

Conference 4/15/2021

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NETFLIX, INC. AND

HULU LLC,

PETITIONERS,

vs.

DIVX, LLC,

PATENT OWNER.

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REVISED

REMOTE CONFERENCE CALL

TELEPHONIC, ALEXANDRIA, VA

THURSDAY, APRIL 15, 2021

PANEL: JUDGE KEVIN TURNER

JUDGE BART A. GERSTENBLITH

JUDGE IFTIKHAR AHMED

Reported by:

Teri C. Gibson, CSR, RPR, CRR

JOB #: 192722

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APRIL 15, 2021

REMOTE CONFERENCE, held telephonically,
Alexandria, VA 22301, pursuant to notice, before Teri C.
Gibson, a Certified Shorthand Reporter, a Registered
Professional Reporter, Certified Realtime Reporter, and
Notary Public in and for the State of Massachusetts,
located in Chelsea, Massachusetts.

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A P P E A R A N C E S:

SHEPPARD, MULLIN, RICHTER & HAMPTON

Attorneys for Petitioner

379 Lytton Avenue

Palo Alto, CA 94301

BY: HARPER BATTS, ESQ.

LOWENSTEIN & WEATHERWAX

Attorneys for Patent Owner

1880 Century Park East

Los Angeles, CA 90067

BY: KENNETH WEATHERWAX, ESQ.

BY: PARHAM HENDIFAR, ESQ.

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2 P R O C E E D I N G S

3 JUDGE TURNER: I am trying to find out
4 from Petitioner's counsel, who we have on the
5 line, and who is going be speaking for
6 petitioner, please.

7 MR. BATTS: Good morning, Judge Turner.
8 This is Harper Batts, Petitioner's counsel. With
9 me is Jeffrey Liang, and I, Harper, will be
10 speaking today.

11 JUDGE TURNER: Okay. Mr. Batts, thank
12 you.

13 And for patent owner, who do we have,
14 and who is going to be speaking?

15 MR. HENDIFAR: Good afternoon, Your
16 Honor. This is Parham Hendifar. I will be
17 speaking for patent owner and also Kenneth
18 Weatherwax, he's counsel for patent owner.

19 JUDGE TURNER: Okay. Thank you.

20 I understand the issue before us is the
21 petitioner wants to file some supplemental
22 information that has already been made of record
23 in the IPR2020-00646 case. I am going to go
24 ahead and have petitioner go ahead and explain to
25 me why this transcript should be made of record

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2 in this proceeding as well. Please do.

3 MR. BATTS: Yes, Your Honor. So on
4 April 5th, we received a transcript for
5 Dr. Bajaj's testimony in the 646 proceeding, and
6 upon review, we confirmed that his testimony
7 contradicts patent owner's position that's taking
8 place in this proceeding, the 558 proceeding,
9 relating to the issue of file format. So in this
10 case, although it's not required by the claim,
11 the patent owner has raised an argument about
12 whether a POSITA would have been able to modify
13 file format. And for timing context, our reply
14 is filed on March 10.

15 So we took the deposition, patent
16 owner's expert in the 646 proceeding a couple
17 weeks after that reply was submitted on March 26.
18 And during that deposition, we asked him
19 questions about his experience and about whether
20 he designed a file format. And on Pages 94 to 98
21 of that transcript, he explained that even
22 undergraduate students in this lab would have
23 been able to design file formats and were aware
24 of file formats. So this testimony directly
25 contradicts DivX's argument in this proceeding on

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2 pages 22 to 24 of their patent and response.

3 And so it's our petition that this is
4 supplemental evidence of information that
5 obviously did not exist earlier than -- could not
6 have appeared earlier, did not exist prior to the
7 filing of our reply brief, and therefore, we
8 request that we can supplement the record with
9 this information. We think that the evidence is
10 straightforward, Your Honor. We don't believe
11 that there need be any more briefing by the
12 petitioner on this point. And currently, the
13 sur-replies for patent owner is due next week,
14 and we raised this issue with them back on
15 April 8. So they have been aware of this
16 evidence that we are requesting to be entered
17 into the record here, so they can address in the
18 surreply if they so choose.

19 JUDGE TURNER: Okay. Thank you.

20 And, Mr. Batts, this is a follow-up. I
21 think that you are not asking to file additional
22 discussion about this. You are just seeking to
23 file the transcript itself in this proceeding?

24 MR. BATTS: Yes, correct, Your Honor,
25 and actually, we were contemplating limiting the

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2 transcript unless patent owner wanted to enlarge
3 it. We were planning on limiting the transcript
4 to just pages 94 to 98 where there was this
5 specific discussion.

6 JUDGE TURNER: All right. But wouldn't
7 that be tantamount to raising an argument?

8 MR. BATTS: No. I think -- I think
9 for -- (Overlapping voices.)

10 JUDGE TURNER: First of all -- I am
11 sorry -- what would be the reason for just giving
12 the impartial within -- the panel a impartial
13 transcript. Why not just file the whole thing
14 and -- I mean, additionally, I, you know, the
15 question would be whether or not any argument --
16 I am not sure how you are going to refer to this
17 oral hearing unless -- unless patent owner brings
18 it up in their surreport so -- but I am sorry.
19 Go ahead.

20 MR. BATTS: Well, I think if the panel
21 views it as necessary that we have to address it
22 in a paper, then we can certainly address it in a
23 two-page submission that raises the specific
24 statements that I made now about their patent
25 owner response, argument on pages 22 to 24, and

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2 the contradiction to that response on pages 94 to
3 98.

4 We certainly have no objection to
5 submitting the whole deposition record, but if we
6 wanted to keep the exhibit more limited, we felt
7 that the relevant portion was 94 to 98. So I do
8 think that not only is it relevant information
9 that directly contradicts their position here, by
10 their expert in a co-pending proceeding, but even
11 that -- I think that also falls to the duty of
12 candor that they should have had to disclose this
13 as to a contradictory position.

14 So I do think that that's absolutely
15 fair game for the hearing for us to discuss the
16 contradictory position that you are taking across
17 proceeding especially if that evidence is in the
18 record in this proceeding.

19 JUDGE TURNER: Okay. Not to presage
20 patent owner's argument, but they are going to
21 say, you had your time for argument in your reply
22 and, you know, I am -- the panel giving you
23 additional argument to distinguish why this
24 transcript or give you a partial transcript is
25 going to be sort of opening the door for you when

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2 really it's patent owner's time and surreply but
3 I --

4 Go ahead and respond to that,
5 Mr. Batts, and then I will go to the patent
6 owner.

7 MR. BATTS: I don't know if they are
8 going to make that argument, Your Honor, but I
9 guess what I would say to that argument is that
10 it goes back to this evidence was not in
11 existence at the time that we filed a reply.
12 Their expert was the one that made the statement
13 that contradicts their position here.

14 So that -- that is a -- is why it would
15 be an interest to justice to permit us to take --
16 allow for the introduction of directly
17 inconsistent testimony that they are, you know,
18 they are playing across two different proceedings
19 simultaneously.

20 JUDGE TURNER: Okay. Let's check with
21 patent owner's counsel.

22 MR. HENDIFAR: This is Parham Hendifar
23 speaking.

24 As Your Honor pointed out, there are
25 many reasons under -- procedurally and

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substantively why the request should be denied.
As Your Honors know, the oral argument here is about a month from now, and really this is an attempt at a distraction where the already short oral argument would be consumed on whether different expert and different proceeding about a different patent, made an out of context statement that could potentially be interpreted, this is -- (distorted audio) but it could be interpreted based on petitioner's position to be -- (distorted audio) seen, this expert.

So this is really just a distraction, but beyond that, if you would allow me to explain why the petitioner's position is not right on the merits, there is no contradiction. Our expert in this proceeding, in Exhibit 2012, Dr. Rasen (phonetic) and Dr. Nielson in paragraph 80 opined the following, he said, "In my opinion, it was beyond the skills of a POSITA to modify the standard file formats to implement partial fragmentation encryption formation within the file."

So a very particular modification to the standard file format was discussed by

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2 Dr. Nielson in this proceeding.

3 Now, in the other proceeding, in the
4 646 proceeding, where petitioner now want to
5 bring in the transcript, Dr. Bajaj's, a different
6 expert who just kind of have already credited in
7 the earlier IPRs, opined about a different
8 patent, which did not involve encryption, did not
9 involve even file format modification to a large
10 extent.

11 He said that as an expert, as a
12 professor at Cornell, he had a team of
13 researchers that included undergrads, and that
14 team developed new file formats. That has
15 nothing to do with whether a POSITA can by
16 itself, change the file format for the purpose
17 that is an issue in this patent. So there is no
18 contradiction whatsoever.

19 But even beyond that, the transcript
20 and its introduction here is inappropriate for --
21 most of all procedurally. The first one as the
22 Board mentioned, the oral argument is about a
23 month from now. The briefing will be complete on
24 Monday, which is next -- two business days from
25 today, and there is no procedure for petitioners

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2 to just bring up new evidence for the first time
3 at oral argument.

4 And, obviously, there was required,
5 petitioner at oral argument, can really respond
6 to what the patent owner has said, and as Your
7 Honor pointed out, if we are not able or if we
8 choose not to raise the transcript, the
9 petitioner cannot raise it, either.

10 More fundamentally, the parties have
11 already submitted their own expert declarations
12 on this very issue of this matter. Petitioner
13 has actually filed a reply declaration by its own
14 expert on multiple pages, explaining this same
15 topic. So it has had its expert already opine on
16 this issue.

17 So there is no reason why another
18 expert in a different proceeding should -- or
19 that a transcript of that different procedure
20 should be brought in, and there are multiple
21 cases on this point as well. For example, in
22 IPR2016-00757, Paper 41, the Board denied a
23 motion to add supplemental evidence, and one of
24 the factors it considered was that the request
25 was made too late in the proceeding and the

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parties already had their own expert opine on the -- on that issue.

Similarly, in IPR2016-00764, Paper 64, the Board said the document that was requested was accumulative to the evidence already in the proceeding, because the parties already had experts that addressed the issue.

On another procedural level, this deposition testimony is hearsay. It was made by the defendant expert who is not an expert here and in a different proceeding, and by definition under the Federal Rules of Evidence 801 and 802, this is hearsay evidence. And even if petitioner had some other right to admit this evidence, it would be stricken under a motion to exclude as hearsay.

And the Board has already filed that evidence that would already be excluded, is noted in supplemented --

For example, in IPR2017-0034, Paper 17, the Board said there is no reason to admit supplemental evidence which would otherwise be entitled to little or no weight, and that is the case also here, both because there is no contradiction, and because the testimony would be hearsay and inadmissible. With

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2 that, I would be happy to answer any questions that
3 Your Honors have.

4 JUDGE TURNER: Okay. Sure.

5 I guess my first question would be, why
6 not allow this transcript into evidence? That
7 gives you the opportunity, you know, to file a
8 motion to exclude as you are going to have, say
9 that we shouldn't consider it, but if it's not on
10 the record, we wouldn't have that ability.

11 And why -- how -- if we allow the whole
12 transcript in as supplemental information, how is
13 this going to prejudice patent owner?

14 MR. HENDIFAR: Yes, so the oral
15 argument here, the Board has not already issued
16 the order, but we expect it to be 60 minutes per
17 side, and there are many issues that need to be
18 discussed in this matter. And, obviously,
19 petitioner raises this issue of contradiction.
20 For distraction reasons we are going to have to
21 respond to it. It's going to take a lot of the
22 energy and the time out of the already short oral
23 argument where there are many actual substantive
24 issues in this matter that could be addressed.

25 And, routinely, in trial courts, for

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2 example, the judges exclude evidence that was a
3 distraction even if, hypothetically, they could
4 serve a function in addition to distraction.

5 So that's really -- and then motions to
6 exclude would also be a waste of petitioner's and
7 the Board's research. As Your Honors may
8 remember, petitioner just two weeks ago requested
9 a Board call to limit the deposition of its
10 expert, because of cost issues that they claimed
11 have been rising in these cases.

12 So we really see no reason why the
13 parties should bear the burden and the Board
14 should bear the burden of going through multiple
15 motions or motions in opposition that apply and
16 orders to exclude a transcript that is really
17 just a distraction and besides, a transitional
18 point in this proceeding.

19 JUDGE TURNER: And I guess Mister -- to
20 follow up Mr. Hendifar, if indeed -- I am sort of
21 hearing that it would be a distraction, but I
22 don't hear any prejudice to patent owner by
23 allowing this transcript in; is that a fair -- or
24 have you indicated that there is a prejudice to
25 patent owner, and I just didn't --

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2 MR. HENDIFAR: Sure. There are two
3 prejudice; one is if we have to, which we will
4 have to devote a substantial amount of time in
5 the oral argument to respond to petitioner's --
6 it's sort of a distraction that whether it's a
7 contradiction -- we would not be able to address
8 the actual merits that we are going to need to
9 address in our oral argument, and this is a
10 technical case, which has a lot of complicated
11 technology, and oral argument in this case is
12 actually going to be very important. We are
13 going to have diagrams, and a lot of technical
14 discussions that I would like to convey to the
15 Board.

16 So if you have to -- maybe the purpose
17 of this request from petitioner to begin with, is
18 you have to instead of addressing the technology
19 and why we are correct on the merits, you have to
20 address why a different deposition did not
21 contradict our position here. We would not be
22 able to utilize the time as efficiently as we
23 should otherwise be able to do, and we wouldn't
24 be able to convey to the Board the technical
25 issues in this matter. That's one prejudice.

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2 And the second one is obviously the cost of
3 motions to exclude and the resources of both the
4 Board and the parties, which would be used in the
5 motion practice.

6 JUDGE TURNER: Okay. Thank you.

7 Do you have anything else before I go
8 back to Mr. Batts?

9 MR. HENDIFAR: No, I don't, Your Honor.

10 JUDGE TURNER: Mr. Batts, I will hear
11 from you now.

12 MR. BATTS: Just a few points, Your
13 Honor. I think that it was clear from patent
14 owner's argument that they concede that this is
15 an issue that is relevant to this dispute, this
16 proceeding. Whether or not they want to agree
17 with the contradiction, they are not disputing
18 that it's relevant information. And if there is
19 no contradiction, then the Board can assess
20 whether a grievant petitioner or patent owner,
21 and the Board obviously has the ability to decide
22 what weight to attribute to this evidence.

23 But the arguments about hearsay, first,
24 it's not hearsay. It's an adopted admission
25 because this is a party sponsored expert witness

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2 and a co-paying proceeding between the parties.

3 So hearsay is not a proper objection here.

4 And second, as noted even in the case
5 law that the patent owner cited, even hearsay can
6 be admitted for evidence in the IPR proceeding if
7 it's in the interest of a justice to allow the
8 Board to consider that testimony. So the same
9 case that they provided to you, to support our
10 position, that this is in fact evidence that can
11 be submitted and considered by the Board.

12 I don't think two decisions (distorted
13 audio) are not going to address the Changer &
14 Dresser position of the Poney Hook decision. I
15 think the one that I would address is the Apple
16 decision, which is IPR2016-00757, Paper 41. And
17 there I think they said that the facts are
18 clearly distinguishable.

19 What patent owner didn't note was that
20 the attempt to add evidence in that proceeding
21 was after oral argument had already been
22 conducted, and that the evidence that was being
23 submitted was for a claim construction issue,
24 which the Board said, Hey, we have sufficient
25 briefing. We understand claim construction. We

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2 can make a determination on claim construction.

3 Whereas, what we are talking about here
4 is about factual statement about what were the
5 capabilities of people for file format
6 modifications back in the time period. So I
7 think that is a very distinguishable situation,
8 both in the procedural timing as well as the
9 underlining evidence that is in question.

10 I think on this whole distraction
11 point, we are certainly open to a pretrial
12 conference here, if needed, and we are certainly
13 not objecting to a longer oral argument, so we
14 have no problem with the hour and 15.

15 I don't think that this should be the
16 subsuming issue of the hearing, but it's up to
17 patent owner how much they want to focus on it.
18 But I would say that patent owner is the one that
19 decided to run, you know, 50 different rabbit
20 trails in their patent owner response.

21 They chose to make this all about so
22 many different issues, so that they can have a
23 scatter ton of issues. So if anybody that's
24 having to address issues, we have the burden. We
25 are going to have to choose what time we allocate

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2 to what argument they raise in the patent owner
3 response when we are limited in our reply brief,
4 and yet they get another surreply to raise
5 arguments again.

6 So I don't believe that distraction is
7 a fair characterization, particularly when the
8 Board can assess whether this is contradictory
9 testimony or not, and I believe that's all I
10 have, Your Honor.

11 JUDGE TURNER: Okay. Thank you,
12 Mr. Batts.

13 Let me just follow-up quickly since you
14 didn't raise the issue, is petitioner planning to
15 request a prehearing conference in this
16 proceeding?

17 MR. BATTS: We may, Your Honor. I
18 don't -- I think that -- (Overlapping voices.)

19 JUDGE TURNER: I know you may. I guess
20 I am looking for a little bit more.

21 MR. BATTS: Sure. So, your Honor, I
22 have yet to request a prehearing conference in 7
23 or 8 years of IPR, but I do plan to request a
24 prehearing conference in the (name) proceeding
25 that's also involving the parties, and Netflix,

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2 and DivX. So it is possible here, depending on
3 what motions are filed, if we need to address
4 things at a prehearing conference, then I think
5 that might be a likelihood, given the number of
6 issues that DivX has raised in the proceedings
7 and doesn't want to streamline proceedings.

8 JUDGE TURNER: Thank you, Mr. Batts.

9 I will go back to Mr. Hendifar. Let's
10 hear from you now.

11 MR. HENDIFAR: Thank you very much,
12 Your Honor.

13 So I have a few points that I would
14 like to raise with, Your Honors.

15 Obviously, evidence does not become
16 relevant or contradictory just because petitioner
17 counsel comes on a call and says that. It's a
18 high bar to show that the evidence and its
19 introduction is dangerous to justice and just --
20 and the statement it may be relevant here, that
21 that does not reach that far.

22 We also don't have the right to provide
23 any additional testimony from either Dr. Bajaj or
24 Dr. Nielson to address this contradictory
25 testimony. So we request that if the Board is

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2 inclined to admit this deposition transcript into
3 evidence, they also allow introduction of
4 Dr. Bajaj's actual declaration in that
5 proceeding, Exhibit 2005. So, that it's a
6 context for the deposition transcript, and if you
7 allow me to explain why, Dr. Bajaj explained that
8 in developing a particular software, SHASTRA, he
9 developed a new file format.

10 In his declaration, Exhibit 2005 in
11 that proceeding, explained that when he did that,
12 he was a professor at Cornell, who's obviously an
13 expert not a -- (distorted audio) -- So we
14 believe that additional information would be
15 necessary to give context to this deposition
16 testimony.

17 So if the Board is inclined, if Your
18 Honors are inclined to admit this deposition, we
19 request that Exhibit 2005 from that proceeding
20 also be admitted into evidence.

21 Finally, we would request a
22 two-business-day extension on our deadline to
23 file a reply, so we can address, if the Board is
24 inclined to allow the testimony, we can address
25 it in our reply.

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2 JUDGE TURNER: Okay. And let me
3 follow-up on a couple things, Mr. Hendifar.

4 So you want this extension of your
5 surreply because you are -- if we allow the
6 transcript in, you are going to address it in the
7 surreply, even though that would seem to
8 completely open the argument on the oral argument
9 address, and therefore, create your own
10 prejudice, I would think. So maybe --

11 MR. BATTS: Right, understood --

12 MR. HENDIFAR: I would have to,
13 obviously, talk to new counsel on this case. We
14 were not honestly expecting that the transcript
15 would be admitted as it is, I would have the
16 opportunity to talk to his counsel. So we may or
17 may not address it, but we would like just one or
18 two-day extension to be able --

19 MR. WEATHERWAX: Sorry. I did not mean
20 to interrupt you. This is Ken Weatherwax. I am
21 lead counsel, and for efficiency, just off the
22 top of my head, we are in a dilemma. If we don't
23 respond to it, if it comes in prior to the
24 surreply, then they could argue that we should
25 have addressed it in the surreply. So what are

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2 we -- are we really in a position where we can
3 just sit back and not address it in the surreply?

4 We don't know. We would ask the Board
5 guidance.

6 JUDGE TURNER: No, I understand that,
7 Mr. Weatherwax, and I appreciate that point.

8 I am sorry. I only want to raise the
9 issue simply because I think from the panel's
10 viewpoint, if we allow this entire transcript in
11 and nobody refers to it, I am not sure that it
12 can be, you know, other than if it's going to be
13 addressable in oral hearing, if there is no
14 underlying argument to refer to, because
15 everything in the oral hearing, you know, has to
16 refer back to a paper and, you know, they can
17 point out that there is a discrepancy here, but,
18 you know, that they may be more limited.

19 And I am just sort of making it clear
20 that, you know, patent owner addresses in its
21 reply that certainly would make it, what I would
22 probably consider a live issue potentially for
23 oral hearing, so they can address it. It seems
24 slightly juxtaposed with prejudice, that
25 Mr. Hendifar was talking about, that he had

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2 limited time and issues.

3 Sorry. Was there a follow-up, sir?

4 MR. WEATHERWAX: I am just saying, we
5 quite understood. We don't want to raise it. We
6 just were concerned about the dilemma we face,
7 and we appreciate your guidance there.

8 JUDGE TURNER: I understand, and let me
9 get back to Mr. Hendifar, since you are here. Is
10 there a -- has patent owner's counsel, have they
11 contemplated to making a request for a prehearing
12 conference in this proceeding with Petitioner?

13 MR. HENDIFAR: Yes. This is actually
14 the first time we heard Batts raise that, so we
15 haven't had an opportunity to discuss that.

16 JUDGE TURNER: Sure, but it's part of
17 the -- you know, our general order. So
18 irrespective of whether petitioner ordered it,
19 you know, I guess I'm trying to find out if
20 patent owner is independently or in concert,
21 going to have a prehearing conference.

22 MR. WEATHERWAX: We have not intended
23 at this point to seek a prehearing conference,
24 Your Honor.

25 JUDGE TURNER: Okay. Thank you.

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2 I think we've heard enough, but let
3 me -- anything -- anything additional, Mr. Batts,
4 before we -- we need to consider before the panel
5 considers all the issues before us, Mr. Batts?

6 MR. BATTS: Yes, just very briefly.

7 We would have no objection to having
8 the declaration submitted that patent owner's
9 counsel referred to from the other proceeding.
10 We would have no objection to granting extension
11 on their surreply next week per their request,
12 and if it's an issue on whether it's addressed in
13 a paper, we would be filing a one-page paper
14 today that addresses this issue.

15 JUDGE TURNER: Okay. And,
16 Mr. Hendifar?

17 MR. HENDIFAR: We oppose the additional
18 briefing by petitioner, and in the
19 meet-and-confer, they expressed that they will
20 not be seeking any additional briefing.

21 And additional briefing when they get
22 one, it's an issue after everything has already
23 been briefed, would actually prejudice patent
24 owner, so we strongly oppose any additional
25 briefing on this issue with the petitioner.

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2 JUDGE TURNER: Understood, and just to
3 make sure that I understand, I am going to call
4 patent owner's counsel. He is requesting a
5 two-day extension for their surreply; is that
6 correct?

7 MR. HENDIFAR: That is correct.

8 JUDGE TURNER: If indeed the transcript
9 or additional information is brought in?

10 MR. HENDIFAR: Correct. A two-day
11 extension as well as Exhibit 2005 from the other
12 proceeding.

13 JUDGE TURNER: Understood, that's the
14 submission as well.

15 Okay. I think we understand the
16 parties. Please stay on the line. The panel
17 will confirm, and we will be right back.

18 Thank you.

19 (Off the record from 12:30 p.m. to
20 12:32 p.m.)

21 JUDGE TURNER: This is Judge Turner,
22 back on the line.

23 The panel has conferred, and we are
24 going to agree to allow for supplemental
25 information from both sides, pursuant to CFR

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2 42123. We are going to allow, not partial
3 transcript, but the entire document of the
4 deposition taken in the 646 and the other
5 exhibit.

6 No additional briefing or supplemental
7 information about those is needed, other than
8 their submission.

9 We are also going to grant a two-day
10 extension, even though the parties could probably
11 work it out. We will be doing an order for
12 patent surreply for that. That would be April 22
13 so -- um -- 21st. So it will be April 23rd will
14 be the due date for the surreply.

15 Any questions or issues based on the
16 panel's ruling, starting with petitioner.

17 MR. BATTS: No, Your Honor.

18 MR. HENDIFAR: I just didn't quite
19 catch the due date for the surreply, if Your
20 Honor would be kind enough to repeat the date.

21 JUDGE TURNER: Well, unless I am off, I
22 think your present due date for -- oh, I am
23 sorry. I think I have the -- no. It's actually
24 the petitioner's surreply, but I think April 21st
25 is the patent owner's surreply date; is it not?

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2 MR. HENDIFAR: Yes. It's April 19, I
3 believe. I just want to make sure Your Honor is
4 clear on this. I believe currently, that our
5 patent owner certified, everything I've related
6 is on file is --

7 JUDGE TURNER: Okay.

8 MR. HENDIFAR: -- is the 19th.

9 JUDGE TURNER: I'm sorry. You are
10 correct. I am looking at the wrong date. So,
11 yes, you are correct. That would move it from
12 the 19th to the 21st.

13 MR. HENDIFAR: Thank you very much.

14 JUDGE TURNER: We will follow-up with
15 an order, which will probably go out tomorrow
16 memorializing this information and return of the
17 -- I'm sorry -- go ahead.

18 MR. WEATHERWAX: Your Honor, this is
19 Ken Weatherwax, counsel for patent owner. I just
20 wanted to point out based on what's happened on
21 other calls, I don't think it's been mentioned,
22 that there is a court courier on the line, which
23 I believe petitioner retained, and I just wanted
24 to let you know that in case you wanted to
25 instruct them as to what to do with the

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2 transcript.

3 JUDGE TURNER: I was just going to get
4 to that, Mr. Weatherwax. Thank you. I am
5 assuming that that is correct.

6 Mr. Batts, that the court reporter was
7 requested by petitioner's counsel; is that
8 correct?

9 MR. BATTS: That is correct, Your
10 Honor.

11 JUDGE TURNER: Okay. And I am assuming
12 that you will follow-up and make a record of the
13 transcript when it's reviewed and available; is
14 that correct?

15 MR. BATTS: Correct. We will file it
16 as per our usual practice in trustee proceedings.

17 JUDGE TURNER: Okay. I appreciate
18 that, and let me go ahead and find out is there
19 any additional question or issue before we
20 adjourn, starting with you, Mr. Batts, the
21 petitioner.

22 MR. BATTS: No further issues, Your
23 Honor.

24 Thank you.

25 JUDGE TURNER: And, Mr. Hendifar,

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2 patent owner?

3 MR. HENDIFAR: No issues, Your Honor.

4 We appreciate your time.

5 JUDGE TURNER: I guess one other -- let
6 me see. The -- if we do -- I guess the panel --

7 so the question would be if we do move the
8 surreply date, is that putting due date 5 in
9 direct conflict with that, that is the question.

10 Does the due date 5, also need to be moved?

11 MR. BATTS: Your Honor, I apologize.
12 My Internet is down, so I can't look at the
13 schedule right now.

14 JUDGE TURNER: Well, due date 3, patent
15 owner's surreply is April 19, which we would move
16 to the 21st.

17 Presently due date 5 is petitioner
18 server -- motion to exclude evidence is also the
19 same, would be the same day.

20 Does that need to be moved?

21 MR. BATTS: I believe so, Your Honor,
22 just so we have an opportunity if we need to --
23 um -- reply to anything based on the surreply.

24 JUDGE TURNER: Okay. Well, what I
25 think makes the most sense is that the panel will

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2 just need a new due date, and then we will work
3 out the dates with -- (distorted audio) -- of
4 course remembering that's going to stay the same
5 on May 25th, but we will go ahead, and probably
6 set everything by two dates just to make it a bit
7 more equitable.

8 Any additional questions?

9 Thanks for pointing that out.

10 I'm sorry. Go ahead.

11 MR. HENDIFAR: Not from patent owner.

12 Thank you.

13 MR. BATTS: Not from Petitioner.

14 Thank you.

15 JUDGE TURNER: Thank you very much. I
16 thank you, parties, for the attention, and we are
17 adjourned.

18 Thank you.

19 (Conference concluded at 12:38 p.m.)

20 * * * *

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C E R T I F I C A T E

I, TERI CELESTE GIBSON, a CSR, RPR, CRR, and a Notary Public within and for the Commonwealth of Massachusetts, do hereby certify that the foregoing transcript, consisting of 33 pages, is a complete, true and accurate record of my stenotype notes taken in the aforementioned matter telephonically, with use of mechanical stenography, computer aided transcription, to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of April, 2021.



TERI CELESTE GIBSON, CSR, RPR, CRR

Notary Public - My Commission Expires: 2/7/2025