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Transcript of Hearing

Date: September 9, 2024

Case: Sony Interactive Entertainment LLC -v- Quantum Imaging LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3
4 SONY INTERACTIVE ENTERTAINMENT LLC,
5
6 Petitioner,

7 Vs.

8 QUANTUM IMAGING LLC,
9
10 Patent Owner.

11 Case No. IPR2023-00954
12 Patent No. 8,458,028
13 Case No. IPR2023-00995
14 Patent No. 10,846,941
15 Case No. IPR2023-00996
16 Patent No. 10,991,165

17 TELEPHONIC HEARING

18 Monday, September 9, 2024

19 1:33 P.M. (EST)

20 BEFORE:

21 ADMINISTRATIVE PATENT JUDGES, JAMES J. MAYBERRY,
22 SCOTT A. DANIELS, AND KEVIN CHERRY

Reported By: Anita M. Trombetta, RMR, CRR, California
CSR No. 14647

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17 Telephonic Hearing, before Anita M. Trombetta, a
18 Certified Shorthand Reporter in the State of
19 California, RMR, CRR, and Notary Public in and for the
20 State of New York, commencing at 1:33 P.M. on
21 September 9, 2024.
22

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

2 PANEL JUDGE MAYBERRY: Good afternoon.
3 This is Judge Mayberry with the Patent Trial
4 and Appeal Board.

5 With me on the line are Judges Daniels
6 and Cherry.

7 This call concerns IPR2023-00954, also
8 -00995 -- I'm sorry.

9 00954, also 00995 and 00996, each
10 entitled Sony Interactive Entertainment LLC V.
11 Quantum Imaging LLC.

12 We'd like to start with appearances.

13 Who do we have on the line for
14 petitioner?

15 ATTORNEY ARJOMAND: Good afternoon, your
16 Honors. Mehran Arjomand, of Morrison &
17 Foerster, on behalf of petitioner, Sony
18 Interactive Entertainment.

19 With me is Bryan Blumenkopf of
20 Morrison & Foerster.

21 There also may be one or more counsel
22 for Sony Interactive Entertainment on the call

1 as well.

2 PANEL JUDGE MAYBERRY: All right. Thank
3 you.

4 And who do we have on the line for
5 patent owner?

6 ATTORNEY ROBINSON: This is Erick
7 Robinson, with Bochner, for the patent owner.

8 And with me is Doug Sorocco, at Dunlap
9 Coddling.

10 Also with me is Jayne Piana, of Bochner.

11 And doing his first appearing conference
12 as a LEAP practitioner is my colleague,
13 Homayoon Rafatijo.

14 PANEL JUDGE MAYBERRY: All right. Thank
15 you, counsel.

16 It sounds like we have a court reporter
17 on the line.

18 Who arranged for the court reporter?

19 ATTORNEY ROBINSON: I believe we did,
20 the patent owner.

21 PANEL JUDGE MAYBERRY: All right. Thank
22 you.

1 If patent owner could then please submit
2 the transcript of this call in each of the
3 three proceedings once it's practical to do so.

4 ATTORNEY ROBINSON: Will do. Thank you,
5 your Honor.

6 PANEL JUDGE MAYBERRY: This call is a
7 prehearing conference for the three matters I
8 identified. The purpose of a prehearing
9 conference is to afford the parties the
10 opportunity to preview, but not argue, the
11 issues to be discussed at the hearing, and to
12 seek the board's guidance as to particular
13 issues that the panel would like to be
14 addressed by the parties.

15 So the hearing in these three matters
16 are set to begin at 10:00 A.M. Eastern Time, on
17 Friday, September 13, and the hearing will be
18 by video. There will be a consolidated hearing
19 for IPR2023-00995, and IPR2023-00996. That
20 will start at 10:00.

21 A separate hearing for IPR2023-00954
22 will begin at 1:30 Eastern Time, on that same

1 day.

2 On the first consolidated hearing for
3 IPR2023, 00995 and 00996, each party will have
4 a total of 60 minutes to present their
5 arguments.

6 In the second separate hearing for
7 00954, again, each party will have 60 minutes
8 of total time to present arguments.

9 We note that in the 00954 case, as
10 patent owner counsel said earlier, there will
11 be a LEAP practitioner, and patent owner will
12 get an extra 15 minutes of argument time.

13 The board would also like to thank
14 patent owner for giving the practitioner an
15 opportunity in our hearing on Friday.

16 We do want to make it clear that any
17 unused time from the first hearing can't be
18 carried over into the second hearing.
19 Similarly, you can't borrow time from the
20 second hearing if you want to make longer
21 arguments than the first.

22 Also want to emphasize that these are

1 going to be two separate hearings, with two
2 separate transcripts.

3 During the second hearing, please don't
4 try to incorporate or reference something that
5 you argued in the first hearing.

6 For example, don't say, you know, "We
7 talked about this issue this morning, so I
8 won't go into it here."

9 We're going to treat them as separate
10 hearings.

11 And did I miss anything?

12 ATTORNEY ARJOMAND: Your Honor?

13 PANEL JUDGE MAYBERRY: Yes.

14 ATTORNEY ARJOMAND: I'm sorry, your
15 Honor. I didn't want to -- I did want to raise
16 one issue. This is Mehran Arjomand for
17 petitioner.

18 For the IPR2023-00954, you indicated
19 that patent owner had submitted a LEAP form,
20 and that had been approved.

21 I would like to make the board aware
22 that petitioner also submitted a LEAP form for

1 my colleague, Bryan Blumenkopf, and that was
2 approved on September 6.

3 So our understanding, your Honors, is
4 that petitioner will also get additional LEAP
5 time for the 00954 IPR hearing.

6 PANEL JUDGE MAYBERRY: I appreciate
7 that, counsel. And I apologize. I just hit my
8 refresh button, and I see the approved forms.
9 I do apologize.

10 But, yes, there is an approved form for
11 petitioner as well. So petitioner in the 00954
12 case will also get an additional 15 minutes of
13 argument time. So that's going to be
14 75 minutes for both sides for that afternoon
15 hearing.

16 And just to make sure that I've got all
17 my records straight, can you -- the parties
18 confirm that there were -- there was no request
19 for the -- the morning hearing, as far as a
20 LEAP practitioner.

21 ATTORNEY ARJOMAND: Correct, from
22 petitioner's perspective, your Honor.

1 PANEL JUDGE MAYBERRY: And patent owner?

2 ATTORNEY SOROCCO: Your Honor, this is
3 Douglas Sorocco. That is correct, for patent
4 owner's side as well.

5 PANEL JUDGE MAYBERRY: Okay. Great.

6 And before we get any further, I did
7 have one housekeeping note.

8 We did receive an email correspondence
9 today. Patent owner's counsel requested
10 permission to file its demonstratives tomorrow,
11 September 10, and indicated that the petitioner
12 did not object to the request. So that request
13 is granted. The deadline for filing
14 demonstratives for these hearings for both
15 parties is tomorrow, Tuesday, September 10.

16 And with that, counsel for patent owner
17 requested this hearing, this conference. So
18 what we're going to do now is turn to counsel
19 and let them discuss what they want to seek out
20 of this conference.

21 So counsel for patent owner, you may
22 proceed when you're ready.

1 ATTORNEY RAFATIJO: Good morning, your
2 Honor. This is Homayoon Rafatiyo. I'm
3 representing the patent owner.

4 I'd like to start by thanking the board
5 for granting our request for a prehearing
6 conference so that we can have the board's
7 decision and guidance on view of our motions to
8 exclude. As a LEAP practitioner who is
9 appearing in the previous conference, I would
10 also like to thank you personally for giving me
11 this opportunity.

12 We requested this prehearing conference,
13 your Honor, because we would like to have an
14 early decision consistent with the trial --
15 trial -- trial practice guideline on a few of
16 the exhibits that we think should be addressed
17 prior to the hearing. And, also, we would like
18 to seek the board's guidance on one issue
19 related to an alternative relief we requested
20 from the board just in case we would like to be
21 in conformity with the board's rule and order
22 in this proceeding. So we just would like to

1 seek guidance on that issue as well.

2 I am going to discuss the 954 IPR, and
3 my colleague, Mr. Sorocco, is going to discuss
4 the other two IPRs. And we are here for any
5 questions, if you have, your Honors, and I'm
6 more than happy to proceed to an argument
7 however your Honor sees fit, we are going to
8 proceed that way.

9 PANEL JUDGE MAYBERRY: Okay. Counsel,
10 this is Judge Mayberry.

11 One thing. Did I understand that you
12 wanted to argue your motion to exclude at this
13 conference so that we could provide some
14 decision on that earlier rather than later?

15 Did I understand that correctly?

16 ATTORNEY RAFATIJO: Your Honor, we would
17 like -- we do not intend to argue our motion.
18 We would just like to have the board's decision
19 and guidance on some of the exhibits before the
20 oral hearing, consistent with the trial
21 practice guidelines. And that's why we are
22 here.

1 We are not here to argue. Unless your
2 Honors have any questions for patent owner, we
3 are not here to argue. We just would like to
4 ask for an early decision and some guidance on
5 an issue so that we could make sure that our
6 demonstratives and our arguments on Friday
7 would be in conformity with the board's order
8 in this proceeding.

9 PANEL JUDGE MAYBERRY: Okay. I
10 understand that.

11 ATTORNEY ARJOMAND: Your Honor, this is
12 Mehran Arjomand. May I be heard briefly?

13 PANEL JUDGE MAYBERRY: Sure.

14 ATTORNEY ARJOMAND: So, your Honor, over
15 the weekend, we had correspondence with patent
16 owner's counsel regarding today's prehearing
17 conference. And in the correspondence, patent
18 owner's counsel indicated very clearly that its
19 intention was to argue the motions to exclude.
20 And we explained to patent owner's counsel,
21 based on the hearing order, Paper 41, that the
22 conferences, such as a prehearing conference in

1 this case and in the other two IPR proceedings,
2 are not meant to be used to argue motions to
3 exclude.

4 And we further explained to them that,
5 you know, our experience is that these
6 prehearing conferences are typically associated
7 with identifying logistical issues associated
8 with the actual hearing. For example, whether
9 the board is interested in hearing evidentiary
10 issues or claim construction issues at the
11 hearing, or whether they would prefer the
12 parties to focus on a specific reference or a
13 specific issue that they think is important.

14 So I am a little bit unclear as to what
15 patent owner's counsel means when they indicate
16 that they're not planning to argue a motion to
17 exclude now, when everything that they had
18 indicated to us over the weekend, as early as
19 this morning, was that they intended to fully
20 argue the motions to exclude in each of these
21 proceedings.

22 PANEL JUDGE MAYBERRY: Again, thank you,

1 counsel.

2 From your point of view, patent owner's
3 counsel, if you want to go ahead and respond to
4 that, that's fine.

5 ATTORNEY RAFATIJO: Sure, your Honor.

6 As I explained earlier, your Honor, on
7 the call, we do not intend to argue, and we
8 made that very clear to the other side. And in
9 the request for this prehearing that we
10 submitted to your Honors, we said the issue
11 that we would like to bring before the board is
12 to seek guidance and decision on a few of the
13 exhibits. And that is consistent with the
14 trial guidelines practices.

15 We're not here to argue a motion to
16 exclude. We just -- we would like to have --
17 again, as I mentioned for the fourth time
18 saying this on the record, we are here to have
19 your Honor's guidance and prepare an early
20 decision, to the extent it is possible, before
21 the final hearing so that the parties can
22 present their arguments in full conformity with

1 the board's order and the guidelines.

2 PANEL JUDGE MAYBERRY: Okay. Thank you,
3 counsel.

4 So let's say this. First, we have not
5 ruled on the motion to exclude. We likely will
6 not rule on the motion to exclude before the
7 hearing on Friday.

8 As such, the -- the exhibits and
9 sections of -- of declaration and those things
10 that are the subject of the motion should be
11 considered as evidence in the record. And you
12 can -- and so they should be treated as such at
13 the hearing so they can be cited to by either
14 party and discussed.

15 And to the extent that patent owner
16 wishes to argue their motion to exclude at the
17 hearing, they can do that -- they can use their
18 time to do that, should they so choose.

19 The panel does not have any special need
20 or desire to have that argument in front of us.
21 We do have the briefings. But, again, we will
22 leave that up to patent owner to decide how to

1 use their time in the two hearings, should they
2 wish to argue specifically their motion to
3 exclude.

4 Does that provide you with sufficient
5 guidance for Friday's hearing? I'm talking
6 about -- I'm directing to patent owner's
7 counsel.

8 ATTORNEY RAFATIJO: Sure, your Honor.
9 We respect the board's decision, and
10 absolutely.

11 One question I have for your Honor. The
12 parties exchanged the demonstratives on Friday
13 and also exchanged their objection to evidence.

14 I just want to make sure that if one
15 party does not object to a slide or has not
16 raised any objections so far, that objection is
17 out of the way, and so that we can -- it is our
18 understanding that we could rely on the slide
19 so long as it's not subject to objections by
20 petitioner.

21 And petitioner set forth a deadline for
22 exchanging objections -- objections to

1 demonstrative, and we have exchanged those
2 objections. And we just want to make sure
3 that -- we would like to make sure that we are
4 in conformity with the rules and the board's
5 orders in presenting an oral argument on
6 Friday.

7 PANEL JUDGE MAYBERRY: So as long as a
8 party has not objected to another party's
9 demonstrative, that demonstrative can be used.
10 And we would not expect an objection to arise
11 on Friday if no objection was made earlier.

12 So to that extent, it would have been
13 waived by failing to provide a timely objection
14 in the window that was provided in our hearing
15 order.

16 ATTORNEY RAFATIJO: Thank you, your
17 Honor.

18 PANEL JUDGE MAYBERRY: And so I do want
19 to make -- just to make clear.

20 My understanding in this proceeding is
21 there is no confidential information. So
22 that's not the concern here.

1 The concern is that -- whether there is
2 any objection to a reference in a -- a slide
3 that may be to evidence that was exclude --
4 was -- was moved to be excluded or something
5 like that. So improper argument or new
6 arguments that appears on the slide.

7 Those would be the types of things that
8 parties may object to. You know, they expect
9 those objections to be made early, to be
10 resolved between the parties, if at all humanly
11 possible, and then we would -- to the extent
12 there are no objections, those demonstratives
13 may be used at the hearing on Friday.

14 ATTORNEY RAFATIJO: Thank you, your
15 Honor, for your guidance.

16 PANEL JUDGE MAYBERRY: Is there anything
17 else from patent owner's counsel that they
18 would like to know -- seek guidance from us
19 prior to the hearing?

20 ATTORNEY RAFATIJO: No, your Honor.
21 Thank you for your time.

22 PANEL JUDGE MAYBERRY: All right.

1 And patent owner, I'm going to go ahead
2 and give you a chance to ask anything if you
3 have anything on your mind.

4 ATTORNEY RAFATIJO: Nothing from patent
5 owner, your Honor. Thank you.

6 PANEL JUDGE MAYBERRY: I'm sorry.
7 Petitioner's counsel. My mistake.

8 Anything from petitioner's counsel?

9 PETITIONER'S COUNSEL: Nothing at our
10 end, your Honor.

11 PANEL JUDGE MAYBERRY: Thank you.

12 I'm going to go ahead and mute this
13 conference and confer with my two panel members
14 to make sure that everybody is -- that there is
15 no other issues that we would like to discuss.

16 So if you can just be patient for a
17 minute.

18 (Brief recess.)

19 PANEL JUDGE MAYBERRY: All right. The
20 panel is back. We would like to thank you for
21 allowing us to step away for a moment.

22 Before we start, we'd like to confirm

1 that we do have counsel for patent owner still
2 on the phone?

3 UNIDENTIFIED ATTORNEY: Yes, your Honor.

4 PANEL JUDGE MAYBERRY: And counsel for
5 petitioner?

6 ATTORNEY ARJOMAND: Yes, your Honor.

7 PANEL JUDGE MAYBERRY: All right.

8 Well, we want to thank both parties for
9 participating. The panel has nothing else for
10 you today. We are looking forward to your
11 arguments on Friday. This call is adjourned.

12 (Time noted: 1:54 P.M.)

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, ANITA M. TROMBETTA, a Notary Public
3 within and for the State of New York, do hereby
4 certify that the within is a true and accurate
5 transcript of the proceedings held on September
6 9th, 2024.

7 That I am not related to any of the
8 parties to this action by blood or marriage; and
9 that I am in no way interested in the outcome of
10 this matter.

11 IN WITNESS WHEREOF, I have hereunto set
12 my hand this 9th day of September, 2024.

13
14
15 IN WITNESS WHEREOF, I have hereunto set my
16 Hand this 9th day of September, 2024.

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18 
19

20 _____
21 NOTARY PUBLIC IN AND FOR THE STATE OF NEW YORK
22

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