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Transcript of Conference Call

Date: July 2, 2024

Case: Peloton Interactive, Inc. -v- Johnson Health Tech Co., Ltd. (PTAB)

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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4
5 PELOTON INTERACTIVE, INC.,
6 Petitioner
7 v.
8 JOHNSON HEALTH TECH CO., LTD.,
9 Patent Owner

10
11 Case No. IPR2023-01163 - (Patent 10,032,227 B2)
12 IPR2023-01164 - (Patent 10,799,375 B2)
13 IPR2023-01165 - (Patent 11,227,340 B2)

14
15 TELEPHONIC CONFERENCE

16 TUESDAY, JULY 2, 2024

17 3:36 P.M. EST

18
19 BEFORE ADMINISTRATIVE PATENT JUDGES:

20 BART A. GERSTENBLITH
21 JAMES P. CALVE
22 JULIET MITCHELL DIRBA

Job No.: 544329

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Stenographically Reported by:

Adrienne Mignano, RPR

A P P E A R A N C E S

ON BEHALF OF PETITIONER-PELOTON INTERACTIVE

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ON BEHALF OF PATENT OWNER-JOHNSON HEALTH TECH

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1 THE COURT: Okay.

2 So, Mr. Laing, patent owner requested
3 this conference call. I'm going to give you a
4 chance to let us know what's going on here.

5 I will note that I would like you to
6 address first, it looks like the exhibit numbers
7 are incorrectly stated in your e-mail from this
8 morning. It looks like you got a couple of them
9 mixed up, but tell me if I'm wrong.

10 Second, I'd like to know what basis
11 patent owner has to request to submit the
12 information that you're seeking as supplemental
13 information pursuant to 42.123(b). And when I
14 say that, I mean it is not my understanding that
15 this is typically the rule used in this type of
16 situation, so I'd like to know what the history
17 is going on.

18 Petitioner sent us an e-mail after
19 your e-mail which provided a little more
20 information. So feel free to give us the full
21 story of what's going on and then address the
22 exact exhibit numbers and how this falls within

1 the rule for what you're requesting.

2 MR. LAING: Thank you, Your Honor.

3 And I apologize, my e-mail did transpose two
4 exhibit numbers. The exhibit numbers at issue
5 are Exhibit Number 18 in IPR number 1163,
6 Exhibit 1020 in 1164 and Exhibit 1020 in 1165.

7 So this issue really boils down to
8 the fact that petitioner filed an incomplete
9 document, and patent owner is seeking to file
10 the complete document. The omitted portion of
11 the document provides relevant context and
12 information important to patent owner's
13 sur-reply.

14 And as counsel for petitioner pointed
15 out, it served -- petitioner served patent owner
16 with the complete document. So it is a little
17 unclear the reason petitioner is opposing patent
18 owner's request.

19 However, the incomplete document that
20 are Exhibit 18 and 1020 is a portion of Johnson
21 Health Tech's preliminary infringement
22 contentions from district court. And the

1 portion that was omitted from the document is
2 the cover pleading explaining that these
3 infringement contentions were preliminary and
4 that Johnson Health Tech reserved the right to
5 supplement its preliminary infringement
6 contention.

7 Now, as for the basis of submitting
8 this as supplemental information, we believe
9 pursuant to 42.123(b) that this information is
10 directly relevant and responsive to petitioner's
11 arguments and evidence admitted with its reply,
12 and we are attempting to essentially complete
13 the record and get the entire document in, and
14 that in doing so, would be in the interest of
15 justice so there isn't an incomplete and
16 potentially misleading exhibit on the record
17 without the full exhibit, the full document.

18 THE COURT: Okay. Did you want to
19 add anything else before we go to Mr. Tehranchi?
20 I apologize if I pronounced your name
21 incorrectly.

22 MR. LAING: Not at this time, Your

1 Honor. Thank you.

2 THE COURT: Okay. Mr. Tehranchi,
3 your turn, please.

4 MR. TEHRANCHI: Thank you, Your
5 Honor, and your pronunciation is just fine.

6 So just a couple of more pieces of
7 information to provide context. So as the
8 patent owner counsel mentioned, they objected to
9 the exhibits that we filed and then we timely
10 filed this cover pleading, which is a two-page
11 document that identifies the parties and the
12 names and all of that. And we believe that the
13 right procedure is if they are still not
14 satisfied with that, then they can file a motion
15 to exclude it, and then we can file the document
16 with the Board and so on.

17 So that's certainly one option. But
18 more importantly with the merits of the case,
19 actually all of this supposed missing
20 information or incomplete information is in our
21 papers already. So these are patent owner's own
22 infringement contentions that they served our

1 clients at Peloton.

2 And in terms of the case number, it
3 is part of the IPR. It is a related proceeding.
4 The date of the case is also in that section and
5 also is in the title of that exhibit that we
6 filed. Also there is a first paragraph of each
7 of the exhibits that we filed. This is patent
8 owner's own statement. It has a reservation of
9 rights statement in there that says effectively
10 that these are preliminary contentions and
11 additional information could be added to this.

12 So we don't think there is anything
13 to merit filing these additional documents at
14 this point, at this time. And just one more
15 thing is that when patent owner contacted us,
16 they asked us -- that they would like to file
17 the cover pleading as exhibits with their
18 sur-reply, and they asked us not to object to
19 it. And we agreed. We basically said yes,
20 under two conditions, which we think were very
21 reasonable.

22 One of them was before they filed the

1 exhibit, they send it to us so we can make sure
2 it is really just a cover pleading. And the
3 second ask was for them not to file a motion to
4 exclude our exhibits. Because otherwise what
5 could happen is they could file a motion to
6 exclude our exhibit and because we hadn't
7 objected to their evidence, then we couldn't
8 file our motion to exclude. And the patent
9 owner didn't agree to that.

10 So we're at this point here, and
11 again, Your Honor, we don't think there is any
12 merit at this point to file these documents
13 because all the supposedly missing information
14 are already in the current papers that's filed.

15 THE COURT: Okay. Thank you for
16 explaining that further.

17 Question -- Mr. Laing, I'm going to
18 come back to you, but a question for you, and
19 don't take this as me trying to tell you-all
20 what to do, but what's the problem with agreeing
21 to -- assuming that we also agree -- allowing
22 you to file the full document with your

1 sur-reply and not objecting to the exhibit that
2 petitioner filed since they are basically the
3 same as what you're filing?

4 I'm just trying to understand why
5 we're even on this call.

6 MR. LAING: This is Michael Laing.
7 Oh, sorry, Mr. Tehranchi. Go ahead.

8 MR. TEHRANCHI: No --

9 THE COURT: That was a question for
10 Mr. Laing. My question was for Mr. Laing.

11 MR. LAING: In the way that patent
12 owner understands the procedures is before
13 patent owner can file any additional information
14 with its sur-reply, it first needs to get
15 authorization from the Board. And so with
16 respect to petitioner's agreement conditioned upon
17 the concession that patent owner can't file a
18 motion to exclude their exhibits, patent owner
19 wouldn't know whether this new exhibit being
20 submitted with its sur-reply would be excluded,
21 and so, therefore, we couldn't agree to that.

22 But I do not agree that all of this

1 information is included in the exhibits actually
2 filed. For example, the exhibits do not state
3 that these contentions are preliminary in
4 nature. Moreover, it doesn't explain that -- in
5 the cover pleading it explains that Johnson
6 Health Tech made the disclosure based on
7 information presently available to it, and noted
8 that no documents from Peloton have been
9 produced. So it's -- there is additional
10 information.

11 THE COURT: Mr. Laing, okay, I
12 gotcha. Let me pause you for one second. I'm
13 going to go to each of you, but please tell me
14 if I'm missing something here.

15 Mr. Tehranchi, you want the full
16 exhibits in the record. You're fine if the full
17 exhibits, including the cover, whatever was
18 filed and served in the district court for these
19 contentions, you're fine with them being an
20 exhibit in each of the cases. Am I wrong?

21 MR. TEHRANCHI: No, Your Honor. We
22 agreed to having that as part of the record as

1 long was we have an opportunity to object, if we
2 need to.

3 THE COURT: Okay. Well, what are
4 you -- that doesn't answer my question. What do
5 you need to object about if it is the document
6 they served you in the district court?

7 MR. TEHRANCHI: Yes, if it is the
8 exact same document, no, Your Honor. But at
9 this point, we don't really know what the patent
10 owner is going to file. Are they going to add
11 more material to it or not? If it is just the
12 cover pleading or the full document at the
13 district court, we definitely agreed to having
14 that as part of the record.

15 THE COURT: Okay. And you would
16 agree not to object if it is the full document,
17 exactly what you just said.

18 MR. TEHRANCHI: Correct.

19 THE COURT: Okay. Now, Mr. Laing,
20 that's exactly what you want, right? You want
21 the full document that you served, that your
22 client served on petitioner in the district

1 court to be entered as an exhibit in each of the
2 cases here; is that correct?

3 MR. LAING: That's correct, Your
4 Honor, without any additional exhibits.

5 THE COURT: Correct. And your intent
6 in your request was to file here exactly what
7 you served on them, not adding something
8 additional or making a change to it.

9 MR. LAING: That's correct, Your
10 Honor.

11 THE COURT: Okay. And if you do
12 that, do you need to maintain the objections to
13 their exhibits, or can we just basically
14 treat -- hey look, we have the complete exhibit
15 in what you're sending, it is easier for the
16 record not to have to expunge those exhibits,
17 but we totally understand that the full exhibit
18 is what you would be filing, or whoever would be
19 filing, we'll get to that point if we get there,
20 the full exhibit would be filed. It would have
21 the pieces that you're asking to be included,
22 nothing new, and everybody is happy and there is

1 no problem and nobody needs to object.

2 Did I miss something?

3 MR. LAING: No, patent owner would
4 agree with that.

5 THE COURT: Okay. Let me put
6 everybody on hold for a minute, and I will get
7 right back to you, okay?

8 MR. LAING: Thank you.

9 (A recess was taken.)

10 THE COURT: Okay. Thank you,
11 everybody. We're back on the call. I apologize
12 for the delay.

13 So as I sort of hinted at in what I
14 was attempting to understand the circumstances,
15 this is really the type of situation that the
16 panel and the board expect the parties to be
17 able to work out on their own. I understand
18 that you might need to come to us for the
19 end-game permission to actually submit these
20 full documents, given the current timing of the
21 case with the sur-reply of the next thing that's
22 up for being filed, but it would have been much

1 more simple and easy and expected if the way it
2 was presented to us was that the parties agree
3 to file the complete exhibit from the district
4 court, and seeking permission to do that with
5 the sur-reply under 42.23(b).

6 Now, 42.23(b) says, "A sur-reply can
7 only respond and cannot be accompanied by new
8 evidence." And arguably this is new evidence or
9 more complete evidence. The problem with
10 requesting supplemental evidence as patent owner
11 has, is that there is a part of that rule that
12 says, "must show why the supplemental
13 information reasonably could not have been
14 obtained earlier."

15 So Mr. Laing, I don't think you want
16 me to ask you how you couldn't obtain this
17 earlier, right, since you have -- I assume you
18 have had this for quite a while. I assume you
19 also don't want me to ask you why you're raising
20 this request to us like five days, six days
21 before your sur-reply is due when this thing was
22 filed weeks ago by petitioner.

1 So were I to ask you these questions,
2 we would be sitting right where we are with no
3 agreement being reached. However, with just
4 three or four questions we figured out an exact
5 solution to handle this that you guys could have
6 done on your own.

7 So I'm not trying to give you a hard
8 time, but in the future, please talk to each
9 other. And, you know, when you're on the same
10 page, there is no problem. Almost every
11 panel -- I can't imagine a panel not agreeing to
12 let you guys file this, these exhibits. Now it
13 is just a matter of which rule to make an
14 exception under.

15 Am I making myself clear for
16 petitioner, Mr. Tehranchi? Am I being clear?

17 MR. TEHRANCHI: Yes, Your Honor.

18 THE COURT: Mr. Laing, am I being
19 clear on patent owner's side?

20 MR. LAING: Yes, Your Honor.

21 THE COURT: Okay. Now, did you guys
22 talk about this on the phone together before

1 reaching out to us?

2 MR. TEHRANCHI: Your Honor, we had a
3 few -- sorry. We had a few e-mail exchanges and
4 I explained that some of the content of those
5 exchanges and basically we need to allow the
6 patent owner to file the exhibits just under
7 those two conditions. And I'm not really sure
8 why there was a disconnect in not making this
9 agreement.

10 THE COURT: Okay. So going forward,
11 I hope everybody can follow this approach to
12 avoid having to get everybody on to a call, have
13 a court reporter, do the whole thing. When you
14 get on the phone with each other, you both have
15 the same interest in having the full exhibit.
16 Very, very simple case, which I'm not
17 complaining about because I much prefer these
18 easy calls than a hard call. But, you know, it
19 is the week of July 4th, so I don't want to take
20 any more of your time.

21 We will have the transcript, and when
22 the transcript is ready, I think Mr. Laing --

1 whoever requested the court reporter, we had
2 asked about patent owner doing it, but whoever
3 did, when the transcript is ready, share it with
4 the other side, make sure there is no minor
5 changes that need to be made, and please file it
6 as soon as possible in each of the three cases
7 as an exhibit.

8 And let me think what else.

9 And so what we're going to do is
10 we're going to make an exception to 42.23(b),
11 and we're going to allow these exhibits to be
12 filed by patent owner with a sur-reply in each
13 of the cases.

14 When you do, if you do cite to them,
15 I would encourage patent owner to drop a
16 footnote -- does not need to be long, I'm not
17 trying to take out your word count and so
18 forth -- but you can reference that the panel
19 made a ruling during this conference call on
20 July 2nd to allow these exhibits -- something
21 like that -- under 42.23.

22 I defer to you because I assume the

1 transcript won't be ready before you are filing
2 on Monday. So if it is, you can just cite to
3 the transcript. If it is not, just a short
4 footnote in each of the cases on the first time
5 that you're citing to these new exhibits, just
6 so everybody knows that this was allowed.

7 Any questions from Mr. Laing?

8 MR. LAING: No questions. Thank you,
9 Your Honor.

10 THE COURT: Any questions from
11 Mr. Tehranchi?

12 MR. TEHRANCHI: No, Your Honor.
13 Thank you for your time.

14 THE COURT: Sure. And the last thing
15 I would just say is -- I'm just thinking about
16 patent owner's objections. We will have it on
17 the transcript, and, Mr. Laing, tell me if I'm
18 getting this wrong, but I understood that you
19 agreed to withdraw your objections to these
20 three exhibits from your objections to evidence
21 that were filed?

22 MR. LAING: That is correct. If you

1 want us to formally do that on the record, we
2 can, but I defer to Your Honor.

3 THE COURT: Well, you just did
4 because we'll have it in the transcript. I
5 don't think you need to file another paper,
6 but --

7 Mr. Tehranchi, do you prefer that
8 another paper be filed or are you fine with the
9 representation on the transcript?

10 MR. TEHRANCHI: That's not necessary,
11 Your Honor. The transcript is fine.

12 THE COURT: Okay. Great. All right.
13 Well, with that -- let me ask you this before we
14 go away, are there any other questions on
15 anything from the cases for either side? I'll
16 start with petitioner's side.

17 MR. TEHRANCHI: No other questions,
18 Your Honor. Thank you.

19 THE COURT: Great. And, Mr. Laing,
20 anything else at all from patent owner's side?

21 MR. LAING: Nothing else. Thank you.

22 THE COURT: Fantastic. We wish

1 everybody a happy July 4th. Hope you have time
2 with your family, and patent owner, that you're
3 not working all holiday on these briefs.

4 We are adjourned. Thank you.

5 MR. LAING: Thank you, Your Honor.

6 MR. TEHRANCHI: Thank you.

7 (Time noted: 3:58 p.m.)
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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, ADRIENNE MIGNANO, Certified
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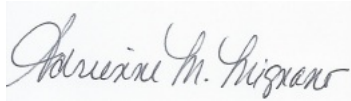
5 That the transcript that is
6 hereinbefore set forth, was stenographically
7 recorded by me is a true record of the
8 conference.

9 I further certify that the conference
10 occurred remotely via Zoom Videoconference
11 equipment on Tuesday, July 2, 2024, commencing
12 at 3:36 P.M. to 3:58 P.M.

13 I further certify that I am not
14 related to any of the parties to this action by
15 blood or marriage, I am not employed by or an
16 attorney to any of the parties to this action,
17 and that I am in no way interested, financially
18 or otherwise, in the outcome of this matter.

19
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21
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1 IN WITNESS WHEREOF, I have hereunto
2 set my hand this 2nd day of July, 2024.
3 My commission expires:
4 June 2026

5 

6 _____
7 ADRIENNE M. MIGNANO, RPR

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