

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

CBM2014-00025 & CBM2014-00026

ORIGINAL

EBAY ENTERPRISES, INC., and :
EBAY, INC., :
Petitioner, :

vs. :

LAWRENCE B. LOCKWOOD, :
Patent Owner :

MONDAY, JULY 21, 2014

Teleconference held on the above date,
commencing at approximately 11 o'clock a.m.,
reported by Rose A. Tamburri, a Federally
Approved Registered Merit Reporter,
Certified Realtime Reporter, National Speed
and Accuracy Champion and Notary Public.

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1 BEFORE:

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3 SALLY C. MEDLEY
4 BENJAMIN D. WOOD
5 Administrative Patent Judges

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Representing the Patent Owner

1 (Whereupon, the proceedings
2 commenced at 11:02 a.m.)

3 JUDGE KIM: Good morning. This is
4 Judge Kim. This is a conference call
5 requested by counsel for the Patent Owner,
6 CBM2014, the matter is 25 and 26. Can I get a
7 role call. Who's on the line for Petitioner?

8 MR. STERNE: Good morning, Judge
9 Kim. This is Rob Sterne here, lead counsel,
10 and I have with me my colleague and
11 co-counsel, Byron Pickard.

12 MR. PICKARD: I apologize, Your
13 Honor. That was -- you asked for counsel for
14 Petitioner. I believe that was Mr. Sterne,
15 counsel for Patent Owner.

16 JUDGE KIM: Right. Okay.

17 MR. DAYBELL: This is Don Daybell,
18 counsel for Petitioner. With me is Jim Maune
19 and I also have my partner, Tom Gray, on the
20 line.

21 JUDGE KIM: All right. Thank you.
22 Okay, Patent Owner, you requested the call, so
23 please go ahead.

24 MR. STERNE: Okay. I apologize,
25 Your Honor, for going out of order. We do

1 have a court reporter on for the call, for
2 your information, Your Honor. We'll provide a
3 transcript for the record.

4 JUDGE KIM: Okay.

5 MR. STERNE: Let me begin and then
6 I'll have Mr. Pickard, who has been working
7 the issue very closely with Mr. Daybell and
8 his team, give us more detail, but to start
9 off with, we find ourself in a very difficult
10 position here concerning this upcoming
11 deposition on Thursday in this case. It
12 involves the only declarant that submitted a
13 declaration with the petition, which, of
14 course, was obviously taken into account when
15 the Board determined that the prima facie case
16 had been met when it instituted on the grounds
17 of indefiniteness.

18 JUDGE KIM: Um-hmm.

19 MR. STERNE: So we find ourselves
20 in a very complex and, frankly, unprecedented
21 situation. And my experience, you know, is,
22 as you know, we, our firm and myself are
23 involved in many of these proceedings and I
24 checked with my colleagues and we've not seen
25 this situation before. But I'd like to turn

1 it over to Mr. Pickard, who will give you the
2 timeline of events, and then we can get right
3 into the meat of the issue.

4 MR. PICKARD: Yes. Thank you.

5 So, very briefly, we reached out to
6 Petitioner's counsel in June to find a date to
7 depose Newton, who Mr. Sterne has said that
8 their -- as you know, the only declarant they
9 have in their petition. Ultimately on
10 July 7th, the parties agreed to depose Newton
11 on July 24th and 25th in the two cases.

12 Late Thursday of last week,
13 July 17th, we received an E-mail from
14 Petitioner's counsel advising us that the
15 Newton depositions were being cancelled and
16 that they would not provide her for
17 deposition. We couldn't do a meet and confirm
18 before we E-mailed the Board on Friday. We
19 were fortunate to talk to opposing counsel
20 over the weekend, late last night, and we --
21 we discussed the issues.

22 Our view is that we're entitled to
23 depose Dr. Newton. She's offered her opinions
24 about the level of skill in the art. She's
25 offered implicit claim constructions when she

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