RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ABB, INC.,

Petitioner

V.

ROY-G-BIV CORP.,

Patent Owner

_____

Case IPR2013-00062 and IPR2013-00282

Patent U.S. 6,516,236

Case IPR2013-00074 and IPR2013-00286

Patent U.S. 8,073,557

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Oral Hearing Held January 23, 2014

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Before THOMAS L. GIANNETTI, JENNIFER S. BISK, and JEREMY M. PLENZLER (VIA VIDEO HOOKUP), *Administrative Patent Judges*.

1   APPEARANCES:

2   ON BEHALF OF THE PETITIONER:
3   RICK MC LEOD
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8
9   ON BEHALF OF THE PATENT OWNER:
10   RICHARD BLACK
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12   154 E Bingen Point Way
13   Bingen, Washington 98605
14
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16   The above-entitled matter came on for hearing on Thursday, January
17   23, 2014 commencing at 1:00 p.m., at the U.S. Patent and Trademark Office,
18   600 Dulany Street, Alexandria, Virginia.
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22   P R O C E E D I N G S

23   JUDGE GIANNETTI: So we are here for our final hearing in

24   two IPR matters, Inter Partes Reviews, IPR 2013-00062 and IPR

25   2013-00074.

26   I'm Judge Giannetti. This is Judge Bisk. And Judge Plenzler

27   is appearing remotely from Detroit on the screen. This is the first hearing I

28   have had with a remote judge. I understand our equipment has been

29   working very well, and let's keep our fingers crossed that it continues to do

30   that.

31   All right. So may I have appearances of counsel first for the

32   Petitioner?

1   MR. MCLEOD: Rick McLeod, Your Honor. I have with me

2   Robert Nupp, the in-house counsel for ABB.

3   JUDGE GIANNETTI: I'm sorry, the second name was?

4   MR. MCLEOD: Robert Nupp.

5   MR. NUPP: Robert Nupp.

6   JUDGE GIANNETTI: Welcome. And for the Patent Owner?

7   MR. BLACK: Thank you. Good afternoon,

8   Your Honors. This is Richard Black on behalf of Patent

9   Owner ROY-G-BIV. I have with me backup counsel Richard Meyer and

10   backup counsel Doug Wilson and also (indiscernible) Dave Brown.

11   JUDGE GIANNETTI: Welcome. All right. So the ground

12   rules are here that each side has one hour to present argument. You may

13   divide argument as you wish. The Petitioner may -- will go first and may

14   reserve rebuttal time. Let me know at the beginning of the argument how

15   much time you are reserving.

16   Okay. Any questions before we begin?

17   (No response.)

18   JUDGE GIANNETTI: Okay. Mr. McLeod, you may proceed

19   when you're ready.

20   MR. MCLEOD: Thank you, Your Honor. I'd like to reserve

21   25 minutes for rebuttal if I may?

22   JUDGE GIANNETTI: Okay. So that's 1:35. You have until

23   1:35. And I'll try to give you five minutes notice towards the end.

24   MR. MCLEOD: Thank you. I have (indiscernible) slides for

25   the panel, if they would like them.

1   JUDGE GIANNETTI: Please.

2   MR. MCLEOD: Judge Plenzler, I apologize. I haven't quite

3   technologically figured out how to deliver those to Detroit yet.

4   JUDGE GIANNETTI: We've got your demonstratives in

5   advance, so I believe Judge Plenzler has access to them.

6   MR. MCLEOD: May it please the Board, the claims of the

7   '236 and '557 Patents are unpatentable for the reasons that have been given

8   in our petition. If you'll turn to page 2 of our slides, we've summarized the

9   grounds for trial for which the Board has instituted this proceeding.

10   One thing is clear, the Gertz thesis, the Stewart thesis and the

11 Morrow paper are the central basis for each of the grounds of rejection.

12 Some additional references address a few items of independent claims from

13 the merged '282 and '286 Patents.

14   Slide 3, we summarize what we believe to be RGB's central

15 arguments in their response. As to specific claim terms, component

16 functions, component code, driver functions, they tend to argue that

17 functions must mean executable code, although executable code does not

18 appear in any claim construction.

19   They asserted that primitive operations are not taught by Gertz,

20 however we note that they didn't challenge that Morrow taught trajectory

21 primitives, which the Board found in its order instituting trial, that the

22 combination of the trajectory primitives and Morrow with the teachings of

23 Gertz would disclose primitive operation.

24   They had some arguments in their response regarding the

25 function pointer table, which we took directly from their infringement

1   contentions and pointed how that was contained in a prior reference. And

2   then there is a brief argument about the -- not being able to write control

3   commands to a file in the UNIX system and they have this argument that

4   Gertz and Morrow are not prior art, which we explain that's just not true.

5   And then there are some arguments that it's somehow impossible to combine

6   the prior art.

7   Looking at page four, the disputed claim terms that are

8   generally listed in their responses are listed. The first place I would like to

9   start with this is claim construction, Slide 5.

10   Now as we know, this is an IPR. We use the broadest

11   reasonable interpretation standard. In our petition, or actually in the order

12   instituting trial, the Board adopted our proposed constructions with the

13   exception of two. And RGB's response, they argue that, well, there's a --

14   these should be construed more narrowly. They should be construed more

15   narrowly because in the joint claim construction statement submitted in

16   district court, ABB supposedly agreed to certain narrower constructions.

17   And that is not a canon of claim construction, certainly not for the broadest

18   reasonable interpretation.

19   They didn't cite any legal authority for this narrowing. They

20   didn't cite any intrinsic evidence, and Dr. Stewart, in fact, didn't give any

21   basis for taking a narrow interpretation. In fact, his declaration often says,

22   "I've read the definition in the patent or I adopted the definition from the

23   joint claim construction statement." When asked if he was a patent law

24   expert, he said no. He simply adopted what was selected for him.

25   Turning to page 6, we look at primitive operations. In the

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