

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RICOH AMERICAS CORPORATION
AND XEROX CORPORATION,
Petitioner,

v.

MPHJ TECHNOLOGY INVESTMENTS, LLC,
Patent Owner.

Case IPR2013-00302
Patent 7,986,426

Held: August 18, 2014

Before: MICHAEL E. TIERNEY, KARL D. EASTHOM, and
GREGG I. ANDERSON, Administrative Patent Judges.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

H. KEETO SABHARWAL, ESQUIRE
MICHAEL D. SPECHT, ESQUIRE
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1 ON BEHALF OF PATENT OWNER:
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6 and
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11
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13 The above-entitled matter came on for hearing on Monday,
14 August 18, 2014, commencing at 10:00 a.m., at the U.S. Patent and
15 Trademark Office, 600 Dulany Street, Alexandria, Virginia.
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19 P R O C E E D I N G S
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21 JUDGE TIERNEY: Are the parties ready to begin
22 today? Welcome, then. Before we begin today, I would like to just
23 note we had offered the parties an opportunity to inform us how they
24 would like to schedule the hearing today. We did have a default
25 procedure in place, though. Have the parties come to any other
26 arrangement other than the default?

27 MR. SABHARWAL: No, Your Honor, I believe that
28 we are going to adhere to the default procedure.

29 JUDGE TIERNEY: Okay.

30 MR. HILL: That's acceptable.

1 JUDGE TIERNEY: Well then, welcome today for *Inter*
2 *Partes* review, IPR2013-00302. If the parties are ready to begin, are
3 there any initial issues we need to take up before we begin the
4 hearing, then, since we're going with the default?

5 (No response.)

6 JUDGE TIERNEY: Hearing no changes from the
7 default, I believe we scheduled that the Petitioner would begin today.

8 MR. SABHARWAL: Yes, Your Honor.

9 JUDGE TIERNEY: If you would approach the podium
10 when you're ready.

11 MR. SABHARWAL: Yes, Your Honor. Good
12 morning, Your Honor. Keeto Sabharwal on behalf of the Petitioners,
13 Ricoh Americas Corporation and Xerox Corporation. Just a couple
14 of preliminary matters before I begin. We do have hard copies of the
15 demo slides that we served in accordance with the Board's order.
16 Would you like a hard copy?

17 JUDGE TIERNEY: Yes, please.

18 MR. SABHARWAL: Your Honors, with the Board's
19 permission, we would like to allocate our time as follows: 25
20 minutes for opening, and 20 minutes for rebuttal.

21 Your Honors, on November 21st of 2013, the Board
22 instituted trial of claims 1 through 11 of the '426 patent based on
23 either the XNS reference, which is Exhibit 1002, or the Salgado
24 reference, which is Exhibit 1005. Since that time, it is our position
25 that Petitioner's case has been significantly strengthened and the

1 Board's decision should therefore stand based upon at least three
2 factors.

3 First, we have the explicit teachings of the XNS and
4 Salgado references. Your Honors, it doesn't really matter what I say
5 here today and it doesn't really matter what my opponents say here
6 today. The teachings say what they say, there's no changing that, and
7 this Board correctly found on November 21st, that all of the
8 limitations on claim 1 through 11 are based on XNS alone or Salgado
9 alone, and nothing we say changes that.

10 Two other things to note, one is Patent Owner's claim
11 construction positions. We believe those claim constructions are
12 unsupportable based upon the governing standard here of the
13 broadest reasonable interpretation, which is the plain and ordinary
14 meaning. And, in fact, even their expert during cross examination
15 admitted that the specific constructions of application and module are
16 not supported and, in fact, they ended up agreeing with the Board,
17 and we're going to talk about that.

18 And then finally, as far as their expert is concerned, it is
19 our position that Mr. Weadock, their sole person, allegedly a person
20 of ordinary skill in the art, does not have either the academic or the
21 experience to serve as an expert in this case, and we're going to talk
22 about that as well.

23 Your Honors, we've submitted hundreds of pages of
24 documents and exhibits, and I'm not here to rehash every single

1 argument and I'm here really to just talk about the highlights and
2 address any questions that Your Honors may have.

3 But I think that the disputes really boil down to whether
4 or not, for example, there's an interface protocol, and then whether or
5 not there's a number of the modules that exist in the claim 5, for
6 example. It's the Patent Owner's contention that neither the XNS nor
7 the Salgado reference have any type of protocol. No memory, no
8 input module, no output module, no server module, no client module,
9 no process module. We believe that flies in the face of the specific
10 teachings and figures of the prior reference and we're going to talk
11 about that.

12 But before I get to that, I think in order to frame the
13 issue, it may help to talk about the two hotly disputed claim terms,
14 application and module. On November 21st, the Board stated in its
15 opinion that application is a program that may or may not be stored
16 on a device, such as a printer or a scanner, and Petitioners expressly
17 agree with that definition.

18 The Patent Owner, in its Patent Owner response,
19 proffered a different definition. They said, "The term application
20 should be construed by the Board to be a discrete software program
21 executable on an operating system for the purpose of accomplishing
22 a task." One of the themes that came out during the course of
23 Mr. Weadock's deposition is that they're trying very hard to have this
24 Board require that these functionalities, that these pieces of software

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