UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

WHATSAPP, INC. AND FACEBOOK, INC.
Petitioner

v.

TRIPLAY, INC.
Patent Owner

Inter Partes Review No. 2015-00740
U.S. Patent No. 8,332,475

_____

REPLY DECLARATION OF DAVID KLAUSNER

Table of Contents

I, David Klausner, declare as follows:

1.   I submit this Reply Declaration to respond to certain points made in the December 9, 2015 Declaration of Rajeev Surati, Ph.D. (Ex, 2002, hereafter "Surati Decl.") submitted by the patent owner.

I.   PERSON OF ORDINARY SKILL IN THE ART

2.   In paragraph 20 his declaration, Dr. Surati adopts a definition of a person of ordinary skill in the art different from the one expressed in my Opening Declaration. (Surati Decl. ¶ 20.) I respectfully disagree with Dr. Surati's formulation insofar as it requires "at least one year of experience working with *format encoding and layout of images or video*." (*Id*. (italics added).) Although a person of ordinary skill in the art could possess such experience, a person can qualify as a person of ordinary skill in the art without such experience.

3.   The challenged claims of the '475 patent do not require messages that contain "images or video," a point Dr. Surati conceded at his deposition. (Surati Depo., Ex. 1014, at 15:12-16:12, 18:4-21.) The patent specification further confirms that a "message" could contain only textual information. ('475, Ex. 1001, 10:51-55.) Therefore, experience with format encoding as it relates to images and video would not have been required to understand and implement the challenged claims.

II. RESPONSE TO DR. SURATI'S OPINIONS REGARDING CLAIM 1

4.   Dr. Surati has treated claim 1 as representative of claims 1, 12, 23, 37, 39, and 41. (Surati Decl. ¶ 14.) In attempting to distinguish claim 1 from Coulombe, Dr. Surati makes only one argument – that Coulombe allegedly fails to disclose that the media block is "configured to **select**, before transmitting, at least one message format and message layout . . . ." (*Id.* ¶ 105 (emphasis added).) Dr. Surati's arguments as to this limitation appear to rely entirely on a narrow definition of the word "select" as recited in the claim. Dr. Surati contends that "this limitation requires that the media block be configured to select a format and layout from *a fixed set of layout and format choices.*" (*Id.* (emphasis added); *see also id.* ¶¶ 83-85.) I respectfully disagree with Dr. Surati's definition of "select." I also disagree that his definition, even if adopted, would distinguish the Coulombe reference. I address these issues below.

A.   Interpretation of "Select" in Claim 1

5.   I have found nothing in the patent to support Dr. Surati's argument that the media block in claim 1 must "select" the message format and layout "from a fixed set of layout and format choices," as alleged by Dr. Surati. (*Id.* ¶ 105.) To the contrary, the word "select" as used in claim 1 is synonymous with "decide" or "determine," and does not require selection from a fixed set of choices.

6.   The patent specification refutes Dr. Surati's argument in several ways. First and foremost, it expressly discloses an embodiment in which the messaging system selects the message format and layout dynamically, relying on information carried in the message itself.   This embodiment argues against Dr. Surati's proposed construction, which would require the choices of format and layout be fixed or preprogrammed into the messaging system.

7.   I note that the messaging system **16** in the specification makes a "delivery decision" on how a received message should be handled before delivery to the destination. ('475, 16:51-63; *see also id.* Fig. 6.) The claimed selection of the message format and layout is encompassed within this "delivery decision." As the specification explains:

> The delivery decision comprises delivery instructions with regard to destination device(s) and/or content and/or format and/or layout of the message to be delivered. The delivery instructions or parts thereof may be received with the message (e.g. contained in the metadata), extracted and provided accordingly, and/or may be predefined in the system (e.g. in a form of a lookup table providing matching between originating device and/or destination device and format and/or layout of the message to be converted for delivery).

('475, 16:63-17:4 (underlining added).)   This passage discloses at least two alternative techniques for selecting a format and layout for a received message: (1) relying on instructions "received with the message (e.g. contained in the

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.