

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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RUBICON COMMUNICATIONS, LP,  
Petitioner,

v.

LEGO A/S,  
Patent Owner.

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Case IPR2016-01187  
Patent 8,894,066 B2

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Record of Oral Hearing  
Held: October 11, 2017

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Before SCOTT A. DANIELS, NEIL T. POWELL, and TIMOTHY J.  
GOODSON, *Administrative Patent Judges*.

Case IPR2016-01187  
Patent 8,894,066 B2

APPEARANCES:

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The above-entitled matter came on for hearing on Wednesday, October 11, 2017, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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JUDGE POWELL: Good afternoon. This is the hearing for IPR2016-01187 which involves U.S. patent number 8,894,066 B2. We have Judges Daniels and Goodson joining us remotely on the monitor there. Starting with the petitioner, can counsel please state your names for the record.

MR. PETRO: I'm Anthony Petro, lead counsel for petitioner, accompanied by backup counsel, Dean Munyon.

MR. RIDDLES: I'm Andrew Riddles, lead counsel for Lego, accompanied by Elizabeth Alquist and Sean Park.

JUDGE POWELL: Thank you. So before we start, we received the filings regarding allegedly improper new arguments and evidence. When we are preparing the final written decision for the case, we will evaluate all those, take all that into consideration and make sure that we don't rely on anything in our final decision that we deem to be improper new evidence or arguments. That said, for today everybody can discuss anything that's presented in the briefing and like I said, we'll sort it out after the hearing.

Each side will have 30 minutes of argument time. And petitioner will present its case in chief first and may reserve time for rebuttal. Patent owner will respond and then the petitioner may use any remaining time to respond to the patent owner's presentation.

When you present, you must identify each demonstrative exhibit clearly and specifically such as by slide or screen number, which is

1 particularly important because Judges Daniels and Goodson will not be able  
2 to see the demonstrative presented in the hearing room.

3 And with that, do we have any questions before we start?

4 MR. PETRO: Your Honor, we have a hard copy of the  
5 demonstratives.

6 JUDGE POWELL: Sure, that would be great. With that, then,  
7 we'll let the petitioner set up, and when you are ready, we'll begin.

8 MR. PETRO: Thank you, Your Honor. I plan to reserve about  
9 seven minutes for rebuttal but may give or take that seeing how the  
10 questioning goes.

11 JUDGE POWELL: I will do my best to remind you.

12 MR. PETRO: I have got a stopwatch here too. Everybody hear  
13 me okay? Okay. All right.

14 Thank you, Your Honors. If you would please turn to slide 2, I  
15 have a few introductory remarks. First of all, what is this case about? Patent  
16 owner tells us that independent claim 1 and its dependent claims are directed  
17 to this embodiment that's illustrated here in Figure 1 of the '066 patent. And  
18 we have claim 1 here next to Figure 1. Claim 1 is a method of facilitating  
19 user preference in creative design of a controller for manipulating images or  
20 symbols on a display. And there are some details here regarding the  
21 controller.

22 The arguments in the case are principally focused around the first  
23 main clause of the claim, providing a main casing configured to  
24 conformably fit around a portion of the exterior surface of and thereby  
25 receive the housing of the controller. You can see that the casing is

1 illustrated here as reference numeral 16 circled in red and the housing of the  
2 controller indicated in green is reference 14.

3           Additionally, this casing has a pattern surface portion that can  
4 support building elements such as Lego bricks. But again, the key dispute  
5 concerns the relationship of the casing to the housing. There's also some  
6 dispute over precisely what manipulating means.

7           The controller itself, however --

8           JUDGE DANIELS: Counsel, are you disputing -- from what I  
9 remember of reading the patent owner's briefs, they say that this  
10 embodiment has to do with these two elements, 14 and 16 being separate.  
11 Are you disputing that aspect of the claim?

12           MR. PETRO: No, Your Honor. The original dispute concerned  
13 whether those two items needed to be separable. In their preliminary  
14 response, patent owner advocated the position that the casing needed to be  
15 separable from the housing, and in its institution decision, the Board showed  
16 some skepticism to that view. Subsequently in their post-institution  
17 response, patent owner took the word "separable" out of their construction.

18           So the construction -- and I believe I have a demonstrative here  
19 that has to do with the Anderson reference. If you turn to slide 33, so Judge  
20 Daniels, this goes to your point, the patent owner's current proposed claim  
21 constructions for casing are a structure that is separate from and covers one  
22 or more surfaces of the housing of the manual controller, the housing being  
23 the exterior shell of the controller. In its institution decision, the Board  
24 indicated that we are not persuaded that the BRI of casing requires the

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