

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

K/S HIMPP,
Petitioner,

v.

III HOLDINGS 4, LLC,
Patent Owner.

Case IPR2017-00781
Case IPR2017-00782
Patent 8,654,999 B2

Record of Oral Hearing
Held: May 1, 2018

Before SALLY C. MEDLEY, DAVID C. McKONE, and KIMBERLY
McGRAW, *Administrative Patent Judges*.

Case IPR2017-00781, Case IPR2017-00782
Patent 8,654,999 B2

APPEARANCES:

ON BEHALF OF PETITIONER:

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ON BEHALF OF PATENT OWNER:

MARGAUX SAVEE, ESQUIRE
HENRY A. PETRI, Jr., ESQUIRE
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The above-entitled matter came on for hearing on Tuesday, May 1, 2018, 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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3 JUDGE MEDLEY: Good afternoon. This is the hearing for
4 IPR2017-00781 and 782 between petitioner, K/S HIMPP, and patent
5 owner, III Holdings 4, involving U.S. patent number 8,654,999. Per our
6 March 22nd order, each side has 60 minutes to present, and the parties
7 shall present in accordance with that order. At this time we would like
8 the parties to please introduce themselves, beginning with the petitioner.

9 MS. LIN: I am Haixia Lin representing petitioner, K/S HIMPP.
10 And with me is Christopher O'Brien, also representing the petitioner.

11 JUDGE MEDLEY: And for patent owner?

12 MS. SAVEE: Good afternoon. My name is Margaux Savee.
13 I'm appearing for Polsinelli on behalf of patent owner. And with me here
14 today is Mr. Henry Petri, also from Polsinelli, and Russ Rigby, in-house
15 counsel.

16 JUDGE MEDLEY: Thank you.

17 JUDGE MCKONE: This is Judge McKone in Detroit. Can you
18 hear me okay?

19 JUDGE MEDLEY: Yes. They are nodding their heads.

20 JUDGE MCKONE: I just wanted to follow up real quick on a
21 teleconference we had last Thursday. As you recall, in our decision to
22 institute in the 782 matter, we declined to institute on claim 12. The
23 recent Supreme Court decision in *SAS Institute* suggests that we may
24 need to deal with that claim now at the final written decision stage. So
25 we convened a call on Thursday, and neither party indicated that they

1 wanted this hearing to be put off to address claim 12, so we are
2 conducting the hearing as scheduled.

3 Now, however, we did ask the parties to confer with their
4 clients and meet and confer with each other to determine if they could
5 agree on what ought to be the course forward on claim 12. We don't have
6 time today to resolve any disputes, but I would like a quick update from
7 the parties, if they have anything to report. So it looks like patent owner
8 is standing up to speak. I'm happy to start with patent owner.

9 MR. PETRI: I apologize, Your Honor, if you want to hear from
10 petitioner. We have met and conferred and have agreed that claim 12
11 should be withdrawn from the IPR. And whatever guidance the Board
12 can give us on the specific procedures for that we would welcome. But
13 that would be our proposed resolution.

14 JUDGE McKONE: Okay. Is that also the case for petitioner?
15 You agree with that?

16 MS. LIN: Yes, we do.

17 JUDGE McKONE: So I think probably the course going
18 forward here would be for the parties to meet and confer one more time
19 to determine a few times -- several times next week when both parties are
20 available for a conference call and then submit that to the trials e-mail
21 box. And we will schedule a conference call sometime next week to
22 figure out the precise course that we'll follow to address claim 12 and
23 potentially withdraw it from the case. Is that acceptable?

24 MR. PETRI: Yes, thank you, Your Honor.

1 MS. LIN: Yes, Your Honor. And I do want to point out that
2 yesterday during the Chat With the Chief webinar, they had indicated that
3 if both parties agree to terminate part of the claim -- terminate part of the
4 case by terminating one or more claims that are not instituted, that that
5 would be permissible. I just wanted to update the judges in case they
6 hadn't heard.

7 JUDGE McKONE: I also listened in on the Chat With the
8 Chief, so I'm aware of what you are talking about. We'll just need to
9 discuss next week what the precise course is for that. And I just don't
10 want to take up the parties' time at this hearing to address that issue.

11 MR. PETRI: Thank you, Your Honor.

12 JUDGE McKONE: So with that, I think it's probably
13 appropriate to start the hearing.

14 JUDGE MEDLEY: And would you like to reserve rebuttal
15 time?

16 MS. LIN: Yes, I would like to reserve 20 minutes for rebuttal.

17 JUDGE MEDLEY: You may begin.

18 MS. LIN: Thank you. Turning to slide 2 of petitioner's
19 demonstratives, today's presentation by petitioner will focus on three
20 areas. First we'll do a quick overview of the '999 patent. Then we will
21 have a brief discussion of the instituted combinations, and then we will
22 talk about the issues raised by patent owner. And in particular, as I will
23 explain in detail shortly when we get to that section, that the primary
24 reference, Fichtl, teaches a sequence of hearing correction filters.

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