United States Court of Appeals for the Federal Circuit

CRFD RESEARCH, INC.,
Appellant

v.

JOSEPH MATAL, PERFORMING THE FUNCTIONS AND DUTIES OF THE UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, U.S. PATENT AND TRADEMARK OFFICE,
Intervenor

2016-2198

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2015-00055.

....

CRFD RESEARCH, INC.,
Appellant

v.

DISH NETWORK CORPORATION, DISH DBS CORPORATION, DISH NETWORK LLC, ECHOSTAR CORPORATION, ECHOSTAR TECHNOLOGIES LLC,
Appellees

2016-2298

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Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2015-00627.

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HULU, LLC, NETFLIX, INC., SPOTIFY USA INC.,
Appellants

v.

CRFD RESEARCH, INC.,
Appellee

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2016-2437

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Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in No. IPR2015-00259.

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Decided: December 5, 2017

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TAREK N. FAHMI, Ascenda Law Group, PC, San Jose, CA, argued for appellant in 2016-2198, 2016-2298 and for appellee in 2016-2437.

MARY L. KELLY, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA, argued for intervenor in 2016-2198. Also represented by NATHAN K. KELLEY, MICHAEL SUMNER FORMAN, THOMAS W. KRAUSE, SCOTT WEIDENFELLER.

ELIOT DAMON WILLIAMS, Baker Botts LLP, Palo Alto, CA, argued for appellees in 2016-2298. Also represented by GEORGE HOPKINS GUY, III.

HARPER BATTS, Baker Botts LLP, Palo Alto, CA, argued for appellant Hulu, LLC, in 2016-2437. Also represented by ELIOT DAMON WILLIAMS; MICHAEL HAWES, Houston, TX.

JOHN F. WARD, Kelley Drye & Warren, LLP, New York, NY, argued for appellants Netflix, Inc., Spotify USA Inc., in 2016-2437. Also represented by DAVID LINDENBAUM, MICHAEL J. ZINNA.

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Before NEWMAN, MAYER, and O'MALLEY, *Circuit Judges.*

O'MALLEY, *Circuit Judge.*

Today we decide three appeals in companion cases from final written decisions of the United States Patent and Trademark Office ("PTO") Patent Trial and Appeal Board's ("Board") inter partes reviews ("IPRs") of U.S. Patent No. 7,191,233 ("the '233 patent"), owned by CRFD Research, Inc. ("CRFD"). *Iron Dome LLC v. CRFD Research, Inc.*, No. IPR2015-00055, 2016 Pat. App. LEXIS 6855 (P.T.A.B. Apr. 22, 2016) (hereinafter "*Iron Dome Final Written Decision*," Appeal No. 16-2198); *DISH Network Corp. v. CRFD Research, Inc.*, No. IPR2015-00627, 2016 Pat. App. LEXIS 7567 (P.T.A.B. June 1, 2016) (hereinafter "*DISH Final Written Decision*," Appeal No. 16-2298); *Hulu, LLC v. CRFD Research, Inc.*, No. IPR2015-00259, 2016 Pat. App. LEXIS 4340 (P.T.A.B. June 1, 2016) (hereinafter "*Hulu Final Written Decision*," Appeal No. 16-2437). For the reasons stated below, we affirm the *Iron Dome* and *DISH Final Written Decisions*,

but we reverse the Board's determination on obviousness in the *Hulu Final Written Decision*.

I. BACKGROUND

A. The '233 Patent

The '233 patent describes methods and systems for "user-directed transfer of an on-going software-based session from one device to another device." '233 patent, col. 1, ll. 10–11. These methods and systems operate to allow the user to begin a session on one communication-enabled device, such as a cellular telephone, wireless personal digital assistant, laptop computer, or desktop computer, and then to transfer the session to another device. *Id.* col. 1, ll. 8–11; *see id.* col. 1, ll. 15–52; *see also id.* col. 2, ll. 3–20; *id.* col. 3, ll. 6–10.

The '233 specification explains that, "[i]n conventional systems, the user would have to discontinue the current session on the first device and reinitiate a new session on the second device." *Id.* col. 1, ll. 59–62. But the session transfer described in the '233 patent "provides the capability to initiate a transfer of an on-going session from a first device to a second device while maintaining the session and its context." *Id.* col. 3, ll. 7–10.

The '233 patent describes a method of session transfer in which: (1) a first device sends a "redirect or transfer command" to a session transfer module; (2) a session server begins intercepting messages intended for the first device; (3) the first device transmits a "transaction or session history" to the session server; (4) the session server retrieves the previously stored "device profile" of a second device to which the session will be redirected, converts the stored messages of the session history into a data format compatible and/or modality compatible with the second device, and converts the session state to a state compatible with the second device; and (5) when the user activates the second device, the session server "push-

es the converted session to the redirected device over the network **100** as a normal session with the converted transaction log." *Id.* col. 7, l. 46–col. 8, l. 35.

Claim 1 is illustrative of the independent and dependent claims at issue in these appeals:[1]

> 1. A method for redirecting an on-going, software based session comprising:
>
>> conducting a session with a first device;
>>
>> specifying a second device;
>>
>> discontinuing said session on said first device; and
>>
>> transmitting a session history of said first device from said first device to a session transfer module after said session is discontinued on said first device; and
>>
>> resuming said session on said second device with said session history.

Id. col. 9, ll. 30–39.

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[1]   CRFD appealed the *Iron Dome Final Written Decision* as to the Board's finding of anticipation of claim 1 and obviousness of claims 4–6 and 8–11 of the '233 patent. *See* Appeal No. 16-2198. CRFD also appealed the *DISH Final Written Decision* as to the Board's finding of anticipation of claims 1, 4, 23, and 25 of the '233 patent, and obviousness of claims 4 and 25 of the '233 patent. *See* Appeal No. 16-2298. Hulu appealed the *Hulu Final Written Decision* as to the Board's finding of no anticipation of claims 1–3, 23, and 24 of the '233 patent, and nonobviousness of claims 1–6, 8–11, 13–15, 17–20, 23–25, 29–31, 34–36, and 38–41 of the '233 patent. *See* Appeal No. 16-2437.

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