

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVER INFORMATION INC. and IPEVO, INC.,
Petitioners,

v.

PATHWAY INNOVATIONS AND TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2017-02108
Patent 8,508,751 B1

Record of Oral Hearing
Held: December 13, 2018

Before JONI Y. CHANG, THOMAS L. GIANNETTI, and
NORMAN H. BEAMER, *Administrative Patent Judges*.

Case IPR2017-02108
Patent 8,508,751 B1

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Thursday,
December 13, 2018, commencing at 9:31 a.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 BEAMER: Good morning. This is IPR2017-2108, Aver Information and IPEVO, Inc. versus Pathway Innovations and Technologies. I'm Judge Norman Beamer. To my left is Judge Tom Giannetti and to my right Judge Joni Chang.

Could the parties make their appearances.

MR. WEED: Good morning, Your Honor. Ben Weed from K&L Gates on behalf of Petitioners and with me is lead counsel, Jackson Ho, and backup counsel, Kevin McCormick.

JUDGE BEAMER: Thank you.

MR. CODDINGTON: Good morning. I'm Trevor Coddington from San Diego IP Law Group representing the Patent Owner Pathway Innovations. With me is backup counsel, Donny Samporna.

JUDGE BEAMER: Thank you. So each side of has 45 minutes. They can reserve some period of time less than half of that for rebuttal. Petitioner will go first and followed by Patent Owner. As we indicated in the most recent conduct of proceedings, we'll be dealing with the amended claims that were attached to the appendix to the Reply Brief. So if Petitioner is ready, then we'll commence.

MR. WEED: And, Your Honors, if I may reserve 10 minutes, please.

JUDGE BEAMER: 10 minutes? Okay.

MR. WEED: Correct.

Good morning, Your Honors. As I mentioned, Ben Weed from K&L Gates for the Petitioners. We're here today to talk about the '751

1 patent, which is directed to document cameras like this Elmo here next to
2 me. And on slide 2, we can see a little bit about kind of the overview of the
3 '751 patent.

4 But before we dive in, I want to set up a little bit of context
5 because this application was filed for the first time in 2010, which is
6 relatively late in kind of the miniaturization of electronics. And, in fact, one
7 thing that I use to kind of place myself is where iPhones were at certain
8 points in time, and in 2010 the iPhone 4 had just been released and that was
9 the first iPhone that had both the rear-facing camera and the front-facing
10 camera. So by that point by the time of the filing of the '751, miniature
11 camera modules were certainly commercially available and viable and were
12 used in mass production.

13 So reading the '751 patent, if we look at the field of the invention
14 here, I mentioned it's about document cameras, but I want to focus on the
15 second part of the field of the invention where the patent says that it's about
16 document cameras for capturing both real-time video and scanning high
17 resolution still images.

18 So one of the big issues in the case, I think particularly with regard
19 to the unamended claims, is whether or not video is required and our
20 position is the patent is about both still images and video. And so while
21 video isn't required, it certainly could be covered. The claims are broad
22 enough, though, to cover also capturing a series of still images.

23 JUDGE BEAMER: And we're dealing with the amended claims.

24 MR. WEED: There are two claims that were originally challenged
25 that have not been amended, Claims 18 and 20.

26 JUDGE BEAMER: Correct.

1 MR. WEED: Right. So my plan was to talk about those claims
2 first and then move to the amended claims, unless the Board would prefer to
3 do it in another order.

4 On slide number 3 we've got some excerpts from the background
5 of the '751 patent and, again, what this is showing here is the inventors were
6 referring to the state of the art as of the filing of the '751 patent. We talked a
7 lot in the Reply about the Gann reference, which is the '460 patent, Exhibit
8 1007, described in the middle callout on slide 3, and we also talked about the
9 Slatter reference, which is the '415 patent, Exhibit 1021 in the bottom
10 column on slide 3.

11 And both of those references talk about the applicability of video
12 in the document camera space. And, in particular, Slatter, the '415 patent,
13 was actually filed 10 years before the original application for the '751 patent.
14 And even Slatter 10 years earlier recognizes that video cameras were usable
15 in the context of document cameras.

16 On slide 4 we have reproduced a passage from Dr. Rodriguez,
17 Patent Owner's expert, and here Dr. Rodriguez agrees with Dr. Madisetti
18 about the level of skill in the art. And, again, we're talking here about 2010,
19 so this is not a -- this is relatively late in the game. Dr. Rodriguez agrees
20 with Dr. Madisetti and says that a person of skill in the art would have had at
21 least one year of direct technical experience in capturing real-time video
22 with zooming capability via a portable document camera.

23 So a person of skill in the art already has experience with
24 document cameras and that's why it's not surprising that when we look at
25 Morichika, the primary reference for Claims 18 and 20, it renders most of
26 the limitations anticipated and renders the whole claim obvious.

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