

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD
4

5
6 MICROSOFT CORPORATION,

7 Petitioner,

8 v.

9 DIRECTSTREAM, LLC,

10 Patent Owner.
11

12
13 IPR2018-01594 (Patent No. 6,434,687)

14 IPR2018-01599 (Patent No. 6,076,152)

15 IPR2018-01600 (Patent No. 6,247,110)

16 IPR2018-01601, -01602, -01603 (Patent No. 7,225,324)

17 IPR2018-01604 (Patent No. 7,421,524)

18 IPR2018-01605, -01606, -01607 (Patent No. 7,620,800)
19

20
21 PTAB CONFERENCE CALL

22 October 22, 2019
23

24 REPORTED BY: CHRISTINE M. (TINA) YOUNG, CSR NO. 2596

25 ASSIGNMENT #3606215

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1 A P P E A R A N C E S
2 Telephonic proceedings, held before Administrative
3 Patent Judges Kalyan K. Deshpande, Christa P. Zado, and
4 Justin T. Arbes, before Christine M. Young, A Certified
5 Shorthand Reporter for the State of Texas.
6
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1 JUDGE ARBES: Okay. Great. Please file
2 a copy of the transcript as soon as you can after the
3 call as an exhibit.
4 Okay. I believe there is an issue
5 regarding scheduling that has come up with respect to
6 the deposition of one of the witnesses. Why don't we
7 begin with counsel for Patent Owner. Would you like to
8 explain the situation?
9 And actually before we do, we would like
10 to remind -- we received the parties' emails, and we
11 would just like to remind the parties again to please
12 follow the board's instructions. We did request a
13 single email. In the future it would be helpful in
14 those circumstances where we request a joint email from
15 the parties, please confer with each other a draft email
16 and both parties sign off on it before sending so that
17 we don't have the situation of multiple emails in the
18 future.
19 Counsel for Patent Owner go first and
20 explain the situation.
21 MR. EVANS: Sure, Your Honor. This is
22 Chris Evans. So Dr. Mian is one of our key expert
23 witnesses in all of these IPR's. His mother was
24 diagnosed with Stage 4 cancer about a month ago. She is
25 located in Dubai. So in September he went over there to
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1 P R O C E E D I N G S
2 JUDGE ARBES: Let's begin. IPR2018-1594.
3 This is Judge Arbes. We have Judge Deshpande and Judge
4 Zado on the line. We have counsel for Petitioner?
5 MR. MICALLEF: Yes, Your Honor, this is
6 Joe Micallef with Sidley Austin for Petitioner,
7 Microsoft. And with me is my partner, Scott Border.
8 JUDGE ARBES: And counsel for Patent
9 Owner?
10 MR. EVANS: Yes, Your Honor, this is
11 Chris Evans from Shore Chan DePumpo, and also Don
12 Puckett representing the Patent Owner.
13 JUDGE ARBES: And do we have a court
14 reporter on the line?
15 THE COURT REPORTER: Yes, we do. My name
16 is Tina Young. I am the court reporter, and I can hear
17 everybody just fine. I just ask that everybody please
18 speak one at a time and clearly to make sure that I can
19 take down all the testimony, and if you could also
20 identify yourself when you are speaking so I know who is
21 speaking.
22 JUDGE ARBES: Sure. This is Judge Arbes.
23 Which party retained the court reporter today?
24 MR. EVANS: The Patent Owner did, Your
25 Honor. This is Chris Evans.
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1 spend time, and I guess within the last week or so, he's
2 been told that she only had days to live. This was last
3 week.
4 As a result of that, we talked to -- I
5 talked to Microsoft's lawyers, and they agreed to cancel
6 the deposition that was scheduled to occur at the end of
7 this week. And so basically the situation is -- I mean,
8 I don't think in good conscience we can't ask him to
9 come do a deposition under these circumstances, and
10 we're just not sure how long it's going to take, you
11 know, for the situation to resolve. And the way the
12 schedule is currently set up, there's not a whole lot of
13 wiggle room to reschedule his deposition, so we think --
14 or I think under these circumstances that there's
15 sufficient good cause for the board to extend the
16 schedule in this case beyond potentially the one-year
17 mark.
18 Specifically, we would just like to
19 request to move back the oral argument date and the
20 other dates that we can't stipulate to by approximately
21 six to eight weeks. That will hopefully give us enough
22 time to let this situation resolve and be able to
23 schedule Dr. Mian's deposition in a reasonable time.
24 JUDGE ARBES: Okay. And the proposal that
25 we have -- it looks like from the emails we have a
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1 couple of proposals. One, assuming that the one-year
 2 deadline would be extended, and one that would not be.
 3 The latter proposal, is that from the Patent Owner or
 4 Petitioner, just to be clear?
 5 MR. EVANS: So, Your Honor, again, this is
 6 Chris Evans. The only proposal that's agreed to is the
 7 proposal that would extend past the one year. The other
 8 proposal just moves around dates that we could stipulate
 9 to, but we haven't actually agreed to or even really
 10 discussed that proposal.
 11 JUDGE ARBES: Okay. Well, I think we can
 12 start off by saying that the six-month extension
 13 obviously is extremely rare and is not something that
 14 the panel is even able to do, so I think we should
 15 proceed for now on the basis that that would not be
 16 available and try to work out a schedule to accommodate
 17 the situation as best we can.
 18 We certainly are sympathetic to the
 19 situation and scheduling needs. It would be requesting,
 20 as you said, a six-to-eight-week extension of all
 21 deadlines, I take it?
 22 MR. EVANS: Yes, Your Honor, that's what
 23 the schedule we proposed -- the first schedule that we
 24 proposed to you would be.
 25 JUDGE ARBES: Okay. Why don't we hear from

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1 our Petitioner. Would you like to respond?
 2 MR. MICALLEF: Yeah. Our view is we
 3 certainly agree we can't expect Dr. Mian to come back
 4 while his mother is on her death bed, and we don't know
 5 how that's going to play out or when, so that's a big
 6 caveat.
 7 The schedule that the Patent Owner
 8 proposed, it presupposes the panel -- I think it
 9 presupposes the panel moving the -- adopting the
 10 six-month extension; otherwise, I'll just point out it
 11 puts the oral argument date about a month before the
 12 final decision is due, and I guess we didn't really
 13 discuss this, but I think we probably just both assumed
 14 that that was not workable for the panel.
 15 But if it is, I mean, I can -- we can deal
 16 with the schedule that the Patent Owner has proposed.
 17 If not, the one we put there sort of makes -- I think
 18 it's workable. It's a little aggressive, but it's
 19 workable at least and keeps the same oral hearing date
 20 that's already ordered.
 21 I guess if you give us a different oral
 22 hearing date in between what's on the schedule now and
 23 what's in Mr. Evans' proposal, maybe we can go back and
 24 sharpen our pencils and, you know, move the other dates
 25 around too, but we're flexible generally.

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1 THE COURT REPORTER: Mr. Micallef, was that
 2 you speaking?
 3 MR. MICALLEF: I'm sorry. It was.
 4 THE COURT REPORTER: Thank you.
 5 JUDGE ARBES: Okay. What else for the call
 6 today at least? I think we should proceed under the
 7 assumption that the one-year deadline is in effect and
 8 there is no extensions, so let's try to come up with a
 9 schedule that might work, if that is a possibility. Let
 10 me ask the parties -- and this is all assuming the
 11 availability of hearing rooms and staff at the board.
 12 What is the parties' availability for a potential oral
 13 hearing later in January or the first week of February,
 14 if you have your calendars in front of you? Why don't
 15 we start with counsel for Patent Owner.
 16 MR. EVANS: Your Honor, I think we can make
 17 that work.
 18 JUDGE ARBES: Are there any dates that
 19 definitively do not work in that time period?
 20 MR. EVANS: I can only speak for myself and
 21 not my colleagues, but I don't have an issue with it,
 22 but I don't have all my colleagues' calendars in front
 23 of me either, but I'm sure we can work around it.
 24 THE COURT REPORTER: Mr. Evans, was that
 25 you speaking?

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1 MR. EVANS: Yes.
 2 MR. PUCKETT: This is Don Puckett. Let me
 3 chime in as well about the Patent Owner. I think that
 4 we can make any dates that are convenient for the board
 5 work within that time frame.
 6 JUDGE ARBES: Okay. Counsel for
 7 Petitioner?
 8 MR. MICALLEF: Your Honor, I think
 9 February 6th and 7th might be an issue for us, but
 10 otherwise in late, late January or early February, I
 11 think we can make it work.
 12 JUDGE ARBES: Okay. Let me propose -- and
 13 again, this is something that we will need to go back
 14 and check on availability, but January 28th and 29th, a
 15 Tuesday and Wednesday, the last week of January, is
 16 there any objection at this point for those dates?
 17 MR. EVANS: Your Honor, this is Chris Evans
 18 for the Patent Owner, no objection. Just -- my only
 19 concern is just whether that's going to be an adequate
 20 amount of time to let the situation resolve.
 21 JUDGE ARBES: Yes, okay. Why don't the
 22 parties hold on for one minute. You can both stay on
 23 the line. We will go in there while the panel confers,
 24 and then we'll be back and we can discuss further.
 25 (Discussion off the record.)


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1 JUDGE ARBES: This is Judge Arbes. We will
 2 confer with the hearing staff at the board as to other
 3 potential dates that are available a few weeks after the
 4 currently scheduled hearing date and get back to the
 5 parties by email. So what we will do is send you both
 6 an email with other proposed dates for the hearing.
 7 What we would like the parties to do in
 8 response to that is confer with each other and come up
 9 with a proposed schedule for Due Dates 2 through 7,
 10 taking into account the new hearing dates. So if we
 11 extend the dates for the hearing that's Due Date 8, we
 12 would like the parties to come up with a proposed
 13 schedule that hopefully works for both for Due Dates 2
 14 through 7.
 15 We will allow the parties to compress those
 16 dates however you would like. Due Date 7 only needs to
 17 be a few days before the hearing, so if you need to
 18 compress those to further retain, that's fine. The one
 19 thing that we ask is that Due Date 4, the date to
 20 request oral argument, not be changed.
 21 So feel free to modify any of the other
 22 dates other than Due Date 4 and get back to us. We will
 23 send that email as soon as we can. The parties can
 24 confer after that and provide a proposed schedule given
 25 the new dates. Hopefully that should resolve any

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1 issues. Any questions from either parties?
 2 MR. EVANS: None from Patent Owner, Your
 3 Honor.
 4 MR. MICALLEF: None from Petitioner, Your
 5 Honor.
 6 JUDGE ARBES: Thank you both. And if
 7 anything changes regarding the situation with the Patent
 8 Owner's clearance or any other matters for scheduling,
 9 please let us know and we can have another call.
 10 MR. EVANS: Thank you, Your Honor.
 11 MR. MICALLEF: Thank you, very much.
 12 JUDGE ARBES: Thank you both.
 13 (End of Proceedings.)
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1 REPORTER'S CERTIFICATE
 2 THE STATE OF TEXAS)
 3 COUNTY OF DALLAS)
 4
 5 I, Christine M. Young, Certified Shorthand
 6 Reporter in and for State of Texas, do hereby certify
 7 that the above and foregoing contains a true and correct
 8 transcription of all portions of evidence and other
 9 proceedings requested in writing by counsel for the
 10 parties to be included in this volume of the Reporter's
 11 Record, in the above-styled and numbered cause, all of
 12 which occurred via telephone conference and were
 13 reported by me.
 14 I further certify that this Reporter's Record
 15 of the proceedings truly and correctly reflects the
 16 exhibits, if any, admitted by the respective parties.
 17 WITNESS MY OFFICIAL HAND this the 30th day of
 18 October, 2012
 19

 20 Christine M. Young, Texas CSR 2596
 21 Expiration Date: 12/2019
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