

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE WESTERN DISTRICT OF TEXAS

3 WACO DIVISION

4 MULTIMEDIA CONTENT MANAGEMENT, LLC

*

5 VS.

*

* CIVIL ACTION NO. W-18-CV-207

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6 DISH NETWORK CORPORATION

*

November 28, 2018

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8 BEFORE THE HONORABLE ALAN D ALBRIGHT, JUDGE PRESIDING
MOTION HEARING

9 APPEARANCES:

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1 (November 28, 2018, 2:53 p.m.)

2 DEPUTY CLERK: Civil proceeding on hearing on motion to
3 dismiss in Civil Action W-18-CV-207, styled Multimedia Content
4 Management, LLC vs. Dish Network Corporation.

5 THE COURT: Mr. Denko?

6 MR. DENKO: Yes, sir.

7 THE COURT: Would you like to introduce yourself for the
8 record?

9 MR. DENKO: Scott Denko for the plaintiff Multimedia
10 Content Management, LLC.

11 THE COURT: I recognize Mr. Bustamante, but I don't know
12 who the gentleman in the middle is.

13 MR. TOLER: Jeff Toler for the plaintiff.

14 THE COURT: Mr. Toler, I think we've met too, but I...

15 MR. TOLER: We have, Your Honor.

16 MR. PANKRATZ: Your Honor, Kurt Pankratz with Baker Botts
17 on behalf of the defendant Dish Network.

18 THE COURT: Okay.

19 MR. PANKRATZ: I'm joined today with my colleagues Hopkins
20 Guy, Tom Carter and John Palmer. We're also joined today by
21 in-house counsel from Dish Lawrence Katzin and James Hanft.

22 THE COURT: Well, thank you so much for coming to Waco. I
23 really appreciate -- I love it when the clients attend these
24 hearings. I actually know a little more about this than I did
25 about the IDEA case I just had. So -- and there are binders so

1 I recognize this as a patent case. I know walking in what I'm
2 going to deal with.

3 So counsel for Dish, it's your motion and I will hear from
4 you guys. Just so you know, I have reviewed everything that
5 you submitted. I've actually got a fair number of questions to
6 ask. You may wind up answering them as you go through, but I
7 just wanted you to know that I have -- I have looked at
8 everything and I am -- I had another 101 hearing a week or two
9 ago, maybe two weeks ago. So I'm a little bit current on what
10 the -- the more recent cases are, but don't let that dissuade
11 you from, you know, hitting on whatever you want to.

12 MR. PANKRATZ: Thank you, Your Honor. Again, Kurt
13 Pankratz on behalf of the defendant Dish. And I heard about
14 the match.com hearing. So I was aware that you were -- you are
15 well aware of the current state of the 101 case law and I will
16 not go too deep into any of it, but I would like to start, Your
17 Honor, by focusing what this analysis is on which is based on
18 the Supreme Court telling us in Alice that the focus is on the
19 claims. And within the slide deck I'm going to -- I'll
20 reference you to certain pages. I'm probably going to jump
21 around a little bit so not necessarily go in exact order
22 necessarily nor hit all the slides, but I'll try and reference
23 by slide number if I'm ever referring to a particular one.

24 At Slide No. 4, a couple of quotes from the Alice case
25 because we think it's really important to reorient ourselves

1 and think about what is the fundamental question or what are
2 the fundamental questions that we're asking ourselves and what
3 do we need to look at to answer them? In Alice the Supreme
4 Court tells us that there are the two steps and they're both
5 focused on the claims themselves. At Step 1, first determine
6 whether the claims at issue are directed to patent ineligible
7 concepts, and then at the second step, if so, what else is in
8 the claims before us? So it is a focus on the claims, not on
9 what could have been in the claims, what could have been
10 included based on descriptions in the specification but on the
11 claims themselves.

12 THE COURT: And let me interrupt you to say you did a
13 really good job of making that point in your briefs and I would
14 encourage Mr. Denko or Mr. Bustamante or whoever it is that
15 argues, and I'm not sure who will, but I would look forward to
16 hearing from the plaintiff references to what is in the claims
17 that defeat your argument that there's nothing there. I mean,
18 you made that point pretty well and I look forward to hearing
19 from them a fairly specific response to that.

20 MR. PANKRATZ: Perfect, Your Honor. Thank you.

21 I will note that at Slide 6 we've got just a clean copy of
22 Claim 23 if at any point we need to jump to that slide and
23 reference the claim with no annotations or at least no
24 annotations yet on this slide.

25 THE COURT: And while you're doing this, you actually

1 anticipated my next question. You might address -- I know I'm
2 going to hear from them why we just don't look at Claim 23 and
3 it's not enough. There are a zillion claims, blah, blah, blah,
4 blah. And so if you want to take that on now, I'll hear from
5 them when they're up, but why -- why -- you might want to put
6 on the record why my analysis of Claim 23 is sufficient to
7 resolve the question of whether Alice applies to all of the
8 claims.

9 MR. PANKRATZ: I'd be happy to take that question right
10 now if you'd prefer.

11 THE COURT: Sure.

12 MR. PANKRATZ: I think -- and I'm not even sure there is a
13 dispute as to whether Claim 23 is representative at least with
14 respect to the independent claims. Now, our brief focused on
15 Claim 23. Their brief pivoted and focused on Claim 1 from the
16 same patent and I think I can address for you right now why we
17 think that those two claims are equivalent. I don't even know
18 if this is a dispute. It may be helpful to hear straight from
19 them. Do they think that the four independent claims rise and
20 fall together? I don't know if they agree. It seems they
21 might from the briefing, but I'm not sure. But I can certainly
22 address that.

23 Page 30 of the slide deck, Your Honor -- and I think
24 you're probably aware we've got two patents in suit here.

25 THE COURT: Sure.

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