

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,
Petitioner,

v.

MEMORYWEB, LLC,
Patent Owner.

IPR2022-00031 Patent 10,621,228
IPR2022-00032 Patent 9,552,376
IPR2022-00033 Patent 10,423,658
PGR2022-00006 Patent 11,017,020

Record of Oral Hearing
Held: March 14, 2023

Before LYNNE H. BROWNE, NORMAN H. BEAMER,
KEVIN C. TROCK, and JASON M. REPKO, *Administrative Patent Judges.*

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APPEARANCES:

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The above-entitled matter came on for hearing, by video, on Tuesday, March 14, 2023, commencing at 1:00 p.m., EDT, at the U.S. Patent and Trademark Office.

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PROCEEDINGS

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2 JUDGE REPKO: Good afternoon. This is a consolidated oral hearing
3 for IPR 2022-00031, 32, 33 and PGR 2022-00006. I am Judge Repko joined
4 by Judges Brown, Beamer and Trock. Our primary concern is your right to
5 be heard so if at any time you have technical problems with this video
6 hearing, and you feel like it would undermine your ability to represent your
7 client any way please let us know immediately. As soon as we're aware that
8 someone disconnected, we'll pause the hearing while they reconnect.

9 When you're not speaking, please mute yourself. When you do speak
10 please identify yourself at the start of your remarks so our court reporter can
11 get an accurate transcript. At the end of the hearing, please remain on the
12 line in case the court reporter has any questions for you. Feel free to present
13 yourself however you are comfortable. That means it's okay to stand. There
14 are members of the public listening to the oral hearing today, so if there's
15 any confidential information, I don't think there is, but if there is, you need
16 to let us know so they can make sure we don't violate confidentiality.

17 At this time, we'd like counsel to introduce themselves and anyone
18 with them, and I'll begin with the Petitioner's counsel.

19 MR. KUSHAN: Good afternoon, Your Honor. My name is Jeff
20 Kushan with Sidley Austin here for Petitioner. With me is Christine Reid.

21 JUDGE REPKO: Will you be presenting your arguments fully or will
22 you be handing it off?

23 MR. KUSHAN: I'll be handling all of the argument.

24 JUDGE REPKO: Thank you. Patent Owner's counsel, can you

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1 please introduce yourself and anyone with you. Are you muted?

2 MR. SCHWARTZ: Can you hear me? Sorry about that. Apologies,
3 Your Honors. This is Dan Schwartz on behalf of Patent Owner
4 Memoryweb. With me today is Jennifer Hayes. I will be presenting most of
5 the argument and she will also be presenting a percentage of the argument as
6 well.

7 JUDGE REPKO: Thank you. Thank you. So our Hearing Order
8 gave each party 90 minutes to present their arguments and since we don't
9 have a clock for everyone to look at, I will time you and try to give you a
10 warning when you have about five minutes remaining. Petitioner's counsel
11 will begin followed by Patent Owner's. Both parties may reserve some
12 rebuttal time, but unless there's some special circumstances, you may not
13 reserve more than half your total time. If you have objections, please raise
14 them during your rebuttal. So with that, I'm going to invite Petitioner's
15 counsel to begin. I need to know how much time you would like to reserve
16 for rebuttal.

17 MR. KUSHAN: I'd like to reserve approximately 30 minutes for
18 rebuttal.

19 JUDGE REPKO: Okay. Thank you. You may begin.

20 MR. KUSHAN: Good afternoon. As you know, there are four
21 patents. There's a somewhat complex record to navigate, so I'll do my best
22 to make sure I cite to the right papers as I go through the issues.

23 I'd like to start with a prior art dispute that has been engaged and for
24 those I'm going to be referring to the papers in the '228 proceeding for
25 simplicity and I will also attempt to show my slides here. Can you see my

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1 slides? Great.

2 So we explained that the primary reference in the four proceedings is
3 the reference Exhibit 1005, which is the Aperture 3 User Manual from
4 February of 2010. It was distributed as an HTML set. That's encoding the
5 User Manual and it was distributed on an installer DVD. The version 3.0
6 Aperture Installer DVD was also distributed on Apple's website. One of our
7 experts, Dr. Terveen, explained that the HTML file set is on the aperture 3.0
8 version installation DVD. It's in a folder called the User Manual within the
9 resources folder inside the Aperture 3 application bundle. The application
10 bundle is actually just a directory structure so you can navigate into it and
11 that's where the Apple developer guidelines say it should be.

12 On slide 29 is a quote from one of those guidelines that indicates that
13 Apple, in the Apple environment, the help files are typically an HTML
14 format and are stored in the resources folder of the application bundle and
15 you can copy the files from the DVD. Dr. Terveen, this is slide 11, Dr.
16 Terveen showed you could do this. He copied it from the DVD to the local
17 storage and so did their expert, Dr. Surati, that's on slide 17. He replicated
18 the steps that Dr. Terveen took to get it off the DVD on to local storage.

19 Now, the DVD, the files that are on the DVD, is also copied to your
20 hard drive when you run the installer and that is illustrated also by Dr.
21 Terveen. That's on slide 15, and he went through the process of installing it.
22 He also confirmed that the copy from the DVD to the hard drive was
23 identical.

24 Now, another important point is that the files on the DVD existed in
25 February, 2010. If you look at slide 18, Dr. Surati, their expert, confirmed

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