

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

RFCYBER CORP.,
Patent Owner.

IPR2022-00412 (Patent 9,189,787 B1)
IPR2022-00413 (Patent 9,240,009 B2)

Record of Oral Hearing
Held: April 21, 2023

Before KEVIN F. TURNER, PATRICK R. SCANLON, and
KEVIN W. CHERRY, *Administrative Patent Judges*.

IPR2022-00412 (Patent 9,189,787 B1)

IPR2022-00413 (Patent 9,240,009 B2)

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF THE PATENT OWNER:

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The above-entitled matter came on for hearing on Friday, April 21, 2023, commencing at 1:00 p.m., Eastern Time, via video conference.

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IPR2022-00413 (Patent 9,240,009 B2)

1 PROCEEDINGS

2 JUDGE SCANLON: Good afternoon or, I guess, good morning
3 depending on your location. Welcome to the Patent Trial and Appeal Board.
4 We are here today for a consolidated hearing in IPR2022-00412 and -00413
5 between Petitioner, Apple Inc. and Patent Owner, RFCyber Corp. The '412
6 case involves patent number 9,189,787 and the '413 case involves patent
7 number 9,240,009. I'm Judge Scanlon and joining me today are Judge
8 Cherry and Judge Turner. Let's start with appearances. Who's here are for
9 Petitioner, please?

10 MR. HART: Thank you, your Honor. Paul Hart with Erise IP for
11 Petitioner Apple.

12 JUDGE SCANLON: Okay, thank you. And for Patent Owner?

13 MR. COWELL: Good afternoon, your Honor. This is Richard Cowell
14 of Fabricant LLP for Patent Owner RFCyber.

15 JUDGE SCANLON: Okay. Very good, thank you. If at any time
16 during this hearing you encounter technical or other difficulties, please let us
17 know immediately so we can try to address the issue. If you get
18 disconnected completely, please contact the hearing staff who provided you
19 with the connection information. Please make every effort to avoid speaking
20 over others. That will assist our court reporter in making a clear record.
21 Also, please try to mute your line when you're not speaking.

22 We do have the entire record including the demonstratives before us.
23 When referring to materials from your demonstratives, it's helpful if you
24 could provide us with a page number for the slide to improve the clarity of
25 the record or if you're citing to other exhibits or papers in the record, please
26 provide page number and/or line number.

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1 Please be aware that there is a public access line open for the hearing.
2 I don't think there's any confidential information in the record, but if there is
3 something that's confidential you'd like to discuss, let us know so we can
4 make accommodations.

5 As set forth in the hearing order, each party is permitted 90 minutes to
6 present their arguments. Because it bears the burden of persuasion,
7 Petitioner will go first and may reserve no more than half of its time for
8 rebuttal. Patent Owner will then have an opportunity to respond and may
9 also reserve time for rebuttal. We will keep time to the best of our ability
10 and I will try to provide updates about the remaining time as the hearing
11 progresses. With that, we'll start with Petitioner. And please let us know
12 how much, if any, time you would like to reserve for rebuttal.

13 MR. HART: Thank you, your Honor. I'm going to try very hard not
14 to use the full 90 minutes, but let's reserve 25 minutes of the 90 for rebuttal.

15 JUDGE SCANLON: Okay, thank you. Proceed when you are ready.

16 MR. HART: Thanks very much, your Honor. The '787 and the '009
17 patent are both directed to implementing smart cards on mobile devices.
18 The detailed disclosures in both patents rely heavily on well-established
19 smart card functionalities, such as those in the GlobalPlatform standard,
20 including its card management and its security functionality. Indeed, both
21 patents, the '787 and the '009, repeatedly reference the GlobalPlatform
22 standard and many of its standardized features are respected in the challenge
23 claims themselves. For the '787 patent specifically, the Philips SmartMX
24 controller also plays a prominent role in both the specification and the
25 claims. Despite these patents' heavy reliance on existing standards and

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1 commercial products, neither GlobalPlatform nor any document discussing
2 Philips SmartMX was provided to the office during prosecution.

3 The proposed grounds in both proceedings seek to remedy Patent
4 Owner's failure to submit the standards and commercial products on which
5 its alleged inventions are based. Those IPRs rely on base reference Dua.
6 Dua describes a cell phone equipped with smart card functionalities and
7 describes a network topology that supports mobile financial transactions.
8 However, Dua's device relies on smart card agnostic communication
9 protocols, the dominant communication protocol relied on by Dua is SIP.
10 SIP is most widely recognized as internet telephony, voice over IP based
11 communication protocol. Dua also discloses security mechanisms such as
12 TLS and S/MIME. Those are both more widely recognized as email security
13 communication protocols. None of those protocols, SIP, TLS, or S/MIME,
14 are specific to smart cards. None of them are associated with the smart card
15 industry or smart card transaction. Both petitions establish that POSITA
16 would have been motivated to implement Dua's smart card functionalities
17 pursuant to GlobalPlatform, the dominant smart card standard at the time.

18 Four times now, twice when instituting Samsung's petitions and twice
19 when instituting Apple's petitions, this Board has concluded that the
20 proposed combination is supported by concrete motivation to combine.
21 Namely, the improved interoperability realized by implementing Dua
22 pursuant to GlobalPlatform provides that motivation. This is still the
23 primary dispute between the parties. As the record has developed, Apple
24 has supplemented its record, clarified the issues with the testimony of Gerry
25 Smith, a true expert in the field, who actually served on the GlobalPlatform
26 board on behalf of American Express. Patent Owner took a different tack.

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