

RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

APPLE INC.  
Petitioner

v.

ACHATES REFERENCE PUBLISHING, INC.  
Patent Owner

---

Case IPR2013-00080 (Patent 6,173,403)  
Case IPR2013-00081 (Patent 5,982,889)

---

Oral Hearing Held: February 26, 2014

---

Before HOWARD B. BLANKENSHIP, JUSTIN T. ARBES, and GREGG  
I. ANDERSON, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

JEFFREY P. KUSHAN, ESQUIRE  
JOSEPH A. MICALLEF, ESQUIRE  
Sidley Austin, LLP  
1501 K Street, N.W.  
Washington, D.C. 20005

ON BEHALF OF THE PATENT OWNER:

VINCENT E. McGEARY, ESQUIRE  
Gibbons, P.C.  
One Gateway Center  
Newark, New Jersey 07102-5310  
BRAD D. PEDERSEN, ESQUIRE  
Patterson, Thunte, Pedersen, P.A.  
4800 IDS Center, 80 South 8th Street  
Minneapolis, Minnesota 55402

The above-entitled matter came on for hearing on Wednesday, February 26, 2014, commencing at 2:11 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia 22314.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

P R O C E E D I N G S

- - - - -

JUDGE ARBES: This is the oral hearing in two cases, Cases IPR 2013-80 and 2013-81 involving Patent 6,173,403 and Patent 5,982,889.

Would counsel please state your names for the record?

MR. KUSHAN: Jeff Kushan and Joe Micallef for Petitioner Apple.

MR. PEDERSEN: Brad Pedersen and Vincent McGeary for the Patent Owner Achates.

JUDGE ARBES: Per the Board's trial hearing order in these cases, each party will have 90 minutes total time to present for the two cases. You can allocate that time however you would like. The order of presentation will be that counsel for the Petitioner will go first regarding the challenged claims in the 80 case. You may reserve time for rebuttal.

The Patent Owner will then respond with respect to the challenged claims in the 80 case. The Petitioner can then use rebuttal time for that one. We will then take a short break and then proceed in the exact same manner for the 81 case.

A couple of reminders before we begin, to ensure that the transcript is clear, because we have one judge in the Denver office, we would ask the parties to please try to remember to refer to your demonstratives by slide number so the record is complete. And, also, if you can stay near the podium so that the judge in the other office can hear you.

Do the parties have copies of the demonstratives that you will be using today?

1 MR. KUSHAN: Yes, Your Honor. May I approach?

2 JUDGE ARBES: Yes, please.

3 MR. KUSHAN: These are the demonstratives. I also was going to  
4 ask that we provide you with a copy of the one exhibit that's under seal so  
5 you have it accessible. If that's okay, I can leave it with you. These are our  
6 copies for the panel.

7 MR. McGEARY: Your Honor, we don't have an extra copy of the  
8 demonstrative exhibits.

9 JUDGE ARBES: That's fine. Counsel for the Petitioner, you can go  
10 first. And would you like to reserve time for rebuttal? And, if so, how  
11 much?

12 MR. KUSHAN: We would like to reserve about half of our time for  
13 rebuttal. And we will take it somewhat as we go to the second proceeding.

14 Thank you very much. Today's hearing is going to focus on two  
15 patents in a fairly crowded field of technology with a fair amount of prior  
16 art. And before we get into the details, it is important to appreciate that the  
17 patents that we are dealing with concern a technique, which essentially takes  
18 a set of information and uses a conventional encryption technique as an aid  
19 to transfer the files securely.

20 When you look at the patents, they employ very well in very  
21 established encryption and other techniques that have been in the prior art  
22 for a fair amount of time. And as we go through the issues, you will see that  
23 the claims are, in fact, going to be fairly, clearly obvious or anticipated by  
24 that prior art.

1           So we move to Slide 2. These are the grounds that we are going to be  
2 addressing. And I am also going to be taking up the grounds based on Pettitt  
3 and Beetcher. And my colleague Mr. Micallef will be taking up the grounds  
4 based on Ginter. If we go to Slide 3.

5           The first issue I would like to address is the finding of anticipation by  
6 Pettitt. This is Claim 1. It has been found anticipated. And what we did in  
7 our petition was outline that there were two distinct authentication codes in  
8 the Pettitt scheme. And if you see on the bottom here in our '403 petition at  
9 Pages 26 and 27, we explain how the Pettitt scheme works.

10           In Pettitt, there is an encrypted reply envelope, which is created.  
11 Inside that encrypted reply envelope are a number of items and information.  
12 One of them is called the digital authorization certificate. I will call that the  
13 DAC for short. In the process, this encrypted reply envelope is sent through  
14 a chain down to a reseller. And then when the reseller receives that, it  
15 decrypts it and recovers the information inside the envelope.

16           The encrypted reply envelope is also signed with the digital signature  
17 of the LCH, license clearinghouse. Once it's decrypted at the reseller, the  
18 contents are then passed on to the user. And those contents, including the  
19 DAC, are used to install the software.

20           This demonstration in Pettitt -- as I said, this is from our petition. We  
21 have very clearly identified that there were actually two authentication codes  
22 in the Pettitt scheme. One was the LCH digital signature. And if we go to  
23 Slide 8, this is one of the statement of facts we included with our petition in  
24 81 where we set out our position with the digital authorization certificate as  
25 an authentication code supported by evidence of Mr. Schneier.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.