UNITED STATES PATENT AND TRADEMARK OFFICE
_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD
_____

KAPSCH TRAFFICCOM IVHS INC. and KAPSCH
TRAFFICCOM HOLDING CORP.,
Petitioner,

v.

NEOLOGY, INC.,
Patent Owner.
_____

Case IPR2015-00814
Patent 6,690,264 B2

_____

Held: May 10, 2016
_____

BEFORE: JUSTIN T. ARBES, GLENN J. PERRY, and
TREVOR M. JEFFERSON, Administrative Patent Judges.

  The above-entitled matter came on for hearing on Tuesday, May
10, 2016, commencing at 9:02 a.m., at the U.S. Patent and
Trademark Office, 600 Dulany Street, Alexandria, Virginia.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

NATHAN S. MAMMEN, ESQUIRE
DAVID SCHLAIFER, ESQUIRE
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005

ON BEHALF OF PATENT OWNER:

NOEL C. GILLESPIE, ESQUIRE
ROBERT H. SLOSS, ESQUIRE
Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, California 92101

1   P R O C E E D I N G S

2   -   -   -   -   -

3   JUDGE PERRY: Good morning. At issue this morning

4   is U.S. Patent 6,690,264 in the case of Kapsch versus Neology,

5   IPR2015-00814, and this afternoon we'll hear two related cases.

6   So per our trial order, each side has 60 minutes to

7   present oral argument based on the record and, of course,

8   Petitioner has the ultimate burden and will go first.

9   Petitioner, feel free to reserve time for rebuttal, if you

10   wish.

11   MR. MAMMEN: Thank you, Your Honor.

12   JUDGE PERRY: So please identify yourself clearly for

13   the reporter. And if you haven't already, please give the reporter

14   your business cards so they can spell your name right in the

15   record.

16   MR. MAMMEN: Yes, Your Honor. Thank you.

17   May I proceed?

18   JUDGE PERRY: Please proceed.

19   MR. MAMMEN: Thank you. Your Honor, I am

20   Nathan Mammen on behalf of the Petitioners Kapsch TrafficCom

21   and, Your Honor, I have -- I don't know if Your Honors have --

22   may I hand them up?

23   JUDGE PERRY: I would like it. Thank you.

24   MR. MAMMEN: Sure.

25   JUDGE PERRY: Do you want to reserve any time?

1 MR. MAMMEN: Yes, Your Honor. I'd like to reserve

2 20 minutes, if I may.

3 JUDGE PERRY: Okay.

4 MR. MAMMEN: So this morning's argument as you

5 mentioned, Your Honor, is about the 814 proceeding which

6 concerns the '264 patent and the '264 patent relates to cloaking,

7 what's called cloaking. The concept of cloaking, as I'm sure you

8 understand and are aware, is basically to silence an RFID tag to

9 allow other tags to be read that it doesn't interfere in the field with

10 other RFID tags that are being broadcast with a signal. And all --

11 the term cloaking is used in the '264 patent and the '144 Kruest

12 reference, which is prior art in this proceeding.

13 The concept has certainly been known and referenced

14 elsewhere and used by other terminology in the prior art that's at

15 issue in this proceeding.

16 JUDGE PERRY: Counsel, is the term cloaking used

17 itself and well-known prior to the invention of the '264 patent?

18 MR. MAMMEN: Yes, Your Honor. And if we go to

19 slide 3, and I think you could look at the format of Claim 1 as one

20 indication that it certainly has been used. It talks about the

21 improvement, the Jepson claim. So it's clearly the understanding

22 that a cloaked RFID tag is something that's known in the art.

23 And then the background to the '264 patent discusses

24 and incorporates by reference the Kruest reference that is one of

1   our grounds here, and that's terminology that Kruest also uses to

2   describe the concept of silencing a tag or cloaking a tag.

3   So as a preamble, one makes clear -- Claim 1 makes

4   clear a cloaked RFID tag with an antenna is something that the

5   prior art recognized and knows are new at the time of this

6   invention and the '264 patent is about setting forth an

7   improvement to that cloaked RFID tag.

8   The '264 patent in the background talked about one of

9   the deficiencies that was recognized with the Kruest arrangement

10   was that Kruest would silence a tag for a period of time in which

11   the tag would just remain silent and wait until an internal timer

12   would run out before the tag would come back alive and be able

13   to be communicated with.

14   The deficiency in that approach is if you need to

15   interrogate the tag before that timer runs out, then you'd have to

16   wait and so the '264 patent was seeking to solve was there an

17   ability to bring that tag out of a cloaked state and use it in further

18   follow-on communications with a reader.

19   And then as we'll talk about later, the Turner reference

20   and other references, but Turner in this proceeding teaches that

21   exact improvement as well, that the idea of wanting to bring a tag

22   out of a cloaked or muted state was known in the art in a way of

23   improving that tag.

24   JUDGE ARBES: So, counsel, if we have just the word

25   cloaked, was the usual understanding of that term that it would be

DOCKET ALARM

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.