

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ERICSSON INC. And TELEFONAKTIEBOLAGET LM  
ERICSSON,  
Petitioner,

v.

INTELLECTUAL VENTURES II LLC,  
Patent Owner.

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Case IPR2015-01872  
Patent 7,385,994 B2

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Held: December 8, 2016

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BEFORE: BRYAN F. MOORE, BRIAN J. McNAMARA, and  
DAVID C. McKONE, Administrative Patent Judges.

The above-entitled matter came on for hearing on Thursday,  
December 8, 2016, commencing at 1:01 p.m., at the U.S. Patent  
and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

Case IPR2015-01872  
Patent 7,385,994 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

J. ROBERT BROWN, Jr., ESQUIRE  
CHARLES J. ROGERS, ESQUIRE  
Conley Rose, P.C.  
5601 Granite Parkway  
Suite 500  
Plano, Texas 75024-6608

ON BEHALF OF PATENT OWNER:

BYRON L. PICKARD, ESQUIRE  
LORI A. GORDON, ESQUIRE  
Sterne, Kessler, Goldstein Fox  
1100 New York Avenue, N.W.  
Washington, D.C. 20005

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

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3                    JUDGE McNAMARA: Good afternoon, everyone.  
4 This is the oral hearing in case IPR2015-01872, Ericsson and  
5 another Ericsson entity which I won't even try and pronounce  
6 versus Intellectual Ventures. Beginning with the petitioner,  
7 would the parties please introduce themselves.

8                    MR. ROGERS: Charles Rogers, backup counsel. I  
9 have with me here my colleague, Robert Brown, lead counsel,  
10 and in-house counsel, Brian Kearns.

11                  MR. PICKARD: Good afternoon. Byron Pickard on  
12 behalf of the patent owner, and I'm joined today by my partner,  
13 Lori Gordon.

14                  JUDGE McNAMARA: As you can see, Judge McKone  
15 is participating remotely. So I would ask everyone to please  
16 speak from the microphones, and in reference to any  
17 demonstrative or paper that you are displaying here, please refer  
18 to it so that -- where it is in the record so that Judge McKone can  
19 access it as well.

20                  Today the petitioner will open the hearing, present its  
21 arguments with respect to the challenged claims that we've  
22 instituted on. Patent owner will then respond and the petitioner  
23 can then exercise its right to rebuttal. Is there any amount of time

1 that the petitioner would like to reserve for rebuttal? There are  
2 45 minutes argument for both sides.

3 MR. ROGERS: Petitioners would like to reserve ten  
4 minutes.

5 JUDGE McNAMARA: Okay. If everybody is  
6 prepared, we can begin.

7 MR. ROGERS: Good afternoon. May it please the  
8 Board, we are going to start out with slide 2. And side 2 lists the  
9 instituted claims, the majority of which are based upon a 103  
10 single-reference obviousness assertion, the single reference being  
11 the prior art Lu patent. And that is the majority of the claims.  
12 Then with the exception of claims 22 and 25, which bring in  
13 Pankaj as a combination of Lu and Pankaj as a 103 obviousness  
14 assertion.

15 Moving to slide 3, slide 3 is the overview of the '994  
16 patent. The '994 patent generally relates to methods of processing  
17 queued packet datas that are described as a combination of  
18 hierarchical, which is tier-based, and weighted fair queueing.  
19 And the specification in the '994 patent refers to this combination  
20 as tier-based weighted fair queueing. And the spec of the '994  
21 patent says that this approach of combining these two prior art  
22 queueing schemes has not been considered in the past, but as  
23 we'll see going forward here, this combination is precisely what  
24 the Lu prior art reference discloses.

1           Moving on to slide 4, there were no claim construction  
2 issues in the institution decision. There were no disputed claim  
3 construction issues. The only claim construction that was done in  
4 the institution decision was the Board properly construing claims  
5 11 through 19 and 24 as reciting means-plus-function terms. And  
6 the patent owner has not disputed the construction for these  
7 means-plus-function terms. There is one claim construction issue  
8 that's come about after the institution decision that arises from the  
9 patent owner's response regarding the term in claim 1 "queued  
10 packet data users." And we'll see that as we go forward here.

11           Next slide, 5, the goal as stated in the specification for  
12 the '994 patent is to provide a fair and optimal allocation of  
13 limited communication resources to data packet users having  
14 different requirements or throughputs. And this is specifically  
15 described in column 2 as quoted here on slide 5 where the spec  
16 for the '994 patent says it is important to optimize use of the  
17 limited communication resource which becomes even more  
18 important when individual data packets have different  
19 requirements with respect to delay, bit error rate, et cetera, such  
20 as quality of service requirements.

21           And slide 6, this is a reference to the background  
22 section of the '994 patent which begins with the description of the  
23 two prior art queueing schemes that it describes, first weighted  
24 fair queueing and then hierarchical queueing. And moving to  
25 slide 7, after the initial description of these two prior art queueing

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