

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WHATSAPP INC.,
Petitioner,

v.

TRIPLAY, INC.,
Patent Owner.

Cases IPR2016-00717 and IPR2016-00718
Patent 8,874,677 B2

Record of Oral Hearing
Held: March 5, 2019

Before JOSIAH C. COCKS, BRIAN J. MCNAMARA, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

IPR2016-00717 and IPR2016-00718
Patent 8,874,677 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Tuesday, March 5, 2019, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

1 PROCEEDINGS

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3 JUDGE COCKS: Please be seated. All right good afternoon. Judge
4 Ippolito is going to be starting us off today so please direct your attention to
5 her. I think she will be showing up there. Judge Ippolito, can you hear us
6 today?

7 JUDGE IPPOLITO: I can hear you. I don't see myself -- oh, there it
8 is. Okay. Good afternoon. This is a supplemental consolidated oral hearing
9 in the cases of IPR 2016-00717 and IPR 2016-00718. These proceedings
10 both involve U.S. patent number 8,874,677.

11 The final written decisions in both of these proceedings were entered
12 on August 27, 2017 after oral argument was held on June 12, 2017. On
13 October -- November 14, 2018 the Federal Circuit issued its decision
14 vacating and remanding these proceedings to the Board. This is a post-
15 remand hearing to address remaining issues in both matters.

16 I'm Judge Ippolito and with us today are Judges Cocks and
17 McNamara. Some of us are participating remotely today so please
18 remember to speak from the podium so that all of us can hear you and
19 remember to identify by slide number any demonstratives you're referring
20 to.

21 And per our order, each side will have 30 minutes of total presentation
22 time. Petitioner will begin today and present its case regarding the
23 remaining issues in these cases and patent owner will have an opportunity to
24 respond. Petitioner may reserve rebuttal time as well.

25 Could I have beginning with petitioner the parties introduce
26 themselves?

1 MS. KEEFE: Thank you. Good afternoon, Your Honor. Heidi Keefe
2 on behalf of petitioner WhatsApp. With me in the courtroom is my co-
3 counsel Yuan Liang and in the audience is our client, Nikki Vo. Thank you.

4 JUDGE IPPOLITO: Thank you. Patent owner?

5 MR. WEIDER: Doug Weider, Greenberg Traurig on behalf of
6 Triplay and with me at counsel table is Steve Pedersen counsel at Triplay.

7 JUDGE IPPOLITO: Thank you. Are we ready to begin? Petitioner?

8 MS. KEEFE: Yes, Your Honor.

9 JUDGE IPPOLITO: Proceed.

10 MS. KEEFE: Thank you, Your Honor.

11 JUDGE COCKS: Counsel, before you start, are you going to reserve
12 any rebuttal time?

13 MS. KEEFE: Thank you for reminding me, Your Honor. Yes, I
14 would like to reserve 15 minutes.

15 JUDGE COCKS: I only ask so I can put something into my device.

16 MS. KEEFE: I appreciate it, Your Honor. Obviously what is most
17 important is answering your questions so if I go over there, I have no
18 problem because I want to make sure that I'm answering what matters to
19 you.

20 So we stand before you today after the Federal Circuit's decision on a
21 single simple issue which is whether or not there was a motivation to
22 combine Coulombe, Bellordre and Friedman in order to find the clickable
23 icon element of the claims at issue in this case.

24 And I have on Slide 2 in front of Your Honors right now just Claim 1
25 showing the language clickable icon which appears in the limitation sub A.

26 The same as in Claim 6 as well and that's on Slide 3.

1 On Slide 4, I wanted to start with observations made by the Federal
2 Circuit. The Federal Circuit held that quote there is no dispute that
3 Coulombe discloses a majority of the claim limitations with the exception of
4 two limitations. Adaptation of video objects, a limitation petitioners find in
5 Bellordre and clickable icons, a limitation petitioners find in Friedman.

6 The Federal Circuit went on to note that together, Coulombe,
7 Bellordre and Friedman disclose all of the limitations of the 677 patent. A
8 fact, which was conceded by Triplay at the first oral hearing before this
9 Board. And that's in the transcript of the hearing at page 65 column, sorry,
10 page 65 lines 17 through page 66 line 8. And this is on Slide 4.

11 And I raise that to make sure that we reemphasize the only thing that
12 we are addressing here is whether or not there is a motivation to combine the
13 three references because there is no dispute that the combination of all three
14 references includes all of the elements of the claims at issue.

15 And as explained by the Federal Circuit, they vacated the Board's
16 non-obviousness decision and remanded for further consideration of the
17 motivation to combine the clickable icons of Freidman with Coulombe and
18 Bellordre, citing to the Federal Circuit opinion.

19 As explained by the Board, the Federal Circuit remanded for further
20 consideration the motivation to combine the clickable icons of Freidman
21 with Coulombe and Bellordre.

22 And I know I have said it about three times now, but it bears repeating
23 that it is a combination of all three references because I anticipate that Patent
24 Owner will argue that there is a problem with the combination of simply
25 Coulombe with Friedman and arguing that there is not a logical link between
26 Coulombe and Friedman. But that's the incorrect question. Because the

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