

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FACEBOOK, INC. and INSTAGRAM LLC,  
Petitioner,

v.

SKKY, LLC,  
Patent Owner.

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Case IPR2017-00088 (Patent 9,124,718 B2)  
Case IPR2017-00089 (Patent 9,118,693 B2)  
Case IPR2017-00092 (Patent 9,124,717 B2)  
Case IPR2017-00097 (Patent 8,892,465 B2)

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Record of Oral Hearing  
Held: January 11, 2018

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Before JUSTIN T. ARBES, CARL M. DEFRANCO, and ROBERT J.  
WEINSCHENK, *Administrative Patent Judges*.

Case IPR2017-00088 (Patent 9,124,718 B2)  
Case IPR2017-00089 (Patent 9,118,693 B2)  
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Case IPR2017-00097 (Patent 8,892,465 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 Thursday, January 11, 2018, at 1 p.m., at the U.S. Patent and Trademark Office, Madison Building East, 600 Dulany Street, Alexandria, Virginia, before Walter Murphy, Notary Public.

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PROCEEDINGS

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2 JUDGE WEINSCHENK: Be seated. All right. Good afternoon  
3 everyone. This is a hearing for IPR2017-88, 89, 92 and 97. Let's start with  
4 appearances and when you make your appearance please step up to the  
5 center podium. Who do we have for Petitioner?

6 MS. KEEFE: Good afternoon, Your Honors. Heidi Keefe on behalf  
7 of Petitioner, Facebook. With me in the courtroom are Andrew Mace, co-  
8 counsel Yuan Liang, also co-counsel, and our client Kate Duvall from  
9 Facebook.

10 JUDGE WEINSCHENK: Thank you.

11 MS. KEEFE: Thank you.

12 JUDGE WEINSCHENK: And who do we have from Patent Owner?

13 MR. SCHULTZ: Good afternoon, Your Honors. Ryan Schultz from  
14 Robins Kaplan. With me is my colleague and co-counsel, Andrew Kabat.

15 JUDGE WEINSCHENK: Thank you. Before we get started just a  
16 few housekeeping matters. Judge DeFranco is joining us by telephone  
17 today. Judge DeFranco, are you there?

18 JUDGE DEFRANCO: I certainly am, Judge Weinschenk.

19 JUDGE WEINSCHENK: All right, great. So when you make your  
20 presentations please step up to the podium so that he can hear you and also  
21 when you refer to demonstratives please use slide numbers so that he can  
22 follow along. As you know from our order, each side will have 60 minutes

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1 to present their case. Petitioner, before you begin just let us know if you'd  
2 like to reserve any time for rebuttal. You can start when you're ready.

3 MS. KEEFE: Thank you, Your Honors. Good afternoon. I'm  
4 estimating that I'd reserve approximately half of my time for rebuttal. If I  
5 went a little bit over that's not a problem with me, I'll just use whatever time  
6 I have left but I'm aiming for 30 minutes for my opening presentation.

7 JUDGE WEINSCHENK: Sounds good.

8 MS. KEEFE: Thank you, Your Honors. I also wanted to say at the  
9 very outset, wanted to compliment opposing counsel because we were able  
10 to talk and agree that we could streamline our presentations for you here  
11 today. So when we started and submitted our presentations originally, I'm  
12 going to slide 12 of our deck -- sorry, I think I'm going to slide 12 of our  
13 deck. On slide 12 of our deck our list of the oral arguments that we had  
14 intended on making, the parties have agreed that they will submit on the  
15 papers regarding the terms "providing a website", "attached to a library" and  
16 "plurality of visual images" unless Your Honors have specific questions,  
17 although I'm happy to address.

18 So I'll begin with the OFDM limitation. I'd also like to make one  
19 interesting comment about these proceedings. This is one of the first  
20 proceedings that I've ever been involved in in which there was no cross-  
21 examination of the expert witness that Petitioner proffered as part of its  
22 opening petition. The expert was not cross-examined and there is no  
23 evidence concerning cross-examination of that expert.

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1           Similarly, no expert was proffered by Patent Owner in this case.  
2   While that's not always interesting, it's a little bit interesting here because  
3   there was an expert for Patent Owner in the previous case which also  
4   involved patents within the same family also involving the OFDM  
5   limitations. In that case, the Patent Owner had similarly argued that OFDM  
6   could not be combined with the primary Rolf reference because Rolf was a  
7   3G reference. In that case the Board properly pointed out, as it did here in  
8   the Institution Decision, that in fact Rolf is not limited to 3G. Rolf instead is  
9   a cellular system. It's a system which transmits music audio files over a  
10   cellular system to a cellular phone. It lists 3G as one of the possible ways in  
11   which that can be done, but it's certainly not limited to that.

12           JUDGE ARBES: Counsel, that was a different secondary reference  
13   though, right --

14           MS. KEEFE: That was.

15           JUDGE ARBES: -- for OFDM?

16           MS. KEEFE: That reference was OFDM FM but it was almost  
17   exactly the same in the sense that it was a reference which said that you  
18   could use OFDM over a cellular network the same reason that Frodigh is  
19   being used in this case, and so the reason for using that reference and the  
20   arguments made by Patent Owner for why the combination was improper are  
21   identical. They said that in that case OFDM couldn't be combined with Rolf  
22   because Rolf was 3G and that was OFDM. They cited the exact same  
23   European references for the notion that the European Union when debating  
24   in coming up with using CDMA for 3G networks had somehow taught away

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