

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETAPP, INC.,
Petitioner,

v.

INTELLECTUAL VENTURES II, LLC,
Patent Owner.

Case IPR2017-00276
Patent 6,633,945

Record of Oral Hearing
Held: March 1, 2018

Before JEFFREY S. SMITH, JENNIFER S. BISK, and BEVERLY M.
BUNTING, *Administrative Patent Judges*.

Case IPR2017-00276
Patent 6,633,945

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Thursday, March 1, 2018, commencing at 10:00 a.m. at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

1 PROCEEDINGS

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3 9:59 a.m.

4 CLERK: All rise.

5 JUDGE SMITH: Please be seated. Good morning, welcome to the
6 Patent Trial and Appeal Board. We're here this morning for a hearing in
7 inter partes review, case IPR 2017-00429.

8 This is a case where EMC Corporation, Lenovo, and NetApp are the
9 Petitioner, and Intellectual Ventures is the Patent Owner.

10 I'd like to start by getting appearance of counsel. Petitioner, please
11 step up to the podium and state your appearance.

12 MR. WEED: Good morning, your honor. Ben Weed from K&L
13 Gates on behalf of Petitioner. And with me is my colleague Erik Halverson.
14 I also just wanted to note for the record that we're here I think for IPR 2017-
15 00276.

16 JUDGE SMITH: 270 -- oh, I'm sorry. My apologies. Sorry, my
17 mistake, 276. The wrong file. Okay, Patent Owner, please state your
18 appearance.

19 MS. GORDON: Good morning, your honor, so I'm Lori Gordon
20 from the law firm of Sterne Kessler Goldstein and Fox, and I'm going to be
21 arguing today on behalf of the Patent Owner, Intellectual Ventures.

22 With me at counsel table is Steve Peters, also from Sterne Kessler.

23 JUDGE SMITH: Thank you. Both parties have given us slides that
24 they want to show us during the presentation. I just want to ask both parties

1 to keep in mind, when you reference a slide, please identify the slide by
2 number so that way we can keep track of which slide you're looking at
3 during the hearing. And also when we review the transcript, it makes it
4 easier to review the transcript.

5 Petitioner, you'll present your case first, Patent Owner will have a
6 chance to respond. And then if Petitioner reserves time for rebuttal,
7 Petitioner will have a chance for rebuttal. Do you wish to reserve time,
8 Petitioner?

9 MR. WEED: Yes, your honor. At this point, I plan to reserve 13
10 minutes, please.

11 JUDGE SMITH: Okay, so that'll leave you 17 minutes for your
12 initial presentation. You may proceed when you're ready.

13 MR. WEED: And your honor, I don't know whether it would help
14 the panel, but I do have hard copies of the slides if you'd like.

15 JUDGE SMITH: I don't think we need them.

16 JUDGE BISK: I don't.

17 MR. WEED: Good morning, Your Honors. As I mentioned, my
18 name is Ben Weed from K&L Gates. And we're here today to argue a case
19 that's a little bit nonstandard for IPR matters.

20 And the reason why is that the primary ground of invalidity that the
21 petition focused on doesn't get a lot of attention in the papers post-
22 institution, especially from the patent owner.

23 And I think the reason why that's the case is that the question we're
24 trying to answer here today is a pretty simple question. Namely, the

1 question is: Would it have been obvious to modify the two primary
2 references to rely on a known networking protocol or scheme to connect
3 nodes within those references? And particularly with regard to the first
4 ground, I think the answer to that is absolutely yes.

5 Another thing that I think it's important to keep in mind in this case -
6 - and this was in our petition at page seven -- is that during examination of
7 the 945 patent, the applicant was faced with a 112 rejection.

8 And in response to that, the applicant pointed to some material in the
9 specification that we'll look at, but what the applicant said to the examiner
10 was, quote, The level of skill in the art is very high, thus the corresponding
11 teaching can be relatively concise.

12 So again, we're looking at the question of whether it would have
13 been obvious to use one of a handful of known interconnection techniques
14 that had known benefits -- and admittedly known deficiencies -- in the
15 context of the two primary references.

16 If we could flip over to Slide 2, please. As I mentioned, the 945
17 patent does contain some disclosure to support the claim limitation that will
18 be the focus of much of the discussion today, and that limitation regards a
19 third point-to-point connection.

20 On Slide 2, we've reproduced a passage from Column 7 of the 945
21 patent, and in particular, the highlighted portion says, the interconnection
22 between FCUs are point-to-point and fully connected. Each FCU has
23 direction connection to all other FCUs.

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