

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EMC CORPORATION, LENOVO (UNITED STATES), INC. and NETAPP,
Petitioner,

v.

INTELLECTUAL VENTURES I, LLC,
Patent Owner.

Case IPR2017-00429
Patent 6,775,745 B1

Record of Oral Hearing
Held: September 7, 2018

Before JEFFREY S. SMITH, GEORGIANNA W. BRADEN, and DANIEL
J. GALLIGAN, *Administrative Patent Judges*.

Case IPR2017-00429
Patent 6,775,745 B1

APPEARANCES:

ON BEHALF OF THE PETITIONER:

PETER M. DICHIARA, ESQUIRE
DANA O. BURWELL, ESQUIRE
Law Office of Wilmer Hale
60 State Street
Boston, Massachusetts 02109
(617) 526-6000

THEODOROS KONSTANTAKOPOULOS, ESQUIRE
7 World Trade Center
250 Greenwich Street
New York, New York 10007
(212) 230-8800

ON BEHALF OF THE PATENT OWNER:

BRENTON R. BABCOCK, ESQUIRE
TED M. CANNON, ESQUIRE
Law Office of Knobbe Martens
2040 Main Street, 14th Floor
Irvine, California 92614
(949) 760-0404

and

TOM BROWN
JAMES HIETALA

The above-entitled matter came on for hearing on September 7, 2018, commencing at 1:01 p.m., at the U.S. Patent and Trademark Office, Madison Building, 600 Dulany Street, Alexandria, Virginia, 22314.

PROCEEDINGS

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JUDGE SMITH: Please be seated. We're here today for IPR 2017-00429 for U.S. Patent Number 6,775,745. Petitioner, will you please step up to the podium and state your appearance?

MR. DICHIARA: Good afternoon. My name is Peter Dichiara and I represent the petitioners.

JUDGE SMITH: And who do you have with you, Petitioner?

MR. DICHIARA: With me today I have Theodoros Konstantakopoulos and Dana Burwell. They're both from Wilmer, Cutler, Pickering, Hale and Dorr representing petitioners, and I also have Tom Brown from petitioner EMC.

JUDGE SMITH: Thank you. Patent owner, will you please step up to the podium and state your appearance?

MR. BABCOCK: Good afternoon, Your Honors. I'm Brent Babcock with Knobbe Martens. I'm representing the patent owner, Intellectual Ventures. With me is Ted Cannon also with Intellectual Ventures. We also have James Hietala, in-house counsel at Intellectual Ventures.

JUDGE SMITH: Thank you. So both sides have 60 minutes to present their case. Petitioner, you'll present your case first. Patent owner, you'll respond. Petitioner, you may reserve time for rebuttal if you desire, and then patent owner, you can have a brief surreply.

1 When we go through the arguments if you reference
2 the slides please -- when you discuss a slide please indicate
3 which slide number you're on. That way our colleagues in
4 Dallas can follow, and it's also when we review the
5 transcript we can follow on the transcript.

6 Petitioner, when you're ready you may begin. Do
7 you wish to reserve time for rebuttal?

8 MR. DICHIARA: Yes. Yes, I do, Your Honor.

9 JUDGE SMITH: How much?

10 MR. DICHIARA: I'm predicting it might be like 20
11 minutes. It depends on the length of the initial
12 presentation.

13 JUDGE SMITH: Okay. Let me see. Let me --

14 MR. DICHIARA: And I might not even need the full
15 20.

16 JUDGE SMITH: So I'll set the clock for 40
17 minutes, and when you're ready you may begin.

18 MR. DICHIARA: Sure. And one brief housekeeping
19 matter.

20 JUDGE SMITH: Yes.

21 MR. DICHIARA: I've already provided a slide deck
22 to the court reporter. I don't know if you would like a hard
23 copy, if you would find it helpful.

24 JUDGE SMITH: I think (inaudible).

25 MR. DICHIARA: Okay. And would you like hard
26 copies?

1 MR. BABCOCK: We're fine, Peter. Thank you.

2 JUDGE SMITH: When you're ready you may begin.

3 MR. DICHIARA: Good afternoon. May it please the
4 board, as I mentioned earlier my name is Peter Dichiara. I
5 represent the petitioners in this matter, and we are here
6 today to discuss the '745 patent. Turning to slide 2, we're
7 here to discuss why the challenge to claims 4 through 6 are
8 unpatentable.

9 The '745 patent concerns something called a hybrid
10 cache, and it uses the term hybrid cache because it's a cache
11 that considers both frequency and recency of a file's use in
12 determining which entry to evict from the cache. Turning
13 briefly to slide 3, which is one of the slides we had in the
14 initial phase of the trial, this is an annotated figure 2A
15 from the patent showing one of the embodiments in action.

16 What you're seeing on the left side of the slide
17 in blue is what the patent called frequency factors, and the
18 frequency factors, as the patent explains, indicate how often
19 a file is used, and you may recall from our papers that when
20 the '745 patent was drafted the applicants thought that the
21 prior art caches were, in their terms, strictly used MRU or
22 LRU techniques, not frequency techniques, and you'll see that
23 in column 2 of the patent.

24 And what they thought they were providing to the
25 state of the art was this consideration of frequency and the
26 patent provided several embodiments that had frequency

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