

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACCLARENT, INC.,
Petitioner,

v.

FORD ALBRITTON, IV,
Patent Owner.

Case IPR2017-00498
Patent 9,011,412

Record of Oral Hearing
Held: April 24, 2018

Before JOSIAH C. COCKS, BEVERLY M. BUNTING, and RICHARD H.
MARSCHALL, *Administrative Patent Judges*.

Case IPR2017-00498
Patent 9,011,412

APPEARANCES:

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The above-entitled matter came on for hearing on Tuesday, April 24, 2018, commencing at 10:00 a.m. at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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JUDGE MARSCHALL: Good morning, everyone, be seated.
Good morning, everyone. This is a hearing in IPR2017-00498 between
Petitioner Acclarent, Inc. and Patent Owner Ford Albritton, IV, reviewing
Patent Number 9011412. I'm Judge Marschall. With me is Judge Cocks
and Judge Bunting is appearing remotely. Let's get the parties'
appearances, please. Counsel for Petitioner?

MS. ADAMS: Good morning, Your Honors. I'm Lisa Adams
with Mintz Levin and here with me today is my colleague, Pete Cuomo.

MR. CUOMO: Good morning.

MS. ADAMS: We represent Acclarent, Inc., the Petitioner in this
case.

JUDGE MARSCHALL: And Counsel for Patent Owner?

MS. MOORE: Yes, Your Honor. Ashley Moore representing the
Patent Owner. I'm with McKool Smith and with me today is Meredith
Elkins, also from McKool Smith.

JUDGE MARSCHALL: Thank you and welcome. We appreciate
your being here today and helping us understand your arguments. We look
forward to your presentations.

Please keep in mind that Judge Bunting will not be able to see what
you project on the screen but has a copy of the materials, so please clearly
reference your materials when speaking. Each party will have 60 minutes

1 of total time to present arguments. The Petitioner may reserve time for
2 rebuttal.

3 Petitioner, do you wish to reserve any time for rebuttal?

4 MS. ADAMS: Yes. I'd like to reserve 15 minutes.

5 JUDGE MARSCHALL: Okay. You may begin when ready.

6 MS. ADAMS: We have hard copies of the presentation. Would
7 you like those?

8 JUDGE MARSCHALL: Sure.

9 MS. ADAMS: Do you need one as well? So good morning. I'd
10 like to start on slide two. There are five grounds at issue in this proceeding.
11 Three of these are based on anticipation and the other two are based on
12 obviousness for some of the dependent claims.

13 Turning to slide 3, the purported invention in the Albritton patent
14 lies in the ability to hold the device using a single hand. The patent,
15 however, does not identify any particular structure for allowing this
16 purported new use. The patent merely discloses a generic handle that's
17 shown here that has a well-known structure. The disclosure is very broad,
18 only disclosing an upper portion and a lower portion that can extend at any
19 angle less than 90 degrees. Even the background of the patent admits that a
20 guide catheter, a handle, and a working device inserted through the two are
21 well known.

22 JUDGE COCKS: Counselor, let me ask you a question right off the
23 bat. So you say the patent didn't disclose any structure for one-handed use,

1 but isn't figure 3 described as being a structure for one-handed use? So isn't
2 that a structure that provides for one-handed use?

3 MS. ADAMS: It is a structure, but it's a very typical pistol-style
4 handle, and the most that they say about it in their disclosure is that there's
5 an upper portion and a lower portion. They really don't describe any unique
6 shape, size, or any particular features on there that enable this purported use.

7 JUDGE COCKS: Isn't there discussion on the angle of the handle
8 with respect to the main upper portion, 60 degrees, I think, is referenced?

9 MS. ADAMS: They disclosed that as a preferred angle. That isn't
10 in the claims and they also explain that the device can have any angle less
11 than 90 degrees. And in figure 6, they have an embodiment that's a
12 pivoting handle.

13 JUDGE MARSCHALL: Under the controlling case law on this
14 topic, how much structure would they need to emphasize in the
15 specification, in your view, to render the narrow interpretation proposed by
16 Patent Owner, the preferred construction?

17 MS. ADAMS: That's a good question. The -- in the case law that
18 relies on, you know, specific details about the structure, there are usually
19 significantly more details. All of the cases where they rely on the structure
20 have very specific disclosures. So for example, like *In re Man Machine*
21 talks about the mouse. In that patent, they explain, you know, that there's a
22 button on the back where the phone goes and there are buttons on the front,
23 and they talk about -- I believe they talk about the size as well. It's very,

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