

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISH NETWORK CORPORATION
and DISH NETWORK LLC,
Petitioner,

v.

CUSTOMEDIA TECHNOLOGIES, LLC,
Patent Owner.

Cases

CBM2017-00019 (Patent 7,840,437 B2)
CBM2017-00023, IPR2017-00454 (Patent 8,719,090 B2)
CBM2017-00032, IPR2017-00717, IPR2017-00724
(Patent 9,053,494 B2)

Record of Oral Hearing
Held: March 5, 2018

Before MEREDITH C. PETRAVICK, MICHAEL W. KIM, and KALYAN
K. DESHPANDE, *Administrative Patent Judges*.

CBM2017-00019 (Patent 7,840,437 B2)
CBM2017-00023, IPR2017-00454 (Patent 8,719,090 B2)
CBM2017-00032, IPR2017-00717, IPR2017-00724 (Patent 9,053,494 B2)

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The above-entitled matter came on for hearing on Monday, March 5, 2018, commencing at 9:30 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

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JUDGE PETRAVICK: Good morning. We are here for hearing in CBM2017-00019, CBM2017-00023, IPR2017-00454, CBM2017-00032, IPR2017-00717 and IPR2017-00724. This is Dish Network Corporation versus Customedia Technologies, LLC. I'm Judge Petravick. With me on the bench is Judge Deshpande and Judge Kim. So could we please know who is here from the petitioner.

MR. WILLIAMS: Good morning, Your Honor. Elliot Williams of Baker Botts for the petitioner.

MR. GUY: Hopkins Guy, Your Honor, with Baker Botts for the petitioner.

JUDGE PETRAVICK: And for the patent owner?

MR. TEPERA: Your Honor, my name is Steven Tepera for the patent owner from Pillsbury.

MR. SCARDINO: And Daniel Scardino for the patent owner.

JUDGE PETRAVICK: Thank you. Before you leave today, if you could give the business card to the court reporter so that she has the correct spelling of your name, that would be appreciated.

So first a couple of matters, can everybody hear me okay?

MR. GUY: I'm having a hard time.

JUDGE PETRAVICK: Usually I have to speak directly into this microphone. How is that?

MR. GUY: That's better.

JUDGE PETRAVICK: All right. First things, each side has a total of two hours. And I understand from the filing that we are going to be

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1 splitting it up by issue. So what I anticipate us doing today is going roughly
2 two hours, having our lunch break and then we'll come back and do the other
3 two hours. Unfortunately, this clock does not count all the way up to two
4 hours. So I have an alternate clock here on the bench which, unfortunately,
5 you won't be able to see. But what I will do is keep track of your total time
6 as you go along. If you need a reminder of how much time you have left,
7 just please request it and I will let you know.

8 Also, some objections were filed to the patent owner's
9 demonstrative exhibits. We are going to hold back on ruling on those
10 objections, but we are just going to remind all parties that there are no new
11 evidence and no new arguments allowed during oral argument and therefore,
12 anything after we go through the record is determined to be a new argument
13 or new evidence will not be considered when making our final written
14 determination.

15 So that being said, if there are objections during the hearing, what
16 we are going to do is I like to have the objections in place in the transcript
17 where they occur. However, if we get so many objections that it's very
18 interruptive to the arguments, at that point in time, we will then have you
19 hold your objections to the end of the presentation. Does everybody
20 understand that?

21 So I believe we are first going to hear arguments as to CBM
22 eligibility. And the order will go petitioner, patent owner, petitioner. So
23 you may approach the podium and begin when you are ready.

24 MR. WILLIAMS: Thank you, Your Honors. May it please the
25 Board, I would like to begin with CBM eligibility of the '090 and the '494

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1 patents which are the ones relating predominantly to advertising. I'll just
2 begin with slide 4 showing what the standard for CBM eligibility is from the
3 statute. Of course, the rule follows this language fairly closely. The key
4 piece, obviously, is determining whether the claims are directed to
5 something that's used in the operation, practice, administration or
6 management of a financial product or service with, of course, the exception
7 for technological invention.

8 Turning to slide 10, we'll just look at some of the claims first from
9 the '090 patent starting with claim 1. I think the most notable thing about
10 these claims is they are all generally directed to some type of targeted
11 advertisements or targeted advertising. Now, advertising is a prototypical
12 business activity. Its purpose, of course, is to alert the public to the
13 availability of your products and to gain sale. If advertising isn't involved in
14 the scope of covered business method or review, it's hard to know what
15 would, frankly.

16 JUDGE KIM: Counsel, don't we already have some case law from
17 the Federal Circuit that has said that -- that cast doubt on advertising as a
18 financial product or service?

19 MR. WILLIAMS: I don't think it would cast doubt. I believe
20 *Calypso*, for instance, has never been overruled and was pretty much directly
21 on that point. The Federal Circuit analyzed the business method eligibility
22 of those claims because they involved advertising and concluded they were
23 squarely within the program. So I don't think that you can say any doubt has
24 been cast on that category.

25 JUDGE KIM: I'm thinking more about *Unwired Planet*.

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