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Paper 28
Entered: August 28, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

BLACKBERRY LTD.,
Patent Owner.

Case IPR2017-00911
Patent 8,745,149 B2

Before SALLY C. MEDLEY, ROBERT J. WEINSCHENK, and RICHARD H. MARSCHALL, *Administrative Patent Judges*.

WEINSCHENK, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a)

I. INTRODUCTION

Google LLC ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting an *inter partes* review of claims 1–17 ("the challenged claims") of U.S. Patent No. 8,745,149 B2 (Ex. 1001, "the '149 patent"). BlackBerry Limited ("Patent Owner") filed a Preliminary Response (Paper 6, "Prelim. Resp.") to the Petition. On August 30, 2017, we instituted an *inter partes* review of the challenged claims of the '149 patent on the following grounds:

Claims	**Statutory Basis**	**Applied References**
1–5, 9–13, and 17	35 U.S.C. § 103(a)[1]	Appelman et al., PCT Patent Application Publication No. WO 01/24036 A2 (filed Sept. 21, 2000, published Apr. 5, 2001) (Ex. 1012, "Appelman") and Toshio, Japanese Patent Application Publication No. H03-89639 (filed Aug. 31, 1989, published Apr. 15, 1991) (Ex. 1007, "Toshio")
1, 5–7, 9, 13–15, and 17	35 U.S.C. § 103(a)	Appelman and Milton et al., U.S. Patent No. 5,631,949 (filed May 22, 1995, issued May 20, 1997) (Ex. 1006, "Milton")
8 and 16	35 U.S.C. § 103(a)	Appelman, Toshio, and MacPhail, U.S. Patent No. 6,661,434 B1 (filed Apr. 13, 2000, issued Dec. 9, 2003) (Ex. 1009, "MacPhail")

[1] The Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112-29, which was enacted on September 16, 2011, made amendments to 35 U.S.C. §§ 102, 103. AIA § 3(b), (c). Those amendments became effective on March 16, 2013. *Id.* at § 3(n). Because the challenged claims of the '149 patent have an effective filing date before March 16, 2013, any citations herein to 35 U.S.C. §§ 102, 103 are to their pre-AIA versions.

Claims	Statutory Basis	Applied References
8 and 16	35 U.S.C. § 103(a)	Appelman, Milton, and MacPhail

Paper 7 ("Dec. on Inst."), 19–20.

After institution, Patent Owner filed a Response (Paper 17, "PO Resp.") to the Petition, and Petitioner filed a Reply (Paper 20, "Pet. Reply") to the Response. Petitioner submitted a Declaration of Dr. Dan R. Olsen Jr. (Ex. 1002) with the Petition, and Patent Owner submitted a transcript of the deposition of Dr. Olsen (Ex. 2006) with the Response. Patent Owner submitted a Declaration of Dr. George T. Ligler (Ex. 2007) with the Response, and Petitioner submitted a transcript of the deposition of Dr. Ligler (Ex. 1018) with the Reply. An oral hearing was held on May 30, 2018, and a transcript of the hearing is included in the record.[2] Paper 27 ("Tr.").

We issue this Final Written Decision pursuant to 35 U.S.C. § 318(a). For the reasons set forth below, Petitioner has shown by a preponderance of the evidence that claims 1–17 of the '149 patent are unpatentable.

A. *Related Proceedings*

The parties indicate that the '149 patent is the subject of the following district court case: *BlackBerry Ltd. v. BLU Products, Inc.*, No. 1:16-cv-23535 (S.D. Fla.). Pet. 1; Paper 4, 1. The parties also indicate that Petitioner filed another petition requesting an *inter partes* review of the '149 patent in IPR2017-00912. Pet. 1; Paper 4, 1.

[2] The oral hearing included a related proceeding, IPR2017-00912. Paper 24.

B. *The '149 Patent*

The '149 patent relates to "a handheld electronic device and a method for providing information representative of the times of certain communications in a messaging environment." Ex. 1001, 1:20–24. The '149 patent explains that when a messaging conversation continues quickly, there generally is no need to display time information. *Id.* at 1:58–64. In other circumstances, though, "it may be desirable for information regarding certain timing aspects . . . to be available to a user," but "the limited space available on a display of a handheld electronic device has made a solution difficult." *Id.* at 1:65–2:2. To address this alleged problem, the '149 patent describes an electronic device that displays time information for a message only after the expiration of a predetermined period during which no additional messages are exchanged or only when a user manually requests time information. *Id.* at 5:31–38, 6:14–23, 7:11–19.

The '149 patent also explains that it is desirable to provide a user with additional time information "depending upon the prevailing circumstances" so that the user may have "an expedited understanding of the timing aspects of the message." *Id.* at 7:37–40, 8:26–33. To address this alleged problem, the '149 patent describes a smart time stamp and an active time stamp. *Id.* at 7:37–50, 7:59–8:5. A smart time stamp displays first time information, such as "2:44 pm," for a message in a conversation. *Id.* at 7:37–50. If the conversation is not resumed until the following day, the smart time stamp automatically changes the first time information to second time information, such as "2:44 pm yesterday," to reflect the change in day. *Id.* An active time stamp displays first time information, such as "one minute ago," for a message in a conversation, and then changes the first time information to

second time information, such as "two minutes ago," as time progresses. *Id.* at 7:59–8:5.

C. *Illustrative Claim*

Claims 1, 9, and 17 are independent. Claim 1 is reproduced below.

> 1. A method of displaying an instant messaging conversation on a display of an electronic device, the method comprising:
>
> displaying a conversation of instant messages;
>
> displaying a first time information for an instant message in the conversation in response to a first input; and
>
> automatically changing the first time information for the instant message to a second time information as time progresses and displaying the second time information instead of the first time information.

Ex. 1001, 8:48–57.

II. ANALYSIS

A. *Level of Ordinary Skill in the Art*

Petitioner argues that a person of ordinary skill in the art would have had "at least a B.S. degree in computer science, electrical engineering, or equivalent thereof, and at least two years of experience in the relevant field, e.g., graphical user interfaces," but notes that "[m]ore education can supplement practical experience and vice versa." Pet. 5–6 (citing Ex. 1002 ¶¶ 13–14). Patent Owner argues that a person of ordinary skill in the art would have had "at least a bachelor's degree in computer science, electrical engineering, or the equivalent, and at least two years of experience in designing user interfaces for mobile devices such as cellular telephones, personal digital assistances (PDA), or other handheld devices." PO Resp. 9–10 (citing Ex. 2007 ¶ 41). The parties' respective definitions of the level of

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