

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOPGOLF INTERNATIONAL, INC.,
Petitioner,

v.

AMIT AGARWAL,
Patent Owner.

Case IPR2017-00928
Patent 5,370,389

Record of Oral Hearing
Held: April 17, 2018

Before LORA M. GREEN, MICHELLE N. WORMMEESTER, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

Case IPR2017-00928
Patent 5,370,389

APPEARANCES:

ON BEHALF OF THE PETITIONER:

NICOLE WILLIAMS, ESQUIRE
ROBERTO J. DEVOTO, ESQUIRE
DOUGLAS E. McCANN, ESQUIRE
Fish & Richardson
1425 K Street, NW
Washington, D.C. 20005

ON BEHALF OF THE PATENT OWNER:

AMIT AGARWAL
Patent Holder

The above-entitled matter came on for hearing on Tuesday, April 17, 2018, commencing at 1:00 p.m. ET, at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

PROCEEDINGS

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JUDGE GREEN: Good afternoon. We are on the record. Welcome everyone. Please make sure that all cell phones are turned off, as they can interfere with the microphones.

This is the Final Oral Hearing in IPR 2017-00928. This proceeding involves Patent No. 5,370,389.

Judge Wormmeester is to my right, and Judge Wieker is attending remotely. At this time we would like Counsel to introduce yourselves and your colleagues, beginning with Petitioner.

MR. DEVOTO: My name is Roberto Devoto. And my colleagues will introduce themselves.

MS. WILLIAMS: Nicole Williams on behalf of the Petitioner.

MR. McCANN: Doug McCann.

JUDGE GREEN: And who will be presenting the argument?

MS. WILLIAMS: I am.

JUDGE GREEN: Okay. Thank you, Ms. Williams. Mr. Agarwal?

MR. AGARWAL: Good afternoon, Your Honors. Amit Agarwal,
pro se.

JUDGE GREEN: Okay. Thank you.

MR. AGARWAL: Thank you.

JUDGE GREEN: Welcome to the Board. Consistent with our previous order, Patent Owner and Petitioner each have 60 minutes to present their arguments. Petitioner will proceed first to present its case-in-chief as to the challenged claims, and may reserve rebuttal time to respond to

1 arguments made by Patent Owner. Thereafter, Patent Owner will respond to
2 Petitioner's case.

3 As Judge Wieker is attending remotely, the parties are reminded to
4 identify which slides they are on, or if you are using the record, to identify
5 where in the record you are, in order to allow her to follow along. If she
6 doesn't know what slide you're on, she can't see them.

7 The parties are also reminded that the demonstratives are only an aid
8 to oral argument and are not evidence of record.

9 I do have one housekeeping detail. Mr. Agarwal, you filed two patent
10 owner responses, one of which was redacted to meet the word count. Do
11 you have any issues with us expunging the first one that was not redacted?

12 MR. AGARWAL: No.

13 JUDGE GREEN: Okay. And Petitioner, do you have any issues with
14 that?

15 MS. WILLIAMS: No, Your Honor.

16 JUDGE GREEN: Okay. Thank you very much. Counsel for
17 Petitioner, you may proceed. Would you like to reserve time for rebuttal?

18 MS. WILLIAMS: Yes, Your Honor. I would like to reserve 20
19 minutes for rebuttal.

20 JUDGE GREEN: Okay. And I will remind you that rebuttal is only
21 to respond to arguments made by Patent Owner.

22 MS. WILLIAMS: Yes. Thank you.

23 JUDGE GREEN: When you are ready.

24 MS. WILLIAMS: Good afternoon, Your Honors. There are three
25 main points in the briefing which Petitioner is prepared to argue. However,
26 based on Patent Owner's slides we believe that the issues really boil down to

1 a single issue. And that is that Bertoncino discloses, or renders obvious the
2 significantly lower limitation. I am here to answer any questions as to the
3 other issues as well, should you be interested.

4 JUDGE GREEN: Okay.

5 MS. WILLIAMS: But based on this, I'm going to skip ahead to slide
6 11. The '389 Patent, which is the patent at issue, claims a golf game. It's a
7 point-scoring game to be played at a golfing range. The setup of this golf
8 game includes a plurality of golfing tees, and coded golf balls that allow an
9 electronic system to understand from which golfing tee the ball was hit.

10 It also includes that plurality of target greens which are remotely
11 located from the plurality of golfing tees. A golfer strikes one of the coded
12 balls towards the target green, and if it lands on the target green, due to the
13 structure of the target green and the slope it rolls -- the golf ball rolls
14 downhill into the cup, which is below this point.

15 At that point the ball is scanned, the golfing tee from which it is
16 originated is identified, and that golfer gets a score according to which target
17 green he or she hits.

18 JUDGE GREEN: And is it your understanding that this game can be
19 played with more than one golfer golfing at a time and still be able to scan
20 the balls?

21 MS. WILLIAMS: The claims one and six, which are the claims at
22 issue, do not require more than one golfer, if you follow through beginning
23 at 1C, it's striking one of said golf balls, and it follows through that single
24 golf ball throughout the entire system. The setup itself, included in the
25 specification, allows for more than one, but the claims that we are actually
26 looking at, really only requires one.

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