

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

MYMAIL, LTD.,
Patent Owner.

Case IPR2017-00967
Patent 8,275,863 B2

Record of Oral Hearing
Held: June 22, 2018

Before KEVIN F. TURNER, KAMRAN JIVANI, and MONICA
S. ULLAGADDI, *Administrative Patent Judges*.

Case IPR2017-00967
Patent 8,275,863 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF PATENT OWNER:

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The above-entitled matter came on for hearing on Friday, June 22, 2018, commencing at 2:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

1 P R O C E E D I N G S

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3 JUDGE ULLAGADDI: Good afternoon and welcome
4 to the Patent Trial and Appeal Board. We are here today for oral
5 arguments in inter partes review matter number IPR2017-00967,
6 a case in which Unified Patents is the petitioner and MyMail is
7 the patent owner. Your panel for the hearing today includes
8 myself, Judge Turner and Judge Jivani. Good afternoon, Judges
9 Jivani and Turner, are you able to see and hear us clearly?

10 JUDGE JIVANI: Yes, thank you.

11 JUDGE TURNER: I can hear you fine.

12 JUDGE ULLAGADDI: Thank you. I would like to
13 start by getting appearances of counsel. Who do we have on
14 behalf of petitioner?

15 MR. STROUD: Jonathan Stroud, Your Honor, for
16 petitioner. With me is Roshan Mansinghani, also for the
17 petitioner.

18 JUDGE ULLAGADDI: Thank you. And for patent
19 owner?

20 MR. BLOCK: Daniel Block from the law firm of
21 Sterne Kessler Goldstein & Fox on behalf of MyMail. With me
22 today at counsel table is Steve Pappas, as well as the CEO of
23 MyMail, Bob Derby, is here as well.

24 JUDGE ULLAGADDI: Thank you. Thank you all for
25 joining us. I have got a few administrative details that I would

1 like to go over before we can get started today. Each party is
2 going to have 45 minutes. We are going to hear first from
3 petitioner. Petitioner, you will present your arguments in chief.
4 And patent owner, you'll be permitted to present your arguments.
5 Would you like to reserve any time for rebuttal, today?

6 MR. STROUD: Yes, Your Honor, 10 minutes for
7 rebuttal.

8 JUDGE ULLAGADDI: Ten minutes reserved for
9 rebuttal. One thing I would like to also mention is when you are
10 working through your demonstratives, to specifically call out the
11 slide number, as Judges Jivani and Turner are not able to see the
12 screen over here that you'll be referring to. So let me put that
13 time on the clock. When you are ready, you may begin.

14 MR. STROUD: Thank you, Your Honors. And may it
15 please the Board, my name is Jonathan Stroud on behalf the
16 petitioner, Unified Patents. I will be arguing for 15 minutes
17 covering claim construction and the procedural aspects of this
18 case, and my colleague, Roshan Mansinghani, will spend the
19 remainder of the time speaking about the merits of the grounds.

20 Today we ask you to adopt your preliminary rulings as
21 correct for three main reasons. One, the parties generally agree
22 on a construction of toolbar, but the District Court rejected
23 MyMail's interpretation of that construction, and we would ask
24 you to do so again here today. Two, it was appropriate to respond
25 to MyMail's changing claim construction arguments and we did

1 so fully in reply. Three, the toolbars of both the Reilly and Filepp
2 references teach toolbars under this new construction.

3 We'll also be talking briefly about the term "internet,"
4 but I would like to point out that it's not dispositive to the
5 majority of the grounds whether the Board agrees with us or not
6 on that issue.

7 Turning first to slide 4, Your Honors, just to back up
8 procedurally, because of *SAS Institute*, this case is slightly more
9 complex than it otherwise would have been. There was an earlier
10 IPR by Client Connect that brought all six grounds. It was
11 instituted by Judge Turner and the panel on grounds 1, 2 and 6,
12 and it preliminarily construed the term "internet" per the
13 definition in the specification as an interconnected network of
14 networks. Now, we believe that's the correct interpretation, but
15 the Board changed its mind in the second institution decision.
16 Again, it's not dispositive, and we'll talk about that in a second.

17 On grounds 3, 4 and 5, the Board did not substantively
18 comment. They simply used their discretion at the time to not
19 institute on those grounds. The case then was briefed and settled.
20 We filed a virtually identical petition on the same grounds with
21 the same expert, and this time around the Board instituted on
22 grounds 3 and 5. They changed their position slightly on the term
23 "internet" but found that grounds 3 and 5 preliminarily taught that
24 and chose under their discretion to not institute on grounds 1, 4
25 and 6.

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