

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZSCALER, INC.,
Petitioner,

v.

SYMANTEC CORPORATION,
Patent Owner.

Case IPR2018-00916
Patent 7,360,249 B1

Record of Oral Hearing
Held: August 8, 2019

Before JEFFREY S. SMITH, BRYAN F. MOORE, and
NEIL T. POWELL, *Administrative Patent Judges.*

Case IPR2018-00916
Patent 7,360,249 B1

APPEARANCES:

ON BEHALF OF THE PETITIONER:

JARED BOBROW, ESQUIRE
DONALD DAYBELL, ESQUIRE
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Menlo Park, CA 92614

ON BEHALF OF THE PATENT OWNER:

CHAD WALTERS, ESQUIRE
MORGAN GRISSUM, ESQUIRE
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The above-entitled matter came on for hearing on Thursday, August 8, 2019, commencing at 2:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Chris Hofer, Notary Public.

P R O C E E D I N G S

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2 JUDGE SMITH: Good afternoon. Welcome to the
3 Patent Trial and Appeal Board. We're here for two cases IPR
4 2018-00916 and IPR 2018-00920. We'll hear IPR 2018-00916
5 first and we'll take a ten minute break and we'll hear the second
6 case. Each side will get 30 minutes and each side may reserve
7 time for rebuttal if you so desire.

8 Petitioner, please step up to the podium and state your
9 appearance.

10 MR. BOBROW: Good afternoon. My name is Jared
11 Bobrow representing the Petitioner Zscaler and with me is Don
12 Daybell.

13 JUDGE SMITH: Do you wish to reserve time for
14 rebuttal?

15 MR. BOBROW: On the 249 yes, I'd like to reserve
16 ten minutes please.

17 JUDGE SMITH: Okay. Thank you. Patent Owner,
18 please step up to the podium and state your appearance.

19 MR. WALTERS: Good afternoon, Your Honor. For
20 Patent Owner my name is Chad Walters and with me is my
21 colleague Morgan Grissum.

22 JUDGE SMITH: Do you wish to reserve time for
23 rebuttal?

1 MR. WALTERS: I would like to reserve ten minutes
2 please.

3 JUDGE SMITH: Thank you. Petitioner, you may
4 begin when ready.

5 MR. BOBROW: Thank you very much and may it
6 please the Board. I'd like to begin simply by outlining the
7 disputes as they pertain to the 249 patent and there are really two
8 sets of disputes. One relates to the applicability of Section 112
9 paragraph 6 and there are several disputes that we'll get to, and
10 then the second set relates to the teachings of the prior art, the
11 AppletTrap manual.

12 So if I can begin first of all with the first issue as it
13 relates to the applicability of Section 112 paragraph 6 and I'm on
14 slide 7, specifically there are a couple of issues here and the first
15 issue that the Patent Owner raises is a suggestion that somehow
16 the petition is deficient because it did not address 112 paragraph
17 6 and did not perform a means plus function analysis comparing
18 corresponding structure and the like in the petition and we
19 submit that that's simply incorrect and the reason simply is that
20 none of the claims actually include the word means. There is no
21 mention of means in the claims whatsoever and as a result of that
22 Williamson, the Federal Circuit case from 2015 provides that
23 there is a presumption that 112 6 does not apply in that
24 circumstance. Because of that presumption there was no reason
25 to address the applicability of 112 6 in the petition and as the

1 Board noted in its Institution decision it expected the parties to
2 address this issue in the subsequent briefing and that's exactly
3 what the parties did. There's no surprise, there's no unfairness,
4 there's no prejudice here. Both sides had a chance to depose
5 experts, both sides had a chance to brief the issue.

6 So now turning to the applicability of Section 112
7 paragraph 6, it is Petitioner's position that Section 112 paragraph
8 6 does not apply to these claims. There are in a sense three, I'll
9 call them sets of claims, that include different terms over which
10 the parties have disputes on the applicability of 112 paragraph 6
11 and if I may begin first of all with the claims that include the
12 phrase "the blocking scanning manager." Now claims 1 and 12
13 include this phrase and it's important to note at the outset that
14 both of those claims are method claims and may I mention to the
15 bench by the way, the clock isn't -- I don't know if the clock has
16 been activated, it's still showing zero.

17 JUDGE SMITH: Oh, I'm keeping track. At 2:23
18 that'll be 20 minutes --

19 MR. BOBROW: Oh, okay.

20 JUDGE SMITH: (Indiscernible.)

21 MR. BOBROW: Thank you. And so --

22 JUDGE SMITH: Just one thing. When you refer to
23 slides can you include the slide numbers so that the court
24 reporter can (indiscernible.)

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