

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC., INSTAGRAM, LLC, and WHATSAPP INC.,

Petitioner,

v.

BLACKBERRY LIMITED,

Patent Owner.

IPR 2019-00706
Patent 9,349,120 B2

Record of Oral Hearing
Held: June 10, 2020

Before MICHAEL R. ZECHER, MIRIAM L. QUINN, and AARON W. MOORE, and, *Administrative Patent Judges*.

IPR 2019-00706
Patent 9,349,120 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Wednesday,
June 10, 2020, commencing at 11:08 a.m. EDT, by video/by telephone.

PROCEEDINGS

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3 JUDGE MOORE: Okay. Good morning, everyone. We are here for
4 a hearing in our IPR2019-00706. The case is captioned *Facebook,*
5 *Instagram* and *WhatsApp v. BlackBerry*. I'm Judge Moore. Judges Zecher
6 and Quinn are also present by video.

7 Can we have appearances for the Petitioner, please? And please let us
8 know where you are.

9 MR. WEINSTEIN: Yes, Your Honor. My name is Mark Weinstein.
10 I'm from the law firm of Cooley LLP, for the Petitioner. And also on the
11 line is Lead Counsel Heidi Keffe. I'm physically located in Los Gatos,
12 California.

13 JUDGE MOORE: Okay. And Patent Owner?

14 MR. GLASS: Thank you, Your Honor. This is Jim Glass for Patent
15 Owner from Quinn Emanuel. With me today at virtual counsel table in
16 Connecticut is my associate and backup Counsel Sean Gloth. He's off
17 frame, I don't expect that he'll be on the video. Also on the line is my
18 partner Sam Stake, also a backup Counsel.

19 JUDGE MOORE: Okay. Welcome everyone. We thank you for
20 your flexibility and participating in this all-video hearing, and apologies for
21 the delay, we had some technical difficulties at the outset. A few things.
22 Our primary concern here is that we preserve your right to be heard, so if at
23 any time you encounter technical problem that prevents you from
24 participating please let us know immediately, speak up, raise your hand,
25 send an email, whatever is appropriate.

1 I'll ask you to identify yourself for the Court Reporter each time you
2 begin speaking, and when not speaking that you mute your connection. The
3 Panel Members have the entire record including your demonstratives, but
4 please be sure that when referring to the record, you identify the item that
5 you're referring to. I will also note that this hearing is open to the public, by
6 audio only.

7 Our Hearing Order granted each side 60 minutes, I will keep the time
8 here. Please let me know at the beginning of your argument if you wish to
9 reserve any time for rebuttal. And with that, Petitioner, you may begin when
10 ready.

11 MR. WEINSTEIN: Thank you, Your Honors. And just for the record
12 we'd like -- this is Mark Weinstein for Petitioner -- I have to remember to
13 keep doing that. We'd like to reserve 30 minutes for rebuttal, if that would
14 be possible.

15 JUDGE MOORE: Okay.

16 MR. WEINSTEIN: And in going through the argument we will be
17 referring to Petitioner's demonstratives which were filed as Exhibit 1030,
18 Petitioner's Exhibit 1030. As Your Honors are aware, the Board instituted
19 six grounds and they're listed on demonstrative slide 3 of Petitioner's
20 demonstratives. Although there are six grounds, there are only two that are
21 relevant to the dispute here, most of the arguments, as you know, depend on
22 the primary reference, which is *Dallas*, the only difference between grounds
23 1 through 3, and 4 through 6 is that 4 through 6 add an additional reference,
24 as you know, to *LeBlanc*, for the notification element. Otherwise, the
25 grounds 4 through 6 are essentially the same as grounds 1, 2, and 3.

1 And although there are a number of prior art references relating to
2 dependent claims, there do not appear to be any disputes about the
3 dependent claims or any arguments that I could perceive off them, so we're
4 going to focus on the issues that were raised by Patent Owner and by the
5 Board.

6 One of the key issues, Your Honors, in this IPR is the construction of
7 the term notification, and if you look at demonstrative slide 5, we wanted to
8 mention this because the parties have spilled an awful lot of ink over what a
9 notification is, but we wanted to make clear that the Board understands that
10 this argument really is only relevant for the first three grounds of the
11 institution, which is the *Dallas* reference.

12 There is not a dispute from Patent Owner that the additional *LeBlanc*
13 reference actually discloses notifications, that is what it manifests to the new
14 message is in fact a notification under every instruction that's been offered.
15 They make other arguments for why they think the combination with
16 *LeBlanc* may not be -- why they don't agree with it, or why they're
17 challenging it, but as far as the core element of whether or not a notification
18 is being provided, there's not a dispute there with respect to the *LeBlanc*
19 reference.

20 So, I wanted to point that out, because although we're going to be
21 spending quite a bit of time, I imagine, both sides talking about what a
22 notification is, even if they were to win the argument and we don't think the
23 argument should win, it would only distinguish at most the first three
24 grounds, and possibly not even those.

25 If we go to slide 7, the Board preliminarily adopted the District Court
26 construction, which was some form of visual, auditory or physical cue to

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