

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TWITTER, INC. and GOOGLE LLC,
Petitioner,

v.

B.E. TECHNOLOGY, L.L.C.,
Patent Owner.

IPR2021-00482
IPR2021-00483
Patent 8,769,440 B2

Before NEIL T. POWELL, MIRIAM L. QUINN, and IFTIKHAR AHMED,
Administrative Patent Judges.

QUINN, *Administrative Patent Judge.*

JUDGMENT
Final Written Decision
Determining Some Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

We instituted *inter partes* review pursuant to 35 U.S.C. § 314 to review claims 1–37 of U.S. Patent No. 8,769,440 B2 (“the ’440 patent”) owned by B.E. Technology, L.L.C. We have jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 47.73. For the reasons discussed below, Petitioner has shown by a preponderance of the evidence that claims 1–24 and 26–27 of the ’440 patent are unpatentable. And Petitioner has not shown by a preponderance of the evidence that claim 25 is unpatentable.

II. CONSOLIDATION OF PROCEEDINGS

The two captioned proceedings (IPR2021-00482¹ and IPR2021-00483²) involve the ’440 patent. The 482 IPR challenges the sole independent claim of the ’440 patent (claim 1) together with a subset of dependent claims. The 483 IPR challenges only dependent claims. The proceedings have a substantial overlap of asserted prior art, present the same expert testimony, and involve the same threshold issues. For instance, the arguments presented by Patent Owner for both proceedings are identical as they primarily focus on the sole independent claim of the ’440 patent. In our Decision on Institution we determined that under the circumstances presented, consolidation is appropriate because the Board can more efficiently handle the common issues and evidence, and also remain consistent across proceedings. 482 IPR, Paper 9, 2–3; 483 IPR, Paper 9,

¹ Hereinafter referred to as “the 482 IPR.”

² Hereinafter referred to as “the 483 IPR.”

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2–3 (“Decision” or “Dec. on Inst.”).³ Under 35 U.S.C. § 315(d), the Director may determine the manner in which these pending proceedings may proceed, including “providing for stay, transfer, consolidation, or termination of any such matter or proceeding.” *See also* 37 C.F.R. § 42.4(a) (“The Board institutes the trial on behalf of the Director.”). And more specifically Rule 122(a) specifically authorizes the Board to consolidate multiple proceedings involving the patent that is before the Office. 37 C.F.R. § 122(a). Therefore, for a more efficient disposition of these proceedings, we consolidate the 482 IPR and 483 IPR for rendering this consolidated Final Written Decision.

III. PROCEDURAL BACKGROUND

Twitter, Inc. and Google LLC (“Petitioner”) filed two Petitions requesting *inter partes* review of different set of claims of the ’440 patent:

(a) in the 482 IPR, Petitioner requested review of 1, 5–12, and 25–27 (482 IPR, Paper 3 (“482 Pet.” or “Pet.”)); and

(b) in the 483 IPR, Petitioner requested review of claims 2–4, 13–24, and 28–37 (483 IPR, Paper 4 (“483 Pet.”)).

B.E. Technology, L.L.C. (“Patent Owner”) timely filed a Preliminary Response in both proceedings, presenting essentially the same arguments in both papers. IPR2021-00482, Paper 8 (“482 Prelim. Resp.” or “Prelim. Resp.”); IPR2021-00483, Paper 8 (“483 Prelim. Resp.”). After considering the merits of the Petition and the arguments against institution by Patent

³ The consolidated Decision on Institution was entered into the record of each proceeding.

Owner, we consolidated the proceedings for purposes of institution and instituted *inter partes* review. 482 IPR, Paper 9 and 483 IPR, Paper 9.

During the trial phase, Patent Owner filed a substantially identical Response in each proceeding, except for the arguments directed to claim 25, which is only challenged in the 482 IPR.⁴ Petitioner filed a Reply in each proceeding, addressing substantially the same argument on both briefs, except for the discussion of claim 25, challenge only in the 482 IPR.⁵ Patent Owner filed a Sur-reply.⁶ We held Oral Argument on June 6, 2022, the transcript of which is filed in the record of both captioned proceedings.⁷

Because the record in the captioned proceedings is substantially similar, hereinafter we cite to the record in the 482 IPR unless specifically stated otherwise.

A. Related Matters

The '440 patent is involved in two district court matters pending in the District of Delaware: *B.E. Technology, L.L.C. v. Twitter, Inc.*, Case No. 1:20-cv-00621, and *B.E. Technology, L.L.C. v. Google LLC*, Case No. 1:20-cv-00622. 482 Pet. 1; 483 Pet. 1.

⁴ 482 IPR, Paper 18 (“482 PO Resp.” or “PO Resp.”); 483 IPR, Paper 22 (“483 PO Resp.”).

⁵ 482 IPR, Paper 20 (“482 Reply” or “Reply”); 483 IPR, Paper 24 (“483 Reply”).

⁶ 482 IPR, Paper 21 (“482 Sur-reply” or “Sur-reply”); 483 IPR, Paper 25 (“483 Sur-reply”).

⁷ 482 IPR, Paper 28 (“Tr.”); 483 IPR, Paper 32.

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In addition to the two concurrent proceedings, Petitioner has filed petitions challenging patents related to the '440 patent. *See* IPR2021-00484 and IPR2021-00485.

The parties also identify various *inter partes* reviews that involved patents related to the '440 patent, including IPR2014-00038, IPR2014-00699, IPR2014-00039, IPR2014-00738, IPR2014-00052, IPR2014-00053, IPR2014-00698, IPR2014-00743, IPR2014-00744, all of which involved U.S. Patent No. 6,628,314 (“the '314 patent”). *See* Exs. 1036–1038. The Board issued Final Written Decisions in all of the above identified proceedings and the appeals from those decisions to the Federal Circuit have been completed, resulting in an opinion affirming the Board’s determinations, for instance, that certain claims of the '314 patent were anticipated by U.S. Patent No. 6,119,098 (“Guyot”). *See* Ex. 1037; Ex. 1039 (*B.E. Technology, L.L.C., v. Google, Inc., et al.*, 2016 WL 6803057 (Fed. Cir. 2016) (“the Federal Circuit Decision”)).

B. Real Parties in Interest

Patent Owner asserts that B.E. Technology L.L.C. is the owner of the entire interest in the '440 patent and is the real party in interest. Prelim. Resp. 1. Petitioner identifies Twitter, Inc. and Google LLC as the sole real parties in interest. 482 Pet. 1; 483 Pet. 1. There is no dispute as to whether the identified parties are real parties-in-interest.

IV. THE '440 PATENT AND PRESENTED CHALLENGES

A. The '440 Patent, Exhibit 1001

The '440 patent relates to user interfaces that provide advertising obtained over a global computer network. Ex. 1001, 1:22–25. The

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