

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MAN WAH HOLDINGS LIMITED,

Petitioner,

v.

RAFFEL SYSTEMS, LLC,

Patent Owner.

Case PGR2019-00029
Patent D821,986 S

Record of Oral Hearing
Held: April 2, 2020

Before GRACE K. OBERMANN, CHRISTOPHER G. PAULRAJ and
RYAN H. FLAX, *Administrative Patent Judges*.

Case PGR2019-00029
Patent D821,986 S

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Thursday, April 2, 2020, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, 22314.

1 PROCEEDINGS

2
3 JUDGE FLAX: Looks like everyone is here. So, we can begin.
4 Hi there everybody. I'm Judge Flax. I'm here with Judges Obermann and
5 Paulraj. And we are here via video for PGR2019-00029 concerning patent
6 number D821,986. If you're not here for that you're on the wrong video
7 conference.

8 And I want to first thank everybody for your flexibility in
9 conducting this video hearing today. We know that this is a departure from
10 our typical practice. Given that, we wanted to start off by clarifying a few
11 items.

12 First, our primary concern is your right to be heard. If at any
13 time during this proceeding you encounter technical or other difficulties that
14 you feel fundamentally undermines your ability to adequately represent your
15 client, please let us know immediately. For example, by contacting the team
16 members who provided you with connection information.

17 Second, when not speaking please mute yourself. We on the
18 panel will be doing likewise.

19 Third, please identify yourself each time you speak. This helps
20 the court reporter, who is on the line as we speak, prepare an accurate
21 transcript.

22 Fourth, we have the entire record including your
23 demonstratives. When referring to demonstratives, papers, or exhibits
24 please do so clearly and explicitly by Slide number, exhibit number, and
25 page number, or by whatever reference you need to identify what you're
26 talking about. Please also pause a few seconds after identifying it to provide

1 us time to find it. This helps the preparation of an accurate transcript of the
2 hearing.

3 I'm going to presume that when you set up the video conference
4 call you had all the conversation you needed regarding the contact in case of
5 technical difficulties, so I won't go over that.

6 Okay, so each side has requested an hour, which you will have.
7 If you want to reserve any time for rebuttal, please let me know when you
8 stand up to speak for the first time, or when you start speaking for the first
9 time.

10 So, we can begin with the Petitioner's case if you're ready.

11 MR. WANG: Yes, Your Honor, we are ready. My name's
12 Shen Wang. I'm from Arch and Lake. I'm here for Petitioner. So, I -- let
13 me introduce Mr. Bakewell. He's going to argue on our behalf.

14 JUDGE FLAX: Okay.

15 MR. BAKEWELL: Good afternoon, Your Honors. My name
16 is Clark Bakewell of Mayer Brown of -- on behalf of Petitioner Man Wah
17 Holdings Limited. If I can, I would like to reserve 15 minutes for a rebuttal.

18 JUDGE FLAX: Okay, I've got it. You can go ahead and begin.

19 MR. BAKEWELL: Thank you. In the Board's Institution
20 decision the Board institutes its PGR on two grounds. Under §102(a)(1) to
21 view of the Raffel_Sample which is Exhibit 1004 as evidence supporting an
22 on-sale bar, or as an anticipatory reference available to the public. Also,
23 under §103, as obvious, due to the Kintec Solution which is Exhibit 1006, as
24 a primary reference and Hua-Dali which is Exhibit 1007 as a secondary
25 (phonetic) reference. This oral presentation will focus on the on-sale bar and
26 §103 obviousness grounds, but all grounds of institution have been briefed

1 and have to take questions on its behalf (phonetic).

2 Turning to Slide 2 of the demonstratives and the on-sale bar,
3 the finding here is Exhibit 1001, which is the 986 patent to Exhibit 1004
4 which is the Songemail, which is the reference that shows the
5 Raffel_Sample. As will be quickly apparent, the product offered in the Song
6 email in the design shown in the nine extra patents are pretty much identical.
7 Raffel sent the exact design that a later patent --

8 JUDGE FLAX: When you say pretty much identical, Counsel.
9 This is Judge Flax.

10 MR. BAKEWELL: Yes.

11 JUDGE FLAX: When you, when you say pretty much
12 identical. Is there anything about them that is not identical?

13 MR. BAKEWELL: Thanks, Your Honor. They are obviously
14 a different image of what appears to be a computer rendering, and one is a
15 very sketch done by hand with dotted lines more appropriate for a patent.
16 So, they are not absolutely identical, but I do not think that there's any
17 meaningful differences beyond that between the two images. I think the
18 Board and Institution is essentially the same.

19 Raffel sent this exact design that is later patented to a customer
20 one year and two months before filing a patent application which surpasses
21 the outer limits of the one-year until bar principle period. This matters -- the
22 on-sale bar prevents even a tenth profit from a later claims invention more
23 than one year before filing to the patent application. There's then an on-sale
24 bar in a patent statutes ever since 1836. The Patent Owner clearly violated
25 this requirement and attached (inaudible).

26 My presentation will first discuss the facts of the offer in the

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