Transcript of Meeting

Date: August 29, 2024
Case: Google LLC -v- Proxense, LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

GOOGLE EXHIBIT 1023
GOOGLE v. PROXENSE
IPR2024-00783

1

2 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4

5 GOOGLE LLC,

6 Petitioner

7 v.

8 PROXENSE, LLC,

9 Patent Owner

10 Case Nos: IPR2024-00782
IPR2024-00783

11 IPR2024-00784

12 THURSDAY, AUGUST 29, 2024

13 3:00 P.M.

14

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19 Job No.: 551635

20 Pages 1 - 19

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1 JUDGE DANG: We are here for
2 petitioner's request for additional briefing.
3 Excuse me, we have a little cross
4 talk. Could somebody please be on mute, please,
5 unless you're talking. Thank you.
6 Okay. So we are here to address
7 petitioner's request for additional briefing,
8 as reflected in our consolidated trial practice
9 guide, we do not allow arguments in the e-mails.
10 This is an opportunity for the parties to go
11 into detailed arguments regarding the matter.
12 Since this is petitioner's request, I
13 guess, Mr. Chang, will you be the one talking?
14 Will you please begin.
15 MR. CHANG: Yes, Your Honors.
16 Petitioner, Google,
17 requests authorization to file a five-page
18 pre-institution reply to address Proxense's
19 inconsistent and unforeseeable claim
20 construction provision. Particularly as they
21 relate to the means plus function construction
22 that they have proposed under their preliminary

1 responses.
2 These constructions are inconsistent
3 because Proxense is speculating whether --
4 THE COURT REPORTER: Excuse me.
5 Somebody's line is open and I can't make out
6 what you're saying with other people talking in
7 the background.
8 MR. CHANG: Okay.
9 So Proxense's constructions are
10 inconsistent because they haven't affirmatively
11 argued that they are means plus function
12 currently. And they also have not done so in
13 the district court. So it's not inconsistent.
14 They are merely speculating if the structure is
15 indefinite, then one -- may be considered.
16 And these positions also were not
17 anticipated. Petitioner filed their petitions
18 before the panel's primary responses were filed
19 in the instituted IPRs. And so this was not
20 something that petitioner would have known.
21 Second, related to the construction
22 during the Samsung case, the Court expressly

1 construed enablement signals. The Court did not
2 construe this particular construction often
3 found speaking as a means plus function
4 construction.
5 And to be clear, this is provided in
6 Exhibit 110 of the petition. We have attached
7 the memorandum of the Court of the claim
8 construction order from the Proxense v. Samsung
9 case. And throughout that memorandum, the terms
10 construed before the Court at that time does not
11 include the particular term that Proxense is now
12 seeking.
13 And so this could not have been
14 something that petitioner would have anticipated
15 to be raised at this point.
16 JUDGE DANG: Mr. Chang, I have a
17 question. This is, I guess, regarding Ludtke,
18 right. The purpose for additional briefing is
19 to help us in our decision as to whether or not
20 to institute. So my question to you is, do you
21 think on the record itself it is not enough,
22 that we do need additional briefing in order to

1 prepare our decision on whether or not to
2 institute?
3 MR. CHANG: The only reason that
4 petitioner is seeking this authorization to file
5 the five-page pre-institution reply is partly
6 because if the Court finds that these are a
7 means plus function term, then petitioner would
8 like the opportunity to address that specific
9 construction.
10 Petitioner does not believe that
11 means plus function construction or analysis is
12 necessary for the institution to allow a
13 pre-institution reply.
14 JUDGE DANG: Okay. Thank you.
15 Mr. Zak, do you have any response to
16 that?
17 MR. ZAK: Sorry. I forgot to unmute
18 myself.
19 Of course, your Honor, and I'd be
20 very happy to.
21 While we do understand that the term
22 "enablement single" was specifically construed

1 by the Court, the Court also addressed the
2 construction of "enabled" when they were
3 responding to Samsung's indefinite argument.
4 And they resolved the indefinite
5 argument by construing what it meant to enable
6 one or more of an application, function or
7 service. This is on page 26 of the Court's
8 memorandum in support of its claim construction
9 order. And the Court said, "An application,
10 function or service is enabled by a PDK when it
11 receives information from a PDK in exchange for
12 an access feed. Similarly, an RDC enables one
13 or more of an application function and a service
14 when it forwards such a message to the
15 application, function or service."
16 Now, the Court said that. Under the
17 doctrine of collateral estoppel, Proxense is
18 bound to it. And we can't do anything but
19 defend the Court's construction. Though we
20 defended it in two ways.
21 One, we applied -- well, if you look
22 at how "enabled" was interpreted in the

1 specification, it is defined this way
2 consistently throughout the specification. They
3 are not raising that. We also said as an
4 alternative, you get to the same result if you
5 do a means plus function analysis. You get to
6 the same results.
7 And then in the 78 -- in the IPRs
8 addressing the '289 and '850 patents, we even
9 presented a third way where we said we're going
10 to give you the explicit definition of "local
11 secured information". It's recited in the
12 claims, "local secured information," "local
13 secured information" is recited in the claims,
14 and it is explicitly defined in the
15 specification, and you get to the same result.
16 So for them to say this is
17 unanticipated or they couldn't have foreseen
18 this, well, I'm sorry, I am bound by what the
19 district court said in the previous case.
20 Proxense was attorney to that case. I cannot
21 ignore a district court's order, memo or
22 construction. They said it in the memo. I'm

1 bound by it. I'm sorry.
2 JUDGE DANG: So Mr. Zak, just to
3 clarify, is it patent owner's position that
4 these are a means plus function terms?
5 MR. ZAK: If you wanted to know my
6 position on it, yes, I would think under the
7 case law, as we put it in there, using whatever
8 analysis, these are means plus function. I
9 would agree.
10 We have things that are defined by
11 the function they performed. And if you look at
12 the case law, they are not definite structures.
13 We have controllers or processors, memory. All
14 of these things are not a definitive structure.
15 So we have this non-definitive structure that is
16 undefined by the function it performs.
17 So I would think yes, we do have to
18 look at means plus function. But I would also
19 say even if you didn't want to do a means plus
20 function analysis, if we just looked at the
21 definition of enabling and the claims, as we
22 also argued, or with respect to the other two

1 IPRs that actually recites local secured
2 information, if you look at the explicit
3 definition of "local secured information" in the
4 patent, we get to the same result.
5 So are these means plus function
6 claims? Yes, I would say so. Do we need to do
7 a means plus function analysis to interpret the
8 claims? Maybe not, for the reasons I just said.
9 We have other definitions that support this as
10 well.
11 JUDGE DANG: Well, I guess the
12 question is, okay, if you do want to take a
13 position it is means plus function claims, I
14 guess petitioner is requesting that if you are
15 reading this as a -- if you want a means plus
16 function analysis, then they are requesting that
17 they have a chance to address the means plus
18 function analysis.
19 So I just want to make sure that is
20 the application.
21 I'm sorry, go ahead.
22 MR. ZAK: Like I said, we are just

1 defending the district court's distinction. The
2 district court said what this meant and I have
3 to abide by that.
4 Now, I don't know how Judge Albright
5 got there, but he said it, and I'm bound by it.
6 And I'm trying to give the Board reasons how he
7 could have gotten there. And to say that no
8 matter which of these paths you take, which of
9 these three paths you take, you get the same
10 result.
11 So if the board wants to do a Wayne
12 v. Citrus analysis, then yes, you get to the
13 same result. If you just want to look at the
14 definition of "enabling" and the specification,
15 you get to the same result. If you want to look
16 at the definition of "local secured
17 information," the explicit definition provided
18 in the specification, you get to the same
19 result.
20 Now, if you're asking me --
21 JUDGE DANG: I'm sorry, but the means
22 plus function analysis was not with the district

1 court, right? It is basically you're saying
2 that you would use the means plus function
3 analysis.
4 MR. ZAK: No, we did use -- in the
5 briefing when -- in the briefing before the
6 district court in the Samsung case when they
7 said, well, we don't know what the heck
8 "enable" -- one or more of an application of
9 functional services means, how things are being
10 enabled, we don't understand this. We said,
11 well, it is key for data. And we addressed that
12 very briefly in our briefing. We said a key for
13 data and that's how it works. And --
14 JUDGE McKONE: This is Judge McKone.
15 Can I ask a question and sort of get that -- my
16 concern is here, is patent owner making an
17 argument that the prior art doesn't teach the
18 corresponding structure as you would define it
19 from the specification?
20 In other words, if we decided this is
21 or is not a means plus function term, does it
22 have any bearing on any issue that we're

1 deciding here regarding patentability?
2 MR. ZAK: Yes, it does. But again,
3 that issue is addressed in other ways, too. So
4 when we talked about local secured information,
5 we are looking at the explicit definition in the
6 specification. And this goes to two of the IPRs
7 at issue. Not all of them because one of them
8 doesn't include this in the claims, but the
9 other ones do include this in the claims. You
10 know, the specification says the service block
11 access keys allow an IT to unlock the
12 information stored in the corresponding service
13 block, which information is useful for local
14 secured information.
15 So that definition is the same point.
16 And just based on that definition alone, the
17 prior art doesn't help. Then we said if you
18 look at the implicit definition of "enabling" in
19 the specification, that the prior art doesn't
20 have either. It is the same thing, and it gives
21 us the same result. And the prior art doesn't
22 have that either. And the means plus function

1 analysis, the algorithm, which, again, is an
2 algorithm of key for data, give me the access
3 key, I'll unlock the data and send it back to
4 you, that also isn't there.
5 So it is just really a conceiving
6 issue, I know, and I'm sorry about this, that
7 you can look at these claims from three
8 different angles, focusing on different terms in
9 the claims, you get to the same result no matter
10 what you do. And the prior art just doesn't
11 have that. It doesn't disclose key for data.
12 It doesn't disclose that algorithm in the
13 specification. An application has an access
14 key. It sends the access key to the service
15 block. The service block unlocks or sends an
16 access key. The service block is unlocked with
17 that access key and the information is retrieved
18 and sent right back to the application.
19 It just doesn't have that. That's
20 the argument we're making. And I don't know if
21 that answers your question, your Honor.
22 JUDGE DANG: Okay. Thank you.

1 Mr. Chang, would you like to respond
2 to that?
3 MR. CHANG: Yes, your Honor.
4 Just to clarify, Judge Albright and
5 the district court did not make any means plus
6 function analysis. The pages that I also cited
7 is in the section under "hybrid device" and
8 specifically the Court was searching whether
9 that term was definite. And so it was not a
10 means plus function analysis before. It was not
11 either in the current district court. If the
12 patent owner wants to say that it is a means
13 plus function term, we would want to have the
14 ability to respond.
15 JUDGE DANG: Do you agree with patent
16 owner that an analysis of means plus function is
17 needed in order to determine the claims on the
18 merits, I guess, against the prior art?
19 MR. CHANG: No, we do not.
20 JUDGE DANG: You do not agree that a
21 means plus function analysis is needed or you do
22 not believe that --

1 MR. CHANG: Sorry. Go ahead.
2 JUDGE DANG: I'm sorry.
3 So you agree that even if we have
4 this means plus function determined analysis, it
5 does not affect the case -- the merits, I guess,
6 of the prior art positions you have.
7 MR. CHANG: Well, we don't believe
8 that means plus function applies here. And even
9 if it was, we believe the prior art --
10 JUDGE DANG: Okay. Thank you.
11 And Mr. Zak, any last comments?
12 MR. ZAK: Yes, just because we didn't
13 have a means plus function analysis in Judge
14 Albright's memo, just because Judge Albright
15 made this statement when deciding another issue,
16 as in, is this claim indefinite? I don't know,
17 let me try to get you the claims to see if it is
18 indefinite, nor to determine that I have to
19 construe this word "enabled" that nobody asked
20 me to construe, but I have to now do that to
21 determine if these are indefinite or not, it
22 doesn't mean it wasn't a construction. It was a

1 construction, it was put in the memo.
2 And under the doctrine of collateral
3 estoppel, I can't take a position contrary to
4 the district court. So I'm trying to -- we're
5 just trying to get the Board all of the reasons
6 to support that district judge's construction.
7 Like I said, there were three. Two of them
8 apply to the '042 patent, three apply to the
9 other two patents that are in dispute here
10 today.
11 And I am not -- I am very upset that
12 counsel would like to say, well, we can
13 disregard orders of the district court,
14 especially a district court that they are also
15 in front of. Google is in front of the same
16 district court now in a related cases. They had
17 opportunity to read these memos and challenge
18 the Judge's understanding of these terms. They
19 chose not to even address what the judge said in
20 his memo and let it stand.
21 JUDGE DANG: Okay. So if neither
22 party has any more comments, I would like to go

1 off line and discuss with the panel, unless
2 either party would like to say something else.
3 Okay. Thank you.
4 (A recess was taken.)
5 JUDGE DANG: Thank you very much. We
6 thank everybody for this clarification today.
7 We appreciate everybody's comments.
8 We will take your positions, comments
9 under advisement today and we will issue an
10 order in due course.
11 So with that, we are adjourned.
12 Thank you very much.
13 MR. CHANG: Thank you, your Honor.
14 MR. ZAK: Thank you, your Honor.
15 (Time noted: 3:24 p.m.)
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9 any of the parties to this case and have no
10 interest, financial or otherwise, in its outcome.
11 IN WITNESS WHEREOF, I have hereunto set
12 my hand and affixed my notarial seal this 30th day
13 of August 2024.
14 My Commission Expires: June 2026.
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22

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