

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

ADASA INC.,	)	
	)	
Plaintiff,	)	No. 6:17-cv-01685-MK
	)	
v.	)	July 17, 2023
	)	
AVERY DENNISON CORP.,	)	Eugene, Oregon
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS

(Jury Trial - Day 5)

BEFORE THE HONORABLE MUSTAFA T. KASUBHAI
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

COURT REPORTER:

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4 Q. Let's talk about each one of those and get some bases
5 for those opinions. I'd like to start with "RFID For Dummies",
6 Dr. Engels. And you're familiar with this reference?

7 A. Yes, I am.

8 Q. Would you please describe to the jury generally what
9 this reference teaches.

10 A. So "RFID For Dummies" is a reference that provided
11 introduction to RFID technologies and their use from a business
12 perspective. So it's not a detailed tome or textbook. It's
13 meant to be readable for a person without any knowledge or
14 background in RFID technologies.

15 Q. Based on your experience in the industry, especially at
16 the time in which "RFID For Dummies" was written, would you
17 expect this type of book to be disclosing brand-new inventions?

18 A. No, it would not.

19 Q. Why not?

20 A. This is a book that's looking backwards, so what was
21 going on at the time, as opposed to making predictions about what
22 the future technology is going to look like and really describing
23 the current -- currently what was happening in the industry.

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21 Q. And I guess I should start, we're going to be talking
22 about pages 238, 239, and 240, particularly the highlighted
23 sections that we'll get to in a minute that Mr. Brahma spent a
24 lot of time with you at. But from the top, does anything in
25 these three pages, 238, 239, and 240 of "RFID For Dummies",

1 disclose the novel invention in Claim 1 of the '967 Patent?

2 A. No, they do not.

3 Q. Does anything in pages 238 through 240 discuss or teach
4 to you, as one skilled in the art, most significant bits and
5 least significant bits?

6 A. No, it does not.

7 Q. Does anything in pages 238 through 240 in "RFID For
8 Dummies" teach an allocated block that contains most significant
9 bits?

10 A. No, it does not.

11 Q. So I know there's been a lot of jokes about what
12 Mr. Sweeney said about what the title "Getting the Digits" meant.
13 What does that say to you?

14 A. That to me -- I actually was not aware of the joke.
15 That meant simply that you were getting the decimal number for
16 the various serial numbers that you have.

17 Q. And do these three pages talk about decimal
18 representations or binary representations, in your opinion?

19 A. They're decimal representations.

20 Q. And why do you say that?

21 A. Again, because it's talking about the EPC number
22 broadly speaking. It's not talking about a particular encoding
23 of that in the RFID tag. It's looking at just the number itself.

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Q. And right above this title, Dr. Engels, it says, "The following sections explain proven methods for managing numbers."
Do you see that part that I just highlighted?
A. Yes, I do.

1 Q. And what were the proven methods for managing numbers
2 at the time when you wrote this chapter?

3 A. They included the central authority, and then later
4 allocating or otherwise assigning broad ranges to a particular
5 manufacturing facility or a particular manufacturing line.

6 Q. And is that the process and the proven method that you
7 describe later in the chapter?

8 A. That is.

9 Q. Let's take a look at the bottom of page 239 that I've
10 highlighted here. And I believe you touched on this part in one
11 of your last answers here about the problem, but it says, "An
12 always-accessible central numbering authority isn't practical for
13 many companies. These companies can use an intelligent hierarchy
14 imposed on the serial number allocation to decentralize and make
15 feasible the allocation of unique serial numbers across all
16 manufacturing lines." Do you see that, Dr. Engels?

17 A. Yes, I do.

18 Q. What does that mean?

19 A. That simply means that by assigning ranges, and
20 actually the next page is where I describe giving an example of
21 this hierarchy, so you can assign a range of numbers to a
22 manufacturing facility, the manufacturing facility can then
23 assign portions of -- within that range to different
24 manufacturing lines. That allows you to have this allocation
25 hierarchy by simply assigning ranges of numbers from a

1 manufacturing facility and have them manage the allocation of
2 those numbers to the various manufacturing lines within that
3 facility.

4 Q. Did you provide an example of that on the next page,
5 Dr. Engels?

6 A. I believe that's exactly what's described on the next
7 page.

8 Q. Okay. So let's take a look at that. And up at the top
9 here, it says, "Here's a simple example of a decentralized
10 hierarchical approach to allocating serial numbers", and then you
11 go on to describe one. Do you see that Dr. Engels?

12 A. Yes, I do.

13 Q. And how about that second sentence that starts, "A
14 range of serial numbers for each product is allocated to each
15 manufacturing facility"? What is that describing?

16 A. That's simply giving a range of numbers, so 1 to 1,000
17 to manufacturing facility 1, 1,001 to 2,000 to manufacturing
18 facility 2.

19 Q. And that is what was being used in the technology in
20 the RFID industry at the time?

21 A. And that's what we were doing in 2004 at that time.

22 Q. Is that what the industry was -- well, let's go to the
23 next sentence. It says, "Within a facility, a range of numbers
24 from those allocated to the facility is allocated to each line
25 producing a particular product." Do you see that?

1 A. Yes, I do.

2 Q. And what's that describing?

3 A. So that's describing manufacturing facility 1, the
4 number is 1 to 1,000, I might -- if I've got two manufacturing
5 lines, I might allocate 1 to 500 to manufacturing line 1 and 501
6 to 1,000 to manufacturing line 2.

7 Q. And when you say giving one line 1,000 -- or 1 to 1,000
8 and then 1,001 to 2,000 to line 2, is that what you meant by "a
9 range of numbers" here?

10 A. That is correct.

11 Q. And how -- what representation would those range of
12 numbers be?

13 A. We would typically be using decimal.

14 Q. And why is that?

15 A. Because that was the language that we were assigning at
16 that time and using, and still use today.

17 Q. Let's look at the next sentence, Dr. Engels. It says,
18 "In this way, the serial number is effectively subdivided into a
19 facility number, line number, and subserial number, in which the
20 allocation hierarchy is maintained between facility number and
21 line number." Do you see that sentence?

22 A. Yes, I do.

23 Q. And you were asked quite a few questions about that
24 particular sentence by Mr. Brahma when they had their chance to
25 talk to you. Do you recall that?

1 A. Yes, I do.

2 Q. So let's talk about specifically what this sentence
3 means and what it meant to you. What did you mean when you
4 wrote, "...the serial number is effectively subdivided into a
5 facility number, line number, and subserial number..."?

6 A. So when you have a manufacturing facility, so give
7 it -- allocated of the range of 1 to 1,000, and then within two
8 different lines, it might allocate 1 to 500, 501 to 1,000 on
9 those two different lines, by doing that hierarchy, you're going
10 to record all of that information into your databases.

11 So you will know that you manufactured this product at
12 this facility on this particular line based upon the serial
13 number itself; that is, you would go into the database, use the
14 serial number as a point range of that database, get the
15 information that you store there, and it'll say manufactured at
16 this particular date, this particular line, this particular
17 facility.

18 The number itself is just a dumb number, as we were
19 advocating at that time. There was no information encoded in the
20 number itself. All that information is contained in the
21 database. And that's why it's, I said, effectively, not
22 actually.

23 So you would effectively get this hierarchy, because
24 you are maintaining that information in the database, but you've
25 got this intelligence. The manufacturer will allocate to the

1 various lines -- manufacturing facility, I should say, will
2 allocate to its lines and manufacturing, too, will allocate to
3 its line, and by this way you maintain an allocation hierarchy.

4 Q. How is the effective subdivision that you're describing
5 here different from Claim 1 of the '967 Patent?

6 A. So Claim 1 of the '967 Patent, again, looking at a bit
7 level, not a decimal level, with most significant bits, so we
8 were looking at not just really large numbers, we were looking at
9 numbers that are going to be encoded in a particular location
10 within an RFID tag, not just a range of numbers like 1 to 1,000,
11 and because of that, we are looking at having a number that we're
12 going to pull out of a particular block, and it's going to be a
13 very large block of numbers typically.

14 Q. And so is it safe to say, Dr. Engels, that what you've
15 written here on page 240 does not teach a binary data field?

16 A. No, this does not teach a binary data field.

17 Q. Does it teach most significant bits in the way that
18 that phrase is used in Claim 1 of the '967 Patent?

19 A. It does not teach most significant bits.

20 Q. And does it teach least significant bits?

21 A. It does not teach least significant bits.

22 Q. Does it teach an allocated block of most significant
23 bits?

24 A. No, it does not.

25 Q. And the rest of that sentence says, "...facility

1 number, line number, and subserial number, in which the
2 allocation hierarchy is maintained between facility number and
3 line number." Do you see that?

4 A. Yes, I do.

5 Q. Is that part of the sentence describing most
6 significant bits in any way?

7 A. No, it is not.

8 Q. Why not?

9 A. It's, again, referring simply to information that would
10 be maintained in your database. And the number itself is not
11 described in terms of a bit-wise representation of it. It's
12 simply a range of numbers from which you are pulling out
13 different sub ranges to be able to allocate in a hierarchical
14 fashion, as I described, manufacturer to product line.

15 Q. And so even using the terms "subdivided, facility
16 number, line number, and subserial number," that to you, as one
17 skilled in the art, doesn't equate to the technology that's been
18 disclosed to Claim 1 of the '967 Patent?

19 A. No, it does not.
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22 Q. So, Dr. Engels, after reviewing "RFID For Dummies" and
23 the portion -- at least the portions that we just discussed
24 there, did that help you form your opinion on anticipation and
25 whether or not "RFID For Dummies" anticipates Claim 1 of the '967

1 Patent?

2 A. It does.

3 Q. And what was your ultimate opinion based on that
4 review?

5 A. Based on my review of "RFID For Dummies", it does not
6 teach Claim Elements E or F of Claim 1 of the '967 Patent and,
7 therefore, does not anticipate Claim 1 of the '967 Patent.

8 Q. Because all of the elements would need to be disclosed
9 in "RFID For Dummies" in order for it to anticipate. Is that a
10 fair statement, sir?

11 A. Correct.

12 Q. And how about an opinion on obviousness related to
13 "RFID For Dummies"? Do you have an opinion on obviousness?

14 A. Yes.

15 Q. And after reviewing "RFID For Dummies", what is your
16 opinion about whether it renders Claim 1 of the '967 Patent
17 obvious?

18 A. "RFID For Dummies" does not render Claim 1 of the '967
19 Patent obvious.

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8 Q. Do you know who Mr. Kenneth R. Traub is?

9 A. Yes.

10 Q. Okay. And who is he?

11 A. So Ken was a member of multiple companies. This one
12 was assigned to Oracle through his tenure, but he had
13 participated in the Auto-ID Center and the EPCglobal standards
14 related to the tag data standards, amongst other standards that
15 he participated.

16 Q. At the time, is it fair to say that Mr. Traub was a
17 fairly big figure in the RFID industry?

18 A. At the time, he -- for -- particularly for EPCIS and
19 tag data standards, yes.

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Q. And so this is Avery Dennison's description of why it believed that the '200 Patent should invalidate the '967 Patent.

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And on page 962, still describing that same '200 Patent, which

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was the IBM patent, here on page 962 it says (as read): The '200

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Patent describes a number of embodiments for assigning serial

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numbers, including one where different manufacturer divisions

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that produce objects having the same object classification can be

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assigned a subset of numbers from a number pool of unassigned

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numbers to ensure that unique serial numbers are always

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generated.

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MR. SECCO: Your Honor, we're going to object at this point. We're going beyond the scope of Dr. Engels' expert report.

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THE COURT: Overruled.

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Q. Do you see that, Dr. Engels?

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A. Yes.

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Q. And then it quoted from part of the '200 Patent on the top of the next page here, where it says (as read): Serial numbers in the range of 1 to 1 million, and the second division can assign serial numbers in a range of 3 to 4 million.

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1 Do you see that?

2 A. Yes.

3 Q. (As read): It should be appreciated that the different
4 divisions can convert -- can be communicatively linked to a
5 centralized system that assigns serial numbers, which would
6 ensure that serial numbers are uniquely assigned for object
7 classification.

8 Do you see that?

9 A. Yes.

10 Q. Is that the same type of system that was disclosed in
11 "RFID For Dummies"?

12 A. Describing it, yes.

13 Q. And similar to what else was being used in the industry
14 at the time?

15 A. Yes.

16 Q. But this was -- this patent was dated after "RFID For
17 Dummies" and Kuhno, correct?

18 A. Correct.

19 Q. I'm going to show you a portion of how Avery Dennison
20 described the second patent, the Oracle '545 patent. And on
21 page 970 of Exhibit 3 and highlighted here, it says (as read):
22 In Figure 13-F, the range of, that giant range, is allocated in
23 Figure 13-G, and the range is allocated there and it's another
24 giant range.

25 Do you see that?

1 A. Yes, I do.

2 Q. Is that the same type of decimal ranges that you were
3 talking about earlier?

4 A. Yes, it is.

5 Q. Same concepts?

6 A. Same concepts.

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Q. I'm going to show you what's page 39 of Exhibit 3 where Mr. McAllister is identifying specific differences between the '54 Patent and the recited claims. Do you see that?

A. The '545 Patent.

Q. The '545 Patent. Thank you, Dr. Engels. And here at the bottom, again, it says (as read): Again, there is no hint or suggestion in the '545 Patent that the EPC code ranges can or should be entered in binary or that one should select decimal numbers.

And moving on to the next page (as read): that correspond to significant bits in binary.

Do you see that?

A. Yes.

Q. So is that the same type of distinction that Mr. McAllister is drawing against the '545 Patent?

A. Yes, it is.

C E R T I F I C A T E

I certify, by signing below, that the foregoing is a true and correct transcript of the record, taken by stenographic means, of the proceedings in the above-entitled cause.

A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

DATED this 27th day of July 2023.

/s/ Kellie M. Humiston

Kellie M. Humiston, RMR, CRR
Official Court Reporter
Certificates Expire: 9/2024