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Transcript of PTAB Conference Call

Date: February 26, 2025

Case: Amazon.com, Inc., et al. -v- Nokia Technologies Oy (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of PTAB Conference Call
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1 UNITED STATES PATENT AND TRADEMARK OFFICE 2 BEFORE THE PATENT TRIAL AND APPEAL BOARD 3 -----X 4 AMAZON.COM, INC., AMAZON.COM : 5 SERVICES, LLC, : 6 Petitioner, : 7 v. : CASE NUMBER: 8 NOKIA TECHNOLOGIES OY, : IPR2024-01507 9 Patent Owner. : 10 -----X 11 12 TELEPHONIC HEARING 13 BEFORE THE PATENT AND APPEAL BOARD 14 Administrative Patent Judges: JASON M. REPKO, 15 STEVEN M. AMUNDSON, and JAMESON LEE 16 Wednesday, February 26, 2025 17 9:30 a.m. 18 19 20 21 22 23 Job No.: 573870 24 Pages 1 - 17 25 Reported by: Cynthia Lichtman, CSR No. 14601, CVR	3 1 HONORABLE JUDGE REPKO: So the purpose of 2 this call is to discuss petitioners' request to submit a 3 reply to patent owner's preliminary response. I'll give 4 each party an opportunity to respond to the other 5 party's arguments at least once. I may pause the call 6 momentarily to discuss your arguments with the other 7 judges on the panel. Under Rule 42.108(c), petitioner 8 is required to make a showing of good cause to patent 9 owner's preliminary response. 10 I'm getting some noise on this. If you can 11 mute your microphone if you're not speaking. 12 I was saying that good cause is required to 13 file a reply to patent owner's preliminary response. 14 Your discussion should focus on that 15 standard. This is not an opportunity for petitioner to 16 explain why they simply disagree with the patent owner's 17 arguments, for example. 18 With that, I will begin with petitioners' 19 counsel, Mr. Bass. Please explain why there is good 20 cause of our reply here. 21 MR. PONDER: Sure, Your Honor. This is 22 actually Chris Ponder. I'll be arguing for petitioner 23 this morning. 24 HONORABLE JUDGE REPKO: Okay. Mr. Ponder, go 25 ahead.
2 1 A P P E A R A N C E S 2 3 ON BEHALF OF THE PETITIONERS: 4 CHRIS PONDER, ESQUIRE 5 HARPER BATTS, ESQUIRE 6 SHEPPARD MULLIN RICHTER & HAMPTON LLP 7 501 West Broadway 8 San Diego, California 92101 9 (650) 815-2676 10 11 ON BEHALF OF THE PATENT OWNER: 12 SCOTT HEJNY, ESQUIRE 13 MCKOOL SMITH, ESQUIRE 14 300 Crescent Court 15 Suite 1200 16 Dallas, Texas 75201 17 (214) 978-4241 18 19 20 21 22 23 24 25	4 1 MR. PONDER: Okay. So in response to 2 petitioners' proposed Claim Construction for processing 3 element, which is on page 19 of the petition, the patent 4 owner proposed an implicit construction. And good cause 5 exists to address this implicit construction in the 6 preliminary briefing because petitioner could not have 7 anticipated the patent owner's flawed Claim Construction 8 argument and untrue statements about what we are 9 contending of processing element. 10 With respect to the claim -- to the implicit 11 Claim Construction, if we turn to page 9 of the patent 12 owner preliminary response, the patent owner states, the 13 '693 patent does not anywhere state or suggest that a 14 processing element can take the form of mere data. 15 What the patent owner is trying to avoid 16 saying in their POPR directly, is that they're 17 contending a process element must include code. 18 HONORABLE JUDGE REPKO: Just before we get 19 into the merits of this, I just kind of point out is 20 there anything just at the outset, anything in the 21 District Court, or anything happening external to PTAB, 22 that we would be -- that would bear on this issue? Are 23 you planning to file, for example, like a Markman order 24 or something or Markman construction, something like 25 that --

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5 1 THE REPORTER: Excuse me, your Honor. 2 Because this is telephonic, could you all speak just 3 slightly slower because there is just a little bit of 4 static on the line? 5 HONORABLE JUDGE REPKO: Sure. 6 THE REPORTER: Thank you all. Apologies. 7 HONORABLE JUDGE REPKO: Yeah. So, I guess, 8 is there anything that developed since the filing of the 9 petition in a District Court case that, you know, might 10 necessitate additional briefing here? 11 MR. PONDER: Your Honor, the District Court 12 is -- has not -- we have not gotten a Claim Construction 13 in District Court. So I don't believe there's anything 14 at this point in time. 15 HONORABLE JUDGE REPKO: Okay. Thank you. 16 Go. Proceed. You were talking about the preliminary 17 response, and it seems like, I guess, the preliminary 18 response was responding to the petition's construction, 19 if I understand that correctly. 20 So in the petition, on page 19, it seems like 21 the petition kind of anticipated a Claim Construction 22 issue and provided some preliminary proposed 23 construction the Board should adopt. And then the 24 patent owner's preliminary response, if I understand you 25 correctly, is you're going to discuss how they're	7 1 is this situation different? (Inaudible) argument. 2 MR. PONDER: Sure. I think what's -- we tend 3 to expect somebody to just completely take a 4 diametrically opposed view of the specification. But 5 turning to the second reason, it's because they misquote 6 and mischaracterize what our expert said. 7 They said that our expert said that there is 8 a single plain and ordinary meaning and that our 9 proposed construction run against that. And you can see 10 that on page 19 of the POPR, where they say, and I'm 11 quoting, petitioners' expert explains that the -- and 12 then this is where they do a quote and modified 13 quotations -- well-known use of the processing element 14 term is an element that carries out processing, e.g., a 15 processing mechanism. But that's not what our expert 16 said. If you actually look at what they -- 17 HONORABLE JUDGE REPKO: And that's fine. We 18 can look at the intrinsic record and kind of figure all 19 that out ourselves, you know, back and forth. But why, 20 in particular, you know, is a mischaracterization -- why 21 would that give rise to good cause? 22 MR. PONDER: Well, Your Honor, the Board has 23 previously granted and said it was good cause. For 24 example, if you look at the Intel Corp. versus VLSI 25 Technology case, that's IPR2019-01197, paper 10, there
6 1 responding to that. 2 But it seems like that would be foreseeable, 3 right? I mean, you've already discussed it in the 4 petition, and you've had some briefing on it already. 5 Why do we need additional briefing here? 6 MR. PONDER: Sure, Your Honor. Well, what's 7 not foreseeable is that their proposed construction 8 excludes an example that is in the specification. So 9 that's why it's unanticipated. If you looked at 10 column 6, line 63, for example, the patent specifically 11 gives examples. 12 It says, for example, a PE, that's processing 13 element, may include computational code and/or data 14 (inaudible) -- 15 HONORABLE JUDGE REPKO: I don't really want 16 to kind of discuss the substance. I'm more looking 17 toward foreseeability, not necessarily where they 18 disagree with this or whether you can find some 19 additional evidence. I mean, it seems like something 20 that -- it was already in the intrinsic record. You had 21 an opportunity to discuss this particular example in the 22 petition; did you not? Why is this something new all of 23 a sudden? Why is this unforeseeable, other than the 24 fact that you probably can't foresee every possible 25 argument in patent owner's preliminary response. So how	8 1 the argument -- this is the same argument, I think, that 2 the petitioner -- patent owner is going to make -- is 3 that the argument over Claim Construction was based on 4 the (inaudible) and cannot furnish good cause for filing 5 a reply. And the Board disagreed. 6 So it's not a mischaracterization, first of 7 all. It's just a false statement, falsely attributing 8 that our expert said that. There's a single plain and 9 ordinary meaning. And they're raising an argument that 10 there's some sort of presumption, which we could not 11 foresee that they would argue, that when our expert says 12 there are multiple, you know, at least two meanings for 13 plain and ordinary meaning, that then we had to then 14 show that there was a disavowal or lexicography. 15 So they raised this whole other legal issue 16 that just couldn't be anticipated when we are relying on 17 a portion of the specification giving a specific example 18 of what could mean a processing element. And now 19 they're arguing that we have not met the standard for a 20 disavowal, which we shouldn't even get to because we 21 don't have an agreement on -- that there's a single 22 plain and ordinary meaning and that somehow our proposed 23 construction is going against the plain and ordinary 24 meaning of the term. So this is a prime example of 25 unanticipated argument.

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9 1 HONORABLE JUDGE REPKO: Okay. I have no 2 further questions on that. Is there anything else you'd 3 like to add at this point? 4 MR. PONDER: I'd just note another case in 5 support. So the other case is Nuevolution versus 6 Chemgene Holdings, and that's IPR2017-01598, paper 13. 7 HONORABLE JUDGE REPKO: Thank you for that. 8 All right. Give me a moment to confer with my 9 colleagues before we move on. 10 Okay. Mr. Hejny, would you like to respond? 11 MR. HEJNY: Yes, Your Honor. Patent owner's 12 position is this was entirely foreseeable. Petitioners, 13 themselves, proposed a construction for a processing 14 element in two paragraphs on page 19 of their petition. 15 So that in and of itself, you know, identifies the fact 16 that they proposed this term, and the patent owner is 17 likely not to agree. 18 The patent owner disagreed to the proposed 19 construction and -- at length in its POPR. And the 20 disagreement in the construction of a term on processing 21 element was entirely foreseeable. And the petitioner 22 now wants five additional pages to try and, you know, 23 more wholesomely support an argument that should have 24 been fully briefed in its petition. 25 I think that the Board is fully capable, as	11 1 have any further questions. 2 And, Mr. Ponder, we'll give you an 3 opportunity to respond to what you heard from the patent 4 owner. With respect to the expert declaration, for 5 example, if you just want us to look at a quote in the 6 preliminary response, can't we just simply check if the 7 quote is accurate and make that assessment for 8 ourselves? Why would that give rise to, you know, 9 unforeseeability or good cause? 10 MR. PONDER: Well, Your Honor, if the 11 argument is that the Board is always capable of going 12 and checking everything, that's certainly true. But 13 that also means, why do we even have petitions? Why do 14 we have replies? Why do we have a hearing? We could 15 just submit all the art, and the Board could figure it 16 out. 17 The point of -- this is an adversarial system 18 where we should have an opportunity to point out where 19 these mischaracterizations are so that the Board can go 20 look and check these things. And so that's why I think 21 there is good cause, and I think that's why judicially 22 limited replies are provided in this system. Because 23 I certainly don't think you can be expected that the 24 Board is going to studiously check every quotation in, 25 you know, these 14,000-word petitions in patent owner
10 1 you indicated, of reading through the record of the 2 documents submitted, including expert declarations, and 3 reach its own conclusion. And petitioner himself noted 4 there's one example of the use of the term processing 5 element in the past specification. That's not the only 6 use of processing element in the past specification. 7 And I think that this is a situation where the Board is 8 fully capable of considering the disagreement regarding 9 Claim Construction and reaching a conclusion on its own 10 without further briefing. 11 HONORABLE JUDGE REPKO: What do you make of 12 the argument about mischaracterizations of the record 13 and mischaracterizations of their expert declaration? 14 MR. HEJNY: Well, the citations to the expert 15 declaration are clear, Your Honor. The reference that 16 Mr. Ponder pointed to on page 19 of the POPR cites to 17 Exhibit 1003, paragraph 27, which is the expert 18 declaration submitted by the petitioner. And there is 19 certainly no intent to misrepresent the statements of 20 the expert. But I feel, again, that the Board is fully 21 capable of reviewing that portion of the expert 22 declaration and determining if they disagree with patent 23 owner's characterizations. 24 HONORABLE JUDGE REPKO: Okay. Thank you. 25 Give me a moment while I confer with my colleagues if we	12 1 preliminary responses. 2 So I think limited responses where we're not 3 providing additional evidence and we're merely pointing 4 out these inconsistencies is important. 5 On the declaration point, the citation in the 6 first sentence of paragraph 27 where Dr. Crovella said, 7 the '693 patent does not limit its discussion or scope 8 of processing elements to another well-known use of the 9 term. And that's where they changed in the patent owner 10 preliminary response "another" to "the," making it sound 11 like there was a singular plain and ordinary meaning. 12 So certainly, we think that that should be 13 placed into the record to ensure that the Board has the 14 opportunity to see where they should look closely at the 15 evidence to confirm the accuracy of the parties' 16 arguments. 17 HONORABLE JUDGE REPKO: Okay. Thank you. 18 And I'm just going to confer with my colleagues for 19 moment before we move on, unless you have something else 20 to add, Mr. Ponder? 21 MR. PONDER: Just one other point. And we 22 just heard from the patent owner, that they are now 23 admitting that they are proposing a construction even 24 though they didn't expressly state it. And we contend 25 that it was an implicit construction. So I think that's

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13 1 another reason that we should be able to call them out 2 and have it in the record that they're trying to have it 3 both ways, argue an implicit Claim Construction and not 4 expressly say what a processing element is, which I 5 think is important because it could have an impact on 6 construction in the District Court in the case. 7 And the Federal Circuit certainly wants there 8 to be full development of Claim Construction disputes, 9 if that is the basis for the Board's decision here. 10 Thank you, Your Honor. 11 HONORABLE JUDGE REPKO: All right. So, 12 Mr. Ponder, just one more thing. They did say, though, 13 on page 19 of the preliminary response, and they kind of 14 go through a whole detailed analysis of what they 15 believe the plain and ordinary meaning of processing 16 element is. Is that not -- is that what you think the 17 implicit construction is? I mean, it seems like they're 18 kind of just providing a lot of evidence and argument on 19 that, right? 20 MR. PONDER: Well, it's implicit in that they 21 don't actually say what it is. Because I don't think 22 the patent owner wants to say their true position, which 23 is that a processing element must include code. They 24 certainly don't want to have to make that express 25 because that could pose a problem for their infringement	15 1 requirement that they, you know, determine the proper 2 construction for a District Court litigation from an 3 infringement standpoint. 4 To the extent that there's a construction 5 proposed in the POPR is plain and ordinary meaning. And 6 that's all that is the substance of the briefing in the 7 POPR. 8 Now, this is not a situation where the Board 9 is being asked to play archaeologist. I know counsel 10 indicated that, you know, there are thousands of words 11 and thousands of pages of documents submitted in these 12 filings, but everything is clearly cited. There are 13 explicit citations to expert declarations, past 14 specifications, the case law, and this is not a 15 situation where the Board needs further explanation 16 because it would otherwise have to play archaeologist. 17 The purpose of those filings is to arm the 18 Board with needed information to determine disputes like 19 this where we have a two-paragraph suggestion of a Claim 20 Construction in a petition and a disagreement in a POPR 21 that the Board is fully capable of analyzing for 22 themselves based upon the cited evidence. 23 And that's all I have, Your Honor. 24 HONORABLE JUDGE REPKO: Thank you. I just 25 want to confer with colleagues, if they have any further
14 1 case. 2 So I think that is why it's important to 3 require parties, if they are going to try to defeat an 4 IPR, they should have to expressly say what is they're 5 contending the term means to figure out, well, does that 6 even matter? 7 Thank you, Your Honor. 8 HONORABLE JUDGE REPKO: Okay. 9 MR. PONDER: And they contradicted the spec, 10 and because they're not expressly saying it, it's not as 11 apparent to the Board that they're trying to say it's 12 executable code when we have a statement in the spec 13 that says it can be executable code and/or data. That 14 just is not foreseeable. 15 HONORABLE JUDGE REPKO: Thank you. Let me 16 take a moment to confer with my colleagues. 17 Okay. I'm going to -- Mr. Hejny, I'm going 18 to give you an opportunity to respond. 19 MR. HEJNY: Sure, Your Honor, just a few 20 quick points. 21 Obviously, counsel indicated very early in 22 the call that the Claim Construction process has not 23 concluded in the District Court case. I am not 24 litigation counsel, so I'm not privy to the details of 25 that. But it's certainly not the Board's, you know,	16 1 questions at this point. 2 Okay. Thank you for your patience. We have 3 no further questions at this time. So the Board is 4 going to deny petitioners' request for a reply in this 5 case. And we will issue an order in due course. 6 Petitioner, how soon can you file a 7 transcript for this call? 8 MR. PONDER: Yes. We asked for it to be 9 expedited, so I would expect it would be a week. 10 HONORABLE JUDGE REPKO: Okay. Thank you. 11 Do you have any further questions, 12 Mr. Ponder? 13 MR. PONDER: No, Your Honor. 14 HONORABLE JUDGE REPKO: Thank you. 15 Mr. Hejny, any further questions? 16 MR. HEJNY: No, Your Honor. Thank you for 17 your time this morning. 18 HONORABLE JUDGE REPKO: Thank you all. This 19 call is concluded. 20 (Off the record at 9:53 a.m.) 21 22 23 24 25

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17 1 CERTIFICATE OF REPORTER - NOTARY PUBLIC 2 I, Cynthia Lichtman, the officer before whom 3 the foregoing proceeding was taken, do hereby certify 4 that the foregoing transcript is a true and correct 5 record of the testimony given; that said testimony was 6 taken by me and thereafter reduced to typewriting under 7 my direction; that reading and signing was not 8 requested; and that I am neither counsel for, related 9 to, nor employed by any of the parties to this case and 10 have no interest, financial or otherwise, in its 11 outcome. 12 IN WITNESS WHEREOF, I have hereunto set my 13 hand and affixed my notarial seal this 27th day of 14 February, 2025. 15 16 My Commission Expires: April 7, 2026 17 18 <i>Cynthia Lichtman</i> 19 20 Notary Public in and for 21 the State of California 22 23 24 25	