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UNITED STATES PATENT AND TRADEMARK OFFICE

TELEPHONIC HEARING

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JT INTERNATIONAL S.A.

Petitioner,

v.

FONTEM HOLDINGS 1 B.V.

Patent Owner.

Case IPR2015-01587

Patent No. 8,365,742

Monday, November 16, 2015

Reported by:

Carrie Pederson

CSR No. 4373

Job No. 2186498

Pages 1 - 13

1 APPEARANCES:

2

3 Honorable Josiah Cocks

4 Honorable Rama Elluru

5 Honorable Jo-Anne Kokoski

6 (Via conference call)

7

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9 (Via conference call)

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1 Sacramento, California, Monday, November 16, 2015

2 11:00 a.m. - 11:19 a.m.

3 --o0o--

4 JUDGE COCKS: Good afternoon. This is Judge
5 Cocks. This is a conference call for IPR2015-01587.

6 I have with me on the line also Judge
7 Kokoski.

8 Who else is on the line? We'll start with
9 the petitioner. Do we have counsel for the
10 petitioner?

11 MR. JORDAN: We do. This is George Jordan,
12 Norton Rose Fulbright, representing the petitioner.

13 THE COURT: All right. Thank you,
14 Mr. Jordan.

15 And do we have counsel for the patent owner
16 on the call? Then we will wait a minute or two until
17 they arrive. Thank you.

18 (Recess)

19 JUDGE COCKS: Do we have counsel for the
20 patent owner? All right. We'll continue to wait a
21 minute or two. Thank you.

22 MR. SWENSON: This is Erik Swenson. I'm on
23 the phone on behalf of the petitioner along with
24 George Jordan.

25 THE COURT: All right. Thank you,

1 Mr. Swenson. We are continuing to wait until the
2 counsel for the patent owner arrives.

3 (Recess)

4 JUDGE COCKS: Yes, hello. This is Judge
5 Cocks again. Have we been joined by counsel for the
6 patent owner?

7 (No response)

8 JUDGE COCKS: I see.

9 Mr. Jordan, have you been in contact with
10 opposing counsel?

11 MR. JORDAN: I have. And as a follow-up, I
12 just sent an email now. We had connected last week
13 about the times we would be available.

14 JUDGE COCKS: But you've not heard from them
15 since that time and certainly not since the call was
16 scheduled?

17 MR. JORDAN: That's correct.

18 JUDGE COCKS: Okay. Well, we will continue
19 to wait. Hopefully they will arrive. Otherwise, we
20 will take some other action. Thank you.

21 MR. JORDAN: Okay.

22 (Recess)

23 MR. SWENSON: This is Erik Swenson and we
24 can confirm that it was indeed Mr. Hamilton that
25 ordered the court reporter because he'd asked us

1 about it, so he said he was going to do that.

2 JUDGE COCKS: Okay. I just wanted to make
3 sure he was aware of this call, so he is. We will
4 again continue to wait a few more minutes, and if he
5 does not arrive, we will figure out what to do.
6 Thank you.

7 (Recess)

8 JUDGE COCKS: This is Judge Cocks again.
9 Mr. Jordan, I take it you have not heard
10 back from opposing counsel.

11 MR. JORDAN: I have not.

12 JUDGE COCKS: Okay. I'm going to briefly
13 see if board personnel can contact the patent owner's
14 counsel in this case, and so if we would wait just a
15 few minutes, see if we can accomplish that.
16 Otherwise, we will, I guess, adjourn this call and
17 schedule for some other time, so --

18 MR. SWENSON: Do you mind if I say something
19 real quick, your Honor?

20 JUDGE COCKS: No. I would rather only hear
21 from you on any substantive issue or really any issue
22 if the other side has representation; so, no, I don't
23 want to hear anything from you right now other than
24 answering any question I ask. Thank you.

25 (Recess)

1 MR. HAMILTON: Hello. This is Joe Hamilton.
2 Are we still on the call?

3 JUDGE COCKS: Hello, Mr. Hamilton. This is
4 Judge Cocks.

5 MR. HAMILTON: I apologize for being late,
6 Judge.

7 JUDGE COCKS: Okay. Thank you.

8 So, again, this is a call for IPR2015-01587.
9 This is Judge Cocks, and I have with me Judge Elluru
10 and Judge Kokoski.

11 Why don't we do a roll call just for
12 posterity. Start with petitioner.

13 MR. SWENSON: This is Erik Swenson and
14 George Jordan for petitioner.

15 JUDGE COCKS: And counsel for the patent
16 owner?

17 MR. HAMILTON: Joseph Hamilton from Perkins
18 Coie for Patent Owner Fontem.

19 JUDGE COCKS: All right. Thank you.

20 Mr. Hamilton, I believe you had arranged for
21 a court reporter who is also on the line.

22 MR. HAMILTON: Yes.

23 JUDGE COCKS: Yes.

24 Ms. Pederson, do you need anything else?

25 (Discussion off the record)

1 JUDGE COCKS: Okay. Thank you.

2 Let's begin this call. There was a request
3 from petitioner with respect to seeking additional
4 briefing. I understand that you maybe have made this
5 request of other panels with the same party. Why
6 don't you fill this panel in on the nature of the
7 request.

8 MR. SWENSON: Yeah. This is Erik Swenson on
9 behalf of petitioner.

10 And what's happened here is that Fontem, in
11 three different IPR's the petitioner filed, has
12 raised privity issues in their response, and then the
13 other two --

14 JUDGE COCKS: Well, let me just -- you said
15 petitioner, but you mean the patent owner; is that
16 correct?

17 MR. SWENSON: Yeah. The patent owner, in
18 his response, correct, raised privity issues which
19 we, the petitioner, have not been able to address
20 before, and we were simply requesting an additional
21 five-page brief solely related to that, you know,
22 privity issue with no new evidence. We have done the
23 same thing, as you noted, in two of the other three
24 IPR's, this being the third of the three, and have
25 filed a brief, and in the second one, the request was

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1 also granted.

2 And I think it's unopposed, right, Joe?

3 JUDGE COCKS: Well, that's one nature of
4 this call.

5 Mr. Hamilton, do we understand that
6 correctly? You do not oppose the request?

7 MR. HAMILTON: No, we do not.

8 JUDGE COCKS: I see. Okay. Thank you.
9 There's not much more I have for the call. I simply
10 wanted to verify the nature of -- there was a request
11 and it is unopposed. We will send out -- I'm going
12 to briefly confer with the panel offline, but we
13 would send out an order responsive to -- giving a
14 response to the request with this call in mind.

15 Mr. Hamilton, given that you have requested
16 a court reporter, would you please file the
17 transcript of this call, when it becomes available,
18 using your next available exhibit?

19 MR. HAMILTON: I will do that.

20 JUDGE COCKS: Okay. Since we have all the
21 parties on the call at this time, including the
22 panel, is there any issue that either side has, or
23 was that the only issue of concern today?

24 MR. HAMILTON: This is Joe Hamilton again.

25 One thing I'd like to point out, and we did

1 on the other panels as well --

2 JUDGE COCKS: Okay.

3 MR. HAMILTON: -- depending on the
4 petitioner's response and what the board decides to
5 do, I just want to let you know that we may intend to
6 seek discovery on the issue, but we can address that
7 if the IPR is instituted.

8 JUDGE COCKS: I see. And when you say "seek
9 discovery on the issue," what is the issue that
10 you're referring to?

11 MR. HAMILTON: So the privity issue that
12 petitioners want to respond to is petitioner has
13 purchased a company that has previously been sued
14 with respect to the patent at issue, and the one-year
15 period to file an IPR had passed for that entity that
16 the petitioner purchased, and I would assume that
17 what petitioner's going to argue is they were not in
18 privity when that agreement was made to purchase the
19 entity and was not directing or doing other things to
20 cause the -- with respect to their filing an IPR on
21 this patent, and so if the IPR is instituted, we
22 would most likely seek discovery to figure out what
23 exactly was communicated between the petitioner in
24 this case and the entity that they purchased that
25 would have been barred from filing for an IPR.

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1 JUDGE COCKS: I see. And you're not making
2 that request now, so --

3 MR. HAMILTON: No. I just wanted to let the
4 panel know.

5 JUDGE COCKS: Thank you. We will table that
6 determination. In the event that you do wish to seek
7 that additional discovery, you will need to schedule
8 a call with opposing counsel and the board, and we
9 will talk about it then. So we're not making any
10 determination about that issue now. Is that
11 understood?

12 MR. HAMILTON: Yes. Thank you.

13 JUDGE COCKS: Okay. Thank you,
14 Mr. Hamilton.

15 All right. Mr. Jordan, do you have anything
16 else for this call?

17 MR. JORDAN: I do not.

18 JUDGE COCKS: Okay. The panel has nothing
19 further. Thank you for your time today, and we are
20 adjourned. Thank you.

21 MR. HAMILTON: Again, I apologize for being
22 late. Sorry about that.

23 JUDGE COCKS: Thank you. The panel accepts
24 your apology, and it seems to have worked out, so
25 thank you.

1 MR. HAMILTON: All right. Great.

2 THE REPORTER: Mr. Jordan, do you want a
3 copy?

4 MR. JORDAN: Probably not, but we'll discuss
5 and get back to you.

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REPORTER'S CERTIFICATE

I certify that the foregoing proceedings in the within-entitled cause were reported at the time and place therein named; that said proceedings were reported by me, a duly Certified Shorthand Reporter of the State of California, and were thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said cause of action, nor in any way interested in the outcome of the cause named in said cause of action.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of December, 2015.

A handwritten signature in cursive script that reads "Carrie Pederson". The signature is written in dark ink and is positioned above a horizontal line.

CARRIE PEDERSON

Certified Shorthand Reporter

State of California

Certificate No. 4373

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