

Facebook, Twitter, LinkedIn's Patent Win Gets Fed. Circ. Nod

By **Kat Greene**

Law360, Los Angeles (May 17, 2016, 8:58 PM EDT) -- Facebook, Twitter and LinkedIn beat a software patent holder's Federal Circuit challenge to a Patent Trial and Appeal Board decision nixing a search engine patent at the heart of an infringement suit against the three social media leaders, according to a short appellate order Tuesday.

The Federal Circuit affirmed PTAB's finding that Software Rights Archive's patent for technology running a search engine system was obvious in light of previously published academic research in a cursory order that didn't elaborate on the panel's reasoning, court records show.

SRA had earlier this month told the three-judge panel that the research held up by Facebook Inc., Twitter Inc. and LinkedIn Corp. in the case — which includes three patents, only one of which was ruled on in Tuesday's order — actually discouraged the type of system described by the patent, court records show.

The court's ruling applies to U.S. Patent Number 5,544,352, though the appellate panel heard arguments on all three patents for the system during oral arguments on May 4, according to the dockets in the cases. No rulings had yet been posted for U.S. Patent Numbers 5,822,494 and 6,233,571 late Tuesday afternoon, court records show.

The trio of patents, referred to in the suit as the "Egger patents," after Daniel Egger, are directed to using indirect citation relationships between records, court records show. For example, if Document A and Document B both cite to Document C, the three would be grouped together to improve search and retrieval, as the social media companies explained in their filings.

Egger was a law student when, in 1993, he allegedly discovered the value of these relationships for search, according to filings in the case.

SRA asserted the patents against the social media giants in a July 2012 infringement suit in Northern California federal court. In response to the lawsuit, Facebook, Twitter and LinkedIn petitioned PTAB to review the validity of the claims, proffering prior art references that allegedly rendered the patents-in-suit obvious, court records show.

In February 2015, the board rejected certain references, but ultimately found the patents obvious in view of a set of 1983 computer science research papers by Columbia University doctoral candidate Edward A. Fox, according to filings in the case.

On appeal of the inter partes review, SRA argued that, after numerous experiments involving database search engines, the research papers established that analyzing indirect relationships between objects — when one object is connected to another by a chain of citations — would lead to “very substantial degradation” in the functionality.

Basically, SRA argued, the Fox experiments yielded highly unpredictable and “harmful” results in a method that’s empirically not shown to work for the intended purpose of computerized search.

Facebook, Twitter and LinkedIn shot back that SRA was cherry-picking a few quotes from the Fox papers to support its argument, and that an “enormous” amount of evidence proved SRA wrong, saying that researchers in information systems have understood that indirect citation relationships can help in search functions since at least the 1960s, according to the social media companies’ brief.

A spokeswoman for Facebook declined to comment. Representatives for the other parties didn’t immediately respond to requests for comment on Tuesday.

U.S. Circuit Judges Pauline Newman, Haldane Robert Mayer and Raymond T. Chen sat on the panel that reached Tuesday’s decision.

The patents in suit are U.S. Patent Nos. 5,544,352, 5,822,494 and 6,233,571.

SRA is represented by Martin M. Zoltick and Soumya Panda of Rothwell Figg Ernst & Manbeck PC and Victor G. Hardy and Minghui Yang of DiNovo Price Ellwanger & Hardy LLP.

Facebook is represented by Heidi L. Keefe, Lowell D. Mead, Carrie J. Richey and Mark R. Weinstein of Cooley LLP.

LinkedIn and Twitter are represented by David Silbert, Sharif E. Jacob and Philip J. Tassin of Kecker & Van Nest LLP.

The cases are Software Rights Archive LLC v. Facebook Inc. et al., case numbers 15-1648, 15-1649, and 15-1652, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Jimmy Hoover. Editing by Emily Kokoll.