

Facebook, WhatsApp Beat Messaging Patent In AIA Review

By **Kevin Penton**

Law360, New York (August 18, 2016, 9:12 PM ET) -- The Patent Trial and Appeal Board on Wednesday invalidated the asserted claims of an electronic messaging patent challenged by WhatsApp and Facebook in an America Invents Act inter partes review, finding the claims to be obvious.

PTAB agreed with WhatsApp Inc. and its parent company, Facebook Inc., that a combination of a patent, a publication and a patent application that preceded TriPlay Inc.'s U.S. Patent Number 8,332,475 B2 would have made the asserted claims obvious for an ordinarily skilled artisan, according to the board's final written decision.

"We are persuaded that the information presented in the petition establishes, by a preponderance of the evidence, that claims 1, 6, 9, 12, 17, 18, 23, 28, 37, 39, 40, 41 and 42 are unpatentable," the decision reads.

TriPlay filed a complaint against WhatsApp in the District of Delaware in October 2013, alleging that the company's messaging service — which can allow messages typed into different types of platforms, such as Android, Blackberry or iPhone, to communicate with each other — infringes the '475 patent, which covers a method for converting or adapting the layouts and formats of messages to be able to be sent between two different devices, according to the complaint.

TriPlay claims that it sent a letter to WhatsApp in April 2013 informing the company of the existence of the '475 patent, that TriPlay contended that WhatsApp infringed it, and an offer for WhatsApp to enter into a licensing deal, according to the complaint. WhatsApp allegedly did not respond.

WhatsApp and Facebook — which acquired its co-petitioner in the instant case in 2014 — filed a petition with PTAB in February 2015 for an inter partes review of the '475 patent's asserted claims, according to Wednesday's decision.

The case in the District of Delaware is in the claim construction phase, according to court documents.

TriPlay alleges that WhatsApp directly and willfully infringes the '475 patent, according to the complaint. The company is seeking an unspecified amount of damages, according to the filing.

Counsel for the parties could not be reached for comment on Thursday.

The patent-at-issue is U.S. Patent Number 8,332,475 B2.

WhatsApp and Facebook are represented by Mark Weinstein, Andrew Mace, Heidi Keefe and Reuben Chen of Cooley LLP.

TriPlay is represented by James Ryerson, Lennie Bersh and Barry Schindler of Greenberg Traurig LLP and Jeremy Monaldo of Fish & Richardson PC.

The case is WhatsApp Inc. et al. v. TriPlay Inc., case number IPR2015-00740, before the Patent Trial and Appeal Board.

--Editing by Bruce Goldman.

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