

## Fed. Circ. Affirms Google, Microsoft Online Ad PTAB Win

By Kurt Orzeck

*Law360, Los Angeles (August 15, 2016, 8:14 PM ET)* -- The Federal Circuit on Friday refused to revive Tennessee computer company BE Technology LLC's patent that covers targeted advertising and is at the center of the company's infringement suits against Google, Facebook, Microsoft and Sony, ruling the Patent Trial and Appeal Board properly construed its language.

The Federal Circuit denied BE's argument that the board was too broad in its interpretation of the U.S. Patent No. 6,771,290 terminology, after Microsoft argued that the patent specification had examples that wouldn't fall within BE's proposed construction.

BE has challenged a series of decisions by the PTAB invalidating the asserted patents following several America Invents Act reviews lodged by the tech giants. The company claimed the board erred in its construction of the term "region" in the '290 patent because it wrongly relied on a nontechnical dictionary and Microsoft expert.

The Federal Circuit on Friday disagreed, siding with the PTAB and Microsoft.

"Far from BE's argument to the contrary, the board specifically considered the written description of the '290 patent and determined that 'region' was not defined," the appeals court ruled.

BE launched a slew of suits in late 2012 against companies that also include Samsung and Match.com.

The '290 patent involves automatically upgraded software applications that adjust advertisements based on personal Internet behavior, as well as traits such as age and gender.

The patent relates to user interfaces — the graphic displays through which people and computers interact — that provide individually tailored Internet advertising. Instead of broad appeals to all consumers, the patents help deliver banner ads based on personal activity, according to court documents.

In April of last year, the PTAB upheld America Invents Act challenges by Google, Microsoft and others to the '290 patent.

BE argued on appeal to the Federal Circuit that the PTAB wrongly interpreted "region" to mean "area," resulting in a definition that was too broad. But the appeals court on Friday shot down that argument.

“We have rejected the notion that claim terms are limited to the embodiments disclosed in the specification, absent redefinition or disclaimer,” the decision said. “BE does not argue that the ‘290 patent contains any such redefinition or disclaimer.”

The Federal Circuit ruled that BE’s construction is based on its own characterization, not any language that was in the patent. The company also “ignores” parts of the patent specification that are broader than BE’s proposed construction, according to the opinion.

The appeals court also ruled that the PTAB didn’t err in finding that prior art anticipated claims of the ‘290 patent, ruling that the art in question showed how user home pages can contain links to specific files.

Representatives for BE, Google and the USPTO declined comment. A representative for Microsoft declined immediate comment. Representatives for Facebook, Microsoft, Sony, Samsung, Match.com and People Media didn’t immediately respond to requests for comment on Monday.

The patent-in-issue is U.S. Patent No. 6,771,290.

Circuit Judges Alan D. Lourie, Raymond T. Chen and Kara F. Stoll sat on the panel for the Federal Circuit.

BE is represented by Robert E. Freitas and Daniel J. Weinberg of Freitas Angell & Weinberg LLP.

Google is represented by Brian Rosenthal, Clinton Brannon, Paul W. Hughes and Andrew J. Pincus of Mayer Brown LLP.

Facebook is represented by Heidi Lyn Keefe, Orion Armon, Peter Sauer and Mark R. Weinstein of Cooley LLP.

Microsoft is represented by Jeffrey Paul Kushan, Scott Border, Ryan C. Morris and Samuel Dillon of Sidley Austin LLP.

Sony is represented by John Flock and Paul T. Qualey of Kenyon & Kenyon LLP.

Samsung is represented by Joshua Lee Raskin of Greenberg Traurig LLP.

Match.com and People Media are represented by Jason A. Engel and Kacy Dicke of K&L Gates LLP.

The USPTO is represented by in-house counsel Thomas W. Krause, Kakoli Caprihan, Michael S. Forman and Scott Weindenfeller.

The cases are BE Technology LLC v. Google Inc. et al., BE Technology LLC v. Microsoft Corp., BE Technology LLC v. Facebook Inc., BE Technology LLC v. Sony Mobile Communications, BE Technology LLC v. Google Inc. et al., BE Technology LLC v. Microsoft Corp. and BE Technology LLC v. Samsung Electronics America, case numbers 15-1827, 15-1828, 15-1829, 15-1882, 15-1883, 15-1887, 15-1888, in the U.S. Court of Appeals for the Federal Circuit.

—Additional reporting by Ryan Davis, Vin Gurrieri and Jimmy Hoover. Editing by Philip Shea.

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