

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CUPP COMPUTING AS v. TREND MICRO INC.

No. 2020-2262, 2020-2263, 2020-2264, United States Court of Appeals for the Federal Circuit (November 16, 2022)

SUMMARY

The Federal Circuit affirmed PTAB decisions holding claims of three mobile security patents unpatentable as obvious. The court upheld the Board's claim construction that a "security system processor" need not be remote from the mobile device processor, as the specification contemplates an embedded embodiment. It also held that a patentee's disclaimer during an IPR proceeding is not binding on the Board in that same proceeding, and that substantial evidence supported the obviousness finding for the "security agent" limitation based on the Gordon prior art.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Dyk; Taranto; Stark
JURISDICTION	Federal
DECIDED	November 16, 2022
DOCKET	2020-2262, 2020-2263, 2020-2264
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. IPR2019-00764, IPR2019-00765, IPR2019-00767.
STANDARD OF REVIEW	Legal conclusions de novo, factual findings for substantial evidence.
PRECEDENTIAL VALUE	Published
PARTIES	CUPP Computing AS v. Trend Micro Inc.

TOPICS

[patent law](#)[administrative law](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

[Patent law](#)[Intellectual property](#)

QUESTIONS PRESENTED

1. Whether the Board erred in construing the claim term 'security system processor' as not requiring that the processor be remote from the mobile device processor.
2. Whether substantial evidence supports the Board's finding that the '595 patent's 'security agent' limitation was obvious over the Gordon prior art reference.

HOLDINGS

1. The term 'security system processor' does not require remoteness; it only requires that the processor be different from the mobile device processor.
2. Substantial evidence supports the Board's finding that Gordon's host agent performs security services after wake-up, rendering the security agent limitation obvious.

KEY QUOTATIONS

“The fact that the security system processor is 'different' than the mobile device processor does not suggest that the two processors are remote from one another.” (6)

“The specification explicitly recognizes as much. In one 'preferred embodiment[]' of the invention, 'the mobile security system . . . may be incorporated within the mobile device.'” (7)

“We hold only that a disclaimer is not binding on the PTO in the very IPR proceeding in which it is made, just as a disclaimer in a district court proceeding would not bind the district court in that proceeding.” (11)

“Substantial evidence supports the Board's finding that Gordon's host agent performs security services.” (14)

FACTUAL BACKGROUND

The patents at issue relate to mobile security systems that wake a mobile device from a power-saving mode to perform security operations. The challenged claims were found obvious over two prior art references: Gordon and Joseph. Two issues were raised on appeal: (1) claim construction of the term 'security system processor' and (2) whether substantial evidence supported the Board's finding that the 'security agent' limitation in the '595 patent was obvious.

PROCEDURAL HISTORY

Trend Micro petitioned for inter partes review of claims in three patents. The Board found all challenged claims obvious over prior art. CUPP appealed. After the Supreme Court's decision in *Arthrex*, the case was remanded for CUPP to seek rehearing from the Director, which was denied. CUPP renewed its appeal.

DISPOSITION

affirmed

CASES CITED

- *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc)

- Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576 (Fed. Cir. 1996)
- Accent Packaging, Inc. v. Leggett & Platt, Inc., 707 F.3d 1318 (Fed. Cir. 2013)
- Trustees of Columbia Univ. v. Symantec Corp., 811 F.3d 1359 (Fed. Cir. 2016)
- Mass. Inst. of Tech. v. Shire Pharms., Inc., 839 F.3d 1111 (Fed. Cir. 2016)
- Avid Tech., Inc. v. Harmonic, Inc., 812 F.3d 1040 (Fed. Cir. 2016)
- Aylus Networks, Inc. v. Apple Inc., 856 F.3d 1353 (Fed. Cir. 2017)
- VirnetX Inc. v. Mangrove Partners Master Fund, Ltd., 778 F. App'x 897 (Fed. Cir. 2019)
- Cuozzo Speed Techs., LLC v. Lee, 579 U.S. 261 (2016)
- Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC, 138 S. Ct. 1365 (2018)
- SAS Inst., Inc. v. Iancu, 138 S. Ct. 1348 (2018)
- Marine Polymer Techs., Inc. v. HemCon, Inc., 672 F.3d 1350 (Fed. Cir. 2012) (en banc)
- Uniloc 2017 LLC v. Hulu, LLC, 966 F.3d 1295 (Fed. Cir. 2020)
- Becton, Dickinson & Co. v. Baxter Corp. Englewood, 998 F.3d 1337 (Fed. Cir. 2021)
- Polaris Innovations Ltd. v. Brent, 48 F.4th 1365 (Fed. Cir. 2022)
- Arthrex, Inc. v. Smith & Nephew, Inc., 35 F.4th 1328 (Fed. Cir. 2022)
- United States v. Arthrex, Inc., United States v. Arthrex, Inc., 141 S. Ct. 1970 (2021)
- U.S. Patent No. 7,818,803 (Gordon)
- U.S. Patent App. Pub. No. 2010/0218012 A1 (Joseph)
- U.S. Patent App. Pub. No. 2010/0195833 A1 (Priestley)