

No earlier conception date shown because no corroborating evidence of dates in purported conception documents

OCTOBER 26, 2020

Fidelity Information Services LLC, v. Groove Digital, Inc., IPR2019-00193 (Apr. 30, 2020).

Before: Moore, Beamer, and Margolies.

Fidelity filed a petition for *inter partes* review challenging multiple claims of a patent owned by Groove Digital. Groove Digital attempted to swear behind the asserted prior art references with an earlier conception date and diligent reduction to practice.

Groove Digital relied on a handful of documents and emails in an attempt to corroborate the inventor's testimony regarding the conception date. Fidelity challenged the dates Groove Digital attributed to the documents because they were not independently corroborated.

The PTAB agreed that there was no evidence in the record that someone other than the inventor saw these conception documents on or near the attributed dates and the PTAB would not accord evidentiary weight to the dates inserted in the footers by the inventor or metadata attached to the documents.

The PTAB found that the emails did not corroborate the dates on the conception documents because they did not indicate what was attached or what the attachment disclosed.

In addition, the PTAB found that the conception documents did not disclose every element of the claimed invention. The PTAB found the patent owner's attorney argument and uncorroborated inventor testimony regarding conception of these claim requirements to be unpersuasive.

Fidelity also argued that the patent owner failed to establish reasonably continuous diligence during the critical period and had numerous gaps in the diligence narrative. Fidelity also argued that there were no documents or testimony corroborating alleged activities during the diligence period such as dates, what was discussed or provided, and whether they related to the claimed invention.

The PTAB agreed that there were gaps in diligence during the critical period. The PTAB also took issue with the failure of the evidence to sufficiently describe the details of "what was done, when it was done, and who did it, to establish corroborated reasonably continuous diligence towards actual reduction to practice of the claimed inventions."

For these reasons, the PTAB determined that the preponderance of the evidence did not support an earlier invention date prior to the filing dates of the asserted prior art.

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