

# **MotionPoint Corporation v. TransPerfect Global: Final Written Decision Finding All Challenged Claims Unpatentable**

## **CBM2014-00060**

Article By:

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*Takeaway: A declaration submitted to the PTO by or on behalf of a patent owner is not hearsay because the submission evidences the patent owner's belief that the statements contained within the declaration were true.*

In its [Final Written Decision](#), the Board found that all of the challenged claims (claims 1-28) of the '022 Patent are unpatentable. The '022 Patent is directed to a method of ordering a translation of an electronic document using a “one-click” or “single-click” translation feature.

The Board began with claim construction, noting that claims are given their broadest reasonable interpretation in light of the specification of the patent. The Board noted that Patent Owner requested a modification of the construction of “said hyperlink” from the Decision to Institute. The Board reviewed the testimony of each party’s experts, as well as the specification, prosecution history, and an office action from a related reexamination. Patent Owner argued that the Board’s construction of “said hyperlink” is too narrow because it unduly limits the meaning of the claims to one embodiment of the specification. The Board was not persuaded by this argument. Therefore, the Board maintained its construction of “said hyperlink” from the Decision to Institute.

The Board then reviewed Patent Owner’s Motion to Exclude Exhibits 1013 (Declaration submitted in connection with a reexamination of the '022 Patent) and 1014 (one of the references at issue in the re-examination request). Patent Owner argued that Exhibit 1013 should be excluded because it is cumulative and not relevant to the instant proceeding, it introduces significant risk that outweighs any probative value, and it is inadmissible hearsay. The Board was not persuaded by these arguments, noting that Exhibit 1013 is relevant to claim construction, there is no risk of undue prejudice, and it is not hearsay because it was submitted by Patent Owner to the PTO. Regarding Exhibit 1014, Patent Owner argued it should be excluded because it is not pertinent to the issues in the proceeding and because it confuses the issues. Again, the Board was not persuaded by these arguments.

Next, the Board reviewed whether the challenged claims lack written description support for the phrase providing translation of said further electronic communications “when said hyperlink is activated” because the '022 Patent fails to disclose providing translation of additional electronic communications when a hyperlink in the original electronic communication is activated. The Board

was not persuaded by Patent Owner's arguments to the contrary. Patent Owner's first argument was based on its erroneous claim construction, and, therefore, failed. Patent Owner's second argument was that a person of ordinary skill would have understood, from reading the specification, how to provide the same functionality required by the claims. The Board did not agree, citing the specification as well as finding that Patent Owner's expert's testimony as to how the invention could work was not enough to show whether one of ordinary skill in the art would have understood from the '022 Patent disclosure that the inventors had possession of the claims as of the filing date.

The Board noted that Patent Owner had filed a contingent Motion to Amend if the claims were found indefinite. Because the Board did not reach the indefiniteness challenge, the Motion was denied as moot.

***MotionPoint Corporation v. TransPerfect Global, Inc.*, CBM2014-00060**

**Paper 41: Final Written Decision**

**Dated: July 15, 2015**

**Patent 6,857,022 B1**

**Before: Thomas L. Giannetti, Bart A. Gerstenblith, and David C. McKone**

**Written by: Gerstenblith**

**Related Proceedings: *TransPerfect Global, Inc. v. MotionPoint Corp.*, No. 4:10-cv-02590 (N.D. Cal.); *TransPerfect Global, Inc. v. MotionPoint Corp.*, No. 3:11-cv-04760 (N.D. Cal.);**

**Reexamination Control No. 95/002,372; CBM2014-00066; CBM2014-00067**

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