
**SEATTLE INTELLECTUAL PROPERTY
AMERICAN INN OF COURT**



**ORAL ARGUMENT:
OPENING, ANSWERING QUESTIONS, CONCLUDING
MAY 21, 2015**

TIPS FOR THE ARGUMENT

1. Briefs win appeals. Arguments lose appeals.
2. Know the court's procedures. Understand the warning lights. Don't state your name if the presiding judge has called you forward by name.
3. Make eye contact with each judge.
4. Be (or seem) happy, relaxed and professional.
5. Have record citations ready to promptly cite to panel.

TIPS FOR THE ARGUMENT

1. Don't rush. Pause often to implicitly invite questions.
2. Stop when judge starts to speak. Listen. Don't interrupt.
3. Answer the question. Don't treat it as interruption. Don't say you'll get to it later.
4. Don't try to cut off follow-up question. Don't plow on with your agenda.
5. Don't patronize the judge; e.g.: "that's a good question."

TIPS FOR OPENING THE ARGUMENT

1. Only part to memorize.
2. Every word counts.
3. Make strongest point, or briefly outline your argument.
4. Structure so clear no matter where stopped.
5. Don't invite immediate question by making unclear or dubious point.
6. Be prepared to abandon planned opening in response to panel's questions (or demeanor) during adversary's argument.

ARGUMENT OPENING



- Mr. Perry.
- Mr. Chief Justice and may it please the Court. That path between Scylla and Charybdis was charted in *Bilski* and *Mayo*. *Bilski* holds that a fundamental economic principle is an abstract idea, and *Mayo* holds that running such a principle on a computer is quote “not a patentable application of that principle.” Those two propositions are sufficient to dispose of this case. If *Bilski* and *Mayo* stand, Alice’s patents fail. Therefore Mr. Phillips and his friends are asking this Court to change the standard even though this Court has had three unanimous decisions in the last four terms establishing what the Court called a myriad, a well established standard.

ARGUMENT OPENING



- Good morning your honor. My name is ...
- Good morning.
- My name is ___. I'm here on behalf of ___. I'm here with my co-counsel Mr. ___ and may it please the court. We're here because searching means searching. As Mr. ___ pointed out we're talking about the language of claim 22, claim 22 which is on the record A85, is we're talking about the searching for data with the same digital digest...

ARGUMENT OPENING



14-35393 Microsoft Corporation v. Motorola Mobility, Inc.

April 8, 2015
Courtroom 1, 3rd Floor
San Francisco, California
Before: THOMAS, WALLACE, BERZON



ANSWERING QUESTIONS



- ... that depicts similar baskets with tapered side walls. Now during ...
- the decision as to whether it's a single primary reference, that's a fact question?
- That's correct.
- so substantial evidence is our review standard?
- That is correct. [pause] And in this case the Board and the Examiner set forth several design characteristics ...
- How are we supposed to review that? For example, take ...

ANSWERING QUESTIONS



- Can you show me in the patent where that, where it says exactly what you just said to me?
- I'll, I'll try to direct ...
- Data is used to do with a purchase, has nothing to do with a user. So ...
- Well, so there are a couple of places
- Can you, can you, yeh in the patent?
- Yeh, where's the patent say that it has to ...
- Take the '940 patent for example. Tell me in the '940 patent where purchase type data will exclude this quarterly information.
- [long pause looking for document] Right and, and this was undisputed ...
- I'm asking you to look at the patent sir ...

ANSWERING QUESTIONS



- What I'm asking you to do sir is to come back to column 19 and explain to me why the user data is exempt, is excluded from the definition of purchase data.
- Well I would come back to the stipulation ...
- I am asking you to do that
- Yes your honor. I would point to the, to the stipulation of the parties ...
- I don't want to talk about the stipulation. This is assumed that I'm trying to do this as a judge trying to decide what claim construction is and I want to know if there's a definition of purchase data in the patent that either includes or excludes user data.

ARGUMENT CONCLUSION



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