GOOGLE LLC v. VALTRUS INNOVATIONS LTD., Appeal No. 2024-1945 (Fed. Cir. October 19, 2026). Before Hughes, Cunningham, and Burroughs (D. Mass, by designation). Appealed from the Patent Trial and Appeal Board.

Background:

Valtrus owns a patent directed to merging search-result lists from multiple search engines. Google petitioned for IPR, asserting obviousness grounds relying on Bushee, which was filed approximately five weeks before Valtrus's patent application. The PTAB found that Valtrus established earlier conception and reasonably continuous diligence until filing and therefore held that Bushee was not prior art under pre-AIA § 102(e). Google appealed.

Issues/Holdings:

(1) Did the PTAB err in finding that the inventor's testimony concerning conception was sufficiently corroborated? No, affirmed.
(2) Did substantial evidence support the PTAB's finding that the inventor exercised reasonably continuous diligence until constructive reduction to practice? Yes, affirmed.

Discussion:

Under pre-AIA § 102(e), a patent owner may antedate a reference by showing earlier conception and reasonably continuous diligence until reduction to practice. Inventor testimony offered to establish conception must be independently corroborated, with sufficiency evaluated under the "rule of reason."

Google argued that Valtrus's disclosure documents and metadata could not independently corroborate the inventor's testimony because they were under his control. The Federal Circuit disagreed. Assuming without deciding that the documents were authentic, the Federal Circuit found that the Microsoft Word metadata was automatically generated rather than authored by the inventor and could therefore provide independent corroboration. Because the metadata's authorship and timestamps were consistent with the asserted conception date, substantial evidence supported the PTAB's corroboration finding.

The Federal Circuit also affirmed the PTAB's diligence finding. Google challenged an approximately three-week period between the last inventor's signature and filing of the application. The Federal Circuit explained that diligence need only be reasonably continuous and not perfectly continuous, which means it does not require activity every day. The record accounted for the period through evidence that the inventor's physical signature had to be mailed from Canada to a California law firm and that the application was being finalized for filing. Accordingly, substantial evidence supported the PTAB's determination that Valtrus exercised reasonably continuous diligence and antedated Bushee.

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