

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.
SAP AMERICA, INC.,

Petitioners,

v.

CLOUDING IP, LLC

Patent Owner.

Case IPR2013-00586

Case IPR2014-00306

Patent 6,738,799

PETITIONERS' CONSOLIDATED REPLY

TO PATENT OWNER'S RESPONSE

I. Introduction

The Patent Owner's Response presents arguments that this Board has now rejected twice and that even its own expert has refuted. For these reasons, and others described below, the Board should cancel all contested claims in this proceeding.

Petitioners Unified Patents, Inc. ("Unified") and SAP America, Inc. ("SAP") set forth several unpatentability grounds in their Petitions,¹ and Clouding IP, LLC ("Clouding" or "Patent Owner") responded in its Preliminary Response. The Board instituted trial, rejecting Clouding's arguments. Clouding's Response simply restates, usually verbatim, the same arguments the Board already rejected *twice*: once in this proceeding and once in IPR2013-00073. Nevertheless, the Patent Owner attempts to bolster its arguments with the declaration of Dr. Prasant Mohapatra. But, under cross-examination, Dr. Mohapatra clearly and absolutely refuted nearly all of Clouding's positions, even contradicting his own declaration. As such, the Board should find claims 1, 5-10, 12, 16-21, 23, 24, 30, 31, 37 and 42 unpatentable based upon the instituted grounds.

¹ For simplicity, and because the petitions filed by Unified and SAP are substantially the same, only the Petition filed by Unified will be hereinafter referenced.

II. Claims 37 and 42 Are Anticipated by Balcha

Clouding makes a single patentability argument over Balcha for claims 37 and 42 that both the Board rejected and Clouding's own expert rejected under cross-examination. Clouding argues that Balcha does not disclose "determining whether a second computer has a latest version of a file" and "generating an update[] if the second computer does not have a latest version of the file" because "*Balcha* only discloses detecting a modification without regard to whether the modified file is, indeed, the latest version of the file." Response, at 7. In particular, Clouding argues that, because the server computer detects a modification of a file residing locally (and not on the client computer), the server cannot know whether the client's version of the file had been independently modified previously, in which case the client would have the latest version of the file. *Id.* Patent Owner previously made this argument, (Preliminary Response, at 20-24), and the Board properly rejected it as being "based on narrow interpretations of the disputed claim phrases, which [the Board] decline[d] to adopt" (Institution Decision, at 23-24).

Clouding now seeks to support its argument with the declaration of Dr. Mohapatra,² but Dr. Mohapatra has admitted that Balcha discloses “determining whether a second computer has a latest version of a file”:

Q. Well, in my hypothetical, sir, the file is stored on server and client as 21 and 27 in figure 1. Do you see that?

A. Yes.

Q. Okay. And in my hypothetical, 21 and 27 are the same.

A. Yes.

...

Q. Then 27 remains the same but 21 is updated.

A. Yes.

...

² On page 9, Clouding argues that Petitioners and/or Dr. Hutchinson failed to demonstrate that Balcha discloses “determining whether a second computer has a latest version of a file” because Dr. Hutchinson never said exactly those words. Both the Petition and Dr. Hutchinson’s declaration, however, demonstrate that Balcha discloses this limitation. *See, e.g.*, Petition, at 26-28; Ex. 1007 (IPR2013-00586), at ¶ 34. To the extent that Dr. Hutchinson’s opinions can be misinterpreted as lacking such an opinion, Dr. Hutchinson has supplemented his testimony to state that Balcha discloses “determining whether a second computer has a latest version of a file.” Ex. 1018, at ¶ 21.

Q. [M]y question is in those circumstances, when the server detects the change to 21, is 21 the latest version of the file?

A. Yes.

Q. And in those circumstances, 27 would not be the latest version of the file; correct?

A. Yes.

Ex. 1019, at 18:5-13.

Clouding relies upon a distinction that simply does not exist between Balcha and the '799 Patent. Clouding argues that Balcha does not ensure that the client's file had not been independently modified, but the '799 Patent operates in the exact same way, as Clouding's expert also admitted. Dr. Mohapatra testified that, in the system disclosed in the '799 patent and recited by claims 37 and 42, the file on the client may be independently modified to be the latest version. *See* Ex. 1019, at 24:21-25:3 ("Q. So if a file on the client in the '799 patent is updated after an update is made to the server subscription file, then the --when the server sends -- then the server version of the subscription file is not the latest version of the file; correct? **A. Yes.**") (emphasis added). In this regard, the '799 patent and Balcha are identical. As such, whether or not the client computer file in Balcha can be independently modified, Balcha anticipates claims 37 and 42 because Balcha's disclosure is indistinguishable to that of the '799 patent's description and claims.

Ex. 1018, at ¶ 21.

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