UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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APPLE INC.
Petitioner

v.

EVOLUTIONARY INTELLIGENCE, LLC
Patent Owner

_____

Case IPR2014-00080
Patent 7,702,682 B2

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Before KALYAN K. DESHPANDE, TREVOR M. JEFFERSON,
BRIAN J. McNAMARA, NEIL T. POWELL, and GREGG I. ANDERSON,
Administrative Patent Judges.

JEFFERSON, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Apple Inc. ("Petitioner") filed a Petition (Paper 1, "Pet.") to institute an *inter partes* review of claims 1-23 of U.S. Patent No. 7,702,682 B2 (Ex. 1001, "the '682 patent"). *See* 35 U.S.C. § 311. Evolutionary Intelligence, LLC ("Patent Owner") filed a Preliminary Response (Paper 6, "Prelim. Resp.").

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides as follows:

> THRESHOLD.—The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Upon consideration of the petition, we conclude that Petitioner has not established a reasonable likelihood that it would prevail with respect to claims 1-23 of the '682 patent. Accordingly, we do not institute an *inter partes* review of claims 1-23 of the '682 patent.

B. Related Matters

Patent Owner has sued Petitioner for infringement of the '682 patent in *Evolutionary Intelligence LLC v Apple Inc.,* Case No. 3:13-cv-04201-LB (N.D. Cal.), filed on October 23, 2012. Pet. 4. Petitioner was served on October 23, 2012. *Id.* Petitioner also filed a petition for *Inter Partes* Review of claims 1-23 of the '682 patent, IPR2014-00079, on October 22, 2013. *Id*. at 5.

Petitioner indicates that the '682 patent is also the subject of litigation in the following cases, originally filed in the Eastern District of Texas and transferred to the Northern District of California: *Evolutionary Intelligence LLC v. Facebook, Inc.*, Case No. 3:13-cv-04202-JSC (N.D. Cal.); *Evolutionary Intelligence LLC v. FourSquare Labs, Inc.*, Case No. 3:13-cv-04203-EDL (N.D. Cal.); *Evolutionary Intelligence LLC v. Groupon, Inc.*, Case No. 3:13-cv-04204-LB (N.D. Cal.); *Evolutionary Intelligence LLC v. LivingSocial, Inc.*, Case No. 3:13-cv-04205-EDL (N.D. Cal.); *Evolutionary Intelligence LLC v. Millennial Media, Inc.*, Case No. 5:13-cv-04206-HRL (N.D. Cal.); *Evolutionary Intelligence LLC v. Twitter, Inc.*, Case No. 5:13-cv-04207-KAW (N.D. Cal.); and *Evolutionary Intelligence LLC v. Sprint Nextel Corp*, Case No. 3:13-cv-4513-JCS (DMR) (N.D. Cal.) Pet. 5.

C. References Relied Upon

Petitioner relies upon the following prior art references:

Ex. 1005	Wachtel	US 6,195,654 B1	Feb. 27, 2001
Ex. 1006	Culliss	US 6,006,222	Dec. 21, 1999
Ex. 1008	Chang	US 6,298,343	Oct. 2, 2001
Ex. 1007	Howe, A., et al., *SavvySearch: A Meta-Search Engine that Learns which Search Engines to Query*, AI MAGAZINE, January 28, 1997 at 19. ("SavvySearch")[1]		

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[1] Although Petitioner's brief contains no discussion supporting its contention that SavvySearch (Ex. 1007) qualifies as a printed publication, Petitioner's declarant, Henry Houh, states that Ex. 1007 was published in AI MAGAZINE in 1997 vol. 19, no. 2. Ex. 1003 ¶ 266.

D. The Asserted Grounds

Petitioner contends that the challenged claims are unpatentable based on the following specific grounds (Pet. 6-7):

Reference[s]	Basis	Claim(s) Challenged
Culliss	§ 102(e)	1-23
SavvySearch	§§ 102(a) and (b)	1-23
Culliss and SavvySearch	§ 103	4 and 23
Culliss and Chang	§ 103	3, 5, and 6
Culliss and Wachtel	§ 103	15 and16

E. The '682 Patent

The '682 Patent is directed to developing intelligence in a computer or digital network by creating and manipulating information containers with dynamic interactive registers in a computer network. Ex. 1001, 1:20-29, 3:10-16. The system includes an input device, an output device, a processor, a memory unit, a data storage device, and a means of communicating with other computers. *Id.* at 3:17-22. The memory unit includes an information container made interactive with, among other elements, dynamic registers, a search engine, gateways, data collection and reporting means, an analysis engine, and an executing engine. *Id.* at 3:26-35.

The '682 patent describes a container as an interactive nestable logical domain, including dynamic interactive evolving registers and maintaining a unique network-wide lifelong identity. *Id.* at 3:37-46. A container, at minimum, includes a logically encapsulated portion of cyberspace, a register, and a gateway. *Id.* at 9:7-9. Registers determine the interaction of that container with other containers, system components, system gateways, events and processes on the computer network. *Id.* at 3:54-57. Container registers may be values alone or contain code

to establish certain parameters in interaction with other containers or gateways. *Id.*
at 9:24-26. Gateways are structurally integrated into each container or strategically
placed at container transit points. *Id.* at 4:63-66. Gateways govern the interaction
of containers encapsulated within their domain by reading and storing register
information of containers entering and exiting that container. *Id.* at 4:66-5:8,
15:46-49.

      The system for creating and manipulating information containers is set forth
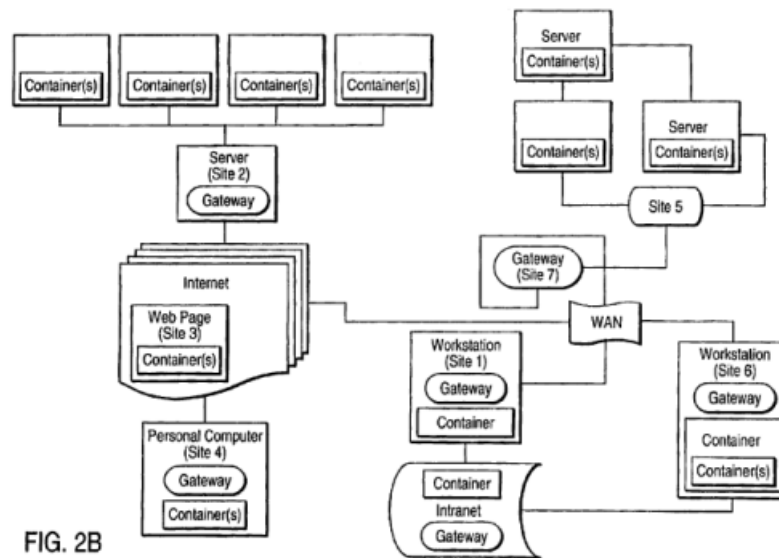in Figure 2B as follows:

FIG. 2B

      Figure 2B illustrates a computer network showing nested containers,
computer servers, and gateways, at Site 1 through Site 7. *Id.* at 10:60-65. Any of
Sites 1 through 7 may interact dynamically within the system, for example Site 1
shows a single workstation with a container and gateway connected to an Intranet.
*Id.*at 10:65-67. Site 2 shows a server with a gateway in relationship to various
containers. *Id.* at 11:2-4. Site 3 shows an Internet web page with a container
residing on it. *Id.* at 11:4-5. Site 4 shows a personal computer with containers and
a gateway connected to the Internet. *Id.* at 11:5-6. Site 5 shows a configuration of

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