

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner

v.

EVOLUTIONARY INTELLIGENCE, LLC
Patent Owner

Case IPR2014-00083
Patent 7,010,536 B1

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

POWELL, *Administrative Patent Judge*.

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

I. INTRODUCTION

On October 22, 2013, Apple Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1 and 3-15 of U.S. Patent No. 7,010,536 (Ex. 1001 (“the ’536 patent”)).¹ Paper 1 (“Pet.”). On January 29, 2014, Evolutionary Intelligence, LLC (“Patent Owner”), filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314.

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 and Preliminary Response, we determine that the information presented in the Petition does not establish that there is a reasonable likelihood that Petitioner would prevail in showing unpatentability of any challenged claim. Accordingly, pursuant to 35 U.S.C. § 314, we do not institute an *inter partes* review for claims 1 and 3-15 of the ’536 patent.

A. *Related Proceedings*

We are informed Petitioner was served on October 23, 2012, with a complaint alleging infringement of the ’536 patent in Civil Action No. 6:12-cv-00783-LED in the Eastern District of Texas, which was transferred to the

¹ The Petition includes headers on pages i and 12 stating that claims 1 and 3-16 are obvious over the cited references, but the Petition contains no substantive discussion of claim 16.

Northern District of California as Civil Action No. 3:13-cv-4201-WHA.

Pet. 1. The '536 patent is also the subject of several other lawsuits against third parties. *Id.* at 2.

B. The '536 Patent

The '536 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, 1:11-20; 3:1-5. 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 3:6-11. 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 3:15-23.

The '536 patent describes a container as an interactive nestable logical domain, including dynamic interactive evolving registers, which maintains a unique network-wide lifelong identity. *Id.* at 3:29-35. A container, at minimum, includes a logically encapsulated portion of cyberspace, a register, and a gateway. *Id.* at 9:2-4. Registers determine the interaction of a container with other containers, system components, system gateways, events and processes on the computer network. *Id.* at 3:43-46. Container registers may be values, alone, or may contain code to establish certain parameters in interaction with other containers or gateways. *Id.* at 9:19-22. Gateways are structurally integrated into each container or strategically placed at container transit points. *Id.* at 4:54-57. Gateways govern the interaction of containers encapsulated within their domain by reading and

storing register information for containers entering and exiting that container. *Id.* at 4:57-66; 15:46-49.

The system for creating and manipulating information containers is set forth in Figure 2B, which is reproduced below:

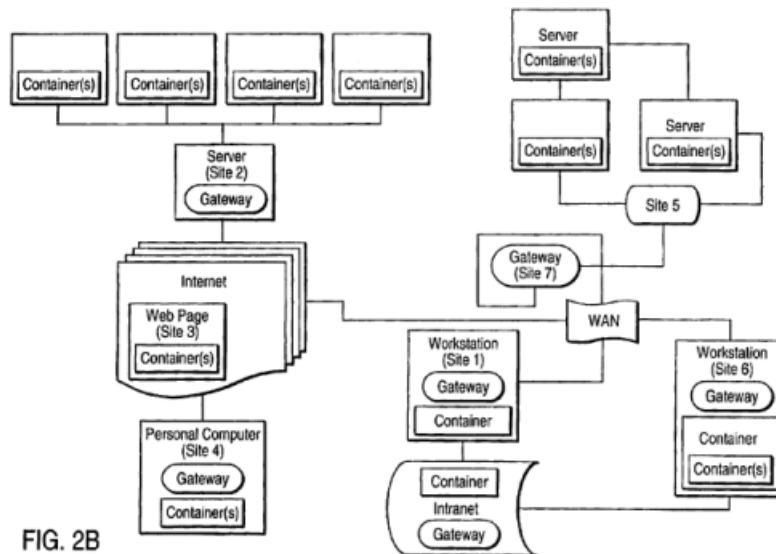


FIG. 2B

Figure 2B illustrates a computer network showing nested containers, computer servers, and gateways, at Site 1 through Site 7. Ex. 1001, 10:59-62. Any of Sites 1 through 7 may interact dynamically within the system. *Id.* at 10:64-66. For example, Site 1 shows a single workstation with a container and gateway connected to an Intranet. *Id.* at 10:66-67. Site 2 shows a server with a gateway in relationship to various containers. *Id.* at 11:2-3. Site 3 shows an Internet web page with a container residing on it. *Id.* at 11:3-4. Site 4 shows a personal computer with containers and a gateway connected to the Internet. *Id.* at 11:4-6. Site 5 shows a configuration of multiple servers and containers on a Wide Area Network. *Id.* at 11:6-7. Site 6 shows a work station with a gateway and containers within a container connected to a Wide Area Network. *Id.* at 11:7-9. Site 7 shows an independent gateway, capable of acting as a data collection and

data reporting site as it gathers data from the registers of transiting containers, and as an agent of the execution engine as it alters the registers of transient containers. *Id.* at 11:8-13.

An example of a configuration the containers may have is provided in Figure 4, included below:

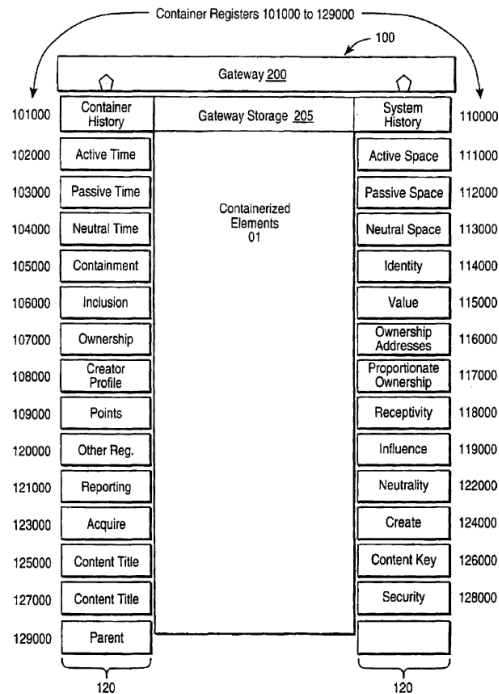


FIG. 4

Figure 4 shows container 100, which includes containerized elements 01, registers 120, and gateway 200. Ex. 1001, 12:65-67. Registers 120 included in container 100 include, among others, active time register 102000, passive time register 103000, neutral time register 104000, active space register 111000, passive space register 112000, neutral space register 113000, and acquire register 123000. *Id.* at 14:31-39.

C. Illustrative Claim

Claims 1 and 15 are the challenged independent claims. Claim 1 is reproduced below:

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