UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

APPLE INC.
Corrected Petitioner,

v.

EVOLUTIONARY INTELLIGENCE, LLC,
Patent Owner.

_____

Case IPR2014-00085
Patent 7,010,536

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

ANDERSON, *Administrative Patent Judge.*

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

I. INTRODUCTION

On October 23, 2013, Apple Inc. ("Apple" or "Petitioner") filed a Corrected Petition for *Inter Partes* Review of claims 2-16 of U.S. Patent No. 7,010,536 (Ex. 1001, "the '536 Patent")[1]. Paper 3 ("Corrected Pet."). On January 29, 2014, Evolutionary Intelligence, LLC ("Evolutionary Intelligence" or "Patent Owner"), filed a preliminary response. Paper 7 ("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 Corrected Petition and preliminary response, we determine that the information presented in the Corrected Petition does not establish that there is a reasonable likelihood that Petitioner would prevail in showing unpatentability of any of the challenged claims. Accordingly, pursuant to 35 U.S.C. § 314, we do not institute an *inter partes* review of the '536 Patent.

A. Related Proceedings

Corrected Petitioner states that on October 23, 2012, it was served with a complaint alleging infringement of the '536 Patent in Civil Action

---

[1] Petitioner initially filed a Corrected Petition intended for a different *inter partes* review on October 22, 2013 and corrected the error on October 23, 2013. The Corrected Petition has been accorded a filing date of October 23, 2013.

No. 6:12-cv-00783-LED in the Eastern District of Texas, which was transferred to the Northern District of California as Civil Action No. 3:13-cv-4201-WHA. Corrected Pet. 4. The '536 patent is also the subject of several other lawsuits against third parties. *Id.* at 5.

B. The '536 Patent

The '536 patent is directed towards 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, a 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, and 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 that 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 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 of containers entering and exiting that container. *Id.* at 4:58-66; 15:46-49.

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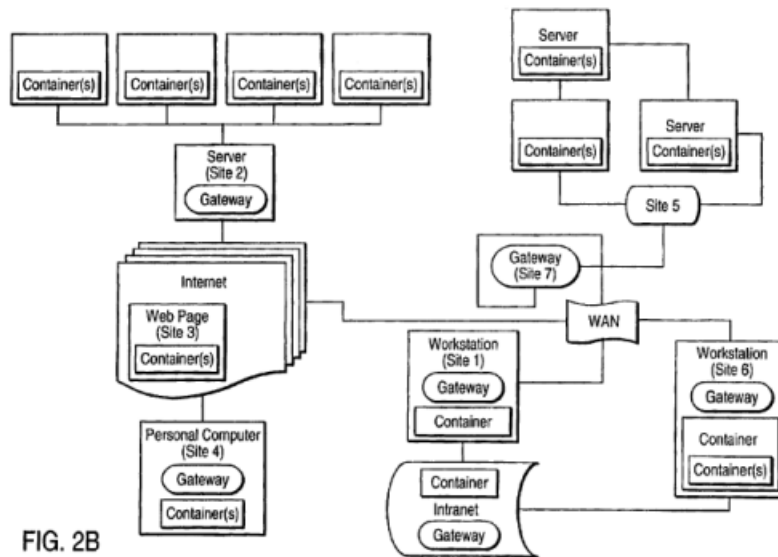

FIG. 2B

Figure 2B illustrates a computer network showing nested containers, computer servers, and gateways at Site 1 through Site 7. *Id.* at 10:59-62. 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 10:64-67. 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,

4

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 the configuration the containers may have is provided in Figure 4 as follows:
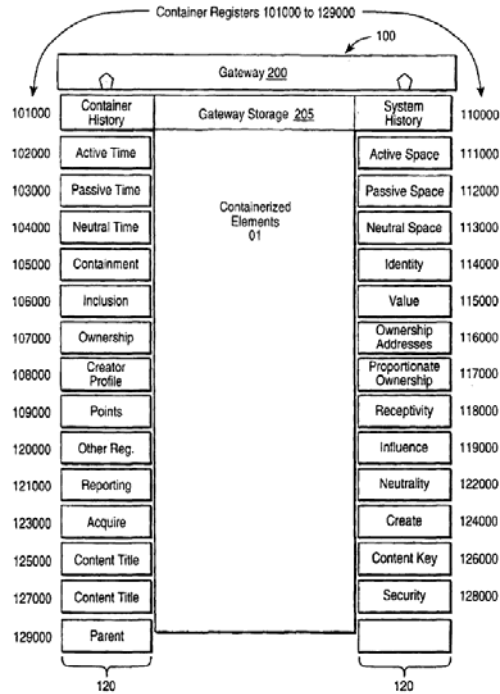

FIG. 4

Figure 4 shows an example of container 100 that includes containerized elements 01, registers 120, and gateway 200. Ex. 1001, 12:65-67. Registers 120 included in container 100 include, *inter alia*, 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.

5

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

fastcase
Smarter legal research.