

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.
Petitioner,

v.

EVOLUTIONARY INTELLIGENCE, LLC,
Patent Owner

Case IPR 2014-0086
Patent No. 7,010,536

PATENT OWNER'S LIST OF PROPOSED MOTIONS

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Pursuant to the Scheduling Order (Paper No. 9) and the Trial Practice Guide (77 C.F.R. 48756 et seq.), Patent Owner proposes to file the following motions:

A. Motion for Additional Discovery regarding Real Parties in Interest

Pursuant to 37 C.F.R. § 42.51(b)(2), a motion for additional discovery on the issue of real party in interest. As noted in the Mandatory Notices, the following lawsuits involve the patent under review:

- 3:13-cv-04201-JMD (N.D. Cal.) *Evolutionary Intelligence, LLC v. Apple Inc.*
- 3:13-cv-04202-SI (N.D. Cal.) *Evolutionary Intelligence, LLC v. Facebook, Inc.*
- 3:13-cv-04203-MMC (N.D. Cal.) *Evolutionary Intelligence, LLC v. Foursquare Labs, Inc.*
- 3:13-cv-04204-SI (N.D. Cal.) *Evolutionary Intelligence, LLC v. Groupon, Inc.*
- 3:13-cv-04205-WHO (N.D. Cal.) *Evolutionary Intelligence, LLC v. LivingSocial, Inc.*
- 3:13-cv-04206-EJD (N.D. Cal.) *Evolutionary Intelligence, LLC v. Millennial Media, Inc.*
- 5:13-cv-04513-RMW (N.D. Cal.) *Evolutionary Intelligence, LLC v. Sprint Nextel Corporation et al.*

- 3:13-cv-04207-JSW (N.D. Cal.) *Evolutionary Intelligence, LLC v. Twitter, Inc.*
- 4:13-cv-03587-DMR (N.D. Cal.) *Evolutionary Intelligence, LLC v. Yelp, Inc.*

Petitioner has coordinated its defense efforts with the other defendants in the above actions. Although most cases were stayed prior to invalidity contentions being served, the Sprint defendants served invalidity contentions that overlap considerably with positions asserted by Apple in the five petitions for *inter partes* review (2014-00079; -00080; -00082; -00083; and -00085) filed concurrently with this case, as well as the concurrent petitions filed by Facebook (No. 2014-00093) and Yelp and Twitter (2014-00092).

Accordingly, Patent Owner requests authorization to file a motion for additional discovery concerning the relationship between Petitioner and the other defendants with respect to their participation in and control over the preparation of the Petition upon which the current trial was instituted.

Patent Owner cannot currently request discovery in the respective district court proceedings of any agreements between Petitioner and the other defendants due to stays of all concurrent litigation. Patent Owner is seeking to lift the stays in some of those proceedings, but such agreements are not presently available to counsel representing Patent Owner in this *inter partes* review trial.

B. Motion for Additional Discovery re: Prior Testimony

Pursuant to 37 C.F.R. § 42.51(b)(2), Patent Owner may file a motion for additional discovery regarding Mr. Houh's testimony in other matters.

C. Motion to Amend

Pursuant to 37 C.F.R. § 42.121, a contingent motion to amend the patent under review by substituting two claims for each and every claim found by the Board to be unpatentable on a ground specified in the decision instituting inter partes review (Paper No. 8). Patent Owner understands that, under 37 C.F.R. § 42.121(a)(3), the Board normally only allows a single substitute claim for each claim found to be unpatentable. In this case, however, the claims found unpatentable are multiply dependent on claims 1 and 2. As such, Patent Owner will seek to substitute two claims for each multiply dependent claim (i.e., one for each independent claim from which the multiply dependent claim depends). Patent Owner expects that the proposed substitute claims for claim 1 (which is not under review in this proceeding) will amend to limit each dependent claim to depending from claim 1, but contain no other amendments. The second set of proposed claims will depend from claim 2 and will contain other proposed amendments, not yet determined.

D. Motion for Observation on Cross-Examination

Patent Owner may also file a motion for observation on cross-examination at the appropriate time.

E. Motion to File Corrected Exhibit 2002

Patent Owner wishes to correct Exhibit 2002, which should contain excerpts from the Oxford Dictionary of Computing Terms. Patent Owner inadvertently submitted a PDF with pages from other documents as part of this exhibit, and wishes to file a corrected PDF.

Respectfully Submitted,

Dated: May 21, 2014

/s/Anthony J. Patek/
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