

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

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Case IPR2014-00086  
Patent 7,010,536

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

McNAMARA, *Administrative Patent Judge*.

INITIAL CONFERENCE SUMMARY  
AUTHORIZATON TO CORRECT EXHIBIT 2002  
*Conduct of the Proceeding*  
*37C.F.R. § 42.5*

An initial conference in IPR2014-00086, which involves U.S. Patent No. 7,010,536 (the “’536 Patent”), was conducted on May 23, 2014. Apple, Inc. (“Petitioner”) was represented by Jeffrey Kushan. Evolutionary Intelligence, LLC (“Patent Owner”) was represented by Anthony Patek. The following subjects were discussed during the conference:

Related Matters

Patent Owner confirmed that there are no reexaminations of the ’536 Patent underway. Patent Owner also advised that all of the lawsuits identified in the Mandatory Notices are currently stayed, although the stays are not all of the same duration and motions to lift the stays are pending in some of the cases.

Scheduling Order

Both parties confirmed that they seek no changes to the current Scheduling Order. The parties are reminded that, without obtaining prior authorization from the Board, they may stipulate to different dates for DATES 1-5, as provided in the Scheduling Order, by filing an appropriate notice with the Board. The parties may not stipulate to any other changes to the Scheduling Order.

Protective Order

The parties have not discussed a protective order at this time. No protective order has been entered. The parties are reminded of the requirement for a protective order when filing a motion to seal. 37 C.F.R. § 42.54. If the parties have agreed to a proposed protective order, including the Standing Default Protective Order, 77 Fed. Reg. 48756, App. B (Aug 14, 2012), they should file a signed copy of the proposed protective order with the motion to seal. If the parties propose a protective order other than or departing from the default Standing Protective Order, Office Trial Practice Guide, *id.*, they must submit a joint,

proposed protective order, accompanied by a red-lined version based on the default Standing Protective Order in Appendix B to the Board's Office Patent Trial Practice Guide. *See, id.* at 48769.

#### Initial Disclosures and Discovery

The parties have not stipulated to any initial disclosures at this time. The parties are reminded of the discovery provisions of 37 C.F.R. § 42.51-52 and Office Trial Practice Guide. *See, 77 Fed. Reg.* at 48761-2. Discovery requests and objections are not to be filed with the Board without prior authorization. If the parties are unable to resolve discovery issues between them, the parties may request a conference with the Board. A motion to exclude, which does not require Board authorization, must be filed to preserve any objection. *See, 37 C.F.R. § 37.64, Office Trial Practice Guide, 77 Fed. Reg.* at 48767. There are no discovery issues pending at this time.

The parties are reminded of the provisions for taking testimony found at 37 C.F.R. § 42.53 and the Office Trial Practice Guide at 77 Fed. Reg. at 48772, App. D.

#### Motions

Prior to the initial conference, each party filed a list of anticipated motions. Petitioner indicated that, at this time, it does not plan any motions, other than those in the Scheduling Order. *See, Paper 11, Petitioner's List of Proposed Motions.* Patent Owner indicated that it would seek discovery concerning whether any other party is a real party-in-interest or a privy. *See, Paper 10, Patent Owner's List of Proposed Motions.* Patent Owner's request for additional discovery is addressed in a separate paper.

The parties are reminded that, except as otherwise provided in the Rules, Board authorization is required before filing a Motion. 37 C.F.R. § 42.20(b). A

party seeking to file a motion should request a conference to obtain authorization to file the motion. Although Patent Owner's List of Proposed Motion indicates that Patent Owner may seek the testimony of Mr. Hough in other matters, Patent Owner has not yet requested authorization to file such a motion. We will take that matter up if Patent Owner makes such a request.

Patent Owner's List of Proposed Motions also requests permission to correct Exhibit 2002, which contains pages from documents that were not intended to be part of the filing. Although the matter was not discussed during the initial conference, Patent Owner is authorized to move to expunge existing Exhibit 2002 and file a corrected Exhibit 2002.

No other motions are authorized in this proceeding at this time.

Patent Owner also indicated that it may file a motion to amend the claims of the '536 Patent. Although Board authorization is not required for the Patent Owner to file one motion to amend the patent by cancelling or substituting claims, we remind Patent Owner of the requirement to request a conference with the Board before filing a motion to amend. 37 C.F.R. § 42.121(a). The conference should take place at least two weeks before filing the motion to amend. The Board takes this opportunity to remind the Patent Owner that a motion to amend must explain in detail how any proposed substitute claim obviates the grounds of unpatentability authorized in this proceeding, and clearly identify where the corresponding written description support in the original disclosure can be found for each claim added.

Patent Owner's List of Proposed Motions indicates that Patent Owner's motion to amend would seek to substitute two claims for each of the amended claims because of multiple dependencies on claims 1 and 2. We reminded Patent Owner that if the motion to amend includes a proposed substitution of claims beyond a one-for-one substitution, the motion must explain why more than a one-

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for-one substitution of claims is necessary. This matter can be discussed further during the pre-amendment conference. For further guidance regarding these requirements, Patent Owner is directed to several decisions concerning motions to amend, including *Nichia Corporation v. Emcore Corporation*, IPR2012-00005, Paper No. 27 (June 3, 2013); *Idle Free Systems, Inc. v. Bergstrom, Inc.*, IPR2012-00027, Paper No. 26 (June 11, 2013), Paper No. 66 (January 7, 2014); *ZTE Corp. v. ContentGuard Holdings*, IPR2013-00136, Paper 33 (November 7, 2013); and *Invensense, Inc. v. STMicroelectronics, Inc.*, IPR2013-00241, Paper No. 21, (January 9, 2014); *Toyota Motor Corp. v. American Vehicular Sciences LLC*, IPR2013-00423, Paper No. 27 (March 7, 2014).

Settlement

The parties stated that, although settlement discussions may occur, there is no immediate prospect of settlement in this proceeding.

PETITIONER:

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