

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.
Petitioner,

v.

EVOLUTIONARY INTELLIGENCE, LLC,
Patent Owner,

Case IPR 2014-00086
Patent No. 7,010,536

TWITTER, INC. and YELP INC.
Joining Petitioners,

v.

EVOLUTIONARY INTELLIGENCE, LLC,
Patent Owner,

Case IPR 2014-00812 (Consolidated)
Patent No. 7,010,536

PATENT OWNER RESPONSE

UNDER 37 C.F.R. § 42.120

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**PRELIMINARY RESPONSE BY PATENT
OWNER UNDER 37 C.F.R. § 42.120**

Patent Owner Evolutionary Intelligence LLC respectfully submits this Response to the Petition for *Inter Partes* Review of U.S. Patent No. 7,010,536, and the Decision to Institute Trial. This Response is filed in both IPR2014-00086 and consolidated proceeding IPR 2014-00812. The term “Petitioners” is used to refer collectively to Apple Inc. and joining parties Twitter, Inc. and Yelp Inc.¹

The evidence in the record demonstrates that Gibbs does not anticipate the ’536 patent. The claims of the ’536 patent are directed to an apparatus for transmitting, receiving, and manipulating information, comprised of a plurality of containers, each container comprising an information element, a number of specific registers, and a gateway. The invention implements intelligent information containers that enable, among other things, presentation and use of information within appropriate spaces (for example, by presenting information on restaurants that are near the user’s physical location). It does so by providing in each information container a set of registers that specify a unique identifier for the container, as well as spatial information that governs how that container will interact with other containers, systems, processes, and gateways according to the utility of the information. These registers also include either information about

¹ All citations to the “Petition” are to the Petition filed by Apple in IPR 2014-00086, but are intended to refer to the comparable portion of Twitter and Yelp’s Petition, which is identical to Apple’s in all relevant respects.

where that container will act upon other containers, can be acted upon by other containers, and may interact with other containers (claim 2), or information controlling when information is added to a given information container from other containers (claim 16). The existence of each of these registers is essential to the functionality and efficiency of the claimed invention. Gibbs does not disclose the claimed apparatus. What Gibbs does disclose is an object-oriented railroad management system with a variety of software objects that represent physical objects in the railroad system, capable of drawing maps of the railroad system and generating reports summarizing specific aspects of its components. Gibbs does not disclose any object that includes all the specified registers in the '536 patent.

In its Preliminary Response (IPR 2014-00086, Dkt. #6), Patent Owner noted that Apple and Dr. Houh failed to identify a single object that possesses *all* the registers required to anticipate the claims of the '536 patent—a critical shortcoming because the claims of the '536 patent require all of the registers to be part of *each* “container” and specify that the apparatus is made up of plurality of such containers. In deposition, Petitioners’ expert, Dr. Henry Houh, admitted that he had never even considered whether *any* of the individual objects disclosed by Gibbs has all of the required registers. There is therefore no support for the anticipation argument made in the Petition.

In an attempt to avoid the demise of Petitioners’ case, Dr. Houh used his deposition to change his position regarding anticipation and to advocate a new theory that was not disclosed in the Petition or his declaration. Under the new theory, the “*plurality of containers*” disclosed by Gibbs is a plurality of previously

unidentified “transport object/map object/report object subsystems” (“TMR subsystems”) that are located on the workstations in Gibbs’ railroad management system. But Gibbs never identifies or even mentions the alleged TMR subsystem, nor is this imaginary subsystem inherent in Gibbs’ disclosure.

Dr. Houh testified that the undisclosed TMR subsystem “must be” present in Gibbs, meaning that instead of express anticipation, he is now advocating *inherent* anticipation. Even if it were proper for Petitioners to change their theory at this stage (which it is not), Petitioners still cannot demonstrate inherent anticipation, because the imagined TMR subsystem still fails to include each of the information registers required by the ‘536 patent. Notably, the proposed TMR subsystem lacks, among other things, a *first register for storing a unique container identification value, active/passive/neutral space registers, and an acquire register for controlling whether the container adds a register from other containers or adds a container from other containers when interacting with them.* Accordingly, Gibbs does not anticipate claims 2-12, 14, and 16 of the ‘536 patent, either expressly or inherently.

This filing is timely under 35 U.S.C. § 313 and 37 C.F.R. § 42.107, as it is being filed by July 18, 2014, pursuant to the PTAB’s scheduling order in this case and the parties’ stipulated extension.

I. Statement of Material Facts in Dispute

Patent Owner identifies the following list of material facts in dispute:

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