

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
TWITTER, INC., AND YELP INC.,
Petitioners

v.

EVOLUTIONARY INTELLIGENCE LLC
Patent Owner.

Inter Partes Review No. IPR2014-00086
Inter Partes Review No. IPR2014-00812¹

Petitioners' Reply

¹ Per the Board's Order (Paper 16 at 4), Petitioner Apple identifies this as a consolidated filing.

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The Board correctly found the “specific types of objects, programs, routines, and architecture disclosed in Gibbs meet the limitations of” claims 2-12, 14, and 16 of the ’536 patent. Paper 8 (“Dec.”) at 21, 26. In its Response, Patent Owner seeks to cloud the record by incorrectly portraying Petitioners’ arguments, the testimony of Petitioners’ expert Henry Houh, Ph.D., the scope of the ’536 claims,² and the Gibbs reference (Ex. 1006). The Board should dismiss Patent Owner’s arguments, and maintain its finding that Gibbs anticipates the challenged claims.

I. Gibbs Discloses the Claimed “Plurality of Containers”

The Board correctly found Gibbs discloses the “plurality of containers” of claims 2 and 16. Dec. at 21 (“Gibbs’ overall train management system receives, transmits, and manipulates information, as per the limiting preamble of claim 2.”). This rested on substantial evidence presented in the Petition; namely, that Gibbs shows the claimed “container” via its description of a collection of transport, map, and report objects that are instantiated and used to display maps and reports to users. *See* Pet. at 18-19 (the map and report *objects* have “instructions and routines [that] are used to gather information from the various transport objects . . . to generate and modify maps and reports”), 15 (the “transport *objects* interact with the map *and* report *objects* to display information relating to the physical

² Patent Owner explicitly advances new claim constructions for two of the “registers” in the ’536 claims. Those are addressed in the analysis of Gibbs below.

equipment and facilities that the transport *objects* represent.”); Ex. 1003 at ¶¶ 122 (same), 109 (the “system [] uses *objects* to display and transmit information to the user, such as through maps and reports.”) (emphases added); *see id.* at ¶¶ 86-98.

Rather than dispute this in its Response, Patent Owner attacks a straw-man: Dr. Houh’s use of the label “TMR subsystem” during his deposition as a shorthand for the architecture and objects in Gibbs that anticipate the claims. *See* Paper 20 (“Resp.”) at 30-35. While Dr. Houh agreed to use this label as a courtesy to Patent Owner’s counsel, he repeatedly and consistently explained the “instances of items from the transport object library, the map object library and report object library” in Gibbs correspond to the “container” of the claims. *E.g.*, Ex. 1008 at 98:21-103:1, 95:15-96:1, 63:8-68:22. Dr. Houh’s deposition testimony reinforces that the displayed maps and reports of Gibbs, created through interactions between the transport, map, and report objects, anticipate the claims. *E.g.*, Pet. at 12-13, 15, 18.

Patent Owner also contends the *individual* objects in Gibbs cannot be a “container.” Resp. at 24-30, 37. Patent Owner raised this same argument in its Preliminary Response (Paper 6 at 31-32); it remains unpersuasive. *See* Dec. at 21 (“Gibbs’ disclosure of *objects* describes the claimed ‘container.’” (emphasis added)). Patent Owner also advances three theories why it believes Gibbs does not disclose a “container” that includes the transport, map, and reports objects: (1) that Gibbs does not describe a “TMR subsystem,” (Resp. at 30-38), (2) even if the

“TMR subsystem” did exist, it is not a “container,” (*id.* at 38-40), and, finally, (3) even if Gibbs does disclose a container, it does not disclose a “plurality of containers,” (*id.* at 55-56). All three theories must be rejected.

A. Gibbs Shows Each Map Display Contains a Collection of Instantiated Transport, Map, and Report Objects

Patent Owner argues that because Gibbs itself does not use the term “TMR subsystem” and does not otherwise coin a term for the collection of instantiated objects in its system, the disclosure of these objects by Gibbs can only be “inherent.” Resp. at 10-11, 35-40. This disclosure is not “inherent.” It is explicit. Patent Owner simply ignores the explanations in the Petition and Dr. Houh’s original declaration that detail *how* Gibbs describes this element – it shows instantiated transport, map, and report objects interacting to create maps and reports for display to a user. Ex. 1003 at ¶¶ 89-90, 94, 96-97; Pet. at 15, 18-19, 23; Ex. 1009 at ¶¶ 5-16.

As Dr. Houh explained, Figure 8a of Gibbs depicts the display of maps and reports generated by its system, which, in turn, contain the transport objects that are within the selected geographic boundaries and meet the other selected criteria. Ex. 1003 at ¶ 94; *see id.* at ¶¶ 89-100, 108-09; Ex. 1006 at Fig. 8a, 20:2-5 (generated display shows map objects), 20:5-16 (transport objects), 20:17-21 & 20:30-40 (report objects); Pet. at 15 (the map object “determine[s] which transport objects are within the selected map area”), 18. In Figure 9b, Gibbs shows how the

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