Paper No. 37

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. IPR2014-00812[1]

PETITIONERS' RESPONSES TO PATENT OWNER'S OBSERVATIONS ON CROSS-EXAMINATION OF HENRY HOUH

[1] Per the Board's Order (Paper 16 at 4), Petitioner Apple identifies this as a consolidated filing on behalf of Petitioners.

As authorized by the Board's Scheduling Order on April 25, 2014 (Paper 9) and the Trial Practice Guide, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012), Petitioners submit the following responses to Patent Owner's observations on cross-examination of Dr. Henry Houh (Paper 33).

I. Response to Observation (1)

Patent Owner asserts that Dr. Houh's testimony shows that he "is relying on inherent anticipation to supply elements required of claim 2" because he used the word "necessary" in one answer when he was discussing Gibbs disclosure of an "execution stack." Dr. Houh identified an "execution stack" is just one of several examples of "logically defined data enclosures" (or data enclosures defined by a "software mechanism") that can comprise a container, (Ex. 1009 at ¶ 29), and he explained in response to questions from Patent Owner's counsel that "one of ordinary skill in the art would understand that [] Gibbs disclosure . . . would have [] something like this execution stack, which would be used to support function calling." Ex. 1010 at 257:6-12, 259:20-24, 266:12-17. Throughout his testimony Dr. Houh cited numerous portions of Gibbs supporting his conclusion that Gibbs discloses a container comprising the instantiated transport, map, and report objects. *E.g.*, Ex. 1009 at ¶¶ 32-48; Ex. 1010 at 308:25-312:8.

II. Response to Observation (2)

Patent Owner asserts that Dr. Houh's testimony shows that he admitted any

execution stack in Gibbs "did not necessarily function in the manner he relied on in his anticipation analysis." In the testimony cited by Patent Owner, Dr. Houh was responding to Patent Owner's incomplete hypothetical, and Dr. Houh was explaining that it ***theoretically would be possible to create a new type of execution*** stack that was not a "logically defined data enclosure." Ex. 1010 (Houh Suppl. Dep. Tr.) at 257:15-259:4 (emphasis added). Dr. Houh explained that in conventional systems under ordinary operation, an execution stack is a logically defined data enclosure. Ex. 1010 at 236:12-237:2, 254:18-255:1. He also testified that Gibbs disclosed a conventional system. Ex. 1010 at 257:22-258:12, 266:12-17, 266:22-267:22.

III. Response to Observation (3)

Patent Owner asserts that Dr. Houh admits that Gibbs only "discloses the latitude and longitude being retrieved *after* the system of Gibbs does a time comparison to determine whether the trains are late." But in the cited passage, Dr. Houh was simply ***reading of the text*** of Gibbs which is not an "admission" that Patent Owner's ***interpretation*** of that text is correct. *Compare* Ex. 1010 at 284:22-

285:17 (Patent Owner's counsel reading text from Gibbs) *with* 286:1-17[2] (Dr. Houh reading the same text); Ex. 1009 at ¶¶ 51-52 ("Gibbs shows that the system will retrieve each object's location and use it to determine whether the train is on time or late." citing Ex. 1006 at 13:46-57). Additionally, Patent Owner's argument is irrelevant because Dr. Houh explained that "Gibbs clearly shows that a train's physical location is a data item on a map, and that Gibbs explains that ***any data item*** (i.e., including the physical location of the train) can be monitored using warning criteria." Ex. 1009 at ¶¶ 52-53 (citing Ex. 1006 at 9:60-62, 9:67-10:4, 12:36-41).

IV. Response to Observation (4)

Patent Owner asserts that Dr. Houh admits that the "content key register" cannot be an example of a "first register having a unique container identification value." But the cited testimony both is irrelevant and does not support Patent Owner's conclusion. First, Patent Owner misstates the relevance of the testimony because the issue is not whether the "content key register" must, forever and always, be unique, but rather whether the '536 patent's disclosure of a ***variety*** of

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[2] Patent Owner cites to the court reporter's "[r]ough" transcript at 85:8-24, Paper 33 at 3, which corresponds to Ex. 1010 at 286:1-17.

container identification values would inform a person having ordinary skill in the art of the broadest reasonable interpretation of the claimed "first register." Second, the testimony is not relevant because Patent Owner was not asking Dr. Houh about how the '536 patent described the content key register, but rather he was asking about Dr. Houh's ***recollection*** of what the "content key register" was, without reference to either his declaration or the '536 patent. *E.g.*, Ex. 1010 at 275:23-276:3 ("Q . . . what is your memory of of what your testimony was with respect to content key registers? A That I did -- I did talk about them. And if you'll let me look in my report, I'll tell you what I said."), 276:13-18 ("Q Okay. But I want to know what you remember without looking at your report. So can you tell me what you remember about your testimony with respect to content key registers? MR. BROUGHAN: Objection, relevance, form."). Finally, the testimony does not support Patent Owner's argument because Dr. Houh explained that if "multiple objects [had] content key registers with [the] same value," then they "would be the same container," such as "a copy of the same item." Ex. 1010 at 278:1-12.

V. Response to Observation (5)

Patent Owner asserts that Dr. Houh's testimony lacks foundation because "he has provided no corroborating evidence for his testimony," but Dr. Houh relied on the '536 patent's ***own disclosure*** to corroborate his view that a "container" could include more than just "the logical description of another container." Ex.

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