

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC.
Petitioner

v.

EVOLUTIONARY INTELLIGENCE, LLC
Patent Owner

Case IPR2014-00093
Patent 7,010,536 B1

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

DESHPANDE, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Facebook, Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 15 and 16 of U.S. Patent No. 7,010,536 B1 (Ex. 1001, “the ’536 patent”). Paper 1 (“Pet.”). Evolutionary Intelligence, LLC (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides as follows:

THRESHOLD—The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Upon consideration of the Petition, we determine that the information presented by Petitioner has not established that there is a reasonable likelihood that Petitioner would prevail in showing the unpatentability of claims 15 and 16 of the ’536 patent. Accordingly, we do not institute an *inter partes* review of these claims.

A. Related Proceedings

Petitioner indicates that the ’536 patent is the subject of litigation in the following cases: *Evolutionary Intelligence LLC v. Apple, Inc.*, Case No. 3:13-cv-04201-WHA (N.D. Cal.); *Evolutionary Intelligence LLC v. Yelp Inc.*, Case No. 4:13-cv-03587-DMR (N.D. Cal.); *Evolutionary Intelligence LLC v. Facebook, Inc.*, Case No. 3:13-cv-04202-JSC (N.D. Cal.); *Evolutionary Intelligence LLC v. FourSquare Labs, Inc.*, Case No. 3:13-cv-04203-EDL (N.D. Cal.); *Evolutionary Intelligence LLC v. Groupon, Inc.*, Case No. 3:13-cv-04204-LB (N.D. Cal.); *Evolutionary Intelligence LLC v.*

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LivingSocial, Inc., Case No. 3:13-cv-04205-EDL (N.D. Cal.); *Evolutionary Intelligence LLC v. Millennial Media, Inc.*, Case No. 5:13-cv-04206-HRL (N.D. Cal.); *Evolutionary Intelligence LLC v. Twitter, Inc.*, Case No. 4:13-cv-04207-KAW (N.D. Cal.); and *Evolutionary Intelligence LLC v. Sprint Nextel Corp.*, Case No. 3:13-cv-04513-JCS (N.D. Cal.). Pet. 1-2.

Additionally, the '536 patent is the subject of the following *inter partes* reviews: IPR2014-00082, IPR2014-00083, IPR2014-00085, IPR2014-00086, and IPR2014-00092.

B. The '536 Patent

The '536 patent is directed to developing intelligence in a computer or digital network by creating and manipulating information containers with dynamic interactive registers in a computer network. Ex. 1001, 1:11-20; 3:1-5. The system includes an input device, an output device, a processor, a memory unit, a data storage device, and a means of communicating with other computers. *Id.* at 3:6-11. The memory unit includes an information container made interactive with, among other elements, dynamic registers, a search engine, gateways, a data collection and reporting means, an analysis engine, and an executing engine. *Id.* at 3:15-23.

A container is an interactive nestable logical domain, including dynamic interactive evolving registers and maintaining a unique network-wide lifelong identity. *Id.* at 3:29-35. A container, at minimum, includes a logically encapsulated portion of cyberspace, a register, and a gateway. *Id.* at 9:2-4. Registers determine the interaction of that container with other containers, system components, system gateways, events, and processes on the computer network. *Id.* at 3:43-46. Container registers may be values alone or contain code to establish certain parameters in interaction with other

containers or gateways. *Id.* at 9:19-22. Gateways are structurally integrated into each container or strategically placed at container transit points. *Id.* at 4:54-57. Gateways govern the interaction of containers encapsulated within their domain by reading and storing register information of containers entering and exiting that container. *Id.* at 4:58-66; 15:46-49.

The system for creating and manipulating information containers is set forth in Figure 2B, which is reproduced below:

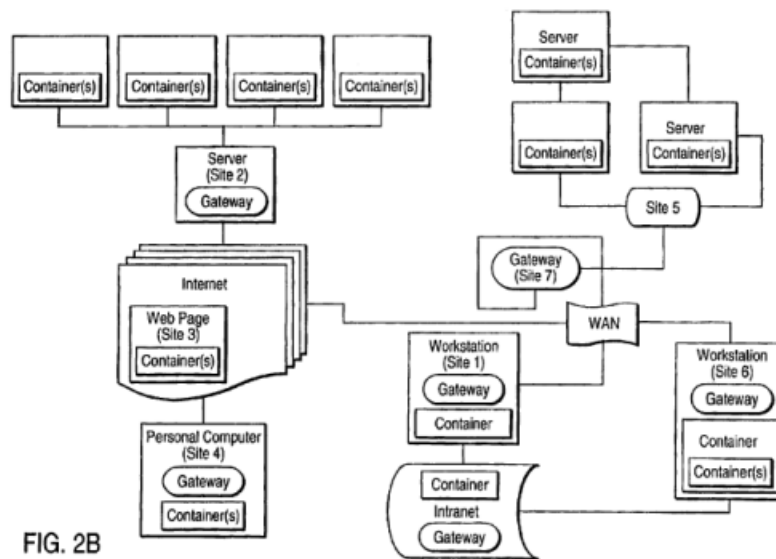


FIG. 2B

Figure 2B illustrates a computer network showing nested containers, computer servers, and gateways at Site 1 through Site 7. *Id.* at 10:59-62. Any of Sites 1 through 7 may interact dynamically within the system; for example, Site 1 shows a single workstation with a container and gateway connected to an Intranet. *Id.* at 10:64-67. Site 2 shows a server with a gateway in relationship to various containers. *Id.* at 11:2-3. Site 3 shows an Internet web page with a container residing on it. *Id.* at 11:3-4. Site 4 shows a personal computer with containers and a gateway connected to the Internet. *Id.* at 11:4-6. Site 5 shows a configuration of multiple servers and containers on a Wide Area Network. *Id.* at 11:6-7. Site 6 shows a work

station with a gateway and containers within a container connected to a Wide Area Network. *Id.* at 11:7-9. Site 7 shows an independent gateway, capable of acting as a data collection and data reporting site as it gathers data from the registers of transiting containers and as an agent of the execution engine as it alters the registers of transient containers. *Id.* at 11:8-13.

An example of a configuration the containers may have is provided in Figure 4, included below:

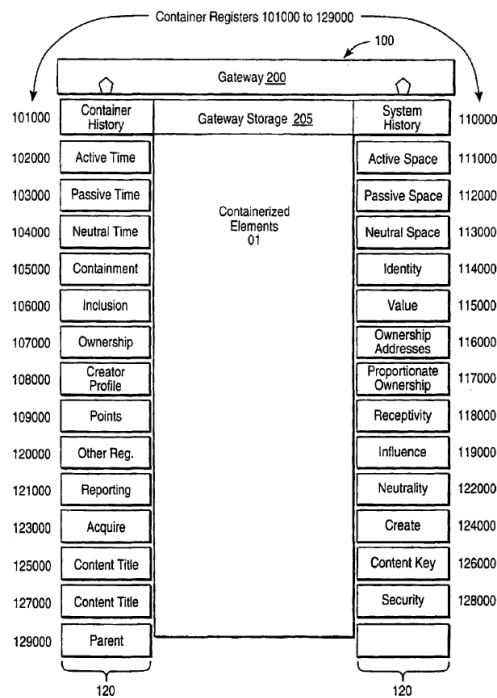


FIG. 4

Figure 4 shows an example of container 100 that includes containerized elements 01, registers 120, and gateway 200. *Id.* at 12:65-67. Registers 120 included in container 100 include, *inter alia*, active time register 102000, passive time register 103000, neutral time register 104000, active space register 111000, passive space register 112000, neutral space register 113000, and acquire register 123000. *Id.* at 14:31-39.

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