

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
U.S. Patent No. 7,010,536

**FACEBOOK REQUEST FOR RECONSIDERATION
UNDER 37 C.F.R. § 42.71(c)**

I.	INTRODUCTION	1
II.	LEGAL STANDARDS	2
III.	ARGUMENT	3
A.	The Petition Established that Claim 15 Is Anticipated by Cooper (Petition Ground 2).....	3
1.	The Petition Established that the Real Key Is a “Register”	5
2.	The Petition Established that the Real Key “Forms Part of” the File Management Program “Container”	7
3.	The Petition Established that a Software Product File Is a “Container” that Is “Added” to the File Management Program “Container”	8
4.	The Petition Established that the Real Key “Controls” Whether A Software Product File Container Is Added to the File Management Program Container	15
B.	The Petition Established that Claim 16 Is Obvious over Cooper in View of Fortune and Veditz (Petition Ground 3)	17
IV.	CONCLUSION.....	17

I. INTRODUCTION

On October 23, 2013, Facebook, Inc. (“the Petitioner”) filed a petition requesting *inter partes* review (“IPR”) of U.S. Patent No. 7,010,536, seeking a narrow review of only claims 15 and 16 (“the ’536 patent”) based on three grounds of unpatentability:

Ground	Claims	Basis for Challenge
1	15 & 16	Anticipated by Zhang under 35 U.S.C. § 102(e)
2	15	Anticipated by Cooper under 35 U.S.C. § 102(e)
3	16	Obvious over Cooper in view of Fortune and Veditz under 35 U.S.C. § 103(a)

(Paper No. 20 (“Petition”) at 4; *see also* Paper No. 1.)

On April 28, 2014, the Board issued a decision declining to institute IPR based on any of these grounds. (Paper No. 12 (“Decision”).) The Petitioner respectfully seeks reconsideration of that decision as to Grounds 2 and 3. As explained in detail below, the Board’s decision to not institute IPR based on those grounds was based on clearly erroneous factual findings as to the Cooper reference, and the application of that reference under the broadest reasonable constructions adopted by the Board. The Petitioner accordingly respectfully requests that the Board find that its Petition has established a reasonable likelihood

that the Petitioner will prevail in showing that claims 15 and 16 are unpatentable based on Grounds 2 and 3.

This request is authorized under 37 C.F.R. § 42.71(c), and prior authorization of the Board is not required for filing of such a request. 37 C.F.R. § 42.71(d). This request is timely because it was filed within 30 days of the Board's decision. 37 C.F.R. § 42.71(d)(2).

II. LEGAL STANDARDS

“When rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” 37 C.F.R. §42.71(c). An abuse of discretion “occurs when a court misunderstands or misapplies the relevant law or makes clearly erroneous findings of fact.” *Renda Marine, Inc. v. U.S.*, 509 F.3d 1372, 1379 (Fed. Cir. 2007) (quoting *PPG Indus., Inc. v. Celanese Polymer Specialties Co.*, 840 F.2d 1565, 1572 (Fed. Cir. 1988)). “A finding is clearly erroneous when, despite some supporting evidence, ‘the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’” *Forest Labs., Inc. v. Abbott Labs.*, 339 F. 3d 1324, 1328 (Fed. Cir. 2003) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

III. ARGUMENT

A. The Petition Established that Claim 15 Is Anticipated by Cooper (Petition Ground 2)

As explained in the Petition, Cooper “describes techniques for ‘temporarily encrypting and securing access to software objects.’” (Petition at 28 (quoting Cooper, 1:36-39).) In particular, Cooper “describes a technique for allowing companies to promote computer software products by distributing them on a ‘try-before-buying’ basis.” (Petition at 28.) A software vendor encrypts the software files distributed to a prospective customer, and a “file management program” running on the customer’s computer is responsible for managing and controlling access to the encrypted software. (Petition at 28-29 (citing Cooper, 8:22-38).)

When a user attempts to access an encrypted software product file, the file management program generates and validates a decryption key referred to as a “real key” to determine whether to permit access. (Petition at 41-42 (citing Cooper, 16:9-46, 18:10-43).) If the real key is valid, the encrypted software product file “is applied as an input” to the decryption engine of the file management program so that the product can be used. (Cooper, 16:24-26 (“Before real key **421** is utilized to decrypt encrypted software products . . . it is tested to determine its validity.”), 16:41-46 (“The encrypted software object **437** is applied as an input to decryption engine **439**.”); *see also* Petition at 41 (citing Cooper, 18:10-43 (“[T]he TSR reads and decrypts this data before passing it back to the application”), 16:9-46).)

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