UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC., TWITTER, INC., AND YELP INC.,
Petitioner,

v.

EVOLUTIONARY INTELLIGENCE, LLC,
Patent Owner.

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Case IPR2014-00086
Case IPR2014-00812
Patent 7,010,536 B1

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Before KALYAN K. DESHPANDE, BRIAN J. McNAMARA, and
GREGG I. ANDERSON, *Administrative Patent Judges.*

ANDERSON, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

INTRODUCTION

On October 22, 2013, Apple, Inc. ("Petitioner")[1] filed a Petition requesting *inter partes* review of claims 2–14 and 16 of U.S. Patent No. 7,010,536 (Ex. 1001, "the '536 patent"). Paper 1 ("Pet."). On April 25, 2014, we granted the Petition and instituted trial for claims 2–12, 14, and 16 of the '536 patent on all of the grounds of unpatentability alleged in the Petition. Paper 8 ("Decision on Institution" or "Dec. Inst.").

After institution of *inter partes* review, Twitter, Inc. ("Twitter") and Yelp Inc. ("Yelp") filed a corrected Petition and Motion to Join the *inter partes* review. IPR2014-00812, Papers 4, 8. We granted the motion and joined Apple, Twitter, and Yelp (collectively, "Petitioner") in the *inter partes* review. Paper 16. Evolutionary Intelligence, LLC ("Patent Owner") filed a Patent Owner Response. Paper 20 ("PO Resp."). Petitioner filed a Reply. Paper 28 ("Pet. Reply"). Patent Owner filed a Motion to Exclude. Paper 34 ("PO Mot. Exclude")

An oral hearing was held on January 6, 2015. The transcript of the consolidated hearing has been entered into the record. Paper 41 ("Tr.").

We have jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). For the reasons discussed below, we determine that Petitioner has not shown by a preponderance of the evidence that claims 2–12, 14, and 16 of the '536 patent are unpatentable. Patent Owner's Motion to Exclude is denied.

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[1] Twitter, Inc. and Yelp Inc. filed a Petition in case IPR2014-00812 against the same patent, which case was joined with this case. Decision Granting Motion for Joinder (Paper 16). Twitter, Inc. and Yelp Inc. are also collectively referred to as "Petitioner" in this case.

A. Related Proceedings

Petitioner states that on October 23, 2012 it was served with a complaint alleging infringement of the '536 patent in Civil Action No. 6:12-cv-00783-LED in the District of Eastern District of Texas (Ex. 1007), which was transferred to the Northern District of California as Civil Action No. 3:13-cv-4201-WHA. The '536 patent is also the subject of several other lawsuits against third parties. Pet. 2.[2]

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.

The '536 patent describes a container as an interactive nestable logical domain, including dynamic interactive evolving registers, which maintain a unique network-wide lifelong identity. *Id.* at 3:29–35. A container, at

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[2] The Petition does not include page numbers. We have assigned page numbers beginning with page 1 at heading I.A. and concluding with page 31 at heading V. This convention corresponds to the assigned page numbers in the Table of Contents. As Patent Owner did in Patent Owner's Response (PO Resp. 1), all citations to the "Petition" are to the Petition filed by Apple in IPR 2014-00086. The Petition filed by Twitter and Yelp is a virtual copy. but the page numbers differ and we will not add those additional citations.

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 integrated structurally 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 as follows:
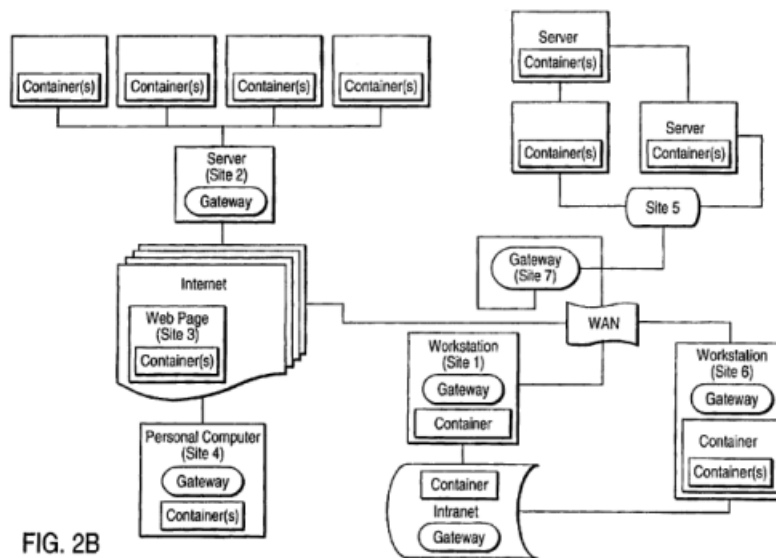

FIG. 2B

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

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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 the configuration the containers may have is provided
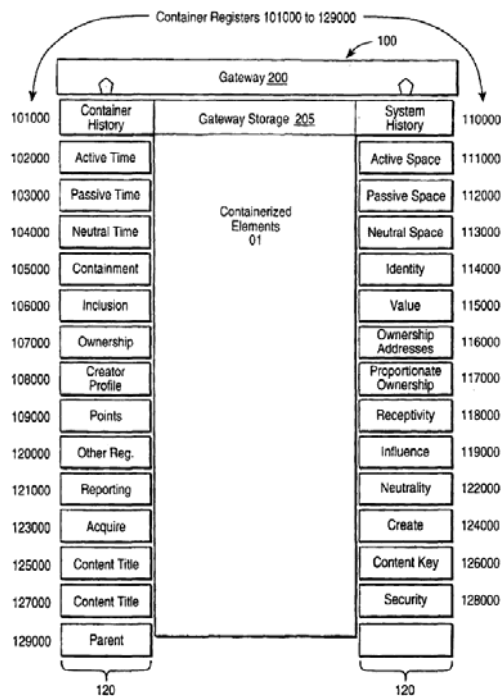in Figure 4 as follows:

FIG. 4

DOCKET ALARM

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