

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner

v.

DSS TECHNOLOGY MANAGEMENT, INC.
Patent Owner

Case IPR2015-00373
Patent 6,128,290

PETITIONER'S REPLY TO PATENT OWNER RESPONSE

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EXHIBIT LIST

Apple Exhibit No.	Description
APL 1001	U.S. Patent No. 6,128,290 to Carvey (“the ’290 patent”)
APL 1002	T. J. Barber, Jr., “BodyLAN™: A Low Power Communications System,” Master’s Thesis at Massachusetts Institute of Technology, 1996 (“Barber”)
APL 1003	U.S. Patent No. 5,241,542 to Natarajan (“Natarajan”)
APL 1004	U.S. Patent No. 4,887,266 to Neve (“Neve”)
APL 1005	Prosecution History of U.S. Application No. 08/949,999 (now U.S. Patent No. 6,128,290) (“the ’999 application”)
APL 1006	U.S. Application No. 08/611,695 (as-filed) (“the ’695 application”)
APL 1007	Apple’s Claim Construction Brief in Case No. 6:13-cv-00919 JDL (EDTX)
APL 1008	Declaration of Jack D. Grimes, Ph.D. in Support of Petition for <i>Inter Partes</i> Review of U.S. Patent No. 6,128,290 (“Grimes Dec.”)
APL 1009	Curriculum Vitae of Jack D. Grimes, Ph.D. (“Grimes CV”)
APL 1010	U.S. Patent No. 5,696,903 to Mahany (“Mahany”)
APL 1011	Deposition Transcript of Robert Dezmelyk, IPR2015-00369 and IPR2015-00373, December 15, 2015 (“Dezmelyk Depo.”)
APL 1012	Mischa Schwartz, Telecommunications Networks: Protocols, Modeling and Analysis, Addison-Wesley, 1988 (“Schwartz”)
APL 1013	Tom Sheldon, Encyclopedia of Networking & Telecommunications, Lisa Wolters-Broder ed., McGraw Hill, 2001 (other excerpts submitted as DSS 2010)
APL 1014	Declaration of Dr. Jing Hu (“Hu Dec.”)
APL 1015	<i>Curriculum Vitae</i> of Dr. Jing Hu

TABLE OF CONTENTS

I. Introduction..... 1

II. DSS’s statutory disclaimer of claims 6 and 7 is effective as a request for adverse judgment against those claims..... 2

III. Natarajan teaches or suggests a server transmitter operating in “low duty cycle RF bursts,” as recited in claim 9 of the ’290 patent. 2

IV. HDLC is consistent with low duty cycle RF bursts. 4

 A. The preferred embodiment in the ’290 patent uses HDLC.....5

 B. DSS relies on the testimony of Mr. Dezmelyk, who admits he is not an expert in HDLC.....5

 C. A POSA would have looked to Schwartz for information on Natarajan’s HDLC protocol and understood that it is consistent with low duty cycle RF bursts.....7

 1. Mr. Dezmelyk did not consider Schwartz—the most logical reference for information on Natarajan’s HDLC protocol—when forming his opinions. 7

 2. Natarajan’s HDLC protocol is consistent with low duty cycle RF burst communication. 8

 D. DSS and Mr. Dezmelyk concoct inaccurate piecemeal arguments from excerpts of unrelated references that are inconsistent with each other and inconsistent with the operation of HDLC.....10

 E. DSS’s “idle words” argument is a red herring.....16

 1. Neve is cited to expressly show that synchronizing a base station and peripheral units was well-known. 16

 2. Natarajan’s HDLC protocol does not use idle words. 17

V. DSS’s “low duty cycle” argument is meritless..... 19

 A. Mr. Dezmelyk’s definition of “duty cycle” is nonsensical.....19

 B. DSS’s proposed claim construction that “low duty cycle” is less than 10% is arbitrary and unduly narrow.....21

 C. DSS improperly truncates the time period for calculating Natarajan’s duty cycle.23

VI. The Board should not give any weight to Mr. Dezmelyk’s testimony. 24

 A. Mr. Dezmelyk’s testimony lacks credibility.24

 B. Mr. Dezmelyk admits he is not an expert in HDLC.25

 C. Mr. Dezmelyk bases his opinions on inaccurate assumptions.....25

VII. Conclusion 25

I. Introduction

Claims 6, 7, 9 and 10 of the '290 patent at issue in this *inter partes* review are merely a combination of well-known concepts. Each and every limitation is either expressly disclosed in the prior art or would have been plainly obvious to a person of ordinary skill in the art (“POSA”).

DSS’s sole argument in its Patent Owner’s Response is that the combination of Natarajan and Neve does not teach or suggest a server transmitter that operates in “low duty cycle RF bursts.” Although this term was not commonplace, the technical features it describes were well-known to those of ordinary skill in the art.

DSS’s argument is flawed for at least four reasons. First, Natarajan teaches or suggests a server transmitter operating in “low duty cycle RF bursts.” Second, DSS bases its argument on the inaccurate premise that HDLC is inconsistent with low duty cycle RF bursts. In particular, DSS erroneously assumes that HDLC uses idle words. Third, DSS uses faulty logic to define “low duty cycle” and imposes an arbitrary 10% maximum threshold. And fourth, DSS bases its positions on the testimony Mr. Dezmelyk, which lacks credibility, particularly because he admits that he is not an expert in HDLC.

Accordingly, DSS’s argument is meritless. Apple has shown by a preponderance of the evidence that claims 6, 7, 9 and 10 of the '290 patent are unpatentable and the Board should enter judgment in accordance therewith.

II. DSS’s statutory disclaimer of claims 6 and 7 is effective as a request for adverse judgment against those claims.

DSS asserts in its Patent Owner’s Response that claims 6 and 7 were disclaimed. (POR, p. 2.) On January 5, 2016, DSS filed a Notice of Filing of Statutory Disclaimer (Paper 18) along with a copy of a “Disclaimer in Patent Under 37 CFR 1.321(a)” dated October 5, 2015, indicating the same. As reflected in the Board’s Order of January 11, 2016 (Paper 20), the parties had a conference call with the Board on January 7, 2016 to discuss this matter. The Board indicated that “the disclaimer works as an effective cancellation of claims 6 and 7 upon which Petitioner can rely in preparing its Reply to Patent Owner’s Response.” (Paper 20, p. 2.) Accordingly, Apple does not address claims 6 and 7 herein, as DSS’s statutory disclaimer is effective as requesting adverse judgment against these claims under 37 C.F.R. § 42.73. Any and all estoppels, including the prohibition to pursue any patentably indistinct claims, therefore apply.

III. Natarajan teaches or suggests a server transmitter operating in “low duty cycle RF bursts,” as recited in claim 9 of the ’290 patent.

The vague term “low duty cycle RF bursts” is not defined in the ’290 patent. As the Board correctly recognized in the Institution Decision, under the broadest reasonable interpretation of this term, Natarajan’s “scheduled multi-access protocol in which time is divided into fixed-length frames, along with Natarajan’s description of frames being divided into slots and multiple subframes” demonstrates that

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