UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ServiceNow, Inc.
Petitioner

v.

Hewlett-Packard Company
Patent Owner

U.S. Patent No. 7,392,300
Filing Date: January 8, 2004
Issue Date: June 24, 2008

TITLE: METHOD AND SYSTEM FOR MODELLING A COMMUNICATIONS NETWORK

REPLY DECLARATION OF TAL LAVIAN, Ph.D.

Inter Partes Review No. 2015-00631

Reply Declaration of Tal Lavian, Ph.D.
Case No. IPR2015-00631

I, Tal Lavian, Ph.D., declare as follows:

1.   I submit this Reply Declaration to respond to certain points made in the November 9, 2015 Declaration of Daniel Menascé ("Menascé Declaration") submitted by the patent owner. For the convenience of the reader, this Reply Declaration will address the particular points raised by Dr. Menascé in the order in which they appear in the Menascé Declaration.

I.   RESPONSE TO MENASCÉ OPINIONS RE PERSON OF ORDINARY SKILL

2.   Paragraphs 38-40 of the Menascé Declaration adopt a definition of a person of ordinary skill in the art different from the one expressed in my opening declaration. (Menascé Decl. ¶ 40.) Dr. Menascé states, however, that his opinions would not change if he applied my definition. (*Id.*)

3.   I respectfully disagree with Dr. Menascé and adhere to my original formulation for the reasons stated in my opening declaration. (Ex. 1002, ¶¶ 18-21.) Nevertheless, I agree with Dr. Menascé that the differences between our competing formulations are not material for purposes of the invalidity analysis. My opinions, therefore, would not be different if I were to apply Dr. Menascé's formulation of a person of ordinary skill in the art.

II.   RESPONSE TO MENASCÉ OPINIONS RE MEANING OF "NETWORK EVENT"

4.   Dr. Menascé provides a number of opinions about "event-driven systems" in the context of software applications, and the meaning of the term "network event." (Menascé Decl. ¶¶ 49-54, 99-105.) Dr. Menascé contends that "network event" should be construed as "an action or occurrence within the network that is detected or received by the system." (*Id.* ¶ 99.) I respectfully disagree with Dr. Menascé on these issues.

5.   I am informed that in determining the legal meaning of "network event" to a person or ordinary skill in the art, the "intrinsic evidence" such as the specification of the '300 patent is more relevant than "extrinsic evidence" such as dictionaries, textbooks and other external sources. Although Dr. Menascé agreed with this principle at his deposition (Menascé Depo. at 15:8-15), it does not appear that his analysis applied it. The analysis employed in the Menascé Declaration relies almost entirely on external sources, which Dr. Menascé elevates far above the patent's own description of "network events."

6.   For example, Dr. Menascé relies on dictionaries and textbooks describing event handling in unrelated contexts (such as user interface programming in the Apple Macintosh environment). (Menascé Decl. ¶¶ 49-54, 100, 101.) As I will explain below, I do not believe a person of ordinary skill in

the art would have found these materials informative in ascertaining the meaning of "network event" as it is used in the '300 patent. A person of ordinary skill in the art would have understood "network event," <u>as that term is used in the patent</u>, as one or more operations that can be executed on or by a network or network device, as noted in my previous declaration. (Ex. 1002, ¶ 54.) A simpler yet equivalent formulation in scope would be "one or more operations executed in a network."

7.   Dr. Menascé appears to equate an "event" to a signal, such as a hardware or software interrupt, that notifies a computer that something needs attention. (Menascé Decl. ¶¶ 49-53.) He further states that "[a] 'network event' can trigger an operation, command, or program, but is not itself an operation, command, or program and is not executed or performed." (*Id.* ¶ 111.)

8.   This is the critical point where the analysis adopted by Dr. Menascé goes awry. In the context of the patent, a "network event" <u>is</u> the operation to be executed or performed, <u>not</u> the preceding occurrence that may have triggered it. For example, the following passage in the specification describes a "network event" is something that is "executed:"

> <u>Network events may be executed</u> using the communications network representation. The network event may be selected from the group consisting <u>of provisioning, circuit provisioning, service provisioning, switch provisioning, rollback, and delete.</u>

('300, 2:51-55 (underlining added).) The passage above lists exemplary network events (e.g. provisioning, rollback, delete, etc.) that "may be <u>executed</u> using the communications network representation." (*Id.* (emphasis added).)

9.   The patent makes clear that the word "**executed**" refers to using a computer processor to perform or carry out an operation or series of operations, such as a network event. ('300, 6:21-24 ("The processor **100** then executes the computer program instructions stored in the main memory **120** to implement the features of the network inventory adapter and the present invention."), 6:55-56 ("In step **218** [of Figure 5], the system then executes the event as required.").) In my opinion, the fact that the patent describes "network events" as being "**executed**" is a strong indication that the proposed construction suggested by Dr. Menascé is inaccurate.

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