UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SERVICENOW, INC.
Petitioner

v.

HEWLETT-PACKARD COMPANY
Patent Owner

Case IPR2015-00717
U.S. Patent No. 7,027,411

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PETITIONER'S REPLY

Petitioner's Reply in Support of Petition
IPR2015-00717

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I. INTRODUCTION

The patent owner's attempt to distinguish the Jones and Tonelli references consists essentially of the argument that the "new list of a plurality of tuples" and the "new tuples list" recited in claim 1 *cannot* refer to the same list. The patent owner's interpretation finds no basis in the plain language of the claims, the specification or the prosecution history and is irreconcilable with long-standing rules of claim construction. The Board should reject the patent owner's argument. But even if the patent owner's argument had any merit, both Jones (Ex. 1003) and Tonelli (Ex. 1004) disclose or suggest the alleged "three lists" that the patent owner contends are required by the claim. Accordingly, the Board should find claims 1 and 3 unpatentable based on the instituted grounds.

II. CLAIM 1 DOES NOT REQUIRE THREE LISTS OF TUPLES

The patent owner contends that claim 1 requires "three different" tuples lists. (Resp. at 2.) Claim 1 is shown below, with underlining added to indicate the alleged three lists in context:

> 1. In a network having interconnected nodes with data tuples that represent nodal connections, a method for mapping a network topology by identifying changes between an existing topology and a new topology, the method comprising:
>
> [a] creating <u>a list of existing tuples</u> from an existing topology representing nodal connections of a network at a prior time;
>
> [b] creating <u>a new list of a plurality of tuples</u> for a topology of the

network at a current time, wherein the new list of tuples

represent nodal connections of the network at the current time,

and wherein each of the tuples comprises a host identifier,

interface information, and a port specification;

[c]   receiving <u>new tuples list</u> that represent new nodal connections;

and

[d]   comparing the list of existing tuples with the new tuples list to

identify changes to the topology.

('411, Ex. 1001, claim 1 (emphasis and lettering (e.g., "[a]") added).)

The key dispute revolves around limitations **[b]** and **[c]**, which recite

"creating <u>a new list of a plurality of tuples</u>" and then "receiving <u>new tuples list</u>,"

which the patent owner calls the "second list" and the "third list," respectively.

There are three possible interpretations of these phrases – the "new list of a

plurality of tuples" and the "new tuples list": (1) **<u>may</u>** (but need not) refer to the

same list; (2) **<u>must</u>** refer to the same list; or (3) **<u>cannot</u>** refer to the same list.

The Petitioner has applied interpretation (1) and believes it to be the

broadest reasonable interpretation of claim 1. The Petitioner's view is supported

by the claim language, specification, and file history. The patent owner, on the

other hand, has chosen (3) – by far the most implausible interpretation.

A.   The Plain Claim Language Supports Petitioner's Construction

There is nothing in the claim language that forbids the "new tuples list" of

step **[c]** from referring to the "new list of a plurality of tuples" of step **[b]**. To the

contrary, the plain language itself indicates that the "new list" and the "new tuples list" *are*, or at least *can be*, the same.

Step 1**[b]** recites the step of "<u>creating</u> a new list of a plurality of tuples for a topology of the network at a current time," whereas step **[c]** merely recites "<u>receiving</u> new tuples list." The most natural and logical reading of these steps is that a list is created in step **[b]**, and that created list is then received in step **[c]** and used for the comparison in step **[d]**.

The patent owner's contrary view, that the two lists *must* be different, creates a strained and anomalous outcome. Under the patent owner's interpretation, the list created in step **[b]** is entirely superfluous; it is not referenced in any subsequent claim limitation and not used in the claimed comparison in step **[d]**. *See Frans Nooren Afdichtingssystemen B.V. v. Stopaq Amcorr Inc.*, 744 F.3d 715, 722 (Fed. Cir. 2014) (noting that claims should be construed to not render any part superfluous). Under the patent owner's view, moreover, the list in step **[c]** is created by some external, unspecified and unclaimed process. Indeed, the patent owner's expert conceded that for the patent owner's interpretation to make sense, one has to imply an unclaimed process of creating the "new tuples list" in step **[c]**. (Shamos Tr., Ex. 1008, 52:3-10 ("[T]here's an implied generating step or creating step where that list gets created, and the only thing that's recited is receiving it.").) The Board should reject this strained and unsupported reading of claim 1.

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