

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WHATSAPP, INC. and FACEBOOK, INC.

Petitioner

v.

TRIPLAY, INC.

Patent Owner

IPR2015-00740

Patent 8,332,475 B2

PATENT OWNER'S PRELIMINARY RESPONSE

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35 U.S.C. § 103 5
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37 C.F.R. § 42.6 2, 15
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I. INTRODUCTION

Patent Owner TriPlay Inc. submits the following preliminary response to the Petition filed by WhatsApp, Inc. (“Petitioner”) as Paper No. 1 in this proceeding (“Petition” or “Pet.”), requesting *inter partes* review of claims 1, 6, 9, 12, 17, 18, 21, 28, 37, and 39-42 of U.S. Patent No. 8,332,475 (“the ‘475 patent”). This response is timely pursuant to the Board’s Notice in Paper No. 3.

The Petition’s allegation against claims 6, 9, 17-18, 28, 40, and 42 suffers from at least two fatal flaws.¹ First, the Petition fails to offer any explanation regarding how the references’ teachings would be combined, with no change in their respective functions, to result in an operable system. Instead, the Petition simply cites to the Declaration of Petitioner’s Expert David Klausner (Petitioner’s Ex. 1002, hereinafter “Klausner Declaration”), which Petitioner apparently relies upon to explain how the modified system would work.

¹ It is Patent Owner’s position that all claims 1, 6, 9, 12, 17, 18, 21, 28, 37, and 39-42 of the ‘475 patent are valid. Because of 37 C.F.R. § 42.108(c) requirement, “*Inter partes* review shall not be instituted for a ground of unpatentability unless the Board decides that the petition supporting the ground would demonstrate that there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable,” for purposes of judicial efficiency, Patent Owner limits its preliminary response to claims discussed herein.

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