UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner,

v.

REALTIME DATA, LLC D/B/A IXO,

Patent Owner.

Case IPR2016-01737
Patent No. 8,880,862

Patent Owner's Reply In Support Of Its Motion To Amend

Table of Contents

Exhibit List

Exhibit No.	Description
2001	Declaration of S. Desmond Jui in Support of Motion for Admission Pro Hac Vice
2002	Declaration of Kayvan B. Noroozi in Support of Motion for Admission Pro Hac Vice
2003	Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-773, dated August 14, 2012
2004	Deposition Exhibit Declaration of Dr. Charles J. Neuhauser filed in IPR2016-01737 proceeding (not filed)
2005	Deposition Exhibit Declaration of Dr. Charles J. Neuhauser filed in IPR2016-01738 proceeding (not filed)
2006	Deposition Exhibit Declaration of Dr. Charles J. Neuhauser filed in IPR2016-01739 proceeding (not filed)
2007	Excerpt from Microsoft Computer Dictionary, 5th Ed., Microsoft (2002)
2008	Declaration of Dr. Godmar Back ("Dr. Back Dec.")
2009	Curriculum Vitae of Dr. Godmar Back
2010	Prosecution History of U.S. Provisional Patent Application No. 60/801,114
2011	Deposition Transcript of Charles J. Neuhauser, dated June 2, 2017
2012	Excerpt from Joint Claim Construction and Prehearing Statement in matter Realtime Data, LLC d/b/a IXO v. Apple Inc., C.A. No. 16-cv-02595-JB (N.D. Cal.)
2013	Excerpt from Operating System Concepts, Silberschatz et al. (2009)
2014	UNUSED
2015	UNUSED
2016	Application No. 11/551,211 as filed
2017	Application No. 09/776,267 as filed
2018	U.S. Patent No. 6,539,456 ("Stewart")
2019	U.S. Patent No. 6,173,381 ("Dye '381")
2020	U.S. Patent No. 6,434,695 ("Esfahani")
2021	U.S. Patent No. 6,073,232 ("Kroeker")
2022	Declaration of Dr. Godmar Back in Support of Motion to Amend

2023	Excerpts from the Prosecution History of U.S. Patent No. 7,181,608 (Application No. 09/776,267)
2024	Deposition Transcript of Charles J. Neuhauser, dated September 27, 2017
2025	Declaration of Dr. Godmar Back in Support of Patent Owner's Reply to its Motion to Amend

I. Introduction

Apple does not dispute that Realtime's motion satisfies § 42.121. And Apple makes no serious attempt to show that the proposed substitute claims are unpatentable over Sukegawa, its primary reference in the trial. Instead, Apple now falls back on Settsu and Zwiegincew. Yet the cross-examination testimony of Apple's expert, Dr. Neuhauser, as well as the testimony of Patent Owner's expert, Dr. Back, reveals that Settsu and Zwiegincew both fail to teach "preloading," as the proposed substitute claims require. Apple's other arguments also fail. Apple had every opportunity to make a full evidentiary showing, yet it has presented no analysis as to how any other prior art—whether Esfahani, the art cited in its district court invalidity contentions, or the art cited on the face of the patent—renders any proposed claim unpatentable. Apple has thus failed to meet its burden, and the Board should grant the proposed claims if it finds the original claims unpatentable.

II. Legal standard

In light of the Federal Circuit's recent *en banc* decision in *Aqua Products v. Matal*, the Board must assess the patentability of proposed substitute claims "without placing the burden of persuasion on the patent owner." No. 2015-1177, 2017 WL 4399000, at *1, *29 (Fed. Cir. Oct. 4, 2017). Rather, it is Petitioner's burden "to prove all propositions of unpatentability, including for amended claims." *Id.* And the only relevant art for purposes of that determination is "the

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