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 8,880,862

PATENT OWNER REALTIME DATA, LLC D/B/A IXO'S LIST OF PETITIONER'S IMPROPER REPLY ARGUMENTS

Pursuant to the Board's authorization on October 10, 2017, Patent Owner Realtime Data, LLC d/b/a IXO ("Realtime") submits the following list of the locations and concise descriptions of the portions of Petitioner's Reply (Paper 23) that exceed the proper reply scope. If the Board were to rely on these arguments and evidence in finding the challenged claims unpatentable, Realtime would not have had sufficient opportunity to respond.

1) At pages 7-8 of the Reply, Petitioner argues that Sukegawa renders obvious the limitation "boot data list." For example:

- "As Dr. Neuhauser explained and the Institution Decision credited, a POSITA would have found it obvious that Sukegawa's files of OS and AP control information are lists of boot data." (Reply at 7.)
- "As Dr. Neuhauser explained, a list is an obvious representation for a collection of information and, thus, Sukegawa's files represent lists of control information." (*Id.* at 8.)

2) At pages 5-7 and 13-16 of the Reply, Petitioner argues that "non-accessed boot data" should be construed to mean "boot data that was not accessed" and that Sukegawa's deletion of control information from table 3A renders obvious the "disassociating non-accessed boot data" limitations. For example:

- "[U]nder BRI, a POSITA would have viewed the term 'non-accessed boot data' per its ordinary meaning as simply boot data that was not accessed." (*Id.* at 5.)
- "[A] POSITA would have found Sukegawa's user deletion of control

information obviously (and most likely) to include control information that was not accessed (or not requested during system boot-up).” (*Id.* at 14.)

- “[B]ecause a POSITA would have found user deletion of ‘non-accessed’ boot data to be an obvious part of Sukegawa’s user deletion, Sukegawa renders obvious disassociating non-accessed boot data from the boot data list.” (*Id.* at 14.)

- “Thus, Sukegawa’s automated deletion of AP control information from cache area 10C involves disassociation of non-accessed boot data from the boot data list. And, Realtime’s argument ignores the presence of OS control information in Sukegawa and the obviousness of managing the OS control information similarly to the AP control information.” (*Id.* at 15.)

- “…Realtime does not properly assess obviousness and ignores the other possibility – that the LRU algorithm could discard items not requested during system boot-up. Indeed, as Dr. Neuhauser explained, the entire point of an LRU algorithm is to remove data that has not been accessed and, thus, a POSITA would have found Sukegawa’s automatic deletion of control information obviously (and most likely) to include control information that was not accessed (or not requested during system boot-up).” (*Id.* at 15-16.)

3) At page 16 of the Reply, Petitioner argues Zwiegincew renders obvious the “disassociating non-accessed boot data” limitations. For example:

- “…Realtime cannot overcome the reasonable likelihood of success established for Zwiegincew’s rendering obvious disassociating non-accessed boot data from the boot data list in Ground 5.” (*Id.* at 16.)

4) At pages 16-17 of the Reply, Petitioner argues that the limitation “loading”

boot data “that is associated with a boot data list” does not require the “boot data” be associated with the “boot data list” prior to loading. For example:

- “Indeed, claim 13 merely recites loading boot data ‘associated with a boot data list’ and, under BRI, places no restriction on whether that boot data becomes associated with the boot data list prior to, or at the time of, loading.” (*Id.* at 16-17.)

5) At pages 16-17 of the Reply, Petitioner argues that Sukegawa’s files of control information disclose the limitation “loading” boot data “that is associated with a boot data list.” For example:

- “Indeed, when Sukegawa loads a file of control information from HDD2 to flash memory 1, the control information in the file is associated with the file prior to its loading.” (*Id.* at 17.)

6) At pages 16-18 of the Reply, Petitioner argues that Sukegawa’s table 3A renders obvious the limitation “loading” boot data “that is associated with a boot data list.” For example:

- “[E]ach of Sukegawa, Settsu, and Zwiegincew render obvious this feature, even under Realtime’s overly-narrow interpretation.” (*Id.* at 17.)
- “In fact, both operations must occur at relatively the same time and, as such, a POSITA would have found it obvious to perform either operation (table update or data load) just prior to the other.” (*Id.* at 17.)
- “As Dr. Neuhauser explained, a POSITA would have found it obvious that, to generate this list, Sukegawa’s system receives a user selection of data to preload, updates table 3A to indicate the selection, and then loads the

user-selected data into area." (*Id.* at 18.)

- "In this way, a POSITA would have found it obvious that the user-selected data is associated with table 3A prior to its loading." (*Id.* at 18.)

7) At pages 17-18 of the Reply, Petitioner argues that Settsu and Zwiegincew render obvious the limitation "loading" boot data "that is associated with a boot data list." For example:

- "[E]ach of Sukegawa, Settsu, and Zwiegincew render obvious this feature, even under Realtime's overly-narrow interpretation." (*Id.* at 17.)
- "In the Petition, Dr. Neuhauser explained how Settsu and Zwiegincew each describe loading boot data that is associated with a boot data list." (*Id.* at 18.)
- "…Realtime cannot overcome the reasonable likelihood of success established for Settsu and Zwiegincew rendering obvious loading boot data that is associated with a boot data list in Grounds 2, 4, and 5." (*Id.* at 18.)

8) At pages 22-23 of the Reply, Petitioner argues that Dye's compression engines and components that perform encoding operations meet the "plurality of encoders" limitations. For example:

- "Indeed, a component that performs encoding operations is commonly understood to be an encoder. Because Realtime admits that Dye has a plurality of components that each perform encoding operations, Realtime itself acknowledges that Dye includes a plurality of encoders." (*Id.* at 23 (internal citations omitted).)
- "Specifically, Dye contemplates multiple compression engines. Because Dye's compression engine is an encoder (as Realtime admits),

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