

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 IPR2016-01738

Patent No. 8,880,862

PATENT OWNER'S MOTION TO AMEND

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Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Submitted Electronically via the PTAB E2E System

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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)
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I. Introduction

Patent Owner Realtime Data, LLC (“Realtime” or “Patent Owner”) respectfully moves under 35 U.S.C. § 316(d) and 37 C.F.R. § 42.121 to amend certain claims of U.S. Patent No. 8,880,862 (“the ’862 patent”), contingent on the outcome of this trial. In the event the Board finds independent claims 8, 11, and 14 unpatentable, Patent Owner respectfully requests that the Board grant this motion to amend and issue the corresponding substitute claims presented herein.

As the motion and the accompanying declaration of Dr. Back demonstrate, this motion and the substitute claims meet all of the requirements of 37 C.F.R. § 42.121. Namely, each contingent amendment is responsive to a ground of unpatentability involved in this proceeding, none of the amendments seeks to enlarge the scope of the claims or introduce new subject matter, each amendment proposes only one substitute claim for each conditionally canceled claim, and the motion clearly shows the changes sought and the support in the original disclosure of the patent for each claim that is added or amended.

Moreover, although Patent Owner respectfully believes that it should not bear the burden of either persuasion or production regarding the patentability of the amended claims as a condition of allowance, and further believes that the Board may not *sua sponte* question the patentability of the proposed amended claims, *see In re Aqua Products, Inc.*, 833 F.3d 1335, 1336 (Fed. Cir. 2016) (en banc decision

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