

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 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 24) 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 6-7 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 6.)
- “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 7.)

2) At pages 4-6 and 11-13 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 4-5.)
- “[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 12.)

- “[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 13.)
- “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 13.)
- “...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 15 of the Reply, Petitioner argues that Sukegawa discloses performing the claim 14 step “accessing boot data” prior to the step “loading the boot data into a memory.” For example:

- “... Sukegawa accesses unloaded data from HDD2 prior to loading it into flash memory 1.” (*Id.* at 15.)
- “[A]ccess[ing]’ data is the ‘act of reading data from or writing data to memory,’ which is accomplished by Sukegawa’s reading boot data from

HDD2 when loading boot data into flash memory 1. APPLE-1044.” (*Id.* at 15.)

- “Thus, a POSITA would have understood that the act of loading the data into memory is necessarily preceded by the act of accessing the data to be loaded, or written, into memory.” (*Id.* at 15.)
- “Sukegawa then, separately, services request for loaded boot data.” (*Id.* at 15.)

4) At pages 15-16 of the Reply, Petitioner argues that the limitations “accessing” or “loading” boot data “that is associated with a boot data list” do not require the “boot data” be associated with the “boot data list” prior to accessing or loading. For example:

- “Indeed, claim 14 merely recites accessing 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, accessing.” (*Id.* at 16.)

5) At pages 15-16 of the Reply, Petitioner argues that Sukegawa’s files of control information disclose the limitations “accessing” or “loading” boot data “that is associated with a boot data list.” For example:

- “Indeed, when Sukegawa loads/accesses 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/accessing.” (*Id.* at 16.)

6) At pages 15-17 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 16.)
- “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 16-17.)
- “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 17.)
- “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 17.)

7) At pages 17-18 of the Reply, Petitioner argues that Settsu and Zwiegincew render obvious the limitations “accessing” or “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 16.)
- “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 17.)

8) At pages 21-22 of the Reply, Petitioner argues that Dye’s compression engines and components that perform encoding operations meet the “plurality of encoders” limitations. For example:

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