

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner

v.

BRADIUM TECHNOLOGIES LLC,
Patent Owner

CASE IPR2016-01897
Patent 9,253,239

**PATENT OWNER BRADIUM TECHNOLOGIES LLC'S
RESPONSE PURSUANT TO 37 C.F.R. §42.120**

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Patent Owner Bradium Technologies LLC (“Patent Owner”) hereby submits this Patent Owner’s Response in IPR2016-01897 for U.S. Patent No. 9,253,239 (the “239 patent”). The Board instituted review of claims 1–19 and 23–25 for Ground I, obviousness under 35 U.S.C. § 103(a) over the combination of Reddy and Hornbacker, and of claims 21–22 for Ground II, obviousness under 35 U.S.C. § 103(a) over the combination of Reddy, Hornbacker and Loomans. Paper 17 (Institution Decision) at 33–34. The Board did not institute review of claim 20. Paper 17 at 19–20.

The Board extended DUE DATE 1 to August 1, 2017. Paper 22, amending Scheduling Order (Paper 18).

I. INTRODUCTION

As to Ground 2, claims 21–22 are not unpatentable at least because the asserted references do not teach or suggest the claimed method of using concurrent threads to request and receive update data parcels. In the interest of presenting a focused response, Patent Owner does not include additional argument regarding the prior art status of Loomans, however, Patent Owner maintains its position that Loomans is not prior art. Patent Owner’s argument on the merits shows that, even if Loomans is considered as prior art, claims 21–22 are not rendered obvious.

Further, the claims are not unpatentable because a POSA would not have combined asserted references Reddy and Hornbacker (claims 1–19 and 23–25) and

additionally Loomans (claims 21 and 22) to arrive at the claimed invention of the '239 Patent.

As to all claims on which review has been instituted, claims 1–19 and 21–25, Patent Owner raises the issue of the constitutionality of the instant proceeding in order to preserve its rights. The Supreme Court recently granted certiorari in *Oil States Energy Svcs. v. Greene's Energy Group*, No. 16-712 (cert. granted Jun. 12, 2017) regarding the question of whether *inter partes* review proceedings violate the Constitution by extinguishing private property rights through a non-Article III forum without a jury.

Therefore, the instituted claims 1–19 and 21–25 of the '239 patent are not unpatentable.

II. OVERVIEW OF THE '239 PATENT

The '239 patent is entitled “Optimized image delivery over limited bandwidth communication channels”. The Abstract recites in part: “Large-scale images are retrieved over network communications channels for display on a client device by selecting an update image parcel relative to an operator controlled image viewpoint to display via the client device. A request is prepared for the update image parcel and associated with a request queue for subsequent issuance over a communications channel. The update image parcel is received from the

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