

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL INC.; EMC CORPORATION; HEWLETT-PACKARD ENTERPRISE
CO.; HP ENTERPRISE SERVICES, LLC; TERADATA OPERATIONS, INC.;
and VERITAS TECHNOLOGIES, LLC,

Petitioners,

v.

REALTIME DATA LLC d/b/a IXO,

Patent Owner.

Case: IPR2017-00806¹
Patent No. 7,161,506

PETITIONER'S REPLY TO PATENT OWNER RESPONSE

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450
Submitted Electronically via the Patent Review Processing System

¹ Case IPR2017-00176 has been consolidated with this proceeding.

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT1

II. CLAIMS 104 AND 105 WOULD HAVE BEEN OBVIOUS.....3

A. Patent Owner’s Expert Agrees There Would Have Been Advantages to Using Hsu’s Teachings to Improve Franaszek.....3

B. Any Remaining Dispute Is Over How Franaszek’s And Hsu’s Teachings Would Have Been Combined.3

C. The Board Should Reject Patent Owner’s Position That the Combination of Franaszek and Hsu Would Always Determine a Data Type.....4

1. Patent Owner Makes An Improper Bodily Incorporation Argument.....5

2. Patent Owner’s Arguments About What a POSA Would Have Done Is Based On Misinterpretation of Testimony and Misunderstanding Of the Facts.....6

a. Dr. Creusere Never Testified That Hsu Would Always Be Used To Determine a Data Type.6

b. Dr. Zeger’s Cross-Examination Testimony Reveals Good Reasons Why a POSA Would Not Have Used Hsu When Franaszek Lacked a Data Type Descriptor.8

c. Patent Owner’s Theory Rests On The Unstated And Legally-Unsupported Assumption That A POSA Would Have Only Seen One Obvious Way To Combine Prior Art Teachings.11

d. The Challenge Presented In The Petition Does Not Turn On Whether Hsu “Always Identifies a Data Type.”12

D. Patent Owner’s Criticisms Of The Combination of Franaszek and Sebastian Are Not Well-Founded.....14

1.	Reliance On Sebastian Is Not Needed To Support A Conclusion of Obviousness Because The Instituted Combination Of Franaszek, Hsu, And Sebastian Encompasses Franaszek And Hsu.....	14
2.	Petitioners Have Provided “Actual Evidence” In Support Of Their Positions In The Form Of Declarations And Documents.....	16
3.	Dr. Zeger’s Opinions About The Combination With Sebastian Ignore The Facts And Are Conclusory.....	17
4.	A Problem Can Exist In The Prior Art Even If Franaszek Is Silent About That Problem.....	18
5.	Sebastian Does Not Say What Patent Owner Infers From Its Text. Nor Does It Make Practical Sense To Interpret Sebastian As Patent Owner Does.....	19
6.	Whether The Data Type Is “Available” To Sebastian’s System Is Irrelevant.....	20
III.	PATENT OWNER HAS ADMITTED THE INVALIDITY OF CLAIMS 104 AND 105 UNDER THE PROPER LEGAL TEST RELATING TO CONDITIONAL METHOD CLAIMS.....	21
IV.	CONCLUSION.....	24

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Application of Kronig</i> , 539 F.2d 1300 (CCPA 1976)	15
<i>CRFD Res., Inc. v. Dish Network Corp.</i> , No. 2016-2198, Slip op. (Fed. Cir. Dec. 5, 2017)	14
<i>Cybersettle, Inc. v. Nat’l Arbitration Forum, Inc.</i> , 243 Fed. App’x 603 (Fed. Cir. Jul. 24, 2007).....	22
<i>Graham v. John Deere</i> , 383 U.S. 1 (1966).....	10, 11
<i>In re Keller</i> , 642 F.2d 413 (CCPA 1981).....	5
<i>KSR Int’l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007).....	11, 13
<i>Mobotix Corp. v. E-Watch, Inc.</i> , IPR2013-00334, Paper 18 (PTAB Jan. 10, 2014)	15
<i>In re Mouttet</i> , 686 F.3d 1322 (Fed. Cir. 2012)	11
<i>Ex parte Schulhauser</i> , 2016 WL 6277792, No. 2013-007847 (PTAB Apr. 28, 2016).....	21, 22
<i>In re Schweikert</i> , 676 F. App’x 988 (Fed. Cir. 2017)	17, 18
Other Authorities	
37 C.F.R. §42.65(a).....	7, 17

LIST OF ABBREVIATIONS

Abbreviation

Meaning

'506 Pat.

U.S. Patent No. 7,161,506

cert.

Ex parte reexamination certificate

Inst. Dec.

Institution Decision

Pet.

Petition

POR

Patent Owner Response

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.