UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE LLC,
Petitioner,

v.

BLACKBERRY LTD.,
Patent Owner.

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Case No. IPR2017-00912
U.S. Patent No. 8,745,149

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PATENT OWNER'S SUR-REPLY

Petitioner's Reply incorrectly argues that statements from the prosecution of related European Patent No. 1668824 (Ex. 1022) contradict Patent Owner's arguments in this proceeding, and that those statements confirm that Graham's "displayed elapsed time and color automatically change as time progresses . . . ." Paper 20 at 20-21. Petitioner's Reply mischaracterizes Patent Owner's arguments and ignores the differences in claim language between the two proceedings.

Patent Owner argued in the European proceeding that the Graham application did not condition the *initial* display of a time stamp on an elapsed time or predetermined user input. Ex. 1022, 136-38. Conversely, Patent Owner argued in this proceeding that Graham does not automatically change and update an *already-displayed* time stamp as time progresses. Paper 17 at 31-43. Across both proceedings, Patent Owner's position is consistent: Graham displays a time display with a message, but does not automatically update that displayed time.

Petitioner selectively quotes Patent Owner's February 5, 2008 correspondence in the European proceeding to imply otherwise, and omits the context of those quotations. Paper 20 at 20-21 (quoting Ex. 1022, 136-38). The claims at issue there involved two distinct "outputting" steps: a first "outputting" step where a portion of a first messaging communication is displayed, and a second "outputting" step where a time stamp of the conversation is displayed responsive to "determining that a predetermined period of time has elapsed … without further

communication between the first device and the second device." Ex. 1022, 140. As Patent Owner explained, if a message is determined to be "non-responded-to" for a period of time, "*then and only then* is a time stamp output on the receiving device to indicate the received time of the non-responded-to message." *Id.*, 135-36. This selective output is advantageous because it conserves the "limited space on the display of the electronic device." *Id.*, 136. Patent Owner then explained that <u>Graham</u> displays "relative age" information "regardless of whether any further communications have taken place," and cannot satisfy the claims. *Id.*, 136-37.

The issue in the European proceeding, therefore, was *not* whether <u>Graham</u> automatically changes and updates time information (it does not), but whether <u>Graham</u> displays an initial time stamp for a messaging communication *only after* certain conditions had been met (it also does not). Petitioner quotes, for example, the following portion of Patent Owner's explanation: "Of particular relevance here is the fact that in [the <u>Graham</u> application], this 'relative age' information is output automatically, *regardless* of whether any further communications have taken place." Ex. 1022, 137 (emphasis added); Paper 20 at 21. Petitioner's reliance on this sentence is misplaced—"automatically" was not a claim term at issue, so Patent Owner's use of that word cannot be a concession the <u>Graham</u> application discloses "automatically changing … and displaying" as claimed by the '149 patent. Patent Owner's meaning in this sentence is also plain: the <u>Graham</u>

application's display of time information *does not depend* on whether any further communications have taken place. Ex. 1022, 136-37. That sentence says nothing about whether the <u>Graham</u> application automatically changes and displays the relative age of a message as time progresses. Earlier claims conditioned the second "outputting" step on "a predetermined input from a user," and Patent Owner explained that this conditioned outputting functionality was not described by <u>Graham</u>. Ex. 1022, 222-25. Patent Owner consistently explained that the <u>Graham</u> application simply displays time information along with a message, and does not *condition* the display of that time information on the claimed events.

Petitioner also misinterprets Patent Owner's statement that <u>Graham</u> discloses "display[ing], starting as soon as a communication has been received from a sending device, ongoing information on the time elapsed since that communication was received." *Id.*, 138; Paper 20 at 22. The <u>Graham</u> application "is concerned with presenting, without any initial delay, a display related to a received message according to the age of that message . . . ." Ex. 1022, 138. A manually initiated display update operation would still allow displaying "ongoing information" on the elapsed time, is consistent with <u>Graham</u>'s disclosure, and would not constitute "automatically changing … and displaying" as claimed. Petitioner is wrong to equate this argument with its argument now that the <u>Graham</u> application discloses "automatically changing … and displaying" updated time information.

Dated: <u>May 8, 2018</u>   Respectfully Submitted,

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