Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

BLACKBERRY LTD.,
Patent Owner.

Case No. IPR2017-00913
U.S. Patent No. 8,402,384

PATENT OWNER'S SUR-REPLY

Petitioner's Reply claim 4 argument is new and should not be considered. *See* Reply (Paper 20) 17-23. The Petition alleged that two embodiments in Cadiz—a person-centric and an email-centric interface—independently render obvious independent claim 1. *See, e.g.*, Pet. 14 ("One example is a person-centric interface, as described in connection with, e.g., FIGS. 6B and 8A-C. Another…is an email-centric interface, as described in connection with, e.g., FIG. 10….Each of these…independently discloses…limitation 1.b."), 17 ("*Cadiz* discloses [limitation 1.c]…with respect to both the person-centric…and…email-centric interface…."), 25 (same for 1.d), 29 (same for 1.e), 37 (same for 1.f and 1.g). The Board's Institution Decision "interpret[ed] Petitioner's contentions as relying on two separate embodiments and alternative theories…—one based on Cadiz's…person-centric interface and one based on … the email-centric interface." Paper 7 at 21.

Claim 4 requires the apparatus of claim 1 "comprise[] a cellular telephone." In two sentences and a string citation, the Petition asserted Cadiz discloses this feature because it "discloses a 'general-purpose computing device constituting an exemplary system for implementing the present invention'…, and that such a device can be a cell phone." Pet. 45-46; Ex. 1002, ¶99 (same). PO explained why this assertion is fatally flawed: Cadiz's person-centric and email-centric interfaces are for a desktop computer, and Petitioner cannot assume—and Cadiz does not show—they would be implemented in the same way on a cell phone. Resp. 38-43.

In Reply, Petitioner does not dispute PO's explanation on this point. Thus, if Petitioner is properly held to its original Petition arguments, claim 4 is patentable over Cadiz. Instead, Petitioner retreats from relying on any specific interface and now argues (without expert support) that the "general concepts" of Cadiz's Figures 1-3, 4A, and 5 are sufficient to disclose claims 1 and 4. *E.g.*, Reply 17-23. But Petitioner cannot "change theories in midstream without…reasonable notice of the change and the opportunity [for PO] to present argument under the new theory." *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016); *accord SAS Inst., Inc. v. Iancu*, No. 16-969, 2018 WL 1914661, at *6 (U.S. Apr. 24, 2018) (The "petition…is supposed to guide the life of the litigation."). PO lacks the opportunity to depose Petitioner's expert about Petitioner's new theory and cannot introduce rebuttal expert testimony. Petitioner's new theory must be dismissed.

Even if considered, Cadiz's "general concepts" fail to show claim 1's specific features. Petitioner claims that Cadiz's "present invention" (Figs. 1-3, 4A, and 5) discloses the elements of claim 1 and can be implemented on a cell phone. Reply 18. But neither the Petitioner nor its expert demonstrates how this "present invention" meets the limitations of claim 1, let alone on a cell phone. For example, Petitioner does not show—in either the Petition or Reply—how any of Figures 1-3, 4A, and 5 or their corresponding descriptions disclose, on a cell phone, "displaying the expanded dynamic bar comprising: displaying additional dynamic preview

information determined from the information managed by the software application, the additional dynamic preview information being different from the dynamic preview information displayed in the dynamic bar, and the additional dynamic preview information being updated to reflect the same or different change to the information managed by the software application." *See* Pet. 29-37 (relying on the specific ***desktop*** interfaces of Figs. 8A-8B and Fig. 10); Reply 17-23. Cadiz's description of Figure 5 does not even mention implementing its disclosure on a cell phone. Cadiz's general statements about cell phones are, therefore, insufficient to show that Cadiz discloses claim 4.

Moreover, there is no indication that all aspects of Cadiz's alleged invention would, or even could, have been implemented on all disclosed devices in the same way, as explained in PO's Response. Resp. 39-40; *e.g.*, Ex. 2007 ¶82 (PO's expert: that a cell phone is "suitable for use with" Cadiz does not mean that all of Cadiz would be implemented in the same way on a cell phone); Ex. 1018, 126:20-131:14. For example, Cadiz discloses physical icon implementations, yet "a doll that turns its head to one side when a person or entity…is either available or unavailable for communication" cannot satisfy, *e.g.*, claim 1's "dynamic bar." Resp. 40; *e.g.*, Ex. 2007 ¶82. Thus, the Reply's contention that Cadiz discloses claim 4 because it "explains that the concepts described with respect to these figures can be implemented on a cell phone" is insufficient. *See* Reply 23.

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Respectfully Submitted,

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