

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BITDEFENDER INC.
Petitioner

v.

UNILOC USA, INC.
Patent Owner

Case IPR2017-01315
Patent 6,510,466

Title: Methods, Systems and Computer Program Products for Centralized
Management of Application Programs on a Network

PETITIONER'S INSTITUTION RESPONSE BRIEF

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I. INTRODUCTION

Petitioner appreciates the opportunity afforded to the parties to address the institution of claims 15-17, 22-24, 30, and 35-37 in light of *SAS Institute, Inc. v. Iancu*, 2018 WL 1914661, at *10 (U.S. Apr. 24, 2018). While the present brief is not specifically authorized by the rules, both the present brief and the original *SAS Order* (Paper 14) are grounded in principles of due process¹ that support the parties' right to be heard².

II. SCOPE OF INSTITUTION RESPONSE BRIEF

In the Order dated May 25, 2018 (Paper 15), the Panel specified that Petitioner's Institution Response Brief is, *inter alia*, for identifying matters in which Petitioner believes the Board erred in its institution decision. Thus, the present brief is broader than a request for rehearing.

Forcing the Petitioner to supply evidence with their petition for arguments not yet raised would, in fact, require them to anticipate all possible arguments. *Volkswagen Grp. of Am., Inc. v. Emerachem Holdings, LLC*, IPR2014-01555, Paper 36 at 5 (PTAB Oct. 9, 2015). The Federal Circuit has interpreted 5 USC §554(b)(3) in the context of IPR proceedings to mean that “an agency may not

¹ Codified at least in part in the Administrative Procedure Act, 5 USC 554 (b)(3), (c), (d). *Dell Inc. v. Accelaron, LLC*, 818 F.3d 1293, 1301 (Fed. Cir. 2016).

² A waivable right does not impose an obligation to exercise that right.

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