

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.

Petitioner

- vs. -

FALL LINE PATENTS, LLC

Patent Owner

IPR2018-00043

U.S. Patent 9,454,748

PETITIONER'S REPLY

TO PATENT OWNER'S RESPONSE

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I. Introduction

Petitioner submits this reply to Patent Owner's Response ("POR") filed June 26, 2018 (Paper 9). The Petition conclusively establishes, by a preponderance of the evidence, that all challenged claims are unpatentable. Patent Owner's Response is a transparent attempt to distract the Board from issues of actual relevance in this case. For example, Patent Owner seeks to construe terminology that is not recited in any challenged claim. Further, Patent Owner's arguments are based on erroneous premises that are plainly inconsistent with a POSITA's understanding of the technology, the evidentiary record, and, indeed, the claim language itself. Finally, Patent Owner presents arguments that are at odds with fundamental principles of obviousness.

In short, the Patent Owner Response provides nothing to lead the Board away from its initially-correct findings in the Institution Decision. None of Patent Owner's contentions are persuasive. The Board should confirm its findings in the Institution Decision that the combination of *Kari*, *Darnell*, *Chan*, and *Todd* teaches each and every limitation of challenged claims 16–19 and 21–22 and that a POSITA would have combined the references. Petitioner respectfully requests a final written decision cancelling all challenged claims as unpatentable.

II. Patent Owner's Claim Construction is Irrelevant

Patent Owner proposes a construction for the term "loosely networked,"

alleging that the definition of such a term is “critical to the understanding of the '748 Patent.” POR at 3–5.¹ The Board should reject Patent Owner's proposed construction. The term “loosely networked” is not recited in any challenged claim. Thus, there is no reason to construe the term “loosely networked,” nor would construction of this term resolve any dispute as to patentability. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (holding that construction of a term is not necessary where the construction is not relevant to the dispute).

III. The Evidence Establishes that Every Challenged Claim is Unpatentable.

Contrary to Patent Owner's allegations, the combination of *Kari*, *Darnell*, *Chan*, and *Todd* teaches each and every limitation of claims 16–19 and 21–22, and a POSITA would have found it obvious to combine the references. Patent Owner's arguments lack technical and legal merit, and fail to appreciate the combined teachings of the references.

¹ Patent Owner asserts that the “entire contents” of the Preliminary Response are incorporated by reference, which is not permitted under 37 C.F.R. § 42.6(a)(3). Any arguments not raised in the Patent Owner Response are therefore waived. Paper 7 (“Scheduling Order”), at 3.

A. Patent Owner's Attacks on Dr. Reddy's Declaration Are Unfounded

As the Board recognized earlier, Dr. Reddy's testimony provides persuasive evidence that the asserted references teach each and every limitation of the challenged claims. *See* Institution Decision (Paper 6) at 27–46. Although Patent Owner presents a number of arguments addressed below in its attempt to cast doubt on Dr. Reddy's opinion, the Board should reject each of these technically and legally unsound arguments, and properly credit Dr. Reddy's technical analysis. *See Elbit Sys. of America, LLC v. Thales Visionix*, 881 F.3d 1354, 1358 (Fed. Cir. 2018) (“The PTAB [i]s entitled to weigh the credibility of the witnesses.”)

1. *Kari* is Not Limited to HTML 2

Patent Owner's first argument requires the Board to accept two false premises: (1) that the teachings of *Kari*'s disclosure are fundamentally limited to the Nokia 9000 Communicator (they are not); and (2) that HTML tags for forms only existed in HTML 4 (forms were present in HTML from HTML 1.0). POR at 11–12. Both arguments are specious.

First, Patent Owner asserts that “the Nokia Communicator 9000 only supported HTML 2” and, based on this contention, alleges that the teachings of *Darnell* cannot be combined with those of *Kari*. POR at 11. *Kari* states that “[a] device suitable for the search terminal 1 is Nokia 9000 Communicator,” but in no way would a POSITA understand *Kari* to be *limited* to only that implementation.

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