UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTERN DIGITAL CORPORATION
Petitioner

v.

SPEX TECHNOLOGIES, INC.
Patent Owner

Case No. IPR2018-00082

Patent 6,088,802

SUPPLEMENTAL DECLARATION OF MARTIN KALISKI, Ph.D. IN SUPPORT OF PETITION FOR *INTER PARTES* REVIEW

Mail Stop **Patent Board**
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

1. I have been asked to provide this Supplemental Declaration concerning technical subject matter relevant to the *inter partes* review of U.S. Patent No. 6,088,802 ("the '802 Patent"). Specifically, this Supplemental Declaration addresses several arguments raised in Patent Owner's Preliminary Response ("POPR") and issues identified by the Patent Trial & Appeal Board in its decision instituting review of the '802 Patent in IPR2018-00082 (Paper 11).

2. Based on my review of the POPR and the institution decision, I understand that the Board agreed with Patent Owner that the Petition had not shown that Harari disclosed an identical or equivalent structure to the structure of interface control device 910 in the '802 Patent at Figure 9B, and, as a result, the Board concluded that there was not a reasonable likelihood that Petitioner would prevail. Subsequent to my initial declaration (Ex. 1015), additional evidence has come to light that, in my opinion, establishes that Figure 4 in Harari discloses the same or equivalent structure as interface control device 910.

I. HARARI FIGURE 4 TEACHES INTERFACE CONTROLLER 910 FROM FIGURE 9B OF THE '802 PATENT

[1F.]	means for mediating communication of data between the host computing device and the target means so that the communicated data must first pass through the security means
[11E.]	means for mediating communication of data between the host computing device and the target means so that the communicated data must first pass through the security means

[23E.]	means for mediating communication of data between the host computing device and the target means so that the communicated data must first pass through the security means

3. In the institution decision, the Board adopted the district court's construction of the term "means for mediating communication of data between the host computing device and the target means so that the communicated data must first pass through the security means." Specifically, the Board agreed that this phrase is governed by 35 U.S.C. § 112 ¶ 6, "where the function is 'mediating communication of data between the host computing device and the target means so that the communicated data must first pass through the security means' and the corresponding structure is '[i]nterface control device 910 (as shown in Fig. 9B).'" Paper 11 at 15 (citing Ex. 2003 at 31-38). This is a narrower construction than was proposed in the petition or by SPEX in the district court.

4. Applying this construction, the Board found that the Petition had not shown that Harari disclosed an identical or equivalent structure to the structure in the '802 Patent that performs the function in this means-plus-function "means for

mediating" term and thus found that there was not a reasonable likelihood that Petitioner would prevail.[1] Paper 11 at 34-36.

5. Subsequent to my original declaration, two of SPEX's experts in the related district court litigation, Dr. V. Thomas Rhyne (Patent Owner's infringement and invalidity rebuttal expert) and Mr. Miguel Gomez (also Patent Owner's invalidity rebuttal expert), testified regarding the structures in Harari Figure 4 in comparison to interface controller 910 in Figure 9B of the '802 Patent

[1] The Board acknowledged that Harari's functional module 42 provides encryption/decryption and other security features. Paper 11 at 31. The Board's institution decision stated that the evidence of record did not establish that Harari's functional module 42 (or controller 41) assures that data exchanged between the host and the daughter card ***must*** pass through the functional module for performing a security operation (such as encryption). *Id.* My original declaration explained that one of ordinary skill in the art would know that in order to store encrypted data it must first pass through the security means in Harari (to be encrypted in the first place). *See* Ex. 1015, ¶ 115. And, the record also contained Dumas, which discloses that the data must pass through the security means, evidencing that it was known in the art to do so. *Id.*, ¶¶ 184-187. The Board also agreed that Dumas discloses this limitation in its institution decision. Paper 11 at 41-42.

and the relationship of the components in Figure 9B to standard PCMCIA and flash memory interfaces. This testimony was not available at the time of my original declaration and is relevant to the issue of whether Harari Figure 4 discloses a structure corresponding to interface controller 910 in '802 Patent Figure 9B (or its equivalent). I have provided that testimony below, omitting objections for clarity.

6. First, Dr. Rhyne compared Host Interface 54 of Figure 4 in Harari to Figure 9B of the '802 Patent:

> Q. Sure. So the host interface 54 in Figure 4 of Harari would perform the same function as the blocks that interface with the PCMCIA interface in Figure 9B, right?
>
> A. Did you mean 54 or 12 in -- in Harari's Figure 4?
>
> Q. No. In -- in Harari's Figure 4, I'm talking about host interface --
>
> A. Okay.
>
> Q. -- block 54, and I'm asking you if they perform the same function as -- and I'll identify the blocks in Figure 9B of the '802 patent -- the PCMCIA I/O controller?
>
> A. Okay.
>
> Q. PCMCIA address buffer?
>
> A. Yep.
>
> Q. PCMCIA data buffer?
>
> A. Yep.
>
> Q. Ready register?
>
> A. Ready/busy register, right.
>
> Q. Yes. Command detector and state controller?

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