UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,
Petitioner,

v.

AGIS SOFTWARE DEVELOPMENT LLC,
Patent Owner.

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Case IPR2018-00821
U.S. Patent No. 8,213,970

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**PETITIONER'S REPLY TO PATENT OWNER'S
PRELIMINARY RESPONSE**

Exhibit List

Ex. No.	Description
1001	U.S. Patent No. 8,213,970 (the "'970 patent")
1002	Declaration of Dr. Benjamin Bederson In Support of Petition for *Inter Partes* Review of U.S. Patent No. 8,213,970 ("Bederson Decl.")
1003	Curriculum Vitae of Dr. Benjamin Bederson
1004	U.S. Patent Application Publication No. 2005/0030977 ("Casey")
1005	U.S. Patent No. 7,386,589 ("Tanumihardja")
1006	U.S. Patent No. 6,232,971 ("Haynes")
1007	File History for U.S. Patent No. 8,213,970 ("FH")
1008	Exhibit A to Plaintiff's Preliminary Infringement Contentions, submitted in *AGIS Software Development LLC v. Apple Inc.*, No. 2:17-cv-00516-JRG (E.D. Tex.) ("'970 PICs")
1009	APPLE COMPUTER, INC., MACINTOSH HUMAN INTERFACE GUIDELINES (1992) ("HIG")
1010	U.S. Patent Application Publication No. 2003/0103072 ("Ko")
1011	U.S. Patent Application Publication No. 2003/0081011 ("Sheldon")
1012	U.S. Patent No. 6,271,835 ("Hoeksma")
1013	U.S. Patent Application Publication No. 2002/0135615 ("Lang")
1014	U.S. Patent No. 6,459,440 ("Monnes")
1015	Benjamin B. Bederson, *Fisheye Menus,* PROCEEDINGS OF ACM SYMPOSIUM ON USER INTERFACE SOFTWARE AND TECHNOLOGY 217 (2000)

Ex. No.	Description
1016	Donald A. Norman, THE PSYCHOLOGY OF EVERYDAY THINGS, Chapter 1, THE PSYCHOPATHOLOGY OF EVERYDAY THINGS, 1-33 (1998)
1017	Jakob Nielsen, USABILITY ENGINEERING, 129-148 (1993)
1018	Ben Shneiderman, DESIGNING THE USER INTERFACE, STRATEGIES FOR EFFECTIVE HUMAN-COMPUTER INTERACTION (3rd ed. 1998)
1019	Derek Ball & Dayton Foster, HOW TO DO EVERYTHING WITH YOUR TREO 600, 25-30 (2004)
1020	Redline comparison between the specifications of U.S. Application No. 11/612,830 and U.S. Patent No. 8,213,970 ("830-122 Comparison")
1021	Claim Construction Order, *Automated Packaging Sys. v. Free Flow Packaging Int'l*, No. 18-cv-00356, ECF No. 217 (N.D. Cal. Aug. 2, 2018)

Petitioner provides the following citations to legal authority regarding "the issue of whether a Petitioner must have a subjective belief that the claim constructions presented in the Petition are correct." Paper 7 at 2-3 (Order).

Western Digital Corp. v. Spex Techs, Inc., IPR2018-00084, Paper 14 at 10-12 (April 25, 2018) (rejecting the same argument made by the same patent owner counsel as here, and distinguishing *Toyota Motor Corp. v. Blitzsafe Texas LLC*, Paper 12, IPR2016-00422 (July 6, 2016)).

Automated Packaging Sys. v. Free Flow Packaging Int'l, No. 18-cv-00356, slip op. at 4-5 (N.D. Cal. Aug. 2, 2018) ("failure to advance a particular construction" or argue indefiniteness during IPR is not probative during Markman) (Ex. 1021).

Fed. R. Civ. P. 8(d)(3) ("A party may state as many separate claims or defenses as it has, regardless of consistency."); *see also Bancorp Services v. Sun Life Assur. Co. of Canada*, 687 F.3d 1266, 1280 (Fed. Cir. 2012) (citing Fed. R. Civ. P. 8(d)(3), and holding the party was entitled to take inconsistent positions); *Water Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 665-666 (Fed. Cir. 1988) (party entitled to take inconsistent positions, and judicial estoppel cannot apply unless an inconsistent position has been successful).

Enzo Biochem, Inc. v. Applera Corp., 599 F.3d 1325, 1332 (Fed. Cir. 2010) (claims are indefinite, and in the alternative, anticipated); *Ethicon Endo-Surgery,*

Inc. v. Covidien, Inc., 796 F.3d 1312 (Fed. Cir. 2015) (claims are indefinite, and in the alternative, not infringed); *Nippon Suisan Kaisha Ltd. v. Pronova Biopharma Norge, AS*, PGR2017-0033, Paper 7 (Jan. 17, 2018) (instituting review of inconsistent alternative positions of indefiniteness and anticipation/obviousness); *B.R.A.H.M.S. GMBH v. Becton, Dickinson and Co.*, PGR2016-00018, Paper 8 (Nov. 2, 2016) (same); *eBay Inc. v. Purple Leaf, LLC*, CBM2015-00052, Paper 22 (July 30, 2015) (same).

Cuozzo Speed Techs., LLC v. Lee, 136 S. Ct. 2131, 2141-42 (2016) (canceling a claim for indefiniteness in an IPR is precluded by statute); *Broadsign Int'l v. T-Rex Property*, IPR2017-00006, Paper 2 (Petition) at 13 n.2 (Oct. 6, 2016) (patent owner's counsel in this case correctly recognizing "the limited scope of inter partes review," proposing claim constructions "solely for the purposes of this IPR," and "reserve[ing] the right to propose alternative claim constructions in other proceedings) (institution denied for other reasons).

Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co., 868 F.3d 1013, 1017 (Fed. Cir. 2017) (Board required to construe claim terms only to the extent necessary to resolve the controversy.).

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