

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

BRADIUM TECHNOLOGIES LLC,
Patent Owner.

Case IPR2018-00952
Patent No. 9,253,239

**PATENT OWNER BRADIUM TECHNOLOGY'S REPLY TO
OPPOSITION TO MOTION TO AMEND
PURSUANT TO 37 C.F.R. § 42.121**

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I. The Claims of Bradium’s Proposed Amendment Are Not Indefinite

The basis of Petitioner’s Opposition appears to be rooted in a mischaracterization of the law and a gross overstatement of the effect of a minor typographical errors in elements 20M and 20P of amended claim 20.

Indefiniteness under the *Nautilus* standard is found when a claim fails to "inform those skilled in the art about the scope of the invention with reasonable certainty" and considers factors other than the claim language itself such as the written description and prosecution history. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 910 (2014). The *Packard* standard, on the other hand, merely looks to whether the claim “contains words or phrases whose meaning is unclear,” *In re Packard*, 751 F.3d 1307, 1310 (Fed. Cir. 2014) (per curiam).

However, Patent Owner believes it is clear, that, to the extent the *Packard* standard and the *Nautilus* standard differ, it is the *Nautilus* standard that controls because it is Supreme Court precedent that issued later in time after *Packard*. Tellingly, Petitioner does not even try to apply the *Nautilus* standard in its analysis but, instead merely relies on a superficial application for the wrong (*Packard*) standard. Opposition at 6-7. This is because, as explained below, under the correct (*Nautilus*) standard, the claims at issue are clearly not indefinite.

Patent Owner recognizes and agrees there are minor typographical errors in claim elements [20M] and [20P]. In particular, that the first recitation of third update data parcel in element [20M] should in fact be the second update data parcel. And 20P should be the third derivative rather than second. However, these are minor typographical errors and a POSITA would understand with a high degree of certainty and clarity that third was intended to be second for element 20M and vice versa for element 20P for at least several reasons.

The first reason is that a POSITA, under *Nautilus*, would consult the written description in order to ascertain the proper meaning of the claim. Such inspection clearly shows that there is no description at all of displaying the second discrete portion ... using the third update data parcel... as pointed out by Unified's Opposition. Rather, that only displaying the second discrete portion ... using the second update data parcel is disclosed for element [20M]. Similarly, that a third derivative image is used and not a second in element [20P]. Therefore, a POSITA would reject this recitation as flawed as not supported by the disclosure and understand third to mean second in this context. EX1019, 6:25-7:1

Moreover, in consulting the disclosure, (the '239 specification and the '468 provisional) it is apparent that the specification essentially discloses one image parcel deployment embodiment, in which the displaying the second discrete portion ... must be done using the second update data parcel and not the third for

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