UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS INC.,
Petitioner,

v.

BRADIUM TECHNOLOGIES LLC,
Patent Owner.

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

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

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.

According to amended claim 20, the second request is renamed the third request, with a new second request inserted. Corresponding references of the second

request are also incremented, except that the third update data parcel still references the second user-controlled image viewpoint. The new second request is for an altered resolution data parcel that references the first user-controlled image viewpoint. Petitioner called to Patent Owner's attention that the word "second" was not cancelled and replaced with "third". The corrected clauses should read:

> "displaying the ~~second~~ **third** discrete portion on the user computing device using the ~~second~~ third update data parcel, the step of displaying the ~~second~~ third discrete portion being performed after the step of receiving the ~~second~~ third update data parcel;" and

> "a series of K_{1-N} derivative images of progressively lower image resolution comprises the first derivative image and the ~~second~~ **third** derivative image, …"

It is noted that the "step of displaying" is a reiteration of the initial "displaying" clause, and therefore the antecedent and subsequent clearly should match. This also follows from the amendment structure which provides for "displaying the first discrete portion … "and "displaying the second discrete portion … "each in a fully parallel recitation. Similarly, it is clear that since the second request was incremented to the third request, the "second derivative image" in the "wherein" clause should also be incremented to the "third derivative image."

In accordance with 35 U.S.C. § 112, a clear error in a claim may be legally

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