UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC, Petitioner,

v.

AGIS SOFTWARE DEVELOPMENT LLC, Patent Owner.

Patent No. 8,213,970 Filing Date: November 26, 2008 Issue Date: July 3, 2012

Inventor: Malcolm K. Beyer, Jr.
Title: METHOD OF UTILIZING FORCED ALERTS FOR INTERACTIVE REMOTE COMMUNICATIONS

PATENT OWNER'S PRELIMINARY RESPONSE

Case No. IPR2018-01079



TABLE OF CONTENTS

			Page(s)
I.	INT	RODUCTION	1
II.	PET STA	E PETITION SHOULD BE DENIED BECAUSE ITIONER HAS FAILED TO PROVIDE A SUFFICIENT TEMENT OF HOW THE CLAIMS SHOULD BE ISTRUED	4
	A.	Petitioner's proposed construction of the means-plus-function terms conflict with positions it has taken in the District Court Litigation and Petitioner has failed to meet its burden under 3' C.F.R. § 42.104	7
	В.	Petitioner improperly submits a conflicting construction for the "forced message alert software application program," "manual response," and "the repeating voice alert" terms and phrases of the Challenged Claims	19
	C.	Petitioner's conflicting positions violate 37 C.F.R. § 42.11, § 11.18(b)(2)	20
III.		ITIONER HAS NOT ESTABLISHED THAT THE KUBALA ERENCE IS PRIOR ART	24
IV.	LIKI ADV	ITIONER HAS NOT DEMONSTRATED A REASONABLE ELIHOOD OF SUCCESS FOR THE GROUNDS VANCED IN THE PETITION, AND THE PETITION OULD BE DENIED	28
	A.	Requirements for Showing Obviousness Under 35 U.S.C. § 103	28
	B.	Kubala Is Directed to a Completely Different Technological Field	31
	C.	No Motivation Exists to Combine Kubala With Hammond	32
	D.	Ground 1 Is Deficient Because Kubala Does Not Disclose a "forced message alert software packet"	34



	E.	Ground 1 Is Deficient Because Kubala Does Not Disclose Automatically Acknowledging Receipt of the Forced Message Alert	35
	F.	Ground 1 Is Deficient Because Kubala Does Not Disclose <i>Clearing</i> the Display <i>Only</i> in Response to Selection of the Manual Response	39
	G.	Grounds 2 and 3 Are Deficient Because Hammond Does Not, By Itself, Disclose or Suggest Any Single Limitation of the Challenged Claims	41
	Н.	Grounds 2 and 3 Are Deficient Because Petitioner Fails to Submit Any Motivation to Combine the References to Disclose or Suggest "a data transmission means"	43
	I.	Grounds 2 and 3 Are Deficient Because Petitioner Does Not Identify Which Elements in Hammond, Johnson, and Pepe Correspond to the "forced message alert software packet"	45
	J.	Grounds 2 and 3 Are Deficient Because The Combination of Hammond, Johnson, and Pepe Does Not Disclose or Suggest <i>Clearing</i> the Display <i>Only</i> in Response to Selection of the Manual Response	47
V.	CON	ICLUSION	49



TABLE OF AUTHORITIES

	Page(s)
Cases	
Apple, Inc. v. Contentguard Holdings, Inc., IPR2015-00355 (P.T.A.B., June 26, 2015)	28
Broadcom Corp. v. Emulex Corp., 732 F.3d 1325 (Fed. Cir. 2013)	30
In re Donaldson Co., 16 F.3d 1189 (Fed. Cir. 1994) (en banc)	18
Dynamic Drinkware, LLC v. Nat'l Graphics, Inc., 800 F.3d 1375 (Fed. Cir. 2015)	24
In re Edwards, 568 F.2d 1349 (CCPA 1978)	25
Facebook, Inc. v. Sound View Innovations, LLC, Case Nos. IPR2017-00998 & IPR2017-01002 (P.T.A.B., Sept. 5, 2017)	17
Fitbit, Inc. v. Bodymedia, Inc., Case No. IPR2016-00707 (P.T.A.B., Sept. 8, 2016)	24, 25
Fresenius USA, Inc. v. Baxter Int'l, Inc., 582 F.3d 1288 (Fed. Cir. 2009)	30
Graham v. John Deere Co., 383 U.S. 1 (1966)	28
Innogenetics, N.V. v. Abbott Labs., 512 F.3d 1363 (Fed. Cir. 2008)	30
Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd., 821 F.3d 1359 (Fed. Cir. 2016)	29
Key Pharm. v. Hercon Labs. Corp., 161 F.3d 709 (Fed. Cir. 1998)	23



KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398 (2007)	28
Los Angeles Biomedical Research Inst. at Harbor-UCLA Med. Ctr. v. Eli Lilly & Co., 849 F.3d 1049 (Fed. Cir. 2017)	29
N. Telecom Ltd. v. Samsung Elecs. Co., 215 F.3d 1281 (Fed. Cir. 2000)	23
Pers. Web Techs., LLC v. Apple, Inc., 848 F.3d 987 (Fed. Cir. 2017)	29
Sanofi-Aventis U.S. v. Immunex Corporation, Case No. IPR2017-01129 (P.T.A.B., Oct. 4, 2017)	18
Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530 (Fed. Cir. 1983)	28
<i>In re Van Os</i> , 844 F.3d 1359 (Fed. Cir. 2017)	30
Yniguez v. State of Ariz., 939 F.2d 727 (9th Cir. 1991)	23
Statutes	
35 U.S.C. 102	24
35 U.S.C. § 103	28
35 U.S.C. § 112	passim
35 U.S.C. § 314(a)	3
35 U.S.C. § 316(e)	24
Other Authorities	
37 C.F.R. § 11.18(b)(2)	3, 20
37 C.F.R. § 42.11	3, 20
37 C.F.R. § 42.104	4



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

