

IPR2018-01257
U.S. Pat. No. 8,552,978

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Google LLC

Petitioner

v.

Cywee Group Ltd.

(record) Patent Owner

IPR2018-01257

Patent No. 8,552,978

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION TO AMEND**

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Exhibit No.	Description
1001	U.S. Pat. No. 8,552,978 (“ the ’978 patent ”).
1002	Declaration of Professor Majid Sarrafzadeh.
1003	C.V. of Professor Majid Sarrafzadeh.
1004	U.S. Pat. No. 7,089,148 (“ Bachman ”).
1005	U.S. Pat. App. Pub. 2004/0095317 (“ Zhang ”).
1006	U.S. Pat. 7,158,118 (“ Liberty ”).
1007	Return of Service for <i>Cywee Group Ltd. v. Google, Inc.</i> , Case No. 1-18-cv-00571, (D. Del.).
1008	Return of Service for <i>Cywee Group Ltd. v. Huawei Technologies Co., Inc. et al.</i> , Case No. 2-17-cv-00495, (E.D. Tex.).
1009	File History of U.S. Pat. App. 13/176,771
1010	Joint Claim Construction and Prehearing Statement in <i>Cywee Group Ltd. v. Samsung Electronics Co. Ltd. et al.</i> , Case No. 2-17-cv-00140, (E.D. Tex.).
1011	Ex. D to Complaint of April 16, 2018 in <i>Cywee Group Ltd. v. Google, Inc.</i> , Case No. 1-18-cv-00571 (D. Del.).
1012	Email of August 3, 2018 from Michael Shore to Luann Simmons.
1013	CyWee’s First Requests for Production of Documents in <i>Cywee Group Ltd. v. Google, Inc.</i> , Case No. 1-18-cv-00571, (D. Del.).
1014	CyWee’s Opposition to Petitioner’s Motion for Joinder to Inter Partes Review IPR2018-01258 of February 8, 2019.

1015	CyWee's Opp. to Defendants' Motion to Stay Pending Inter Partes Review Proceedings in <i>CyWee Group, Ltd. v. Samsung Elec. Co., Ltd.</i> , Case 2:17-cv-00140-WCB-RSP (E.D. Tex. Jan. 25, 2019).
1016	Complaint of April 16, 2018 in <i>Cywee Group Ltd. v. Google, Inc.</i> , Case No. 1-18-cv-00571 (D. Del.).
1017	U.S. Pat. Pub. No. US 2010/0312468 A1 (" Withanawasam ").
1018	Rebuttal Declaration of Professor Majid Sarrafzadeh
1019	Deposition Transcript of Dr. Joseph LaViola in IPR2018-01257, -01258 (May 22, 2019) (" LaViola Tr. ").
1020	U.S. Pat. No. 7,356,361 (" Hawkins ").
1021	U.S. Pat. No. 7,630,741 (" Siddiqui ").
1022	U.S. Pat. No. 8,738,103 (" Puente Baliarda ")
1023	USPTO PATFT database search results (search string "ref/7089148").
1024	U.S. Pat. Pub. 2018/0153587 A1 (" van der Walt ").
1025	Deposition Transcript of Joseph LaViola in <i>CyWee Group Ltd., v. Huawei Device Co. Ltd.</i> , CASE NO. 2017-cv-00495-WCB-RSP (E.D. Tex. September 25, 2018).

Google respectfully submits this opposition to CyWee’s motion to amend (“Mot.”). The motion should be denied-in-full for the following reasons.

I. CYWEE IS NOT ENTITLED TO A PRIORITY DATE EARLIER THAN JULY 6, 2011

To the extent CyWee seeks a priority date for its proposed amended claims earlier than the actual filing date of the ’771 application, CyWee has not met its burden. A patent owner seeking the benefit of an earlier priority date in an IPR bears an initial burden of production to demonstrate entitlement to priority. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1379-80 (Fed. Cir. 2015) (the initial burden of production for showing an earlier priority date rests with the patent owner, not the petitioner). At a minimum, the patent owner’s initial burden of production under § 119(e)/120 requires the patent owner to identify support in each application—including *each intermediate application* in the chain—stretching back to the first application whose priority date is sought. The need to identify how each (non-provisional) *intermediate application* independently satisfies the requirements of § 120 is born out of the statutory language requiring each earlier application to be “similarly entitled to the benefit of the filing date of the first application.” 35 U.S.C. § 120; *Encyclopaedia Britannica, Inc. v. Alpine Elecs. of Am., Inc.*, 609 F.3d 1345, 1350-52 (Fed. Cir. 2010)(interpreting “similarly entitled” to require each intermediate application to independently satisfy all § 120

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