

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO., LTD. And  
GOOGLE LLC  
Petitioner,

v.

IRON OAK TECHNOLOGIES, LLC,  
Patent Owner.

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IPR2018-01553<sup>1</sup>  
U.S. Patent No. 5,699,275

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**PATENT OWNER SUR-REPLY**

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<sup>1</sup> Google LLC, who filed a petition in IPR 2019-00111, has joined as a petitioner in this proceeding.

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Petitioner’s burden was to file a Petition that “specif[ied] where each element of [Claim 1] is found in the prior art patents or printed publications relied upon;” and “the exhibit number of the supporting evidence relied upon to support the challenge and the relevance of the evidence to the challenge raised, including identifying specific portions of the evidence that support the challenge.” 37 C.F.R. § 42.104 at (4). As held in *Intelligent Bio-Sys, Inc. v. Illumina Cambridge Ltd*, 821 F.3d 1359, 1369 (Fed. Cir. 2016), “[i]t is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that support the grounds for the challenge to each claim.’”

As shown below, among other things, the Petition fails to give effect to all limitations in the challenged claim and correspondingly fails to reasonably demonstrate how the prior art discloses the invention as actually claimed. Specifically, the Petition did not adequately identify where the proposed Hapka-Parrillo combination disclosed a Manager Host operable to decide *not* to initiate transmission of the at least one patch message to a *second mobile unit*, which second mobile unit is operable to create patched operating code by merging *the* at least one patch with *the current operating code*. Because the Petition did not adequately specify where each claim limitation is found in the prior art, the Petition must be denied.

## I. INTRODUCTION

Petitioner’s Reply highlights construction disputes for two claim elements in dispute: the “Second Mobile Unit” claim element and the “wherein” claim element, reprinted below with the Board’s constructions and with emphasis.

a second mobile unit operable to receive the at least one discrete patch message, the second mobile unit further operable to create patched operating code by incorporating *the at least one patch* into the *current operating code*, without replacing the current operating code, located in the second mobile unit and to switch execution to the patched operating code; and

wherein the manager host is further operable to decide which specific mobile unit to send the at least one discrete patch message before beginning transmission such that *the at least one discrete patch message* is transmitted to the first mobile unit *but not to the second mobile unit*.

Reading claim 1 as a whole, and giving meaning to each word or phrase in the claim, demonstrates that the claim requires at least *a single patch message*, which is introduced in the first claim element and carried throughout the claim with the antecedent signal “the.” See *Wag Acquisition, LLC v. Webpower, Inc.*, Slip Op. No. 2018-1617(Fed. Cir. August 26, 2019) (identifying antecedent basis for “said requests”).

This patch message is what the Manager Host must be operable to transmit to the First Mobile Unit but not the Second Mobile Unit. And, this same patch message is what the Second Mobile Unit must be operable to create “patched operating code” from. If the alleged Second Mobile Unit cannot create patched operating code from that patch message (such as because the operating code is already patched) that unit cannot be the “Second Mobile Unit” of claim 1 for purposes of that patch message.

Figure 5 of the '275 Patent and associated text discloses that if the “version” of the patch message does not match the current operating code, an error message is transmitted because the mobile unit (e.g., second mobile unit) is not operable to create patched operating code from that patch message. It should be understood that the Second Mobile Unit of claim 1 is determined not solely by whether the Manager Host is capable to transmit a message to it, or even whether the Second Mobile Unit is capable to receive the message. Rather, the Second Mobile Unit also has to be capable to create patched operating code from *the same patch message* sent to the first mobile unit.

Petitioner cites to 4:9-17 of the '275 Patent to support its argument that '275 Patent discloses not sending the patch to a mobile unit that is capable of updating *current* operating code. Reply at 7. However, that portion of the '275 Patent discussing Figure 1 explains that the mobile units not receiving *the patch* “have different version of operating code than mobile units 26, 28 and 30” and therefore

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