UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETFLIX, INC.,
Petitioner,

v.

REALTIME ADAPTIVE STREAMING LLC,
Patent Owner.

Case IPR2018-01630
Patent No. 9,769,477

PATENT OWNER'S SUR-REPLY

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Exhibit List

Exhibit No.	Description
2001	Declaration of Kayvan B. Noroozi in Support of Motion for Admission *Pro Hac Vice*.
2002	Declaration of Kenneth A. Zeger, Ph.D.
2003	Transcript of Oral Deposition of James Storer, Ph.D, taken in IPR2018-01630 on May 8, 2019.
2004	Digital Compression and Coding of Continuous-Tone Still Images – Requirements and Guidelines (JPEG Standard)

I. The Reply fatally concedes that the Petition does not explain how a POSITA would combine Imai and Pauls, and thus cannot prevail

The Federal Circuit has held that obviousness based on a prior art combination cannot be reached absent a clear explanation or evidence "showing [ ] *how* the combination of the two references was supposed to work." *Personal Web Tech. v. Apple*, 848 F.3d 987, 994 (Fed. Cir. 2017) (emphasis original). As the Federal Circuit explained in *Personal Web*, "such a clear, evidence-supported account ***of the contemplated workings*** of the combination is a ***prerequisite*** to adequately explaining and supporting a conclusion that a relevant skilled artisan would [1] have been ***motivated*** to make the combination and [2] ***reasonably expect success*** in doing so." *Id.* (number and emphasis added).

In particular, the Federal Circuit has held that a *prima facie* obviousness showing requires the challenger (1) "to explain how specific references could be combined," (2) "which combination(s) of elements in specific references would yield a predictable result," and (3) "how any specific combination would operate or read on" the claims. *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312, 1327-28 (Fed. Cir. 2012).

The Board has repeatedly recognized those requirements, and has repeatedly rejected obviousness allegations that fail to explain *how* the prior art elements could have been combined to achieve predictable results and arrive at the claimed

invention. *Dell, Inc. v. Realtime Data, LLC*, IPR2016-01002, Paper 71 at 15; *Dell, Inc. v. Realtime Data, LLC*, IPR2016-00972, Paper 71 at 10-11, 15-16; *Commvault Systems, Inc. v. Realtime Data LLC*, IPR 2017-2007, Paper 11 at 13.

In the POR, Patent Owner demonstrated that the Petition offers no explanation as to *how* a POSITA would combine Imai and Pauls because it does not explain what would be the "first" or "second" encoders recited by the claims, as is required to show obviousness. POR 35-46. Indeed, Petitioner's expert failed to provide any explanation on cross-examination. *Id.* at 38-45.

In its Reply, Petitioner fails to address that crucial and dispositive argument. The Reply simply offers no further explanation which encoders included in the combination would be the claimed "first" or "second" encoders. Petitioner thus confirms that no such explanation exists.

Petitioner's failure to address that issue is a dispositive concession. Accordingly, the Board cannot find any claims unpatentable based on the combination of Imai and Pauls on this record. *See* POR 35-46.

Rather than address that crucial issue head on (which it cannot do), the Reply instead attempts to dodge the issue by stating: "Realtime cannot seriously contend that a POSITA would not know how to select or implement video or image compressor encoders that vary in their data compression rates or compression ratios . . . ." Rep. 2. But Patent Owner never so contended. And in any

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