

Filed: March 6, 2019

Doug G. Muehlhauser (Reg. No. 42,018)
William H. Shreve (Reg. No. 35,678)
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, Fourteenth Floor
Irvine, CA 92614
Tel.: (949) 760-0404
Fax: (949) 760-9502
E-mail: BoxNomadix@knobbe.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GUEST TEK INTERACTIVE ENTERTAINMENT LTD.,
Petitioner,

v.

NOMADIX, INC.,
Patent Owner.

Case IPR2019-00211
Patent 7,953,857

PATENT OWNER'S PRELIMINARY RESPONSE TO PETITION
FOR *INTER PARTES* REVIEW

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	2
	A. Nomadix sues Petitioner.....	2
	B. Over the next two years, Petitioner files six IPR petitions	2
III.	OVERVIEW OF THE '857 PATENT	4
	A. Sample embodiments described in the specification	4
	B. Claims 1 and 9.....	6
IV.	PRELIMINARY CLAIM-CONSTRUCTION REMARKS	7
V.	PETITIONER'S ASSERTED GROUNDS.....	8
VI.	THE BOARD SHOULD DENY THE PETITION	9
	A. Since it was not sworn or made under penalty of perjury, the Board should not accord Dr. Dordal's testimony any weight	9
	B. Petitioner fails to carry its burden for Grounds 1 and 3	10
	1. Bonomi's comparison of arrival times is not a calculation of a delay period	11
	2. Petitioner has failed to demonstrate that one of ordinary skill in the art would be motivated to combine Bonomi and Borella with a reasonable expectation of success.....	14

a.	Bonomi’s traffic-shaping technology is completely reliant on underlying technologies unique to ATM networking.....	14
b.	Borella’s technology is completely reliant on the specific packet format that the IP protocol dictates	18
c.	The IP-rooted technology of Borella cannot be incorporated into Bonomi, which relies on unique aspects of ATM networks.....	21
3.	Petitioner has failed to demonstrate that one of ordinary skill in the art would be motivated to combine Bonomi and Teraslinna with a reasonable expectation of success.....	25
C.	Petitioner fails to carry its burden for Ground 2 because it fails to show that Rupp is prior art, let alone prior art that renders the claims obvious	28
1.	Petitioner has failed to offer evidence that Rupp constitutes a prior-art printed publication.....	29
a.	Petitioner mischaracterizes Mr. Grenier’s testimony—he never states that Rupp was published by May 20, 1998	30
b.	Mr. Grenier offers no competent evidence of public accessibility early enough to make his Exhibit A prior art, and his Exhibit A is not even the same as Rupp.....	30
c.	Mr. Grenier’s statements about a 1998 conference are not competent evidence that Rupp qualifies as a printed publication	32

2.	Petitioner fails to carry its burden of demonstrating Rupp is analogous art.....	35
3.	Even if Rupp were analogous art, one of ordinary skill in the art would neither be motivated to combine Chandran and Rupp nor have a reasonable expectation of succeeding in combining the two to arrive at the claimed inventions.....	39
VII.	CONCLUSION.....	44

TABLE OF AUTHORITIES

<i>Acceleration Bay, LLC v. Activision Blizzard Inc.</i> , 908 F.3d 765 (Fed. Cir. 2018)	29
<i>Blue Calypso, LLC v. Groupon, Inc.</i> , 815 F.3d 1331 (Fed. Cir. 2016)	34, 35
<i>DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.</i> , 567 F.3d 1314 (Fed. Cir. 2009)	25, 28
<i>FedEx Corp. v. Ronald A. Katz Tech. Licensing, L.P.</i> , Case CBM2015-00053 (PTAB June 29, 2015) (Paper 9)	9, 10
<i>In re Clay</i> , 966 F.2d 656 (Fed. Cir. 1992)	37, 38
<i>In re Cronyn</i> , 890 F.2d 1158 (Fed. Cir. 1989)	29
<i>In re Gordon</i> , 733 F.2d 900 (Fed. Cir. 1984)	25, 28
<i>In re Kahn</i> , 441 F.3d 977 (Fed. Cir. 2006)	35
<i>In re Klein</i> , 647 F.3d 1343 (Fed. Cir. 2011)	38
<i>In re Spinnoble</i> , 405 F.2d 578 (C.C.P.A. 1969)	25
<i>Intel Corp. v. Alacritech, Inc.</i> , Case IPR2017-01402 (PTAB Nov. 6, 2017) (Paper 8)	10
<i>K-TEC, Inc. v. Vita-Mix Corp.</i> , 696 F.3d 1364 (Fed. Cir. 2012)	35, 36
<i>McGinley v. Franklin Sports, Inc.</i> , 262 F.3d 1339 (Fed. Cir. 2001)	25

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.