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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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STARBUCKS CORPORATION ET AL.

Petitioners

v.

FALL LINE PATENTS, LLC

Patent Owner

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CASE IPR2019-00610

PATENT 9,454,748

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**PATENT OWNER'S BRIEF IN RESPONSE TO
PETITIONER'S CLAIM CONSTRUCTION FOR
INTER PARTES REVIEW OF U.S. PATENT NO. 9,454,748
CHALLENGING CLAIMS 1, 2, 5, 7, AND 19-22**

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**PATENT OWNER'S BRIEF IN RESPONSE TO PETITIONER'S
CLAIM CONSTRUCTION FOR *INTER PARTES* REVIEW OF U.S.
PATENT NO. 9,454,748 CHALLENGING CLAIMS 1, 2, 5, 7, AND 19-22**

I.   Introduction

This paper is submitted pursuant to the Board's authorization to the parties to provide additional briefing in connection with claim construction issues and is in response to Petitioner's Supplemental Brief in Support of Petition for *Inter Partes* Review (Paper 27, "Petitioner's Brief", hereinafter).

II.   Response to Petitioner's Claim Construction

A.   The term "tokenized questionnaire" can only be construed to mean a questionnaire which contains only device independent tokens.

Petitioner's sole focus on the word "comprising" as a transition phrase in responding to the Board's questions is misplaced. It is well established that the terms in a claim must be construed in light of the usage in the specification and must be given a meaning consistent with their use, e.g., *United States v. Adams*, 383 U. S. 39, 49 (1966) ("[I]t is fundamental that claims are to be construed in the light of the specifications and both are to be read with a view to ascertaining the invention."). In the '748 patent the specification makes it clear that the tokenized questionnaire must contain only device independent tokens. Otherwise, an object of the invention would be thwarted.

The questionnaires are tokenized so that the same questionnaire can be executed without change on each device. Petitioner's Brief, pp. 2-3. "It is still a further object of the present invention to provide an operating system for a handheld computer wherein files may be transferred among devices without a translation or conversion." '748 Patent, 4:23-26. "Any program developed under the inventive system will run on any handheld computer equipped with the OIS and files on one such handheld will transfer freely to any other handheld or any computer connected to the inventive system." *Id.*, 7:41-45. *See also*, "Patent Owners' Response to Petition for *Inter Partes* review of U.S. Patent No. 9,454,748 Challenging Claims 1,2,5, 7, and 19-2", Paper 16, pp. 5-7. *See also*, EX. 2006, ¶26.

A construction of tokenized questionnaire that includes questionnaires that contain tokens which are not device independent or indifferent would not be consistent with the invention as described by the clear language of the specification of the '748 Patent.

B. **Assuming *arguendo* the questionnaire contains tokens that are not device independent, there is no prior art which teaches this combination nor has there been any showing of how such would allow a GPS receiver to be read by a "tokenized questionnaire".**

The prior art of record fails to show a tokenized questionnaire that includes both device independent and device dependent tokens. Petitioner has provided a single example of a language which is alleged to produce device independent tokens:

Java, e.g., *Barbosa's* (EX 1002) refernece to Java is said to teach "device independent tokens." EX. 1005, ¶¶131-132. Nowhere in any prior art of record nor in any argument advanced by the Petitioner or elsewhere is there any statement or allegation that a Java application could be used to produce a questionnaire that contains Java "tokens" (which presumably would be device independent) *and* tokens which are not device independent.

Nor is there any discussion, explanation, or showing of how such a combined "Java program" (i.e., one which contains both device independent and device dependent tokens) would be executed using the standard JVM or KVM of Java (Ex. 2006, ¶87, ¶44) or how it would interface with it. Recall that Patent Owner has challenged Petitioner to explain how Java running on a handheld as of the date of the invention could be used to read a GPS receiver and that challenge has never been answered. *See*, e.g., Patent Owner's Sur-reply (Paper 20, pp. 1-3).

Finally, again assuming *arguendo* that the prior art actually shows a questionnaire with both device independent and dependent tokens, Petitioner has failed to show or allege how this combined questionnaire could be implemented in practice to read a GPS receiver in Java or any other language as of the date of the invention. A questionnaire containing that combination of tokens is not enabled.

In view of the foregoing, judgment is requested in favor of Patent Owner with respect to all challenged claims of the '748 patent.

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