

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SNAP, INC.,  
Petitioner

v.

BLACKBERRY LIMITED,  
Patent Owner

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Case No. IPR2019-00714  
Patent No. 8,825,084

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**PATENT OWNER'S SUR-REPLY**

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## EXHIBITS LIST

- EX2001 Declaration of Patrick McDaniel, Ph.D.
- EX2002 Corrected Final Ruling on Claim Construction/*Markman* Hearing, *Blackberry Limited v. Snap Inc.*, Case Nos. CV 18-1844-GW & 18-2693-GW (C.D. Cal. April 5, 2019) (“*Markman* Order”)
- EX2003 Second Declaration of Patrick McDaniel, Ph.D.
- EX2004 Transcript of Deposition of Dr. Samrat Bhattacharjee (November 18, 2019)
- EX2005-EX2007 [RESERVED]
- EX2008 Garmin: Updating Maps on Your Garmin Device (May 2010), available at [https://www8.garmin.com/documents/instructions/Garmin\\_Map\\_Update\\_Guide.pdf](https://www8.garmin.com/documents/instructions/Garmin_Map_Update_Guide.pdf) (retrieved November 24, 2019)
- EX2009 CNET Article: How To Update Your GPS Maps TomTom Edition (July 14, 2010), available at <https://www.cnet.com/pictures/how-to-update-your-gps-maps-tomtom-edition-photos> (retrieved November 24, 2019) (slideshow pictures reproduced in a single PDF)
- EX2010 Transcript of Second Deposition of Dr. Samrat Bhattacharjee (April 10, 2020)

## I. INTRODUCTION

The Reply continues to advance arguments that are premised on an erroneous claim construction and mischaracterizations of the prior art. Petitioner fails to adequately explain why the Board should interpret the term “action spot” in a manner that not only contradicts the ’084 patent’s lexicographic definition, but also departs from the *Phillips* construction already imposed on the parties in the district court. *See* POR, 15-21; EX2003, ¶¶35-41.

A proper construction of element 1[c]/9[c] (“determining” an “action spot”), which aligns with the district court’s construction, is dispositive for the *Lemmela* grounds here, especially where Section IV of the Reply never argues that the *Lemmela* grounds achieve this requirement under such a construction. Petitioner has thus waived any argument in this regard. Moreover, the Reply’s *Lemmela*-specific arguments directed to claim elements 1[b], 9[d], and 6, as well as the “activity level” arguments, only serve to highlight additional shortcomings of the *Lemmela* grounds.

Finally, the Institution Decision previously determined that Ground 1 based on the *Winkler-Altman* combination was not reasonably likely to prevail. Inst. Dec., 32-35. The Reply attempts to revive the *Winkler* ground by introducing, for the first time in this proceeding, new “Scenarios” that were never presented with particularity in the Petition and, in many cases, directly contradict other statements from the Petition itself. These belated theories improperly prejudice Patent Owner and should

be disregarded according to Federal Circuit precedent. And, even if Patent Owner must suffer such prejudice, the new “Scenarios” suffer from meaningful defects noted below.

## II. ARGUMENT

### A. Petitioner’s Reply Fails To Justify Its Departure From The Lexicographic/District Court Definition Of “Action Spot” In The Context Of The Claimed Operation Of “Determin[ing] At Least One Action Spot.”

Petitioner’s Reply arguments continue to disregard the ’084 patent’s lexicographic definition of “action spot” as “a location or an event where at least one activity *is occurring* relative to the current location of another mobile device.” EX1001, 3:3-5 (emphasis added). Petitioner instead seeks to re-write the patent’s explicit definition of “action spot” to mean a location where “activity [] *has* occurred in the past, not activity that is *presently* occurring.” Reply, 3 (emphasis in original); EX1011, ¶16; EX2010, 10:8-11:15.

Petitioner’s critical flaw is that it conflates the *inputs* of the claimed determination of an action spot with the *output* of that determination. As already explained in the Response, the evidence here demonstrates that the claims require a particular type of *output*—namely, a determination of an “action spot” (a location or event where activity “is occurring” relative to the “current” location of the user)—which is accomplished based on *input* describing activity (e.g., documenting actions) that *has occurred* at the location of the action spot. POR, 17-20; EX2003 ¶¶35-41.

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