

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SNAP, INC.,
Petitioner

v.

BLACKBERRY LIMITED,
Patent Owner

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

PATENT OWNER'S PRELIMINARY RESPONSE

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE '084 PATENT	2
III.	OVERVIEW OF THE PRIOR ART	6
	A. Winkler	6
	B. Altman	9
	C. Lemmela	10
	D. Crowley	13
IV.	CLAIM CONSTRUCTION	13
	A. “action spot” (claims 1, 2, 5, 6, 9, 10, 12, 13).....	14
	B. “determine at least one action spot within a predetermined distance from the current location of the first mobile device” (claims 1, 9).....	15
V.	THE PETITION EXPRESSLY ASSUMES THE CLAIM SCOPE UNDER THE DISTRICT COURT’S CONSTRUCTION IS UNDEFINED, SO THE BOARD SHOULD DECLINE TO INSTITUTE REVIEW	16
VI.	GROUND 1 IS DEFICIENT	19
	A. The Winkler-Altman Combination Fails To Provide The “Determine At Least One Action Spot” Limitation Of Independent Claims 1 And 9	19
	1. The petition presents shifting and inconsistent mappings for “the at least one action spot” that deprive Patent Owner and the Board of a fair opportunity to assess Petitioner’s combination	20
	2. The petition fails to demonstrate that any individual map element disclosed in Winkler meets all the requirements for “the at least one action spot” recited in claim 1.....	26

3.	The petition fails to demonstrate that the system resulting from the Winkler-Altman combination sets a “predetermined distance” before determining “the at least one action spot”	34
4.	The petition’s proposed modification to Winkler is factually and legally flawed	38
B.	The Winkler-Altman Combination Fails To Provide The “Displaying A Graphical Item ... Identifying A Direction” Limitation Of Independent Claim 9	47
VII.	FOUNDATIONS 2-3 ARE DEFICIENT	50
A.	The Petition Fails To Show That Lemmela Teaches The Limitation of Independent Claim 1 Of A Server Configured To Receive Data Indicative Of A Current Location Of A First Mobile Device.....	50
B.	The Lemmela-Crowley Combination Fails To Provide The “Determine At Least One Action Spot” Limitation Of Independent Claims 1 And 9.....	54
C.	The Petition Fails To Show That Lemmela “Transmit[s] ... An Indication Of An Activity Level At The At Least One Action Spot” (Claim 1) or “Display[s] A Level Of Activity Associated With The At Least One Action Spot” (Claim 9).....	58
D.	The Proposed Combination of Ground 3 Fails To Provide The “Displaying A Graphical Item ... Identifying A Direction” Limitation Of Independent Claim 9	60
VIII.	CONCLUSION.....	61

LIST OF EXHIBITS

- 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”)

I. INTRODUCTION

Petitioner has failed to meet its burden of showing a reasonable likelihood that it would prevail with respect to any of the challenged claims. Indeed, the Petition is fatally deficient in multiple ways, each of which provides an independent basis to deny institution. Collectively, the large number of deficiencies in the Petition provides overwhelming weight to deny institution of this flawed IPR petition.

As an initial matter, the district court has formally construed the “determine at least one action spot” limitation under the *Phillips* standard, but the petition expressly assumes that moving forward with the district court’s claim construction would “fail[] to inform a POSITA with reasonable certainty about the claim’s scope.” Pet., 15. A petition that fails to present alternative constructions and instead expressly assumes the claim scope is undefined should be denied institution. *Infra*, Section V.

Second, the petition presents shifting and inconsistent mappings for the “at least one action spot” element of claims 1 and 9, thereby failing to fulfill its requisite burden of identifying the grounds “with particularity” under § 312(a), unduly requiring the Board to speculate, and unfairly depriving Patent Owner of a fair opportunity to respond.

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