

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SNAP, INC.,
Petitioner

v.

BLACKBERRY LIMITED,
Patent Owner

Case No. IPR2019-00715
Patent No. 8,326,327

PATENT OWNER'S PRELIMINARY RESPONSE

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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/determining 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., 17. 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, 10, and 13, 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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