

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GUARDIAN ALLIANCE TECHNOLOGIES, INC.
Petitioner,

v.

TYLER MILLER
Patent Owner.

Case IPR2020-00031
Patent 10,043,188 B2

PATENT OWNER'S PRELIMINARY RESPONSE

LIST OF EXHIBITS

No	Description
2001	Email to Board, October 30, 2019
2002	Declaration of David Howell
2003	Curriculum Vitae for David Howell
2004	BYU Library, Web page Criminal Justice program
2005	Excerpt of BYU Course Catalog 1974-1975
2006	National University, Business Admin Degree Flyer
2007	Internet Archive Standard Affidavit
2008	HTML source for POBITS "Frame Set"
2009	HTML source for POBITS Navigation Frame Content
2010	HTML source for POBITS "Introduction" Child Page

I. INTRODUCTION	1
II. LITIGATION BACKGROUND	2
III. THE '188 PATENT	2
A. Effective Filing Date of Claims	3
B. The Subject Matter of the '188 Patent	4
IV. LEVEL OF ORDINARY SKILL IN THE ART	6
V. THE BOARD SHOULD NOT INSTITUTE TRIAL UNDER 314(A).	7
A. Petitioner's PHOSITA Is Incapable of Combining the Cited References	8
B. The Petition Fails to State the Precise Grounds for Unpatentability	10
C. Ex. 1002 Is Not Prior Art	13
1. Ex. 1002 (Background Solutions Video) Bears a 2012 Copyright Date	14
2. Declarant Ward's Testimony Is Vague and Uncorroborated	19
3. The <i>Klopfenstein</i> Factors Have Not Been Proven by Ward and Corroborating Evidence	23
D. Exhibit 1004 (POBITS) Is Not Prior Art	28
1. Ex. 1004 Substantially Consists of Material Captured No Earlier Than August 8, 2019	29
2. A Copyright Date Does Not Establish Publication	33
3. Miller's Conception and Reduction to Practice Antedate POBITS	34
VI. CONCLUSION	36

TABLE OF AUTHORITIES

Cases

<i>Coleman v. Dines</i> , 754 F.2d 353, 355-60 (Fed. Cir. 1985)	20, 21, 36
<i>DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.</i> , 464 F.3d 1356, 1367 (Fed. Cir. 2006)	9
<i>Graham v. John Deere</i> , 383 U.S. 1 (1966)	9
<i>Honeywell v. Arkema</i> , 939 F.3. 1345, 1349-51 (Fed. Cir. 2019).....	3, 36, 37
<i>In re NTP</i> , 654 F.3d 1279, 1291-92 (2011)	13
<i>KSR Int'l Co. v. Teleflex, Inc.</i> , 550 U.S. 398, 417 (2007)	9
<i>MIT v. AB Fortia</i> , 774 F.2d 1104 (Fed. Cir. 1985).....	27
<i>Regents of the University of Cal v. Howmedica, Inc.</i>	passim
<i>The Barbed Wire Patent</i> , 143 U.S. 275 (1892).....	20
<i>United Servs. Auto. Ass'n v. Asghari-Kamrani</i> , CBM2016-00063, Paper No. 10, Aug. 16, 2016)	37

Statutes

35 U.S.C. § 103	1
35 U.S.C. § 255	3, 4
35 U.S.C. § 312(a)	13
35 U.S.C. § 314(a)	1

Other Authorities

83 Fed. Reg. 39,989	8
---------------------------	---

Rules

37 C.F.R. § 42.8(a).....	1
--------------------------	---

Pursuant to 37 C.F.R. § 42.8(a), Patent Owner Tyler Miller (“PO” or “Miller”) hereby submits this Preliminary Patent Owner Response (“POPR”):

I. INTRODUCTION

The Board should not institute trial under 35 U.S.C. § 314(a) for several reasons.

First, Petitioner’s grounds for unpatentability are based solely on 35 U.S.C. § 103. In an attempt to qualify one of its references as prior art, it has asserted a level of ordinary skill requiring no substantial experience, education or training in software development/engineering. Such persons would be unable to arrive at the claimed invention. Notably, Petitioner provides no expert testimony in support of its assertions, including the level of skill in the art, the teaching of the alleged references, or the ability to implement the invention. Miller’s expert testimony therefore stands as uncontested evidence.

Second, one of the two grounds asserted by Petitioner is not clearly set forth in the petition. It is difficult to determine if Petitioner’s primary reference is a video plainly created after the effective filing date of the claims, whether it is trying to claim that the video was created (and shown to others) years prior to the dates contained in the video itself, or whether it is trying to rely upon some version of related documents that have not been provided to the Board and Patent Owner. Patent Owner Miller cannot be expected to evaluate and counter uncorroborated

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.