UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Microsoft Corporation and HP Inc.,

Petitioners,

v.

SYNKLOUD TECHNOLOGIES, LLC,

Patent Owner.

IPR2020-01031
U.S. Patent No. 10,015,254

PATENT OWNER SUR-REPLY

Contents

I. Introduction.

Petitioners' Reply, like their Petition, relies on their overly-broad claim construction of the claim term "cache" and their unsupported position that "[in] the [prior art] combination, the URLs [corresponding to files selected from a web page displayed on a user's device] are obtained from cache, not from the display of the web page." Reply, 7. But their primary prior art reference, McCown, makes no mention of a cache. And even if a cache were added to McCown, there is no documentary evidence in the record that a URL of a file selected from a displayed web page would be retrieved from the cache. Rather, data such as a URL selected from a web page displayed on a user's device would be retrieved from a web page display. *Infra,* § III.A.

Petitioners' construction of the claim term "cache" as any "storage for data received from the Internet that is more readily accessible by the user or user application than the original Internet storage location" (Petition, 7) is clearly overly broad. Under Petitioners' construction, any memory (*e.g.*, disk drives, flash drive) at or near a user's device that stores Internet data would qualify as a "cache" because any such memory is "more readily accessible by the user or user applications than the original storage Internet location" (*i.e.*, the web site server). But there is no intrinsic or extrinsic evidence in the record indicating that memory such as a disk drive, flash drive, *etc,* would be considered by a person or ordinary skill in the art (POSITA) to be a cache.

Under the proper claim construction as set forth by Patent Owner (PO), none of the

claims of the '254 patent would have been obvious. Indeed, many of the claim limitations are wholly absent from the prior art.

Under these circumstances, documentary evidence is required to establish that the absent limitations would have been obvious. *K/S HIMPP v. Hear-Wear Technologies, LLC*, 751 F.3d 1362, 1366 (Fed. Cir. 2014) ("an assessment of basic knowledge and common sense as a replacement for documentary evidence for factual findings lacks substantial evidence support."). But Petitioners make no attempt in their Reply to provide the documentary evidence required to establish obviousness. Nor do they attempt to argue that *K/S HIMPP* is not the law.

Instead, Petitioners blithely rely on "common sense" to add the missing limitations to their prior art combination (Reply, 7, 8) and restate their sole reliance on their expert declaration to advance the theory that the limitations that are absent from the prior art would have been obvious. *See* Reply, 7-25. For this very reason, Petitioners' argument violates the mandate of *K/S HIMPP*. It is improper to rely on common sense and after-the-fact expert declarations, rather than contemporaneous documentary evidence, to support an obviousness theory that relies on modifications of the prior art to supply missing limitations. *K/S HIMPP*, 751 F.3d at 1366. Indeed, Petitioners' expert failed to respond to the testimony of SynKloud's expert Mr. Jawadi explaining why a POSITA would not have been motivated to modify the prior art to include the missing claim limitations.

II. PO's Claim Constructions Are Consistent With the Plain and Ordinary Meaning Of The Claims As Understood By A POSITA In Light Of The Specification.

A. download a file from a remote server across a network into the assigned storage space through utilizing download information for the file stored in said cache storage (independent claims 1 and 11).

As explained by PO, the proper construction of this claim limitation requires "information needed to download a file from a remote server to be (i) stored in a cache storage of a wireless device and (ii) utilized to download the file across a network into an assigned storage space for the user of the wireless device." PO Response, 10.

Petitioners' quibbling with SynKloud's use of the term "needed" in its proposed claim construction (Reply, 4) is meant to detract from the important point that the claimed "download information" is required to download a file from a remote server into the assigned storage space. Indeed, the "download information" is required or needed because it identifies the file that is to be downloaded from the remote server to the assigned storage space. The Specification explicitly states that the download information in the wireless device's cache is, in fact, needed and used to download the file:

> The other software modules (9) of the wireless device (1) send the obtained downloading information to other service modules (7) of the storage server …
>
> the other service module (7) of the storage server (3) sends a web download request to the web-site (15) … based on download information obtained. and receives the downloading data streams from the web server of the web-site (15).

EX1001, 5:16-27.

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