

**UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

**CISCO SYSTEMS, INC.,  
APPLE INC.,  
HEWLETT PACKARD ENTERPRISES CO.,  
ARUBA NETWORKS, LLC,**

**Petitioners**

**v.**

**BILLJCO LLC,  
Patent Owner**

CASE: IPR2022-00426

U.S. PATENT NO. 8,761,804

**PATENT OWNER'S PRELIMINARY RESPONSE**

**PURSUANT TO 35 U.S.C. § 313 AND 37 C.F.R. § 42.107(a)**

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## SECTION 1. INTRODUCTION

Petitioners have not met their burden in demonstrating that U.S. Patent No. 8,761,804 (“the ‘804 Patent”) is more likely than not invalid, and, as such, institution should be denied.

Petitioners’ contention that all claims of the ‘804 Patent are invalid as obvious lacks merit. The Petition is facially defective in that it fails to demonstrate “a reasonable likelihood that the Petitioners would prevail with respect to at least one of the claims challenged in the petition” under 35 U.S.C. § 314(a).

Neither the Petition, nor the declaration submitted by Petitioners’ expert, provide an articulated reasoning with a rational underpinning to support a legal conclusion of obviousness. *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). The Petition lacks cogent reasoning as to why a person of ordinary skill in the art would modify the cited reference in the specific manner that is recited in each of the challenged claims.

Petitioners’ expert declaration (EX1004) merely repeats the attorney arguments in the Petition.

In summary, the IPR Petition fails to show a reasonable likelihood that at least one of the challenged claims of the ‘804 Patent is unpatentable.

Finally, in view of the pending litigation in the Western District of Texas, the Board should exercise its discretion pursuant to 35 U.S.C. § 314(a) and deny review.

For all of these reasons, the Board should not institute *inter partes* review of the '804 Patent and should deny the Petition in its entirety.

## SECTION 2. ALLEGED GROUNDS OF UNPATENTABILITY

Petitioners allege the following grounds of unpatentability under 35 U.S.C. § 103 against independent claim 1 and dependent claims 10-12 of the '804 Patent. Pet. at 3. All are deficient in meeting the challenged claims.<sup>1</sup>

	Grounds	Reference(s)	Challenged Claims
1.	§ 103	Himmelstein <sup>2</sup> and Myr <sup>3</sup>	1 and 10-12
2.	§ 103	Himmelstein, Myr, and Evans <sup>4</sup>	1 and 10-12

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<sup>1</sup> Petitioners assert the claim terms in the Challenged Claims do not require construction for the purpose of evaluating the prior art in the Petition. Pet. at 8-9. If IPR is instituted, Patent Owner will provide appropriate constructions of terms of the '804 Patent in its Patent Owner Response, and expressly reserves the right to do so.

<sup>2</sup> EX1005.

<sup>3</sup> EX1006.

<sup>4</sup> EX1008.

### SECTION 3. OVERVIEW OF THE '804 PATENT

The '804 Patent is titled “System and Method for Location Based Exchanges of Data Facilitating Distributed Locational Applications.” EX1001. The invention “relates generally to location based services for mobile data processing systems, and more particularly to location based exchanges of data between distributed mobile data processing systems for locational applications.” *Id.* at 1:20-24. The Patent further discloses, “A common connected service is not required for location based functionality and features. Location based exchanges of data between distributed mobile data processing systems enable location based features and functionality in a peer to peer manner.” *Id.* at 1:24-28.

The '804 Patent describes the need for a method for “enabling users to get location dependent features and functionality through having their mobile locations known, regardless of whether or not their MS is equipped for being located. Also, new and modem location dependent features and functionality can be provided to a MS unencumbered by a connected service.” EX1001 at 3:44-49. The patent discloses new terminology, system and, method referred to as Location Based Exchange (LBX) which “provide server-free and server-less location dependent features and functionality.” EX1001 at 4:6-8. The '804 Patent also discloses that “[i]t is an advantage [] enabling useful distributed applications without the necessity of having a service, and without the necessity of users and/or systems registering with

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