UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

CPC PATENT TECHNOLOGIES PTY, LTD.,
Patent Owner

CASE: IPR2022-00600
U.S. PATENT NO. 8,620,039

PATENT OWNER SUR-REPLY

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LIST OF EXHIBITS

Exhibit No.	Description
2001	Declaration of William C. Easttom II (Chuck Easttom) Ph.D., D.Sc.
2002	CV of Dr. Chuck Easttom
2003	Rough Deposition Transcript of Dr. Andrew Sears, dated January 13, 2023
2004	Final Deposition Transcript of Dr. Andrew Sears, dated January 13, 2023

I. APPLE'S ARGUMENTS ARE CONTRADICTED BY ITS OWN EXPERT DR. SEARS

Apple's expert, Dr. Andrew Sears, conceded that the principal reference upon which Apple relies, *Bradford,* lacks the claim limitation "defining, dependent upon the received card information, a memory location." Paper No. 12 at 8-9, 13-14. Apple attempts to neutralize Dr. Sears' admission by urging a new construction of this limitation whilst also claiming that CPC has improperly construed this limitation. Not only are Apple's new arguments and constructions simply wrong, its new construction is improper at this stage of the proceeding. Apple loses on this basis alone.

Apple's new construction, namely that "defining … a memory location" means "pointing to" a memory location that has already been created, is precisely the opposite of Dr. Sears' testimony. Dr. Sears admitted that, according to Claim 1, card information must first be obtained before the memory location is defined. Ex. 2004, 11:2-22. This testimony is consistent with CPC's construction and is fatal to Apple's Petition.

A. Dr. Sears Conceded That the Challenged Claims Contain a Temporal Requirement

Dr. Sears testified, consistent with CPC's construction, that the method steps of Claim 1 of the '039 Patent must be carried out in a specific order – the card information is obtained first, the memory location is defined by the card information

second, and the biometric signature is stored in the defined memory location third. Paper No. 12 at 8 (citing Ex. 2003, 15:21-16:6); *see also* Paper No. 1 at 26 (describing how "a player entry is created in the player ID database" followed by "[t]he casino attendant then provid[ing] the player with the first authenticator"); *see also* Ex. 1001, 12:29-38 ("the method comprising the steps of: [1] receiving card information; … [2] defining, dependent upon the received card information, a memory location in a local memory external to the card; … and [3] storing…the biometric signature at the defined memory location").

Dr. Sears' admission of the temporal nature of Claim 1 comports with the construction of the challenged claims put forth by Dr. Easttom, CPC's expert. Dr. Easttom opined that the term "defining" means "setting" or "establishing," citing to the specification of the '039 Patent for support. Ex. 2001, ¶41 (*citing* Ex. 1001, 2:64-67, 7:47-49).[1] By first obtaining card data, and then defining the memory location, the memory location cannot already exist, as contemplated by Apple's new construction. *See* Ex. 2004, 12:17-13:1. Apple's attempt to twist the meaning of

[1] Given Dr. Easttom's citation to the specification to support his construction, his declaration is distinct from the declaration in *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Ex. 1003, ¶54 (PTAB Aug. 24, 2022), cited by Apple, in which the declarant pointed to nothing.

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