

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

AIRE TECHNOLOGY LIMITED,
Patent Owner,

IPR2022-01137
U.S. Patent No. 8,581,706

**PETITIONER'S SUR-REPLY TO PATENT OWNER'S REPLY TO
OPPOSITION TO MOTION TO AMEND**

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 between “selection” and “subsequent communication.” 3

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 claimed “*selection.*” 5

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V. The Opposition properly relies on the entirety of the record to show the
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PETITIONER'S EXHIBIT LIST

Ex.1001	U.S. Patent No. 8,581,706
Ex.1002	Prosecution History of U.S. Patent No. 8,581,706
Ex.1003	Declaration of Dr. Joshua Phinney under 37 C.F.R. § 1.68
Ex.1004	<i>Curriculum Vitae</i> of Dr. Joshua Phinney
Ex.1005	U.S. Patent No. 6,824,064 to Guthery et al. ("Guthery")
Ex.1006	JP2000163539 to Nozawa et al. ("Nozawa") – Certified English Translation
Ex.1007	<i>RFID Handbook: Radio-Frequency Identification Fundamentals and Applications</i> , Klaus Finkenzeller (1999)
Ex.1008	<i>Smart Card Handbook: Third Edition</i> , Wolfgang Rankl (3 rd ed. 2003)
Ex.1009	Reserved.
Ex.1010	Reserved.
Ex.1011	Complaint, <i>Aire Technology Ltd. v. Apple Inc.</i> 6-21-cv-01101 (W.D. Tex. Oct. 22, 2021)
Ex.1012	Infringement Contentions, <i>Aire Technology Ltd. v. Apple Inc.</i> 6-21-cv-01101 (W.D. Tex. Oct. 22, 2021)
Ex.1013	Scheduling Order, <i>Aire Technology Ltd. v. Apple Inc.</i> 6-21-cv-01101 (W.D. Tex. Oct. 22, 2021)
Ex.1014	Standing Order Governing Proceedings (OGP) 4.1
Ex.1015	Complaint, <i>Aire Technology Ltd v. Samsung Electronics Co., Ltd.</i> , 6:21-cv-00955 (W.D. Tex. Sep. 15, 2021)
Ex.1016	JP2000163539 to Nozawa et al. (original)

Petitioner's Sur-reply to Reply to Opposition to Motion to Amend
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Ex.1017	Internet Archive capture of “Wiley:Smart Card Handbook, 3 rd Edition,” https://web.archive.org/web/20041026102425/http://www.wiley.com:80/WileyCDA/WileyTitle/productCd-0470856688.html (archived October 26, 2004)
Ex.1018	Declaration of Franchesca Ruiz
Ex.1019	Reserved.
Ex.1020	Reserved.
Ex.1021	Reserved.
Ex.1022	Reserved.
Ex.1023	Federal District Court Trial Statistics (June 2022)
Ex.1024	Email chain with Board granting Petitioner's request to file preliminary reply briefs
Ex.1025	Plaintiff Aire Technology Ltd.'s Motion to Amend Preliminary Infringement Contentions, <i>Aire Technology Ltd. v. Apple Inc.</i> 6-21-cv-01101 (W.D. Tex. Sept. 30, 2022)
Ex.1026	Supplemental Declaration of Dr. Joshua Phinney under 37 C.F.R. § 1.68

I. Introduction

Patent Owner filed a Motion to Amend (“Motion,” Paper 16) with substitute claims 23-26, Petitioner filed an opposition (“Opposition,” Paper 19). The Board issued preliminary guidance (“Guidance,” Paper 21) which stated that “Petitioner (or the present record) has shown that Guthery discloses or renders obvious each of the newly recited limitations of proposed substitute claims 23–26.” Guidance, 11. Patent Owner then filed a reply (“PO Reply,” Paper, 23). For the reasons below, Patent Owner’s reply does not refute Petitioner’s obviousness analysis presented in the Opposition. Petitioner further maintains that the substitute claims lack written description support and enablement under Patent Owner’s proposed construction.

II. The claims are unpatentable under any proposed interpretation.

The claims are unpatentable under the Board’s interpretation provided in the preliminary guidance. Guidance, 7. Substitute claim 23 recites “*wherein after selection of one of the plurality of applications, subsequent communication between the reading device and the selected application takes place without requiring any further steps.*” In the Guidance, the Board interpreted this language to “not require any further steps **between** selection and the subsequent communication.” Guidance, 7. It is unclear from the Patent Owner Reply whether Patent Owner agrees or disagrees with the Board’s interpretation. Patent Owner states only that “[o]nce selected, the communication device will then control

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