UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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APPLE INC.,

Petitioner,

v.

RFCYBER CORP.,

Patent Owner.

Patent No. 10,600,046
Filing Date: June 2, 2015
Issue Date: March 24, 2020

Inventors: Xiangzhen Xie, Liang Seng Koh, and Hsin Pan
Title: METHOD AND APPARATUS FOR MOBILE PAYMENTS

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PATENT OWNER'S SUR-REPLY

Case No. IPR2022-01239

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TABLE OF AUTHORITIES

Page(s)

Cases

EXHIBIT LIST

Exhibit No.	Description of Document
2001	Declaration of Alfred C. Weaver, Ph.D.
2002	CV of Alfred C. Weaver, Ph.D.
2003	Transcript of May 11, 2023 Deposition of Gerald W. Smith

Petitioner's Reply attempts to shift the burden of persuasion by arguing that Patent Owner "must convince this Board" that Petitioner's combination fails to render the Challenged Claims obvious. Reply, 3. But it is Petitioner's burden to persuade the Board that the claims are obvious. As shown below, Petitioner has failed to do so, and the Board should issue a Final Written Decision finding all Challenged Claims not unpatentable.

I. PETITIONER'S COMBINATION DOES NOT RENDER AN E-PURSE OBVIOUS

A. Petitioner Cannot Remedy its Failure to Identify an E-purse in the Petition

Petitioner has failed to identify any "software" in meeting the e-purse limitation in its Petition. POR, 14. In its Reply, Petitioner attempts to handwave away this deficiency. Reply, 20 ("Neither PO nor Dr. Weaver dispute that Laracey's mobile device utilizes software for its transaction functionality."). But Petitioner did not identify Laracey's "transaction functionality" software as the claimed e-purse. Instead, it identified a "stored value account." Pet., 29; POR, 14.

The Board should reject Petitioner's late attempt to backfill its Petition. *MModal LLC v. Nuance Commc'ns*, 846 F. App'x 900, 906-07 (Fed. Cir. 2021) (affirming Board's rejection of new argument raised on Reply). *MModal* is instructive. There, the Petitioner identified specific portions of a reference (Taira) as disclosing an element. *Id.* After the Patent Owner rebutted those portions, the

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