

Filed on behalf of Patent Owner by:

Paper No. \_\_\_\_

Gerald B. Hrycyszyn, Reg. No. 50,474  
Richard F. Giunta, Reg. No. 36,149  
Jason W. Balich, Reg. No. 67,110  
WOLF, GREENFIELD & SACKS, P.C.  
600 Atlantic Avenue  
Boston, MA 02210  
(617) 646-8000 Phone  
(617) 646-8646 Fax

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

MICROSOFT CORPORATION,  
HP INC., DELL INC., DELL TECHNOLOGIES INC.,  
ASUSTEK COMPUTER INC., ASUS GLOBAL PTE. LTD.,  
Petitioners,

v.

LITL LLC,  
Patent Owner.

---

Case No. IPR2024-00457

Patent No. 9,880,715

---

**PATENT OWNER'S PRELIMINARY RESPONSE**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	THIS PETITION IS TIME-BARRED .....	2
A.	Factual Background.....	3
1.	The Microsoft-Lenovo Relationship .....	3
2.	Microsoft’s Privy Relationships with HP, Dell, and ASUS Confirm Microsoft’s Privy Relationship with Lenovo .....	4
B.	Privity Law .....	6
C.	Lenovo Was Microsoft’s Privy Under §315(b).....	7
1.	Lenovo and Microsoft’s Pre-Existing Substantive Legal Relationship.....	7
a.	██████████ Establishes Such a Relationship .....	7
b.	The Microsoft-Lenovo Relationship Is Central to Lenovo’s Infringement.....	8
2.	██████████ Is an Agreement to Be Bound.....	10
a.	██████████ Establish Microsoft’s Agreement to Be Bound.....	10
b.	Microsoft’s Interpretation of §315(b) Renders “Privy” Superfluous .....	12
III.	’715 PATENT .....	13
IV.	LENOVO’S ’715 PATENT CHALLENGES .....	17
V.	DISCRETIONARILY DENIAL UNDER §325(d).....	17
A.	<i>Advanced Bionics</i> Step 1 Is Met.....	18
1.	Substantially the Same Art.....	20
a.	Pröll and Lane are Substantially the Same .....	20
b.	Martinez and Preppernau Are Substantially the Same as Pogue.....	22
2.	Lenovo Made Substantially the Same Argument as Petitioners .....	30
3.	Petitioners’ Conclusory Assertion Fails.....	31
B.	<i>Advanced Bionics</i> Step 2 Is Met.....	31

VI. PETITIONERS FAIL TO DEMONSTRATE A REASONABLE LIKELIHOOD OF PROVING ANY CLAIM UNPATENTABLE.....	32
A. Petitioners Admit that a Plurality of Views Requires a Plurality of Ways of Organizing Content .....	34
B. None of Petitioners’ Prior Art Discloses Selecting a View in Response to a Detected Computer Configuration .....	35
1. Petitioners Admit Pröll Does Not Disclose Selecting Among a Plurality of Views.....	35
2. Martinez Does Not Select a View in Response to a Detected Computer Configuration .....	36
3. Preppernau Does Not Select a View in Response to a Detected Computer Configuration .....	37
C. The Board Denies Institution when the Prior Art Fails to Disclose a Claim Limitation.....	37
1. Petitioners Rely on Expert Testimony to Supply a Missing Limitation .....	38
2. Expert Testimony Can Supply a Missing Limitation Only in Rare Circumstances Absent Here.....	38
3. The Board Denies Institution Where the Petition Fails to Justify Reliance on Expert Testimony to Supply a Missing Limitation.....	40
D. Grounds 1-3 Fail.....	42
1. POSAs Motivated to Modify Pröll Based on Martinez Would Not Have Arrived at Any Challenged Claim .....	43
2. The Petition Does Not Adequately Explain the Contemplated Workings of its Pröll-Martinez Combination .....	44
3. Petitioners Establish No Reason to Select Different Views Based on the Computer’s Configuration Rather Than a User Shake as Martinez Teaches .....	47
a. Petitioners’ Modification is Not Required to “Allow” Pröll’s Device to be Used in Mobile Environments .....	48
b. Alleged Improved Usability Based on Relative Window Sizes Between Martinez’s Tile and Cascading Arrangements Fails .....	49

i.	The Assertion About Window Size Is Unsupported by any Credible Evidence .....	49
ii.	Petitioners’ Assertion About Window Size is Demonstrably False .....	52
iii.	Petitioners Rely on Their Expert’s Naked Say-So to Meet a Limitation Missing from the Art .....	54
c.	The Petition’s Remaining Reasons to Combine Fail to Yield a Computer Meeting Any Challenged Claim.....	55
i.	Alleged Similarities Between Pröll and Martinez Provides No Reason to Combine Their Teachings in the Claimed Manner.....	55
ii.	That POSAs Could Have Implemented a Computer Meeting the Claims Provides No Reason Why POSAs Would Have Done So .....	56
iii.	Even if POSAs Had Been Motivated to Combine Martinez with Pröll, that Would Not Have Resulted in a Computer Meeting Any Challenged Claim .....	57
4.	The Expert Declaration Cannot and Does Not Cure the Petition’s Failures.....	58
a.	The Evidence Relied Upon Needed to Be Cited and Explained in the Petition .....	58
b.	The Expert Declaration Fails to Cure the Petition’s Fatal Deficiencies.....	59
i.	Dr. Houh’s Assertion that Pröll Discloses Different Views Warrants No Weight.....	60
ii.	Martinez Does Not Select Among Window Arrangements Based on the Computer’s Configuration .....	61
iii.	Dr. Houh’s Assertion that POSAs Would Have Selected Among Views Based on a Detected Computer Configuration is Unsupported .....	63
5.	Conclusion: Ground 1 Fails.....	65

E. Grounds 2-3 Inherit Ground 1’s Failures .....	66
F. Ground 4 Fails .....	66
1. POSAs Motivated to Modify Pröll Based on Preppernau Would Not Have Arrived at a Computer Meeting Any Challenged Claim .....	67
2. The Petition Fails to Explain the Contemplated Workings of the Pröll-Preppernau Combination.....	68
3. The Petition Never Alleges a Reason to Combine Pröll and Preppernau in a Manner Meeting the Challenged Claims .....	69
a. Petitioner’s “Motivation to Combine” Section Alleges No Such Reason .....	69
b. The Petition’s Addressing Limitation 1[f] Similarly Alleges No Reason to Combine Pröll and Preppernau in the Manner Claimed.....	71
4. The Expert Declaration Cannot Save Ground 4.....	72
a. Incorporation by Reference is Prohibited .....	72
b. If Considered, the Expert Declaration Fails.....	73
i. Windows Vista Running on Pröll’s Computer Does Not Meet Any Challenged Claim .....	73
ii. Dr. Houh Provides No Reason Why POSAs Would Have Modified Windows Vista .....	73
c. Dr. Houh Fails to Explain the Contemplated Workings of the Pröll-Preppernau Combination .....	75
d. Dr. Houh’s Assertion that Pröll Discloses Different Views is Unsupported in Pröll and Refuted by Dr. Houh’s Own Admission .....	76
5. Conclusion: Ground 4 Fails.....	76
G. Ground 5 Fails .....	76
VII. CONCLUSION.....	77

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.