

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CRUSOE ENERGY SYSTEMS, LLC

Petitioner

v.

UPSTREAM DATA INC.

Patent Owner

Case PGR2023-00039

Patent No. 11,574,372

PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY

1. Petitioner Does Not Identify Material Differences

a. Dickerson

Petitioner's reply does not undercut PO's showing that the Petition should be discretionarily denied under §325(d). Petitioner argues that Dickerson's alleged mobility "lead[s] to a new and stronger motivation to combine." Reply, 2. First, this is attorney argument, unsupported by any evidentiary citation. Second, it is undisputed that Examiner's finding of a lack of motivation to combine Belady-837 during prosecution did not rest on whether Belady-837 was mobile. Reply, 1. Third, the Examiner credited Belady-837's teaching that data centers "are being located in areas in areas where natural resources, from which electrical power can be derived, are abundant and can be located inexpensively" in discussing the motivation to combine a data center with Belady-837. EX1002, 336. Therefore, contrary to the argument in Petitioner's Reply, the Examiner understood that Belady-837 and data center components could be transported to remote sites.

Petitioner also points to Belady-837's pressure regulating valve as a "deficiency" absent in Dickerson. Reply at 2. However, this deficiency was not noted by the Examiner and did not influence his analysis and therefore is not a material difference or error during examination. Moreover, Petitioner ignores that a POSITA would not have combined Dickerson. POPR, 10-21.

Finally, Petitioner asserts that "claims 17, 18, 19, 20, and 21 all require a portable containerized system, which is disclosed by Dickerson, but not Belady-

837.” Reply, 2. However, the Examiner found these claims obvious in view of Belady-837 and Gleifchauf. EX1002, 343-44. Accordingly, this is not a material difference and did not lead to any error during examination.

b. CryptoKube / Polivka

Petitioner does not identify *any* limitation that the Petition attributes to these references which was not found by the Examiner in Gleifchauf. Instead, Petitioner once again resorts to unsupported attorney argument that the “portable containerized” nature of these references somehow leads to a “new and stronger motivation to combine.” Reply, 3. However, as conceded by Petitioner, portability and containerization are only relevant to certain claims (17, 18, 19, 20, and 21) that were rejected over Belady-837 and Gleifchauf. Moreover, as established in the POPR, the Examiner considered containerized miners such as the BlockBox that are substantially similar to CryptoKube and Polivka. POPR, 61-62; EX1002, 361; EX2007. Contrary to Petitioner, BlockBox discloses blockchain mining devices each having a mining processor, e.g., 16nm BitFury ASICs. Reply, 4; EX2007, 1-2; EX2001, ¶¶110-11.

Petitioner also improperly uses the Reply to mitigate its failure to address reasonable expectation of success by arguing, without any evidentiary support, that “a strong reasonable expectation of success” existed because CryptoKube, MAGS and Polivka were “commercially deployed systems.” Reply, 3. However, there was

no reasonable expectation of success for the reasons established in the POPR. POPR, 18-21, 39-42, 45-49, 55-56, 68-70. *Bos. Sci., Inc. v. Iancu*, 811 F. App'x 618, 625 (Fed. Cir. 2020) cited by Petitioner is inapposite. That case found a reasonable expectation of success based on extensive proof, with commercial availability merely one of many factors, that is absent here. *See, id.* at 624-626.

c. MAGS

Contrary to Petitioner, EX2006 discloses “a generator connected to the source of combustible gas.” The Petition appears to rely on MAGS generators that “run the drilling operation” to satisfy this claim limitation.” Petition, 84. EX2006 likewise teaches “using one [gas] stream to power a generator to replace local diesel consumption.” POPR, 59-60; EX2001, ¶107; EX2006 (00:45-2:20 min.).

Also contrary to Petitioner, EX2006 at approximately 00:06-00:33 teaches that there is no sales gas line because the gas mixture is unusable for sales. Regarding the “electrical power grid” limitation of claim 2, the Petition did not rely on express disclosure in MAGS of this limitation but argued that a “POSITA would have understood that diesel-powered generators are needed because the system is isolated from an external power grid.” Petition, 86. The same reasoning applies to EX2006 which teaches MAGS replacing diesel generators. EX2001, ¶107.

Finally, Petitioner is incorrect that “because the Youtube video was merely made of record and not actually applied in a rejection, it does not weigh in favor of

denying institution.” EX2006 was found by the Examiner at the time of the non-final rejection, indicating that he considered it with due care. EX1002, 346.

Moreover, PTAB decisions cited by Petitioner do not support the broad proposition asserted by Petitioner. For example, Petitioner characterizes IPR2022-00353 Paper 8 as “finding that when a reference is not the basis of rejection, and merely made of record, it weighs ‘strongly against; exercising discretionary denial.’” In that proceeding, the examiner did not issue *any* rejection (aside from double-patenting) even though the reference demonstrated all claim elements. IPR2022-00353 Paper 8, 8. That is not the case here – the Examiner rejected the claims and Petitioner has not shown that MAGS is (1) not cumulative and (2) that the examiner erred.

2. Arguments are Not Substantially Different

As established in the POPR and herein, the motivation to combine proffered in the Petition is not substantially different from the art considered during examination. Petitioner’s three examples don’t show otherwise: (1) containerization was both (a) disclosed and (b) not relevant to Examiner’s analysis; (2) Belady-837 disclosed that “natural gas is available for free” at oil drilling facilities and “can be utilized to generate electrical power” (EX1002, 336-37) such that Dickerson’s disclosure is merely cumulative; and (3) Examiner understood that “cost-effective” electricity was important because it is a “primary determinant of success” (EX1002, 336).

Contrary to Petitioner, PO’s arguments are consistent with the prosecution.

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