

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.
Petitioner,

v.

EVOLUTIONARY INTELLIGENCE, LLC,
Patent Owner

Case IPR 2014-0085
Patent No. 7,010,536

PRELIMINARY RESPONSE BY PATENT OWNER

UNDER 37 C.F.R. § 42.107

TABLE OF CONTENTS

I. TECHNOLOGY BACKGROUND	5
II. OVERVIEW OF THE ASSERTED PRIOR ART	9
III. THE PETITION SHOULD BE DENIED.....	11
A. The Petition Fails To Explain the Relevance Of The References To The Claims As Required By 37 C.F.R. § 104(b)(5).....	12
B. The Petition Violates Rule 42.6 By Incorporating the Substance of Its Arguments by Reference.....	16
C. The Prior Art Raised in the Petition is Cumulative with Prior Art Asserted by the Petitioner in Another Petition.....	20
D. There Is No Reasonable Likelihood of the Claims Being Invalidated.	22
1. The Petitioner Fails to Construe and/or Incorrectly Construes Terms Material to all Claims.....	22
a. “Container”	25
b. “Register”	27
c. “Gateway”	29
d. “Encapsulated”/”Encapsulating”	31
e. ““Active Space Register” / “Passive Space Register” / “Neutral Space Register”	32
f. “Acquire Register”	33

2. There Is No Reasonable Likelihood Of Claims 2-14 or 16 Being Anticipated by Anderson (Ex. 1005).	33
3. There Is No Reasonable Likelihood Of Claims 2, 4-8, 13, and 16 Being Rendered Obvious in View of Anderson (Ex. 1006) and “General Knowledge”	38
4. There Is No Reasonable Likelihood Of Claims 2-14 or 16 Being Anticipated by Dussell (Ex. 1006).	40
IV. CONCLUSION	44

PRELIMINARY RESPONSE BY PATENT
OWNER UNDER 37 C.F.R. § 42.107

Patent Owner Evolutionary Intelligence LLC hereby respectfully submits this Preliminary Response to the Petition seeking *inter partes* review of U.S. Patent No. 7,010,536.

The Petition is deficient and relies on prior art references that are entirely distinct from the '536 patent. The Petition should be rejected for four independent reasons. First, the Petition fails to explain the relevance of the prior art to the claims as required by 37 C.F.R. § 104(b)(5), including failing to establish that the prior art discloses all elements “arranged as in the claims.” Second, the Petition is deficient because it violates 37 C.F.R. 42.6(a)(3)’s strict prohibition against incorporating other arguments by reference. Third, the Petition relies on prior art that is cumulative of prior art raised in another pending petition filed by Petitioner, as well as with prior art considered during the prosecution of the underlying application. Finally, even setting aside these critical defects, the Petition should be rejected on the merits, because it fails to demonstrate a reasonable likelihood of any claims being invalid—particularly because it relies on unreasonably broad constructions for and fails to construe terms that are material to all of the claims at issue. For at least these reasons, the Petition does not show a reasonable likelihood

of prevailing with respect to any of the challenged claims, and *inter partes* review should not be instituted.

This filing is timely under 35 U.S.C. § 313 and 37 C.F.R. § 42.107, as it is being filed within three months of the October 29, 2013 mailing date of the Notice granting the Petition a filing date of October 23, 2013.

I. Technology Background

The '536 patent describes a “System and Method for Creating and Manipulating Information Containers With Dynamic Registers.” The invention is directed at improving the processing of “containerized” data, such as the data that makes up web pages and documents. At the time of the invention, processing information resources on a computer network (e.g., the internet) was primarily static, in that the processing did not result in dynamic modifications that would improve future processing efforts. For example, the searching of data was “accomplished by individuals directing a search effort by submitting key words or phrases to be compared to those key words or phrases contained in the content or description of that information resource, with indices and contents residing in a fixed location unchanging except by human input.” Ex. 1001 at 1:22-28. As the '536 patent notes, this “static” information model was limited, because, *inter alia*, the information being processed did not evolve to reflect its actual utility to the people using it, and successful search strategies were not available to be used to

process future searches. Ex. 1001 at 1:37-2:48. At most, the prior art allowed “hits” for a given web page to be tracked—a static process. *See* Ex. 1001, 2:8-13.

The invention solved this problem through the use of “dynamic” information containers. The dynamic information containers include dynamic registers that attach to and form part of the container. Ex. 1001 at 2:66-3:5. Each container has an information element (e.g., an advertisement, article, or a text string), a plurality of registers, and a gateway. The plurality of registers for each container include (i) a unique identification register for that container; (ii) a second register governing the interactions of the container according to utility of the information in the information element relative to space or time; (iii) an active register controlling whether the container acts upon other containers according at a given time or location; (iv) a passive register controlling whether the container can be acted upon by other containers at a given time or location; and (v) a neutral register controlling whether a container may interact with other containers at a given time or location. “Gateways” are programmed with rules to enable the interaction among the various containers, gateways, and system components. *Id.* at 4:54-5:11.

In the invention of the ’536 patent, information containers are populated with information elements and time- and space-based dynamic registers, thereby facilitating access to the information at appropriate times and in relation to pertinent locations. This facilitates access to information that is useful to the user.

As users access the information containers, the dynamic registers are updated with information regarding their use, allowing them to evolve. This is made more evident in the claims of U.S. Patent 6,702,682, whose underlying application is a continuation of the application leading to the '536 patent. In the '2,682 patent, “a search query may be run against a plurality of container registers encapsulated and logically defined in a plurality of containers to identify one or more container registers responsive to the search query,” and “a list characterizing the identified containers may be provided.” *See* U.S. Patent 6,702,682 at Abstract. The dynamic nature of the invention of the '536 patent is also evident in its other continuation, U.S. Patent No. 7,873,682. The '3,682 patent is directed to methods and systems using at least two information containers with dynamic registers to evolve information containers over time.

Independent claim 1 of the '536 patent is directed to “an apparatus for transmitting, receiving and manipulating information on a computer system” comprised of a plurality of dynamic containers, each having an information element, a plurality of registers, and a gateway. The plurality of registers for each container include the five types of registers discussed above.

Claim 2, also an independent claim, is identical to claim 1, except that “space” and “three-dimensional space” replace “time” and “event time” in the second register. Claim 2 is not at issue in this proceeding.

Claims 3-14 are multiply dependent from claims 1 and 2. These claims further comprise at least one “container history register” (claim 3); “system history register” (claim 4); “predefined register” (claim 5); “user-created register” (claim 6); “system-defined register” (claim 7); “acquire register for controlling whether the container adds a register from other containers or adds a container from other containers when interacting with them” (claim 8); OR an apparatus wherein the gateway includes “means for acting upon another container” (claim 9); “means for allowing interaction (claim 10); “means for gathering information,” (claim 11); means for reporting information (claim 12); or “an expert system” (claim 13); OR an apparatus wherein the “information element is one from the group of text, graphic images, video, audio, a digital pattern, a process, a nested container, bit, natural number and a system” (claim 14).

Claims 15 and 16 of the '536 patent are each directed to “an apparatus for transmitting, receiving and manipulating information on a computer system” comprised of a plurality of dynamic containers, each having an information element, a plurality of registers, and a gateway. The plurality of registers for each container includes (i) a unique identification register for that container, (ii) a second register designating time (claim 15) or space (claim 16) governing the interactions of the container according to utility of the information in the information element relative to event time (claim 15) or three-dimensional space

(claim 16), and (iii) at least one acquire register controlling whether the container adds a register or container from another container.

As with claims 1 and 2, claims 15 and 16 differ only with respect to each claim's second register. Claim 15 recites a second register "having a representation designating *time* and governing interactions of the container with other containers, systems or processes according to utility of information in the information element relative to an external-to-the-apparatus *event time*." Claim 16, which is not at issue in this proceeding, recites a second register designating "*space*" and governing interactions of "the container" of which it is part "according to the utility of the information in the information element relative to *three-dimensional space*."

II. Overview of the Asserted Prior Art

The petition for IPR2014-0083 relies upon two references:

- Anderson et al., U.S. Patent No. 5,684,471 (Ex. 1005) ("Dussell");
and
- Dussell et al., U.S. Patent No. 5,938,721 (Ex. 1006) ("Dussell").

The Petition asserts that Anderson anticipates claims 2-14 and 16, and makes claims 2, 4-8, 13, and 16 obvious in view of "general knowledge." The Petition also asserts that Dussell anticipates claims 2-14, and 16. Both references

are directed to systems that use a GPS database in conjunction with a mobile device.

Anderson

Anderson discloses a “Field Navigation System,” a “location system for use in a vehicle moving within a selected area at a selected speed while moving in a selected direction.” Ex. 1005 at 3:37-40. The location system includes heading and speed sensors. *Id.* at 1:40-48. A storage device stores the “initial position data” and “checkpoint data.” *Id.* at 3:15-48. A database (within the vehicle’s location system) stores records with geographic information. *Id.* at 3:48-50. The internal database uses the positions calculated by the “position computer” to determine when certain actions should be taken. *Id.* at 7:30-45.

There is no two-way communication with an outside network. The unit includes a GPS receiver, but this is just a receiver that monitors satellite signals and triangulates position based on those signal’s travel times. *Id.* at 4:32-35. The location computer generates a “position signal” that is cross-indexed to the “task GIS unit” database that is installed within the unit. *Id.* at 8:21-59.

Anderson does not disclose an apparatus with a “*plurality of containers.*” In fact, Anderson does not disclose even one “*container*” comprising “*an information element . . . , a first register having a unique container identification value, a*

second register. . . governing interactions of the container according to the utility of information in the information element . . . , and a gateway.”

Dussell

Dussell discloses a “Position Based Personal Digital Assistant.” Task descriptions are stored a database accessible on a “personal digital assistant” (“PDA”). Ex. 1006, at Abstract. The PDA receives “positioning information corresponding to its current location” (e.g., GPS data). *Id.* The PDA correlates the task descriptions with locations via a geographic coordinate (“geocode”) index. *See* Ex. 1006 at 7:13-32; 8:27-44. As the user enters locations that have one or more task records associated with them, the system presents task reminders to the user.

Dussell does not disclose an apparatus with a “*plurality of containers*” or “*a first register having a unique container identification value.*”

III. The Petition Should Be Denied.

The Petition should be rejected for four independent reasons. First, the Petition fails to explain the relevance of the prior art to the claims as required by 37 C.F.R. § 104(b)(5), including failing to establish that the prior art discloses all elements “arranged as in the claims.” Second, the Petition is deficient because it violates 37 C.F.R. 42.6(a)(3)’s strict prohibition against incorporating other

arguments by reference. Third, the Petition relies on prior art that is cumulative of prior art raised in another pending petition filed by Petitioner, as well as with prior art considered during the prosecution of the underlying application. Finally, even setting aside these critical defects, the Petition should be rejected on the merits, because it fails to demonstrate a reasonable likelihood of any claims being invalid—particularly because it relies on unreasonably broad constructions for and fails to construe terms that are material to all of the claims at issue. For at least these reasons, the Petition does not show a reasonable likelihood of prevailing with respect to any of the challenged claims, and *inter partes* review should not be instituted.

**A. The Petition Fails To Explain the Relevance Of The References
To The Claims As Required By 37 C.F.R. § 104(b)(5)**

37 C.F.R. § 104(b)(5) states (emphasis added): “*the petition must set forth:* . . . (5) The exhibit number of the supporting evidence relied upon to support the challenge and *the relevance of the evidence to the challenge raised, including identifying specific portions of the evidence that support the challenge. The Board may exclude or give no weight to the evidence where a party has failed to state its relevance* or to identify specific portions of the evidence that support the challenge.” In addition, in order to invalidate a claim, a prior art reference “must not only disclose all elements of the claim within the four corners of the document,

but must also disclose those elements ‘arranged as in the claim.’” *See* MPEP 2131; *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008). Failure to satisfy these requirements is grounds to dismiss an IPR petition in its entirety. *See, e.g., Synopsis, Inc. v. Mentor Graphics Corp.*, IPR 2012-0041, Dkt. No. 16, 12-13 (PTAB 2013) (declining to institute IPR due to petitioner’s failure to establish that elements were “arranged as in the claim”).

The Petition fails to mention, let alone satisfy, these requirements. For example, the Petition provides no explanation of how Anderson and Dussell show each and every element “arranged as required by the claim,” as required for a proper anticipation rejection. *See id.* Instead, the Petition consists of a series of conclusory statements that various elements of the claims are present in the asserted prior art. There is little or no explanation *in the Petition* of specifically how the claim terms are being applied by the Petitioner or why the highlighted language corresponds to (or is otherwise relevant to) the claim elements. Even the Declaration of Henry Houh (Ex. 1003), upon which the Petition is based, contains many conclusory statements that elements are met, but fails to provide the explanation required by the PTO’s regulations.¹

¹ The supporting declaration of Apple’s expert also repeatedly omits the “arranged as required by the claim” requirement for anticipation. *See* Ex. 1003 at ¶ 28 (representing that § 102 is satisfied because “every element” is present, without addressing how the elements are arranged).

A prime example of the Petition's failure to explain how the cited references meet the limitations is the Petition's assertion that Anderson and Dussell each disclose a "first register for storing a unique container identification value." For both Anderson (Ex. 1005) and Dussell (Ex. 1006), the Petition asserts that the "geocode" or "location index" associated with a database record for a given location is "a unique container identification value." In both cases, this statement is made without citing any specific language from the asserted prior art. If one follows the citations from the Petition to the supporting declaration to the actual reference, it becomes apparent that neither reference gives any indication that the "location index" or "geocode" is "unique." In fact, it is entirely possible to have a database of geographic locations in which a given "location index" or "geocode" corresponds to two or more entries.

Further, in both petitions, a single register (i.e., the "location index" or "geocode") is asserted as satisfying four or five elements of the claimed apparatus. For example, with respect to Anderson, the Petition asserts that the "location coordinates" of the object in the field embodies the "*information element*," (ii) the first register having a unique container identification value, and (iii) all four "space" registers (i.e., the "*second register*" and "*active*," "*passive*," and "*neutral*" registers). *See* Petition at 15-19. The Petition similarly asserts that the single "geocode" value associated with the database records in Dussell satisfies all of

these limitations. Because these arguments conflate the “*information element*,” “*first register having a unique container identification value*,” and the “*second register . . . governing interactions of the container*,” this argument reads the second register as controlling interactions with itself, which is either nonsensical and/or tautological. Moreover, the specification clearly states that, within a container, the “content” (i.e., “information element”) and registers must be independent of each other. *See* Ex. 1001 at 13:1-3 (“Registers **120** are unique in that they operate independently of the encapsulated contents . . .”). To the extent the Petition presents these arguments without explaining why a single register embodies five distinct elements, including one which is supposed to be controlled by the other, the Petition fails to meet its burden.

Accordingly, the Petition fails to satisfy § 104(b)(5)’s requirement that “the Petition must set forth . . . the relevance of the evidence to the challenge raised.” The failures cited above with regard to the “*first register having a unique container identification value*,” “*information element*,” and “*second register representing space and governing interactions of the container . . . according to utility of information in the information element*” are not the only examples of such deficiencies.

B. The Petition Violates Rule 42.6 By Incorporating the Substance of Its Arguments by Reference

Rule 42.24 of the PTAB's Rules for Trial Practice limits petitions for *inter partes* review to 60 pages. The PTO adopted this page limit after substantial public commentary, in an attempt to reduce the burden of petitions for review on the PTAB and patent owners. To ensure that Petitioners adhere to this page limit, the PTO explicitly prohibits incorporation of arguments by reference. See 37 C.F.R. 42.6(a)(3) ("Arguments ***must not*** be incorporated by reference from one document into another document.") (emphasis added); *see also* Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions ("Rules of Practice"), Fed. Reg. 77, No. 157, p. 48617 (noting that, under § 42.6, petitions are subject to Fed. R. App. Proc. 32, which prohibits incorporation by reference). As the PTO explained:

The prohibition against incorporation by reference minimizes the chance that an argument would be overlooked and eliminates abuses that arise from incorporation and combination. In *DeSilva v. DiLeonardi*, 181 F.3d 865, 866–67 (7th Cir. 1999), the court rejected "adoption by reference" as a self-help increase in the length of the brief and noted that incorporation is a pointless imposition on the court's time as it requires the judges to play archeologist with the record. The same rationale applies to Board proceedings. *Cf. Globespanvirata, Inc. v. Tex. Instruments, Inc.*, 2005 WL 3077915, *1 (D. N.J. 2005) (Defendants provided cursory statements in motion and sought to make its case through incorporation of expert declaration and a claim

chart. Incorporation by reference of argument not in motion was held to be a violation of local rules governing page limitations and was not permitted by the court). . . .

The PTO noted that that Board applied page limits to both arguments and findings of fact because the failure to do so resulted in “abuses of the system.” Fed. Reg. 77 at 48620. The PTO noted that patent cases before the PTAB are no exception to the standards of district courts, where motion practice does not require federal judges to “shovel through steaming mounds of pleonastic arguments in Herculean effort to uncover a hidden gem of logic.” *Id.*

Despite this prohibition on incorporation by reference, the Petition incorporates at least **67 pages** of the 98-page supporting declaration by reference. The Petition itself never directly cites either of the two asserted prior art references. Instead, it cites the supporting declaration, which then often cites other portions of itself before finally citing actual language from the underlying patents. This is particularly inexcusable given that the Petition had only nine pages of space to use.

The Petitioner’s failure to abide by the regulations is not merely technical; it directly impacts the substance of the issues in the Petition. The Petitioner’s use of incorporation by reference enabled the Petitioner to assert conclusions without having to show that the underlying references actually make the asserted disclosures.

By moving all actual evidence into the 67 pages of discussion in the declaration, the Petition disguises its leaps in logic and mischaracterizations. *See* Petition at 16 (incorporating a summary of Ex. 1005 by reference to Ex. 1003 , ¶¶ 70-96.) and 38 (incorporating a summary of Ex. 1006 by reference to Ex. 1003 , ¶¶ 198-205.). For example, the Petition’s blithe reference to “location indexes” and “geocodes” as “*unique container identification values*” glosses over the fact that neither Anderson nor Dussell ever state that the databases they disclose can only have one record per location. *Compare* Petition at 40 (alleging that each “run” by a vehicle in Anderson’s system creates “*unique index*” based on position and is thus a “unique container identification value,” *citing* Ex. 1003, ¶¶ 112-113) *with* Ex. 1003, ¶¶ 112-113 (asserting that records in Anderson have “unique position values,” *citing* Ex. 1003, ¶ 85) *and id.*, ¶ 85 (*citing* Ex. 1005 at 1:31-35 (“An index into the GIS database is formed based on the farm implement position within a specified location. The indexed application rate is retrieved from the GIS database and is used to instruct the implement to apply the prescribed application rate to the field.”); Petition at 40 (alleging Dussell’s “geocodes” correspond to “a *unique* physical location” and are thus “*unique container identification values*” based on Ex. 1003, ¶¶ 200-202) *with* Ex. 1003, ¶¶ 200-202 (quoting excerpts from Dussell that establish location records include geocodes, without ever indicating such geocodes are unique). Even if the Petition were relying on inherent anticipation to

establish that because each location has a record, that location is a “unique container identification value,” it would be required to prove that this was *necessarily* true, which it is not (because a location could have more than one record).

When the reader reviews the cited references, it is apparent that the Petition chose not to cite the asserted prior art directly because the prior art does not describe the asserted functionality. The actual text of Anderson and Dussell never mention unique container identification values, and never indicate that location records are unique. The Petition’s statements that Anderson and Dussell each disclose an apparatus with this element are false, as are its assertion that these non-existent disclosures establish disclosure of the “first register” of claims 2-14 and 16.

These are exactly the kinds of abuses that § 42.6’s prohibition against incorporating by reference was designed to prevent. Walking the PTAB through every Byzantine argument presented by Petitioner would require parsing over 67 pages of Ex. 1003 and the Petition, which would exceed the page limit for this Preliminary Response. The Petition itself is only 51 pages, but it never once presents a direct quotation of any evidence in the asserted prior art. Instead, the Petition presents all the actual disclosures of the prior art in Ex. 1003. The overwhelming bulk of Petitioner’s argument—even more than the nine pages that

Petitioner had left at its disposal—is in the underlying declaration and incorporated by reference. This creates an unreasonable amount of work for the PTO, is unfair to the Patent Owner, and violates § 42.6 of the PTAB’s Rules of Practice for *inter partes* review proceedings. In light of this violation by Petitioner, the Petition should be denied.

C. The Prior Art Raised in the Petition is Cumulative with Prior Art Asserted by the Petitioner in Another Petition.

The prior art asserted in this case is cumulative with the prior art asserted by the same Petitioner in the petition for *inter partes* review in case No. 2014-0086. The prior art asserted in Petition No. 2014-0086, U.S. Patent No. 5,836,529 (“Gibbs”) is directed to an “Object Based Railroad Transportation Network Management System and Method.” The references asserted in the current petition (Anderson and Dussel) are asserted as anticipatory based on their disclosure of location-based databases that interact with devices in the real world based on location. The Gibbs patent similarly discloses the use of an object-oriented database in combination with external devices (e.g., railroad cars, stations, and cargo).

The basic functionality disclosed by the prior art asserted in this petition is identical to the basic functionality disclosed by Gibbs, at least insofar as it is material to the ’536 patent. In both petitions, the Petitioner, Apple Inc., essentially

contends that (i) any software file is a container (location records in Anderson and Dussel; location, crew, and locomotive objects in Gibbs), (ii) any location-based software action satisfies all four space-based limitations in claims 2-14 and 16, and (iii) any process that adds anything to any file proves the existence of an “acquire register.” In petition 0085, Petitioner contends that Anderson and Dussell anticipate claims 2-14 and 16. In petition 0087, Petitioner contends that Gibbs anticipates these claims. In essence, the two petitions are identical in their allegations.

Patent Owner submits that it is inefficient to initiate two proceedings to answer the question of whether prior art that discloses location-based databases interacting with objects in the real world invalidates claims 2-14 and 16 of the '536 patent. Accordingly, Patent Owner submits that even if the PTO decides that the Petitioner has carried their burden of showing a reasonable likelihood of prevailing on at least one claim in both petitions (Nos. 2014-0085 and 2014-0087), it would be within the PTO's discretion to choose one petition on which to proceed and deny the other.

D. There Is No Reasonable Likelihood of the Claims Being Invalidated.

1. The Petitioner Fails to Construe and/or Incorrectly Construes Terms Material to all Claims.

The initial step in an analysis of whether to institute a trial is to determine the meaning of the claims. Consistent with the statute and the legislative history of the AIA, the Board interprets claims using the broadest reasonable construction in light of the specification in which they appear. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48766 (Aug. 14, 2012); 37 CFR § 42.100(b). Claim terms are also given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). There is a “heavy presumption” that a claim term carries its ordinary and customary meaning. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). “Plain meaning” refers to the ordinary and customary meaning the term would have to a person of ordinary skill in the art. Such terms require no construction. *See, e.g., Biotec Biologische Naturverpackungen GmbH & Co. KG v. Biocorp, Inc.*, 249 F.3d 1341, 1349 (Fed. Cir. 2001) (finding no error in non-construction of “melting”); *Mentor H/S, Inc. v. Med. Device Alliance, Inc.*, 244 F.3d 1365, 1380

(Fed. Cir. 2001) (finding no error in court’s refusal to construe “irrigating” and “frictional heat”).

A patentee may act as his own lexicographer by redefining the meaning of particular claim terms away from their ordinary meaning, by clearly expressing that intent in the written description. *See Merck & Co., Inc. v. Teva Pharmaceuticals*, 395 F.3d 1364, 1370, 1379 (Fed. Cir. 2005). If an inventor acts as his or her own lexicographer, the definition must be set forth in the specification with reasonable clarity, deliberateness, and precision. *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1249 (Fed. Cir. 1998).

The Petition urges the Board to utilize two additional rules in construing the claims, neither of which has any support in the law. First, Petitioner asserts that the “[t]he broadest reasonable construction should reflect subject matter that Patent Owner contends literally infringes the claims, as well as constructions proposed by Patent Owner in past or concurrent litigation.” Petition at 8. No law is cited to support this position, because there is no legal support for this position. In fact, the Federal Circuit has explicitly ruled that legal opinions offered by patentees during litigation warrant no deference during claim construction. *Howmedica Osteonics Corp. v. Wright Med. Tech., Inc.*, 540 F.3d 1337, 1346 (Fed. Cir. 2008); *see also Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 985 (Fed.Cir.1995) (*en banc*) (“[I]t is not unusual for there to be a significant difference between what an

inventor thinks his patented invention is and what the ultimate scope of the claims is after allowance by the PTO.”); Reexamination No. 95/000,639, Action Closing Prosecution, 8-9 and 21-22 (declining to construe claims in accordance with patent owner’s positions taken in litigation).²

Next, the Petition asserts that, “if Patent Owner contends terms in the claims should be read to have a special meaning, those contentions should be disregarded unless Patent Owner also amends the claims compliant with 35 U.S.C. § 112 to make them expressly correspond to those contentions.” Petition at 8, (citing 77 Fed. Reg. 48764 at II.B.6 (August 14, 2012) and *In re Youman*, 679 F.3d 1335, 1343 (Fed. Cir. 2012)). The authorities cited by Petitioner, however, simply do not establish that that any such amendments are necessary.

In addition to misunderstanding the proper legal standard for claim construction, the Petition completely fails to construe the terms “*encapsulates*”—a term that is material to every claim in the ’536 patent. Rather, the Petition merely concludes, without any support, that these limitations are present in the asserted prior art.

² The Declaration of Henry Houh states explicitly that Apple’s expert Henry Houh construed the claims “taking into account the matter Patent Owner contends infringes the claims and constructions the Patent Owner has advanced in litigation.” Ex. 1003 at 15. Accordingly, the PTAB should assume that Dr. Houh used an incorrect legal standard in construing the claims. No proposed claim constructions have been submitted in the concurrent litigation as of this date, and only preliminary infringement contentions, provided without benefit of any discovery or expert testimony, have been submitted.

Ignoring the term “encapsulates,” the Petition instead focuses on the terms “*container*,” “*register*,” “*active space register*”/“*passive register for identifying space*”/ “*neutral space register*,” and “*gateway*.” In an attempt to construe the claims as broadly as possible and invalidate the claims of the ’536, Petitioner cherry-picks statements about these terms from the specification that, out of context, make these terms appear much broader than they actually are. As described below, these deficiencies are fatal to Petitioner’s arguments, and the constructions proposed by Petitioner are unreasonable.

a. “Container”

Within the field of computer science at the time the invention was conceived, the word “container” meant “an element that has content as opposed to one consisting solely of the tag name and attributes.” Ex. 2001. This parallels the description of “containers” used in the specification. *See, e.g.*, Ex. 1001 at 8:64-9:2 (“The information container **100** is a logically defined data enclosure which encapsulates any element”). Patent Owner proposes that the broadest reasonable construction of “container” is “a logically defined data enclosure which encapsulates any element or digital segment (text, graphic, photograph, audio, video, or other), or set of digital elements.”

The Petition proposes construing the term “container” as “a logically defined data enclosure that *contains* a whole or partial digital element (e.g., text, graphic,

photograph, audio, video, or other) or set of digital segments, any system component or process, or other containers or sets of containers.” Petition at 9. The Petition cites a description of “container” from within the ’536’s specification, but substitutes the verb “contains” for the specification’s use of “encapsulates.”

Compare id. with Ex. 1001 at 8:64-9:2.

As an initial matter, defining “container” as something that “contains” other things is circular and unhelpful. In addition, the Petitioner’s proposed construction is incorrect because it ignores the relationship between “containers” and “encapsulation.” “Encapsulation,” which is discussed in more detail below, is a term of art, referring generally to “treat[ing] a collection of structured information as a whole without affecting or taking notice of its internal structure.” *See Ex. 2001*. Encapsulation can refer, for example, to the process of wrapping data in protocols that allow its transmission from one network to another, as occurs when a web page is sent using HTML. *See id.* (discussing relevance of encapsulation to TCP/IP transmission); *see also Ex. 1002 at 164, line 35* (foreign patent in IDS describing hypermedia “objects” that “encapsulate” and control aspects of the hypermedia system). Patent Owner notes that Facebook, Twitter, and Yelp, who filed IPR petitions for the ’536 patent on the same day as Apple, proposed construing “container” as “a logically defined enclosure that *encapsulates* any

element”³ By deleting the word “*encapsulates*” from its proposed construction, Petitioner seeks to broaden the construction of “container” beyond what the specification reasonably conveys to *anything* that “contains” something else in the broadest sense of the word (e.g., a “folder”), so that it can assert anticipation based on non-analogous prior art.

b. “Register”

“Register” is a common computing term that refers to computer memory, often programmed with a specific value. The 1996 Oxford Dictionary of Computing defines “register” as “a group of (usually) bistable devices that are used to store information within a computer system for high speed access.” Ex. 2002. Similarly, Webster’s New World Dictionary of Computer Terms defines “register” as “a memory location within a microprocessor, used to store values and external memory addresses while the microprocessor performs logical and arithmetic operations on them.” Ex. 2003.

³ See Petition for *Inter Partes* Review, *Twitter, Inc. and Yelp Inc. v. Evolutionary Intelligence LLC*, IPR 2014-1092 at 12 (“the broadest reasonable construction of ‘container’ is ‘a logically defined data enclosure which encapsulates any element or digital segment (text, graphic, photograph, audio, video, or other), or set of digital elements.’”); Petition for *Inter Partes* Review, *Facebook, Inc. v. Evolutionary Intelligence LLC*, IPR 2014-1093 at 8 (“the broadest reasonable construction of ‘container’ is ‘a logically defined data enclosure that encapsulates any element or digital segment or set of digital segments, any system component or process, or other containers or sets of containers.’”).

The plain meaning of the term “register” is thus “a memory location within a computer that stores data.” This plain meaning comports perfectly with the specification of the ’536 patent, which describes “dynamic registers” as memory locations that are searched and updated with data according to interactions among various containers. Ex. 1101 at 2:66-3:5 (“The present invention is a system and methods for manufacturing information on, upgrading the utility of, and developing intelligence in, a computer . . . by offering the means to create and manipulate information containers with dynamic registers.”); 3:14-15 (“The memory unit advantageously includes an information container made interactive with dynamic registers”); 3:29-32 (“A container . . . include[es] a minimum set of attributes coded into dynamic interactive evolving registers . . .”).

This construction is somewhat similar to that proposed by Petitioner: “a value or code associated with a container.” Petition at 10. The difference is that Petitioner’s proposed construction is (likely intentionally) so broad and abstract that it could read onto unpatentable subject matter. In contrast, Patent Owner’s proposed construction is concrete and comports with both the specification and the claims. *See, e.g.*, claim 1 (directed to “*an apparatus for transmitting, receiving and manipulating information on a computer system*” including “*registers*” and a “*gateway*”). Accordingly, Petitioner’s proposed construction is unreasonable, and Patent Owner’s should be adopted.

c. “Gateway”

Without reading the '536 Patent, a person of ordinary skill in the art would conclude that a “gateway” is “a device that interconnects two networks” Ex. 2002; *see also* Ex. 2004 (defining “gateway” as “A functional unit that interconnects two computer networks with different network architectures.”); Ex. 2001 (“A device that connects networks using different communications protocols so that information can be passed from one to the other.”).

In most respects, the '536 patent's use of “gateway” is within the scope of this commonly understood meaning. For example, “gateways” are capable of receiving and storing containers and data, as one would expect of devices that interconnect two networks. *See* claim 1 (reciting “a gateway attached to and forming part of the container, the gateway controlling the interaction of the container with other containers, systems or processes”). The specification explicitly identifies embodiments of “gateways” that fit the traditional definition of “gateway.” *See, e.g.*, Ex. 1101 at Fig. 2B (showing gateways may be servers, workstations, intranets, or personal computers); *id.* at 4:54-55 (noting gateways may be “structurally integrated into containers” or “strategically placed at transit points”); *id.* at 22:45-50 (gateways may be placed “anywhere on the network that containers transit” and may reside on “any or all containers”). They also can have

storage, are programmed with rules that control the interactions of containers that transit them, and can alter those containers. *Id.* at Fig. 2; 4:58-66; and 9:25-28.

However, the '536 patent's specification expands upon the commonly understood meaning of "gateway" to include software that processes network data. For example, as described in the '536 patent, gateways can be generated as part of the process of searching, which implies that a gateway can be created through manipulation of programming on a computer. *See, e.g.*, claim 13 (describing a method of claim 11 further comprising "generating a new gateway; and associating the container with the new gateway"). This establishes that gateways may be embodied by software that processes network data. Accordingly, the '536 patent's use of the term "gateway" is similar to the well-understood concept of Common Gateway Interface scripts, which process network data as it is communicated between information servers. *See* Ex. 2001.

Accordingly, Patent Owner proposes that the proper construction of "gateway" is "a hardware device that facilitates the transfer of information between containers, systems and/or processes on two different networks or devices, or software that processes network data." Patent Owner notes that this is consistent with the concept of "encapsulation" as a process that assists transmission of data over "gateways. *See* Ex. 2002 ("The *encapsulated* packet is sent over the network to a *gateway*.") This construction is also consistent with the prior art considered

during the examination of the '536 patent. *See* Ex. 200x at 416 (asserting §102 rejection based on Chiussi, U.S. Patent No. 6,075,791, directed to a server which guarantees data transfer rates and data transfer delays).

d. “Encapsulates”

Within the meaning of the '536 patent, “encapsulate” refers to “treat[ing] a collection of structured information as a whole without affecting or taking notice of its internal structure. Ex. 2001; *see also* Ex. 2002 (linking “encapsulation” to the process of “internetworking,” or wrapping data in a network-specific protocol so that it can be conveyed from one network to another without translation). This type of “encapsulation” is used when transmitting information (e.g., web pages, emails) over networks.⁴ *See id.* Although “encapsulates” is not used in the claim directly, it is a fundamental characteristic of a “*container*,” is used consistently in the patent to define “*containers*,” and is in the proposed construction of “*container*” for the '536 patent offered by Petitioners Yelp, Twitter, and Facebook in concurrently filed IPR Petitions Nos. 2014-0092 and 2014-0093. *See* note 3.

The specification and claims are consistent with “encapsulating” as the process of preparing information for transmission over a network by treating it “as a whole, without affecting or taking notice of its internal structure.” *See* Ex. 2001

⁴ In object-oriented programming, “encapsulation” refers to the process of defining objects so that details about how the object operates are hidden. *See* Ex. 2002 at 165; 240.

(explaining that encapsulated data sent over TCP/IP is reassembled after transmission over a network to re-create the original message). *See also* Ex. 1001 at 9:14-17 (noting a “container” has code allowing it “to reconstruct itself”). Claim 1 of the ’682 patent recites “searching . . . first container registers encapsulated and logically defined in a plurality of containers” and “encapsulating the identified containers in a new container.” Claim 11 of the ’682 patent recites “encapsulating the search query into a search container.”

This construction of encapsulation is further supported by the very purpose of the patent—enabling one to search for information over the internet and other networks. In order to make such searching possible, the invention encapsulates data so that it can be transmitted as a whole, without affecting its internal structure, to another network (i.e., the network from which the search query was received).

The Petition does not provide any construction for “encapsulation.” In fact, the Petition never directly addresses the concept. Accordingly, it is impossible to determine what the Petitioner believes “*encapsulates*” means.

**e. “Active Space Register” / “Passive Space Register” /
“Neutral Space Register”**

Claim 1 recites three “register” elements, stating: (i) “an active time register for identifying times at which the container will *act upon* other containers, processes, systems or gateways”; (ii) “a passive time register for identifying times

at which the container *can be acted upon* by other containers, processes, systems or gateways” and (iii) “a neutral time register for identifying times at which the *container may interact with other* containers, processes, systems or gateways.” The ’536 patent does not expressly define any of these registers. Patent Owner submits that these terms should be construed in accordance with their plain meaning.

f. “Acquire Register”

The Petition fails to construe the limitation “acquire register for controlling whether the container adds a register from other containers or adds a container from other containers when interacting with them.” Patent Owner submits that this limitation should be construed according to its plain meaning and Patent Owner’s proposed constructions of “container” and “register.”

2. There Is No Reasonable Likelihood Of Claims 2-14 or 16 Being Anticipated by Anderson (Ex. 1005).

The Petition asserts that Anderson (Ex. 1005) anticipates claims 2-14 and 16. The Petition fails to establish a reasonable likelihood of prevailing on these arguments, because it does not construe the claims properly and does not read them onto Anderson in an appropriate and consistent manner.

First, Anderson does not disclose a “gateway.” The Petition cites the “user interface” as the “gateway.” But the user interface is not “a hardware device that

facilitates the transfer of information between containers, systems and/or processes on two different networks or devices, or software that processes network data.”

The Petition also references the ability of Anderson’s system to trigger actions based on location as evidence of a gateway, but the actuators are part of the field navigation system installed on the agricultural machine; they are not a means exchanging information between two networks. Anderson also discloses a GPS receiver, but the GPS receiver is simply a radio receiver that detects pulse data from various satellites, which it uses to triangulate the agricultural machine’s position. Ex. 1005 at 4:32-35. Accordingly, the GPS receiver is not a “*gateway*.”

The Petition also fails to properly construe and apply the term “*container*.” The specification clearly indicates that “*containers*” are “logically defined and encapsulated.” The Petition accepts this, but fails to acknowledge that the term “encapsulate” is a term of art that means “to treat a collection of structured information as a whole without affecting or taking notice of its internal structure.” See Ex. 2001. The Petition never identifies any disclosure that the “containers” of Anderson satisfy this limitation. Moreover, there is no indication in Anderson that anything is encapsulated. Anderson does not disclose “*containers*” with “encapsulated” information elements. In fact, there is no “*information element*” in Anderson, since the data values in the database not information available for

viewing by people searching for information. Accordingly, Anderson does not disclose any “containers” as that term is used within the claims.

Furthermore, the Petition fails to identify which specific disclosure of Anderson is a “container” and which disclosures constitute a “plurality of containers.” When discussing this limitation, the Petition cites various disclosures of Anderson (e.g., vehicles, sensors, a GIS database), but never identifies exactly which of these is “*the container*” to which all the other elements of the claim are tied. Petition at 15-16. Although the petition references “data structures, such as the GIS database,” the Petition fails to establish that Anderson discloses an apparatus with a “*plurality*” of GIS databases as required by the claims. *See id.*

In addition to failing to specify which of the various data items of Anderson is “the container,” the Petition also fails to specify which exact disclosures in Anderson it is reading each of the other limitations onto, and which putative “containers” those registers are a part of. For example, the Petition argues that “the GIS database stores records containing elements specifying locations.” The Petition does not explicitly identify any specific disclosures from Anderson, and it does not explicitly identify of which “container” they are a part. Even assuming that generic “data elements” within the GIS database were a plurality of registers, the apparatus would then include only one container (i.e., the GIS database), as described above.

The Petition also fails to establish the disclosure of a “*first register having a unique container identification value.*” First, as described above at pages 13-14 and 17-18, Anderson does not disclose any “unique container identification value,” because the location values asserted by the Petition are not disclosed by Anderson as being “unique.” Furthermore, to the extent they identify any “*container,*” they identify the location record, which the Petition did not identify as “*the container.*”

Moreover, the Petition reads multiple limitations onto the same data. As discussed above at pages 13-14, the Petition cites the registers with “location” data as (i) the “*information element,*” (ii) the “*first register having a unique container identification value,*” (iii) the “*second register having a designation representing space and governing the interactions of the container according to utility of information in the information element,*” and (iv) the active, passive, and neutral register. See Petition at 15-19.

The Petition also fails to establish Anderson’s disclosure of “*a passive register for identifying space in which the container can be acted upon by other containers, processes, systems or gateways.*” The Petition asserts that “historical location values can be analyzed subsequently for various reasons,” and are thus “*passive registers for identifying space in which the container may be acted upon.*” *Id.* at 18. But merely stating that location data may be analyzed subsequently does not establish that these putative registers “identify space” in which “the container

can be acted upon.” Furthermore, the Petition again fails to specify “the container” which is acted upon. *See id.* (referencing “the system” generally). If “the GIS database” were “*the container*,” Anderson does not disclose “a plurality of containers.” If “the container” were a record of the vehicle’s past locations, then that “*container*” is not “*the container*” onto which the Petition reads the other limitations of the claim. *Compare id.* at 16 (referencing records storing locations at which certain actions may be taken) with Ex. 1005 at 8:1-20 (noting that the GIS database contains a variety of different records) and 1:46-51 (stating that “historical information” can be stored in records in the GIS database). Either way, the Petition fails to establish that Anderson discloses this limitation.

Each of the above limitations is present in claim 2 and, by extension, dependent claims 3-14. Because the Petition fails to establish anticipation of claim 2, it fails to establish anticipation of claims 3-14.

With the exception of the “active,” “passive,” and “neutral” time registers, each of the limitations of claim 2 is also present in independent claim 16, meaning the Petition fails to establish anticipation of claim 16 for the same reasons identified above.

In addition, with respect to claim 16, the Petition fails to establish the existence of an “acquire register.” The Petition asserts that the “acquire register” is present because “Ex. 1005 describes adding different types of data to a record in

the GIS database, including checkpoints and information “such as weed maps, soil attributes, soil test results, pest infestation, climate, terrain, hydrography, agricultural chemical needs, and previous yields.” Petition at 23 (citing Ex. 1005 at 8:23-26, Ex. 1003 at ¶¶ 78-80.) What Ex. 1005 actually discloses is that those types of data are included when the GIS database is created for inclusion in the “task GIS unit,” that will be installed on the agricultural machine. Merely disclosing that a database contains information does not prove that there is “an acquire register” in the GIS database “*for controlling **whether** the container adds a register from other containers or adds a container from other containers when interacting with them.*” Indeed, the identified “additions” are not even from “other containers,” because the GIS database is self-contained on the agricultural device it controls (which has no “*containers*”), and is not in communication with any other devices. As such, the Petition fails to identify any disclosure in Anderson of “*an acquire register*” as required by claim 16 (and claim 8).

3. There Is No Reasonable Likelihood Of Claims 2, 4-8, 13, and 16 Being Rendered Obvious in View of Anderson (Ex. 1006) and “General Knowledge”

The Petition argues that Anderson (Ex. 1006) in view of “general knowledge” renders claims 2, 4-8, 13, and 16 obvious. The Petition fails to establish that Anderson renders claim 2 obvious for the same reasons it fails to

establish Anderson anticipates claim 2. The only information the petition's obviousness argument adds is the general assertion that a "neutral space register" would have been obvious because "[t]he concept of using one data element to govern interactions between other sets of data elements was a well known [sic] and conventional programming technique before January of 1998." Petition at 30. Even if true (which it is not), this fails to address the additional deficiencies in Anderson identified above in section VII.A.

Claims 4-8, and 13 all depend from Claim 2. The Petition fails to establish a reasonable likelihood that Anderson renders these claims obvious for the same reasons the Petition fails to establish a reasonable likelihood that Anderson anticipates claim 2.

The Petition fails to establish a reasonable likelihood that claim 16 is obvious in view of Anderson for the same reasons it fails to establish a reasonable likelihood that Anderson anticipates claim 16. Again, the Petition's obviousness argument adds nothing beyond a generic statement that "appending one data object to another related object was a well known [sic] technique." *See* Petition at 38 (citing *id.* at 36). Even if true, this fails to address the additional deficiencies in Anderson identified above in section VII.A.

**4. There Is No Reasonable Likelihood Of Claims 2-14 or 16
Being Anticipated by Dussell (Ex. 1006).**

The Petition asserts that Dussell (Ex. 1006) anticipates claims 2-14 and 16. The Petition fails to establish a reasonable likelihood of prevailing on these arguments, because it does not construe the claims properly and does not read them onto Anderson in an appropriate and consistent manner.

First, the Petition fails to identify which exact structures disclosed by Dussell it is reading the “*container*” limitation of claim 2 onto, mainly because Dussell discloses no such structures. When discussing the “*plurality of containers*” or “*the container*,” the Petition generically references “records.” Petition at 38. But the Petition never identifies exactly which “records” in Dussell it is reading the “container” limitation onto. The reason is, simply, that Dussell never identifies any database structures onto which to read these limitations. Dussell discloses the general concept of coupling a geographic database to a personal device assistant (PDA) with a geographic coordinate (“geocode”) index – nothing more. *See* Ex. 1006 at 7:13-32 (describing adding the geographic index onto prior art “to-do” software for PDAs). As such, it cannot, and does not, disclose any structure that corresponds to the “container” of claim 2. Even if a “record” of Dussell were a “container,” Dussell could not disclose all the other elements of claim 2 “arranged as in the claim” because Dussell provides nothing

more than general references to “task” databases. See, e.g., Ex. 1006 at Ex. 1006 (Dussell) at 7:13-26 (stating “tasks” are stored in “a database **10**”); *id.*, Fig. 1 (showing database **10** as a generic database, without providing any record structure).

The Petition also fails to properly construe and apply the term “*container*.” The ’536 specification clearly indicates that “*containers*” are “logically defined and encapsulated.” The Petition acknowledges this, but fails to acknowledge that the term “encapsulate” is a term of art that indicates “to treat a collection of structured information as a whole without affecting or taking notice of its internal structure.” *See* Ex. 2001. The Petition never identifies any disclosure that the “containers” of Dussell satisfy this limitation. Moreover, there is no indication in Dussell that anything is “encapsulated.” Accordingly, Dussell does not explicitly disclose any “*containers*” as that term is used within the claims, and the Petition fails to provide any evidence or reasoning to support the conclusion that Dussell inherently anticipates this limitation.

The Petition’s failure to identify any disclosure of a specific “container” by Dussell is a pervasive deficiency in its argument that Dussell anticipates claim 2. The petition cannot establish that any of the putative “registers” are in each of plurality of containers,” because Dussell never identifies any details of its record

structure, beyond indicating that “tasks” are in a database and are indexed by “geocode.”

The Petition also fails to establish the disclosure of a “first register having a unique container identification value.” First, as described above in section V, Dussell does not disclose any “unique container identification value” because the “geocodes” asserted by the Petition are not disclosed by Dussell as being “unique.” Dussell merely states that the “geocodes” are used to “index” the “task list,” and one value in an index can reference multiple records.

Moreover, the Petition reads multiple limitations onto the same single register. For example, the Petition generically cites the “location” data as support for disclosure of (i) the first register having a unique container identification value, (ii) the “second register having a designation representing space and governing the interactions of the container according to utility of information in the information element”, (iii) the active space register, (iv) the passive space register, and (v) the neutral space register. *See* Petition at 38-43.

The Petition also fails to establish Dussell’s disclosure of “*a passive register for identifying space in which the container can be acted upon by other containers, processes, systems or gateways.*” The Petition alleges a number of generic processes disclosed by Dussell satisfy this limitation, including “recording locations that have been visited,” “setting a delivery route with pick-up and drop-

off locations on a map,” “search[ing] for nearby stores based on the user’s current location,” and setting “reminders” for specific tasks in “records for each location.” *Id.* at 41-42. But these high level disclosures do not provide the detail necessary to establish “*a passive register for identifying space in which the container can be acted upon by other containers, processes, systems or gateways.*” Again, the Petition fails to specify “*the container*” which is acted upon.

Each of the above limitations is present in claim 2 and, by extension, dependent claims 3-14. Because the Petition fails to establish anticipation of claim 2, it fails to establish anticipation of claims 3-14.

With the exception of the “active,” “passive,” and “neutral” time registers, each of the limitations of claim 2 is also present in independent claim 16, meaning the Petition fails to establish anticipation of claim 16 for the same reasons identified above.

In addition, with respect to claim 16, the Petition fails to establish the existence of an “acquire register.” The Petition asserts that the “acquire register” is present because “Ex. 1006 describes “adding” “task descriptions” to “location records,” “pick-up or drop-off locations” to “delivery routes,” and “GPS data” to mobile devices. Petition at 45 But merely disclosing the ability to add information to databases (i.e., one of the three different putative “containers” identified in the above example) does not prove that there is “an acquire register”

in that data structure “for controlling whether the container adds a register from other containers or adds a container from other containers when interacting with them.” Indeed, there is no proof in the Petition that the identified “additions” are from “other containers” with which the putative “containers” interact. As such, the Petition fails to identify any disclosure in Dussell of “*an acquire register*” as required by claim 16.

IV. Conclusion

For the foregoing reasons, there is no reasonable likelihood of Petitioner prevailing with respect to even one of challenged claims. Accordingly, the Petition should be denied under 35 U.S.C. § 314(a).

Dated: January 29, 2014

Respectfully Submitted,

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PATENT OWNER'S EXHIBIT LIST

Exhibit	Brief Description
2001	Microsoft Computer Dictionary, 4 th Edition (1999)
2002	Oxford Dictionary of Computing Terms, 4 th Edition (1996)
2003	Webster's New World Dictionary of Computing Terms, 8 th Ed. (2000)
2004	IBM Dictionary of Computing, 10th Edition (1994)

CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 CFR § 42.6, that on January 29, 2014, the same day as the filing of the above document, a true and correct copy of the foregoing PRELIMINARY RESPONSE BY PATENT OWNER UNDER 37 C.F.R. § 42.107 with exhibits is being served via email, by agreement between the parties, on the following:

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