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Paper 9
Entered: April 25, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Corrected Petitioner,

v.

EVOLUTIONARY INTELLIGENCE, LLC,
Patent Owner.

Case IPR2014-00085
Patent 7,010,536

Before KALYAN K. DESHPANDE, TREVOR M. JEFFERSON, BRIAN J. McNAMARA, NEIL T. POWELL, and GREGG I. ANDERSON *Administrative Patent Judges.*

ANDERSON, *Administrative Patent Judge.*

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

On October 23, 2013, Apple Inc. ("Apple" or "Petitioner") filed a Corrected Petition for *Inter Partes* Review of claims 2-16 of U.S. Patent No. 7,010,536 (Ex. 1001, "the '536 Patent")[1]. Paper 3 ("Corrected Pet."). On January 29, 2014, Evolutionary Intelligence, LLC ("Evolutionary Intelligence" or "Patent Owner"), filed a preliminary response. Paper 7 ("Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides as follows:

> THRESHOLD.—The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Upon consideration of the Corrected Petition and preliminary response, we determine that the information presented in the Corrected Petition does not establish that there is a reasonable likelihood that Petitioner would prevail in showing unpatentability of any of the challenged claims. Accordingly, pursuant to 35 U.S.C. § 314, we do not institute an *inter partes* review of the '536 Patent.

A. Related Proceedings

Corrected Petitioner states that on October 23, 2012, it was served with a complaint alleging infringement of the '536 Patent in Civil Action

[1] Petitioner initially filed a Corrected Petition intended for a different *inter partes* review on October 22, 2013 and corrected the error on October 23, 2013. The Corrected Petition has been accorded a filing date of October 23, 2013.

No. 6:12-cv-00783-LED in the Eastern District of Texas, which was transferred to the Northern District of California as Civil Action No. 3:13-cv-4201-WHA. Corrected Pet. 4. The '536 patent is also the subject of several other lawsuits against third parties. *Id.* at 5.

B. The '536 Patent

The '536 patent is directed towards developing intelligence in a computer or digital network by creating and manipulating information containers with dynamic interactive registers in a computer network. Ex. 1001, 1:11-20; 3:1-5. The system includes an input device, an output device, a processor, a memory unit, a data storage device, and a means of communicating with other computers. *Id.* at 3:6-11. The memory unit includes an information container made interactive with, among other elements, dynamic registers, a search engine, gateways, a data collection and reporting means, an analysis engine, and an executing engine. *Id.* at 3:15-23.

The '536 patent describes a container as an interactive nestable logical domain, including dynamic interactive evolving registers, and which maintains a unique network-wide lifelong identity. *Id.* at 3:29-35. A container, at minimum, includes a logically encapsulated portion of cyberspace, a register, and a gateway. *Id.* at 9:2-4. Registers determine the interaction of that container with other containers, system components, system gateways, events, and processes on the computer network. *Id.* at 3:43-46. Container registers may be values alone or contain code to establish certain parameters in interaction with other containers or gateways. *Id.* at 9:19-22. Gateways are structurally integrated into each container or strategically placed at container transit points. *Id.* at 4:54-57. Gateways

govern the interaction of containers encapsulated within their domain by reading and storing register information of containers entering and exiting that container. *Id.* at 4:58-66; 15:46-49.

The system for creating and manipulating information containers is set forth in Figure 2B as follows:

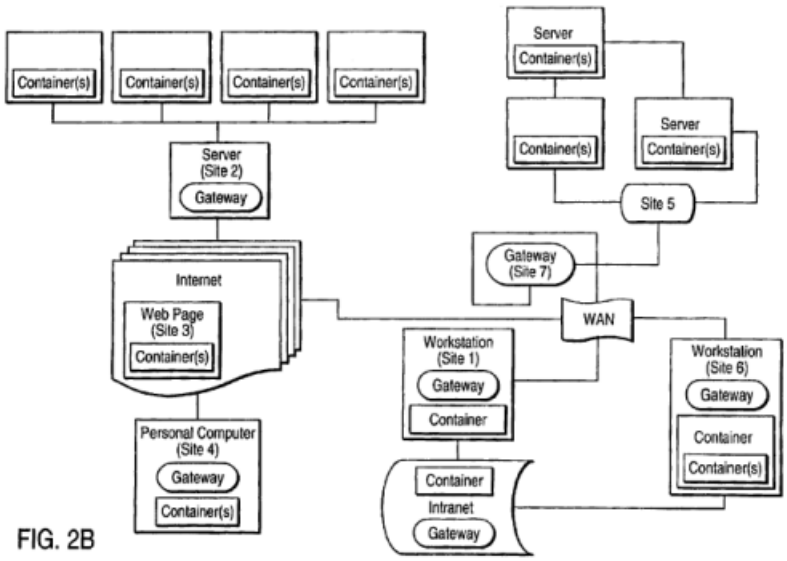


FIG. 2B

Figure 2B illustrates a computer network showing nested containers, computer servers, and gateways at Site 1 through Site 7. *Id.* at 10:59-62. Any of Sites 1 through 7 may interact dynamically within the system; for example, Site 1 shows a single workstation with a container and gateway connected to an Intranet. *Id.* at 10:64-67. Site 2 shows a server with a gateway in relationship to various containers. *Id.* at 11:2-3. Site 3 shows an Internet web page with a container residing on it. *Id.* at 11:3-4. Site 4 shows a personal computer with containers and a gateway connected to the Internet. *Id.* at 11:4-6. Site 5 shows a configuration of multiple servers and containers on a Wide Area Network. *Id.* at 11:6-7. Site 6 shows a work station with a gateway and containers within a container connected to a Wide Area Network. *Id.* at 11:7-9. Site 7 shows an independent gateway,

capable of acting as a data collection and data reporting site as it gathers data from the registers of transiting containers, and as an agent of the execution engine as it alters the registers of transient containers. *Id.* at 11:8-13.

An example of the configuration the containers may have is provided in Figure 4 as follows:

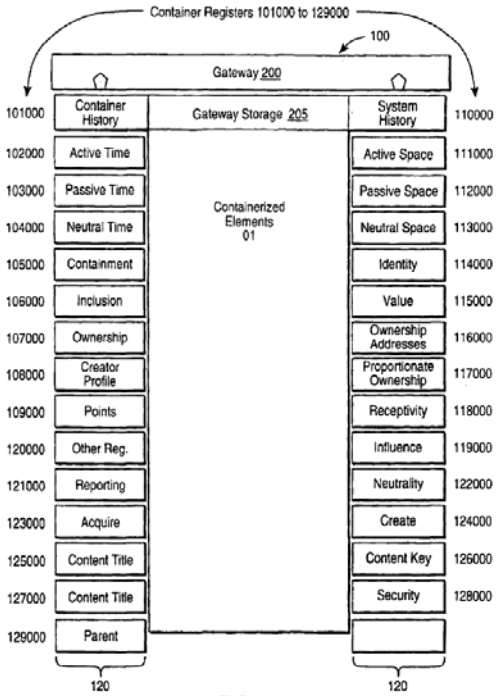


FIG. 4

Figure 4 shows an example of container 100 that includes containerized elements 01, registers 120, and gateway 200. Ex. 1001, 12:65-67. Registers 120 included in container 100 include, *inter alia*, active time register 102000, passive time register 103000, neutral time register 104000, active space register 111000, passive space register 112000, neutral space register 113000, and acquire register 123000. *Id.* at 14:31-39.

C. Illustrative Claim

Claims 2 and 16 are the two independent claims challenged. Claim 2 is reproduced below:

> 2. An apparatus for transmitting, receiving and manipulating information on a computer system, the apparatus including a plurality of containers, each container being a logically defined data enclosure and comprising:
>
> an information element having information;
>
> a plurality of registers, the plurality of registers forming part of the container and including
>
> a first register for storing a unique container identification value,
>
> a second register having a representation designating space 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 three dimensional space,
>
> an active space register for identifying space in which the container will act upon other containers, processes, systems or gateways,
>
> a passive resister for identifying space, in which the container can be acted upon by other containers, processes, systems, or gateways,
>
> a neutral space register for identifying space in which the container may interact with other containers, processes, systems, or gateways; and
>
> a gateway attached to and forming part of the container, the gateway controlling the interaction of the container with other containers, systems, or processes.

D. Prior Art Relied Upon

Corrected Petitioner relies upon the following prior art references:

Reference	Description	Filing Date	Exhibit
Anderson	US 5,684,476	Dec. 30, 1993	Ex. 1005
Dussell	US 5,938,721	Oct. 24, 1996	Ex. 1006

E. The Alleged Grounds of Unpatentability

Corrected Petitioner alleges the following grounds of unpatentability:

Claims	Grounds	Reference[s]
2-14 and 16	35 U.S.C. § 102(e)	Anderson
2, 4-8, 13 and 16	35 U.S.C. § 103(a)	Anderson
2-14 and 16	35 U.S.C. § 102(e)	Dussell

II. ANALYSIS

A. Claim Construction

In an inter partes review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012). The terms also are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the disclosure. *In re Translogic Tech., Inc*., 504 F.3d 1249, 1257 (Fed. Cir. 2007).

1. "container"

Independent claims 2 and 16 recite the term "container," as do various dependent claims, e.g., claims 5 and 7. As discussed above, the '536 patent specification describes a container as an interactive nestable logical domain, including dynamic interactive evolving registers, and which maintains a unique network-wide lifelong identity. Ex. 1001, 3:29-35. Petitioner cites to the '536 patent specification explaining that a "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 segments, or referring now to FIG. 3C, any system component or process, or other containers or sets of containers." Corrected Pet. 8-9 (citing Ex. 1001, 8:64-9:2). Petitioner then argues that the broadest reasonable interpretation of "container" is "a logically defined data structure that contains a whole or partial digital element (e.g., text, graphic, photograph, audio, video, or other), or set of digital segments, or any system component or process, or other containers or sets of containers." *Id.* at 9 (citing Ex. 1003, ¶¶ 54-55). 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, photographic, audio, video, or other), or set of digital elements." Prelim. Resp. 25.

Patent Owner, however, argues that defining "container" as something that "contains," as Petitioner proposes, is circular and unhelpful. Prelim. Resp. 26. Further, Patent Owner argues Petitioner's proposed construction ignores the relationship between "containers" and "encapsulation." *Id.* Patent Owner also argues "encapsulation" refers to "treat[ing] a collection of structured information as a whole without affecting or taking notice of its

internal structure" and "encapsulated" further refers "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." *Id.* (citing Ex. 2001).

We are not persuaded by Patent Owner's arguments. The '536 patent discloses that a container "at minimum includes in its construction a logically encapsulated portion of cyberspace, a register and a gateway" and a container "at minimum encapsulates a single digital bit, a single natural number or the logical description of another container, and at maximum all defined cyberspace, existing, growing and to be discovered, including but not limited to all containers, defined and to be defined in cyberspace." Ex. 1001, 9:2-9. The '536 patent does not limit the terms "logically defined" or "encapsulated" to "structured information as a whole" regardless of its internal structure or "wrapping data" in preparation for transmission. The claims also do not require such limitations. Accordingly, we do not agree with Patent Owner that "logically defined" or "encapsulated" require anything more than "contained within."[2]

Accordingly, based on the proposed construction of "container" by both Petitioner and Patent Owner, and for the purposes of this decision, we construe "container" to mean "a logically defined data enclosure which encapsulates any element or digital segment (text, graphic, photograph, audio, video, or other), or set of digital elements."

[2] Related U.S. Patent No. 7,702,682 B2, the patent at issue in IPR2014-00079 and IPR2014-00080, recites the terms "logically defined" and/or "encapsulated" in independent claims 1 and 19-23. Our interpretation of these terms is consistent with our analysis in IPR2014-00079 and IPR2014-00080.

2. "register"

Independent claims 2 and 16 recite "a plurality of registers, the plurality of registers forming part of the container." Petitioner proposes that the plain meaning of "register" is "value and/or code associated with a container" based on the context of "register" in the '536 patent specification, where container registers "may be values alone or contain code to establish certain parameters in interaction with other containers 100 or gateways 200." Corrected Pet. 9-10 (citing Ex. 1001, 9:19-23).

Patent Owner argues that the term "register" encompasses "a group of (usually) bistable devices that are used to store information within a computer system for high speed access" and "a memory location within a microprocessor, used to store values and external memory addresses while the microprocessor performs logical and arithmetic operations on them." Prelim. Resp. 27 (citing Exs. 2002, 2003). Based on these dictionary definitions, Patent Owner proposes that "register" means "a memory location within a computer that stores data." *Id.* at 28. Patent Owner acknowledges that its proposed construction is similar to Petitioner's construction, but argues that Petitioner's construction is unreasonably broad and may encompass unpatentable subject matter. *Id.* at 28.

We disagree with Patent Owner. Specifically, we do not agree with Patent Owner that "register" must require "a memory location within a computer." The '536 patent specification and claims do not impose such a limit to the meaning of "register." The '536 patent describes "container registers" as follows:

> Container registers 120 are interactive dynamic values appended to the logical enclosure of an information container 100, and serve to govern the interaction of that container 100 with other containers 100,

> container gateways 200 and the system 10, and to record the historical interaction of that container 100 on the system 10. Container registers 120 may be values alone or contain code to establish certain parameters in interaction with other containers 100 or gateways 200.

Ex. 1001, 9:14-23. We see no reason to limit the scope of "register" to include limitations neither described by the specification nor required by the claims. Therefore, we are persuaded by Petitioner's argument that the broadest reasonable construction of "register," as it is used in the '536 patent is "value or code associated with a container."

B. The Declaration of Dr. Houh in the Corrected Petition

The Petition for *inter partes* review filed on October 22, 2013 (Paper 1, "Pet.") was identical to the Petition in IPR2013-000086. The sole challenge to patentability in the Petition filed on October 22, 2013 was that claims are unpatentable under 35 U.S.C. § 102(e) based on US 5,836,529, to Gibbs filed October 31, 1995. Pet. 8-30.[3] The Petition filed on October 22, 2013, cites the Declaration of Henry Houh (Ex. 1003). Dr. Houh's declaration is limited to a discussion of Gibbs, and contains no discussion or analysis of any other prior art.

On October 23, 2013, Petitioner filed a Corrected Petition. The Corrected Petition challenges the patentability of claims 2-14 and 16 based on Anderson, Dussell, and general knowledge in the field. Corrected Pet. 8-51. Dr. Houh's declaration is Exhibit 1003 to the Petition and the Corrected Petition and does not address either Anderson or Dussell. Ex. 1003 ¶¶ 66-194.

[3] The Corrected Petition does not include page numbers. We have assigned page numbers beginning with page 1 at heading I.A. and concluding with page 31 at heading V. The assigned page numbers appear to correspond to page numbers in the Table of Contents.

In *Captioncall, LLC v. Ultratec, Inc.*, IPR2013-00544, slip op. at 14-15 (PTAB March 5, 2014)(Paper 6), the Board held that the information presented in the petition, even without an expert declaration, established a reasonable likelihood that Petitioner would prevail on the asserted grounds of unpatentability. Similarly, in this case, we analyze the Corrected Petition to determine if the arguments made regarding the references are sufficient to establish a reasonable likelihood that Petitioner will prevail on the asserted grounds on at least one claim of the '536 patent.

For reasons detailed below, we are not persuaded that Petitioner has shown that it is reasonably likely to prevail with respect to at least one of the claims. 37 C.F.R. § 42.20(c). A petition "must specify where each element of the claim is found in the prior art patents or printed publications relied upon[,]" and it "must include . . . a detailed explanation of the significance of the evidence including material facts[.]" 37 C.F.R. § 42.104(b)(4); 37 C.F.R. § 42.22(a). "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." 37 C.F.R. § 42.104(b)(5).

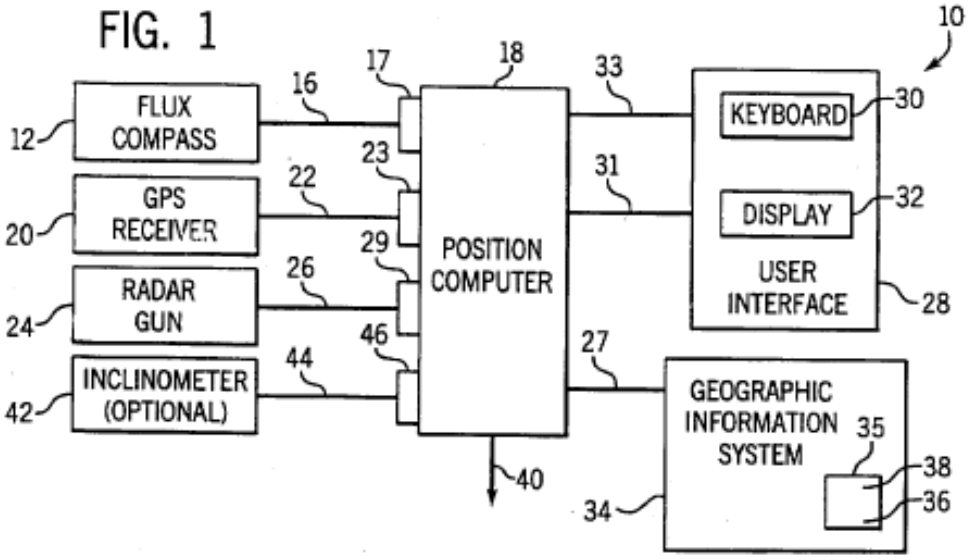
C. Anticipation by Anderson

The Corrected Petition directs us to the declaration of Dr. Houh for a summary of Anderson (Ex. 1005). Corrected Pet. 15 (citing Ex. 1003 ¶¶ 70-96). Dr. Hough does not address Anderson.

Overview of Anderson

Anderson discloses a location system for a farm implement traveling in an agricultural field. Ex. 1005, 4:9-18. The location system provides a real-time farm implement position indication so that data from a location indexed database can be used to control the vehicle's actions. *Id.* The database includes a geographical information system (GIS) which stores a map of the area in which the vehicle will operate. *Id.* at 8:1-4. The GIS database also stores information such as weed maps, soil attributes, soil test results, pest infestation, climate, terrain, hydrography, agricultural chemical needs, and previous yields to a fine resolution. *Id.* at 8:23-38. This data is used to regulate location-specific application of agricultural chemicals and seed. *Id.*

Figure 1 of Anderson is reproduced below.



As shown in Figure 1, global positioning system (GPS) receiver 20 is also mounted on the vehicle. Ex. 1005, 4:43-49. GPS receiver 20 derives speed information, representing the current speed of the vehicle, and provides a GPS speed signal on line 22, representative of the current speed of the vehicle to position computer 18 via communication link 23. *Id.* The position computer automatically detects operator moves varying from a heading established by the flux compass, and the operator is directed on a planned path through the field. Id. at 11:37-40.

Claims 2-14 and 16

Claim 2 recites in the preamble "[A]n apparatus for transmitting, receiving and manipulating information on a computer system, the apparatus including a plurality of containers, each container being a logically defined data enclosure."[4]

Petitioner's general statements about Anderson do not specify what in Anderson actually discloses the claimed "container." Corrected Pet. 15-16. Petitioner's references to paragraphs 97-103 of the declaration of Dr. Houh, which discuss Gibbs, are not relevant to Anderson. Neither the Corrected Petition nor Dr. Houh's declaration specifically identifies what portion of Anderson arguably meets the container limitation, or any other limitation of claim 2.

Patent Owner argues the Corrected Petition does not show how the container limitation is met by Anderson. Prelim. Resp. 35. Patent Owner contends the Corrected Petition:

[4] The preamble forms an antecedent basis for "containers" as used in the claims and will be given weight. *See, Eaton Corp. v. Rockwell Int'l Corp.,* 323 F.3d 1332, 1339 (Fed. Cir. 2003).

> 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. Corrected Petition at 15-16. Although the Corrected Petition references "data structures, such as the GIS database," the Corrected Petition fails to establish that Anderson discloses an apparatus with a "*plurality*" of GIS databases as required by the claims. *See id.*

Id.

We agree that Petitioner has failed to state Anderson's relevance or to identify specific portions of Anderson that support the challenge. 37 C.F.R. § 42.104(b)(5). Even if the GIS database is arguably a container, which seems to be the closest disclosure of Anderson to the container limitation, there is only one GIS database and not the plurality required by the claims at issue.

The Corrected Petition generally does not cite specifically to any disclosure in Anderson for any of the limitations of claim 2. Absent such specificity, Petitioner has not established it is likely to prevail in demonstrating the unpatentability of claim 2.

Claim 16 recites the same "container" limitation, and Petitioner relies on the same evidence. Corrected Pet. 29. For the same reasons discussed above, Petitioner has not shown it is reasonably likely to prevail in demonstrating that claim 16 is anticipated by Anderson. Claims 3-14 depend from claim 2 and necessarily require the same container limitation, which Petitioner has not shown is present in Anderson.

For the reasons discussed above, we are not persuaded that Petitioner has shown a reasonable likelihood that any of claims 2-14 and 16 would be unpatentable as anticipated by Anderson.

C. Obviousness over Anderson

Petitioner relies on the same evidence as discussed in connection with its anticipation contentions as to claims 2, 4-8, 13 and 16. Corrected Pet. 30. For the reasons discussed above, Petitioner has not shown a reasonable likelihood of demonstrating that any of claims 2, 4-8, 13 and 16 is unpatentable as obvious over Anderson.

D. Anticipation by Dussell

The Corrected Petition directs us to the declaration of Dr. Houh for a summary of Dussell (Ex. 1006). Corrected Pet. 38 (citing Ex. 1003 ¶¶ 198-221). Dr. Houh's declaration ends at paragraph 195 and does not address Dussell. *See* Ex. 1003.

Overview of Dussell

Dussell describes a computer assisted method of scheduling tasks. Ex. 1006 at 1:58-59. A task description is stored in a database accessible by a mobile computer system. *Id.* at Abstract. The mobile computer system receives positioning information corresponding to its geographic location and indexes the database based on the positioning information when the information indicates that the mobile computer system is in a geographic location that facilitates completion of a task associated with the task description. *Id.*

Figure 1 of Dussell is reproduced below.

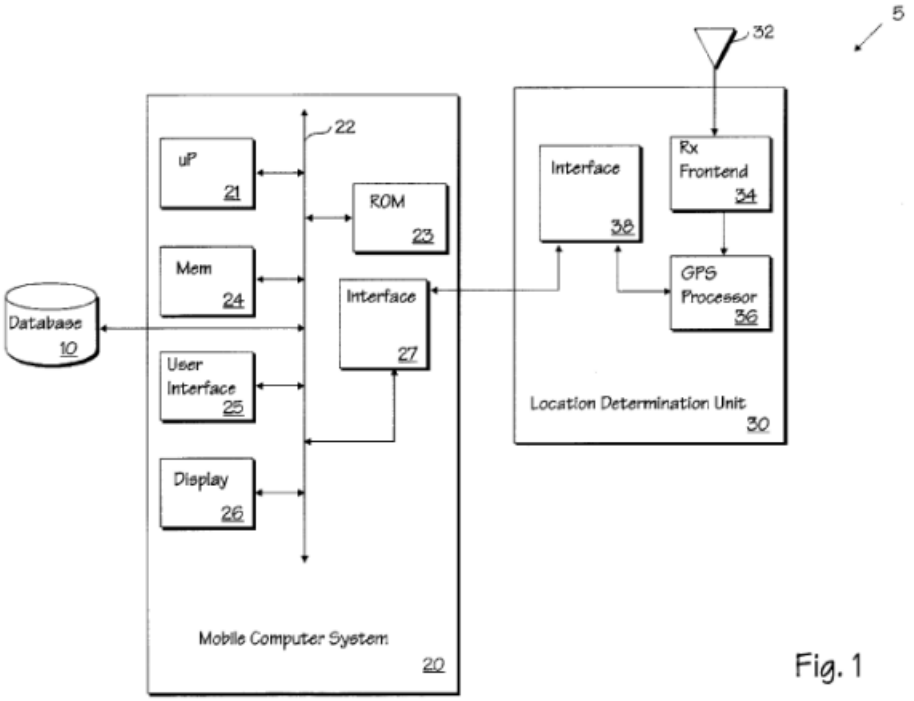


Fig. 1

Figure 1 shows digital system 5 having database 10, mobile computer system 20 and location determination unit 30. Ex. 1006 at 3:27-29. The database may be a separate database maintained at some location remote from the mobile computer system or it may be a local database maintained within mobile computer system. *Id.* at 3:29-32. The location determination unit may be a Global Positioning System (GPS) receiver or other unit capable of determining a geographic location of accompanying antenna 32. *Id.* at 3:36-39.

Claims 2-14 and 16

Petitioner argues that Dussell discloses a database that contains records containing task descriptions and other information. Corrected Pet. 38-39 (citing to non-existent paragraphs 198-205 in declaration of Dr. Houh). "Each of these records, along with the database itself, is a logically

defined data enclosure." *Id.* at 39. After discussing the location device and the receipt of location information by the database, Petitioner asserts that Ex. 1006 thus discloses the claimed apparatus, including a plurality of containers. *Id.*

Patent Owner asserts that when discussing the "*plurality of containers*" or "*the container*," the Corrected Petition "generically references 'records.'" Prelim. Resp. 40-41. Patent Owner further contends:

> the Petition never identifies exactly which "records" in Dussell it is reading the "container" limitation onto. *Id.* 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.

Id.

Petitioner also relies on the records of Dussell generally to meet the plurality of registers" limitation of claim 2. "Ex. 1006 [Dussell] describes a database containing many records which themselves contain information on task descriptions and the corresponding locations associated with those task descriptions. Ex. 1003 ¶¶ 198-204, 217-219."[5] Corrected Pet. 40. The same disclosure of Dussell cannot be used to meet separate elements of the same claim. *See Becton Dickinson and Co.v. Tyco Healthcare Group LP,* 616 F.3d 1249, 1254 (Fed. Cir. 2010) (noting where a claim lists elements separately, "the clear implication of the claim language" is that those

[5] As previously noted, the Houh declaration ends at paragraph 195. The paragraphs cited by Petitioner do not exist in the record before us.

elements are "distinct components" of the patented invention) (internal citations omitted).

The records relied on to meet both the "container" and "plurality of registers" limitations have not been sufficiently identified in Dussell. Even assuming the records of Dussell upon which Petitioner relies for each limitation are different; Petitioner has not cited to the subject matter in Dussell that explains what the records are, so that a determination can be made as to whether the limitations are sufficiently described.

The Corrected Petition does not cite to any specific disclosure in Dussell that meets the limitations of claim 2. As previously stated, this is, in part, a result of reliance on the deficient declaration of Dr. Houh. Regardless of the reason, absent such specificity, Petitioner has not met its burden.

Petitioner has not established a reasonable likelihood that claim 2 is unpatentable. Claim 16 has the same "container" and "plurality of registers" limitations as claim 2, and Petitioner relies on the same evidence. Corrected Pet. 50. For the same reasons previously discussed, Petitioner has not shown it is reasonably likely to prevail in demonstrating anticipation of claim 16 by Dussell. Claims 3-14 depend from claim 2 and necessarily require the same container limitation, which is lacking from Dussell.

Therefore, Petitioner has not shown a reasonable likelihood that any of claims 2-14 and 16 would be unpatentable as anticipated by Dussell.

III. CONCLUSION

For the foregoing reasons, we are not persuaded that the information presented in the Corrected Petition establishes a reasonable likelihood that

Petitioner would prevail in establishing the unpatentability of any challenged claim of the ’536 Patent.

ORDER

Accordingly, it is

ORDERED the Corrected Petition for *inter partes* review based on Petitioner’s challenges to the patentability of claims 2-14 and 16 of the ’536 Patent is *denied*.

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