

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Facebook, Inc.
Petitioner

v.

Rembrandt Social Media, L.P.
Patent Owner

IPR2014-00415
Patent 6,415,316

**PATENT OWNER STATEMENT CONCERNING
PETITIONER'S NEW ARGUMENT**

Petitioner argued for the first time in its reply papers that the cited prior art inherently discloses sending access information to the client. Mr. Tittel declared:

It is well-known to persons of ordinary skill in the art that the user's local computer must enforce "can view" and "can edit" access privileges for a downloaded file. This is a standard feature of any modern operating system, including the Windows operating system, and it requires that the server send the access privilege information to the user system.

(Ex. 1015 ¶ 23.) And Petitioner's reply brief twice cited this paragraph in arguing that both Salas and Parker must disclose sending access information to the client.

"[A] user computer obviously cannot enforce access restrictions (such as "read only") unless it knows what those restrictions are." (Reply at 10-11, citing ¶ 23.)

"This is because in order to show "test folder-1" and "test folder-2" to the user "in accordance with" (i.e. consistent with) the user's access privileges, the server must have sent those access privileges to the user computer." (Reply at 11, citing ¶ 23, emphasis original.)

This inherency argument appears nowhere in the Instituted Grounds and is not a proper response to any Patent Owner argument. Instead, it is a new theory necessitated by Mr. Tittel's admissions from his first deposition, which established that the Salas access information and the Parker access privileges are used only at

the server and not sent to the client. (*See* Patent Owner Response at 18-44.) This is a radical change in theory too. According to Mr. Tittel, the Salas system would not even work as intended without it. (Ex. 2014, 112:14-18). And the supposed support for this new theory includes “various historical references, including Microsoft TechNet and a variety of books about operating systems prevalent at the time” that Mr. Tittel “didn't find [] necessary to cite” in his declarations. (*Id.* 114:3-15.) Untimely, unfair, and unsupported, this new argument is not a proper reply.

The argument is also wrong as a factual matter. Its linchpin is Mr. Tittel's belief that all file systems available at the time of the invention, including Windows 95, had the ability to enforce “can view” and “can edit” restrictions. (*See* Ex. 2014 114:16-24.) But Windows 95 did not have that ability (as Patent Owner could prove with supplemental evidence), and thus file system enforcement cannot be “necessarily present” in Salas or Parker as inherency requires. And because the Salas “Internet Explorer” disclosures suggest Windows 95, skilled artisans would know that file system enforcement in Salas is neither necessary nor contemplated.

Finally, the Board should disregard any argument that this new theory responds to Dr. Jones testimony because: (1) the testimony is irrelevant given that it was not tied to the time of the invention in 1998—which was nearly eighteen years ago; (2) it does not relate to Windows 95; and (3) it was not relied upon by Patent Owner in any event, and thus cannot be the basis for a proper reply.

Respectfully submitted,

Date: March 18, 2015

/John S. Goetz/

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4) and 42.205(b), the undersigned certifies that on March 18, 2015, a complete and entire copy of this PATENT OWNER REMBRANDT SOCIAL MEDIA, L.P.'S STATEMENT CONCERNING PETITIONER'S NEW ARGUMENT was provided via email to the Petitioner by serving the correspondence email address of record as follows:

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