

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.

Petitioner

v.

UNILOC 2017 LLC

Patent Owner

IPR2019-00702

PATENT 7,969,925

PATENT OWNER PRELIMINARY RESPONSE TO PETITION

PURSUANT TO 37 C.F.R. §42.107(a)

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I. INTRODUCTION

Uniloc 2017 LLC (“Uniloc” or “Patent Owner”) submits this Preliminary Response to Petition IPR2019-00702 for *Inter Partes* Review (“Pet.” or “Petition”) of United States Patent No. 7,969,925 (“the ’925 patent” or “EX1001”) filed by Apple, Inc. (“Petitioner”). The instant Petition is procedurally and substantively defective for at least the reasons set forth herein.

II. THE ’925 PATENT

The ’925 patent is titled “Peer-to-peer mobile data transfer method and device.” The ’925 patent issued June 28, 2011, from U.S. Patent Application No. 12/832,576 filed January July 8, 2010.

The inventors of the ’925 patent observed that, at the time, multimedia messaging technologies for mobile devices depended upon a server that receives and prepares multimedia content to be retrieved by the recipient of the multimedia message. For example, at the time, the Multimedia Messaging Service (“MMS”) protocol utilized a server known as a Multi-Media Service Center (“MMSC”) to store multimedia content in preparation for a retrieval process initiated by the recipient. Specifically, under MMS, the initiating device initiated a data connection over TCP/IP and performed an HTTP POST of an MMS Encapsulation Format encoded multimedia message to the MMSC. The MMSC stored the multimedia message and made it available as a dynamically generated URL link. The MMSC

then generated a notification message containing the dynamically generated URL and sent the notification message to the recipient through WAP Push over the Short Message Service (“SMS”) protocol. When the recipient received the MMS notification message, it initiated a data connection over TCP/IP and performed an HTTP request to retrieve the MMS message containing multimedia content from the MMSC through the dynamically generated URL. EX1001, 1:23-42.

According to the disclosure of the '925 patent, a method and system is provided for establishing a direct data transfer session between mobile devices over a digital mobile network system that supports data packet-based communications. Under the disclosure of the '925 patent, no separate data server need be used to provide a known location from which a recipient retrieves data such as multimedia content. Instead, a mobile device initiating a data transfer opens a listening port defined by an underlying data packet-based network protocol. The initiating mobile device sends an invitation message containing the network address, including the listening port, of the initiating device to a target mobile device through a page-mode messaging service (e.g., text-based service) supported by the digital mobile network system. The initiating mobile device further utilizes and incorporates a unique identification number (e.g., telephone number, PIN number, etc.) associated with the target mobile device into the invitation message to locate and contact the target mobile device within the wireless mobile network. Once the initiating mobile device

receives a response from the target mobile device at the listening port, the two mobile devices are able to establish a reliable virtual connection through the underlying data packet-based network protocol in order to transfer data directly between the two mobile devices. EX1001, 1:61-2:17.

III. THE PETITION IMPROPERLY REDUNDANTLY CHALLENGES THE CLAIMS AT ISSUE

The Petition redundantly challenges both sets of challenged claims ((1) claims 1, 3-8, 10-15, 17-20; and (2) claims 2, 9, and 16) of the '925 Patent, without providing any alleged justification for such inefficient redundancies. Moreover, the Petition redundantly challenges each set of challenged claims a total of three times each, for a total of six redundant grounds.

As the Board has previously explained, “multiple grounds, which are presented in a redundant manner by a petitioner who makes no meaningful distinction between them, are contrary to the regulatory and statutory mandates, and therefore are not all entitled to consideration.” *See Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, No. CBM2012-00003, Paper 7 (P.T.A.B. Oct. 25, 2012). Such redundancies place a significant burden on both the Board and the patent owner, causing unnecessary delay, compounding costs to all parties involved, and compromising the ability to complete review within the statutory deadline. *Id.*; 37 C.F.R. § 42.1(b); *see also* 37 C.F.R. § 42.108. As such, analyzing the petition and eliminating redundant grounds streamlines the proceeding. *Idle Free Sys., Inc. v. Bergstrom, Inc.*, IPR2012-00027, Paper 26 at 4-5 (P.T.A.B. June 11, 2013); *Liberty*

Mut., CBM2012-00003, Paper 7 at 2.

The Petition presents grounds that are horizontally redundant with respect to each other. Horizontal redundancy “involves a plurality of prior art applied not in combination to complement each other but as distinct and separate alternatives.” *Liberty Mut.*, CBM2012-00003, Paper 7 at 3. In such instances where reliance on distinct and separate alternatives is alleged to sufficiently present a *prima facie* case of invalidity, such reliance fails where “the associated arguments do not explain why one reference more closely satisfies the claim limitation at issue in some respects than another reference, **and** vice versa.” *Id.* (emphasis in original). “Because the references are not identical, each reference has to be better in some respect or else the references are collectively horizontally redundant.” *Id.*

As the Board explained, the Petitioner in *Liberty Mutual* did “not articulate any relative weakness in any respect for any one of the ...references.” *Liberty Mut.*, CBM2012-00003, Paper 7 at 6. Further, the Petitioner in *Liberty Mutual* did not “articulate any relative strength in any respect for any one of the... references.” *Id.* Here, Petitioner similarly makes no effort to justify its horizontally redundant theories by explaining the relative strength and relative weakness of the alternative references cited in any combination of Grounds 1, 3, and 5 or in any combination of Grounds 2, 4, and 6. If one of the alternative grounds is better from all perspectives, then the Board should only consider the stronger ground and not burden the Patent Owner and the Board with the weaker ground. Further, if there is no difference in the grounds, the Petitioner should assert only one of the grounds. *Id.* at 12. “Only if

the Petitioner reasonably articulates why each ground has strength and weakness relative to the other should both grounds be asserted for consideration.” *Id.* (emphasis added). Indeed, the Petition does not even acknowledge the gamesmanship of hedging its bets through the redundancy of its six (6) grounds in the present Petition.

The Board in *Eizo Corp. v. Barco N.V.*¹ flatly rejected a similar attempt to hedge bets and unnecessarily multiply the work of both the Board and the Patent Owner. The Board there found insufficient the petitioner’s “conclusory assertion” that “[t]o the extent [the first prior art reference] may not explicitly teach” the limitation, the second prior art reference “explicitly teaches this limitation.” The Board explained that “such an assertion fails to resolve the exact differences sought to be derived from” the second prior art reference. *Id.*

The Board’s precedential authority on these procedural issues is clear. Here, Petitioner impermissibly seeks the benefit of different bites at the apple, without providing a bi-directional explanation of the relative strengths and weaknesses of each redundantly offered ground. For example, the Petition makes no mention of the relative strengths and weaknesses of the multiple redundant grounds of rejection asserted by Petitioner, including in any combination of Grounds 1, 3, and 5, or in any combination of Grounds 2, 4, and 6. If Petitioner believes its obviousness

¹ IPR2014-00358, Paper 11 (P.T.A.B. July 23, 2014)

challenges in any of its six (6) redundant grounds suffer from weaknesses, Petitioner is obligated to articulate those weaknesses in the Petition itself. Because Petitioner chose to not offer such concessions, presumably for strategic reasons, the Board need not and should not consider the merits of the redundant challenges based on obviousness.

IV. RELATED PROCEEDINGS

The following proceedings are currently pending cases concerning U.S. Pat. No. 7,969,925 (EX1001).

Case Caption	Case Number	District	Case Filed
<i>Uniloc USA, Inc. et al v. Apple Inc.</i>	4-19-cv-01696	CAND	Apr. 03, 2019

V. LEVEL OF ORDINARY SKILL IN THE ART

The Petition alleges that “[a] person of ordinary skill in the art at the time of the alleged invention of the 925 patent (a “POSITA”) would have had a Bachelor’s degree in computer science or a comparable field of study, plus approximately two to three years of professional experience with cellular phone and IP networks, or other relevant industry experience.” Pet. 9. Given that Petitioner fails to meet its burden of proof when purportedly applying its own definition of a person of ordinary skill in the art, Patent Owner does not offer a competing definition for purposes of this proceeding.

VI. PETITIONER DOES NOT PROVE A REASONABLE LIKELIHOOD OF UNPATENTABILITY FOR ANY CHALLENGED CLAIM

Petitioner has the burden of proof to establish entitlement to relief. 37 C.F.R. §42.108(c) (“review shall not be instituted for a ground of unpatentability unless . . . there is a reasonable likelihood that at least one of the claims challenged . . . is unpatentable”). The Petition fails to meet this burden.

The Petition raises the following Section 103 challenges:

Ground	Claims	Reference(s)
1	1, 3-8, 10-15, 17-20	Alos ² , and RFC793 ³
2	2, 9, and 16	Alos, RFC793, and SMS Specification, ⁴ and WMA ⁵
3	1, 3-8, 10-15, 17-20	Cordenier ⁶ and RFC793
4	2, 9, and 16	Cordenier, RFC793, and Dorenbosch ⁷
5	1, 3-8, 10-15, 17-20	Lee, ⁸ RFC793, and SMS Specification
6	2, 9, and 16	Lee, RFC793, SMS Specification, and WMA

A. Claim Construction

Patent Owner submits that the Board need not construe any claim term in a particular manner in order to arrive at the conclusion that the Petition is

² EX1005, EP 1 099 153 A1.

³ EX1010, Request for Comment 793.

⁴ EX1014, SMS Specification.

⁵ EX1018, WMA.

⁶ EX1007, EP 1 385 323 A1.

⁷ EX1011, US Patent Application No. 2003/0217174.

⁸ EX1006, US Patent No. 6,847,632.

substantively deficient. *Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011) (“need only be construed to the extent necessary to resolve the controversy”). However, because the Petition seeks to construe the term “opening a listening port” and “opening a second listening port” in a manner inconsistent with its plain and ordinary meaning, Patent Owner addresses Petitioner’s inappropriate proposed construction below. Further, in the event the Board institutes trial, Patent Owner reserves the right to oppose Petitioner’s other proposed constructions and provide Patent Owner’s own proposed constructions.

In IPR proceedings, claim terms are to be given a construction utilizing the standard applied by Article III courts. 37 C.F.R. §42.100(b); *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). Under *Phillips*, a claim term must be given “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Phillips*, 415 F.3d at 1313. The *Phillips* standard primarily focuses on intrinsic evidence, such as the patent specification and prosecution history, to interpret the claim terms. *Id.* at 1317; see also 37 C.F.R. § 42.100(b).

**1. “opening a listening software port” (claims 1, 8, and 15) /
“opening a second listening software port (claims 2, 9, and
16)**

Petitioner realizes that its numerous redundant references and grounds fail to disclose the required “opening a [second] listening software port”, and therefore the

Petition seeks to improperly to rewrite the claim language by rendering the term “opening” superfluous and/or substituting the required “opening” with merely “associating”. Pet. 21-22.

The Petition provides no authority or intrinsic evidence for its inappropriate proposed construction. Specifically, the Petition proposed construction is that the limitations means “associating a port identifier with a process.” Pet. 21. And then Petitioners make clear its actual goal in its inappropriate proposed re-write of the claim language: “[t]he Board should reject any proposed construction that attempts to narrow this phrase to require that the port be opened exclusively for receiving a response from only the target device.” Pet. 22. As will be shown below, Petitioner acknowledges its multitude of redundant references are each lacking and does not render any of the challenged claims unpatentable, and therefore Petitioner seeks to improperly re-write the claim language.

Yet, the Petition provides no evidence or authority to support such a drastic re-writing of the claim language. Instead, the Petition only references various extrinsic pieces of evidence that merely explain generally the concept of ports. *See* Pet. 21-22. The Petition provides no explanation how such generic extrinsic evidence supports Petitioner’s improper attempt to re-write the claim language. Petitioner’s use of such extrinsic evidence in an unexplained and unsupported manner to improperly re-write the claim language in its proposed construction

should be rejected.

Furthermore, the Petition's purported reliance on "a related application" (EX1004) also fails. As the Petition itself admits, the "additional claim language" of EX1004 included the phrase opening a listening software port "for the target mobile device". *See* Pet. 21. Therefore, EX1004 and the "additional claim language" does not support Petitioner's contention that this somehow "excluded the use of well-known ports" (Pet. 21); instead, that "additional claim language" of EX1004 only excludes ports that are exclusively "for the target mobile device."

There is no argument in the Petition that EX1004 (or anything else for that matter) that renders superfluous or excludes the required act of "**opening**" of a listening software port, because there is none. In fact, the claim language from EX1004 also recites the required "opening". *See* EX1004 at 414 (listing certain limitations of claim 1). Therefore, there is nothing in EX1004 that supports re-writing the claim language here to remove or render superfluous the required act of "opening" of a listening software port. Quite the opposite – the claims in the EX1004 application also recite the required act of "opening".

The Board should reject Petitioner's unsupported and improper attempt to drastically re-write the claim language to replace or render superfluous the required claim language term "opening". *See K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1364 (Fed. Cir. 1999) ("Courts do not rewrite claims; instead, [Courts] give effect

to the terms chosen by the patentee."). Patent Owner contends the claim language on its face requires "opening" a listening software port, and the term "opening" should be given its plain and ordinary meaning, for example, to perform the act of making open.

B. None of the Petition's References and Proposed Combinations Disclose "opening a listening software port" (Independent Claims 1, 8, 15) (Grounds 1-6)

Each and every ground in the Petition relies on a combination involving RFC793, including Grounds 1, 3, and 5, which challenge independent Claims 1, 8, and 15. *See* Pet. 6. For the limitation "opening a listening software port", for each of Grounds 1, 3, and 5, the Petition groups together independent Claims 1, 8, and 15 and addresses all of them collectively. *See* Pet. 31-32 (Ground 1); Pet. 47 (Ground 3); Pet. 59-60 (Ground 5). For the reasons discussed below, none of Grounds 1, 3, or 5 show that the proposed combination discloses "***opening*** a listening software port" as required by independent Claims 1, 8, and 15.

1. "Opening a listening software port" requires actually opening a port

As discussed above in Section VI.A.1, the Board should reject Petitioner's unsupported proposed construction to re-write the claim language in such a way to remove or render superfluous the term "opening" from the claim limitation. *See K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1364 (Fed. Cir. 1999) ("Courts do not

rewrite claims; instead, [Courts] give effect to the terms chosen by the patentee.”).

Instead, it is Petitioner’s burden to show that its (numerous redundant) proposed combinations would render obvious the claim limitation that requires ***opening*** a listening software port. Indeed, if a single limitation of a claim is absent from the prior art, the claim cannot be considered obvious. *See CFMT, Inc. v. YieldUp Int’l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (“Obviousness requires a suggestion of all limitations in a claim.”) (*citing In re Royka*, 409 F.2d 981, 985 (C.C.P.A. 1974)); *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993) (reversing obviousness rejection where prior art did not teach or suggest all claim limitations); *Garmin Int’l, Inc. v. Patent of Cuozzo Speed Techs. LLC*, Case No. IPR2012-00001, slip op. at 15 (P.T.A.B. Jan. 9, 2013) (refusing to institute an inter partes review under 35 U.S.C. § 103 where prior art did not disclose all claim limitations).

2. None of Alos, Cordenier, or Lee disclose “opening a listening software port”

The Petition admits that none of Alos, Cordenier, or Lee discloses “opening a listening software port”, as required by the claim language. Instead, in each Ground, the Petition purports to rely on RFC793 for the required act of “opening”.

Regarding Alos, the Petition admits that Alos “does not specify a transport layer protocol”. Pet. 31. And therefore, by definition, Alos could not and does not specify the operation of the transport layer protocol which it fails to identify. Instead,

here the Petition purports to rely on RFC793 for the required and missing act of “opening” a listening software port limitation. Pet. 31-32.

Regarding Cordenier, again, the Petition admits that Cordenier “does not specify a transport layer protocol”, as required by the claim language. Pet. 47. And again, therefore, by definition, Cordenier could not and does not specify the operation of the transport layer protocol which it fails to identify. Instead, here, the Petition also purports to rely on RFC793 for the required and missing act of “opening” a listening software port limitation. Pet. 47.

Regarding Lee, while Lee allegedly discloses a transport layer protocol, there is nothing in Lee that discloses operation of that protocol, and specifically there is nothing in Lee regarding the required “opening” a listening software port limitation. And the Petition does not argue otherwise. Instead, as with the other references and redundant grounds above, the Petition purports to rely on RFC793 for the required and missing act of “opening” a listening software port limitation. Pet. 60.

Thus, as confirmed by the Petition itself, nothing in any of the redundant grounds involving Alos, Cordenier, or Lee discloses the required and missing “opening” a listening software port limitation. And as will be shown below, the Petition’s purported reliance on RFC793 is also unavailing.

3. The Petition does not show that any of the combinations with RFC793 in the Petition’s redundant Grounds 1, 3, or 5 results in a hypothetical system that discloses “opening a listening software port”

As the Petition itself acknowledges, RFC793 itself discloses that there are TCP ports that are not available for opening because those certain ports are reserved and permanently assigned to a particular socket for things such as file transfer. An example of such a TCP port is what is called a “well-known socket”. *See e.g.*, Pet. 21 (citing to “well-known sockets”). Specifically regarding “well-known sockets”, RFC793 recites:

Well-known sockets are a convenient mechanism for a priori associating a socket address with a standard service. For instance, the "Telnet-Server" process is permanently assigned to a particular socket, and other sockets are reserved for File Transfer, Remote Job Entry, Text Generator, Echoer, and Sink processes (the last three being for test purposes). A socket address might be reserved for access to a "Look-Up" service which would return the specific socket at which a newly created service would be provided. The concept of a well-known socket is part of the TCP specification, but the assignment of sockets to services is outside this specification. (See [4].)

EX1010 at 20 (highlighting and underlining added).

As shown by the passage above, “well-known sockets” are “**permanently assigned** to a particular socket” and made available “**a priori**”. And one of those “well-known sockets” is “**reserved for File Transfer**”. EX1010 at 20. Therefore, there is no reason for any of the hypothetical combinations of Alos, Cordenier, or Lee with RFC793 to not simply use one of the “well-known sockets” which are “permanently assigned” and made available “a priori”, and specifically include a

socket that is specifically “reserved” for “file transfer”. In each of the Petition’s redundant grounds and hypothetical combinations with RFC793, using the pre-existing, “permanently assigned” socket that is “reserved” for “file transfer” would be the simplest and most common-sense solution, as RFC793 itself expressly provides for it. Therefore, there is no disclosure in the Petition that the redundant hypothetical combinations of Alos, Cordenier, or Lee with RFC793 renders obvious “*opening* a listening software port” as required by the claim language because there already exists in the disclosure of RFC793 a “well-known socket” for “file transfer” is “permanently assigned”.

And, the Petition provides no evidence or analysis that a POSITA would ignore this “well-known socket”. Instead, the Petition merely speculates through its declarant that “A POSITA would also have been motivated to configure phone 1 to make a passive OPEN call to open a TCP port in a listen mode because, if the TCP port on phone 1 were not opened, the TCP response message from phone 2 could not be received and processed.” Pet. 28. However, Petitioners provide no evidence that its redundant hypothetical combinations would **not** have used the “well-known socket” for “file transfer” that is “permanently assigned” and available “a priori”. In such a case, any hypothetical combinations with RFC793 does not perform the required “*opening* a listening software port” as required by the claim language because there is nothing to open, since the “well-known socket” is “permanently

assigned”, and available “a priori”.

Finally, to the extent the Board considers Petitioner’s declarant’s testimony on this issue, that testimony should be given little to no weight. The Petitioner’s declarant merely parrots the same conclusory statements as in the Petition (*compare* Pet. 28 *with* EX1002, ¶ 65) and should be given little to no weight. 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”); *see also Verlander v. Garner*, 348 F.3d 1359, 1371 (Fed. Cir. 2003) (Board has discretion to accord little weight to broad conclusory statements from expert witness). The Petition and Petitioner’s declarant merely conclude that a POSITA would have been motivated to open a TCP port, without any discussion or acknowledgement of the “well-known socket” for “file transfer” that is “permanently assigned” as disclosed by RFC793.

Thus, for at least the reasons discussed above, the Petition fails to prove that any of its redundant grounds renders obvious “opening a listening software port” as required by the claim language, and therefore the Petition should be denied.

C. The Petition fails to Prove Obviousness of Any Dependent Claim

The deficiencies of the Petition articulated above concerning the challenged independent claims apply also taint the analysis of the challenged dependent claims. Accordingly, the Petition should be denied in its entirety.

VII. THE CONSTITUTIONALITY OF *INTER PARTES* REVIEW IS THE SUBJECT OF A PENDING APPEAL

In a pending appeal to the Federal Circuit, *Polaris Innovations Ltd. v. Kingston Technology*, No. 18-01768, Dkt. No. 27, the patent owner Polaris argued that the Board's appointments of administrative patent judges violate the Appointments Clause of Article II, and that their decisions must be set aside, because administrative patent judges are "appointed by the Secretary of Commerce, in consultation with the Director" of the USPTO, but without appointment by the President and confirmation by the Senate in violation of Article II, Section 2, Clause 2 of the Constitution. Out of an abundance of caution, Patent Owner hereby adopts this constitutional challenge now to ensure the issue is preserved pending the appeal.

VIII. CONCLUSION

For at least the reasons set forth above, Uniloc respectfully requests that the Board deny all challenges in the instant Petition.⁹

Date: May 28, 2019

Respectfully submitted,

By: /s/ Brett A. Mangrum

Brett A. Mangrum; Reg. No. 64,783

Attorney for Patent Owner

⁹ Patent Owner does not concede, and specifically denies, that there is any legitimacy to any arguments in the instant Petition that are not specifically addressed herein.

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), we certify that this Preliminary Response to Petition complies with the type-volume limitation of 37 C.F.R. § 42.24(b)(1) because it contains fewer than the limit of 14,000 words, as determined by the word-processing program used to prepare the brief, excluding the parts of the brief exempted by 37 C.F.R. § 42.24(a)(1).

Date: May 28, 2019

Respectfully submitted,

By: /s/ Brett A. Mangrum

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Attorney for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), we certify that we served an electronic copy of the foregoing PATENT OWNER'S PRELIMINARY RESPONSE PURSUANT TO 37 C.F.R. § 42.107(a) along with any accompanying exhibits via the Patent Review Processing System (PRPS) to Petitioner's counsel at the following addresses identified in the Petition's consent to electronic service:

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