UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION

Petitioner

v.

UNILOC 2017 LLC

Patent Owner

IPR2019-01268

PATENT 7,092,953

PATENT OWNER PRELIMINARY RESPONSE TO PETITION

PURSUANT TO 37 C.F.R. §42.107(a)

Table of Contents

I. INTRODUCTION

UNILOC 2017 LLC ("Uniloc" or "Patent Owner") submits this Preliminary Response to Petition IPR2019-01268 for *Inter Partes* Review ("Pet." or "Petition") of United States Patent No. 7,092,953 ("the '953 Patent" or "EX1001") filed by Microsoft Corporation ("Petitioner"). The instant Petition is defective for at least the reasons set forth herein.

II. THE '953 PATENT

The '953 patent is titled "Apparatus and methods for intellectual property database navigation." The '953 patent issued August 15, 2006, from U.S. Patent Application No. 10/036,298 filed December 28, 2001 which claims priority to U.S. Provisional Patent Application No. 60/259,194 filed December 28, 2000.

The inventors of the '953 patent observed that at the time of the invention, intellectual property, embodied in books, articles, films, music, television shows, and the like were important assets and often, there was a complex bundle of intellectual property rights associated with a given intellectual property asset. In order to manage intellectual property, conventional systems at the time maintained intellectual property databases. And given the number of properties and the large number of associated property rights an owner may have had it was challenging to determine what properties and rights were available. Using conventional techniques at the time, the process of determining property and rights availability was time consuming and processor intensive. In addition, the intellectual property database would become very large and difficult to maintain. EX1001, 1:26-47.

According to the invention of the ’953 Patent, there is provided a method and system to more efficiently determine property and rights status and availability through a bi-directional hierarchical navigation process and by extracting implied data relations. One way of achieving bi-directional hierarchical navigation of rights-related data elements, i.e., the ability to identify generational relationships, such as ancestor/descendant relationships, between any two values at any level in a hierarchy, utilizes binary tree data structures. A binary tree can be defined as a collection of ‘nodes.’ A tree has a primary node, or ‘root.’ A node that has no children is known as a ‘leaf.’ A node is said to be a ‘parent’ if another node is a direct ‘descendent.’ Applying a tree data structure to intellectual property rights provides for efficient information retrieval. To retrieve information stored in this data structure, the system performs calculations to assign a pair of “left & right” or “minimum & maximum” integers or other ordered identifiers to each node. EX1001, 18:42-19-3.

III. NAYLOR IS NOT PRIOR ART AND THE CHALLENGED CLAIMS ARE ENTITLED TO A PRIORITY DATE OF AT LEAST DECEMBER 28, 2000

The Petition argues that Naylor is “prior art under Sections 102(a) and 102(e)” Pet. 7. However, Naylor (EX1007) is not prior art to the Challenged Claims of the ’953 patent under its publication date of December 6, 2001 or filing date of February 14, 2001, because the Challenged Claims claim priority to Provisional Patent Application No. 60/259194, filed **December 28, 2000** (EX1003, “2000 Provisional

Application"). Further, Petitioner has not shown Naylor to be prior art under any alleged claim of priority to its provisional application, therefore Naylor is not prior art, and Ground 2 of the Petition, which relies on Naylor, should be disregarded.

A. The Challenged Claims Are Entitled To A Priority Date Of At Least December 28, 2000

The Petition argues that the 2000 Provisional Application does not support the claim 1 element: "retrieving from computer readable memory rights related information using a joining of the first set of rights and the first media rights hierarchy data structure." Pet. 14-15 (emphasis removed). Specifically, the Petition makes two arguments: (1) that the 2000 Provisional Application does not contain a claim with the "retrieving…" language, and (2) that the 2000 Provisional Application does not support the claim element requiring the "first set of rights" be "join[ed]" with a "hierarchy data structure." *See* Pet. 17-18. Petitioner is wrong.

First, the Petition purports to apply an impermissible *ipsissimis verbis* test, implying that the challenged claims are allegedly not supported by the 2000 Provisional Application had simply because the 2000 Provisional Application claim does not include the "receiving…" claim element language. *See* Pet. 17-18. Yet Petition provides no authority for its proposition. And in fact, the Petition only cites to the same conclusory testimony of its declarant for support. *Compare* Pet. 17-18 *with* EX1004, ¶¶ 44-45. That is insufficient. 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.").

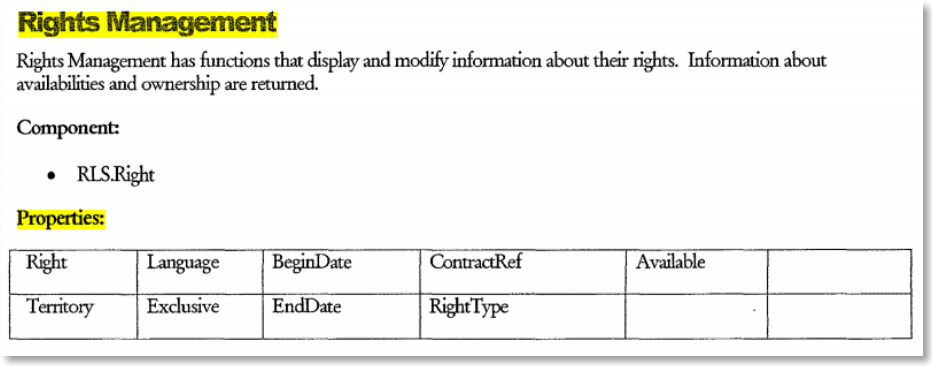
Second, the 2000 Provisional Application does in fact support the claim

element requiring the "first set of rights" be "join[ed]" with a "hierarchy data structure." Petitioner apparently came to its erroneous conclusion by searching for the word "join[ing]" in the 2000 Provisional Application and did not find the exact language recited by the "receiving…" claim element. Again, Petitioner engages in an impermissible *ipsissimis verbis* test.

If Petitioner had instead taken the time to review the substance of the 2000 Provisional Application, it would have found that the 2000 Provisional Application does indeed provide support and written description for the claim element that requires the "first set of rights" be "join[ed]" with a "hierarchy data structure."

The claim element requires that data be "joined", in the context of databases. Further, what the claim element requires to be joined is a "first set of rights" and a "hierarchy data structure". Though the Petition only argues as to the number of appearances of the word "join[ing]" in the 2000 Provisional Application, and therefore the Petition tacitly concedes that the 2000 Provisional Application discloses a "set of rights" and a "hierarchical data structure", nonetheless the 2000 Patent Application clearly discloses both.

The 2000 Provisional Application clearly discloses a "set of rights" throughout its 79 pages, as just two examples:



Rights Management

Rights Management has functions that display and modify information about their rights. Information about availabilities and ownership are returned.

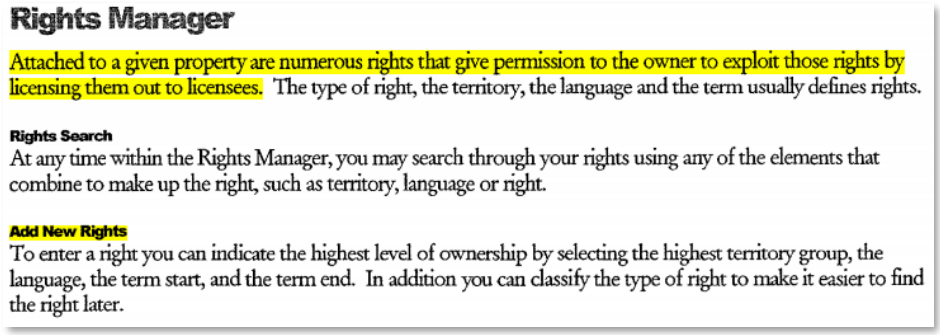
Component:

- RLS.Right

Properties:

Right	Language	BeginDate	ContractRef	Available	
Territory	Exclusive	EndDate	RightType		

EX1003, p. 30[1] (highlighting added).



Rights Manager

Attached to a given property are numerous rights that give permission to the owner to exploit those rights by licensing them out to licensees. The type of right, the territory, the language and the term usually defines rights.

Rights Search

At any time within the Rights Manager, you may search through your rights using any of the elements that combine to make up the right, such as territory, language or right.

Add New Rights

To enter a right you can indicate the highest level of ownership by selecting the highest territory group, the language, the term start, and the term end. In addition you can classify the type of right to make it easier to find the right later.

EX1003, p. 43 (highlighting added).

As shown by the examples, above, the 2000 Provisional Application clearly discloses a "set of rights".

Next, the 2000 Provisional Application also clearly discloses a "hierarchy data structure" throughout its 79 pages, for example:

[1] The page numbers referenced refer to the page numbers Petitioner inserted at the bottom right corner of each page of EX1003.

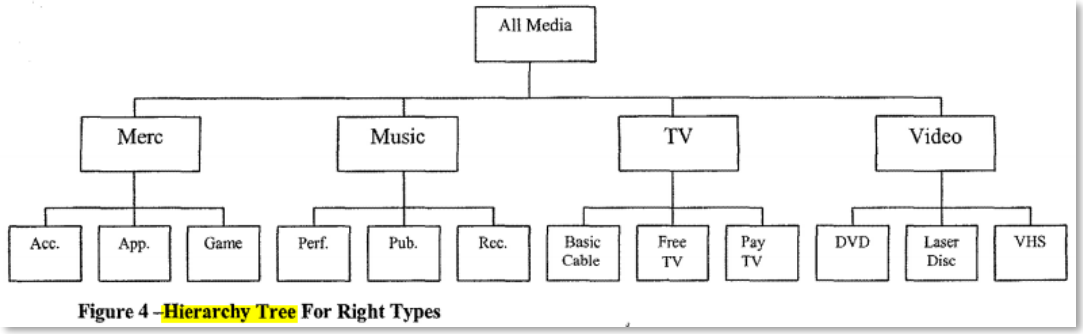


Figure 4 –Hierarchy Tree For Right Types

EX1003, p. 57 (highlighting added).

As shown by Figure 4 above, the 2000 Provisional Application clearly discloses a "hierarchy data structure".

And importantly, the 2000 Provisional Application also clearly discloses how to "join" a "set of rights" data in the context of databases, and specifically, database tables with a hierarchical data structure. For example, the 2000 Provisional Application teaches how to join a "Time Hierarchy" hierarchical table to itself:

To avoid running multiple queries, and to present the data in a more intuitive fashion, a circular *view* is created in the database that joins that table to itself to present a *denormalized* data set. For example, a view defined as…

```
Create view Time_Hierarchy_View as
Select T1.Time_Value as "Year"
       ,T2.Time_Value as "Quarter"
       ,T3.Time_Value as "Month"
From   Time_Table T1
       ,Time_Table T2
       ,Time_Table T3
Where (T1.Time_Value = '1999')
And    (T1.Time_Value = L2.Time_Parent(+))
And    (L2.Time_Value = L3.Time_Parent(+))
```

EX1003, p. 55.

And then using the "Time Hierarchy" table as an example, the 2000 Provisional Application then teaches the same concept applied to a set of rights. *See* EX1003, pp. 57-60. In expressly showing that teaching, the 2000 Provisional

Application states:

> "Using above identified examples related to the Time hierarchy, let's apply them to the data elements that were identified in the previous section as items that are required to uniquely identify an IP right: Property, Rights Type, Territory, Language, and Term (Term Start Date and Term End Date)."

EX1003, p. 56.

And the 2000 Provisional Application goes on to illustrate over numerous pages (*see* EX1003, pp. 57-60) example results from its teaching, but only one such example is reproduced below (next page):

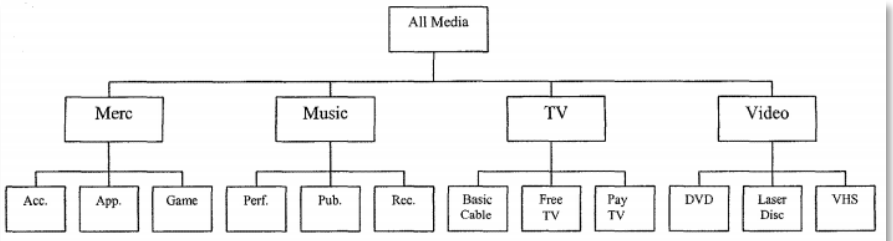


Figure 4 –Hierarchy Tree For Right Types

Right_Value	Right_Parent
All Media	
Merchandise	All Media
Music	All Media
Television	All Media
Video	All Media
Accessories	Merchandise
Apparel	Merchandise
Games	Merchandise
Performance	Music
Publishing	Music
Recording	Music
Basic Cable	Television
Free TV	Television
Pay TV	Television
DVD	Video
Laser Disc	Video
VHS	Video

Table 8 – Right Type Hierarchy Table

Media	Right Type	Right
All Media	Merchandise	Accessories
All Media	Merchandise	Apparel
All Media	Merchandise	Games
All Media	Music	Performance
All Media	Music	Publishing
All Media	Music	Recording
All Media	Television	Basic Cable
All Media	Television	Free TV
All Media	Television	Pay TV
All Media	Video	DVD
All Media	Video	Laser Disc
All Media	Video	VHS

Table 9 - Query Result Set from Right Type Hierarchy View

EX1003, p. 57.

Finally, using all of the above teachings, the 2000 Provisional Application discloses searching by a set of rights, or in other words, joining a rights table with the elements of the right:

Rights Search
At any time within the Rights Manager, you may search through your rights using any of the elements that combine to make up the right, such as territory, language or right.

EX1003, p. 43 (highlighting added).

Accordingly, and in view of the foregoing, the 2000 Provisional Application supports the claim 1 element: "retrieving from computer readable memory rights related information using a joining of the first set of rights and the first media rights hierarchy data structure", and the challenged claims are entitled to a priority date of December 28, 2000.

Therefore, Naylor does not qualify as prior art under a publishing date of December 6, 2001 (Pet. vi).

B. To The Extent Petitioner Intends To Rely On Any Alleged Priority Claim To Naylor's Provisional Application, Any Such Reliance Must Fail Because Petitioner Fails To Make The Required Showing Under MPEP § 2136.03

Further, to the extent the Petition intends on relying on any alleged priority claim to the filing date of Naylor's provisional application, Petitioner can only assert Naylor as prior art based on the filing date of its provisional application ***only if*** the subject matter relied upon in Naylor is described in Nalyor's provisional application, and at least one of the issued claims of Naylor is supported by the written description of the provisional application in compliance with pre-AIA 35 U.S.C. § 112, first paragraph. MPEP § 2136.03; *Dynamic Drinkware, LLC, v. National Graphics, Inc*., 800 F.3d 1375, 1381-82 (Fed. Cir. 2015) ("A reference patent is only entitled to claim the benefit of the filing date of its provisional application if the disclosure of the provisional application provides support for the claims in the reference patent in compliance with § 112, ¶ 1."); *Amgen Inc. v. Sanofi, Aventisub LLC*, 872 F.3d 1367 (Fed. Cir. 2017) (Applying *Dynamic Drinkware* equally to patents and published

patent *applications* asserted as prior art).

However, nowhere n the Petition does Petitioner make any attempt to satisfy its obligations under MPEP § 2136.03, and *Dynamic Drinkware*, therefore Naylor cannot be asserted as prior art under any alleged priority claim to its provisional application. And in addition to the challenged claims being entitled to a priority date of December 28, 2000, as discussed above in Section III.A, Naylor is not prior art, and Ground 2 of the Petition, which relies on Naylor, should be disregarded

IV. RELATED PROCEEDINGS

The following are currently pending proceedings concerning U.S. Pat. No. 7,092,953 (EX1001).

Case Caption	Case Number	District	Case Filed
Microsoft Corporation v. Uniloc 2017 LLC	IPR2019-01648	PTAB	Sep. 27, 2019

V. THE LEVEL OF ORDINARY SKILL IN THE ART

The Petition alleges that "[t]he person of ordinary skill in the art at the time the '953 application was filed ("POSITA") would have been someone who would have had a Bachelor's Degree in Electrical Engineering, Computer Science, or a related subject and one or more years of professional experience or training in working with intellectual property licensing and rights management, including processes using databases or data structures of rights to license or grant rights to intellectual property or media properties, as well as computer systems that support these licensing activities." Pet. 11-12. Given that Petitioner fails to meet its burden

of proof in establishing *prima facie* anticipation or obviousness when applying its own definition of a person of ordinary skill in the art ("POSITA"), Patent Owner does not offer a competing definition for POSITA at this preliminary stage, though it reserves the right to do so in the event that trial is instituted.

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 should be denied as failing to meet this burden.

The raises the following obviousness challenges under 35 U.S.C. § 103:

Ground	Claims	Reference(s)
1	1, 2, 5, and 6	Johnson[2] and Stefik[3]
2	1, 2, 5, and 6	Johnson and Naylor[4]

A. Claim Construction

At this preliminary stage, 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 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"). In the event that trial is instituted, however, Patent

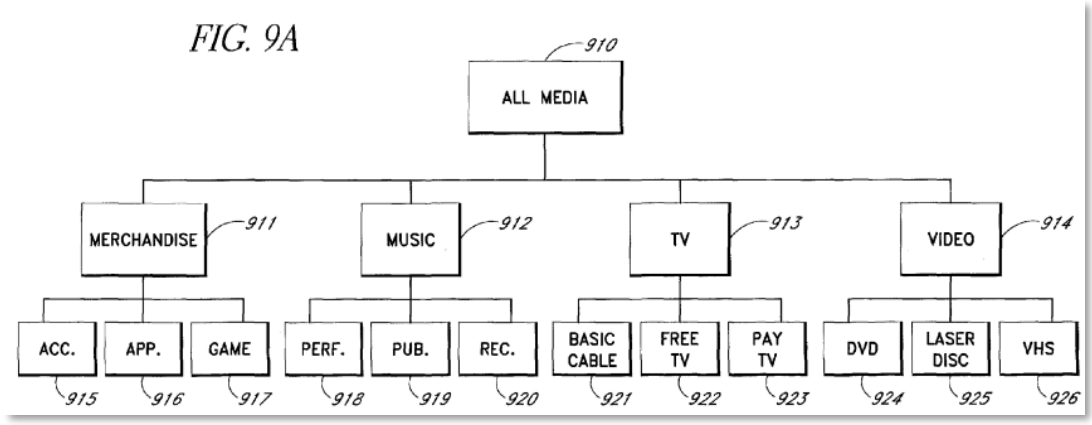
[2] EX1005, U.S. Patent No. 5,991,876
[3] EX1006, European Patent Application No EP 0 715 247 A1
[4] EX1007, U.S. Patent Application No. 2001/0049648

Owner reserves the right to object to Petitioner's proposed construction and provide Patent Owner's proposed construction.

B. Johnson And Stefik, Alone Or In Combination, Does Not Render Obvious "defining and storing in computer readable memory *a first media rights hierarchy data structure* *having a first set of nodes* with corresponding rights characteristics values for the first rights characteristic" / "identifying media rights *ancestors* and media rights *de[s]ce[n]d[a]nts* *within the first set of nodes*" (Ground 1)

This claim limitation requires "defining and storing in computer readable memory ***a first media rights hierarchy data structure*** **having a first set of nodes** with corresponding rights characteristics and values for the first rights characteristic." As specifically recited by the claim language, this element requires a first media **rights** hierarchy data structure, that has a first set of nodes. And further, there must be media rights ancestors and descendants within the first set of nodes.

The '953 patent provides numerous examples and illustrations of a first media rights hierarchy data structure having a first set of nodes which have media rights ancestors and descendants within the first set of nodes. Figure 9A of the '953 patent illustrates an example of the requisite media rights hierarchy data structure:



EX1001, Fig. 9A.

As shown above, each box is a "node" in the exemplar media rights hierarchy data structure, and within the set of "nodes", there are ancestors ("parents") and descendants ("children"). A full description can be found in the specification of the '953 patent. *See* EX1001, 25:51-62 ("FIG. 9A illustrates the hierarchy tree 900 for media right types. The overall parent value is "all media" 910 with children values of 'merchandise' 911, 'music' 912, 'TV' 913, and 'video' 914. …")

For Ground 1, the Petition relies on Johnson and Stefik for these limitations, however neither discloses the required first media rights hierarchy data structure.

1. Johnson does not disclose the required "first media rights hierarchy data structure having a first set of nodes with corresponding rights characteristics and values for the first rights characteristic"; and Johnson also does not disclose "identifying media rights ancestors and media rights de[s]ce[n]d[a]nts within the first set of nodes"

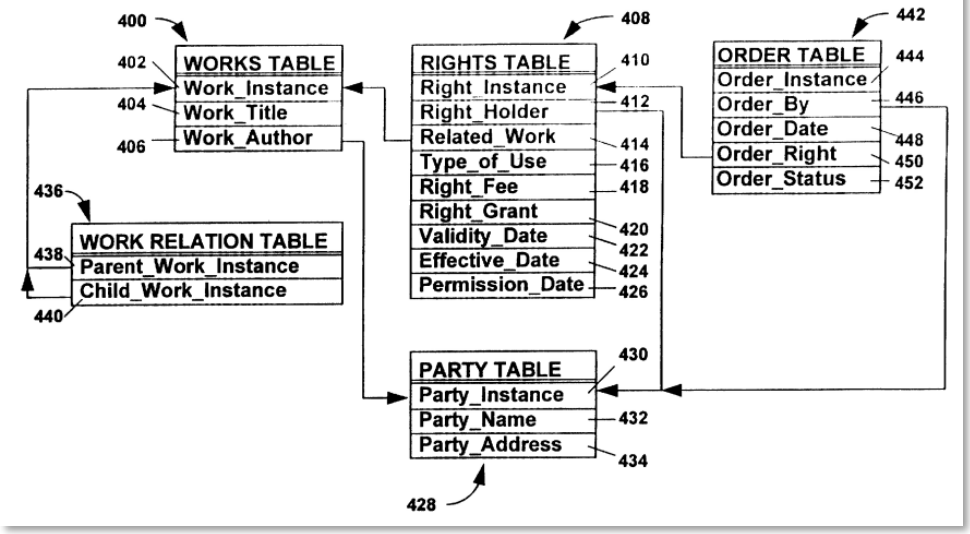
While Johnson discloses a "Rights Table" and a "Works Table", Johnson does not disclose "a first **media rights hierarchy** data structure". The Petition only points to Johnson's "Works Table" and "Works Relation Table" as being anything that is

alleged to have a "hierarchy data structure". *See* Pet. 26-34. However, this claim element requires that a "first ***media rights*** **hierarchy data structure**".

In other words, it is the media rights that are required to be in a hierarchy data structure, and further, the media rights hierarchy data structure must have a first set of nodes. And within the first set of nodes there must be media rights ancestors and descendants – which is what makes the media rights a hierarchical data structure.

The Petition fails because Johnson discloses its "Rights Table" as a flat data structure. Johnson discloses various tables, among them, a "Rights Table" and a "Works Table". The "Rights Table" holds fields related to rights such as fees and rights granted, and the "Works Table" holds fields identifying a work, such as by title and author:

FIG. 4

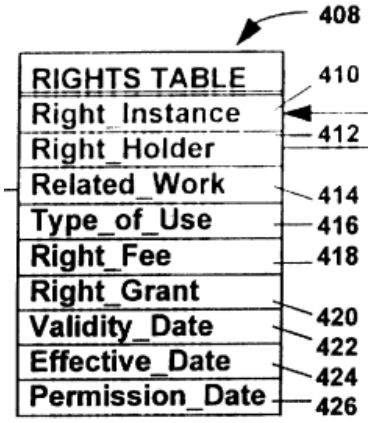


EX1005, Fig. 4.

As seen above in Johnson's Fig. 4, the "Rights Table" is a flat data structure, with each of its fields (such as "Right_Fee", "Right_Grant", Validity_Date", etc.) as simple peers to one another and without the required hierarchical organization. Therefore, Johnson's "Rights Table" does not have the required hierarchical data structure, and nothing in the Petition shows otherwise.

Further, it also is important to note that a further requirement of this limitation is that the "first media rights hierarchy data structure" has "a first set of **nodes** with corresponding rights characteristics and values for the first rights characteristic". And the fields of Johnson's "Rights Table" cannot be the required nodes because as the claim language itself states in the following claim element: "identifying media rights ancestors and media rights de[s]ce[n]dents **within the first set of nodes**". EX1001, 28:61-62 (emphasis added). As the recited claim limitation makes clear, within the first set of nodes of a first media rights hierarchy data structure there must be media rights ancestors and descendants. This is further supported by the specification as well. *See e.g.* EX1001, 18:47-64. And nothing in the Petition shows Johnson's "Rights Table" to have anything that qualifies as "nodes" having media rights ancestors and descendants, because the fields of Johnson's "Rights Table" have a flat structure where every field is a simple peer of the other fields:[5]

[5] The Petition in its "Element 1.2" reads the fields from Johnson's "Rights Table" to the required "rights characteristics". *See* Pet. 24-25 (citing to the "Rights Table"'s "validity date", "effective date", and "permission date" rights).



EX1005, excerpt of Fig. 4.

Nonetheless, the Petition argues that the structure of Johnson's "'Works Relation Table' 436 is associated with or corresponds to the available 'rights' in the 'Rights Table' 408 via the 'Works Table' 400. Pet. 29. However, even assuming Johnson's "Works Relation Table" has a hierarchical structure, the Petition still fails because Johnson's "Rights Table" does not. Johnson's "Rights Table" being merely "associated with" or "corresponding to" the "Works Relation Table" does not magically convert the flat data structure of the "Rights Table" into something else. And to further confirm it does not convert the "Rights Table" into a hierarchical structure, even if the "Rights Table" were to "correspond to" the "Works Relation Table", **the "Rights Table" still would not have the required first set of "nodes"** because the fields of the "Rights Table" are unchanged and **still do not have the required media rights ancestors and descendants that is required to be a "node" within a first set of "nodes"** according to the claim language. And nothing in the Petition claims otherwise.

Next, the Petition then argues that it would have been obvious to a POSITA

to essentially put Johnson's "Rights Table" directly into the "Works Table". *See* Pet. 33-34. First, the Petition only cites to its declarant for support that it would have been obvious for a POSITA to make such a proposed modification, and its declarant merely parrots the statements of the Petition. *Compare* Pet. 29-34 *with* EX1004, ¶¶ 66-72. This is insufficient. 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."); *Alza Corp. v. Mylan Labs., Inc.*, 464 F.3d 1286, 1290 (Fed. Cir. 2006) ("legal determinations of obviousness, as with such determinations generally, should be based on evidence rather than on mere speculation or conjecture."); *In re Magnum Oil Tools Int'l Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016) ("[A] petitioner cannot employ mere conclusory statements" and "must instead articulate specific reasoning, based on evidence of record . . . .").

Second, Petitioner's proposed modification still fails because merely copying Johnson's "Rights Table" into its "Works Table" does not magically convert the flat data structure of the "Rights Table" into something else. Even if it were the case that the "Works Table" in Johnson had a hierarchical structure, and each "work" had its own copy of a "Rights Table", the structure of each copied "Rights Table" would remain unchanged – i.e. **the data structure of each "Rights Table" remains flat, with no first set of "nodes" that have media rights ancestors and descendants** as required by the claim language. That a particular instance of a "work" in Johnson may have a parent or a child does nothing to change the *data structure* of the "Rights Table" from being a flat data structure. And nothing in the Petition claims otherwise.

Thus, Johnson fails to disclose or render obvious the challenged claims because Johnson fails to disclose "defining and storing in computer readable memory *a first media rights* ***hierarchy data structure*** ***having a first set of nodes*** with corresponding rights characteristics values for the first rights characteristic", and Johnson further fails to disclose "identifying media rights *ancestors* and media rights *de[s]ce[n]d[a]nts* ***within the first set of nodes***".

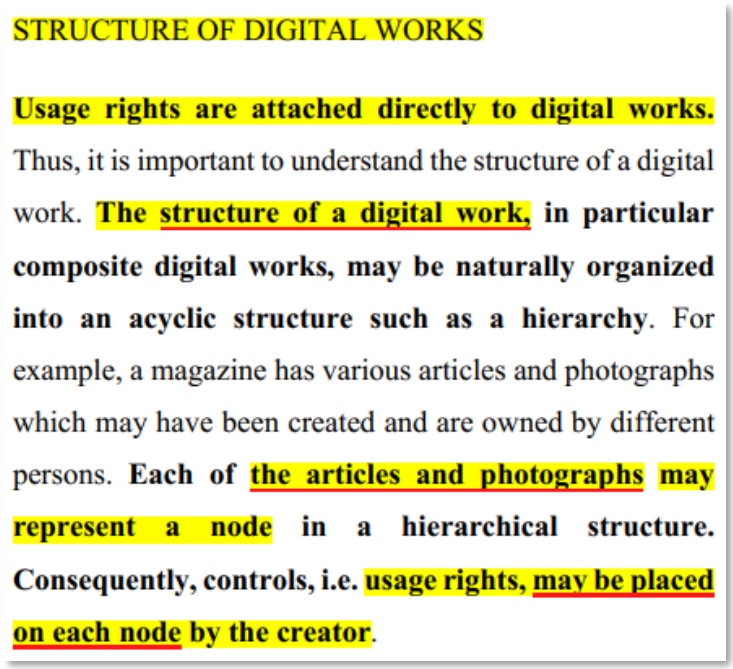
2. Stefik does not disclose the required "first media rights hierarchy data structure having a first set of nodes with corresponding rights characteristics and values for the first rights characteristic"; and Stefik also does not disclose "identifying media rights ancestors and media rights de[s]ce[n]d[a]nts within the first set of nodes"

Stefik also does not disclose the required "first media rights hierarchy data structure having a first set of nodes with corresponding rights characteristics and values for the first rights characteristic" and Johnson does not disclose "identifying media rights ancestors and media rights de[s]ce[n]d[a]nts within the first set of nodes". And the key again, is that the claim limitation requires a "**first media rights hierarchy data structure**", meaning that the media rights must have a hierarchical data structure.

Initially, it must be noted that the Petition acknowledges that "[a] related version of the Stefik reference was disclosed by the Applicant…" Pet. 5. And in fact, the "related" version of Stefik appears on the face of the '953 patent. As such, Petitioner has "the added burden of overcoming the deference that is due to a

qualified government agency presumed to have properly done its job, which includes one or more examiners who are assumed to have some expertise in interpreting the references and to be familiar from their work with the level of skill in the art and whose duty it is to issue only valid patents." *Shire LLC v. Amneal Pharmaceuticals, LLC*, 802 F.3d 1301, 1307 (Fed. Cir. 2015).

Regardless, Stefik fails to disclose the required claim language, which is shown by the Petition's quotation of Stefik describing its "STRUCTURE OF DIGITAL WORKS":



STRUCTURE OF DIGITAL WORKS

Usage rights are attached directly to digital works. Thus, it is important to understand the structure of a digital work. **The structure of a digital work, in particular composite digital works, may be naturally organized into an acyclic structure such as a hierarchy**. For example, a magazine has various articles and photographs which may have been created and are owned by different persons. **Each of the articles and photographs may represent a node in a hierarchical structure. Consequently, controls, i.e. usage rights, may be placed on each node by the creator**.

Pet. 34 *quoting* EX1006, 5:9-15 (emphasis altered – highlighting and underlining added).

As seen above in Stefik's own words, it is Stefik's **digital works** that have a hierarchical data structure, **not** the "usage rights". Stefik explains that "[e]ach of the

articles and photographs" (i.e. the digital works) "may represent a node in the hierarchical structure". This confirms that in Stefik, it is the "digital works" that have a hierarchical data structure. To further drive the point home, Stefik goes on to state that the "usage rights" "may be placed on each node", where in Stefik, the nodes are the "articles and photographs" (i.e. the digital works). Which means that, by the plain words of Stefik, it is the "digital works" that have a hierarchical data structure having nodes, **not** the "usage rights", as required by the claim language.

The Petition's further quotation from Stefik fares no better, in fact, it only further reinforces Stefik's express disclosure of its "digital works" having a hierarchical data structure and NOT the "usage rights", as required by the claim language:

> **From Figures 5 and 6 it is readily observed that a digital work can be represented by its component parts as a hierarchy. The description tree for a digital work is comprised of a set of related descriptor blocks (d-blocks).** The contents of each d-block is described with respect to Figure 7. **Referring to Figure 7, a d-block 700 includes** an identifier 701 which is a unique identifier for the work in the repository, a starting address 702 providing the start address of the first byte of the work, a length 703 giving the number of bytes in the work, **a rights portion 704 wherein the granted usage rights and their status data are maintained,** a parent pointer 705 for pointing to a parent d-block and child pointers 706 for pointing to the child d-blocks. . . .

Pet. 35, excerpt *quoting* EX1006, 5:32-58 (emphasis altered – highlighting

and underlining added).

As again seen by the above recitation from Stefik, Stefik expressly states that it is the "**digital work**" (with component parts) that can be represented as a hierarchy. And within the data structure of the **digital work**, there is a "rights portion" that simply holds data – rights and status data – in simply a flat structure. As such, Stefik does not disclose the required "media rights hierarchy data structure having a first set of nodes", as required by the claim language.

Moreover, the Petition's reliance on Figure 1 of Stefik is misplaced. Figure 11 of Stefik shows an *instance* of Stefik's *digital works data structure*. And more than that, Figure 11 of Stefik also further illustrates the fact that its "usage rights" or "rights portion" merely holds data in a flat data structure:

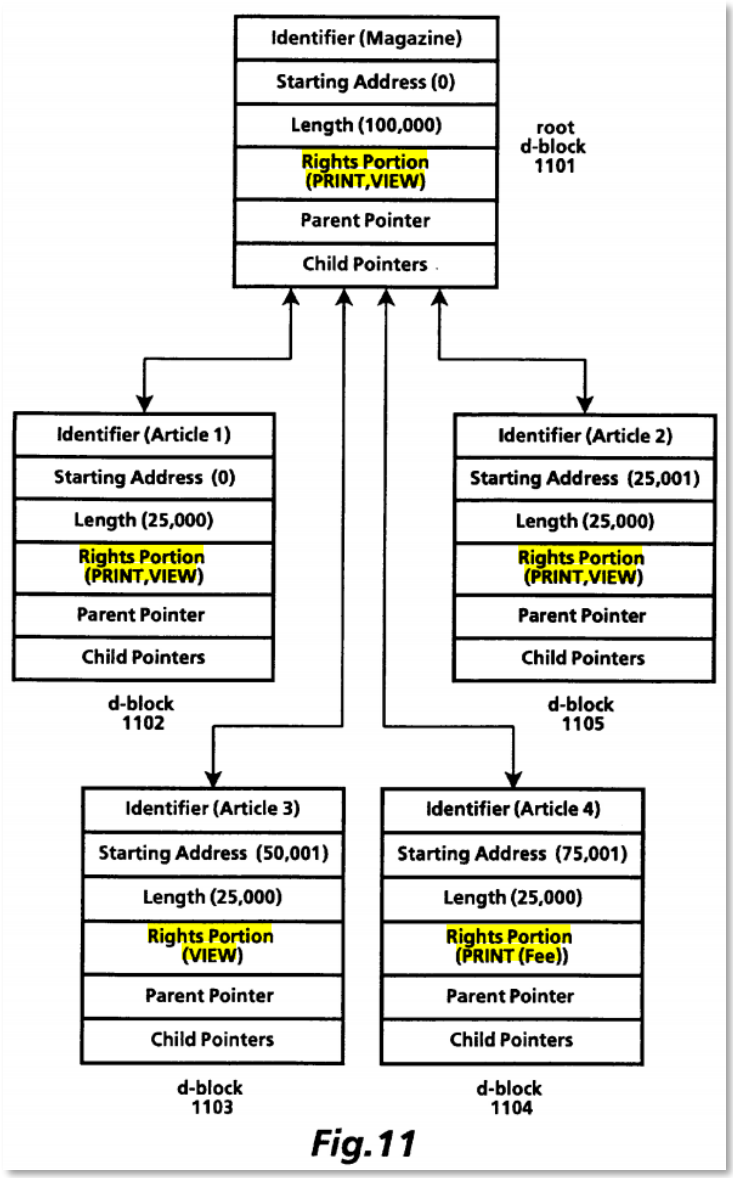


Fig.11

EX1006, Fig. 11 (highlighting added).

As seen in Figure 11, above, each "d-block" is an *instance* of the data structure of Stefik's "digital works". Stefik itself makes clear that the "d-block" structure is the data structure of a "digital work": "The description tree **for a digital work** is comprised of a set of related descriptor blocks (**d-blocks**)." EX1006, 5:33 (emphasis added). And as also seen in Figure 11, above, each "d-block", having a "rights

portion", where the "rights portion" merely holds one or two items of data ("PRINT" and/or "VIEW"). And those one or two items of data are clearly stored with no structure other than a flat data structure.

Put differently, and under the requirements of the claim language, Stefik's "rights portion" holding data (such as "PRINT and/or "VIEW") does not have the required ancestors and descendants to qualify as the required "nodes" because Stefik's "rights portion" has a flat data structure instead of the required "media rights hierarchical data structure".

Thus, Stefik fails to disclose or render obvious the challenged claims because Stefik fails to disclose "defining and storing in computer readable memory *a first media rights* ***hierarchy data structure*** ***having a first set of nodes*** with corresponding rights characteristics values for the first rights characteristic", and Stefik further fails to disclose "identifying media rights *ancestors* and media rights *de[s]ce[n]d[a]nts* ***within the first set of nodes***".

C. Johnson and Stefik, Alone Or In Combination, Does Not Render Obvious "retrieving from computer readable memory rights related information *using a joining* of the first set of rights and the first media rights hierarchy data structure"

For the reasons stated above in Section VI.B, alone, Ground 1 fails. However, as a wholly independent reason, the Petition also fails because neither Johnson and Stefik, alone or in combination, renders obvious "retrieving from computer readable memory rights related information *using a joining* of *the first set of rights and the*

first media rights hierarchy data structure".

1. Johnson does not operate on a set of rights or a media rights hierarchy data structure

It is telling that the Petition's reliance on the example in Johnson regarding a story titled "The Golden Parakeet" (a work) that contains an illustration titled "The Winding River" (a work), and the search for available rights by searching for "The Winding River" (i.e. the name of the work). *See* Pet. 54-56; *citing* EX1005, 9:16-35. The claim language recites "using a joining of the first set of rights and the first media rights hierarchy data structure". The Petition and its reliance on Johnson must fail because the example in Johnson clearly searches on the *work* (e.g. "The Winding River"), not a first set of **rights**, as required by the claim language. And this is further evidence that Johnson does not disclose the required "media **rights** hierarchy data structure".

2. Stefik does not operate on a media rights hierarchy data structure

Similarly, the Petition's reliance on Stefik is misplaced. Here, the Petition relies on an example in Stefik regarding "PRINT" rights. *See* Pet. 56 *citing* EX1006, 6:53-7:18. In that example, Stefik describes traversing its Figure 11, which illustrates "a root d-block 1101 has child d-blocks 1102-1105". EX1006, 7:7-8. However, as previously explained in Section VI.B.2, and as confirmed again by Stefik, "root d-block represents *a magazine*, and each of the child d-blocks 1102-1105 represents *articles in the magazine*." EX1006, 7:8-9 (emphasis added). In other words, Stefik searches along a hierarchy of *works*. Therefore, the Petition and its reliance on Stefik

also fails at least because Stefik does not search a "first media rights hierarchy data structure" as required by the claim language. And this is further evidence that Stefik does not disclose the required "media **rights** hierarchy data structure".

3. Johnson and Stefik do not disclose the required "***joining*** of the first set of rights and the first media rights hierarchy data structure"

Initially it should be noted that Petitioner's complaint regarding the '953 patent's provisional application is that "[s]pecifically, the only use of the word 'join[ing]' in the 2000 Provisional Application is in connection with the concept of having a 'Time Hierarchy' table 'join[ed]' to itself to form a 'circular view' that 'present[s] a denormalized data set.'" Pet. 18. However, the word "join" **never appears even once in any** of the Petition's cited references, Johnson, Stefik, or Naylor for that matter (which is not prior art, *see* Section III). Therefore to the extent the Board may give any weight to the complaint in the Petition regarding the "2000 Provisional Application" in Section VII of the Petition, and equal amount of weight must fall against the Petition here.

Next, the Petition also fails here because the examples cited to by the Petition all involve *searching* by **moving and examining within a works hierarchy**. *See* Pet. 54-56; EX1005, 9:16-35 ("… The software then *moves up one level*…"); EX1006, 6:53-7:18 ("The rights for the root d-block 1101 and child d-blocks 1102-1105 are then *examined*.") Therefore, the Petition fails to show that Johnson or Stefik performs "retrieving from computer readable memory rights related information ***using a joining*** of the first set of rights and the first media rights hierarchy data

structure", because Johnson and Stefik's moving and examining is merely iteratively traversing, and not the required joining.

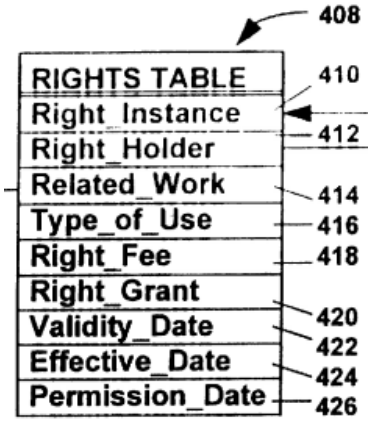
Finally, while the Petition only cites to its declarant for support of its conclusory statements, that testimony should be given no weight because its declarant merely parrots the same statements of the Petition. *Compare* Pet. 53-56 *with* EX1004, ¶¶ 103-107. This is insufficient. 37 C.F.R. § 42.65(a) ("Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight."); *Alza Corp. v. Mylan Labs., Inc.*, 464 F.3d 1286, 1290 (Fed. Cir. 2006) ("legal determinations of obviousness, as with such determinations generally, should be based on evidence rather than on mere speculation or conjecture."); *In re Magnum Oil Tools Int'l Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016) ("[A] petitioner cannot employ mere conclusory statements" and "must instead articulate specific reasoning, based on evidence of record . . . .").

D. Ground 2 Fails Because Naylor Is Not Prior Art

Ground 2 fails for all the same reasons discussed in Section VI.B.1, above, and because Naylor is not prior art as discussed in Section III, above.

To briefly summarize, ***first***, Johnson fails to disclose or render obvious the challenged claims because Johnson fails to disclose "defining and storing in computer readable memory *a first media rights* ***hierarchy data structure*** ***having a first set of nodes*** with corresponding rights characteristics values for the first rights characteristic", and Johnson further fails to disclose "identifying media rights

ancestors and media rights *de[s]ce[n]d[a]nts* ***within the first set of nodes***". Even if it were the case that the "Works Table" in Johnson had a hierarchical structure, and each "work" had its own copy of a "Rights Table", the structure of each copied "Rights Table" would remain unchanged – i.e. **the data structure of each "Rights Table" remains flat, with no first set of "nodes" that have media rights ancestors and descendants** as required by the claim language. And nothing in the Petition shows Johnson's "Rights Table" to have anything that qualifies as "nodes" having media rights ancestors and descendants, because the fields of Johnson's "Rights Table" have a flat structure where every field is a simple peer of the other fields:[6]



EX1005, excerpt of Fig. 4.

Second, Naylor (EX1007) is not prior art to the Challenged Claims of the '953 patent under its publication date of December 6, 2001 or filing date of February 14,

[6] The Petition in its "Element 1.2" reads the fields from Johnson's "Rights Table" to the required "rights characteristics". *See* Pet. 24-25 (citing to the "Rights Table"'s "validity date", "effective date", and "permission date" rights).

2001, because the Challenged Claims claim priority to Provisional Patent Application No. 60/259194, filed **December 28, 2000** (EX1003, "2000 Provisional Application"). *See* Section III.A, above. Further, Petitioner has not shown Naylor to be prior art under any alleged claim of priority to its provisional application, therefore Naylor is not prior art, and Ground 2 of the Petition, which relies on Naylor, should be disregarded. *See* Section III.B, above.

Thus, Ground 2 fails and the Petition should be denied.

E. Ground 2 Also Fails Because Johnson and Naylor, Alone Or In Combination, Does Not Render Obvious "retrieving from computer readable memory rights related information *using a joining* of the first set of rights and the first media rights hierarchy data structure"

Each of the reasons discussed in Sections III, VI.D, are separate and independent reasons why Ground 2 fails. Specifically and importantly, Naylor is not prior art, and therefore the Board should not expend its resources on the substance of Naylor.

Regardless however, the Petition should further be denied because Johnson and Naylor, Alone Or In Combination, Does Not Render Obvious "retrieving from computer readable memory rights related information *using a joining* of the first set of rights and the first media rights hierarchy data structure"

1. Johnson does not operate on a set of rights or a media rights hierarchy data structure

It is telling that the Petition's reliance on the example in Johnson regarding a story titled "The Golden Parakeet" (a work) that contains an illustration titled "The

Winding River" (a work), and the search for available rights by searching for "The Winding River" (i.e. the name of the work). *See* Pet. 54-56; *citing* EX1005, 9:16-35. The claim language recites "using a joining of the first set of rights and the first media rights hierarchy data structure". The Petition and its reliance on Johnson must fail because the example in Johnson clearly searches on the *work* (e.g. "The Winding River"), not a first set of **rights**, as required by the claim language. And this is further evidence that Johnson does not disclose the required "media **rights** hierarchy data structure".

2. Johnson and Naylor do not disclose the required "*joining* of the first set of rights and the first media rights hierarchy data structure"

Initially it should be noted that Petitioner's complaint regarding the '953 patent's provisional application is that "[s]pecifically, the only use of the word 'join[ing]' in the 2000 Provisional Application is in connection with the concept of having a 'Time Hierarchy' table 'join[ed]' to itself to form a 'circular view' that 'present[s] a denormalized data set.'" Pet. 18. However, the word "join" **never appears even once in any** of the Petition's cited references, Johnson, Stefik, or Naylor for that matter (which is not prior art, *see* Section III). Therefore to the extent the Board may give any weight to the complaint in the Petition regarding the "2000 Provisional Application" in Section VII of the Petition, and equal amount of weight must fall against the Petition here.

Next, the Petition also fails here as to Johnson because the example in Johnson cited by the Petition involves *searching* by **moving and examining within a works**

hierarchy. *See* Pet. 54-56; EX1005, 9:16-35 ("… The software then *moves up one level*…"); Therefore, the Petition fails to show that Johnson or Stefik performs "retrieving from computer readable memory rights related information ***using a joining*** of the first set of rights and the first media rights hierarchy data structure", because Johnson's moving and examining is merely iteratively traversing, and not the required joining.

Further, the Petition also fails as to Naylor because as the examples cited to by the Petition make clear, Naylor only discloses a user-facing interface of its system. Naylor does not disclose its inner-workings and how it finds and obtains the information on its user-facing web page. And nothing in the Petition shows otherwise. *See* Pet. 69-70 *citing* EX1007, ¶¶ 19, 127-133. Because nothing in Naylor discloses how it obtains the information of its user-facing web page, it may very well be through Johnson's move-and-examine iterative traversal method. In any event, Naylor does not disclose the required "retrieving from computer readable memory rights related information ***using a joining*** of the first set of rights and the first media rights hierarchy data structure".

Finally, while the Petition only cites to its declarant for support of its conclusory statements, that testimony should be given no weight because its declarant merely parrots the same statements of the Petition. *Compare* Pet. 69-70 *with* EX1004, ¶¶ 132-33. This is insufficient. 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."); *Alza Corp. v. Mylan Labs., Inc.*, 464 F.3d

1286, 1290 (Fed. Cir. 2006) ("legal determinations of obviousness, as with such determinations generally, should be based on evidence rather than on mere speculation or conjecture."); *In re Magnum Oil Tools Int'l Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016) ("[A] petitioner cannot employ mere conclusory statements" and "must instead articulate specific reasoning, based on evidence of record . . . .").

F. The Petition Fails As To The Challenged Dependent Claims

The deficiencies of the Petition articulated above concerning the challenged independent claim 1 apply also to the analysis of the challenged dependent claims. Accordingly, the Petition should be denied in its entirety.

VII. CONCLUSION

For at least the reasons set forth above, Uniloc respectfully requests that the Board deny all challenges in the instant Petition.[7]

Date: October 25, 2019

Respectfully submitted,

By: /s/ Brett A. Mangrum
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Attorney for Patent Owner

[7] 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: October 25, 2019

Respectfully submitted,

By: /s/ Brett A. Mangrum
Brett A. Mangrum; Reg. No. 64,783
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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