

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS, LLC, and JPMORGAN CHASE BANK, N.A.,

Petitioner,

v.

DYNAPASS IP HOLDINGS, LLC

Patent Owner.

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***Inter Partes Review No. IPR2023-00425<sup>1</sup>***

**Patent No. 6,993,658**

**PATENT OWNER'S RESPONSE TO PETITIONER'S SUPPLEMENTAL  
BRIEFING PURSUANT TO PAPER 27**

Filed on behalf of Patent Owner by:

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<sup>1</sup> JPMorgan Chase Bank N.A. was joined as a party to this proceeding via Motion for Joinder in IPR2023-01331.

Dynapass IP Holdings, LLC (“Patent Owner”) respectfully submits this Response to Petitioner’s Supplemental Briefing Pursuant to Paper 27. There is no dispute that Petitioner introduced new evidence and argument during the oral argument in this proceeding; consideration thereof would require the Board to exercise its waiver authority under 37 C.F.R. § 42.5(b). *See Dell Inc. v. Accelaron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018).

**I. The Record Facts Belie Petitioner’s Request That The Board Exercise Its Waiver Authority.**

The answer to the Board’s first question is “yes:” it is too late for Petitioner to file a copy of the infringement contentions. Conspicuously absent from Petitioner’s brief are the circumstances of when and how Petitioner first became aware of the infringement contentions. The fact is that the infringement contentions have been publicly available since December 8, 2023, on the EDTX docket in the *JPMorgan Chase* consolidated case (exhibits to Dkt. 153), more than four months before oral argument. And that proceeding was identified as a related matter in Patent Owner’s Mandatory Notices. *See* Paper 3. In fact, the district court motion related to the infringement contentions was signed by H. Albert Liou, lead counsel in the joined proceeding (IPR2023-01331).

Petitioner could have addressed the infringement contentions in its reply, more than a month after the contentions were publicly available. Petitioner could

have raised the issue in its request for oral argument, nearly three months after the infringement contentions were publicly available. And Petitioner could have raised the issue in its demonstratives, four months after the infringement contentions were publicly available and five days before oral argument.

On one hand, the record facts show that Petitioner knew or should have known about the infringement contentions well before oral argument. On the other hand, it is highly unlikely that Petitioner first became aware of the infringement contentions in the five-day window between when Petitioner filed its demonstratives and the oral argument, especially given Petitioner's choice to withhold information about when and how it first became aware of the infringement contentions. Accordingly, the record facts do not support Petitioner's request that the Board exercise its waiver authority, so it is too late for Petitioner to file a copy of the infringement contentions.

## **II. Petitioner's Attempt To Deflect Its Failings Is Baseless.**

Unable to provide facts to support its request that the Board exercise its waiver authority, Petitioner baselessly argues that Patent Owner failed to comply with mandatory discovery and the duty of candor. Rule 42.51(b)(1)(iii) applies only to "relevant information that is inconsistent with a position advanced by the party during the proceeding. . . ." The rule does not apply here because, as explained below, the infringement contentions do not contain an inconsistent position. Petitioner's allegation of a breach of candor is baseless for the same reason.

### **III. The Infringement Contentions Should Be Afforded No Weight.**

The answer to the Board's second question is that the infringement contentions should be afforded no weight because they do not contain an inconsistent position. Patent Owner argued here that *Kew's* "user identification code" is "like a username" because it "is used to identify the user." Paper 13, p. 45. But *Kew's* "user identification code" (aka *Kew's* username) cannot be the claimed "passcode" because it "is never combined with *Kew's* 'Code A' (Petitioner-identified 'token') to generate *Kew's* 'Code B' (Petitioner-identified 'password')," as the independent claims require. Paper 19, p. 17. Conversely, in Ex. 1026, Patent Owner mapped BOA's "username" to the claimed "passcode" because, upon information and belief, it is combined with BOA's "authorization code" or "sign in code" (the claimed "token") as the "password" received from the user, as required by the claims. See Ex. 1026, p. 23.

Patent Owner has never argued that the claimed "passcode" could not be a username. Instead, Patent Owner argued that the claimed "passcode" could not be *Kew's* "user identification code." *Kew's* "user identification code" and BOA's "username" are processed differently by their respective systems. As a result, the fact that BOA's "username" meets the requirements of the claimed "passcode," is not inconsistent with the fact that *Kew's* "user identification code" does not. Thus, Exhibit 1026, if admitted, should be given no weight in this proceeding.

DATED: May 1, 2024

Respectfully submitted,

By: /John Wittenzellner/  
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**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on May 1, 2024, the foregoing document was served on counsel of record for Petitioner by filing this document through the End-to-End System, as well as via electronic mail to counsel of record for Petitioner (and joined Petitioner) at the following addresses:

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