

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LENNOX INDUSTRIES INC.,

Petitioner,

vs.

ROSEN TECHNOLOGIES LLC,

Patent Owner

Case No. IPR2023-00716

U.S. Patent No. 6,789,739

PATENT OWNER'S PRELIMINARY RESPONSE

* * * *

USE OF EMPHASIS IN QUOTATIONS

All emphases in quotations and exhibit citations have been added, unless otherwise indicated.

APPLICABLE STATUTES

References to 35 U.S.C. § 103 are to the Pre-AIA versions applicable to the '739 Patent.

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I. INTRODUCTION

Petitioner Lennox Industries Inc., (“Petitioner”) challenges claims 1-3 and 6-9 (the “Challenged Claims”) of Patent Owner Rosen Technologies LLC’s (“Patent Owner”) U.S. Patent No. 6,789,739 (the “’739 Patent”).

However, all Grounds asserted by Petitioner fail as the petition relies on prior art that does not include each and every element of the Challenged Claims of the ’739 Patent. The petition is insufficient on the merits, as Petitioner fails to demonstrate in Ground 1 and 2 (Liming and obvious over Liming in view of Rainer), Ground 3 (Inoue in view of Peters and weather.com) and Ground 4 (Rainer in view of Kikinis and weather.com) that their location response is storage of the location data at the remote device and correlation of the physical location to location response data stored at or available to the remote device or created by processing of location data at the remote device, whereafter location response data is transmitted from the remote device to the controller.

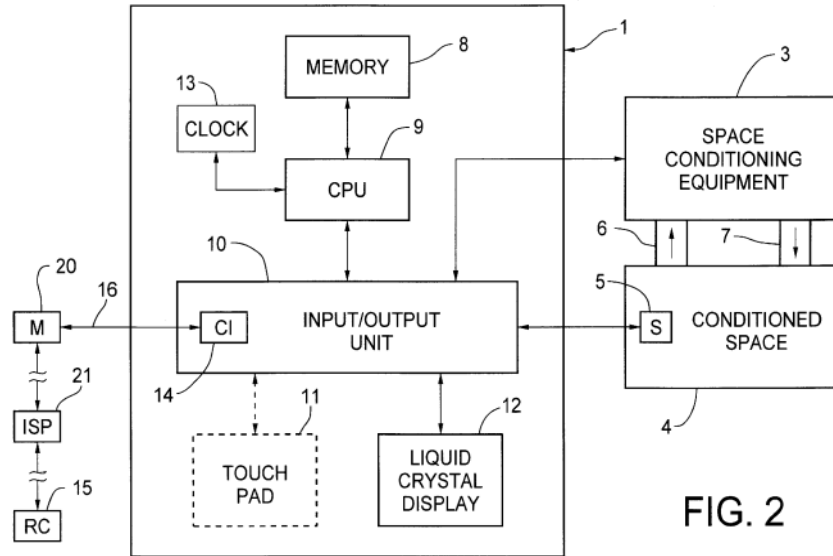
Accordingly, Patent Owner Rosen Technologies LLC respectfully requests that the Board deny the petition for *inter partes* review of claims 1-3 and 6-9 of the ’739 Patent on the merits and/or under §314(a).

II. THE ’739 PATENT DISCLOSES A THERMOSTAT SYSTEM WITH LOCATION DATA.

At the time of the filing of the ’739 Patent, traditional programmable thermostat systems, fixed position buttons were to be touched in a precise sequence

to program set points for programmable time periods. Ex-1001, 1:48-55. The '739 Patent notes that the “modern thermostat systems may limit, or even make no provision for, user programming. For example, thermostats distributed throughout a large commercial establishment may be programmable only by authorized persons employing special tools or may even have their programs permanently set at the time of manufacturer or installation. These non-programmable thermostat systems do not have a user accessible touch pad (or have no touch pad at all), but may incorporate a user readable display.” Ex-1001, 1:58-64. The '739 patent finds use in both programmable and non-programmable thermostat systems which operate under control of a processor. Ex-1001, 1:65-67

More specifically, the '739 Patent disclosed an environmental controller that has geographical information stored, such as location data in the form of a zip code or telephone number. Location data correlates in some way to the physical and geographic location of the environmental controller. The invention provides for intervening transmission and/or conversion of forms of location data of the environmental controller until the location data reaches a desired remote device. Ex-1001, 7-8: 58-67, 1-11



An environmental controller links to a web site and transmits location data and an access code. The access code is appropriately received by the web site and identifies the user as one authorized to have transmitted to it information or algorithm results from the web site. The access code may be structured so that location data is a substantial part of that access code, i.e., the access code is the phone number of the physical location of the environmental controller. The access code may be evaluated by the server for the web site to determine if a previously approved access code is still valid, i.e., whether the user has paid their last bill for access to the web site. In a specific example of this type of response, a user of the invention environmental controller pays the operator of a web site with weather data for a period of access. The user is either issued an access code by the web site operator to be input into the environmental controller or the access code is some code specific

to the environmental controller, such as the location code, and is accepted by the web site operator. An access code may include credit card numbers for instant acceptance and debiting at linking to the web site. Ex-1001, 8:21-41

III. LEVEL OF ORDINARY SKILL IN THE ART

Plaintiff contends that a person having ordinary skill in the art of the inventions of the Patents-in-Suit (a “POSITA”) would have at a bachelor’s degree in engineering, computer science, or a comparable field, with at least 2 years’ experience in temperature controls, embedded control systems, electronic thermostats, or HVAC controls, or similarly relevant industry experience, with relevant experience substituting for education and vice versa.

IV. CLAIM CONSTRUCTION

In the present case, Patent Owner and Petitioner filed their respective opening claim construction briefs on April 20, 2023. Patent Owner and Petitioner filed their respective response claim construction briefs on May 11, 2023.

The standard for claim construction in an *inter partes* review proceeding is the same as that for a district court. 37 C.F.R. § 42.100(b). Claim construction is “simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims.” *DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1322-23 (Fed. Cir. 2001) (quoting *Embrex, Inc. v. Serv. Eng’g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000); *see also*

Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996). An inventor particularly points out and distinctly identifies the subject matter of the invention in the claims, and no one, including the Court, can change the invention through claim construction. See *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1365 (Fed. Cir. 1999) (citing *Autogiro Co. of Am. v. United States*, 384 F.2d 391, 396 (Ct. Cl. 1967); *Digital Biometrics, Inc. v. Identix, Inc.*, 149 F.3d 1335, 1344 (Fed. Cir. 1998).

In the District Court, the Parties disputed 6 terms in the '739 Patent and said that 35 U.S.C. § 112, ¶6 should apply for all 6. For the purposes of the Petition, the Petitioner has agreed to apply the following construction. Petition at 7.

Limitation	Structure and Function
1[a]: “storage means”	<u>Function</u>: storing as location data a physical location of the environmental controller <u>Structure</u>: memory

V. THE *FINTIV* FACTORS FAVOR DISCRETIONARY DENIAL UNDER § 314(A).

The Board may also exercise its §314(a) discretion to deny institution because this proceeding would not promote the efficient and conclusive resolution of the pending litigation dispute regarding the '739 Patent. Lennox is the real party in interest and the litigation is ongoing.

The Director has discretion to deny institution under 35 U.S.C. § 314(a). The Board’s precedential decisions in *NHK Spring Co., Ltd. v. Intri-Plex Technologies*,

Inc. and *Apple Inc. v. Fintiv Inc.* explain that the Board should consider “whether efficiency, fairness, and the merits support the exercise of authority to deny institution.”¹ As shown below, a majority of *Fintiv*’s factors support the Board’s exercise of discretionary denial because efficiency, fairness, and the merits don’t support institution.

A. Factor 1 –The District Court is Has Not Stayed the Parallel Litigation.

As mentioned earlier, there is a pending District Court litigation involving the ’739 Patent as well as 4 other patents asserted by Patent Owner against Lennox (“Lennox Litigation”). Lennox initially filed a Motion to Stay Pending IPR, this was denied by the Court in the Lennox Litigation. Subsequently, the Parties jointly filed a Motion to Stay, however, as of the date of this POPR, the Court has not stayed the litigation.

B. Factor 2 – The Expected Trial Date Is Neutral.

This factor is neutral. The Board is unlikely to issue a final written decision for this proceeding before April 2024. The district court, however, has scheduled the parallel litigation’s final pretrial materials due by May 13, 2024.²

¹ IPR2018-00752, Paper 8 (P.T.A.B. Sept. 12, 2018) (designated precedential); IPR2020-00019, Paper 11 at 5 (P.T.A.B. Mar. 20, 2020) (designated precedential).

² Ex-1011 (NDTX Scheduling Order).

Accordingly, because the deadline for the Board’s final written decision is right before the scheduled trial timeline, this factor is neutral.

C. Factor 3 – The Northern District of Texas, Patent Owner and Lennox Have Significantly Invested in the Parallel Litigation, Favoring Denial.

This factor weighs in favor of discretionary denial. Rosen submitted infringement contentions November 21, 2022 and Lennox submitted their invalidity contentions on December 15, 2022. All claim construction briefings were submitted, and a claim construction ruling is expected shortly.

This expenditure of resources was avoidable. Patent Owner filed the complaint in the parallel litigation on March 31, 2022. Petitioner waited 363 days from the filing of the Lennox Complaint to file this Petition on March 29, 2023. During that year, Rosen and Lennox expended significant resources (and continue to do so). The Board has found that this weighs in favor of discretionary denial.³

Even if Petitioner had diligently filed its petition in a timelier manner, this factor would still weigh in favor of discretionary denial. As explained, diligence in filing the petition does not overcome the concern over expended resources in the

³ *Immersion Sys. LLC v. Midas Green Techs., LLC*, PGR2021-00104, Paper 15 at 10 (P.T.A.B. Jan. 31, 2022) (internal quotation and citation omitted).

parallel litigation.⁴ And even the remaining work before trial isn't significant enough to overcome the extensive efforts already exerted by the parties and the court.⁵

Accordingly, because Patent Owner, Petitioner and the district court have expended significant resources in the parallel litigation, this factor weighs against institution.

D. Factor 4 – The Significant Overlap Between Issues Raised in this Proceeding and the Parallel Litigation Favors Denial.

This factor weighs in favor of discretionary denial. If the Board institutes this proceeding, significant overlap will occur. For example, as Lennox's invalidity contentions show, the parties will still be expending efforts to address the following overlapping obviousness arguments in the parallel litigation that are based on Grounds 1-3

- Petitioner has cited Liming and Rainer against the '739 Patent in the Lennox Litigation

⁴ *Verizon Business Net. Servs. LLC v. Huawei Techs. Co. Ltd.*, IPR2020-01278, Paper 12 at 11 (P.T.A.B. Jan. 26, 2021) (weighing claim construction and Markman hearing favored exercise discretion despite Petition's filing date only 2 months after service) (internal citations omitted).

⁵ *NXP USA, Inc. v. Impinj, Inc.*, IPR2021-01556, Paper 10 at 8-9 (P.T.A.B. Apr. 21, 2022) (internal citations omitted).

- Petitioner has cited Inoue and Peters and weather.com against the '739 Patent in the Lennox Litigation
- Petitioner has cited Ranier and Kikinis and weather.com against the '739 Patent in the Lennox Litigation

Further, institution would open the door to conflicting and inefficient rulings regarding validity. Accordingly, because of the significant overlap and duplicative rulings, this factor weighs against institution.

E. Factor 5 – The Patent Owner and Petitioner Are Parties to the Parallel Litigation.

The Board has consistently found parallel proceedings with the same parties to weigh in favor of exercising discretion to deny institution.⁶ There is no dispute that Petitioner and Patent Owners are the only parties to the parallel litigation.

As such, this factor weighs in favor of denial.

⁶ *Immersion Systems LLC v. Midas Green Technologies, LLC*, PGR2021-00104, Paper 15 at 15 (P.T.A.B. Jan. 31, 2022); *eClinicalWorks, LLC, Medical Software Solutions, Inc., and NextGen Healthcare, Inc. v. Decapolis LLC*, IPR2022-00229, Paper 10 (P.T.A.B. Apr. 13, 2022) (weighing even only two of three petitioner's status in parallel proceeding as favoring discretionary denial); *NXP USA, Inc. v. Impinj, Inc.*, IPR2021-01556, Paper 10 at 10 (P.T.A.B. Apr. 21, 2022); *cf. TCO AS v. NCS Multistage Inc.*, PGR2020-00078, Paper 16 at 11 (P.T.A.B. Feb. 18, 2021) (weighing petitioner's absence from parallel proceedings against discretion).

F. Factor 6 – Additional Circumstances Favor Discretionary Denial.

This factor favors discretionary denial. Among the additional factors considered are the merits of the proposed grounds and the necessity for third party discovery. Both considerations favor discretionary denial.

i. The Weakness of Grounds 1-2 Weighs Against Institution.

“Although we need not undertake a full merits analysis when evaluating *Fintiv* Factor 6, we consider the strengths and weaknesses of Petitioner’s case, where stronger merits may weigh against discretionary denial and weaker merits may favor exercising discretion to deny institution.”⁷ “[I]f the merits of the grounds raised in the petition are a closer call, then that fact has favored denying institution when other factors favoring denial are present.”⁸

As discussed above in Section III, the three proposed grounds fail to disclose at least “program stored in said memory for displaying messages received from said remote correspondent.”

⁷ *Immersion Systems LLC v. Midas Green Technologies, LLC*, PGR2021-00104, Paper 15 at 16 (P.T.A.B. Jan. 31, 2022) (weighing weak disclosures and lack of motivation to combine for exercising discretion to deny); *TCO AS v. NCS Multi-stage Inc.*, PGR2020-00078, Paper 16 at 22-27 (P.T.A.B. Feb. 18, 2021) (weighing failure to map prior art disclosures to claims sufficiently and weak proposed grounds weighed in favor of exercising discretion).

⁸ *Fintiv* at 15.

Accordingly, the merits of the proposed grounds are not “sufficiently strong to override the concerns about duplication of effort by the Board and the district court.”⁹ As a result, this factor weighs heavily against institution.

* * * *

In sum, five of the six *Fintiv* factors (Factors 1, 3-6) weigh against institution, one factor (Factor 2) is neutral. Accordingly, Patent Owner respectfully requests that the Board discretionarily deny this petition under §314(a).

VI. PETITIONER’S GROUNDS 1 & 2 FAILS TO ESTABLISH LIMING OR LIMING IN VIEW OF RAINER RENDERS CLAIM 1 OBVIOUS.

A. Overview of Liming (Ex-1004)

Liming is a published application titled “System and method providing a spatial location context.” Liming relates to the field of data and telecommunications networks, such as the Internet, and specifically concerns spatial location technologies, information search and retrieval systems, and electronic automation systems.

⁹ *Immersion Systems LLC v. Midas Green Technologies, LLC*, PGR2021-00104, Paper 15 at 16 (P.T.A.B. Jan. 31, 2022) (weighing weak disclosures and lack of motivation to combine for exercising discretion to deny); *TCO AS v. NCS Multi-stage Inc.*, PGR2020-00078, Paper 16 at 22-27 (P.T.A.B. Feb. 18, 2021) (weighing failure to map prior art disclosures to claims sufficiently and weak proposed grounds weighed in favor of exercising discretion).

The primary objective of Liming is to provide an integral spatial location context. Ex-1004, Abstract

Liming was primarily concerned with spatial location technologies, information search and retrieval systems, and electronic automation systems, but as discussed in detail below, Liming failed to disclose or render obvious elements of the Challenged Claims.

B. Overview of Rainer (Ex-1005)

Rainer is directed primarily to an apparatus and technique for regulating temperature in buildings. The primary objective of Rainer is to provide an integrated assembly of devices for providing and controlling building heating, ventilation cooling, fresh air ventilation, and air conditioning. Ex-1005, Abstract, 1:7-10

Rainer generally disclosed retrieving weather information from the internet for control and display purposes Ex-1005 4:31-34, but as discussed in detail below, Rainer failed to disclose or render obvious elements of the Challenged Claims.

C. Liming Alone nor Liming in view of Rainer Do Not Teach or Render Obvious at Least Element C of Independent Claim 1.

Elements A and C of claim 1. Element A recites the following:

A) physical location of the environmental controller stored as

location data in Storage means in the controller

Element C recites the following:

C) location response is storage of the location data at the remote device and correlation of the physical location to location response data stored at or available to the remote device or created by processing of location data at the remote device, whereafter location response data is transmitted from the remote device to the controller.

Ground 1 argues that Liming or Liming in combination with Rainer, renders claim 1 obvious. However, as shown below, Liming or Liming in combination with Rainer does not disclose an environmental controller that has geographical information, such as location data in the form of a zip code or telephone number, stored in them.

For example, Liming does not disclose “an environmental controller” with its “physical location” store in the “storage means” of the controller as required by Element A. Instead Liming discloses that “Block 406”, “Block 408”, and “Block 410” which are “a home, office building, or telecommunications facility with network capabilities” and which “may contain home or building automation capabilities”. Ex-1004 at ¶ 65. In other words, Liming discloses a building which may contain a home automation system, rather than an environmental controller with storage means for storing location data of the environmental controller.

Liming and Rainer disclose that location data is transmitted to the remote servers and the transmission induces a location response. However, the claimed

location response is storage of the location data at the remote device and correlation of the physical location to location response data stored at or available to the remote device or created by processing of location data at the remote device, whereafter location response data is transmitted from the remote device to the controller.

Element C claims an environmental controller that has geographical information, such as location data in the form of a zip code or telephone number, stored in them. Location data is output to transmitter means, delivered to, and processed by a remote device, and retransmitted by that remote device to the environmental controller or other remote device. Whatever its form, location data correlates in some way to the physical and geographic location of the environmental controller. Ex-1001, 7-8: 58-67, 1-11

The '739 Patent states several ways to make use of location data in a response by a remote device or remote correspondent. For example, it is well known that Internet web sites make certain information and/or algorithms available for use by the user linking to that web site, either for free or at a cost to the user. Automated means are preferred for linking the environmental controller to the web site and causing the web site to respond to the location data.” Ex-1001, 8:13-20.

Hence, method for delivering location relevant media to clients which may be achieved by storing content or pointers to such content, along with spatial or

geographic areas of relevance, in a table and web browser using cookies with location data considered by the Petitioner is not the same as the ‘739.

D. Since Liming and obvious over Liming in view of Rainer Does Not Teach or Render Obvious the Independent Claims, Liming and obvious over Liming in view of Rainer fails to Teach or Render Obvious the Dependent Claims

Parroting the obvious, since Liming and Liming in combination with Rainer fails with respect to independent claim 1, Liming and Liming in combination with Rainer also fails with respect to dependent claims 2, 3, 6, 7, 8, and 9.

VI. PETITIONER’S GROUND 3 FAILS TO ESTABLISH INOUE IN VIEW OF PETERS AND WEATHER.COM RENDERS OBVIOUS LIMITATIONS OF CLAIMS 1.

A. Overview of Inoue (Ex-1007).

Inoue is a patent titled “Software-based temperature controller circuit in an electronic apparatus.” Inoue is directed primarily to a temperature controller circuit in an electronic apparatus such as a computer device. The primary objective of Inoue is to control temperature in the electronic apparatus by changing the operation of a central processing unit (CPU) based on an information signal identifying the status of a cooling device such as a cooling fan installed within the computer device. Ex-1007, ¶ 0001.

The petitioner considers Inoue’s laptop as a thermostat system as the laptop is controlling the temperature inside the laptop via a temperature sensor using the CPU. The CPU controls the temperature by controlling a cooling fan, but as discussed in

detail below, Inoue failed to disclose or render obvious elements of the Challenged Claims.

B. Overview of Peters (Ex-1008)

Peters is a patent titled “Independently controlling passive and active cooling in a computer system.” Peters is directed primarily to a computer system having thermal control logic that independently controlling passive and active cooling in the computer system in response to processor temperature. Peters discloses a second temperature sensor that measures the temperature outside of a CPU. EX1008, Abstract, 1:16-21, 4:7-31, 5:32-53, 6:12-21

The petitioner considers Peters laptop as a “thermostat system” as the laptop controls temperature using thermal control logic temperature sensors. Further, one temperature sensor place outside of the CPU, but Peters failed to disclose or render obvious elements of the Challenged Claims.

C. Overview of Weather.com (Ex-1009)

Weather.com is a website published on January 26, 1997. It is a website that is accessible via the Internet and provides weather data to a requester. However, as discussed in detail below, Weather.com failed to disclose or render obvious elements of the Challenged Claims.

D. Inoue in combination with Peters and Weather.com Do Not Teach or Render Obvious Claim Element C of independent claim 1.

The '739 Patent and the preamble to claim 1 is directed to a novel HVAC system. The apparatus of Inoue and the system of Peters are directed to purely a computer CPU cooling device and are non-analogous art.

Element A of claim 1 also recites an “environmental controller” which the specification and the plain and ordinary meaning make clear controls “space conditioning equipment” such as HVAC (Ex-1001 at 6:62-65). Again, the apparatus of Inoue and the system of Peters are non-analogous prior art as they are directed to computer CPU cooling devices. Similarly, Weather.com is directed to a website rather than an environmental controller as disclosed in claim 1 of the '739 Patent. As such, none of these references teach the environmental controller with memory storing the physical location of the controller as required by Element A of claim 1.

Element C of claim 1 recites the following:

C) location response is storage of the location data at the remote device and correlation of the physical location to location response data stored at or available to the remote device or created by processing of location data at the remote device, whereafter location response data is transmitted from the remote device to the controller.

Ground 3 is based on Inoue in combination with Peters and Weather.com, the Petition relies heavily on this combination to support that element C is disclosed or

rendered obvious. However, Inoue in combination with Peters and Weather.com does not disclose an environmental controller that have geographical information, such as location data in the form of a zip code or telephone number, stored in them. Location data may take several forms as it is originally input into and through a local environmental controller, output to transmitter means, delivered to and processed by a remote device, and retransmitted by that remote device to the environmental controller or other remote device as claimed in Element C.

Inoue in combination with Peters and Weather.com use location data (zip code) to retrieve location response data (e.g. local weather) to display on laptop is discloses. However, The '739 discloses an environmental controller that has geographical information stored in them. Location data is output to transmitter means, delivered to and processed by a remote device, and retransmitted by that remote device to the environmental controller or other remote device. Whatever its form, location data correlates in some way to the physical and geographic location of the environmental controller. The invention provides for intervening transmission and/or conversion of forms of location data of the environmental controller until the location data reaches a desired remote device. Ex-1001, 7-8: 58-67, 1-11

The '739 Patent states several ways to make use of location data in a response by a remote device or remote correspondent. For example, it is well known that

Internet web sites make certain information and/or algorithms available for use by the user linking to that web site, either for free or at a cost to the user. Automated means are preferred for linking the environmental controller to the web site and causing the web site to respond to the location data.” Ex-1001, 8:13-20.

Hence, method for delivering location relevant media to clients which may be achieved by storing content or pointers to such content, along with spatial or geographic areas of relevance, in a table and web browser using cookies with location data considered by the Petitioner is not the same as the ‘739.

E. Since Inoue in combination with Peters and Weather.com Does Not Teach or Render Obvious the Independent Claims, Inoue in combination with Peters and Weather.com fails to Teach or Render Obvious the Dependent Claims

Parroting the obvious, since Inoue in combination with Peters and Weather.com fails with respect to independent claim 1, Inoue in combination with Peters and Weather.com z also fails with respect to dependent claims 2, 3, 6, 7, 8, and 9.

VII. PETITIONER’S GROUND 4 FAILS TO ESTABLISH RAINER IN VIEW OF KIKINIS AND WEATHER.COM. OBVIOUS LIMITATIONS OF CLAIMS 1-3 AND 6-9.

A. Overview of Kikinis (Ex-1006)

Kikinis is a published application titled “Method and apparatus for configuration of an internet appliance.” Kikinis is directed primarily to an apparatus for configuring such appliances for Internet access and use by dial-up connection to

a configuration server. The primary objective of Kikinis for configuring Internet-capable appliances.

Kikinis was primarily concerned with the connection of a network server with network to connect Internet appliances. Ex-1006, Abstract but as discussed in detail below, Kikinis failed to disclose or render obvious elements of the Challenged Claims.

B. *Kikinis* in combination with Rainer and Weather.com Does Not Teach or Render Obvious at Least Element C of Independent Claim 1.

The combination of Kikinis in view of Rainer and Weather.com fails to render claim 1 obvious as the combination fails to disclose either Elements A or C.

Element A requires that the controller store the physical location of the environmental controller in the storage means of the controller. Ex-1001 at claim 1. Neither Kikinis, Rainer, nor Weather.com disclose this element. For example, Kikinis discloses a server using DNIS or ANI to “draw product identification associations to, and locate particular users.” Ex-1006 at 6:38-41. ANI and DNSI are phone number recognition systems which would operate on the server itself, and not be stored in the storage means of the controller. *Id.* at 5:45-51. Similarly, Rainer also entirely fails to disclose this element. *See* Ex-1005. In contrast, weather.com is entirely directed to a server-side application and does not disclose this element

either. *See* Ex-1009. As such, the combination of Kikinis, Rainer, and Weather.com fails to disclose Element A of claim 1 and cannot render it obvious.

In addition, the combination also fails to disclose Element C. Element C of claim 1 recites the following:

C) location response is storage of the location data at the remote device and correlation of the physical location to location response data stored at or available to the remote device or created by processing of location data at the remote device, whereafter location response data is transmitted from the remote device to the controller.

Ground 4 is based on Rainer in combination with Kikinis and Weather.com, the Petition relies heavily on this combination to support that the element C is disclosed or rendered obvious. However, as shown below, Rainer in combination with Kikinis and Weather.com does not disclose a location response including storage of the location data at the remote device and correlation of the physical location to location response data stored at or available to the remote device or created by processing of location data at the remote device, whereafter location response data is transmitted from the remote device to the controller as claimed in Element C.

The system of in Rainer in view of Kikinis and Weather.com discloses thermostats connected to internet via a communication link and weather information

is obtained from “weather service”. However, claim 1 of the ’739 Patent does not disclose the weather information obtain in similar way as disclosed in Rainer in view of Kikinis and Weather.com.

The Patent ‘739 discloses an environmental controller that has geographical information, such as location data in the form of a zip code or telephone number, stored in them. Location data may take several forms as it is originally input into and through a local environmental controller, output to transmitter means, delivered to and processed by a remote device, and retransmitted by that remote device to the environmental controller or other remote device. Whatever its form, location data correlates in some way to the physical and geographic location of the environmental controller. For example, the transmitter means may link the environmental controller to an intervening remote server which has stored in it a correlation between the specific IP address or other specific identifier and the physical location of that environmental controller. In that case, a specific IP address or specific identifier is the functional equivalent of location data and is included in its definition herein. The invention provides for intervening transmission and/or conversion of forms of location data of the environmental controller until the location data reaches a desired remote device. Ex-1001, 7-8: 58-67, 1-11

Hence, method for delivering location relevant media to clients which may be achieved by storing content or pointers to such content, along with spatial or

geographic areas of relevance, in a table and web browser using cookies with location data considered by the Petitioner is not the same as the '739.

C. Since Rainer in combination with Kikinis and Weather.com Does Not Teach or Render Obvious the Independent Claims, Rainer in combination with Kikinis fails to Teach or Render Obvious the Dependent Claims

Parroting the obvious, Rainer in combination with Kikinis and Weather.com fails with respect to independent claim 1, Rainer in combination with Kikinis and Weather.com also fails with respect to dependent claims 2, 3, 6, 7, 8, and 9.

VIII. CONCLUSION

The Board should deny the Petition as the proposed prior art reference and combinations thereof claim to render the claims of the '739 Patent obvious under 35 U.S.C. § 103. In the alternative, the Board should exercise its discretion to deny the petition on the merits and/or *Fintiv* grounds.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Per 37 C.F.R. §42.24(a) and (d), the undersigned hereby certifies that the Petition complies with the type-volume limitation of 37 C.F.R. §42.24(a)(i) because, exclusive of exempted portions, it contains 5385 words as counted by the word-processing program used to prepare it.

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that the above-captioned Mandatory Notice was served on counsel of record for the Petitioner by filing this document through the Patent Review Processing System as well as by delivering a copy via electronic mail to:

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