

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.
Petitioner,

v.

HEADWATER RESEARCH LLC,
Patent Owner.

IPR2024-01051
Patent 8,639,811

PATENT OWNER'S PRELIMINARY SUR-REPLY

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Patent Owner herein responds briefly to each of Petitioner's two preliminary Reply arguments, failure of either of which is fatal to Petitioner's Jones-based theory. *See* POPR, 8-11 (setting forth two independent reasons for non-institution based on the theory discussed in the Petition).

I. The Petition did not rely on a theory where policies would modify the location (as opposed to the frequency) of data backup.

The Petition's sole substantive discussion of its Jones-based theory is reproduced below:

Jones teaches that "data protection software ... may execute in the background to perform data backups" and the "[b]ackup frequency ... may depend on ... enterprise policies." SAMSUNG-1006, 3:45-51. A POSITA would have recognized that preventing network access for backup processes (in the background) leaves additional bandwidth for other applications, avoiding cases where background packets are processed in lieu of or "processed ahead of the real-time network packets," as described in Rao. SAMSUNG-1005, [0003]; SAMSUNG-1003, ¶¶[316]-[317].

Pet. 39.

Patent Owner had understood the Petition's theory to be about adjusting backup *frequency* based on enterprise policies, not about adjusting the *location* of backup storage based on those policies. As such, Patent Owner did not understand that the Petition's theory would involve Jones' backup program running to perform

non-network data backups, as that is not the focus of Jones and is not depicted in any of Jones' figures. However, to the extent the Board finds that the Petition did set forth a theory in which Jones' backup software would be running to perform non-network data transfer, Patent Owner does not contest that under such a theory (in light of the newly cited portions of Jones in Petitioner's Preliminary Reply), Jones' backup application could be running even when it is not communicating over a network.

II. Petitioner's Reply interpretation of "preventing communication associated with first application over the first wireless network when the first application is running" is inconsistent with plain meaning and the '811 patent.

As Patent Owner explained in POPR, "'communication[s] associated with' a backup application would only exist when the backup application is attempting to perform communications for data backup." POPR, 9. An *example* of this is a generated packet, as noted by Patent Owner's expert. Ex. 2001, ¶39 ("A POSITA would have understood that in order to prevent a communication, there must be a communication to prevent, *such as, for example*, a data packet.") (emphasis added). However, not all attempted communications involve blocking packets.

For example, the POPR-cited portions of the '811 patent are not limited to blocking packets as examples of "preventing communication." The '811 patent

discusses “pass[ing]” or “block[ing]... the traffic *or* network access associated with” a given queue. Ex. 1001, 56:11-34 (cited by POPR, 9). The recited “traffic or network access” need not be a packet specifically, but more broadly includes a request to access the network (such as, e.g., a request to open a network connection or a request to place a phone call). *See* Ex. 1001, 17:65-18:3 (discussing examples of communications such as “a given traffic packet, group of packets, packet flow, voice connection, or other traffic flow”) (emphasis added); *id.* 162:49-57 (discussing “voice traffic” separately from “data traffic”). As Patent Owner’s expert explained, a “communication associated with” a backup application occurs “*when the backup application is actually attempting to send or receive data.*” Ex. 2001 ¶39; POPR, 9 (equating “communication[s]” with attempts to access the network, regardless of whether packets have been specifically generated); *see also* Ex. 2001 ¶40 (explaining that in the proposed combination, there would not be any “attempted ‘access to the first wireless network’ as recited by claims 1 and 4 that could be restricted or prevented”).

Petitioner, even in Reply, does not actually explain what it believes to constitute “preventing communication associated with” an application, other than asserting that it is not limited to blocking packets and contending that Jones’ application’s decision (pursuant to its own programming) to not even attempt communication would satisfy that requirement. *See generally* Preliminary Reply at

3-5. However, this ignores the testimony of Patent Owner's expert that "in order to prevent a communication, there must be a communication to prevent," such as "when the backup application is actually attempting to send or receive data." Ex. 2001, ¶39. Petitioner also presents *no* evidence from the '811 patent that an application deciding, based on its own programming, to not attempt any communication at any given moment in time would constitute "preventing communication associated with" that application.

Under Petitioner's apparent interpretation, a phone application that is not actively placing a call would be "preventing communication associated with" the phone app, because that app would be "prohibited" (pursuant to its programming) from placing calls except when a user issues a request to place a call. A POSITA would not understand that to be the case, however; the phone application is not *preventing* communication, it is simply *not issuing* communications. Only if the application made some attempt to communicate could an identifiable "communication associated with the application" exist such that that "communication associated with" that application could be *prevented*. See Ex. 2001, ¶39.

In sum, an application's programming that simply does not issue communications under certain conditions would not be "preventing communication associated with the first application" under those conditions. Rather, there would

simply be no “communication associated with” that application to prevent, because the application is not making any attempt to communicate. Ex. 2001, ¶39. And Petitioner presents no intrinsic or extrinsic evidence to the contrary.

Date: October 25, 2024

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e)(1))

The undersigned hereby certifies that the above document was served on October 25, 2024, by filing this document through the Patent Trial and Appeal Case Tracking System as well as delivering a copy via electronic mail upon the following attorneys of record for the Petitioner:

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