

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.,

Petitioner,

v.

STERLING COMPUTERS CORPORATION,

Patent Owner.

IPR2025-00430

U.S. Patent No. 7,716,217

PETITIONER'S RESPONSE TO REQUEST FOR DIRECTOR REVIEW

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I. INTRODUCTION

Patent Owner’s (“PO”) Request for Director Review (Paper 52, “Request” or “Req.”) of the FWD (Paper 51) finding the challenged claims unpatentable should be denied. Director Review requests are limited to decisions presenting (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law. PO presents no such issues, instead raising issues for the first time that are not part of the official record¹ or quibbling with the Board’s heavily fact-bound determinations about what the prior art teaches. Because those determinations are all well supported by the record evidence, the Request presents nothing to command the Director’s attention.

II. ARGUMENT

A. PO’s Request Presents No Meritorious Director Review Issues for Grounds 2-3 Based on Rose, Which Cover All Challenged Claims.

Petitioner presented two Rose-based grounds each covering all Challenged Claims. Pet. (Paper 2), 2. PO raises two highly fact-bound disputes about Rose’s teachings: (1) it does not “re-rank” content, and (2) it considers feedback from “all” users, not merely those that are cognate. Req. 1-10. Because PO’s arguments are

¹ See Director Review process, §3.E, <https://www.uspto.gov/patents/ptab/decisions/director-review-process> (prohibiting new arguments).

inconsistent with Rose’s teachings, there is nothing for the Director to correct in the Board’s determinations.

1. The Board Correctly Determined Rose’s Relevance Score is Based on the First User’s Own Actions.

PO argues Rose evaluates the relevance of content that a user has not interacted with, such that if a user interacts with content, then Rose will never “re-rank” it. Req., 1-7. Based on this, PO argues the Board erred in finding Rose teaches “determin[ing] the relevance score” “based at least in part on the first determined measure of relevance” – i.e., “one or more actions of the user on the piece of electronic content.” *Id.*, 1. The Board carefully examined and rejected this argument. FWD, 41-44. Notably, PO concedes Rose will always update a user’s profile after they interact with content (POR (Paper 18), 30); PO argues this is insufficient because, in its view, Rose would ignore that updated user profile and never use it to “re-rank” content the user has already ranked. Req., 4.

The Board (correctly) rejected PO’s arguments about Rose not “re-ranking” content as inconsistent with Rose’s teachings. First, Rose teaches that it ranks “*all* of the messages addressed to that user”²; as the Board explained, this includes

² PO does not address this quoted language for good reason. *See* Req., 4. Rose plainly and explicitly discloses ranking “all of the messages addressed to that

ranking messages with which the user has already interacted. FWD, 41 (citing EX-1006, 4:38-42) (emphasis added). Additionally, the Board found Rose updates a user's profile "each time" they interact with content. FWD, 41 (citing EX-1006, 6:38-40). This updated user profile is used to rank content. *Id.*; *see also* Pet., 54 (citing EX-1006, 4:33-35, 5:21-23) ("[R]atings from the user's client device are... 'used to update the user profile'... that is 'used to rank the messages stored within the system.'"). The Board concluded that when Rose ranks "all" messages to a user, that ranking will be based on the user's updated user profile, which is informed by the user's earlier interactions with that content. FWD, 41. Thus, PO's argument that it is "undisputed" that Rose "does not expressly disclose re-scoring an item after the first user provides feedback" is incorrect (Req., 2)—Rose discloses ranking *all* messages, including those with which a user previously interacted.

PO is also incorrect that the Board relied on "common sense" to supply a missing claim limitation. Req., 3. Rather, the Board stated that PO's arguments about Rose not "re-ranking" content were "an unintuitive reading of Rose's email system" that "***does not comport with Rose's teachings.***" FWD, 42 (emphasis added). First, if a user ranked a document highly, PO's arguments would mean that ranking would

user," without limitation to whether the user already interacted with those messages. EX-1006, 4:38-42.

be fixed forever, “no matter how relevant the first email is in comparison to other emails.” *Id.* Second, the Board noted, if a user positively rated “junk mail,” that rating would be locked indefinitely, even if Rose would otherwise deem that electronic content as irrelevant. *Id.* The Board concluded that these scenarios were inconsistent with Rose’s purpose, which aims to rank “particularly pertinent” messages highly while “junk mail messages are given a low ranking.” *Id.* (citing EX-1006, 4:38–44).³ PO has not shown the Board erred in these determinations.

PO argues Rose cannot “re-rank” content because it provides only “predictions” of relevance for messages “to be provided” to a user, meaning that Rose would not rank messages that have already been “provided.” Req., 4-5. PO’s hyper-literal reading of Rose is unsupported, including because Rose provides an “example” of this scenario where an “e-mail system” ranks “all of the messages *addressed to* that user.” FWD, 41 (quoting EX-1006, 4:38-42) (emphasis added); EX-1006, 4:51-53 (“The left hand column [of Fig. 3]...indicates the relative ranking score of *each message*[.]” (emphasis added)). Thus, Rose itself contradicts PO’s

³ The Request points repeatedly to page 10 of the oral hearing transcript (Req. 2-3 (citing Tr. (Paper 49), 10:3-20), but there Petitioner’s counsel merely explained that while there was no “in haec verba” disclosure, the process was suggested by Rose’s disclosure and would have been understood by a POSITA.

interpretation of its teachings, instead ranking “all” messages addressed to a user, not merely those that are “to be provided.” The Board also rejected PO’s argument that Rose’s use of “likely” or “prediction” means that Rose only ranks content a user has not already ranked. FWD, 43 (“Patent Owner makes too much out of Rose’s use of the phrase ‘predicted degree of relevance,’ as if making an initial prediction forecloses making updated predictions based on updated information.”); EX-1045 ¶25 (“[T]erms like ‘predicted’ and ‘likely,’ which are common when discussing computer-based relevance scores, merely reflect calculating an approximation of that content’s relevance to the user—they do not suggest a system does not re-rank content[.]”). Indeed, the Board found PO’s example from Rose—allowing a user to rank messages with a “thumbs up” or “thumbs down”—supported that Rose “re-ranks” content because messages that are ranked poorly by a user “would [then] be given a relatively low ranking.” FWD, 43-44.

PO newly argues a distinction between “score” and “ranking,” whereby Rose’s initial “score” would be fixed but not its “ranking” (Req. 5-6); even if considered, this argument does not show the Board erred. Notably, PO’s concocted system would fix the score to the initial prediction score, with new emails being ranked compared to that fixed score rather than the updated one based on user interactions. PO’s argument is nonsensical because the content’s “score” directly

informs its rank.⁴ EX-1006, Fig. 3 (ranking messages based on score), 4:51-53 (referring to “relative **ranking score** of each message” (emphasis added)); FWD, 45 (“Rose teaches an email interface with a score column [displaying] the relative ranking score of each message.”). Such a system would be contrary to Rose’s teachings to rank highly “messages which are particularly pertinent to the user’s interests.” FWD, 40 (quoting EX-1006, 4:40-49). Rather than conflate these terms, the Board simply disagreed with PO and concluded Rose teaches ranking *all* content addressed to a user including based on the user’s previous interaction with that content. FWD, 42-43 (“Patent Owner’s reading of Rose adds a caveat to Rose’s plain words such that ‘all messages’ means *not* all messages and, instead, means a specific subset of all messages that have not been rated by a user or means ‘unread messages.’...[W]e do not find any disclosure in Rose supporting that caveat.” (emphases original)). Thus, PO’s new argument is wrong.

PO also argues the Board’s findings that Rose will give a relatively low ranking to content a user marks as not interesting (FWD, 43) assumes that email “will be scored exclusively based upon the first user’s feedback.” Req., 6-7. Not so.

⁴ Indeed, PO previously treated an item’s “rank” and “score” synonymously. *See, e.g.,* POR, 30 (“Rose does not teach or suggest updating **the ranking score** for an item **after** the first user has read and rated it.” (emphasis original)).

The Board explained Rose ranks content based on (1) “similarity between a document vector and the user’s profile vector,” (e.g., informed by the first user’s feedback), and (2) “correlating indications provided by other users.” FWD, 29-30. PO asserts that because Rose considers feedback from the “community,” the Board’s holding would lead to the “not ‘intuitive’” scenario where a user could rate a movie poorly and still be shown that movie based on the community’s feedback. Req., 6-7. But as Petitioner’s expert explained, that is often the intended outcome for such community-based feedback systems, e.g., showing a user content they might otherwise believe is irrelevant. EX-1045, ¶27. Not only is this outcome “intuitive,” it is intentional.

Finally, PO argues the Board did not support its “conclusory finding” that (1) because Rose teaches that its user profile is updated “[e]ach time a user provides a new response” indicating interest in a retrieved message,” then (2) “when Rose provides its ranking of all email messages, that email’s ranking is updated.” Req., 7 (citing EX-1006, 6:38-40). PO ignores the Board’s citations and analysis leading up to these statements, including that (1) Rose’s user profile is used to rank messages, (FWD, 41 (citing Pet. 45)), and (2) “all of the messages to that user are ranked” (*id.* (citing EX-1006, 4:38-42)). Because the user’s updated user profile is used to rank “all” messages to that user, the updated user profile will be used to rank those messages with which the user has interacted.

At bottom, PO disagrees with the Board’s well-supported factual findings about Rose. But PO is simply incorrect, and its disagreements about Rose’s teachings do not merit Director Review.

2. The Board Correctly Determined Rose “Identif[ies]” a Second User Cognate to the First User.

PO next argues the Board erred in finding Rose “identif[ies]” another user that is “cognate to the [first] user”⁵ because Rose considers feedback from all other users. Req. 8-10. Again, this argument was examined at length and rejected by the Board based on a careful analysis of the record. FWD, 36-37. PO’s dispute about Rose’s teachings does not merit Director Review.

PO argues Rose does not identify “cognate” users because it considers correlations from “all users.” Req., 8. But the Board disagreed, explaining that Rose teaches ranking the relevance of content by using “regression methods” to “*identify* the most important attributes that are used as predictors, e.g.,...*users having similar feedback responses[.]*” FWD, 36-37 (citing EX-1006, 7:41-47) (emphasis added); *id.*, 37 (citing EX-1006, 5:55-60) (“[A] user’s reaction to a movie ‘provide[s] information to rank that movie for viewing by other *users whose interests in movies*

⁵ “Cognate” users are merely “other users who are ‘similar’ to the user.” FWD, 5 (citing EX-1001, 25:37-39, 35:65-36:6, 43:20-30).

are similar or opposed.” (emphasis added)). The Board also rejected PO’s argument because it adds an unsupported negative limitation to the claims, i.e., excluding input from non-cognate users. *Id.*, 36 (“[T]he claim does not preclude consideration of feedback from all other users, whether they are cognate or not.”); EX-1001, Cl. 1 (“identify at least one other of the plurality of users...that is cognate to the user”). None of PO’s arguments affect that Rose teaches identifying cognate users by identifying “users having similar feedback responses.” FWD, 36-37.

PO repeats its argument that Rose identifies “attributes” and not “users,” (Req., 9-10), but the Board correctly rejected this argument as ignoring Rose’s teaching that the “attributes” being “identif[ied]” include “*users* having similar feedback responses.” FWD, 37 (citing EX-1006, 7:41-47) (emphasis added). Although PO’s Request says much about the surrounding language—e.g., “attributes,” “salient terms in a document,” and “similar feedback responses”—PO does not explain why Rose’s statement about identifying “users” fails to meet this claim limitation. *Compare* Req. 9-10, *with* EX-1006, 7:37-47. PO’s arguments that are directly contradicted by Rose’s teachings do not merit Director Review.

B. PO’s Request Presents No Meritorious Director Review Issues for Ground 1 Based on Dumais, Which Covers All Challenged Claims.

PO presents three arguments for the Dumais-based ground, which also addressed all Challenged Claims (Pet., 2): (1) the Board collapsed the requirements of identifying a “recipient” and “cognate” user; (2) Dumais identifies a “cognate”

user before the electronic content and user for whom relevance is being evaluated are “identified,” and (3) the Board did not properly consider PO’s diligence evidence in its attempt to antedate Dumais. Req., 10-15. None of PO’s arguments have merit.

1. The Board’s Decision on Dumais Did Not Render the “Cognate” Limitation Superfluous.

PO argues the Board’s decision as to the Dumais ground failed to require identification of one other user who is both a recipient of the piece of electronic content and is cognate to the first user. Req. 10-13. This is incorrect and is again based on PO’s incorrect understanding about what the prior art teaches. The Board correctly found that Dumais identifies users who are both recipients and cognate to the user for whom relevance is being evaluated. FWD, 20-26.

Specifically, Dumais uses “collaborative filtering” to identify users having “similarities” based on their “usage of items.” FWD, 20-21 (citing EX-1005, ¶¶52, 55-56). Because Dumais contemplates that its teachings can be used with email, the Board determined these “similarities” would be based on users who had received and interacted with the same email. *Id.*, 21 (citing EX-1005, ¶¶22, 56).

PO argues the Board assumed that simply being a “recipient” makes a user “cognate” to the original user, rendering the “cognate” term superfluous. Req., 10-

13. Setting aside that this is a new argument,⁶ the Board explicitly found the opposite. FWD, 24 (“[N]ot all recipients of the same email are necessarily cognate in Dumais; rather, recipients who have the same interaction with that email are cognate, whereas recipients of that email who do not have the same interaction with that email are not cognate.”). Indeed, PO concedes the Board looked to users’ “interactions” with content (Req., 12), confirming the Board did not merely discuss users *receiving* the same content, but instead relied on their similar *interactions* with that content. Req., 12-13; FWD, 20-21, 23. The Board’s analysis gives meaning to both the “recipient” and “cognate” terms without rendering either superfluous.

2. The Board Correctly Determined Dumais’ “User Model” Satisfies the “Identify” Limitation.

PO argues the Board erred in finding Dumais’ user model identifies a recipient of a particular piece of content and who is cognate to the first user. Req., 13-14. But in making this argument, PO seeks to include a new⁷ temporal limitation—requiring

⁶ See POR, 51-56; PO Sur-Reply, 4 n.5, 6-7 (not making this argument); *but see* Director Review process, §3.E (prohibiting new arguments).

⁷ PO never previously argued Dumais could not satisfy the claims because it, purportedly, “creates its user model before it is known which item needs to be scored.” *Compare* Req., 13-14, *with* POR, 17-19, 51-56; PO Sur-Reply, 6-7.

that a system cannot identify a “cognate” user until the electronic content and user for whom relevance is being evaluated are “identified”—that does not accurately reflect the challenged claims. Req., 13-14. The Director should reject it.

PO argues that Dumais cannot meet the challenged claims because it creates a “user model” for a user “**before** it is known which item needs to be scored.” Req., 13. But the challenged claims merely require “identify[ing]” another user who is a “recipient of the piece of electronic content and that is cognate to the user”—they say nothing about when the information used to make that identification must be collected. EX-1001, Cl. 1. PO presents no serious reason why Dumais could not simply track all the relevant information in its “user profiles” and then look at the information relevant to a particular piece of electronic content/user when evaluating the relevance of that content.

Because PO’s argument is based on an incorrect understanding of the challenged claims, it does not merit Director Review.

3. The Board Correctly Determined PO Failed to Adequately Present Evidence of Diligence.

Finally, PO previously argued Dumais is not prior art and attempted to swear behind Dumais. POR, 45-50. On Director Review, PO argues the Board erred in failing to consider PO’s evidence of diligence. Req., 14-15. Not so. Instead, the Board concluded that PO had failed its temporary burden of production when trying to antedate Dumais because PO failed “to specifically cite the relevant record

evidence combined with an explanation of the significance of the produced material in briefs.” FWD, 11-17 (citing *Parus Holdings, Inc. v. Google LLC*, 70 F.4th 1365, 1371 (Fed. Cir. 2023)). PO’s failure to do so does not merit Director Review.

PO’s Request shows precisely why the Board rejected its evidence as insufficient. PO argues that it “cited EX2003-14 and EX2032-78” as evidence showing diligence (Req., 14 (citing Resp., 5-6, 45, 49)), but these are the precise kinds of broad and conclusory arguments that are inappropriate. *See, e.g., Parus Holdings*, 70 F.4th at 1371 (“One cannot reasonably expect the Board to sift through hundreds of documents, thousands of pages, to find the relevant facts.”); *see also Gen. Access Sols., Ltd. v. Sprint Spectrum L.P.*, 811 F. App’x 654, 658 (Fed. Cir. 2020) (affirming Board’s exclusion of conception arguments incorporated by reference from claim charts). PO further argues that it “explained ‘the significance’ of the material” (Req., 14), but its cites from its briefing confirm, as the Board found, that PO merely “cite[d] entire exhibits and assert[ed], without analysis or explanation, that they show diligence” (FWD, 13), as shown below:

- POR 5-6 (“Along with the previously submitted evidence (EX2003 through EX2014) . . . additional documentation relating to diligence (EX2032 through EX2078) corroborate the inventors’ testimony[.]”);
- POR 45 n.6 (“The inventors’ background is set forth in their declarations and exhibits cited within. EX2003, EX2015, EX2030, EX2031, EX2016-EX2018 & EX2075-2078”);
- POR 49 (“Patent Owner has provided additional evidence that . . . they were refining the formulas to implement the BlueSpace relevance

model and continuously exercised reasonable diligence. EX2030 (J. Marston declaration); EX2031 (P. Marston declaration); EX2032 through EX2074 (corroborating documentation)").

Indeed, PO concedes it did not include "pinpoint citations" to its evidence. Req., 14. Thus, PO essentially concedes it did not "specifically cite the relevant record evidence" and explain "the significance of the produced material *in briefs*." See *Parus Holdings*, 70 F.4th at 1372 (emphasis added).

PO argues the Board should have considered the explanation contained in its "inventors' declarations." Req., 15. But the Board's rules require PO to make those arguments *in its briefing*, forbidding PO from presenting its arguments in supporting declarations that are incorporated by reference into that briefing. 37 C.F.R. §42.6(a)(3) ("Arguments must not be incorporated by reference from one document into another document."); see also *Parus Holdings*, 70 F.4th at 1371-72 (affirming Board decision refusing to consider evidence and arguments incorporated by reference into brief). Even then, the Board addressed PO's inventor declarations, concluding that PO "does not cite any non-testimonial evidence corroborating that testimony," including because the inventors admitted that many emails from the relevant time "no longer exist." FWD, 15 (citing EX2030, EX2031).

PO further argues that the Board should have considered PO's diligence arguments made for the first time in its Sur-Reply. Req., 15. **First**, the Board found these arguments to be procedurally improper, including because they were raised for

the first time in PO's Sur-Reply. FWD, 14-15 (citing 37 C.F.R. § 42.23(b)). **Second**, the Board explained that "even if we were to consider the untimely new arguments and citations in the Sur-reply, they would not show diligence" (FWD, 15), confirming these belated arguments were likewise substantively insufficient to show diligence. Indeed, the Board explained that (1) the inventors admitted that much of the contemporaneous evidence from that timeframe no longer existed, (2) the Sur-Reply focused on the inventors' "other work" that did not show diligence as to the alleged invention, and (3) PO had again cited hundreds of pages of exhibits, without "provid[ing] a single pincite and accompanying explanation discussing what specific work was done and by whom." FWD, 15-17 (discussing PO Sur-Reply, 15-18). Thus, PO's claim that the Board simply "refused to consider the evidence, finding the descriptions 'untimely'" is incorrect.

Because PO failed to adequately develop its arguments and evidence *in its briefing*, the Board correctly determined that PO had failed to antedate the Dumais reference as prior art.

III. CONCLUSION

For the foregoing reasons, PO's Request for Director Review should be denied.

Dated: September 10, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2026 true and correct copies of the foregoing PETITIONER’S RESPONSE TO REQUEST FOR DIRECTOR REVIEW were served via electronic mail upon the following counsel of record for PO:

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