

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

VIRTAMOVE, CORP.,
Patent Owner.

Case No. IPR2025-000487
Patent No. 7,519,814

PATENT OWNER'S PRELIMINARY RESPONSE

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ARGUMENT	2
III.	CONCLUSION	7

PATENT OWNER'S EXHIBIT LIST

No.	Description
2001	May 7, 2025 Transfer Order in <i>VirtaMove v. Google</i> , 24-CV-00033 (W.D. Tex.)
2002	DocketNavigator Median Time-to-Trial Statistics
2003	National Judicial Caseload Profile, <i>available at</i> https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_distprofile1231.2024.pdf
2004	Petitioner Google's October 17, 2024 Invalidity Contentions
2005	Declaration of Erik de la Iglesia in Support of Patent Owner's Preliminary Response to Petition
2006	<i>Curriculum vitae</i> of Erik de la Iglesia

I. INTRODUCTION

Patent Owner will disclaim claims 31-34 of the '814 patent shortly after the filing of this Preliminary Response, leaving claims 1-30 as the only remaining claims challenged by this Petition.¹ Because the Board may not institute an *inter partes* review based on disclaimed claims,² institution of this proceeding is appropriate only if the Petition can demonstrate a reasonable likelihood of prevailing with respect to claim 1, the sole remaining challenged independent claim

The Petition fails to establish a reasonable likelihood of prevailing with respect to claim 1, and thus fails to establish a reasonable likelihood of prevailing with respect to any claim that depends from it. Specifically, claim 1 requires that the claimed method be performed “[i]n a system having a plurality of servers with operating systems that differ.” The Petition contends that its primary reference (“Blaser”) discloses this limitation, but the Petition mischaracterizes Blaser’s disclosure. In actuality, Blaser discloses only a system that includes a *single* operating system.

¹ Patent Owner does not concede the merits of the Petition’s challenges as to any claims; disclaimer of the referenced claims is merely to simplify proceedings.

² 37 C.F.R. § 42.107(e) (“No *inter partes* review will be instituted based on disclaimed claims.”).

To the extent Blaser fails to disclose a system with multiple different operating systems, the Petition contends that the secondary reference (“Calder”) discloses a system that includes both Windows and non-Windows operating systems. But this also fails, because the Petition presents no credible motivation for, or evidence of reasonable expectation of success in, modifying Blaser’s layers to be compatible with non-Windows operating systems as the Petition alleges would be obvious.

II. ARGUMENT

Claim 1 of the ’814 patent requires that the claimed method be performed “[i]n a system having a plurality of servers with operating systems that differ.” Ex. 1001, 17:30-32. The Petition alleges that this limitation is satisfied in its proposed Blaser-Calder combination, either because Blaser itself discloses it (Pet. 14), or because Calder discloses “a plurality of servers with operating systems that differ by OS family (e.g., Windows- and Unix-based servers)” (Pet. 15). Neither of these theories succeeds.

First, the Petition contends that the limitation is disclosed in Blaser because, allegedly, “Blaser’s layers are compatible with various ‘Windows operating system[s]’ (‘Windows 95, 98, NT, 2000, and XP’ (Blaser, 13:43-57)) and ‘operating systems other than Windows (Blaser, 3:28-36).” Pet. 9-10; Pet. 14-15.

However, Blaser states that any given layer is “provided of an application layering system under *a* [single] 32-bit Microsoft Windows architecture, such as

Windows 95, 98, NT, 2000, and XP” (Ex. 1005 13:43-57); the cited portion of Blaser does not teach that a system would involve *numerous different* architectures, and Blaser does not disclose that a specific layer would be compatible with different operating systems. Instead, a POSITA would understand that any *given* layer, if it were to be ported between computers having different operating systems, would need to be modified, and there is no articulated reason in the Petition to modify the layers in this regard. Ex. 2005, ¶¶29-31. Indeed, a POSITA would understand that system predictability and stability would be increased if all computers in a networked computer system used the *same* operating system, because then the exact same layers could be used across all of the computers in the system. Ex. 2005, ¶31.

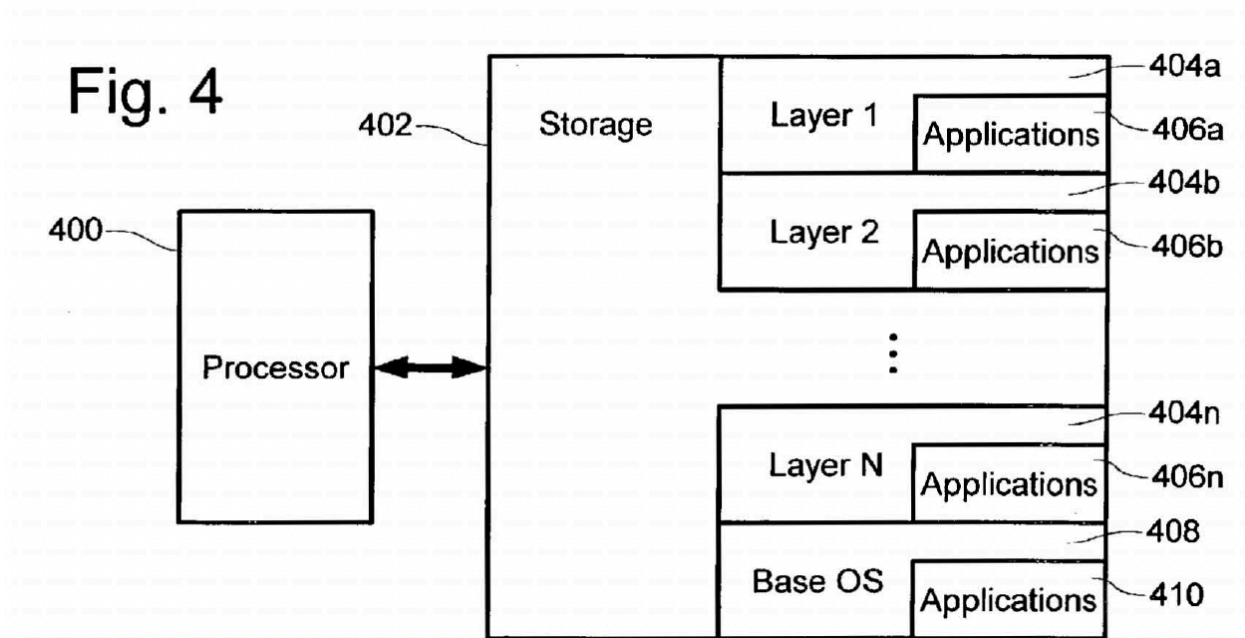
In an apparent attempt to cure this deficiency of Blaser’s disclosure, the Petition relies on an equally deficient disclosure elsewhere in Blaser. Specifically, the Petition relies on Blaser’s discussion of “operating systems other than Windows” in asserting that “Blaser’s layers are compatible with... ‘operating systems other than Windows.’” Pet. 14 (quoting Ex. 1005, 13:43-53).

As explained by Patent Owner’s expert, this disclosure does *not* teach the compatibility of Blaser’s layers with “operating systems other than Windows.” Ex. 2005, ¶¶32-33. Instead, it teaches (under a discussion titled “General Concepts”) that “[t]he meaning of registries and registry settings is therefore extended to future Windows operating systems and operating systems other than windows.” Ex. 1005,

3:15, 3:28-36. Nothing in this disclosure (or in Blaser more generally) teaches the compatibility of layers (much less any individual layer) with operating systems other than Windows. Ex. 2005, ¶33.

The Petition also alleges that Blaser says that ‘multiple versions of a software product are [often] installed’ in a network because ‘an older version... supports a function desired but not supported in a newer version,” and the Petition and Dr. Bhattacharjee contend that “POSAs understood that different ‘versions’ of software typically included versions of the same application designed for different OSs.” Pet. 10; Ex. 1003 ¶83.

But again, this is a misrepresentation of Blaser’s actual disclosures. Ex. 2005, ¶¶34-36. This is *not* a teaching that multiple versions of a software product are [often] installed “in a network;” it is a teaching that “multiple versions of a software product are installed *on a computer*.” Ex. 2005, ¶35; Ex. 1005, 13:29-30. And in the context of Blaser, each computer has only a single operating system; for example, Blaser’s Figure 4 shows only a single “Base OS” that all layers (and the applications within them) rely on:



Ex. 1005, FIG. 4.

Accordingly, Blaser’s reference to “multiple versions of a software product” clearly does not, as the Petition asserts, relate to versions of a software product installed on different computers in a network compatible with different OSs. Ex. 2005, ¶36. Instead, Blaser’s teaching in this regard is unmistakably a reference to multiple versions of a software product installed on a *single computer*. *Id.* And as Patent Owner’s expert explains, all of these applications would need to be compatible with the *same* operating system in the context of Blaser’s teachings, as shown in FIG. 4 of Blaser. *Id.*

The Petition also alleges that “Blaser-Calder’s system also has a plurality of servers with operating systems that differ by OS family (e.g., Windows- and Unix-

based servers).” Pet. 15. But the Petition does not explain how Blaser’s layers would work outside of the Windows architecture, nor does it explain any modification that would reasonably be expected to succeed in this regard. Ex. 2005 ¶37. As noted above, the allegation that Blaser’s layers are compatible with “operating systems other than Windows” (Pet. 14) is simply a misreading of Blaser, and a POSITA would not understand Blaser to teach compatibility of its layers with any non-Windows operating systems. Ex. 2005, ¶¶32-33.

Furthermore, the Petition provides no evidence that modifying Blaser’s layers to be compatible with non-Windows OSs would be reasonably expected to succeed. While the Petition alleges that Calder teaches how to modify *applications* so that they can execute on non-native platforms (Pet. 12), there is no discussion of how Blaser’s *layers* (which *contain* applications) would be modified to do so. The Petition does nothing to articulate *how* this modification would have been done, much less articulate this unexplained modification would have been within the level of skill in the art. Without an explanation of *how the references would be* modified, or *why* those modifications would be within the level of skill in the art, the Petition fails to establish a reasonable likelihood of prevailing with respect to any challenged claim. And Patent Owner’s expert explains that Petitioner’s failure to articulate the necessary modifications is no trivial oversight, because any necessary modifications

(to the extent possible) would have been a significant challenge even for individuals of *greater* than ordinary skill in the art. Ex. 2005, ¶38.

III. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that institution be denied.

Date: June 10, 2025

Respectfully submitted,

/James A. Milkey/
James A. Milkey, Reg. No. 79,503
RUSS, AUGUST & KABAT
12424 Wilshire Blvd., 12th Fl.
Los Angeles, CA 90025

Counsel for Patent Owner

CERTIFICATION REGARDING WORD COUNT

Pursuant to 37 C.F.R. §42.24(d), Patent Owner certifies that there are 1,242 words in the paper excluding the portions exempted under 37 C.F.R. §42.24(a)(1).

Date: June 10, 2025

Respectfully submitted,

/James A. Milkey/
James A. Milkey, Reg. No. 79,503
RUSS, AUGUST & KABAT
12424 Wilshire Blvd., 12th Fl.
Los Angeles, CA 90025

Counsel for Patent Owner

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

The undersigned hereby certifies that the above document was served on April June 10, 2025 by filing this document through the Patent Trial and Appeal Case Tracking System (PTACTS) as well as delivering a copy via electronic mail upon the following attorneys of record for Petitioner:

Elisabeth H. Hunt, Reg. No. 67,336
Gregory S. Nieberg, Reg. No. 57,063
Anant K. Saraswat, Reg. No. 76,050
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210-2206
EHunt-PTAB@wolfgreenfield.com
GNieberg-PTAB@wolfgreenfield.com
ASaraswat-PTAB@wolfgreenfield.com

Date: June 10, 2025

Respectfully submitted,

/James A. Milkey/
James A. Milkey, Reg. No. 79,503
RUSS, AUGUST & KABAT
12424 Wilshire Blvd., 12th Fl.
Los Angeles, CA 90025

Counsel for Patent Owner