UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

SANDPIPER CDN, LLC,
Patent Owner.

IPR2026-00190

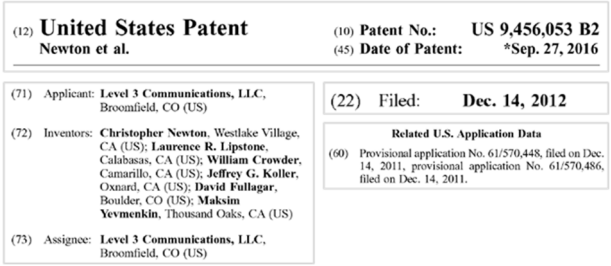
Patent No. 9,456,053

PETITIONER'S AUTHORIZED SUR-REPLY TO PATENT OWNER'S REPLY IN SUPPORT OF ITS REQUEST FOR DISCRETIONARY DENIAL

This IPR is an important use of Office resources for multiple reasons. *See* Paper 9 ("DD Opp."). Rather than address relevant issues, PO's discretionary denial reply (Paper 10, "DD Reply") cobbles together a self-serving narrative about its co-founder Andrew Swart. But Mr. Swart is not an inventor of the '053 patent, and PO provides no evidence connecting him—or so-called "Footprint" software he was allegedly involved in developing—to the subject matter of the challenged claims. PO's strained arguments only show the lengths PO is willing to go to prevent the Office from considering the merits of this IPR.

I. NEITHER PO NOR ANDREW SWART HAS A CONNECTION TO THE TECHNOLOGY OF THE '053 PATENT

The '053 patent was filed in 2012 and purports to claim priority to provisional applications filed in 2011. EX1001, Cover. The patent names six inventors—**none of whom is Andrew Swart**—and was issued in 2016. *Id.* The original assignee was Level 3 Communications, LLC. *Id.*



(12) **United States Patent**
Newton et al.

(10) **Patent No.: US 9,456,053 B2**
(45) **Date of Patent: *Sep. 27, 2016**

(71) Applicant: **Level 3 Communications, LLC**, Broomfield, CO (US)

(72) Inventors: **Christopher Newton**, Westlake Village, CA (US); **Laurence R. Lipstone**, Calabasas, CA (US); **William Crowder**, Camarillo, CA (US); **Jeffrey G. Koller**, Oxnard, CA (US); **David Fullagar**, Boulder, CO (US); **Maksim Yevmenkin**, Thousand Oaks, CA (US)

(73) Assignee: **Level 3 Communications, LLC**, Broomfield, CO (US)

(22) Filed: **Dec. 14, 2012**

Related U.S. Application Data

(60) Provisional application No. 61/570,448, filed on Dec. 14, 2011, provisional application No. 61/570,486, filed on Dec. 14, 2011.

EX1001, Cover.

PO Sandpiper CDN, LLC did not exist until 2024 (DD Opp., 1), and thus PO's only connection to the '053 patent is the fact that it acquired it. Despite this—and despite failing to mention Andrew Swart in its discretionary denial request (Paper

6)—PO now argues there is a connection between Mr. Swart (and therefore PO) and the '053 patent. DD Reply, 1-3. PO's arguments fail.

PO argues Mr. Swart developed "pioneering CDN technology that led directly to" the patent. *Id.*, 1; *see also id.*, 2 (arguing the "patent is an improvement on the core CDN technology that Mr. Swart developed" and that Mr. Swart was a "leading inventor of this trailblazing technology"). Yet, PO provides no evidence connecting Mr. Swart to the '053 patent claimed subject matter. Instead, PO alleges that Mr. Swart is an inventor on patents incorporated by reference (U.S. 6,185,598; 6,654,807; 7,945,693; 7,949,779; 7,054,935). *Id.*, 2. The '053 patent incorporates these documents for all purposes, but it merely refers to the first one for its "table generation mechanism" (EX1001, 17:48-51) and all five documents as describing how a best/optimal server "may be selected by a server selection mechanism." *Id.*, 7:34-40. The challenged claims are directed to something else—implementation of global and customer configuration data in cache servers. *See generally* Paper 1.

PO's remaining arguments fare no better. PO argues that Mr. Swart co-founded Sandpiper Networks Inc., which allegedly developed technology and received accolades. DD Reply, 2. But the provisional the '053 patent claims priority to was filed in 2011, and the '053 application itself was filed in 2012. This was years after Sandpiper Networks Inc. ceased to exist. EX2005, ¶¶23-30 (alleging that: Sandpiper Networks was founded in 1996 and merged with Digital Island in Dec.

1999; Savvis Inc. purchased Digital Island's assets/Sandpiper Networks patents on or about 2004; and Level 3 acquired Savvis' CDN service assets in January 2007).

Mr. Swart's subsequent work history is likewise irrelevant. DD Reply, 2-3. Even if Mr. Swart continued to work at Digital Island, Savvis, and Level 3, that says nothing about his involvement with developing technology related to the subject matter of the '053 patent claims. Similarly, PO's assertion that Mr. Swart worked on "Footprint" CDN software is also irrelevant absent any evidence that the software relates to the claimed subject matter. For the same reasons, PO's uncorroborated assertion that PO acquired that software and Mr. Swart is attempting to continue to develop and commercialize it—including through an alleged evaluation agreement with a U.S. company—is also irrelevant. DD Reply, 3.

Finally, PO's claim that Petitioner "bid" against Level 3 (*id.*, 2) is beyond the scope of the authorized reply. EX3102. It is also irrelevant because Level 3's acquisition was in January 2007 (EX2005, ¶¶29-30), which was years before the filing of the provisionals to which the '053 patent claims priority.

II. CONCLUSION

PO's arguments reduce to the assertion that this IPR should be discretionarily denied because its co-founder previously worked at Level 3, has worked in the same field as the '053 patent inventors, and has since co-founded an entity that acquired Level 3's patents. That is not a proper basis for discretionary denial.

Dated: April 20, 2026

Respectfully submitted,

/ *Jessica Kaiser* /

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Petitioner's Sur-Reply to Patent Owner's Reply in Support of Its Request for Discretionary Denial was served upon the below listed counsel by electronic mail:

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