UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CISCO SYSTEMS, INC.,
Petitioner

- vs. -

EGENERA, INC.,
Patent Owner
_____

Case IPR2017-01341
U.S. Patent No. 7,231,430

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REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE

I.   INTRODUCTION

As authorized by the Board, Petitioner submits this Reply on the limited issue of Patent Owner's argument and cited evidence that "the named inventors conceived of the claimed subject matter before the priority date of Petitioner's cited art." Paper 8 at 3; *see, e.g.,* Paper 7 at 1. Here, Patent Owner's purported evidence of conception fails to provide written description support for every claim limitation of the '430 patent as of the September 29, 2000 alleged conception date.

II.   APPLICABLE LEGAL PRINCIPLES

Patent Owner bears the burden of producing evidence supporting a date of invention prior to the priority date of Petitioner's cited art. *See, e.g.,* IPR2016-00258, Paper 89 at 11 (PTAB 2017) (citing *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.,* 800 F.3d 1375, 1378-90 (Fed. Cir. 2015)). The standard for proving conception is essentially the same as the written description standard under 35 USC § 112. *See Vanderkooi v. Hoeschele*, 7 USPQ2d 1253, 1255 (Bd. Pat. App. & Int'f 1987). That is, Patent Owner's purported evidence of prior conception must describe **every** claim limitation using "such descriptive means as words, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention." *See Lockwood v. Amer. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997); *see also Singh v. Brake*, 317 F.3d 1334 (Fed. Cir. 2003) ("conception must encompass **all** limitations of the claimed invention") (emphasis added).

III.   PATENT OWNER'S EVIDENCE DOES NOT SUPPORT A SEPTEMBER 29, 2000 CONCEPTION DATE

Patent Owner alleges that its purported conception date of September 29, 2000 is supported by Exhibit 2001. That document, however, lacks any written description of multiple claimed features. Petitioner provides examples of the evidentiary shortcomings of Exhibit 2001 below.

A.   "wherein the at least one control node includes logic to buffer data corresponding to write messages"

Independent claims 3 and 7, addressed in Ground #1, recite the above language. Patent Owner makes the unsupported assertion that the "Interframe controller node includes logic (such as I/O server logic) to buffer data." Paper 7 at 27. Contrary to Patent Owner's attorney argument, there is no description in Exhibit 2001 of "logic to buffer data corresponding to write messages" as claimed.

Patent Owner cites to one portion of Exhibit 2001 that refers to "buffers." However, that passage describes buffers allocated by an application node (not a "control node" as in the claim) and makes no mention of "write messages":

> Giganet driver code in the operating system kernel of **each application node is responsible for allocating memory for buffers** and queues, and for conditioning the node's Giganet network interface card to know about the connection and its memory allocation.

Paper 7 at 29 (citing to EGRA-2001 at 5) (emphasis added).

Patent Owner asserts that the "control node" of the claim corresponds to the "Interframe Controller node" of Exhibit 2001, while the claimed "processors"

allegedly correspond to "application nodes." *See, e.g.,* Paper 7 at 9-10. Neither Patent Owner nor its expert explain how or why the buffers allocated by an application node would be used by the Interframe Controller node to buffer write messages. Nor does Patent Owner or its expert identify any disclosure of "logic" in the Interframe Controller that would allow the Interframe Controller node to use a buffer located in an application node for "data corresponding to write messages."

The remaining cited portions of Exhibit 2001 do not describe "buffers" and fail to cure the above noted deficiencies. *See, e.g.,* Paper 7 at 27-30.

B.   "software commands specifying (i) a number of processors"

All of the independent claims recite the above language. Patent Owner's Preliminary Response asserts that the claimed software commands are received "from an Interframe administrator and Interframe controller node[.]" Paper 7 at 16. However, the cited portions of Exhibit 2001 that refer to an "administrator" and the "Interframe controller nodes" do not describe any "software commands" or "specifying (i) a number of processors." For example, Exhibit 2001 explains that:

> An administrator using that software creates and activates configuration description files that instruct the I/O server logic running on the Interframe controller nodes as to what devices to simulate for each application node.

Paper 7 at 17-18 (citing EGRA-2001 at 13).

The cited portion does not describe how its "software creates and activates

configuration description files," nor does it describe how, or whether, such "confi-guration description files" would "specify[] (i) a number of processors." Rather, the cited portion indicates that the "configuration description" provides instruction "as to what devices to simulate for each application node." Determining devices to simulate on an application node does not specify a **number** of application nodes (i.e., the components Patent Owner alleges are the claimed "processors").

The other cited portions pertain to "allow[ing] simulated application node ports to be cabled," "changing a node's configuration," "simulat[ing] hard drives on specific application nodes," and "simulat[ing] Ethernet interfaces[.]" Paper 7 at 17-20. None of these features provide written description support for "software commands specifying (i) a number of processors."

C.   "said at least one control node including logic to modify said received messages to transmit said modified messages to the external communication network and to the external storage network"

Independent claims 1, 3, and 4 recite the above language and independent claims 5, 8, and 8 recite similar features. Exhibit 2001 states, in the most potentially relevant portion, that for "a disk access request … I/O server logic in the Interframe controller node is aware of which node sent the request and is able to translate that node's device number into the proper actual partition[.]" Paper 7 at 16 (citing to EGRA-2001 at 2-3). At most, this "disk access request" would be sent to "the external storage network." There is no support in the cited portion for

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