

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC., INSTAGRAM, LLC, and WHATSAPP INC.,
Petitioners

v.

BLACKBERRY LIMITED
Patent Owner

Case IPR2019-00706
U.S. Patent No. 9,349,120

PETITIONERS' REPLY

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I. INTRODUCTION

Patent Owner’s response rests primarily on a narrow construction of “**notification**” that goes far beyond and finds no support in the district court’s claim construction, which the Board adopted in the Institution Decision. The prior art Dallas reference discloses the claimed “notifications” under the construction adopted by the Board, and under any proper construction of the term.

Patent Owner’s arguments about “notifications” also have no relevance to instituted Grounds 4-6, which add LeBlanc (Ex. 1005). Patent Owner does not dispute that the combination of Dallas and LeBlanc discloses “notifications,” even under Patent Owner’s proposed interpretation. For the reasons stated below and in the Petition, the Board should find the challenged claims unpatentable.

II. CLAIM CONSTRUCTION OF “NOTIFICATION”

The Board has adopted, for purposes of its Institution Decision, the district court’s construction of notification, *i.e.*, “some form of visual, auditory, or physical cue to draw attention to an incoming message that would not otherwise have been noticed, at the time of the incoming message.” (Paper 9 at 9.) Petitioner has not yet had an opportunity to address this construction because the district court adopted it after the Petition was filed.

The Board also showed prescience in inviting the parties to “brief further how one might evaluate the *‘that would not otherwise have been noticed’* portion of the

construction with regard to what a user might or might not be doing for the user to not otherwise have noticed the message.” (*Id.* (emphasis added).) The language the Board highlighted has been a source of mischief in the district court and here, as Patent Owner has used it as a hook to import a number of unwarranted limitations.

But as explained below, to the extent the Board chooses to adhere to the district court’s construction, the language in question (*i.e.* “that would not otherwise have been noticed”) should be understood as merely requiring a visual, auditory, or physical cue that increases the likelihood of a user noticing a new message. Patent Owner’s argument that a notification “must distract or otherwise interrupt a user from another activity” (Response, 14 (citing Ex. 2003, ¶56)), is unsupported.

A. “Notification” Should Be Given its Ordinary Meaning

The Board should not adopt the “*would not otherwise have been noticed*” language because it is not part of the ordinary meaning of “notification,” and lacks support in the intrinsic record or contemporaneous sources such as dictionaries. “Notification” should thus be construed as “some form of visual, auditory, or physical cue to draw attention to an incoming message at the time of its receipt.” This construction is faithful to the intrinsic record, and Petitioner does not believe the “*would not otherwise have been noticed*” language is necessary to capture the essence and intent of the district court’s construction.

Federal Circuit law is clear that claim terms are generally given their ordinary and customary meaning to a person of ordinary skill in the art. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc). The specification supports Petitioner’s more streamlined construction by describing a notification as an indication drawing the user’s attention to the happening of an event, *i.e.* an incoming message. (’120, 9:8-11 (“Notifications may be initiated upon the *happening of certain events...*”), 9:13-15 (“...signal *notification* module 310 to *indicate* the arrival of the new message...”)) (emphasis added).) This view is further supported by contemporaneous dictionary definitions and the prior art cited during the prosecution of the ’120 patent, as described in the Petition. (Petition, 8-9.)

Nothing in the intrinsic record supports a requirement that a notification must draw the attention of a user to a new message that “*would not otherwise have been noticed*” in the absence of a notification. Patent Owner identifies nothing in the patent specification or file history that compels this language.

Patent Owner’s gloss on the district court’s claim construction, *i.e.* that a notification “**must distract or otherwise interrupt a user from another activity,**” is similarly unsupported. (Response, 14.) Patent Owner suggests that this further requirement is based on the district court’s construction but it is not. The district court never addressed whether a notification has to distract or interrupt a user. Patent Owner’s own technical expert in the litigation was specifically presented with the

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