

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DATASPEED INC.

Petitioner,

v.

SUCXESS LLC.

Patent Owner.

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IPR2020-00268  
Patent 10,454,707 B2

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Record Oral Hearing  
Held: February 11, 2021

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Before TREVOR M. JEFFERSON, MINN CHUNG, and  
NATHAN A. ENGELS, *Administrative Patent Judges*.

IPR2020-00268  
Patent 10,454,707 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF THE PATENT OWNER:

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The above-entitled matter came on for hearing on Thursday, February 11, 2021, commencing at 2:52 p.m. EDT, by video/by telephone.

PROCEEDINGS

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JUDGE JEFFERSON: Good afternoon. This is Judge Jefferson. With me are Judges Chung and Engels. I had a little brief interruption of my video feed so I'm going to proceed under the guise that I think everybody can hear me and see me. So I will continue; is that correct?

MR. WILSON: We can hear you, Your Honor.

JUDGE JEFFERSON: Okay. Thank you. So we're back on the record. We're here for IPR 2020-00268. This will conclude our sort of joint proceeding that we held earlier with IPR 2020-00116 and 00147. This is a separate transcript for just the 00268 case for Patent Number 10,454,707.

We've discussed the sort of housekeeping matters so I'm going to jump straight to having the parties again introduce themselves on the record. And we will start with Petitioner.

MR. WILSON: Thank you, Your Honor. James Wilson for Petitioner. In the room with me is Pete Gowdey, lead counsel for this IPR, and also Mr. Wayne Helge.

JUDGE JEFFERSON: Thank you, and welcome, Mr. Wilson. And for the Patent Owner, make your appearances, please.

MR. NIX: This is Axel Nix again for the Patent Owner. And with me also again my co-counsel, Maxwell Goss.

MR. GOSS: Good afternoon, Your Honor.

JUDGE JEFFERSON: Thank you. Thank you, Mr. Goss, thank you, Mr. Nix. Appreciate that, getting everybody in on the record.

Each party will have 30 minutes to present their case with respect to IPR 2020-00268. Petitioner has the burden of showing patentability of the

1 challenged claims, and will proceed first. And Patent Owner then follows,  
2 and each party may reserve rebuttal time as we did in our prior hearing.

3 Obviously, let me repeat for clarity again, please state which slide  
4 exhibit you're on and page number. The parties did an excellent job and I'm  
5 sure will continue. Then again, if there is any technical difficulties that  
6 everybody's been given information, but please let us know if there's  
7 anything that impedes your ability to hear or see the proceedings, and  
8 obviously protect the record that you are creating.

9 And I think we should be able to proceed straight through. And we'll  
10 start with Petitioner. You may begin when you're ready, and tell me how  
11 much time you'd like to reserve.

12 MR. WILSON: Thank you, Your Honor. This is James Wilson. Five  
13 minutes for rebuttal, is what we'd ask for. Thank you.

14 JUDGE JEFFERSON: You're welcome. And you may proceed  
15 when you're ready.

16 MR. WILSON: May it please the Board. When the 707 patent was  
17 filed, it was filed and issued, there was issues with 20 claims. Petitioner  
18 challenged those 20 claims based on nine grounds, as shown in Slide 3. And  
19 Patent Owner chose not to file a preliminary response. And as shown in  
20 Slide 4, of course the Board instituted the IPR after reviewing the 20 claims,  
21 and that's the situation where it then called for Patent Owner's response.  
22 And the Patent Owner, in response, as shown in Slide 5, disclaims,  
23 essentially cancelling 18 of the 20 claims of the 707 patent.

24 Shown in Slide 6, this is the 20 claims of the 707 patents and shown  
25 without the gray highlighting are the claims, two dependent claims that were  
26 made.

1           As shown in Slide 7, focusing in on those two dependent claims, they  
2 are both each ultimately dependent from Claim 6. And Claim 15 recites that  
3 a first electrical interface claim, and actually by virtue of Claim 13, two  
4 electrical interfaces are CAN vehicle data bus interfaces. And then Claim 20  
5 claims a relay and says again the relay in Claim 19 has already been found,  
6 or admitted to be un-patentable, and it states the relay is electrically  
7 controlled in response to the presence of electrical failure.

8           Neither of those limitations in 15 and 20 lend to any patentability for  
9 the claims of the 707 patent. In particular there's nothing special about a  
10 CAN vehicle data bus.

11           In Patent Owner's surrebuttal Brief they indicated that this was like a  
12 kind of a patent case where there was a large genus and there's something  
13 special about one of those species. That's not this record. This record is  
14 vehicle data buses were known and they were alternatives. And we know  
15 that from the 707 patent itself.

16           The 707 patent, in Column 7, Lines 30 to 34, equate different types of  
17 data buses. Column 7, Lines 30 to 44 state that the data bus of the 707  
18 patent can be either a Class 2 data bus, it can be a CAN vehicle data bus, or  
19 "any other suitable data bus." So this argument that there's some genus and  
20 something special about a CAN vehicle data bus doesn't hold up. It is for  
21 the person of ordinary skill in the art, they are equivalent. And they are  
22 equivalent in view of the 707 patent.

23           So the better case to look at instead of a case in chemical analysis,  
24 would be *Hoover Technologies versus XI*. In that case, the specifications  
25 indicated there was nothing special about the particular alternatives of this  
26 claim, and when there are alternatives they are obvious even if there's

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