UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MICROSOFT CORPORATION,

Petitioner,

v.

SAINT REGIS MOHAWK TRIBE,

Patent Owner.

_____

IPR2018-01594

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PATENT OWNER SAINT REGIS MOHAWK TRIBE'S PRELIMINARY RESPONSE TO PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT 6,434,687 B2

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I. INTRODUCTION

Microsoft has shamelessly copied and claimed credit for inventing the paradigm

shifting, high-performance reconfigurable technology invented by Seymour R.

Cray's last company—SRC Computers. Microsoft has now launched an all-out

assault on the patents covering this ground-breaking technology by filing ten

petitions for *inter partes* review ("IPR") against six patents that are the subject of a

patent infringement lawsuit filed by SRC Labs, LLC (a successor to SRC

Computers) and the Saint Regis Mohawk Tribe ("Tribe").

The Board should exercise its discretion to deny institution for three reasons.

First, IPRs were intended to be an efficient, cost-effective alternative to

litigation, not a burdensome and inefficient duplicate of litigation. Microsoft's

Petition mirrors invalidity arguments it has asserted in the co-pending district court

case.

Second, for more than a decade, SRC[1] has been the sole source provider to

Lockheed Martin on behalf of the U.S. Southern Command of high performance

reconfigurable processors for the Tactical Reconnaissance and Counter-

Concealment Radar ("TRACER") program, which requires extremely high-

performance signal processing in a very limited size, weight, and power ("SWAP")

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[1] In this brief, SRC will be used as shorthand to refer to both SRC Computers and
its successor DirectStream, LLC.

environment. EX. 2032 ¶¶ 2-23. No other vendor can match the capabilities of SRC's systems. *Id.* ¶ 21. The cost of defending the ten duplicative IPR petitions filed by Microsoft may put SRC out of business. EX. 2034 ¶¶ 9-10. That result would be extremely detrimental to the United States national security interests. EX. 2032 ¶¶ 22-23. Small innovative companies like SRC are key to developing the advanced cutting-edge technology needed for the Department of Defense's most critical missions. *Id.* ¶¶ 4-8.

Third, the Tribe is a federally recognized, American Indian Tribe and owner of U.S. Patent No. 6,434,687 ("'687 patent") that is the subject of this proceeding. The Federal Circuit recently held that the Director can deny a petition for IPR "based on a party's status as a sovereign." *Saint Regis Mohawk Tribe v. Mylan Pharm. Inc.*, 896 F.3d 1322, 1327 (Fed. Cir. 2018) ("*Mylan*"). Accordingly, the Tribe respectfully requests that the Board exercise his discretion to deny this Petition based on the Tribe's status as a sovereign.

In addition, Microsoft has failed to establish a reasonable likelihood of prevailing against any claim of the '687 patent because the cited prior art fails to disclose multiple claim limitations. Therefore, the Board must deny institution.

II. PERTINENT FACTS

A. SRC Computers creates the first high performance reconfigurable computer.

The inventors of the '687 patent and their colleagues pioneered the use of Field

Programmable Gate Arrays (FPGAs) as general-purpose processors to create

small, energy efficient, supercomputers. These new supercomputers outperform

conventional computers by a factor of 100x (or more) while using 99% less power.

These innovations were the result of private research and development done by

SRC Computers, which was founded in 1996 by Jim Guzy, Jon Huppenthal, and

Seymour Rodger Cray (hence SRC), who is widely considered to be the father of

supercomputing. EX. 2030. Notably, SRC Computers' first customers were the

National Security Agency ("NSA"), the Naval Postgraduate School, and George

Washington University. EX. 2034 ¶ 7. SRC Computers spent over $100 million in

research and development for its patented reconfigurable supercomputers. *Id.* ¶ 3.

SRC Computers has restructured into three entities: a corporate parent FG-SRC,

LLC, an operating company DirectStream, LLC, and a licensing entity called SRC

Labs, LLC. *Id.* ¶ 1. DirectStream and SRC Labs operate in tandem and FG-SRC is

responsible for the management and funding of both entities. *Id.* This proceeding,

coupled with the other nine Microsoft IPR petitions, may force DirectStream out of

business as it is counting on licensing revenue from SRC Labs to operate and the

costs of defending these IPRs may exceed $700,000. *Id*. ¶¶ 9-11.

In an effort to diversify its economy and foster jobs, the Saint Regis Mohawk

Tribe ("Tribe") recently created an Office of Technology, Research and Patents

("OTRAP"). OTRAP's purpose is to strengthen the Tribal economy by

encouraging the development of emerging science and technology initiatives and projects, and promoting the modernization of Tribal and other businesses. EX. 2024 at 1. The objective is to create revenue, jobs, and new economic development opportunities for the Tribe and its members. *Id*. OTRAP will also promote the education of Mohawks in the fields of science, technology, engineering, and math. *Id*. at 2.

All revenue generated by OTRAP will go into the Tribal General Fund and be used to address the chronically unmet needs of the Tribal community, such as housing, employment, education, healthcare, cultural and language preservation. *Id*.

The '687 patent has been assigned to the Tribe and the Tribe granted SRC Labs an exclusive license. EX. 2034 ¶ 2.

B. Related Proceedings.

On October 18, 2017, the Tribe and its exclusive licensee, SRC Labs, LLC ("SRC"), sued Microsoft for infringement of six different patents that were originally assigned to SRC Computers: The '687 patent and U.S. Patent Nos. 6,076,152, 6,247,110, 7,225,324, 7,421,524, and 7,620,800. This case was originally filed in the Eastern District of Virginia (*SRC Labs, LLC et al v. Microsoft Corporation*, No. 1:17-cv-01172-LO-JFA) but was transferred to the Western District of Washington for Microsoft's convenience (*SRC Labs, LLC et al*

v. Microsoft Corporation, No. 2:18-cv-00321-JLR).

Between August 24, 2018 and September 11, 2018, Microsoft filed ten IPR petitions. IPR2018-01594, IPR2018-01599, IPR2018-01600, IPR2018-01602, IPR2018-01603, IPR2018-01604, IPR2018-01605, IPR2018-01606, and IPR2018-01607.

III. THE BOARD SHOULD DENY INSTITUTION UNDER § 314(a).

The Board should exercise its discretion under 35 U.S.C. § 314(a) to deny Microsoft's Petition for three reasons. First, Microsoft's petitions are an attack on a small, innovative, U.S. company that is the sole-source supplier to the Department of Defense. Second, there is a district court case involving the same patent. And third, the Patent Owner is a sovereign,

Section 314(a) provides the Director with discretion to deny a petition. *See* 35 U.S.C. § 314(a); *Cuozzo Speed Techs. v. Lee*, 136 S. Ct. 2131, 2140 ("[T]he agency's decision to deny a petition is a matter committed to the Patent Office's discretion.").

To assist the Board's assessment of the potential impacts on both the efficiency of the IPR process and the fundamental fairness of the process for all parties, the *General Plastic* decision was recently designated a Precedential decision because it enumerated the following seven non-exclusive factors that the Board will consider in exercising discretion on instituting IPR:

1. whether the same petitioner previously filed a petition directed to the same claims of the same patent;

2. whether at the time of filing the first petition the petitioner knew of the prior art asserted in the second petition or should have known of it;

3. whether at the time of filing of the second petition the petitioner already received the patent owner's preliminary response to the first petition or received the Board's decision on whether to institute review in the first petition;

4. the length of time that elapsed between the time the petitioner learned of the prior art asserted in the second petition and the filing of the second petition;

5. whether the petitioner provides adequate explanation for the time elapsed between the filings of multiple petitions directed to the same claims of the same patent;

6. the finite resources of the Board; and

7. the requirement under 35 U.S.C. § 316(a)(11) to issue a final determination not later than 1 year after the date on which the Director notices institution of review.

General Plastic Indus. Co., Ltd. v. Canon Kabushiki Kaisha, Case IPR2016–01357, Paper 19 at 9-10 (PTAB Sept. 6, 2017) (precedential).

But these factors are neither dispositive nor exclusive and are "not intended to represent all situations where it may be appropriate to deny a petition." *See* Trial Practice Guide Update (August 2018) at 10. There may be other reasons where the "effect … on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings … favor denying a petition even though some claims meet the

threshold standards for institution." *Id.* Some examples listed in the Trial Practice Guide Update include other proceedings "related to the same patent, either at the Office, in the district courts, or the ITC." *Id.*

A. The Board should deny institution because SRC is a sole-source supplier for the U.S. Army's TRACER Program.

The Department of Defense's most critical missions rely on cutting-edge technology developed and manufactured in the United States by American companies like SRC. EX. 2032 ¶¶ 4-7. Because SRC's patented, reconfigurable supercomputers are much smaller and more energy efficient than traditional computers, the technology is a perfect fit for applications where space and power are at a premium. EX. 2031. As a result, Lockheed Martin chose SRC to be the sole source vendor of processors for the U.S. Army's TRACER program. EX. 2032 ¶ 9.

SRC TRACER Signal Data Processor (SDP)
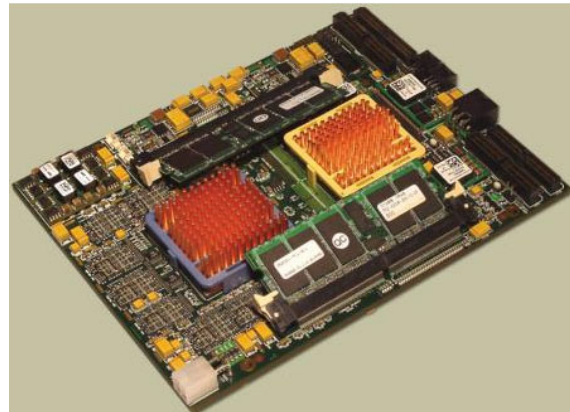
SRC Series H MAP processor

The TRACER program addresses a critical need to identify hidden targets, facilities, and enemy equipment such as small roadside targets and buried weapons

caches. EX. 2033. TRACER has been operational outside the continental United States for ten years performing operations for the U.S. Southern Command. EX. 2032 ¶ 14. SRC/DirectStream's processors have allowed these surveillance operations to produce images of targets on the ground in real-time, providing immediately actionable information. *Id.* ¶¶ 15-16. The TRACER program's unique real-time radar capabilities have allowed the U.S. Southern Command to detect rebel forces, drug cartel activities, and terrorism that occurs in the dense jungles of that region. *Id.* ¶ 18.

According to Lockheed Martin's Engineering Program Manager in charge of the TRACER program, it is not in the national security interests of the United States to require SRC to spend time or money defending IPRs. *Id.* ¶ 23. Instead, it is in the best interest of the United States as a whole, and Lockheed Martin in particular, to keep companies like SRC/DirectStream healthy and unencumbered so they focus on new technology development. *Id.* ¶ 22. In fact, Lockheed Martin's procurement process has shown that no other vendor can match the capabilities of SRC's TRACER processors. *Id.* ¶¶ 19-21.

Microsoft's petitions are an attack on a small, innovative, U.S. company that is the sole-source supplier to the Department of Defense. Small innovative companies are the lifeblood of our economy and the intended beneficiaries of the U.S. patent system. Microsoft should not be allowed to use the IPR process to avoid paying

royalties when it steals the intellectual property of small companies like SRC/Directstream.

Accordingly, the Tribe asks the Board to exercise its discretion under § 314(a) to deny this Petition.

B. The Board should deny institution because there is a district court case involving the same patent and overlapping prior art.

The Board should deny institution because Microsoft is relying on the same prior art and arguments in its district court invalidity contentions as asserted in this Petition. Microsoft's Petition asserts that claims 1-25 of the '687 patent are unpatentable based on Obelix (EX. 1005) alone and in combination with Spencer (EX. 1007), Perkins (EX. 1008), Leong (EX. 1009), Curtis (EX. 1010), Davis (EX. 1011) and Skillen (EX. 1012).

In the district court case, Microsoft has also asserted anticipation based on Obelix and obviousness based on Obelix in view of Perkins, Davis, and Skillens. EX. 2039 at 10, 19; EX. 2040; EX. 2041; EX. 2042; EX. 2043. But Microsoft waited ten months to file this Petition and then moved to stay the district court case pending the resolution of its ten IPR petitions. EX. 2019; EX. 2020. Prior to the stay, the district court was scheduled to have a *Markman* hearing on December 20, 2018 and trial in November 2019. EX. 2018 at 2. Thus, the district court would have analyzed the same issues and resolved them before any trial on this Petition could have concluded.

Microsoft's petitions were filed to delay the resolution of these issues by the district court. This is contrary to the overall goal of the AIA, which was to "make the patent system more efficient by the use of post-grant review proceedings." *See General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*, Case IPR2016-01357, slip op. at 16-17 (PTAB Sept. 6, 2017) (Paper 19) (precedential as to § II.B.4.i). IPRs were not intended to be a tool to enable efficient infringement by trillion dollar corporations, such as Microsoft.

The Board should deny this Petition based on these inefficiencies as the Board has recently done in other proceedings involving parallel district court cases with overlapping prior art. *See NHK Spring Co., Ltd v. Intri-Plex Techs., Inc.*, Case IPR2018-00752, slip op. at 19-20 (PTAB Sept. 12, 2018) (Paper 8) (denying institution under § 314(a) because of co-pending litigation); *Mylan Pharms., Inc. v. Bayer Intellectual Property GMBH*, Case IPR2018-01143, slip op. at 12-14 (PTAB Dec. 3, 2018) (Paper 13) (denying institution under § 314(a) because of co-pending litigation involving overlapping prior art).

Accordingly, the Tribe asks the Board to exercise its discretion under § 314(a) to deny this Petition because of these inefficiencies.

C. The Board should deny institution because of the Tribe's status as a sovereign.

The Tribe is a federally recognized, American Indian Tribe and owner of the '687 patent that is the subject of this proceeding. The Tribe, as a sovereign

government, is not amenable to suit unless it expressly consents or Congress abrogates its immunity. *See*, *e.g.*, *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2030 (2014).

Last summer, in the *Mylan* case, the Federal Circuit held that sovereign immunity cannot be asserted in an IPR because an "IPR is more like an agency enforcement action than a civil suit brought by a private party." 896 F.3d at 1327. The Tribe believes that case was wrongly decided and filed a petition for writ of certiorari on December 20, 2018 that asks the Supreme Court to decide whether sovereign immunity may be asserted in IPRs before the Patent Trial and Appeal Board. EX. 2037.

But the Federal Circuit also held that the USPTO "Director bears the *political responsibility* of determining which cases should proceed." *Saint Regis Mohawk Tribe*, 896 F.3d at 1327 (emphasis added). And that the Director can deny a petition for IPR "based on a party's status as a sovereign." *Id.* Accordingly, the Tribe respectfully requests that the Director exercise his discretion to deny this Petition based on the Tribe's status as a sovereign.

IV. TECHNOLOGY BACKGROUND

A. Conventional Computer Architecture.

Conventional computers utilize general purpose processors from Intel or AMD and employ a Von Neumann architecture. In a conventional computer, "hardware

is fixed and cannot be changed after manufacturing." EX. 2029 ¶ 9. To execute a

software program, the processor "goes through a fixed routine of steps":

> 1. **Instruction Fetch** - read the instruction whose address
> is specified by the program counter into the designated
> processor internal register, and advance the program
> counter to point to the next instruction.
>
> 2. **Instruction Decode** - Decipher the work needed by
> the instruction.
>
> 3. **Execute** - carry out the work needed if data is
> available internally, if not then prepare the address of the
> data.
>
> 4. **Data Memory Access** - read/write data from/to
> memory.
>
> 5. **Write back** - write the results into an internal register.

Id. This is referred to as the fetch-execute cycle. Because of their architecture,

conventional computers must operate in a sequential manner. *Id*. ¶ 10.

B. Field Programmable Gate Arrays.

A field programmable gate array ("FPGA") is a reprogrammable integrated

circuit that contains an array of configurable logic blocks (functional units)

connected by configurable interconnects. EX. 2029 ¶ 11. The user can configure

the FPGA to perform a desired computation by configuring (or instantiating) the

configurable logic blocks to perform the desired operations (arithmetic, logical,

control, data movement, etc.) and then configuring the interconnects so that the

configured logic are connected in the order needed to perform the desired

computation. *Id.* An FPGA is configured by loading a file called a bitstream into the FPGA. *Id.*

C. Reconfigurable Computing.

Reconfigurable computing systems are built from reconfigurable computing devices, such as FPGAs, that serve as coprocessors to microprocessors. EX. 2025 at 1; EX. 2035 at 1. "In its simplest terms, reconfigurable computing, based on FPGA technology, could be defined as the capability of reprogramming hardware to execute logic that is designed and optimized for a specific user's algorithms." EX. 2035 at 2.

With an FPGA one can implement only the hardware that is needed and can avoid many of the slowdowns that come with load-decode-fetch-execute sequences in traditional Von Neumann processors.

Much of the speedup from FPGAs comes from the fact that intermediate results do not need to be stored back in memory. Instead they live on the wires (reconfigurable routing resources) inside the FPGA as they flow from one processing element (i.e., configurable logic blocks) to another. This is the key for processing performance gains on reconfigurable computing systems. FPGAs can instantiate many processing elements, which allows them to perform many computations before having to store the results back to external memory. If one has to compute, store externally, and then immediately fetch back, one loses.

D. The '687 patent: SRC invents methods for accelerating data processing at websites using reconfigurable processors.

The '687 patent claims methods for processing data at an internet site utilizing a system incorporating reconfigurable processors operating under a single operating system image. EX. 1001 at col. 1:25-43, 21:51-62. Many "electronic commerce ('e-commerce') websites employ various methods to allow their content to be varied based on the demographics of a particular user." *Id.* at col. 1:37-40. Demographic data is obtained directly or indirectly using a variety methods such as surveys or "click stream" processing. *Id.* at col. 1:42-51. Click stream processing infers the interests of a web site visitor by analyzing the "previous sites he has visited." *Id.* This means that an e-commerce site processes this demographic data and uses it to alter the content of its web page to "maximize it[s] appeal to that particular site visitor with a view toward ultimately maximizing site revenue." *Id.* at col. 1:45-51.

The problem is that "studies have shown that the average Internet user will wait but a maximum of twenty seconds or so for a web page to be updated." *Id.* at col. 1:52-55. That means that a "great deal of effort is placed into maximizing the software performance of algorithms that process the user demographic data," i.e. the survey info or click stream data. *Id.* at 1:55-58. Unfortunately, "all known web servers that accomplish this processing employ industry standard microprocessor based servers" so their "maximum performance" is inhibited by the "'load/store'

architecture" inherent to these systems. *Id.* at col. 1:60-63.

The solution to this problem is to use "a multiprocessor computer system incorporating one or more microprocessor and a number of reconfigurable processors operating under a single operating system image." *Id.*at col. 2:6-10. The "demographic data processing algorithms may be loaded into the reconfigurable processors" that can "process the data up to 1000 times faster than the standard microprocessor based server." *Id.*at col. 2:20-25.

Processing demographic data is not the only way the patented system can also be used to accelerate e-commerce sites. It can also be used to accelerate "decryption algorithms," which allows for "faster web site access while concomitantly allowing more robust data encryption techniques to be employed." *Id.* at col. 2:48-65.

In short, this hybrid system allows the e-commerce site to "employ user selected hardware accelerated versions of software algorithms currently implemented in a wide array of e-commerce related functions" resulting in "an easy to use system with significantly faster processing capability which translates into shorter site visitor waiting periods." *Id.* at col. 3:1-6.

V. LEVEL OF ORDINARY SKILL

Patent Owner agrees with Microsoft's characterization of a person of ordinary skill in the art of the '687 patent.

VI. PATENT OWNER'S CLAIM CONSTRUCTIONS

The '687 patent is expired so the *Phillips* claim construction standard applies.

A. Terms to be construed.

1. "an internet site"

Patent Owner's Construction	Microsoft's Construction
A web site accessed using a URL	A location publicly accessible on the Internet.

The plain and ordinary meaning of an internet site is a web site. The '687 patent talks about solving problems experienced by e-commerce "web sites" using hybrid reconfigurable web servers. EX. 1001 at col. 1:35-2:25. The '687 patent talks about replacing a "typical web site server" with "an SRC-6 reconfigurable server," *Id.* at col. 20:36-40, which is depicted in Figure 12:
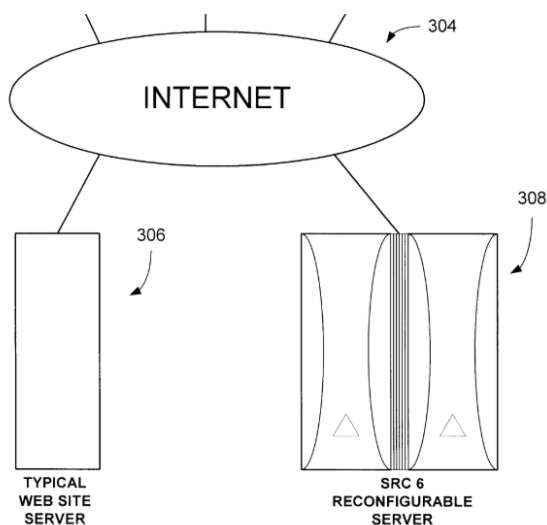
So it is clear that the term "internet site" simply means a web site. EX. 2026 at 8-10. (definitions of web site, web address, and URL). And a web site is publicly accessible via its web address or URL.

Patent Owner's proposed construction is consistent with the testimony of

Microsoft's experts:

> The word "*site*" is also a well-known term of art that typically refers to a location at an address on the World Wide Web that stores documents associated with Web pages that can be accessed from other locations on the Internet. EX. 2038 ¶ 191.

> The word "*site*" is also well-known, and often associated with the World Wide Web portion of the Internet, as a location at an address on the Web from which Web documents may be retrieved or received by members of the public, *i.e.,* a "web site." *See*, *e.g.*, EX1015, https://www.merriamwebster. com/dictionary/site (defining site as "one or more Internet addresses at which an individual or organization provides information to others ...*especially*: website"). EX. 1003 ¶ 59.

Accordingly, the Board should construe Internet site to be a "web site accessed

using a URL."

2. "internet" – claim 11

Patent Owner's Construction	Microsoft's Construction
a global system of interconnected computer networks that use the Internet protocol suite (TCP/IP) to link devices into a single worldwide network	None.

The term "internet" in claim 11 should be construed according to its plain and

ordinary meaning, which is "a global system of interconnected computer

networks that use the Internet protocol suite (TCP/IP) to link devices into a single

worldwide network."

Microsoft's experts agree that the '687 patent uses the term internet according to its ordinary meaning:

> Although the terms "*internet site*" and *"site"* are not used in the specification, the word "*internet*" does appear in the background section of the 687 Patent, as well as in Figure 12. Exhibit G (687 Patent), 1:37, 52; Fig. 12. In both cases, that term is used to describe the well-known system of global interconnected networks. *See, e.g.,* Exhibit R, U.S. Patent No 5,838,910 to Domenikos, 1:31-33 (defining the Internet as "a global system of interconnected computer networks formed into a single worldwide network"). EX. 2038 ¶ 191.

> The 687 Patent does not use the phrase "*internet site*" outside of the claims. It uses the word "internet" twice in the background section and once in the description of Figure 12, each time in the ordinary sense of the global system of interconnected computer networks. 687 Patent, 1:37, 52; Fig. 12; *see also* EX1014, U.S. Patent No 5,838,910 to Domenikos, 1:31-33 (defining the Internet as "a global system of interconnected computer networks formed into a single worldwide network"). EX. 1003 ¶ 58.

Patent Owner's proposed construction is consistent with the plain and ordinary meaning of the term "Internet" as shown by the definitions from extrinsic sources:

> One of the most widely accepted and heavily used computer networks is the Internet. The Internet is a global system of interconnected computer networks formed into a single worldwide network. A user, through the Internet, can interactively transmit messages with users in different countries. Similarly, a user in the U.S. can access the files from libraries in Europe and Asia and download these files for personal use. Accordingly, the Internet computer network provides strong communication functions similar to the communication

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functions provided by ham radio operators. EX. 1014 at col. 1:30-39.

The Internet is a collection of thousands of networks linked by a common set of technical protocols which make it possible for users of any one of the networks to communicate with or use the services located on any of the other networks. These protocols are referred to as TCP/IP or the TCP/IP protocol suite. EX. 2027 at 3.

Accordingly, the Board should adopt Patent Owner's construction.

3. "internet processing" – claim 11

Patent Owner's Construction	Microsoft's Construction
Data processing performed by a web server at an internet site	none

The entire point of the '678 patent is to accelerate web site access and processing. EX. 1001, Abstract. The patent talks about how it is "vitally important that the updating of page contents be completed as rapidly as possible." *Id.* at col. 1:52-63.

To do this, the '687 patent teaches replacing a typical web site server (or web server) with a reconfigurable server. EX. 1001 at col. 3:66-4:2 ("FIG. 12 is a simplified illustration of a representative operating environment for the system and method of the present invention including a typical web site server as would be replaced by an SRC-6 reconfigurable server."); Fig. 12.

302
USER PC
302
USER PC
USER PC
304

INTERNET

308
306

TYPICAL
WEB SITE
SERVER

SRC 6
RECONFIGURABLE
SERVER

300
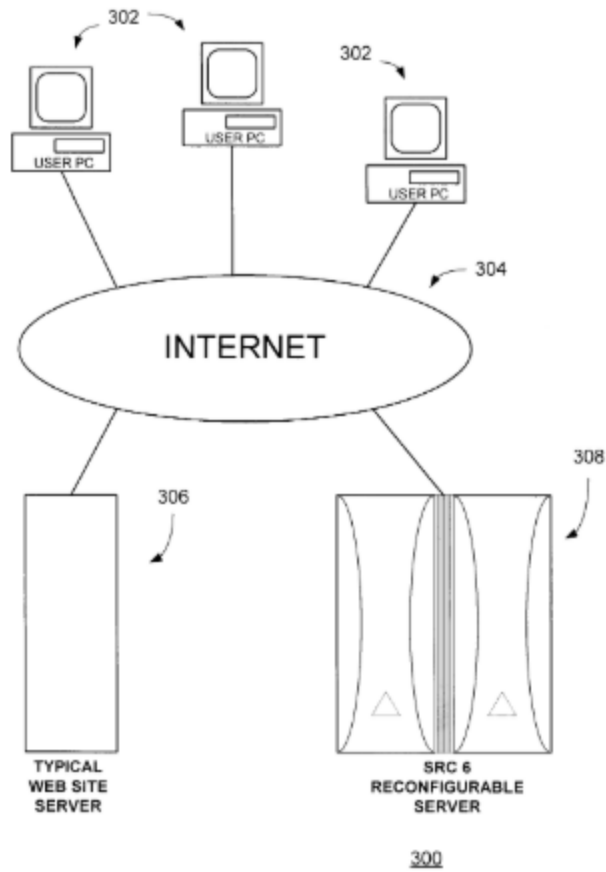
Fig. 12

And Figure 14 depicts a "flowchart … illustrating the processing of demographic or other data utilizing the reconfigurable server 308 of FIG. 12 in a significantly faster data processing sequence." EX. 1001 at col. 21:1-5.
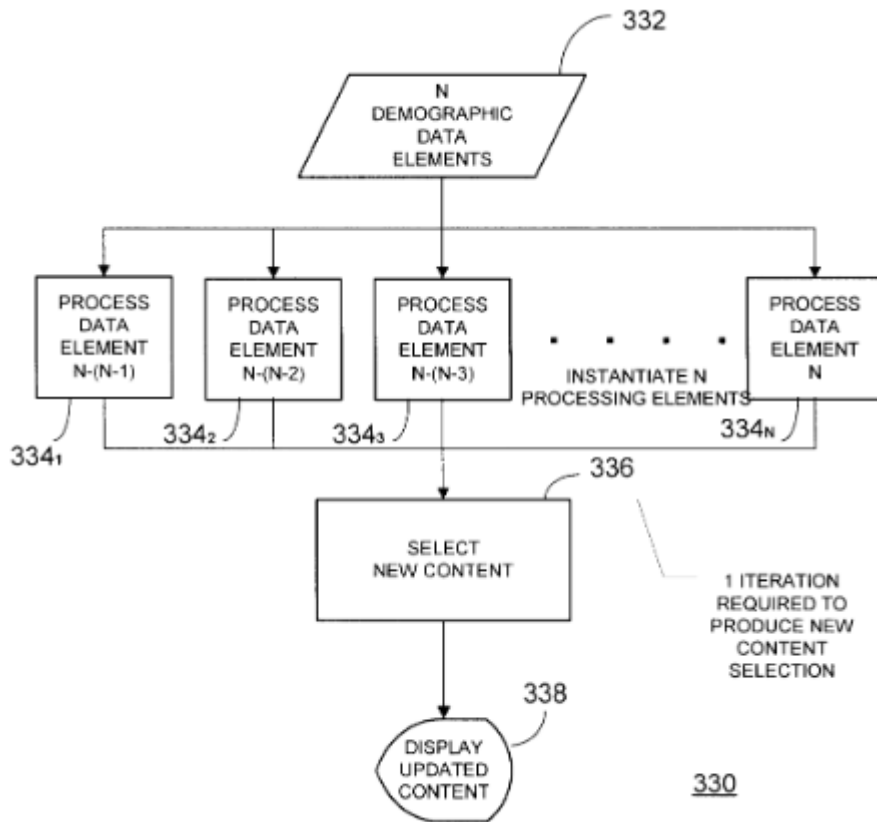
Fig. 14

And the specification talks about how web servers at various internet sites

process user data:

> Presently, many different forms of electronic business and commerce are transacted by means of individual computers coupled to the Internet. By virtue of its computer-based nature, many electronic commerce ("e-commerce") web sites employ various methods to allow their content to be varied based on the demographics of the particular user.
>
> This demographic information may be obtained in a variety of ways, with some sites simply requesting the site visitor respond to one or more questions while others may employ more sophisticated techniques such as "click stream" processing….

Since studies have shown that the average Internet user will wait but a maximum of twenty seconds or so for a web page to be updated, it is vitally important that the updating of the page contents be completed as rapidly as possible. Consequently, a great deal of effort is placed into maximizing the software performance of algorithms that process the user demographic data. Currently, all known web servers that accomplish this processing employ industry standard microprocessor based servers and, as a result, their maximum performance is thereby limited by the limitations inherent in the standard microprocessor "load/store" architecture. EX. 1001 at 1:35-64.

Given this context, its clear that the "internet processing" referred to in claim 11 refers to "data processing performed by a web server at an internet site."

This definition comports with Microsoft's expert's understanding of the ordinary meaning of "internet processing":

79. In early computer systems, the speed of the central processing unit in the host computer was a critically important feature of the system. This is because, until the mid-to-late 2000s, most computer processing operations were performed locally at the site of a host computer. As internet bandwidth has grown exponentially and the cost of shipping data to computer data centers has fallen, the importance of processing at a host computer has been reduced. When data is shipped off for processing by other computers over a computer network, we say that the remote computers perform internet processing.

80. One important type of internet processing that many people use every day is that of internet search engines. An internet search engine is a service provided by various companies that provide the ability to search the vast quantities of information available over the Internet. These services work by periodically "crawling" the

Internet for new sites or other content updates, and updating the index of sites at the Internet server to reflect these changes in content.

81. As the Internet becomes more directed to personalized access based on individual needs, search engines have adapted to display more personalized search results based on the individual characteristics of a specific user. Providing these results requires the search engine provider to alter its base set of search results to suit the needs of the particular user. Because this operation requires processing of data at a site remote to the user, it is a form of Internet processing. One of the patents at issue here is directed to a system that performs an early type of internet processing in conjunction with preparing customized internet search results. EX. 2038 ¶¶ 79-81.

So Patent Owner's proposed construction comports with both the intrinsic and extrinsic evidence.

Therefore, the Board should adopt Patent Owner's proposed construction.

4. "demographic data"

Patent Owner's Construction	Microsoft's Construction
Information pertaining to the user	Information that identifies a particular segment of a population

The issue is whether "demographic data" pertains to a specific user or to a general population. The specification describes demographic data or information in terms of a particular user, similar to Patent Owner's proposed construction:

Presently, many different forms of electronic business and commerce are transacted by means of individual computers coupled to the Internet. By virtue of its computer-based nature, many electronic commerce ("e-

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commerce") web sites employ various methods to allow their content to be varied based on the **demographics of the particular user**.

This **demographic information** may be obtained in a variety of ways, with some sites simply **requesting the site visitor respond to one or more questions** while others may employ more sophisticated techniques **such as "click stream" processing**. In this latter instance, the prospective interests of the site visitor are inferred by determination and analysis of, for example, the previous sites he has visited.

EX. 1001 at col. 1:35-51 (emphasis added).

The patent describes obtaining demographic data through user questionnaires or by analyzing the "previous sites" the user has visited. EX. 1001 at 1:35-51. This user demographic data is then utilized to alter a web site's content to maximize its appeal to that particular user in order to maximize revenue. *Id.* Accordingly, the intrinsic evidence demonstrates that the term "demographic" pertains to information about a specific user.

By contrast, nothing in the intrinsic records supports Microsoft's attempt to define this term as applying to a "particular segment of a population." Microsoft's construction relies solely on extrinsic evidence. Petition at 15 (citing EX. 1003 and EX. 1020). But extrinsic evidence cannot be used to "contradict any definition found in or ascertained by a reading of the patent documents." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1322-23 (Fed. Cir. 2005). And "[e]xpert testimony in conflict with the intrinsic evidence, however, should have been accorded no

weight." *DESA IP, LLC v. EML Techs., LLC*, 211 F. App'x 932, 936 (Fed. Cir. 2007). So Microsoft's dictionary definition of "demographic" and expert opinion about the term's meaning, both of which conflict with the meaning described in the specification, should not be afforded any weight.

Accordingly, the Board should adopt Patent Owner's proposed construction.

5. "a single system image of an operating system"

Parties' Agreed Construction in District Court Case	Microsoft's Proposed Construction
an operating system that hides the heterogeneous and distributed nature of the available resources and presents them to the user and applications as a single unified computing resource	An operating system that provides the user the illusion that the processing resources associated with a collection of otherwise independent engines is a single computational resource

Microsoft filed this Petition on August 24, 2018. Over the next several months the parties were engaged in claim construction proceedings in the district court case that resulted in the following agreed construction for this term: "an operating system that hides the heterogeneous and distributed nature of the available resources and presents them to the user and applications as a single unified computing resource." EX. 2036 at 18.

The parties agreed to construction comes almost verbatim from Petitioner's Exhibit 1024: "A single system image (SSI) is the property of a system that hides the heterogeneous and distributed nature of the available resources and presents them to users and applications as a single unified computing resource." EX. 1024

at 1. Thus, it comports with the plain and ordinary meaning of the term.

This is supported by the specification, which states:

> Through the use of such a hybrid system operating under a single operating system image, a standard operating system, such as Solaris™ (trademark of Sun Microsystems, Inc., Palo Alto, Calif.) may be employed and can be easily administered, a feature which is important in such e-commerce based applications. EX. 1001 at col. 2:38-43.

> In general, the use of hybrid computer systems with a single system image of a operating system for web site hosting allows the site to employ user selected hardware accelerated versions of software algorithms currently implemented in a wide array of e-commerce related functions. EX. 1001 at col. 2:66-3:3.

> In the exemplary embodiment shown, all of reconfigurable processors may share all of the system's resources and be controlled by a single system image of the operating system although, in alternative embodiments, cluster management software may be utilized to effectively make a cluster of microprocessors appear to a user to be but a single copy of the operating system. EX. 1001 at col. 21:14-21.

Accordingly, the Board should adopt the parties' agreed to construction from the district court case.

6. Preambles of claims 1, 11, and 18 are limiting.

Microsoft has not taken a position on whether the preambles are limiting but does treat them as limiting in its anticipation and obviousness analysis. Petition at 21-22, 33-34, and 37.

According to the Federal Circuit, "the preamble is regarded as limiting if it

recites essential structure that is important to the invention or necessary to give meaning to the claim." *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 952 (Fed. Cir. 2006). "That is, if the claim drafter 'chooses to use both the preamble and the body to define the subject matter of the claimed invention, the invention so defined, and not some other, is the one the patent protects.'" *Id.* Specifically, when the limitations in the body of the claim "rely upon and derive antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention." *Id.* That is exactly the case here.

The bodies of claim 1, 11 and 18 all "derive antecedent basis from the preamble":

> Claim 1. A method for processing data at *an internet site* comprising: providing a reconfigurable server *at said site* incorporating at least one microprocessor and at least one reconfigurable processing element…

> Claim 11. *An internet* processing acceleration service comprising: a reconfigurable server coupled to *said internet*…

> Claim 18. A process of accelerating access time of a remote computer to *an internet site* comprising: providing a reconfigurable server *at said site* incorporating at least one microprocessor and at least one reconfigurable processor…

All three claims rely on the preambles to provide an antecedent basis for body of the claims. Therefore, the preamble in all three claims is limiting.

VII. MICROSOFT FAILED TO DEMONSTRATE A REASONABLE LIKELIHOOD OF PREVAILING AS TO ANY CHALLENGED CLAIM.

A petition must identify with particularity each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim. 35 U.S.C. § 312(a)(3). Per 37 C.F.R. § 42.22(a), each petition must include a statement of the precise relief requested and a full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence including material facts, the governing law, rules, and precedent. Under 37 C.F.R. § 42.104(b)(4), the petition must specify where each element of a challenged claim is found in the prior art patents or printed publications. And 37 C.F.R. § 104(b)(5) requires the petition to explain the relevance of the evidence supporting the challenge, including citing specific evidence that supports the challenge.

A. Microsoft has failed to demonstrate that claims 1-10 and 18-25 are anticipated or rendered obvious by Obelix because Obelix does not teach a method for processing data at an internet site.

Microsoft has failed to demonstrate that Obelix anticipates or renders obvious claims 1-10 and 18-25 of the '687 patent because Obelix does not teach how to process data at an "internet site" as required for these claims.

Claims 1 and 18 both require providing a reconfigurable server, receiving data, and processing data at an "internet site":

1. A method for processing data at an *internet site* comprising:

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providing a reconfigurable server at said site incorporating at least one
microprocessor and at least one reconfigurable processing element;
receiving N data elements at said site relative to a remote computer
coupled to said site;
instantiating N of said reconfigurable processing elements at said
reconfigurable server; and
processing said N data elements with corresponding ones of said N
reconfigurable processing elements.

18. A process of accelerating access time of a remote computer to *an
internet* site comprising:
providing a reconfigurable server at said site incorporating at least one
microprocessor and at least one reconfigurable processor;
transmitting N data elements from said remote computer to said server;
substantially concurrently processing said N data elements with N of
said at least one reconfigurable processors;
selecting a content of said internet site in response to said N data
elements; and
transmitting said content to said remote computer.

As discussed above, "an internet site" is a "web site accessed using a URL."

Applying that definition, Microsoft has not demonstrated that Obelix teaches

"an internet site." Users intentionally access "internet sites" by inputting the URL

into their web browser, for example www.bing.com.

**1. Microsoft has not shown that Obelix discloses an "internet site" as
required by claims 1 and 18.**

The Obelix system does not have a URL and is not "an internet site." The

problem Obelix was trying to solve was the lack of user feedback to search engine

results. EX. 1005 at 10. Obelix obtained user feedback by modifying the "web

browser …to inform Obelix server(s) about client actions through the datagram

connection." EX. 1005 at 1. In other words, the user's browser sent information to

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the Obelix server in the background as the user browsed other web sites. The user

never enters a URL to access an Obelix web site. EX. 1005 at 1-3, 10-11. So

information about the user's browsing habits is simply broadcast to the Obelix

server in the background. EX. 1005 at 2. A user cannot access the Obelix system

via a specific web site or URL.

So Obelix is a service provided by an internet service provider ("ISP") that

would be sold to web browser providers, such as Microsoft. EX. 2028 at 1; EX.

1005 at 10. It is not intended to accelerate processing data at an "internet site" as

required by claims 1 and 10. *Id.* Therefore, Obelix does not teach any of the

limitations in claims 1 and 18 that require an internet site.

Microsoft's Petition fails to demonstrate that Obelix teaches an "internet site"

because it only makes conclusory arguments concerning these limitations and

applies its incorrect construction of "internet site." For example, Microsoft simply

states, without citing to any evidence, that the Obelix system is "provided '*at an*

internet site' because it comprises a server that communicates directly with client

computers over the Internet and is generally accessible by members of the public."

Petition at 22, 40-41. Besides being conclusory, this statement does not teach an

"internet site" when that term is properly construed to mean a "web site accessed

using a URL."

Microsoft then argues that Obelix "describes an internet search engine system

which includes a server that receives search requests and provides search results to clients." Petition at 22. But this argument conflates the Obelix server with the separate "search server" that was implemented as a web-application:

> In order to get information about the quality of the Obelix system search service, the MS Windows version Netscape Navigator web browser is modified to that it collect and sends the information about the users' actions to the Obelix server. The server side is at present implemented as a software-only application running on a Linux server that collects requests and stores them in a database.
>
> The *search server is implemented as a web-application* running on the same Linux server as the Obelix simulator. It is based on the Infoseek engine…. *The search server takes input queries from the web and forwards them to the Infoseek engine.* Then it collects the result page and extracts URLS and percentage scores out of it. Afterwards, it calculates the Obelix results according to the formula… EX. 1005 at 7-8 (emphasis added).

So it is the search server web-application, not the Obelix system,[2] that receives search requests and provides search results. *Id.* Microsoft confirms this confusion by then pointing out that Obelix "receives data about users' actions via IP packets sent from various clients." Petition at 22. This sentence is referring to the datagrams broadcast in the background by the user's modified web browser, which

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[2] Notably, this entire section of the reference is talking about a simulated Obelix system that does not contain any reconfigurable processors since it was simulated on a standard Linux server.

is completely different than the search inquires it was discussing in the prior

sentences. *Compare* EX. 1005 at 1-2; *with id.* at 7-8.

Finally, the testimony of Microsoft's expert on this element should not be

afforded any weight because he simply repeats Microsoft's arguments verbatim.

EX. 1003 ¶¶ 116-117. This type of conclusory testimony should not be afforded

any weight. 37 C.F.R. § 42.65(a). And the Board has repeatedly held that expert

testimony that "repeats Petitioner's argument without any additional analysis,

facts, or data to support it … is entitled to little probative weight." *See Masabi Ltd.*

v. Bytemark, Inc., IPR2017-01449, slip op. at 43-44 (PTAB Dec. 3, 2018) (Paper

38); *Apple Inc. v. Uniloc Luxembourg, S.A.*, IPR2017-02202, slip op. at 9-10

(PTAB Dec. 13, 2018) (Paper 10) (affording no weight to expert testimony that

"merely repeats verbatim Petitioner's argument"); *Infobionic, Inc. v. Braemer*

Manufacturing, LLC, IPR2015-01704, slip op. at 14-15 (PTAB Feb. 16, 2016)

(Paper 11) (affording no weight to expert testimony repeating Petitioner's

arguments "with the addition of the phrase 'in my opinion'"); *Kinetic Techs. v.*

Skyworks Solutions, Inc., No. IPR2014-00529, slip op. at 15-16 (PTAB Sept. 23,

2014) (Paper 8) ("Merely repeating an argument from the Petition in the

declaration of a proposed expert does not give that argument enhanced probative

value," and a petitioner cannot move forward to trial based upon such "mere

conclusory statements."); *TRW Automotive US LLC v. Magna Elecs., Inc.*, No.

IPR2014-00258, slip op. at 10-11 (PTAB Aug. 27, 2014) (Paper 18) (giving little to no weight to expert testimony that "did not elaborate on [Petitioner's] position because it simply repeated [Petitioner's] conclusory statements verbatim.").

Accordingly, Microsoft's Petition failed to demonstrate that Obelix is an "internet site" as required by claims 1 and 18 and all of their dependent claims.

2. Microsoft has not shown that Obelix teaches "providing a reconfigurable server at said [internet] site" as required by claims 1 and 18.

Because Microsoft's Petition failed to demonstrate that Obelix is an "internet site" it also has failed to show that Obelix teaches "providing a reconfigurable server at said [internet] site" for the same reasons. Once again, Microsoft simply concludes that Obelix is "an internet site." Petition at 24, 40-41. The only evidence Microsoft cites to support this conclusory allegation is paragraph 116 of Dr. Stone's declaration. *Id.* But that paragraph is the same paragraph discussed above that merely repeats Microsoft's arguments verbatim and conflates the search server web-application and the Obelix system. *Compare* EX. 1003 ¶ 116; *with* EX. 1005 at 7-8. So Microsoft has failed to teach this limitation.

Accordingly, Microsoft's Petition failed to demonstrate that Obelix teaches "providing a reconfigurable server at said [internet] site" as required by claims 1 and 18 and all of their dependent claims.

3. Microsoft has not shown that Obelix teaches "receiving N data elements at said [internet] site" as required by claim 1.

Because Microsoft's Petition failed to demonstrate that Obelix is an "internet site" it also has failed to show that Obelix teaches "receiving N data elements at said [internet] site" as required by claim 1. Again, Microsoft simply assumes that Obelix is an "internet site." Petition at 24. But the "N data elements" that Microsoft relies upon are the IP packets broadcast by the modified web browsers to the Obelix server. *Id.* As discussed above that is not receiving data elements at an internet site because the user is not going to a URL associated with Obelix. Instead, the user is simply browsing the web as usual and information about that browsing is being sent in the background to Obelix by the web browser. EX. 1005 at 1-2.

By contrast, receiving data at an internet site would occur when a user enters a URL, such as www.bing.com, and then inputs information into that website that is received by that site's web server.

Accordingly, Microsoft has failed to demonstrate that that Obelix teaches "providing a reconfigurable server at said [internet] site" a receiving N data elements at said [internet] site" as required by claim 1 and its dependent claims 2-10.

4. Microsoft has not shown that Obelix teaches "transmitting N data elements from said remote computer to said server" as required by claim 18.

For the same reasons, Microsoft has also not demonstrated that Obelix teaches "transmitting N data elements from said remote computer to said server" as required by claim 18. The "said server" is the "configurable server at said [internet] site." EX. 1001 at col. 22:50-60 (claim 18). As discussed above, Microsoft has not shown that Obelix teaches "receiving N data elements at said [internet] site" as required by claim 1. Microsoft cites to that same section as proof of this limitation.

Therefore, and for the same reasons, Microsoft has failed to demonstrate that that Obelix teaches "transmitting N data elements from said remote computer to said server" as required by claim 18 and its dependent claims 19-25.

B. Microsoft has failed to demonstrate that any claims 11-17 are anticipated or rendered obvious by Obelix because Obelix does not teach "internet processing acceleration."

Microsoft has failed to demonstrate that Obelix anticipates or renders obvious claims 11-17 because Obelix does not teach "internet processing acceleration" as required for these claims

The entire point of the '678 patent is to accelerate web site access and processing. EX. 1001, Abstract. The patent talks about how it is "vitally important that the updating of page contents be completed as rapidly as possible." *Id.* at col.

1:52-63. By contrast, Obelix is concerned with a different problem: "when using search engines, users often get documents in the result set of questionable usefulness." EX. 1005 at 1. Obelix is not trying to speed up search engines, it is trying to improve the usefulness of their results by introducing a "human factor in ranking algorithms." *Id.* And Obelix itself is not even performing the searches. Instead, it gathers user information and provides it to the "search sever in the appropriate form." *Id.* Obelix uses its reconfigurable architecture so that the Obelix server can "conduct a real-time data processing and acquisition." *Id.* So, again, it is not the search server that is being sped up, it is Obelix's processing that utilizes the speedy reconfigurable architecture.

Microsoft's Petition fails to demonstrate that Obelix teaches an "internet processing acceleration service." Petition at 33. Microsoft points to three things to support its conclusion that this claim limitation is present.

First, Microsoft points to the title as disclosing "providing **improved** Internet search results to a user more quickly." Petition at 33. But the title says nothing about speed: "The Architecture of the Obelix – An Improved Internet Search Engine." EX. 1005 at 1.

Second, Microsoft argues that Obelix's "ranking of user actions associated with a given UR, and calculating ranking scores based on those actions" is "internet processing." Petition at 33. But as explained above, Obelix is not an "internet site."

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It simply collects user browsing data that is sent to it by a modified browser and then uses that information to update a database that can be used by a search engine. *Supra* VII(A)(1); EX. 1005 at 2, 7-8. It is the search engine, not Obelix, that performs the ranking scores. EX. 1005 at 7-8. And since Obelix is not an "internet site," it cannot be performing "internet processing," when that term is properly construed to mean "data processing performed by a web server at an internet site." *Supra* § VI(A)(3). The Petition does not provide any proposed construction for the term "internet processing" even though the Board's rules required Microsoft to identify "[h]ow the challenged claim is to be construed." 37 C.F.R. § 42.104(b)(3). As a result, it is impossible to know what Dr. Stone or Microsoft mean when they use the term "internet processing."

Finally, Microsoft equates the "speedup" Obelix receives from its reconfigurable architecture with an acceleration service. Petition at 33-34. But the "speedup" Microsoft cites is to Obelix's own processing of the user data, not a "speedup" of search results or anything else that would be visible to a user of internet site. EX. 1005 at 3, 7-8. Obelix passively gathers user browsing data that is broadcast to it by modified web browsers, processes that data (which is where the speedup occurs), and then sends the results to a database that is used by a search engine to allow the search engine to provide better search results to users. EX. 1005 at 1-3, 7-9 ("The performance of the system has showed the *improvement* of

the search results sing the presented techniques… Obelix has proved itself as a valuable search engine offering more *useful* search results than conventional search engines.") (emphasis added). Nothing cited by Microsoft shows any sort of acceleration service.

Therefore, Microsoft has failed to demonstrate that Obelix teaches "an internet processing acceleration service" as required by claim 11 and its dependent claims 12-28.

C. Microsoft has not shown that any claim of the '687 patent is anticipated or rendered obvious based on any combination of Obelix or the other references.

Microsoft relies on Obelix exclusively to demonstrate various elements discussed in §VII(A)-(B). Microsoft does not allege that Spencer, Perkins, Leong, Davis, or Skillen teach any of these claim elements. *See generally* Petition at 46-70 (relying on Obelix exclusively to supply these limitations). Therefore, all of the proposed grounds fail for the same reasons discussed above.

D. No weight should be given to Dr. Stone's conclusory obviousness testimony.

Microsoft attempts to fill the gaps in its anticipation arguments related to Obelix by arguing that any missing limitations would simply be obvious. Petition at 40-46. For example, Microsoft argues that it would have been obvious to perform Obelix's data processing at an internet site. Petition 40-41. To support this bald conclusion, Microsoft cites only to Dr. Stone's declaration. *Id.* But paragraph

121 of Dr. Stone's declaration is identical to the argument in Microsoft's petition,

but absent any evidence or citations:

Petition at 40-41	**Dr. Stone's Declaration ¶ 121**
To the extent one might argue that Obelix does not disclose processing data "at an internet site," it would have been obvious to perform the processing described in Obelix "at an internet site" under any reasonable interpretation of that phrase. A Skilled Artisan would have been motivated to perform processing at an internet site by Obelix's statements that it is "An Improved Internet Search Engine" utilizing reconfigurable hardware boards to assist in the processing of data associated with a search engine that serves clients over the Internet. *Id.*, 1-2; EX1003¶121. Moreover, a Skilled Artisan would have recognized that Obelix also discloses that the server receives information about users' browsing habits through a datagram connection. *Id.*, 2. The data is received by the Obelix server in the form of a packed Internet Protocol (IP) packet. *Id.* A Skilled Artisan would have understood that the server must therefore be able to receive data over the internet to perform the data processing associated with the system. These statements would suggest to a Skilled Artisan that the data processing should occur at an internet site. EX1003¶121.	121. To the extent one might argue that Obelix does not disclose processing data "at an internet site," it would have been obvious to perform the processing described in Obelix "at an internet site" under any reasonable interpretation of that phrase. A Skilled Artisan would have been motivated to perform processing at an internet site by Obelix's statements that it is "An Improved Internet Search Engine" utilizing reconfigurable hardware boards to assist in the processing of data associated with a search engine that serves clients over the Internet. *Id.*, 1-2. Moreover, a Skilled Artisan would have recognized that Obelix also discloses that the server receives information about users' browsing habits through a datagram connection. *Id.*, 2. The data is received by the Obelix server in the form of a packed *Internet Protocol* (IP) packet. *Id.* A Skilled Artisan would have understood that the server must therefore be able to receive data over the internet to perform the data processing associated with the system. These statements would suggest to a Skilled Artisan that the data processing should occur at an internet site.

This type of conclusory testimony should not be afforded any weight. 37 C.F.R.

§ 42.65(a). The Board has repeatedly held that expert testimony that "repeats Petitioner's argument without any additional analysis, facts, or data to support it … is entitled to little probative weight." *See Masabi Ltd. v. Bytemark, Inc.*, IPR2017-01449, slip op. at 43-44 (PTAB Dec. 3, 2018) (Paper 38); *Apple Inc. v. Uniloc Luxembourg, S.A.*, IPR2017-02202, slip op. at 9-10 (PTAB Dec. 13, 2018) (Paper 10) (affording no weight to expert testimony that "merely repeats verbatim Petitioner's argument"); *Infobionic, Inc. v. Braemer Manufacturing, LLC*, IPR2015-01704, slip op. at 14-15 (PTAB Feb. 16, 2016) (Paper 11) (affording no weight to expert testimony repeating Petitioner's arguments "with the addition of the phrase 'in my opinion'"); *Kinetic Techs. v. Skyworks Solutions, Inc.*, No. IPR2014-00529, slip op. at 15-16 (PTAB Sept. 23, 2014) (Paper 8) ("Merely repeating an argument from the Petition in the declaration of a proposed expert does not give that argument enhanced probative value," and a petitioner cannot move forward to trial based upon such "mere conclusory statements."); *TRW Automotive US LLC v. Magna Elecs., Inc.*, No. IPR2014-00258, slip op. at 10-11 (PTAB Aug. 27, 2014) (Paper 18) (giving little to no weight to expert testimony that "did not elaborate on [Petitioner's] position because it simply repeated [Petitioner's] conclusory statements verbatim.").

The remainder of Microsoft's obviousness arguments about Obelix are similarly devoid of substance and rely only on similarly conclusory testimony from Dr.

Stone. Petition at 41-46. Accordingly, Microsoft has failed to demonstrate that any of the claims of the '687 patent are obvious over Obelix.

VIII. CONCLUSION

The Board should exercise its discretion under § 314(a) and deny institution for any one of three reasons: (i) SRC is an important sole-source supplier for the Department of Defense, (ii) the district court case involving the same patent and overlapping prior art, and (iii) the Tribe's status as a sovereign. But even if the Board decides not to exercise its discretion under § 314(a) it should still deny institution because Microsoft has failed to demonstrate that it has a reasonable likelihood of prevailing as to any challenged claim. Therefore, the Board should deny Microsoft's Petition.

Date: January 15, 2019

Respectfully submitted,

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IX. LIST OF EXHIBITS

Exhibit No.	Descriptions
2001	*Mylan Pharmas. Inc., et al v. Saint Regis Mohawk Tribe, et al*, IPR2016-01127, Paper 78 (PTAB Sept. 22, 2017)
2002	*Mylan Pharmas. Inc., et al v. Saint Regis Mohawk Tribe, et al*, IPR2016-01127, Paper 129 (PTAB Feb. 23, 2018)
2003	*Mylan Pharmas. Inc., et al v. Saint Regis Mohawk Tribe, et al*, IPR2016-01127, Paper 133 (PTAB Feb. 28, 2018)
2004	*Saint Regis Mohawk Tribe et al v. Mylan Pharmas., Inc., et al*, No. 18-1638, Dkt. 10-1 (Fed. Cir. March 19, 2018)
2005	*Saint Regis Mohawk Tribe et al v. Mylan Pharmas., Inc., et al*, No. 18-1638, Dkt. 42 (Fed. Cir. March 28, 2018)
2006	*Saint Regis Mohawk Tribe et al v. Mylan Pharmas., Inc., et al*, No. 18-1638, Dkt. 136-1 (Fed. Cir. July 20, 2018)
2007	*Saint Regis Mohawk Tribe et al v. Mylan Pharmas., Inc., et al*, No. 18-1638, Dkt. 137 (Fed. Cir. Aug. 20, 2018)
2008	*SRC Labs, LLC, et al v. Microsoft Corp.*, No. 1:17cv-01172-LO-JFA, Dkt. 27 (E.D. Va. Dec. 22, 2017)
2009	*Saint Regis Mohawk Tribe et al v. Mylan Pharmas., Inc., et al*, No. 18-1638, Dkt. 156 (Fed. Cir. Sept. 6, 2018)
2010	*Saint Regis Mohawk Tribe et al v. Mylan Pharmas., Inc., et al*, No. 18-1638, Dkt. 162 (Fed. Cir. Sept. 7, 2018)
2011	*Saint Regis Mohawk Tribe et al v. Mylan Pharmas., Inc., et al*, No. 18-1638, Dkt. 163 (Fed. Cir. Sept. 7, 2018)
2012	A Reporter's Guide to Applications Pending Before The Supreme Court of the United States
2013	*Ericsson Inc., et al v. Regents of the Univ. of Minn.*, IPR2017-01186, Paper 13 (PTAB Aug. 15, 2017)
2014	*Reactive Surfaces Ltd., LLP, v. Toyota Motor Corp.*, IPR2017-00572, Paper 22, (PTAB Feb. 21, 2017)
2015	*St. Jude Medical, LLC v. The Regents of the Univ. of California*, IPR2017-01338, IPR2017-01339, Paper 7 (PTAB July 20, 2017)
2016	*Baylor College of Medicine v. The Board of Regents of the Univ. of Texas Sys. et al*, IPR2018-00948, IPR2018-00949, Paper 8 (PTAB Aug. 7, 2018)
2017	*Apple, Inc. v. MEC Resources, Inc.*, IPR2018-00286, Paper 6 (PTAB Jan. 30, 2018)

2018	*SRC Labs, LLC et al v. Microsoft Corp.*, No. 2:18-cv-00321-JLR, Dkt. 94 (W.D. WA May 22, 2018)
2019	*SRC Labs, LLC et al v. Microsoft Corp.*, No. 2:18-cv-00321-JLR, Dkt. 117 (W.D. WA Oct. 11, 2018)
2020	*Saint Regis Mohawk Tribe et al v. Mylan Pharmas., Inc., et al*, No. 18-1638, Dkt. 136-1 (Fed. Cir. July 20, 2018)
2021	*Saint Regis Mohawk Tribe et al v. Mylan Pharmas., Inc., et al*, No. 18-1638, Dkt. 170 (Fed. Cir. Oct. 22, 2018)
2022	*Saint Regis Mohawk Tribe et al v. Mylan Pharmas., Inc., et al*, No. 18-1638, Dkt. 174 (Fed. Cir. Nov. 13, 2018)
2023	Email from Scott Border to Christopher Evans re: stay of IPR proceeding pending Sovereign Immunity Appeal
2024	SRMT Office of Technology, Research and Patents ("OTRAP")
2025	El-Araby, The Promise of High-Performance Reconfigurable Computing
2026	Microsoft Press Computer Dictionary, 3rd Edition
2027	RFC 1594 – FYI Q/A for New Internet Users, March 1994
2028	Obelix Searches Internet Using Customer Data
2029	Declaration of Tarek El-Ghazawi dated 11/05/18 *SRC Labs LLC and Saint Regis Mohawk Tribe v. Microsoft Corporation,* No. 2:18-cv-00321-JLR
2030	Cray, Britannica Online Encyclopedia
2031	COTS Journal, UAVs Lead Push for Embedded Supercomputing
2032	Declaration of Mark Wollgast dated 09/10/18 *Xilinx, Inc. v. Saint Regis Mohawk Tribe,* IPR2018-01395
2033	SRC Computers Chosen by Lockheed Martin for U.S. Army Program
2034	Declaration of Brandon Freeman dated 10/25/18 *SRC Labs LLC and Saint Regis Mohawk Tribe v. Microsoft Corporation,* No. 2:18-cv-00321-JLR
2035	Caliga, Delivering Acceleration: The Potential for Increased HPC Application Performance Using Reconfigurable Logic
2036	Joint Claim Chart and Prehearings Statement (Dkt. 128) *SRC Labs LLC and Saint Regis Mohawk Tribe v. Amazon Web Services, Inc., Amazon.com, Inc, and Vadata, Inc.,* No. 2:18-cv-00317-JLR
2037	Petition for Writ of Certiorari

	Saint Regis Mohawk Tribe and Allergan, Inc. v. Mylan Pharmaceuticals, Inc., Teva Pharmaceuticals USA, Inc., and Akorn, Inc. (Supreme Court of the United States), No. 19-899
2038	Declaration of Dr. Henry Houh dated 09/21/18 *SRC Labs LLC and Saint Regis Mohawk Tribe v. Microsoft Corporation,* No. 2:18-cv-00321-JLR
2039	Microsoft Corporation's Preliminary Invalidity Contentions *SRC Labs LLC and Saint Regis Mohawk Tribe v. Microsoft Corporation,* No. 2:18-cv-00321-JLR
2040	Exhibit C-1: Obelix
2041	Exhibit C-13: Perkins
2042	Exhibit C-14: Davis
2043	Exhibit C-15: Skillen

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e)(4) and 42.25(b), the undersigned certifies that

on January 15, 2019, a complete copy of *Patent Owner Saint Regis Mohawk Tribe's*

Preliminary Response to Petition for Inter Partes Review of U.S. Patent 6,434,687

was filed electronically through the Patent Trial and Appeal Board's PTABE2E

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24, the undersigned certifies that the foregoing

Patent Owner Preliminary Response contains less than 14,000 words excluding the

table of contents, table of authorities, certificate of service, certificate of word

count, and appendix of exhibits. Patent Owner has relied on the word count feature

of the word processing software used to create this paper in making this

certification.

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