UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APTOS, INC.,
Petitioner,

v.

PROTEGRITY CORPORATION,
Patent Owner.

Case No. CBM2015-00002
Patent No. 6,321,201

PETITIONER APTOS, INC.'S NOTICE OF APPEAL

Pursuant to 37 C.F.R. § 90.2 Petitioner Aptos, Inc., (f/k/a Epicor Software Corporation ("Petitioner")) hereby gives notice of appealing to the United States Court of Appeals for the Federal Circuit from a portion of a Final Written Decision entered on April 20, 2016 (Paper No. 46) which held that claims 27 – 31 are not shown to be unpatentable under 35 U.S.C. § 101, including any underlying decisions, rulings, and opinions relating to claims 27 – 31.

In accordance with 37 C.F.R § 90.2(a)(3), the Petitioner states the following:

In the Decision, Claim 1, the independent claim from which claims 27 – 31 depend, was deemed unpatentable under 35 U.S.C. § 101, and claims:

> 1. A method for processing of data that is to be protected, comprising:
>
> storing the data as encrypted data element values (DV) in records (P) in a first database (O-DB), the first database (O-DB) having a table structure with rows and columns, each row representing a record (P) and each combination of a row and a column representing a data element value (DV), in the first database (O-DB) each data element value (DV) is linked to a corresponding data element type (DT);
>
> storing in a second database (IAM-DB) a data element protection catalogue (DPC), which contains each individual data element type (DT) and one or more protection attributes stating processing rules for data element values (DV), which in the first database (O-DB) are linked to the individual data element type (DT);

> for each user-initiated measure aiming at processing of a given data element value (DV) in the first database (O-DB), initially producing a calling to the data element protection catalogue for collecting the protection attribute/attributes associated with the corresponding data element type, and
>
> controlling the user's processing of the given data element value in conformity with the collected protection attribute/attributes.

Claim 27 merely claims the concept of collecting protection attributes/attributes associated with the corresponding data element values (DV) for every user-initiated measure. Claim 28 merely claims the concept of collecting the protection attributes/attributes associated with the corresponding data element value (DV) occurs for every user and is not based upon an identity of the user who initiated the measure. Claim 29 merely claims the concept of the database protection catalogue being inaccessible to a user. Claim 30 merely claims the concept of the database protection catalogue being physically separate from the first database. Claim 31 merely claims the concept of the database protection catalogue being physically separate from the first database and is inaccessible to a user.

The prior art before the Patent Trial and Appeal Board ("PTAB") establishes that the following limitations were known: the concept of collecting protection

attributes/attributes associated with the corresponding data element values (DV) for every user-initiated measure; the concept of collecting the protection attributes/attributes associated with the corresponding data element value (DV) occurs for every user and is not based upon an identity of the user who initiated the measure; the concept of the database protection catalogue being inaccessible to a user.; the concept of the database protection catalogue being physically separate from the first database; and the concept of the database protection catalogue being physically separate from the first database and is inaccessible to a user.

The PTAB held claims 27 – 31 unpatentable under 35 U.S.C. § 101 as being directed to non-statutory subject matter under another Petition decided by the Board on April 28, 2016 in the matter of *Square, Inc. v. Protegrity Corporation*, CBM 2015-0014 (Paper No. 41) (herein after the "*Square Decision")*. The PTAB also held claims 27 – 31 unpatentable under 35 U.S.C. § 101 as being directed to non-statutory subject matter under yet another Petition decided by the Board on May 31, 2016 in the matter of *Informatica Corporation v. Protegrity Corporation*, CBM 2015-00021 (Paper No. 38) (herein "*Informatica Decision*"*)*. The determination of patentability under 35 U.S.C. § 101 is a matter of law. The Board's Decision is inconsistent with the evidence before it and the *Square* and

Informatica Decisions it has rendered on the same claims and constitutes error as a matter of law.

In accordance with 37 C.F.R § 90.2(a)(3), Petitioner further indicates that the issues on appeal include, but are not limited to:

1. Whether the Patent Trial and Appeal Board's erred in its determination that claims 27 – 31 are not shown unpatentable under 35 U.S.C. § 101where the claims purport to cover the abstract idea of whether access to data should be granted based on whether one or more rules are satisfied and claims 27 – 31 provide no meaningful limitations to the abstract idea.

2. Whether the Patent Trial and Appeal Board's erred in its determination that claims 27 – 31 are not shown unpatentable under 35 U.S.C. § 101where the prior art established:

a. The concept of collecting protection attributes/attributes associated with the corresponding data element values (DV) for every user-initiated measure was known and/or is not a meaningful limitation;

b. The concept of collecting the protection attributes/attributes associated with the corresponding data element value (DV) occurs for every user and is not based upon an identity of the user who initiated the measure was known and/or is not a meaningful limitation;

c. The concept of the database protection catalogue being inaccessible to a user was known and/or is not a meaningful limitation;

d. The concept of the database protection catalogue being physically separate from the first database was known and/or is not a meaningful limitation; and

e. The concept of the database protection catalogue being physically separate from the first database and is inaccessible to a user was known and/or is not a meaningful limitation.

3. Whether the Patent Trial and Appeal Board erred in its determination that claims 27 – 31 are not shown unpatentable under 35 U.S.C. § 101where:

a. The concept of collecting protection attributes/attributes associated with the corresponding data element values (DV) for every user-initiated is not a meaningful limitation;

b. The concept of collecting the protection attributes/attributes associated with the corresponding data element value (DV) occurs for every user and is not based upon an identity of the user who initiated the measure is not a meaningful limitation;

c. The concept of the database protection catalogue being inaccessible to a user is not a meaningful limitation;

d. The concept of the database protection catalogue being physically separate from the first database is not a meaningful limitation; and

e. The concept of the database protection catalogue being physically separate from the first database and is inaccessible to a user is not a meaningful limitation.

4. Whether the Patent Trial and Appeal Board's determination that claims 27 – 31 are not shown unpatentable under 35 U.S.C. § 101was arbitrary and capricious where it held the same claims were invalid under 35 U.S.C. § 101 in the matter of *Square, Inc. v. Protegrity Corporation*, CBM 2015-0014.

5. Whether the Patent Trial and Appeal Board's determination that claims 27 – 31 are not shown unpatentable under 35 U.S.C. § 101was arbitrary and capricious where it held the same claims were invalid under 35 U.S.C. § 101 in the matter of *Informatica Corporation v. Protegrity Corporation*, CBM 2015-00021.

6. Whether the Patent Trial and Appeal Board's determination that claims 27 – 31 are not shown unpatentable under 35 U.S.C. § 101 constituted legal error where it held the same claims were invalid under 35 U.S.C. § 101 in the matter of *Square, Inc. v. Protegrity Corporation*, CBM 2015-0014.

7. Whether the Patent Trial and Appeal Board's determination that claims 27 – 31 are not shown unpatentable under 35 U.S.C. § 101 constituted legal error

where it held the same claims were invalid under 35 U.S.C. § 101 in the matter of *Informatica Corporation v. Protegrity Corporation*, CBM 2015-00021.

This Notice of Appeal is being served to the Director of the United States Patent and Trademark Office and the Clerk's Office for the United States Court of Appeals for the Federal Circuit. A copy of this Notice of Appeal is being filed with the PTAB through the Patent Review Processing System, and a copy of this Notice of Appeal, along with the required docketing fees, is being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit.

Respectfully submitted,

Dated: June 2, 2016

/s/ William J. Cass

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Appeal was electronically served on this 2nd day of June, 2016, on the Patent Owner as follows:

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The undersigned hereby further certifies that the foregoing Notice of Appeal was served by Federal Express on the 2nd day of June, 2016 upon the Director of the United States Patent and Trademark Office, specifically to the General Counsel's office within said office at:

Office of the General Counsel
10B20 Madison Building East
600 Dulany Street
Alexandria VA 22314

The undersigned hereby further certifies that the foregoing Notice of Appeal was served by Federal Express on the 2nd day of June, 2016 upon the Clerk's Office of the United States District Court of Appeals for the Federal Circuit:

United States Court of Appeals for
the Federal Circuit - Clerk's Office
717 Madison Place N.W.
Washington, DC 20439

By: */s/ William J. Cass*
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