Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner,

v.

CONTENTGUARD HOLDINGS, INC.,
Patent Owner

Patent No. 7,774,280
Issued: August 10, 2010
Filed: October 4, 2004
Inventors: Nguyen, *et al*.
Title: System and Method for Managing Transfer of Rights Using Shared State Variables

Inter Partes Review No. IPR2015-00352

PETITIONER'S REQUEST FOR REHEARING UNDER 37 C.F.R. 42.71

I. INTRODUCTION

Apple Inc. ("Petitioner") requests rehearing of the Board's decision denying institution of IPR2015-00352 concerning claim 1 of U.S. 7,774,280 ("the '280 patent") (Ex. 1001). Rehearing is warranted because the Board misapprehended and/or overlooked arguments and evidence clearly presented in the Petition establishing that it would have been obvious to modify the Gruse DRM system to employ an ***admittedly*** old and well-known type of "trusted system": a "repository" having behavioral integrity as described in prior art patents to Stefik *et al*. *See* Pet. at 53-56. The Board appeared to have overlooked and/or misapprehended this argument and evidence, as neither is referenced or discussed anywhere in the Decision. Because the "repository" limitation was the sole basis identified by the Board as to why it did not institute trial on the grounds based on Gruse, rehearing is warranted, as is withdrawal and institution of trial on these grounds.

II. RELIEF REQUESTED

Apple requests the Board to withdraw the Decision and institute *inter partes* review of claim 1 of the '280 patent as obvious under 35 U.S.C. §103(a) over Gruse and the knowledge of one skilled in the art. This claim is the only one still being asserted against Apple in the district court litigation. The grounds presented in the Petition based on Gruse in view of Wiggins do not concern this claim. Petitioner's decision to not seek review of these grounds and/or other claims does

not imply a belief that the denial of those grounds was proper.

III. STANDARD OF REVIEW

"When rehearing a decision on petition, a panel will review the decision for an abuse of discretion." (emphasis added) 37 C.F.R. § 42.71(c). An abuse of discretion exists "when [the] decision is based on clearly erroneous findings of fact, is based on erroneous interpretations of the law, or is clearly unreasonable, arbitrary or fanciful." *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1460 (Fed. Cir. 1998) (*en banc*); *see Advanced Software Design Corp. v. Fiserv, Inc*., 641 F.3d 1368, 1380 (Fed. Cir. 2011).

IV. MATTERS MISAPPREHENDED OR OVERLOOKED

In accordance with 37 C.F.R. §42.71(d), Apple identifies the matters which it believes the Board misapprehended and/or overlooked in its Decision and the place where each matter was previously addressed.

A. The Board Overlooked the Explanations in the Petition that Using a Stefik Trusted "Repository" as the Clearinghouse in the Gruse Scheme Would Have Been Obvious

The Petition explained that Gruse (Ex. 1008) describes a DRM rights scheme that is designed to facilitate the distribution of usage rights to consumers through intermediaries. Pet. at 24. It also explained the Gruse scheme employs "meta rights" and "state variables" to create "usage rights" to enable consumers to use particular items of digital content, consistent with prior determinations by the Board. The Petition also explained that Gruse teaches use of a "Clearinghouse"

device as the intermediary that plays the same role in the Gruse scheme as the "repository" plays in the contested claims. Pet. at 36-38. The Petition also explained many of these facts had been established, noting the Board had found (in a decision not appealed by Patent Owner) the scheme described in Gruse to anticipate claims to a "meta-rights" distribution scheme in a related application. Pet. at 24, 28-29.

Importantly, the Petition explained that Gruse expressly teaches that "trusted systems" were a well-known solution to the challenge of "preventing unauthorized use and distribution" of protected content. Pet. at 55. The Petition further explained that Gruse expressly teaches that its disclosed DRM system can be deployed using a "trusted system" model and was specifically designed to include flexibility regarding the security technologies that are used within its components. *See* Pet. at 55 ("Moreover, Gruse itself points out that its system can be implemented in one of two general models; ***trusted*** or not trusted.")[citing Ex. 1008 at 10:17-19]; *id*. at 55-56 ("And Gruse indicates that its system is designed specifically to include flexibility regarding future-arising security technologies that may be incorporated into it."). The Petition also identified several examples in Gruse where Clearinghouses use "digital certificates" to maintain the overall integrity of the Gruse DRM scheme. *See* Pet. at 37 ("[A] Clearinghouse ('repository') will provide to the Store the authorization to sell or distribute digital

content ***in the form of a digital certificate*** along with encryption keys needed to extract information from ***secure containers***."); *id*. ("the Clearinghouse sends a ***digital certificate*** providing authorization to a Store 'in a ***secure*** fashion'"); *see also id*. at 34.

The Petition then explained that the '280 patent itself admits that use of "trusted systems"/"repositories" in DRM schemes was old and known in the prior art. *See* Pet. at 54 (citing Ex. 1001 at 1:57-2:8; *see also id*. at 1:25-2:62; Ex. 1003 at ¶¶ 85-88). In particular, the Petition explained that the '280 patent itself states that "repositories" having "physical, communications and behavioral integrity" were well known and had been used in DRM schemes, identifying a passage in the '280 patent where it admits such "repository" schemes had been so used in U.S. Patent No. 5,634,012 ("the Stefik '012 patent") (Ex. 1012). Pet. at 18, 19, 54, 55. As the Petition stated, "these prior art schemes use ***the same repositories*** that are used in the '280 patent claims." *See* Pet. at 54 (citing Ex. 1001 at 2:9-15; Ex. 1003 at ¶¶ 83-84, 90). Indeed, Patent Owner relied on this ***prior art*** Stefik repository scheme as the basis for its position on the proper construction of "repositories" and "behavioral integrity." Prelim. Resp. at 15-16 (referring to the Stefik '012 patent).

The Petition then ***expressly stated*** that Gruse could be read as ***not disclosing*** certain aspects of the '280 Patent claims (Pet. at 50-51) including "(iii) system components with varying security capabilities, including those capable of

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.