UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner

v.

DSS TECHNOLOGY MANAGEMENT, INC.
Patent Owner

Case IPR2015-00369
Patent 6,128,290

PETITIONER'S REQUEST FOR REHEARING OF INSTITUTION DECISION UNDER 37 C.F.R. § 42.71(d)

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Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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I. Introduction

Petitioner Apple Inc. ("Apple") respectfully requests rehearing under 37 C.F.R. §§ 42.71(c) and (d) and that the Board reconsider and reverse its decision not to institute *inter partes* review based on Barber.

On June 25, 2015, the Board instituted *inter partes* review of claims 1-4 of U.S. Patent No. 6,128,290 ("the '290 patent") under 35 U.S.C. § 103(a) over the combination of Natarajan and Neve. The Board declined to institute *inter partes* review of claims 1-4 under 35 U.S.C. § 103(a) based on Barber.

As a matter of law, the Board misapprehended the statutes and the regulations governing these proceedings by creating an irrebuttable presumption that the date stamped on a printed publication is not what it purports to be. The Board overlooked that the asserted prior art–Barber–*facially indicates* that it was publicly accessible on the date asserted by Apple. Moreover, the Board overlooked that Patent Owner has not provided any evidence or arguments to the contrary. Instead, the Board acted contrary to the procedural framework of *inter partes* review and the highly factual nature of the printed publication inquiry.

In brief, the Board has imposed an arbitrary requirement on Apple to preemptively corroborate its prior art. This is not supported by the relevant statutes or regulations, and is capricious in view of an established pattern of conduct by the Board to the contrary.

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