UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner,

v.

PERSONALIZED MEDIA COMMUNICATIONS, LLC,

Patent Owner.

Case IPR2016-00754
Patent 8,559,635

PATENT OWNER'S NOTICE OF APPEAL

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NOTICE OF APPEAL TO THE FEDERAL CIRCUIT

Notice is hereby given, pursuant to 35 U.S.C. §§ 141 and 142 and 37 C.F.R. § 90.2, that Patent Owner Personalized Media Communications, LLC ("PMC") hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision (FWD) entered on September 19, 2017 (Paper 41), the Decision on Request for Rehearing (RfR) entered on September 19, 2019 (Paper 43), and from all underlying orders, decisions, rulings, and opinions, regarding claims 4, 7, 13, 21 and 28-30[1] ("Challenged Claims") of U.S. Pat. No. 8,559,635 ("the '635 Patent").

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

(1) Whether the Board erred as a matter of law in construing "decrypt," "encrypt" and related terms—as used in claim limitations such as "decrypting said encrypted digital information portion of said programming" including "encrypted video" (claim 4), "decrypting a second of said plurality of [detected] signals" (claim 13), "decrypting . . . a second portion of said encrypted materials" (claim 21)—to encompass deciphering through the descrambling of analog information such as analog television signals, rather than being limited exclusively to the

[1] Claims 1 and 2 were included in the petition but were later disclaimed by PMC.

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deciphering of digital information signals.

(2) Whether the Board erred as a matter of law in disregarding multiple instances of prosecution disclaimer presented in the prosecution of the ’635 Patent and related patents “that limit ‘decrypt’ to operations on digital data and exclude operations on analog information.”

(3) Whether the Board erred in construing “encrypted video” in claim 4 as requiring “non-static imagery” that “requires moving visuals” but then applying a different construction in finding that the claim term is met by teletext characters and simple graphics in U.S. Pat. No. 4,337,483 (“Guillou”) and U.S. Pat. No. 4,388,643 (“Aminetzah”) without any showing that they are non-static imagery with moving visuals.

(4) Whether the Board incorrectly held that claims 7, 21, and 29 are anticipated by Guillou.

(5) Whether the Board incorrectly held that claims 4, 13, 28, and 30 are obvious based on Guillou.

(6) Whether the Board incorrectly held that claims 21 and 28-30 are obvious based on Aminetzah.

(7) Whether the Board incorrectly held that claim 4 is obvious based on Aminetzah in view of U.S. Pat. No. 3,743,767 (“Bitzer”).

(8) Whether, in arriving at its decision, the Board acted in a manner that

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was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or based on factual findings unsupported by substantial evidence.

(9) Whether the appointment of the Administrative Patent Judges (APJs) who presided over the *inter partes* review was unconstitutional, requiring at a minimum vacatur of that panel's rulings and decisions and remand to a new panel of APJs, pursuant to *Arthrex, Inc. v. Smith & Nephew, Inc.*, No. 2018-2140 (Fed. Cir. Oct. 31, 2019).

Concurrently with this submission, a copy of this Notice of Appeal is being filed with the Patent Trial and Appeal Board, and a copy is being filed electronically with the United States Court of Appeals for the Federal Circuit along with the requisite filing fee. No fees are believed to be due to the United States Patent and Trademark Office in connection with this filing, but authorization is hereby given for any required fees to be charged to Deposit Account No. 50-6989.

Dated: November 19, 2019

Respectfully submitted,

By: /Douglas J. Kline/

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