

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,  
v.

PERSONALIZED MEDIA COMMUNICATIONS LLC,  
Patent Owner

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IPR2016-01520  
Patent No. 8,559,635 B1

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**PATENT OWNER'S NOTICE OF APPEAL**

Pursuant to 35 U.S.C. §§ 141-144 and 319, and 37 C.F.R. §§ 90.2 and 90.3, notice is hereby given that Patent Owner Personalized Media Communications LLC appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered September 8, 2022 (Paper 53) in IPR2016-01520 (Exhibit A), and all prior and interlocutory rulings related thereto or subsumed therein, to the extent they are adverse to Patent Owner. Patent Owner is also filing today a notice of appeal in IPR2016-00754, which the Board resolved in the same Final Written Decision and which addresses claims from the same patent.

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

(1) whether the Board erred in holding that claims 3, 18, 20, 32, and 33 are not entitled to a priority date of November 3, 1981, the date of filing of the application for U.S. Patent No. 4,694,490 (the “’490 application”), including, but not limited to, (a) whether the Board erred by construing the term “unaccompanied by any non-digital information transmission” in claim 18, and similar limitations in claims 20, 32, and 33, to exclude non-information analog signals; (b) whether the Board erred by concluding that the ’490 application does not provide written description support for the “unaccompanied by any non-digital information transmission” limitation in claim 18, and similar limitations in claims 20, 32, and

33, properly construed; (c) whether the Board erred as a matter of law in holding that *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299 (Fed. Cir. 2008), requires that the priority determination under 35 U.S.C. §§ 120 and 112 be conducted by comparing the definition and/or scope of a claim term in the earlier specification to the definition and/or scope of that claim term in the later specification, rather than by evaluating whether the claim term as defined in the later specification finds written description support in the earlier application pursuant to 35 U.S.C. §112; and (d) whether the Board erred by concluding that the '490 application does not provide written description support for the “programming” limitation in claim 3;

(2) whether the Board erred in holding that claims 13, 18, 20, and 32 are anticipated by U.S. Patent No. 4,817,140 (“Chandra”), including, but not limited to, (a) whether the Board erred in concluding that Chandra qualifies as prior art against claims 18, 20, and 32; (b) whether the Board erred in construing “changing a decryption technique” in claim 13 to encompass changing a decryption key and (c) whether, in construing “changing a decryption technique” in that way, the Board failed to adequately account for the applicant’s statements made during prosecution;

(3) whether the Board erred in holding that claim 33 is obvious based on Chandra and the publication entitled “When Network File Systems Aren’t Enough: Automatic Software Distribution Revisited” (“Nachbar”), including, but not limited to, whether the Board erred in concluding that Chandra and Nachbar qualify as prior art against claim 33;

(4) whether the Board erred in holding that claims 4 and 7 are anticipated by U.S. Patent No. 4,886,770 (“Seth-Smith”);

(5) whether, in arriving at its decision, the Board acted in a manner that was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or based on factual findings unsupported by substantial evidence; and

(6) whether the Board erred in any finding or determination supporting or related to those issues, as well as all other issues decided adversely to Patent Owner in any orders, decisions, rulings, and opinions.

Pursuant to 37 C.F.R. § 90.3, this Notice of Appeal is timely, having been filed within 63 days after the date of the Final Written Decision.

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a), a copy of this Notice of Appeal is being filed simultaneously with the Patent Trial and Appeal Board, the Clerk’s Office for the United States Court of Appeals for the Federal Circuit, and the Director of the Patent and Trademark Office.

Dated: November 10, 2022

Respectfully submitted,

/Douglas J. Kline/

Douglas J. Kline (Reg. No. 35,574)

GOODWIN PROCTER LLP

100 Northern Avenue

Boston, MA 02210-1980

Tel.: (617) 570-1000

Fax: (617) 523-1231

*dkline@goodwinlaw.com*

*Counsel for Patent Owner*

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