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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

ANDREA ELECTRONICS CORPORATION,
Patent Owner.

Case IPR2017-00626
Patent 6,363,345

**PATENT OWNER'S SUPPLEMENTAL RESPONSE REMAND
BRIEF**

I. INTRODUCTION

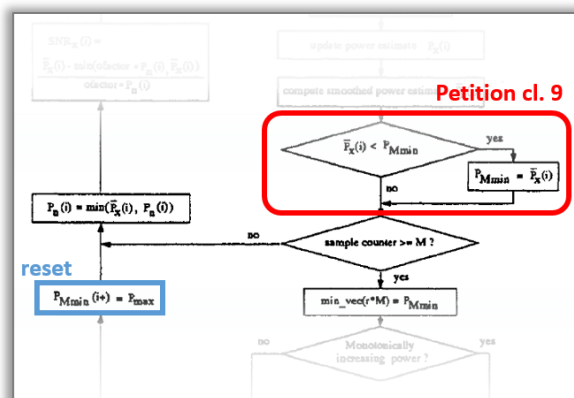
The Board's Order on supplemental briefing limited Apple's arguments to "further explanation of the original challenge to claim 9" and precluded introduction of "any new theory of unpatentability based on other disclosures from Martin." (Paper 45 at 3.) Despite this directive, Apple's supplemental brief introduces a previously unraised theory, premised on a reset condition in Martin setting P_{Mmin} to P_{Max} that allegedly controls the timing of setting P_{Mmin} to $\bar{P}_x(i)$. Since Apple violated the Board's Order by raising a new argument, the Board should disregard Apple's new argument and confirm the patentability of claim 9.

Even if the substance of Apple's new argument is considered, it still fails to disclose the "periodically" limitation of claim 9. The reset condition in Martin does not negate the fact that the alleged setting of the future minimum to the current magnitude in Martin is conditioned on a particular signal condition ($\bar{P}_x(i) < P_{Mmin}$) being met. Because the alleged setting of the future minimum to the current magnitude in Martin is conditional, it cannot occur at "regular intervals of time" and meet the "periodically" limitation in claim 9.

II. ARGUMENT

In its Petition, Apple alleged that Martin taught claim 9 because it sets an alleged future minimum, P_{Mmin} , to an alleged current magnitude, $\bar{P}_x(i)$, whenever the condition $\bar{P}_x(i) < P_{Mmin}$ occurs, attempting to satisfy its rejected interpretation of

“periodically,” which it interpreted as “from time-to-time.” (Petition at 46.) In its analysis of claim 9, Apple’s Petition did not make any arguments on the actual timing of when this condition would occur, because that was unnecessary under Apple’s rejected construction. Apple now attempts to conjure a new theory relying on other portions of its Petition, to try to meet the affirmed claim construction of “periodically” which requires “regular intervals of time.” (Apple Supp. Br. at 2-3.) Apple’s new theory relies on the



reset of P_{Mmin} to P_{Max} (annotated in blue), to argue that the condition $P_x(i) < P_{Mmin}$ “occur[s] at the beginning of every sub-window of M samples,” and therefore meets claim 9. (*Id.* at 1-3.)

Apple relies on: (1) its analysis of claim 5, which makes a passing reference to the reset of P_{Mmin} with P_{Max} , and (2) a hypothetical discussion proffered by its expert under Apple’s rejected single subwindow ($W=1$) scenario. (See Apple Supp. Br. at 2-3 (citing Pet. at 41¹, 43; Ex. 1003, ¶¶138-140); Final Decision at 10-15 (rejecting single subwindow argument).) Neither of these portions of Apple’s

¹ Apple did not cite to page 41 of its Petition in its responsive Remand Brief for its arguments regarding claim 9. (See Apple Resp. Remand Br. at 5.)

Petition articulates how Martin discloses the “periodically” limitation of claim 9 under a multiple subwindow teaching. Apple’s attempts to piece together this new theory of invalidity after the rejection of its proposed construction of “periodically” should be rejected because this argument was not made in Apple’s original challenge to claim 9. (Petition at 46.)

Substantively, Apple’s contention that Martin sets the alleged future minimum (P_{Mmin}) to the alleged current magnitude ($\bar{P}_x(i)$) at the beginning of each subwindow is also incorrect. Apple’s entire theory rests on the assumption that $\bar{P}_x(i)$ is always less than P_{Mmin} at the beginning of each subwindow. This argument is not supported by the evidence and is incorrect. The incoming signal magnitude, $\bar{P}_x(i)$, at the beginning of a subwindow has a variable value that may be equal to or greater than P_{Mmin} , which would prevent the alleged future minimum from being set to the alleged current magnitude at “regular intervals of time,” as required by the construction of “periodically.” Unlike in Martin, where the setting of P_{Mmin} to $\bar{P}_x(i)$ has inconsistent timing that is controlled by a particular signal condition being met, in the ’345 Patent the setting of the future minimum with the current magnitude value occurs periodically (*e.g.*, every five seconds). (*Compare* Ex. 1001, Fig. 3 (“Init with Y(n)) Every 5 Seconds”), 6:24-28 *with* Apple Supp. Br. at 3 (Martin’s conditional operation annotated in red).)

The Board should confirm the patentability of claim 9 of the ’345 Patent.

IPR2017-00626 (Patent 6,363,345)
Patent Owner's Supplemental Response Remand Brief

Respectfully submitted,

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