UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FACEBOOK, INC. and WHATSAPP, INC.,[1]

Petitioners

v.

UNILOC USA, INC. and UNILOC LUXEMBOURG S.A.,

Patent Owners

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IPR2017-01668

PATENT 8,724,622

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PATENT OWNER REPLY BRIEF ON REMAND

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[1] Apple Inc., which filed a petition in Case IPR2018-00580, was previously joined as a petitioner but is no longer a party to this proceeding. *See* Order Conduct of Proceeding, Paper 42, n.2 and n.3. LG Electronics, Inc. and Huawei Device Co., Ltd. also filed a motion for joinder and petition in IPR2017-02090.

Petitioner wrongly accused Uniloc of presenting new arguments on remand and pleads with the Board to not consider their merits. Paper 44, 1. What Petitioner mischaracterized as *new argument* is simply Uniloc's discussion of (and citation to) *arguments of record* concerning claim language clearly at issue on remand. Each one of the patentable distinctions Uniloc had identified arise from limitations directed to the "instant voice message" claim term (hereinafter, "IVM"), when read in the context and further qualifications recited in claims 4 and 5. Paper 43, 1-5. Certain distinctions of record arise from the proper construction of the IVM term *itself* (*id.*, 1-2), while others arise from the requirement that the IVM must *itself* include multiple fields, each having respective limitations (*id.*, 2-5).

Petitioner's brief on remand only underscores the necessity of carefully reviewing the record as it concerns the dispute over, and ultimate construction of, the IVM term. Petitioner erroneously suggests the Board found in its Final Written Decision that Zydney's voice container *in its entirety* is accurately characterized as "data content including a representation of an audio message." Paper 44, 2. Petitioner overlooks that the Board recognized there is a clear distinction between *voice data content* and *structure* used only for transporting such content. This is evident at least by the Board (1) adopting a construction focused on *content* while rejecting one focused on *structure*, and (2) recognizing a distinction between *voice data content* within Zydney's voice container and "*additional data and structure that ensures adequate transport or delivery of the [voice] data content.*" FWD, 45 (emphasis added). To use an analogy, just because a person remains a person while being transported by a bus, it does not follow that the bus *itself* is also a person.

Compounding its error, Petitioner falsely asserted that Uniloc's argument on remand is that Zydney's "voice container is no longer an 'instant voice message,' simply by virtue of being packaged in an HTTP message." Paper 44, 3. Not so. Uniloc has maintained its consistent argument of record that "data content including a representation of an audio message" does not *itself* encompass distinct structure used only to transport voice data content. Paper 43, 2 (citations omitted). This does not mean that the presence of such distinct transporting structure *precludes* the existence of "data content including a representation of an audio message." Rather, Uniloc has consistently maintained that such extraneous *additional data and structure* cannot supply what the claimed IVM *itself* must include, such as the "action field" recited in claim 4 and further qualified in claim 5. Paper 43, 1-5.

Petitioner's brief on remand also underscores deficiencies of the Petition regarding the "action field" term. Petitioner relied on Zydney's voice container as allegedly including therein the required IVM term, under the adopted construction of "data content including a representation of an audio message." Yet Petitioner acknowledged its "proposed combination did not place the '**action field**' within the Zydney voice container *itself*." Paper 44, 2 (emphases original). Thus, the alleged "action field" is admittedly *not included within* what Petitioner had relied upon as allegedly being "data content including a representation of an audio message." Paper 43, 3-5. Uniloc previously summarized arguments of record concerning the "object field" of the IVM, in part, to underscore the failure to establish that the proposed combination would have provided "data content including a representation of an audio message" that *itself* includes the requisite fields. *Id.*, 2-3.

Petitioner also failed to persuasively defend its combination theory against the teach-away rebuttal of record. Paper 43, 4 (citing Resp., 18-20). Petitioner's proposed combination admittedly would require a transport mechanism that *relied on* a POST method, whereas Zydney expressly restricts its transport mechanism as purposefully "contain[ing] no methods." *Id.* Petitioner attempted to waive away the express constraint in Zydney as "irrelevant" ostensibly because Petitioner's combination theory placed the "action field" outside of Zydney's voice container (and hence also outside of what Petitioner alleged is the "data content including a representation of an audio message"). Paper 44, 2. At a minimum, Petitioner offered no basis to dispute that "Zydney's definitional description of its voice container … constrains the transport mechanism *itself*." Paper 43, 4 (citation omitted). Petitioner also failed to defend against the identified inconsistencies of its theory. *Id*.

Petitioner's remand discussion of Board findings concerning claim 24 only confirms their present relevance. Paper 44, 4-5. The Board found it significant that claim 24 did not require the "connection objects" to be included within the instant voice message *itself*. FWD, 107. The Board thus concluded that "*even if the HTTP/1.1 Request-Line Method field is properly understood to include a 'method' within the meaning of that term as used in Zydney's definition of a voice container*, we disagree with Patent Owner's argument that Zydney teaches away from a combination in which the HTTP POST method described by Hethmon would be used." *Id*. (emphasis and underlining added). Claims 4 and 5, however, both require that the "action field" must be included within the instant voice message *itself*.

For brevity, Uniloc stands on its prior briefing for previously addressed points.

Date: April 25, 2022

Respectfully submitted,

By: /s/ Ryan Loveless

Ryan Loveless; Reg. No. 51,970
Brett A. Mangrum; Reg. No. 64,783
Attorneys for Patent Owners

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