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.

UNILOC LUXEMBOURG, S.A.

Patent Owner

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IPR2018-00289

PATENT 8,872,646

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**PATENT OWNER REQUEST FOR REHEARING
UNER 37 C.F.R. § 42.71(D)**

In response to the Final Written Decision entered May 1, 2019 (Paper 22) and pursuant to 37 CFR § 42.71(d), Patent Owner hereby respectfully request a rehearing and reconsideration by the Board of its Final Written Decision in IPR2018-00289.

I.   APPLICABLE STANDARDS

"A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board." 37 C.F.R. §42.71(d). "The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply." *Id*. The Board reviews a decision for an abuse of discretion. 37 C.F.R. §42.71(c).

II.   ARGUMENT

A.   "remov[ing] the one or more glitches from the motion data"

The Board's Final Written Decision does not expressly address, and hence appears to have overlooked, certain positions presented in Patent Owner's Response directed to the claim language "remov[ing] the one or more glitches from the motion data". *See*, *e.g.*, Paper 11 (Patent Owner Response) at 12-15.

The entirety of the Board's assessment of Patent Owner's position is reproduced below:

> Patent Owner argues that McMahan's error modification is distinguishable from the claimed glitch removal. *See* Resp. 9–15. According to Patent Owner, "McMahan defines its 'error' as a value that is impossible and not an accurate reflection of motion because it is outside what the sensor is designed to monitor," whereas the claimed glitch "refer[s] to actual motion data deemed to not fit the signature of human motion indicative of someone preparing to interface with a device." Id. at 9–10. In

addition, Patent Owner contends, McMahan's "'modify' block 308 refers to processing an erroneous output which, due to its impossible value, is never included as part of anything that can be considered motion data (and thus it cannot be removed from such data)." *Id*. at 14. We disagree with Patent Owner's arguments because they rely on Patent Owner's proposed "glitch" claim construction, which we decline to adopt for the reasons explained above.

Paper 22 (FWD) at 13.

The above block quotation incorrectly suggests that Patent Owner's position is entirely dependent upon the construction it had offered for the "glitches" term, which the Board rejected. This misunderstands Patent Owner's argument concerning certain deficiencies in the Petition. The Board is directed to the entirety of the section of Patent Owner's Response addressing the limitation "remov[ing] the one or more glitches from the motion data". *See*, *e.g.*, Paper 11 at 12-15.

Patent Owner addressed in its Response a plain reading of the surrounding context for the limitation "remov[ing] the one or more glitches from the motion data". *Id*. Regardless of how the "glitches" term is construed, there can be no question that "each 'remov[ing]' limitation (of claims 1, 13, and 20) derives antecedent basis for the term 'the motion data' from a respective limitation in which that term is introduced." *Id*. at 13. It follows that the "remov[ing]" is performed on a sample of "motion data" that must already exist, of which the "one or more glitches" must be a part. The claimed "remov[ing]", therefore, *removes* a part of the "motion data." *Id*. This plain reading of the *context* surrounding the "glitches" term is not dependent upon a particular construction for the "glitches" term. *Id*.

Patent Owner distinguished this plain reading of the *context* surrounding the "glitches" term from McMahan, the sole reference relied upon in addressing this claim language. Patent Owner observed that the Petition fails to explain how the only two statements from McMahan cited therein in addressing this claim language allegedly maps onto the "remove" and "removing" limitations. Paper 11 at 13 (citing EX1005, McMahan at 4:26-30 and 4:35-38).

Patent Owner further noted certain example distinctions arising from how McMahan addresses what it refers to as *errors*. *Id*. at 13-15. McMahan never provides errors to anything that can be considered motion data; and, instead, it only provides a new and contrived value. *Id*. Because McMahan's errors are never *a part* of anything that can be considered "motion data", it follows that those errors cannot be *removed* from anything that can be considered "motion data". This deficiency is independent of any construction applied to the "glitches" term.

Patent Owner further noted in its Response that "[i]n its Institution Decision, the Board argues on behalf of Petitioner that McMahan teaches '[w]hen an output data set is modified or replaced, it no longer includes the original input.'" *Id*. at 14. Patent Owner further observed that "[t]he Petition does not advance (and has therefore waived) the argument that McMahan teaches "an output data set is modified or replaced." *Id*. Patent Owner further explained why "[m]odifying a single 'error' (i.e., not a 'glitch') *before* the modification is purportedly included within a so-called 'data set' (a couplet that does not appear in McMahan or the Petition) is distinguishable from 'remov[ing] the one or more glitches from the motion data,' as recited in all challenged claims." *Id*. at 15 (emphasis original).

The Final Written Decision does not expressly address, and thus appears to have overlooked, at least the above positions previously presented in Patent Owner's Response.

II.   CONCLUSION

In view of the foregoing, Patent Owner respectfully requests that the Board grant a rehearing and reconsider its Final Written Decision.

Date: June 14, 2019   Respectfully submitted,

                                                      By: /s/ Brett A. Mangrum
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                                                      Attorney for Patent Owner

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