

Paper No. \_\_\_\_\_

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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Case IPR2018-00289  
Patent No. 8,872,646

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**PETITIONER'S MOTION TO STRIKE THE DECLARATION OF  
WILLIAM EASTTOM**

**PETITIONER'S UPDATED EXHIBIT LIST**

**September 19, 2018**

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| APPL-1001 | U.S. Patent No. 8,872,646.   |
| APPL-1002 | Prosecution History of U.S. Patent No. 8,872,646.  |
| APPL-1003 | U.S. Patent No. 7,409,291 to Pasolini <i>et al.</i>  |
| APPL-1004 | <i>Using the LIS3L02AQ Accelerometer</i> , Ron Goldman, Sun Microsystems Inc. Dated February 23, 2007.   |
| APPL-1005 | U.S. Patent No. 7,204,123 to McMahan <i>et al.</i>   |
| APPL-1006 | U.S. Patent Publication No. 2006/0161377 to Rakkola <i>et al.</i>  |
| APPL-1007 | <i>Using Gravity to Estimate Accelerometer Orientation,</i> David Mizell, Proceedings of the Seventh IEEE International Symposium on Wearable Computers (ISWC '03) 2003. |
| APPL-1008 | Declaration of Chris Butler, Under 37 C.F.R. § 1.68.   |
| APPL-1009 | <i>Dictionary of Scientific and Technical Terms,</i> McGraw-Hill.  |
| APPL-1010 | Declaration of Joe Paradiso, Ph.D, Under 37 C.F.R. § 1.68.   |
| APPL-1011 | Curriculum Vitae of Joe Paradiso.  |
| APPL-1012 | Declaration of Ingrid Hsieh-Yee, Under 37 C.F.R. § 1.68.   |
| APPL-1013 | Reserved.  |
| APPL-1014 | U.S. Patent No. 7,028,220 to Park <i>et al.</i>  |
| APPL-1015 | Email Correspondence between Petitioner's Counsel and the Board.   |

Pursuant to the Board's authorization made through an email on September 10, 2018 (APPL-1015), Petitioner files this unopposed motion to strike Exhibit 2001, the Easttom Declaration, in its entirety from the record of this proceeding.

I. STATEMENT OF FACTS

On March 12, 2018, Uniloc submitted the Declaration of William C. Easttom II (Exhibit 2001) in connection with its Patent Owner Preliminary Response (Paper 6). On August 13, 2018, Uniloc filed its Patent Owner Response (Paper 11). The Patent Owner Response does not cite Exhibit 2001.

On August 24, 2018, Petitioner requested that Patent Owner make Mr. Easttom available for deposition. Patent Owner, however, chose not make Mr. Easttom available for cross-examination. The parties conferred on September 5, 2018 to further discuss the deposition of Mr. Easttom. In light of the discussions held during that call, and subsequent email exchanges, it was agreed that Petitioner would file an Unopposed Motion to Strike. On September 7, 2018, Petitioner emailed the Board to request permission to file this motion. *See* APPL-1015. On September 10, 2018, the Board granted Petitioner's request by email. *See id.*

II. DISCUSSION

The rules of discovery explicitly allow Petitioner to cross-examine Mr. Easttom. *See* 37 C.F.R. 42.51(b)(1)(ii); 37 C.F.R. 42.53(b)(2). And, the Board has

made clear: “[a]s a guiding principle of *routine discovery*, as defined by our Rules, if a party proffers a witness’s testimony, that party ***must*** make that witness available for cross-examination by the other party.” *HTC Corp. v. NFC Technology, LLC*, IPR2014-01198, Paper 41, at 3 (PTAB Nov. 6, 2015) (emphasis added on “must”). The Board may exercise its authority to strike a declaration when the declarant is not made available for cross-examination. *See id* at 4. Further, “little to no weight is given to testimony of declarants who are not subject to cross-examination, even if the testimony is not excluded as hearsay.” *The Mangrove Partners Master Fund, LTD, et al., v. Virnetx Inc.*, IPR2015-01047, Paper 52 at 6-7 (PTAB Apr. 15, 2016); *see also Kolmes v. World Fibers Corp.* 107 F.3d 1534, 1542 (Fed. Cir. 1997) (holding that evidence was properly disregarded since no opportunity to cross-examine declarant).

Accordingly, because (i) Mr. Easttom has not been made available for cross-examination, (ii) Patent Owner’s Response does not cite to Exhibit 2001, the Easttom declaration, (iii) Mr. Easttom’s testimony would be given little to no weight, and (iv) Patent Owner does not oppose this Motion to Strike, Petitioner respectfully requests that this motion be granted and that Exhibit 2001 expunged from the record.

Petitioner's Motion to Strike the Declaration of William Easttom  
IPR2018-00289 (Patent No. 8,872,646)

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Dated: September 19, 2018

Respectfully submitted,

/Andrew S. Ehmke/

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