

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.

Petitioner

v.

UNILOC 2017 LLC

Patent Owner

IPR2018-00294

PATENT 6,736,759

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

In response to the Final Written Decision entered April 12, 2019 (Paper 20) and pursuant to 37 CFR § 42.71(d), Patent Owner hereby respectfully requests a rehearing and reconsideration by the Patent Trial and Appeal Board of its Final Written Decision (“FWD”).

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

The Board’s Final Written Decision misapplies the Federal Circuit construction of “displaying real-time data” to mean “displaying data without intentional delay, given the processing limitations of the system and the time required to accurately measure the data.” The Board bases its conclusion on the factually incorrect and legally inapposite finding that “the only delay in Fry’s display of GPS data is due to system processing.” FWD at 20. The suggestion that no system processing, however unrelated to the claim language, can ever amount to the form of “intentional delay” proscribed by the Federal Circuit is incorrect.

The disclosure in Fry that the Board dismisses as mere “system processing” is in fact *intentional delay* caused by executing *additional* process steps unrelated to computing and displaying the “data” as claimed. *See* Paper 9 (Resp.) at 5-11. Claim

1 recites the claimed “data” in the specific context of “data provided by said electronic positioning device and said physiological monitor.” In other words, the “data” that must be displayed in “real time” (i.e., “without intentional delay”) is specifically claimed as that which is provided by “said electronic positioning device and said physiological monitor.” Accordingly, unrelated system processing that would intentionally delay displaying the specifically-claimed “data” cannot reasonably be dismissed as “processing limitations of the system and the time required to accurately measure *the data*” as claimed. *See* Paper 9 (Resp.) at 5-11.

Intentional delay would arise, for example, by dedicating additional process cycles to servicing other sensors that provide data other than that “provided by said electronic positioning device and said physiological monitor.” Such unrelated processing is not fairly characterized as either “processing limitations of the system” or “the time required to accurately measure the [specifically-claimed] data”. It must therefore be considered intentional delay and hence outside the scope of the claim language. Therein lies a fundamental flaw in the Petition that the Board appears to have misunderstood or overlooked in its Final Written Decision.

The passage of the ’759 patent cited by the Board only confirms this interpretation and further highlights deficiency of the Petition. *See* FWD at 22 (citing EX1001 at 16:19-38). The Board observes that “the ’759 patent discloses that the electrical signal sent to the display unit can include data from the electronic positioning device (location, altitude, velocity, pace, distance traveled, and heading) and data from the physiological monitor (blood oxygen level and heart rate).” FWD at 22. This description of the specific data displayed in real time reflects the claim

language in question. The only data disclosed concerns that which is provided by the electronic position device data and physiological monitor.

Unlike the '759 patent, Fry intentionally delays displaying the “GPS and heart rate” data that Petitioner points to as allegedly satisfying the claim language. Paper 12 (Reply) at 8. The Petition focuses on Figure 3 of Fry (reproduced below). Figure 3 itself and its corresponding description confirm that Fry intentionally delays the display of the “GPS and heart rate” data Petitioner relies upon.

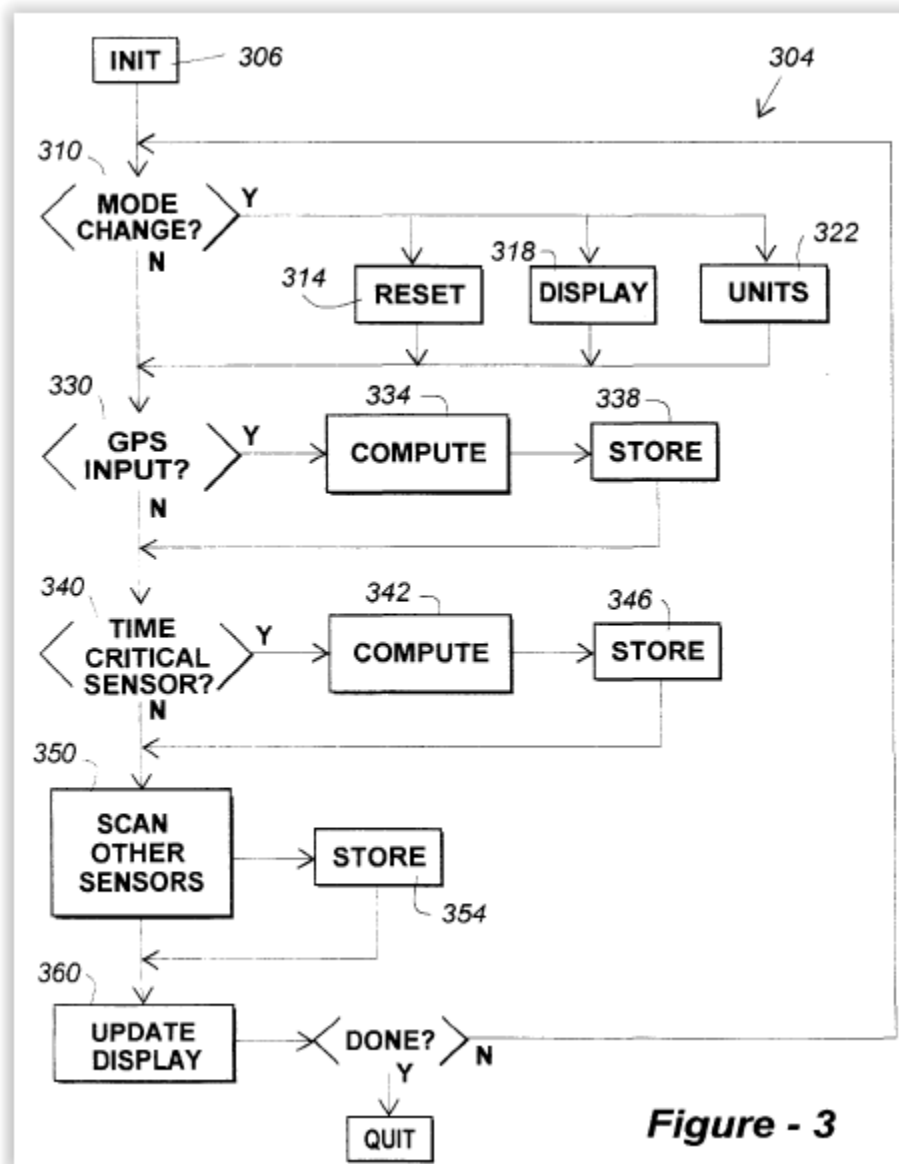


Figure - 3

EX1004 (Fry), Figure 3.

At a minimum, Fry discloses its block 350 requires dedicating additional process cycles to scanning for data that is not accurately characterized as being provided by either an “*electronic positioning device*” or a “*physiological monitor*.” EX1004 at Figure 3, 6:28-31. Consequently, execution of block 350 intentionally delays updating the display with the previously stored “GPS and heart rate” data Petitioner attempted to map onto the claim language. *Id.*; Paper 12 (Reply) at 8. Fry itself justifies and explains this intentional delay by stating that updating the display (at block 360) is the “least critical function.” EX1004 at 6:32–33; *see also* EX2001 ¶¶ 20-22.

In describing Figure 3, Fry makes explicit distinctions between the data provided by GPS sensor (at block 330) and the distinct data provided by the less time-critical sensors (at block 350). EX1004 at 6:1-41. To be clear, Fry does not describe the less time-critical sensors as including either an *electronic positioning device* or a *physiological monitor*, much less *exclusively* constituting such sensors. On the contrary, Fry uses the name “less time-critical sensors” to distinguish these sensors, in part, in that they are not time sensitive and they do not provide either GPS coordinate data or physiological data. *Id.*

Fry further distinguishes block 350 by illustrating and describing it as simply scanning the “less time-critical sensors” for data each sensor currently holds, without requiring performing any calculations on that data, such as time-derivative calculations. *See* EX1004 at Figure 3 (distinguishing block 350 in that it is followed

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