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 2017 LLC,[1]
Patent Owner.

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Case IPR2018-00294
Patent 6,736,759 B1

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Before SALLY C. MEDLEY, JOHN F. HORVATH, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

DECISION
Denying Patent Owner's Request for Rehearing
37 C.F.R. § 42.71(d)

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[1] At the time the petition was filed, Uniloc Luxembourg S.A. was the patent owner.

I. INTRODUCTION

On April 12, 2019, the Board issued a Final Written Decision in this proceeding. Paper 20 ("Decision" or "Final Dec."). In the Decision, we determined that Petitioner had shown by a preponderance of the evidence that claims 1–32 of U.S. Patent No. 6,736,759 B1 (Ex. 1001, "the '759 patent") were unpatentable. *Id.* at 68.

On May 13, 2019, Patent Owner, Uniloc 2017 LLC, timely filed a Request for Reconsideration of our Decision under 37 C.F.R. § 42.71(d). Paper 21 ("Request" or "Req. Reh'g"). The asserted grounds for rehearing relate to the Board's construction of "displaying real-time data." For the reasons discussed below, we are not persuaded that we erred in the Decision, and *deny* Patent Owner's Request for Rehearing.

II. LEGAL STANDARD

A request for rehearing "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." 37 C.F.R. § 42.71(d). The burden of showing a decision should be modified on a request for rehearing lies with the party challenging the decision. *Id.*

III. ANALYSIS

In the Decision, we construed "displaying real time data" consistent with the construction issued by the U.S. Court of Appeals for the Federal Circuit, our reviewing court, in *Paragon Solutions, LLC v. Timex Corp.*, 566 F.3d 1075 (Fed. Cir. 2009) (Ex. 1023) to mean "displaying data without intentional delay, given the processing limitations of the system and the time

required to accurately measure the data." Final Dec. 10; *see also* Ex. 1023, 14. We further determined that, because "our review of the '759 patent and the evidence of record does not reveal a broader construction, . . . the Federal Circuit's construction comports with not only the *Phillips* standard, but also the broadest reasonable interpretation."[2] Final Dec. 10.

Patent Owner contends that we "misapplie[d] the Federal Circuit construction," arguing that "giving the processing limitations," as used in the Federal Circuit's construction, excludes any system processing other than the processing of electronic positioning and physiological data. Req. Reh'g 1–3. Specifically, Patent Owner argues that "[i]ntentional 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 . . . 'processing limitations of the system.'" *Id.* at 2. Patent Owner argues that the data scanned and stored in Fry's[3] processing blocks 350 and 354 is not electronic positioning or physiological data, and that the processing illustrated by these blocks therefore constitutes "intentional delay" between obtaining and displaying electronic positioning and physiological data. *Id.* at 3–6. Patent Owner also argues that the processing illustrated by Fry's processing block 350 is not optional, but instead occurs every cycle of the software routine. *Id.* at 6–8. Thus, Patent Owner's Request is premised on the notion that "displaying

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[2] This Petition was filed before the effective date of the amendment to 37 C.F.R. § 42.100 that changed the claim construction standard applied in *inter partes* reviews.

[3] US 6,002,982 (Ex. 1004, "Fry").

real-time data" precludes any system processing steps occurring between the processing and displaying of electronic positioning and physiological data. We disagree with Patent Owner's interpretation of the Federal Circuit's construction of "displaying real-time data."

We noted in the Decision that, "when construing 'displaying real-time data,' the Federal Circuit first considered the Specification and determined that 'the [S]pecification supports a construction of "real-time" in this case that precludes *intentionally delaying the display of data by storing it for later review*.'" Final Dec. 18 (citing Ex. 1023, 12). We further noted that the Federal Circuit also considered several "definitions of 'real-time' in [various] technical dictionaries [that] suggest that a real-time process cannot involve intentional delay or storage for later processing." *Id.* at 19 (citing Ex. 1023, 14). These definitions considered by the Federal Circuit define "real-time" processes as processes that are performed "during the actual time that the related physical process transpires," "as events occur and the information is generated, as opposed to batch processing," and "without any delay." Ex. 1023, 14 (citations omitted). The Federal Circuit concluded by determining:

> [W]hile the data need not be displayed instantaneously, it must be displayed without any intentional delay, taking into account *the processing limitations of the system* and the time required to accurately measure the data. We therefore construe "displaying real-time data," as used in the claims of this case, as "displaying data without intentional delay, given *the processing limitations of the system* and the time required to accurately measure the data."

Id. (emphases added).

We discern no support for Patent Owner's contention that "given the processing limitations of the system," as used in the Federal Circuit's construction, refers only to processing limitations associated with obtaining and displaying the electronic positioning and physiological data. *See* Req. Reh'g 2.[4] Rather, because the Court repeatedly referenced displaying the positioning and physiological data while the activity is taking place, as opposed to imparting a time delay to collect and process the data in batches, or waiting until the activity is complete to process the data, we interpret "given the processing limitations of the system" to include taking into account the processing limitations required to process all of the data gathered and displayed by the system, rather than only the specifically-recited electronic positioning and physiological data.

Patent Owner argues that Fry's processing "block 350 requires dedicating additional process cycles to scanning for data." *Id.* at 4. Fry discloses: "At block **350**, less time-critical sensors are simply scanned by the controller. These include internal electronic compass heading, weather sensors and so forth, which do not change on a time-critical or even periodic basis. Thus, in these cases, the sensors are simply scanned after time-critical interrupts are first serviced." Ex. 1004, 6:28–33. Thus, any "delay" imparted by Fry's system by scanning its less time-critical sensors is due to the processing limitations of Fry's system; if Fry's system could obtain the information from these sensors instantaneously, there would be no delay.

We additionally note that the claims of the '759 patent use the open-ended "comprising" transitional phrase, allowing for elements in addition to

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[4] Notably, Patent Owner does not provide a citation to the record or any other evidence in support of its interpretation.

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