

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., LG ELECTRONICS, INC.,
HTC CORPORATION, AND HTC AMERICA, INC.,

Petitioner

v.

UNILOC 2017 LLC,

Patent Owner

IPR2018-00389
PATENT 8,712,723

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

In response to the Final Written Decision entered June 17, 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.

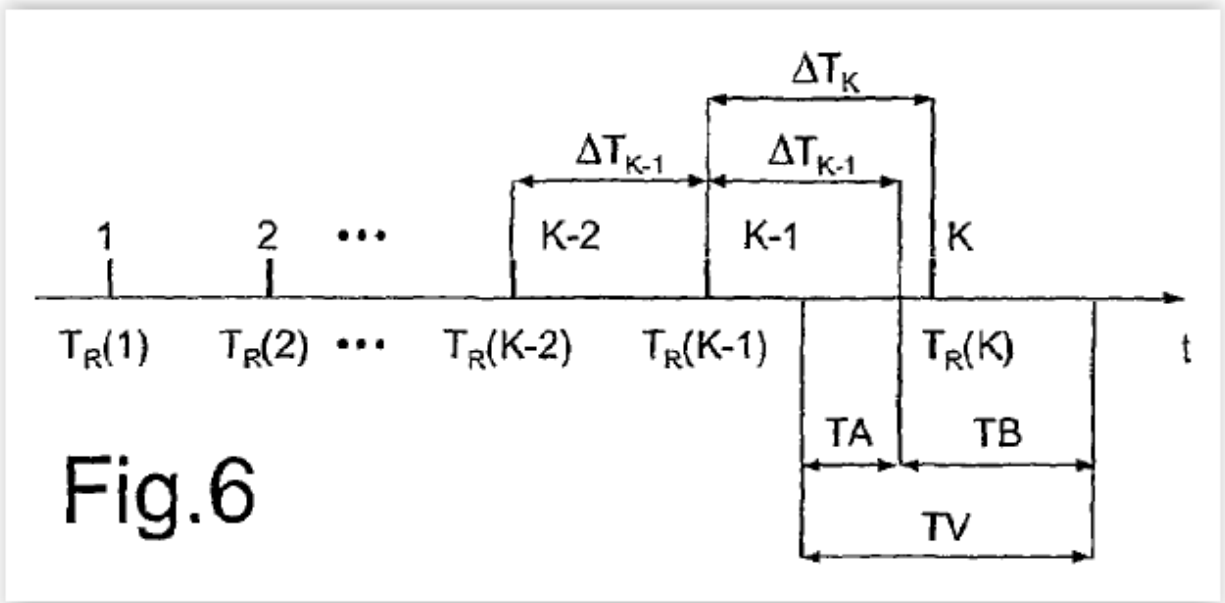
I. APPLICABLE STANDARDS

“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 appears to have misunderstood argument and evidence presented during trial explaining why Petitioner failed to meet its burden to prove Fabio’s validation interval TV maps onto the “cadence window” term. *See* Paper 14 at 3-6 (distinguishing Fabio’s retrospective validation scheme); Paper 11 at 10-14; *see also* Ex. 1006 (Fabio), Fig. 6, 4:22-40. The misunderstanding primary concerns why Fabio’s validation interval TV is not “a window of time *since* a last step was counted”, as required by Petitioner’s construction for the “cadence window” term. *Id.* Fabio defines its TV as necessarily starting *before* the last step is counted.

To assist in understanding the key timing aspects that underscore this patentable distinction, Uniloc’s briefing during trial offered detailed observations concerning Fabio’s Figure 6 (reproduced below):



See Paper 11 at 12 (annotating and discussing Fig. 6 of Fabio, Ex. 1006). Fabio states that because $T_R(K)$ falls within the interval shown as TV, as shown in Figure 6, *the last step* recognized ($T_R(K-1)$) is validated and hence counted. Ex. 1006 (Fabio), Fig. 6, 4:22-40.

At least in this respect, Fabio's validation scheme is *retrospective* in that it is used to validate only the last step. *Id.* Fabio's *retrospective* validation scheme, when properly understood, is distinguishable from the "cadence window" limitations for the reasons articulated by Uniloc during trial. See, e.g., Paper 14 at 3-6; Paper 11 at 10-14.

The Board appears to have been misled by Petitioner into adopting an incorrect understanding of Fabio. See, e.g., Paper 20 at 30-31. Under Petitioner's incorrect interpretation of Fabio, the step being validated by a given TV is not the *last step* (as disclosed) but rather the *current step*. From the perspective of Fabio's Figure 6 (copied above), Petitioner argued that step $T_R(K)$ *is itself* validated and

counted if and when *it* occurs within the validation interval TV shown in Figure 6. *Id.* The Board appears to have misunderstood Fabio, and the argument and evidence concerning the same, in adopting such an interpretation. *Id.*

Petitioner's flawed interpretation ignores the undisputed and demonstrable fact that Fabio mathematically defines TV with respect to the instant of recognition of the *immediately-preceding step*. See Paper 14 at 3-6; Paper 11 at 10-14; see also Ex. 1006 (Fabio), Fig. 6, 4:22-40. Applying Petitioner's flawed interpretation to the TV definition, at least the first and second steps (shown in Figure 6 as $T_R(1)$ and $T_R(2)$, respectively) would necessarily both be excluded from the total count of valid steps. The exclusion would necessarily occur even if the duration that lapsed between the first step $T_R(1)$ and the second step $T_R(2)$ is substantially homogeneous with other steps that are counted as valid, as shown in Figure 6 of Fabio. This result is inconsistent with the express disclosure in Fabio and its focus on a retrospective analysis that considers the immediately preceding step.

The exclusionary flaw in the interpretation adopted by the Board is best explained by reference to the TV definition itself. Ex. 1006, 4:40. Among other requirements, the equations defining the start and stop times for TV both depend on what Fabio refers to as $T_R(K-1)$, which is the instant the preceding step was recognized. *Id.* The value $T_R(K-1)$ cannot be determined *for the first step* $T_R(1)$ because there is no immediately preceding step. Accordingly, applying the understanding the Board appears to have adopted, there would be no basis to calculate the validation interval TV ostensibly used to determine whether *the first*

step $T_R(1)$ itself should be counted as valid. As a result, the first step $T_R(1)$ would always be excluded from the count of valid steps.

More importantly, a similar exclusion would also apply to the second step $T_R(2)$ under Petitioner's interpretation. *See* Paper 14 at 3-6; Paper 11 at 10-14; *see also* Ex. 1006 (Fabio), Fig. 6, 4:22-40. This is at least because the equations for calculating the start and stop times for TV both further depend on what Fabio refers to as ΔT_{K-1} , which is defined as the duration since an immediately preceding step (i.e., the duration between $T_R(K-2)$ and $T_R(K-1)$ of Figure 6). *Id.* This value is undefined for the first step $T_R(1)$ because there is no preceding step from which a duration can be calculated. Consequently, it would not be possible to determine whether the second step $T_R(2)$ *itself* falls within a validation interval TV under Petitioner's interpretation.

This exclusionary flaw resulting from Petitioner's interpretation and applicable to both the first and second steps ($T_R(1)$ and $T_R(2)$) is particularly glaring given (1) the significance placed in Fabio on accurately counting the total number of steps, (2) the fact that two distinct steps and a measured duration between them have been recognized by this point, and (3), the fact that the Fabio counting scheme purports to be a step-to-step consideration. *See* Paper 14 at 3-6; Paper 11 at 10-14; *see also* Ex. 1006, 3:1, 14-15.

The exclusionary flaw resulting from Petitioner's interpretation does not exist when Fabio is correctly understood. This is because, under the actual scheme set forth in Fabio, a *retrospective* analysis is applied once a sequence of steps has been established. For example, a proper understanding of Fabio reveals that the second

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