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,

Patent Owner

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IPR2018-00394
PATENT 6,622,018

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**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 overlooked or misunderstood argument and evidence presented during trial explaining why Petitioner failed to meet its burden to prove Ben-Ze'ev discloses "broadcasting a message, said message for locating remote devices within range of said transceiver", as recited in independent claims 1 and 11.

It was undisputed at trial that broadcasting is a term of art and that Ben-Ze'ev does not expressly disclose broadcasting. The obviousness theory adopted by the Board was essentially that the *interrogating* in Ben-Ze'ev inherently discloses the *broadcasting* limitations, even without using the broadcasting term of art. Paper 20 at 7-9. The record evidence, including the Broadcasting Standard itself, which the Board does not mention in its Final Written Decision, reveals that a person of

ordinary skill in the art at the time of the invention would have readily recognized that *broadcasting* has a distinct technical meaning that is different from the conventional *interrogating* disclosed in Ben-Ze'ev.

The parties essentially agreed on that "broadcasting" in the context of the '018 patent refers to a single transmission of a message that is itself receivable at once by multiple devices. *See*, *e.g.*, Paper 10 at 6 ("It is significant that the broadcast message 640 is referenced here (and elsewhere in the specification) in the singular, yet it is receivable by multiple devices") (citing Ex. 1001, 8:33-36); *id*. at 6-7 (citing Microsoft Computer Dictionary definitions submitted by Petitioner); Ex. 2001 at ¶45; *see also* Paper 13 at 3 ("the plain and ordinary meaning of 'broadcasting a message' in the context of the '018 Patent is generally understood as transmitting a singular message to multiple devices"); Paper 20 at 5 (concluding the parties appear "to adopt the same general understanding for 'broadcasting'"). The Board appears to have overlooked argument and evidence distinguishing this acknowledged understanding of *broadcasting* from *interrogating*.

Uniloc's expert, Dr. Easttom, testified that a person of ordinary skill in the art would readily recognize *interrogating* and *broadcasting* are distinguishable terms of art at least because interrogating involves communicating with an individual machine, one at a time. *Id*. at ¶ 49; *see also* Paper 10 at 7-8 (citing the same). Dr. Easttom offered the following technical dictionary definitions to support his testimony concerning the distinct meaning of interrogation from the perspective of a person of ordinary skill in the art.

46.   Ben-Ze'ev uses 'interrogation'.   The Oxford Dictionary of Computer Science, 7th Edition, defines interrogation as follows:

> **interrogation** The sending of a signal that will initiate a response. A system may interrogate a peripheral to see if it requires a data transfer. The response is normally a status byte. When a number of devices are interrogated in a sequence the process is called *polling.

47.   Merriam-Webster defines interrogate (in relation to computer science) as "to give or send out a signal to (a device, such as a transponder) for triggering an appropriate response."[2]

48.   Oxford's Learners Dictionary defines interrogate (in relation to computer science) as "to obtain information from a computer or other machine".

Ex. 2001 ¶¶ 46-47; *see also* Paper 10 at 7-8 (citing the same). Petitioner offered no controverting technical dictionary definition for interrogation in its Reply.

As shown above, interrogate is defined in the context of computer science to mean "to give or send out a signal to a device for triggering an appropriate response." Ex. 2001 ¶¶ 46-47. Dr. Easttom found it significant that these definitions consistently define interrogate (in relation to computer science) to refer to communication with an individual machine, one at a time. *Id.* ¶¶ 46-50. For communication with multiple machines, each is interrogated sequentially in an interrogation process also referred to as polling. *Id.*

To further support his conclusion that a person of ordinary skill in the art would readily recognize a meaningful distinction between broadcasting and interrogating, Dr. Easttom quoted a passage from the RFC 919 Broadcasting Standard, which he summarized as describing certain disadvantages of interrogation and its polling derivative. *Id*. ¶ 50; *see also* Paper 10 at 7-8 (citing the same).[1] As Dr. Easttom observed, the Broadcasting Standard differentiates a polling form of interrogation, in part, as polling all possible neighbors until one responds. *Id*. Individually polling all possible neighbors is achievable because there is a finite number of possible addresses for devices grouped together on a network. *Id*. The Broadcasting Standard expressly disparages such interrogation and distinguishes it from the "broadcasting" set forth in the Broadcasting Standard. *Id*. Rather than contacting devices individually, broadcasting "provides a fast and simple way for a host to reach all of its neighbors." *Id*.

The Board also appears to have overlooked Dr. Easttom's conclusion that Ben-Ze'ev use of the word interrogate only confirms there is a meaningful distinction, as the Broadcasting Standard itself confirms. Ex. 2001 ¶¶ 41, 48-52. Ben-Ze'ev states the remote controller "periodically interrogates the existence of all appliances in the vicinity." *Id*. (quoting Ex. 1007, 10:49-51). This passage is copied in its fuller context below:

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[1] As Dr. Easttom correctly noted, a complete copy of RFC 919 Broadcasting Standard is publicly available at: J. Mogul, Broadcasting Internet Datagrams, RFC 919, SRI Network Information Center, Oct. 1984, https://tools.ietf.org/html/rfc919. Ex. 2001 ¶ 50 n.3.

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