UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner

v.

UNILOC 2017 LLC,

Patent Owner

IPR2018-00395
PATENT 6,622,018

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

In response to the Final Written Decision entered June 18, 2019 (Paper 20) and pursuant to 37 CFR § 42.71(d), Patent Owner hereby respectfully request 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 the conventional polling mentioned in Leichiner 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 Leichiner does not expressly disclose this term. The obviousness theory adopted by the Board was essentially that the reference to *polling* in Leichiner inherently discloses the *broadcasting* limitations, even without using word broadcasting. Paper 20 at 6-9. 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 polling disclosed in Leichiner.

The parties essentially agreed 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 ¶¶ 45-52; *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 confirming there is a meaningful distinction between *broadcasting* and *polling*.

The Board's Final Written Decision appears to have overlooked certain testimony and supportive evidence offered through Uniloc's expert, Dr. Eastom. For example, Dr. Easttom, testified that a person of ordinary skill in the art would readily recognize *polling* and *broadcasting* are distinguishable terms of art at least in that polling refers to communicating with an individual machine, one at a time. Ex. 2001 at ¶¶ 48-52; *see also* Paper 10 at 7-8 (citing the same). Dr. Easttom offered the following technical dictionary definitions, which are not mentioned in the Final Written Decision, to support his testimony concerning the distinct meaning of

polling from the perspective of a person of ordinary skill in the art.

> A communications technique that determines when a terminal is ready to send data. The computer continually ***interrogates its connected terminals in a round robin sequence***. If a terminal has data to send, it sends back an acknowledgment and the transmission begins. Contrast with an interrupt-driven system, in which the terminal generates a signal when it has data to send.

Id. at ¶ 48 (quoting PC Magazine).

> 49. In Dr. McArdle's notes for his engineering course EE414 Communication Networks, he states:
>
> "Each station on the network is polled in some predetermined order."[5]
>
> 50. The Oxford Dictionary of Computer Science defines polling as follows:
>
> **polling** The process by which one station on a *multidrop line (the primary station) addresses another station (a secondary station), giving the secondary station access to the communication channel. The secondary station is then able to send status information and/or data to the primary. The primary station resumes control of the line and may send data of its own or poll another station.
>
> Polling is a form of *time division multiplexing. The precise polling strategy used depends upon the application. In

Id. at ¶¶ 49-50.

The technical dictionaries quoted by Dr. Easttom consistently refer to polling in the context of generating *multiple* discreet polling messages that are each individually sent to a respective receiving device, on a one-to-one basis. Paper 10 at 7 (citing Ex. 2001 ¶¶ 49-52). Petitioner offered no controverting technical dictionary definition in its Reply.

To further support his conclusion that a person of ordinary skill in the art would readily recognize a meaningful distinction between broadcasting and polling, Dr. Easttom quoted a passage from the RFC 919 Broadcasting Standard, which he summarized as describing certain disadvantages of polling relative to broadcasting. *Id*. ¶ 51; *see also* Paper 10 at 7-8 (citing the same).[1] As Dr. Easttom observed, the Broadcasting Standard differentiates broadcasting from polling, including in the context of polling all possible neighbors until one responds. *Id*. When devices are grouped together on a network, for example, individually polling all possible neighbors is achievable, even if polling in the blind, because there is a finite number of possible addresses to which a message might be sent. *Id*. The Broadcasting Standard expressly disparages *polling* and distinguishes it from the *broadcasting* defined 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*.

[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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