

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

APPLE INC., SAMSUNG ELECTRONICS AMERICA, INC.,  
HTC CORP., HTC AMERICA, INC., and LG ELECTRONICS, INC.,

Petitioner

v.

UNILOC 2017 LLC,

Patent Owner

---

IPR2018-00424  
PATENT 7,881,902 B1

---

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

In response to the Final Written Decision entered July 16, 2019 (Paper 21, “FWD”) 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.

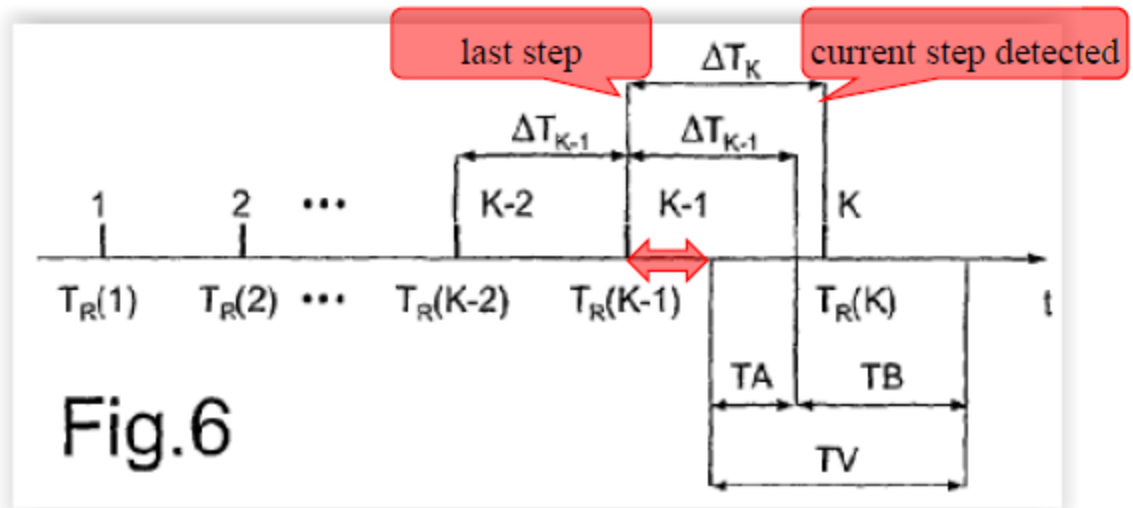
## **I. APPLICABLE STANDARDS**

“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 11 (“POR”), 13–15 (distinguishing Fabio’s retrospective validation scheme); Paper 15 (“POSR”), 1–5; *see also* Ex. 1006 (Fabio), Fig. 6, 4:22-40. The misunderstanding primarily 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. *Id.*

To assist in understanding the key timing aspects that underscore this patentable distinction, Uniloc’s briefing during trial provided certain annotations to Fabio’s Figure 6 (reproduced below):



See POSR 3 (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, 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., POSR 1-5 (distinguishing Fabio’s retrospective validation scheme); POR 13–15.

The Board appears to have been misled by Petitioner into adopting an incorrect understanding of Fabio. See, e.g., FWD 47–49. 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 POR 13–15 (distinguishing Fabio's retrospective validation scheme); POSR 1–5; *see also* Ex. 1006, 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 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* POR 13–15 (distinguishing Fabio's retrospective validation scheme); POSR 1–5; *see also* Ex. 1006, 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  $\Delta T_{K-1}$ , 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 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* POR 13–15 (distinguishing Fabio's retrospective validation scheme); POSR 1–5; *see also* Ex. 1006, 3:1, 14–15.

The 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,

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.