UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

SONOS, INC.
Petitioner

v.

IMPLICIT, LLC
Patent Owner

Case: To be assigned
Patent No. 8,942,252

PRELIMINARY RESPONSE TO PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,942,252

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I. INTRODUCTION

Patent Owner Implicit, LLC ("Implicit") opposes institution of *Inter Partes* Review on all grounds because Petitioner Sonos, Inc. ("Petitioner") cannot show a reasonable likelihood of demonstrating invalidity of any challenged claim.

Petitioner alleges invalidity under 35 U.S.C. § 103, relying primarily on a single prior art reference, U.S. Patent No. 7,269,338 ("Janevski") (Ex. 1007). Petitioner fails to demonstrate, however, that Janevski, either alone or in combination with other alleged prior art cited in the Petition, discloses every element of any challenged claim.

The patent at issue, U.S. Patent No. 8,942,252 ("the '252 Patent") (Ex. 1001), discloses and claims methods of synchronizing the rendering of a single content stream on multiple devices. In order to do that, the '252 Patent teaches the use of "master and slave" devices that track and use two separate and distinct elements: 1) "device" time, and 2) "rendering" time. The '252 Patent further teaches "smoothing" a "rendering time differential that exists between the master rendering device" and "slave device." All of the claims at issue in this Petition require smoothing of rendering times.

Petitioner does not identify anywhere in the prior art the smoothing of a rendering time differential. Petitioner concedes Janevski does not teach smoothing of a rendering time differential. Pet., at 42. Petitioner argues instead that it would

have been obvious to modify Janevski, based on a statement by its expert that smoothing functions were known in the prior art.

Petitioner's expert testimony does not satisfy the requirements to prove obviousness under 35 U.S.C. § 103. Petitioner's expert argues that smoothing functions were known in the prior art, citing technical articles and textbooks dating to as early as 1971. But Petitioner does not rely on these sources as prior art, much less demonstrate a reason, suggestion, or motivation to adapt prior art smoothing functions and combine them with prior art synchronization methods. In the end, Petitioner and its expert are left with nothing more than conclusory testimony that Janevski "could be modified" to achieve the claimed invention.

In a series of alternative arguments, Petitioner argues that Janevski could have been combined with various prior art references that may teach the use of a smoothing function. But again, Petitioner does not identify the claimed requirement of "smoothing a rendering time differential" in any of those references. Petitioner merely demonstrates, at most, that smoothing algorithms have been used in the prior art for various other purposes. Petitioner's claimed combination thus does not meet all of the requirements of the claims for which the Petition seeks review.

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