

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

SONOS, INC.  
Petitioner

v.

IMPLICIT, LLC  
Patent Owner

---

IPR2018-00767  
U.S. Patent No. 8,942,252

---

**PETITIONER'S OPENING BRIEF AFTER REMAND**

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	iii
INTRODUCTION .....	1
I. THE CERTIFICATES OF CORRECTION DO NOT CURE INVALIDITY DECIDED IN THESE FINAL WRITTEN DECISIONS .....	1
A. The Certificates of Correction do not Impact Invalidity Arising Under 35 U.S.C. §§ 102(a), (b), and (e) and 103(a) Decided in the Final Written Decisions.....	2
B. Implicit’s Caselaw Does Not Support Revisiting the Final Written Decisions in View of the Certificates of Correction.....	3
II. DOCTRINES OF JUDICIAL ESTOPPEL AND WAIVER PRECLUDE THE CERTIFICATES OF CORRECTION FROM HAVING RETROACTIVE EFFECT ON THE FINAL WRITTEN DECISIONS .....	6
A. Judicial Estoppel Prevents the Certificates of Correction from Having Retroactive Effect on the Final Written Decisions.....	6
B. Implicit Waived the Opportunity to Argue that Carpenter is an Inventor.....	9
III. EVEN IF THE BOARD CONSIDERS THE CERTIFICATES OF CORRECTION, THEY WOULD NOT CHANGE THE ULTIMATE RESULT OF THE FINAL WRITTEN DECISIONS .....	11
A. Certificates of Correction Can Be Entered on Invalid Patents Without Affecting Invalidity .....	11
B. The Board Would Be Required to Consider The Old Evidence Again Under Implicit’s New Inventorship Theory .....	12

IV. REVERSING THE INVALIDITY DETERMINED IN THE FINAL WRITTEN DECISIONS WOULD VIOLATE THE ADMINISTRATIVE PROCEDURE ACT AND DUE PROCESS.....14

V. CONCLUSION.....15

## TABLE OF AUTHORITIES

### CASES

<i>Dell Inc. v. Accelaron, LLC</i> , 818 F.3d 1293 (Fed. Cir. 2016) .....	14, 15
<i>Egenera, Inc. v. Cisco Sys., Inc.</i> , 972 F.3d 1367 (Fed. Cir. 2020) .....	3, 4
<i>Fairchild (Taiwan) Corp. v. Power Integrations, Inc.</i> , 854 F.3d 1364 (Fed. Cir. 2017) .....	6
<i>Finjan, Inc. v. Cisco Sys., Inc.</i> , 837 F. App'x 799 (Fed. Cir. 2020) .....	10
<i>Frank's Casing Crew &amp; Rental Tools, Inc. v. PMR Techs., Ltd.</i> , 292 F.3d 1363 (Fed. Cir. 2002) .....	12
<i>Heat Techs., Inc. v. Papierfabrik Aug. Koehler Se</i> , 2019 WL 3430477 (Fed. Cir. July 18, 2019).....	12
<i>Home Prod. Int'l, Inc. v. United States</i> , 633 F.3d 1369 (Fed. Cir. 2011) .....	6
<i>In re Apple</i> , 562 F. App'x 983 (Fed. Cir. 2014) .....	6
<i>In re Dunn</i> , 349 F.2d 433 (C.C.P.A. 1965) .....	5
<i>In re Google Tech. Holdings LLC</i> , 980 F.3d 858 (Fed. Cir. 2020) .....	10
<i>In re VerHoef</i> , 888 F.3d 1362 (Fed. Cir. 2018) .....	2
<i>Interactive Gift Exp., Inc. v. Compuserve Inc.</i> , 256 F.3d 1323 (Fed. Cir. 2001) .....	9
<i>New Hampshire v. Maine</i> , 532 U.S. 742 (2001).....	7

<i>Qualcomm Inc. V. Intel Corp.</i> , 6 F.4th 1256 (Fed. Cir. 2021) .....	14, 15
<i>SIPCO, LLC v. Emerson Elec. Co.</i> , 2018-1364 (Fed. Cir. Jun. 27, 2018).....	5
<i>Transclean Corp. v. Jiffy Lube Intern., Inc.</i> , 474 F.3d 1298 (Fed. Cir. 2007) .....	7, 8, 9
<i>United States v. Olano</i> , 507 U.S. 725 (1993).....	10
<i>VirnetX Inc. v. Apple Inc.</i> , 665 F. App'x 880 (Fed. Cir. 2016) .....	10, 11

**STATUTES**

35 U.S.C. § 102(f).....	2
35 U.S.C. § 256(b) .....	2
5 U.S.C. § 554(c) .....	14
5 U.S.C. § 556(d) .....	14

# 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.