UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SONOS, INC.,
Petitioner,

v.

IMPLICIT, LLC,
Patent Owner.

_____

Case IPR2018-00767
Patent 8,942,252

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PATENT OWNER IMPLICIT, LLC'S SUR-REPLY TO PETITIONER'S REPLY

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I.   INTRODUCTION

The Board should find that the claims are patentable. First, Janevksi is not prior art because Implicit can swear behind it, despite Sonos's procedural challenges. Second, the Source Code practices the Challenged Claims—further indicating that Implicit pre-dates Janevski. It is undisputed that not a single secondary reference teaches "smoothing a rendering time" differential as required by the challenged claims. Further, Janevski does not disclose the "master device" limitation.

II.   JANEVSKI IS NOT PRIOR ART

The question in this proceeding is whether Janevski—filed *six days* before the December 17, 2001, provisional application that led to the Patent—is actually prior art. To swear behind the reference, Implicit provided significant evidence to corroborate Mr. Balassanian's testimony of prior invention, including documentary evidence and source code.

Sonos ignores the bulk of this evidence. It instead tries to raise procedural roadblocks and asserts theories that are improbable on their face: (1) that the source code functionality for which Implicit sought patent protection does not practice the Challenged Claims and (2) that the Board should ignore the voluminous source code

and documentary evidence because that evidence is not sufficiently "independent" of Mr. Balassanian.[1]

These arguments fail. Implicit only needs to show it is more likely than not that it is entitled to priority over Janevski. When considered in total, under a rule of reasons analysis, the evidence shows that Implicit has cleared that hurdle.

A. Preponderant Evidence—Most of Which Sonos Fails to Address—Establishes Prior Invention Under a Rule of Reason Analysis

Mr. Balassanian's testimony lays out the invention story in significant detail, with supporting documentation. Exhibit 2001. The testimony spans the year up to the December 17, 2001, filing of the application that led to the Patent: the Intel Juno Project in late 2000 to early 2001; conception of the inventions after the Juno project was suspended in February 2001; the audio-video synchronization project (and source code) development during the summer of 2001; the tests and demonstrations, including the Fight Club demonstration, of the invention through the fall of 2001; and the drafting of the provisional patent application, completed in substance on

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[1] Implicit also produced to Sonos the entire source code repository for Strings ("cvs_strings"), the entire hard drive of the BeComm demo laptop discussed in Implicit's Patent Owner Response, and its entire website root from the 2000-2001 time period. Implicit also allowed Sonos's forensic expert to obtain a forensic image of a backup CD of the source code repository and the original hard drive of the BeComm demo laptop.

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