

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

Case IPR2018-01027
Patent 8,712,723 B1

**PETITIONER'S REQUEST FOR REHEARING
OF INSTITUTION DECISION UNDER 37 CFR § 42.71(d)**

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I. INTRODUCTION

Petitioner Apple Inc. (“Apple”) respectfully requests rehearing under 37 C.F.R. § 42.71(d) of the Board’s October 18, 2018 Decision denying institution of IPR2018-01027 directed to claims 4 and 19 of U.S. Patent No. 8,712,723 (“the ‘723 patent”). Specifically, Petitioner requests that the Board reconsider its determination that the Petition failed to establish that the combination of Pasolini (Ex.1005), Fabio (Ex.1006), and Richardson (Ex.1007) renders obvious the limitation of claims 4 and 19— “wherein the lower threshold is adjusted based on at least one of a rolling average of accelerations and the orientation of the inertial sensor.”

Rehearing is warranted because the Board misapprehended how Harris applies to the combination of Pasolini, Fabio, and Richardson, as set forth in the Petition. Harris is a textbook that provides evidence that a POSITA knew that the “moving average,” as taught by Richardson, is the same as the “rolling average” as recited in the claims. Ex.1011 at 243. Harris was also supplied as further evidence for why a POSITA would have been motivated to combine the teachings of Richardson with Pasolini and Fabio. *See* Petition at 45, 51. The Board, though, held that other teachings of Harris contradicted Richardson’s teachings.

Specifically, the Board concluded that: “Petitioner’s contention that using data from only the current stepping period would ‘yield a smoother acceleration

threshold' does not comport with Petitioner's stated rationale or the teachings of Harris upon which Petitioner and its declarant rely." Decision at 17. However, these alleged contradictions between Harris's teachings and Richardson's teaching reflect a fundamental, technical misunderstanding of Richardson.

Specifically, the Board misunderstood Richardson's "stepping period" to be a *single* data point. However, the term "stepping/sample period" in Richardson refers to the entirety of the acceleration data in Richardson's buffer and the data in the buffer represents *multiple* data points. The Board's misunderstanding of the contents of the data in Richardson's buffer caused the Board to see inconsistencies when considering Harris.

As will be explained in further detail below, a proper understanding of the "stepping period" in Richardson's buffer (which includes multiple steps) leads to a different conclusion, and the record establishes that the combination of Fabio, Pasolini, and Richardson renders claims 4 and 19 obvious. Petitioner respectfully requests that the Board reverse its error and institute trial.

II. LEGAL STANDARD

The Board's decision on institution is reviewed for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion occurs when a "decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment." *PPG Indus., Inc. v. Celanese Polymer Specialties Co.*, 840

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