

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.

Petitioner

v.

UNILOC LUXEMBOURG, S.A.¹

Patent Owner

IPR2018-01028

PATENT 7,881,902

PATENT OWNER SUR-REPLY TO PETITIONER'S REPLY

¹ The owner of this patent is Uniloc 2017 LLC.

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I. INTRODUCTION

Uniloc 2017 LLC (“Uniloc” or “Patent Owner”) submits this Sur-Reply to Petitioner’s Reply in IPR2018-01028 for *Inter Partes* Review (“Pet.” or “Petition”) of United States Patent No. 7,881,902 (“the ’902 Patent” or “EX1001”) filed by Apple, Inc. (“Petitioner”).

II. PETITIONER FAILS TO MEET ITS BURDEN OF PROOF

The Petition fails to established unpatentability for the following grounds it raised under 35 U.S.C. § 103:

| Ground | Claims | Reference(s) |
|--------|--------|--|
| 1 | 5 | <i>Fabio</i> ² and <i>Pasolini</i> ³ |
| 2 | 8 | <i>Fabio</i> , <i>Pasolini</i> , and <i>Tsuji</i> ⁴ |

A. Ground 1 of the Petition Fails Because Fabio and Pasolini do not Disclose or Suggest “using a default step cadence window to identify a time frame within which to monitor for a next step”

Among other substantive deficiencies, Petitioner fails to prove that the cited Fabio and Pasolini references (either alone or in combination) disclose or suggest “using a default step cadence window to identify a time frame within which to monitor for a next step,” as recited in claim 5 (and claim 8 depending therefrom).

The Petition, as well as the Reply, incorrectly defines the “cadence window” as a “window of time since a last step was counted that is looked at to detect a new step.” *See* Petition at 9-10; Reply at 8, 11. This definition ignores the term “cadence”

² EX1006, U.S. Patent No. 7,698,097

³ EX1005, U.S. Patent No. 7,463,997

⁴ EX1010, U.S. Patent No. 7,297,088

and treat the words as though they merely reference a “window” without regard to a “cadence.” Both the common definition of cadence (usually referring to a repetitive rhythmic pattern) and the specification describe a “cadence” as looking at **multiple** motion cycles (not just a single cycle) to determine a particular rhythmic pattern. *See e.g., Id.* at 3:18-32, 38-54; 6:65-7:14. Indeed, the specification describes the cadence window as a rolling average of previous detected cycles. *Id.* at 3:66-4:10.

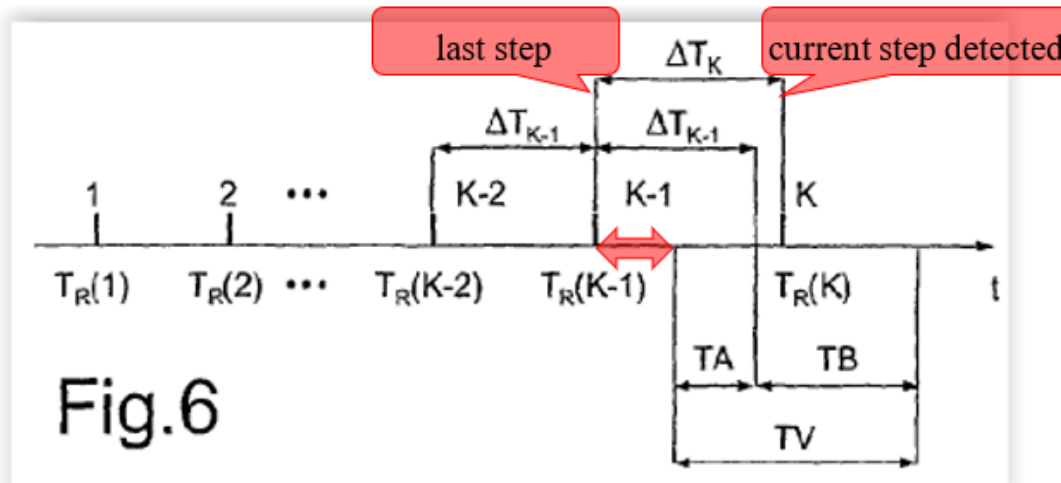
Assuming for the sake of argument that Petitioner’s incorrect definition were adopted, *Fabio* still does not disclose the claimed “cadence window.” This is because *Fabio*’s so-called “validation interval” TV is used to determine whether the last step is to be counted – not as a “window of time **since** a last step was counted” as described further below.

1. The Board correctly found Fabio’s validation window TV is not a default cadence window

The Board observed that the primary theory in the Petition is that “Fabio’s validation window TV is a default cadence window.” Paper 8 at 28. In rejecting this theory, the Board stated “we are not persuaded that Fabio’s validation window TV in first counting procedure 110 teaches or suggests using a default cadence window.” *Id.* The Board is correct that Petitioner’s attempted mapping of Fabio’s “validation interval” (TV) onto the claimed “default cadence window” cannot withstand scrutiny, particularly in view of the construction applied in the Petition.

Fabio describes its TV with reference to its Figure 6, which is copied and annotated below. *See, e.g., EX1006, Fig. 6* and accompanying description including,

for example, 4:28–49.



Fabio’s TV is *retrospective* at least in that it is used to validate only the immediately *preceding* step (shown in Fig. 6 as K-1) (shown in Fig. 6 as K): “[m]ore precisely, the last step recognized is validated if the instant of recognition of the current step $T_R(K)$ falls within a validation interval TV [.]” *Id.* (emphasis added). Unless and until the last step is validated by the current *suspected* step in the manner disclosed, the last step is not counted. *Id.* 5:10–39. The current suspected step (K), in turn, is dependent upon the next suspected step (K+1) for validation and counting. *Id.* The final suspected step detected will not be counted because it cannot be validated. *Id.*

Accordingly, Fabio’s validation interval TV is not “a window of time since a last step was counted” (as required by Petitioner’s construction) at least because Fabio defines its TV as necessarily starting before the last step is counted. *Id.*; see also EX2001 ¶¶ 32–35. Indeed, Fabio’s TV is used in determining *whether* to count the last step. *Id.* Thus, in addition to the reasons set forth in the Institution Decision, the Petition should be denied because Fabio’s TV does not satisfy the construction

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