UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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HTC CORPORATION, AND HTC AMERICA, INC.,

Petitioner

v.

UNILOC 2017 LLC,

Patent Owner

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IPR2018-01589
PATENT 7,653,508

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PATENT OWNER'S SUR-REPLY
TO PETITIONER'S REPLY

I. INTRODUCTION

Uniloc 2017 LLC ("Uniloc" or "Patent Owner") submits this Sur-Reply to Petitioner's Reply in IPR2018-01589 for *Inter Partes* Review of United States Patent No. 7,653,508 ("the '508 patent" or "EX1001"), filed by HTC Corp. and HTC America, Inc. (collectively, "HTC" or "Petitioner"). The instant Petition solely challenges claim 20 of the '508 patent, which depends from claims 15 and 19.

Petitioner mischaracterizes Uniloc's Response as solely premised upon the dispute over which step Fabio discloses is validated and hence counted by a given validation interval (TV). Petitioner essentially argues it should prevail here due to certain alleged findings concerning Fabio in a Final Written Decision in a related matter. Reply 1 (citing *Apple Inc. v. Uniloc 2017 LLC*, Case IPR2018-00387, Paper No. 21, Final Written Decision) ("the Apple FWD"). Petitioner is wrong in arguing Apple FWD is dispositive here.

Uniloc identified several deficiencies in the instant Petition which are *entirely independent* of the dispute over which step Fabio discloses is validated by a given validation interval (TV). Petitioner has not and cannot defend against these additional and independent deficiencies merely by pointing, instead, to a different dispute. Petitioner's failure to accurately characterize, much less squarely address and rebut, at least these patentable additional patentable distinctions provides multiple independent reasons to deny the Petition in its entirety.

Notably, Petitioner also does not dispute that "there is no discussion of Pasolini in the Petition's challenge of Claim 20." *See* Resp. 16 n.8. In addressing claim limitations uniquely recited in claim 20, the Petition relies solely on Fabio.

II.   ARGUMENT

A.   Petitioner ignores patentable distinctions Uniloc had identified arising from certain claim language unique to dependent claim 20

Petitioner's Reply fails to address a fundamental deficiency Uniloc had identified in its Response concerning the additional limitations recited in dependent claim 20. Specifically, claim 20 (which depends from claims 15 and 19) further requires (1) "wherein the cadence logic adjust the cadence *windows*" (recited *in the plural*) and (2) that the adjustment pertaining to plural "cadence windows" must be "based on a measured *cadence* associated with the *periodic* human motion."

Among other deficiencies, Uniloc had observed that the Petition fails to explain how or why this claim language is allegedly rendered obvious by Fabio's use of a *single* prior step to determine but one, single-use validation interval (TV). *See* Resp. (Paper 11) 15–18. Uniloc argued this undisputed understanding of Fabio is distinguishable from limitations of claim 20 directed to an adjustment affecting "cadence *windows*" (*in the plural*) "based on a *measured cadence* associated with the *periodic* human motion." *Id*. Petitioner has not and cannot prove obviousness by glossing over the explicit language unique to claim 20 and, instead, merely vaguely pointing to the analysis of other claims that do not recite the same limitations. *Id*.

Petitioner does not address these deficiencies in its Reply. On the contrary, Petitioner expressly concedes that Fabio discloses "using a ***single*** prior step to determine a validation window" (in the singular). *See* Reply 7 (boldface and emphasis original). In offering this concession, Petitioner makes no attempt to refute the distinction Uniloc had identified between the way in which Fabio determines its

validation interval (TV) and the adjustment of claim 20, which affects "cadence windows" (in the plural) and which is based on "a measured cadence associated with the periodic human motion." *See* Resp. 15–18.

The intrinsic evidence supports the patentable distinction that Uniloc had identified and that Petitioner ignored. A few examples serve to further underscore and clarify this patentable distinction Uniloc had previously identified concerning Fabio's singular step evaluation.

First, the '508 patent confirms that the phrase "measured cadence associated with the periodic human motion" requires consideration of *repeated* steps or periods (in the plural) which *collectively define the cadence*. For example, the '508 patent offers the following definitive statement directed to the cadence of periodic human motion: "[t]he amount of time that it takes to complete one motion cycle defines the motion cycle's period, and the number of motion cycles that occur in a given unit of time define the motion cycle's cadence." Ex. 1001 ('508 patent) at 3:28–31.

Second, the '508 patent discloses, with reference to Figure 5, an example embodiment that sets cadence windows based on a stepping cadence associated with human motion meeting a threshold number of periodic steps (*e.g.*, 4 to 10 steps). A relevant portion of the flow diagram of Figure 5 is reproduced below for ease of reference.
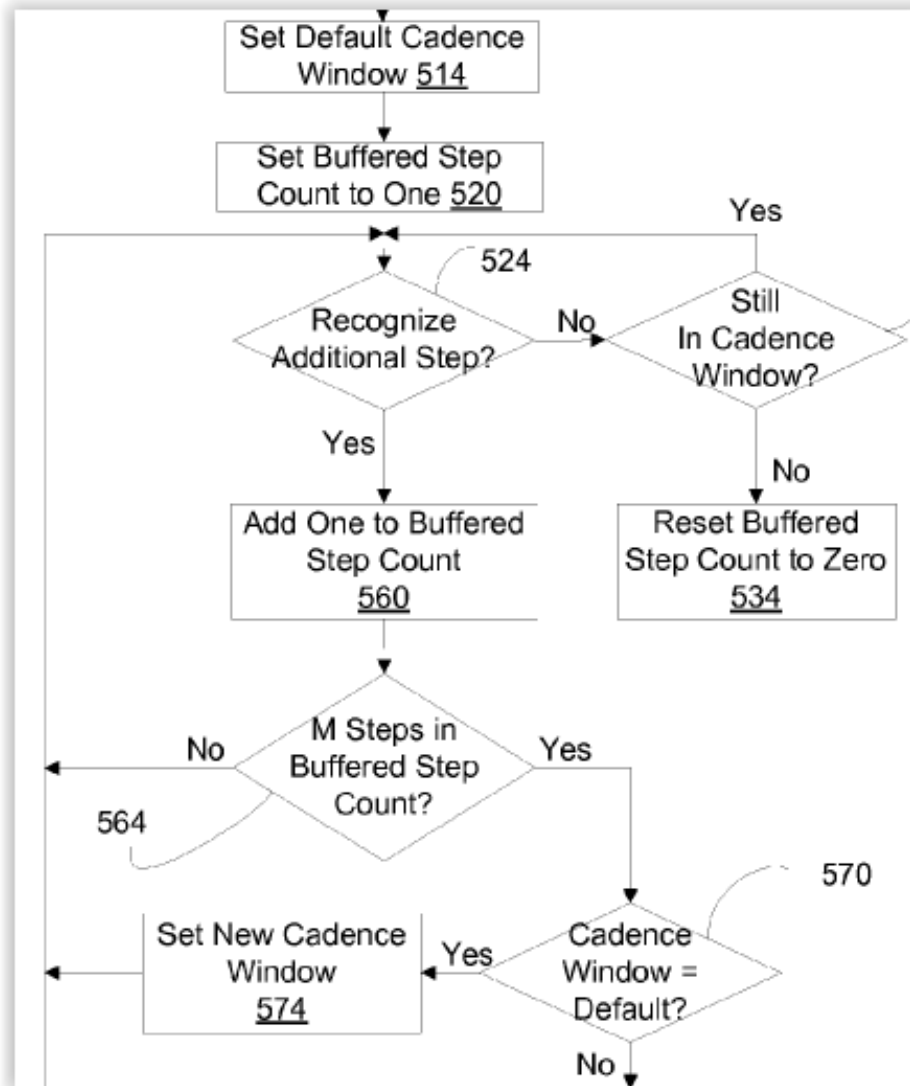
Ex. 1001 ('508 patent) at Figure 5.

The corresponding description of Figure 5 states, with reference to block 574 ("Set New Cadence Window"), that new cadence windows are set "*based on a stepping cadence of the M steps measured.*" *Id.* at 10:56–57 (emphasis added). The description further explains that "M is an integer value between about 4 and 10" steps. *Id.* at 10:50. This description confirms that when an adjustment is made based on a stepping cadence (i.e., "a measured cadence associated with periodic human motion"), then the adjustment itself requires consideration of *several* previously

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