

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.

Petitioner

v.

UNILOC 2017 LLC

Patent Owner

IPR2019-00251

Patent 6,993,049 B2

PATENT OWNER RESPONSE TO PETITION

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I. INTRODUCTION

Uniloc 2017 LLC (“Uniloc” or “Patent Owner”) submits this Response to the Petition filed by Apple, Inc. (“Petitioner”) for *inter partes* review of United States Patent No. Patent 6,993,049 (“the ’049 patent” or “EX1001”).

II. PETITIONER FAILS TO PROVE UP REFERENCES AS PRIOR ART

The Petition is procedurally defective at least because it fails to meet Petitioner’s burden to prove that the documents relied upon were indeed publicly available prior art. *See, e.g., ServiceNow, Inc., v. Hewlett-Packard Co.*, IPR2015-00716, Paper No. 13 at 8, 15–17 (P.T.A.B. Aug. 26, 2015). All evidence, including evidence tending to show public availability, must satisfy the U.S. Federal Rules of Evidence. *See* 37 C.F.R. § 42.62.

In IPR2015-00716, the Board found that the petitioner had not met its burden to prove that references asserted in its petition were prior art. The Board explained its finding, in part, in that the declarants did not testify to having personal knowledge of the references being publicly accessible before the critical date. *Id.* at 18–20. As a result, the petitioner’s only evidence of the alleged publication dates was the respective date appearing on the face of each exhibit. *Id.* at 8. The Board concluded the dates themselves were inadmissible hearsay and, consequently, petitioner had not proven the references qualify as prior art printed publications. *Id.* at 18–20. The same reasoning and conclusion apply here.

A. Procedural deficiencies of the BT Core document

Petitioner asserts that the reference it identified as BT (Bluetooth) Core (Ex. 1014) qualifies as prior art under at least 35 U.S.C § 102(a). Pet 3. Petitioner then

provides a few unexplained citations as alleged support for the conclusory statement that “the Bluetooth Core specification was released and available for download or order from Bluetooth’s website in December 1999 (at least by March 1, 2000).” *Id.*

Nothing in the Petition itself, its attached declarations, or in the unexplained citations, establishes that BT Core was publicly accessible before the alleged “Critical Date” of June 26, 2000. *See* Pet. 2. All Petitioner is left with is asserting the date appearing on the face of the BT Core document for the truth of the matter asserted—i.e., inadmissible hearsay. This hearsay of BT Core cannot be cured by relying on *more* hearsay set forth in the additional references Petitioner cites.

The present facts invoke a pair of final written decisions issued March 6, 2017 and upholding the patentability of the patents challenged in IPR2015-01835 and IPR2015-01836.¹ In each matter the PTAB instituted trial on the same two grounds. One obviousness ground relied on a webcast containing a slide presentation, as well as a purported record of the slide presentation evidenced by a link from an internet archive, Wayback Machine. The petitioner argued that the slide presentation was accessible on a website of the webcast’s host and was a printed publication. It offered as evidence a press release (which stated the webcast would be archived for “on-demand replay”), screenshots from Wayback Machine’s archive of the webcast host’s website showing a link to a pdf of the presentation, and the slides themselves.

¹ *See Coalition for Affordable Drugs VIII, LLC v. The Trustees of the University of Pennsylvania*, IPR2015-01835, Paper 56 (P.T.A.B. March 6, 2017) and *Coalition for Affordable Drugs VIII, LLC v. The Trustees of the University of Pennsylvania*, IPR2015-01836, Paper 58 (P.T.A.B. March 6, 2017).

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