

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC., LG ELECTRONICS INC., SAMSUNG ELECTRONICS  
CO., LTD., AND SAMSUNG ELECTRONICS AMERICA, INC.

Petitioners

v.

UNILOC 2017 LLC

Patent Owner

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IPR2019-00510

Patent 6,868,079 B2

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PATENT OWNER SUR-REPLY

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**Exhibit List**

<b>Exhibit</b>	<b>Description</b>
EX2001	Claim Construction Memorandum and Order entered in <i>Uniloc USA, Inc. v. Samsung Electronics America Inc.</i> , Case No. 2:18-cv-0042-JRG-RSP, D.I. 93 (E.D. Tex. Apr. 18, 2019) and <i>Uniloc USA, Inc. v. Huawei Device USA, Inc.</i> , Case No. 2:18-cv-0075-JRG-RSP, D.I. 57 (E.D. Tex. Apr. 18, 2019)

## I. INTRODUCTION

Uniloc 2017 LLC (“Uniloc” or “Patent Owner”) submits this Sur-Reply to the Petition IPR2019-00510 for *Inter Partes* Review (“Pet.” or “Petition”) of United States Patent No. 6,868,079 (“the ’079 patent” or “Ex. 1001”) filed by Apple Inc., LG Electronics Inc., Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc. (“Petitioners”).

For the reasons given in Patent Owner’s Response (Paper 9, “POR”) and herein, Petitioner fails to carry its burden of proving the challenged claims of the ’079 patent unpatentable on the challenged grounds.

## II. PETITIONERS’ REPLY AND ACCOMPANYING BELATED ARGUMENT AND EVIDENCE UNDERSCORES DEFICIENCIES OF THE PETITION

Petitioners’ Reply insists that Patent Owner has provided no evidence that warrants reconsideration of the institution decision, and that its arguments improperly attack *individually*, the multiple references asserted by petitioner in Grounds 1 and 2, without addressing the *combinations* presented in the Petition. (Reply, p. 1-2).

Petitioner’s Reply not only ignores the clear requirement that “In an inter partes review . . . , the *petitioner* shall have the *burden* of proving a proposition of unpatentability by a preponderance of the evidence” (35 U.S.C. § 316(e)), but also ignores Patent Owner’s unambiguous rebuke of Petitioner’s Grounds 1 and 2, in that

no *combination* of Wolfe, Bousquet, or Everett discloses “wherein the at least one of the plurality of respective secondary stations retransmits the same respective request in consecutive allocated time slots without waiting for an acknowledgement until said acknowledgement is received from the primary station” (POR, p. 11-13). Further still, Petitioner’s contention that Patent Owner “improperly attacks the references individually” (Reply, p. 1-2) is equally misplaced, as the POR lays bare the glaring deficiencies of each of the references themselves, and as used by the Petitioner and declarant in the failed assertion of obviousness of claims 17 and 18 in view of Wolfe, Bousquet, and Patsiokas (Ground 1), and Wolfe, Bousquet, Everett, and Patsiokas (Ground 2). (POR, p. 7-18).

**A. Petitioners fail to meet their burden to show the cited combination of Wolfe and Bousquet (Ground 1) teaches “wherein the at least one of the plurality of respective secondary stations retransmits the same respective request in consecutive allocated time slots without waiting for an acknowledgement until said acknowledgement is received from the primary station” (Claim 17)**

Patent Owner’s Response explains that the Petition fails to establish *prima facie* obviousness for the above-identified recitation. (POR p. 7-13). None of the references, alone or in combination, teach retransmission in even two consecutive allocated time slots.

Petitioner’s Reply admits the clear deficiency in Wolfe by conceding that “the Petition recognized that Wolfe did not *fully disclose the retransmission limitation.*” (Reply, p. 4 (emphasis added)). Notably, both the Petition and the Reply are silent as to what, if any, *partial disclosure* of the above *retransmission limitation* Petitioner attributes to Wolfe, given that Wolfe itself provides absolutely no disclosure

whatsoever that each of the respective secondary stations *retransmits the same respective request in consecutive allocated time slots without waiting for an acknowledgement until said acknowledgement is received from the primary station.* Nevertheless, given Wolfe's glaring omission, the Reply necessarily asserts that "Bousquet...suggest[s] *modification of Wolfe to perform retransmission in consecutive allocated time slots without waiting for an acknowledgement until said acknowledgement is received*", and further asserts that Patent Owner fails to "address the Petition's nearly *twelve page explanation of how a POSITA would have combined Wolfe and Bousquet to modify Wolfe's ground station 10*". (Reply, p. 4-5).

Tellingly, neither Petitioner nor declarant, in its twelve pages of "explanation" for the proposed combination, points to *any portion* of Bousquet as disclosing the limitation *performing retransmission in consecutive allocated time slots without waiting for an acknowledgement as required by claim 17, let alone the further requirement of retransmission of the same respective request in *consecutive allocated time slots without waiting until said acknowledgement is received from the primary station.* Petitioner's reliance on Bousquet's disclosure of *systematic repetition* of the access packets *in the predefined time period* (Pet. 49) (citing EX1006, 3:53-56) is unavailing, as such disclosure falls far short of the required showing of performing retransmission in *consecutive allocated time slots until said acknowledgement is received* from the primary station.*

Moreover, as addressed in the POR, operation of the Bousquet reference is further confirmed in an earlier passage:

The effect of the invention can be seen in FIG. 1 which shows the probability of collision between access packets as a function of the load on the temporally shared resource for  $n=1$  through 7 where  $n$  is the number of times the same access package is sent during a predetermined time period for a random ALOHA access system. Here the packet error rate is 1%.

EX1006, 3:7-13 (highlighting and underlining added).

Further still, Bousquet itself recites that “the invention proposes to *send the same access packet  $n$  times ( $n>1$ ) in a given time period whether an acknowledgement message is received from the station to which these packets are sent or not.*” (emphasis added) EX 1006, 2:53-56.

Thus, Bousquet itself teaches a retransmitting technique which is the exact opposite from the claim requirement of retransmitting “*until* said acknowledgement is received”, in that Bousquet expressly requires its technique be performed a requisite number of times within a defined interval, and not “until receipt of an acknowledgement”. Piecemeal reconstruction of the ‘079 Patent’s disclosure from selected portions of prior art patents is contrary to the requirements of 35 U.S.C. § 103, as “[i]t is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *In re Wesslau*, 353 F.2d 238, 241 (CCPA 1965). Petitioners here fail to provide a convincing explanation as to why a POSITA would select from Bousquet’s integrated teaching of performing a predetermined number of retransmissions, preferably spaced at random in time, regardless of receipt of an acknowledgment, only the feature of retransmitting. This

proposed selection would require that a POSITA opt against incorporation of the feature of performing those retransmissions a predetermined number of times, or the feature of spacing of the retransmissions at random, clearly represents an improper attempt to pick and choose from Bousquet only those teachings that support Petitioner's position.

Further still, by Petitioners' own admission, at least because Bousquet limits its "repetition" to "in the predefined time period", Bousquet cannot and does not disclose the required retransmitting the same respective request "in consecutive allocated time slots without waiting for an acknowledgement until said acknowledgement is received from the primary station." (emphasis added). Bousquet's additional teachings of "n packets transmitted . . . spaced in time, preferably at random" and only "during a predetermined time period", further illustrate Bousquet's failure to teach the required claim language.

Petitioner's Reply contends that Patent Owner erroneously addresses the references individually, concluding that, if a claim limitation is not fully taught by any single reference in the combination, it cannot be rendered obvious by the combination. (Reply, p. 6). However, the Reply, like the Petition itself, fails to identify any portion of Bousquet that in fact teaches the above-identified limitations, given that the primary reference Wolfe is admittedly deficient in this regard. Indeed, the Reply implicitly acknowledges the deficiencies of the Petition and the declaration filed with the Petition by improperly seeking to rely on a *second*



declaration of Paul G. Steffes (Ex. 1018, 16-18), even though the Petitioner repeatedly argues that the Patent Owner did not submit its own evidence. (Reply, p. 1-2). In fact, as demonstrated by the Petitioner's attempt to belatedly justify its arguments via a further declaration, Patent Owner's Response has demonstrated that Petitioner and declarant have failed to meet their burden of showing that each of the features in the above-identified claim limitation is mapped by Bousquet and Wolfe.

Further still, the Reply's assertion that Patent Owner has failed to demonstrate that Bousquet teaches away from the proposed combination likewise misses the mark. (Reply, p. 6). There is no need for the Board here to find that Bousquet teaches away from the proposed combination to determine that the Petitioners have failed to demonstrate unpatentability of the challenged claims, as the Petitioners and their declarant have failed to provide a reasonable explanation as to why a POSITA, considering the references as a whole, would pick and choose features from Wolfe and Bousquet to obtain the recitations of the claims of the '079 Patent. As discussed above, the '079 Patent provides functionality which is absent from Bousquet's teaching, in the case of the recited *consecutive* allocated time slots. Further still, Bousquet's own disclosure of its retransmission technique (*send the same access packet n times in a given time period whether or not an acknowledgement message is received from the station*) is opposite that recited in the claimed limitation, and Petitioner points to no portion of the references of Bousquet or Wolfe to cure these

glaring omissions and contradictions. Similarly, Petitioner’s declarant’s testimony merely parrots the Petition’s conclusory and unsupported statements as to what a POSITA would find obvious, without properly evaluating how a POSITA would view the references as a whole. Recognizing the clear deficiencies in the references themselves, the Reply asserts (Reply, p. 11) that Petitioner’s declarant alleges that, “to *maximize the speed* of call setup while *minimizing wasted bandwidth*, a POSITA would have found it *obvious to modify Wolfe to use all opportunities available for a successful request.*” Petition, 32; EX-1018, [21]-[22], and that, “[t]o achieve that result, a POSITA would have modified Wolfe to *re-transmit requests* in consecutive frames *until a point in time when an acknowledgement* of the first request *would have been expected.*” *Id.* (emphasis added); EX-1018, [21]-[22]. This conclusory analysis should be given little or no weight, as Petitioner’s declarant has provided only a hindsight reconstruction of the claim limitations, rather than an analysis based on a POSITA’s understanding of the references as a whole. Further, declarant’s incongruous assertion that a POSITA would modify Wolfe to include retransmission until a point in time when an acknowledgement *would have been expected* is not only inconsistent with the claim language itself, but is untethered from the references’ teachings and finds no basis in fact, law or logic. As the Court of Appeals has stated:

[W]e rejected obviousness determinations based on conclusory and unsupported expert testimony. We repeatedly expressed concerns that

crediting such testimony risks allowing the challenger to use the challenged patent as a roadmap to reconstruct the claimed invention using disparate elements from the prior art—i.e., the impermissible *ex post* reasoning and hindsight bias that *KSR* warned against. *See Van Os*, 844 F.3d at 1361 (citing *KSR*, [550 U.S. at 418, 421](#)).

*TQ Delta, LLC v. Cisco Sys.*, 2018-1766, at \*13-14 (Fed. Cir. Nov. 22, 2019).

Here, the evidence on which Petitioner seeks to reply is nothing more than an improper use of the '079 Patent as a roadmap to reconstruct the claimed invention using disparate elements from the Wolfe and Bousquet references, and should be given no weight.

**B. Petitioners fail to meet their burden to show the cited combination of Wolfe, Bousquet, and Everett (Ground 2) teaches “wherein the at least one of the plurality of respective secondary stations retransmits the same respective request in consecutive allocated time slots without waiting for an acknowledgement until said acknowledgement is received from the primary station” (Claim 17)**

Patent Owner’s Response explains that the Petition fails to establish *prima facie* obviousness for the above-identified recitation. (POR p. 9-13). The inclusion of Everett fails to cure the glaring omissions and contradictions inherent in Wolfe and Bousquet described herein above. Petitioner’s Reply, in regards to Ground 2, asserts that *Bousquet and Everett suggest modification of Wolfe to perform retransmission in consecutive allocated time slots without waiting for an acknowledgement until*

*said acknowledgement is received.* (Reply, p. 4). In response to Patent Owner’s clear rebuke of Petitioner’s reliance on Everett (POR p. 9-13), including evidence showing Everett’s retransmissions are done at *randomly selected time intervals* (opposite to the claim requirements), no evidence exists for Everett disclosing the required retransmitting the same respective request “**in consecutive allocated time slots without waiting for an acknowledgement until said acknowledgement is received from the primary station**”, Petitioner’s Reply concedes such failure by Everett. (Reply, p. 9). However, in a futile attempt to cabin Everett and maintain its erroneous contention of obviousness, the Reply asserts that the Petition’s combination “relies primarily on Everett for teaching the use of “acknowledgement[s] to acknowledge, separate from an allocation, a secondary station’s request to the primary station for additional capacity and to retransmit the request until Everett’s acknowledgement is received” and to “cease re-transmission once the secondary station has received an acknowledgement from the primary station.” Petition, 48 (citing to EX-1008, 317- 318, FIG. 17. 7), 75-76 (citing to EX-1008, 207). “ (Reply, p. 9). The Reply further asserts that Everett’s processing technique and “use of randomly selected time intervals” is *beside the point because the proposed combination relies only on Everett’s concept of using acknowledgements and ceasing re-transmissions.* EX-1018, [19]-[20]. (*id.*). (emphasis added). The Reply once again points out Petitioner’s impermissible piecemeal selection of only so much of a reference “as will support a given position,

to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” *In re Wesslau*, 353 F.2d at 241. For this reason alone, Petitioner fails to carry its burden of proof.

As further evidence of Petitioner’s utter failure to establish a prima facie case of obviousness of the *retransmission limitation* of claim 17 over Wolfe in view of Bousquet and in further view of Everett, the Reply and declarant refer to the first declaration (Ex. 1003) for support, which asserts that to *maximize the speed* of call setup while *minimizing wasted bandwidth*, a POSITA would have *found it obvious to modify Wolfe to use all opportunities available for a successful request.*”

Petition, 32; Ex. 1003; 69. (emphasis added). The above statement endeavors to provide the illusion of explanation, but is nonsensical and devoid of any analysis, logic or application of the references. For this additional reason, Petitioner fails to carry its burden of proof.

Further still, given that Petitioner’s Reply admits that Everett is relied upon only in an attempt to teach use of acknowledgement[s] to retransmit the request until Everett’s acknowledgement and to and to cease re-transmission upon receipt of an acknowledgement (Reply, p. 9), Petitioner nevertheless fails to reconcile Everett’s allegation of acknowledgement processing with the unambiguous language of Bousquet, which teaches retransmission of requests a predefined number of times *independent* of whether an acknowledgement is received or not.

(Ex. 1006; 2: 53-56). Such failure is striking and points up the incongruous and disparate teachings asserted in Petitioner's Reply, which fail to carry Petitioners' burden of proof under 35 U.S.C. §316(e).

***C. The Petition fails to render obvious “wherein the primary station determines whether a request for services has been transmitted by the at least one of the plurality of respective secondary stations by determining whether a signal strength of the respective transmitted request of the at least one of the plurality of respective secondary stations exceeds a threshold value” (Claim 17) (Grounds 1 and 2)***

**i. A POSITA Would Not Combine Patsiokas with Wolfe and Bousquet, or with Wolfe, Bousquet, and Everett**

Patent Owner's Response explains that the Petition fails to establish *prima facie* obviousness for the above-identified recitation as Petitioner fails to establish that a POSITA would have made the hypothetical combinations proposed by the Petition involving Patsiokas. (POR p. 13-18). Petitioner's Reply asserting misrepresentation of Petitioner's arguments (Reply, p. 16) is unavailing, as Petitioner fails to cite any portion of Wolfe, Bousquet, or Everett to refute Patent Owner's contention that Patsiokas addresses a shortcoming in cordless radio telephone systems that is unidentified in the satellite systems of these references. (POR, p.16).

Further, Petitioner's reliance on declarant's testimony (Ex.-1018, [30]-[31]) attempting to refute Patent Owner's assertion of Wolfe's showing of a single reference station (base station) and Everett's single hub (base station) (POR, p. 17-18) misses the mark, as Wolfe's system makes clear that only one reference station

exercises control. (EX-1005, 5:20-21). Further still, the Petition's reliance on specific portions and embodiments of Everett's single hub (base station) as shown by Petitioner in Fig. 1.6(c) is not defended, but rather the Reply points to separate embodiments, unidentified in the asserted Petition, in a failed effort to rebut Patent Owner's contention. (See Reply, p. 19). Not only is such new evidence insufficient, the Petitioners' desperate attempt to salvage its case by belatedly introducing new evidence demonstrates that even Petitioners concede that the Petition is deficient.

#### **D. Claim 18**

Patent Owner's Response acknowledges that the Board has made its determination that Petitioners' contentions are inadequate for the alleged obviousness of claim 18, and that the Board included the claim in this trial only in light of *SAS*. See Paper 7, 24. The Petition's contentions as to claim 18 are also deficient for at least the same reasons argued above as to claim 17, and Petitioner's Reply fails to address those deficiencies.

### **III. Related Proceedings**

Patent Owner identifies the following proceedings involving the '079 patent:

<b>Case Filing Date</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>
2/22/2018	<i>Uniloc USA, Inc. et al v. Apple Inc.</i>	1-18-cv-00158	WDTX
2/23/2018	<i>Uniloc USA, Inc. et al v. Samsung Electronics America, Inc. et al</i>	2-18-cv-00042	EDTX
3/9/2018	<i>Uniloc USA, Inc. et al v. LG Electronics USA, Inc. et al</i>	3-18-cv-00557	NDTX

<b>Case Filing Date</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Court</b>
3/13/2018	<i>Uniloc USA, Inc. et al v. Huawei Device USA, Inc. et al</i>	2-18-cv-00075	EDTX
7/23/2018	<i>Uniloc USA, Inc. et al v. ZTE (USA), Inc. et al</i>	2-18-cv-00304	EDTX
7/23/2018	<i>Uniloc USA, Inc. et al v. BlackBerry Corporation</i>	2-18-cv-00305	EDTX
7/23/2018	<i>Uniloc USA Inc et al v. Blackberry Corporation</i>	3-18-cv-01883	NDTX
10/24/2018	<i>Uniloc USA, Inc. et al v. ZTE (USA), Inc. et al</i>	3-18-cv-02835	NDTX
11/6/2018	<i>Uniloc USA Inc et al v. LG Electronics USA Inc et al</i>	4-18-cv-06737	NDCA
11/17/2018	<i>Uniloc 2017 LLC v. ZTE Inc et al</i>	3-18-cv-03064	NDTX
11/17/2018	<i>Uniloc 2017 LLC v. Blackberry Corporation</i>	3-18-cv-03065	NDTX
11/20/2018	<i>Uniloc 2017 LLC v. Motorola Mobility, LLC</i>	1-18-cv-01841	DDE
11/30/2018	<i>Uniloc 2017 LLC v. HTC America, Inc.</i>	2-18-cv-01728	WDWA
1/10/2019	<i>Apple Inc. et al v. Uniloc 2017 LLC</i>	IPR2019-00510	PTAB
3/26/2019	<i>Uniloc 2017 LLC v. AT&amp;T Services, Inc. et al</i>	2-19-cv-00102	EDTX
4/2/2019	<i>Uniloc USA, Inc. et al v. Apple Inc.</i>	4-19-cv-01691	NDCA
7/1/2019	<i>Uniloc USA, Inc. et al v. Samsung Electronics America, Inc. et al</i>	19-2072	CAFC
10/11/2019	<i>Motorola Mobility LLC et al v. Uniloc 2017 LLC</i>	IPR2020-00038	PTAB
1/17/2020	<i>Ericsson Inc. v. Uniloc 2017 LLC</i>	IPR2020-00420	PTAB



#### IV. CONCLUSION

For at least the reasons set forth above, Uniloc respectfully requests that the Board deny all challenges in the instant Petition.<sup>1</sup>

Date: February 20, 2020

Respectfully submitted,

By: /Ryan Loveless/  
Ryan Loveless  
Reg. No. 51,970  
Brett A. Mangrum  
Reg. No. 64,783  
*Attorneys for Patent Owner*

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<sup>1</sup> Patent Owner does not concede, and specifically denies, that there is any legitimacy to any arguments in the instant Petition that are not specifically addressed herein.

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that the foregoing complies with the type-volume limitation of 37 C.F.R. § 42.24(c)(1) because it contains fewer than the limit of 5,600 words, as determined by the word- processing program used to prepare the brief, excluding the parts of the brief exempted by 37 C.F.R. § 42.24(c).

Date: February 20, 2020

Respectfully submitted,

By: /Ryan Loveless/  
Ryan Loveless  
Reg. No. 51,970  
Brett A. Mangrum  
Reg. No. 64,783  
*Attorneys for Patent Owner*

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), the undersigned certifies that an electronic copy of the foregoing Sur Reply was served via email to Petitioner's counsel at the following addresses identified in the Petition's consent to electronic service:

Lead Counsel: W. Karl Renner, Reg. No. 41,265  
[IPR39521-0060IP1@fr.com](mailto:IPR39521-0060IP1@fr.com)

Backup Counsel: Jeremy J. Monaldo, Reg. No. 58,680  
Roberto J. Devoto, Reg. No. 55,108  
Grace Kim, Reg. No. 71,977  
[PTABInbound@fr.com](mailto:PTABInbound@fr.com); [axf-ptab@fr.com](mailto:axf-ptab@fr.com);  
[monaldo@fr.com](mailto:monaldo@fr.com); [devoto@fr.com](mailto:devoto@fr.com); [gkim@fr.com](mailto:gkim@fr.com)

Date: February 20, 2020

Respectfully submitted,

By: /Ryan Loveless/  
Ryan Loveless  
Reg. No. 51,970  
Brett A. Mangrum  
Reg. No. 64,783  
*Attorneys for Patent Owner*