UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner

v.

UNILOC 2017 LLC
Patent Owner.

Case IPR2019-00753
Patent 7,587,207

PETITIONER'S REQUEST FOR REHEARING

PURSUANT TO 37 C.F.R. § 42.7

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I. INTRODUCTION

Apple Inc. ("**Petitioner**") respectfully requests rehearing of the September 16, 2019 Decision ("**Decision**") denying institution of *Inter Partes* Review of claims 1-3, 5-6, and 9–11 (the "**Challenged Claims**") of U.S. Patent No. 7,587,207 (the "**'207 Patent**") under 37 CFR § 42.71(d). In the Decision, Judges Smith and Medley ("**the Majority**") held that the Petition had not established a reasonable likelihood that the Petitioner would prevail with respect to at least one of the Challenged Claims. Paper 7, p 1. Judge Horvath issued a dissent ("**the Dissent**"). Paper 7, p 1. As explained below, the Majority's decision misapprehends and/or overlooks critical technical teachings of the prior art and arguments advanced in the Petition.

For example, the Majority's decision misapprehends and/or overlooks critical features of Bluetooth technology and the Bluetooth capabilities of a receiverless beacon. Specifically, the Majority explained:

> We also agree with Patent Owner that the Petition does not explain why ***a transmitter that uses existing Bluetooth technology*** and cannot receive an inquiry response message (a) would send inquiry messages, and (b) would add an additional data field to the inquiry message, ***rather than use an existing alternative that***

does not require modifying the standard Bluetooth inquiry message. Paper 7, p 11.[1]

The problem with this statement, as explained by Dr. Knutson, is that it assumes the existence of a Bluetooth alternative that does not exist. *See* Ex. 1003, ¶¶[51]-[52] (citing Ex. 1007, pp 108-10). Indeed, although Patent Owner argues existence in Bluetooth of "any of a number of other alternatives," Patent Owner fails to demonstrate this with evidence – not even uncorroborated expert testimony, and Patent Owner fails to even allege what alternative might be used. Paper 6, p 13. The only evidence on record (Dr. Knutson's testimony and the teachings of BT Core) confirms that "[t]he only way the beacon can provide information to another device using Bluetooth is through a pre-connection inquiry message." Ex. 1003, ¶¶[51]-[52], [79] (citing Ex. 1007, pp 108-10). With the full weight of uncontroverted evidence supporting the Petition's obviousness analysis, trial should be instituted to allow proper vetting and full consideration of Patent Owner's unsupported argument that other alternatives exist. That type of vetting is precisely the reason trials are instituted and decisions at institution are preliminary.

Accordingly, and for the reasons explained in more detail below, the Majority's decision misapprehends and/or overlooks critical features of Bluetooth.

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[1] All emphasis added, unless otherwise noted.

Thus, Petitioner respectfully requests reconsideration of the decision and institution of *Inter Partes* Review.

II. ARGUMENT

A. The Majority's Decision Misapprehends and/or Overlooks the Bluetooth Capabilities of a Receiverless Beacon

Several facts are undisputed:

- McCall discloses a receiverless beacon that "transmits its identifying signal continuously, or at intervals" (Ex. 1005, 4:10-16, 4:26-32; Paper 2, p 10; Ex. 1003, ¶[42]);
- McCall discloses multiple assets passively listening for the transmitted signal (*Id.*);
- McCall discloses using Bluetooth technology (Ex. 1005, 2:47-52 and 5:9-23; Paper 2, p 10); and
- McCall discloses the Bluetooth inquiry protocol, which involves transmission of a broadcasted inquiry message received by any nearby device (*Id.*; Ex. 1007, pp 108-10).

With this background, the dispute centers on whether McCall's receiverless beacon (1) transmits using Bluetooth's inquiry protocol or (2) transmits using another, alternative Bluetooth protocol. The Majority's decision presupposes the latter, but misapprehends and/or overlooks critical Bluetooth technology that

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