

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
APPLE INC., and ERICSSON INC.,
Petitioner,

v.

UNILOC 2017 LLC,
Patent Owner.

IPR2019-00973¹
Patent 7,075,917 B2

Before SALLY C. MEDLEY, KALYAN K. DESHPANDE, and
ROBERT J. WEINSCHENK, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

¹ Apple Inc., who filed a petition in IPR2020-00224, has been joined as a petitioner in this proceeding. Ericsson Inc., who filed a petition in IPR2020-00315, has been joined as a petitioner in this proceeding.

I. INTRODUCTION

Microsoft Corporation (“Petitioner”) filed a Petition for *inter partes* review of claims 1–3, 9, and 10 of U.S. Patent No. 7,075,917 B2 (Ex. 1001, “the ’917 patent”). Paper 2 (“Pet.”). Uniloc 2017 LLC (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). Upon consideration of the Petition and Preliminary Response, we instituted *inter partes* review, pursuant to 35 U.S.C. § 314, as to claims 1–3, 9, and 10 based on the sole challenge set forth in the Petition. Paper 7 (“Decision to Institute” or “Dec.”).

Subsequent to institution, Patent Owner filed a Patent Owner Response (Paper 9, “PO Resp.”), Petitioner filed a Reply to Patent Owner’s Response (Paper 12, “Pet. Reply”), and Patent Owner filed a Sur-reply (Paper 13, “Sur-reply”). On August 20, 2020, we held an oral hearing. A transcript of the hearing is of record. Paper 19 (“Tr.”).

In our Scheduling Order, we notified the parties that “any arguments not raised in the [Patent Owner] response may be deemed waived.” *See* Paper 8, 7; *see also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012) (“The patent owner response . . . should identify all the involved claims that are believed to be patentable and state the basis for that belief.”). Patent Owner argues that it “does not concede, and specifically denies, that there is any legitimacy to any arguments in the instant Petition that are not specifically addressed” in its Patent Owner Response. PO Resp. 47 n.1; *see also id.* at 14–15. We decline to speculate as to what arguments Patent Owner considers illegitimate in the Petition. Any arguments for patentability not raised in the Patent Owner Response are deemed waived.

For the reasons that follow, we conclude that Petitioner has proven by a preponderance of the evidence that claims 1–3, 9, and 10 of the '917 patent are unpatentable.

A. Related Matters

The parties indicate that the '917 patent is the subject of several court proceedings, including *Uniloc 2017 LLC v. Microsoft Corporation*, 8:18-cv-002053 (C.D. Cal.), filed November 17, 2018. Pet. vii; Paper 3, 2; Prelim. Resp. 14–15; *see also* Ex. 1011 (complaint). The '917 patent also was the subject of IPR2019-00259, where a decision to not institute *inter partes* review was rendered. *Apple Inc. v. Uniloc 2017 LLC*, IPR2019-00259 (“IPR259”), Paper 7 (PTAB June 27, 2019) (Decision Denying Institution) (“IPR259 Dec.”). In IPR2020-00224, Apple Inc. filed a motion to join this proceeding, which we granted. *See Apple Inc. v. Uniloc 2017 LLC*, IPR2020-00224, Paper 10 (PTAB Apr. 6, 2020). In IPR2020-00315, Ericsson Inc. filed a motion to join this proceeding, which we granted. *See Ericsson Inc. v. Uniloc 2017 LLC*, IPR2020-00315, Paper 10 (PTAB Apr. 7, 2020).

B. The '917 Patent

The Specification of the '917 patent describes a wireless network comprising a radio network controller (RNC) and a plurality of assigned terminals, which are each provided for exchanging data and which form a receiving and/or transmitting side. Ex. 1001, 1:6–9. The '917 patent describes data transmitted using the hybrid Automatic Repeat Request (ARQ) method. *Id.* at 1:10–15. The '917 patent explains that an object of the invention is “to provide a wireless network in which error-affected data repeatedly to be transmitted . . . are buffered for a shorter period of time on

average.” *Id.* at 1:64–67. This is done by storing abbreviated sequence numbers whose length depends on the maximum number of coded transport blocks to be stored, and transmitting coded transport blocks that include a packet data unit and an assigned abbreviated sequence number. *Id.* at 2:8–16. The use of abbreviated sequence numbers reduces the extent of information that is required to be additionally transmitted for managing transport blocks and packet data units and simplifies the assignment of the received acknowledge command to the stored transport blocks. *Id.* at 2:45–49. The ’917 patent further describes that a receiving physical layer checks whether a coded transport block has been transmitted correctly, and, if so, a positive acknowledge signal ACK is sent to the sending physical layer over a back channel. *Id.* at 6:9–13. If the coded transport block has not been received error-free, a negative acknowledge command NACK is sent to the sending physical layer. *Id.* at 6:13–15.

C. Illustrative Claim

Petitioner challenges claims 1–3, 9, and 10 of the ’917 patent. Claims 1, 9, and 10 are independent claims, and claims 2 and 3 depend directly from claim 1. Claim 1 is reproduced below, which includes changes made per a Certificate of Correction.

1. A wireless network comprising a radio network controller and a plurality of assigned terminals, which are each provided for exchanging data according to the hybrid ARQ method and which form a receiving and/or transmitting side, in which a physical layer of a transmitting side is arranged for

storing coded transport blocks in a memory, which blocks contain at least a packet data unit which is delivered by an assigned radio link control layer and can be identified by a packet data unit sequence number,

storing abbreviated sequence numbers whose length depends on the maximum number of coded transport blocks to be stored and which can be shown unambiguously in a packet data unit sequence number, and for

transmitting coded transport blocks having at least an assigned abbreviated sequence number and

a physical layer of a receiving side is provided for testing the correct reception of the coded transport block and for sending a positive acknowledge command to the transmitting side over a back channel when there is correct reception and a negative acknowledge command when there is error-affected reception.

Ex. 1001, 7:62–8:17, p.10.

D. Instituted Ground of Unpatentability

We instituted trial based on the sole asserted ground of unpatentability under 35 U.S.C.² as follows (Dec. 5, 28):

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–3, 9, and 10	103(a)	TR25.825 ³ , Abrol ⁴

² The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended 35 U.S.C. §§ 102 and 103. Because the ’917 patent has an effective filing date before the effective date of the applicable AIA amendments, we refer to the pre-AIA versions of 35 U.S.C. §§ 102 and 103.

³ 3G TR 25.835 V1.0.0 (2000-09) – 3rd Generation Partnership Project; Technical Specification Group Radio Access Network; Report on Hybrid ARQ Type II/III (Release 2000) (Ex. 1005, “TR25.835”).

⁴ US 6,507,582 B1, issued Jan. 14, 2003 (Ex. 1007, “Abrol”).

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