

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner,

v.

FIRSTFACE CO., LTD.,

Patent Owner.

Case IPR2019-01011

U.S. Patent No. 9,633,373

**DECLARATION OF SCOTT MCKEOWN IN SUPPORT OF
THE PETITION FOR *INTER PARTES* REVIEW OF
UNITED STATES PATENT NO. 9,633,373**

I, Scott McKeown, make the following Declaration pursuant to 28 U.S.C.

§ 1746:

1. I am a partner at the law firm of Ropes & Gray LLP and counsel to Petitioner in the above-identified proceeding and related proceedings filed on April 24, 2019.

Apple Ex. 1038

2. I provide this Declaration in connection with the above-identified *Inter Partes* Review proceeding that is being requested at the United States Patent and Trademark Office (“USPTO”) by Apple Inc. Unless otherwise stated, the facts stated in this Declaration are based on my personal knowledge.

3. On January 23, 2019, a petition for *Inter Partes* Review 2019-00613 was filed to challenge claims 1-2, 4-6 and 11-14 of U.S. Patent 9,633,373, which was intended to address all of the claims asserted against Petitioner in a related litigation, styled as Case No. 18-cv-2245 (N.D. Cal.). That petition inadvertently omitted dependent claims 10 and 18.

4. The omission of claims 10 and 18 from IPR2019-00613 was solely a result of my misidentification of the asserted claims in Case No. 18-cv-2245.

5. Petitioner first learned of this omission on April 12, 2019 and immediately and diligently prepared the accompanying petition on claims 10 and 18, which is concurrently filed herewith.

6. I hereby declare that all statements made herein of my own knowledge are true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001. If called to testify as to the truth of the matters stated herein, I could and would testify competently.

7. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of April, 2019, in Washington, D.C.

/Scott A. McKeown/
Scott A. McKeown