UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

LBT IP I LLC,
Patent Owner

Inter Partes Review Case No. IPR2020-01189
U.S. Patent No. 8,497,774

PETITIONER APPLE INC.'S REPLY REMAND BRIEF

I. Introduction

The specification of the '774 Patent describes two different embodiments that rely on two different "threshold values." LBT's entire brief focuses on the battery level embodiment, which is described at columns 11-13 (and which includes Figure 4). Intentionally or otherwise, LBT completely ignores the GPS signal level embodiment described in columns 7-10. Ultimately, LBT's argument does nothing to answer the Board's question because the operation of the battery level embodiment is not in dispute between the parties. Instead, the dispute revolves around what to do with the GPS signal level embodiment disclosed in the portions of the specification that LBT ignores. The dispute is simply whether that embodiment is part of the claims or not. As discussed in the opening brief and below, the GPS signal level embodiment is absolutely part of the "multitude of threshold values" in claim 8. There is no limitation in the claims, or in the specification, that would compel a conclusion that excludes the GPS signal level embodiment. Moreover, LBT's position runs the risk of violating fundamental legal principles of claim construction that may lead to further appellate issues. Because nothing in claim 8 limits its application to only the battery level embodiment, and because the language of claim 8 uses the broad and expansive "comprising" language, the Board must find that the "multitude of threshold values" includes both battery level and GPS signal level.

II. Argument

First, LBT's argument divorces GPS signal levels from the "power level that is monitored and adjusted by the battery power level monitor." *Id.* LBT advances the argument that "in context, the 'multitude of threshold values' can only be battery power level threshold values." *Id.*, 2-3. But this fundamentally ignores the operation of GPS receivers and the impact of a GPS signal level on the power level of the battery. Indeed, the inventors of the '774 Patent realized that GPS signal levels are intimately tied together with a high drain on the power level of the battery:

> GPS satellite communication signals may be obstructed or partially blocked, hindering tracking and monitoring capability. Not only is a GPS transceiver receiving a weak GPS signal [e.g., a weak GPS signal level], but also the GPS transceiver is depleting battery power in failed attempts to acquire communication signals…

'774 Patent, 3:2-8. Tellingly, LBT does not cite or discuss this portion of the specification in its brief.

Second, LBT ignores the express embodiment that correlates GPS signal levels with the threshold value. LBT instead focuses solely on the Fig. 4 battery level embodiment. LBT provides pages and pages of argument and citations that solely discuss the battery level embodiment. But this discussion is unhelpful because it ignores the fact that the '774 Patent discloses two embodiments that (allegedly) save power of the tracking device. The first is disclosed in column 7 where the inventors

note that the "designated [GPS] antennas, e.g., antennas 122a, 122b, detect[] **a first signal level, e.g., a low signal level or threshold value**."[1] '774 Patent, 7:55-59. Here, the inventors expressly and explicitly equate the GPS signal levels from the GPS antennas 122a/b with a "threshold value." This portion of the specification completely refutes LBT's arguments, which is likely why LBT ignored it. Because this embodiment was discussed extensively in Apple's opening brief[2] it will not be addressed further here except to note that it would be error to adopt a construction that reads out an embodiment of the specification. *See, e.g., Pacing Techs., LLC v. Garmin Int'l, Inc.,* 778 F.3d 1021, 1026 (Fed. Cir. 2015).

The third problem with LBT's argument is that it ignores the claim language itself. Limitation 8d reads as follows:

> wherein the battery power level monitor measures a power level of the charging unit and adjusts a power level applied to location tracking circuitry responsive one or more signal levels, *the power level* **comprising** *a multitude of threshold values* determined by a user or system administrator to intermittently activate or deactivate the location tracking circuitry to conserve power of the charging unit in response to the estimated charge level of the charging unit.

[1] As noted in Apple's opening brief, antennas 122a/b are the GPS antennas and, thus, can only be detecting a GPS signal level, not a battery level. Paper 43, Apple's Claim Construction Brief, 1, 3-4.
[2] Paper 43, Apple's Claim Construction Brief.

'774 Patent, Claim 8(d). As discussed above, and in Apple's opening brief, there are two specific embodiments disclosed in the '774 Patent for the threshold values—one for the GPS signal level and one for the battery level. Paper 43, 6-7 (noting that "threshold value" is only used twice in the '774 Patent, once for battery power level and once for GPS signal level). It would be reversible error to exclude one of these embodiments unless the claim language expressly limits it to one of these embodiments. *Pacing Techs.* 778 F.3d at 1026. Nothing in the claim limits it to the battery level embodiment.

While LBT focuses its argument on the three words "the power level," it ignores the term "comprising." As the Board is well aware, "'[c]omprising' is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim." *Genentech, Inc. v. Chiron Corp.,* 112 F.3d 495, 501 (Fed.Cir.1997). Because of the term "comprising," LBT invites error by suggesting "the 'multitude of threshold values' can only be battery power level threshold values" because this conclusion violates black letter law on claim construction. In essence, LBT's argument would replace the phrase "comprising" with "consisting," which is improper in the absence of any evidence overriding the presumption that exists with the use of the phrase "comprising." *Crystal Semiconductor Corp. v. TriTech Microelectronics Intl'l, Inc.,* 246 F.3D 1336, 1362 (Fed. Cir. 2001) ("When a patent

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