

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., LG ELECTRONICS U.S.A.,  
INC., AND GOOGLE LLC

Petitioner,

v.

GESTURE TECHNOLOGY PARTNERS, LLC,

Patent Owner.

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IPR2021-00921<sup>1</sup>

Patent 8,878,949 B2

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Before PATRICK R. SCANLON, BRENT M. DOUGAL, and  
SCOTT RAEVSKY, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

JUDGMENT

Final Written Decision

Determining Some Challenged Claims Unpatentable

35 U.S.C. § 318(a)

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<sup>1</sup> IPR2022-00092 (LG Electronics, Inc. and LG Electronics U.S.A., Inc.) and IPR2022-00362 (Google LLC) have been joined with this proceeding.

## I. INTRODUCTION

Apple Inc., LG Electronics, Inc., LG Electronics U.S.A., Inc., and Google LLC (collectively “Petitioner”) challenge claims 1–18 of U.S. Patent No. 8,878,949 B2 (Ex. 1001, “the ’949 patent”). We have jurisdiction under 35 U.S.C. § 6, and this Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that claims 1–3, 5–10, and 12–17 of the ’949 patent are unpatentable but has not shown by a preponderance of the evidence that claims 4, 11, and 18 are unpatentable.

### *A. Procedural History*

Apple Inc. filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of the challenged claims. Gesture Technology Partners, LLC (“Patent Owner”) filed a Preliminary Response (Paper 6).

We instituted a trial as to all challenged claims. Paper 8 (“Decision on Institution” or “Dec. Inst.”).

After institution, LG Electronics, Inc. and LG Electronics U.S.A., Inc. filed a petition and a motion for joinder to this proceeding. IPR2022-00092, Papers 1, 3. We granted the motion for joinder, and IPR2022-00092 was joined with this proceeding and dismissed. Paper 12, 11–12. In addition, Google LLC filed a petition and a motion for joinder to this proceeding. IPR2022-00362, Papers 2, 3. We granted the additional motion for joinder, and IPR2022-00362 was joined with this proceeding and dismissed. Paper 16, 5–6. Consequently, Apple Inc., LG Electronics, Inc., LG Electronics U.S.A., Inc., and Google LLC are joined in this proceeding.

Patent Owner filed a Patent Owner Response (Paper 10, “PO Resp.”), Petitioner filed a Reply (Paper 13, “Reply”), and Patent Owner filed a Sur-reply (Paper 14, “Sur-reply”).

Petitioner relies on the Declaration of Dr. Benjamin B. Bederson (Ex. 1003) and the Supplemental Declaration of Dr. Benjamin B. Bederson (Ex. 1018) in support of its contentions. Patent Owner relies on the Declaration of Benedict Occhiogrosso (Ex. 2002) in support of its contentions.

An oral hearing was held on September 14, 2022. A transcript of the hearing is included in the record. Paper 23 (“Tr.”).

#### *B. Real Parties in Interest*

Petitioner identifies Apple Inc., LG Electronics, Inc., LG Electronics U.S.A., Inc., and Google LLC as the real parties in interest. Pet. 65; IPR2022-00092, Paper 1, 62; IPR2022-00362, Paper 1, 61. Patent Owner identifies itself as the real party in interest. Paper 15, 1.

#### *C. Related Matters*

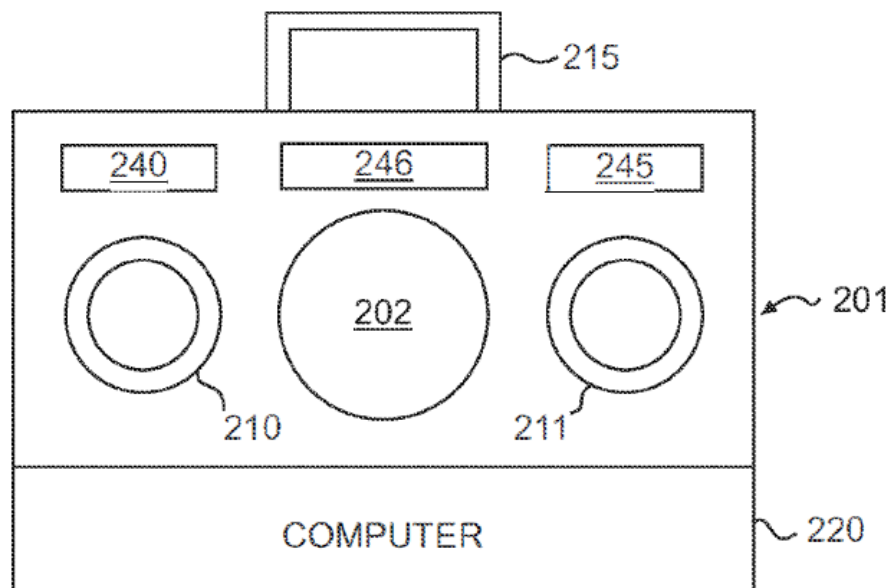
The parties identify the following proceedings as related matters involving the '949 patent: *Gesture Technology Partners, LLC v. Apple Inc.*, No. 6:21-cv-00121 (W.D. Tex.); *Gesture Technology Partners, LLC v. Lenovo Group Ltd.*, No. 6:21-cv-00122 (W.D. Tex.); *Gesture Technology Partners, LLC v. LG Electronics, Inc.*, No. 6:21-cv-00123 (W.D. Tex.); *Gesture Technology Partners, LLC v. Huawei Device Co., Ltd.*, No. 2:21-cv-00040 (E.D. Tex.); *Gesture Technology Partners, LLC v. Samsung Electronics Co., Ltd.*, No. 2:21-cv-00041 (E.D. Tex.), *Gesture Technology Partners, LLC v. Motorola Mobility LLC*, No. 1:22-cv-03535 (N.D. Ill.), and *Gesture Technology Partners, LLC v. Katherine K. Vidal*, No. 1:22-cv-622 (E.D. Va.). Pet. 65; Paper 15, 1–3.

In addition, Patent Owner identifies the following *inter partes* review proceedings as related matters: IPR2021-00917; IPR2021-00920; IPR2021-00922; and IPR2021-00923. Paper 15, 2–3. Patent Owner also identifies the following related *Ex Parte* Reexaminations: No. 90/014,900; No. 90/014,901; No. 90/014,902; and No. 90/014,903. *Id.* at 3–4.

#### D. The '949 Patent

The '949 patent, titled “Camera Based Interaction and Instruction,” issued November 4, 2014, with claims 1–18. Ex. 1001, codes (45), (54), 15:21–16:50. The '949 patent relates to “enhanc[ing] the quality and usefulness of picture taking for pleasure, commercial, or other business purposes.” *Id.* at 1:4–6. In one embodiment, “stereo photogrammetry is combined with digital image acquisition to acquire or store scenes and poses of interest, and/or to interact with the subject in order to provide data to or from a computer.” *Id.* at 1:6–10.

Figure 2A of the '949 patent is reproduced below.



**FIG. 2A**

Figure 2A illustrates still camera system 201, which includes central camera 202 having high resolution and color accuracy for picture taking. *Id.* at 4:66–5:2. Camera system 201 also includes two cameras 210, 211 on either side of central camera 202. *Id.* at 5:2–3. Cameras 210, 211 “may be lower resolution (allowing lower cost, and higher frame rate, as they have less pixels to scan in a given frame time), with little or no accurate color capability, as they are used to simply see object positions or special datum positions on objects.” *Id.* at 5:3–7.

Camera system 201 further includes computer 220 that processes data from cameras 210, 211 “to get various position and/or orientation data concerning a person.” *Id.* at 5:24–26. “In general, one can use the system to automatically ‘shoot’ pictures” in response to a particular event, such as the subject undertaking a particular position or gesture—i.e., a silent command to take a picture. *Id.* at 5:30–49.

#### *E. Challenged Claims*

As noted above, Petitioner challenges claims 1–18 of the ’949 patent. Claims 1, 8, and 13 are independent. Claim 1 is illustrative of the claimed subject matter and is reproduced below:

1. A portable device comprising:
  - a device housing including a forward facing portion, the forward facing portion of the device housing encompassing an electro-optical sensor having a field of view and including a digital camera separate from the electro-optical sensor; and
  - a processing unit within the device housing and operatively coupled to an output of the electro-optical sensor, wherein the processing unit is adapted to:

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