

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

GESTURE TECHNOLOGY PARTNERS, LLC,  
Patent Owner.

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IPR2021-00921  
Patent 8,878,949 B2

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Before PATRICK R. SCANLON, GREGG I. ANDERSON, and  
BRENT M. DOUGAL, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

DECISION  
Granting Institution of *Inter Partes* Review  
35 U.S.C. § 314

## I. INTRODUCTION

Apple Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–18 of U.S. Patent No. 8,878,949 B2 (Ex. 1001, “the ’949 patent”). Gesture Technology Partners, LLC (“Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2020). To institute an *inter partes* review, we must determine that the information presented in the Petition shows “a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). For the reasons set forth below, we determine that the information presented in the Petition establishes a reasonable likelihood that Petitioner will prevail with respect to at least one challenged claim. Accordingly, an *inter partes* review is hereby instituted.

## II. BACKGROUND

### A. *Real Parties in Interest*

Petitioner identifies itself as the real party in interest. Pet. 65. Patent Owner identifies itself as the real party in interest. Paper 4, 1.

### B. *Related Matters*

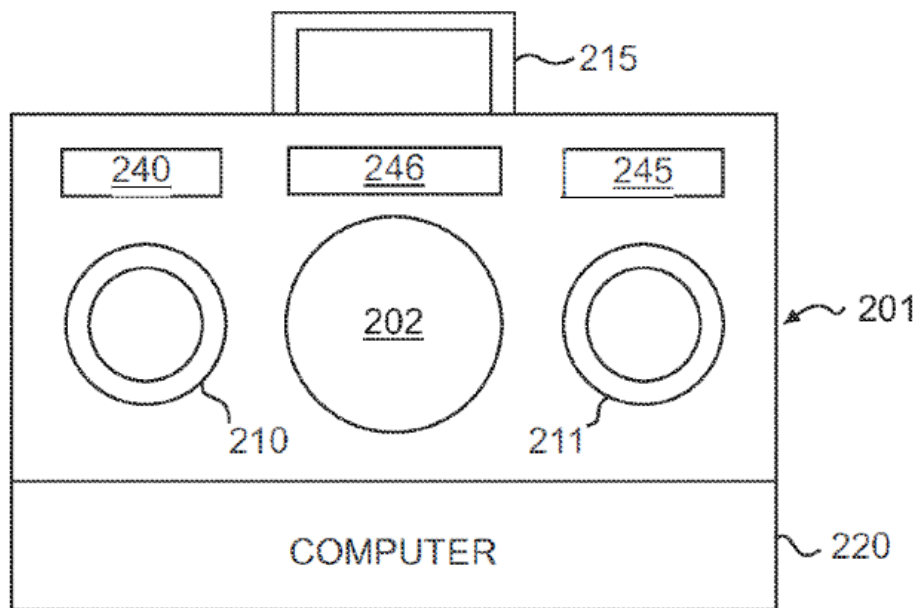
The parties identify the following proceedings as related matters involving the ’949 patent: *Gesture Technology Partners, LLC v. Apple Inc.*, No. 6:21-cv-00121 (W.D. Tex.); *Gesture Technology Partners, LLC v. Lenovo Group Ltd.*, No. 6:21-cv-00122 (W.D. Tex.); *Gesture Technology Partners, LLC v. LG 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.); and *Gesture Technology Partners, LLC v. Samsung Electronics Co., Ltd.*, No. 2:21-cv-00041 (E.D. Tex.). Pet. 65; Paper 4, 1.

In addition, Patent Owner identifies the following *inter partes* review proceedings as related matters: IPR2021-00917; IPR2021-00920; IPR2021-00922; and IPR2021-00923. Paper 4, 2.

*C. 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.

#### *D. 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:

determine a gesture has been performed in the electro-optical sensor field of view based on the electro-optical sensor output, and

control the digital camera in response to the gesture performed in the electro-optical sensor field of view, wherein the gesture corresponds to an image capture command, and wherein the image capture command causes the digital camera to store an image to memory.

Ex. 1001, 15:21–38.

### *E. Asserted Grounds of Unpatentability*

Petitioner contends that the challenged claims would have been unpatentable on the following grounds:<sup>1</sup>

<b>Claim(s) Challenged</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>
1–18	103(a)	Numazaki, <sup>2</sup> Nonaka <sup>3</sup>
6, 12, 17	103(a)	Numazaki, Nonaka, Aviv <sup>4</sup>

Pet. 6–7. Petitioner supports its challenge with the Declaration of Dr. Benjamin B. Bederson (Ex. 1003).

## III. ANALYSIS

### *A. Level of Ordinary Skill in the Art*

In determining whether an invention would have been obvious at the time it was made, 35 U.S.C. § 103 requires us to resolve the level of ordinary skill in the pertinent art at the time of the effective filing date of the claimed invention. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). The

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<sup>1</sup> The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended 35 U.S.C. § 103. Because the ’949 patent has an effective filing date before the March 16, 2013, effective date of the applicable AIA amendments, we apply the pre-AIA version of 35 U.S.C. § 103.

<sup>2</sup> US 6,144,366, issued Nov. 7, 2000 (Ex. 1004).

<sup>3</sup> JP H4-73631, published Mar. 9, 1992 (Ex. 1005).

<sup>4</sup> US 5,666,157, issued Sept. 9, 1997 (Ex. 1006).

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