

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner

v.

GESTURE TECHNOLOGY PARTNERS LLC
Patent Owner

Inter Partes Review Case No. IPR2021-00923
U.S. Patent No. 8,194,924

SUPPLEMENTAL DECLARATION OF DR. BENJAMIN B. BEDERSON

I, Benjamin B. Bederson, hereby declare the following:

1. My name is Benjamin B. Bederson, Ph.D and I am over 21 years of age and otherwise competent to make this Declaration. I make this Declaration based on facts and matters within my own knowledge and on information provided to me by others.

2. I submitted an initial declaration in support of Apple's petition for *Inter Partes* Review of U.S. Patent No. 8,194,924 ("the '924 Patent"). I understand the PTAB instituted the requested review and that the proceeding involves the full scope of the proposed grounds addressed in my initial declaration. I have been asked to address a few additional issues in response to Patent Owner's Response (Paper 12) and Patent Owner's expert's declaration (Ex. 2002).

I. A POSITA would have been motivated to combine Mann and Numazaki

3. I understand Patent Owner and its expert argue that it would not have been obvious to implement Numazaki's no-touch gesture recognition technology upon Mann's device because "physically interacting with a watch or PDA is what would be expected," noting the long history of users physically interacting with those types of devices in order to control them. Paper 12, 11. The argument continues, alleging Mann's touch-based gestures actually "provide a cover for the user to trigger the recording" while no-touch gesture recognition would be "more

likely to intrigue the [target] subject and draw their attention.” Paper 12,13-14; Ex. 2002, ¶¶ 49, 54, 55. I disagree.

4. Just the opposite is true. In my initial declaration, I explained that Mann’s goal is to capture a recording of a subject without drawing the subject’s attention. Ex. 1003, ¶ 47. Mann’s goal is to avoid “creat[ing] a visual disturbance to others and attract[ing] considerable attention on account of the gesture of bringing the camera up to the eye.” Ex. 1004, 1-2. I explained that physically touching Mann’s device “runs the risk of being noticed by the subject.” Ex. 1003, ¶ 47. Whether touching Mann’s device or bringing it up to the eye, in both circumstances the user risks drawing the subject’s attention by performing an action that the subject may recognize as interacting with the device. For example, when a user brings a camera to the eye, it’s unavoidable that the subject will assume she is being recorded. Similarly, when the user physically interacts with the watch or PDA, it risks the subject recognizing that the user has in fact interacted with the device and may have initiated some process within the device (e.g., a recording). This is one of the key reasons a POSITA would have understood no-touch gestures draw less attention than Mann’s native touch-based gestures. Touch-based gestures are easily recognizable as the user interacts with the device, which is precisely why they draw more attention. When a user seeks to initiate a recording on a device without the subject

knowing, she should avoid actions that suggest a function has been initiated on the device.

5. From the perspective of avoiding attention, Mann's touch-based gestures improve upon raising a camera to one's eye to capture video. But Mann's touch-based gestures still depend on physical actions that a subject is likely to associate with the user interacting with and controlling the device. As Patent Owner and its expert admit, the proposed no-touch gestures have no such association. Paper 12, 11; Ex. 2002, ¶ 49 ("physically interacting with a watch or PDA is what would be expected, while no-touch gesture recognition is much more recent"). Accordingly, contrary to Patent Owner's argument, a POSITA would have understood that using no-touch gestures as proposed are *less* likely to draw the subject's attention to the fact that the user is interacting with an electronic device.

6. I understand Patent Owner argues Numazaki's lighting unit would flicker when detecting gestures, drawing attention to it and undermining Mann's intention to record covertly. Paper 12, 12; Ex. 2002, ¶ 51. I disagree. Mr. Occhiogrosso's argument assumes the emitted light is visible to the human eye. Numazaki is unequivocal that it is not. Numazaki discloses "it is preferable to use a device that can emit the near infrared light which is invisible to the human eyes, as the lighting unit 101 . . . so that the target human being will not sense the glare of the light." Ex. 1005, 12:1-6. Indeed, Mr. Occhiogrosso did not later dispute that

Numazaki's emitted light could be invisible to the human eye. Ex. 1019, 46:14-47:4. Accordingly, Numazaki's use of invisible infrared light would not cause the lighting unit to flicker in a way perceptible to the recorded subject.

7. In response to an opinion I expressed in my initial declaration that Mann's touch-based gestures would result in the user's finger inadvertently touching the glass over the camera, reducing its fidelity over time, I understand Mr. Occhiogrosso opines that the user-facing camera would be left "untouched" because it is "separate" from and "above" the portion of the watch face with which the user interacts. Ex. 2002, ¶¶ 56-57. I disagree. Although Mann does illustrate physical separation between the camera and area within which a user interacts, a PHOSITA would have understood that a number of factors support my conclusion. The close proximity of the camera and the area within which the user interacts means a user's finger would need to stay precisely within the designated touch-based gesture area to avoid touching the camera. Given the very small space available, as discussed in detail below, I would expect a user's finger to regularly extend beyond the gesture area, which means it will often touch the very nearby camera. Indeed, Mr. Occhiogrosso's opinion assumes a level of precision with which a user interacts with the screen that is simply not realistic. Mann teaches that display 400—an area that contains the circle within which a user performs gestures—is only "0.7 inches on the diagonal." Ex. 1004, 14. Accordingly, Mr. Occhiogrosso assumes that a user can

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