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Paper 52
Entered: January 11, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

NEONODE SMARTPHONE LLC,
Patent Owner.

IPR2021-01041
Patent 8,095,879 B2

Before KARA L. SZPONDOWSKI, CHRISTOPHER L. OGDEN, and SCOTT B. HOWARD, *Administrative Patent Judges*.

OGDEN, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining No Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

Petitioner Google LLC ("Google") filed a Petition (Paper 6, "Pet.") for *inter partes* review of claims 1–7, 9, 12, 13, and 15–17 of U.S. Patent No. 8,095,879 B2 (Ex. 1001, "the '879 patent"). Based on the Petition and preliminary filings, the Board instituted trial. (Paper 19). Patent Owner Neonode Smartphone LLC ("Neonode") then filed a Patent Owner Response under seal (Paper 29, "PO Resp."; public redacted version as Ex. 2060), Google filed a Reply to the Patent Owner Response (Paper 35, "Pet. Reply"), and Neonode filed a Sur-reply (Paper 44, "PO Sur-reply").

We held an oral hearing on October 17, 2022, and the transcript is entered on the record. Paper 50 ("Tr.").

This is a final written decision under 35 U.S.C. § 318(a) as to whether the claims challenged in the *inter partes* review are unpatentable. For the reasons below, we conclude that Google has not shown that any claims of the '879 patent are unpatentable.

II. BACKGROUND

A. Related Proceedings

The parties identify the following as related matters: *Neonode Smartphone LLC v. Apple Inc.*, No. 6:20-cv-00505 (W.D. Tex. filed June 8, 2020); and *Neonode Smartphone LLC v. Samsung Electronics Co.*, No. 6:20-cv-00507 (W.D. Tex. filed June 8, 2020). Pet. 106; Paper 3, 2.

The Board has issued a previous final written decision addressing the '879 patent. *See Samsung Electronics Co. v. Neonode Smartphone LLC*, IPR2021-00144, Paper 59 (PTAB Dec. 15, 2022); Pet. 106, Paper 3, 2.

B. THE '879 PATENT (EX. 1001)

The '879 patent relates to a user interface on a mobile handheld computer device that has a touch-sensitive display screen divided into a menu area and a display area. *See* Ex. 1001, 1:6–9, code (57). The user interface is "specifically adapted to be used with a small computer unit where the size of the touch sensitive area is in the order of 2–3 inches" and the interface can "be operated by one hand." *Id.* at 3:1–6.

Figure 1 of the '879 patent, reproduced below, illustrates such a user interface:

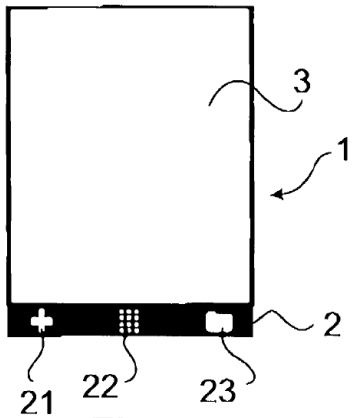

Fig. 1.

Figure 1 depicts touch-sensitive area 1 on a mobile handheld device. Ex. 1001, 3:22–23, 3:51–53. It is divided into menu area 2 and display area 3. *Id.* at 3:53–54. Menu area 2 is a narrow strip along the lower part of touch-sensitive area 1 that contains predefined functions 21 (a general application-dependent function), 22 (a keyboard), and 23 (a task and file manager). *Id.* at 4:1–6; *see also id.* at 2:7–10.

Functions 21, 22, and 23 in menu area 2 "can be activated when the touch sensitive area detects a movement of an object with its starting point within the representation of the function on the menu area and with a

direction from the menu area to the display area." Ex. 1001, 1:65–2:5, 2:11–14. This method of activation is shown in Figure 2, reproduced below:

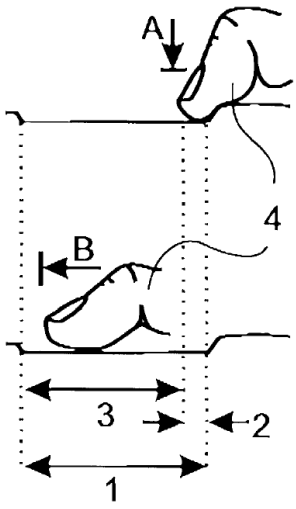

Fig. 2.

Figure 2, above, illustrates a touch gesture by which a user may activate functions 21, 22, or 23 in area 2. *See* Ex. 1001, 3:24–25. This gesture begins when object 4 (a thumb as shown in Figure 2, but it could be any finger, a pen, or another pointing device, *id.* at 6:11–15) touches the display at point A within representation 21, 22, or 23, and moves in direction B away from menu area 2 into display area 3. *Id.* at 4:7–11.

When a user activates the first function, display area 3 displays icons representing services or settings, depending on the current active application. Ex. 1001, 2:18–20. Figure 3, reproduced below, illustrates the touch screen after function 21 has been activated:

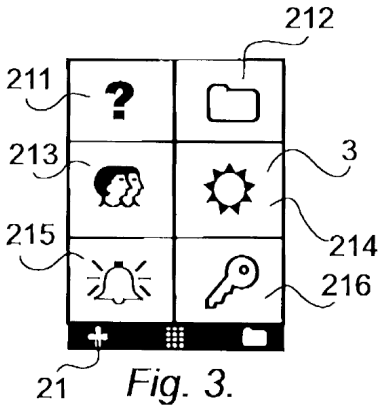

Fig. 3.

Ex. 1001, 3:26. Figure 3, above, shows that after a user activates function 21 with the gesture as illustrated in Figure 2, display area 3 displays icons 211–216, which each represent services or functions depending on the currently active application. *Id.* at 4:12–15. If, for example, the active application handles a picture, then the icons showing on display area 3 after a user activates the first function can include services such as "save to disk," "send as SMS," or "delete," or settings such as "resolution," "colour," or "brightness." *Id.* at 4:24–28.

Analogously, selecting function 22 activates a keyboard, and selecting function 23 activates a library of available applications and files on the device. Ex. 1001, 4:36–38, 4:63–65, Figs. 5–6. If there is no currently active application, the icons may "represent services or settings of the operations system of the computer unit, such as background picture, clock alarm 215, users 213, help 211, etc." *Id.* at 4:29–33.

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