

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.

Petitioner

v.

MEMORYWEB, LLC

Patent Owner

Patent No. 10,621,228

Inter Partes Review No. IPR2022-00031

DECLARATION OF EUGENE LHYMN

I, Eugene Lhymn, declare as follows:

1. I make this declaration based upon my own personal knowledge and, if called upon to testify, would testify competently to the matters stated herein.

2. I have been retained on behalf of MemoryWeb, LLC, (“MemoryWeb” or “Patent Owner”) as an independent expert consultant to provide this declaration concerning whether certain references could have been found by an ordinarily skilled searcher’s diligent search in connection with U.S. Patent No. 10,621,228 (“the ‘228 patent”).

3. I am being compensated at my standard hourly rate of \$600 per hour for the time I spend on this matter. My compensation is not based on the content of my opinions or the resolution of this matter, and I have no other interest in this proceeding.

4. In this declaration, I offer opinions concerning whether the Aperture 3 User Manual (“A3UM”) reference relied on by Petitioner Apple Inc. (“Apple”) could have been found by a skilled searcher’s diligent search on September 3, 2021 or at any time during the 3 months preceding that date. The substance and bases of my opinions appear below.

I. BACKGROUND AND QUALIFICATIONS

5. In formulating my opinions, I have relied on my knowledge, training, and experience, which I will summarize below. A copy of my *curriculum vitae* (CV) is appended to this declaration.

6. I am the CEO and Founder of Sherman Patent Search Group (“SPSG”), patent search firm based in Pasadena, California. SPSG is a patent search firm that has technical experience that spans across all technology areas. Currently, I supervise four SPSG employees who run patent research projects.

7. I am also currently CEO and Founder of Visualize (VIP), a computer vision A.I. patent search startup headquartered in Pasadena, CA. VIP developed an A.I. image similarity SaaS platform that automates design patent searches. Currently, I supervise five VIP employees who manage our R&D, tech stack, and sales.

8. I received a Bachelor’s Degree in Mechanical Engineering from Penn State University in 2004.

9. Between 2000 and 2004 is worked an engineer at Bayer Corporation, Applied Research Lab (PSU) and Air Products and Chemicals.

10. Between 2004 and 2005, I was employed as a patent examiner in Art Unit 3727 at the United States Patent and Trademark Office. During my time as an examiner, I searched for prior art and issued office actions.

11. Between 2005 and 2012, I was employed as a senior patent analyst at Cardinal Intellectual Property Inc. My job responsibilities included performing patent searches, including prior art searches.

12. I have extensive experience performing patent searches. Throughout my career, I have personally performed approximately 3,000 searches. I have managed or supervised approximately 7,000 additional patent searches. I have personally performed more than 500 patent searches in the software field. The prior art searches include invalidity, clearance, and patentability searches.

13. Based on my education and experience, I am qualified to render opinions on prior art invalidity searches and prior art in the software field, including the prior art at issue here.

II. LEGAL STANDARDS

14. I understand that a petitioner, or the real party in interest or privy of the petitioner, in an *inter partes* review that results in a final written decision is estopped from requesting or maintaining a proceeding before the Office grounds that the petitioner raised or reasonably could have raised during the *inter partes* review in accordance with 35 U.S.C. § 315(e)(1):

The petitioner in an *inter partes* review of a claim in a patent under this chapter that results in a final written decision under section 318(a), or the real party in interest or privy of the petitioner, may not request or maintain a proceeding before the Office with respect to that claim on

any ground that the petitioner raised or reasonably could have raised during that *inter partes* review.

15. I further understand that a petitioner reasonably could have raised a ground and/or reference during an *inter partes* review when any ground and/or reference is known to the petitioner or when an ordinarily skilled searcher conducting a reasonably diligent search would have been expected to discover the ground and/or reference.

16. I further understand that one way of showing an ordinarily skilled searcher's reasonably diligent search is to identify the relevant search string and search source that could identify the allegedly unavailable prior art and explain why such a criterion would be part of a skilled searcher's diligent search.

17. I further understand that although physical prior art devices cannot be raised during *inter partes* review, a petitioner is estopped from raising grounds that include physical prior art devices if petitioner knew of or a skilled searcher conducting a diligent search reasonably could have been expected to discover one or more prior art printed publications, patent or non-patent, that are cumulative of the physical prior art device.

III. OPINIONS

14. I understand that Unified Patents, LLC ("Unified") filed a petition for *inter partes* review challenging claims 1-7 of the '228 patent on September 3, 2021.

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