PUBLIC VERSION

Filed: September 29, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MEMORYWEB, LLC,
Patent Owner.

Case No. IPR2022-00031
U.S. Patent No. 10,621,228

PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO TERMINATE

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I. INTRODUCTION

MemoryWeb identifies no basis to terminate this proceeding, which has already advanced through institution, briefing, and final hearing. The Board thus should issue a final written decision ("FWD") addressing each claim of U.S. Patent 10,621,228 ("'228").

First, MemoryWeb has not met its burden of establishing that Unified Patents ("Unified") could have reasonably raised and defended grounds based on A3UM (EX1005) in IPR2021-01413 ("*Unified*"). Remarkably, after vigorously disputing that A3UM (EX1005) could have been found by ***a skilled artisan***, MemoryWeb reverses course and now claims a "***skilled searcher***" could have found it. But MemoryWeb's own evidence shows otherwise: its "skilled searcher" (Mr. Lyhmn) pursued a hindsight-driven, scorched-earth campaign that ultimately ***failed to locate EX1005*** (*i.e.*, the user manual for v3.0.0 of the Aperture 3 product on which Apple's challenge is based). MemoryWeb also claimed Apple had not proven A3UM was adequately disseminated to the public. The Board found it was by relying on ***evidence inaccessible to Unified*** about how A3UM was disseminated, particularly testimony of an Apple employee. Each point independently shows Unified could not have reasonably raised grounds based on A3UM (EX1005) in IPR2021-01413. Because 35 U.S.C. §315(e)(1) does not apply, MemoryWeb's real-party-in-interest ("RPI") arguments are moot.

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