

Apple Inc. v. MemoryWeb, LLC

IPR2022-00031

U.S. Patent No. 10,621,228

HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY

Patent Owner's Motion to Terminate Demonstrative Exhibit

'228 Patent Litigation Matters

Samsung Lawsuit
April 2021

Apple Lawsuit
May 2021

Unified IPR
Sept. 2021

Apple IPR
Oct. 2021

Samsung IPR
Nov. 2021

Unified Reasonably Could Have Asserted the
Apple Grounds in its IPR

Legal Standard

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.

Cal. Inst. of Tech. v. Broadcom Ltd.,
25 F.4th 976, 991 (Fed. Cir. 2022)

Estoppel applies “to all grounds not stated in the petition but which reasonably could have been asserted against the claims included in the petition.”

Ironburg Inventions Ltd. v. Valve Corp.,
64 F.4th 1274, 1299 (Fed. Cir. 2023)

A ground reasonably could have been asserted when “a skilled searcher conducting a diligent search reasonably would have been expected to discover” the relied-upon references.

MemoryWeb's Skilled Searcher

- ▶ MemoryWeb presented evidence from skilled searcher: Mr. Eugene Lhymn

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

EUGENE LHYMN

225 South Lake Ave, Suite 300, Pasadena, CA 91101 - 626-432-7292
 Eugene.lhymn@shermanpatentsearch.com · <https://www.linkedin.com/in/eugenelhymn/>

EDUCATION

B.S. MECHANICAL ENGINEERING, PENN STATE UNIVERSITY

EXPERIENCE

2012 – PRESENT

CEO, FOUNDER, SHERMAN PATENT SEARCH GROUP, LLC

- 100% U.S.-BASED PATENT SEARCH FIRM, PROVIDING A FULL RANGE OF PATENT SEARCH SERVICES

2019 – PRESENT

CEO, FOUNDER, VISUALIZE IP, LLC

- COMPUTER VISION PATENT SEARCH SAAS STARTUP

2005 – 2012

SENIOR ANALYST, CARDINAL IP

- PERFORM PATENT SEARCHES
- REVIEW PATENT SEARCHES FROM TEAM
- TRAIN SEARCH ANALYSTS IN BEST PRACTICES

2004 – 2005

PATENT EXAMINER, USPTO

- MECHANICAL ENGINEERING PATENT EXAMINER, TC 3727
- PRIOR ART SEARCH
- DRAFT OFFICE ACTIONS TO COUNSEL

Unrebutted Evidence of a Diligent Search

Mr. Lhymn's Declaration

35. In addition, an ordinarily skilled searcher conducting a reasonably diligent search during the Timeframe would review all references cited on the face of '228 patent. Patent references cited on the face of '228 can be obtained via Patworld, and non-patent literature references cited on the face of '228 can be obtained via the USPTO PAIR system, or Google, amongst other non-patent literature sources. Moreover, an ordinarily skilled searcher would review those references cited on the face of '228 patent for further citations or disclosure of additional prior art. This citation approach is effective in developing a "trail" of prior art for review by an ordinarily skilled searcher.

EX2111, ¶ 35

28. An ordinarily skilled searcher conducting a reasonably diligent search would iteratively search through individual classification codes, combined with keyword search strings of a subject patent to incrementally and reasonably increase the scope of the prior art search. According to the above public patent office indexes, the relevant classifications of claims 1-19 of the '228 patent, include at least the below:

- CPC class G06F (Electrical Digital Data Processing), subclass 16/51 (Indexing; data structures therefor; storage structures) (relevant to the '228 patent)
- CPC class G06F (Electrical Digital Data Processing), subclass 3/0481 (based on specific properties of the displayed interaction object or a metaphor-based environment, e.g., interaction with desktop elements like windows or icons, or assisted by a cursor's changing behaviour or appearance) (relevant to the '228 patent)

EX2111, ¶ 28

A Skilled Searcher Would Have Located Aperture 3

Mr. Lhymn's Declaration

51. In addition, as discussed above, a skilled searcher of ordinary skill during the Timeframe would review all references cited on the face of '228 patent. One of the references on the face of '228 patent is Hoffman ("Create Great iPhone Photos"). Hoffman mentions the Apple Aperture product on page 18, mentioning "Events and Faces" sorting features. Ex. 2004, 18. The '228 patent claims a "map view" and "people view" which would prompt a skilled searcher to identify Apple Aperture as being relevant to the search.

EX2111, ¶ 51

Places

Your iPhone camera tags your photos with the location where they were taken (unless, that is, you don't want it to) and embeds this information in them. You can then view images by location with a feature called Places. Here's how to do this with the Photos app:

1. Tap the **Photos** app, and then tap **Places** at the bottom of the screen.
2. A map appears, with red pins marking locations with photos (Figure 1-20). Tap a pin, and you'll see how many images are tagged for that location. Tap the arrow in the blue circle to view those images.
3. From the map, double-tap or use the pinch-and-spread technique to zoom on a particular area. As you zoom, additional pins will likely appear, because the location data is displayed more precisely.



FIGURE 1-20: By tapping Places, a map is displayed with red pins for locations with photos.

Faces and Events

If you use Apple's iPhoto or Aperture software, you will have the option of viewing your photos by tapping **Events** and **Faces**—features that sort your images by occasion and by individual. (The Faces feature uses face detection technology to find people in your photos.) For these features to work on your iPhone, you will need to synchronize Events and Faces using iTunes. The Events and Faces icons won't appear within the Photos app if you don't synchronize your Events and Faces (or if you're not using a Macintosh computer).

EX2004, 18

A Skilled Searcher Would Have Located a DVD

Mr. Lhymn's Declaration

53. Additionally, as discussed above, an ordinarily skilled searcher conducting a reasonably diligent search in the Timeframe would be aware that physical copies of older technical manuals are easily accessible online, via eBay. Physical copies of technical manuals obtained directly from its source can be ideal to a skilled searcher so as to ensure the technical manual is complete. Running the search string "Apple Aperture Manual" in eBay returns numerous listings of Aperture 3 installation DVD's, which contain the official technical manual of Aperture 3. Based on my experience, eBay works in materially the same way as they did during the Timeframe. Ex. 2108 shows that Aperture DVD's were indeed available during the relevant Timeframe.

EX2111, ¶ 53

eBay Search Results

The screenshot shows the eBay search results page for the query "apple aperture manual". The search results are displayed in a grid format. The first listing is for "APPLE APERTURE 2 FOR MAC PHOTO EDITING FOR MACINTOSH-NEW SHRINKWRAPPED MB2B4Z/A" priced at \$22.56. The second listing is for "Apple Aperture 3 and Aperture 2 Photo Editing Software with Box and Manuals" priced at \$9.99. The third listing is for "Apple Aperture 3 2009 manual ONLY no software: original manual from Apple vary g" priced at \$10.00. The search filters on the left include Category (All Listings), Condition (New, Used, Not Specified), Price (Under \$12.00, \$12.00 to \$18.00, Over \$18.00), and an available inventory bar chart.

EX2109

Unified Could Have Located an Aperture 3 DVD

Dr. Terveen's Declaration

97. In addition to the copy of Aperture 3 that was provided to me by Apple, I also received a copy of Aperture 3 that was purchased by Apple's counsel from a third party via eBay. See EX1052 (eBay order details, redacted to remove counsel's personal information). This copy was indistinguishable physically from the Apple-provided copy other than a sticker on the front that said "Academic." Once I installed this copy of Aperture 3 using the same steps I outlined above for the Apple-provided copy, I was provided access to the same Aperture 3.0 software product as well as the same Help and HTML versions of the Aperture 3 User Manual that I describe below. Based on my review, the content of the Aperture 3

EX1003, ¶ 97

Petitioner's Sept. 17, 2021 Order

Order information

Buyer [REDACTED]
 Seller mikedu ek
 Placed on Sep 17, 2021
 Payment method Credit Card
 Paid on Sep 17, 2021

Shipping address

Sam Dillon
 [REDACTED]
 United States

Order total

1 item	\$24.90
Shipping	\$7.95
Tax	\$1.49
Order total	\$34.34

Items bought from mikedusek

Order number: 14 07615 23854

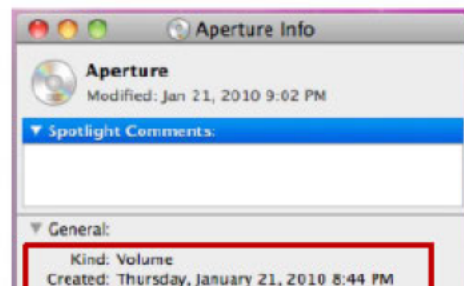
Qty	Item name	Shipping service	Item price
1	Apple Aperture 3 Academic Software DVD With Serial Code (403166059038)	USPS Priority Mail Flat Rate Envelope	\$24.90

EX1052

The Board Accepted Apple's Arguments Regarding A3UM's Accessibility

Apple's Public Accessibility Arguments

Second, A3UM existed in February 2010. Witnesses from both parties testified it is located on and can be retrieved from (i) the Installer DVD and (ii) a local copy of the Aperture application bundle after installation. EX1003, ¶¶77-96; EX1020, ¶¶12-16; EX2025, ¶109; EX1089, 139:20-140:1, 143:9-13. Dr. Surati confirmed the Installer DVD has creation modification dates establishing files on it necessarily existed *before* February 2010. EX1089, 125:3-25; EX1073, 1 (right).



Reply (Paper 37), 2

Apple Inc. v. MemoryWeb, LLC

IPR2022-00033, Paper 39 at 48 (PTAB May 18, 2023)

We determine that Petitioner has shown by a preponderance of the evidence that the A3UM HTML file set present on the Aperture 3 installation DVD is a printed publication. Even though the HTML file set was hidden after installation, anyone who had the installer DVD could access the A3UM file set.

Unified Did Not Need Mr. Birdsell's Testimony to Reasonably Raise A3UM

Apple's Public Accessibility Arguments

Fourth, the Installer DVD was publicly distributed starting in February of 2010. An array of evidence corroborates this, including (i) Apple's press release (EX1048, 1), (ii) Mr. Birdsell's recollections about its release date, his activities around that release date, and that he witnessed it for sale in Apple stores then (EX1020, ¶¶5-7; EX2026, 59:10-60:10, 62:4-21), and (iii) webpages captured between February and June 2010 reporting experiences of people using Aperture 3. EX1044, 1; EX1045, 2; EX1077, 1; EX1089, 181:14-182:11, 192:2-7, 189:10-14, 170:6-13.

Reply (Paper 37), 3

Apple Inc. v. MemoryWeb, LLC

IPR2022-00033, Paper 39 at 47-48 (PTAB May 18, 2023)

that suggests Mr. Birdsell's testimony is unreliable. Petitioner, however, has provided corroborating evidence to show that Aperture 3 was marketed, including a press release (Exhibit 1048), a feature on the home page of Apple (Exhibit 1021), and two separate reviewer articles (Exhibits 1044, 1045). *See also* Ex. 2026, 57:3-12 (stating that the presence of Aperture 3 manufacture three separate versions also supports this finding. Though Petitioner's expert apparently lacked personal knowledge of Aperture 3 prior to this case, Mr. Birdsell's testimony, along with the other evidence corroborating Apple's marketing and sales of Aperture 3, shows that POSITAs would likely have known about Aperture 3. *See, e.g.*, Ex. 1020, ¶ 7 (noting that at least 100,000 copies of Aperture 3 were sold); Ex. 2026, 51:16-20 (stating that website analytics corresponded with sales); 54:15-22 (discussing website access volume for Aperture 3); Exs. 1044, 1045, 1048 (published press releases and product reviews of Aperture 3). We find it far more likely than not that A3UM was publicly accessible through retail sales of Aperture 3 software at least as of June 2010.

A Skilled Searcher Would Have Located Aperture 3 Through Multiple Methods

Mr. Lhymn's Declaration

41. Running the search string (metadata* and imag*) identified above, through the Patworld prior art search tool for global patents within classification CPC G06F 16/51 (Electrical Digital Data Processing), returned a list of 141 search results. The search string returned patents that include variations of “metadata” and “image” in the title, abstract, or claims of the references. This search, which is effectively the same search tool and the same prior art databases during the Timeframe, returned U.S. Patent No. 7,859,543 (Salvador, Ex. 2101) as among the 141 search results. In particular, Salvador was the 100th result out of 141. Ex. 2100 is a true and correct copy of these Patworld search results.

EX2111, ¶ 41

42. As discussed above, a skilled searcher of ordinary skill conducting a reasonably diligent search in the Timeframe would review the references cited on the face of the patents reviewed during the search. In this case, Salvador cites an Apple Aperture manual on its face, namely: “Apple Computer, Inc. Technical Manual, Aperture Getting Started, 2006.”

OTHER PUBLICATIONS

JEITA CP-3451, “Exchangeable image file format for digital still cameras: ExifVersion 2.2”, Standard of Japan Electronics and Information Technology Industries Association, Apr. 2002.*
 Flickr, “Popular Tags on Flickr Photo Sharing” printed Sep. 27, 2006, <http://www.flickr.com/photos/tags>, pp. 1-2.
 Apple Computer, Inc. Technical Manual, “Aperture Getting Started” 2006, http://manuals.info.apple.com/en/Aperture_Getting_Started.pdf#search=%22%22Introducing%20Aperture%20%22%20%2B%22Learning%20About%20the%20Aperture%20Interface%22%22, pp. 1-222.

Ex. 2101, cover


EX2111, ¶ 42

A Skilled Searcher Would Have Located Aperture 3

43. As discussed above, a skilled searcher can easily obtain digital copies of non-patent references via Google. Running the search string “apple aperture manual” in Google (as shown below) returns a hit titled “How to find the Aperture User Manual” under the first result. Ex. 2102 is a true and correct printout of these Google search results.

Ex 2111, ¶ 43

About 6,660,000 results (0.32 seconds)

 Apple Support
<https://support.apple.com/manuals>

Manuals

Browse **Manuals** by Product · Aperture 3.5 - User Guide · Aperture 3 - Exploring Aperture · Aperture 3 - Keyboard Shortcuts · Aperture 3 - Installing Your Software.

https://prohelp.apple.com/aperture_otherhelp

Exploring Aperture

Aperture can automatically locate images on the map if the camera has recorded GPS information. You can also manually specify the location of an image, and ...

<https://discussions.apple.com/docs/DOC-250000352>

How to find the Aperture User Manual

Feb 22, 2020 — The Aperture 3 User Manual is currently missing from the Support pages. A version has been saved by the Internet Archive here: ...

<https://developer.apple.com/1436594-aperture>

aperture | Apple Developer Documentation

A factor that determines the transition between in-focus and out-of-focus areas. Animatable.

EX2102

Community

Browse Search

Sign in



Léonie

Level 10 (193,597 points)

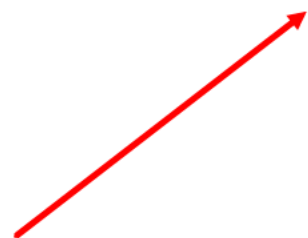
How to find the Aperture User Manual

★★★★★ 1 | 1 like | 741 views | Last modified Feb 22, 2020 2:01 AM

The Aperture 3 User Manual is currently missing from the Support pages. A version has been saved by the Internet Archive here:
<https://web.archive.org/web/20180504121246/http://documentation.apple.com/en/aperture/usermanual/index.html>

Update: It is now back:
https://manuals.info.apple.com/MANUALS/1000/MA1560/en_US/Aperture_3_User_Manual.pdf

EX2103



A Skilled Searcher Would Have Located Aperture 3

INTERNET ARCHIVE <http://documentation.apple.com/en/aperture/usermanual/index.html>
WaybackMachine 72 captures
 Aperture 13 Feb 2010 - 8 Aug 2018

web.archive.org/web/20180504121245/http://documentation.apple.com/en/aperture/usermanual/index.html

WaybackMachine 72 captures
 13 Feb 2010 - 8 Aug 2018

User Manual

Aperture 3 User Manual

- » Welcome to Aperture
- » An Overview of Aperture
- » The Aperture Interface
- » Working with the Aperture Library
- » Importing Images
- » Working with Images in the Browser
- » Displaying Images in the Viewer
- » Viewing Images in Full Screen View
- » Stacking Images and Making Picks
- » Rating Images
- » Applying Keywords to Images
- » Working with Metadata
- » Organizing Images with Faces
- » Locating and Organizing Images with Places
- » Using Photo Stream
- » Searching for and Displaying Images
- » Grouping Images with Smart Albums
- » An Overview of Image Adjustments
- » Making Image Adjustments
- » Making Brushed Adjustments
- » Printing Your Images
- » Exporting Your Images
- » Creating Slideshow Presentations
- » Using the Light Table
- » Creating Books
- » Creating Webpages
- » Sharing Your Images Online
- » Backing Up Your Images
- » Customizing the Aperture Workspace

Welcome to Aperture
 Aperture is a powerful and easy-to-use digital image management system that can help you work with your photos. With Aperture, you can efficiently import digital images, perform a photo edit, and you work with high-quality JPEG, TIFF, and RAW image files—and even HD video!

This preface covers the following:

- About Aperture
- About the Aperture Documentation
- Additional Resources

Apple EX1021, 6

Aperture 3
 User Manual

- » Aperture 3 User Manual
- » Welcome to Aperture
- » An Overview of Aperture
- » The Aperture Interface
- » Working with the Aperture Library
- » Importing Images
- » Working with Images in the Browser
- » Displaying Images in the Viewer
- » Viewing Images in Full Screen View
- » Stacking Images and Making Picks
- » Rating Images
- » Applying Keywords to Images
- » Working with Metadata
- » Organizing Images with Faces
- » Locating and Organizing Images with Places
- » Searching for and Displaying Images
- » Grouping Images with Smart Albums
- » An Overview of Image Adjustments
- » Making Image Adjustments
- » Making Brushed Adjustments
- » Printing Your Images
- » Exporting Your Images
- » Creating Slideshow Presentations
- » Using the Light Table
- » Creating Books
- » Creating Webpages
- » Sharing Your Images Online
- » Backing Up Your Images
- » Customizing the Aperture

A Skilled Searcher Would Have Located Belitz

The Petition

III. IDENTIFICATION OF CHALLENGED CLAIMS

Claims 1-19 are unpatentable as obvious under 35 U.S.C. § 103 (AIA or pre-AIA) based on A3UM (EX1005) in view of Belitz (EX1006).

Petition, 3

Mr. Lhymn's Declaration

57. Running the search string (map* and thumbnail* and imag*), identified above, through the Patworld prior art search tool for global patents within classification CPC G06F 3/0481, also identified above, and limited to references with a priority date before June 9, 2011, returned a list of 76 search results. The search string returned patents that includes variations of “map” and “thumbnail” and “image” in the title, abstract, and claims of the references. This search, which is effectively the same search tool and the same prior art databases during the Timeframe, returned Belitz as among the 76 search results. In particular, Belitz was the 37th result out of 76. Ex. 2109 is a true and correct copy of these search results.

58. Based on my investigation, it is my opinion that an ordinarily skilled searcher exercising reasonable diligence during the Timeframe would and should have readily identified Belitz in a prior art search related to claims 1-19 of the '228 patent using, at least, the search strings and prior art searching resources available during the Timeframe.

EX2111, ¶¶ 57-58

A Skilled Searcher Would Have Located Belitz

Samsung's IPR Petition

Samsung learned of Okamura and Belitz, the references advanced in this petition, through prior art searching that commenced in June 2021. With the

Samsung Electronics Co., Ltd. v. MemoryWeb, LLC
IPR2022-00222, Paper 2 at 83 (PTAB Dec. 3, 2023)

Apple's Sept. 24, 2021 Letter to MemoryWeb's Counsel

Nor were the sort of features that MemoryWeb claims are covered by its patents limited to Apple's products. For example, U.S. Patent App. Pub. No. 2010/0058212 ("Belitz"), published in 2010 and assigned to Nokia, also discloses a map for viewing and organizing photos grouped by location, complete with interactive thumbnails:

EX2112, 3

TERMINATION OF
THE ENTIRE
PROCEEDING IS
PROPER

EQUITABLE CONSIDERATIONS
DEMAND APPLE NOT BE
PERMITTED PROCEED WITH
CHALLENGING CLAIMS 8-19

Termination of the Entire Proceeding is Proper

- ▶ 35 U.S.C. § 315(d) contemplates termination in these circumstances
- ▶ Apple failed to respond to the policies underlying RPI and privy provisions of 35 U.S.C. § 315 that support termination
 - ▶ “Lengthy and duplicative proceedings are one of the worst evils...[during which] a patent owner is effectively prevented from enforcing his patent.”
 - ▶ “Core function” of these provisions is “to protect owners from harassment” from:
 - ▶ Multiple proceedings (Unified files on less than all claims; Apple files on all claims)
 - ▶ “Second bite at the apple”
 - ▶ Protect the integrity of the USPTO/Federal Courts (Unified’s settlements only benefit members)

Apple is an RPI to the Unified IPR

The Board's Unified RPI Order

RPI Order

“Unified’s first learning that the ’228 patent was being asserted against its members, Apple and Samsung, the subsequent preparation and filing of the Petition by Unified’s in-house attorneys, the reporting of the filing of the Petition and Decision to Institute to Apple, Samsung, and other Unified members, [REDACTED]

[REDACTED], all indicate that Unified prepared and filed the Petition in this case to benefit its members Apple and Samsung, supporting a conclusion that Apple and Samsung are RPIs in this proceeding.”

EX2080, 22-33

RPI and Privity Inquiries

Applications in Internet Time v. RPX, 897 F.3d 1336 (Fed. Cir. 2018) (AIT I)

“Determining whether a non-party is a ‘real party in interest’ demands a flexible approach that takes into account both equitable and practical considerations, with an eye toward determining whether the non-party is a **clear beneficiary** that has a preexisting, established relationship with the petitioner.”

....

“[Courts should] bea[r] in mind **who will benefit** from having [the challenged] claims canceled or invalidated”

....

“[Two factors are] **whether a non-party ‘desires review of the patent’ and whether a petition has been filed at a nonparty’s behest.**”

Aruze v. MGT Gaming

IPR2014-01288, Paper 13 (Feb. 20, 2015)

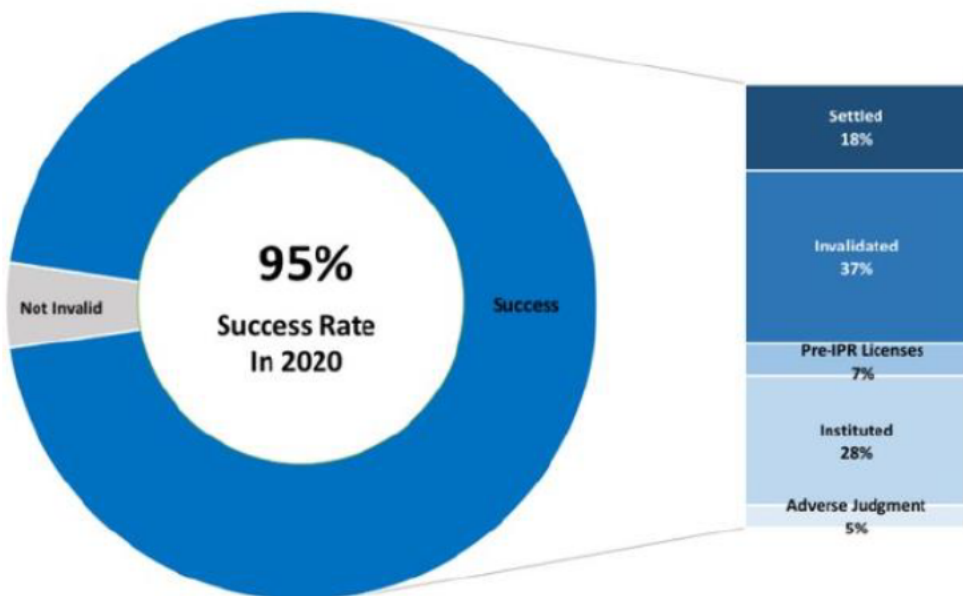
“The word ‘privity’ has acquired an expanded meaning. The courts, in the interest of justice and to prevent expensive litigation, are striving to give effect to judgments by extending ‘privies’ beyond the classical description. The emphasis is not on a concept of identity of parties, but on the practical situation.”

Unified's Business Model and Operations Confirm Apple is an RPI

Unified is a Top PTAB Petitioner

Unified Website-2021

“Unified has filed more patent challenges than all other third-party petitioners combined. Unified was the #6 most prolific all time PTAB petitioner and #3 for 2019. Moreover, we have successfully neutralized more patents than any other third-party.”



EX2065,1; EX2083, UNIFIED_000011

Unified Website - 2023

Petitioner	#Cases
Apple Inc	948
Google LLC	583
Samsung	557
Samsung Electronics America Inc	436
Samsung Electronics Co Ltd	318
Microsoft Corp	302
Unified Patents LLC	282
Intel Corp	271

EX2065, 1

Apple's Fees Fund Unified's Validity Challenges

2022 Jakel Transcript – Unified IPR

A. So Unified Patents has what we call zones and in those zones we have members and from those we have two different areas of zones. We have the standard essential patent zones and then we also have zones related to NPE, so what we call NPE zones, [REDACTED]

[REDACTED].

....

A. I believe our [REDACTED] revenue was [REDACTED], in that ballpark.

Q. That [REDACTED] came from membership fees?

....

A. That's correct.

EX2068, 35:10-23; 36:7-13

2023 Jakel Transcript – Apple IPR

Q. And then I asked: "That [REDACTED] came from membership fees?" Then there was an objection. But ultimately you said "That's correct."

A. I said that but, I mean, it – [REDACTED]
[REDACTED]
[REDACTED].

....

Q. [REDACTED] NPE zone revenue that you collect comes from membership fees, correct?

A. Yes, that's -- I believe that's correct, yeah.

EX2091, 29:21 - 30:8, 31:18 - 32:17, 33:11-34:5

Unified Files Petitions at Apple's Behest

RPI Order

“Unified’s business model, finances, and operations are structured to support **Unified’s patent validity challenges**, including patent reexamination and the filing of petitions for IPR. These activities act to protect Unified’s members, including Apple and Samsung, from the threat of patent litigation and **are important components of Unified’s core subscription business.**”

“Even though Unified’s members may not decide which patents Unified challenges, **it is not credible to suggest that Apple and Samsung do not expect Unified to file petitions for IPRs** against patents they are accused of infringing”

EX2080, 22, 30

Apple-Unified Agreements to File Validity Challenges

Membership Agreement

[REDACTED]

EX2069, 4.1

Zone Agreement

[REDACTED]

EX2114, 2, 2(d)

Applications in Internet Time v. RPX,
897 F.3d 1336 (Fed. Cir. 2018) (AIT I)

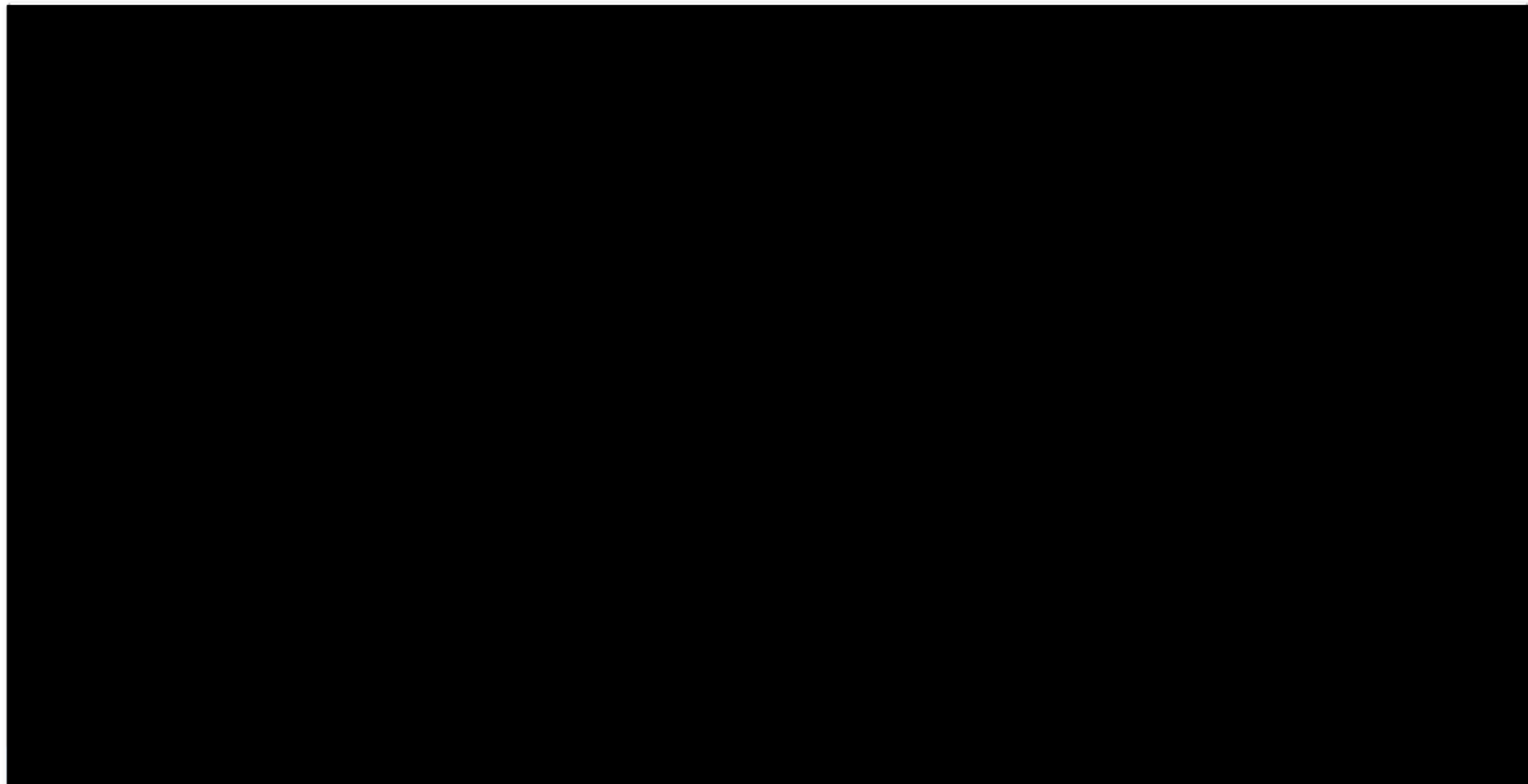
“[A] nonparty to an IPR can be a real party in interest even without entering into an express or implied agreement with the petitioner to file an IPR petition.”

Apple's Funding of Unified's IPR

- ▶ Membership fees, such as those paid by Apple, [REDACTED] Unified's "technology zone" business
- ▶ Apple currently pays Unified [REDACTED] annually
- ▶ Payments account for [REDACTED] of Unified's [REDACTED] in annual revenue
- ▶ Fees [REDACTED] for the [REDACTED]
- ▶ [REDACTED] "NPE" zones and SEP zone (both include validity challenges)

Unified's Spend on Member-Funded Validity Challenges

- ▶ [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]



Unified's Value Proposition to Apple: Filing IPRs

- ▶ Unified first learned of the '228 patent from district court filings
 - Monitored Samsung lawsuit in April 2021
 - Monitored Apple lawsuit in May 2021
- ▶ Filed the Unified IPR petition in September 2021
- ▶ Emailed notice of the Unified IPR to Apple in September 2021

Unified Website - 2021

“Challenging invalid patents instead of paying for expensive licenses has proved to be the most cost-effective and successful way to stop unreasonable assertions.”

EX2065, 1

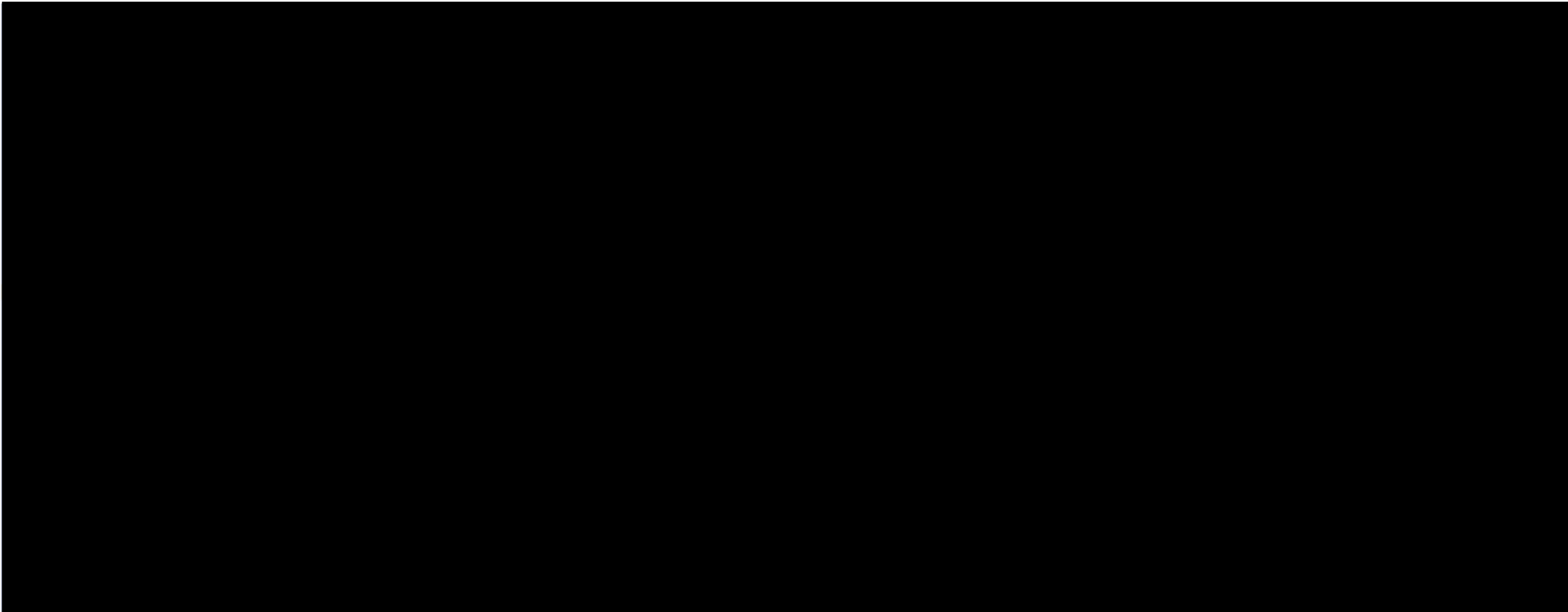
MEMORYWEB PATENT CHALLENGED

On September 3, 2021, Unified filed a petition for *inter partes* review (IPR) against [U.S. Patent 10,621,228](#), owned by [MemoryWeb, LLC](#), an NPE. The '228 patent generally relates to content management systems. It is currently being asserted against [Apple](#) and [Samsung](#).

View [district court litigations by MemoryWeb, LLC](#). To read the petition and view the case record, see [Unified's Portal](#). Unified is represented by in-house counsel, [Ellyar Barazesh](#) and [Ashraf Fawzy](#).

EX2074, 1

Unified's Value Proposition to Apple: Filing IPRs



Apple Desired
Review and Has
Benefited

RPI Order

“This evidence leads to the inference that Unified **filed the Petition in this case to benefit its members** Apple and Samsung, supporting a conclusion that Apple and Samsung are RPIs in this proceeding.”

EX2080, 22

Denying That Apple Benefits is Not Credible

Apple/Unified's implausible claims:

- ▶ “Unified does not and cannot know if” Apple benefits
- ▶ “[N]o evidence that Unified took Apple’s interests into account”
- ▶ “Unified considers only the interests of the Zone.”
- ▶ “It really is not about the individual members in terms of the benefit of what we do on behalf of the technology area.”

EX2077, ¶113; EX2117, 66:1-6; EX2091, 90:14-23, 177:1-5

The truth: Apple benefits

- ▶ Apple’s [REDACTED]
- ▶ Of the countless options, Unified chose to challenge **this** ’228 patent asserted against Apple
- ▶ Filed its own IPR seeking the same result (invalid ’228 patent claims)
- ▶ [REDACTED]
- ▶ Cannot be found to infringe invalidated claims
- ▶ Enjoys two “bites at the apple”

The Unified IPR Benefits Apple

Unified Website

“Challenging invalid patents instead of paying for expensive licenses has proved to be the most cost-effective and successful way to stop unreasonable assertions.”

“Because Unified Patents offers its Micro-Pool solution on a technology-by-technology basis, companies can subscribe to and pay for only these Micro-Pools they need. This structure provides complete alignment between Unified Patents and its member companies. Companies can be confident that their subscription fees are exclusively used to reduce the risk of NPEs targeting their key technologies.”

EX2065, 1; EX2063, 1

AIT I, 897 F.3d at 1363

“The invalidation of AIT's patents-in-suit would directly benefit Salesforce because Salesforce was sued by AIT for infringing the same patents.”

2023 Jakel Transcript

“We want to work on behalf of the zone. And we, you know, hope that members appreciate that work, and in doing so, you know, continue to remain members.”

EX2091, 89:9-12

Unified's Settlement Practices Directly Benefit Members

Unified's settlement practices directly benefit only members

- ▶ Validity challenges lead to settlements
- ▶ [REDACTED]
- ▶ [REDACTED]
- ▶ [REDACTED]
- ▶ [REDACTED]



EX2116, 1

Unified Stopped Filing IPRs for Members

Jakel Transcript

“A. I mean, I have no knowledge about whether or not Apple wants estoppel to apply or not.”

EX2091, 177:1-5

Not credible:

- ▶ Filed one or more IPR/PGR petitions each calendar month since March 2021
- ▶ IPR/PGR petitions stopped after the March 8, 2023 RPI Order
- ▶ Unified could have continued benefiting the zone with IPRs/PGRs, but stopped for the interest of paying members – the only parties facing estoppel

Case	Case Filing Date ▼
Unified Patents, LLC v. Competitive Access Systems, Inc. IPR2023-00584 (PTAB)	Mar. 01, 2023
Unified Patents, LLC v. Togail Technologies Ltd. IPR2023-00338 (PTAB)	Feb. 02, 2023
Unified Patents, LLC v. Dynapass IP Holdings LLC IPR2023-00425 (PTAB)	Jan. 06, 2023
Unified Patents, LLC v. Ozmo Licensing LLC IPR2023-00193 (PTAB)	Dec. 06, 2022
Unified Patents, LLC v. Dolby Laboratories Licensing Corporation IPR2022-01508 (PTAB)	Nov. 21, 2022
Unified Patents, LLC v. Mel NavIP LLC IPR2023-00083 (PTAB)	Oct. 24, 2022
Unified Patents, LLC v. Peter Henrik Pedersen IPR2023-00029 (PTAB)	Oct. 14, 2022
Unified Patents, LLC v. Corrigent Corporation IPR2022-01514 (PTAB)	Sep. 29, 2022
Unified Patents, LLC v. Electronics and Telecommunications Research Institute et al PGR2022-00060 (PTAB)	Sep. 28, 2022
Unified Patents, LLC v. Torchlight Technologies LLC et al IPR2022-01500 (PTAB)	Sep. 22, 2022
Unified Patents, LLC v. Sunflower Licensing LLC IPR2022-01496 (PTAB)	Sep. 16, 2022
Unified Patents, LLC v. Backertop Licensing LLC IPR2022-01438 (PTAB)	Sep. 02, 2022

EX2095

MemoryWeb Has Not Relied on Direct Communications or Coordination

RPI Order

“Despite Unified’s [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
This creates an obvious advantage for Unified’s members because it allows Unified to act as a proxy for its members interests while attempting to avoid naming its members as an RPI, thus insulating Unified’s members from being subjected to the statutory estoppel provisions of 35 U.S.C. § 315(e).”

EX2080, 28

Avoiding Direct Communications is Irrelevant

The RPI Order did not rely on:

- ▶ Direct communications
 - ▶ Specific coordination
 - ▶ Lack of “independence”
- [REDACTED]
- [REDACTED]

AIT II (precedential)

“At bottom, as the Federal Circuit stated, intentionally avoiding discussion about a forthcoming IPR against its client for the **sole purpose of avoiding having to name the client as an RPI**, yet challenging patents asserted against its client, suggests a ‘willful blindness’ strategy, see *id.* at 1355, supporting a conclusion that Salesforce is an RPI in these proceedings.”

Unified Manipulates the System to Avoid RPI Findings

Jakel Interview

“As a NPE-deterrence solution whose 200+ members are often targeted by NPEs with demand letters and in district court proceedings, Unified Patents is well-aware of these issues, and has carefully structured our solution to comply with all of the existing legal requirements to file administrative challenges as the sole RPI.”

EX2058, 1

Promo Email to Apple and Other Members



EX2070

Apple's Additional Arguments Do Not Rebut that Apple is an RPI

RPI Order

“This is substantial evidence that **Unified has a strong financial incentive to serve its members’ needs—expressed or not—**and those of its other current and potential future clients. **This evidence leads to the inference that Unified filed the Petition in this case to benefit its members Apple and Samsung,** supporting a conclusion that Apple and Samsung are RPIs in this proceeding.”

EX2080, 22

Apple Does Not Contribute [REDACTED] For “Other Activities”

Unified other “activities” relate to validity challenges or are of minimal value:

- ▶ [REDACTED]
- ▶ [REDACTED]
- ▶ Apple identified “legislative reform” advocacy but was unaware of any “specific” efforts
- ▶ Many of Unified’s amicus briefs support PTAB petitioners

The Board's Prior Determinations are Irrelevant

- ▶ The RPI Order correctly focused on the unique factual record of the present case
- ▶ *Unified v. Bradium, IPR2018-00952*:
 - Patent had not been asserted in a lawsuit “against any of Petitioner’s members”
 - Patent Owner relied on Unified’s “business model alone”
 - Institution decision based on preliminary factual record, rather than FWD
- ▶ *Unified v. CCE, IPR2018-0091*:
 - Petitioner failed to adduce any evidence its member “directly financed” the proceeding
 - Apple’s payments account for [REDACTED]