UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner

v.

BILLJCO LLC,

Patent Owner

CASE: IPR2022-00131

U.S. PATENT NO. 8,639,267

PATENT OWNER'S PRELIMINARY RESPONSE

PURSUANT TO 35 U.S.C. § 313 AND 37 C.F.R. § 42.107(a)

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I. INTRODUCTION

Petitioner Apple, Inc. ("Petitioner") has not met its burden in demonstrating that U.S. Patent No. 8,639,267 ("the '267 patent") is more likely than not invalid, and, as such, institution should be denied.

Petitioner's contention that the challenged claims of the '267 patent are invalid as obvious lacks merit. Petitioner relies on two primary prior art references—U.S. Patent Application Publication US 2005/0096044 A1 to Haberman (Ex. 1004) and U.S. Patent Application Publication US 2002/0132614 A1 to Vanluijt (Ex. 1006). The Petition is facially defective in that it fails to demonstrate "a reasonable likelihood that the Petitioner would prevail with respect to at least one of the claims challenged in the petition" under 35 U.S.C. § 314(a).

Petitioner's obviousness arguments fail because none of the cited references teach or suggest the recited "matching privilege [...] relating the originating identity of the whereabouts data with a destination identity of the whereabouts data". This "privilege data [is] stored local to the mobile data processing system". The primary references (Haberman and Vanluijt) are silent regarding any destination address. The secondary reference (Boger) includes the address of the receiving phone in the message, leaving no destination identity to match upon receipt.

Neither the Petition, nor the declaration submitted by Petitioner's expert, provide an articulated reasoning with a rational underpinning to support a legal conclusion of obviousness. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007),

quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006). The Petition only provides "mere conclusory statement[s]" (*id.*) that the claims are obvious, and lacks cogent reasoning as to why a person of ordinary skill in the art would modify or combine the cited references in the specific manner that is recited in each of the challenged claims.

Petitioner's expert declaration (Ex. 1002) merely repeats the attorney arguments in the Petition (often verbatim).

In summary, the IPR Petition fails to show a reasonable likelihood that at least one of the challenged claims of the '267 patent is unpatentable. The Board should not institute *inter partes* review of the '267 patent and should deny the Petition in its entirety.

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