UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

~~APPLE INC.~~
GOOGLE LLC
Petitioner

v.

GESTURE TECHNOLOGY PARTNERS LLC
Patent Owner

Case No. ~~IPR2021-00921~~IPR2022-00362
U.S. Patent No. 8,878,949

PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,878,949

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I. INTRODUCTION

Petitioner ~~Apple Inc.~~Google LLC ("Petitioner") requests an *Inter Partes* Review ("IPR") of claims 1–18 (the "Challenged Claims") of U.S. Patent No. 8,878,949 ("the '949 Patent"). This petition is substantively the same as IPR2021-00921 (which is instituted), and is being filed concurrently with a motion for joinder with respect to that proceeding.

II. SUMMARY OF THE '949 PATENT

A. The '949 Patent's Alleged Invention

Generally directed to digital imaging, the '949 Patent seeks to automate the process of taking a picture by analyzing the scene and capturing an image when "certain poses of objects, sequences of poses, motions of objects, or any other states or relationships of objects are represented." *'949 Patent* (Ex. 1001), 1:50-2:8. The patent describes a number of different scenarios that, when detected, cause the camera to capture an image. Some examples include detecting (1) a "[s]ubject in a certain pose," (2) a "[s]ubject in a sequence of poses," (3) a "[p]ortion of [s]ubject in a sequence of poses (e.g., gestures)," (4) a "[s]ubject or portion(s) in a specific location or orientation," (5) a "[s]ubject in position relative to another object or person" such as a "bride and groom kissing in a wedding," and (6) "a subject undertak[ing] a particular signal comprising a position or gesture" such as "raising one's right hand." *Id.* at 5:30-49. Only gestures are claimed, however. Each of the

Challenged Claims requires detecting or determining a "gesture has been performed." *Id*. at Independent Claims 1, 8, 13.

The '949 Patent contemplates multiple image sensors to accomplish its goal. For example, a "central camera . . . is for picture taking and has high resolution and color accuracy," while "lower resolution" cameras "with little or no accurate color capability . . . are used to simply see object positions." *Id*. at 5:1-6. Although the term is not used outside the claims, all Challenged Claims refer to the gesture-capturing sensor as an "electro-optical sensor." *Id*. at Independent Claims 1, 8, 13.

B. The '949 Patent's Prosecution

The Application that resulted in the '949 Patent was filed on August 7, 2013. The Application claims priority to provisional patent application No. 60/133,671, filed May 11, 1999. *Id*. at (22), (60). For purposes of this petition and without waiving its right to challenge priority in this or any other proceeding, Petitioner adopts May 11, 1999 as the invention date for the Challenged Claims.

A first office action rejected all initially presented claims as anticipated or obvious over U.S. Patent No. 6,359,647 to Sengupta et al. ("*Sengupta*"). *'949 File History* (Ex. 1002), 136-144. The examiner noted that *Sengupta* teaches an electro-optical sensor separate from a digital camera, which triggers an image capture when it detects movement within the sensor's field of view. *Id*. at 140-141.

In response, the Applicant characterized *Sengupta* as a system comprising multiple security cameras that transitions to an appropriate camera when an object moves from one camera's field of view to another's. *Id*. at 167-168. Focusing on structural distinctions, the Applicant argued that Sengupta did not teach "a device housing including a forward facing portion having an electro-optical sensor and a digital camera" as required by Claim 1 and its dependents. *Id*. at 168. The Applicant drew a functional distinction with respect to the claims that ultimately issued as independent Claims 8 and 13 (and their dependents), arguing *Sengupta* does not "identify a particular gesture apart from a plurality of gestures, where the particular gesture corresponds to an image capture command." *Id*. at 169-170.

A second office action rejected the Applicant's alleged distinctions, finding the structural point was "not clearly defined in claim 1" and "the term 'gesture' [] not clearly defined in the claim[s]" to support the purported distinction regarding independent Claims 8 and 13. *Id*. at 186. Following an examiner interview on August 7, 2014 (*Id*. at 199), the Applicant further amended the claims to distinguish the claimed invention from *Sengupta*. *Id*. at 210-217. The Applicant noted, "[w]ith respect to [the] amended independent claims . . . , Sengupta does not disclose, teach or suggest: a) a device housing including a forward facing portion that encompasses an electro-optical sensor and a digital camera; or b) a processor to determine a

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