UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

RFCYBER CORP.,
Patent Owner

Inter Partes Review Case No. IPR2022-00412
U.S. Patent No. 9,189,787

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

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I. INTRODUCTION

The Challenged Claims relate to securely funding an e-purse in a portable device. A focus of the parties' disputes is the claimed "security," which is accomplished by personalizing an e-purse with security keys. This key-based personalization process was well known in the prior art, having been standardized by GlobalPlatform. Indeed, even the '787 Patent points to GlobalPlatform in support of the claimed security. Ex. 1001, 4:24-32 (noting an embodiment of the alleged invention uses "a global platform security . . . to personalize a smart card").

The Petition's base reference—Dua—teaches a smart card e-purse loaded on a mobile device. Dua acknowledges the importance of complying with then-governing smart card standards, but does not describe these standards in any detail. Nor does Dua describe basic smart card implementation details, focusing instead on smart card agnostic communication protocols. The Petition proposes that a POSITA would have looked to well-known smart card teachings to realize Dua's goal of implementing its smart card-equipped mobile device in compliance with governing standards. Specifically, the Petition proposes that a POSITA would have looked to GlobalPlatform for its card architecture, security, life cycle models, and command teachings, and to the commercial Philips SmartMX controller specification for its e-purse specific emulator—another claimed concept well established in commercial prior art smart cards.

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Patent Owner' ("PO") Response ("POR") focuses largely on the motivations underlying Petitioner's proposal to supplement Dua's limited smart card teachings with the then-dominant smart card standards. These arguments mirror those in PO's Preliminary Response ("POPR"), which were correctly rejected at institution both in the now-terminated Samsung proceeding (IPR2021-00980, "Samsung IPR") and the instant proceeding. Seeking a different outcome with its rehashed arguments, PO supplements the record with testimony of a declarant. But PO's declarant not only lacks experience with smart card standards, he has no mobile commerce experience at all. Accordingly, his testimony should be accorded little to no weight.

II. ARGUMENT

A. Person of Ordinary Skill in the Art

The Parties and the Board unanimously agree that the focus of the '787 Patent is mobile payments. Petition, 1-2; POR, 1-6; Institution Decision ("ID"), 4-7. Accordingly, the Board adopted Petitioner's POSITA definition which it preliminarily held is "consistent with the '787 patent and the asserted prior art." That definition requires knowledge of "mobile payment methods and systems[,]" and at least "one year of professional experience relating to mobile payment technology." ID, 10-11; Petition, 11.

Although PO did not dispute this definition in its POPR, the POR quietly removes a requirement for mobile payment experience. POR, 10. The POR does not

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acknowledge this definition shift, nor does it provide any justification for removing this key requirement. PO's strategy is transparent. It seeks to rely on an unqualified declarant who admitted he has no specific mobile payment technology experience, no experience with e-purses, no experience with the relevant protocols, and no educational experience to remedy his professional deficiencies. Ex. 1041 (Gomez Tr.), 8:11-19, 9:7-20:4, 37:8-39:9, 50:15-51:18. To do so, PO must redefine a POSITA's qualifications. Yet PO makes no attempt to justify this significant shift.

As the Board correctly found at institution and as Petitioner's expert explains in a supplemental declaration, experience with mobile payments is *required*. Ex. 1042 (Supp. Dec.), ¶¶4-10. Accordingly, the Board should make its preliminary findings on the requisite level of skill final and accord Mr. Gomez's unqualified testimony little to no weight. *Best Med. Int.'l, Inc. v. Elekta Inc.*, 46 F.4th 1346, 1353-54 (Fed. Cir. 2022) (affirming Board's decision to discount testimony where the declarant failed to satisfy POSITA definition).

B. Philips is Prior Art to the '787 Patent

PO misapplies the law and mischaracterizes the record, contesting that Philips was published and available prior to the purported September 26, 2006 effective filing date of the '787 Patent. POR, 11-13.

"Whether a reference qualifies as a 'printed publication' is a legal conclusion based on underlying factual findings[.]" *Nobel Biocare Servs. AG v. Instradent USA,*

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