

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

CPC PATENT TECHNOLOGIES PTY, LTD.,  
Patent Owner.

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IPR2022-00601  
Patent 9,269,208 B2

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Before SCOTT A. DANIELS, BARRY L. GROSSMAN, and  
AMBER L. HAGY, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

DECISION  
Granting Institution of *Inter Partes* Review  
*35 U.S.C. § 314, 37 C.F.R. § 42.4*

## I. INTRODUCTION

### A. Background and Summary

Apple Inc. (“Petitioner” or “Apple”) filed a Petition for *inter partes* review of claims 1, 3–7, 9–11, and 13 (collectively, the “challenged claims”) of U.S. Patent No. 9,269,208 B2 (Ex. 1001, “the ’208 patent”). Paper 1 (“Pet.”). CPC Patent Technologies PTY, Ltd. (“Patent Owner” or “CPC”) timely filed a Preliminary Response to the Petition. Paper 7 (“Prelim. Resp.”). With our authorization, Petitioner filed a Preliminary Reply (Paper 8 (“Prelim. Reply”)) addressing the issue of discretionary denial raised in the Preliminary Response and Patent Owner filed a Prelim. Sur-Reply (Paper 9 (“Prelim. Sur-Reply”)).

We have jurisdiction under 35 U.S.C. § 314. Under § 314, an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). The Board determines whether to institute a trial on behalf of the Director. 37 C.F.R. § 42.4(a).

Petitioner has the burden of proof. *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (“In an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.”).

For the reasons set forth below, we determine that Petitioner has demonstrated that there is a reasonable likelihood that at least one of the challenged claims is unpatentable. Accordingly, we institute an *inter partes* review of all challenged claims and on all grounds asserted in the Petition. *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (stating

that a decision to institute is “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition”).

*B. Real Parties-in-Interest*

Apple identifies itself as the sole real party-in-interest. Pet. 72.

CPC also identifies itself as the sole real party-in-interest. Paper 4, 2.

*C. Related Matters*

Petitioner and Patent Owner each identify the following two district court proceedings as related matters: (1) *CPC Patent Technologies Pty Ltd. v. Apple Inc.*, Case No. 6:21-cv-00165-ADA (W.D. Tex.); and (2) *CPC Patent Technologies Pty Ltd. v. HMD Global Oy*, Case No. 6:21-cv-00166-ADA (W.D. Tex.) (the “HMD Litigation”). Pet. 72; Paper 4, 2–3.

The first listed case, between the same parties involved in this *inter partes* review proceeding, however, has been transferred to the Northern District of California. *See In re Apple Inc.*, 2022 WL 1196768 (Fed. Cir. Apr. 22, 2022); *see also* Ex. 3002 (Text Order granting Motion to Change Venue). The case is now styled *CPC Patent Technologies Pty Ltd. v. Apple Inc.*, No. 5:22-cv-02553 (N.D. Cal.). *See* Ex. 3003 (PACER Docket for the transferred case); Prelim. Resp. 1, fn 1 (Patent Owner acknowledging the transfer from the Western District of Texas to the Northern District of California). Also, the '208 patent is no longer involved in this case. Patent Owner states it “dismissed its infringement claim for the '208 Patent in the district court action.” Prelim. Resp. 1.

Petitioner and Patent Owner also each identify the following two pending *inter partes* review proceedings as related matters: (1) IPR2022-00600, challenging claims in Patent 8,620,039; and (2) IPR2022-00602, challenging claims in Patent 9,665,705, which is based on an a continuation

of the application that matured into the '208 patent in the proceeding before us. *See* Ex. 3001, code (63).

#### D. The '208 Patent

The '208 patent discloses a system “for providing secure access to a controlled item.” Ex. 1001, Abstr. The system uses a database of “biometric signatures” (*id.*), such as a fingerprint (Ex. 1001, 1:29–30) for determining authorized access.

Figure 2 from the '208 patent is reproduced below.

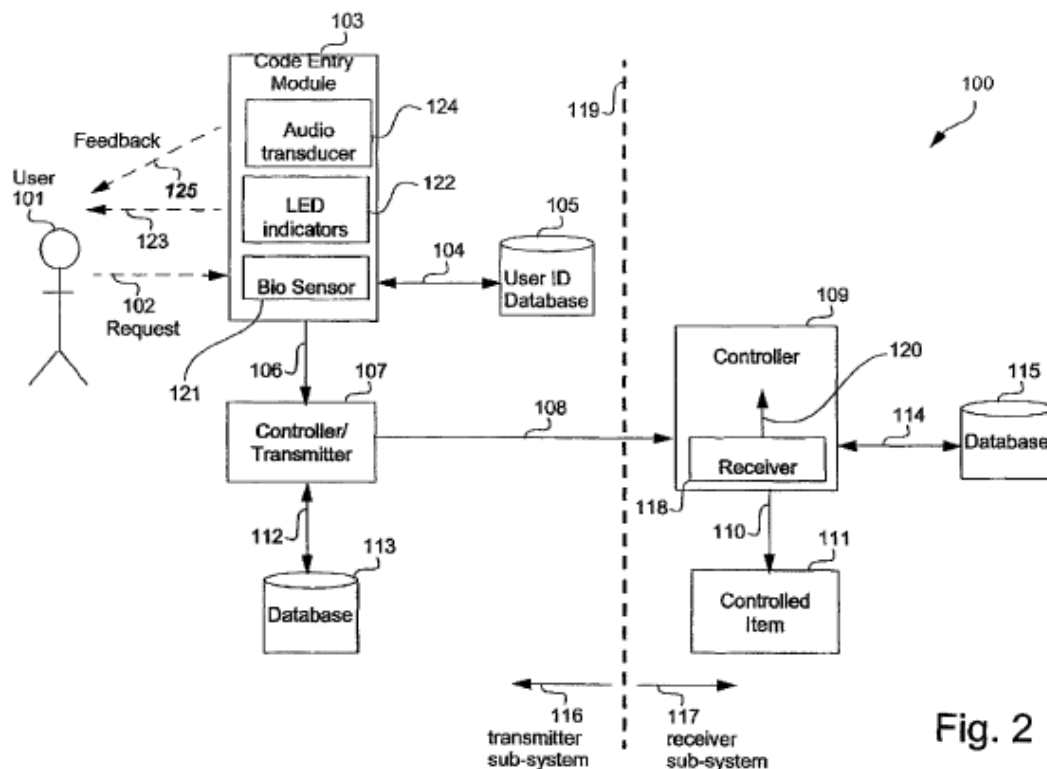


Fig. 2

Figure 2 is a functional block diagram of an arrangement for providing secure access according to the system disclosed in the '208 patent. Ex. 1001, 5:15–16.

User 101 makes a request to code entry module 103. Code entry module 103 includes biometric sensor 121. *Id.* at 5:52–53. If biometric sensor 121 is a fingerprint sensor, for example, then the request “typically

takes the form of a thumb press” on a sensor panel (not shown) on code entry module 103. *Id.* at 5:56–59. Code entry module 103 then “interrogates” an authorized user identity database 105, which contains “biometric signatures” for authorized users, to determine if user 101 is an authorized user. *Id.* at 5:60–65. If user 101 is an authorized user, code entry module 103 sends a signal to “controller/transmitter” 107. *Id.* at 5:65–67.

The ’208 patent also discloses that code entry module 103 may be activated by providing a succession of finger presses to biometric sensor 121 included in module 103. *Id.* at 10:45–47. If these successive presses are of the appropriate duration, the appropriate quantity, and are input within a predetermined time, controller 107 accepts the presses as potential control information and checks the input information against a stored set of legal control signals. *Id.* at 10:47–67.

If user 101 is an authorized user based on the inputs to code entry module 103, controller/transmitter 107 then sends “an access signal,” based on a “rolling code,” to controller 109. Ex. 1001, 6:1–5. According to the written description, “[t]he rolling code protocol offers non-replay encrypted communication.” *Id.* at 6:5–6. Other secure codes, such as “the Bluetooth™ protocol, or the Wi Fi™ protocols” also can be used. *Id.* at 6:28–34.

If controller 109 determines that the rolling code received is “legitimate,” then controller 109 sends a command to “controlled item 111,” which, for example “can be a door locking mechanism on a secure door, or an electronic key circuit in a personal computer” that is to be accessed by user 101. *Id.* at 6:7–16.

Code entry module 103 also incorporates at least one mechanism for providing feedback to user 101. *Id.* at 6:20–21. This mechanism can, for

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