UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

CPC PATENT TECHNOLOGIES PTY, LTD.,
Patent Owner

CASE: IPR2022-00601
U.S. PATENT NO. 9,269,208

PATENT OWNER RESPONSE

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LIST OF EXHIBITS

Exhibit No.	Description
2001	Scheduling Order, *CPC Patent Technologies Pty Ltd. v. HMD Global Oy*, 6:21-cv-00166 (Dkt. 27) (Sept. 23, 2021)
2002	HMD Global Oy – Final Invalidity Contentions dated March 16, 2022
2003	Defendant Apple Inc.'s Notice of Motion and Motion to Stay Pending *Inter Partes* Review, 5:22-cv-02553 (Dkt. 119) (June 14, 2022)
2004	Scheduling Order, *CPC Patent Technologies Pty Ltd. v. Apple Inc.*, 6:21-cv-00165 (Dkt. 37) (Sept. 23, 2021)
2005	March 19, 2020 Letter from George Summerfield to Brian Ankenbrandt
2006	Declaration of George C. Summerfield in Support of Motion for *Pro Hac Vice* Admission
2007	Biography of George C. Summerfield
2008	Declaration of Jonah Heemstra in Support of Motion for *Pro Hac Vice* Admission
2009	Apple's Opening Claim Construction Brief, *CPC Patent Technologies Pty Ltd. v. Apple Inc.*, 6:21-cv-00165 (Dkt. 46) (Nov. 19, 2021)
2010	Final Deposition Transcript of Dr. Andrew Sears, dated November 8, 2022
2011	Declaration of William C. Easttom II (Chuck Easttom) Ph.D., D.Sc.
2012	CV of Dr. Chuck Easttom

I.   INTRODUCTION

The limitations of the independent claims of U.S. Patent No. 9,269,208 ("the '208 Patent"), using representative Claim 1 as an example, can be divided as follows: 1) the preamble; 2) a database of biometric signatures (representative clause 1(a));[1] 3) a transmitter subsystem and its components involved in capturing and matching of biometric data (representative clause 1(b)); 4) a receiver subsystem to give access to a device based upon information received from the transmitter subsystem (representative clause 1(c)); 5) the transmitter subsystem to the extent it is involved in the capture and registration of biometric data associated with a user (representative clause 1(d)); and 6) the device to be unlocked (representative clause 1(e)). Apple cobbles together a single, three-reference challenge to the claims of the '208 Patent. Even with these three references in hand, Apple must ignore its own characterization of the prior art and its construction of the subject claims to mount an obviousness challenge.

First, the "transmitter subsystem" (representative clause 1(b)) specifies a "means for matching the biometric signal against members of the database of biometric signatures to thereby output an ***accessibility attribute***" (emphasis added).

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[1] These clauses refer to the numbering system used by the Board to label the various claim limitations in claim 1 of the '208 Patent.

Apple successfully urged before the district court and here that "accessibility attribute" be construed as an "attribute that establishes whether *and under which conditions* access to the controlled item should be granted to a user" (emphasis added). According to Apple, the challenged claims go beyond the binary access decision of "yes" or "no." Yet, Apple improperly calls upon prior art teachings that are limited to this very binary decision as allegedly teaching the "accessibility attribute" limitation.

Second, the transmitter subsystem limitation (representative clause 1(d)) specifies "a series of entries of the *biometric* signal, said series being characterised according to at least one of the number of said entries and a duration of each said entry" (representative clause 1(d)(1)) (emphasis added) ("the Biometric Signal Duration Limitation"). In discussing the prior art that allegedly teaches this limitation, Apple's expert, Dr. Andrew Sears, initially draws a bright line distinction between biometric security devices, such as a fingerprint sensor, and knowledge-based security devices, such as a capacitive touch sensor and Morse code.

Yet, when cobbling together a multi-reference challenge to the validity of the subject claims, Dr. Sears and Apple completely blur that distinction, combining teachings from both realms, and treating knowledge-based security features as biometrics to satisfy the Biometric Signal Duration Limitation. This necessarily dooms Apple's challenge, unless the fundamental distinction between "knowledge,"

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