

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE  
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED  
STATES PATENT AND TRADEMARK OFFICE**

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APPLE INC.,  
Petitioner,

v.

CPC PATENT TECHNOLOGIES PTY, LTD.,  
Patent Owner.

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Case IPR2022-00602  
U.S. Patent No. 9,665,705

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**PATENT OWNER'S REQUEST FOR REHEARING OF DIRECTOR'S  
DENIAL OF PANEL REVIEW**

## I. INTRODUCTION

This case represents a rare occasion where rehearing<sup>1</sup> is warranted – inconsistent panel decisions on an identical issue resulting in opposite determinations of patentability. Here, the Panel was asked to determine whether finger presses taught in the cited prior art are biometric signals. Patent Owner has argued repeatedly that they are not. In this case, the Panel disagreed, and found all claims of U.S. Patent No. 9,665,705 (“the ‘705 Patent”) unpatentable. In a separate proceeding (IPR2022-01006, “the ASSA ABLOY IPR”), the *same* Panel, reviewing the *same* patent (the ‘705 Patent) and *same* claim limitations, found that the prior art’s finger presses “are *not* biometric entries at all.” The Panel then found, in the ASSA ABLOY IPR, all claims of the ‘705 Patent *not* unpatentable.

In this case Patent Owner unsuccessfully petitioned for Director Review as to whether the prior art teaches a “series of entries of [a] *biometric* signal.” After the Director denied Patent Owner’s review request, the Panel issued the decision in the ASSA ABLOY IPR, finding that the prior art’s finger presses “are *not* biometric entries at all” (emphasis added).

The PTAB has now issued two inconsistent decisions regarding the prior art’s teaching of the same limitation in the same patent. This inconsistency is dispositive

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<sup>1</sup> Pursuant to Section 5(C)(ii) of the Revised *Interim* Director Review Process, Patent Owner requests rehearing of the Director’s denial of Panel review.

of the Panel’s decisions – finding the claims unpatentable in one proceeding and patentable in another – and warrants a rehearing in this matter. As Patent Owner has repeatedly urged in this proceeding, finger presses are not biometric – they are knowledge-based. The Panel’s abrupt about face on whether finger presses are biometric, resulting in opposite findings of patentability, glaringly demonstrates that the decision in this proceeding was incorrect and should be reviewed.

## II. DISCUSSION

### A. The History of This Proceeding

In its petition, Petitioner sought review of Claims 1, 4, 6, 10-12, and 14-17 of the ’705 Patent in light of *Mathiassen* in view of *McKeeth* and *Anderson*. Paper No. 1 at 5. Common to all challenged claims is limitation 1(d1), “receive 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.” *See* Paper No. 31 at 50 (emphasis added).

Petitioner’s prior art starting point for this limitation was *Mathiassen*’s “finger movements,” which can be “a touch/no touch finger movement,” *i.e.*, a finger press. Paper No. 1 at 32. However, according to Petitioner, “*Mathiassen* does not teach characterizing the series based on a ‘duration’ of each entry.” *Id.* at 33. Petitioner therefore looked to *Anderson*’s teaching of a “series of pressure pulses having varying durations.” *Id.* at 34.

In response, Patent Owner argued that “the ‘pressure pulses’ in *Anderson* are not, and do not generate, biometric signals as they are knowledge-based.” Paper No. 17 at 26. As a result, “combining *Mathiassen*’s fingerprint sensor with *Anderson*’s pressure code does not produce the claimed invention, as any duration would apply to a *non*-biometric signal.” *Id.* at 28 (emphasis in original). Later, Patent Owner explained that *Mathiassen*’s fingerprint sensor “cannot analyze movement,” e.g., finger presses. *See* Paper No. 26 at 14. Rather, movement analysis in *Mathiassen* requires “[m]ovement analyzing means, in the form of a hardware or a software movement analyzing program module.” *Id.*

Ultimately, in addressing this limitation, the Panel determined first that, *Mathiassen* “will detect the biometric part of the input signal, **while also sensing the number and duration of inputs.**” Paper No. 31 at 52 (emphasis added). The Panel then accepted Petitioner’s argument that *Mathiassen* could be “modified to recognize a touch duration, per *Anderson*, of the fingerprint representation on the fingerprint sensor.” *See id.* According to the Panel, “there can be no reasonable dispute that *Anderson* discloses input **biometric** signals that vary in number and duration.” *Id.* at 51 (emphasis added). The Panel concluded that “Petitioner has sufficiently shown that the cited references, as combined by Petitioner, disclose or suggest limitation 1(d1).” *Id.* at 54. In short, the Panel looked to a series of pressure pulses to satisfy the “biometric signal” series limitation.

Patent Owner sought Director Review of the Panel’s Decision. The second issue on which Patent Owner sought review was whether the combination of the *Mathiassen* and *Anderson* references results “in a series of received biometric signal entries that are mapped into an instruction used to populate the database as part of an enrollment process, as required by the challenged claims.” Paper No. 34 at 1 (emphasis added). In explaining the Panel’s error, Patent Owner began by noting that *Mathiassen*’s finger movement sequences do not “constitute a series of received biometric signal entries that are mapped into an instruction used to populate the database as part of the enrollment process.” *Id.* at 7. Patent Owner then pointed out that *Anderson*’s system “may sense only ‘temporal applications of pressure,’ relying on timing of the pressure applications for entry of the access code,” which is “knowledge-based, i.e., non-biometric.” *Id.* at 9. The Director denied Patent Owner’s review request on November 6, 2023. *See* Paper No. 35.

#### **B. The ASSA ABLOY IPR**

In a separate proceeding, ASSA ABLOY AB and its co-petitioners sought review of the ’705 Patent. *ASSA ABLOY AB, et al. v. CPC Patent Technologies PTY, Ltd.*, IPR2022-01006, Final Written Decision (PTAB Nov. 30, 2023) [Paper No. 47] at 2. Of relevance here is the first challenge ground, where the petitioners asserted

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