

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC. AND HP INC.,
Petitioner

v.

XR COMMUNICATIONS, LLC,
D/B/A VIVATO TECHNOLOGIES,
Patent Owner

IPR2022-01155
U.S. Patent No. 10,715,235

PATENT OWNER'S PRELIMINARY RESPONSE

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Patent Owner's Exhibit List

Exhibit	Description
2001	<i>XR Commc'ns. LLC, dba Vivato Techs. v. Apple Inc.</i> , 6-21-cv-00620, Vivato's Preliminary Infringement Contentions Cover Pleading (served Dec. 20, 2021)
2002	<i>XR Commc'ns. LLC, dba Vivato Techs. v. HP Inc.</i> , 6-21-cv-00694, Vivato's Preliminary Infringement Contentions Cover Pleading (served Dec. 20, 2021)
2003	<i>XR Commc'ns. LLC, dba Vivato Techs. v. Apple Inc.</i> , 6-21-cv-00620, Dkt. 27 (W.D. Tex. Jan 13, 2022) Original Scheduling Order
2004	<i>XR Commc'ns. LLC, dba Vivato Techs. v. Apple Inc.</i> , 6-21-cv-00620, Dkt. 72-1 (W.D. Tex. Sept. 9, 2022) Discovery and Scheduling Order
2005	<i>XR Commc'ns. LLC, dba Vivato Techs. v. Apple Inc.</i> , 6-21-cv-00620, Vivato's Second Supplemental Preliminary Infringement Contentions Cover Pleading (served Aug. 26, 2022)
2006	<i>XR Commc'ns. LLC, dba Vivato Techs. v. Apple Inc.</i> , 6-21-cv-00620, Dkt. 74 (W.D. Tex. Sept. 26, 2022) Revised Scheduling Order
2007	<i>XR Commc'ns. LLC, dba Vivato Techs. v. Apple Inc.</i> , 6-21-cv-00620, Dkt. 76 (W.D. Tex. Sept. 30, 2022) Order Denying Motion to Stay
2008	<i>XR Commc'ns. LLC, dba Vivato Techs. v. Apple Inc.</i> , 6-21-cv-00620, Defendants Invalidity Contentions (served Feb. 25, 2022)
2009	<i>XR Commc'ns. LLC, dba Vivato Techs. v. Apple Inc.</i> , 6-21-cv-00620, Defendants Invalidity Contentions, Saunders Chart
2010	<i>XR Commc'ns. LLC, dba Vivato Techs. v. Apple Inc.</i> , 6-21-cv-00620, Defendants Invalidity Contentions, Hottinen Chart

I. INTRODUCTION

The Board should deny institution for institution on the merits and as a matter of discretion under the *Fintiv* and *General Plastic* factors.

On the merits, the challenged claims require determining a set of weighting values from two different signals received from the same remote station, wherein the set of weighting values is configured to be used by the transceiver to construct one or more beam-formed transmission signals. Petitioners rely almost entirely on Saunders to disclose this limitation. But Saunders does not teach or suggest determining a set of weighting values from two different signals received from the same remote station. Petitioners' single, conclusory sentence addressing a Saunders-Hottinen combination likewise fails. Accordingly, the Petition fails to show that a Saunders-Hottinen combination renders this limitation obvious.

The Board should also exercise its discretion to deny institution under § 314(a) based on the *Fintiv* factors. The facts and circumstances here present a strong case for discretionary denial. Here, the district court trial is likely to occur 4.5 months before the FWD deadline. This is because Petitioners unduly delayed in filing the Petition, waiting nearly a full year after the complaints were filed. Further, substantial work on the '235 patent has already been done by the parties and district court, and even more work will be done by the institution deadline.

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