

EXHIBIT 23

IPR2018-00817
U.S. Patent No. 9,445,251

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

AGIS SOFTWARE DEVELOPMENT LLC,
Patent Owner.

Patent No. 9,445,251
Issue Date: September 13, 2016
Title: METHOD TO PROVIDE AD HOC AND PASSWORD PROTECTED
DIGITAL AND VOICE NETWORKS

PATENT OWNER'S PRELIMINARY RESPONSE

Case No. IPR2018-00817

I. INTRODUCTION

On March 22, 2018, Apple Inc. (“Apple” or “Petitioner”) submitted a Petition (the “Petition”) to institute *inter partes* review (“IPR”) of U.S. Patent No. 9,445,251 (Ex. 1001, “the ’251 Patent”), challenging claims 1–35 (the “Challenged Claims”).

The Petition challenges all of the claims with only a single ground—that the claims are obvious over AGIS’s own patent, U.S. Patent No. 7,630,724 (“the ’724 Patent”) to which the ’251 Patent claims priority. However, the Petition fails for at least three reasons: (1) the Petition fails to properly construe the claims; (2) the Petition does not establish that the ’724 Patent is prior art; and (3) the Petition does not demonstrate that the Challenged Claims are obvious over the ’724 Patent.

First, the Petition is deficient because Petitioner fails to meet its burden under 37 C.F.R. § 42.104(b)(3). Petitioner proffered conflicting claim constructions in the co-pending District Court litigation including an identification of numerous claims that it believes are governed by 35 U.S.C. § 112(f). Ex. 2001 at 38–55. However, in this Petition, Petitioner does not allege that any of the Challenged Claims are governed by 35 U.S.C. § 112(f) and only seeks construction of a single term: “georeferenced.” Notably, Petitioner has conceded in the District Court Litigation that this term should be afforded its plain and ordinary meaning. Additionally, Petitioner’s substantive arguments are rife with narrow