

# EXHIBIT 11

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
90/014,903	11/11/2021	8878949	752891.00085	2469				
184036	7590	12/02/2021	<table border="1"> <tr> <td colspan="2">EXAMINER</td> </tr> <tr> <td colspan="2">MENEPEE, JAMES A</td> </tr> </table>		EXAMINER		MENEPEE, JAMES A	
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Williams Simons & Landis PLLC/ GTP The Littlefield Building 601 Congress Ave., Suite 600 Austin, TX 78701			<table border="1"> <tr> <td>ART UNIT</td> <td>PAPER NUMBER</td> </tr> <tr> <td>3992</td> <td></td> </tr> </table>		ART UNIT	PAPER NUMBER	3992	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Order Granting Request For Ex Parte Reexamination</b>	<b>Control No.</b> 90/014,903	<b>Patent Under Reexamination</b> 8878949	
	<b>Examiner</b> James Menefee	<b>Art Unit</b> 3992	<b>AIA (FITF) Status</b> No

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The request for *ex parte* reexamination filed 11/11/2021 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a)  PTO-892, b)  PTO/SB/08, c)  Other: \_\_\_\_\_

1.  The request for *ex parte* reexamination is GRANTED.

**RESPONSE TIMES ARE SET AS FOLLOWS:**

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the **date of service** of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

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cc:Requester ( if third party requester )

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### ORDER GRANTING REEXAMINATION REQUEST

A substantial new question of patentability (“SNQ”) affecting claims 1-18 of U.S. Patent No. 8,878,949 (“the ‘949 patent”) is raised by the reexamination request filed 11/11/2021 (“Request”). The ‘949 patent was filed before March 16, 2013, and is being examined under the pre-AIA first to invent regime.

Based on the specific reference to earlier applications and the 0 day patent term adjustment on the face of the patent, the ‘949 patent is expired. This proceeding therefore will use the ordinary and customary meaning claim construction standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). MPEP 2258 I.G. Furthermore, no amendments other than the cancellation of claims will be permitted in this proceeding. 37 CFR 1.530(j).

#### *References Cited as Raising SNQs*

U.S. Patent 6,115,482 to Sears et al. (“Sears”)

U.S. Patent 6,198,485 to Mack et al. (“Mack”)

#### *Prosecution History*

The ‘949 patent is drawn to a camera that is configured to automatically take pictures when a person makes a gesture, such as raising one’s right hand. There is a camera for taking the picture, and there is a separate camera or sensor in the same housing for sensing the gestures. The ‘949 patent was filed on 8/7/2013 as application 13/961,452 and is part of a chain of several continuation application. In the first Office action on the merits the claims were rejected on several different grounds of double patenting, and also as anticipated or obvious over a reference to Sengupta. In a response filed 3/27/2014 the applicant amended some claims, filed a terminal

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disclaimer to overcome the double patenting rejections, and argued that Sengupta did not show that the camera and sensor be disposed in the same housing. The terminal disclaimers were not approved as they identified a party who is not the applicant, and in a final rejection mailed 5/14/2014 the examiner maintained the double patenting and art rejections, arguing that the distinguishing features were not claimed.

On 8/14/2014 applicant filed a request for continued examination with new terminal disclaimers and claim amendments. The terminal disclaimers were again not approved for the same reason. In a non-final action mailed 8/26/2014 the examiner maintained the double patenting rejections but withdrew the art rejections without comment. Applicant filed new terminal disclaimers on 8/26/2014 that were subsequently approved. A notice of allowance was mailed 9/18/2014 without reasons for allowance.

Turning back to the 8/14/2014 amendments, applicant added the requirement that the housing/device encompasses the electro-optic sensor and digital camera, that the processing unit is adapted to determine a gesture has been performed in the sensor field of view based on the sensor output, and that the gesture corresponds to an image capture command that causes the digital camera to store an image to memory. Applicant argued that Sengupta hands off between separate cameras and therefore lacked a housing encompassing the sensor and camera. Applicant also argued that Sengupta merely reports the location of moving objects and does not determine that a gesture corresponds to an image capture command. Applicant stated that the examiner had agreed in a 8/7/2014 interview that these changes would overcome the rejections based on Sengupta. Accordingly, it is apparent the claims were allowable over the art due to these features that were lacking in Sengupta. These technical teachings were missing from the art during the

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