

# EXHIBIT 5

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

GESTURE TECHNOLOGY PARTNERS, LLC,  
Patent Owner.

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IPR2021-00921  
Patent 8,878,949 B2

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Before PATRICK R. SCANLON, GREGG I. ANDERSON, and  
BRENT M. DOUGAL, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

DECISION  
Granting Institution of *Inter Partes* Review  
35 U.S.C. § 314

IPR2021-00921  
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## I. INTRODUCTION

Apple Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–18 of U.S. Patent No. 8,878,949 B2 (Ex. 1001, “the ’949 patent”). Gesture Technology Partners, LLC (“Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2020). To institute an *inter partes* review, we must determine that the information presented in the Petition shows “a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). For the reasons set forth below, we determine that the information presented in the Petition establishes a reasonable likelihood that Petitioner will prevail with respect to at least one challenged claim. Accordingly, an *inter partes* review is hereby instituted.

## II. BACKGROUND

### A. *Real Parties in Interest*

Petitioner identifies itself as the real party in interest. Pet. 65. Patent Owner identifies itself as the real party in interest. Paper 4, 1.

### B. *Related Matters*

The parties identify the following proceedings as related matters involving the ’949 patent: *Gesture Technology Partners, LLC v. Apple Inc.*, No. 6:21-cv-00121 (W.D. Tex.); *Gesture Technology Partners, LLC v. Lenovo Group Ltd.*, No. 6:21-cv-00122 (W.D. Tex.); *Gesture Technology Partners, LLC v. LG Electronics, Inc.*, No. 6:21-cv-00123 (W.D. Tex.); *Gesture Technology Partners, LLC v. Huawei Device Co., Ltd.*, No. 2:21-cv-00040 (E.D. Tex.); and *Gesture Technology Partners, LLC v. Samsung Electronics Co., Ltd.*, No. 2:21-cv-00041 (E.D. Tex.). Pet. 65; Paper 4, 1.

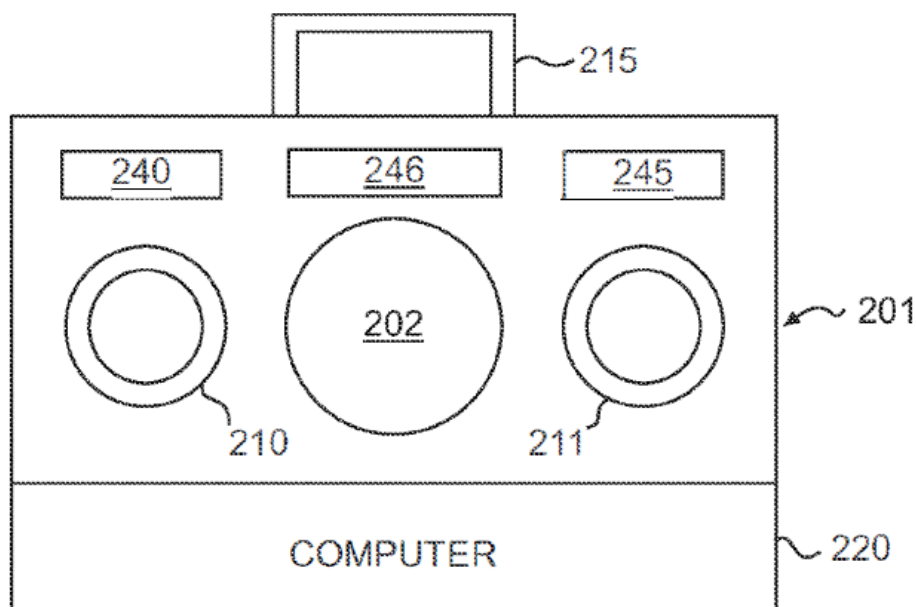
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In addition, Patent Owner identifies the following *inter partes* review proceedings as related matters: IPR2021-00917; IPR2021-00920; IPR2021-00922; and IPR2021-00923. Paper 4, 2.

### C. The '949 Patent

The '949 patent, titled “Camera Based Interaction and Instruction,” issued November 4, 2014, with claims 1–18. Ex. 1001, codes (45), (54), 15:21–16:50. The '949 patent relates to “enhanc[ing] the quality and usefulness of picture taking for pleasure, commercial, or other business purposes.” *Id.* at 1:4–6. In one embodiment, “stereo photogrammetry is combined with digital image acquisition to acquire or store scenes and poses of interest, and/or to interact with the subject in order to provide data to or from a computer.” *Id.* at 1:6–10.

Figure 2A of the '949 patent is reproduced below.



**FIG. 2A**

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Figure 2A illustrates still camera system 201, which includes central camera 202 having high resolution and color accuracy for picture taking. *Id.* at 4:66–5:2. Camera system 201 also includes two cameras 210, 211 on either side of central camera 202. *Id.* at 5:2–3. Cameras 210, 211 “may be lower resolution (allowing lower cost, and higher frame rate, as they have less pixels to scan in a given frame time), with little or no accurate color capability, as they are used to simply see object positions or special datum positions on objects.” *Id.* at 5:3–7.

Camera system 201 further includes computer 220 that processes data from cameras 210, 211 “to get various position and/or orientation data concerning a person.” *Id.* at 5:24–26. “In general, one can use the system to automatically ‘shoot’ pictures” in response to a particular event, such as the subject undertaking a particular position or gesture—i.e., a silent command to take a picture. *Id.* at 5:30–49.

#### *D. Challenged Claims*

As noted above, Petitioner challenges claims 1–18 of the ’949 patent. Claims 1, 8, and 13 are independent. Claim 1 is illustrative of the claimed subject matter and is reproduced below:

1. A portable device comprising:
  - a device housing including a forward facing portion, the forward facing portion of the device housing encompassing an electro-optical sensor having a field of view and including a digital camera separate from the electro-optical sensor; and
  - a processing unit within the device housing and operatively coupled to an output of the electro-optical sensor, wherein the processing unit is adapted to:

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