

EXHIBIT 3

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

RFCYBER CORP.,
Patent Owner.

IPR2022-00412
Patent 9,189,787 B1

Before KEVIN F. TURNER, PATRICK R. SCANLON, and
KEVIN W. CHERRY, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

DECISION

Granting Institution of *Inter Partes* Review

35 U.S.C. § 314

Dismissing Petitioner's Motion for Joinder as Moot

37 C.F.R. §§ 42.22, 42.122(b)

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I. INTRODUCTION

Apple Inc. (“Petitioner”) filed a Petition to institute *inter partes* review of claims 1–19 of U.S. Patent No. 9,189,787 B1 (Ex. 1001, “the ’787 patent”). Paper 1 (“Pet.”).¹ RFCyber Corp. (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”).

We have authority under 35 U.S.C. § 314 to determine whether to institute an *inter partes* review. The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” The Supreme Court has held that the Board, in a decision to institute under 35 U.S.C. § 314(b), may not institute review on less than all claims challenged in the petition. *SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1355–56 (2018). Moreover, in accordance with our rules, “[w]hen instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.” 37 C.F.R. § 42.108(a) (2020); *see also PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (interpreting the statute to require “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition”).

¹ Petitioner also filed a Motion for Joinder to IPR2021-00980 (Paper 3). Petitioner indicated that its Petition is substantially identical to the petition in IPR2021-00980. Pet. 5. (Although the Petition actually refers to the petition in IPR2021-00981, this appears to be a typographical error.) However, IPR2021-00980 has since settled and was terminated. Because IPR2021-00980 has been terminated, we dismiss Petitioner’s motion to join that proceeding as *moot*.

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Applying those standards, and upon considering the Petition, the Preliminary Response, and the evidence of record, we determine the information presented shows a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one of the challenged claims of the '787 patent. Accordingly, we institute an *inter partes* review of all challenged claims (i.e., claims 1–19) of the '787 patent on the grounds asserted in the Petition.

II. BACKGROUND

A. Related Matters

The parties identify the following district-court proceedings as related matters involving the '787 patent: *RF Cyber Corp. v. Apple, Inc.*, No. 6:21-cv-00916 (W.D. Tex.); *RF Cyber Corp. v. Google LLC*, No. 2:20-cv-00274 (EDTX); *RF Cyber Corp. v. LG Electronics, Inc.*, No. 2:20-cv-00336 (EDTX); and *RF Cyber Corp. v. Samsung Electronics Co.*, 2:20-cv-00335 (EDTX). Pet. 3; Paper 6, 1 (Patent Owner's Mandatory Notices).

Petitioner also identifies the following Board proceeding involving the same parties and a related patent: PGR2021-00028 (U.S. Patent No. 10,600,046 B2 ("the '046 patent")). Pet. 4. The parties also identify the following Board proceedings involving the '787 patent or related patents, filed by Samsung Electronics America, Inc. et al.: IPR2021-00978 (U.S. Patent No. 8,448,855 B1 ("the '855 patent")); IPR2021-00979 (U.S. Patent No. 8,118,218 B2 ("the '218 patent")); IPR2021-00980 (the '787 patent); and IPR2021-00981 (U.S. Patent No. 9,240,009 B2 ("the '009 patent")). Pet. 4; Paper 6, 1. Petitioner also identifies the following Board proceedings involving the '787 patent or related patents, filed by Google LLC: IPR2021-00954 (the '855 patent); IPR2021-00955 (the '787 patent); IPR2021-00956

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(the '009 patent); IPR2021-00957 (the '218 patent); PGR2021-00028 (the '046 patent); and PGR2021-00029 (the '046 patent). Pet. 3–4.

B. Real Parties in Interest

Petitioner identifies its real party in interest as Apple Inc. Pet. 2. Patent Owner identifies RFCyber Corp. as its real party in interest. Paper 6, 1.

C. Overview of the '787 patent

The '787 patent relates to commerce over networks, and more specifically, to a method and apparatus for funding an electronic purse (“e-purse”) for use in portable devices configured for both electronic commerce (“e-commerce”) and mobile commerce (“m-commerce”). Ex. 1001, code (57), 1:15–19.

The '787 patent states that there is a “need for a mechanism in devices, especially portable devices, functioning as an electronic purse (e-purse) to be able to conduct transactions over an open network with a payment server without compromising security.” *Id.* at 1:44–48. Although closed systems—such as smart card technology—existed, they were “difficult to be expanded into other areas such as e-commerce and m-commerce” because “stored values and transaction information are stored in data storage of each tag that is protected by a set of keys,” which keys must be “delivered to the card for authentication before data can be accessed during a transaction.” *Id.* at 1:33–39. According to the '787 patent, this required delivery of keys “makes systems using such technology difficult to be expanded to an open environment such as the Internet for e-commerce and cellular networks for m-commerce as the key delivery over a public domain network causes security concerns.” *Id.* at 1:39–43. The '787 patent

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