UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

NOTICE OF ENTRY OF
JUDGMENT ACCOMPANIED BY OPINION

OPINION FILED AND JUDGMENT ENTERED: 03/23/2018

The attached opinion announcing the judgment of the court in your case was filed and judgment was entered on the date indicated above. The mandate will be issued in due course.

Information is also provided about petitions for rehearing and suggestions for rehearing en banc. The questions and answers are those frequently asked and answered by the Clerk's Office.

 No costs were taxed in this appeal.

Regarding exhibits and visual aids: Your attention is directed Fed. R. App. P. 34(g) which states that the clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them. (The clerk deems a reasonable time to be 15 days from the date the final mandate is issued.)

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

16-2523, 16-2524 - DSS Technology Management v. Apple Inc.
United States Patent and Trademark Office, Case Nos. IPR2015-00369, IPR2015-00373

United States Court of Appeals
for the Federal Circuit

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DSS TECHNOLOGY MANAGEMENT, INC.,
Appellant

v.

APPLE INC.,
Appellee

_____

2016-2523, 2016-2524

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Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. IPR2015-00369, IPR2015-00373.

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Decided: March 23, 2018

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ERIC WILLIAM BUETHER, Buether Joe & Carpenter LLC, Dallas, TX, argued for appellant. Also represented by BRIAN ANDREW CARPENTER; ANDRIY LYTVYN, Smith & Hopen, PA, Oldsmar, FL.

JON WRIGHT, Sterne Kessler Goldstein & Fox, PLLC, Washington, DC, argued for appellee. Also represented by DAVID K.S. CORNWELL, JASON A. FITZSIMMONS.

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Before NEWMAN, O'MALLEY, and REYNA, *Circuit Judges.*

Opinion for the court filed by *Circuit Judge* O'MALLEY.

Dissenting opinion filed by *Circuit Judge* NEWMAN.

O'MALLEY, *Circuit Judge*.

In response to two petitions for *inter partes* review filed by Appellee Apple Inc. ("Apple"), the Patent Trial and Appeal Board ("Board") issued a pair of final written decisions finding claims 1–4 and 9–10 of U.S. Patent No. 6,128,290 ("the '290 patent"), owned by Appellant DSS Technology Management, Inc. ("DSS"), unpatentable as obvious. *Apple Inc. v. DSS Tech. Mgmt., Inc.*, No. IPR2015-00369, 2016 WL 3382361 (P.T.A.B. June 17, 2016) (*Apple I*); *Apple Inc. v. DSS Tech. Mgmt., Inc.*, No. IPR2015-00373, 2016 WL 3382464 (P.T.A.B. June 17, 2016) (*Apple II*). Because we find that the Board did not provide a sufficient explanation for its conclusions, and because we cannot glean any such explanation from the record, we reverse.

I. BACKGROUND

A. The '290 patent

The '290 patent, which issued in 2000 and is assigned to DSS, is directed to a wireless communication network for a single host device and multiple peripheral devices. The '290 patent discloses a data network for bidirectional wireless data communications between a host or server microcomputer—described in the specification as a personal digital assistant or "PDA"—and a plurality of peripheral devices that the specification refers to as personal electronic accessories or "PEAs." '290 patent, col. 1, ll. 11–20, col. 2, ll. 15–18. According to the '290 patent, this data network provides "highly reliable" communication, "requires extremely low power consumption, particularly for the peripheral units," "avoids interference from nearby similar systems," and "is of relatively simple and inexpensive construction." *Id.* at col. 1, ll. 33–

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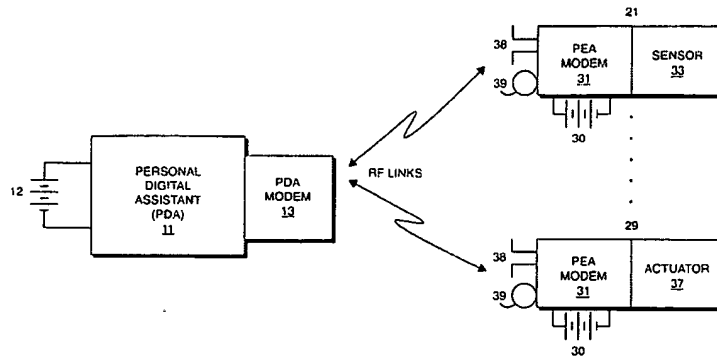47. Figure 1 of the '290 patent illustrates an embodiment of this wireless data network:

FIG. 1

Id. at Fig. 1. This figure depicts a server microcomputer, shown as PDA **11**, and a plurality of peripheral units **21** to **29**.   *Id.* at col. 2, ll. 42–44, col. 2, l. 66–col. 3, l. 15.

The '290 patent teaches that the transmitters within the host or server microcomputer and the peripheral units in the data network operate in a "low duty cycle pulsed mode of operation." *Id.* at col. 1, ll. 57–59. In such a mode of operation, each peripheral unit is allocated a subset of available time slots in which it receives or transmits data from or to the server microcomputer in radio frequency (i.e., wireless) bursts. *Id.* at col. 3, l. 57–col. 4, l. 6. These time slots are determined in relation to synchronizing information initially transmitted from the server micro-computer. *Id.* at col. 2, ll. 35–39. In the time slots when a peripheral unit is neither receiving nor transmitting, its reception and transmission circuitry may be powered down. *Id.* at col. 4, ll. 6–8. "The low duty cycle pulsed operation both substantially reduces power consumption and facilitates the rejection of interfering signals." *Id.* at col. 1, ll. 59–61.

The '290 patent contains 11 apparatus claims, six of which—claims 1–4 and 9–10—are relevant to this appeal.

Because the parties dispute only a single claim limitation recited in independent claim 1, they agree that claim 1 is representative. Claim 1 recites:

> A data network system for effecting coordinated operation of a plurality of electronic devices, said system comprising:
>
> a server microcomputer unit;
>
> a plurality of peripheral units which are battery powered and portable, which provide either input information from the user or output information to the user, and which are adapted to operate within short range of said server unit;
>
> said server microcomputer incorporating an RF [radio frequency] transmitter for sending commands and synchronizing information to said peripheral units;
>
> said peripheral units each including an RF receiver for detecting said commands and synchronizing information and including also an RF transmitter for sending input information from the user to said server microcomputer;
>
> said server microcomputer including a receiver for receiving input information transmitted from said peripheral units;
>
> *said server* and peripheral *transmitters being energized in low duty cycle RF bursts* at intervals determined by a code sequence which is timed in relation to said synchronizing information.

'290 patent, col. 11, l. 62–col. 12, l. 18 (emphasis added).

The only disputed limitation of claim 1 pertains to the "low duty cycle RF bursts" referenced above. Claim 1 requires both the server microcomputer and each of the peripheral units to comprise transmitters. According to

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