UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMERICAN MEGATRENDS, INC., MICRO-
STAR INTERNATIONAL CO., LTD, MSI COMPUTER CORP.,
GIGA-BYTE TECHNOLOGY CO., LTD., and G.B.T., INC.,
Petitioners,

v.

KINGLITE HOLDINGS INC.,
Patent Owner.

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Case IPR2015-01133
Patent 5,732,268

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Before TREVOR M. JEFFERSON, BRIAN J. McNAMARA, and
J. JOHN LEE, *Administrative Patent Judges*.

JEFFERSON, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
37 C.F.R. § 318(a) and 37 C.F.R. § 42.73

I.   INTRODUCTION

On November 17, 2015, we instituted inter partes review of claims 1–7, 9–11, and 13–20 of U.S. Patent No. 5,732,268 (Ex. 1001, "the '268 patent"). Paper 13 ("Dec."). Patent Owner, Kinglite Holdings Inc., filed a Patent Owner Response (Paper 20, "PO Resp.") to the Petition (Paper 6, "Pet.") filed by American Megatrends, Inc., Micro-Star International Co., Ltd, MSI Computer Corp., Giga-Byte Technology Co., Ltd., and G.B.T., Inc. (collectively "Petitioner"). Petitioner filed a Reply. Paper 26 ("Pet. Reply"). Petitioner also filed a Motion to Exclude. Paper 28 ("Pet. Mot. To Exclude"). Patent Owner filed an Opposition to Petitioner's Motion to Exclude (Paper 33, "Opp. Mot. Exclude"), and Petitioner filed a reply (Paper 34, "Pet. Mot. Reply"). A transcript of an oral hearing held on August 18, 2016 (Paper 36, "Tr.") has been entered into the record.

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. §318(a). We base our decision on the preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d).

Having reviewed the full record, we conclude that Petitioner has demonstrated by a preponderance of the evidence that the challenged claims are unpatentable for the reasons set forth below. For the reasons discussed below, we also deny Petitioner's Motion to Exclude.

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A. Related Proceedings

The parties state that the '268 patent has been asserted in *Kinglite Holdings Inc. v. Giga-Byte Technology Co. Ltd.*, Case No. 1:14-cv-04989

(C.D. Cal.), and *Kinglite Holdings Inc. v. Micro-Star International Co Ltd.*,

Case No. 1:14-cv-03009 (C.D. Cal.). Pet. 5–6; Paper 7, 1.

B. The '268 Patent

The '268 patent is titled "Extended BIOS adapted to establish remote

communication for diagnostics and repair." Ex. 1001, at [54]. The '268

specification states that:

> a basic input output system (BIOS) is provided comprising a non-volatile memory; a first code portion recorded in the non-volatile memory and adapted for execution by a CPU to perform startup functions for a computer, including initiating boot operations; and a second code portion recorded in the non-volatile memory and adapted for execution by the CPU to establish communication with a remote computer. Code execution by the CPU is directed from the first portion to the second portion upon failure to complete the boot operations. Communication with the remote computer may be established over a telephone link by operating a telephone modem to dial a telephone number, using either an analog or digital line, and in some embodiments plural numbers may be dialed in a priority sequence until a connection is established. Communication may be established as well over any network connection to remote computers.

Id. at 3:44–60. Figure 1, depicted below, illustrates an embodiment of the
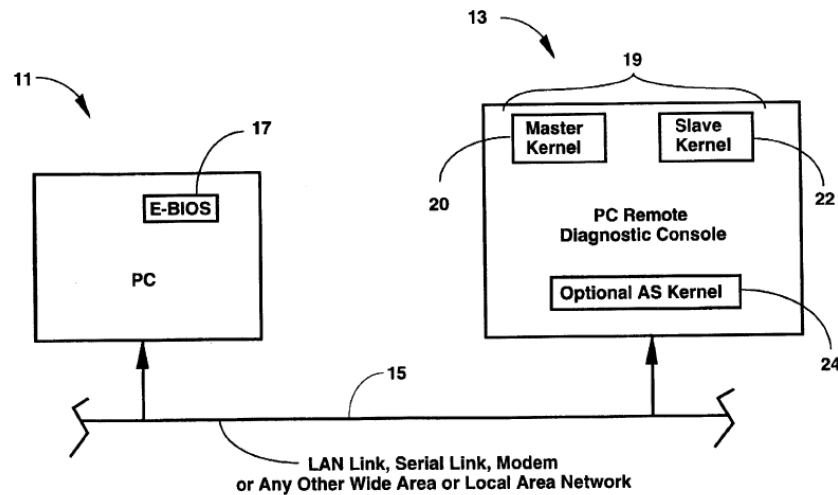
'268 invention.

Fig. 1

Figure 1 depicts "a block diagram of an E-BIOS PC, an E-BIOS diagnostic center, and interconnection." *Id*. at 4:65–66. The block diagram of Figure 1 shows local E-BIOS PC 11 connected to remote E-BIOS diagnostic and repair facility 13 by communication link 15. *Id*. at 5:9–13. Link 15 for communication can be any of several well-known types. *Id*. "PC 11 has unique E-BIOS 17 . . . and facility 13 is equipped with code for cooperating with E-BIOS PC 11 over connection 15. This E-BIOS code in FIG. 1 is designated E-BIOS Host 19, and comprises a master kernel 20 and a slave kernel 22." *Id*. at 5:15–20.

Figures 2 and 3 below show flow diagrams of E-BIOS PC boot up operation (Figure 2) and diagnosis and repair after an E-BIOS PC and diagnostic center are connected (Figure 3). *Id*. at 5:1–5.
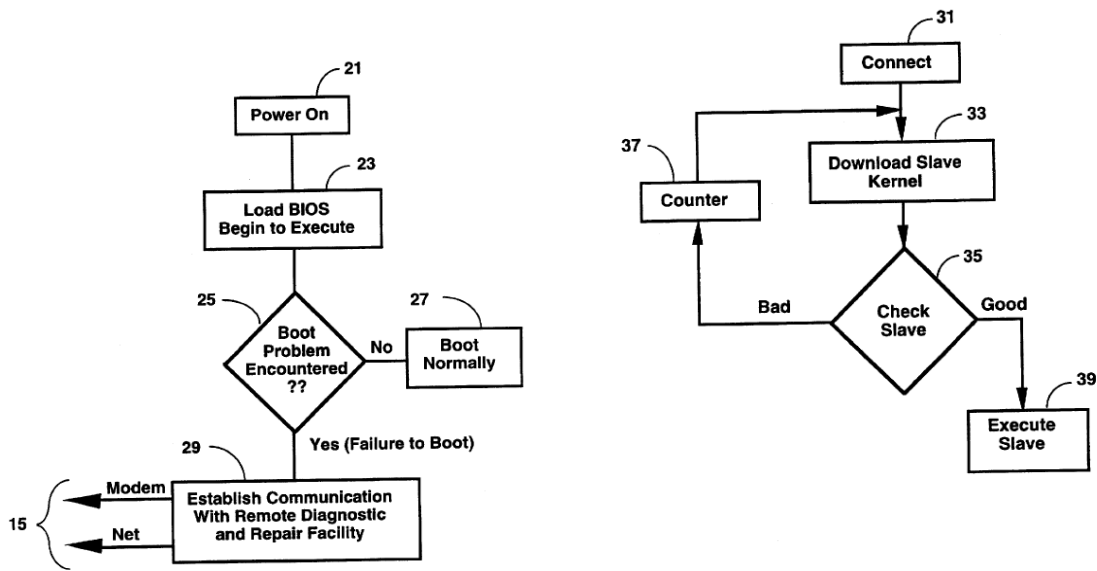
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Fig. 2

Fig. 3

Figure 2 shows operation of an E-BIOS PC at boot up. *Id*. at 5:65–67.

At step 21 power on is initiated. *Id*. At step 23 the E-BIOS is loaded into

RAM and execution begins, and at step 25 E-BIOS continues performing

power on self test (POST) and other BIOS startup functions, while

monitoring for faults in the boot process. *Id*. at 6:5–9. If a fault is detected

at step 27 that prevents normal operation, step 29 communicates with a

remote E-BIOS diagnostic and repair unit (element 13 in Figure 1). *Id*. at

6:20–26.

Figure 3 is a logic diagram of interaction between a failed E-BIOS PC

11 and remote diagnostic PC 13 shown in Figure 1. *Id*. at 7:3–5. At step 31

communication is established, and at step 33 slave kernel 22 is downloaded

automatically or manually by a user from diagnostic and repair PC 13 over

link 15 to failed E-BIOS PC 11. *Id*. at 7:8–12. At step 35 slave kernel 22 is

5

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