

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.

UNILOC 2017 LLC  
Patent Owner

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Case No. IPR2018-01093  
Patent No. 7,994,353

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**PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE**

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## **I. INTRODUCTION**

Having declined to depose Petitioner's expert and having failed to submit a competing expert declaration of its own, Patent Owner's Response consists entirely of attorney argument that mischaracterizes the Petition and the prior art discussed therein. When these mischaracterizations are corrected, it is clear that the Board's preliminary findings at institution should be adopted in its Final Written Decision, concluding the Challenged Claims are obvious.

## **II. PRELIMINARY MATTER—APPLE IS NOT CONTRACTUALLY PREVENTED FROM CHALLENGING THE '353 PATENT**

Based on pure speculation, Patent Owner suggests Apple may be “bound by a license agreement that forbids Apple to challenge the validity of the '353 Patent[.]” Patent Owner provides no evidence in support of its assertion. No license agreement. No testimony. Nothing. And, not surprisingly, Patent Owner is incorrect. The undersigned counsel has investigated this speculation and can represent for the Board that Apple has never been, and is not now, bound by any agreement that would limit its ability to challenge the '353 Patent.

## **III. ARGUMENT**

### **A. The Board Correctly Found the Prior Art Teaches Distinct Steps of (1) Determining an Event Context and (2) Assessing its Criticality**

Patent Owner's primary argument is that Petitioner has conflated the claimed steps of “determining an event context” and “assessing a criticality of the determined

event context.” **Paper 11**, *Response* at 5-6. In support, Patent Owner mischaracterizes both the prior art and Petitioner’s reliance on the same. At institution, the Board correctly found that both embodiments of *Lemelson* relied upon by Petitioner—medical condition and audio monitoring—involve separate steps of determining an event context and assessing its criticality. **Paper 8**, *Institution Decision (“ID”)* at 15-18. Patent Owner’s mischaracterizations should not deter the Board from making its preliminary findings final.

*i. Lemelson’s medical alert monitoring first identifies an “abnormal medical condition” and then assesses whether a “variance of [a] predefined degree” exists*

The Board correctly concluded at institution that “*Lemelson* teaches analyzing a user’s biometrics or medical history data to determine an abnormal medical condition[,]” which meets the “determin[ing] an event context” limitation. **Paper 8**, *ID* at 15-17. The Board also correctly concluded that *Lemelson* teaches “the computer [that] detects a variance of predefined degree between the person’s current and normal medical conditions,” which meets the “assessing a criticality” limitation. *Id.* at 17-18. Finally, the Board correctly concluded that *Lemelson* teaches informing the control center of the variance, which satisfies the reporting response responsive to the criticality assessment—the final limitation of Claim 1. *Id.* at 18-19.

Patent Owner challenges the Board’s conclusions, arguing that “*Lemelson* expressly defines its “abnormal medical condition” as being “a variance of a

predefined degree . . . between the person's current and normal medical conditions.”

**Paper 11**, *Response* at 7 (citing **Ex. 1003**, *Lemelson* at 4:32-41). According to Patent Owner, if detecting an abnormal medical condition and detecting a variance of a predefined degree are one and the same, Petitioner and the Board have erred in finding this single process satisfies two distinct limitations. *Id.*

Patent Owner is incorrect. The single citation proffered in support of its strained *Lemelson* interpretation does not combine these steps. Instead, *Lemelson* is clear that detecting a variance of a predefined degree is a separate inquiry, the result of which triggers a communication process with a “command control center” and defines what information is contained within the communication—an indication of the specific variance. **Ex. 1003**, *Lemelson* at 4:32-41.<sup>1</sup> In order words, the criticality assessment in *Lemelson* goes beyond simply determining that an abnormal medical condition exists. It defines the degree of abnormality and provides that assessment to the central command center. As explained in the following excerpt, though certainly related to each another, *Lemelson* teaches distinct steps of (1) determining

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<sup>1</sup> Patent Owner advances a related point, arguing that because the control center receives the emergency transmission and determines appropriate medical assistance based on the severity of the situation, no prior assessment of criticality could have occurred. **Paper 11**, *Response* at 7-8. Patent Owner does not explain how the central control center performing a severity assessment for purposes of determining appropriate medical assistance precludes a prior assessment of criticality for purposes of determining whether an emergency message should be sent to the central control center at all.

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