UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS INC.
Petitioner,

v.

SMTM TECHNOLOGIES, LLC
Patent Owner.

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Case IPR2019-00434
Patent 8,958,853 B1

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Before NEIL T. POWELL, GEORGIANNA W. BRADEN, and
SHARON FENICK *Administrative Patent Judges.*

FENICK, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314(a)

I.   INTRODUCTION

Unified Patents Inc. ("Petitioner") filed a Petition requesting *inter
partes* review of claims 1–7 ("the challenged claims") of U.S. Patent
No. 8,958,853 B1 (Ex. 1001, "the '853 patent"). Paper 1 ("Pet."). Patent

Owner SMTM Technologies, LLC ("Patent Owner") did not file a
Preliminary Response. *See* Paper 5, 1. We have jurisdiction under 35
U.S.C. § 314.

Upon consideration of the Petition, Petitioner has failed to
demonstrate a reasonable likelihood that it would prevail in showing the
unpatentability of at least one challenged claim of the '853 patent.
Accordingly, Petitioner's request to institute *inter partes* review is denied.

II. BACKGROUND

A. Related Matters and Real Parties in Interest

Petitioner states that the '853 patent was asserted in *SMTM
Technology, LLC v. Apple Inc.*, Case No. 3:18-cv-04111 (N.D. Cal.) and
SMTM Technology, LLC v. Microsoft Corp., Case No. 3:15-cv-02396 (N.D.
Cal.). Pet. 1–2. Patent Owner states that there are no related matters. Paper
5, 1 (Patent Owner's Mandatory Notices).

Petitioner identifies only itself as the real party in interest. Pet. 1.
Patent Owner also identifies only itself as the real party in interest. Paper 5,
1.

B. Overview of the '853 Patent

The '853 patent relates to "a mobile device including functionality for
suppressing communications to a user and systems for verifying that a user
was not receiving communications during a particular period of time."
Ex. 1001, 1:50–54, 6:57–60. This is done to prevent distracted driving. *Id.*
at 1:22–28, 2:2–3, 19–21, 37–39, 6:60–64. The suppressed communications
may be, for example, notifications of incoming phone calls, text messages,
or emails, or notifications from mobile device applications. *Id.* at 1:55–58,
1:66–2:1. Thus, when the device is in inactive mode, normal user

notifications of communication events, such as ringing, vibration, or screen activation, are suppressed. *Id.* at 1:66–2:1, 2:19–23, 42–45, 3:6–12.

Additionally, optionally, when a communication is received at the mobile device, the mobile device sends an "away message" to the sender of a communication, "in order to reassure senders that they will receive a response at the earliest convenient opportunity." *Id.* at 1:66–2:8, 2:24–25, 3:16–25. The user can configure the away message or choose from among several away messages before the device enters inactive mode. *Id.* at 3:29–32.

A user can customize the behavior of the mobile device during inactive mode using a graphical user interface on the mobile device. *Id.* at 8:26–37, 9:15–25. Figure 5c, reproduced below, depicts a mobile device with an interface showing a custom message selection screen including example "away messages." *Id.* at 6:26–28.

FIG. 5C

Txt Message Away Message

✕ Cancel | ✓ Accept | ☰ Edit

575 — (Autoreply) Sorry I'm driving ☑

(Autoreply) Sorry I'm driving ☐
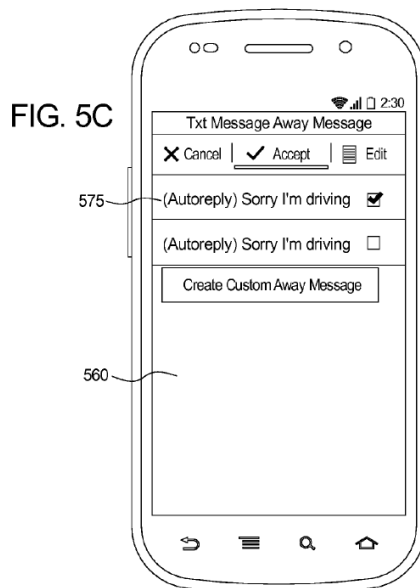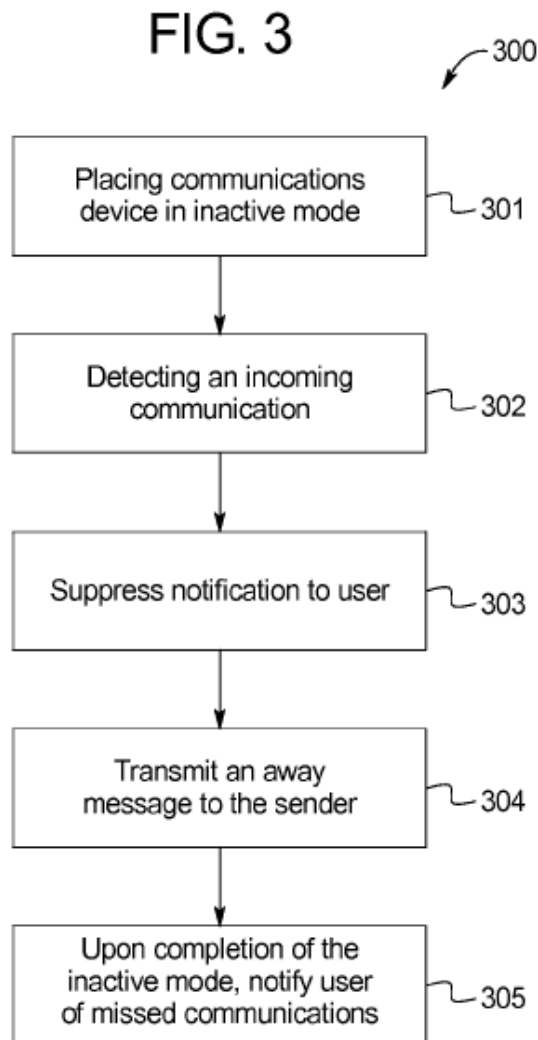
Create Custom Away Message

560 —

Figure 5c shows an away message selection screen 560, which allows the user to select a specific away message to be used from away

messages 575. *Id.* at 8:36–38. The away message selection screen can be used to enable a user to create custom "away messages" and select a message to be transmitted to the sender of a communication when the mobile device is in inactive mode. *Id.* at 8:24–38.

Figure 3, reproduced below, is "a flow chart illustrating a method carried out by a mobile device to provide for an inactive mode." *Id.* at 6:8–9.

FIG. 3

— 300

```
┌─────────────────────────┐
│  Placing communications │  ⌐ 301
│  device in inactive mode│
└─────────────────────────┘
            │
            ▼
┌─────────────────────────┐
│   Detecting an incoming │  ⌐ 302
│      communication      │
└─────────────────────────┘
            │
            ▼
┌─────────────────────────┐
│ Suppress notification to user │ ⌐ 303
└─────────────────────────┘
            │
            ▼
┌─────────────────────────┐
│    Transmit an away     │  ⌐ 304
│   message to the sender │
└─────────────────────────┘
            │
            ▼
┌─────────────────────────┐
│   Upon completion of the│
│  inactive mode, notify user │ ⌐ 305
│  of missed communications│
└─────────────────────────┘
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As shown above in Figure 3, the method provides five sequential steps: placing a device into inactive mode (301); detecting an incoming communication (302), suppressing notification (303); transmitting an away message to the sender of the communication (304); and, upon completion of the inactive mode, notifying the user of missed communications (305). *Id.* at 7:37–49, 8:4–6, 8:14–16, 8:24–26, 8:53–55.

The inactive mode may be activated in different ways: through a user activating a button on a user interface; according to a pre-set schedule; when driving directions functionality of a mobile device is being used; upon pairing of the mobile device with a vehicle; by a remote user; or when the mobile device enters a particular location. *Id.* at 2:29–42, 3:4–5, 5:9–12, 5:19–24, 7:47–67. "[A]ny input that may indicate that the user is not to be distracted may be used to place the device in inactive mode." *Id.* at 7:67–8:2.

C. Illustrative Claim

Of the challenged claims, claim 1 is independent. Claim 1 is reproduced below, with bracketed notations, corresponding in part to notations in the petition,[1] added for reference.

> 1. [a] A mobile device, comprising:
>
> a wireless communication module;
>
> [b] a processor, controlling the wireless communication module; and
>
> [c] a memory controlled by the processor, the memory including instructions that when

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[1] Petitioner does not provide a label for one limitation of claim 1, we reference it with the notation "[*]".

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