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.

SEVEN NETWORKS, LLC,
Patent Owner.

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IPR2020-00180
Patent 9,648,557 B2

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Before THU A. DANG, KARL D. EASTHOM, and
JONI Y. CHANG, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

Apple Inc. ("Petitioner") filed a Petition (Paper 2, "Pet.") requesting an *inter partes* review of claims 1–28 (the "challenged claims") of U.S. Patent No. 9,648,557 B2 (Ex. 1001, "the '557 patent"). Petitioner filed a Declaration of Patrick Traynor, Ph.D. (Ex. 1003) with its Petition. Patent Owner, Seven Networks, LLC ("Patent Owner"), filed a Preliminary Response (Paper 8, "Prelim. Resp."). The parties filed additional briefing to address the Board's discretionary authority to deny a petition based on a parallel district court proceeding under 35 U.S.C. § 314(b). Paper 10 ("Pet. Prelim. Reply"); Paper 11 ("PO Prelim. Sur-reply").

We have authority to determine whether to institute an *inter partes* review ("IPR"). *See* 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). Under 35 U.S.C. § 314(a), we may not authorize an *inter partes* review unless the information in the Petition and the Preliminary Response "shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." For the reasons that follow, we institute an *inter partes* review as to the challenged claims of the '557 patent on all grounds of unpatentability presented.

I.   BACKGROUND

A.   Real Parties-in-Interest

Petitioner identifies Apple Inc. as the real party-in-interest. Pet. 70.

B.   Related Proceedings

The parties identify *SEVEN Networks, LLC v. Apple Inc.*, No. 2:19-cv-00115 (E.D. Tex.) ("District Court Action" or "District Court") as a related matter involving the '557 patent. Pet. 70; Paper 5.

C.   The '557 patent

The '557 patent describes "[a] method of selecting a network from a plurality of available access networks." Ex. 1001, code (57). A user device

can execute multiple applications having different respective link metrics, including quality of service (QoS) requirements. *Id.* at 2:46–54; 6:36–63. "[A] profile of applications supported by the [user equipment (UE)] may be used for connectivity and handover decisions, for example latency requirements, [and] bandwidth requirements." *Id.* at 7:4–7. "A radio link selection request/Indicator function based on priority parameters or profiles may be used to query which radio link should be used for a particular application" and "[t]he Indicator can also be event triggered and can signal to the IMS services that a change of domain should be made for a certain application or for all applications." *Id.* at 10:54–67.

The '557 patent provides for "connections to *multiple access networks simultaneously* depending upon handset use cases supported. For example, voice call via cellular services may be provided while email is downloading via WLAN." Ex. 1001, 8:35–39 (emphasis added).

D.   *Illustrative Claim 1*

Of the challenged claims, independent claim 1, recites a "[a] method of operating a mobile device," and independent claim 14 recites "[a] mobile device." Claims 1 and 14 recite materially similar limitations. Remaining challenged claims 2–14 and 15–28 depend or ultimately depend from claim 1 or claim 14.

Claim 1 illustrates the challenged claims at issue:

1. [1.P] A method of operating a mobile device comprising:

[1.1] connecting to a WIFI network and a cellular network;

[1.2] displaying an indication of availability of the WIFI network and the cellular network;

[1.3] accessing data through the WIFI network in response to an application request from an application executing on the mobile device;

[1.4] detecting a first condition indicative of a quality of the WIFI network;

[1.5] detecting, in response to a subsequent application request and before or at a time of receiving a response to the subsequent application request, a second condition indicative of a time responsiveness of the WIFI network;

[1.6] evaluating user settings, wherein the user settings include a roaming rule, a connectivity rule, and an application profile of the application;

[1.7] in response to detecting the first condition and the second condition and evaluating the user settings, determining a time responsiveness of the cellular network; and

[1.8] based on the detected first condition and detected second condition, the evaluated user settings, the time responsiveness of the cellular network, and the application executing on the mobile device, sending the subsequent application request through the cellular network in response to the [subsequent] application request executing on the mobile device,

[1.9] wherein requests from another application executing on the mobile device continue to access data through the WIFI network.

Ex. 1001, 14:1–34.[1]

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[1] *See* Ex. 1001 (Certificate of Correction inserting <u>subsequent</u> before "application" in claims 1 and 14).

E.   *The Asserted Grounds*

Petitioner challenges claims 1–28 of the '557 patent on the following grounds (Pet. 2):

Claims Challenged	35 U.S.C. §	References
1–27	103[2]	White,[3] Falardeau[4]
6, 19	103	White, Falardeau, Chitrapu[5]
7, 20	103	White, Falardeau, Li[6]
8, 9, 21, 22	103	White, Falardeau, Zehavi[7]
11, 24	103	White, Falardeau, Shell[8]
28	103	White, Falardeau, Konicek[9]

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[2] The Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. § 103. For purposes of institution, the '557 patent contains a claim with an effective filing date before March 16, 2013 (the effective date of the relevant amendment), so the pre-AIA version of § 103 applies.

[3] White et al., US 7,539,175 B2, issued May 26, 2009 (Ex. 1004).

[4] Falardeau, US 7,620,065 B2, issued Nov. 17, 2009 (Ex. 1005).

[5] Chitrapu, US 2003/0223395 A1, published Dec. 4, 2003 (Ex. 1006).

[6] Li et al., US 2004/0192312 A1, published Sept. 30, 2004 (Ex. 1007).

[7] Zehavi et al., US 7,613,171 B2, issued Nov. 3, 2009 (Ex. 1008).

[8] Shell et al., US 6,826,762 B2, issued Nov. 30, 2004 (Ex. 1009).

[9] Konicek et al., US 8,880,047 B2, issued Nov. 4, 2014 (Ex. 1010).

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