

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

APPLE, INC. et al.	)
	)
Plaintiffs,	)
	)
v.	)
	)
ANDREW IANCU, in his official capacity	)
As Under Secretary of Commerce for Intellectual	)
Property and Director, United States Patent and	)
Trademark Office,	)
	)
Defendant.	)
	)

**Declaration of Hugh Svendsen**

I, Hugh Svendsen, being over the age of 18 years hereby declare as follows.

1. I am an inventor. I invented the device and system described in U.S. Patent No. 8,874,554. The '554 patent solves the problem of recommending media items based on the geographic location of a user.
2. The '554 patent, along with U.S. Patent Nos. RE41450, RE45543 and RE47704 together the Patents, are involved in infringement disputes.
3. I am the Managing Member of Ikorongo Technology, LLC and Ikorongo Texas, LLC, together the Assignees of the entire right and interest in the Patents.
4. I and the Assignees are members of nonprofit US Inventor. We joined because US Inventor is looking after "little guy" inventors and small businesses who need the patent system to

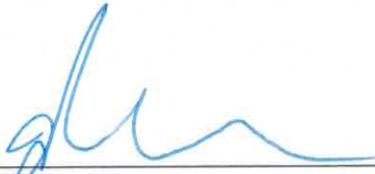
function well so that entrepreneurs can build businesses and create jobs, secure in the knowledge that their patent rights will protect them from infringements.

5. The Assignees are currently in infringement disputes with Bumble Trading Inc., LG Electronics Inc. et al, Lyft, Inc., Samsung Electronics Co., LTD et al and Uber Technologies, Inc. There are lawsuits pending in the Western District of Texas to resolve the disputes: Cases Nos. 6:20-cv-00256, 6:20-cv-00257, 6:20-cv-00258, 6:20-cv-00259 and 6:20-cv-00843.
6. Unified Patents, Inc. has filed a petition at the USPTO for an inter partes review of the '543 patent. The deadline for our Preliminary Response is imminent: November 11, 2020.
7. I have seen statistics that, after institution, 84% of patents reviewed result in a final written decision invalidating at least one claim.
8. In the Preliminary Response we plan to ask that the Director use his discretion under 35 U.S.C. § 314(a) (and other parts of the AIA) to deny institution. In particular, we expect to point to the fact that the Jury trial for the infringement disputes is scheduled for January 24<sup>th</sup>, 2022 while the IPR, if instituted, would normally produce a written decision by February 17<sup>th</sup>, 2022. Thus, the Jury trial would finish first, and there would be significant duplication of effort should the IPR be instituted.
9. There are no promulgated regulations on the Director's consideration of discretionary factors like these in the decision of whether to grant institution. I and the assignees are irreparably and imminently harmed by the lack of such rules. There are no authoritative published rules that I can cite to help me make my arguments against institution of the IPR trial.

10. If the Court granted a preliminary injunction requiring the Director to deny institution pending issuance of proper regulations, that would eliminate this harm from occurring. Even if the Court just required the Director to stay that decision, that would eliminate this harm because after the stay, I would be able to use those regulations to persuade the Director to make a discretionary denial.
11. I understand that proper regulations require publication, notice-and-comment by the public, and a thorough review by the agency. I also understand that in this case, agency review would have to take into account the effect of any proposed rule on the economy as a whole, and the integrity of the patent system. I believe that any regulations that come out of such a process will make it much more likely that the PTAB will have to deny institution in cases with facts like mine.
12. The lack of promulgated regulations has made it more expensive and uncertain for us as patent owners to deal with this IPR petition, since the public lacks certainty about what the PTAB will do in factual situations such as my own.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 25, 2020

  
\_\_\_\_\_  
Hugh Svendsen