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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92063729
Party	Defendant Apple Inc.
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Attachments	FRONT ROW RN 3411726 Ubiquiti v Apple Reply Brief ISO Motion to Dismiss Petition August 29 2016.pdf(10886 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration of Apple Inc.
Mark: FRONT ROW
Registration No.: 3,411,726

UBIQUITI NETWORKS, INC.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92063729
	:	
APPLE INC.,	:	
	:	
Registrant.	:	

REPLY BRIEF IN SUPPORT OF REGISTRANT’S MOTION TO DISMISS

Registrant Apple Inc. (“Apple”), responds to Petitioner Ubiquiti Networks, Inc.’s (“Petitioner”) opposition to Apple’s Motion to Dismiss as follows:

INTRODUCTION

Apple filed its Motion to Dismiss because Petitioner has failed to allege specific facts that are sufficient to satisfy the relevant pleading standards. As a result, the Petition is so vague that Apple can only guess at the facts and circumstances that Petitioner believes might constitute abandonment or fraud, and therefore lacks adequate notice to enable it to prepare its answer and defenses.

Petitioner has responded to Apple’s motion by mischaracterizing Apple’s arguments, and by misstating the pleading standards that apply to abandonment and fraud claims.

Petitioner incorrectly suggests that Apple’s motion calls for Petitioner to “plead the proof of its case-in-chief” and that the Petition is sufficient to provide notice of the basis for each claim. This assertion misses the point of Apple’s motion and ignores the established principle that, even under minimal notice pleading standards, a Petition “must contain sufficient factual

matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 555 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In the context of Board *inter partes* proceedings, a claim is plausible on its face when the plaintiff pleads factual content that if proved, would allow the Board to conclude, or draw a reasonable inference that, the Petitioner has standing and that a valid ground for cancellation exists. *See id.* The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility of the allegations asserted. *See id.*

As discussed in Apple’s moving brief, Petitioner’s abandonment claim is based on a single paragraph that amounts to a conclusory recitation of the elements of an abandonment claim. (*See* Petition ¶ 19). The Petition contains no allegation of specific facts to support this recitation, particularly the critical element that Apple has no intention to resume use of the FRONT ROW mark (which, in fact, has been and continues to be in use). Thus, Petitioner has not alleged facts that could allow the Board to draw a reasonable inference that there is a valid ground to cancel Apple’s registration on grounds of abandonment. Although the Board, in deciding this Rule 12(b)(6) motion, must accept as true all factual allegations in the Petition, it is not bound to accept as true legal conclusions couched as a factual allegations. Twombly, 550 U.S. at 555.

With respect to the fraud claims, Petitioner fails to acknowledge the plain language of Rule 9(b) of the Federal Rules of Civil Procedure, which states that “[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” Indeed, Petitioner’s fraud allegations are devoid of particularity. **All** of the allegations relating to fraud are based “upon information and belief” and Petitioner has not alleged **any** specific facts upon which its belief is founded. Such allegations amount to naked assertions and formulaic

recitations of the elements of a cause of action, which fail to provide fair notice of a plausible fraud claim. Ashcroft v. Iqbal, 555 U.S. 662, 678 (2009). Furthermore, although Petitioner calls the principle “ridiculous”, the law is clear that “[p]leadings of fraud made ‘on information and belief,’ when there is no allegation of ‘specific facts upon which the belief is reasonably based’ are insufficient.... Allegations based solely on information and belief raise only the mere possibility that such evidence may be uncovered and do not constitute pleading of fraud with particularity.” Asian & W. Classics B.V. v. Selkow, 92 USPQ2d 1478, 2009 WL 3678263 (TTAB 2009) (citing Exergen Corp. v. Wal-Mart Stores Inc., 91 USPQ2d 1656, 1670 (Fed. Cir. 2009)). The Board has cited this case in more than 60 decisions and it is repeatedly referenced in the TBMP.

CONCLUSION

For the foregoing reasons, and the reasons set forth in Apple’s moving brief, Apple requests that the Petition be dismissed with prejudice in its entirety.

Respectfully submitted,

Dated: August 29, 2016

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Certificate of Service

I hereby certify that on August 29, 2016, a true and correct copy of the foregoing Reply Brief in Support of Registrant's Motion to Dismiss has been duly served by sending such copy by first class mail, postage prepaid, to counsel for Petitioner, Cynthia R. Adwere, Law Office of Cynthia R. Adwere, 2625 Middlefield Road #360, Palo Alto, CA 94306.

/Daniel P. Hope/
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