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No. NSD 1288 of 2025

Federal Court of Australia
District Registry: New South Wales
Division: General

On appeal from the Federal Court

CPC PATENT TECHNOLOGIES PTY LTD (ACN 615 736 028)

Appellant/Cross-Respondent

APPLE PTY LIMITED (ACN 002 510 054) and another

Respondents/Cross-Appellant

Apple's outline of submissions in reply on the cross-appeal

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A. Introduction

1. These are Apple's submissions in reply to "*CPC's outline of submissions in answer*" dated 9 February 2026 (CSA) in relation to the cross-appeal. Apple's submissions in chief on the cross-appeal dated 2 February 2026 are referred to herein as ASC.

B. Background: the Provisional and the Patents

2. CSA provides no substantive response to the characterisation of the Provisional and the Patents as set out in ASC section B. Rather, CSA [22] says that this section "*seeks to draw the Full Court into error by impermissibly construing the asserted claims based on the Provisional*". That is not correct. ASC section B characterises the disclosure of the Provisional and the Patents, and, as is required when considering priority date, compares them. CSA [22] tends to indicate that CPC wishes to avoid making that comparison.

C. GROUNDS 1 to 4(a): matters for remitter if CPC's constructions preferred

3. As submitted in ASC [2], [30], a number of grounds of invalidity were advanced by Apple only on the basis of CPC's relevant claim constructions. CSA section B, confusingly, characterises this as Apple "*not pressing*" that very case. CPC's mischaracterisation is exposed by the relevant part of the Reasons, as follows:

[468] During the course of closing oral argument, Apple submitted that much of its invalidity case was dependent upon the infringing construction of the asserted claims advanced by CPC, although some aspects of its invalidity case were advanced based on its non-infringing construction of certain integers of the asserted claims. After the conclusion of oral submissions, it clarified its position by stating that:

...

(c) if the court construes "accessibility attribute" such that it is not embodied by the Apple Devices, it does not press its lack of inventive step case at all;

(d) if the court construes "accessibility attribute" such that it is not embodied by the Apple Devices, it also does not press its lack of novelty case based on any of Scott, Mathiassen or the iPAQ Reference Guide;

(e) if the court construes "transmitter sub-system" and "receiver sub-system" such that they are not embodied by the Apple Devices, it does not press its lack of novelty case based on the iPAQ Reference Guide;

(f) if the Court construes the "series feature" such that it is not embodied in the Apple Devices, it does not press its lack of novelty case at all in respect of the 293 patent; and

(g) if the court construes "administrator signature" such that it is not embodied by the Apple Devices, it does not press its lack of novelty case based on Scott, Hamid, Wuidart or the iPAQ Reference Guide in respect of claims 3 or 6 of the 168 patent or claim 41 of the 293 patent.

[469] Furthermore, in its closing written submissions Apple indicated that it did not press its case based on lack of manner of manufacture if the court rejected CPC's construction of accessibility attribute, transmitter sub-system and receiver sub-system, as used in the asserted claims.

[470] *My findings in section 6 of these reasons are that the Apple Devices do not infringe the asserted claims because they do not contain the “accessibility attribute” feature, the “transmitter sub-system” and “receiver sub-system” features, the “series feature” or the “administrator signature” feature. The consequence is that, in light of these findings, much of the novelty and all of the lack of inventive step case fall away as well as the ground of invalidity based on lack of manner of manufacture.*

[471] *Nevertheless, in the sections that follow I have considered it appropriate, out of an abundance of caution, to have regard to the lack of novelty case insofar as it concerns the disclosures of Scott, Hamid, Mathiassen and Wuidart, in the event that my construction of the contested terms is found to be incorrect. I have not succumbed to the temptation to take that course with the iPAQ Reference Guide. Nor have I considered it to be appropriate to evaluate the question of lack of inventive step against a construction that I have rejected. The same applies to the question of whether the asserted claims lack a manner of manufacture. Since I have considered the disclosure of Mathiassen, for the reason explained above, it has also been necessary to consider the question of deferred priority date.*

4. Consistently with the passage above, the grounds of invalidity which the PJ recorded as pressed by Apple on CPC’s constructions, but which the PJ chose not to decide, were: *(i)* the inventive step ground referred to in Reasons [647]; *(ii)* the manner of manufacture and s 40 grounds identified in Reasons [663]-[665] and [670]-[671]; and *(iii)* lack of novelty based on iPAQ [471]. Those grounds are pressed in this appeal on the same basis as they were pressed before the PJ: see NOA Grounds 1 to 4(a).¹ CSA section B is therefore wrong to submit that Apple did not press NOA grounds 1 to 4(a) before the PJ. The opposite is true. What Apple did not press were those grounds of invalidity based on its *own* claim constructions.
5. CSA [7] also raises a straw person by suggesting that Apple is pressing its inventive step case on this appeal insofar as it relied on section 7(3) of the *Patents Act*. Lest that be unclear, Apple is not pressing that case. As ground 1 identifies, the subject of this appeal is that part of the inventive step case which Apple advanced, and which the PJ chose not to decide, at Reasons [647]. That is the section 7(2) case. See also Reasons [468(b)].
6. The PJ decided in favour of Apple’s claim constructions, so it was not necessary to decide the grounds of invalidity premised upon CPC’s rejected claim constructions. The PJ then had to consider, in the usual way, whether to decide those grounds anyway against the possibility that he was wrong about claim construction. That was a choice for the PJ, consistently with the authorities referred to at CSA [9]. That demonstrates that CSA [9]-[11] is wrong to submit that Apple made some “*election*” not to press its invalidity case based on CPC’s claim constructions, or that there was somehow a forensic benefit in it doing so: as Reasons [471] sets out, the PJ specifically identified the invalidity case premised on

¹ See Apple’s Outline of Closing Submissions on Invalidity [124]-[131], [147]-[164], [173]-[179], [182], [184], [186] (Appeal Book Part C (Pt C) Tab 79 AB-2361-2364, 2367-2371, 2373-2377).

CPC's claim constructions as pressed by Apple, and either decided it or expressly did not.

7. The question then is whether, if it becomes necessary, this Court should decide those grounds, or whether they should be remitted to the PJ. The evidence adduced, and submissions made, on those grounds before the PJ was considerable.² The orthodox approach where the lower court did not consider a question is to remit, particularly where it involves consideration of evidence in respect of which factual findings have not been made.³ That approach should be followed here. There is nothing in the authorities referred to at CSA [9] to the contrary; indeed, they support that approach.

D. GROUND 4(b) – Novelty: Series Feature

8. Mathiassen. As submitted in chief (ASC [34]-[35]), Mathiassen discloses the Series Feature on CPC's construction. The medicine cabinet and vehicle have "*the very same principles applied*" (see Mathiassen [145]), and enrolment in both is carried out by using the IC (1) depicted in Figure 2a (see Mathiassen [130], [150], [164]). Thus having described the enrolment process in relation to the medicine cabinet embodiment at [130], it did not need to repeat every aspect of that process when describing it again in relation to the vehicle embodiment at Mathiassen [164]. Contrary to CSA [16], that is not a matter of impermissibly combining embodiments but rather considering what in truth is disclosed in relation to the enrolment process for the vehicle embodiment.
9. Though CSA [16] concedes that Mathiassen [130] discloses the need for an acceptable quality of the minutiae fingerprint representations, "*sufficient*" minutiae tables, and rejecting the captures if they are of inferior quality, CPC submits that the fact that those disclosures are not repeated in [164] is "*deliberate and material*". But it ignores the evidence of the experts referred to at ASC fn 24 to the contrary, and provides no evidence in support of that submission; nor did the PJ reason in that manner.
10. CSA [16] further submits that Mathiassen does not disclose a "*single*" mathematical representation because what is produced is a "*master minutiae (plural) table*". But (even putting aside that it is difficult to ascertain from the claim language where the requirement of a "*single mathematical representation*" is to be found), as that submission concedes, it is a (singular) "*table*" which is produced, and it is that singular table against which a sample is compared when a user seeks access. The table, of course, contains multiple minutiae, which are recorded in the course of at least three presentations of the finger. The "*minutiae*" are

² See footnote 1 above.

³ See for example *Kimberly-Clark Australia Pty Ltd v Arico Trading International Pty Ltd* (2001) 207 CLR 1 at [35]; *Commissioner of Patents v Aristocrat Technologies Australia Pty Ltd* (2021) 286 FCR 572, [95]-[98], [143]-[144].

distinct points where fingerprint lines (ridges) start or stop, or locations of bifurcation of the ridges, and may be described by a vector comprising X and Y coordinates and the direction of that vector. Boztas accepted that these matters were disclosed by Mathiassen.⁴ Further, if Mathiassen does not disclose a “*single*” mathematical representation, as construed by CPC, then there cannot be any infringement in respect of FaceID.⁵

11. Hamid, Scott, Wuidart: CSA [17] apparently does not dispute that, based on the CGK, enrolment of a biometric signature always involved the taking of more than one sample, analysing them and producing a single individual template. But CPC says that, in the case where one of the samples is chosen to form the template, rather than combining information from all of them, that does not constitute “*mapping*” them into an instruction. If that is correct, then there cannot be any infringement in respect of FaceID. Further, if it was intended to draw a distinction between those CGK methods of enrolment and claim only one of them, one would expect the specification to draw attention to it and explain why it matters. But it will be recalled that there is no disclosure in the specification supporting CPC’s construction of the Series Feature in any respect, let alone that one.

E. GROUND 4(c) – Novelty: Hamid/secure access signal

12. CSA [19] does not dispute that, on CPC’s approach, the secure access signal must be “*secure’ in some way, whether by encryption, authentication or otherwise*”. Rather, CSA states that the word “*authorised*” in the term “*authorisation code*” as used in Hamid refers to the fact that a user is authorised to enter, not that it has been transmitted from an authenticated source. But that is a distinction without a relevant difference. The signal is appropriately described as secure, even on CPC’s construction, because biometric authentication is required to transmit it.
13. CSA [20] then suggests that Hamid discloses “*multiple separate signals to multiple separate receivers*” and for that reason does not embody the claims. But that is inconsistent with its case on infringement. On infringement, CPC looks at all of the signals which it says constitute secure access signals in the various scenarios it is interested in, and it asks which components are involved in receiving those signals. Even if they are different components in each scenario, CPC simply aggregates them and calls that “*the receiver subsystem*”.⁶

F. GROUND 5 – Fair basis: TSS and RSS

⁴ Boztas at T922.5-923.8; 927.20-928.21 (Pt C Tab 91 AB-3536-3537, 3541-3542); 943.25-944.32 (Pt C Tab 92 AB-3557-3558): see Mathiassen [50], [66]-[73]; [164] (Pt C Tab 31 AB-1139-1142, 1148).

⁵ Wells at T373.21-37 (Pt C Tab 87 AB-2987).

⁶ See eg CPC’s Outline of Closing Submissions on Infringement [155] (Pt C Tab 78 AB-2303-2304). CSA [20] also ignores embodiments in which the signal is transmitted to a central controller which unlocks the portals: see eg claim 15.

14. As submitted in ASC at [43], the specification discloses an invention which involves a TSS and an RSS which are separate items of hardware, and are separated by a wired or wireless medium. That is consistent with the purpose of the invention, which is to address the problem that the medium connecting the subsystems can be a weak point vulnerable to interception.⁷ Though CSA [24] disputes that the personal computer referred to at page 12 lines 18 to 20 is disclosed as necessarily being accessed from a remote fob, it does not dispute the computer is disclosed as being integrated with the receiver subsystem, which is separated from the transmitter subsystem by a wired or wireless medium.⁸
15. In this respect CSA [24] says that the proposition that “*because two subsystems are separated by a wired or wireless medium, they remain distinct pieces of hardware ... is fundamentally misconceived*”. In support of that contention CPC says “*a single piece of hardware can have electronic components within it that communicate with one another, such as a printed circuit board*”. But, putting aside whether the components of a printed circuit board could have the features of the TSS and RSS of the claims, if a printed circuit board has components in it which communicate with each other over a wired or wireless medium (and CSA [24] refers to no evidence about this), those components would appropriately be described as separate items of hardware.
16. Thus, there is no real and reasonably clear disclosure of an invention in which the TSS and RSS are embodied on a single item of hardware – that would be a system that travels well beyond that which is disclosed. It follows that if, contrary to Apple’s submission, the claims are construed such that the TSS and RSS are not separate and distinct items of hardware, they lack fair basis on the principles set out by the PJ at Reasons [653]-[655] and CSA [25].

16 February 2026

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⁷ 168 Patent 1.15-2.12; 2.23-24; 3.1-6 (Pt C Tab 28 AB-1005-1007).

⁸ As Dr Dunstone accepted, that could take the form of a peripheral such as a mouse: see Dunstone 2 as amended by Dunstone 3 [57], [58], [102] (Pt C Tab 44 AB-1444-1445, 1461); Dunstone T499.25-501.45 (Pt C Tab 88 AB-3113-3115); Boztas T502.5-21 (Pt C Tab 88 AB-3116).