NOTICE OF FILING AND HEARING

Filing and Hearing Details

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Place:	To Be Advised

Registrar

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Form 122
Rule 36.01(1)(b); 36.01(1)(c)

Notice of appeal

No. NSD of 2025

Federal Court of Australia
District Registry: New South Wales
General

On appeal from the Federal Court

CPC Patent Technologies Pty Ltd
Appellant

Apple Pty Limited and another as named in the schedule
First respondent

To the Respondents

The appellant appeals from the judgment as set out in this notice of appeal.

Time and date of hearing	Time of hearing on Date of hearing
Place:	Law Courts Building, Queens Square, Sydney NSW 2000

Date: 22 July 2025

Signed by an officer acting with the authority of
the District Registrar

Filed on behalf of	CPC Patent Technologies Pty Ltd, the Appellant
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The appellant appeals from declarations 1 and 2 and orders 4, 5 and 7 made on 18 June 2025 in Federal Court of Australia Proceeding No NSD 998 of 2021, consequent upon reasons for judgment published as *CPC Patent Technologies Pty Ltd v Apple Pty Limited* [2025] FCA 489 (the **Reasons**).

To the extent necessary, the appeal is brought by leave of the Court granted on 18 June 2025. A copy of the orders appealed from, including the order giving leave, is annexed to this notice of appeal (the **Orders**).

Grounds of appeal

References to paragraphs of the Reasons are indicative only and not exhaustive.

Construction

1 The primary judge erred in construing the phrase "controlled item" as used in claims 1, 2, 3, 5 and 6 of Australian Patent No 2004301168 (the **168 Patent**) and claims 1, 27, 29, 37, 39 and 41 of Australian Patent 2009201293 (the **293 Patent**) (collectively, the **asserted claims**).

Particulars

(a) The primary judge erred in finding that a "controlled item" must be a single discrete item and cannot comprise multiple sub-items which may require additional authentication to gain access (Reasons at [111]).

(b) The primary judge erred in finding that "controlled item", in the context of the specification, refers only to a single locking mechanism and not a facility or device to which access may be sought (Reasons at [106], [108]).

(c) The primary judge ought to have found that a "controlled item": (i) can be any physical or logical item to which a user can seek access; and (ii) can comprise multiple sub-items which may require additional authentication to gain access.

(d) The appellant reserves the right to provide further particulars.

2 The primary judge erred in construing the phrase "accessibility attribute" as used in the asserted claims.

Particulars

(a) The primary judge erred in finding that the confirmation of a biometric match cannot itself constitute an "accessibility attribute" under any circumstances (Reasons at [122], [126]).

(b) The primary judge erred finding that an "accessibility attribute" must itself contain the conditions of access of the user (Reasons at [136]-[137]).

(c) Having correctly found that the asserted claims do not restrict the particular form of the "accessibility attribute" or how it is interpreted or decoded (Reasons at [126], [144]), the primary judge ought to have found that: (i) an "accessibility attribute" is something output or produced which, in the operation of the system, determines whether and under which conditions access should be granted; and (ii) where the user seeking access identifies the condition of access sought, the confirmation of a biometric match may constitute an "accessibility attribute".

(d) The appellant reserves the right to provide further particulars.

3 The primary judge erred in construing the phrases "transmitter sub-system" and "receiver sub-system" as used in the asserted claims.

Particulars

(a) The primary judge erred in finding that the "transmitter sub-system" and the "receiver sub-system" must be "separate and distinct" and "separately identifiable" from each other, in the sense that they cannot include any common or overlapping components (Reasons at [161]-[164], [167]).

(b) The primary judge erred in finding that the "transmitter sub-system" and the "receiver sub-system" cannot be identified by the key or quintessential components responsible for achieving their functionalities, and must include any components that are ancillary or incidental to doing so (Reasons at [168]).

(c) Having correctly found that: (i) the asserted claims require that there be a functional relationship between the "transmitter sub-system" and the "receiver sub-system" (Reasons at [161]); (ii) the claims define parts of the system, method

and apparatus concerned by reference to the functions they perform (Reasons at [167]); and (iii) the claims contain no language that indicates there be a requisite distance between the transmitter sub-system and receiver sub-system (Reasons at [169]), the primary judge erred in finding that the "transmitter sub-system" and the "receiver sub-system" cannot be described in functional terms (Reasons at [162]).

(d) The primary judge ought to have found that the "transmitter sub-system" and the "receiver sub-system": (i) are defined by their functionalities; (ii) need not be physically separate and distinct, and may include common or overlapping components; and (iii) further or alternatively, may be identified by the key or quintessential components responsible for achieving their functionalities, and need not include components that are ancillary or incidental to doing so.

(e) The appellant reserves the right to provide further particulars.

4 The primary judge erred in construing the phrase "administrator signature" as used in claims 3 and 6 of the 168 Patent and claims 29 and 41 of the 293 Patent.

Particulars

(a) The primary judge erred in finding that an "administrator signature" is a mathematical representation of information obtained from a biometric signal that matches a stored biometric signal in the database signifying that the person whose signature is used has administrator privileges (Reasons at [192]).

(b) The primary judge erred in finding that, in order for there to be an "administrator signature", it is not sufficient that there be a person with administrator privileges whose signature is enrolled in the database (Reasons at [192]).

(c) Having correctly found that, as a matter of common general knowledge, an administrator is someone with access privileges needed to perform administrative functions such as enrolling new users (Reasons at [190]), the primary judge ought to have found that an "administrator signature" is a signature of a person who has such privileges whether or not the signature is recorded or tagged as such in the database.

(d) The appellant reserves the right to provide further particulars.

5 The primary judge erred in construing the "series feature" (as defined in Reasons at [195]) as used in claims 1, 27, 29, 37, 39 and 41 of the 293 Patent.

Particulars

(a) The primary judge erred in finding that the "series feature" requires that the series of entries be mapped into a pre-existing direction or command and that there be a means for enrolling signatures into the database according to that instruction (Reasons at [210]).

(b) The primary judge erred in finding that the "series feature" is not directed to obtaining a quality biometric signature and does not require there to be a sufficient number of entries and duration of each entry which are mapped into an instruction (Reasons at [211]).

(c) The primary judge ought to have found that the "series feature" is directed to obtaining a quality biometric signature and requires there to be a sufficient number of entries and duration of each entry to obtain a sufficient quality scan that can be mapped into an instruction.

(d) The appellant reserves the right to provide further particulars.

Infringement

6 By reason of the errors of construction referred to in one or more of grounds 1 to 5 above, the primary judge erred in finding that the Apple Devices (as defined in Reasons at [7]) do not incorporate all of the features of the asserted claims.

Particulars

(a) By reason of the errors of construction referred to in ground 1 above, the primary judge erred in finding that the "controlled item" in the Apple Devices is the home screen and not the device itself (Reasons at [375]).

(b) The primary judge ought to have found that the access sought and granted to the Apple Devices can take one of three forms as outlined in Reasons at [370], each of which is a form of conditional access to the device as a "controlled item" which involves particular functionality being made available (Reasons at [376]).

(c) Further or alternatively, having found that the home screen in the Apple Devices is a "controlled item" (Reasons at [375]), the primary judge ought to have found

that the Apple Devices include the other contested features of the asserted claims as particularised in sub-paragraphs (d) to (k) or under ground 7 below.

(d) By reason of the errors of construction referred to in ground 2 above, the primary judge erred in finding that the Apple Devices do not involve the output or provision of an "accessibility attribute" within the meaning the asserted claims (Reasons at [440], [444]).

(e) The primary judge ought to have found that, in the operation of the Apple Devices, the output or provision of an "accessibility attribute" occurs in one or more of the steps or combinations of steps identified in Reasons at [431]-[433].

(f) By reason of the errors of construction referred to in ground 3 above, the primary judge erred in finding that the Apple Devices do not include a "transmitter sub-system" and a "receiver sub-system" within the meaning of the asserted claims (Reasons at [388], [417], [425]).

(g) The primary judge ought to have found that: (i) the "transmitter sub-system" in the Apple Devices consists of, or alternatively includes, the components identified in Reasons at [383]; and (ii) the "receiver sub-system" in the Apple Devices consists of, or alternatively includes, the components identified in Reasons at [384].

(h) By reason of the errors of construction referred to in ground 4 above, the primary judge erred in finding that the Apple Devices do not provide for an "administrator signature" within the meaning of claims 3 and 6 of the 168 Patent and claims 29 and 41 of the 293 Patent (Reasons at [460]-[461]).

(i) The primary judge ought to have found that the signature of the first enrolled user of an Apple Device, or a user who is identified as an "administrator" in the case of a MacOS Apple Device, is an "administrator signature".

(j) By reason of the errors of construction referred to in ground 5 above, the primary judge erred finding that the Apple Devices do not include the "series feature" within the meaning of claims 1, 27, 29, 37, 39 and 41 of the 293 Patent (Reasons at [453]).

(k) The primary judge ought to have found that the "series feature" is present in the aspects of the touch ID and face ID enrolment processes of the Apple Devices identified in Reasons at [446]-[447].

(l) The appellant reserves the right to provide further particulars.

7 Further or alternatively to ground 6 above, the primary judge erred in characterising the features of the Apple Devices in determining the question of infringement.

Particulars

(a) The primary judge erred in failing to find that, in the operation of the Apple Devices, the components identified in Reasons at [383] are the key or quintessential components responsible for enrolling, matching and emitting a secure access signal, being the functionalities required of a "transmitter sub-system" (Reasons at [393], [417]).

(b) The primary judge erred in failing to find that, in the operation of the Apple Devices, the components identified in Reasons at [384] are the key or quintessential components responsible for receiving an accessibility attribute or secure access signal and providing access to the device dependent upon that information, being the functionalities required of a "receiver sub-system" (Reasons at [417]).

(c) The primary judge erred in finding that, in the operation of the Apple Devices, the steps or combinations of steps identified in Reasons at [441] and [443] do not establish whether and under which conditions access to the device is granted, so as to constitute an "accessibility attribute" (Reasons at [442]-[443]).

(d) The primary judge erred in rejecting the appellant's contention that the evolution in its position as to the characterisation of the Apple Devices was a function of the detail which emerged in cross-examination of the Apple engineers concerning the operation of the Apple Devices, and in finding that this involved construing the claims with an eye to the alleged infringement (Reasons at [409]-[410]).

(e) Particulars (b), (e), (g), (i) and (k) to paragraph 6 above are repeated.

(f) The appellant reserves the right to provide further particulars.

Deferred priority date

8 The primary judge erred in finding that the asserted claims are not entitled to a priority date earlier than 13 August 2004.

Particulars

(a) The primary judge erred in finding that Australian Provisional Patent Application No 2003904317 (the **Parent**), from which the asserted claims claim priority, does not provide a real and reasonably clear disclosure of an "accessibility attribute" within the meaning of the asserted claims (Reasons at [508], [510]).

(b) The primary judge erred in finding that the Parent does not provide a real and reasonably clear disclosure of an "administrator signature" within the meaning of claims 3 and 6 of the 168 Patent and claims 29 and 41 of the 293 Patent (Reasons at [519]).

(c) The primary judge erred in finding that the Parent does not provide a real and reasonably clear disclosure of the "series feature" within the meaning of claims 1, 27, 29, 37, 39 and 41 of the 293 Patent (Reasons at [521]).

(d) The appellant reserves the right to provide further particulars.

Novelty

9 The primary judge erred in finding that claims 1, 2 and 5 of the 168 Patent are not novel in the light of United States Patent No 6164403 (**Wuidart**).

Particulars

(a) The primary judge erred in finding that Wuidart discloses an "accessibility attribute" within the meaning of the asserted claims (Reasons at [644], [646]).

(b) The appellant reserves the right to provide further particulars.

10 The primary judge erred in finding that the features of an "accessibility attribute" and an "administrator signature" are disclosed in the prior art on the appellant's construction of those phrases.

Particulars

(a) The primary judge erred in finding that United States Patent No 6484260 (**Scott**) discloses an "accessibility attribute" on the appellant's construction of that phrase (Reasons at [554]-[555]).

(b) The primary judge erred in finding that Scott discloses an "administrator signature" on the appellant's construction of that phrase (Reasons at [557]-[558]).

(c) The primary judge erred in finding that United States Patent Application No 2002/0138767 A1 (**Hamid**) discloses an "accessibility attribute" on the appellant's construction of that phrase (Reasons at [582], [589]).

(d) The primary judge erred in finding that Hamid discloses an "administrator signature" on the appellant's construction of that phrase (Reasons at [587]).

(e) The primary judge erred in finding that United States Patent Application No 2004/0123113 A1 (**Mathiassen**) discloses an "accessibility attribute" on the appellant's construction of that phrase (Reasons at [611]-[613]).

(f) The primary judge erred in finding that Mathiassen discloses an "administrator signature" on the appellant's construction of that phrase (Reasons at [615]).

(g) The primary judge erred in finding that Wuidart discloses an "accessibility attribute" on the appellant's construction of that phrase (Reasons at [644], [646]).

(h) The appellant reserves the right to provide further particulars.

Orders sought

1 An order that the appeal be allowed.

2 An order setting aside declarations 1 and 2 and orders 4, 5 and 7 of the Orders.

3 An order that the respondents pay the appellant's costs of and incidental to the appeal and of the trial below.

4 An order that the matter be remitted to the primary judge for hearing of the appellant's claim for pecuniary relief.

5 Such further or other order as the Full Court sees fit.

Appellant address

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The Appellant address is Level 1, 18 Tedder Avenue, Main Beach, Queensland 4217.

Service on the Respondents

It is intended to serve this application on all Respondents.

Date: 22 July 2025

Signed by Michael Williams
Lawyer for the Appellant

Schedule

No. NSD of 2025

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

Second Respondent **Apple Inc.**