

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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VIPTELA, INC.,

Petitioner,

v.

FATPIPE NETWORKS PRIVATE LIMITED,

Patent Owner.

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Case IPR2017-00680

U.S. Patent No. 7,406,048

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**PATENT OWNER'S PRELIMINARY RESPONSE**

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| <b>2001</b>    | PTAB Decision Instituting <i>Inter Partes</i> Review in IPR 2016-00977 |
| <b>2002</b>    | Petition for <i>Inter Partes</i> Review in IPR 2016-00977              |
| <b>2003</b>    | Declaration of Dr. Kevin Negus filed in IPR 2016-00977                 |

## **I. Introduction**

Viptela, Inc. (“Petitioner”) filed a Petition for *Inter Partes* Review of U.S. Patent No. 7,406,048 (“the ’048 Patent”) on January 13, 2017 (Paper 1, “the Petition”). The Board mailed a Notice of Filing Date Accorded to Petition on February 2, 2017 (Paper 3). Pursuant to 37 C.F.R. § 42.107, Patent Owner FatPipe Networks Private Limited and exclusive licensee FatPipe, Inc. (for the purposes of consistency with Board convention, referred to as “Patent Owner”) timely submits this Preliminary Response.

Patent Owner respectfully requests that the Board exercise its discretion under 35 U.S.C. § 325(d) to deny the Petition because the Petition presents the same prior art and substantially the same arguments as those already being considered by the Board in IPR 2016-00977.

## **II. The Board should exercise its discretion under 35 U.S.C. § 325(d) to deny the Petition.**

Under 35 U.S.C. § 325(d) the Board has discretion to deny a petition if it merely presents prior art and arguments already presented to the Office. Specifically, 35 U.S.C. § 325(d) sets forth that “In determining whether to institute or order a proceeding under this

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