UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner

v.

REALTIME ADAPTIVE STREAMING LLC,
Patent Owner

Case IPR2019-01035
Patent 9,769,477

PATENT OWNER'S PRELIMINARY RESPONSE SUR-REPLY

PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	Excerpts of Petitioner Google's invalidity contentions in Case 2:18-cv-03629-GW-JC (C.D. Cal.) served on January 18, 2019.
2002	Petitioner Google's election of asserted prior art in Case 2:18-cv-03629-GW-JC (C.D. Cal.) served on February 8, 2019.
2003	Scheduling Order, Case 2:18-cv-03629-GW-JC, D.I. 67 (C.D. Cal. May 23, 2019)
2004	Google's final election of asserted prior art in Case 2:18-cv-03629-GW-JC (C.D. Cal.) served September 9, 2019.
2005	Excerpts of Google's invalidity expert report in Case 2:18-cv-03629-GW-JC (C.D. Cal.) served September 16, 2019.

Google's reply contains a fatal admission. It concedes that this "Petition ***is largely a copy*** of the petition in the Sony IPR" (IPR2018-01413). Paper 7 at 2, n. 2 (emphasis added). The Sony petition was filed on July 31, 2018. But this Petition was not filed until May 6, 2019—more than nine months later. Thus, by Google's own admission, it could have filed this Petition about nine months earlier.

This excessive, unjustified delay is just what the *General Plastic* factors were designed to prevent. As a result of Google's delay, the PTAB will decide the patentability of the same '477 patent claims in two prior IPRs at least seven months before this IPR. And a district court will conduct a separate trial—involving the same parties, patent claims, prior art, and invalidity arguments—seven months before. Google's nine-month delay ensures that instituting this IPR will waste the Board's resources and unfairly prejudice Realtime. Institution should be denied.

The *General Plastic* Factors Weigh Strongly Against Institution

Factor 2. Google agrees Factor 1 is not dispositive but wrongly argues that Factor 2 favors institution. *Compare* POPR (Paper 6) at 5–7, *with* Reply (Paper 7) at 1. To the extent Factor 2 is not neutral, it weighs against institution. The Netflix petitions were filed in June and September 2018. Brooks is a publicly available patent and Google knew of it by July 2018. Thus, Google "knew or should have known of" Brooks at the time of the Netflix petitions. *General Plastics* at 9.

Factor 3. Google's reply confirms that Factor 3 weighs against institution.

Realtime showed how Google studied the Netflix IPRs and tailored its Petition based on the POPRs and institution decisions. *See* POPR at 8–10. In reply, Google concedes it "had access to the POPRs and Institution Decisions." Reply at 2. Google's main argument is that it copied the Sony petition, not the Netflix petitions. *Id.* at 2, n.2. But a comparison between the Sony petition and Google's "largely copied" Petition proves Realtime's point. Google's Petition attempts to fill in gaps from the Sony petition based on information gained from the Netflix IPRs.

The Sony petition argues (in one paragraph) that Brooks teaches encoders "that result in different data compression rates." *See* IPR2018-01413, Paper 3 at 32–33. But Brooks only mentions compression ratios, not rates. And as Realtime explained in the Netflix IPRs, there is a significant distinction between compression ratios and compression rates. *See* POPR at 8–9. Google's Petition attempts to improve on Sony's petition by expanding the one paragraph into three pages. *See* Pet. (Paper 1) at 32–34. Google's Petition acknowledges that Brooks's teachings are about compression ratios and attempts to explain the connection between compression ratios and rates. *Id.* This is exactly what was discussed in the Netflix IPRs and what was missing from the Sony petition.

The differences with the Sony petition confirms that Google derived an unfair benefit from the Netflix IPRs. Google's assertion that it could not obtain *any* benefit because the IPRs were instituted (Reply at 2) is false. The benefit is the opportunity

to address potential defects in the Petition. Whether the Netflix IPRs were instituted under a preliminary record is irrelevant.

Factors 4 and 5. Based on Google's own admission, Factors 4 and 5 weigh heavily against institution. Google admits that this Petition "is largely a copy" of the Sony petition filed on July 31, 2018. Thus, Google not only knew of the art but *already had a full petition it could copy and adapt*. Yet it waited an additional nine months—until May 6, 2019—before filing this Petition. This is inexcusable.

Unable to justify its delay, Google resorts to twisting the facts and the law. Google refers to Realtime's alleged "staggering of its infringement complaints." Reply at 3. But Google was served on May 4, 2018, and all '477 IPRs were filed after that date. Google received the Sony petition about three months after being served. Yet it filed this Petition one year and two days after service. Realtime's election of claims in January 2019 is also irrelevant. Sony's petition challenged all claims, 1–29, of the '477 patent. Google's Petition challenges a subset of those claims. Since Google's Petition is "largely a copy" of the Sony petition, nothing prevented Google from challenging additional claims of the '477 patent before January 2019.

Google also attempts to distinguish Realtime's cited cases *for reasons that have nothing to do with Factors 4 and 5*. *See* Reply at 3–4 (discussing *Valve I* and *NetApp*). Factors 4 and 5 concern the length of time between when the petitioner learned of the prior art and the filing of the petition and whether petitioner provides

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