

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner

v.

PARUS HOLDINGS, INC.,

Patent Owner

Case No. IPR2020-00686

U.S. Patent No. 7,076,431

**PETITIONER APPLE INC.'S MOTION TO STRIKE PORTIONS OF
PATENT OWNER'S SUR-REPLY**

I. Parus’s New Evidence Is Not Authorized by the Board’s Rules

Pursuant to the Board’s authorization via email on May 10, 2021, Petitioner requests Exhibits 2026 and 2027 filed with Patent Owner’s Sur-Reply (Paper 21) and the related portions of the Sur-Reply be stricken. Without authorization, Patent Owner submitted new evidence in its Sur-Reply. Per the PTAB’s Trial Practice Guide, “[t]he sur-reply may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.” *PTAB’s Consolidated Trial Practice Guide (November 2019)* (Nov. 2019 TPG) at 73.

The Board consistently expunges new evidence submitted in a Sur-Reply and contrary to the Nov. 2019 TPG. Under similar circumstances, the Board previously expunged late-filed exhibits and struck the related portions of the Patent Owner’s Sur-Reply. *Mallinckrodt Pharmaceuticals Ireland Limited v. Biovie, Inc.*, IPR2018-00974, Paper 34 at 7–10 (striking portions of the Sur-Reply related to a late-filed exhibit); *Lenovo Holding Company, Inc. v. Dodots Licensing Solutions LLC*, IPR2019-01279, Paper 37 at 34–34 (striking a Supplemental Declaration filed with a Sur-Reply); *Apple Inv. v. Maxell, Ltd.*, IPR2020-00200, Paper 24 (Order, Conduct of Proceeding) at 2 (ordering expungement of exhibits accompanying Patent Owner’s Sur-Reply and redaction of portions of the Sur-Reply relying on such exhibits).

Here, Parus filed a supplemental declaration (Ex. 2027) and an Installation and User Guide for Dragon software (Ex. 2026). Regarding the supplemental declaration (Ex. 2027), Parus’s declarant, Mr. Occhiogrosso, provides new opinions regarding *Ladd* (Ex. 1004). Mr. Occhiogrosso generally opines *Ladd* teaches “speech recognition that directly compares audio inputs, not text, to a vocabulary or grammar in order to identify a selected speech pattern of the inputs.” (Ex. 2027, ¶ 2). This opinion could have previously been provided in Mr. Occhiogrosso’s declaration (Ex. 2025) submitted with the Patent Owner Response (Paper 15). Because Mr. Occhiogrosso’s opinion is newly submitted in the Sur-Reply, Apple is prejudiced because it was not provided an opportunity to depose Mr. Occhiogrosso on this opinion.

Regarding Ex. 2026, the exhibit is an Installation and User Guide for Dragon software. Relying on Ex. 2026, Parus asserts the Dragon software is “commonly understood to be a speaker dependent system....” (Paper 21, 9). There are several issues with presenting Ex. 2026. First, Parus introduces Ex. 2026 to attempt to differentiate *Ladd*’s teachings. Parus could have introduced Ex. 2026 with its Patent Owner Response. Second, Ex. 2026 is not authenticated nor is it established the exhibit is prior art or indicative of the functionality of the Dragon software prior to the critical date of the ’431 Patent. Third, there is no evidence other than the conclusory attorney assertion that Ex. 2026 stands for the proposition stated in the

Petitioner Sur-Reply at page 9 (and in fact, the cited text does not appear to reference a speaker dependent system). Introduction of Ex. 2026 is prejudicial to Apple because Apple was foreclosed from deposing Mr. Occhiogrosso regarding the exhibit and providing a substantive response to Parus's assertions, including with Apple's own expert support submitted with the Petitioner Reply.

Because both Exhibits 2026-2027 are late-filed, and because Apple would be prejudiced from reliance on such exhibits, Apple requests expungement of Exhibits 2026-2027.

II. Portions of Parus's Sur-Reply Should Be Struck

In addition to expungement of Exhibits 2026-2027, Apple requests those portions of the Sur-Reply relying on Exhibits 2026-2027 be struck. Submitted with this Paper is Exhibit 1042, which is the Patent Owner's Sur-Reply with the below-listed sections indicated by strikethrough. The selected portions are narrowly tailored to only the text of the Sur-Reply relying on Exhibits 2026-2027.

Petitioner requests the following improper portions of Patent Owner's Sur-Reply (Paper 21) relating to Exhibits 2026-2027 be stricken:

- Page 9: "Notably, the STT unit 256 is not described as being speaker independent and then uses a different 'preferable' software package called Dragon Naturally Speaking, which is commonly understood to be a speaker dependent system that requires extensive training. (Ex. 2026, 15-16)."

- Page 10: “Speech recognition does not require two steps, and this is a mischaracterization of Mr. Occhiogrosso’s statements. (Ex. 2027, ¶¶ 2-3).”
- Pages 10-11: “Unfortunately for Apple, *Ladd* is clear that its speech recognition device (the ASR unit 254) operates based on voice patterns, which is disclaimed by the ’431 Patent. (Ex. 2027, ¶¶ 2-3).”
- Page 12: “The speech recognition device of *Ladd*, to the contrary, discusses recognizing a voice pattern and performing an action. (Ex. 2027, ¶¶ 2-3).”
- Page 12: “; Ex. 2027, ¶¶ 2-3)” (citation after sentence beginning “The ASR unit 254”).
- Page 12: “; Ex. 2027, ¶¶ 2-3)” (citation after sentence beginning “*Ladd* describes a”).
- Page 12: “It describes comparing the ‘audio’ to the grammar. (Ex. 2027, ¶¶ 2-3). *Ladd* matches predefined voice patterns to the audio input in the speech recognition phase, which is proscribed by the ’431 Patent. It does not convert audio to text and somehow compare that text to a voice pattern in a later phase.”
- Page 12-13: “*Ladd* is unambiguous ... ; Ex. 2027, ¶¶ 2-3)” (introductory phrase of “*Ladd* is unambiguous” and citation at end of sentence beginning “*Ladd* is unambiguous”).

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