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

PATENT OWNER'S SUR-REPLY TO PETITIONER APPLE'S OPPOSITION TO MOTION TO EXCLUDE EVIDENCE PURSUANT TO 37 C.F.R. § 42.64

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I. INTRODUCTION

Parus's Motion to Exclude should be granted because Apple has raised new arguments and theories that should have been included in the Petition. Apple's supplemental declaration is improper because Apple should have made their claim construction argument in the Petition. Regardless, the supplemental declaration improperly goes beyond the claim construction issue to offer new theories and evidence about Ladd. Parus requests the Board grant its Motion to Exclude.

II. APPLE SHOULD HAVE MADE THEIR CLAIM CONSTRUCTION ARGUMENT IN THE PETITION

Apple should have made their claim construction argument in the Petition, but failed to do so. Parus's suggested claim construction is not new and stems from the four corners of the '431 and '084 patents. The '431 and '084 Patents clearly disavow speaker-independent speech recognition that use predefined voice patterns. *See, e.g.*, Ex. 1001, 4:42-43. In the Petition, Apple had every opportunity to argue that Ladd's speech recognition is not the very speaker-independent speech recognition disavowed by the '431 and '084 patents, but Apple failed to do so.

A. Parus's Suggested Claim Construction Is Not New And Is Based On The Intrinsic Record And Should Have Been Addressed In The Petition

There is nothing new about Parus's suggested claim construction. (Paper 30, 2). Apple should have known Parus's claim construction because it is based on the plain teachings of the '431 and '084 patents. *See, e.g.*, Paper 29, 8-9.

Apple should have been aware that the '431 and '084 patents both disavow speaker-independent speech recognition that used predefined voice patterns when they filed their Petition. *See, e.g.*, Ex. 1001, 4:42-43. At that stage of the proceeding, Apple had the opportunity to argue that Ladd's speaker-independent speech recognition was different than the speaker-independent speech recognition that was disavowed from the '431 and '084 patents, but Apple chose not to do so.

Instead, Apple spent a paragraph and a figure to argue that "*Ladd* teaches **a** speaker-independent speech recognition device," and never argues how Ladd's speaker-independent speech recognition device meets **the** claimed speaker-independent speech recognition device from the '431 and '084 patents. (Paper 1, 22-23). Similarly, in his declaration, Dr. Terveen spends a paragraph on speaker-independent speech recognition device, noting that "*Ladd* teaches a very similar network architecture as the '431 Patent," but never argues how the speaker-independent speech recognition device meets the claimed speaker-independent speech recognition device from the '431 and '084 patents. (Ex. 1003, ¶ 90).

Both Petitioner and Dr. Terveen had ample opportunities to demonstrate how the speech recognition in the '431 relates to the speech recognition disclosed in Ladd, but chose not to. The appropriate time to include this information is in the Petition, not a Reply to the POR. *See Intelligent Bio-Systems, Inc. v. Illumina Cambridge, Ltd.*, 821 F.3d 1359, 1362 (Fed. Cir. 2016) ("[i]t is of the utmost

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