

IPR2020-01265
U.S. Patent No. 7,110,444
PO's Opposition to Petitioner's Motion to Exclude Evidence

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION
Petitioner

v.

PARKERVISION, INC.
Patent Owner

U.S. Patent No. 7,110,444

Issue Date: September 19, 2006

Title: WIRELESS LOCAL AREA NETWORK (WLAN) USING UNIVERSAL
FREQUENCY TRANSLATION TECHNOLOGY INCLUDING MULTI-PHASE
EMBODIMENTS AND CIRCUIT IMPLEMENTATIONS

Inter Partes Review No. IPR2020-01265

**PATENT OWNER'S OPPOSITION TO
PETITIONER'S MOTION TO EXCLUDE EVIDENCE**

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Patent Owner ParkerVision, Inc. ("ParkerVision") hereby opposes the Motion to Exclude Evidence ("Motion," Paper 34) filed by Petitioner Intel Corporation ("Intel") on October 7, 2021. ParkerVision respectfully submits that Intel's Motion should be denied in its entirety.

I. Introduction.

Intel's motion is a blatant attempt to exclude evidence that is relevant and damaging to its case. Intel asks the Board to exclude Exhibit 2022, a demonstrative exhibit used during the deposition of Intel's expert, Dr. Vivek Subramanian, to guide the technical discussion. Exhibit 2022 is an integral part of Dr. Subramanian's deposition transcript which is expressly permitted by the Trial Practice Guide. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide, 74 (Nov. 2019) ("PTAB Practice Guide"). Exhibit 2022, together with the testimony discussing the exhibit, serve to rebut Dr. Subramanian's new theory regarding the transfer/storage of energy by capacitors that he first presented in his Reply Declaration (*see* Exhibit 1030, ¶¶6-14).

Moreover, Petitioner has the prejudice at issue backwards; it is Patent Owner that will be prejudiced if the motion is granted. Dr. Subramanian took a position in his Reply Declaration for the first time in this proceeding, analyzing the amount of energy stored by Tayloe's capacitors based solely on the amount of work needed to charge the capacitor to a particular voltage level. *See* Exhibit-1030, ¶¶7, 12. By

introducing Dr. Subramanian's new testimony in his reply, Intel ensured that ParkerVision could not respond with expert evidence explaining why Dr. Subramanian's new approach was wrong. Cross-examination exposed these discrepancies. Excluding demonstratives created for that cross-examination would prejudice Patent Owner's ability to fairly present the testimony.

At bottom, Exhibit 2022 is timely, compliant with PTAB procedure, and poses no undue prejudice against Intel. Accordingly, ParkerVision respectfully submits that Intel's Motion should be denied in its entirety.

II. Intel rewrites procedural history in attempt to exclude Exhibit 2022.

Exhibit 2022 is permissible evidence under the Trial Practice Guide, being simply part of proper cross-examination of a reply witness concerning an argument raised in the reply and reply declaration. In an eleventh-hour attempt to bolster its case, Intel invents a narrative that contradicts the history of this proceeding. In particular, Intel asserts that "PO changed tack in its Sur-Reply" and "argues for the first time that Tayloe's capacitors do not store 'non-negligible amounts of energy.'" Mot., 4. Intel therefore concludes that Exhibit 2022 should be excluded because it is new evidence that "would take the trial in a new direction with a new approach." Mot., 9 (citations omitted). But Intel's narrative is false and simply ignores the facts.

Despite the parties disputing the construction of “storage element” in the related District Court litigation, Intel failed to propose a construction for the term in its Petition. Instead, Intel opted to give itself flexibility for its invalidity case in an attempt to cover the voltage sampling system of Tayloe.

ParkerVision expressly noted this discrepancy in its Patent Owner's Response (*see* Paper 18 (“POR”), 45-46), and proposed construing “storage element” consistent with the District Court's construction: “an element of an energy transfer system that stores non-negligible amounts of energy from an input electromagnetic signal.” POR, 2, 4, 45. ParkerVision then *specifically* argued that none of Intel's cited prior art references disclose, teach, or suggest using a “storage element.” *See, e.g.*, POR, 3. In fact, ParkerVision's Response is replete with statements on this very issue.

- POR, 54 (“Because Tayloe is a voltage sampling system, Tayloe does not disclose the use of “storage elements” (a term reserved for element of an energy transfer (energy sampling) system) as set forth in claim 3 of the '444 patent”);
- POR, 59 n. 14 (“Tayloe's use of 25% of the input signal (one quarter of the wave) does not indicate or imply energy transfer.”)
- POR, 63 (“A POSITA knows that for the voltage on the capacitor 74 to equal the average voltage represented by point 110, there is only a small amount of current and, thus, only a small amount of energy flowing through RFILTER 32.”)

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