UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ELASTIC N.V.,
Petitioner,

v.

GUADA TECHNOLOGIES LLC,
Patent Owner.
_____

Case IPR2021-00875
Patent No. 7,231,379
_____

PETITIONER'S REPLY TO PATENT OWNER RESPONSE

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Patent Owner responds to institution by restyling and refiling its preliminary response. *Compare* Paper 6 ("POPR"), *with* Paper 9 ("Response"). Thus, the Board has already substantively read and rejected what Patent Owner has to say. Patent Owner did not cross-examine Elastic's expert witness, nor does it proffer supporting expert testimony of its own despite all grounds turning on what would have been obvious to a person of ordinary skill in the art. The record remains effectively the same as when the Board preliminarily found a reasonable likelihood of unpatentability. Patent Owner presents no new basis—whether argument or evidence—for the Board to not cancel the claims.

Responding to Grounds 1-2, Patent Owner stands only on a prior IPR's institution decision. But Elastic had no hand in the different petition that led to that analysis. More importantly, Patent Owner's reliance on that institution decision is premised on the false assertion that Elastic's petition presents identical grounds as the earlier IPR. It does not. And, as the Board noted when instituting here, Elastic addressed the substantive issue raised in the previous institution decision with clarifying explanation. In any event, Patent Owner has not identified any substantive issue regarding the analysis actually presented in Elastic's petition—no missing claim limitation, no challenge to the explanation of obviousness—and has now waived the opportunity to do so.

For Grounds 3-4, Patent Owner relies on an illogical attempt to add a

requirement to claim 1 that would exclude intermediate verification steps from its node jumping method. That implied claim construction is wrong and lacks support in the recited claim text, specification, and prosecution. Absent reading this unstated requirement into the claims, Elastic prevails under the claim constructions proposed in the petition, none of which are disputed by Patent Owner. But, in any case, the Fratkina reference describes embodiments lacking intermediate verification steps. And even if the prior art did not so describe, it still suggested omitting them. It certainly did not, as Patent Owner maintains, "teach away."

I.   GROUNDS 1-2 (WESEMANN AND RAJARAMAN): PATENT OWNER PRESENTS NO SUBSTANTIVE REBUTTAL

The petition demonstrates that claims 1, 2, and 7 are obvious in view of Wesemann (Ground 1) and claims 3-6 are obvious in view of the combination of Wesemann and Rajaraman (Ground 2). Patent Owner's response runs just half a page and is limited to the single argument that these grounds should be rejected because the Board in a different proceeding found grounds based on these references lacking when deciding (and granting) institution. Response, 7. Patent Owner contends Grounds 1 and 2 are copied from that proceeding and "advance[] no new argument." *Id*. Yet the Board already recognized at institution this is not accurate, and in any event the outcome in this case is not compelled by the preliminary determinations of the prior institution decision. Having waived any substantive response to the merits of Grounds 1 and 2, Patent Owner's

misrepresentation of the content of the grounds should be rejected and the challenged claims should be found unpatentable.

A. Patent Owner misrepresents the grounds, which are not identical to the *Bloomreach* petition

Patent Owner argues that the Board should adopt previous preliminary and non-final views as expressed in a decision granting institution. Response 7 (citing IPR2019-01304, "*Bloomreach*"). According to the *Bloomreach* institution decision, the petitioners there had not shown a reasonable likelihood of prevailing against the '379 patent on their Wesemann grounds. Response, 7 (citing IPR2019-01304). This argument is premised on Patent Owner's assertion that Elastic is "in fact advancing ***the same exact failed argument down to the very letter***" as what was argued in the petition that won the prior institution. *Id.*; *see also id.*, 4 (asserting Elastic is "literally copying the [prior] Petitioner's argument word for word").[1] Patent Owner misrepresents the petition.

Contrary to Patent Owner's characterization, Elastic's grounds are not merely copied from the *Bloomreach* petition. The petition here, among other things, clarifies Wesemann's disclosure of the claimed "jumping" limitation in a

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[1] All emphasis added unless otherwise noted.

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