UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TCL Industries Holdings Co., Ltd., Hisense Co., Ltd., and LG Electronics Inc.,

Petitioners

v.

ParkerVision, Inc.

Patent Owner

Case No. IPR2021-00990
U.S. Patent No. 7,110,444

PATENT OWNER'S SUR-REPLY

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I. INTRODUCTION

Petitioners have no evidence demonstrating that the cited references actually include capacitors that store "non-negligible" amounts of energy.[1] Instead, Petitioners engage in a handwaving exercise to distract from their fatal lack of evidence. Simply put, Petitioners do not meet their burden of proof.

The Petition has no discussion (implied or otherwise) as to whether capacitors in the cited references store "non-negligible" amounts of energy. On the other hand, ParkerVision's Response provides an expert declaration explaining why the capacitors in the cited references hold only *negligible* amounts of energy. Tellingly, in their Reply, instead of providing expert rebuttal, Petitioners chose to rely on out-of-context testimony by one inventor of the '444 patent and *attorney* interpretation of the cited references in view of that testimony. *This is not evidence*. Effectively, Petitioners are attempting to shift the burden to ParkerVision to prove that capacitors in the cited prior art do not store non-negligible amounts of energy.

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[1] For Tayloe, Petitioners rely on the Board's decision in IPR2020-01265, which only considered Intel's conclusory and flawed position regarding "non-negligible" amounts of energy. But Petitioners have a burden on the record here in *this* proceeding and they cannot meet it by looking elsewhere to fill their evidentiary lapses.

This is improper. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (holding that the burden of proof never shifts to the patent owner.).

In particular, without any actual evidence to rely upon, Petitioners focus on an inventor's prior statements, take these statements out-of-context, and try to apply them to the cited references.

At bottom, Petitioners seek a results-oriented approach – for the Board to simply adopt its prior decision regarding the '444 patent from IPR2020-01265. But there is a *different* record before the Board here – issues that the Board did not consider or resolve in IPR2020-01265.

First, on June 21, 2022, the U.S. District Court for Western District of Texas ("Texas Court") issued its Claim Construction Order in *ParkerVision Inc. v., LG Electronics, Inc. See* Ex.-2040.[2] Unlike the record before the Board in IPR2020-01265, the Texas Court has now provided a detailed analysis/explanation for its construction of "storage element." *See id*. In doing so, the Texas Court specifically addresses the Board's construction of "storage element" and explains why the language "energy transfer system" should be included in the construction.

[2] On June 27, 2022, the Board authorized the filing of Exhibit 2040.

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