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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

BILLJCO LLC,
Patent Owner

IPR2022-00131

PETITIONER'S RESPONSE TO MOTION TO STRIKE

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Exhibits

Exhibit	Description
1001	U.S. Patent No. 8,639,267
1002	Declaration of Dr. Thomas La Porta
1003	Prosecution History of U.S. Patent No. 8,639,267
1004	U.S. Patent Publication No. 2005/0096044 to Haberman et al.
1005	U.S. Patent Publication No. 2002/0159401 to Boger
1006	U.S. Patent Publication No. 2002/0132614 to Vanluijt et al.
1007	BillJCo, LLC v. Apple Inc., Case No. 6:21-cv-00528-ADA, Dkt. 27, Agreed Scheduling Order.
1008	Thom Tillis letter to Andrew Hirschfeld dated November 2, 2021.
1009	"How reliable are trial dates relied on by the PTAB in the Fintiv analysis?", Andrew Dufresne et al., 1600ptab.com (October 29, 2021).
1010	Fintiv, Inc. v. Apple Inc., 6:21-CV-00926-ADA, Dkt. 41 2, Order.
1011	Erik Fuehrer letter to Brian R. Michalek dated November 23, 2021.
1012	Supplemental Declaration of Dr. Thomas La Porta

I. INTRODUCTION

For the reasons outlined below, the Petitioner respectfully requests that the Board deny Patent Owner's (hereinafter "PO") Motion to Strike (hereinafter "Motion").

II. ALLEGATIONS OF HABERMAN'S PREFERENCES AND VANLUIJT'S PREFERENCES BEING EQUIVALENT TO THE PRIVILEGE-BASED CLAIM LIMITATIONS

In the Motion, PO alleges that Petitioner's response should be stricken because Petitioner argued that Haberman's preferences and Vanluijt's preferences are "equivalent" to the claimed privileges and that this equivalence argument is a shift in position. *See* Motion, pp. 5-11; 12-14. This is incorrect.

PO's position greatly exaggerates and misunderstands Petitioner's position. Petitioner's use of the word "equivalence" is not an attempt to shift theories by making an equivalence argument as suggested by the PO. Instead, Petitioner has always maintained that, despite Haberman and Vanluijt not reciting the word "privilege" or "privileges," a POSITA would interpret Haberman's preferences and Vanluijt's preferences as the claimed privileges.

Nevertheless, PO's arguments are without merit. In the Motion, PO alleges that Petitioner has failed to show equivalence based on the standard established in MPEP 2183. PO states that "[a]n argument regarding whether a prior art element is equivalent of a claimed element is ***typically for*** a means-plus-function element."

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