

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SAMSUNG ELECTRONICS CO., LTD.,  
SAMSUNG ELECTRONICS AMERICA, INC., and APPLE INC.

Petitioners

v.

JAWBONE INNOVATIONS, LLC,

Patent Owner

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Case IPR2022-01321

U.S. Patent No. 11,122,357

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**PETITIONER'S PRELIMINARY REPLY**

**PETITIONERS' UPDATED EXHIBIT LIST**

<b>Exhibit</b>	<b>Description</b>
Ex. 1001	U.S. Patent No. 11,122,357 to Burnett (“the ’357 patent”)
Ex. 1002	File History of U.S. Patent No. 11,122,357
Ex. 1003	Declaration of Dr. Jeffrey S. Vipperman, Ph.D.
Ex. 1004	Curriculum Vitae of Jeffrey S. Vipperman, Ph.D.
Ex. 1005	U.S. Patent Application Publication No. 2004/0185804 to Kanamori et al. (“Kanamori”)
Ex. 1006	Iain A. McCowan et al., <i>Near-Field Adaptive Beamformer for Robust Speech Recognition</i> , Digital Signal Processing, Vol. 12, Issue 1 (2002), 87-106 (“McCowan”)
Ex. 1007	Declaration of Shauna L. Wiest Regarding McCowan
Ex. 1008	U.S. Patent Application Publication No. 2007/0244698 to Dugger et al. (“Dugger”)
Ex. 1009	U.S. Patent No. 8,942,387 to Elko (“Elko”)
Ex. 1010	U.S. Patent No. 7,171,008 to Elko (“Elko ’008”)
Ex. 1011	U.S. Patent Application Publication No. 2003/0031328 to Elko et al. (“Elko ’328”)
Ex. 1012	U.S. Patent Application Publication No. 2008/0152167 to Taenzer (“Taenzer”)
Ex. 1013	Certified Translation of Japanese Unexamined Patent Application Publication No. H11-18186 and Translation (“Ikeda”)
Ex. 1014	Scheduling Order, <i>Jawbone Innovations, LLC v. Google LLC</i> , No. 6:21-cv-00985-ADA, Dkt. 27 (W.D. Tex. Jan. 7, 2022)

Exhibit	Description
Ex. 1015	U.S. Patent Application Publication No. 2006/0120537 to Burnett et al. (“Burnett”)
Ex. 1016	Docket Control Order, <i>Jawbone Innovations, LLC v. Amazon.com, Inc. et al.</i> , No. 2:21-cv-00435, Dkt. 33 (E.D. Tex. Apr. 6, 2022)
Ex. 1017	Lawrence E. Kinsler et al., <i>Fundamentals of Acoustics</i> , John Wiley & Sons, Inc. (4th ed. 2000)
Ex. 1018	M. P. Norton et al., <i>Fundamentals of Noise and Vibration Analysis for Engineers</i> , Cambridge Univ. Press (2d ed. 2003)
Ex. 1019	Complaint in <i>Jawbone Innovations, LLC v. Samsung Elecs. Co., Ltd.</i> , 2:21-cv-00186 (E.D. Tex. May 27, 2021)
Ex. 1020	First Amended Complaint in <i>Jawbone Innovations, LLC v. Samsung Elecs. Co., Ltd.</i> , 2:21-cv-00186 (E.D. Tex. October 26, 2021)
Ex. 1021	Second Amended Docket Control Order in <i>Jawbone Innovations, LLC v. Samsung Elecs. Co., Ltd.</i> , 2:21-cv-00186 (E.D. Tex.)
Ex. 1022	Stipulation to be filed in <i>Jawbone Innovations, LLC v. Samsung Elecs. Co., Ltd.</i> , 2:21-cv-00186 (E.D. Tex.)
Ex. 1023	Plaintiff’s Election of Asserted Claims in <i>Jawbone Innovations, LLC v. Samsung Elecs. Co., Ltd.</i> , 2:21-cv-00186 (E.D. Tex.)
Ex. 1024	Complaint in <i>Jawbone Innovations, LLC v. Apple Inc.</i> , Case No. 6:21-cv-00984 (W.D. Tex. September 23, 2021)
Ex. 1025	Scheduling Order in <i>Jawbone Innovations, LLC v. Apple Inc.</i> , Case No. 6:21-cv-00984 (W.D. Tex. January 7, 2022) (summons issued as to Apple Inc. 9/23/2021)
Ex. 1026	Stipulation to be filed in <i>Jawbone Innovations, LLC v. Apple Inc.</i> , Case No. 6:21-cv-00984 (W.D. Tex.)

<b>Exhibit</b>	<b>Description</b>
Ex. 1027	Claim Construction Order, <i>Jawbone Innovations, LLC v. Google LLC</i> , No. 6:21-cv-00985-ADA, Dkt. 88 at 4 (W.D. Tex. Oct. 14, 2022)
Ex. 1028	Motion to Transfer Venue, <i>Jawbone Innovations, LLC v. Apple Inc.</i> , Case No. 6:21-cv-00984 (W.D. Tex. May 2, 2022)
Ex. 1029	Stay Order, <i>Jawbone Innovations, LLC v. Apple Inc.</i> , Case No. 6:21-cv-00984 (W.D. Tex. Nov. 8, 2022)
Ex. 1030	Stay Order, <i>Jawbone Innovations, LLC v. Samsung Elecs. Co., Ltd.</i> , 2:21-cv-00186 (E.D. Tex. Nov. 29, 2022)

## I. INTRODUCTION

As authorized by the Board, Petitioners address below the proper application of the *Fintiv* factors under the USPTO’s Interim Procedure for Discretionary Denials (“Guidance”), and demonstrate that denial would be inappropriate.

## II. DISCRETION UNDER 35 U.S.C. § 314(A)

### *Compelling Merits Alone Show Discretionary Denial Is Not Appropriate.*

The Board will not deny institution based on *Fintiv* “where a petition presents compelling evidence of unpatentability.” Memo. from Director Vidal, *Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation* at 2 (U.S.P.T.O. June 21, 2022) (“Int. Procedure”). Here, Petitioner has shown such compelling evidence. For example, Petitioner has demonstrated that the combination of Kanamori (Ex. 1005), McCowan (Ex. 1006), and Elko (Ex. 1009) renders all challenged claims obvious. Paper 1 (“Pet.”) 7-76.

Patent Owner’s contrary arguments lack merit. Paper 12 (“POPR”) 7-13. Patent Owner argues that Dr. Vipperman did not explain how he performed his linear-response simulations. POPR 7-8. To the contrary, the section of Dr. Vipperman’s declaration titled “Simulations of Virtual Microphone Responses” explained in detail the equations used for each simulation and the values of the variables in each equation based on Kanamori, McCowan, and the knowledge of a POSITA. Ex. 1003, ¶¶ 50-60. Patent Owner failed to identify any details missing

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