UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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META PLATFORMS, INC.,
Petitioner,

v.

JAWBONE INNOVATIONS, LLC,
Patent Owner.

IPR2023-01130
U.S. Patent No. 11,122,357

PETITIONERS' REQUEST FOR REHEARING
UNDER 37 C.F.R. § 42.71(d)

Meta Platforms, Inc. v. Jawbone Innovations, LLC
IPR2023-01130 – U.S. Patent 11,122,357

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Petitioner Meta Platforms, Inc. ("Meta") respectfully requests rehearing pursuant to 37 C.F.R. § 42.71(d) for claims 1-20 of U.S. Patent No. 11,122,357 (Ex. 1001, "the '357 patent")[1]. The Board previously instituted on the same grounds for petitioner Amazon.com, Inc. ("Amazon") in IPR2023-00251 ("Amazon IPR"). Upon institution in IPR2023-00251, Meta filed this copycat petition ("Pet.") and moved for joinder, but the Amazon IPR terminated before Patent Owner ("PO") filed its Preliminary Response (Paper 9, hereinafter "POPR") here and the motion for joinder was withdrawn. In its Decision on Institution (Paper 10, hereinafter "Decision"), the Board reversed itself and denied institution. In doing so, the Board misapprehended the scope of the claims, narrowing the term *noise response* in a way that directly conflicts with the '357 patent and the Board's prior institution decision, and misapprehended Brandstein's (Ex. 1003) teachings. Meta respectfully submits that the clear legal errors and erroneous factual findings in the Decision require rehearing. Upon rehearing, the Board should institute trial.

I.   INTRODUCTION

The Board's Decision denying institution is based on an overly narrow interpretation of the term *noise response* and misapprehension of key prior art

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[1] Unless otherwise noted, citations to Papers and Exhibits are to those filed in this IPR proceeding (IPR2023-1130).

disclosures. Specifically, the Decision improperly narrows the claims to require *noise responses* that are *substantially similar* in nearly all directions and for all frequencies, despite the fact that the '357 patent describes examples placing noise sources at specific directions, and the plain and ordinary understanding that a response to noise is in the direction of that noise. Moreover, the Decision misreads how the prior art operates to cancel noise, including: (1) misunderstanding Brandstein to sum virtual microphone signals, when it actually subtracts them, and (2) misunderstanding Brandstein's first virtual microphone to eliminate noise, when it actually must pass noise substantially similar to the second virtual microphone for noise cancellation to occur.

II. LEGAL STANDARD

"A party dissatisfied with a decision may file" a request for rehearing, "identify[ing] all matters the party believes the Board misapprehended or overlooked." 37 C.F.R. § 42.71(d). The Board reviews its decision for abuse of discretion. 37 C.F.R. § 42.71(c). "The Board abuses its discretion if the decision: (1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact findings; or (4) involves a record that contains no evidence on which the Board could rationally base its decision." *Ultratec, Inc. v. CaptionCall, LLC*, 872 F.3d 1267, 1272 (Fed. Cir. 2017).

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