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Paper No. __

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MICROSOFT CORPORATION,
HP INC., DELL INC., DELL TECHNOLOGIES INC.,
ASUSTEK COMPUTER INC., ASUS GLOBAL PTE. LTD.,
Petitioners,

v.

LITL LLC,
Patent Owner.

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Case No. IPR2024-00457
Patent No. 9,880,715

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PATENT OWNER'S PRELIMINARY SUR-REPLY

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TABLE OF AUTHORITIES[1]

Cases

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[1] All emphasis is added unless otherwise indicated.

I. INTRODUCTION

Petitioners ask the Board to devote its limited resources to conducting a trial that would involve the Office's ***fourth*** evaluation of the patentability of the '715 Patent claims following (1) original prosecution, (2) Lenovo's IPR2021-00786, and (3) Reexamination No. 90/014,958 ("'715 EPR"). Petitioners do not dispute that all three prior considerations are relevant under 35 USC § 325(d). Paper 11 ("POPR"), 17. Petitioners also do not dispute that ***Petitioners*** bear the burden to establish either that their art and arguments were not substantially the same as those the Office previously considered or that the Office materially erred. *Id.*; *Ecofasten Solar v. Unirac*, IPR2021-01379, Paper 11, 38-42 (PTAB Feb. 8, 2022) ("*Ecofasten*"). The Petition's § 325(d) argument ignored the '715 EPR entirely.

Petitioners' Preliminary Reply (Paper 15, "Reply") belatedly addresses the § 325(d) implications of the '715 EPR. But the Reply fails to refute that the Petition's grounds and a ground considered during the '715 EPR are both based on (1) a reference (Lane or Pröll) that teaches a configurable computer but nothing about a plurality of views, (2) a reference (Pogue, Martinez or Preppernau) that teaches only ***user***-selectable views, and (3) an argument that the combination of these references somehow renders obvious claims that require selecting a view in response to a detected computer configuration. POPR, 30-31. The Office already rejected this hindsight assertion. POPR, 19-20. Petitioners ask the Board to

conduct a trial in the hopes that the Board will reach a different conclusion. But Petitioners fail to carry their burden to avoid discretionary denial under § 325(d).

II. *ADVANCED BIONICS* STEP 1 IS MET

"Even though Patent Owner did not have the burden of proof on this issue" (*Ecofasten*, Paper 11, 39), LiTL provided comprehensive argument, supported by evidence, establishing that Petitioners' art and arguments are substantially the same as art and arguments considered by the Office during the '715 EPR before confirming the claims. PPOR, 17-31. Petitioners bear the burden to establish that their art and arguments are ***materially*** different from what the Office considered during the '715 EPR. *Autel Intelligent Tech. v. Orange Elec.*, IPR2021-01545, Paper 8, 23 (PTAB Apr. 8, 2022) (denying institution; "Petitioner does not show any ***material*** difference between Nihei and the references cited in the Third Reexamination"); *Ecofasten*, Paper 11, 38-42. Because the Reply fails to identify any ***material*** differences, *Advanced Bionics* Step 1 is met.

A. No Material Difference Between Pröll and Lane

Petitioners do not dispute that Pröll and Lane both disclose laptops with a plurality of physical configurations and a sensor to keep displayed content right-way-up. PPOR, 20-22. The Reply alleges that LiTL ignored "key" and "important differences" between Pröll and Lane but identifies only a single difference and fails to explain why that difference is material under § 325(d). Reply, 5-6. It is not.

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