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Subject: Google v. Proxense (IPR2024-00782, -00783, -00784)
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Your Honors,

Pursuant to Rule 42.108(c), Petitioner Google requests authorization to file 5-page pre-institution replies in each of IPR2024-00782, -00783, and -00784 to address Proxense's inconsistent and unforeseeable claim construction positions, particularly as they relate to alleged means-plus-function constructions for various terms.

Proxense's claim construction positions are inconsistent because Proxense merely speculates whether "35 U.S.C. § 112, paragraph 6, *may be considered*" without affirmatively arguing that the claims are means-plus-function claims. These inconsistent positions also could not have been anticipated by the Petitioner because (1) Patent Owner did not raise these constructions before the district court in the pending litigation (Ex. 1016) and (2) Petitioner's petitions were filed before the Patent Owner Preliminary Responses were filed in instituted IPRs Nos. 2024-00405, 2024-00407, and 2024-00573. Google will not oppose a sur-reply of equal length.

Patent Owner opposes the request because "the constructions advanced were previously ordered by the District Court and explained in Court's Memo in Support of Claim Construction Order issued in *Proxense, LLC v. Samsung Electronics, Co., Ltd. et al.*, No. 6.21-CV-00210 (W.D. Tex. March 5, 2021) (Exhibits 2001 and 2002)," and "the same constructions were advanced in the Patent Owner Preliminary Responses filed in IPRs Nos. 2024-00405, 2024-00407, and 2024-00573, which asserted substantially the same art." According to Patent Owner, "Google had full opportunity to challenge the District's Court constructions as expressed in its previous Order and Memo, and did so unsuccessfully for select terms." "Given the foregoing, it is incorrect to characterize the constructions advanced in the Preliminary Responses as 'inconsistent and unforeseeable'." Furthermore, it would create inconsistency between the proceedings for Google to request the Board to disregard the District Court's Orders and Memo."

The parties are available for a conference call this week if needed.

Best regards,
Shawn

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