

In the Matter Of:

AUTOSTORE SYSTEM INC. vs

OCADO INNOVATION LIMITED

CONFERENCE CALL

August 10, 2021



Conference Call - August 10, 2021

<p style="text-align: right;">1</p> <p>1 UNITED STATES PATENT AND TRADEMARK OFFICE 2 3 BEFORE THE PATENT TRIAL AND APPEAL BOARD 4 5 AUTOSTORE SYSTEM INC., 6 Petitioner, 7 v. 8 OCADO INNOVATION LIMITED, 9 Patent Owner. 10 11 Case IPR2021-00798 12 Patent 9,796,080 13 (Via Conference Call) 14 15 DATE: Tuesday, August 10, 2021 16 17 TIME: 11:00 a.m. 18 19 Before Patent Administrative Judges: 20 21 HONORABLE BARRY L. GROSSMAN 22 23 HONORABLE MIRIAM L. QUINN 24 25 HONORABLE FRANCES L. IPPOLITO 26 27 Reported by: 28 ANNETTE ARLEQUIN, CCR, RPR, CRR, CLR 29 JOB NO. 2021-806087</p>	<p style="text-align: right;">3</p> <p>1 A P P E A R A N C E S : 2 3 On behalf of Petitioner AutoStore System Inc. : 4 KIRKLAND & ELLIS LLP 5 1301 Pennsylvania Ave., N.W. 6 Washington, D.C. 20004 7 BY: W. TODD BAKER, ESQ. 8 JOSEPH A. LOY, ESQ. 9 AARON RESETARITS, ESQ. 10 11 12 On behalf of Patent Owner Ocado Innovation Limited: 13 SULLIVAN & CROMWELL LLP 14 125 Broad Street 15 New York, New York 10004 16 BY: STEPHEN J. ELLIOTT, ESQ. 17 LAURIE N. STEMLER, ESQ. (Pro hac vice) 18 19 - oOo - 20 21 22 23 24 25</p>
<p style="text-align: right;">2</p> <p>1 2 3 4 August 10, 2021 5 11:00 a.m. 6 7 Telephonic conference call before 8 Patent Administrative Judges Honorable 9 Barry L. Grossman, Honorable Miriam L. 10 Quinn and Honorable Frances L. Ippolito 11 Before Annette Arlequin, a Certified 12 Court Reporter, a Registered 13 Professional Reporter, a Certified 14 Realtime Reporter, and a Realtime 15 Systems Administrator and a Notary 16 Public of the State of New York, New 17 Jersey and Florida. 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">4</p> <p>1 JUDGE GROSSMAN: This is a call 2 for IPR2021-00798. 3 Do we have petitioner on the 4 line? 5 MR. RESETARITS: Good morning, 6 Your Honor, this is Aaron Resetarits, 7 counsel for petitioner, and with me is 8 my colleagues, Todd Baker and Joseph 9 Loy. 10 JUDGE GROSSMAN: Welcome. 11 And patent owner? 12 MR. ELLIOTT: Yes, Your Honor, 13 this is Stephen Elliott for the patent 14 owner, and with me is my colleague 15 Laurie Stempler who has been admitted 16 pro hac in this matter. 17 JUDGE GROSSMAN: Okay. Did 18 either side schedule a court reporter 19 for the call? 20 MR. ELLIOTT: We did, Your Honor, 21 the patent owner scheduled the court 22 reporter and she is on the line. 23 JUDGE GROSSMAN: Okay, perfect. 24 In due course, if you put the 25 exhibit -- put the transcript into the</p>

5	<p>1 record as an exhibit, I would 2 appreciate that. 3 MR. ELLIOTT: We will do so. 4 JUDGE GROSSMAN: So this call is 5 discuss petitioner's request to file a 6 reply to the preliminary response and 7 to include supplemental evidence with 8 this reply. 9 Petitioner, you want to explain 10 exactly what you're looking for and why 11 you think there is good cause in this 12 case. 13 MR. RESETARITS: Yes, Your 14 Honors, thank you. This is Aaron 15 Resetarits for petitioner. Your 16 Honors, so there is essentially three 17 arguments that were raised in patent 18 owner's preliminary response, two of 19 which are claim construction arguments. 20 First, on the -- a term "a structural 21 feature defining a grid of storage 22 locations." 23 And second this term "autonomous 24 vehicle." 25 The first term is a term</p>	7	<p>1 on for all grounds. So the potential 2 impact there is significant and we 3 would respectfully request an 4 opportunity to respond to that 5 argument. 6 The board has permitted replies 7 in similar circumstances where a patent 8 owner has attempted to disqualify a 9 reference as prior art. For example, 10 IPR2021-00624, Paper 10 and 11 IPR2021-00467, Paper 7. 12 So here, Your Honor, like in 13 those cases, we believe that the 14 construction of that term "autonomous 15 vehicle" is not correct and the 16 specification does enable -- the 17 specification of Lert does enable the 18 claims as claimed in the Lert patent. 19 Secondly, related to this issue 20 of autonomous vehicles enablement, we 21 also believe there is an issue with 22 patent owner's citation to the Dynamic 23 Drinkware case, in that in their papers 24 this patent is governed by, you know, 25 post AIA, and Dynamic Drinkware was</p>
6	<p>1 appearing in the subject patent, the 2 '080 patent, while the second term 3 appears in the primary reference that 4 petitioner has raised in the 5 proceeding, the Lert reference. 6 There is then a third argument 7 that patent owner raised in the 8 preliminary response which was that the 9 provisional application of the Lert 10 reference does not enable this term 11 "autonomous vehicles" as construed 12 under patent owner's proposed 13 construction of that term. 14 So those are the three arguments, 15 Your Honor, that petitioner would ask 16 for permission to submit a reply to, 17 and we believe that there is good cause 18 for that request. 19 First, Your Honor, with respect 20 to the limitation "autonomous vehicles" 21 and why the Lert reference is not 22 enabled under that construction, Your 23 Honor, that it's essentially an attempt 24 to disqualify Lert as a prior art 25 reference, which the petitioner relies</p>	8	<p>1 applicable to pre-AIA patents. So we 2 believe there's a legal issue there 3 that needs to be addressed and 4 petitioner should have the opportunity 5 to address that. 6 JUDGE GROSSMAN: And what is that 7 legal issue? 8 MR. RESETARITS: Your Honor, we 9 would submit the Dynamic Drinkware case 10 that is cited is not applicable to this 11 IPR, whereas the correct standard that 12 should be applied is the 102(d) 13 standard that is in the current 14 post-AIA patent laws. 15 JUDGE GROSSMAN: And how would 16 that affect your case and the evidence 17 that you put forward? 18 MR. RESETARITS: Sure, so I think 19 what we would come forward with is 20 whether or not the standard that needs 21 to be shown in order to demonstrate 22 whether or not the application is 23 prepped -- is enabled, or whether or 24 not it needs to be enabled or whether 25 or not it's sufficient to have a</p>

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<p style="text-align: right;">9</p> <p>1 sufficient description, and what the 2 requirements are under 102(d) as 3 compared to the Dynamic Drinkware 4 standard. 5 JUDGE GROSSMAN: Okay. While you 6 are on that question, let me ask you, 7 the Lert patent was actually filed 8 before the PCT entry of the '080 9 patent, right? Both the filing and the 10 national stage entry? Is that fair? 11 MR. RESETARITS: I have to check 12 the dates, Your Honor, but that sounds 13 correct to me. 14 JUDGE GROSSMAN: In that 15 situation under Dynamic Drinkware, 16 would it not be patent owner's burden 17 to come forward with evidence that 18 they're entitled to the filing of the 19 Great Britain patent or are you 20 conceding that they don't need to do 21 that? 22 MR. RESETARITS: Sure. So the 23 position we took forth in the petition, 24 Your Honor, was that the Lert patent 25 should be entitled to the provisional</p>	<p style="text-align: right;">11</p> <p>1 trial should all the other evidence be 2 there. 3 Maybe you could move on and tell 4 me what the supplemental evidence that 5 you're seeking to put in actually is? 6 What form you're looking to do. 7 MR. RESETARITS: Of course, Your 8 Honor. So I believe petitioners would 9 request the opportunity to submit 10 evidence that the board and the courts 11 typically find useful for construing 12 patent terms. Current -- we'd envision 13 things like an expert testimony 14 perhaps, and also evidence about the 15 prior art or state of the art, the type 16 of evidence that courts have found is 17 relevant and useful to construing 18 terms, including in, you know, the 19 Philips case, 415 F.3d 1303, and also 20 the American Radio case, 2014 WL 21 4115868. I think both of those cases 22 stand for the position that expert 23 testimony and evidence about the prior 24 art is relevant to construing the claim 25 terms and --</p>
<p style="text-align: right;">10</p> <p>1 filing date of the Lert application, 2 which I believe predates the priority 3 date that patent owner could obtain. 4 And therefore while we're not 5 opposing the GB date, the Great Britain 6 filing date, we are trying to get the 7 Lert provisional application date. 8 JUDGE GROSSMAN: Right. And what 9 I'm trying to flesh out is whether this 10 is an issue we need to resolve at the 11 preliminary stage -- whether this is an 12 issue for trial should we find that 13 there is sufficient evidence otherwise 14 to go forward. 15 MR. RESETARITS: Sure. And 16 again, I think, you know, petitioner's 17 position, Your Honor, is that, you 18 know, the Lert provisional does provide 19 sufficient to support -- and the Lert 20 patent is properly prior art before the 21 board and institution would be proper. 22 JUDGE GROSSMAN: Right. 23 I'm just trying -- what I would 24 hate is for the parties to waste a lot 25 of effort on an issue that has to go to</p>	<p style="text-align: right;">12</p> <p>1 JUDGE GROSSMAN: I guess my 2 question is more fundamental. 3 I guess once I know that my 4 question is fundamentally: How are you 5 able to get that in preinstitution 6 either under supplemental evidence or 7 supplemental information? What rule or 8 statute are you relying on? 9 MR. RESETARITS: I think we're 10 relying on the board's precedence in 11 this case, and including, for example, 12 there is a case IPR2018-01039, Paper 13 29, which is a precedential decision 14 from the board which recognized, on 15 Page 14 to 15, that opportunities do 16 exist for the petitioner to present new 17 evidence including in a reply to a 18 patent owner preliminary response. 19 And as well there is an example 20 of this in IPR2021-00467, Paper 7, the 21 board in that case did allow a 22 petitioner to submit supplemental 23 evidence in connection with a 24 petitioner reply to respond to an issue 25 about whether a piece of prior art was,</p>

13	<p>1 in fact, prior art, similar to the 2 situations here, Your Honor. 3 JUDGE GROSSMAN: Okay. 4 So I think you had an extra piece 5 here another claim construction 6 argument you're looking to address as 7 well? 8 MR. RESETARITS: That's right, 9 Your Honors. We would seek to address 10 this issue of the term "a structural 11 feature defining a grid of storage 12 locations." Again here, Your Honors, 13 the board has permitted replies on 14 claim construction in the past, 15 including in IPR2017-01598 and 16 IPR2019-00564. Like those cases, Your 17 Honors, again, this was a term that was 18 first raised by the patent owner in 19 this IPR and we would request the 20 opportunity to be heard on what the 21 proper construction of that is. 22 Patent owner argues that under 23 that construction the majority of the 24 claims are not disclosed by the Lert 25 patent and we would like an opportunity</p>	15	<p>1 submits that every term should be given 2 its plain and ordinary meaning. So not 3 entirely sure that this term really 4 needs to be construed, but if the board 5 would be open to receiving additional 6 briefing on this term, we would be 7 happy to provide it. 8 JUDGE GROSSMAN: Let me discuss 9 with the panel, but I think if we're 10 opening up some claim construction 11 issues, this appears to be a question 12 that's out there. Maybe it should be 13 resolved. 14 And another question I put 15 forward to you on that question is: 16 Reading through the claim, there is 17 some question of whether -- what this 18 term should require. For example, 19 whether the focus is actually on 20 storage containers and whether they are 21 exclusively handled only within the 22 storage-and-retrieval system, 23 especially looking at claim 13 as well. 24 So we will -- obviously, the 25 panel will think about that and get</p>
14	<p>1 to respond to that construction in this 2 proceeding at the preliminary phase. 3 JUDGE GROSSMAN: Okay. Let me 4 ask you one additional question here. 5 In the preliminary clause, the 6 footnote 4, they discussed the storage 7 container limitations and suggest that 8 petitioners implicitly define those 9 terms. 10 Do you agree with that? And do 11 you agree with the construction that 12 they put forward? 13 MR. RESETARITS: Give me one 14 second, Your Honor, to look at that 15 footnote. 16 JUDGE GROSSMAN: Sure. 17 MR. RESETARITS: Your Honors, 18 just looking at this footnote, I don't 19 think that what's written here is what 20 patent owner claims is necessarily 21 correct. Again, we haven't -- 22 petitioner has not set forth any 23 expressed constructions in its 24 petition. 25 Nor do... and petitioner just</p>	16	<p>1 back to you whether we need that 2 resolved or addressed. 3 Okay. Petitioner, is there 4 anything else you want to discuss 5 before we hand it over to patent owner? 6 MR. RESETARITS: I think that's 7 all for petitioner, Your Honor. Of 8 course, if the patent owner has some 9 issues that come up, we would ask for 10 the chance to respond if that would be 11 appropriate or if the board would 12 indulge. 13 JUDGE GROSSMAN: Of course. 14 MR. RESETARITS: Otherwise, 15 nothing else. 16 JUDGE GROSSMAN: If we grant this 17 briefing, you would not be opposed to a 18 surreply from patent owner, correct? 19 MR. RESETARITS: That's correct, 20 Your Honor. I don't think patent owner 21 has requested a surreply yet, but if 22 they were -- if they were to request it 23 on this call, I believe we would be 24 willing to -- we would not oppose that. 25 JUDGE GROSSMAN: Okay.</p>

17	<p>1 With that, let's hear from patent 2 owner. 3 MR. ELLIOTT: Your Honor, this is 4 Steve Elliott for the patent owner. 5 I'm going to turn it over to my 6 colleague Laurie Stempler to respond. 7 JUDGE GROSSMAN: Okay. 8 MS. STEMLER: Good morning, Your 9 Honor. This is Laurie Stempler from 10 Sullivan & Cromwell on behalf of Ocado 11 Innovation Limited. Before I get 12 started, I would just make sure so I 13 don't forget that the patent owner 14 would request a surreply in response, 15 but we don't think good cause exists 16 here for a reply or supplemental 17 evidence. 18 This is a disagreement with 19 patent owner's positions. The 20 arguments in the preliminary response 21 were reasonably foreseeable and the 22 board has denied requests under similar 23 circumstances. 24 As an initial matter, petitioners 25 are not automatically authorized to</p>	19	<p>1 the '080 patent. 2 Now Autostore has already 3 proposed that the words in the claims 4 be given their plain and ordinary 5 meaning. And they also included tables 6 in both the petition and the expert 7 declaration purporting to show how the 8 Lert provisional supports the claims in 9 the patent. And the patent owner 10 responded to that. 11 So both parties had the 12 opportunity to fully address those 13 two issues, and there is no need for 14 further briefing. In fact -- 15 JUDGE GROSSMAN: Let me ask you, 16 is there anything in the record or 17 maybe from the -- I think there is 18 ongoing litigation -- any reason 19 petitioner should have anticipated your 20 dispute with the meaning of "autonomous 21 vehicle" and whether it's enabled in 22 Lert -- in the Lert provisional? 23 MS. STEMLER: I would say a 24 couple of reasons, Your Honor. I mean, 25 as an initial matter, you know, it was</p>
18	<p>1 file replies to preliminary responses. 2 Instead good cause is required. And 3 good cause requires more than just 4 disagreements, and I get that from 5 IPR2018-297, Paper 24. 6 But that is exactly what we have 7 here, a disagreement. And the 8 petitioner said so itself in its email 9 to the board. It wrote: "Petitioner 10 does not agree with patent owner's 11 contentions." That is not good cause. 12 That is simply what we would expect in 13 an adversarial proceeding like this 14 one. 15 Petitioner is now asking to go 16 back and add to arguments about claim 17 construction and the priority date of 18 its main reference when it was required 19 to include those arguments in the 20 petition. 21 37 C.F.R. 42.104 requires 22 petitioner to include its claim 23 constructions and the positions, and 24 the petitioner also bore the burden to 25 establish its reference as prior art to</p>	20	<p>1 foreseeable that we would challenge the 2 claims in the priority date itself. 3 And then when you -- you know, when you 4 map up the limitations of the Lert 5 patent itself and the Lert claims to 6 the provisional application, it doesn't 7 take much investigation to see that, 8 you know, as our position has stated, 9 that there is not sufficiently enabling 10 disclosure of that. 11 And especially because, as 12 petitioner noted, this is a reference 13 asserted against every challenged 14 claim. So it was even more foreseeable 15 that we were going to challenge the 16 Lert claims to priority to its 17 provisional. 18 JUDGE GROSSMAN: Okay. And do 19 you believe under Dynamic Drinkware and 20 PowerOasis you are entitled to your 21 Great Britain priority date as a matter 22 of course? 23 MS. STEMLER: Yes, Your Honor. 24 JUDGE GROSSMAN: Okay. Do you 25 have any case law that would support</p>

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<p style="text-align: right;">21</p> <p>1 that? Or are you just relating to 2 Drinkware and those cases? 3 MS. STEMLER: We are relying on 4 Dynamic Drinkware. 5 JUDGE GROSSMAN: Okay. Sorry, I 6 cut you off there. Please proceed. 7 MS. STEMLER: Thank you, Your 8 Honor. 9 As I was mentioning, both parties 10 had the opportunity to fullsomely 11 address these issues and there is no 12 need for further briefing, especially 13 where here the reply under supplemental 14 evidence would only serve to go against 15 the PTAB's policy of ensuring 16 resolution of its proceedings. 17 The C.F.R. sets forth the 18 relevant policy consideration when it 19 says in 37 C.F.R. 42.1B: "This part 20 shall be construed to secure the just, 21 speedy, and inexpensive resolution of 22 every proceeding." And those 23 considerations are mirrored in the U.S. 24 code. That policy would not be served 25 well here where the petitioner wants to</p>	<p style="text-align: right;">23</p> <p>1 construction and the board did not find 2 good cause, both because the panel was 3 able to decide whether to institute 4 trial using the record before it, as is 5 the case here, and the board noted that 6 it was petitioner's burden to present 7 its case in the petition and not in the 8 reply. Another example of this is 9 IPR2017-852, Paper 13. 10 And then I've already addressed 11 the -- why the priority challenge was 12 reasonably foreseeable (audio 13 interruption) provided similar requests 14 (audio interruption). 15 (Recess is taken.) 16 (Court reporter lost telephonic 17 connection.) 18 JUDGE GROSSMAN: Agreed by 19 parties that there was a disconnection. 20 Ms. Stempler, why don't you keep 21 going then. 22 MS. STEMLER: I believe, Your 23 Honor, that concludes our position. 24 There's no good cause for reply and 25 supplemental evidence here because</p>
<p style="text-align: right;">22</p> <p>1 back sell their arguments with not only 2 a reply but with supplemental evidence. 3 Now, petitioner also has said 4 that it couldn't have addressed the 5 arguments because it couldn't have 6 anticipated them, but it's not unusual 7 for patent owners to take positions on 8 claim construction in the preliminary 9 response, as Ocado did here. And if 10 every time the patent owner did that to 11 a reply, I think we would have replies 12 in most IPRs. 13 In addition, the terms here are 14 common English words as our expert has 15 explained. And the proposed 16 constructions are consistent with the 17 ordinary means of those words. 18 The board has denied requests for 19 replies in similar circumstances and 20 for that I direct the board to 21 IPR2018-1739, Paper 10. In that 22 instance the -- it's a similar 23 situation to what we have here. The 24 petitioner wanted to respond to the 25 patent owners's proposed claim</p>	<p style="text-align: right;">24</p> <p>1 these arguments were reasonably 2 foreseeable and it's common for patent 3 owner to present the arguments that it 4 did in its preliminary response. And 5 this is just merely a disagreement, 6 which is not enough for good cause. 7 On top of that, as I mentioned, 8 the reply and the supplemental evidence 9 would go against the policy of 10 efficient resolution of IPR 11 proceedings, and that's especially the 12 case where here the parties have both 13 briefed the issues. 14 JUDGE GROSSMAN: Okay. 15 Petitioner, would you like to 16 reply? 17 MR. RESETARITS: Thank you, Your 18 Honors. This is Aaron Resetarits for 19 petitioners. I'll just be brief. 20 I think that, you know, we're 21 certainly happy to provide the board 22 with any materials in the form of a 23 reply or supplemental evidence, and we 24 submit that it would be efficient for 25 the board to take a look at that and I</p>

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25	<p>1 think it would be helpful to the board 2 when they're making these decisions on 3 claim construction to consider. So 4 I'll just respond to that on the 5 efficiency point. 6 JUDGE GROSSMAN: Let me ask you: 7 Could you get away with not using any 8 supplemental evidence on these issues? 9 MR. RESETARITS: We're happy to 10 do whatever the board would allow us to 11 do and any chance to reply would be 12 helpful. 13 We do believe that there is some 14 evidence about -- there is evidence in 15 the prior art about what the -- 16 references that are cited by both the 17 Lert patent and the '080 patent -- 18 references on the face, that is, that 19 do provide some helpful contents for 20 what some of these terms mean, and the 21 federal circuit has found that that 22 type of evidence is helpful to claim 23 construction, included in the 24 V-Formation case, 401 F.3d 1307, 25 evidence cited on the face of -- excuse</p>	27	<p>1 were cited on the face of the patent? 2 MR. RESETARITS: I think we could 3 do that, Your Honor. That would be 4 workable for us. 5 JUDGE GROSSMAN: Okay. Anything 6 else you would like to add? 7 MR. RESETARITS: Nothing else 8 from petitioner, Your Honor. 9 JUDGE GROSSMAN: Okay. And 10 patent owner, just for the last word 11 before the panel conference in this 12 case? 13 MS. STEMLER: Thank you, Your 14 Honor. I would just note that, you 15 know, we're not -- regarding what would 16 be helpful for the claim construction, 17 that is something that can be decided 18 should the board decide to institute 19 trial. 20 At this stage the board has 21 everything that it needs and so there 22 is no further information that would be 23 necessary for the board to be able to 24 rule on these claim construction and 25 priority date issues. Thank you.</p>
26	<p>1 me -- references cited on the face of 2 the patent are helpful for claim 3 construction. And we believe that that 4 is the case here and we think that is 5 helpful for understanding what some of 6 these terms mean. 7 So, you know, I would at least -- 8 if the board isn't inclined to give us 9 a chance to submit the expert 10 declarations as well, I think we would 11 at least ask for an opportunity to 12 submit at least some forms of 13 supplemental evidence in terms of the, 14 you know, additional references that 15 are used for claims construction. 16 JUDGE GROSSMAN: The references 17 cited on the face of the patent but 18 with -- without -- I guess one of the 19 things that is catching me up is the 20 idea of bringing in an expert report 21 here at this stage. 22 MR. RESETARITS: Sure. 23 JUDGE GROSSMAN: So would you be 24 able to, if this is granted, be able to 25 do with just putting in references that</p>	28	<p>1 JUDGE GROSSMAN: Okay. With 2 that, the panel is going to put you on 3 hold and briefly discuss this and see 4 how we want to move forward. So we are 5 going to go on hold right now. Thank 6 you. 7 (Board conferring.) 8 JUDGE GROSSMAN: The panel is 9 back on line. Do we still have 10 petitioner? 11 MR. RESETARITS: Thank you, Your 12 Honors, yes, petitioner is on the line. 13 JUDGE GROSSMAN: And patent 14 owner? 15 MR. ELLIOTT: Yes, Your Honor. 16 MS. STEMLER: Yes, Your Honor. 17 JUDGE GROSSMAN: Okay. And the 18 court reporter? 19 THE COURT REPORTER: Yes, Your 20 Honor. 21 JUDGE GROSSMAN: Okay, great. 22 The panel, having considered the 23 arguments, is going to grant the 24 request to file a reply by petitioner 25 here and we will also grant a surreply</p>

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<p style="text-align: right;">29</p> <p>1 from patent owner. Limitations, it 2 will be limited to 15 pages for both 3 the reply and the surreply and limited 4 to evidence that is intrinsic to the 5 record, for example, things that are 6 cited on the face of the patent. We're 7 not authorizing the filing of an expert 8 report here.</p> <p>9 Petitioner, what is the timeline 10 here? Can you get this done in a week?</p> <p>11 MR. ELLIOTT: Thank you, Your 12 Honors, of course, yes. We understand 13 the board is under the deadline for the 14 institution. So if a week it is, that 15 that should be workable for us, Your 16 Honors.</p> <p>17 JUDGE GROSSMAN: Okay. And 18 patent owner, I understand you were 19 involved in another proceeding.</p> <p>20 Would a week after the filing of 21 petitioner's reply be sufficient time 22 for you?</p> <p>23 MS. STEPLER: That should be 24 fine, Your Honor.</p> <p>25 JUDGE GROSSMAN: Okay. So that</p>	<p style="text-align: right;">31</p> <p>1 be addressed in the reply and in the 2 surreply or is it including the claim 3 construction issue Your Honor raised or 4 is it for the petitioner to decide what 5 issues to address?</p> <p>6 JUDGE GROSSMAN: Well, I think 7 we're going to limit petitioner to what 8 it requested in its email and that 9 additional claim construction issue 10 that was briefed on -- at least on the 11 preliminary response.</p> <p>12 Does that give you clarification?</p> <p>13 MR. ELLIOTT: Yes, thank you.</p> <p>14 JUDGE GROSSMAN: Petitioner, with 15 that clarification are you still okay, 16 no questions?</p> <p>17 MR. RESETARITS: Yes, Your 18 Honors, thank you.</p> <p>19 JUDGE GROSSMAN: And patent 20 owner?</p> <p>21 MR. ELLIOTT: Yes, Your Honor.</p> <p>22 JUDGE GROSSMAN: Okay, great. 23 With that this issue will be considered 24 dealt with.</p> <p>25 I have one last question for</p>
<p style="text-align: right;">30</p> <p>1 is what we will do. And, obviously, 2 the parties can choose to, you know, 3 allocate the 15 pages as they see fit, 4 but we are interested in that third 5 claim construction issue on the storage 6 container limitations, so you can 7 decide whether you would like to brief 8 that as well. But I think it would be 9 helpful.</p> <p>10 Okay. Are there -- we'll 11 issue -- since we have a court reporter 12 on the line, we won't issue an order. 13 We'll use the transcript as the order. 14 I think both parties should understand 15 what's being allowed.</p> <p>16 Petitioner, do you have any 17 questions?</p> <p>18 MR. RESETARITS: No, Your Honors. 19 Thank you.</p> <p>20 JUDGE GROSSMAN: And patent 21 owner, any questions?</p> <p>22 MR. ELLIOTT: Your Honor, just 23 some clarification. This is Steve 24 Elliott for the patent owner. Is there 25 any limitation on the issue that should</p>	<p style="text-align: right;">32</p> <p>1 Ms. Stempler. There was a request that 2 you made that you were not receiving 3 filings in this case. Was that then 4 resolved?</p> <p>5 MS. STEPLER: I believe so, Your 6 Honor.</p> <p>7 JUDGE GROSSMAN: Okay. If it 8 hasn't, please reach out to the trial's 9 mailbox or the staff to make sure that 10 we get that resolved for you.</p> <p>11 MS. STEPLER: Thank you, Your 12 Honor. Will do.</p> <p>13 JUDGE GROSSMAN: Okay. With that 14 this call is adjourned. 15 Thank you, both parties.</p> <p>16 17 18 (Time noted: 11:35 a.m.) 19 20 21 22 23 24 25</p>

1 C E R T I F I C A T E

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3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF WESTCHESTER)

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7 I, ANNETTE ARLEQUIN, a Notary
8 Public within and for the State of New
9 York, do hereby certify:

10 That SAID CONFERENCE CALL, is a
11 true record of proceedings.

12 I further certify that I am not
13 related to any of the parties to this
14 action by blood or marriage; and that I
15 am in no way interested in the outcome
16 of this matter.

17 IN WITNESS WHEREOF, I have hereunto
18 set my hand this 10th day of August, 2021.

19

20

21 _____
22 ANNETTE ARLEQUIN, CCR, RPR, CRR, RSA

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