

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION  
Petitioner,

v.

ACQIS LLC,  
Patent Owner

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Case IPR2021-01103  
Reissue Patent 45,140

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**PATENT OWNER'S SUR REPLY TO PETITIONER'S REPLY TO  
PATENT OWNER'S PRELIMINARY RESPONSE**

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**I. THE SCOPE OF REPLY EXCEEDS THE BOARD'S  
AUTHORIZATION AND SHOULD BE DISREGARDED IN FULL**

Petitioner was authorized to file a reply “tailored narrowly to address the alleged[] ‘Patent Owner’s omission of certain facts and/or inaccurate/misleading arguments’ directed to the 35 U.S.C. §314(a) discretionary denial issue.” Email to Parties on Oct. 26, 2021. Petitioner was “not authorized to address the 35 U.S.C. § 325(d) issue.” *Id.* Counter to the Board’s mandate, Petitioner spent most of its reply arguing the identified § 325(d) issue. Under the rules and Trial Practice Guide, Patent Owner could have requested a motion to strike, but the Board is capable of disregarding the entirety of Petitioner’s Factor 6 reply given the blatant disregard for the authorized scope of the reply. PTAB Consol. Trial Prac. Guide Nov. 2019 at 80. Patent Owner respectfully requests that the Board do so. To provide a complete reply, Patent Owner responds to Petitioner’s arguments, but invites the Board to disregard Section II in compliance with the authorized scope.

**II. FINTIV FACTOR 6**

Despite being unauthorized to address§ 325(d), Petitioner cleverly replies to Patent Owner’s § 325(d) argument because Fintiv Factor 6 in Patent Owner’s Preliminary Response (“POPR”), referred back to Patent Owner’s § 325(d) section. POPR at 43-44. Petitioner did not identify any “omission of fact” or “inaccurate/misleading argument” presented by Patent Owner in Factor 6 and

cannot dispute any facts *within* this section—the Board did in fact deny institution of Samsung’s petitions, which addressed the same underlying issue and requested the same relief. Petitioner’s only dispute is that the “question” presented by its Petition is different from the prior Board decisions because a “POSITA” standard should have been applied. This is not new. Petitioner raised this issue. Pet. at 25 n.4. Patent Owner responded. POPR at 16, 25. As Patent Owner previously outlined, *see* POPR at 25-31, Petitioner’s assertion is incorrect. Moreover, even if the standard relied upon by the Board in the Samsung IPRs was incorrect, the result does not change. *See id.* In particular, an Examiner is regularly considered a POSITA and thus Petitioner’s argument is a difference without distinction, as the Board indicated that an Examiner understood and approved the incorporation by reference. *See In re Berg*, 320 F.3d 1310, 1315 (Fed. Cir. 2003).

Patent Owner is consistent across the IPR and parallel proceedings. *See* Reply at 2-3. The claims introduced in the ’138 application were different from those in the proceeding patents—this is why Figures 19 and 20 became essential to the claims and needed to be expressly added and is also why any alleged disclaimer does not apply. As explained in the POPR, when these new claims were added to the ’138 application, the Patent Owner followed the correct procedure: amending the specification to set forth the material previously incorporated by reference. POPR at 18-20.

### III. FINTIV FACTOR 4

Patent Owner does not “omit” that “RPIs served an expanded *Sotera*-type stipulation in the District Court” (Reply at 3), rather, Patent Owner expressly acknowledged that fact (“the Lenovo entities’ willingness to stipulate, if effected, ...”). Patent Owner correctly pointed out that the WDTX cases’ invalidity contentions are joint contentions advanced by the RPI Lenovo Defendants and four other defendants. See POPR at 38-40. Thus, Lenovo’s “expanded *Sotera*-type stipulation” does not remove a single invalidity theory from the WDTX cases. *Id.*

### IV. FINTIV FACTOR 2

The fact that the Board “may” act sooner in some cases cannot reasonably be considered an “omission of fact” or “inaccurate/misleading argument.” Of course, the Board may act at any time within the statutory framework—Petitioner citing one IPR proceeding where the Board issued its institution decision in less than three months merely offers an example of this obvious point. Regardless of when the Board issues its institution decision, finality will be delayed since there must also be time for Director review. Neither factor Petitioner points to (minimizing district court overlap or allegedly strong merits) support institution. Specifically, “overlap with the district court” is not at all “minimized” (*see* Factor 4 above) and the merits of the Petition are not strong, despite Petitioner’s weak, belated, and improper attempt to distinguish its Petition from those in the Samsung IPRs.

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Date: November 8, 2021

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 8, 2021, a copy of Patent Owner's Sur Reply to Petitioner's Reply to Patent Owner's Preliminary Response, including all accompanying attachments, appendices, and exhibits, has been served in its entirety via e-mail (as was consented to by Petitioner) on Petitioner at the following e-mail addresses:

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