

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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THE NOCO COMPANY, INC.,

Petitioner,

v.

PILOT, INC.,

Patent Owner.

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IPR2022-01237

Patent 11,124,077

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**PATENT OWNER PILOT, INC.'S  
RESPONSE TO ORDER TO SHOW CAUSE**

Patent Owner Pilot, Inc. (“Patent Owner”) hereby submits the following Response to the Board’s October 5, 2023 Order to Show Cause, Conduct of the Proceeding, 37 C.F.R. § 42.5, Paper 10.

As the Board is aware, The NOCO Company, Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–24 in U.S. Patent No. 11,124,077 B2 (Ex. 1001, “the ’077 patent”) under 35 U.S.C. §§ 311–319. Paper 1 (“Pet.”). Patent Owner did not file a Preliminary Response, with the Board then noting under 37 C.F.R. § 42.4(a) authority to determine whether to institute an *inter partes* review.

The Board may institute an *inter partes* review only if “the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a) (2018). The “reasonable likelihood” standard is “a higher standard than mere notice pleading” but “lower than the ‘preponderance’ standard to prevail in a final written decision.” *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (precedential).

After considering the Petition and the evidence of record, including the Declaration of Dr. Wood (Ex. 1003), and for the reasons explained in the institution Decision (Paper 6, Jan. 23, 2023 (“Decision”)), the Board determined that Petitioner

had shown a reasonable likelihood that it would prove at least one of the challenged claims obvious. The Board then instituted *inter partes* review of claims 1–24 on all challenges, identified as:

Petitioner asserts the following challenges to patentability: <b>Claim(s) Challenged</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>
1–7, 9–11, 18–20	103	Krieger (EX 1005)
8	103	Krieger, Baxter (EX 1006)
22, 23	103	Krieger, Tracey (EX 1007)
1–7, 9–16, 18–21, 24	103	Richardson (EX 1004)
17	103	Richardson, Lai (EX 1008)
3–7, 19, 20	103	Richardson, Krieger
8	103	Richardson, Krieger, Baxter
22, 23	103	Richardson, Tracey

The ‘077 Patent lists on its face all these applied references except for Lai (an irrelevant reference), as well as many more. Casting aside the United States Patent and Trademark Office (“USPTO”) Examiner’s hard work, the Board found a reasonable likelihood that the claims will be found invalid as obvious considering these previously reviewed references.

Patent Owner and Petitioner each maintain open applications, and the Board’s analysis of the prior art and arguments may be instructive in allowing the USPTO to, in the future, examine claims in these pending applications. Accordingly, Patent

Owner does not request adverse judgment against itself. Instead, Patent Owner requests that the Board issue a Final Written Decision finding all claims remain valid. Indeed, Petitioner has failed to present competent evidence of unpatentability, including failing to present viable reasons to read the prior art references as supporting the proffered obviousness grounds.

For instance, Patent Owner believes there is a lack of proof that limitation 1(b), when properly construed, is shown by any applied reference. Specifically, the “load detector circuit” of Kreiger cannot properly be found to meet the claimed “feedback circuit” of the ‘077 Patent. A “feedback circuit” is commonly understood by artisans as a circuit that supplies some portion of the circuit output back to the input of the involved system. The Petition cites to paragraph 81 of Dr. Wood’s Declaration for the notion that Kreiger’s “load detector circuit,” a circuit that measures electrical load being drawn from a power source and that has nothing to do with supplying some portion of its output to the involved system, as meeting the “feedback circuit” limitation. In fact, the Board cites to that very paragraph in its institution Decision. (Decision at 20.) However, in this same paragraph 81, Dr. Wood admits he really does not know what “feedback circuit,” as used in the ‘077 Patent, means. (Ex. 1003, ¶ 81.) He then gins-up a meaning for the term that does not require traditional “feedback” functionality but does allow him to say Kreiger meets the limitation. *Id.* Dr. Wood (paragraphs 127-131) and the Board do the same

with Richardson, another reference that does not “feedback” any portion of the circuit output signal into the involved system.

At a minimum, the Board should properly interpret “feedback circuit” as part of a Final Written Decision. It should then explain how that definition is met, if it can be met, by the Petitioner-identified circuits of Kreiger and Richardson. In the end, Patent Owner believes that if the Board applies a plain and ordinary meaning to the term “feedback circuit,” which is exactly what a skilled artisan would have applied to that term in 2014 as there is no reason in the intrinsic record to apply any other definition, the Board will find that neither circuit of Kreiger nor Richardson identified by Petitioner in the Petition can reasonably be held to meet the limitation. If the Board would like additional input on this issue, Patent Owner will be happy to supply same.

Respectfully submitted,

Dated: October 20, 2023

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## CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that **PATENT OWNER PILOT, INC.'S RESPONSE TO ORDER TO SHOW CAUSE** complies with the page limitation as set forth in the Board's Order to Show Cause, as it is 4 pages in length.

Respectfully submitted,

Dated: October 20, 2023

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## CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(a) and (b), I certify that on October 20, 2023, a true and accurate copy of this paper, **PATENT OWNER PILOT, INC.'S RESPONSE TO ORDER TO SHOW CAUSE**, was served on the following counsel for Petitioner via email, pursuant to Petitioner's consent to e-mail service:

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