

From: [Trials](#)
To: [Parham Hendifar](#); [Trials](#)
Cc: [Michael Specht](#); [Daniel E. Yonan](#); [Richard M. Bemben](#); [Ryan Richardson](#); [Edward Hsieh](#); [Kenneth Weatherwax](#); [hhamad@caldwellcc.com](#); [Neo](#); [Ryan Richardson](#); [PTAB Account](#); [PTAB Account](#)
Subject: RE: Volkswagen Group of America v. Neo Wireless (IPR2023-00426) // Authorization to File Reply to POPR
Date: Friday, July 28, 2023 10:57:39 AM
Attachments: [image001.png](#)
[image002.png](#)

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Counsel,

From the Board –

Petitioner’s request to file a reply to Patent Owner’s Preliminary Response is denied. No additional briefing is authorized at this time.

Regards,

Esther Goldschlager
Supervisory Paralegal Specialist
Patent Trial & Appeal Board
U.S. Patent & Trademark Office

From: Parham Hendifar <hendifar@lowensteinweatherwax.com>
Sent: Thursday, July 27, 2023 11:25 AM
To: Trials <Trials@USPTO.GOV>
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Subject: Re: Volkswagen Group of America v. Neo Wireless (IPR2023-00426) // Authorization to File Reply to POPR

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Dear Honorable Board,

Petitioner’s email presents substantive discussions in violation of Board rules. *Dell Inc. v. Neo Wireless LLC*, IPR2021-01468, Paper 10 (“*Dell*”), 3 (Jan. 27, 2022). To the extent the Board is inclined to consider these arguments, Patent Owner responds.

Petitioner’s primary argument for additional briefing is that Patent Owner supposedly argues

Petitioner's expert declaration "should be given little weight because it 'mirrors' arguments in the Petition." That mischaracterizes the POPR. Petitioner's expert's testimony deserves little weight not just because it "mirrors" the Petition but because, like the Petition, it is "conclusory" and provides no "reason, motivation or analysis as to why a POSITA would have had a motivation to modify Jeong to utilize mobile stations with a reasonable expectation of success." POPR, *e.g.*, 14.

Next, Petitioner argues Patent Owner "mischaracteriz[es]" Petitioner's IEEE 802.16ab-based references as failing to disclose mobile users, supposedly contradicting "admissions" in the Patent. But "[t]he Board routinely determines whether a party mischaracterizes the asserted references or the other party's arguments without the need for additional briefing." *Dell*, 3. Furthermore, in meet and confer Petitioner failed to identify *any* statements in the Patent that the 802.16ab standard supported mobile users. In any event, petitioners must "make their case in their petition to institute." *Intelligent Bio-Systems*, 821 F.3d at 1369. Any argument that these references disclose "mobile users" should have been in the petition. POPR, 12-14.

Finally, Petitioner argues that Patent Owner's POPR and District-Court positions regarding "power levels of subcarriers at both ends of a block are set to zero" are inconsistent. But the District-Court case is at an early stage (see Petition, 77), and the parties' District-Court claim construction positions are in the record (Exhs. 1021, 1028), so, again, the Board does not "need additional briefing on this limited issue." *Dell*, 3. Furthermore, Petitioner had Patent Owner's infringement contentions *months* before the Petition, yet included only one cursory sentence arguing this limitation's construction. Paper 2, 31 ("Alternatively, to the extent "*block of subcarriers*" is interpreted to include the guard subcarriers at both ends,..."); see POPR, 28. If Petitioner wanted to make these arguments, they should have been in the Petition. 37 C.F.R. 42.104(a).

Respectfully submitted,

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From: Ryan Richardson <RRICHARDSON@sternekessler.com>

Date: Wednesday, July 26, 2023 at 12:22 PM

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Subject: Volkswagen Group of America v. Neo Wireless (IPR2023-00426) // Authorization to

File Reply to POPR

Your Honors,

On June 29, Patent Owner Neo Wireless LLC filed a Preliminary Response in IPR2023-00426 (Paper 6, "POPR"). Petitioner Volkswagen Group of America, Inc. hereby seeks authorization to file a seven-page reply to the POPR pursuant to 37 C.F.R. § 42.108(c). Good cause exists for the requested reply because the POPR includes critical mischaracterizations and inconsistencies that warrant a response.

For example, Patent Owner's argument that testimony from Petitioner's expert, Dr. Cimini, should be given little weight because it "mirrors" arguments in the Petition, both mischaracterizes precedent regarding assessing expert testimony and is inconsistent with Patent Owner's own presentation of its expert's testimony via lengthy block quotes in the POPR. This was a key issue in the Board denying institution of Volkswagen's Petition in IPR2023-00086, and is a subject of Volkswagen's request for rehearing in that proceeding.

Additional key mischaracterizations and inconsistencies in the POPR include: Patent Owner's allegations regarding the appropriate scope of the claimed "power levels of subcarriers at both ends of a block are set to zero," which are insolubly inconsistent with its infringement theories in the corresponding multi-district litigation; and Patent Owner's mischaracterizations regarding Jeong's and 802.16ab's ability to support "mobile stations" and whether a POSITA would have found ranging in mobile stations obvious, which are inconsistent with *admissions* in the '366 patent's background section that ranging in mobile stations was known.

Petitioner submits that it needs no more than 10 days to prepare this reply. Petitioner does not oppose a responsive Patent Owner sur-reply of the same length and same response period (seven pages, 10 days).

Petitioner conferred with Patent Owner regarding this requested authorization, and Patent Owner indicated that it opposes Volkswagen's request.

Best,
Ryan Richardson



Ryan Richardson

Director

Sterne, Kessler, Goldstein & Fox P.L.L.C.

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Please be aware as of August 1, 2023, the Sterne, Kessler, Goldstein & Fox office address is 1101 K Street, NW, 10th Floor, Washington, DC 20005. Information about

our new address is being provided for your awareness and updating of our firm profile, your records, etc. if/as needed.

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