Paper No. 69

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SIEMENS MOBILITY, INC., GROUND TRANSPORTATION SYSTEMS USA, INC., HUMATICS CORP., and PIPER NETWORKS, INC.

Petitioners,

v.

METROM RAIL, LLC
Patent Owner.

Case No. IPR2023-00470
Patent No. 8,812,227

PETITIONERS' SUPPLEMENTAL REPLY ADDRESSING EXHIBITS 2030-2036

As authorized by the Board, Petitioners submit this supplemental reply to address Exhibits 2030-2036 and Patent Owner's ("Metrom's") arguments regarding those exhibits. Paper 68 at 8.

I. Exhibits 2030-2031 Do Not Demonstrate Commercial Success or Copying.

Petitioners' reply explained why Metrom has not established either commercial success or copying. Paper 44 at 7-11. Exhibits 2030-2031 do not fix Metrom's deficient secondary-considerations case.

Metrom cites Exhibits 2030 and 2031 exactly once in its sur-reply. Metrom alleges these exhibits support its argument that its AURA system "was the only terrestrial radio-ranging-based, railroad collision avoidance system available for railroads until Piper copied the AURA system[1]." Paper 50 at 16. But Exhibits 2030 and 2031 are Petitioner ***Piper's*** marketing documents regarding ***Piper's*** system—they have nothing to do with Metrom's system, and do not mention or refer to Metrom, AURA, or any alleged commercial success of the AURA system. Metrom's argument is a non-sequitur.

[1] In fact, Metrom offers no competent evidence to suggest that its AURA system was the only terrestrial radio-ranging-based, railroad collision avoidance system available for railroad at any time.

The two exhibits discussing Piper's system do not establish that Metrom's AURA system was the first at anything, that Piper's Helix system is a copy of the AURA system, or that the AURA system was commercially successful. In fact, the section of Metrom's sur-reply that addresses alleged copying by Piper (Paper 50 at 17-19) does not even cite EX2030 or EX2031.

Moreover, the Board has found—without rebuttal by Metrom—that Piper's "Helix comprises more than just vehicle mounted modules and is sold with many components and in many potential configurations" and thus "comprise[s] more than the vehicle mounted modules of [the claims]." Paper 19 at 6-8. The Board correctly found that the Helix system includes numerous unclaimed features such that "any sales data for Helix systems may reflect the commercial success of features other than vehicle mounted modules recited in claim of the '131 or '227 patent." *Id.*, 8; *see also id.*, 10.

Exhibits 2030 and 2031 are wholly consistent with the Board's previous finding as each details numerous features of Piper's Helix system that the challenged claims do not cover. *See, e.g.*, EX2031 (discussing the use of "LiDAR" for "reliable obstacle detection," the use of an onboard "inertial measurement unit (IMU) for collision detection, HD cameras to capture video "for forensic purposes," and an "intuitive Operator Dashboard"); EX2030 (touting similar features). Exhibits 2030 and 2031 only serve to confirm that the Board was right when it previously said that

"Patent Owner has not shown that sales of the Helix are commensurate with claim 1 or that the features in claim 1 drive sales of Helix systems." Paper 19, 9.

II. Exhibits 2032-36 Do Not Demonstrate Copying.

Like Exhibits 2030 and 2031, Metrom cites Exhibits 2032-36 exactly once in its sur-reply. Paper 50, 18. And like Exhibits 2030-31, Exhibits 2032-36 do not fix Metrom's deficient secondary-consideration allegations. Metrom's sur-reply cites Exhibits 2032-36 at the end of a long string cite, as alleged support for Metrom's argument that "Piper copied and Piper had inside access *via* Mr. Garcia." Paper 50, 18. Metrom's motion similarly states in conclusory fashion that these exhibits "support[] PO's claim that Piper through its employee, David Garcia, had significant and continued access to PO's AURA CAS." Paper 38, 6. None of that is true.

Exhibits 2032-36 concern ***public*** presentations by Metrom at a ***public*** conference. None of these exhibits were marked confidential, and instead were apparently intentionally presented at a trade show attended by engineers involved with transit signaling. Metrom's allegation that these exhibits demonstrate that Mr. Garcia had "inside access" to AURA CAS (Paper 50, 18) is baseless. Moreover, these exhibits provide no relevant evidence as to whether or not Piper copied the AURA CAS. As Petitioners previously stated, Metrom's allegations of ***copying by Piper*** supported by "inside access *via* Mr. Garcia" (Paper 50, 18) "are implausible because Mr. Garcia only joined Piper in 2020, well after the MTA project at issue in

the district court litigation. EX1042" (Paper 40, 7 n.2). That is, the Piper system that Metrom accuses of infringing the patent under view in this IPR was already demonstrated to MTA multiple times years prior to Mr. Garcia joining Piper. *See also* Paper 44, 10-11 ("Piper began filing patent applications relating to using UWB time-of-flight ranging in railway environments six months before Mr. Garcia joined Piper"), *id.* ("[B]y the time Mr. Garcia joined the company, Piper had also already successfully demonstrated its UWB positioning technologies in a pilot project for the" MTA").

In any event, Metrom's sur-reply fails to identify any information disclosed in any of Exhibits 2032-36 that was not already disclosed in the prior art, including, *e.g.*, the Grisham patent (EX1006) and Metrom's own published patent applications. *See* Paper 44, 10-11. It is not Petitioners' or the Board's burden to review these exhibits to guess at how they allegedly show that Mr. Garcia had unique "inside access" to information that Piper allegedly leveraged to copy aspects of AURA CAS that were not already in the public domain. *See Gen. Access Sols., Ltd. v. Sprint Spectrum L.P.*, 811 F. App'x 654, 657 (Fed. Cir. 2020) (Board should not "be forced to 'play archeologist with the record' and search for arguments that might have been made outside of the parties' briefing") (quoting PTAB Rules of Practice, 77 Fed. Reg. 48,617 (Aug. 14, 2012)).

Exhibits 2032-2036 are not even circumstantial evidence that Piper copied anything about AURA CAS, "*via* Mr. Garcia" or otherwise. Paper 50, 18. Exhibits 2032-2033 are emails sent by Mr. Garcia attaching versions of Metrom's public presentation of AURA at the 2018 NextGen Train Control Conference, and Exhibit 2036 is identified as a transcript of the conference. Exhibits 2034-35 are merely photographs showing Mr. Garcia on a panel at that conference. Metrom has not even attempted to demonstrate how these presentations or transcript at this public conference show that AURA CAS practices any challenged claim, let alone prove that these exhibits disclosed features of AURA CAS that were copied by Piper and/or describe features of AURA CAS that were not already disclosed in the prior art.

With or without Exhibits 2032-2036, it remains true that Metrom has failed to establish the existence of any secondary considerations of non-obviousness, let alone secondary considerations that outweigh the strong case of obviousness established by the record before the Board.

Respectfully submitted,

Dated: April 11, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 12, 2024, a true and correct copy of the foregoing Petitioners' Supplemental Reply to Patent Owner's Sur-Reply was served by electronic mail on the following email address:

MetromIPR@mcandrews-ip.com

Respectfully submitted,

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