

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COPELAND COMFORT CONTROL LP

Petitioner,

v.

OLLNOVA TECHNOLOGIES LTD.

Patent Owner.

Case IPR2023-00626

U.S. Patent No. 7,746,887

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

UPDATED LIST OF EXHIBITS

Exhibit ("Ex.")	Description
1001	U.S. Patent No. 7,746,887
1002	Declaration of Dr. Dean P. Neikirk
1003	File History of U.S. Patent No. 7,746,887
1004	U.S. Patent No. 7,528,711 to Kates
1005	U.S. Patent Application Publication No. 2004/0100394 to Hitt
1006	U.S. Patent Application Publication No. 2005/0246593 to Littrell
1007	U.S. Patent No. 5,696,695 to Ehlers
1008	U.S. Patent Application Publication No. 2005/0270173 to Boaz
1009	<i>Ollnova Technologies Ltd. v. Emerson Electric Co.</i> , 4:22-cv-01387 (E.D. Mo.) Defendants' Opening Claim Construction Brief (October 27, 2022)
1010	<i>Ollnova Technologies Ltd. v. Emerson Electric Co.</i> , 4:22-cv-01387 (E.D. Mo.) Plaintiff Ollnova Technologies Ltd.'s Responsive Claim Construction Brief (November 17, 2022)
1011	<i>Ollnova Technologies Ltd. v. Emerson Electric Co.</i> , 4:22-cv-01387 (E.D. Mo.) Defendants' Reply Claim Construction Brief (December 1, 2022)
1012	<i>Ollnova Technologies Ltd. v. Emerson Electric Co.</i> , 4:22-cv-01387 (E.D. Mo.) Plaintiff Ollnova Technologies Ltd.'s Sur-Reply Claim Construction Brief (December 15, 2022)
1013	<i>Ollnova Technologies Ltd. v. Emerson Electric Co.</i> , 4:22-cv-01387 (E.D. Mo.) Joint Claim Construction Statement (December 20, 2022)

1014	<i>Ollnova Technologies Ltd. v. Carrier Global Corp.</i> , 9:22-cv-80388 (S.D. Fla.) Plaintiff Ollnova Technologies Ltd.’s Opening Claim Construction Brief (November 4, 2022)
1015	<i>Ollnova Technologies Ltd. v. Carrier Global Corp.</i> , 9:22-cv-80388 (S.D. Fla.) Carrier Global Corp.’s Responsive Claim Construction and Indefiniteness Brief (November 18, 2022)
1016	<i>Ollnova Technologies Ltd. v. Carrier Global Corp.</i> , 9:22-cv-80388 (S.D. Fla.) Plaintiff Ollnova Technologies Ltd.’s Reply Claim Construction Brief (November 30, 2022)
1017	<i>Ollnova Technologies Ltd. v. Carrier Global Corp.</i> , 9:22-cv-80388 (S.D. Fla.) Joint Claim Construction Chart (December 5, 2022)
1018	U.S. Patent No. 6,124,806 to Cunningham
1019	U.S. Patent Application Publication No. 2003/0174070 to Garrod
1020	U.S. Patent Application Publication No. 2003/0137968 to Lareau
1021	U.S. Patent No. 7,230,528 to Kates
1022	U.S. Patent No. 7,102,505 to Kates
1023	<i>Ollnova Technologies Ltd. v. ecobee Technologies, ULC</i> , 2:22-cv-00072 (E.D. Tex.) P.R. 4-3 Joint Claim Construction and Prehearing Statement (January 10, 2023)
1024	Standing Order Governing Proceedings (OGP) 4.1—Patent Cases (W.D. Tex.) (April 14, 2022)
1025	<i>Ollnova Technologies Ltd. v. Emerson Electric Co.</i> , 4:22-cv-01387 (E.D. Mo.) Plaintiff’s Preliminary Disclosure of Asserted Claims and Infringement Contentions (July 7, 2022)
1026	Redline comparison between the specifications of U.S. Patent No. 7,746,887 and U.S. Patent No. 7,102,505
1027	<i>Reserved</i>
1028	<i>Reserved</i>

1029	<i>Reserved</i>
1030	<i>Reserved</i>
1031	U.S. Patent No. 6,513,723 to Mueller
1032	<i>Reserved</i>
1033	<i>Reserved</i>
1034	<i>Reserved</i>
1035	Lex Machina: Overview for E.D. Mo. (Jan. 29, 2023) (retrieved from https://law.lexmachina.com/court/moed)
1036	<i>Reserved</i>
1037	<i>Reserved</i>
1038	<i>Reserved</i>
1039	<i>Reserved</i>
1040	<i>Reserved</i>
1041	U.S. Patent No. 7,268,581 to Trimberger
1042	U.S. Patent No. 7,254,691 to Ebeling
1043	<i>Ollnova Technologies Ltd. v. Emerson Electric Co.</i> , 6:22-cv-00358-ADA (W.D. Tex.) Declaration of Erik De La Iglesia in Support of Plaintiff Ollnova Technologies Ltd.’s Responsive Claim Construction Brief
1044	<i>Ollnova Technologies Ltd. v. ecobee Technologies, ULC</i> , 2:22-cv-00072 (E.D. Tex.) Ollnova Technologies Ltd.’s Opening Claim Construction Brief (January 31, 2023)
1045	<i>Reserved</i>
1046	M. R. Barbacci, C. B. Weinstock and J. M. Wing, “Programming at the processor-memory-switch level,” Proc. [1989] 11th Int. Conf. on Software Eng’g, Singapore, 1988, pp. 19-28

1047	Declaration of Jonathan Bradford
1048	<i>Ollnova Technologies Ltd. v. Emerson Electric Co.</i> , 4:22-cv-01387-JAR (E.D. Mo.) Memorandum and Order, Dkt. 79 (April 5, 2023)
1049	Memorandum from Director Vidal dated June 21, 2022
1050	<i>Reserved</i>
1051	<i>Reserved</i>

Patent Owner (“PO”) acknowledges that the pending district court case against Petitioner Copeland (“*Copeland Case*”) is stayed pending IPRs (see Ex. 1048), and therefore focuses its arguments exclusively on an unrelated lawsuit pending against an unrelated party, ecobee (“*ecobee Case*”). But the *ecobee Case* will not resolve most, if any, of this IPR’s issues. Because the *Copeland Case* is stayed, *Fintiv* does not support exercising discretion—especially because PO doesn’t meaningfully dispute the compelling merits of the Petition.

A. Factors 1-3 Favor Institution: *Copeland Case* Is Stayed

The *Copeland Case* was stayed pending this (and another Copeland-filed IPR) early in the case, shortly after the case was transferred to E.D. Missouri, and before *Markman* or any significant non-claim construction discovery took place. Factors 1-3 therefore strongly favor not exercising discretion in view of the *Copeland Case*. PO does not dispute this, and instead argues that the *ecobee Case* favors stay. But Petitioner is not related to ecobee. And PO does not suggest that it has invested meaningful resources into litigation involving Petitioner. While the *ecobee Case* and *Copeland Case* raise an overlap

ping claim construction dispute (See Ex. 2002, 8-11), that dispute is immaterial to this IPR. See Pet., 14-15 & n.4.

B. Factor 4 Favors Institution: Any *ecobee* Overlap Is Minimal

While there is overlap of issues between the *Copeland Case* and this IPR, the *Copeland Case* is stayed. Moreover, while it should be irrelevant in light of the stay of the *Copeland Case* pending IPRs and Petitioner's uninvolvedness in the *ecobee Case*, Petitioner stipulates that, if this IPR is instituted, Petitioner will not assert invalidity in district court on any ground that Petitioner has raised or reasonably could have raised during this IPR. In such circumstances, the USPTO has stated it will not discretionarily deny under *Fintiv*. Ex. 1049, 3.

In contrast, there are few overlaps with the *ecobee Case*. The *ecobee Case* will address only challenged claim 1. Challenged claims 3-8, 14-15, and 18 are unasserted in that case. See POPR, 7-8. And, most of the prior art in this IPR is completely different. Kates-711 is not at issue in the *ecobee Case*. Kates-505 is at issue in the *ecobee Case*, but there it is not being considered in combination with, e.g., Hitt, Littrell, and/or Mueller for even claim 1—as it will be in this IPR. And while Kates-711 and Kates-505 do share the same core disclosures (POPR 8 (citing Pet. 7 n.2)), Kates-505 does not include some of Kates-711's teachings of, e.g., suspending transmission if a change is “within the predetermined range”; the

Petition combines Kates-505 with Mueller, which is not in the *ecobee Case*, for these teachings. *See* Pet. 69-74. This factor strongly favors institution.

C. Factor 5 Favors Institution: Petitioner Is Not Related to ecobee

PO admits Petitioner is unrelated to, and not coordinating with, ecobee. PO does not cite any cases in which the Board exercised discretion where, as here, the petitioner was uninvolved in the third-party litigation, there was minimal overlap in IPR issues, and the litigation against Petitioner was stayed pending IPR. *Contra* POR, 9; IPR2020-00828, Pap. 13, *7-16 (no stay, substantial litigation had occurred, substantial overlap of issues, and petitioner was “coordinating”); IPR2020-00440, Pap. 17, *13-23 (no stay; same claims and art would be addressed); IPR2019-00136 (addressing 325(d)—not *Fintiv* factors). Indeed, Petitioner and ecobee have not coordinated any contentions or other submissions to any Court. This factor favors institution.

D. Factor 6 Favors Institution: PO Doesn’t Meaningfully Dispute the Petition’s Compelling Merits

PO does not meaningfully dispute the Petition’s compelling merits—favoring discretion. PO’s sole argument that the Petition is not compelling because its “grounds are based entirely on alleged obviousness” (POPR 10) lacks merit because the Petition’s obviousness grounds are compelling—which may explain why PO chose not to challenge them. Indeed, the only reason Ground 1 does not rely on

anticipation over Kates-711 at least for claim 1 is because Kates-711 does not explicitly disclose a “memory,” which would have been obvious. Pet. 18-19, 30-31.

The Board should not exercise its discretion. IPR should be instituted.

Dated: August 2, 2023

Respectfully submitted,

/James L. Davis, Jr./

James L. Davis, Jr.

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Counsel for Petitioner

COPELAND COMFORT CONTROL LP

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing PETITIONER'S
REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE and Exhibits
1048 and 1049 were served by filing this document through the Patent Trial and
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Dated: August 2, 2023

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