

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

Patent 7,746,887

**PATENT OWNER’S SUR-REPLY IN SUPPORT OF
PATENT OWNER’S PRELIMINARY RESPONSE TO PETITION**

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Patent Owner Ollnova Technologies Ltd. (“Patent Owner”) submits this sur-reply in support of its preliminary response to Petitioner Copeland Comfort Control LP’s (“Petitioner”) Petition for *inter partes* review of U.S. Patent No. 7,746,887 (“the ’887 patent”). As stated in Patent Owner’s Preliminary Response (“POPR”), there is an active district court case in the Eastern District of Texas set for trial in just one month, on September 11, 2023, that involves the same patent, the same claims, and substantially the same prior art. Paper 8 at 1.

That case, *Ollnova Technologies Limited v. ecobee Technologies ULC*, No. 2:22-cv-00072-JRG, is not an unrelated lawsuit. The ’887 patent is at issue in that case and challenged independent claim 1 is at issue in that case. Petitioner admits that there is an overlapping claim construction dispute. Paper 10 at 1-2. Moreover, all of the remaining challenged claims depend from claim 1. Paper 8 at 8.

And, as discussed previously, the defendant’s invalidity expert report in the district court case addresses the same Kates prior art reference asserted in the Petition. *Id.* There is substantial overlap between Petitioner’s invalidity arguments and evidence and the invalidity arguments and evidence that will be addressed during the trial between Patent Owner and ecobee next month. *Id.*

The first three *Fintiv* factors all favor denying institution because the parallel litigation involving the ’887 patent, *Ollnova Technologies Limited v. ecobee*

Technologies ULC, No. 2:22-cv-00072-JRG, will not be stayed, is set for trial next month, and has entailed substantial investment by the district court and patent owner.

The fourth *Fintiv* factor also favors denying institution because of the substantial overlap between this proceeding and the trial in the Eastern District of Texas as discussed above. *ecobee* asserts *Kates* (U.S. Patent App. Pub. No. 2005/0275530), which is the published patent application for *Kates-505* (U.S. Patent No. 7,102,505) asserted in the Petition. Ex. 2005 at 34, 323-337. Therefore, the content is identical. In addition, the Petition asserts *Kates-711* (U.S. Patent No. 7,528,711), which names the same inventor and is substantially similar to *Kates-505*. *See, e.g.*, Petition at 7 n.2 (“*Kates-505* shares the same core critical disclosures with *Kates-711*.”); *id.* at 64-68 (chart comparing *Kates-505* and *Kates-711*). Thus, there is a substantial overlap and the fourth *Fintiv* factor favors denying institution.

With respect to the sixth *Fintiv* factor, “a full analysis of the merits is not necessary to evaluate [the sixth *Fintiv*] factor.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 17 (PTAB May 13, 2020) (decision denying institution of *inter partes* review) (“*Fintiv II*”). Where, as here, Petitioner’s challenges are based solely on alleged obviousness, it cannot be said that the Petition presents a compelling unpatentability challenge. And, it is important to note that the compelling merits standard is a higher standard than the standard for institution set by statute. “A challenge can only ‘plainly lead to a conclusion that one or more claims are

unpatentable’ if it is highly likely that the petitioner would prevail with respect to at least one challenged claim.” *OpenSky Indus., LLC v. VLSI Tech. LLC*, IPR2021-01064, Paper 102, 49 (PTAB Oct. 4, 2022) (precedential). Petitioner has not done so here, and, when considered together with the other *Fintiv* factors discussed above, this factor also favors discretionary denial.

The Petition should be denied because Petitioner has not established a reasonable likelihood of invalidity under any ground or challenged claim. As set forth above and in the POPR, the majority of the *Fintiv* factors strongly favor discretionary denial, and the Petition should be denied for this reason alone.

Respectfully submitted,

/Brett Cooper/

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Date: August 9, 2023

CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

The undersigned hereby certifies that the above document was served on August 9, 2023, by filing this document through the Patent Trial and Appeal Case Tracking System as well as delivering a copy via electronic mail upon the following attorneys of record for the Petitioner:

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