UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NOKIA OF AMERICA CORPORATION,

Petitioner

v.

ALEXANDER SOTO AND WALTER SOTO,

Patent Owner

Case: IPR2023-00682

U.S. Patent No. 10,771,181

PETITIONER'S REPLY TO PATENT OWNERS' PRELIMINARY RESPONSE

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LIST OF EXHIBITS

Exhibit	Short Name	Description
Ex. 1001	’181 Patent	U.S. Patent No. 10,771,181
Ex. 1002	’181 File History	File History of U.S. Patent No. 10,771,181
Ex. 1003	Prucnal Declaration	Declaration of Dr. Paul Prucnal
Ex. 1004	Prucnal CV	*Curriculum Vitae* of Dr. Paul Prucnal
Ex. 1005	Agazzi ’640	U.S. Patent No. 6,879,640
Ex. 1006	Wei	U.S. Patent No. 6,873,800
Ex. 1007		[Reserved]
Ex. 1008		[Reserved]
Ex. 1009	Agazzi ’341	U.S. Patent No. 7,933,341
Ex. 1010	Jiang	U.S. Patent No. 6,665,498
Ex. 1011	Liu	U.S. Patent No. 6,005,694
Ex. 1012	Poplawski	U.S. Patent No. 5,879,173
Ex. 1013	Lavoie	Renaud Lavoie, *The Evolution of the Pluggable Module*, Broadcast Engineering (2012)
Ex. 1014	SFP MSA	SFF Committee, INF-8074i Specification for SFP (Small Formfactor Pluggable) Transceiver, Rev. 1.0 (May 12, 2001)
Ex. 1015	Leon-Garcia	Alberto Leon-Garcia & Indra Widjaja, *Communication Networks Fundamental Concepts and Key Architectures* (2000)

Exhibit	Short Name	Description
Ex. 1016	Ramaswami	Rajiv Ramaswami & Kumar Sivarajan, *Optical Networks: A Practical Perspective* (2d ed. 2002)
Ex. 1017	Senior	John Senior, *Optical Fiber Communications: Principles and Practice* (1985)
Ex. 1018	Papadias	C. B. Papadias & D. T. M. Slock, *On the Decision-Directed Equalization of Constant Modulus Signals*, Proceedings of 1994 28th Asilomar Conference on Signals, Systems and Computers, Pacific Grove, CA, USA, pp. 1423-1427, Vol. 2 (1994)
Ex. 1019	Feldman	U.S. Patent No. 6,295,272
Ex. 1020	Martin	Martin P. Clark, *Wireless Access Networks: Fixed Wireless Access and WLL Networks—Design and Operation* (2000)
Ex. 1021		[Reserved]
Ex. 1022		[Reserved]
Ex. 1023	’795 Patent	U.S. Patent No. 9,887,795
Ex. 1024	’795 File History	File History of U.S. Patent No. 9,887,795
Ex. 1025	’723 Patent	U.S. Patent No. 10,263,723
Ex. 1026	’723 File History	File History of U.S. Patent No. 10,263,723
Ex. 1027	DCO	Doc. No. 58, Docket Control Order, *NextGen Innovations, LLC v. Fujitsu Network Communications, Inc. et al.*, No. 2:22-cv-00307-JRG-RSP (E.D. Tex.) (consolidated cases)
Ex. 1028	Feuerstraeter	U.S. Patent No. 7,286,557

Exhibit	Short Name	Description
Ex. 1029		[Reserved]
Ex. 1030	Caseload	U.S. District Court – Judicial Caseload Profile (Sept. 2022)
Ex. 1031	181 Patent Infringement Contentions	NextGen's Infringement Contentions Against Petitioner for the '181 Patent in *NextGen Innovations, LLC v. Nokia of America Corporation et al.*, No. 2:22-cv-00309-JRG-RSP (E.D. Tex.)
Ex. 1032	488 Spec	U.S. Provisional Application No. 60/480,488
Ex. 1033	Samueli	Henry Samueli, Jeffrey Putnam, Mehdi Hatamian, *QAM-Based Transceiver Solutions for Full-Duplex Gigabit Ethernet Over 4 Pairs of UTP-5 Cable*, Broadcom Corporation Presentation (Nov. 1996)
Ex. 1034	Stevens Declaration	Declaration of M. Scott Stevens dated September 14, 2023
Ex. 1035	Consolidation Order	Consolidation Order, *NextGen Innovations, LLC v. Nokia of America Corporation, et al.*, No. 2:22-cv-00307-JRG-RSP, Dkt. No. 22
Ex. 1036	Hearing Transcript	*Nokia of America Corporation v. Soto et al.*, IPR2023-00960, Ex. 2004 (PTAB Aug. 29, 2023)
Ex. 1037	PTAB Order	*Nokia of America Corporation v. Soto et al.*, IPR2023-00960, Paper 8 (PTAB Aug. 26, 2023)

I. INTRODUCTION

Pursuant to the Board's authorization email dated September 7, 2023, Nokia of America Corporation ("Petitioner" or "Nokia") submits this Reply to Patent Owners' Preliminary Response (Paper 6, "POPR"). In its POPR, Patent Owners Alexander Soto and Walter Soto incorrectly allege that Fujitsu, Infinera, and AT&T are also real parties in interest ("RPIs"). This Reply addresses that misstatement.

II. ARGUMENT

A. Nokia is not an RPI of Fujitsu, Infinera, or AT&T

Patent Owners' allegations are both substantively incorrect and procedurally futile. There is no need to address whether any of these other companies should be named as an RPI because "neither the time bar nor estoppel provisions of 35 U.S.C. § 315 are implicated in this case." *Unified Patents LLC v. Monarch Networking Solutions LLC*, IPR2020-01708, Paper 61 at 9 (PTAB May 27, 2022) (citing *SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734, Paper 11 at 18 (PTAB Oct. 6, 2020) (precedential)). Regardless, there are no RPI issues here. As such, the final *Fintiv* factor (other circumstances) should not weigh against institution.

Patent Owners allege, without any supporting factual or legal evidence, that Nokia, Fujitsu, Infinera, and AT&T are real parties in interest. But Patent Owners attempt to construct an artificial relationship, where none exists. As the Stevens Declaration makes clear, the smoke and mirrors that Patent Owners rely on is simply

false—Patent Owners present no evidence supporting the fictitious relationship. *See generally* Ex. 1034.

Patent Owners licensed U.S. Patent No. 10,771,181 ("'181 Patent") to NextGen Innovations, LLC ("NextGen"). NextGen then filed suits against Nokia, Fujitsu, Infinera, and AT&T alleging infringement of the '181 Patent on August 9, 2022. On October 21, 2022, Judge Gilstrap *sua sponte* consolidated the four actions. Ex. 1035. Absent this consolidation order, Nokia would not have any litigation overlap with these parties. Tellingly, counsel for Patent Owners clearly perceived Nokia, Fujitsu, Infinera, and AT&T as unrelated entities—filing separate suits against all four—only now arguing against that reality for its own benefit.

Precedent holds that "[d]etermining whether a non-party is a 'real party in interest' demands a flexible approach that takes into account both equitable and practical considerations." *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1351 (Fed. Cir. 2018). Though there is no bright-line test, "relevant considerations [] may include, whether a []party exercises [or could exercise] control over a petitioner's participation in a proceeding, or whether a []party is funding the proceeding or directing the proceeding." *Uniloc 2017 LLC v. Facebook Inc.*, 989 F.3d 1018, 1028 (Fed. Cir. 2021) (internal quotations omitted).

Here, Patent Owners failed to present any real evidence of control over Nokia's IPR petition by Fujitsu, Infinera, and AT&T for good reason—none exists.

Ex. 1034, ¶¶5-6, 9; *Wi-Fi One, LLC v. Broadcom Corp.*, 887 F.3d 1329, 1340 (Fed. Cir. 2018) ("Other than Wi-Fi's conjecture, there is no evidentiary support for [the] theory that Broadcom was acting at the behest or on behalf of [D-Link]."). Nokia did not file this petition at Fujitsu, Infinera, or AT&T's behest, nor did these parties have any control over Nokia's origination or participation in this proceeding or any other related proceeding. Ex. 1034, ¶¶3, 5–6. All decisions to file Nokia's petition against the '181 Patent were unequivocally made by Nokia and its counsel alone. *Id.*

Nokia clearly informed counsel for Patent Owners of this fact via email on July 12, 2023 as evidenced in Patent Owners Exhibit. Ex. 2007 at 1–2 ("***Nokia has not coordinated and/or worked on any IPRs with the other defendants***. Therefore, we do not have any such information to produce.") (emphasis added). Despite Patent Owners' attempt to paint Nokia as "evasive" for not providing (the nonexistent) requested RPI discovery in the district-court proceeding, Nokia informed counsel for Patent Owners that its attempt to elicit RPI discovery in a district-court proceeding for use in an IPR is improper because it is irrelevant to the district-court proceeding and contravenes case law. And given the much broader discovery standards in district-court cases, courts have routinely denied the use of district-court materials in PTAB proceedings. *See, e.g.*, *Ericsson Inc. v. D-Link Corp.*, No. 6:10-CV-473, 2013 U.S. Dist. LEXIS 199512, at *24–26 (E.D. Tex. Dec. 20, 2013).

Patent Owners' lack of evidence undercuts its RPI allegation. For instance, the Federal Circuit in *Uniloc 2017* affirmed that LG was not an RPI because nothing in the record indicated LG exercised any control over Facebook's invalidity challenges as there was "no evidence of joint funding, or even any evidence of substantial coordination between the parties as to their respective decisions to bring these proceedings." 989 F.3d at 1028–29; *see also Wi-Fi One*, 887 F.3d at 1340. Here, there simply is no evidence of "substantial coordination;" in fact, there is evidence of ***no*** coordination. *See* Ex. 1034, ¶¶5–6, 9. Tellingly, Patent Owners have not moved the PTAB for discovery in this case and, even if they did, they could not meet the high bar for additional discovery because their inquiry is speculative at best.

Patent Owners' other RPI arguments also lack substance. Patent Owners allege that because Nokia, Fujitsu, Infinera, and AT&T are co-defendants, they somehow must have a preexisting, substantive legal relationship and, ergo, must have coordinated on IPR strategy. Paper 6 at 57–58. This is incorrect. The cases were consolidated *sua sponte* and the parties have separate, independent counsel. Ex. 1034, ¶7; *see also* Ex. 1035. The mere fact that parties are contemporaneous defendants to respective NextGen actions does not establish privity. *See, e.g.*, *Petroleum Geo-Servs. Inc. v. WesternGeco LLC*, IPR2014-00688, Paper 33 at 18 (PTAB Dec. 15, 2014) ("The nature of shared interests in invalidating the '607 patent, undertaking a joint defense, and assertion of a common interest privilege does not, without more, indicate

privity"). Patent Owners' fictitious coordination argument is simply fantasy, not fact. Ex. 1034, ¶¶5–6, 9. Moreover, Patent Owners' argument that Nokia previously withheld relevant information in IPR2023-00960 is a red herring. As explained in full during an August 23, 2023 hearing, Nokia did not present a false certification of service. Ex. 1036 at 8:14–13:2. A review of the transcript and resulting Order demonstrates that the Board itself does not agree that Nokia violated its duty of candor or otherwise deceived the Board. *Id.*; Ex. 1037 at 2–4.

Accordingly, the final *Fintiv* factor (other circumstances) should not weigh against institution as there is no real party in interest issue.

B. The Board should not deny institution under *Fintiv*

Nokia maintains that the *Fintiv* factors are not applicable to this petition. Nokia diligently prepared its petition, filing the petition less than six weeks after serving invalidity contentions. Paper 6 at 55; Paper 1. But, on no fault of Nokia's, the accorded filing date was not issued until over two months after the petition was filed. Paper 5. The delayed accorded filing date significantly undercuts Patent Owners' diligence arguments on Factors 2 and 3. Regardless, the district-court case will not be in an advanced stage, and the compelling merits of the petition outweigh any implied delay.

III. CONCLUSION

Petitioner respectfully requests that the Board grant institution.

Date: September 14, 2023 By: /M. Scott Stevens/ (Reg. No. 54,762)

CERTIFICATE OF SERVICE

The undersigned certifies that Petitioner served a copy of the foregoing PETITIONER'S REPLY TO PATENT OWNERS' PRELIMINARY RESPONSE and supporting Exhibits 1034–1037 by filing this document through the PTAB's E2E Filing System as well as sending a copy via electronic service (as agreed by counsel for Patent Owners) on the following:

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