

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LENOVO (UNITED STATES) INC. and
MOTOROLA MOBILITY LLC
Petitioners

v.

THETA IP, LLC
Patent Owner

IPR2023-00694
Patent No. 7,010,330 B1

PETITIONERS' REPLY TO REHEARING REQUEST OPPOSITION

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I. INTRODUCTION

Patent Owner’s opposition mischaracterizes Petitioners’ Rehearing Request (“Request”) as “new disagreement with the Board’s decision,” Paper 12 at 1, and as a “disagreement with credible testimony.” *Id.* at 3. The request is neither—it is a straightforward explanation of how Patent Owner misled the Board, causing the Board to misapprehend the prior art and overlook Petitioners’ evidence and positions. While this alone favors institution, institution is warranted in view of the Board’s institution of two other IPRs challenging continuations of the ’330 patent. The patents challenged in those instituted IPRs share the same specification as the ’330 patent, the asserted grounds rely on the same *Rauhala* reference, and the issues extensively overlap with the issues of the present case. Institution would cause the Board no undue burden and afford the Board an opportunity to rule consistently across three related patents on fully-developed records.

II. PATENT OWNER’S MISREPRESENTATIONS CAUSED THE BOARD TO MISAPPREHEND PETITIONERS’ EVIDENCE

Patent Owner continues to misrepresent the Petition. *Id.* at 1-2 (“Now, for the first time, Lenovo claims that the entirety of the mixer it pointed to is in the signal path...This argument also fails as a matter of law because it was not urged in the Petition”). *See also* Paper 9 at 38-39. (“Lenovo never discusses this “in the

signal path” aspect”). Notwithstanding, Petitioners’ Request only highlight grounds already set forth in the Petition and nothing more.

The Petition systematically demonstrates that 1) a signal path has functional units including a mixer, 2) the entirety of the mixer is shown in *Rauhala* FIG. 7, and 3) the impedance of the mixer, which is in the signal path, is changed.

The Petition identifies the *Rauhala* signal path and explains that it includes a mixer. Paper 1 at 32 (“FIG. 2 of *Rauhala* is a block diagram showing a signal path comprising functional units (as blocks) and control signal paths (as lines and arrows between the blocks). Ex. 1004 at FIG. 2; Ex. 1002 at ¶112.”); *see also* Paper 1 at 50 (“***Rauhala* teaches a receiver signal path comprising at least an amplifier, a mixer and a filter.**” (emphasis added)).

In support, the Petition cites expert testimony, which states:

It is my opinion that FIG. 2 of *Rauhala* is a block diagram that is a [] diagram in which their essential systems units are drawn as blocks, and their relationship to each other is indicated by appropriately connected lines...The block diagram serves to indicate the various data and control **signal paths** between functional units of the system hardware.

Ex. 1002 at ¶112 (emphasis added), citing Ex. 1011 at 7 (showing a signal path having a mixer); *see also* Paper 11 at 5-6.

The Petition then explains that *Rauhala* FIG. 7—not merely some portion of FIG. 7—“shows a double-balanced mixer.” Paper 1 at 36. Petitioner then shows impedance of the FIG. 7 mixer in the signal path is changed. Paper 1 at 36-46.

Patent Owner, however, represented that “Lenovo never discusses this ‘in the signal path’ aspect of the claim elements,” Paper 9 at 38, and the Board accepted this misrepresentation. Indeed, the Board’s decision is silent with respect to any of the foregoing Petitioner’s explanation and evidence concerning the claimed “signal path.” Paper 10 at 20.

As shown above, Patent Owner’s characterization of the Petition was—and continues to be—fundamentally wrong. The Board’s reliance on Patent Owner’s misleading representation makes clear that the Board misapprehended *Rauhala* and at least misapprehended, if not overlooked entirely, the Petition’s explanation of the “signal path” elements. The proper remedy for the Board’s misapprehensions, in light of Patent Owner’s misleading statements, is to grant rehearing and institution. *See e.g., Samsung Elecs. Co. v. Neonode Smartphone LLC*, IPR2021-00144, Paper 26 at 7-9 (PTAB Dec. 3, 2021) (granting rehearing and institution based on a misapprehension of the art and of the Petition’s related arguments); *Platform Science, Inc. v. Omnitrac, LLC*, IPR2020-01612, Paper 14 at 6 (PTAB Sep. 3, 2021) (“[w]e are persuaded that we misapprehended Petitioner’s challenge to [the] independent claims ... Accordingly, Petitioner’s Request is granted.”).

Patent Owner has at most raised a disagreement as to an issue of fact. Such disagreement “is best resolved on a full trial record.” *Neonode* at 7.

III. INSTITUTION WOULD AVOID CONFLICTING DECISIONS WITHOUT UNDULY BURDENING THE BOARD

In further rebuttal to Patent Owner’s contention that Petitioner has not met the standard for reconsideration, Paper 12 at 4, *Rauhala*’s disclosure of the claimed “signal path” is contested not only in this proceeding, but also in IPR2023-00697 and -00698, both of which the Board instituted. *See* IPR2023-00697, Paper 10 at 33-36, 41; IPR2023-00698, Paper 10 at 25-26, 28. The patents challenged in those IPRs—US 10,129,825 and US 10,524,202—each claim priority to and have the same specification as the ’330 patent. Claim 8 of the ’825 patent and claims 7 and 19 of the ’202 patent include the “signal path” term in dispute here. *See* IPR2023-00697, Paper 10 at 33; IPR2023-00698, Paper 10 at 25. Indeed, in its Preliminary Response for all three patents, Patent Owner advanced the very same mischaracterizations regarding *Rauhala*’s signal path. *Compare* Paper 9 at 37-41 *with* IPR2023-00697, Paper 9 at 49-52; IPR2023-00698, Paper 10 at 56-59.

In both IPR2023-00697 and -00698, the Board will resolve the same dispute, involving the same prior art (*Rauhala*), for which Petitioners request institution. The Board, therefore, would not be unduly burdened by instituting in this case. *Samsung Elecs. Co. v. Nucurrent, Inc.*, IPR2019-00861, Paper 15 at 13-14 (PTAB Feb. 7, 2020). In *Nucurrent*, the Board granted rehearing and institution where the Board had “already instituted two other petitions . . . whose grounds and claims

extensively overlap with those in the instant petition.” The *Nucurrent* panel’s reasoning for granting rehearing and institution is directly applicable here:

In [the two instituted proceedings], we will be analyzing the same primary reference, the same specification, many of the same secondary references, and what we anticipate to be very similar arguments from the parties. Thus, due to this additional unusual circumstance, we would not be unduly burdened if we were to institute *inter partes* review in this case.

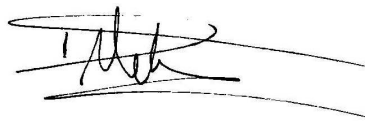
Nucurrent at 14 (emphasis added).

In each of the instituted proceedings, the Board will have the benefit of a full trial record. On full records, the Board may well reach conclusions that contradict the conclusion reached in the institution decision here. By instituting here, the Board can avoid inconsistency with the forthcoming final written decisions in the ’697 and ’698 IPRs, “maintaining integrity of the patent system.” *Neonode* at 8-9.

IV. CONCLUSION

Petitioners request granting *inter partes* review of the ’330 patent.

Respectfully submitted,



Dated: January 19, 2024

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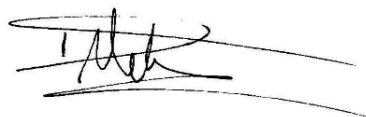
CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned hereby certifies that this “PETITIONERS’ REPLY TO REHEARING REQUEST OPPOSITION” was served by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) and via e-mail to the following attorneys of record for the Patent Owner listed below:

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