

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LENNOX INDUSTRIES INC.,

Petitioner,

v.

ROSEN TECHNOLOGIES LLC,

Patent Owner.

IPR2023-00715

U.S. Patent No.: 6,619,555

**PETITIONER'S AUTHORIZED SUR-SUR-REPLY TO
PATENT OWNER'S SUR-REPLY IN SUPPORT OF PRELIMINARY
RESPONSE**

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PETITIONER’S EXHIBIT LIST

Ex[No.]	Description of Documents
1001	U.S. Patent No. 6,619,555 (“’555 Patent”)
1002	Declaration of R. Jacob Baker, Ph.D., P.E.
1003	Prosecution File History of the ’555 Patent
1004	U.S. 2003/0034898 (“ <i>Shamoon</i> ”)
1005	U.S. Patent No. 7,398,821 (“ <i>Rainer</i> ”)
1006	EP 1085399 (“ <i>Inoue</i> ”)
1007	U.S. Patent No. 6,470,289 (“ <i>Peters</i> ”)
1008	Archived 1999 source code for weather.com, available at https://web.archive.org/web/19991128144159/http://www2.weather.com/
1009	U.S. Patent No. 5,926,776 (“ <i>Glorioso</i> ”)
1010	U.S. Patent No. 6,621,507 (“ <i>Shah</i> ”)
1011	Scheduling Order, <i>Rosen Techs. LLC v. Lennox Indus., Inc.</i> , No. 3:22-cv-00732-K, Dkt. 29 (N.D. Tex. Sept. 1, 2022)
1012	Transcript of Deposition of Howard J. Rosen, December 14, 2022, <i>Rosen Technologies LLC v. Lennox Industries, Inc.</i> , No. 3:22-cv-00732-K (N.D. Tex.)
1013	Affidavit of Nathaniel E. Frank-White dated November 28, 2022 & Exhibit A
1014	Ari Luotonen, Web Proxy Servers (1998)
1015	Andrew S. Tanenbaum, Computer Networks (3d ed. 1996)
1016	Joint Claim Construction and Prehearing Statement, <i>Rosen Techs. LLC v. Lennox Indus., Inc.</i> , No. 3:22-cv-00732-K, Dkt. 54 (N.D. Tex. Feb. 23, 2023)

Ex[No.]	Description of Documents
1017	Plaintiff’s Amended Disclosure of Asserted Claims and Preliminary Infringement Contentions & Exhibit A, dated November 21, 2022, <i>Rosen Techs. LLC v. Lennox Indus., Inc.</i> , No. 3:22-cv-00732-K, (N.D. Tex.)
1018	U.S. Patent No. 6,032,867 (“ <i>Dushane</i> ”)
1019	U.S. Patent No. 6,754,485 (“ <i>Obradovich</i> ”)
1020	U.S. Patent No. 6,615,175 (“ <i>Gazdzinski</i> ”)
1021	U.S. Patent No. 5,460,327 (“ <i>Hill</i> ”)
1022	U.S. Patent No. 7,084,859 (“ <i>Pryor</i> ”)
1023	Gillet, Sharon Eisner et al., A Taxonomy of Internet Appliances, Telecommunications Policy Research Conference (2000)
1024	Cardio Manual, Secant Home Automation Inc (“ <i>Cardio Manual</i> ”)
1025	KR1998/0701245 (“ <i>Ehers</i> ”) translated with certification
1026	U.S. Patent No. 6,161,133 (“ <i>Kikinis</i> ”)
1027	U.S. Patent No. 5,784,291 (“ <i>Chen</i> ”)
1028	U.S. Patent No. 6,665,163 (“ <i>Yanagisawa</i> ”)
1029	Statutory Disclaimer and Declaration of Howard Rosen entered in U.S. Patent No. 6,824,069
1030	U.S. Patent Pub. No. 2002/0103878 (“ <i>Moncibais</i> ”)
1031	U.S. Patent No. 6,496,361 (“ <i>Kim</i> ”)
1032	U.S. Patent No. 5,485,614 (“ <i>Kocis</i> ”)
1033	U.S. Patent No. 6,804,792 (“ <i>Nishikawa</i> ”)
1034	U.S. Patent No. 6,023,587 (“ <i>Watts</i> ”)

Ex[No.]	Description of Documents
1035	U.S. Patent No. 6,098,092 (“Padzensky”)
1036	CA Patent 2,265,292 (“Weiss”)
1037	Lin et al., Internet-Based Monitoring and Controls for HVAC Appliances, IEEE Industry Appliance Magazine (Jan.-Feb. 2002)
1038	U.S. Patent No. 6,868,293 (“Schurr”)
1039	U.S. Patent No. 5,950,709 (“Krueger”)
1040	Dokter, D.A., From Glosser-RuG to Glosser-WeB (Apr. 18, 1997)
1041	Major, April, Copyright Law Tackles Yet Another Challenge: The Electronic Frontier of the World Wide Web, 24 Rutgers Computer Tech. L. J. 75 (1998)
1042	Mefford, FDFiles: Find Dead Files, PC Magazine (December 17, 1996)
1043	Gilster, Ron, PC Hardware: A Beginner’s Guide (2001).
1044	Andrew T. Dufresne, Nathan K. Kelley, & Lori Gordon, <i>How reliable are trial dates relied on by the PTAB in the Fintiv analysis?</i> , PERKINS COIE 1600 PTAB & BEYOND, Oct. 29, 2021
1045	Katherine K. Vidal, Memorandum: Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation (June 21, 2022)
1046	Dani Kass, <i>Fintiv Fails: PTAB Uses ‘Remarkably Inaccurate’ Trial Dates</i> , LAW360, Nov. 2, 2021
1047	Docket Sheet as of March 19, 2023, <i>Rosen Technologies LLC v. Lennox Industries, Inc.</i> , No. 3:22-cv-00732-K (N.D. Tex.)
1048	Joint Motion to Stay Pending <i>Inter Partes</i> Review, <i>Rosen Technologies LLC v. Lennox Industries Inc.</i> , No. 3:22-cv-00732-K (N.D. Tex. July 28, 2023)

Ex[No.]	Description of Documents
1049	Docket Navigator Statistics Regarding Grant of Joint Motions to Stay Pending <i>Inter Partes</i> Review
1050	Order Granting Joint Motion to Modify Deadlines, <i>Rosen Technologies LLC v. Lennox Industries Inc.</i> , No. 3:22-cv-00732-K (N.D. Tex. June 1, 2023)
1051	Joint Motion to Modify Deadlines, <i>Rosen Technologies LLC v. Lennox Industries Inc.</i> , No. 3:22-cv-00732 (N.D. Tex. Aug. 24, 2023)
1052	Email from Trials@USPTO.GOV (August 23, 2023)
1053	Plaintiff's Responsive Claim Construction Brief, <i>Rosen Technologies LLC v. Lennox Industries Inc.</i> , No. 3:22-cv-00732-K (N.D. Tex. May 11, 2023)
1054	Plaintiff's Opening Claim Construction Brief, <i>Rosen Technologies LLC v. Lennox Industries Inc.</i> , No. 3:22-cv-00732-K (N.D. Tex. Apr. 20, 2023)
1055	Order Granting Joint Motion to Stay Pending <i>Inter Partes</i> Review, <i>Rosen Technologies LLC v. Lennox Industries Inc.</i> , No. 3:22-cv-00732-K (N.D. Tex. Sept. 12, 2023)
1056	Claim Construction Order, <i>Rosen Technologies LLC v. Lennox Industries Inc.</i> , No. 3:22-cv-00732-K (N.D. Tex. Sept. 11, 2023)

As authorized by the Board via email on September 19, 2023, Petitioner respectfully submits this sur-sur-reply.

I. PATENT OWNER’S CLAIM CONSTRUCTION IS FLAWED

A. PO Has Taken Multiple Inconsistent Claim Construction Positions

PO’s statements regarding its proposed construction of the “program stored” limitation (18[e]) in the district court are incorrect. See Sur-Reply at 1-2. First, PO did not, as it now suggests, propose to construe that limitation as a means-plus-function limitation. Both of PO’s claim construction briefs argued for plain and ordinary meaning. EX1053 at 17-18; EX1054 at 24-25. PO then merely asserted that “even if it were a means-plus function term[,] **which it is not**[,] . . . Figures 1 and 7 and the discussion at column 5, lines 38-56 [of the ’555 Patent] provides more than sufficient information for a POSITA to ascertain the scope of the invention and the steps necessary to accomplish that function.” EX1054 at 24-25. PO’s alternative argument—which failed to even identify any algorithm as corresponding structure—falls far short of an affirmative proposal to construe the limitation as a means-plus-function limitation. Petitioner was entitled to rely on PO’s proposed plain meaning construction for purposes of its invalidity grounds in this IPR. *10X Genomics, Inc. v. Bio-Rad Labs*, IPR2020-00086, Paper 8 at 21-22 (P.T.A.B. Apr. 27, 2020) (permissible to base invalidity grounds on PO’s claim constructions).

Second, PO’s Sur-Reply arguments are not only inconsistent with its district

court position; they are also inconsistent with PO's position in its preliminary response (Paper 6 ("POPR")). In proposing to construe "program stored" as a means-plus-function limitation, the POPR argued that the corresponding structure is disclosed in Figure 5 and column 4, lines 16-31 and lines 40-59 and that the element requires parsing and matching terms. POPR at 6-7. PO's Sur-Reply suggests that the POPR relied on "equivalent language" to the district court's construction. The district court's construction, however, identifies Figure 7 or its column 5, lines 41-56 description as the corresponding structure, neither of which involve parsing or matching terms. The Board should reject PO's attempt to read in the parsing and matching requirements of Figure 5 into a term whose corresponding function is limited to "displaying messages received from said remote correspondent."

For at least these reasons, the Board should reject PO's shifting and contradictory means-plus-function constructions of the "program stored" term and adopt the ordinary meaning construction PO urged in the district court litigation.

B. The District Court's Reliance on the Entirety of Figure 7 as Supplying the Corresponding Structure is Misplaced

The district court's construction is flawed in part and should not be used as a basis for denying institution. In construing the "program stored" limitation as a means-plus-function limitation, the district court identified the function as "displaying messages received from said remote correspondent" and identified the structure as "'555 Patent at Fig. 7" or "5:41-56," and "equivalents thereof."

EX1056 at 27-34. The Court’s identified structure, however, is partially incorrect. The first two steps of Figure 7 recite “establish[ing] communication between the local thermostat system and a predetermined remote correspondent” and “read[ing] current information from the remote correspondent.” EX1001 at Fig. 7, 5:41-56. In contrast, the claimed function is “displaying ***messages received from said remote correspondent,***” meaning that the program is displaying messages that have **already been received**. As such, the only portion of Figure 7 that *corresponds* to the claimed function is the last flowchart step, which recites “display[ing] current information.” *Id.* The first two steps of Figure 7—“establish[ing]” and “read[ing]”—are separate steps that are not properly considered part of the algorithm for performing the claimed “displaying” function. That “establish[ing]” and “read[ing]” are not part of the claimed function of “displaying” is further confirmed by Claim 1 of the ’555 Patent, which includes separate limitations for the program to “establish” and “read” and then to “display.”

If the Board is inclined to construe “program stored” as a means-plus-function limitation, then the Board should limit the corresponding structure to the displaying step of Figure 7. Petitioner submits that the function and corresponding structure is taught by the prior art in Grounds 1-3 for the reasons set forth in the Petition.

Respectfully Submitted,

September 26, 2023

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CERTIFICATE OF SERVICE

In accordance with 37 C.F.R. § 42.6(e), the undersigned certifies that on September 26, 2023, a complete and entire copy of the **PETITIONER'S AUTHORIZED SUR-SUR-REPLY TO PATENT OWNER'S SUR-REPLY IN SUPPORT OF PRELIMINARY RESPONSE** and Exhibits 1055-1056 were served on Patent Owner via email at the following correspondence addresses:

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