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Subject: IPR2023-00797 - Petitioner's Request for Authorization to File Reply to POPR
Date: Monday, September 18, 2023 12:09:02 PM

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Dear Patent Trial and Appeal Board,

Petitioner respectfully requests authorization to file briefing in the form of a 10-page Reply to Patent Owner's Preliminary Response ("POPR") in IPR2023-00797. In addition, Petitioner respectfully requests authorization to submit evidence in the form of a supplemental declaration from Petitioner's technical expert, Dr. Buehrer, in order to address technical inaccuracies contained in the POPR. If Petitioner's requests are granted, Petitioner does not oppose Patent Owner's submission of an equivalent-length Sur-Reply and submission of additional evidence.

If authorized, Petitioner's Reply would address POPR arguments that could not have reasonably been foreseen, at least insofar as the POPR characterizes petition arguments and record evidence in a manner inconsistent with the petition and evidence. Petitioner respectfully submits that good cause for further briefing on these issues exists, at least because briefing would clarify the record and aid the Board in deliberations on issues that are potentially dispositive to institution of the pending petition. For example, Petitioner's reply would address the following issues in the POPR:

1. Patent Owner's arguments under § 314(a) attempt to extend the holding of *Valve* to a circumstance in which prior art is different from that applied in an earlier IPR petition (POPR, § II);
2. Patent Owner's arguments under § 325(d) are based on a 300-page technical standard document that was never discussed during original examination (POPR, § II);
3. Patent Owner's arguments that the reference Koo is not prior art mischaracterize the '586 provisional to which the '302 patent claims priority and also mischaracterize a 2006 book authored by Petitioner's technical expert Dr. Buehrer (POPR, § III.B).

Furthermore, if Petitioner's request for authorization to submit evidence is granted, the supplemental declaration from Petitioner's expert, Dr. Buehrer, would clarify the record as to various allegations by Patent Owner's expert, Mr. Alberth. If authorized, Petitioner's Reply and Dr. Buehrer's accompanying declaration are ready to be filed immediately, thus alleviating any timing concerns.

Petitioner and Patent Owner have conferred. Patent Owner opposes this request.

Should the Board desire a call to discuss this request, the parties are available on September 21 (1:00 PM – 4:00 PM EST), September 25 (1:00 PM – 4:00 PM EST), and September 27 (3:00 PM – 5:00 PM EST).

Respectfully submitted,
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