
From: Trials
Sent: Friday, September 15, 2023 11:34 AM
To: Jonathan Tuminaro; Trials
Cc: NGoldbergPTABMatters@proskauer.com; BVinti@proskauer.com; jr@nixonvan.com; rym@nixonvan.com; jar@nixonvan.com; EWang@proskauer.com; Michael Specht; Daniel Block; Steve Pappas; PTAB Account
Subject: RE: IPR2023-00888 and -00889 // Request for Leave to File Reply to POPR

Counsel,

The Board grants Petitioner's request to file a Reply limited to 5 pages filed on or before September 22, 2023. The Reply may only address the following claim construction issues: (1) "potentially security-related events," (2) "post-filtering residue," and (3) "dynamically modifying an analysis capability of said probe." No other issues may be raised or discussed, and a supporting expert declaration is not authorized. Likewise, Patent Owner may file a Sur-Reply, which is limited to 5 pages. If filed, the Sur-Reply is due on or before September 29, 2023. The Sur-Reply may only address issues discussed in Petitioner's Reply. No other issues may be raised or discussed, and a supporting expert declaration is not authorized.

Regards,

Esther Goldschlager
Supervisory Paralegal Specialist
Patent Trial & Appeal Board
U.S. Patent & Trademark Office

From: Jonathan Tuminaro <JTUMINAR@sternekessler.com>
Sent: Wednesday, September 13, 2023 6:38 PM
To: Trials <Trials@USPTO.GOV>
Cc: NGoldbergPTABMatters@proskauer.com; BVinti@proskauer.com; jr@nixonvan.com; rym@nixonvan.com; jar@nixonvan.com; EWang@proskauer.com; Michael Specht <MSPECHT@sternekessler.com>; Daniel Block <DBLOCK@sternekessler.com>; Steve Pappas <SPAPPAS@sternekessler.com>; Jonathan Tuminaro <JTUMINAR@sternekessler.com>; PTAB Account <PTAB@sternekessler.com>
Subject: IPR2023-00888 and -00889 // Request for Leave to File Reply to POPR

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Honorable Board:

In accordance with 37 C.F.R. 42.108(c), Petitioner requests leave to file a limited reply to Patent Owner's Preliminary Response in the above-captioned IPRs. Petitioner proposes that the reply be limited to 10 pages with an accompanying expert declaration, and that the reply be due within 10 days of authorization, if authorized. The reply would respond to the following issues, which Petitioner believes were unforeseeable and/or raise new claim-construction issues:

1. Patent Owner's contention that Petitioner failed to address secondary considerations previously raised (IPR2023-00888, POPR, 12-13). Patent Owner did not previously raise the information presented in the POPR as objective indicia of nonobviousness.

2. The arguments and evidence presented in Dr. Lee's declaration (EX2001) regarding the "identify[ing] potentially security-related events" claim elements, which raises new claim-construction issues regarding the meaning of "potentially security-related events." See EX2001 (IPR2023-00888), ¶ 139 ("Neither of them analyzes any data to identify *potential* threats after filtering (*i.e.*, previously unknown threats from the post-filtering residue).").
3. The arguments and evidence presented in Dr. Lee's declaration regarding the "post-filtering residue" claim elements, which raise new claim-construction issues regarding the meaning of "post-filtering residue." See EX2001 (IPR2023-00888), ¶ 146 (contrasting "post-filtering" with the term "mid-filtering").
4. The arguments and evidence presented in Dr. Lee's declaration regarding updating Duvall's database in relation to the "dynamically modifying an analysis capability of said probe" claim elements, which presents arguments that were unforeseeable regarding whether a database "inherently allow[s] for dynamic updates" and whether Duvall's database would allow for dynamic updates. See EX2001 (IPR2023-00888), ¶ 170.

Patent Owner opposes Petitioner's request. Should the Board desire a conference call, the parties are available at the following times:

Wednesday, 9/20: 1:30-3:00 PM ET

Thursday, 9/21: 11:30 AM-12:00 PM or 2:30-3:00 PM ET

The parties can also be available at another time convenient for the Board.

Regards,
Jonathan Tuminaro
Counsel for Petitioner



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Please be aware as of August 1, 2023, the Sterne, Kessler, Goldstein & Fox office address is 1101 K Street, NW, 10th Floor, Washington, DC 20005. Information about our new address is being provided for your awareness and updating of our firm profile, your records, etc. if/as needed.

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