From:	Trials
To:	Philip J. Eklem; Trials
Cc:	ellisen.turner@kirkland.com; todd.baker@kirkland.com; jonathan.brit@kirkland.com; Jennifer Bush; #Meta_VideoLabs; Christine E. Lehman; Jaime Cardenas-Navia; RJ_VideoLabs-Facebook
Subject:	RE: IPR2023-00924 (Meta Platforms, Inc. v. VL Collective IP LLC) - Conference call today - July 1st
Date:	Monday, July 1, 2024 9:57:47 AM

CAUTION: EXTERNAL SENDER

Counsel,

A conference call is scheduled with the Board **today at 3pm ET**.

The dial-in number is: 866-919-8442 and the passcode is: 9446155#.

Regards,

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

From: Philip J. Eklem <peklem@reichmanjorgensen.com>
Sent: Thursday, June 27, 2024 8:57 AM
To: Trials <Trials@USPTO.GOV>
Cc: ellisen.turner@kirkland.com; todd.baker@kirkland.com; jonathan.brit@kirkland.com; Jennifer Bush <jbush@fenwick.com>; #Meta_VideoLabs <Meta_VideoLabs@kirkland.com>; Christine E. Lehman <clehman@reichmanjorgensen.com>; Jaime Cardenas-Navia <jcardenas-navia@reichmanjorgensen.com>; RJ_VideoLabs-Facebook <RJ_VideoLabs-Facebook@reichmanjorgensen.com>
Subject: IPR2023-00924 (Meta Platforms, Inc. v. VL Collective IP LLC)

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Dear Honorable Board,

Patent Owner writes to request relief in two ways with respect to Petitioners' Reply (Paper 32), filed on Monday, June 17, 2020. Patent Owner's Sur-Reply is due on July 24, 2024. Paper 31.

First, Patent Owner requests permission to submit a supplemental declaration from its technical expert (Dr. Saber) with its Sur-Reply to address issues that Petitioners first addressed in their Reply. The Petition did not substantively address the proper priority date of the patent or affirmatively propose claim

constructions, yet Petitioners' Reply includes arguments and a declaration from their expert (Dr. Bajaj) alleging a later priority date than what was in the Petition and advancing claim constructions. *See*, *e.g.*, Reply at 1-5, 7, 12, 26 (claim construction), 5-7 (priority date). As such, Patent Owner's Sur-Reply is the only opportunity for Patent Owner to respond to Petitioners' arguments on these issue and, because both types of issues are addressed from the perspective of the POSITA, Patent Owner should be able to respond with expert opinion. The Sur-Reply also includes or incorporates new arguments and expert opinions about how the POSITA would have allegedly interpreted the asserted references, and what would have allegedly been obvious to the POSITA. *See*, *e.g.*, Reply at 9-13 (POSITA's understanding with respect to Zhao), 15-16 (POSITA's understanding with respect to Steffens and obviousness), 17-18 (knowledge of a POSITA), 19-20 (POSITA's understanding with respect to Ozer), 25-27 (POSITA's understanding of TLP and knowledge of POSITA). So too here, Patent Owner should be permitted to respond with expert opinions so that Petitioners' expert opinions are not unrebutted.

Second, Patent Owner seeks an increase of the word count limit for its Sur-Reply so that it can adequately respond to arguments and testimony improperly incorporated by reference into Petitioner' Reply. The Reply cites to large portions of Dr. Bajaj's supplemental declaration (Exhibit 1052) that contain arguments not made or explained in the Reply. *See*, *e.g.*, Reply at 2 (citing Ex1052, ¶¶6-22, 23-35), 4-5 (citing Ex1052, ¶¶6-22), 8-9 (citing Ex1052, ¶¶6-22, 23-35), 11 (citing Ex1052, ¶¶6-22), 12-14 (citing Ex1052, ¶¶65-85), 25-27 (citing Ex1052, ¶¶6-23, 24-34, 65-85). This violates the Board's rules and amounts to a circumvention of the word count limit, which is prejudicial to Patent Owner. Patent Owner therefore requests an increase of the word count limit for its Sur-Reply that is commensurate with Petitioners' violation so it can respond to Petitioners' improperly incorporated arguments. Accordingly, Patent Owner requests an additional 4,000 words for its Sur-Reply.

Patent Owner has conferred with Petitioners, and Petitioners have stated that they oppose both requests for relief.

Petitioners provide their position as follows:
Petitioners oppose Patent Owner's requests to (1) submit a supplemental declaration from its technical expert, Dr. Saber, with its Sur-Reply and (2) increase the word count limit allowed in a Sur-Reply by 4,000 additional words. No new argument was included in Petitioners' Reply (Paper 32);

Petitioners responded to the issues in Patent Owner's Response (Paper 26), and in compliance with 37 C.F.R. §§ 42.23(b) and 42.24(c). Further, the CTPG and rules are clear: "A sur-reply may only respond to arguments raised in the corresponding reply and may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness." 37 C.F.R. § 42.23(b).

The parties are available for a conference call with the Board on:

- Friday, June 28 between 10 – 11:30 am or 1 – 5 pm ET
- Monday, July 1 between noon – 2 pm or 3 – 4 pm ET
- Wednesday, July 3 between 10 am – 2 pm ET

Counsel for all parties are copied on this email.

With best regards,

Philip Eklem
(Counsel for Patent Owner)

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Suite 800
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