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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GENERAL MOTORS LLC

Petitioner

v.

EDWARD H. NORTRUP

Patent Owner

Case IPR2023-00994

Patent 10,444,028

PATENT OWNER'S SUR-REPLY

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I. INTRODUCTION

Petitioner's Ground One argument has a fatal flaw. The argument is based on Petitioner's mistaken belief that Feldman discloses cell phones self-reporting location data. Feldman does not disclose this. This fact was acknowledged by Petitioner's own expert as outlined in the POR. Thus, the Knockeart-Feldman combination lacks disclosure of cell phones self-reporting location data or otherwise having control over the cellular phone networks collection, which is critical to elements 1.4 and 1.5 of claim 1 and to claim 2. Further, Ground One never advances an argument that cell phones self-reporting location data would have been obvious in light of the Knockeart-Feldman combination. Therefore, Petitioner is stuck with an argument that fails to identify where elements of the claims are disclosed in the prior art.

Petitioner apparently recognizes this fatal flaw and attempts to "fix it" in multiple, but inappropriate, ways. First, Petitioner introduces for the first time in the Petitioner's Reply the notion of "primary" and "secondary" configurations of the Knockeart-Feldman combination in which the importance of Feldman in the primary configuration is minimized. Petitioner is subordinating the importance of Feldman by no longer relying on Feldman as disclosing cell phone self-reporting location data. But this construct was not in the Ground One argument. To the contrary, the

Petition states unequivocally that (regardless of the supposed primary and secondary combination configurations) ultimately, the resulting system of the Knockeart-Feldman combination “would have used Feldman’s techniques for collecting traffic information.” Feldman’s technique for collecting traffic information, however, is by calculating a cell phone’s location based on administrative messaging collected on the network side. Nowhere does Feldman disclose cell phones transmitting location data as part of its technique for collecting traffic information. Therefore, the new argument in Petitioner’s Reply inappropriately contradicts the original argument in the Petition.

Second, Petitioner attempts to modify the Ground One argument by adding additional prior art references which supposedly discloses cell phone self-reporting location data for traffic estimations. Such a modification of the Ground One argument is inappropriate at this point in the IPR proceedings.

Third, Petitioner inappropriately mischaracterizes Feldman in an effort to interpret the reference as disclosing something that it does not disclose i.e., cell phones self-reporting location data.

Petitioner is stuck with the fatal flaw in its argument. It cannot reinvent its case at this time. Accordingly, the board should reject petitioner’s arguments and affirm the patentability of each of the challenged claims.

II. PETITIONER INTRODUCES CONCEPT OF PRIMARY AND SECONDARY CONFIGURATIONS OF KNOCKEART-FELDMAN COMBINATION FOR THE FIRST TIME IN THE REPLY

A. Petitioner Did Not Apply Different Knockeart-Feldman Combinations To The Claims In The Petition.

The Petitioner's Reply (PR) states that "[t]he Petition identifies two, alternative configurations for applying Feldman's suggestions to Knockeart's navigation system." PR at 6. Petitioner then goes on to argue that primary and secondary combination configurations are applied differently to the claims.

But Petitioner did not apply different Knockeart-Feldman combinations to the claims in the Petition (P). Petitioner introduced different motivations for combining Feldman and Knockeart (P at 9), but these motivations were not characterized as different combination configurations that should be applied to the claims differently. Rather, as best understood by PO, just a single Knockeart-Feldman combination was applied to the claims. When applying the Knockeart-Feldman combination to the claims only "the Knockeart-Feldman combination" is referenced without any indication of it having a primary or secondary configuration. See "Application of Knockeart-Feldman" P at 15 et seq.

For example, when addressing element [1.4] "wherein the traffic condition is at least in part based on a plurality of cell phone speeds estimated through an

assessment of multiple locations of each of a plurality of cell phones,” Petitioner states as follows:

Knockeart further discloses that probe vehicle speeds are estimated through an assessment of *multiple locations of each of the probe vehicles*. GM-1003, ¶78 . . .

P at 20 (emphasis added). Thus, Petitioner argues initially that this element is disclosed in Knockeart but sidesteps a verbatim recitation of claim language. Petitioner could not state that Knockeart discloses determining the traffic condition based on “an assessment of multiple locations of each of *a plurality of cell phones*” as claimed because Knockeart simply does not disclose this. Petitioner states instead that Knockeart discloses determining the traffic condition based on “assessment of multiple locations of each of the *probe vehicles*.” Petitioner apparently understood this deficiency, and adds the following:

To the extent Knockeart does not explicitly disclose the use of cell phone speeds estimated through an assessment of multiple locations of each of a plurality of cell phones, as described in Section III(A)(3), supra, *in the Knockeart-Feldman combination*, vehicle-carried cellular phones are used as probes to populate at least some of the traffic information in the traffic database. GM-1003, ¶80.

P at 21-22 (emphasis added). Thus, when applying the Knockeart-Feldman combination to this claim element, Petitioner refers to a single Knockeart-Feldman

combination. Likewise, when addressing the other elements of claim 1 and claims 2-7, 9-10, 12-21, 25-26, 29, and 31 (i.e., Ground 1), Petitioner again refers to a single Knockeart-Feldman combination.

B. Why Introduce the Concept Of Primary And Secondary Combination Configurations In The Reply?

Petitioner prefaces the introduction of the primary and secondary combination configurations, stating as follows:

Petitioner presents a brief overview of the two alternative configurations for the Knockeart-Feldman combination presented in the Petition to *reorient* the Board to a correct framing of the relevant issues.

PR at 2 (emphasis added). Petitioner appears to be attempting to “reorient” the Board to the concept of a primary combination which proposes “retaining all functionality of Knockeart’s navigation system and adding cellular phone capability to Knockeart’s system. . . .” (PR at 3). Petitioner concludes as follows:

The Petition’s primary proposed configuration is therefore just the simple addition of full cellular phone capabilities (based on the suggestions of Feldman) to Knockeart’s system that already includes the main components needed for such functionality.

P at 6. Therefore, Petitioner introduces a primary combination configuration that subordinates the importance of Feldman in the Knockeart-Feldman combination so that Feldman is combined with Knockeart only for its “cell phone capabilities.”

Petitioner is subordinating the importance of Feldman in the Knockeart-Feldman combination because Feldman has become a liability in Petitioner’s claim analysis. That is, Petitioner relied on Feldman in Petition as disclosing cell phones self-reporting their location. However, there is no basis for this. As set forth in the POR pages 5-6 and discussed below, Feldman’s technique for collecting traffic information is by monitoring administrative messages between a subject cell phone and a cellular wireless network’s cell towers. The cellular wireless network interprets the messages and calculates a cell phone’s location. All of the interpretation and calculations are done on a server and the phone is unaware of its own location. Feldman does not disclose cell phones self-reporting their locations. Further, as discussed in more detail in the POR and below, the cell phones have no way to control the networks messaging, interpretation of the messaging or location calculations. Because Feldman does not disclose cell phones self-reporting their locations or any way to control the networks messaging and calculations, elements related to cell phone location, location access control by the phone and transmission of location information, such as [1.4], [1.5] and [2], are not found in the combination of Knockeart-Feldman. Thus, Petitioner’s Ground One argument is fatally flawed.

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And what we see in the PR is a desperate attempt to cure this flaw by reinventing the claim analysis and distorting Feldman.

III. THE KNOCKEART-FELDMAN COMBINATION DOES NOT DISCLOSE SELF-REPORTING OF CELL PHONE LOCATIONS AND THEREFORE FAILS TO TEACH OR SUGGEST ALL ELEMENTS OF THE CLAIMED INVENTION

A. Petitioner Admits That The Knockeart-Feldman Combination Would Rely On Feldman's Techniques For Collecting Traffic Information Using Vehicle Carried Cell Phones

The PR quotes a passage on page 9 of the Petition as support for the concept of primary and second combination configurations. See PR at 3 and 7. This quotation, however, conspicuously omits the last sentence of the passage which the begins on page 10 and reads as follows:

In either case, the resulting system would have used Feldman's techniques for collecting traffic information using vehicle-carried cellular phones to populate Knockeart's traffic database used to determine fastest routes between starting points and destinations. *Id.*

Therefore, regardless of the supposed primary and secondary combination configurations, ultimately, the resulting system of the Knockeart-Feldman combination "would have used Feldman's techniques for collecting traffic information." As discussed below and set for in POR pages 5-6, Feldman's technique for collecting traffic information is by calculating location data based on administrative messaging on the network administration side. Nowhere does

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Feldman disclose cell phones transmitting location data as part of its technique for collecting traffic information.

Therefore, because Petitioner admits that the Knockeart-Feldman combination would rely on Feldman's technique for collecting traffic information (regardless of the supposed "combination configuration"), and because Feldman's technique for collecting traffic information does not involve cell phones self-reporting location data, Petitioner has essentially admitted that the Knockeart-Feldman combination does not include cell phones self-reporting location data—which is crucial to elements [1.4], [1.5] and [2].

B. Petitioner's expert acknowledges that Feldman does not disclose self-reporting of location data.

As set forth in POR at 8-9, there is no disclosure in Feldman regarding cell phones having the ability to self-report their own location, such as by taking a reading of a GPS receiver inside of the phone and transmitting the coordinates to some other entity. Dr. Braasch was asked specifically about this topic.

Q. And earlier you mentioned that you believe that the cell phones being discussed in Feldman did have some GPS capability. Can you point me to the portion of Feldman that describes a cell phone reporting its GPS position to the cellular network?

A. . . . At the moment I'm not finding a particular disclosure that specifically recites what you're talking about . . . Braasch Depo., p. 37,

ln. 23-p. 38, ln. 5 (noting that Dr. Braasch’s answer goes on with various non-responsive statements regarding the question asked).

Petitioner attempts to rehabilitate its position by stating: “Dr. Braasch clearly identified the relevant teachings of Feldman regarding self-reporting of location data by cell phones in his declaration. GM-1003, ¶56 (citing GM-1005, [0024]), ¶80, (citing GM-1005, [0035]-[0036], [0053]), ¶89 (citing GM-1005, [0053]), ¶93 (citing GM-1005, [0035], [0008]-[0009]).” PR at 13-14. However, none of these sections of Feldman teach of a GPS enabled cell phone or otherwise configured self-reporting location cell phone.

C. Petitioner Changes Its Ground One argument to Include Simske and Whitsell in PR

Petitioner, recognizing the fatal flaw in its claim analysis, attempts to change its Ground One argument to include new prior art references. Petitioner states as follows:

Techniques for using GPS enabled cellphones as traffic probes were well known in prior art navigation systems by the ’028 patent’s 2004 priority date. Pet., 15. For example, Simske¹ describes determining traffic conditions “[b]ased on GPS tracking information obtained from other GPS enabled devices” such as “a portable telephone, laptop computer, pager, personal digital assistant, or any other type of portable

¹ For the reasons stated in POR, Simske is not prior art under the IPR rules.

or mobile unit or device having a GPS receiver.” GM-1006, [0012]-[0013]. In a similar example, Whitsell describes the well-known prior art technique in which “the mobile terminal[s] 50 may include a GPS system” and that “the mobile terminal 50 will likely be a cellular telephone.” GM-1007, 7:54-67, 5:44-45.” PR at 12-13.

Petitioner does not provide a Petition citation for the Simske or Whitsell references because Petitioner never included these references in the Petition’s Ground One argument. For this reason, these references should be excluded by the Board for Ground One.

D. Reply Mischaracterizes Feldman—Feldman Does Not Disclose Self-reporting of Cell Phone Location Data

Petitioner, again recognizing the fatal flaw in its claim analysis, attempts to spin Feldman as disclosing self-reporting from GPS enabled cell phones. Petitioner states, “Feldman discloses multiple techniques for collecting traffic information, including self-reporting from GPS enabled cellphones” PR at 11. and then mischaracterizes Feldman to support this argument. Selected instances of Petitioner mischaracterizing Feldman are detailed in the table below.

In general, Petitioner mischaracterizes Feldman by conflating different technologies for collecting, modeling, and processing vehicular traffic data. Feldman reviews prior art techniques for acquiring, analyzing, processing, and

applying vehicular traffic data, focusing on (1) GPS type networks, and (2) cellular type networks. For example, Feldman states:

For obtaining dynamic vehicle location and velocity data and information, having varying degrees of accuracy and precision, from [1] *uniquely or specifically dedicated in-vehicle mobile sensors or electronic devices, such prior art techniques make use of well known global positioning system (GPS) and/or* [2] *other types of mobile wireless communication or electronic vehicular tracking technologies, such as cellular telephone or radio types of mobile wireless communications networks or systems*, involving the use of corresponding mobile wireless devices

Feldman ¶8 (bracketed numbering and emphasis added). Therefore, according to Feldman, there are at least two recent prior art approaches for modeling and processing vehicular traffic data: (1) transmitting location data from specifically dedicated in vehicle mobile sensors and electronic devices such as GPS, and (2) using a cellular telephone wireless communications network involving mobile wireless communication devices such as cell phones.

It should be understood that nowhere does Feldman disclose GPS in cell phones. However, Petitioner misrepresents the passage above to indicate that Feldman does. Specifically, Petitioner alters the passage above to read:

Feldman describes that “such prior art techniques make use of well known global positioning system (GPS)” *implemented in* “mobile wireless devices such as cellular telephones.”

PR at 12 (emphasis added). There is no suggestion in the passage above that the prior art techniques implement GPS in cell phones. To the contrary, the passage indicates clearly that there are two different types of networks—GPS and Cellular Network. However, Petitioner’s modification of this passage conflates the two network types, completely changing the meaning of the passage to support Petitioner’s distortion that Feldman discloses cell phones self-reporting location data.

A significant portion of Feldman compares these two types of networks, addressing their pros and cons. For example, Feldman states that due to the specialized equipment needed for a GPS-type network, cellular-type networks are more popular, stating as follows:

It is noted, however, that due to the requirement of uniquely or specifically designating or assigning each mobile sensor or electronic device to a particular vehicle during the process of gathering, collecting, or acquiring, the vehicular traffic data and information, the potential number of mobile sensors or electronic devices providing dynamic vehicle location and velocity data and information to the computerized central traffic data and information handling system is limited, in proportion to the number of vehicles featuring the particular

mobile wireless communication or electronic vehicular tracking technology. *For example, currently, there is a significantly larger potential number of vehicles associated with cellular telephone types of a mobile wireless communication network or system compared to the potential number of vehicles associated with GPS types of a mobile wireless communication network or system.*

Feldman ¶9 (emphasis added). Feldman also acknowledges that GPS-type networks have more accurate vehicle location data than cellular-type networks, stating as follows:

In the prior art, another critically important aspect requiring new and improved understanding and enabling description relates to the modeling and processing of *vehicular traffic data* and information which are acquired, collected, or gathered, using techniques *based on cellular telephone types of mobile wireless communications networks or systems, which to date, feature relatively low accuracy and precision of vehicle locations compared to the less widely used, but significantly more highly accurate and precise, GPS types of mobile wireless communication or electronic vehicular tracking technologies.*

Feldman ¶12 (emphasis added).

Feldman discloses a solution that uses a cellular-type network with an improved method of locating cell phone's on a network, stating as follows:

Another main aspect of the present invention relates to the modeling and processing of vehicular traffic data and information which are acquired, collected, or gathered, using techniques based on mobile wireless communication networks or systems, such as cellular telephone types of networks and systems, which to date, feature relatively low accuracy and precision of vehicle locations compared to the less widely used, but significantly more highly accurate and precise, GPS types of mobile wireless communication or electronic vehicular tracking technologies.

Feldman ¶34.

The location data is calculated by a server using administrative messages collected by the network (e.g., cell tower handovers). Specifically, Feldman states as follows:

Data acquisition from cellular phones is controlled by a server connected to a particular cellular phone network. The operation of cellular phones provokes a large amount of administrative and control messages that flow in the cellular phone network whenever any cellular event occurs. For example, initiation of a call, completion of a call, transmission of a short message Service (SMS) message, a cell transition or handover, etc. The server of the cellular phone network monitors these messages and intercepts those that indicate movement of cellular phone holders, for example, phones whose cell handovers rate can point to a vehicle speed.

Feldman ¶60. Thus, Feldman relies on cellular wireless network interpretation of administrative messaging to calculate the locations of cell phones as its only method of tracking cell phones. Nowhere does Feldman disclose of cell phones that self-report using GPS or other technology. While Feldman discusses GPS, it is in the context of vehicle GPS to support an in-vehicle navigation system. Feldman also discusses sending GPS data from the vehicle through a wireless network, but this is a transmission of data acquired at the vehicle by a mobile location sensor—i.e. a vehicle probe.

Therefore, contrary to Petitioner’s distorted characterization of Feldman, nowhere does Feldman disclose of cell phones that self-report using GPS or other technology. Below is a table highlighting selected mischaracterizations of Feldman in the PR.

Petitioner’s Characterization	Disclosure of Feldman	Comments
“prior art techniques make use of well known global positioning system (GPS)’ implemented in ‘mobile wireless devices such as cellular telephones’” “Id., [0008].” PR at 12 (emphasis added).	“[P]rior art techniques make use of well known global positioning system (GPS) and/or other types of mobile wireless communication or electronic vehicular tracking technologies, such as cellular telephone or radio types of mobile wireless communications networks or systems,	Petitioner replaced the entire “and/or” clause with the phrase “implemented in,” thereby changing the meaning of the passage entirely. The original passage was describing two different network approaches. Petitioner’s modification conflates the two approaches and states erroneously that Feldman

	involving the use of corresponding mobile wireless devices such as cellular telephones,” Feldman [0008] (emphasis added).	discloses GPS being implemented in cells phones, which it did not.
“Feldman describes the well-known prior art technique of collecting ‘vehicular traffic data and information acquired from mobile sensors of a cellular phone mobile communication network.’ GM-1005, [0024]. This disclosure reveals that Feldman expressly describes acquiring vehicle traffic data from the mobile phones themselves, and not exclusively from monitoring cell tower handovers. GM-1003, ¶¶56, 80, 89, 93.” 2 nd Dec of Dr. Braasch, pg. 13 (emphasis original).	“[0024] FIG. 3 is a pictorial diagram illustrating exemplary results obtained from the process of path identification using vehicular traffic data and information acquired from mobile sensors of a cellular phone mobile communication network, in accordance with the present invention;” Fig. 3 description continues: "sectors 72, 74, and, 76, in FIG. 3 ... represent the footprints corresponding to the tracking data obtained ... from a cellular phone mobile communication network” Feldman [0077] (emphasis added).	Petitioner is implying, incorrectly, that Feldman is disclosing a cell phone that has location data to self-report. Neither paragraph 0024 nor the related Fig. 3 discloses a self-reporting cell phone. Feldman discloses network side collection of administrative messages to represent footprints of the phone.
“This includes GPS enabled cellphones ‘transmitting vehicular locations to’ a central traffic server. GM-1005, [0053].” PR at 10.	“A growing number of mobile wireless communication devices are increasingly being installed or carried in vehicles, and are capable of transmitting vehicular locations ...” “Such mobile wireless	There is no disclosure in Feldman para 0053 disclosing GPS enabled cell phones. Feldman is disclosing wireless communication devices that transmit data. In the list of examples,

	communication devices are telemetric devices with GPS capabilities, anti-theft devices, and, driver-carried devices such as computer laptops and cellular phones.” Feldman [0053] (emphasis added).	Feldman discloses telemetric GPS devices and, separately, driver-carried cell phones.
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E. Because the Knockeart-Feldman combination Does Not Disclose Location Data Self-reporting or Control of Access to Location data It Fails To Teach Or Suggest All Elements Of The Claims

A. No disclosure of [1.5] wherein each of the plurality of cell phones further has a user initiated permission set comprised of a list of authorizations that permit a user to selectively enable or disable access to user cell phone location data or [2], wherein each of the plurality of cell phones communicates its respective locations through a cellular network infrastructure to a server for calculation of the traffic condition.

Because the Feldman does not disclose cell phones self-reporting their locations or any way to control the networks messaging and calculations, elements related to self-reporting cell phone location or controlling self-reporting features, such as [1.4] and [2], are not found in the combination of Knockeart-Feldman. Nor has Petitioner argued that it would be obvious for cell phones in *Feldman* to collect and transmit location data. Petitioner presents no *Graham* analysis in its Petition identifying the lack of *Feldman*’s cell phone’s ability to collect and transmit location data and then claiming that this ability would be obvious in light of some other reference. Instead, Petitioner’s argument erroneously relied on the mistaken belief

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that the cell phones of *Feldman* do contain such location data and are capable of transmitting such data. Petitioner is therefore stuck with that argument now. See also POR at 12 et seq.

B. Petitioner’s Reply Mischaracterizes Feldman—Feldman’s Network Location Collection System Cannot be Controlled by a Cell Phone

Petitioner contradicts Petitioner’s Expert deposition testimony, stating:

[W]hile it is true that for cellphones described by Feldman that are tracked based on cell tower handovers, “[t]he server of the cellular phone network monitors [administrative and control] messages” to identify cellphone “movement,” (GM-1005, [0060]), such functionality would not prevent the cell phone network provider from restricting access to such information. GM-1018, ¶¶23-24. A POSITA still would have found it obvious and beneficial to include functionality for enabling or disabling access to such information by the traffic identification and navigation system in the resulting combination (based on the functionality described in Knockeart).

PR at 16-17.

As stated previously in the POR:

The user of a cellphone has no control over the phone’s sending of control messages or the handover process as described in paragraph 60 of Feldman. That process is solely under the control of the cellphone and cellular network. Dr. Braasch also confirmed this understanding.

POR at 7.

Feldman uses administrative and control messages that are sent between a cellular telephone wireless network and its phones to maintain proper operation. A user of the phone has no way of enabling or disabling the messages. If the messages stop, so does the functionality of the phone. The Petitioner's argument fails because there is no way to control the network's location collection.

C. No disclosure in Knockeart of [1.4] wherein the traffic condition is at least in part based on a plurality of cell phone speeds estimated through an assessment of multiple locations of each of a plurality of cell phones.

As discussed above, Petitioner initially bases its Ground One argument on Knockeart the traffic condition based on “assessment of multiple locations of each of the *probe vehicles*,” stopping short of the actual claim language in which the assessment is based on “multiple locations of each of the *cellphones*” Petitioner then states:

To the extent Knockeart does not explicitly disclose the use of cell phone speeds estimated through an assessment of multiple locations of each of a plurality of cell phones, as described in Section III(A)(3), *supra*, ***in the Knockeart-Feldman combination***, vehicle-carried cellular phones are used as probes to populate at least some of the traffic information in the traffic database. GM-1003, ¶80.

But nowhere does the Knockeart-Feldman combination teach or suggest “vehicle carried cellular phones” being used as probes. Specifically, nowhere does Knockeart disclose using cell phones as in-vehicle probes. Moreover, as set forth in POR at 9, the cell phones in *Feldman* are never disclosed as being able to operate as navigation devices themselves. *Feldman*’s phones are tracked by the cellular network to generate certain traffic-related information. But there is no disclosure that *Feldman*’s cell phones use this data to provide navigation services. Again, Dr. Braasch was questioned about this topic.

Q. . . . where is the disclosure in Feldman that that data or that information is provided to the phone and that the phone can perform navigation functions? I would note, Dr. Braasch, that paragraph 65 talks about these processing steps, which refers to previous processing steps take place in a server that’s connected to the mobile sensor network.

A. . . . Sitting here at this moment, I am not finding a specific reference that I can point to. . . .

Braasch Depo, p. 34., ln. 20 – p. 35, ln. 3. Thus, the leap from in-vehicle GPS to cell phone tracking is not taught or suggested by Knockeart or Feldman.

IV. CONCLUSION

For the foregoing reasons, Petitioner has failed to carry its burden of proving that the Challenged Claims are obvious over the cited combinations of references.

Accordingly, Patent Owner respectfully requests a final written decision affirming the patentability of each of the Challenged Claims.

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), I certify that this Sur-Reply complies with the type-volume limits of 37 C.F.R. § 42.24(c)(4) because it contains 4,280 words, excluding the parts of this Patent Owner's Sur-Reply that are exempted by 37 C.F.R. § 42.24(a)(1), according to the word processing system used to prepare this Patent Owner's Sur-Reply.

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2024, a copy of Patent Owner's Sur-Reply has been served in its entirety via email on the following:

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