

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SYMRISE AG and SYMRISE INC.,
Petitioners,

v.

INOLEX INVESTMENT CORPORATION,
Patent Owner.

Case IPR2023-01035
U.S. Patent No. 10,995,048

**PATENT OWNER INOLEX INVESTMENT CORPORATION'S
RESPONSE TO PETITIONERS' IDENTIFICATION OF
OBJECTED TO PORTIONS OF PATENT OWNER'S REPLY**

Pursuant to the Board's guidance provided in Ex. 3001, Patent Owner ("P.O.") submits this Response to Petitioners' objections (Paper 30).

Objections 1 and 2: What a prior reference discloses to a POSITA and whether Petitioners' expert, Dr. Taber, relied on impermissible hindsight are factual inquiries that requires the Board to analyze his testimony in view of the evidence as a whole. *See, e.g., Lectrosonics, Inc. v. Zaxcom, Inc.*, IPR2018-01129, -1130, Paper 33 at 29-30 (PTAB January 24, 2020). The objected-to sections of Ex. 2010 (§§102-109, 111-116) are Dr. Wright's comparison of Dr. Taber's Third Declaration with prior art of record. P.O.'s Reply Brief also includes two paragraphs as to why Dr. Taber's prior art analysis is based on impermissible hindsight. *See* Paper 25 at 10. P.O.'s assertion that the claimed calcination temperature is not disclosed in the prior art was first raised in P.O.'s RMTA (Paper 18, 18-19, 21-23), and Dr. Wright is permitted to respond to new Grounds and arguments raised for the first time in Petitioners' Opposition. *See* Paper 20 at 7-11, 14-15; Ex. 1046, §§26, 51-61, 63, 69-71, 74-75.

Objection 3: Further, secondary indicia of non-obviousness "play an important role as a guard against the statutorily proscribed hindsight reasoning in the obviousness analysis." *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1328 (Fed. Cir. 2016). Because P.O. is permitted to raise new evidence in its Reply Brief, 84 F.R. 9500 at 9501, it would be improper to strike such evidence rather than weighing its probative value, particularly after Petitioners respond on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2024, a true and correct copy of the foregoing PATENT OWNER INOLEX INVESTMENT CORPORATION'S RESPONSE TO PETITIONERS' IDENTIFICATION OF OBJECTED TO PORTIONS OF PATENT OWNER'S REPLY was served on counsel of record for Petitioner by filing this document through the P-TACTS System as well as delivering a copy via electronic mail to the following addresses:

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