UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,
Petitioner

v.

AUTONOMOUS DEVICES, LLC,
Patent Owner

Case: IPR2023-01055
U.S. Patent No. 11,238,344

PATENT OWNER'S PRELIMINARY SUR-REPLY

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Exhibit List

Exhibit	Description
2001	Biography of Blair M. Jacobs (previously submitted)
2002	Declaration of Blair M. Jacobs (previously submitted)
2003	Supplemental Declaration of Blair M. Jacobs (previously submitted)
2004	Disclaimer of Claims 1-2 and 19-20 (previously submitted)
2005	District Court Docket (previously submitted)
2006	District Court Scheduling Order (previously submitted)

I. INTRODUCTION

As authorized by the Board via email on September 26, 2023, Autonomous Devices, LLC ("Patent Owner" or "PO") submits this Preliminary Sur-Reply responding to Petitioner's Reply to Patent Owner's Preliminary Response (Petitioner's Reply is Paper No. 12, and PO's Preliminary Response ("POPR") is Paper No. 11). This Preliminary Sur-Reply is timely filed, as it is filed within five business days of Petitioner's Reply, which was filed October 3, 2023.

The Board should adopt PO's proposed construction of "object representation" and deny institution of this IPR because Petitioner has not established that there is a reasonable likelihood that any challenged claims are unpatentable. The Board should also exercise its discretion to deny institution under 35 U.S.C. § 314(a), as five of the six *Fintiv* factors favor discretionary denial.

II. PO'S CONSTRUCTION OF "OBJECT REPRESENTATION" SHOULD BE ADOPTED

The Board should adopt Patent Owner's proposed construction of "object representation." Patent Owner has proposed a reasonable, well-supported construction: "data structure that includes an object property generated by object processing." POPR, 10. This is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc). "Importantly," skilled artisans are "deemed to read the claim term . . . in the context of the entire patent."

Id. at 1313. The specification "is always highly relevant to the claim construction analysis" and is usually "dispositive." *Id.* at 1315. PO's construction is consistent with the claim language and is well-supported by the intrinsic record including the specification and figures, particularly Figure 4B of the '344 patent. POPR, 8-13.

Petitioner's contention that PO's proposed construction "improperly imports limitations from cherrypicked embodiments in the specification" is wrong. Reply, 1. The portions of the specification and drawings cited in the POPR provide important context and meaning for the "object representation," and the various examples later described in the specification build on that but do not change the meaning of the term. Petitioner's argument that "Patent Owner's construction improperly reads out embodiments of the '344 patent that refer to object representations in broader contexts" is wrong. Reply, 2. The portions of the '344 patent cited by Petitioner do not disclose embodiments of object representations that lack a data structure including an object property generated by object processing and instead merely disclose that "an object representation of a stream of collections of object representations includes one or more object properties," Ex. 1001, 3:42-61, 28:23-26. Petitioner claims that object representations may not include object properties, but the first portion of the '344 patent cited by Petitioner simply acknowledges that sensors are used, in part, to detect objects in the sensors' normal operation of capturing the device's general environment, not that an object representation data

structure does not include an object property. Reply, 2 (citing Ex. 1001, 3:42-61). Simply because one part of the specification discloses object representation data structures with object properties does not mean object representation data structures lack object properties in other embodiments.

Petitioner's argument that PO's proposed construction departs from the claim term's ordinary meaning misses the mark. Reply, 1-3. As discussed in the POPR, PO's construction is consistent with the term's customary meaning and is supported by the claims, specification, drawings, and intrinsic record as a whole. POPR, 8-14. The Board should reject Petitioner's attempt to analyze claim terms in a vacuum. *See Slimfold Mfg. Co. v. Kinkead Indus., Inc.*, 810 F.2d 1113, 1116 (Fed. Cir. 1987).

Petitioner's argument regarding claim 18 is also flawed. Reply, 2. Dependent claim 18 recites in part that an object representation includes "one or more digital pictures that depict one or more objects." Ex. 1001, Claim 18. That claim language is consistent with PO's construction of an object representation as being a data structure including an object property generated by object processing, and provides an example of what the data structure can include. An embodiment from dependent claim 18 does not alter the meaning of "object representation," which is set forth when that term is first described in the specification and drawings (as noted in the POPR).

III. GROTMOL DOES NOT DISCLOSE THE CLAIMED "OBJECT REPRESENTATION" UNDER PO'S CONSTRUCTION

Petitioner's contention that Grotmol's limited disclosure of object recognition and feature comparison means that Grotmol discloses the claimed "object representations" under PO's construction also fails. Reply, 3. Grotmol provides almost no disclosure regarding how object detection or feature comparison is performed, including what, if any, data structures are used in these processes. The data structure is key to the object representation, as shown in Figure 4B. Further, Grotmol's disclosure of a sensor's general capturing of the environment including any objects does not disclose "object representations" as properly construed. Grotmol's cursory discussion of object and edge detection does not support the argument that Grotmol discloses object representations that are ***data structures including an object property generated by*** object processing.

IV. THE *FINTIV* FACTORS FAVOR DENIAL OF INSTITUTION

Petitioner is wrong that "the *Fintiv* factors weigh strongly against discretionary denial." Reply, 3. The first factor favors denial because there is no stay in the district court proceeding and there is a low likelihood of a stay given the advanced stage of the underlying litigation. Petitioner's citation to *Sand Revolution II* is inapposite (at Reply, 3), as the Board in that case lacked specific evidence regarding the likelihood of a stay. In contrast, the advanced stage of the litigation here provides evidence that a stay is unlikely.

The third factor also weighs in favor of denial because the parties and the district court have expended significant time and resources on the litigation. Petitioner does not dispute this fact but cites an inapplicable district court decision denying a stay where deposition discovery had not even started. Reply, 4. By mid-December 2023 (the institution decision deadline), the parties will have likely begun deposition discovery and will have expended even more resources on discovery.

Regarding the fourth *Fintiv* factor, Petitioner's recent stipulation in its Reply (Reply, 5) confirms that Petitioner recognized the need for some type of stipulation, but provided a weak stipulation under *Sand Revolution* that falls short of a *Sotera* stipulation. *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 18-19 (PTAB Dec. 1, 2020). As a result, factor four favors denial. *See Samsung Elecs. v. Ancora Tech.*, IPR2020-01184, Paper 11 at 21-22 (PTAB Jan. 5, 2021).

Petitioner does not dispute that *Fintiv* factor five favors denial, and factor six also favors denial because, as discussed above and in the POPR, the merits of the Petition are weak. Further, PO's disclaimer of certain claims for streamlining the IPR is irrelevant to the merits of Petitioner's arguments regarding other claims. Finally, although factor two may weigh in PO's favor, no single factor is dispositive, *see Snap, Inc. v. SRK Technology LLC*, IPR2020-00820, Paper 15 at 19 (Oct. 21, 2020), and five of six factors favor denial, so the Board should deny institution.

Dated: October 11, 2023

Respectfully submitted,

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CERTIFICATION OF PAGE COUNT

The undersigned hereby certifies that **PATENT OWNER'S PRELIMINARY SUR-REPLY** is 5 pages or less as required by the Board's September 26, 2023 e-mail.

Dated: October 11, 2023

By: */Arvind Jairam/*
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CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of this **PATENT OWNER'S PRELIMINARY SUR-REPLY** has been served on Petitioner via email on the following counsel of record for Petitioner:

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