

Filed on behalf of: Meta Platforms, Inc.

Filed: November 1, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.
Petitioner,

v.

JAWBONE INNOVATIONS, LLC
Patent Owner.

Case No. IPR2023-01084
U.S. Patent No. 8,321,213 B2

**PETITIONER'S REPLY TO PATENT OWNER'S
PRELIMINARY RESPONSE**

TABLE OF AUTHORITIES

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Cases

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IPR2023-01084 (U.S. Patent No. 8,321,213)
Petitioner's Reply to Preliminary Response
EXHIBITS

Ex. 1001	U.S. Patent No. 8,321,213 to Petit <i>et al.</i> (“the ’213 patent”)
Ex. 1002	Excerpts from the Prosecution History of the ’213 patent (“the Prosecution History”)
Ex. 1003	Declaration of Dr. Thomas Kenny
Ex. 1004	<i>Curriculum Vitae</i> of Dr. Thomas Kenny
Ex. 1005	U.S. Patent No. 8,194,880 B2 (“Avendano”)
Ex. 1006	U.S. Patent No. 7,464,029 B2 (“Visser”)
Ex. 1007	RESERVED
Ex. 1008	U.S. Patent No. 7,155,019 B2 (“Hou”)
Ex. 1009	Byrne, D, <i>et al.</i> , “An international comparison of long-term average speech spectra,” 1994 Oct; <i>J. Acoust. Soc. Am.</i> ; 96(4): 2108-2120 (“Byrne”).
Ex. 1010	U.S. Publication No. US 2011/0103626 A1 (“Bisgaard”)
Ex. 1011	U.S. Provisional App. No. 60/816,244 (“the Bisgaard Provisional”)
Ex. 1012	U.S. Publication No. US 2002/0198705 A1 (“Burnett”)
Ex. 1013	Berglund, B, <i>et al.</i> , “Sources and effects of low-frequency noise,” 1996 May; <i>J. Acoust. Soc. Am.</i> ; 99(5): 2985-3002 (“Berglund”).
Ex. 1014	Declaration of June Ann Munford
Ex. 1015	Declaration of June Ann Munford – Appendix
Ex. 1016	<i>Curriculum Vitae</i> of June Ann Munford
Ex. 1017	October 26, 2023 E-mail from Board authorizing Petitioner Reply and Patent Owner Sur-Reply to Patent Owner’s Preliminary Response

Pursuant to Board authorization (Ex. 1017), Petitioner respectfully submits this Reply. PO's proposal is an improper attempt to rewrite the claim language, and regardless, the prior art meets the claims even under PO's incorrect construction.

I. Patent Owner's Proposed Claim Construction Is Improper

Term (Independent Cl. 14, 42)	PO's Proposed Construction
"filter that describes a relationship for speech between the first physical microphone and the second physical microphone"	"A filter that alters the magnitude of a signal based on the relative responses to speech of the first and second physical microphones."

POPR at 10 (emphasis added).

A. PO's Proposal is Unsupported

PO rewrites the claims to narrow the filter to "alter[] the magnitude of a signal based on the relative responses to speech." But the claims plainly recite a "filter" that merely describes any relationship for speech between two microphones. Nothing in the claim requires the filter to alter the magnitude of anything, let alone based on relative responses to speech of two microphones. In fact, there is no support for PO's proposal, as it appears nowhere in the patent. *See Source Vagabond Sys. v. Hydrapak, Inc.*, 753 F.3d 1291, 1299-300 (Fed. Cir. 2014) (rejecting proposal to add words to the claim language, without support from the patent, that would have altered otherwise unambiguous claim language). The Board should reject PO's proposal because it "had the ability to draft the claim that way but did not." *Id.*

B. PO's Proposal Improperly Excludes Preferred Embodiments Covered by the Plain Language of the Claim Term

PO's proposal attempts to limit "filter" to the patent's description of fixed or adaptive filter $\beta(z)$ (POPR at 10-12), and should be rejected because "it is improper to read a limitation from the specification into the claims." *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 904 (Fed. Cir. 2004) (citations omitted). But not only does PO's proposal improperly limit the filter to one embodiment in the patent, it also excludes other preferred embodiments encompassed by the plain language.

First, PO's proposal tries to exclude the patent's delay **filter** $z^{-\gamma}$, which PO admits "compensates for the temporal difference based on the distance between the microphones." POPR at 10-12. The patent's delay filter therefore describes a temporal "relationship for speech" between the two microphones. *See* Pet., 25-27; Ex. 1001, Figs. 2, 3. Second, PO's proposal tries to exclude a calibration "**filter**" ($\alpha(z)$) (POPR at 10-11), which is "used to *compensate O2's response so that it is the same as O1.*" Ex. 1001 at 5:29-34 (emphasis added). The calibration filter $\alpha(z)$ compensates the *response* to speech of one microphone to match the other, and therefore also "describes a relationship for speech" between the two microphones.

Where, as here, the "claims can reasonably [be] interpreted to include a specific embodiment, it is incorrect to construe the claims to exclude that embodiment, absent probative evidence on the contrary." *GE Lighting Sols., LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1311 (Fed. Cir. 2014) (citation omitted). Notably,

PO does not point to anything in the intrinsic record requiring the claimed “filter” to exclude these embodiments. PO relies on dependent claim 17 to support its position. POPR at 16. But claim 17 only requires a delay applied to a first intermediate signal, not that the filter recited in independent claim 14 must exclude a delay filter. In fact, the patent's description of the adaptive filter $\beta(z)$ includes a delay (*see, e.g.*, Ex. 1001, Eq. 3, 6:1-9 (depicting $\beta(z)$ as having delay element z^{-v})).

II. Prior Art Meets Claimed “Filter” Even Under PO's Proposal

For the “filter,” the Petition relies on two alternatives: (1) Avendano's delay node 402, or (2) Visser's cross filters w_{12} and w_{21} . Pet. at 25-28. Contrary to PO's arguments, Avendano's delay node 402 does alter the magnitude of a signal, because by delaying the signal, the signal's magnitude is altered at particular instances in time. Regarding Visser's cross filters, PO does not dispute that the prior art meets the limitation even under PO's proposal, instead only attacking the combination (POPR at 17-20).¹ As such, the prior art meets the claimed “filter.”

III. Conclusion

Petitioner respectfully requests the Board rejects PO's arguments.

¹ PO mischaracterizes the Petition as “strip[ping] away Visser's feedback structure” (POPR at 17-20), but the Petition clearly incorporates Visser's entire “ICA process,” including the cross filters' feedback structure. *See, e.g.*, Petition at 15-21, 27-28.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a complete copy of this **Petitioner's Reply to Patent Owner's Preliminary Response** were served on the official correspondence address for the patent owner via electronic mail, as agreed to by counsel, on November 1, 2023:

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