

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. IPR2023-01129
U.S. Patent No. 8,326,611

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

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EXHIBITS

EX. 1001	U.S. Patent No. 8,326,611 to Petit et al. ("the '611 patent")
EX. 1002	Excerpts from the Prosecution History of the '611 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 '880")
EX. 1006	U.S. Patent No. 8,204,252 B1 ("Avendano '252")
EX. 1007	U.S. App. No. 11/699,732 ("Avendano Priority Application")
EX. 1008	U.S. Patent No. 7,155,019 B2 ("Hou")
EX. 1009	October 26, 2023 E-mail from Board authorizing Petitioner Reply and Patent Owner Sur-Reply to Patent Owner's Preliminary Response

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. PO's Proposed Claim Construction Is Improper

Term (Independent Cl. 29, 44)	PO's Proposed Construction
"forming a filter"	" forming an adaptive filter comprising a signal ratio "

POPR at 12 (emphasis added).

A. PO's Proposal Improperly Injects Two Limitations

PO's proposal parrots the exact claim term and merely injects two limitations (**bolded**, above): the filter must (1) be "adaptive," and (2) "compris[e] a signal ratio." However, the claims are unambiguous that the "filter" is not required to be adaptive, and is formed as a ratio of two **quantities**, not **signals**. The Federal Circuit has rejected similar proposals that merely "added words to the actual claim language" for "alter[ing] otherwise unambiguous claim language." *Source Vagabond Sys. v. Hydrapak, Inc.*, 753 F.3d 1291, 1299-300 (Fed. Cir. 2014) (citations omitted).

B. PO's Proposal Violates Claim Differentiation and is Unsupported

"Adaptive": "[L]imitations stated in dependent claims are not to be read into the independent claim from which they depend." *Nazomi Communs., Inc. v. ARM Holdings, PLC*, 403 F.3d 1364, 1370 (Fed. Cir. 2005) (citations omitted) (explaining claim differentiation). Here, claim 37 depends from claim 29 and requires the

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“filter” is an “adaptive filter.” Accepting PO’s proposal would therefore violate claim differentiation and render claim 37 superfluous. The Board should reject PO’s proposal seeking to “read [a limitation] into an independent claim [that] already appears in a dependent claim” because this is when “the doctrine of claim differentiation is at its strongest.” *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 910 (Fed. Cir. 2004) (quotation omitted); *see also Transonic Sys. v. Non-Invasive Med. Techs. Corp.*, 143 F. App'x 320, 327-28 (Fed. Cir. 2005) (rejecting a construction that would have required the independent claim to have the same scope as its dependent claim). Moreover, an “adaptive” filter is only one type of filter described in the patent, which also describes other types of filters, including calibration and delay filters. *See, e.g.,* Ex. 1001, 5:29-33, Fig. 3.

“Signal ratio”: “[I]t is presumed that different words used in different claims result in a difference in meaning and scope for each of the claims.” *Clearstream Wastewater Sys. v. Hydro-Action*, 206 F.3d 1440, 1446 (Fed. Cir. 2000). Here, the claims recite “quantity” separately from “signal.” The claim language is unambiguous that the filter is formed “as a ratio of the first quantity to the second quantity,” not a signal ratio. As PO acknowledges, the patent contemplates the “filter” could be a ratio of scalars, not signals. *See* Paper 10, 13. Moreover, even if claim 1 requires a ratio of scalars as PO contends (POPR at 13), this does not mean the other independent claims must exclude a ratio of scalars. Where, as here, the

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“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). Further, there is no support for “signal ratio” as this term does not appear anywhere in the specification or in the claims. *See Orion Energy Sys. v. Energy Bank Inc.*, No. 16-C-1250, 2017 U.S. Dist. LEXIS 174665, at *31 (E.D. Wis. Oct. 23, 2017) (rejecting proposal that “unnecessarily adds words that change the meaning of the [term]” when the phrase in the proposed construction appeared “no where in the specification or claim language”).

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

For the “filter,” the Petition relies on Hou’s divide unit 512 (*see* Pet., 37, citing Hou at 5:42-45), which meets PO’s proposal. In Hou, the divide unit 512 produces not a fixed, constant gain, but a quotient between two signal estimates that vary over time, and are themselves signals. *See* Ex. 1008 at 5:36-41 (explaining the estimates are “measured over a time constant duration” and are “relatively long-term”), *see also id.* 6:3-15, 6:30-38. As such, Hou’s “filter” adapts to signal changes (**adaptive**) and is a ratio between two time-varying signals (**signal ratio**).

III. Conclusion

Petitioner respectfully requests the Board rejects PO’s arguments and institutes *inter partes* review.

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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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