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Subject: IPR2023-01239 - Request for leave to file motion to strike

Dear Honorable Board:

Patent Owner in the above-referenced IPR requests a teleconference to seek authorization to file a motion to strike the following new arguments and untimely declaration evidence raised in Petitioner's Reply last week (Paper 25), or in the alternative to submit a supplemental expert declaration responsive to the untimely new theories and opinions in the supplemental declaration of Petitioner's expert, Dr. Reader, EX1040:

1. Petitioner's Reply, citing a newly filed supplemental expert declaration of Dr. Reader, raises new theories and arguments concerning how the "available time" limitation of the claims is met by *Chou*. Reply (Paper 25) at §§ III.A.3, III.C.1; EX1040 at ¶¶6-15, 28-29. For example, the Reply raises for the first time a theory that variable " $g(n-1)$ " of *Chou* corresponds to the buffer duration, based on new opinions set forth by Dr. Reader. *Compare, e.g.*, Reply (Paper 25) at §§ III.A.3 (" $g(n-1)$ [that] represents ... the client buffer duration at that time"), III.C.1 and EX1040 at ¶¶6-15, 28-29 *with* Petition (Paper 2) at pp. 38-48 (relying on the gap between a frame's playback deadline and its arrival time, " $t_d(n)-t_a(n)$," as representing the client buffer duration); *see also* EX2015 (Reader Dep. Tr.) at 142:24-143:2; 146:23-150:24, 151:17-154:15, 196:11-23 (no mention of $g(n-1)$ when asked which portion of *Chou* satisfies the "available time" limitation).
2. Petitioner's Reply, citing a newly filed supplemental expert declaration of Dr. Reader, raises new theories and arguments concerning how the "remaining time" limitation of the claims is met by *Chou*. Reply (Paper 25) at § III.B.3; EX1040 at ¶¶22-24. For example, Petitioner Reply argues theories based on equations 18 and 20 of *Chou* that were not made in the Petition.

Patent Owner requests authorization to file a motion to strike these arguments and supporting declaration evidence pursuant to 37 C.F.R. § 42.23(b) ("A reply may only respond to arguments raised in the corresponding opposition, [POPR], [POR], or decision on institution"). *See also* Consolidated Trial Practice Guide at 73 (Nov. 2019) ("Petitioner may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a prima facie case of unpatentability."). In the alternative, Patent Owner seeks leave to file, with its sur-reply, a supplemental expert declaration responding to the new theories and opinions in Dr. Reader's supplemental declaration, EX1040 at ¶¶6-15, 22-24, and 28-29.

The parties have met and conferred. Petitioner indicated it would oppose.

The parties are available for a conference call with the Board on September 11, 2024, at any time convenient for the Board.

Respectfully submitted,

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