

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before the Honorable Cameron R. Elliot
Administrative Law Judge**

In the Matter of

**CERTAIN AUDIO PLAYERS AND
COMPONENTS THEREOF (II)**

Inv. No. 337-TA-1330

RESPONDENT SONOS, INC.'S REBUTTAL CLAIM CONSTRUCTION BRIEF

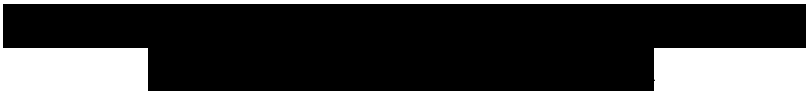
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I. REBUTTAL TO '748 TERMS

Google's claim construction positions regarding the '748 Patent claim terms are a house of cards built on a false premise that the term "predetermined spoken audio command" does not encompass a "hotword." But the specification explicitly says otherwise. Google's extrinsic cannot "contradict the import of . . . the specification." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1584 (Fed. Cir. 1996).

While Sonos draws its proposed constructions directly from the intrinsic evidence, Google, on the other hand, seeks to hide behind a "plain and ordinary meaning" proposal while its expert attempts to segregate "hotwords" from the claim term "predetermined spoken audio command," purportedly under that plain meaning. Clearly, the parties have a dispute regarding the scope of the '748 Patent claim terms, which the ALJ should resolve.

A. "predetermined spoken audio command"

The crux of the dispute regarding construction of "predetermined audio command" is whether the term includes "hotwords."¹ As explained in Sonos's opening brief, in the context of the '748 Patent, "predetermined spoken audio command" means "any audio input usable to initiate interaction with a computing device, such as a spoken hotword." The specification explicitly defines "predetermined spoken audio command" as such. '748 Pat., 2:64-67, 3:67-4:2. Indeed, the specification expressly discloses that the hotword "Hello device" is an example of "a predetermined spoken audio command." *Id.*, 5:13-15 ("[C]omputing device [] may receive audio input that includes a *predetermined audio command (e.g., 'Hello device')*"), 5:39-42.

Google completely ignores the fact that the specification expressly states that the "predetermined spoken audio command" includes spoken "hotwords." Instead, Google argues

¹ "Hotwords" (or "keywords" or "wakewords") are words or phrases that "can be used to signify a user's desire to activate the voice assistant functionality of a smart device." Google's Opening Brief (herein after cited as "GOB"), Ex. 6, ¶41.

[REDACTED]

that Sonos’s construction is too narrow because it allegedly does not cover “directive[s] that can be executed by the device.” GOB, 17. This is not true. Sonos’s proposed construction, which is plucked right from the specification, broadly covers “**any** audio input usable to initiate interaction with a computing device.” Thus, the “directives” that Google refers to would be covered, not excluded, under Sonos’s construction. Google’s argument to the contrary is a red herring.

After falsely labeling Sonos’s construction as “unduly restricting,” Google argues for a construction of “predetermined spoken audio command” that excludes “hotwords.” GOB, 17-19. Specifically, while Google does not formally offer a construction, it provides a definition of this term based on extrinsic evidence: “A predetermined spoken audio command is a spoken utterance that includes a directive for the claimed computing device to execute an associated action.” GOB, 17. The problem with this definition, however, besides the fact that it is not based on any intrinsic evidence, is that Google appears to be excluding “hotwords” from its concept of a “directive.” See GOB, 18; *id.*, Ex. 6, ¶¶67-68 (pointing to examples of directives, none of which involve a “hotword”).² This exclusion is not only inconsistent with the specification’s definition of a “predetermined spoken audio command” as including a “hotword” but is also inconsistent with the very extrinsic evidence cited by Google.

In fact, Google’s cited extrinsic evidence actually **confirms** that “hotwords” are “predetermined spoken audio commands.” For example, the ’128 Patent cited by Google’s expert states that “an electronic device 190 is ‘**awakened**’ [*i.e., interacted with*] . . . by a voice input that includes a **hotword**,” where “[t]he **hotword** may be a word or phrase, and may be a **predefined** [*i.e., predetermined*] default and/or may be customized by a user,” and “[a] user may **speak** the **hotword**, wait for an acknowledgement response from the electronic device (e.g., the electronic

² As explained below, Google’s desire to exclude “hotwords” from “predetermined spoken audio commands” is evident from its arguments with respect to the other ’748 Patent terms.

[REDACTED]

device 190 outputs a greeting), and then make a first voice request.” GOB, Ex. 6, ¶41 (*citing* ’128 Pat., 11:44-67). As another example, the ’107 Patent cited by Google’s expert states that “[o]ne way to accomplish this is to use a *hotword*, which by agreement among the users in the environment, is reserved as a *predetermined* word that is *spoken* to *invoke [i.e., initiate interaction]* the attention of the system.” *Id.*, ¶41 (*citing* ’107 Pat., 1:47-2:3). Thus, even under Google’s definition, a “hotword” is a “predetermined spoken audio command” because it is “a spoken utterance that includes a directive” (*i.e.*, “awaken[]” or “invoke the attention” of the computing device) “for the claimed computing device to execute an associated action” (*i.e.*, outputting an “acknowledgement response” or “greeting.”).

B. “[perform/performing] speech recognition”

As explained in Sonos’s opening brief, the ’748 Specification dictates that the claim term “[perform/performing] speech recognition” should be construed to mean “[process/processing] spoken audio to determine whether it includes a predetermined spoken audio command.” The specification explicitly defines performing “speech recognition” as such. *See* ’748 Pat., 6:61-66, 4:57-63, 10:1-7, 10:21-25.

Once the term “predetermined spoken audio command” is properly construed to include “hotwords,” the phrase “[perform/performing] speech recognition” must encompass “processing spoken audio to determine whether it includes a predetermined spoken audio command [such as a spoken hotword].” This is where the dispute lies. While Google does not formally offer a construction of the term “speech recognition,” it provides a definition based on extrinsic evidence: “deriving text from speech.” GOB, 12. Google asserts that, unlike Sonos’s proposed construction, its definition of “speech recognition” does not “improperly sweep detection techniques (voice activity detection and keyword (hotword) detection) within the term’s scope.” *Id.* But Google is wrong that “speech recognition” does not cover “keyword (hotword) detection” and that “speech

recognition” is limited to “deriving text from speech.”

Starting with the claim language itself, it is clear that “speech recognition” is “performed” on “the spoken audio input” to “determin[e]” whether “the spoken audio input includes a predetermined spoken audio command.” *See, e.g.,* ’748 Patent, cl. 1 (“determining, by the first computing device, based on performing speech recognition on the spoken audio input, whether the spoken audio input includes a predetermined spoken audio command”). Since a “predetermined spoken audio command” includes “spoken hotwords,” performing “speech recognition” cannot exclude “hotword detection,” as Google contends.

The ’748 Specification also refutes Google’s position. Contrary to Google’s suggestion, the specification does not limit “speech recognition” to “deriving text from speech” and does not exclude “hotword detection” from “speech recognition.” Indeed, Google misreads and disingenuously truncates the portion of the specification it relies on to separate “hotword detection” from “speech recognition.” *See* GOB, 14 (*citing* ’748 Pat., 15:28-38). The relevant portion of the specification is as follows:

When active, *monitoring and execution module 38* may be operable by processors 20 to *process indications of audio input to determine whether the audio input includes a predetermined audio command*. . . . In some examples, *monitoring and execution module 38 may process the audio input by performing one or more speech-to-text transformations* to obtain textual data corresponding to the received audio input. In other examples, *monitoring and execution module 38 may perform other audio analysis to recognize and identify speech, such as performing frequency analysis to identify tonal characteristics or other sonic identifiers* present in the audio input. Monitoring and execution module 38 may use the processed input to determine whether or not a predetermined audio command is included For instance, *monitoring and execution module 38 may compare the processed audio input to a set of indications (e.g., text, tonal characteristics, or other sonic identifiers) corresponding to predetermined audio commands*.

’748 Pat., 15:18-46.

As explained in this part of the ’748 Specification, the “monitoring and execution module” is responsible for “process[ing] the audio input” (*i.e.*, performing “speech recognition” on the

[REDACTED]

“audio input”) to “determine whether [it] includes a predetermined spoken audio command.” *Id.*, 15:18-22. Such processing may include “performing one or more speech-to-text transformations to obtain textual data corresponding to the received audio input” or “perform[ing] other audio analysis to recognize and identify speech, such as performing frequency analysis to identify tonal characteristics or other sonic identifiers present in the audio input.” *Id.*, 15:30-38. Therefore, according to the ’748 Patent, “speech recognition” may be performed by *either* “speech-to-text transformation” *or* “frequency analysis to identify tonal characteristics or other sonic identifiers.” In other words, “speech recognition” is not limited to “deriving text from speech.”

Google mistakenly asserts that “performing one of more speech-to-text transformations” is “speech recognition,” while “performing frequency analysis to identify tonal characteristics or other sonic identifiers” is “keyword detection, *but not* speech recognition.” GOB, 14. That is the opposite of what the ’748 Specification says. It explicitly states that “performing frequency analysis to identify tonal characteristics or other sonic identifiers present in the audio input” is performing “audio analysis to *recognize* and identify *speech*” – *i.e.*, performing “speech recognition.” ’748 Pat., 15:34-38. The specification also indicates that, “to determine whether or not a predetermined audio command is included in at least a portion of the received audio input,” the “monitoring and execution module 38 may *compare* the processed audio input to a set of indications (e.g., *text, tonal characteristics, or other sonic identifiers*) *corresponding to predetermined audio commands.*” *Id.*, 15:39-46. Thus, the specification makes clear that the comparisons for speech recognition involve not just “text” corresponding to predetermined audio commands, but also “tonal characteristics” or “other sonic identifiers” corresponding to predetermined audio commands. As such, even when analyzing “tonal characteristics” or “other sonic identifiers” is characterized as “keyword detection,” it is indisputably considered “speech recognition” as far as the ’748 Patent is concerned.

[REDACTED]

Finally, and not surprisingly, even Google’s own extrinsic evidence demonstrates that “speech recognition” is used for “hotwords.” For example, the cited ’107 Patent states:

[T]he *hotword* used to invoke the system’s attention are the words “OK computer.” Consequently, each time the [hot]words “OK computer” are *spoken*, it is picked up by a microphone, *conveyed to the system*, which *performs speech recognition techniques to determine whether the hotword was spoken.*”

GOB, Ex. 6, ¶41 (citing ’107 Pat., 1:47-2:3); see also Ex. O (GOOGLE-SONOSITC13XX-00062550), 57 (“[REDACTED]”).

[REDACTED]

[REDACTED]

[REDACTED]

C. “[determine/determining] . . . whether the first computing device should perform speech recognition on the spoken audio input”

Google misrepresents the parties’ dispute with respect to this term. Sonos is not trying to replace any claim language, as Google suggests. See GOB, 20.³ Sonos is simply construing this limitation to make clear that “determining . . . whether the first computing device should perform speech recognition on the spoken audio input” is done without any of the plurality of computing devices performing speech recognition on the spoken audio input, *i.e.*, “without any of the plurality of computing devices processing the spoken audio input to determine whether it includes a predetermined audio command.” This is the only logical interpretation of this claim limitation.

The real dispute between the parties centers on whether speech recognition can be performed *before* a determination is made as to whether the first computing device should perform

³ Sonos has no objection to adding the claim language “based at least in part on information received from the one or more additional computing devices” into its proposed construction for this limitation, which would then read “determining, based at least in part on information received from the one or more additional computing devices, whether the first computing device should perform speech recognition on the spoken audio input without any of the plurality of computing devices processing the spoken audio input to determine whether it includes a predetermined audio command.”

[REDACTED]

speech recognition. According to Google, “nothing in the intrinsic evidence precludes the non-designated computing devices from beginning speech recognition before a first computing device determines that it should do so.” GOB, 22. Not only is this argument nonsensical, it is based on a misunderstanding of the invention disclosed in the ’748 Patent.

As explained by the extrinsic evidence cited by Google’s expert, in a conventional arbitration process for determining which computing device should handle a user’s spoken query, audio input may be processed by a “hotworder” to determine a “confidence score” that can be used to decide the arbitration process. GOB, Ex. 6, ¶41 (*citing* ’107 Pat., 5:2-28). As already explained, analyzing audio input for a “hotword” is part of speech recognition. Based on its flawed definitions of “predetermined spoken audio command” and “speech recognition” not including “hotwords,” Google seems to be arguing that, with respect to the ’748 Patent claims, the conventional “hotword” analysis may be used to determine whether the first computing device should perform speech recognition. In other words, Google believes that the ’748 Patent claims allow for “hotword” detection to be performed as part of the arbitration process. But that is not how the arbitration process works in the ’748 Patent.

According to the ’748 Specification, the arbitration process for determining whether a computing device should perform speech recognition is based on (1) “a ranked list of device types usable to monitor for and/or process audio input,” such as a “smartphone, smartwatch, headset, tablet, laptop, desktop, in-vehicle system, etc.” (7:37-64); (2) “a level of audio input quality associated with one or more of [the] computing devices,” such as “volume, signal-to-noise ratio, and/or other parameters” (7:65-8:13); or (3) “a determined context of one or more of [the] computing devices,” such as “a location of the computing device,” “applications installed at the computing device,” “networks ... available to the computing device,” “devices in proximity to the computing device,” “an operating mode ... of the computing device,” “data obtained from one or

[REDACTED]

more sensors of the computing device ..., or any other data about the status or current state of the computing device” (8:26-52).⁴ Thus, the arbitration process in the ’748 Patent does not rely on the performance of any speech recognition on the spoken audio input, such as “hotword” detection/analysis. Thus, it makes perfect sense that the determination as to “whether the first computing device should perform speech recognition on the spoken audio input” is done without any of the plurality of computing devices performing speech recognition.

D. “a command to temporarily refrain from performing speech recognition”

The main dispute over the construction of the term “a command to temporarily refrain from performing speech recognition” is whether the command instructs the second computing device to cease performing “any and all” speech recognition.⁵ As explained in Sonos’s opening brief, the claim language itself, as well as the specification, dictates that this term should be construed as “a message instructing the second computing device to temporarily cease performing any and all speech recognition.” Restraining the performance of some, but not all, speech recognition would not be “refrain[ing] from performing speech recognition,” and would fail to meet the desired goals expressed in the ’748 Patent. *See, e.g., Interactive Gift Exp., Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1336 (Fed. Cir. 2001); *Nevro Corp. v. Bos. Sci. Corp.*, 955 F.3d 35, 44 (Fed. Cir. 2020); *Howmedica Osteonics Corp. v. Tranquil Prospects, Ltd.*, 401 F.3d 1367, 1372 (Fed. Cir. 2005).

Moreover, if Google wanted to qualify that the non-designated computing devices should refrain from only some, but not all, speech recognition, it could have done so expressly in the claims. *Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527 F.3d 1379, 1381-1382 (Fed. Cir.

⁴ This list constitutes the “information received from the one or more additional computing devices” recited in the claim limitation.

⁵ Google takes issue with Sonos construing “command” as “message instructing” and “refrain” as “cease.” GOB, 17. As explained in Sonos’s opening brief, these constructions are fully supported by the specification. However, Sonos does not object to changing its construction to “a command to temporarily refrain from performing any and all speech recognition.”

[REDACTED]

2008) (declining to add qualifiers to a term, explaining that if the patentee “had intended to use these terms to describe the platform top surface, it should have.”). Google did not do so. There are no qualifiers in this limitation surrounding the phrase “performing speech recognition.”

Similarly, if Google wanted to qualify that the non-designated computing devices refrain from only certain speech recognition, it could have done so. *Helmsderfer*, 527 F.3d at 1381-1382. Again, Google did not do so. In fact, purposefully omitting any qualifier on “speech recognition” in the negative limitation “refrain[ing] from performing speech recognition,” illustrates an intent not to limit “speech recognition” to any particular type. *Imaginal Sys., LLC v. Leggett & Platt, Inc.* 805 F.3d 1102, 1109-110 (Fed. Cir. 2015) (“[N]o support for attempts to narrow the negative claim limitation so that it disclaims only one particular vision guidance system . . . [patentee] could have specifically disclaimed a particular vision guidance system . . . but did not do so.”).

II. REBUTTAL TO '128/'311 TERMS

A. '128 Pat: “other devices” / “quality scores” '311 Pat: “second values” / “other electronic devices”

Faced with unambiguous usage of plural nouns, Google retreats to arguing that, despite this, a POSITA would nonetheless understand that plural would mean “one or more.” Google is thus reading in the language “one or more” as a prefix to every plural noun (i.e., “[one or more] quality scores generated by the [one or more] other devices”). This inappropriately broadens the claim from the unmistakable plain meaning and is thus not permitted. *See Allen Eng'g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1349 (Fed. Cir. 2002) (“Allen argues that one of skill in the art would understand that the term ‘perpendicular’ in the claim should be read to mean ‘parallel.’ Allen stretches the law too far. It is not our function to rewrite claims . . .”). Reciting “one or more” is something the Applicant knew how to do (and did) in the same claim for other nouns (i.e., “one or more processors”). Its choice not to recite “one or more” here is controlling.

Google points out that the preamble of the claim recites “a plurality of electronic devices,”

[REDACTED]

which includes at least “the first electronic device.” Google then argues “plurality” often means “two or more,” so a POSITA would understand that the plurality of devices could include the first electronic device and just one other device. Google concludes that a POSITA would understand that any subsequent use of plural nouns was simply recited for grammatical consistency and could therefore refer to just the one other device of the plurality. This is incorrect for two reasons.

First, the claim’s recitation of “other devices” and “quality scores” was not done for grammatical consistency. In fact, in the ’128 Patent, the claim first introduces the phrase “other devices” and “quality scores” in element 1[d]. By reciting plural “quality scores” and plural “other devices,” the Applicant was not maintaining grammatical consistency with any prior recitation of “scores” or “devices” but was making a deliberate choice to claim the step of receiving **multiple** scores from **multiple** devices. Had the Applicant desired to claim receiving a singular score from a singular device, it could have done so in many different ways while being equally consistent with its grammar. For instance, it could have recited “receiving **a quality score** generated by **another device** of the plurality of electronic devices,” or “receiving **one or more** quality scores generated by **one or more** other devices of the plurality of electronic devices.” Either would have covered Google’s interpretation of receiving a single quality score from a single other device.⁶ Doing neither, however, the Applicant deliberately chose to recite “receiving quality **scores** generated by the **other devices** of the plurality.” Grammar did not require reciting plural nouns.

Second, assuming *arguendo* that a POSITA would have understood “other devices of the plurality of electronic devices” to mean “one or more other devices,” then there was no need to also pluralize “quality scores.” The claim could have recited “receiving a quality score generated by the other devices of the plurality.” This may have signaled that the minimum number of “other

⁶ Of course, because “a” means “one or more,” this singular recitation would have also covered receiving “quality scores” from “other devices.” *Free Motion Fitness, Inc. v. Cybex Int’l, Inc.*, 423 F.3d 1343, 1350 (Fed. Cir. 2005).

[REDACTED]

devices of the plurality” was one. But unnecessarily pluralizing “quality scores” in addition to “other devices” (when grammar did not require it) demonstrates the clear and unmistakable meaning of these plural nouns is “two or more.”

Google’s cases do not counsel in favor of redrafting the claims. *Versa* addressed whether a plural recitation in the function portion of a means-plus-function element could operate to limit the structure required to practice the claim. *Versa Corp. v. Ag-Bag Int’l Ltd.*, 392 F.3d 1325, 1328 (Fed. Cir. 2004). As with all means-plus-function claim elements, construction was dictated by the corresponding disclosure of the structure *from the specification*. *Id.* (“The dispute is over what corresponding structure is disclosed in the specification.”). The Court found the plural usage of “channels” in the claim did not dictate what the corresponding structure disclosed in the specification was. *Id.* Here, Google’s claim is not a means plus function claim.

Dayco too concerned a means-plus-function claim. *Dayco Prod., Inc. v. Total Containment, Inc.*, 258 F.3d 1317, 1328 (Fed. Cir. 2001). There, the disputed phrase recited “surface means defined by . . . projections with recesses therebetween.” *Id.* In holding that plural “recesses” did not dictate what structure was required by “surface means,” the Court explained that “recesses” is plural in order to achieve grammatical consistency with plural recitation of “projections.” *Id.* Since “recesses” are between “projections,” there is one “recess” in between two “projections.” But with the claim’s particular phrasing, “recess” had to be plural in order to be grammatically consistent with the phrase “projections with [nouns] therebetween.” *Id.* As explained, no such grammatical consistency in Google’s claims required that “quality scores” and “other devices” be plural. The singular noun would have made grammatical sense as well (i.e., “receiving a quality score generated by another device of the plurality”).

In re Omeprazole Pat. Litig. concerned grammatical consistency as well. 84 F. App’x 76, 80 (Fed. Cir. 2003) (construing “materials” as singular because it was “an attempt to achieve

[REDACTED]

grammatical consistency” in the claimed phrase “*one or more* layers of materials”). This case might be persuasive in construing “devices” as singular if Google’s claims recited “*one or more quality* scores from other devices.” But Google’s claims do not recite “one or more,” and thus, they do not have the grammatical consistency problem found in *Omeprazole* (or *Dayco*). *Certain Elec. Devices* is also easily distinguishable. *Certain Elec. Devices, Including Handheld Wireless Commc'ns Devices*, Ord. No. 41, USITC Inv. No. 337-TA-667 (Sept. 21, 2009). There, the ALJ refused to find that claim 1 required three processor devices when it recited a “plurality of processor devices” including an “owner processor device” and “other processor devices” because dependent claim 4 added the limitation “wherein the plurality of processor devices comprises at least three processor devices,” establishing that by claim differentiation claim 1 did not require three processor devices. *Id.* No such claim differentiation is present here.

Finally, Google relies on one example in the specification in which the plurality of electronic devices is disclosed as including “two or more.” GOB, 28. But disclosure of this example cannot erase the Applicant’s clear choice to claim plural “quality scores”/“values” and plural “other devices.” This example serves to illustrate that the claims could have been written to encompass singular nouns (in any of the ways described above) but instead recited plural nouns.

**B. ’128 Pat.: “forgo outputting”
 ’311 Pat.: “[forgoing/forgo] responding”**

Sonos’s construction of the “forgo” terms accords with the plain meaning of “forgo”; that is, refrain from any and all outputs. Google proposes “no construction [] necessary,” yet interprets “forgoing outputting a response” to allow for providing outputting a response. This is a nonsensical interpretation and therefore, construction is warranted.

Google argues that the “the plain language of the claims makes clear, if a device . . . is determined to not have the highest quality score . . . then the device does not output *an audible and/or visual response* to the detected voice input.” GOB, 30. But claim element 1[f] does not

[REDACTED]

limit the types of responses that the *first device* must forgo. The claim merely recites “forgoing outputting *a response* to the detected voice input” not forgoing outputting only audible and/or visual responses. Reading in limitations to narrow the scope of what types of responses are being claimed is inappropriate.

Google twists itself in knots attempting to establish that “fulfillment” and “responses” are two distinct concepts or processes articulated by the specification in order to argue that the claim does not require forgoing “fulfillment.” Google is wrong. The specification is crystal clear that fulfilling a user’s request contained within a voice input (e.g., playing a “Beach Boys” song when the voice input is “play a Beach Boys song”) is just one of many different types of “responses.” In this way, “response” is used as a broad term to cover engaging in an action to address the voice input. For instance, the patent explains:

[T]he voice-activated electronic devices *respond to voice commands by:* generating and providing a spoken response to a voice command (e.g., speaking the current time in response to the question, “what time is it?”); *streaming media content requested by a user* (e.g., “play a Beach Boys song”); reading a news story or a daily news briefing prepared for the user; *playing a media item* stored on the personal assistant device or on the local network; *changing a state or operating one or more other connected devices* within the operating environment (e.g., turning lights, appliances or media devices on/off, locking/unlocking a lock, opening windows, etc.); or issuing a corresponding request to a server via a network.

See, e.g., ‘311 Pat., 7:48-63 (numerals omitted); *see also id.*, 24:60-62 (“The *response* may include a voice output and/or *instructions to another device to perform an operation.*”), 17:6-7 (describing a “[r]esponse module 556 for performing instructions included in voice request responses . . .”). These examples are exactly what Google refers to as “fulfillment” – but the specification clearly treats them as “respon[s]es to voice commands.” *Id.*

Google itself acknowledges that “fulfillment” is a type of “response.” It concedes that the specification “describes the distinct process of *fulfillment*, by which a device takes an action or operation *in response* to an instruction relating to the user’s request.” GOB, 31. Additionally,

[REDACTED]

Google argues: “by injecting the requirement that a device ‘refrain from outputting any and all responses,’ Sonos’s proposed construction would broaden the scope of the claimed ‘response[s]’ to encompass fulfillment (or any action whatsoever).” GOB, 32. But Sonos is not “broadening the scope” of “responses.” The claim recites “response” and Sonos’s construction recites “response.” It is Google that is conceding that fulfillment is a type of response and pretending it is only Sonos’s construction that sweeps in fulfillment. Fulfillment is within the plain meaning of “response” according to the specification. Sonos’s proposal merely accords plain meaning to the word “forgo” in light of the specification and Google’s clear indication to read “forgo” as “forgo some responses but allow others.” Exactly which responses need be forgone and which are allowable is apparently up to Google. This does not accord with proper claim interpretation. Thus, the phrase ought to be construed as “refraining from outputting any and all responses.”

Finally, Google confusingly points to an unclaimed embodiment as apparent evidence that Sonos’s construction is incorrect for excluding this unclaimed embodiment. GOB, 33 (*citing* ‘128 Pat., 23:35-45). But this reveals the dispute over this term – Google is inappropriately broadening the claim by reading it to permit some types of responses when the plain language specifies “forgoing outputting a response.” The passage cited by Google describes an embodiment in which all devices (even a non-leader) output a visual response to the detected voice input indicating that the devices are “listening.” *Id.* This is clearly an ***unclaimed*** embodiment because the claims expressly require a non-leader to “forgo outputting a response.” Outputting a “visual response” is the opposite of “forgoing outputting a response.” Had the Applicant meant to claim this embodiment, it would have limited the term by using a qualifier preceding “response,” such as “forgoing outputting ***an audible*** response to the voice input,” which would have permitted visual responses. *Helmsderfer*, 527 F.3d at 1381-1382. In the absence of such a qualifier, the negative limitation must preclude responses of all types.

[REDACTED]

[REDACTED]

C. '128 Pat. / '311 Pat.: “in accordance with a determination . . . in accordance with a determination”

Google argues that these claim steps are “conditional” and “presented as alternatives.” They are not. The claims fail to use any hallmark of conditional language, such as “if,” “when,” or “on a condition” – language that Google’s cited authority relies on to construe claims as conditional.⁷ Ex. M, ¶¶ 32-33.

Google relies on a district court case, *Interdigital*, arguing that Sonos’s argument has been “rejected.” But Google misreads *Interdigital*. There, the claims recited “on a condition.” *Interdigital Tech. Corp.*, 2021 WL 1856937 at *5. The court rejected defendant’s construction that each conditional step must be carried out, explaining the claim “utilizes conditional claiming.” *Id.* But unlike the claims at issue in *Interdigital*, Google’s claims do not recite “on a condition” – instead, they literally recite the performance of opposite and contradictory method steps. Thus, unlike in *Interdigital*, Sonos is not seeking a construction that clearly conditional claims must all be carried out – Sonos is arguing indefiniteness **because** the claims **do not** recite conditionality.

Google agrees that the claim steps as written cannot be carried out. GOB, 36 (“A POSITA would also readily appreciate that both conditions stated in the ’128 and ’311 claims cannot be met simultaneously.”). Google uses this as a reason why the claims should be rewritten to recite conditionality instead of invalidated for indefiniteness. But it is not the ALJ’s role, or Google’s privilege, to redraft these claims to correct the admitted impossibility. *E.g., Allen Eng’g.*, 299 F.3d at 1349 (“It is not our function to rewrite claims”); *Chef Am., Inc. v. Lamb–Weston, Inc.*, 358 F.3d

⁷ Google explains that “claims may include conditional steps.” GOB, 34. True, but Google’s claims here do not. Compare ’128 Pat., cl. 1, ’311 Pat., cl. 2, with *Hytera Commc’ns Co. v. Motorola Sols., Inc.*, 841 F. App’x 210, 213 (Fed. Cir. 2021) (construing claim step as conditional because it recited “if [condition] . . . ; otherwise [condition]”); *Interdigital Tech. Corp. v. Lenovo Holding Co., Inc.*, No. 19-1590, 2021 WL 1856937, at *5 (D. Del. May 10, 2021) (construing claim steps as conditional because they recited “on a condition”); *Cybersettle, Inc. v. Nat’l Arb. F., Inc.*, 243 F. App’x 603, 607 (Fed. Cir. 2007) (refusing to read in “if necessary” to claim that did not otherwise require conditionality, finding “no textual basis” for doing so).

[REDACTED]

1371, 1374 (Fed. Cir. 2004) (“[C]ourts may not redraft claims, whether to make them operable or to sustain their validity.”). If Google were correct that patentees were permitted to rewrite claims that recited impossibilities, then no claim would ever be invalidated for reciting an impossibility. Of course, Google is wrong; many claims have been invalidated for reciting impossibilities. *See* Sonos Opening Brief (“SOB”), 31 (citing cases). Sonos’s position does not “contravene[] Federal Circuit authority” as Google avers. *GOB*, 37. Sonos cited three Federal Circuit cases, among others, invalidating claims for reciting impossibilities. *SOB*, 31.

Even if the ALJ were inclined to rewrite the claims to recite conditionality as Google inappropriate suggests, two independent reasons demonstrate that, for these claims, this is incorrect and must be rejected. ***First***, Google’s rewrite would cause claim 2 of the ‘311 patent to be invalid under § 112(d), which requires “a claim in dependent form shall . . . specify a further limitation of the subject matter claimed.” 35 U.S.C. § 112(d). Claim 1 of the ‘311 patent does not contain contradictory steps (but claim 2, incorporating all steps from claim 1, does). Claim 1 is thus not indefinite because it recites only one determination:

1[d] in accordance with a determination that the first value is higher than the second values, responding to the detected input.

’311 Pat., cl. 1. Because claim 2 adds a contradictory method step to claim 1, claim 2 is indefinite:

[2] The method of claim 1, further comprising: in accordance with a determination that the first value is not higher than the second scores, forgoing responding to the detected input.

’311 Pat., cl. 2. But if Google were permitted to rewrite claim 2 to recite conditionality (which would mean that only one of the two determinations from claims 1 and 2 are carried out), claim 2 then becomes invalid because it would undo claim 1’s requirement that step 1[d] be carried out. By undoing claim 1’s requirement that step 1[d] be carried out (thus retroactively making step 1[d] optional), claim 2 would not “specify a further limitation” of claim 1; it would broaden claim 1. Because this is not permitted, it confirms that Google’s interpretation of the claims cannot be

correct here. See *Multilayer Stretch Cling Film Holdings, Inc. v. Berry Plastics Corp.*, 831 F.3d 1350, 1362 (Fed. Cir. 2016) (“A dependent claim that contradicts, rather than narrows, the claim from which it depends is invalid [under § 112(d)].”); *Pfizer, Inc. v. Ranbaxy Labs. Ltd.*, 457 F.3d 1284, 1291 (Fed.Cir.2006) (holding dependent claim invalid when it omitted an element from, and was thus broader than, the claim upon which it depends).

Second, Google’s rewrite of the claim to require conditionality does not specify which of two plausible interpretations of conditionality the claim would take. When a claim has two plausible, but materially different, interpretations, it is indefinite.⁸ Here, Google’s rewritten claim could plausibly be interpreted under the “capability” approach (under *Hytera*) or the “two methods” approach (under *Schulhauser*). *Hytera*, 841 F. App’x at 216. *Hytera* explains that depending on how the claim recites the conditional claim elements, one plausible interpretation of the claim requires that a prior art (or an infringing act) teach (or carry out) one of the two conditions and also teach (or be capable of carrying out) the other condition.⁹ *Hytera* also explains another plausible interpretation – set forth in *Schulhauser* – in which “**each alternative condition could reasonably be construed as a standalone method claim**” in which case the prior art (or an infringing act) need only teach (or practice) **one** of the conditions and need not teach (or be capable of practicing) the other. *Id.* (citing *Ex Parte Schulhauser*, 2016 WL 6277792 (P.T.A.B. Apr. 28, 2016)). Here, it is unclear which approach from *Hytera* Google’s rewrite of the claims would take. Google has not articulated which approach its rewritten claims should be interpreted under (despite

⁸*Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.*, No. 13-cv-655, 2014 WL 4352489, at *5 (E.D. Tex. Sept. 2, 2014) (two plausible but conflicting interpretations renders claim indefinite).

⁹*Hytera*, 841 F. App’x at 216 (“the ‘selecting’ step in claim 7 is not met unless the TDMA system **is configured to perform each claimed responsive action** in response to each corresponding claimed prerequisite condition.”); *id.*, 215 (“Hytera argues that, to render the claim obvious, the prior art need only teach one condition and its corresponding response. But that argument does not square with our precedent in *Lincoln Nat’l Life Ins. Co. v. Transamerica Life Ins. Co.*, 609 F.3d 1364 (Fed. Cir. 2010).”); *id.*, 218 (“[I]n order to render claim 7 obvious, the prior art must teach each step of the claim, including the response **to each condition** in the ‘selecting’ step.”).

[REDACTED]

relying on *Hytera* in its own brief). These conflicting interpretations are another reason why Google's proposed rewrite of the claims must be rejected and the claims held indefinite.

Finally, Google cites the specification as supporting the notion that a POSITA would understand the claims' conditionality. GOB, 36. But the specification does not provide this guidance. Ex. M, ¶¶ 34-37. As an initial matter, the specification largely uses the exact same language as used in the claim but stops short of explaining that the "in accordance with a determination . . ." steps are conditional. '311 Pat., 29:44-30:24. The specification does recite "[i]f a device determines that its score is not the highest . . . the device does not output a response to the voice input." '311 Pat., 30:8-12. But this only further confuses the issue, as a POSITA would therefore have expected the "if" statement to appear in the claims if the claim steps were conditional.¹⁰ Ex. M, ¶¶ 35-37.

D. '128 Pat.: "cause the electronic device"

Confusingly, Google argues that no construction of "the electronic device" is necessary but then argues that the phrase should be interpreted to refer to "the [first] electronic device." GOB, 37-38. The phrase does not include the word "first." Without this reference, the term lacks antecedent basis and is indefinite. To avoid this, Google is asking the ALJ to correct this error under the guise of a POSITA's understanding. This cannot be done unless Google's interpretation is not subject to reasonable debate. *Novo Indus., L.P.*, 350 F.3d at 1357; *Synchronoss Techs., Inc.*, 389 F. Supp. 3d at 715, *aff'd*, 987 F.3d 1358 ("To say that a [POSITA] would understand that 'red' means 'blue,' is the same thing as rewriting 'red' as 'blue.'"). Google fails to rebut other

¹⁰ Google also cites a passage that provides, "[a]s used herein, the term 'if' is, optionally, construed to mean 'when' or 'upon' or 'in response to determining' or 'in response to detecting' or 'in accordance with a determination that,' depending on the context." GOB, 35. This too fails to help a POSITA. Ex. M, ¶¶ 38-41. This passage says that "if" means "in accordance with a determination" – not that "in accordance with a determination" means "if." To do the work Google hopes this passage does, the passage might have read "in accordance with a determination" is construed to mean "if."

reasonable interpretations, which prevents correction.

Google argues that the only device the claims specify is “the first electronic device.” This is false. The claims specify “a first electronic device of a plurality of electronic devices,” and thus, specify “the first electronic device” and a “plurality of electronic devices.” There is no indication one way or the other as to whether “the electronic device” was intended to refer to “the [*first*] electronic device” or “the electronic device[s].” *See* Ex. M, ¶¶ 13-16.

Google argues that the “context of claim 11” specifies that the steps are carried out by the “first electronic device.” This too is false. Claim elements 11[a], 11[b], 11[c], and 11[d] are simply gerund phrases that do not refer to “the first electronic device.” ’128 Pat., cl. 11 (“detecting,” “determining,” “communicating,” “receiving”). Elements 11[e] and 11[f] recite steps that are carried out “in accordance with a determination that the quality score generated by the first device is the highest” but these steps do not specify which specific device carries out the responsive action. *Id.*, cl. 11 (“outputting,” and “forgoing outputting.”).

Google cites portions of the specification describing that the leader determination process can be carried out by one of the devices but ignores other portions of the specification that explain that the method could be carried out by all devices. *See, e.g.*, ’311 Pat., 20:55-21:32; *see also id.*, 17:59-67, 18:6-29; 20:15-39 (disclosing embodiment in which server device carries out some or all the disclosed functions). Indeed, the point of the invention is to have *multiple* devices carry out the leader election process in order to select one of them as the leader. *See* Ex. M, ¶¶ 15-16.

In sum, while it is clear the claim contains an error rendering the claim without sufficient antecedent basis, it is not clear whether the error was omitting “first” or omitting “s” to pluralize “device.” For this reason, the claim must be held indefinite, not rewritten by the ALJ.

E. ‘311 Pat.: “the second scores”

This term too lacks proper antecedent basis and is thus indefinite. Google admits that this

[REDACTED]

is an error but fails to confront the fact that correction is not possible if it is subject to reasonable debate or if the file history suggests a different interpretation. *Novo Indus., L.P.*, 350 F.3d at 1357. Here, both are present. One reasonable interpretation is that the claim attempted to recite that the second values are a narrower type of value, called a “score” or “quality score.” See Ex. M, ¶¶ 20-22. Moreover, the file history suggests that reciting “scores” was intentional because the Applicant changed other instances of “scores” to “values” in claim 2 but intentionally left the recitation at issue here. Ex. L, 78; See Ex. M, ¶ 19.

Google argues that indefiniteness due to this “error” is “draconian.” But this is precisely the result that Google advocated for – and won – against Sonos in another case. See Ex. N (Google arguing indefiniteness that cannot be corrected for claim term in which a copy/paste error during prosecution put “particular” in the middle of the phrase “media [*particular*] playback device.”). Google cannot repudiate its winning argument when its own claims are at issue.

F. ‘311 Pat.: “the detected output”

Google argues that this too is a “typographical error.” For similar reasons to the other clear errors in the asserted claims, this error cannot be corrected. Google argues that the only reasonable interpretation of this claim is that “output” means “input” because the specification “never” describes detecting an output. This is not true. The specification discloses an embodiment in which the devices forward received voice input to a “voice assistance server” so that the voice assistance server can return a proposed response or “output.” E.g., ’311 Pat., 26:54-27:3, 28:1-9, 29:57-61 (“[T]he voice assistance server 112, which generates a response, which includes audible output ... to the voice input and transmits the response to the devices.”); see Ex. M, ¶¶ 26-29. The specification also describes that the devices would detect an output from a nearby key device. *Id.*, 28:44-47 (an electronic device identifies “the speaking user” by “detecting a nearby key device associated with the speaking user (e.g., using Bluetooth low energy or ultrasonic RF)”). Correction

is thus not proper because correction is subject to reasonable debate.

III. REBUTTAL TO ‘615 TERMS

A. “short-range signal transmission path”

Google does not dispute that “short-range signal transmission path” is a term of degree. *See* GOB, 47. But Google asserts that a handful of non-limiting examples in the specification provide “objective benchmarks” that would allow a POSITA to determine the scope of the term with the requisite specificity. *Id.*, 45-46. Not so. The specification’s non-limiting examples vary so widely in their technology, architecture and range that a POSITA would not be able to *objectively* determine the scope of the term. *See* SOB, 42-43. Put differently, there is no way to take the examples, which run the gamut from requiring literal adjacency to including entire cities and distill a set of *objective* principles about what values qualify as *short*.

Google first argues that short-range paths are those that use the “protocols identified in the ’615 patent, *or similar protocols*.” GOB, 46 (emphasis added). This falls well short of the objective boundaries required under *Nautilus*. Google’s emphasis on “similar protocols” and its reliance on non-limiting embodiments make its arguments analogous to the arguments evaluated in *IQASR*. *IQASR LLC v. Wendt Corp.*, 825 F. App’x 900, 906 (Fed. Cir. 2020). In *IQASR*, the court found the term “magnetic fuzz” indefinite because the patentee used open-ended language in every definition and embodiment. *Id.* The Federal Circuit rebuked the patentee’s attempt to “avoid limiting the scope of [the] invention while also arguing that those same examples define the limits of the invention.” *Id.* The same holds true here. Google points to an open-ended list of technologies and asserts that the disputed term covers those technologies “or similar,” trying to make the term’s scope open ended and flexible—*not* objectively ascertainable.¹¹

¹¹ In addition, the ’615 patent specification discusses Wi-Fi numerous times but never indicates whether Wi-Fi is a “short-range signal transmission path.” *See, e.g.* ’615 patent, 7:7-18, 8:38-54,

[REDACTED]

Google itself appears uncertain as to the term’s scope. During the parties’ meet-and-confer, Google refused to answer whether Wi-Fi is a “short-range signal transmission path” in the ’615 Patent. Why? Because Google wants to avoid any objective boundaries for the scope of the claim so that it can maintain flexibility. In a recent district court case, Google asserted that “short-range wireless technology to a skilled artisan at the time of the patent would include personal area networks such as Bluetooth but would **not** include wireless local area networks such as Wi-Fi.” *Uniloc 2017 LLC v. Google LLC*, No. 2:18-CV-00493-JRG-RSP, 2020 U.S. Dist. LEXIS 9748 (E.D. Tex. Jan. 20, 2020). In that case, Google submitted an expert report explaining how a POSITA “Would Understand ‘Short-Range Wireless Technology’ To Exclude Wireless Local Area Networks (Wi-Fi).” *Id.* (Laneman Decl., 6-13). But in this case, Google refuses to say whether “short-range” includes Wi-Fi in the context of its own patent. Google’s gamesmanship here is an issue in and of itself, but it points to a more fundamental issue – namely that you **cannot** determine simply by looking at the non-limiting examples in the specification whether WiFi falls within the scope of the claim. That is what makes it **possible** for Google to play this game – *i.e.*, it can only be vague about it because the specification does not provide any “objective boundary” from which you could answer the question.

Google next attempts to save this claim term by rephrasing it as a “proximity-based communication channel” mentioned in the specification. GOB, 46-47 (quoting ’615 patent, 8:9-13). This fails too. First, the “proximity-based communication channel” is merely one exemplary embodiment: “[i]n **one embodiment**, the smart wireless device 321 utilizes a side band, proximity based communication channel.” ’615 patent, 8:9-13 (emphasis added). Nowhere does the ’615 patent define “short-range signal communication path” **as** a “proximity-

9:15-46. The juxtaposition of Wi-Fi and “short-range signal transmission path” without addressing whether Wi-Fi *is* or *is not* short-range signal adds more ambiguity to this term.

[REDACTED]

based communication channel.” Meanwhile, other embodiments include technologies that aren’t based on “proximity,” including “mechanical vibration/accelerometer transmission” and “camera flash and [. . .] an optical sensor.” ’615 patent, 8:53-54, 8:43-44. And *all* these examples are expressly cited as non-limiting. *Id.* “[S]uch **non-limiting** examples do not on their own expressly define the bounds—the **limits**—of the claim.” *IQASR*, 825 F. App’x at 906 (affirming ruling of indefiniteness) (emphasis in original).

Second, the phrase “proximity-based” is itself a term of degree that lacks objective boundaries which cannot be determined from the specification. How close is close enough to be “in proximity” in this field? The word “proximity” is no more certain in itself than the word “short,” and thus Google’s proposed linguistic substitution simply recapitulates the problem.

Third, redefining “short” as “proximity” does not tell you whether the term “short” modifies the *type* of signal, or the *length* of the path. Thus, Google’s proposal does not even solve the predicate, grammatical ambiguity in the claim term. SOB, 41. To put this in more concrete terms, technologies like Zigbee (cited in the specification) frequently operate in mesh networks. *See* EDIS Doc. ID 786263, Ex. F (“White Declaration”), ¶100. For this reason, a POSITA would not know whether the “proximity” term is meant to encompass only direct transmissions (*i.e.*, it limits the overall length of the path) or includes transmissions through a mesh network (*i.e.*, it includes any length of path that uses “proximity-based” signals). *See id.*, ¶100. In other cases, Google has argued that terms of degree are indefinite where the specification provides non-limiting examples. For example, in *Skyhook*, Google successfully argued that the term “far” was indefinite, “even where the specification provided two examples on how to measure whether a distance is far.” *Skyhook Wireless, Inc. v. Google, Inc.*, No. CIV.A. 10-11571-RWZ, 2014 WL 898595, at *6 (D. Mass. Mar. 6, 2014) (“‘[f]ar’ is a word of degree,” and “substituting examples for the required ‘standard,’ the specification leaves the definition of

[REDACTED]

‘far’ so open-ended as to leave a person skilled in the art to guess at the scope of the invention.”). Short-range leaves us in a similar position.

Google relies on two distinguishable cases. In *Niazi Licensing*, the Federal Circuit considered whether the terms “resilient” and “pliable” were definite. *Niazi Licensing Corp. v. St. Jude Med. S.C., Inc.*, 30 F.4th 1339 (Fed. Cir. 2022). The specification provided a single, consistent example for each term and provided context for those examples that delineated boundaries that a skilled artisan could understand. *Id.* at 1349. The trial court erred when it found that a single sentence in a paragraph that did not even include the terms at issue rendered the terms indefinite. *Id.* (“both the inner and outer catheters ‘preferably have a predetermined shape and a certain degree of stiff[n]ess to maintain such shape during manipulation in the heart, but still flexible enough to bend when required.’”). In contrast, Google uses the term “short-range signal transmission path” in many different contexts, which include technologies as diverse as mechanical vibration, camera flashes, and Bluetooth and “similar.” SOB, 42.

Google’s reliance on *Sonix* is also misplaced. In *Sonix*, the district court found the term “visually negligible” to be “purely subjective” and therefore indefinite. *Sonix Tech. Co. v. Publications Int’l, Ltd.*, 844 F.3d 1370, 1378 (Fed. Cir. 2017). The Federal Circuit rejected that classification for two reasons. First, both parties’ experts agreed to an ordinary-meaning construction during initial claim construction. *Id.* at 1380. Second, the prosecution history showed that the USPTO withdrew its indefiniteness rejection after the patentee submitted an expert declaration explaining that a skilled artisan would understand the metes and bounds of this term. *Id.* Thus, Federal Circuit found “visually negligible” not indefinite “on *this* record.” *Id.* at 1381 (emphasis added). No similar record exists here.

[REDACTED]

B. “in response to receiving the request, receiving one or more network configuration packet”

Google’s opening brief does nothing to address the ambiguity presented by this term. Instead, Google argues that “[t]he ’615 Patent explains the commissioning process in detail.” ’615 patent, Fig. 3, 7:3-67. But that is besides the point because, of course, we must construe the claim and not the specification. And nowhere in its brief or in the ’615 Patent does Google explain how the claim term (to receive something (configuration information) *in response to* receiving something else (the request)) informs a POSITA with reasonable certainty about the scope of the invention. *See generally* SOB, 45-49.¹²

Google’s brief does not provide any substantive argument on this term. Instead, it asserts that “Sonos could not articulate why it believes this claim term is indefinite” during the meet and confer process. SOB, 49. This is simply not accurate. During a meet and confer meeting on November 28, 2022, multiple lawyers for Sonos (including Alyssa Caridis and Cole Richter) explained how this disputed term is indefinite to Google’s lawyers (Brett Watkins, Patrick Curran and Patrick Stafford). Ex. P (Caridis Decl.), ¶ 5. In response, Google’s lawyers agreed to take Sonos’ position back to their team and to propose a response to resolve the ambiguity that Sonos had identified. *Id.* ¶ 6. In other words, Google’s lack of briefing on this term is part of a tactical choice to hide its position in order to prevent Sonos from having an opportunity to address its arguments in writing.

IV. CONCLUSION

Sonos respectfully requests the Administrative Law Judge adopt Sonos’s constructions.

¹² Google also fails to address whether it is, in fact, attempting to read “in response to” as “after.” *See* SOB, 48. Such a re-writing of the claim is improper (*id.*), and is confirmed by Google’s filing of a continuation application to the ’615 Patent, where Google did change “in response to” to “after.” Ex. Q (Preliminary Amendment to U.S. Application No. 17/337,579), 2.

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George I. Lee, Esq.
Sean M. Sullivan, Esq.
Rory P. Shea, Esq.
J. Dan Smith, Esq.
Cole B. Richter, Esq.
Michael P. Boyea, Esq.
Jae Y. Pak, Esq.
LEE SULLIVAN SHEA & SMITH LLP
656 W Randolph St, Floor 5W
Chicago, IL 60661
Tel.: (312) 754-0002
Email: Sonos-1330-service@orrick.com

Jordan L. Coyle, Esq.
ORRICK, HERRINGTON & SUTCLIFFE LLP
Columbia Center
1152 15th Street, NW
Washington, DC 20005
Tel.: (202) 339-8400
Email: Sonos-1330-service@orrick.com

Respectfully,

/s/ Jordan L. Coyle

Jordan L. Coyle

Clement S. Roberts, Esq.
ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Tel.: (415) 773-5700
Email: Sonos-1330-service@orrick.com

Bas de Blank, Esq.
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025-1015
Tel.: (650) 614-7400
Email: Sonos-1330-service@orrick.com

Alyssa M. Caridis, Esq.
Geoffrey Moss, Esq.
ORRICK, HERRINGTON & SUTCLIFFE LLP
355 S. Grand Ave., Suite 2700
Los Angeles, CA 90071
Tel.: (213) 629-2020
Email: Sonos-1330-service@orrick.com

Attorneys for Respondent Sonos, Inc.