

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC

Petitioner,

v.

JAWBONE INNOVATIONS, LLC,

Patent Owner.

Patent No. 8,467,543

Filing Date: March 27, 2003

Issue Date: June 18, 2013

Inventor: Gregory C. Burnett, Nicolas J. Petit, Alexander M. Asseily, and Andrew
E. Einaudi

Title: MICROPHONE AND VOICE ACTIVITY DETECTION (VAD)
CONFIGURATIONS FOR USE WITH COMMUNICATION SYSTEMS

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

Case No. IPR2023-01291

Meta's Reply confirms its failure to meet its burdens under 37 C.F.R. § 42.104(b)(3) and (4) to identify "[h]ow the challenged claim is to be construed" and "[h]ow the construed claim is unpatentable under the statutory grounds." Meta attempts to shift its burden to Jawbone by arguing that Jawbone has not proposed a construction for "generating a noise waveform estimate" or shown that the term, properly construed, is not disclosed by Andrea. Neither is required because Jawbone has no such burden. The burden is Meta's, and since it failed to meet that burden, its Petition is deficient and should not be instituted.

Meta contends that no construction of "generating a noise waveform estimate" is required but does not even attempt to show how the electrical output of a microphone that receives noise is a "noise waveform estimate." More specifically, even if Meta is correct that Andrea's microphone generates an electrical noise *signal*, Meta has not shown that this signal, whether amplified or not, is a noise *waveform estimate* under any definition. Meta presents no evidence that the plain and ordinary meaning of "signal" is "waveform estimate" or that the terms are interchangeable or synonymous to a POSITA. Rather, Meta offers the bare conclusion that a POSITA would understand that whatever "generating a noise waveform estimate" is, it is disclosed in Andrea.

Meta is correct that the Petition did not expressly argue that "generating a noise waveform estimate" should be written out of the claims. Rather, Meta

implicitly read the term out of the claims by attributing to it no limiting effect by assuming it is met by the inherent capability of a microphone to convert acoustic signals to electrical signals. Under basic claim construction precedent, Meta cannot succeed in proving invalidity relying on this indefensible claim construction position.

Jawbone agreed that no claim construction of “generating a noise waveform estimate” was necessary because the term sufficiently requires generating a waveform estimate of noise, and the Petition points to no such thing in Andrea. Nowhere in the Petition or the Reply does Meta tell us where in Andrea’s electrical microphone output signal (again, whether amplified or not) one can find a waveform, and how that waveform comprises an *estimate* of noise, rather than just the noise itself. For the purposes of institution, the words of the claim term conclusively demonstrate that Andrea does not disclose “generating a noise waveform estimate” without the need for further construction.

Meta argues that “generating a noise waveform estimate” can be an “acoustic-to-electrical conversion” because the ’543 Patent does not otherwise limit that term. Reply, 3. Meta performs a perfunctory claim construction analysis, apparently by searching for “estimate” or “estimating” and then looking for lexicography or disclaimer. *Id.* Meta then dismisses Jawbone’s citation to the specification of the

'543 Patent at 14:40-16:3 as containing no disclaimer or other disclosure limiting “generating a noise waveform estimate” to using transfer functions. *Id.*

Meta overlooks that the above-cited portion of the specification discloses an embodiment of a denoising method in which a noise waveform estimate is subtracted from an acoustic signal that includes speech and noise to derive the desired signal:

$$S(z) \approx M_1(z) - M_2(z)H_1(z).$$

'543 Patent, 16:2. In this equation, $M_1(z)$ is the speech-and-noise signal, $M_2(z)H_1(z)$ is an estimate of the noise component of the speech-and-noise signal derived by applying the transfer function $H_1(z)$ to the noise signal $M_2(z)$, and $S(z)$ is the desired speech signal that results from subtracting the noise waveform estimate from the speech-and-noise signal. *Id.*, 14:40-16:2. Here, “generating a noise waveform estimate” involves applying a transfer function to a noise microphone signal, and nothing in the specification supports treating a “noise waveform estimate” as a bare microphone output signal.

While some disputes over claim interpretation might require institution to resolve, that is not the case here where the Petition’s implied construction is untenable and reads the limitation out of the claims. Indeed, although Meta bears the burden of proof, it never argues that Andrea discloses “generating a noise waveform estimate” under an interpretation of that gives meaning to all words of the claim. Accordingly, the Petition should not be instituted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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