

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIZIO, INC.,
Petitioner

v.

POLARIS POWERLED TECHNOLOGIES, LLC,
Patent Owner

Case IPR2024-00073
U.S. Patent No. 7,843,148

**PATENT OWNER'S OPPOSITION TO
PETITIONER'S MOTION TO STRIKE**

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Patent Trial and Appeal Board
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P.O. Box 1450
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The Board should deny Petitioner’s Motion to Strike (Paper 26, “Motion” or “Mot.”). The allegedly new “strobe” argument is responsive to Petitioner’s arguments presented in the Reply. The deposition exhibit is properly included to provide context for Dr. Zane’s testimony and assess his credibility.

I. THE ALLEGEDLY NEW “STROBE” ARGUMENT IS PROPERLY RESPONSIVE TO PETITIONER’S REPLY ARGUMENTS.

Petitioner moves to strike the argument at page 16, lines 4-7 of PO’s Sur-reply as being an improper new argument. Mot., 3-4. But PO’s argument is properly responsive to arguments raised for the first time in Petitioner’s Reply and Dr. Zane’s Reply Declaration. As Petitioner admits, the Petition relies on an inherency theory for claim 7’s “clock connected to the shift register” limitation. *Id.*, 4 (“Patent Owner has been aware since the outset of this proceeding of Petitioner’s assertion that a clock was inherent in Thomas’s shift register.” (citing Pet., 34-35)). As noted in PO’s Sur-reply, “Petitioner and Dr. Zane initially—and strenuously—alleged that ‘[a]ll shift registers *must* have a clock connected to them for shifting the bits.’” Sur-reply, 12 (quoting Pet., 34 (emphasis original); citing EX1003, ¶76).

To rebut Petitioner’s allegations of inherency, in its PO Response, PO identified examples of shift registers that, contrary to Petitioner’s assertion otherwise, *do not* utilize a clock—namely asynchronous shift registers and dynamic shift registers. *See, e.g.*, POR, 19-20; Sur-reply, 12. Petitioner contends

that “Patent Owner could have presented its ‘strobe signal’ argument in its Patent Owner Response” (Mot., 4), but PO is not required to *disprove* Petitioner’s inherency argument (Sur-reply, 13) and need not have elucidated every possible counterexample of shift registers without clocks in the PO Response. The examples provided in the PO Response were sufficient to rebut the Petition’s inherency theory, because they conclusively showed that it is not true that “[a]ll shift registers **must** have a clock connected to them for shifting the bits” (Pet., 34 (emphasis original)). *See* POR, 19-20 (citing EX2004, 99:15-21 (Dr. Zane admitting that asynchronous shift registers do not include a clock, testifying that “any shift register ... would have to derive an effective clock to shift the data down the register,” but “[i]n an asynchronous shift register, that *would typically not include a separate dedicated clock...*” (emphasis added))).

In Petitioner’s Reply, Petitioner walked back its contention that “[a]ll shift registers **must** have a clock connected to them for shifting the bits,” Pet., 34 (first emphasis added), asserting incorrectly instead that *Thomas*’s shift register is not an asynchronous shift register and necessarily has a clock because “[w]ithout a clock, *Thomas*’s shift register would not be able to shift synchronously.” *See* Reply, 20-22; EX1031, ¶24. Petitioner also alleged, as relevant here, that dynamic shift registers utilize clock signals, pointing to signals ϕ_1 and ϕ_2 in the dynamic shift register of EX1011 as a clock signal. Reply, 22-23. But even if this were true, it

does not follow that a dynamic shift register *necessarily* is connected to a clock to receive and use a clock signal. *See* Sur-reply, 15-16. This is precisely the argument PO makes in the Sur-reply to which Petitioner now objects. In particular, *in response to Petitioner’s argument presented for the first time in the Reply* (i.e., that a dynamic shift register utilizes a clock signal), PO provides specific examples where the “shift signal” in a dynamic shift register could be *something other than* a clock signal from a connected clock. *Id.*, 16. Thus, PO properly rebuts Petitioner’s Reply arguments. The argument presented at page 16, lines 4-7 should not be stricken.

II. DEPOSITION EXHIBIT 1 IS PERMISSIBLE AND SHOULD NOT BE STRICKEN.

Petitioner moves to strike Deposition Exhibit 1 (pages 76-79 of Exhibit 2011) as impermissible sur-reply evidence. Mot., 1-3. The Board should not do so here. Attaching Deposition Exhibit 1 to Dr. Zane’s deposition transcript is proper and in accordance with the Board’s rules. As the Board stated in *Ascend Performance Materials Operations LLC v. Samsung SDI Co.*, “if exhibits are introduced during a deposition for the purposes of testing the witness’ testimony, a party should be able to submit those exhibits with the transcript, so the Board has the full context available in order to evaluate the testimony.” IPR2020-00349, Paper 53, 12 (P.T.A.B. July 15, 2021). In *Ascend*, the deposition exhibits were “relevant to [patent owner]’s cross-examination of [petitioner’s reply witness], and

thus constitute[d] proper evidence to submit along with the deposition transcript.”

Id., 12–13. Such is the case here.

In *Netflix, Inc. v. DivX, LLC*, cited by Petitioner, the excluded exhibits constituted nearly 80 pages of various documents that “[the expert] had not seen” prior to the deposition. IPR2020-00511, Paper 46, 52-56 (P.T.A.B. Aug. 13, 2021). Here, on the other hand, the exhibit is a single dictionary definition from a relevant technical dictionary. That Dr. Zane is unfamiliar with “strobe” signals—a common type of non-clock signal that could be used as a shift signal in Thomas’s shift register—is certainly relevant to his testimony on the inherency issue in this proceeding. *See* EX2011, 27:14-28:12.

Further, Deposition Exhibit 1 is not prejudicial to Petitioner, because Dr. Zane “had an opportunity to respond to the exhibit[] during the deposition.” *Edwards Lifesciences Corp. v. Cardiovalve Ltd.*, IPR2021-00383, Paper 60, 87 (P.T.A.B. July 18, 2022). Additionally, Petitioner’s counsel had full and fair opportunity to question Dr. Zane on the exhibit via re-direct examination, and elected not to do so. EX2011, 54:4-55:4. Accordingly, Deposition Exhibit 1 should not be stricken from the record in this proceeding.

Respectfully submitted,

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Date: November 6, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **PATENT OWNER'S
OPPOSITION TO PETITIONER'S MOTION TO STRIKE** was served
electronically via e-mail on November 6, 2024, in its entirety on the following
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