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On behalf of **VIZIO, Inc.**
By: Sheila N. Swaroop
Marko R. Zoretic
Daniel Kiang
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614
Ph: 949-760-0404
Email: VIZIO-148IPR@knobbe.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIZIO, INC.,
Petitioner
v.
POLARIS POWERLED TECHNOLOGIES, LLC
Patent Owner

IPR2024-00073
Patent No. 7,843,148

CORRECTED TITLE:
AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST

I. THE DIRECTOR SHOULD DENY REVIEW

Patent Owner's ("PO") Director Review Request ("Request") fails to identify any abuse of discretion, important issue of law or policy, erroneous factual finding, or erroneous conclusion of law warranting Director Review. Instead, PO presents four arguments that are legally flawed or inconsistent with the record.

A. There Is No Need To Revisit The Board's "Thomas-Based" Findings

1. PO Conceded The Board Can Decide Claim 6

PO argues the Board abused its discretion in considering the obviousness of dependent Claim 6 after the Board determined that the Petition's Claim 1 anticipation argument had a defect. Request, 3-9. PO is wrong.

Claim 1 of the '148 Patent recites an electronic circuit for driving LEDs, with the disputed limitation of a "current set circuit." The Petition and its expert identified resistors in Thomas that were connected in series with the LEDs and transistors as the "current set circuit." Pet., 25-26, EX1003 ¶63. PO asserted that a "circuit" requires at least two connected components and argued that the Petition identified only a single component (the resistor) instead of multiple components. FWD, 31-32. The Board accepted PO's argument that the Petition did not identify *enough* components in Thomas to satisfy "current set circuit" for Claim 1.[1] FWD, 32-33.

[1] In response to PO's claim construction, the Reply clarified the "current set circuit" includes both Thomas's resistor and transistor, but the Board declined to consider

But Claim 6 recited that each "current set circuit comprises", *inter alia*, (1) a "resistor" and (2) a "transistor" connected with that resistor. FWD, 47. There was no dispute the Petition identified both a resistor and transistor for Claim 6. In fact, PO ***never*** disputed VIZIO's Claim 6 arguments. *See generally* POR; Sur-Reply. Thus, the Board found that Petitioner's Claim 6 arguments cured the purported defect in the Claim 1 argument, namely, not identifying *enough* components.

PO complains the Board "should have stopped its inquiry" at Claim 1 and "never should have reached claim 6." Request, 4, 2, 6. But PO ***conceded*** the Board ***could*** review Claim 6 even if the Board agreed that Petitioner's Claim 1 argument had a defect. Paper 31 ("Hrg. Tr."), 64:15-25 ("I can't think of a legal reason why you wouldn't consider a separate ground as a separate ground."). PO cites no authority requiring the Board to end its analysis at the independent claim, particularly where an alleged defect in the independent claim argument is cured by a dependent claim argument. Such analysis would be contrary to the "mandate" that "the Board *must* address *every* claim the petitioner has challenged." *SAS Institute, Inc. v. Iancu*, 584 U.S. 357, 362-63 (2018) (original emphasis). The Board has previously found independent claims obvious based on arguments made with respect

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that argument. FWD, 32-33. But Petitioner was entitled to explain how Thomas discloses the limitation under PO's construction. *Axonics, Inc. v. Medtronic, Inc.*, 75 F.4th 1374, 1383-84 (Fed. Cir. 2023). If Director Review is granted, the Director should also review the Board's decision not to consider that Reply argument, and should find anticipation/obviousness of Claim 1 based on Thomas.

to a dependent claim. *Eastman Kodak Co. v. CTP Innovations, LLC*, IPR2014-00788, Paper 39 (Sept. 21, 2016) (granting rehearing to reconsider unpatentability of independent claim based on arguments for dependent claim); *Eastman Kodak*, Paper 44 (Jan. 13, 2017) (finding independent claim invalid); Hrg. Tr., 47:20-48:3.

PO incorrectly argues the Board "cherry-pick[ed]" and adopted arguments on behalf of Petitioner. Request, 4-6. The Petition set forth a complete argument on Claim 6, which PO never substantively disputed. Pet., 46-50.

PO cites cases where an independent claim was not found obvious and its dependent claims also were not found obvious. Request, 6-7 (citing, *e.g.*, *Hartness v. Simplimatic*). But none of those cases involved dependent claim arguments that cured a purported issue with arguments regarding the independent claim.

Because the Board ***must*** decide every challenged claim, the Board correctly found Claim 6 obvious. And because Claim 6 includes all limitations of Claim 1, the Board correctly found Claim 1 was also obvious.

2. A POSITA's Motivation Is Irrelevant to Anticipation, and PO Waived This Argument

PO argues the Board's Claim 6 finding was also based on a legal error regarding Claim 17. Request, 9-12. The Board found Thomas anticipated Claim 17 because when Thomas's control signal W was high, the output of the AND gate was the same as the PWM signal E. FWD, 38-40. Relying on *ParkerVision*, PO invents a legal error that there was no argument or evidence that a POSITA would have been

motivated to operate Thomas's device with the control signal W set to high. Request, 11. PO argument is baseless for three reasons.

First, PO waived that argument by never presenting it to the Board. FWD, 34-40. ***Second***, a POSITA's motivation has no relevance to anticipation. *ParkerVision* involved *obviousness*, whereas the Board found Thomas *anticipated* Claim 17. *ParkerVision, Inc. v. Qualcomm, Inc.*, 903 F.3d 1354, 1363 (Fed. Cir. 2018). ***Third***, Dr. Zane explained that Thomas discloses a high control signal W would be used to turn the corresponding LEDs on. EX1003, ¶¶68-69; Pet., 31 n.6.

3. PO's Argument Regarding AND Gates Identifies No Error

PO argues the Board misunderstood the operation of Thomas' AND gates, yet identifies no record evidence that the Board allegedly misunderstood. Request, 12-14. The Board understood how AND gates work. *See* FWD, 38-39. PO ignores its concession that PWM signal E and the AND gate's output have a "similar waveform," which supported the Board's finding that the AND gate's output "has the same functional form or modulation as PWM signal E" when Thomas's AND gate is enabled by a high control signal W. *Id.* (citing Hrg. Tr. 37:23-38:9). PO next argues the Board incorrectly treated the AND gate as a multiplexer. Request, 13 n.4. But PO waived that argument by never raising it.

B. <u>The Board Correctly Rejected PO's Bias Criticisms of Dr. Zane</u>

PO argued to the Board that because Dr. Zane authored the *Zane* prior art paper, he was so biased that his opinions should have been given no weight. POR, 30-34. The Board considered and rejected those criticisms. FWD, 12-16. PO mischaracterizes the Board's decision as premised only on the reason that Dr. Zane's "testimony concerns what is already disclosed in Zane." Request, 14-15. But the Board fully evaluated PO's bias arguments and "[did] not find Dr. Zane so biased that his testimony ought to be categorically assigned little to no weight." FWD, 15-16. PO also incorrectly argues the Board "did not reconsider the impact of Dr. Zane's bias in the context of obviousness." Request, 15. The Board expressly considered PO's bias criticisms in its obviousness analysis. *See* FWD, 23 ("Patent Owner, in addition to arguing Dr. Zane's testimony should be given no weight, argues ….").

PO ignores the record in asserting that "[w]ithout Dr. Zane's testimony," the ground is "unsupported attorney argument." Request, 15. PO never moved to exclude Dr. Zane's testimony. The Board thus weighed the available testimony and "[found] Dr. Zane's testimony more credible than Mr. Credelle's [PO's expert]." FWD, 25. The Board properly credited Dr. Zane's opinions in its analysis.

For the foregoing reasons, VIZIO respectfully request that Director Review should be denied.

Dated: April 3, 2025 By: /Sheila Swaroop/

Sheila N. Swaroop (Reg. No. 53,658)
Marko R. Zoretic (Reg. No. 65,994)
Daniel C. Kiang (Reg. No. 79,631)
KNOBBE MARTENS OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614
Ph. 949-760-0404
Attorneys for Petitioner VIZIO, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date below a copy of this **CORRECTED TITLE: AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST** was served by email on the Patent Owner at the following email addresses:

dalberti@krameralberti.com; rtonkovich@krameralberti.com;
abrewster@krameralberti.com; jfitzsimmons-PTAB@sternekessler.com;
rbemben-PTAB@sternekessler.com; jchagnon-PTAB@sternekessler.com;
mspecht-PTAB@sternekessler.com; PTAB@sternekessler.com
KramerAlberti-Polaris-Vizio@krameralberti.com

Dated: April 3, 2025 By: /Daniel C. Kiang/
Daniel C. Kiang
KNOBBE MARTENS OLSON & BEAR, LLP

57202406