UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MOTOROLA SOLUTIONS, INC.,
*Petitioner*

v.

STA GROUP LLC,
*Patent Owner*.

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Case IPR2024-00207

U.S. Patent No. 8,145,249 B2

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# PETITIONER'S AUTHORIZED REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE

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PO argues for discretionary denial under 35 U.S.C. § 325(d). POPR at 28-38. Section 325(d) states that "[i]n determining whether to institute" an IPR, the Director may take into account whether "the same or substantially the same prior art or arguments previously were presented to the Office." All of the prior art presented in the Petition—Botha, McDonald, Radenkovic, and Koren—is new and has not been previously presented to the Office. PO thus relies on the "substantially the same" portion of § 325(d), arguing that the Petition's prior art and arguments are cumulative of those considered during prosecution. *Id.* at 2. As explained below, they are not. PO's § 325(d) argument fails, and IPR should be instituted.

## I. DISCRETIONARY DENIAL UNDER § 325(d) IS NOT WARRANTED

The Board analyzes § 325(d) using the two-part framework of *Advanced Bionics, LLC v. Med-El Electromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (PTAB Feb.13, 2020) (precedential). PO's argument fails at part one: The Botha and Radenkovic-McDonald grounds disclose mixing of a plurality of streams, each having a plurality of users, which were the precise limitations found to be missing from Löppönen during prosecution. The Botha and Radenkovic-McDonald grounds thus present non-cumulative art and arguments materially different from those previously considered by the Office. The Board need not consider part two of

*Advanced Bionics*.[1]

### A. Botha Discloses the Limitations Missing from Löppönen

In its merits argument against Ground 1, PO argues that Botha fails to disclose "receiving a plurality of monitored push-to-talk communication streams," where each stream comprises "audio communications from a plurality of users" (hereinafter "2x2 limitation," reflecting the requirements of at least two streams, each having at least two users). POPR at 20-21. Then, for § 325(d), PO rehashes this same argument, asserting that "Botha fails in the same manner as Löppönen was found to fail. There is no disclosure of a *plurality of streams*, which themselves comprise a *plurality of users* to be transmitted to an endpoint." *Id.* at 31 (emphases in original). PO's merits and § 325(d) arguments are thus intertwined—the § 325(d) argument would be valid *only* if PO is correct that Botha fails to disclose the 2x2 limitation. But PO is wrong, meaning that its merits and § 325(d) arguments both fail.

The Petition, supported by Dr. Sayfe Kiaei, showed that the Botha System discloses the 2x2 limitation. Pet. at 26-38, Ex. 1002 (Kiaei Decl.) at ¶¶ 89-97, 99-101. Botha's Figures 1-2 illustrate a two-way radio system having *multiple* radios

[1] To the extent relevant, the Office materially erred in failing to find and apply the Botha, McDonald, and Radenkovic references cited in the Petition.

180. Pet. at 12-13, 28; Kiaei Decl. at ¶¶ 76-78, 90. And in the Botha System, there are *multiple* two-way radio systems. Pet. at 34-38; Kiaei Decl. at ¶¶ 95-96. In other words, the Botha System has *multiple* communication streams coming from each of the radio systems with each of those streams originating from *multiple* radios 180. The Botha System mixes those streams with a "mixing operation" using proxy 997.[2] Pet. at 39; Kiaei Decl. at ¶ 102.

As the Office acknowledged in allowing the '249 patent, Löppönen fails to disclose these features. Ex. 1003 at 32, 76-77. In Löppönen's mixed stream, "the user still hears only one group at a time." *Id.*

PO argues that Botha fails to disclose the 2x2 limitation because "the 'group' of Botha resides on Channel 110-D," which is a single group heard by the Phone 160. POPR at 31. That is wrong because PO fails to take into account the mixing performed by the phone proxy 997 itself. In the Botha System, the phone proxy 997 mixes together Channel 110-A having the first PTT stream *and* Channel 110-D having the second PTT stream. Indeed, Petitioner's expert Dr. Kiaei testified that phone proxy 997 "receives at least two multicast streams, each stream including push-to-talk communications from a plurality of endpoints 180," (Kiaei Decl. at ¶ 99) and "creates an aggregate/mixed communication stream corresponding to all

[2] As a matter of design choice, gateway 220 can alternatively perform this mixing.

other multicast or unicast streams on the channel 110" (*id.* at ¶ 102). Facing this evidence, PO offers no competing expert testimony and responds with mere attorney argument, which "is not evidence" and cannot overcome Dr. Kiaei's well-reasoned testimony. *Elbit Sys. of Am., LLC v. Thales Visionix, Inc.*, 881 F.3d 1354, 1359 (Fed. Cir. 2018). Thus, Ground 1's Botha System presents new, non-cumulative art and arguments, and *Advanced Bionics* part one is not satisfied. The Board should reject PO's § 325(d) argument for at least these reasons.

### B. McDonald Discloses the Limitations Missing from Löppönen

As with Botha, PO's § 325(d) argument for McDonald is valid *only* if PO's merits argument for this reference is correct. PO argues that McDonald fails to disclose the 2x2 limitation and "thus fails for the same reasons Löppönen failed during prosecution." POPR at 37-38. That is PO's primary merits argument for the Radenkovic-McDonald grounds (*see id.* at 22-23) repurposed to seek § 325(d) discretionary denial. But regardless of context, PO's argument fails.

The Petition, supported by Dr. Kiaei, showed that the Mixed McDonald System discloses the 2x2 limitation. Radenkovic discloses an audio service system in which mixers 104/204/304 mix audio streams. Pet. at 52; Kiaei Dec. at ¶ 131. McDonald discloses that "[a]ny number of talk groups … can be established within the system 100" of Fig. 1. Ex. 1007 at [0015]; *see* Pet. at 58-59; Kiaei Decl. at ¶ 148. That is, McDonald discloses *multiple* talk groups. Each of those talk groups can

include *multiple* communication units 148, 150. Core router 114 of McDonald incorporates mixer 304 of Radenkovic, in the Mixed McDonald System, to mix together *multiple* talk group streams, each with *multiple* communication units. Pet. at 62-63; Kiaei Decl. at ¶¶ 152-153. As explained above, Löppönen fails to disclose this mixing.

PO argues that McDonald fails to disclose the 2x2 limitation because McDonald Figure 1 "discloses a singular stream from one talkgroup comprising 148 and 150." POPR at 37. That is wrong because PO fails to take into consideration that in the Mixed McDonald System there can be *multiple* talk groups with each talk group having *multiple* communication units. Additionally, PO does not argue that the combination of Radenkovic and McDonald is cumulative. Instead, PO's § 325(d) arguments focus only on McDonald. Petitioner's expert Dr. Kiaei testified that audio is received from "mobile radios 148, 150 in talkgroups" and "[u]sing the combination of McDonald and Radenkovic … multiple audio streams of the two or more non-critical talkgroups may be mixed." Kiaei Decl. at ¶¶ 86, 140. With no competing expert testimony and mere attorney argument, PO cannot overcome Dr. Kiaei's well-reasoned testimony. *Elbit Sys. of Am.*, 881 F.3d at 1359.

Thus, the Mixed McDonald System in Grounds 2-3 presents new, non-cumulative art and arguments, and *Advanced Bionics* part one is not satisfied. The Board should reject PO's § 325(d) argument for these additional reasons.

Respectfully submitted,

Dated: June 7, 2024

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## CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on June 7, 2024, a complete and entire copy of **PETITIONER'S AUTHORIZED REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE** has been served in its entirety by e-mail to:

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