

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUALCOMM INCORPORATED

Petitioner¹

v.

NETWORK SYSTEM TECHNOLOGIES, LLC,

Patent Owner

U.S. Patent No. 7,373,449

Inter Partes Review No. IPR2024-00338

PATENT OWNER'S MOTION TO STRIKE

¹ Qualcomm Incorporated filed a petition and motion for joinder in IPR2024-01081 and has been joined as a petitioner in this proceeding.

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To secure joinder, Qualcomm adopted the Petition² and expert declaration (EX1003) initially filed by Samsung. After stepping into Samsung's shoes as Petitioner, Qualcomm's Reply brief (Paper 43) and new declaration (EX1043) seek to effectively rewrite the Petition in an attempt to remedy its deficiencies and inconsistencies. Qualcomm's belated theories and evidence violate the Board's rules because they are necessary for its *prima facie* obviousness case, prejudice Patent Owner ("PO"), and should be stricken. CTPG, 73-74, 80-81; 37 C.F.R. § 42.23(b).

New "First Module" Theories: PO's Preliminary Response explained that the Petition failed to specify whether it relies on Drake's (EX1006) source station 10 ("option 1") or application 11 therein ("option 2") for the claimed "first module." IPR2024-01081, Paper 7, 28-29. While Qualcomm requested a preliminary reply to address alleged "mischaracterizations of the Petition's claim-mapping," it did not address or dispute the "first module" issue that PO raised. IPR2024-01081, EX3002.

The Institution Decision found that "Petitioner consistently identifies" the "first module" as Drake's source station 10 and not application 11—i.e., option 1, not 2. IPR2024-01081, Paper 14, 22-24; *see also* Paper 10, 59-60, 81-82. Indeed, portions of the Petition clearly argue option 1. Pet., 27, 32, 35-36, 43, 47, 61, 63, 67, 70 (arguing option 1 for claim 2, limitations 6[d]/10[e], etc.). Given the Board's finding and Qualcomm's failure to argue otherwise previously, PO's Response

² IPR2024-01081, Paper 1. Other citations are to IPR2024-00338 unless indicated.

(“POR”) focused on option 1. *See, e.g.*, POR, 17-20; EX2070, ¶83 n.4.

Then, however, Qualcomm's Reply and new declaration (i) disavowed **any** reliance on Drake for the “first module” (“option 3”) and (ii) also argued option 2 by identifying application 11 as the “thing”/“component” in Drake that “mak[es] the service request.” Reply, 3-4, 15-17, 21. Qualcomm claims this is not new because “the Petition ... identif[ies] the Goossens references [EX1005 & EX1007] as disclosing a first module, and further Petitioner ... ha[s] consistently identified the application 11 ... as the thing that actually makes the QoS request.” EX3007, 2. But as the Board found, the Petition clearly relies on Drake's source station for the “first module” (option 1). IPR2024-01081, Paper 14, 22-24; Pet., 27, 32, 35-36, 43, 47, 61, 63, 67, 70. Indeed, while new option 3 purports to identify the “first module” solely as the Goossens references' IPs, the Petition never mentions those IPs for limitations 6[d]/10[e]. Reply, 4, 15-17, 21; Pet., 43-44, 47, 67, 70.

Qualcomm's position on the “first module” in Drake (i.e., options 1-3) is critical to the merits. There is no dispute that under option 1, Drake does not disclose a “communication manager” under PO's construction or limitations 6[a]/10[a]. POR, 12-16, 38-41, 60-62; Reply, 15-17. Qualcomm's new Reply theories (options 2-3) are meaningfully distinct from option 1 and should be stricken. *Henny Penny Corp. v. Frymaster LLC*, 938 F.3d 1324, 1331 (Fed. Cir. 2019) (finding petitioner's attempt to disavow reliance on secondary reference for a claim limitation improper).

To the extent Qualcomm argues that any ambiguity in the Petition was resolved during its expert's deposition, that does not justify Qualcomm's new theories. *Arista Networks, Inc. v. Cisco Sys., Inc.*, IPR2016-00308, Paper 42, 12-13 (PTAB May 25, 2017) (striking argument despite deposition testimony). Moreover, Qualcomm's new argument that it does not rely on Drake's source station 10 at all for the "first module" (option 3) is contrary to Dr. Mowry's testimony. EX2078, 173:4-11 (confirming he "mapped Drake's source station to the first module in the claims"); *Fantasia Trading LLC v. CogniPower LLC*, IPR2021-00071, Paper 55, 20-23 (PTAB May 11, 2022) (Kenny, ALJ) ("we do not permit Petitioner and [its expert] to identify [the element] during cross examination and then completely change that identification, after [PO] argued the initial identification was flawed").

New "Network Interface" Theories: Samsung's Petition relies on Drake's QoS requestor manager 12 ("QoS-12") as the claimed "communication manager" but failed to explain why or how Drake's QoS-12 would be implemented in the Goossens references, including where it would be located and how it would work with the existing service requests. *See, e.g.*, POR, 24-37, 46-47, 49-60.

To address this deficiency, Qualcomm's Reply argues *for the first time* that (i) Drake's QoS-12 is a network interface ("NI") component, (ii) Drake's QoS-12 would be implemented in the Goossens references' NIs in the combinations, and (iii) a POSITA would be motivated to do so because of an alleged "need for interfacing."

Reply, 9-15; EX1043, *passim* (discussing NIs/interfaces and newly annotating Drake's Fig. 1 in ¶15). The Petition never mentions "interface" in relation to Drake; instead, it only mentions "interface" (i) in Grounds 1-2 for claim 9 with no reference to Drake and (ii) in Ground 2 for claim 2 and 6[a] in relation to Goossens2003's NI but not Drake's QoS-12, as the Petition relies on those two components as alternatives, not in combination. Pet., 44-45, 62-63, 65-68; *see* Reply, 9 n.4, 16.

Qualcomm's NI theories should be stricken because they purport to provide an entirely new theory and rationale as to where and why Drake's QoS-12 would be implemented in the Goossens references. Reply, 9-15. Indeed, the new NI theories are Qualcomm's **only** alleged motivation to combine specific to QoS-12 and thus were necessary for *prima facie* obviousness. Such new obviousness theories are improper. 37 C.F.R. § 42.23(b); *Kingston Tech. Co. v. Spex Techs., Inc.*, IPR2017-01021, Paper 39, 33-34 (PTAB Oct. 1, 2018) (Boudreau, ALJ) (rejecting new reply argument); *Samsung Elecs. Co. v. Resonant Sys., Inc.*, IPR2023-00992, Paper 47, 89-92 (PTAB Jan. 8, 2025) (Amundson, ALJ) (same); *Arista*, IPR2016-00308, Paper 42, 12-13 (striking new reply argument).

Qualcomm does not deny that its Reply's NI theories were never presented in the Petition; instead, it argues that these theories are responsive to PO's arguments. EX3007, 2. However, contrary to this, the only thing that the new NI theories are "responsive to" is the POR's showing that the Petition lacked any explanation (1) as

to **where** Drake's QoS-12 would be implemented in the combinations or (2) **why** a POSITA would allegedly incorporate Drake's QoS-12 into the Goossens references. *See, e.g.*, POR, 24-26, 28, 30-31, 34. "[S]imply point[ing] out the flaws in the underlying evidence" does not "open[] the door" for new theories. *Colas Sols., Inc. v. Blacklidge Emulsions, Inc.*, 759 F.App'x 986, 990 (Fed. Cir. 2019).

Qualcomm's Reply cites one instance in Dr. Mowry's deposition where he said that an NI "would be a natural place to put" Drake's QoS-12. Reply, 10, 13 (citing EX2078, 203:24-204:9). Should Qualcomm argue this provided notice of its new theory, that is incorrect. While Dr. Mowry has tried to align his testimony with Qualcomm's new NI theories by recanting some answers, claiming he "misunderstood" those questions (EX1043 ¶¶155-57 (regarding EX2078, 203:24-209:13)), the reality is that, consistent with the Petition's silence, Dr. Mowry **repeatedly** answered at other times, including during redirect, that Drake's QoS-12 could "could go anywhere on the chip," with no mention of an NI. EX2078, 211:4-25, 233:4-234:1. In any event, the deposition testimony does not make Qualcomm's new theories any less improper. *Arista*, IPR2016-00308, Paper 42, 12-13.

Accordingly, PO submits that the new first module theories on Reply pages 3-4, 15-17 and 21, the new NI theories on Reply pages 9-15, and the cited portions of EX1043 should be stricken. Alternatively, the Board may disregard the Reply entirely. CTPG, 74.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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