

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUALCOMM INCORPORATED
Petitioner¹

v.

NETWORK SYSTEM TECHNOLOGIES, LLC
Patent Owner

Case: IPR2024-00338
U.S. Patent No. 7,373,449 B2

**PETITIONER QUALCOMM INCORPORATED'S OPPOSITION TO
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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There is no basis for PO's motion to strike. The Reply's "first module" arguments are the same theory as the Petition; they also respond to the institution decision and POR. The "interfacing" arguments properly respond regarding what POSITAs would have known and understood about the *same* combination.

"First Module": PO's "first module" arguments fail, for two reasons.

One, PO's contention that Goossens' disclosure of a "first module" is a "new" theory (Paper 53, 1-2) is plainly not true. The Petition identified the Goossens publications (the primary references) as disclosing the claimed "first module" in each of the combinations. Petition², 21-22, 55-56 (claim 1[a]), 40, 65 (dependent claim 6[a]), 45-47, 68-69 (claim 10[pre], 10[a]). PO's argument that whether Drake (the secondary reference) *also* discloses a "first module" is "necessary for [Petitioner's] *prima facie* obviousness case" and "critical to the merits" (Paper 53, 1-2) ignores the Petition's express combinations.

PO's argument that the Petition "never mentions" Goossens' IP modules for limitations 6[d]/10[e] (Paper 53, 2) also ignores the Petition itself. The Petition already addressed Goossens' disclosure of the "modules" in connection with limitations 1[a], 6[a]/10[a], as explained above. Limitations 6[d]/10[e] refer back to "*the*" first and second modules, and the Petition explains "Goossens[2002/2003] in view of Drake" makes the limitation obvious. Petition, 43, 47, 67, 70. Ground 2

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

also expressly references Goossens2003's IPs "request for a connection." *Id.*, 67.

Two, the discussion of Drake's application 11 as *also* being a first module is entirely proper, and consistent with the Petition's theories. A Reply may "address issues discussed in the Institution Decision." CTPG, 73. And "a petitioner is entitled... to respond to new claim construction arguments made by a patent owner." *Axonics, Inc. v. Medtronic, Inc.*, 75 F.4th 1374, 1382 (Fed. Cir. 2023).

PO's original preliminary response to Samsung's petition did not raise the purported Drake "first module" issue, and the Board instituted review. Papers 7, 10. PO raised the issue for the first time in its later preliminary response to Qualcomm's joinder petition. IPR2024-1081, Paper 9, 28-29. PO complains that Qualcomm did not seek to address the issue then. But at that stage, particularly as a joinder petitioner and given Goossens already disclosed a first module, Qualcomm had no obligation (or reason) to ask to address a new issue.

The Board's joinder decision did then preliminarily conclude that for Drake the Petition identified source station 10 as a first module, while also noting that the Petition identified Drake's application 11 as the component "involved in issuing a request." Paper 16, 22-24. PO then filed its POR brief, including a new argument that "first module" and "communication manager" should "be construed as separate and distinct claim elements." POR, 12-16. PO's brief also *acknowledged* Petitioner's expert had "clarified" Drake's application 11 corresponded to a "first

module,” but PO still chose to focus on Drake’s source station 10. *Id.*, 18-19.

The Reply arguments PO identifies are properly responsive to all of this. For example, the Reply points out that in the Petition’s combinations, the first module and communication manager are separate and distinct. Reply, 2, 15-16. It also properly explains that even in Drake alone, application 11 is what issues a QoS request. Reply, 3-4, 15-17, 21; Ex-1043, ¶¶74-75, 80-81, 136, 139-140. It also properly addresses the Drake “first module” issue discussed in the joinder institution decision. *E.g.*, Reply, 3-4.

Finally, *Henney Penny* is inapposite. There the reply relied on a different reference for the “sensor” element than the petition, and the petitioner admitted the argument was new. 938 F.3d 1324, 1329-31 (Fed. Cir. 2019). Here, the Petitioner has always relied on Goossens for a “first module,” and the Reply also confirmed that in Drake a POSITA would understand application 11 issues the QoS request.

“Interface”: The Reply arguments and evidence regarding POSITA’s understanding of interfacing are not “new obviousness theories,” nor are they the “only alleged motivation to combine.” *See* Paper 53, 4. The Reply maintains the *same* theory as the Petition (which already provides the necessary motivations), while properly responding directly to PO’s arguments. *Compare* Petition, 51-54, 16-20 *with* Reply, 6-15. For example:

- PO argued that even if motivated to combine Goossens with Drake’s QoS, the

QoS-12 component would have been “redundant.” POR, 26-28, 35, 49-50, 57.

The Reply properly responded that one reason it would not be “redundant” is a POSITA would have known that Drake’s QoS-12 was part of the network interfacing componentry, which was known to be needed. Reply, 8-9, 15.

- PO argued that Drake “teaches away” from implementing Drake’s QoS-12 outside of Goossens’ IP blocks because Drake’s QoS-12 is “purposefully within source station 10 rather than within the LAN.” POR, 29-30, 51-52. The Reply properly responded that it was understood in the art that the equivalent on-chip place for interfacing components such as Drake’s QoS-12 was outside of the IP blocks, such as in the network interface. Reply, 10-12.
- PO argued that implementing Drake’s QoS-12 in Goossens’ NOC would have been “complex.” POR, 30, 52. The Reply properly responded that would not, and that one “natural” place to implement QoS-12 would have been in the network interface, where Goossens2003 already teaches putting communication management functionality. Reply, 12-13.

This is entirely proper. 37 C.F.R. § 42.23(b); CTPG, 73-75 (“A party also may submit rebuttal evidence in support of its reply.”); *Rembrandt Diagnostics, LP v. Alere, Inc.*, 76 F.4th 1376, 1384–85 (Fed. Cir. 2023) (reply arguments regarding motivation to combine properly addressed arguments in POR); *Amazon.com, Inc. v. WAG Acquisition, L.L.C.*, IPR2022-01433, Paper 26 at 93 (PTAB Feb. 15, 2024)

(reply arguments properly respond to POR arguments). “Evidence admitted in rebuttal to respond to the patent owner’s criticisms will commonly confirm the *prima facie* case. That does not make it necessary to the *prima facie* case.” *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1079 (Fed. Cir. 2015).

PO’s cases are inapposite. Unlike here, each sought to map a new aspect of the prior art to a claim element. *Kingston Tech. Co. v. Spex Techs., Inc.*, IPR2017-01021, Paper 39, 33-34 (PTAB Oct. 1, 2018) (“storage of data” newly mapped to claim term); *Samsung Elecs. Co. v. Resonant Sys., Inc.*, IPR2023-00992, Paper 47, 91-92 (PTAB Jan. 8, 2025) (component newly mapped); *Arista Networks, Inc. v. Cisco Sys., Inc.*, IPR2016-00308, Paper 42, 13-14 (PTAB May 25, 2017) (same).

PO also argues Dr. Mowry’s testimony that the NI would be a “natural place” to implement Drake’s QoS-12 did not provide notice. Paper 53, 5. This testimony—and the Reply’s citation of it—is proper. The claims do not require the communication manager in any particular location, and the evidence shows that implementing Drake’s QoS teachings would have been routine. The Reply merely notes, for example in response to PO’s “complexity” argument, that for a POSITA a “natural” place to implement Drake’s QoS-12 teachings would be the NI. Reply, 10, 13. Nor does Dr. Mowry “recant” answers. *See* Ex-1043, ¶¶155-57.

PO has not shown that there is any reason to strike any portion of the Reply or cited evidence. The Board should deny the motion.

Respectfully submitted,

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CERTIFICATION OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e) and the agreement of the parties, the undersigned certifies that on February 26, 2025, a true and correct copy of the foregoing Petitioner Qualcomm Incorporated's Opposition to Patent Owner's Motion to Strike was served via electronic mail upon the following:

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