

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUALCOMM INCORPORATED*
Petitioner

v.

NETWORK SYSTEM TECHNOLOGIES, LLC
Patent Owner

Patent No. 7,373,449

Inter Partes Review No. IPR2024-00338

PATENT OWNER'S REQUEST FOR REHEARING OF PAPER 64

* Qualcomm Incorporated filed a petition and a motion for joinder in IPR2024-01081 and was joined as a petitioner in this proceeding.

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LISTING OF EXHIBITS

Exhibit No.	Description
2001	WITHDRAWN
2002	<i>Curriculum vitae</i> of Dr. Erik Chmelar
2003	Neil Weste & David Harris, CMOS VLSI DESIGN: A CIRCUIT AND SYSTEMS PERSPECTIVE (4th ed. 2010)
2004	Jan Rabaey, Anantha Chandrakasan & Borivoje Nikolic, DIGITAL INTEGRATED CIRCUITS: A DESIGN PERSPECTIVE (2nd ed. 2003)
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2006	John F. Wakerly, DIGITAL DESIGN: PRINCIPLES AND PRACTICES (4th ed. 2005)
2007	Fayez Gebali, Haytham Elmiligi & Mohamed Watheq El-Kharashi, NETWORKS-ON-CHIPS: THEORY AND PRACTICE (2009)
2008	Kurt Shuler, <i>Busses, Crossbars and NoCs: The 3 Eras of SoC Interconnect History</i> , ARTERISIP (Oct. 22, 2010), https://www.arteris.com/blog/busses-crossbars-and-nocs-the-3-eras-of-soc-interconnect-history/
2009	Kurt Shuler, <i>The SoC Interconnect Fabric: A Brief History</i> , ARTERISIP (Aug. 6, 2013), https://www.arteris.com/blog/the-soc-interconnect-fabric-a-brief-history/
2010	William Stallings, DATA & COMPUTER COMMUNICATIONS (6th ed. 1999)
2011	RESERVED
2012	United States District Courts — National Judicial Caseload Profile
2013-2020	RESERVED
2021	Order Resetting Jury Trial, <i>Network System Technologies, LLC v. Texas Instruments Incorporated</i> , Civil Action No. 2:22-cv-00482-

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	RWS (E.D. Tex.), Dkt. 182 (Mar. 18, 2024)
2022	Claim Construction Order, <i>Network System Technologies, LLC v. Texas Instruments Incorporated</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.), Dkt. 150 (Jan. 3, 2024)
2023-2027	RESERVED
2028	Docket Control Order, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd. et al.</i> , Civil Action No. 2:22-cv-00481-JRG (E.D. Tex.), Dkt. 59 (Jun. 16, 2023)
2029	Samsung's First Amended Answer and Counterclaims, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd. et al.</i> , Civil Action No. 2:22-cv-00481-JRG (E.D. Tex.), Dkt. 96 (Jan. 24, 2024) (Public Version)
2030	Samsung's P.R. 4-1 Identification of Proposed Terms and Claim Elements for Construction, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.) (Nov. 28, 2023)
2031	Samsung's Amended P.R. 4-1 Identification of Proposed Terms and Claim Elements for Construction, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.) (Dec. 18, 2023)
2032	Samsung's Preliminary Claim Construction and Extrinsic Evidence Pursuant to Local Patent Rule 4-2, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.) (Dec. 19, 2023)
2033	P.R. 4-3 Claim Construction and Prehearing Statement, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.), Dkt. 91 (Jan. 9, 2024)
2034	Plaintiff Network System Technologies, LLC's Opening Claim Construction Brief, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.), Dkt. 100 (Feb. 20, 2024)

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2035	Defendant Samsung Electronics Co., Ltd.’s Responsive Claim Construction Brief, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.), Dkt. 112 (March 12, 2024)
2036	Plaintiff Network System Technologies, LLC’s Reply Construction Brief, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00482-RWS (E.D. Tex.), Dkt. 116 (March 19, 2024)
2037	RESERVED
2039	Second Amended Scheduling Order, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.) Dkt. 80 (Oct. 23, 2023)
2040	Defendants’ Joint Opening Claim Construction Brief, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.), Dkt. 77 (Oct. 12, 2023)
2041	Plaintiff Network System Technologies, LLC’s Responsive Claim Construction Brief, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.), Dkt. 81 (Nov. 16, 2023)
2042	Defendants’ Joint Reply Claim Construction Brief, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.), Dkt. 83 (Nov. 30, 2023)
2043	Plaintiff Network System Technologies, LLC’s Sur-Reply Claim Construction Brief, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.), Dkt. 86 (Dec. 14, 2023)
2044	Defendants’ Supplemental Claim Construction Brief, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.), Dkt. 105 (Mar. 1, 2024)

Exhibit No.	Description
2045	Plaintiff Network System Technologies, LLC’s Supplemental Claim Construction Brief, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.), Dkt. 106 (Mar. 1, 2024)
2046	Defendants’ Supplemental Invalidity Contention Cover Pleading, <i>Network System Technologies, LLC v. Qualcomm Incorporated et al.</i> , Civil Action No. 1:22-cv-1331-DAE (W.D. Tex.) (Jan. 23, 2024)
2047-2049	RESERVED
2050	Defendants’ Invalidity and Ineligibility Contentions And Disclosures Pursuant to Patent Rule 3-3 Cover Pleading, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd., et al.</i> , Civil Action No. 2:22-cv-00481-JRG (E.D. Tex.) (July 11, 2023)
2051-2061	RESERVED
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2066	RESERVED
2067	Transcript of Aug. 27, 2024 Deposition of Dr. Nikil Dutt in IPR2024-00343
2068	2014 Design, Automation and Test in Europe Conference (“DATE”) Website Main Page
2069	H. Nejatollahi et al., “Software and Hardware Implementation of Lattice-based Cryptography Schemes,” Center for Embedded and Cyber-Physical Systems (2017)
2070	Declaration of Dr. Nader Bagherzadeh

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2071	<i>Curriculum vitae</i> of Dr. Nader Bagherzadeh
2072	A survey of Research and Practices of Network on Chip
2073	Routing Algorithms for On Chip Networks
2074	McGraw Hill Dictionary
2075	IEEE Dictionary
2076	Supported Token-Ring Functions – IBM Documentation
2077	Token Ring Solutions
2078	Transcript of Nov. 4, 2024 Deposition of Dr. Todd Mowry
2079	Transcript of Nov. 15, 2024 Deposition of Sean O’Bryan
2080	Transcript of Sept. 20, 2024 Deposition of Gordon MacPherson
2081	IEEE - Terms & Disclosures for Use of IEEE Websites
2082	IEEE XPlore Metrics (Radulescu)
2083	IEEE Xplore Metrics (Goossens2002)
2084	<i>Markman</i> Hearing Transcript, <i>Network System Technologies, LLC v. Samsung Electronics Co., Ltd.</i> , Civil Action No. 2:22-cv-00481-JRG (E.D. Tex.) (Apr. 9, 2024)
2085	Declaration of Peter Krusiewicz
2086	Declaration of Peter Krusiewicz in Support of <i>Pro Hac Vice</i> Motion
2087	Transcript of Feb. 25, 2025 Deposition of Dr. Nikil Dutt
2088	Transcript of Feb. 11, 2025 Deposition of Dr. Todd Mowry
2089	Patent Owner’s Demonstrative Exhibit

I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71(d), Patent Owner Network Systems Technology, LLC (“Patent Owner”) respectfully requests rehearing of the Board’s Order Denying Patent Owner’s Motion to Strike (“Order,” Paper 64). Patent Owner’s Motion to Strike (“Motion” or “Mot.,” Paper 53) argued that Petitioner Qualcomm’s (“Petitioner” or “Qualcomm”) Reply (“Reply,” Paper 43) and accompanying new expert declaration (EX1043) improperly contain new, belated obviousness theories and evidence that were not set forth in the Petition, are in at least some cases inconsistent with the Petition¹ and Petitioner’s expert’s testimony, are not properly responsive to Patent Owner’s Response (“POR,” Paper 35), and are prejudicial to Patent Owner, who could not respond to Petitioner’s new Reply theories with its own expert testimony. Mot., 1-5; EX3007. The Motion detailed why these new theories should be stricken or disregarded. Mot., 1-5 (citing Consolidated Trial Practice Guide (“CTPG”), 73-74, 80-81; 37 C.F.R. § 42.23(b)).

As set forth herein, the Order misapprehended or overlooked arguments and evidence regarding both the Reply’s improper new “first module” theories and “NI” theories.

¹ IPR2024-01081, Paper 1 (“Petition” or “Pet.”). Other citations are to IPR2024-00338 unless indicated.

II. LEGAL STANDARD

“A party dissatisfied with a decision may file a ... request for rehearing” identifying “all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion.” 37 C.F.R. § 42.71(d).

III. REQUESTED RELIEF

Patent Owner respectfully requests rehearing because the Order overlooked or misapprehended the Motion's arguments and evidence relating to: (1) the Reply's improper new “first module” theories and 2) the Reply's improper new theory that a POSITA would purportedly be motivated to implement Drake's (EX1006) QoS requestor manager 12 (“QoS-12”) in the Goossens references² based on a need for interfacing. The Board should strike or disregard these new Reply theories.

IV. ARGUMENT

A. New “First Module” Theories

The Motion explained that the Petition clearly relied on Drake's source station 10 (“option 1”) for the claimed “first module,” consistent with the Institution Decision's finding “that ‘Petitioner consistently identifies’ the ‘first module’ as Drake's source station 10 [option 1] and not application 11.” Mot., 1-2 (quoting IPR2024-01081, Paper 14 (“Institution Decision”), 22-24). The Motion then

² EX1005 and EX1007 (collectively, “Goossens references” or “Goossens”).

explained that Petitioner's Reply asserted two new theories regarding the "first module" by (i) disavowing any reliance on Drake for the "first module" ("option 3") and (ii) alternatively relying on Drake's application 11 within the source station 10 ("option 2") as the "first module." Mot., 2 (citing Reply, 3-4, 15-17, 21). The Motion further explained, for example, that options 2-3 are contrary to the Petition's analysis for claim 2 and Dr. Mowry's first deposition testimony. Mot., 2-3.

The Order did not address, and thus misapprehended or overlooked, the Motion's arguments and evidence discussed below. Order, 12-20.

1. The Order Misapprehended or Overlooked the Motion's Argument that "Option 2" Is an Improper New Reply Theory

As explained above, the Motion argued that the Reply includes *two* improper new "first module" theories (options 2 and 3). Mot., 1-2. For option 2, the Reply argues that the application 11—rather than the source station 10 in its entirety—in Drake corresponds to the claimed "first module." Mot., 2 (quoting Reply 3-4)); *see also* Paper 54, 2 (acknowledging that the Reply relies on "Drake's application 11 as also being a first module"). This new option 2 is inconsistent with the Institution Decision, which stated: "we disagree with Patent Owner that Petitioner identifies application 11 in the source station 10 as the claimed 'first module'" and that "Petitioner identifies source station 10 as the claimed 'first module.'" IPR2024-01081, Paper 14, 24.

The Order misapprehended the Motion as limited to seeking to strike option 3 in which Petitioner disavows any reliance on Drake for the “first module” and misapprehended or overlooked the Motion’s arguments regarding option 2. Order, 12-13. In summarizing the Motion, the Order conflated the Motion’s arguments with respect to options 2 and 3:

Patent Owner contends that the Reply and Dr. Mowry’s declaration ... include an improper new first-module theory of unpatentability where Petitioner and Dr. Mowry (1) rely “solely” on the Goossens references for the claimed “first module” and (2) disavow “any reliance” on Drake for the claimed “first module” but still identify “application 11 as the ‘thing’/‘component’ in Drake that ‘mak[es] the service request.’”

Order, 12-13. In the passage above, arguments (1) and (2) both relate to option 3 – not option 2. Order, 12-13 (quoting Mot., 2). The quoted language of “solely” for alleged argument (1) and “any reliance” for alleged argument (2) come from the Motion’s arguments that “Qualcomm’s Reply ... disavowed any reliance on Drake ... (‘option 3’)” and “option 3 purports to identify the ‘first module’ solely as the Goossens references’ IPs.” Mot., 2. The Order conflates the Motion’s separate arguments about the Reply disavowing any reliance on Drake for the “first module” (option 3) versus relying on Drake’s application 11 (option 2) for the “first module.” Order, 12-13; Mot., 2.

The fact that the Order misapprehended or overlooked the Motion’s argument that option 2 is an improper new theory is further demonstrated by the Order’s failure to address the Reply’s reliance on application 11 as the claimed “first module” in

any of its relevant discussion of application 11. Order, 15-20. Indeed, the Order never mentions the claimed “first module” in connection with Drake’s application 11. *Id.* The Order also states that “[i]n the Petition and the Reply, Petitioner relies on the same disclosures from the ... references” for the obviousness grounds. Order, 19. But this again misapprehended or overlooked the Motion’s argument that the Reply relies on Drake’s application 11 for the “first module” (option 2) whereas the Petition, as the Institution Decision found, relies instead on Drake’s source station 10 (option 1). As explained in the Motion, the fact that Dr. Mowry raised this new theory regarding application 11 being the “first module” does not mean that it is permissible for Petitioner to raise this new theory in its Reply. Mot., 3; *see* Order, 18-19.

2. The Order Misapprehended or Overlooked the Motion’s Argument that the Petition Asserts “Option 1” for Claim 2

The Motion argued that the Petition “clearly argue[d] option 1”—i.e., relied on Drake’s source station 10 for the claimed “first module”—“for *claim 2*, limitations 6[d]/10[e], etc.,” and the Motion cited the Petition’s claim 2 analyses for Grounds 1 and 2. Mot., 1 (citing Pet., 35-36, 63); *see also* Mot., 2 (arguing that “the Petition clearly relies on Drake’s source station for the ‘first module’ (option 1) and citing the Petition’s claim 2 analyses (Pet., 35-36, 63)). This is because for claim 2—which recites a “[CM] for managing the communication between different *modules*”—the Petition’s Ground 1 analysis relies on Drake’s “source station 10”

for the claimed “module[]” (Pet., 35-36) and the Petition's Ground 2 analysis cites and relies on that Ground 1 analysis with respect to Drake's QoS-12 constituting the claimed “[CM]” (Pet., 63).

The Order's analysis discusses portions of the Petition, including for claims 6 and 10, and then states: “for both challenges the Petition relies on the Goossens references for disclosing the claimed ‘first module’ and also discusses Drake.” Order, 15-17. The Order then addresses limitation 6[d], stating: “Regarding Patent Owner's assertion ... for limitations 6.d and 10.e, we agree with Petitioner that the Petition ‘already addressed’ how the Goossens references disclose the claimed ‘first module’ ... in connection with limitations 6.a and 10.a.” Order, 17-18. However, the Order misapprehended or overlooked the Motion's argument and evidence regarding the Petition's analysis of claim 2, despite claim 6 depending from claim 2 and the Petition relying on its 6[a] and 6[d] analyses for 10[a] and 10[e]. *See* Order, 15-17; Mot., 1-2 (citing Pet., 35-36, 63, 47, 70); EX1001, claim 6; Pet., 46-47, 69-70. Indeed, the Order's analysis for the “first module” issue never cites to the Petition's claim 2 analyses (i.e., Pet., 35-36, 63). *See* Order, 15-20.

Because the Order misapprehended or overlooked these portions of the Petition that expressly relied on Drake's source station 10 for the “first module,” the Order failed to appreciate how options 2 and 3 in the Reply are new and inconsistent with the Petition.

3. The Order Misapprehended or Overlooked the Motion's Argument that "Option 3" Is Inconsistent with Dr. Mowry's First Deposition Testimony

The Order misapprehended or overlooked the Motion's argument that the Reply's new "option 3"—i.e., disavowing any reliance on Drake for the claimed "first module" for claims 2, 6, and 10—is contrary to Dr. Mowry's first deposition testimony confirming that he relied on Drake for the "first module." Mot., 3 (citing EX2078, 173:4-11 ("Q. So in your declaration, you've mapped Drake's source station to the first module in the claims, correct? A. Yes.")). The Order's discussion of Dr. Mowry's testimony overlooked the inconsistency between option 3 and Dr. Mowry's first deposition testimony stating the opposite. *See* Order, 18-19. Indeed, the Order's statement that Dr. Mowry's deposition testimony "supports Petitioner's explanation" that "the Petition relies on the Goossens references for ... the 'first module'" overlooked that he expressly testified that that he mapped the claimed "first module" to Drake. *Id.* (citing EX2078, 172:4-176:3).

4. The Order Misapprehended or Overlooked that Patent Owner's Preliminary Response Raised the "first module" Issue with Respect to Goossens, Not Just Drake

The Motion argued that Patent Owner's Preliminary Response ("POPR") raised the "first module" issue and that the Institution Decision found that Petitioner consistently identifies the "first module" as Drake's source station 10. Mot., 1 (citing

IPR2024-01081, Paper [9]³ ("POPR"), 28-29; IPR2024-01081, Paper 14, 22-24).

The Order's discussion of the POPR and Institution Decision states that "[i]n the [POPR] in IPR2024-01081, Patent Owner did not dispute that Petitioner relies on the Goossens references for disclosing the claimed 'first module'" and "[h]ence, in the [Institution Decision] in IPR2024-01081, the Board did not discuss Petitioner's reliance on the Goossens references for disclosing the claimed 'first module.'" Order, 19-20.

The Order misapprehended or overlooked the arguments in the POPR, which expressly argued that both Goossens references do not disclose a "communication manager." POPR, 28-29 (arguing that "Goossens2002 does not disclose a communication manager and [Petitioner] only relies on Drake for this limitation"). Claims 2, 6, and 10 recite a relationship between the "communication manager" and "module[s]," including the "first module." *See* POPR, 28-31; Mot., 2. Thus, if Goossens does not disclose a "communication manager," it necessarily does not disclose the claimed "first module." Likewise, if Drake does not disclose a "first module," then it necessarily does not disclose the claimed "communication manager." Thus, by disputing whether Goossens discloses a "communication

³ The Motion's citation to "IPR2024-01081, Paper 7" should be "Paper 9," as the assertion refers to "PO's Preliminary Response." Mot., 1.

manager,” the POPR necessarily disputed whether Goossens discloses the “first module.”

5. The Order Misapprehended or Overlooked Preliminary Briefing Further Demonstrating How Options 2-3 in the Reply are New

The Motion argued that the POPR argued that Petitioner was relying on Drake for the “first module” but it was unclear whether Petitioner was relying on source station 10 or application 11 within source station 10. Mot., 1 (citing IPR2024-01081, Paper 9, 28-29). Petitioner requested a preliminary reply to address alleged mischaracterizations of the Petition’s claim-mapping, but it never disputed Patent Owner’s understanding that the Petition relied on Drake for the “first module” or otherwise clarified its position prior to the Reply. *Id.* (citing IPR2024-01081, EX3002). The Order overlooked these facts, which further demonstrate how the Reply’s options 2-3 are new and inconsistent with both Patent Owner and the Board’s initial understanding of the Petition.

B. New “Network Interface” Theories

The Motion argued that Petitioner’s Reply contains improper new “NI” theories, including theories [i] that Drake’s QoS-12 is an NI component; [ii] regarding where/how Drake’s QoS-12 would be implemented in Goossens (“implementation”); and [iii] regarding why a POSITA would have allegedly been motivated to implement Drake’s QoS-12 in Goossens (“motivation”). Mot., 3-5.

Specifically, with respect to new theory [iii], the Reply asserted for the first time a motivation to combine Drake's QoS-12 with Goossens based on an alleged "need for interfacing" in Goossens. *Id.*, 3-4. The Motion then argued, *inter alia*, that:

- (#1) theory [iii] was never presented in the Petition (Mot., 3-4);
- (#2) new theory [iii] is the only alleged motivation *specific to* combining Drake's QoS-12 with Goossens and was thus necessary in the Petition for prima facie obviousness (Mot., 1, 4); and
- (#3) new theory [iii] is not properly responsive to the POR, as *Colas Sols., Inc. v. Blacklidge Emulsions, Inc.*, 759 F. App'x 986, 990 (Fed. Cir. 2019) instructs that "simply point[ing] out the flaws" in the Petition does not "open[] the door" for new Reply theories (Mot., 4-5).⁴

The Order first addresses theory [iii] (*motivation*) by stating that the Petition provides a motivation to combine Drake and Goossens (Order, 23) and then addresses theory [ii] (*implementation*) by stating that the Petition did not need to specify "implementation details" (i.e., location) of Drake's QoS-12 in the combinations and that the Reply properly responded to the POR concerning those

⁴ The indicators [i]–[iii] and (#1)–(#3) in this paragraph are used throughout the remainder of this section to reference the Motion's arguments (#1)–(#3) regarding the Reply's new "NI" theories [i]–[iii].

implementation details (Order, 24-25). The Order, however, misapprehended or overlooked the Motion's arguments (#1)–(#3) regarding the Reply's new theory [iii]. In fact, the Order's analysis does not mention the Reply's new theory [iii] that a POSITA would have been motivated to combine Drake's QoS-12 with Goossens based on an alleged need for interfacing in Goossens. Mot., 3-4; *see* Order, 23-26 (only discussing motivation on page 23, with no mention of interfacing).

1. The Order Misapprehended or Overlooked the Motion's Argument that the Reply's Theory [iii] Is New

The Order does not address the Motion's argument (#1) that the Reply's motivation theory [iii] was not included in the Petition and is therefore improper. Mot., 3-4. The Order's analysis (Order, 23-26) only discusses motivation on page 23, which refers to disclosures in the Petition and states: "contrary to Patent Owner's contentions, the Petition provides a reason with rational underpinning as to why [a POSITA] would have been motivated to combine Drake's teachings with each of the Goossens references." Order, 23. But the Motion does not simply argue that the Petition provides *no* alleged motivation to combine. Rather, the Motion argues that the Petition, unlike the Reply, did not allege *interfacing* as a motivation. Mot., 3-4 (explaining that the Petition never mentions "interface" in relation to Drake). Indeed, the Order's analysis of alleged motivation in the Petition contains no mention of "interfacing." Order, 23. The Order thus misapprehended or overlooked the

Motion's argument that the Reply's theory [iii] is an improper new motivation to combine.

2. The Order Misapprehended or Overlooked the Motion's Argument that the Reply's New Theory [iii] Is the Only Alleged Motivation *Specific to* Drake's QoS-12

The Order does not address the Motion's argument (#2) that the Reply's new theory [iii] is the only reason Petitioner has ever articulated as to why a POSITA would allegedly implement Drake's QoS-12 (the alleged "communication manager") in Goossens. Mot., 4. While the Order noted that the Petition generally provides a reason to combine Drake with Goossens, the Order misapprehended the Motion's argument. Order, 23. The Motion does not argue that the Petition provides *no* alleged motivation; rather, the Motion argues that the Petition alleged no motivation to combine *specific to* adding Drake's QoS-12 to Goossens. Mot., 4. Indeed, neither the Order nor Petitioner in its opposition identify where any such motivation to combine specific to Drake's QoS-12 was articulated in the Petition. Order, 23; Paper 54, 3.

As a result of this misapprehension or oversight, the Order also misapprehended or overlooked that the Reply's new theory [iii] was "necessary for prima facie obviousness" and therefore improper. Mot., 1, 4 (arguing that Petitioner's only "alleged motivation ... specific to QoS-12" was thus "necessary for prima facie obviousness"). While the Order addressed the Motion's argument

that the Reply's new theory [ii] was necessary for prima facie obviousness, the Order did not address the Motion's argument that theory [iii] was also necessary for prima facie obviousness. Order, 25 (finding that "implementation details," i.e., Reply theory [ii], "were not 'necessary for prima facie obviousness'"). Indeed, the Order's analysis only mentions "prima facie obviousness" once. *See* Order, 25.

3. The Order Misapprehended or Overlooked the Motion's Argument that the Reply's New Theory [iii] Is Not Properly Responsive to the POR

The Order overlooked or misapprehended the Motion's argument (#3) that the Reply's new theory [iii] is not properly responsive to the POR. Mot., 4-5. The Order only discusses whether the Reply is responsive with respect to theory [ii] (*implementation*), not theory [iii] (*motivation*). Order, 24-25 (stating "the Reply properly respond[s] to ... contentions in the [POR] ... concerning implementation details"). The Order makes no finding that new Reply theory [iii] was properly responsive to the POR and overlooked the Motion's cited authority explaining that simply pointing out a deficiency in the Petition does not open the door for Petitioner to identify a new motivation to combine in its Reply. Mot., 4-5 (citing *Colas*, 759 F. App'x at 990); Order, 23.

V. CONCLUSION

For the reasons set forth herein, Patent Owner respectfully requests rehearing and a finding that the improper new Reply theories discussed above should be stricken or disregarded.

Respectfully submitted,

Dated: April 1, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Patent Owner's Request for Rehearing of Paper 64** was served on April 1, 2025, via email:

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