

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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TESLA, INC.,

v.

GRAPHITE CHARGING COMPANY LLC,  
Patent Owner.

Case No. IPR2024-00387

Patent No. 8,103,391

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**PETITIONER'S OPPOSITION TO  
PATENT OWNER'S MOTION TO STRIKE**

## 1. Introduction

Petitioner hereby opposes Patent Owner’s Motion to Strike (filed Apr. 30, 2025), which requests that the Board strike:

- U.S. Patent No. 8,918,657 to Cameron *et al.* (Exhibit 1020; “Cameron Patent”);
- an excerpt from *Wiley Electrical and Electronics Engineering Dictionary* (Exhibit 1022; “Wiley Dictionary”);
- an excerpt from *The Authoritative Dictionary of IEEE Standard Terms* (Exhibit 1023; “IEEE Dictionary”);
- a *Supercharger Support* page (Exhibit 1024); and
- U.S. Patent App. Pub. No. 2009/0177580 to Lowenthal *et al.* (Exhibit 1025; “Lowenthal”).<sup>1</sup>

Paper 35 at 2-6. The Motion also requests that the Board strike portions of Petitioner’s Reply pertaining to Exhibits 1022, 1023, and 1024. *Id.* at 6.

The Motion to Strike is an attempt to preclude Petitioner from responding to claim construction and other arguments first presented by Patent Owner in its

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<sup>1</sup> All of this evidence was presented in Petitioner’s Reply. Thus, Patent Owner had a meaningful opportunity to respond to said evidence in its Sur-Reply. There is no prejudice here.

Response. As discussed below, this is inconsistent with Federal regulations and Federal Circuit precedent (not to mention duplicative and untimely). Accordingly, the Board should deny Patent Owner's motion in its entirety.

## **2. Legal Standard**

In its reply, a petitioner is entitled to respond to “arguments raised in the corresponding ... patent owner response.”<sup>2</sup> 37 C.F.R. § 42.23(b). This is true for newly raised claim constructions, as well. The Federal Circuit has held that, when a patent owner raises new claim constructions in its response, the Board “must give [the] petitioner an opportunity to respond to the new construction[s].” *Axonics, Inc. v. Medtronic, Inc.*, 75 F.4th 1374, 1381 (Fed. Cir. 2023). This includes allowing the petitioner to “present argument and evidence under [patent owner's] new construction[s].” *Id.*

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<sup>2</sup> If there are any impermissible arguments, they exist only in Patent Owner's Sur-Reply. Patent Owner, for instance, newly argues for lexicography “by implication,” when it previously argued only for express lexicography in the '391 Patent. Sur-Reply at 2.

### 3. Argument

#### 3.1 The Disputed Evidence Is Responsive to New Arguments and Therefore Should Not Be Stricken

As Patent Owner appears to admit, most of the evidence at issue was submitted responsive to its new claim constructions. *See* Paper 35 at 2-6. In its Reply, Petitioner cites to each of Exhibits 1020, 1022, 1023, and 1024 in rebutting these new constructions:

*First*, Petitioner uses Exhibit 1020 to highlight issues with Patent Owner’s expert’s position regarding lexicography in the ’391 Patent. Paper 26 at 3 n. 2; Paper 24 at 9-27 (citing Ex-2005 ¶¶ 69-81). *Second*, Petitioner cites to Exhibits 1022 and 1023 as extrinsic evidence contradicting Patent Owner’s construction of “request” and “response.” Paper 26 at 13; Paper 24 at 27-28, 45-46. *And finally*, Petitioner cites to Exhibit 1024 to reveal inconsistencies between Patent Owner’s construction of “preference interruption” and its infringement position at district court. Paper 26 at 11; Paper 24 at 25-27.

The remaining evidence at issue, Exhibit 1025, was likewise submitted responsive to new arguments in the Response. Paper 26 at 17-18; Paper 24 at 41. Therein, Patent Owner argues that a POSA would be unaware of standards and regulations, such as SAE Standard J1772. Paper 24 at 18. Additionally, Patent Owner further argues that the Board should disregard Petitioner’s expert’s

discussion of the standard given allegedly improper incorporation by reference. *Id.* at 41. Accordingly, in its Reply, Petitioner responds to Patent Owner’s argument, in part, by noting that the J1772 Standard was already a part of the intrinsic record. Paper 26 at 17-18. Specifically, Exhibit 1025, *which Patent Owner itself cited in an IDS during prosecution*, refers to the standard on multiple occasions. Ex-1025 ¶¶ [0036], [0044].

Given Petitioner relies on Exhibits 1020, 1022, 1023, 1024, and 1025 in responding to new arguments from Patent Owner’s Response, the Board should not strike this evidence (or the portions of Petitioner’s Reply pertaining thereto). *Axonics*, 75 F.4th at 1381. On the contrary, the Board should carefully consider Petitioner’s newly submitted evidence in assessing Patent Owner’s arguments regarding claim construction, lexicography, and the J1772 Standard.

### **3.2 The Motion to Strike Is Duplicative**

In addition to the aforementioned legal issues, Patent Owner’s Motion to Strike is also partially duplicative and entirely dismissive of explicit Board instructions. In authorizing the Motion, the Board indicated that Patent Owner’s motion “is only to address matters *not already the subject of the previously filed motion to exclude*.” E-mail from Andrew Kellog, Deputy Chief Clerk of Trials, PTAB (Apr. 25, 2025 at 10:41 PT) (emphasis added). In short, “[t]he motion ... shall contain no duplication.” *Id.*

Yet Patent Owner now moves to strike Exhibit 1020, which it already included in its Motion to Exclude. Paper 32 at 3-4. Such duplicity is wasteful of limited Board resources, not to mention neglectful of unambiguous Board instructions.

### **3.3 The Motion to Strike Is Untimely**

Lastly, Petitioner's request to file its Motion to Strike is months overdue. The Trial Practice Guide indicates that, "[g]enerally, authorization to file a motion to strike should be requested *within one week* of the allegedly improper submission[s]." Trial Practice Guide at 81 (emphasis added).

Here, Petitioner introduced the evidence at issue on January 31<sup>st</sup>. Accordingly, Patent Owner should have requested authorization to file a motion to strike the evidence by February 7<sup>th</sup>. Instead, Patent Owner waited more than eleven weeks to request authorization—contacting the Board on April 30<sup>th</sup> and requiring Petitioner to prepare this Opposition just prior to oral argument.

#### **4. Conclusion**

The Motion to Strike seeks to deny Petitioner the opportunity to rightfully raise arguments related to Patent Owner's claim construction and other arguments—which Patent Owner raised for the first time in its Response. Not only does Patent Owner's Motion misunderstand regulation and past precedent, but it is duplicative and untimely and should be rejected accordingly.

For these reasons, Petitioner respectfully requests that the Board deny Patent Owner's Motion to Strike in its entirety.

Dated: May 5, 2025

Respectfully Submitted,

/ Alexander B. Stein /

Alexander B. Stein, Reg. No. 71,397

**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e)(4), lead counsel for Petitioner hereby certifies that a copy of this Opposition was served on May 5<sup>th</sup> via email to Patent Owner's counsel of record:

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