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Paper No. ____

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASUSTeK COMPUTER INC.; ASUS GLOBAL PTE. LTD.;
DELL TECHNOLOGIES INC.; DELL INC.; and HP INC.,
Petitioners,

v.

LITL LLC,
Patent Owner.

Case No. IPR2024-00532

Patent No. 8,289,688

PATENT OWNER'S PRELIMINARY RESPONSE

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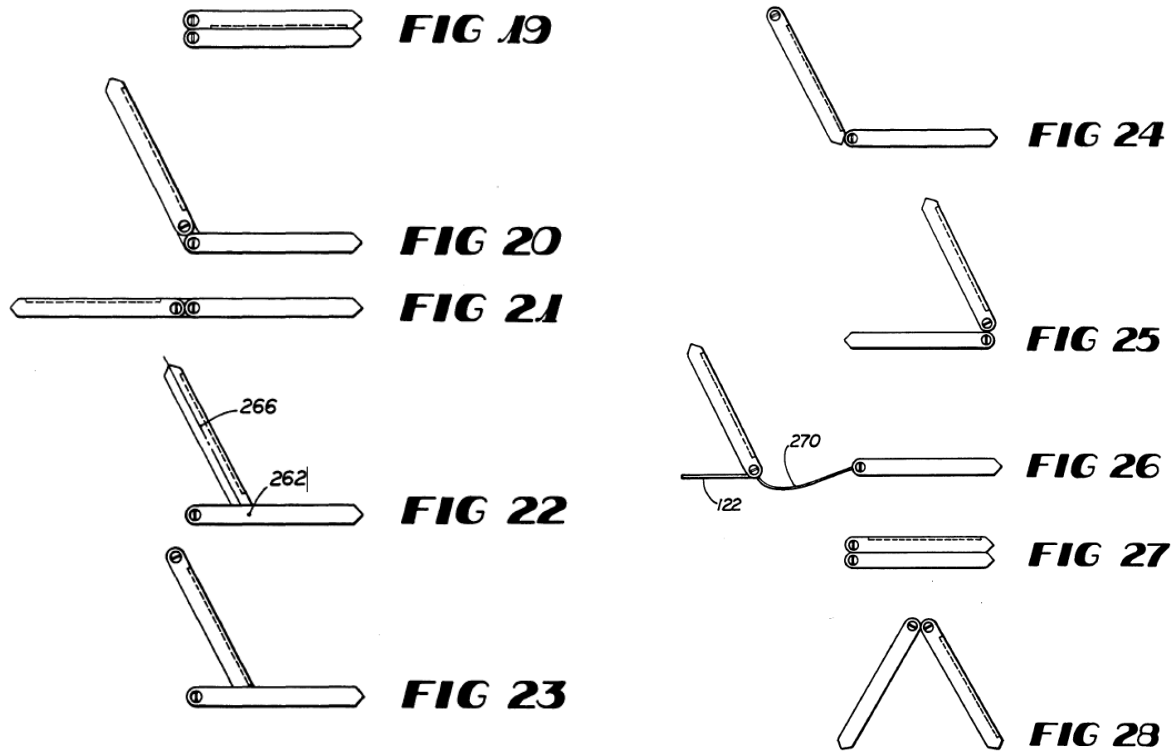
Exhibit	Description
2001	[No Author Listed], The Litl webbook. European Consumers Choice. URL= https://www.europeanconsumerschoice.org/hi-tech/litlwebbook-computer-test-and-reviews/ [last accessed June 25, 2021]
2002	[No Author Listed], Litl Webbook Beats ChromeOS, Becomes First Cloud Computer. CoolThings. November 16, 2009. URL: https://www.coolthings.com/litl-webbook-beats-chromeosbecomes-first-cloud-computer/ [last accessed June 25, 2021]
2003	Noe, The Litl Webbook: A more social computing device. November 5, 2009. Corr77. URL: https://www.core77.com/posts/15122/The-Litl-Webbook-A-more-social-computing-device [last accessed June 25, 2021]
2004	Saxena, CES 2010: All New Litl Webbook Makes Its Debut Appearance. Elite Choice. URL: https://elitechoice.org/luxury/ces-2010-all-new-litl-webbook-makes-its-debut-appearance [last accessed June 25, 2021]
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2008	[No Author Listed], All-New Litl Webbook Debuts at 2010 CES. Cision. January 5, 2010. URL: https://www.prnewswire.com/newsreleases/all-new-litl-webbook-debuts-at-2010-ces-80716797.html [last accessed June 25, 2021]
2009	Request for Ex Parte Reexamination Under 35 U.S.C. §§ 302-307 and 37 C.F.R. § 1.510 filed by Lenovo (United States) Inc. on May 24, 2022

I. INTRODUCTION

Institution should be denied for two reasons. First, every one of Petitioners' grounds fails because it relies on a combination of references that destroys the principles of operation and intended use of the primary reference (Lane). Second, every ground relies on prior art (Lane and Misawa) that was previously presented to the Office and Petitioners failed to do what the Board's caselaw requires to avoid discretionarily denial under 35 U.S.C. § 325(d).

A. Petitioners' Grounds Rely on a Modification to Lane that Destroys its Principles of Operation and its Intended Use

Every ground relies on a combination that modifies Lane in view of Misawa. Lane discloses a portable computer with a unique hinge between its base and display components that allows them to (1) be detached from one another and reattached in various configurations, and (2) rotate about two parallel axes from 0-360°. Lane's hinge allows Lane's computer to be configured into a host of different configurations shown in Lane's Figs. 19-28, reproduced below.



The Petition ignores the capability of Lane's hinge to allow the base and display to be *detached* and *reconfigured*. Petition, 17-18 (acknowledging only the dual-pivot aspect of Lane's hinge) and 29 (proposing swapping Lane's dual-pivot hinge with Misawa's single-pivot hinge). Thus, the Petition never even acknowledges, never mind addresses, that the Lane-Misawa combination requires swapping Lane's *detachable/reconfigurable* hinge with Misawa's *non-detachable/non-reconfigurable* hinge.

The Petition alleges that a person of ordinary skill in the art (“POSA”)¹ would have been motivated to replace Lane’s dual-pivot hinge with Misawa’s single-pivot hinge. Petition, 29. The purported motivation for this modification to Lane is that a single-pivot hinge is less complex so it would be less expensive and “*likely* more reliable.” *Id.*, 29.² No credible evidence supports this alleged motivation. Moreover, the Petition nowhere factors into its analysis that Lane’s hinge allows the base and display to be detached and reconfigured whereas Misawa’s hinge does not. *Id.*

Petitioners provide no explanation as to how Lane, upon replacing its detachable/reconfigurable hinge with Misawa’s non-detachable/non-reconfigurable hinge, could possibly retain its same operating principle. Where a proposed modification or combination of prior art would change the principle of operation of the prior art reference being modified, then the teachings of the references do not render the claims *prima facie* obvious. *Trivasular, Inc. v. Samuels*, 812 F.3d 1056, 1068 (Fed. Cir. 2016); *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984); *In re Ratti*, 270 F.2d 810, 813 (CCPA 1959).

¹ For the limited purposes of this Patent Owner Preliminary Response, LiTL does not challenge the Petition’s POSA definition because institution should be denied even if Petitioners’ POSA definition is adopted.

² Emphasis is added throughout unless otherwise indicated.

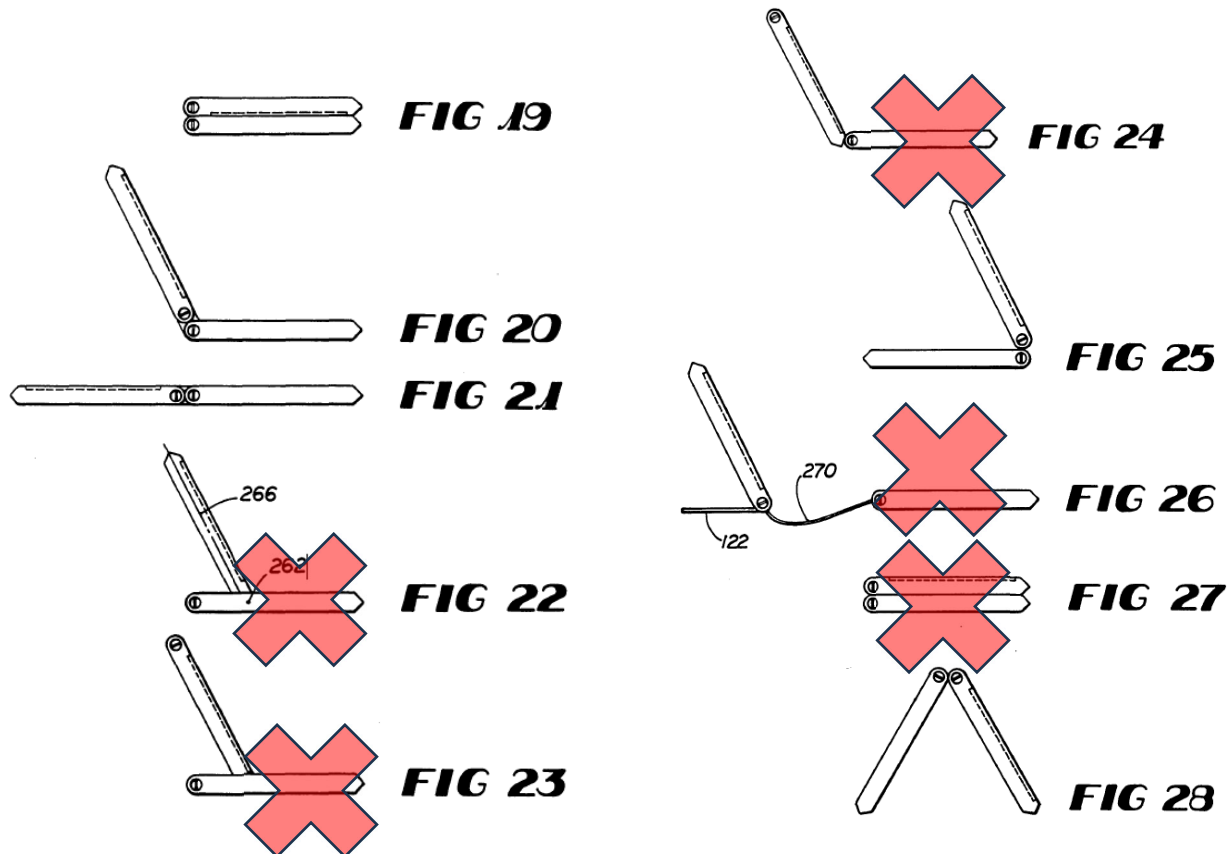
Lane explains that its invention is “*designed to permit coupling and decoupling* of devices or components.” Lane, Abstract. Lane distinguishes this “modular, *reconfigurable* system” from prior art arrangements where “neither the keyboard nor display is *detachable from the remainder of the device*, and their *reconfigurability* is severely limited.” *Id.*, 2. Lane disparages “existing electronic systems [that] have components which can *neither be decoupled nor reconfigured* . . . and thus fail to address these and other consumer needs.” *Id.*, 1.

The Petition’s Lane-Misawa combination removes Lane’s unique hinge that allows the base and display components to be detached and reconfigured in different configurations, and replaces it with Misawa’s fixed hinge that lacks this capability. The proposed modification plainly guts Lane of its principle of operation.

Replacing Lane’s dual-pivot hinge with Misawa’s single-pivot hinge also destroys Lane’s ability to rotate the display component 360° into Lane’s tablet configuration where the back of the display component is flat against the back of the base component. Lane, Fig. 27. The Petition concedes that the Lane-Misawa combination could not achieve Lane’s tablet configuration. Petition, 29.

As detailed in § III below, the Lane-Misawa combination destroys Lane’s principle of operation and the intended use of Lane’s computer as a “modular, *reconfigurable* system designed to permit *mechanical (and, if necessary,*

electrical) coupling and decoupling of devices or components.” Lane, 2. Indeed, the Lane-Misawa computer is incapable of being configured into fully half of the configurations that Lane discloses.



Lane-Misawa is an unsupportable combination that cannot establish obviousness of any challenged claim.

B. Petitioners Improperly Try to Side-Step the Board’s § 325(d) Framework

Petitioners made the strategic decision to submit a petition based on prior art that was previously presented to the Office, but then failed to do what the Board’s

caselaw requires to avoid discretionary denial under 35 U.S.C. § 325(d). Petition, 57-58.

In determining whether to exercise its discretion under § 325(d), the Board applies a two-part framework from the precedential *Advanced Bionics* decision discussed in § IV below (*Advanced Bionics, LLC v. Med-El Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 (PTAB Feb. 13, 2020) (precedential) (“*Advanced Bionics*”)). Under that two-part framework, the Board first determines whether the same prior art or arguments were previously presented to the Office. If so, the Board determines whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of the challenged claims. When the petitioner fails to demonstrate material error, the Board generally exercises its discretion to deny institution. The Petitioners failed to do what the *Advanced Bionics* framework requires to avoid discretionary denial.

There is no dispute that Lane and Misawa were both previously presented to the Office during an *ex parte* reexamination of challenged U.S. Patent No. 8,289,688 (“‘688 Patent”). Petition, 57; Ex. 2009, iii, 31-33, 42-44, 53-60, 98-105. Given that, the first prong of the *Advanced Bionics* framework is satisfied, thereby triggering application of the second prong.

Petitioners concede that the second prong of the *Advanced Bionics* framework requires that Petitioners make a showing that the Office erred in a

manner material to the patentability of the challenged claims. Petition, 57. Yet, Petitioners do not even attempt to make that required showing. *Id.*, 57-58. Instead, Petitioners contend that “imposing that requirement makes no sense here.” *Id.*, 58. Petitioners boldly allege that this case is the “polar opposite” of cases where an IPR challenges claims that survived an examination over prior art that the IPR petition reuses, because here “**other** claims of the ‘688 Patent” were rejected during the reexamination. *Id.*

Petitioners misapprehend the reexamination process. When a reexamination is ordered, the Office has the authority to reexamine **every** claim in the reexamined patent. MPEP § 2258.IV.B (“The **decision** to reexamine any claim for which reexamination has not been requested under 35 U.S.C. 302 lies within the sole discretion of the Office, to be exercised based on the individual facts and situation of each individual case. If the Office **chooses** to reexamine any claim for which reexamination has not been requested under 35 U.S.C. 302, it is permitted to do so.”). The Office decided to not reexamine and reject the claims challenged here. Petitioners fail to even allege, let alone establish, that that decision was in error.

Petitioners’ allegation that the Office’s rejection of “**other** claims of the ‘688 Patent” somehow “bolster[s] Petitioners’ challenge to the ‘688 Patent” is nonsensical. Petition, 58. Challenged independent claim 1 is of **different scope** than the claims rejected during the reexamination. Petitioners did no analysis

comparing the similarities and *differences* between the challenged claims and those rejected in the reexamination. Petitioners’ suggestion that the reexamination Examiner would have rejected the challenged claims if they had been reexamined is unsupported by any evidence or analysis. The Examiner’s decision to exclude the challenged claims from the reexamination suggests otherwise.

Because Petitioners fail to offer any meaningful analysis to satisfy *Advanced Bionics* prong two, this IPR should be denied as seeking to have the Board use its finite resources to reconsider art previously presented to the Office.

II. THE LITL PATENTS

A. LiTL’s Webbook Product

Before LiTL introduced its Webbook product (shown below) that commercialized an embodiment of the ’688 Patent, home computers were essentially the same as office computers. *See* Ex. 2001. LiTL recognized that the home environment could lend itself to more and different ways in which consumers would use computers. LiTL recruited leading user experience design (“UXD”) experts and worked closely with some of the world’s leading technology and UXD consultancies in a multi-year development effort that led to a computer more suitable to home use. Ex. 1001, 6:43-63, 11:27-12:5, 14:14-29, 16:51-62, 1:15-17, 1:59-64, 2:7-9, 2:19-22; Exs. 2001-2008.

LiTL Webbook



Ex. 2001, 1.

LiTL's Webbook included a number of new inventions initially described in provisional application no. 61/041,365 filed April 1, 2008. The '688 Patent is one of several LiTL patents stemming from that provisional.

III. PETITIONERS' HINDSIGHT MODIFICATION TO LANE DESTROYS LANE'S PRINCIPLE OF OPERATION AND ITS INTENDED USE

Ground 1 challenges claim 1 (and several dependent claims) as allegedly being obvious over Lane and Misawa. Petition, 2. Every other ground builds on this combination by adding one or more additional secondary references to challenge various dependent claims. Petition, 2-3. The Petition fails to establish any supportable reason why a POSA would have modified Lane in the suggested manner. Thus, the Petition fails to demonstrate that Petitioners are reasonably

likely to prevail in establishing any challenged claim unpatentable. 35 U.S.C. § 314(a). Institution should be denied. *Id.*

A. Lane Discloses a Unique Hinge Between Its Computer’s Base and Display that Provides a Reconfigurable System and 0-360° Rotation

Lane discloses a portable computer and characterizes its innovation as a unique hinge³ between the base module 14 and the display module 18 that allows those modules to (1) be decoupled from one another and reattached in various configurations, and (2) rotate about two parallel axes from 0-360°. Lane, Title (“Modular, *Reconfigurable* Devices”), Abstract (disclosed system “permit[s] *coupling and decoupling*” and “rotat[ion] about *two adjacent, parallel axes* (58, 62) permitting components to be positioned throughout approximately *0-360 degrees*”), 2:25-33 (the “invention” allows elements to be “*decoupled*”), 3:5-9 (“The innovative system also is adapted to rotate about at least *two adjacent, parallel axes*” [and] permits components to be repositioned about each other throughout approximately *0-360°*”), 3:18-25 (“object of the present invention” to “permit [] coupling and *decoupling* of devices and components” and “to provide a system having *two adjacent, parallel axes* of rotation to facilitate component

³ Lane uses the term “connector,” but Petitioners characterize Lane’s connector 54 as a “hinge.” *See e.g.*, Petition, 19 (“hinge 54”), 29 (same). LiTL adopts Petitioners’ “hinge” terminology for the Board’s convenience.

rotation about approximately **0-360°**”), claim 1 (reciting a “modular, reconfigurable system” having ***first and second axes of rotation***).

Lane summarizes the unique advantages of its system:

[t]he ***present invention*** [] provides a ***modular, reconfigurable system designed to permit mechanical*** (and, if necessary, electrical) ***coupling and decoupling of devices or components*** of varying types. ***Because system elements can be decoupled***, consumers can upgrade individual components as desired without having to purchase an entirely new system. Component redundancy can also be decreased, as a single electronic display, for example, can be coupled for use not only with computers but with appropriate audio-visual or telecommunications equipment as well. ***In essence, the invention permits a user to ‘mix and match’ electronic or other devices and components as needed.***”

The innovative system also is adapted to ***rotate about at least two adjacent, parallel axes***. Consequently, ***the present invention permits components to be repositioned about each other throughout approximately 0-360°***, allowing use of a visual display not only in a standard laptop computer format but also in formats facilitating use of the display as, for example, a television or telecommunications monitor or a pen-based computing tablet.

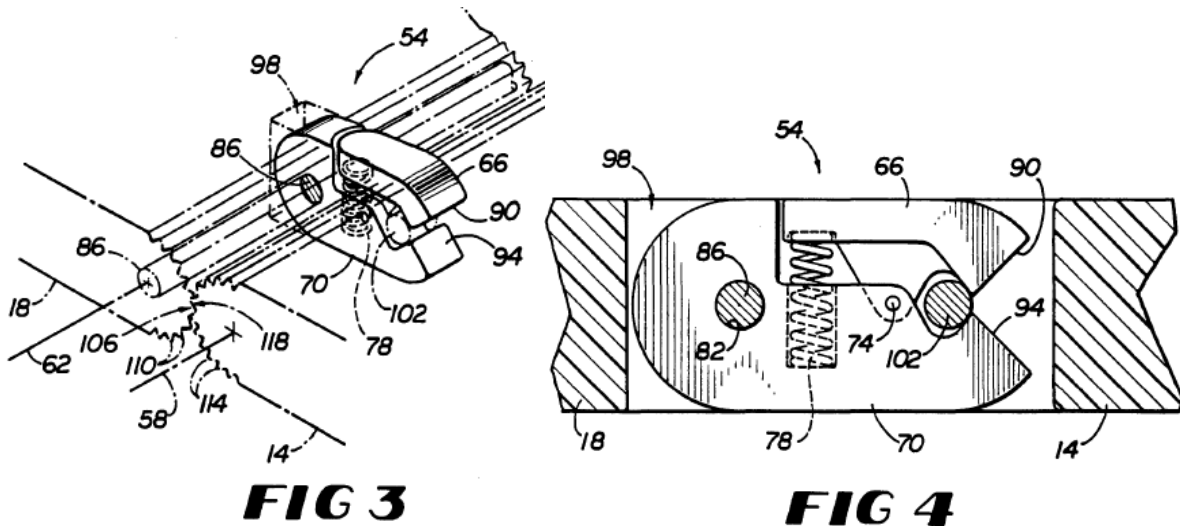
It is therefore an ***object of the present invention to provide a system composed of reconfigurable modules***.

It is another ***object of the present invention to provide a modular system permitting coupling and decoupling of devices and components***, particularly electronic devices and components.

It is also an *object of the present invention to provide a system having two adjacent, parallel axes of rotation to facilitate component rotation about approximately 0-360°.*

Id., 2-3.

Lane's hinge includes one or more connectors 54 shown in Figs. 3-4 (Lane, 6:6-7:30), or the "alternative connector 162" shown in Fig. 14 (Lane, 9:5-12), that allow the base and display components to coupled and decoupled. *See* Lane, Figs 3-4 (reproduced below).



Lane explains that:

[c]onnector 54 comprises (moveable) leg 66, (fixed) leg 70, pin 74, and spring 78 and defines tube 82 for permanently receiving axle 86 .

.. Leg 66 is designed to pivot about pin 74, with its flared end 90 biased by spring 78 toward a similar flared end 94 of leg 70. As a consequence, legs 66 and 70 of connector 54, when fitted into slots 98 of first module 14, snap, or clamp, onto axle 102 of that module and thereby connect first and second modules 14 and 18. The camming

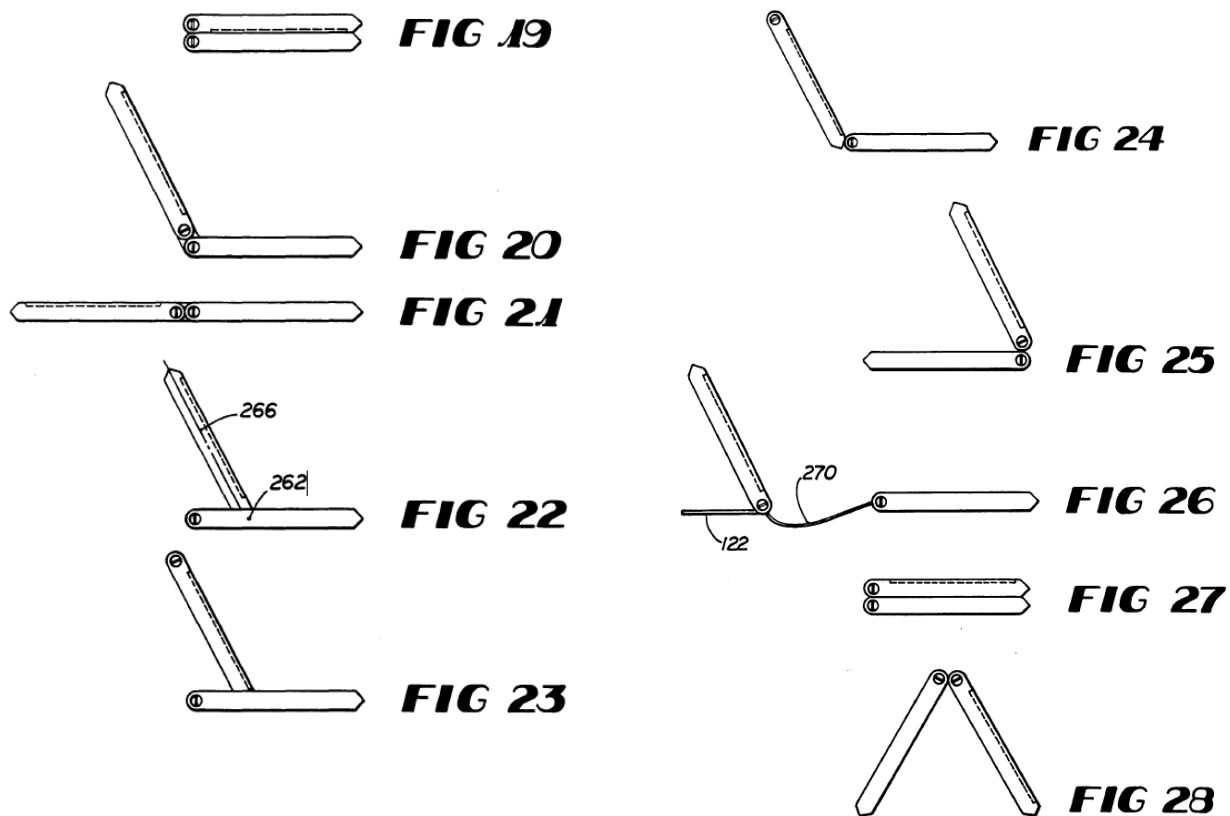
action of connector 54 forces axles 82 and 94 toward each other, facilitating attachment of the modules.

Lane, 6-7.

As shown in Fig. 4, the user can press on leg 66 away from its flared end 90 to overcome the biasing force of spring 78 and pivot leg 66 counterclockwise in Fig. 4. This causes the flared ends 90 and 94 of legs 66 and 70 to release the axle 102 and thereby allow the base and display modules to be decoupled.

The two axes of rotation 58 and 62 defined by connector 54 (as shown in Fig. 3) permit rotation of the display component relative to the base component from 0-360°. Lane, 6:7-12, 3:5-9. 8:15-19.

Lane's detachable and reconfigurable dual-pivot hinge allows the computer to be configured into ten different configurations shown in Lane's Figs. 19-28 (reproduced below).



B. The Lane-Misawa Combination Replaces Lane’s Detachable and Reconfigurable Dual-Pivot Hinge with Misawa’s Fixed Single-Pivot Hinge

All challenged claims require a hinge assembly “defin[ing] a *single* longitudinal axis running along an interface between the display component and the base, and wherein the display component and the base are rotatable about the *single* longitudinal axis.” Ex. 1001, 17:18-21. The Petition does not allege that Lane meets the claimed “single” axis hinge assembly. Instead, Petitioners characterize Lane as disclosing “a double-pivot hinge 54.” Petition, 29.

Misawa is directed to a cell phone – not a portable computer like Lane’s. *See e.g.*, Misawa, Abstract (“portable telephone”). Despite that, the Petition alleges

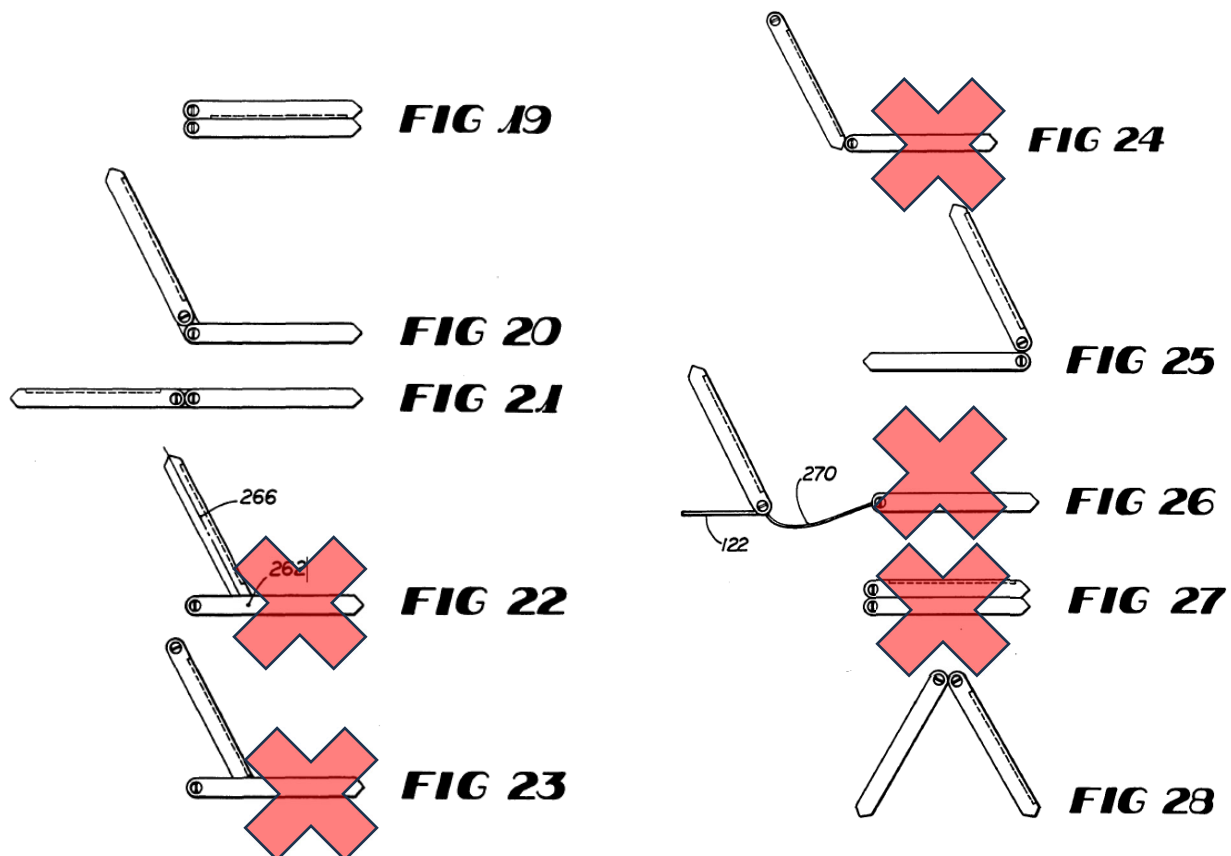
that a POSA would have been motivated by Misawa to replace Lane’s “double-pivot hinge” with a single-pivot hinge. Petition, 17-18, 29. The purported reason why a POSA would have made this modification to Lane is that a single-pivot hinge is “less mechanically complex” than Lane’s hinge so it would be “less expensive” and “*likely* more reliable.” *Id.*, 29; *see also Id.*, 18. The Petition’s “analysis” ignores that the Lane hinge that the combination removes allows the base and display components to be detached and reconfigured into different configurations, whereas Misawa’s hinge does not. Petition, 29, 17-18.

Petitioners’ assertion that a POSA would have replaced Lane’s specialized hinge with Misawa’s hinge fails for the reasons detailed below.

C. The Lane-Misawa Combination Guts Lane of its Detachable and Reconfigurable Hinge and Renders Lane’s Computer Unsuitable for its Intended Use

Lane’s focus is on providing a portable computer with a mechanical and electrical interface between the base and display components that (1) enables the components to be decoupled and reattached in various configurations, and (2) has two parallel axes of rotation to enable 0-360° relative rotation between the base and display components. *See supra* § III.A. The Petition removes Lane’s hinge from the Lane-Misawa combination and replaces it with Misawa’s “single-pivot hinge” that does not provide either capability. Petition, 29.

As discussed *supra* § III.A, Lane's unique hinge is what provides the modular, reconfigurable system that Lane touts in its Title, Abstract, "Summary of the Invention" and claims, and it is this detachable dual-pivot hinge that enables Lane's computer to be configured into any of the ten different configurations illustrated in Lane Figs. 19-28. As illustrated by the red Xs below, at least five of Lane's ten configurations (Lane Figs. 22-24 and 26-27) are destroyed in the Lane-Misawa combination because Misawa's fixed (non-detachable) single-pivot hinge cannot achieve these configurations.



- The Lane configurations destroyed by Petitioners' Lane-Misawa combination include at least:
- **Fig. 22's** configuration where the connector 54 is “*detach[ed]*” from the first [base] module 14 *and reattach[ed]* about a secondary axis 262 of that [base] module [14]” (Lane, 10:32-11:1);
 - **Fig. 23's** configuration where the connector 54 is “*detach[ed]*” from the second [display] module 18 *and reattach[ed]* about secondary axis 266” of that display module 18 (Lane, 11:2-7);
 - **Fig. 24's** configuration where the connector 54 is “*reattach[ed]*” about secondary axis 266 of second [display] module 18 while retaining its connection about axis 58 of first [base] module 14” (Lane, 11:7-10);
 - **Fig. 26's** configuration that leverages “the *detachable mechanical connection*” between the base and display modules (14, 18) so that those modules are physically separated and “merely” connected by “electrical connector 270” (Lane, 11:10-16); and
 - **Fig. 27's** “tablet for pen-based computing” configuration where the back of the display module is *rotated 360°* against the back of the base module (Lane, 10:17-20).

The configurations in **Figs. 22-24 and 26** all require releasing Lane's connector 54 (Figs. 3-4) to decouple the base module 14 and display module 18,

and then either leaving them physically decoupled (Fig. 26) or using the connector 54 to reattach the modules in different ways to form different configurations (Figs. 22-24). Lane expressly criticizes prior art systems that lack this ability to “decouple[]” the computer’s modules because they “fail to address ... consumer needs.” Lane, 1:25-31. It is Lane’s unique hinge assembly that allows the base and display components to be decoupled and reattached in the configurations show in Figs. 22-24 and 26. *See supra* § III.A. Misawa does not teach that its single-axis hinge has the capability to allow the base and display modules to be decoupled and reattached in different configurations. The Petition never even alleges that the Lane-Misawa combination could achieve any of the configurations in Lane Figs. 22-24 and 26.

As for **Fig. 27**’s tablet mode, the Petition concedes that “a *dual-pivot* hinge is generally []necessary ... to allow the display component to rotate far enough to fold flat against the base of the display to deploy the portable computer in tablet mode.” Petition, 29. Misawa does not disclose that its single-pivot hinge can support Lane’s tablet mode. The Petition does not allege otherwise.

As seen from the foregoing, the Petition alleges that a POSA would have modified Lane based on Misawa in a manner that would have obliterated everything Lane teaches is innovative about its computer. The modification destroys the basic objectives of Lane’s system (to allow decoupling and

reconfiguration of the base and display modules and the use of two parallel axes of rotation to support 0-360° rotation). *See supra* § III.A; Lane, Title (“Modular, **Reconfigurable** Devices”), Abstract (disclosed system “permit[s] **coupling and decoupling**” and “rotat[ion] about **two adjacent, parallel axes** (58, 62) permitting components to be positioned throughout approximately **0-360 degrees**”), 2:25-33 ([t]he present invention [] provides a modular, **reconfigurable** system designed to permit mechanical (and, if necessary, electrical) **coupling and decoupling** of devices or components of varying types.”), 3:2-4 (“the invention permits a user to ‘**mix and match**’ electronic or other devices and **components as needed**.”), 3:5-9 (“The innovative system also is adapted to rotate about at least **two adjacent, parallel axes**” [and] permits components to be repositioned about each other throughout approximately **0-360°**”), 3:15-25 (“object[s] of the present invention” to “provide a system composed of **reconfigurable modules**,” “permit [] coupling and **decoupling** of devices and components,” and “to provide a system having **two adjacent, parallel axes** of rotation to facilitate component rotation about approximately **0-360°**”), claim 1 (reciting a “modular, reconfigurable system” having **first and second axes of rotation**).

Petitioners’ modification also destroys much of the configurability Lane touts. The modification would eliminate the ability to use the computer in fully half of the configurations Lane discloses and would render the computer

inoperable for its intended use of being configurable into any and all of the configurations shown in Lane Figs. 22-24 and 26-27. *See supra* § III.A.

D. Petitioners’ Lane-Misawa Combination Is at Odds with The Federal Circuit’s Obviousness Caselaw

1. A Combination that Destroys the Basic Objective of the Primary Reference is Not Supportable

The Federal Circuit has repeatedly made clear that a combination like Lane-Misawa that destroys the basic objective of the primary reference and renders it inoperable for its intended purpose is not one a POSA would have made.

Trivasular, Inc. v. Samuels, 812 F.3d 1056, 1068 (Fed. Cir. 2016) (affirming the Board’s finding that a POSA would not have had motivation to replace barbs in a primary reference with gripping protuberances from a secondary reference because the modification “would ***destroy the basic objective*** of the barbs, which is to penetrate surrounding tissue”); *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984) (reversing the Board’s determination of obviousness where the modification to the primary reference that turned it upside down as needed to meet the claim would have ***rendered the primary reference “inoperable for its intended purpose”***).

The Lane-Misawa combination that Petitioners propose in an attempt to reconstruct the claims in hindsight would render Lane’s computer inoperable for its intended use of being configurable into any and all of Lane’s configurations, including those in Figs. 22-24 and 26-27. *See supra* §§ III.A and III.C. The Federal

Circuit has made clear that obviousness cannot be established based on such a combination.

2. Petitioners’ Alleged Reasons to Combine Are Unsupported by Credible Evidence and Ignore the Teachings of Lane as a Whole

Petitioners fail to even acknowledge that their hindsight modification would gut Lane of everything Lane says is innovative about its computer and destroy Lane’s core functionality. Petitioners do not remotely establish reasons why a POSA would have actually done this. Instead, Petitioners only offer boilerplate “reasons” to modify Lane that are unsupported.

a. Petitioners’ Boilerplate “Cost” and “Reliability” Arguments Are Unsupported by Credible Evidence

Petitioners’ hindsight assertion that a POSA would have been motivated to replace Lane’s innovative detachable and reconfigurable dual-pivot hinge with Misawa’s fixed (not detachable) single-axis hinge is based on boilerplate arguments about alleged cost savings and “likely” reliability improvements that are unsupported by any credible evidence. Petition, 18, 29.

The Petition purports to support its expense and reliability arguments only by citation to Ex. 1004, ¶¶ 113 and 131. Petition, 18, 29. In those paragraphs, Petitioners’ expert notes Misawa’s statement that a bi-axial hinge is “*likely* to be complicated” (Misawa, [0009]), but then merely parrots the Petition’s conclusory arguments about cost and reliability word-for-word. *Compare* Ex. 1004, ¶ 113 with

Petition, 18; *compare* 1004, ¶ 131 with Petition, 29. Petitioners’ expert cites no evidence corroborating his testimony that repeats verbatim the Petition’s conclusory assertions about cost and reliability. He does not even attempt to quantify what expense or reliability improvements a POSA would have expected to result from the modification to Lane. This unsupported conclusory testimony warrants no weight under the Board’s precedential *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB Aug. 24, 2022) (“the cited declaration testimony is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight. *See* 37 C.F.R. § 42.65(a) (‘Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.’)”).

Petitioners do not quantify what alleged expense or reliability improvements a POSA would have expected to see based on the modification to Lane. Thus, Petitioners never even attempt to establish that a POSA would have found these unsubstantiated cost/reliability “improvements” to justify the massive loss of functionality that Lane’s computer would suffer from Petitioners’ hindsight modification. *See supra* § III.C (at least five of Lane’s ten computer configurations could no longer be used).

Petitioners presented no credible evidence that cost or reliability concerns would have motivated a POSA to destroy the intended benefits of Lane's system based on Misawa's disclosure of a fixed (not detachable) single-axis hinge.

b. Petitioners' "Design Choice" Argument Fails

The Petition's allegation that it would have been a "design choice" to use Misawa's fixed (not detachable) single-pivot hinge *if* there was no "need or desire to enable the portable computer to be deployed in a tablet mode" (Petition, 18) fails for four reasons.

First, Petitioners entirely ignore the other configurations of Lane's computer (Lane, Figs. 22-24 and 26) that would be destroyed by the Lane-Misawa combination. Lane repeatedly emphasizes the importance of its unique hinge allowing the base and display modules to be decoupled and reattached in various configurations. *Supra* § III.A. Indeed, Lane criticizes prior art systems that lacked this capability as "fail[ing] to address ... consumer needs." Lane, 1:27-31.

Petitioners and Petitioners' expert do not even acknowledge that the Lane-Misawa combination removes this decoupling/reattaching functionality from Lane, or that the combination destroys Lane's ability to configure the computer in the configurations shown in Figs. 22-24 and 26 (*supra* § III.C). Given that Petitioners entirely ignored this loss of functionality that Lane teaches is critical, Petitioners

submitted *no evidence* establishing that a POSA would have considered it to be a “design choice” to suffer this loss of functionality.

Second, this is another argument unsupported by any credible evidence. The Petition purports to support its assertion that using a single-axis hinge was “a design choice that largely turned on whether there was a need or desire to enable the portable computer to be deployed in a tablet mode” only by citation to Ex. 1004, ¶ 114. Petition, 18 (citing Ex. 1004, ¶ 114 which mirrors the Petition’s argument word-for-word). Petitioners’ expert merely parrots the Petition’s conclusory argument without any supporting explanation or citation to any corroborating evidence. That testimony warrants no weight. *Xerox*, IPR2022-00624, Paper 9 at 15.

Third, the Petition does not even allege, let alone establish, any reason why a POSA would have found Lane’s tablet mode to not be “need[ed]” or “desire[d].” Petition, 18. Lane teaches a desire to allow the computer to be configured into Fig. 27’s tablet configuration “for pen-based computing.” Lane, 10:17-20. Petitioners never establish that eliminating Lane’s tablet mode was a “design choice.”

Fourth, Petitioners’ “design choice” argument establishes nothing more than that a POSA *could* have modified Lane in the manner alleged, not that a POSA *would* have been motivated to do so. The Federal Circuit has made clear that such a showing is insufficient to establish obviousness. *Adidas AG v. Nike, Inc.*, 963

F.3d 1355, 1359 (Fed. Cir. 2020) (affirming a Board finding that a petitioner had not established a motivation to combine; “The obviousness inquiry does not merely ask whether a skilled artisan could combine the references, but instead asks whether ‘they would have been motivated to do so.’”); *Polaris Indus., Inc. v. Arctic Cat, Inc.*, 882 F.3d 1056, 1068 (Fed. Cir. 2018) (vacating a Board determination of obviousness because, in part, “the Board focused on what a skilled artisan would have been able to do, rather than what a skilled artisan would have been motivated to do at the time of the invention.”); *InTouch Techs., Inc. v. VGO Commc’ns, Inc.*, 751 F.3d 1327, 1352 (Fed. Cir. 2014) (finding that a party’s expert “succumbed to hindsight bias in her obviousness analysis” where that analysis “primarily consisted of conclusory references to her belief that one of ordinary skill in the art *could* combine these references, not that they *would* have been motivated to do so”) (emphasis in original); *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073 (Fed. Cir. 2015) (“[O]bviousness concerns whether a skilled artisan not only *could have made* but *would have been motivated to make* the combinations or modifications of prior art to arrive at the claimed invention.”) (emphasis in original).

c. Petitioners Ignore Lane’s Teachings as a Whole

Petitioners’ hindsight assertion that a POSA would have replaced Lane’s hinge with a “less mechanically complex” hinge to prioritize an alleged cost

reduction and increase in reliability over the functionality that Lane’s detachable dual-axis hinge assembly provides fails to consider Lane’s teachings as a whole. *See e.g., Henny Penny Corp. v. Frymaster LLC*, 938 F.3d 1324, 1331-1332 (Fed. Cir. 2019); *Medtronic, Inc. v. Teleflex Innovations S.a.r.l.*, 69 F.4th 1341, 1349 (Fed. Cir. 2023) (affirming a Board decision rejecting obviousness arguments: “We did not hold, however, that a proposed modification’s destruction of a device’s primary purpose is always legally irrelevant to obviousness. Such a conclusion is equally at odds with common sense and gives in to the very hindsight bias the obviousness inquiry is designed to avoid. Indeed, we have held it was error for the Board to ignore evidence that a proposed modification would interfere with a reference's stated purpose.”).

In *Henny Penny*, the Federal Circuit affirmed the Board’s finding that a petition failed to prove obviousness where the petitioner failed to establish a supportable “motivation to combine” the references. *Henny Penny*, 938 F.3d at 1331-1332. The Board found a lack of motivation because the petition’s combination disadvantageously changed the primary reference in certain ways. *Id.* On appeal, the petitioner alleged that this was error. *Id.* The Court disagreed because the prior art “must be considered for all its teachings” and the benefits “*both lost and gained*” from the modification to the primary reference “should be weighed against each other.” *Id.*, (emphasis original) (quoting *Winner Int’l Royalty*

Corp. v. Wang, 202 F.3d 1340, 1349 n. 8 (Fed. Cir. 2000)). The Court found no error in the Board’s analysis and noted that a reasonable factfinder could have found that the tradeoffs from the modification “yield an unappetizing combination” that a POSA would not have been motivated to make. *Id.*

Here, Petitioners completely ignored Lane’s teachings that make clear that Petitioners’ Lane-Misawa combination was “unappetizing” because it destroyed functionality that Lane taught was desirable. In doing so, the Petition failed to consider Lane “for all its teachings” and failed to weigh the benefits “*lost*” against those allegedly “*gained*” from Petitioners’ modification to Lane as the law requires to establish obviousness. *Henny Penny*, 938 F.3d at 1331-1332.

E. Petitioners’ Failure to Establish a Supportable Non-Hindsight Reason to Modify Lane Based on Misawa Is Fatal to the Petition

Petitioners failed to support their assertion that a POSA would have replaced Lane’s detachable and reconfigurable dual-axis hinge assembly with Misawa’s fixed single-axis hinge. That is fatal to every ground because every ground relies on this unsupported combination. Petition, 2-3. Institution should be denied because Petitioners have not demonstrated a reasonable likelihood of establishing that any challenged claim would have been obvious.

IV. DISCRETIONARY DENIAL UNDER § 325

The Board can deny the Petition without even determining whether Petitioners met their burden to demonstrate a reasonable likelihood of establishing

any challenged claim obvious. The Board can instead exercise its discretion to deny the Petition under 35 U.S.C. § 325(d). Petitioners chose to file a Petition based on prior art that was previously presented to the Office. Every ground relies on Lane and Misawa, both of which were previously presented to the Office during a reexamination in which no claim challenged herein was rejected. Despite that, the Petition does not attempt to establish error. Petitioners failed to meet their burden to have a trial instituted based on art that was previously presented to the Office.

A. Petitioners Failed to Meet Their Burden

In 35 U.S.C. § 325(d), Congress made clear that “[i]n determining whether to institute or order [an IPR] proceeding ... the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.”

The Petition recognizes that the Board’s leading caselaw on the application of § 325(d) is the precedential decision in *Advanced Bionics*, IPR2019-01469, Paper 6; Petition, 57. *Advanced Bionics* explains that:

under § 325(d), the Board uses the following two-part framework: (1) whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office; and (2) if either condition of first part of the framework is satisfied, whether the

petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims.

Advanced Bionics, IPR2019-01469, Paper 6 at 8.

In evaluating the factual issues underlying the first and second *Advanced Bionics* prongs, the Board considers the “*Becton, Dickinson* factors”⁴ which provide “useful insight into how to apply the framework under 35 U.S.C. § 325 (d).” *Id.* at 9. *Advanced Bionics* characterizes *Becton Dickinson* as identifying the following non-exclusive factors:

(a) the similarities and material differences between the asserted art and the prior art involved during examination; (b) the cumulative nature of the asserted art and the prior art evaluated during examination; (c) the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection; (d) the extent of the overlap between the arguments made during examination and the manner in which petitioner relies on the prior art; (e) whether petitioner has pointed out sufficiently how the examiner erred in its evaluation of the asserted prior art; and (f) the extent to which additional evidence and facts presented in the petition warrant reconsideration of the prior art or arguments. *See Becton, Dickinson*, Paper 8 at 17–18 (§ III.C.5, first paragraph).

⁴ *See Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 (PTAB Dec. 15, 2017) (precedential as to § III.C.5, first paragraph) (“*Becton, Dickinson*”).

Advanced Bionics, IPR2019-01469, Paper 6 at 9 (footnote 10).

Advanced Bionics is explicit that a discretionary denial consideration under § 325(d) may be triggered by prior art previously presented to the office during “**reexamination** of the challenged patent.” *Advanced Bionics*, IPR2019-01469, Paper 6 at 8.

1. The First *Advanced Bionics* Prong is Met

Claim 1 is the only independent claim challenged herein – the other challenged claims (claims 2-10 and 23) all depend therefrom. Claim 1 is only challenged in Ground 1, which alleges obviousness over Lane and Misawa. Petition, 2. The other grounds build on Ground 1’s Lane-Misawa combination and add other references for limitations in the dependent claims. Petition, 2-3.

Petitioners admit that Lane and Misawa were “previously presented to the Office” during a reexamination of the ‘688 Patent. Petition, 57. Lenovo’s reexamination request only alleged unpatentability of certain claims of the ‘688 Patent. Ex. 2009, iii-vi, 5-6, 31, 42. The Office found that the request raised a substantial new question of patentability and ordered reexamination. Ex. 1009, 2-3, 13-29, 41-45. Lane and Misawa each was then used in at least one rejection of other claims, but the claims challenged herein were never rejected. Ex. 1010, 3 (summarizing non-Final Office Action rejections); Ex. 1011, 3 (table of contents summarizing Final Office Action rejections).

Despite conceding that Lane and Misawa were previously presented to the Office in reexamination – which satisfies the first *Advanced Bionics* prong – Petitioners allege that the “concerns of duplicative efforts and due deference to prior evaluations by the Office underlying Section 325(d) do not arise from instituting this petition as to the claims challenged herein” because “the same art was previously presented against other claims of the ‘688 Patent.” Petition, 57 (emphasis original). Petitioners cite ***no authority*** supporting their naked assertion that the concerns underlying § 325(d) are inapplicable here.

Petitioners misapprehend the scope of a reexamination. It is true that Lenovo did not request that the Office reexamine the claims of the ‘688 Patent challenged here. But that did not render those claims immune from reexamination. Once the reexamination was ordered, the Office had the authority to reexamine ***every*** claim in the ‘688 Patent. MPEP § 2258.IV.B (“The ***decision*** to reexamine any claim for which reexamination has not been requested under 35 U.S.C. 302 lies within the sole discretion of the Office, to be exercised based on the individual facts and situation of each individual case. If the Office ***chooses*** to reexamine any claim for which reexamination has not been requested under 35 U.S.C. 302, it is permitted to do so.”). The Office made a “decision” and chose to not reexamine and reject the claims challenged here. *Id.* That implicates the “concerns” underlying § 325(d). Petition, 57.

The first prong of *Advanced Bionics* is satisfied because Lane and Misawa were “previously presented to the Office” during a “reexamination of the challenged patent.” *Advanced Bionics*, IPR2019-01469, Paper 6 at 8. Petitioners cannot avoid their obligation to satisfy the second prong of *Advanced Bionics* when asking the Board to consider their Petition that reuses prior art previously presented to the Office.

2. Petitioners Failed to Satisfy the Second *Advanced Bionics* Prong

When the first prong of *Advanced Bionics* is satisfied, “then the Board’s decisions generally have ***required*** a showing that the office erred in evaluating the art or arguments” and “the Director generally will exercise discretion not to institute *inter partes* review” when “the petitioner fails to make a showing of material error.” *Id.*, 8-9. Here, Petitioners did not even purport to comply with the second prong of *Advanced Bionics* by making the “required” showing of material error.

Petitioners contend that they should be absolved of the Board’s requirement to show material error because “imposing that requirement makes no sense here.” Petition, 58 (***citing no authority***). Petitioners allege that this case is the “polar opposite” of cases where an IPR challenges claims that had survived examination over prior art that the IPR petition reuses, because here “***other*** claims of the ‘688

Patent” were rejected during the reexamination. *Id.* Petitioners’ unsupported assertion fails for two reasons.

First, to the extent Petitioners suggest that the claims challenged herein were immune from reexamination because they were not identified in the reexamination request, Petitioners are wrong. As explained above, in ordering the reexamination the Office **decided** to not reexamine and reject the claims challenged here. MPEP § 2258.IV.B (“The **decision** to reexamine any claim for which reexamination has not been requested ... lies within the sole discretion of the Office, to be exercised based on the individual facts and situation of each individual case. If the Office **chooses** to reexamine any claim for which reexamination has not been requested ... it is permitted to do so.”). This is not the “polar opposite” of cases where claims challenged in an IPR survived an examination despite the Office having been aware of the prior art presented again in the petition. Petition, 58. The Office decided to not reexamine and reject the claims challenged herein. Petitioners fail to even allege, let alone establish, that that decision was in error.

Second, Petitioners’ assertion that the Office’s rejection of “**other** claims of the ‘688 Patent” – not those challenged here – during the reexamination “bolster[s] Petitioners’ challenge to the ‘688 Patent” is nonsensical. Petition, 58. Challenged independent claim 1 is one of four different independent claims in the ‘688 Patent all reciting a “portable computer” and those claims are all of **different scope**.

Petitioners did no analysis comparing the similarities and *differences* between the challenged claims and those rejected in the reexamination. Petitioners’ suggestion that the reexamination Examiner would have rejected the challenged claims if they had been reexamined is unsupported by any evidence or even analysis. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (“Attorney’s argument in a brief cannot take the place of evidence”); *Elbit Sys. of Am., LLC v. Thales Visionix, Inc.*, 881 F.3d 1354, 1359 (Fed. Cir. 2018) (“[The petitioner] Elbit fails to present any evidence supporting this contention beyond attorney argument, ... and attorney argument is not evidence and cannot rebut other admitted evidence.” (internal citations and quotes omitted); *Gator Bio, Inc. v. Sartorius BioAnalytical Instruments, Inc.*, IPR2023-00215, Paper 19 at 21 (PTAB June 20, 2023) (denying institution under § 325(d): petitioner’s “argument [that the Board should decline to exercise its discretion to deny review under § 325(d)] is conclusory because it is unsupported by any analysis tethered to the particular facts at hand.”)

Petitioners’ speculation that the Office would have rejected the challenged claims if they had been reexamined is insufficient to establish material error. It is at least as likely that the Office decided to not reexamine the claims challenged here because the Office did not find them to be unpatentable over the prior art of record in the reexamination. *Advanced Bionics*, IPR2019-01469, Paper 6 at 8-9 (“If reasonable minds can disagree regarding the purported treatment of the art or

arguments, it cannot be said that the Office erred in a manner material to patentability.”).

Additionally, a petitioner must do more than merely allege that a material error occurred in the Office’s prior consideration of the art – a petitioner must explain *what* that alleged error was. Conclusory assertions of error are insufficient to satisfy the second prong of the *Advanced Bionics* framework. *Panduit Corp. v. Corning Optical Commc’ns LLC*, IPR2021-01562, Paper 20 at 16-18 (PTAB Apr. 6, 2022) (denying institution under § 325(d) because petitioner’s argument that the examiner erred was “conclusory and non-persuasive”); *Google LLC v. Kewazinga Corp.*, IPR2021-00524, Paper 17 at 17-18 (PTAB Aug. 24, 2021) (denying institution under § 325(d) because petitioner did “not identify any specific teaching in any reference that the Examiner misapprehended or overlooked”); *Ivantis, Inc. et al. v. Sight Scis., Inc.*, IPR2022-01540, Paper 14 at 13-14 (PTAB Mar. 22, 2023) (denying institution under § 325(d) and rejecting an argument that the “examiner’s silence in discussing relevant prior art” constitutes a showing of material error). Petitioners do not even allege that the reexamination Examiner’s decision to not reexamine and reject the claims challenged herein was material error, let alone explain what any alleged material error was.

Petitioners made the strategic decision to rely on prior art that had been previously presented to the Office. In asking that the Board to use its limited

resources to consider this prior art again, Petitioner bore a burden to comply with *Advanced Bionics* by making the “required” showing of material error. *Advanced Bionics*, IPR2019-01469, Paper 6 at 8-9. Petitioners did not even attempt to do so. In such circumstances, the Board “generally will exercise discretion not to institute *inter partes* review.” *Id.*

V. CONCLUSION

As detailed above, institution should be denied on the merits because Petitioners have not demonstrated a reasonable likelihood of establishing any challenged claim unpatentable. Alternatively, the Board should exercise its discretion to deny the Petition under § 325(d) because Petitioners did not do what the Board’s precedent requires of a petitioner seeking to have a trial instituted based on prior art that was previously presented to the Office.

Respectfully submitted,
LiTL LLC

Date: March 1, 2024

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24, the undersigned certifies that the foregoing **PATENT OWNER'S PRELIMINARY RESPONSE** contains 7,108 words excluding; a table of contents, a table of authorities, a certificate of service or word count, or appendix of exhibits or claim listing. Patent Owner has relied on the word count feature of the word processing system used to create this paper in making this certification.

Date: March 1, 2024

/MacAulay Rush/
MacAulay Rush
Paralegal
WOLF, GREENFIELD & SACKS, P.C

CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6 (e)(4)

I certify that on March 1, 2024, I will cause a copy of the foregoing document, including any exhibits filed therewith, to be served via electronic mail, as previously consented to by Petitioner, upon the following:

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