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Transcript of PTAB Conference Call

Date: July 26, 2024
Case: Amazon.com, Inc., et al. -v- Nokia Technologies Oy (PTAB)

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC, AMAZON.COM SERVICES, LLC,
Petitioner

v

NOKIA TECHNOLOGIES OY,
Patent Owner

Case IPR2024-00626
U.S. Patent No. 11,805,276

Hearing July 26, 2024 via telephone

Job No. 547021
Carol L. Crawley, CSR 7518

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LOS ANGELES, CALIFORNIA; FRIDAY, JULY 26, 2024
10:00 a.m.

Mr. Liang: This is Jeff Liang. I'm with Sheppard Mullin. I'll be speaking on behalf of the Petitioners. Also on the call with me are my colleagues Harper Batts and Fred Qiu, also of Sheppard Mullin.

We also have the court reporter on the line.

Honorable Judge Repko: Who do we have on the call for Patent Owner?

Mr. Hejny: Good afternoon, your Honor, this is Scott Hejny from McKool Smith on behalf of Patent Owner Nokia. And with me on the call is my colleague Eric Hansen.

Honorable Judge Repko: Thank you.

The purpose of this call is to discuss petitioners request from their reply to Patent Owner's preliminary response for these IPR's.

I will give each party an opportunity to respond to either party's arguments. I may pause the call momentarily to discuss the arguments with the other judges on the panel.

In the e-mail you did note the number of pages. We would also like to know if it's two weeks

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within receiving authorization, so if we were to grant we would like to know what the timeframe would be as well.

So, we will start with petitioner's counsel. Can you please explain specifically why there is good cause to file a reply here.

Keep in mind I do not need to know the merits of the arguments and our focus should be on good cause.

Mr. Liang: Thank you, your Honor.

So, this is Jeff Liang speaking.

We requested briefing on two separate issues, and I will address them in turn.

So, starting, first there is the Advanced Bionics. Across the grounds there is only one reference, Karczewicz Two, that was cited in an IDS and the petitions other references were not cited at all.

So this isn't a situation where any other references were used in an office action and instead Patent Owner's arguments fall really on the outer periphery of section 325D.

And they are arguing that teachings from our art overlaps with teachings from different references in the file history.

So, this is -- this is the type of situation, and in fact, that the director has made clear that

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section 325D, you know, often warrants pre-institution briefing in these types of scenarios.

So, for example in Google v. Valtrus, IPR2022-01197 paper 12, Director Vidal sua sponte granted direct review and found that the petitioner had good cause to submit a preliminary reply on section 325D issues, and that the board had erred in denying that request.

So, here there is good cause because patent Owner's arguments are based on various attenuated circumstances that fall far outside the norm for section 325D.

The primary prior art references need grounds so Walker for Ground One and Karczewicz One for Ground Two were never presented to the Patent Office at all. They were not used on this action, not even cited during prosecution.

And a secondary reference Karczewicz Two was only cited in an IDS, but also never used in any office actions.

So, the board often grants preliminary briefing on Section 325D, and there is good cause to do that here.

On the second issue --

Honorable Judge Repko: I need to clarify the

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situation, make sure I understand your request.

So, in this case there was one reference of, I guess, three that were presented to the office previously, and you discussed that in your petition, and you acknowledge that there was at least one reference that was the same and considered by the examiner.

Mr. Liang: So, in one ground, the first ground, there is only Walker, and it was not considered or presented at all with the Patent Office.

And in the second -- for the second -- for the second Ground for Karczewicz Two, one reference was included in the IDS, and we did explain how it was on page 86 of the petition, how it was just included in an IDS along with 76 other references, and there is no substantive analysis of it. So we did --

Honorable Jason Repko: Sorry to interrupt.

I guess I am thinking so in Prong One you did discuss in the petition to say that there is a reference that is the same as the reference that was previously presented to the office on Prong One. So even ten in your -- you know, proposed briefing to discuss Prong One, that is the similarity of the references?

Mr. Liang: Well, correct.

So, that is the thrust of Patent Owner's arguments. Patent owner is arguing that Karczewicz One,

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even though never presented and also Walker, have similarities with other references that were cited in IDS forms, so we would address the alleged similarities.

And also we would address -- they did also compare, you know, they make a lot of arguments about how Karczewicz Two, which is the cell phone reference cited in IDS resembles other art that was cited in the IDS. There are many pages of analysis on that. So we also, I guess, address those arguments even though in some ways they are irrelevant since Karczewicz Two itself was already cited.

But, yes, we would address the argument they raise that the references, particularly the primary references are similar to references that were to other references from different Patent families that were just cited in IDS forms.

And we would also argue and explain that that Patent Owner's other arguments they use regarding the file history to try to link up, for example, Walker and Ye are very misleading, and they mischaracterize what actually happened.

So, we would address that as well in the briefing.

Honorable Judge Repko: From Prong Two, you are going to clarify, in your view, the prosecution

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history as it relates to the other references that Patent Owners discussing that weren't necessarily relied upon in the petition but were alleged to be similar to references that are used in the challenge. Is that correct?

Does that include the scope of the briefing that you are looking for?

Mr. Liang: I believe so, your Honor, yes, that is the -- we would address their arguments that the art relied on in the petition is similar to art that was presented in an IDS.

Honorable Judge Repko: Okay. Second issue, go ahead and proceed on that. I don't have any further questions at this time about the first issue.

Mr. Liang: Okay. So for Claim Construction Patent Owner has raised Claim Construction argument.

So Patent Owner admits, for example, on pages one and 17 of the POPR that prior art reference - Walker - teaches a type of prediction called a weighted prediction.

And since the challenge claims near the first and second prediction under the plain and ordinary meaning Walker would teach a prediction.

To distinguish Walker, Patent Owner proposes a Claim Construction for prediction. They argue that

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prediction should be interpreted to exclude this particular type of prediction.

And if you look on page 46, they propose a construction; that's where - and I am quoting from the POPR - they state - the 267 Patent makes clear that the prediction is a value obtained from the reference frame using the motion factor, not some intermediate value generated in the process of combining two predictions.

So, the -- and then after that the POPR goes on for 11 pages to advocate for this -- to advocate for this definition of prediction and to apply the definition which precludes an intermediate values against Walker.

But the claims do not actually say anything about final versus intermediate values. So this is Claim Construction, plain and simple, about the meaning of the claim term prediction and additional briefing may be needed.

Honorable Jason Repko: You already briefed construction, right? The idea in the petition you said that that term, you know, means whatever you said it means, so how is this an unanticipated issue, for example, that might give rise to good cause?

Was there a -- this report, oh, construction, for example, or any new developments since you filed the

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petition? I guess that is what we want to focus on here.

Mr. Liang: Sure, Your Honor.

So, the petition proposed a construction for precision. The term precision has been -- we are dealing here with a different claim term - prediction.

And I know there may be one of the things that Patent Owner has done in its briefing is it tried to conflate the two, and it sometimes it is talking when it talks about, you know, prediction it cites the thing talking about precision.

So the Patent Owner has tried to somewhat confuse the two things, but they are separate claim terms that deal with entirely, well, separate concepts.

And so we proposed the construction for precision which is the number of bits that is used to represent a value as there hasn't been a -- we did not propose a construction for prediction.

Honorable Judge Repko: So you are characterizing their arguments as an implicit construction when you, I guess, in the challenge itself is there something maybe the construction in your petition that you would end up having resolve the dispute using, I guess, a formal construction in the DI's, is that an accurate characterization of your

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position? Is that why you think any additional briefing on it?

Mr. Liang: Well, Patent Owner's arguments they have -- they have not proposed the term for construction, but they are claim -- they haven't in a sense that they don't have a separate section called Claim Construction where they listed their arguments, but they took those same Claim Construction arguments and they put them in a different section.

So in that sense, it is implicit in that they didn't officially propose the term, but it is Claim Construction because they do explicitly propose the definition for the term prediction.

And their arguments are predicated on that Claim Construction.

So, that would be something that would need to get resolved -- would need to get resolved, because, in fact, this type of strategy is very common -- is very common in litigation where plaintiffs do not officially propose a construction, even though they advocate for it.

And it is so common that the federal circuit has noted that they keep seeing these types of implicit Claim Construction disputes in IPR's and they frequently aren't labeled as Claim Construction by the parties, but

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the Federal Circuit has held they are nonetheless Claim Construction disputes because they establish the scope of the claims.

So for example, the Federal Circuit has noted this in the case HTC Corp v Cellular Communication Equipment, LLC, 877 F.3d 1361, on page 1367 Federal Circuit 2017.

And they also noted that in another case, Google LLC v EcoFactor, Inc., 92 F.4th 1049 at page 1056, Federal Circuit 2024, and there is also other cases as well.

So, here there is a definition that plaintiff is actually proposing and that is the construction that we are requesting briefing to explain to address and good cause -- there is good cause to address this because it is a new Claim Construction that they raised and it is contradicted by the claims and specifications which refer to intermediate values as predictions.

And also there is several mischaracterizations in the file history that Patent Owner relies on to push this contrary construction.

So, there is good cause to address this Claim Construction.

Honorable Judge Repko: Thank you. No further questions on that and neither do my colleagues. We will

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move on to the Patent Owner --
Mr. Hejny: Sorry, your Honor, this is Scott Hejny, are you ready for me?
Honorable Judge Repko: Sorry, I dropped off.
There would be no further questions for petitioner at this time so we wanted to move on to Patent Owner to get their response. Thank you.
Mr. Hejny: Your Honor, is it okay if I take the argument in reverse order so I can immediately address the Claim Construction issue?
Honorable Judge Repko: Yes, feel free.
Mr. Hejny: Okay, your Honor, Scott Hejny from McKool Smith on behalf of patent owner Nokia.
The patent owner in this case is simply relying on the plain and ordinary meaning of prediction as the term is used and the specification of the 267 patent and the prior art.
This is similar to any other case that is before the board. We have a Patent and we have prior art and the petitioner is interpreting the prior art and the Patent in one way and the Patent Owner is interpreting it in a different way.
And without getting too deep into the weeds, there is no need to construe prediction because the use of prediction in the 267 Patent and all the prior art is

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consistent.
But what is happening here is that Amazon is claiming that something that is not the understood definition of prediction is actually a prediction and reads on the challenged claims.
It is Patent Owner's position that there is no implicit Claim Construction. There certainly is no conflation between precision and prediction; those terms are distinct.
And there is no need for additional briefing on the matter because, again, Patent Owner believes that the terms are defined within the four corners of the specification of the 267 patent and that is why Patent Owner does not propose a construction in the Patent Owner's preliminary response.
Honorable Judge Repko: Thank you. No further questions on that. Feel free to move on.
Mr. Hejny: Thank you, Your Honor.
With respect to Advanced Bionics, petitioner had to be aware that Advanced Bionics was going to be an issue because if you would, despite the fact for example, that Walker was not before the Patent Office during prosecution, if you look at the disclosure in Walker, the Ye reference that was cited during prosecution and other references that were cited during

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prosecution, the equations in those references are identical. There are identical tables and identical disclosures.
And again, those that identity exists between the prosecution references and the references that have been asserted in this petition. For example, one point to keep your eye on, Your Honor, is the fact --
Honorable Judge Repko: We don't need to get into the merits; I will cut you off.
Let's move on the good-cause standard here and focus on what each party has argued rather than getting into the leads as to where they are and what points you want us to focus on.
Mr. Hejny: Absolutely, Your Honor.
Just as an example, the Karczewicz reference, there are multiple references that are authored commonly by Ye and Karczewicz.
And it is Patent Owner's position that petitioner had to be aware of that fact.
And because Ye references were cited during prosecution as the basis for objections, and because one Karczewicz reference was cited in an IDB, the petitioner had to be aware that this issue was going to arise in the context of 325D and petitioner should have addressed this in their petition as opposed to in after the fact

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preliminary replies to Patent Owner's POPR.
Honorable Judge Repko: So, examiner issued a rejection in view of one of these similar references?
Mr. Hejny: Your Honor, give me just a second.
During the prosecution of the priority application that led to the issuance of the 267 patent there were multiple references that were cited, included -- including references from a patentee named Ye.
Honorable Judge Repko: I guess the petitioner just told me earlier in this call that there was, you know, that the examiner did not treat these references at all; there was no discussion of anything. So I want to kind of clarify that point.
In your view, the examiner did actually issue some sort of office action that addressed the references that you are discussing that are similar or alleging that are similar.
Mr. Hejny: No, Your Honor, I didn't mean to mislead you or to suggest something that is clearly not in the briefing.
Walker was not cited during prosecution. Petitioner is correct on that.
But Ye, there is a reference from Ye who is an inventor cited on some of the references were the basis for rejections during prosecution.

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And Ye and Karczewicz, Karczewicz is one of the references that forms the basis for Ground Two, and it was submitted in IDS, but it was not the basis for rejection during prosecution, Your Honor.

And Ye and Karczewicz coauthored some articles, and that's on the POPR at page 41.

So Patent Owners's argument is the cumulative nature of the disclosures between prosecution and the petition. Walker, for example, which is the basis for Ground One was not cited during prosecution.

Honorable Judge Repko: Thank you for that.

Now pause for a moment and see if my colleagues have any further questions.

Patent owner, if you don't have anything further I was going to go back to petitioner to give them an opportunity to respond.

Is there anything further you want to ask?

Mr. Hejny: Last point, sorry. My last point, Your Honor, is that petitioner has requested 12 pages and Patent Owner thinks that is excessive; that could add thousands of words to the petition and Patent Owner doesn't think that is proper.

Other than that, Your Honor, yes please, my argument at this point is concluded. I will be open to additional questions later.

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Honorable Judge Repko: Thank you.

Petitioner, would you like to respond to Patent Owner's argument?

Mr. Liang: Just briefly, Your Honor.

I want to note that Patent Owner did admit just now that there is - regarding Claim Construction - there is a dispute in interpretation of the term prediction.

And I want to just say that their argument that there is no construction, they're applying plain ordinary meaning; that is simply not credible because they admit on page one of the POPR that Walker teaches the type of prediction called a waited prediction and that claims just say prediction.

So their arguments that attack Walker for allegedly using an intermediate value, well, claims don't say anything about intermediate values or final values; that comes from the construction of the definition they propose.

So, there is Claim Construction that they propose that we would like to address.

Honorable Judge Repko: Thank you. Anything further on the the Advanced Bionics issue?

Mr. Liang: I believe the parties have stated their positions on that. If you do have questions about

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what, you know, what was cited or, you know, which references were presented we would be happy to answer that.

I think, you know, one thing that might add help with some clarification is that the Ground -- so ground -- there are two Grounds in the petition.

The first Ground relies on a reference called Walker, which was, which was just is not related to the Karczewicz references. The first ground is just Walker.

And you know Walker wasn't presented or considered in any way and the Patent Owner is trying to argue that it is similar as a reference called Ye, which was raised in an office action.

The petition did explain the prosecution of Ye on page 11 of the petition and how Walker teaches actually precisely what the examiner found was not explicit in Ye, so that is on page 11 of the petition.

So then separate from Ground One there is Ground Two which combines Karczewicz One and Two.

And so Karczewicz -- the Karczewicz references are separate from Walker, so Karczewicz One and Two, Karczewicz One was never presented or considered to the Patent Office. And Karczewicz Two is what is cited in an IDS form.

And for Ground Two the Patent Owner is arguing

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that, well, Karczewicx One is similar to other things that appear in an IDS form and a whole slew of 76, you know, other entries, but they are arguing it is similar to those other cited references.

And none of those references that they are arguing for Ground Two that were cited were considered or raised in any office action.

Honorable Judge Repko: Thank you.

So, in petition you acknowledge that Ye was considered and discussed by examiner on page 11 of the petition, for example, of, I guess, was it the 626 IPR.

And then in your discretionary analysis, or Advanced Bionics for example, you discuss all three references and discuss how the Grounds based on the references cited in -- were not considered --

So, it seems like at least on some level have made an argument regarding all three references that you relied upon in the challenges plus Ye, so what more do you want to add to this and why does that give rise to good cause if you already discussed all of this in the petition?

Mr. Liang: The Patent Owner raised a number of arguments that are attempts to mislead the board into thinking that in the prosecution's history, the part about Lee that the applicant somehow was distinguishing

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weighted predictions and then using that they tried to connect up Ye and Walker, but that is not correct; that is not what happened.

And that is -- and that is one area that we would like to explain particularly given the technical nature of these video-coded claims.

We want to make sure that we can point out what really happened in the file history and to address many of the specific arguments that they had raised which while we had addressed Ye because Ye is the reference raised in an office action, you know, we want to address various arguments that they have raised trying to compare, you know, the different Karczewicz references to a handful of cherry-picked Patents that were cited in an IDS.

So, there are still additional issues to address and that is what we would like to do.

Honorable Judge Repko: Seems like you had the opportunity, though, to address those issues in the petition and do you acknowledge the similarity with Ye. I mean you acknowledge that so why should we give you a second opportunity to do that? It is not just good cause.

Mr. Liang: Your Honor, let me clarify.

We did not acknowledge the similarity between

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Walker and Ye because those references, while they have -- those references -- so specifically we showed what is different about them in that because Ye, Ye was the reference that is raised in an office action.

So, when we discuss the prosecution history explain, we explain that well, Walker is actually explicitly teaching what was the examiner noted was not explicit in Ye.

So, we weren't saying that these things are similar, as opposed to we are highlighting the contrast in their teachings, but the thing is we, what we cannot have anticipated is the way that they would present the section 325D in these very attenuated circumstances where one Ground Walker that reference was never presented in any way or considered by the office.

And that the other Ground, the primary reference Karczewicz One was also not presented or considered.

So, what we couldn't have predicted that, you know, reasonably been expected to predict that they would try to distort the file history to somehow connect Ye and Walker and say they are cumulative.

And we couldn't have and it would have been reasonable to expect us to try to identify okay, well, Karczewicz One wasn't presented but, you know, they are

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going to try to argue it is similar enough to, you know, a handful of other references out of 76 and IDS.

So we explain -- we did address Advanced Bionics and we addressed the prosecution history at a normal level that you would expect, but given the arguments that they raised in these particular circumstances that, you know, that is what warrants additional briefing.

Honorable Judge Repko: Thank you. I have no further questions. I will check with my other colleagues and see if they have any.

No further questions from the court. Thank you, petitioner.

We'll move on to Patent Owner, give them a chance to respond to what we just heard from petitioner before we wrap up the call.

Mr. Hejny: Sure, Your Honor. Scott Hejny from McKool Smith on behalf of Nokia.

I think it goes without saying that in no way, shape, or form was Nokia attempting to mislead the board in any way.

We were pointing out that the Walker art is cumulative to what was before the examiner.

I encourage the board to take a look at the briefing, at the references and the board is clearly

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competent to review this, those documents and determine for itself whether or not it believes the reference is cumulative.

And also, consider that - as I mentioned before - that Ye is a coauthor with Karczewicz on several of these references which is also something that factors into the analysis.

We believe, we, Nokia, believe that Amazon gave short trips to 325D, that they should have been aware that was -- this cumulativeness was going to be an issue in the petition process, and they shouldn't be given another bite at the apple to try and correct the 325D deficiency to the petition at this time.

With respect to Claim Construction, again, I heard mislead the board, cherry picking of references and definitions.

But this is clearly just a dispute as to what the plain and ordinary meaning of prediction is. And if you look at the prior art and look at the Patent, the 267 Patent, you will see what is identified in equation form as a prediction.

And what Amazon is calling a prediction is not the prediction itself; it is a subcomponent of the prediction equation.

So, this is just a dispute, Your Honor,

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between petitioner and Patent Owner over what is a prediction within the well understood definition of prediction to a person of ordinary skill in the art.

And that is something that has been addressed in both the POPR and the expert declaration.

And I think the board will be able to see that once they have a chance to review all the papers in the proceeding and we don't think this merits additional briefing.

And I will rest with that, Your Honor, unless there are additional questions.

Honorable Judge Repko: Thank you, no further questions. I will confer with my colleagues and I will put you on hold for a moment. Thank you.

If we were to grant briefing here, it looks like petitioner is requesting 12 pages. Patent Owner objects to that.

Petitioner, can you break it down perhaps, to maybe a request of if we were to grant one and not the other, grant one on Claim Construction and grant one on Advanced Bionics.

How many pages would you need to address your Claim Construction arguments and how many pages for the Advanced Bionics arguments if we were to grant briefing here?

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Mr. Liang: Your Honor, we would be requesting six pages on each topic, so six for Claim Construction and six for Advanced Bionics.

And in terms of timing we would be, I think two weeks each would be fine, so two weeks for us to file our preliminary reply and if you grant a sur-reply then two weeks for the Patent Owner.

Honorable Judge Repko: Patent Owner, you object to that; otherwise you think it should be fewer pages? If we were to grant briefing in this case what do you think would be the appropriate number of pages for each issue?

Mr. Hejny: Your Honor, Patent Owner obviously believes that at some level to the discretion of the board, but Patent Owner would believe that four to five pages per issue would be more than sufficient.

Honorable Judge Repko: Thank you. Take a moment to confer with my colleagues.

The panel have decided to take the matter on advisement. We will issue an order in due course.

Any further questions from the parties at this point about process or anything else? Petitioner, any further questions?

Mr. Liang: No, Your Honor.

Honorable Judge Repko: And when can you have

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the transcript filed - in a day or two days?

Mr. Liang: We can ask to expedite it, so early next week.

Honorable Judge Repko: Okay, sounds good. Thank you.

Patent Owner, any further questions before I conclude this call?

Mr. Hejny: No questions, Your Honor. Thank you for your time this afternoon.

Honorable Judge Repko: Thank you both. This call is concluded.

Mr. Liang: Thank you, Your Honor.

Mr. Hejny: Thank you.

(Whereupon, the hearing proceedings were concluded at 10:30 A.M.)

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I, Carol L. Crawley, CSR No. 7518 Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this 30th day of July, 2024.

Carol L. Crawley

Carol L. Crawley, CSR No. 7518

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