UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIKTOK INC.
Petitioner,

v.

CELLSPIN SOFT, INC.,
Patent Owner

IPR2024-00769
Patent 9,900,766

PETITIONER'S REPLY
TO PATENT OWNER'S PRELIMINARY RESPONSE

I. PETITIONER'S *SOTERA* STIPULATION RENDERS PATENT OWNER'S *FINTIV* ANALYSIS MOOT

The *Sotera* stipulation filed by TikTok, and notified to Cellspin, is controlling to obviate a *Fintiv* analysis. TTI-1035. Director Vidal's Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation is dispositive, stating "the PTAB will not discretionarily deny institution in view of parallel district court litigation where a petitioner presents a stipulation not to pursue in a parallel proceeding the same grounds or any grounds that could have reasonably been raised before the PTAB." TTI-1034. TikTok's stipulation makes precisely that representation, and "[u]nder the mandatory *Fintiv* guidance discussed above, this stipulation is dispositive." *BMW v. Northstar*, IPR2023-01017, Paper 12, 10 (PTAB Dec. 8, 2023).

Here, Cellspin points out that reexaminations were subsequently filed for patents *other than* the '766 patent but fails to show that those reexaminations have any relevance to this proceeding. POPR, 11-13. Indeed, the Board has granted institution under similar facts. *See Google LLC v. Proxense, LLC*, IPR2024-00232, Paper 10, 31-32 (PTAB July 24, 2024).

II. CELLSPIN'S §316(b) ARGUMENTS SHOULD BE REJECTED

In the parallel District Court lititgation, Cellspin is asserting a patent that should never have been granted. As the unwilling defendant in a patent lawsuit,

TikTok availed its right as a member of the public to petition the Board to review and ultimately cancel the asserted claims on the basis that they are unpatentable. Cellspin now seeks to avoid Board review of a meritorious challenge to its patent under 35 U.S.C. §316(b) on the basis that TikTok should be barred from access to the PTAB. POPR, 21-31. Cellspin's argument should be rejected for multiple reasons.

First, the petition does not implicate §316(b), which concerns the Director's prescribing of regulations: "In prescribing regulations under this section, the Director shall consider the effect of any such regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted under this chapter." 35 U.S.C. §316(b). And yet, the §316(b) argument takes root in a single petition against the asserted Cellspin patent. Nothing about the implicated petition is inconsistent with the intent of Congress in making the same available to members of the public that seek to challenge the patentability of a granted patent. It therefore cannot be credibly disparaged as negatively affecting the "economy," the "integrity of the patent system," or the "efficient administration of the Office." At bottom, the petition concerns **Cellspin's** patent and demonstrates that **Cellspin's** asserted patent claims are unpatentable. More, **nothing** in this petition implicates TikTok's intellectual property, nor does the petition ask the Board to take any action

concerning TikTok. There is no basis for Cellspin to assert that TikTok is (or should be) barred from seeking review of unjustifiably broad patent claims that have been asserted against it in litigation.

Second, even assuming that §316(b) applies to institution decisions (rather than regulation promulgation), Cellspin asks this Board to extend §316(b) to considerations of "foreign policy" and "national security." POPR, 21-31. There is no justification for such an expansion, and Cellspin's theory clearly goes far beyond the statutory text. The evaluation of foreign policy and national security concerns would involve an evidentiary review that is not provided for in the IPR procedures. Even Cellspin admits that "such analysis is impossible to achieve at the case-by-case adjudication level, and should rather occur through formal rulemaking to involve the expertise of policy experts on all sides" and "national security and related policy issues are unfamiliar in the Board's day-to-day activities." *Id*., 25-27. Moreover, IPR proceedings benefit the domestic economy by clearing out invalid patents. That public benefit is in no way affected by a *bona fide* petition by a party being sued for patent infringement—regardless of who that party is. Cellspin alleges no ill intent on the part of TikTok, and there is no allegation that TikTok is in any way trying to game the system. On the contrary, Cellspin is asserting patent claims that TikTok alleges are clearly unpatentable, and the public interest is clearly served by the PTAB considering TikTok's petition.

Third, Cellspin relies on Declarations submitted by two alleged "experts" in an unrelated IPR—two experts that Cellspin has not retained and that Cellspin has not made available for deposition. POPR, 26-31 (citing IPR2021-00476, Paper 8). Further, the "experts" do not purport to provide an analysis of foreign policy or economics that the Board may find helpful, but instead provide unique and subjective theories concerning how they believe the Patent Office should conduct itself. *Id*. It would be improper for the Board to embrace such theories outside of rulemaking after public notice and a comment period have been provided.

Fourth, assuming *arguendo* that these flawed theories are applied, *Cellspin fails their own "test"* because, despite what Cellspin contends, the patent at issue is not related to "Data Science and Storage." POPR, 29. In fact, Cellspin admits elsewhere that they abandoned their "mobile blogging service" for "host[ing] … media" in January 2013. *See* http://www.cellspin.net/mplatform/. Cellspin's "test" requires technology relevant to the "Critical and Emerging Technologies list" to deny institution, which they cannot demonstrate. POPR, 29.

III. THE BOARD SHOULD REJECT PO'S CONSTRUCTION OF "OBJECT"

The POPR's construction of "object" is not supported by the evidence. First, to clarify, the term at issue in the '766 patent is "new-data object." *E.g.*, TTI-1003, claim 1. In the claims, after new-data is acquired and stored, the processor creates a

new-data object, which is defined to include 1) signal to notify, 2) the acquired new data, and 3) associated new-data. *E.g.*, *id*. This "new-data object" is then transferred to the cellular phone. *E.g.*, *id*. The claims define "new-data object," and Petitioner submits that no construction is needed beyond the plain meaning recited in the claims. Fundamentally, the "new-data object" is something that includes the three elements described above that is wirelessly transferred from the data capture device to the cellular phone.

While the term "new-data object" is not found in the '766 patent specification, the specification is instructive, to better understand the plain meaning of "new-data object." For example, the specification discusses transferring files between the data capture device and the cellular phone, including using specific "file transfer protocols," including OBject EXchange (OBEX). *Id.*, 4:47-5:29. The specification provides examples for transferring files, including the use of a "file event listener" that is used to detect the "creation of a new file." *Id.*, 5:22-29. Thus, the specification seems to conflate a "new-data object" with a file created by the data capture device that includes "captured data, the multimedia content, and files associated with the captured data and the multimedia content." *See, e.g.*, *id.*, 4:47-5:44.

PO's construction of "object" first ignores the context of the term as a "new-data object" and instead relies on a Wikipedia definition from object-oriented programming. POPR, 59. The specification teaches that "software programs can be

stored as "an object code," but the term at issue is not a software program. TTI-1003, 11:26-27. Object-oriented programming is not relevant to the construction the claims of the '766 patent. Instead, the plain meaning is sufficient.

If the PO's construction of object is accepted, the prior art still applies to the claims because the prior art teaches a data structure, which is a data organization and storage format. Based on the evidence provided in the POPR, a file meets the definition of a data structure: "A file may be designated to store an image, a written message, a video, a program, or any wide variety of other kids of data. Certain files can bstore multiple data types at once." POPR, 59 (quoting https://en.wikipedia.org/wiki/Computer_file). The Petition provides an example of a new-data object created by the Kahn-Bluetooth combination. Petition, 74 (citing TTI-1030, [566] showing a data object that includes location data metadata, timestamp as a signal to notify, and the new-image data).

IV. THE PRIOR ART GROUNDS PERFORM THE RECITED ORDER OF OPERATION

The POPR raises a claim construction issue pertaining to the recited order of certain operations. POPR, 53-54. Without commenting on the merits of PO's construction, Petitioner notes that the prior art satisfies the order of certain operations. *E.g.*, Petition, 41, 56, 70. The Petition proves that the Kahn-Bluetooth combination teaches new-data is necessarily limited to data acquired after

establishing the short-range paired wireless connection [that is maintained continuously]. *E.g.*, Petition, 69-70, 78-81, 85-91.

The POPR's reliance on BIP (EX2015) to show non-obviousness of the claims in view of the Kahn-Bluetooth combination is misplaced. POPR, 70-75. The Petition has demonstrated that a POSITA would have been motivated to combine Kahn and Bluetooth, and that the Kahn-Bluetooth combination renders the claim terms obvious, even in view of the POPR's proposed order of certain operations. Petition, 42-44, 69-70, 78-81, 85-91.

Respectfully submitted,

Date: August 16, 2024

/Kim H. Leung/

W. Karl Renner, Reg. No. 41,265
Kim H. Leung, Reg. No. 64,399
Steven Katz, Reg. No. 43,706
Rishi Gupta, Reg. No. 64,768
Ryan O'Connor, Reg. No. 60,254
Fish & Richardson P.C.
60 South Sixth Street, Suite 3200
Minneapolis, MN 55402
T: 202-783-5070
F: 877-769-7945
Attorney for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on August 16, 2024, a complete and entire copy of this Petitioner's Reply to Patent Owner's Preliminary Response was provided by email to Patent Owner by serving the email correspondence addresses of record as follows:

M. Scott Fuller, Reg. No. 54,716
119 W. Ferguson Street
Tyler, Texas 75702
Phone: (903) 705-7420

René A. Vazquez, Reg. No. 38,647
18296 St. Georges Ct.
Leesburg, VA 20176
Phone: (703) 989-2244

sfuller@ghiplaw.com
litigation@ghiplaw.com
rvazquez@sinergialaw.com

/Crena Pacheco/
Crena Pacheco
Fish & Richardson P.C.
60 South Sixth Street, Suite 3200
Minneapolis, MN 55402
pacheco@fr.com