UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

THETA IP, LLC,
Patent Owner.

Case IPR2024-00818
U.S. Patent No. 10,524,202

PATENT OWNER THETA IP LLC'S REPLY IN SUPPORT OF MOTION TO STRIKE

Theta's Motion to Strike showed how Apple's new Reply Declaration testimony is unfair, against the Board's rules, and violates due process—because, for example, Theta is not permitted under the rules to respond with further specific rebuttal testimony. Paper 22 at 2, 5; Paper 18 at 3. In opposition, Apple further illustrates the point, by repeatedly faulting Theta for allegedly only presenting "attorney argument" in sur-reply. Paper 25. Theta demonstrated why Apple's arguments—even supplemented with its new improper testimony—fail on their lack of merit and should be rejected. *See generally*, Paper 23. But because these new theories are also procedurally improper and Theta's ability to respond has been restricted, the Board cannot credit these new theories without prejudice and denial of process due to Theta.

I. Apple's new theory that the band-pass IS the component with a dynamically changed impedance or bias should be stricken or excluded

Apple's list of citations in opposition identifies sparse Petition and Declaration references to the overall band-pass filter block—which contains two swappable low-pass filters and a separate high-pass filter block. Paper 25, 4-5. But reading these passages in context reveals that none of them actually say what Dr. Abidi said for the first time in Reply: that the whole bandpass block "is" the "the component or circuit in the signal path whose impedance is dynamically varied." EX1042, ¶4. Apple needed a Preliminary Reply and then a Reply Declaration to say this specific thing—

because it didn't identify this aspect from the outset as required.[1]

In opposition, Apple goes so far as to hide contrary language behind ellipses. *Compare* IPR2024-00816, Paper 26 at 3-4 ("*See* Paper 1 at 25 ("***Behbahani's BPF*** . . . ***satisf[ies] the filter component*** recited in the preamble.") *with* IPR2024-00816, Paper 1 at 25 ("*Behbahani's* BPF ***includes a low-pass filter***, satisfying the filter component recited in the preamble."). Its other references to a "filter" were, at best, ambiguous and/or directed to other claim elements.

The overall band-pass is not the claimed "an" impedance that is dynamically varied, for all the reasons detailed in Theta's Sur-Reply. *See, e.g.*, Paper 23 at 2 ("The overall bandpass is built of *multiple* circuits and impedances, none of which undergo changed impedance or bias"), 11-15; EX2020, ¶¶81-83 ("What the band-pass filter of the *Behbahani* papers does not have is any individual impedance 'in the signal path' that changes dynamically during operation"). But Dr. Abidi's new opinion can be, and is, wrong on the merits, rebutted in response, and also excludable as procedurally improper and unfair.

[1] Apple wrongly faults Theta for filing a similar motion across the five challenged patents. But it is Apple that submitted an identical Reply Declaration without accounting for specific claim language—and Apple that has the burden of proof on each separate claim.

II. Apple's new theory alleging obviousness of the claimed signal strength indications should be stricken or excluded

Apple's opposition fails to identify any passage of the Petition or Original Declaration that gives the specific opinions about obviousness presented by Dr. Abidi for the first time in his Reply Declaration; for example, that a POSITA would have just known to *modify Tan*'s peak detector circuit to do something it is otherwise not capable of. EX1042, ¶15 ("I believe a POSITA would have considered using a simplified version of Tan's circuit to…").

Statements about motivation to combine or about background art do not explain this specific new theory of obviousness. *See* Paper 25, at 11-12 (*citing* EX1003, ¶¶179-181). Apple's and Dr. Abidi's theory of how a POSITA would understand or modify *Tan*—if it can fairly be deciphered from their reply—was certainly not developed or shown in the Petition, which never discusses this. All reply testimony is on some level intended to be responsive, but new theories to cover gaps in the Petition, as here, are improper and should be stricken or excluded.

Again here, Apple's gap-filled obviousness testimony fails to establish teaching or suggestion of the claimed elements, for all the reasons detailed in Theta's Sur-Reply. *See, e.g.*, Paper 23 at 7-8, 21-24. And again, while the Board can reject Apple's showing on its lack of merit against Apple's burden of proof, it cannot fairly credit the new theory and testimony of the Reply Declaration—without denying Theta its

statutory and due process right to respond with rebuttal evidence.

III. Conclusion

For all of these reasons discussed here and in Theta's Motion, the Board should strike, or exclude from its consideration, the identified new theories. In addition, before crediting any (counterfactual) suggestion from Apple that its new expert testimony is somehow unrebutted, the Board should permit submission of further expert declaration responsive to EX1042. *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1080 (Fed. Cir. 2015); 5 U.S.C. § 556(d) (Ramot "is entitled to" … "submit rebuttal evidence," …). The Board can make exception to its sur-reply rules for this purpose, to avoid prejudice and provide due process to Theta. *See, e.g.*, *ZyXEL Communications Corp. v. UNM Rainforest Innovations*, 107 F.4th 1368, 1382-83 (Fed. Cir. 2024).

Dated: August 12, 2025

Respectfully submitted,

/Aaron R. Hand/

Aaron R. Hand, Lead Counsel
Reg. No. 80,694
Corey Johanningmeier, Back-Up Counsel
(*pro hac vice*)
BUNSOW DE MORY LLP
701 El Camino Real
Redwood City, CA 94063
Telephone: 650-351-7248
Facsimile: 415-426-4744
ahand@bdiplaw.com
cjohanningmeier@bdiplaw.com

Counsel for Patent Owner

CERTIFICATE OF SERVICE

Petitioners have consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. §42.6, the undersigned certifies that on August 12, 2025, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

Paul R. Hart, (Reg. No. 59,646)
Paul.Hart@eriseip.com
ERISE IP, P.A.
717 17th St., Suite 1400
Denver, Colorado 80202
Telephone: (913) 777-5600
Fax: (913) 777-5601

Adam P. Seitz (Reg. No. 52,206)
Adam.Seitz@eriseip.com
ERISE IP, P.A.
7015 College Blvd., Suite 700
Overland Park, Kansas 66211
Telephone: (913) 777-5600
Fax: (913) 777-5601

Dated: August 12, 2025

/Aaron R. Hand/

Aaron R. Hand
Reg. No. 80,694
BUNSOW DE MORY LLP
701 El Camino Real
Redwood City, CA 94063
Telephone: 650-351-7248
Facsimile: 415-426-4744
ahand@bdiplaw.com

Lead Counsel for Patent Owner