PUBLIC VERSION

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UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable Doris Johnson Hines
Administrative Law Judge

In the Matter of **CERTAIN VIDEO CAPABLE ELECTRONIC DEVICES, INCLUDING COMPUTERS, STREAMING DEVICES, TELEVISIONS, CAMERAS, AND COMPONENTS AND MODULES THEREOF**	**Investigation No. 337-TA-1379**

RESPONDENTS' MOTION FOR SUMMARY DETERMINATION THE ASSERTED CLAIMS OF THE '808 PATENT ARE EITHER NOT INFRINGED OR ARE INVALID

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GROUND RULE 5.1 CERTIFICATION

Pursuant to Ground Rule 5.1, Respondents Amazon.com, Inc., Amazon.com Services LLC, and HP Inc. f/k/a Hewlett-Packard Company (collectively "Respondents") certify that they conferred with counsel for Complainants Nokia Technologies Oy and Nokia Corporation (collectively "Nokia" or "Complainants") and Staff prior to filing this motion. Complainants oppose this motion and Staff will take a position after reviewing this motion.

I. INTRODUCTION

Respondents are entitled to summary determination of noninfringement of the '808 patent, or in the alternative that the '808 patent is not entitled to the priority date Nokia asserts, and that the '808 patent is invalid.

Like previous video coding standards dating back as far as MPEG-1, the accused H.264 standard includes a "skip mode" that encodes/decodes a macroblock containing motion by comparing it either to the macroblock directly to its left or the macroblock directly above it. This single-block, block-by-block comparison is not only old, it differs from the purported invention described in Nokia's provisional application, which is a skip mode approach that simultaneously analyzed multiple "surrounding" macroblocks. When the adopted construction of "skip mode"—which recognized this distinction and expressly incorporated "surrounding" into every asserted '808 patent claim—is properly applied, Nokia's allegations of infringement based on H.264 fail and summary determination of noninfringement is appropriate.

Nokia attempts to bridge the gap between what the '808 patent claims require and the H.264 standard by conflating the "surrounding" and block-by-block approaches. Nokia already attempted this obfuscation before the Patent Office: after the prior art block-by-block approach was adopted into the H.264 standard, Nokia inserted previously undisclosed new matter into the application

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that would issue as the '808 patent. Nokia called this new matter a "second embodiment" and drafted vague claims in an attempt to capture it. But just as the ALJ recognized the need to include "surrounding" in the claim construction, the ALJ should reject Nokia's attempts to own the prior art block-by-block technique.

Because Nokia added the block-by-block approach as new matter, it is not entitled to priority through the provisional. Once that timing issue is resolved, Nokia's claims targeting the block-by-block technique necessarily fall against multiple pieces of prior art, including the preliminary version of H.264 itself. Accordingly, Respondents are also entitled to summary determination of no priority and invalidity.

Deciding these issues now is both appropriate and necessary, as the facts are undisputed and their resolution will streamline the hearing. Accordingly, for the reasons detailed herein, Respondents ask that summary determination be entered in their favor.

II. FACTUAL BACKGROUND

A. Nokia Originally Applied for a Patent On a "Surrounding" Skip Mode Technique and Added the Prior Art Block-By-Block Approach Only After Block-by-Block Was Adopted into H.264.

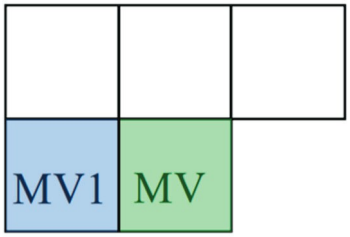
1. Skip Modes with Motion Using the Block-by-Block Approach Were Well-Known Before Nokia's '808 Patent or H.264.

The video coding industry has been developing techniques to compensate for motion since the earliest days of digital video standardization. One straightforward and long-known way to compress video is to copy pixels from a previous frame. In macroblocks where there is no motion, you can "skip" sending data representing a particular macroblock entirely and merely repeat the information for that macroblock from a previous frame. But such wholesale macroblock skipping will only work where there is no motion at all, i.e., the two macroblocks are essentially identical.

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MPEG-1, one of the earliest video standards, added a "skip mode" for macroblocks that included motion. Specifically, where a motion macroblock was going to be skipped, MPEG-1 called for the skipped macroblock to assign a motion vector based on a neighboring block, the previous macroblock. Ex. 1 (MPEG-1) at RESPNOKIA_00397839, D.6.5.2 (assigning "the same motion vector … as the previous macroblock"). Whether the motion vector of the previous block was zero or non-zero, the skip block would have the very same zero or non-zero motion vector. *Id*. Because MPEG-1 encoded from left to right, this meant that a motion vector for any macroblock could be copied from the single, neighboring macroblock to its left. *Id.* at RESPNOKIA_00397757, 2.4.1 ("Slice is a series of… macroblocks… proceeding by raster-scan order from left to right"). Although MPEG-1 provided no visual depiction of its technique, below is a graphic in the style of later standards and Nokia's own provisional application to illustrate:



In MPEG-1's technique, the motion vector (MV) for the current macroblock in green would be assigned the same value as motion vector 1 (MV1) from the block in blue. *Id.* at RESPNOKIA_00397839, D.6.5.2.

MPEG-1 explained that the motion vector of the previous block (e.g., MV1) is a good motion vector predictor: "[T]he motion vector of a macroblock tends to be well correlated with the vector of the previous macroblock. For example, in a pan all vectors would be roughly the same." *Id*. at RESPNOKIA_00397823, D.6.2.3. The MPEG-1 skip also had no prediction error and was

[redacted]

efficient: "there is no additional DCT correction, they require very few bits to transmit." *Id*. at RESPNOKIA_00397839, D.6.5.2.

2. The H.264 Standard Group Selected a Global Motion Compensation Solution Along the Lines of What Had Been Done Previously.

The joint ITU-and-ISO H.264 standardization effort began in 2001, and its Joint Video Team (JVT)[1], included prominent members of the video industry. Ex. 2 (Joint Video Team), available at https://www.itu.int/en/ITU-T/studygroups/com16/video/Pages/jvt.aspx. Sharp Labs of America identified early that making global motion compensation more efficient would be a significant issue for the new standard. *See* Ex. 3 (Sharp Submission VCEG-O20, Nov. 27, 2001) (proposing a Global Motion Vector Coding (GMVC) Copy Mode).

Over a month before Nokia filed its provisional application, the JVT met in Geneva from January 29 to February 1, 2002. Proposals on global motion compensation at that meeting included JVT-B019 ("Global Motion Vector Coding (GMVC)") proposed by Sharp, and JVT-B046 ("GMVC and GMC switched by MV") proposed by NTT. Ex. 4 (JVT-B019), Ex. 5 (JVT-B046). In addition, the JVT commented that the skip decision should be made "at the MV predictor," i.e., the same place that decision had been made since MPEG-1, almost a decade earlier. Ex. 6 (JVT-B001d1) at RESPNOKIA_00002609.

Based on these submissions and comments, the JVT formed a smaller, ad hoc group to "study[] the use of MB skip at [the motion vector] predictor." *Id*. Like other JVT ad hoc groups, this one used an email reflector to allow members to share ideas and collaborate closely. *See, e.g.*, Ex. 7 (JVT-C011) at RESPNOKIA_00164628.

[1] The JVT was a collaborative effort, where members collaborated closely, sharing reports, proposals, and findings to facilitate progress in video compression technology. The H.264 JVT included representatives from Microsoft, Philips, Sony, Polycom, NTT, Sharp, and LG, in addition to Nokia. *See* Ex. 9 (JVT-C001d3).

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3. Nokia Filed a Provisional Application On a "Surrounding" Technique.

On March 15, 2002—two months after the JVT's work in Geneva—Nokia filed Provisional Application No. 60/365,072, which eventually issued as the '808 patent. The provisional comprised barely eight pages of double-spaced text, with three figures appended at the end. *See generally* Ex. 8 (Provisional). Nokia described its purported invention as a single, preferred embodiment, i.e., "*the* preferred embodiment." *Id*. at NOK_AMHP_ITC00079542, ¶ 34 (emphasis added). That lone embodiment "consist[ed] of three steps":

> (1) "generating a median motion vector prediction for the Macroblock" as explained in "reference 1";
>
> (2) "[i]f any of the resulting motion vector components has absolute value larger than a threshold…the motion is classified as 'Active Motion.' Otherwise it is classified as 'Non-Active Motion,'" and
>
> (3) "[d]epending on the classification result" from step 2, "activate the appropriate block to generating [sic] the motion parameters," again, as explained in reference 1.

Id. at ¶¶ 34-37. The provisional's text disclosed nothing more about "generating motion parameters" in step 3 than that it was to be done in accordance with reference 1, i.e., the operative version of the H.264 standard under development at the time, Joint Model Number 1 (JM-1), a document produced by the entire JVT, not Nokia alone. *See generally id*., attaching Doc. JVT-A003, Jan. 2002. Both because steps 1 and 3 represented the work of the entire JVT, and because Nokia's attempt to incorporate "reference 1" was legally improper and ineffective[2], only step 2 of the single preferred embodiment—the classification scheme of "active" versus "non-active" based on comparison to a "threshold"—represented the purported invention.

[2] Under MPEP rules, nonpatent printed publications may only be used to incorporate non-essential material, i.e., background material on the state of the art or other information not necessary to meet the requirements of § 112. 37 CFR § 1.57(d).

[redacted]

The bimodal choice between "active" and "non-active" motion was embodied in one of the provisional's three figures:

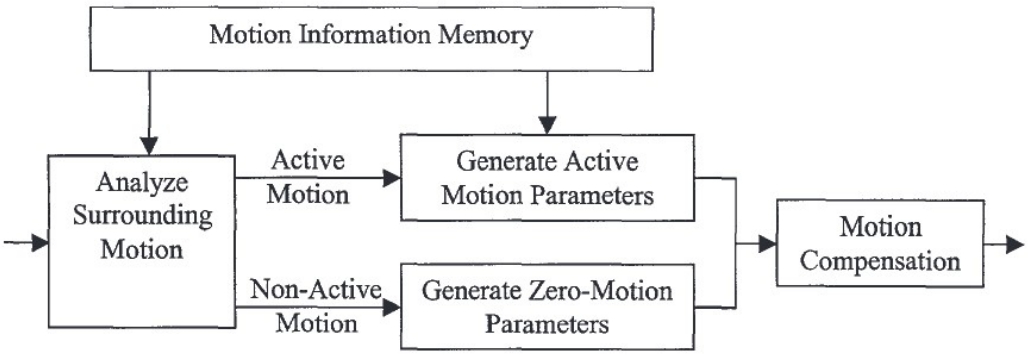


Figure 2: Encoding and decoding block for SKIP mode Macroblocks in a system according to a particular embodiment of the invention.

Ex. 8 (Provisional) at NOK_AMHP_ITC00079547, Fig. 2. Figure 3 of the provisional indicated the set of motion vectors for comparison would be expanded from the four used in JM-1 to six. *Id.*

Specifically, Figure 3 identified the two neighboring macroblocks directly to the left (purple) of the macroblock being encoded (green) and four macroblocks in the row above it (purple) as those for comparison:

[redacted]

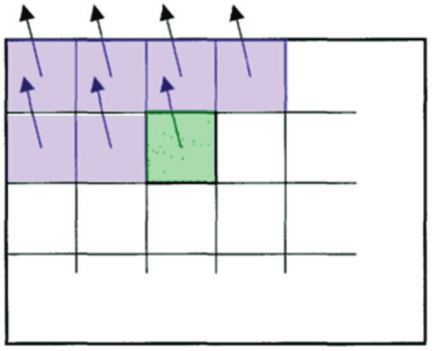


Figure 3: An example of Macroblock partitioning, surrounding motion for the Macroblock to be coded or decoded and the generated SKIP mode motion vector for the Macroblock (the darkened Macroblock in the figure) according to one possible embodiment of the invention.

Ex. 8 (Provisional) at NOK_AMHP_ITC00079548, Fig. 3 (emphasis added). The caption to Figure 3 referred to this collection of six macroblocks as "surrounding motion." *Id.*.

4. The H.264 Standard Group Adopted the Block-By-Block Approach into H.264 in May 2002.

At a May 2002 meeting in Fairfax, Virginia, the entire JVT considered and voted on a series of proposals from various members regarding global motion compensation. Ex. 9 (JVT-C001d3). One proposal—a block-by-block proposal—was authored by the '808 patent's named inventor Lainema and Marta Karczewicz[3]. *Id.* at RESPNOKIA_00336352, JVT-C027. The proposal included a "simple modification" that involved "no syntax changes" to the bitstream because "the motion vector prediction for 16x16 is reused." Ex. 13 (JVT-C027) at RESPNOKIA)00002876. This proposal indicated that, depending on a comparison of a particular macroblock to the one immediately to its left or to the one immediately above it, the predictor could either set the motion vector to zero or use the motion vector predictor 16x16. Ex. 9 (JVT-

[3] Marta Karczewicz was omitted as an inventor on the '808 patent. The JVT-C027 is the work of an inventive entity other than the inventive entity of the '808 patent.

[redacted]

C001d3) at RESPNOKIA_00336352-353 (adopting JVT-C027). The proposal indicated that the decision whether to use a zero motion vector or a prediction should be premised on the following block-by-block "rule" wherein, as a result of the conjunction "or," a decision with respect to *any one macroblock* results in a zero motion vector:

> - If a Macroblock immediately above or to the left is not available (that is, is out of the picture or belongs to a different slice).
> - If a Macroblock or block immediately above or to the left that is used in motion vector prediction has a zero motion vector and uses the latest picture as reference in motion compensation.
>
> Otherwise the predictor is used for skip-mode motion compensation prediction.

Id.

The JVT's concept of "skipping at the predictor," along with the block-by-block modifications in JVT-C027 authored by Lainema and Karczewicz, appear in the JVT's first draft of the H.264 standard in December of 2002. *See* Ex. 10 (JVT-F100) at RESPNOKIA_00003505, 8.4.1.1 ("Derivation process for … skipped macroblocks").

The first draft of H.264 shows in standard syntax language the four conditions for setting the motion vector to zero and otherwise assigning the motion vector predictor (i.e., from subclause 8.4.1.3):

[redacted]

For the derivation of the motion vector mvL0 of a P_Skip macroblock type, the following applies.

- The process specified in subclause 8.4.1.3.2 is invoked with mbPartIdx 0, subMbPartIdx = 0, and list suffix L0 as input and the output is assigned the mbAddrA, mbAddrB, mvL0A, mvL0B, refIdxL0A, and refIdxL0B.
- If at least one of the following conditions is true, both components of the motion vector mvL0 are set to zero.
  - mbAddrA is not available
  - mbAddrB is not available
  - refIdxL0A is equal to 0 and both components of mvL0A are equal to 0
  - refIdxL0B is equal to 0 and both components of mvL0B are equal to 0
- Otherwise, with the following functions being extended as mb_part_width(mb_type) = 16 and mb_part_height(mb_type) = 16, the derivation process for luma motion vector prediction as specified in subclause 8.4.1.3 is invoked with mbPartIdx = 0, subMbPartIdx = 0, and list suffix L0 as input and the output is assigned to mvL0.

NOTE – The output is directly assigned to mvL0, since the predictor is equal to the actual motion vector.

Id. (emphasis added).

5. Only *After* the Block-By-Block Approach Was Standardized in H.264 Did Nokia Add It to the '808 Patent.

Ten months later, when Nokia filed its full utility application on March 14, 2003, parts of the document corresponded to the provisional application filed a year earlier. The '808 patent specification's discussion of a "first preferred embodiment" came from the provisional application's discussion of the three-step process for classifying motion as "active" or "non-active." *Compare* Ex. 11 ('808 patent) at NOKIA_CMPLITC00000042, Col. 19, ll. 11-20 and 28-51, *with* Ex. 8 (Provisional) at NOK_AMHP_ITC00079542, ¶¶ 34-38. And a cleaner version of provisional Figure 3 was included in the '808 patent specification as Figure 9. *Compare* Ex. 8 (Provisional) at NOK_AMHP_ITC00079548, Fig. 3, *with* Ex. 11 ('808 patent) at NOKIA_CMPLITC00000031, Fig. 9.

But much of the application was new matter.[4] In particular, Nokia added a new section of the specification dedicated to a previously unmentioned "second preferred embodiment of the invention" beginning at Column 20, line 6. *Id*. at NOKIA_CMPLITC00000042. Unlike the three-

[4] Illustrating the extent of the added content to the '808 patent application from the provision, Exhibit 12 highlights the text in the '808 patent found in the provisional.

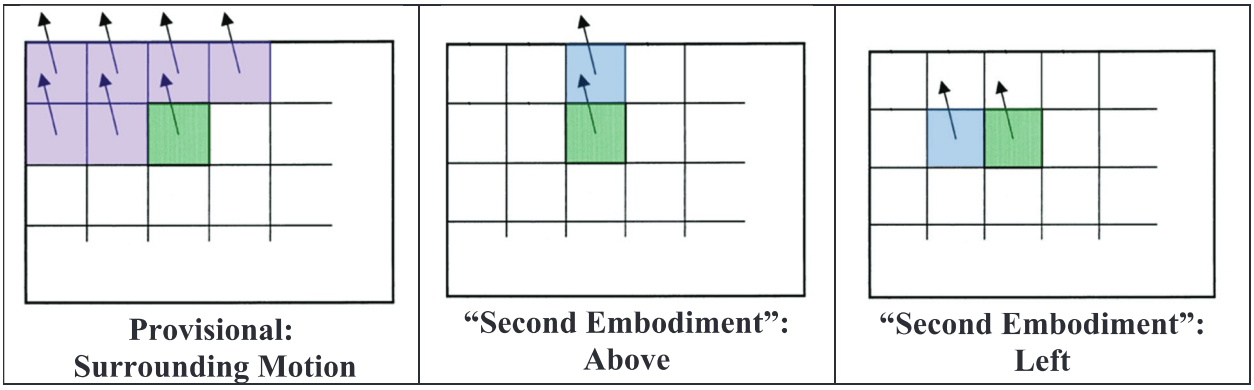
[redacted]

step process outlined in the provisional, in this "second embodiment," the "classification to the 'non-active motion' category takes place if either or both of…two [one-block] conditions…are true, otherwise the motion is classified as active motion." *Id.* at Col. 20, ll. 12-16. The two conditions specified for the "second embodiment" are:

> Condition 1: The *macroblock immediately above or the macroblock immediately to the left of the macroblock under consideration* is not available (that is, is out of the picture or belongs to a different slice).
>
> Condition 2: The *macroblock or block immediately above, or the macroblock or block immediately to the left* that are used in motion vector prediction for the 16x16 INTER mode has a Zero motion vector and uses the latest picture as reference in motion compensation.

Id. (emphasis added). These two conditions align with Lainema's and Karczewicz's proposal JVT-C027 that was adopted by the JVT in May 2002. *Compare id.*, *with* Ex. 13 (JVT-C027). Yet this "second embodiment" is nowhere to be found in the provisional. *Compare* Ex. 8 (Provisional), *with* Ex. 13 (JVT-C027).

The '808 patent itself lacks any figures that depict this "second embodiment." *See generally* Ex. 11 ('808 patent). The shift to this "second embodiment" from the approach announced in the provisional is apparent. Respondents have annotated with color and juxtaposed three versions of '808 Figure 9—i.e., the "cleaned up" version of Provisional Figure 3—to illustrate this point:



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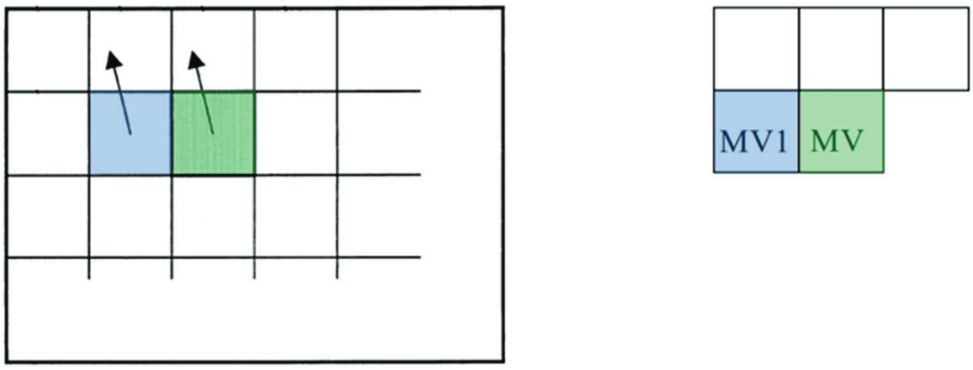
[redacted]

In the lefthand version, the macroblock whose motion vector is being determined has been shaded green, while six surrounding macroblocks have been colored purple. Ex. 11 (’808 patent) at NOKIA_CMPLITC00000031, Fig. 9. Consistent with the provisional and ’808 Column 19, lines 28-51, these purple “surrounding” macroblocks are the ones whose motion vectors the system will measure for the assessment of whether this motion is “active” or “non-active.” *Id.* at NOKIA_CMPLITC00000042, Col. 19, ll. 28-51; Ex. 8 (Provisional) at ¶¶ 34-37. The middle version of Figure 9, however, is colored to match one of the scenarios from the ’808 patent’s description of the “second embodiment.” In this middle figure, consistent with the description in Column 20, the only macroblock evaluated to classify the motion as “active” or “non-active” is the blue macroblock directly above the current macroblock. Ex. 11 at NOKIA_CMPLITC00000042, Col. 20, ll. 6-25. Finally, the righthand version of Figure 9 is colored to match the other scenario from the ’808 patent’s description of the “second embodiment,” namely where the only macroblock evaluated to classify the motion as “active” or “non-active” is the blue macroblock to the left of the current macroblock. *Id.* The ’808 specification confirms that in the “second embodiment” these two blue macroblocks are evaluated separately, not together. *Id.*

Again, no text in the provisional application addresses the “second embodiment” described in ’808 Column 20. *See* Ex. 8 (Provisional). No figure in the provisional application describes this different block-by-block technique. *Id*. When shown graphically, the ’808 patent’s block-by-block “second embodiment” looks very similar to the block-by-block approach defined for MPEG-1 and adopted into the standard:

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[redacted]



6. Nokia's Asserted Claims Cover the "Surrounding" Technique Disclosed in the Provisional—As Nokia and the ALJ Recognized—But Its Infringement Allegations Cover Only the Block-By-Block Approach Adopted into the Standard.

Here, Nokia has asserted claims 1-2, 6-7, 9-11, 15-16, 20-25, 28-30, 32, 34, 36, 39-41, 43-44, 47-49, 51-54, 58-60, and 62-65 against Respondents by targeting the H.264 standard. *See* Ex. 14 (Nokia's '808 Final Infringement Contentions). During claim construction, Nokia recognized these claims require analyzing "surrounding motion." *See, e.g.*, Parties' Updated Joint Proposed Claim Construction Chart, EDIS Document ID 815800 (Mar. 8, 2024) (Complainants proposing construction for "skip coding mode" as "a coding mode in which a zero (non-active) motion vector or a non-zero (active) motion vector is associated with each skip mode macroblock, depending on the characteristics of the motion in image segments *surrounding the macroblock in question*.") (emphasis added). So too does the claim construction order:

> Based on the parties' briefs and their arguments at the hearing, "skip coding mode" is construed as: a coding mode in which a zero (non-active) motion vector or a non-zero (active) motion vector is associated with each skip mode macroblock, depending on the characteristics of the motion in image segments surrounding the macroblock in question.

Order No. 38, Construing Claim Term, EDIS Document ID 818617 at 15 (Apr. 16, 2024).

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[redacted]

But Nokia's allegations are all directed to the block-by-block technique that was adopted into the standard through JVT-C027. *See, e.g.*, Ex. 14 (Nokia's '808 Final Infringement Contentions) at 378 (citing to H.264 standard section "8.4.1.1 Derivation process for ... skipped macroblocks"). None of Nokia's allegations relate to the provisional application's disclosed technique of examining six macroblocks that surround the macroblock in question. *See generally id*.

III. LEGAL STANDARD

Summary determination under Commission Rule 210.18, like summary judgment under Federal Rule of Civil Procedure 56, may be granted only where the evidence shows "there is no genuine issue as to any material fact and that the moving party is entitled to summary determination as a matter of law." 19 C.F.R. § 210.18(b). The movant bears the initial burden of establishing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the movant satisfies its initial burden, the burden shifts to the non-movant to demonstrate specific facts showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 255 (1986).

Summary determination shall be granted "if pleadings and any depositions answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law." 19 C.F.R. *§* 210.18(a)-(b). A party opposing summary determination "may not rest upon the mere allegations or denials of the opposing party's pleading, but the opposing party's response, by affidavits, answers to interrogatories, or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue of fact." 19 C.F.R. *§* 210.19(c); *see Celotex*, 477 at 324 (requiring nonmoving party to go beyond pleadings

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[redacted]

and provide evidence showing genuine issue of fact); *see also Amgen Inc. v. Int'l Trade Comm'n*, 565 F.3d 846, 849 (Fed. Cir. 2009) (equating standard for summary determination with those for summary judgment). Conclusory and unsupported statements cannot defeat a summary judgment motion. *See Enzo Biochem, Inc. v. Applera Corp.*, 599 F.3d 1325, 1337 (Fed. Cir. 2010).

IV. ARGUMENT

A. Nokia Cannot Demonstrate Infringement Under the Court's Claim Construction of "Skip Coding Mode," Which Properly Limits Nokia to Skip Mode Using the "Surrounding" Technique.

The infringement analysis turns on whether an accused product contains all elements of a properly construed claim from the asserted patent. Here, the claim construction dictates that the motion vector for the "skip mode" described in the asserted claims must be determined "depending on the characteristics of the motion in image segments surrounding the macroblock in question." Order No. 38 at 15. And that construction necessitates summary determination of noninfringement in Respondents' favor: the accused products do not practice or include this limitation.

As detailed above, H.264's skip mode does not—ever—decide the motion vector for the skip mode by looking at characteristics of the motion in the image segments *surrounding* the macroblock in question. In its infringement contentions, Nokia has identified only portions of the H.264 standard directed to analyzing motion vectors on a block-by-block basis, and not to analyzing characteristics of motion among image segments in a region surrounding the current image segment. Section 8.4.1.1 of the H.264 standard explains that the "motion vector mvL0 of a P_Skip macroblock" is set to zero if any of the following conditions are true: *neighbor* macroblock A is unavailable; or *neighbor* macroblock B is unavailable; or *neighbor* macroblock A has a zero motion vector and zero refIdxL0, or *neighbor* macroblock B has a zero motion vector and zero refIdxL0. Ex. 15 (H.264 Standard) at NOK_AMHP_ITC00045026, Section 8.4.1.1.1 (emphasis

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added). In other words, the standard considers neighbor blocks on a block-by-block basis to determine whether mvL0 should be set to zero; it never uses characteristics of motion of image segments in a region surrounding the current image segment to determine whether to assign a zero or non-zero motion vector. As such, Nokia's contention that "depending on the characteristics of the motion in image segments surrounding the macroblock in question" is limited to analyzing a single, previously coded neighboring block fails. Such an embodiment does not analyze characteristics of the motion in image segments, much less would image segments surrounding the macroblock in question.

Moreover, determining that a neighboring macroblock to the left has a zero motion vector does not indicate if there is motion in a macroblock above, or above and right, or above and left. Section 8.4.1.1 of H.264 only looks at one macroblock at a time, and two macroblocks total, to decide whether to assign a zero (non-active) motion vector or a nonzero (active) motion vector associated with each skip mode macroblock. Analyzed in isolation, each of those two neighboring macroblocks is not "surrounding" the macroblock being encoded/decoded under the plain and ordinary meaning of "surrounding". "Surrounding" requires all the macroblocks illustrated in Nokia's provisional—and certainly more than a single macroblock.

Given that the H.264 standard, and all of Respondents' accused products, lack this required element present in all the asserted claims, summary determination of noninfringement is appropriate.

B. Because Nokia Added the Block-By-Block Approach as New Matter, It Has No Support in the Provisional and the Asserted Claims Should Be Afforded a March 15, 2003 Priority Date.

As discussed above, the '808 patent claims when properly construed are limited to a skip mode using the "surrounding" approach, and Respondents do not infringe. Given Nokia's

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insistence on reading the '808 patent against the block-by-block approach utilized by the industry since MPEG-1, however, the asserted claims are also invalid. Which reference yields that invalidity result turns on the date afforded to the asserted claims. Nokia's effort to capture the H.264 standard with its asserted claims demonstrates that they are entitled to the March 15, 2003 date of the non-provisional '808 application only, *not* the date of the earlier provisional.

It is axiomatic that, to obtain the benefit of a provisional application's date, a patent claim must be supported by the provisional application's disclosure. 35 U.S.C. § 119(e). The provisional must satisfy the requirements of 35 U.S.C. § 112 with respect to each claim for which priority is sought. *Id.* "[T]he specification of the provisional must 'contain a written description of the invention and the manner and process of making and using it, in such full, clear, concise, and exact terms,' 35 U.S.C. § 112 ¶ 1, to enable an ordinarily skilled artisan to practice the invention claimed in the non-provisional application." *New Railhead Mfg., L.L.C. v. Vermeer Mfg. Co.*, 298 F.3d 1290, 1294 (Fed. Cir. 2002); *see also Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997) ("One shows that one is 'in possession' of the invention by describing the invention, with all its claimed limitations, not that which makes it obvious."). Although compliance with the written description requirement is a question of fact, it is amenable to summary determination where, as here, no reasonable fact finder could return a verdict for the non-moving party. *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1307 (Fed. Cir. 2008).

Here, Nokia cannot show that its asserted claims are supported in the March 2002 provisional. Every asserted claim relates to the '808 patent's so-called "second embodiment"—the one that Nokia added after it was adopted into the standard. That embodiment purports to apply two conditional statements to the macroblocks directly to the left and directly above the macroblock in question, and to do so on an individual block-by-block basis. The text of the

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provisional *never* mentions those two conditional statements. The text of the provisional *never* addresses performing motion analysis block-by-block, either. No figure from the provisional depicts this block-by-block approach. There is no mention of deciding zero/non-zero based on "availability" of a macroblock as required in the first condition or deciding based on whether a macroblock "uses the latest picture as reference" as required in the second condition. Instead, the *only* disclosure in the provisional is for a three-step method applied to all six macroblocks surrounding the macroblock in question at the same time. Nokia is limited to the four corners of its provisional disclosure for anything that is "essential" to patentability. Nokia's "incorporation by reference" of two non-patent documents written by others, Joint Model Number 1 and Global Motion Vector Coding (GMVC), does nothing to augment the provisional application's text and figures. 37 CFR § 1.57(d) ("'Essential material' may be incorporated by reference, but only by way of an incorporation by reference to a U.S. patent or U.S. patent application publication…. 'Essential material' is material that is necessary to: (1) Provide a written description….").

Because the provisional does not contain anything about the "second embodiment," Nokia is not entitled to the provisional priority date for claims related to that embodiment. Accordingly, summary determination should be granted that the critical date for any claims reading on the second embodiment—which includes all claims asserted in this investigation—is the filing date of the '808 patent, i.e., March 15, 2003.

C. Under a March 15, 2003 Priority Date, the Asserted Claims Are Invalid Over Multiple References, Including a Draft of H.264.

If the priority date for the claims asserted against Respondents are afforded the filing date of the '808 application—and not the date of the provisional—the draft version of the H.264

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standard (known as JVT-F100)[5] anticipates the asserted claims. That is why Respondents are raising this priority issue and seeking summary determination: comparing the asserted claims to H.264 is extremely straightforward.[6]

H.264 draft JVT-F100, formally entitled "Study of Final Committee Draft of Joint Video Specification (ITU-T Rec. H.264 | ISO/IEC 14496-10 AVC)," was published on February 16, 2003. Ex. 10 (JVT-F100). If, as Nokia contends, H.264 standard-compliant products (i.e., those using a block-by-block analysis) infringe the asserted claims of the '808 patent, then JVT-F100 itself would invalidate those same claims, because block-by-block analysis is not disclosed in the provisional and was not included in Nokia's patent application until *after* it was published in the standard. Below, the '808 patent's independent claims[7] are mapped to portions of JVT-F100 as an

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[5] JVT-F100 is prior art under pre-AIA 35 U.S.C. § 102(a) because it was published before the filing date of Application No. 10/390,549 that became the '808 patent and is the collective work of the JVT. To the extent Nokia contends JVT-C027 shows invention prior to JVT-F100, it is the work of another inventive entity including author Marta Karczewicz and therefore is also prior art to the '808 patent and not a document showing conception to the '808 patent. *See, e.g., Duncan Parking Techs., Inc. v. IPS Group, Inc.*, 914 F.3d 1347, 1352–53, 1357 (Fed. Cir. 2019) (for a patent naming as inventors King, Hunter, Hall, and Jones and a reference naming as inventors King and Schwarz: "If Schwarz is a joint inventor of the anticipating disclosure, then it is 'by another.'").

[6] Even if the ALJ finds that the block-by-block approach is somehow incorporated into the provisional despite the complete absence of any text or figures disclosing it, that will not save the '808 patent. At most, granting all claims of the '808 patent priority back to the provisional application's date will narrow the field of prior art that invalidates those claims. For example, MPEG-1, as discussed above, disclosed a block-by-block skip mode long ago. For brevity's sake Respondents have not incorporated every prior art reference into this motion, but those additional references can and will be presented at the hearing, if necessary.

[7] Nokia is currently asserting thirty-nine claims from the '808 patent alone, all of which can be resolved on this motion for summary determination. Recognizing, however, the impossibility of trying so many claims at the hearing in this matter and noting how Nokia has ultimately limited its claims in other litigation, Respondents have repeatedly pressed Nokia to narrow its claims in this Investigation to a manageable set. To date, unfortunately, Nokia has refused. Nevertheless, for brevity's sake here, Respondents will limit the body of the motion to the four independent claims being asserted from the '808 patent. The remaining thirty-five dependent claims add trivial limitations and fall on the same grounds and are addressed in Exhibit 16 hereto.

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exemplary comparison using the same cites to the portions of H.264 Nokia identifies as evidence of infringement in its infringement contentions. A claim chart of all asserted claims with complete support for each claim is attached as Exhibit 16.

1. H.264 Draft JVT-F100 Anticipates '808 Independent Encoding Claim 1.

The preamble of claim 1 requires a "method of encoding a video sequence, the method comprising." There is no dispute JVT-F100 discloses a method of encoding a video sequence. Section 0.2 is entitled "Purpose" and states, "This Recommendation | International Standard was developed in response to the growing need for higher compression of moving pictures for various applications…. It is designed to enable the use of the coded video representation." Ex. 10 (JVT-F100) at RESPNOKIA_00003407, Sec. 0.2. Section 3.11 defines "bitstream" as "a sequence of bits that forms the representation of the data and coded… frames." *Id*. at RESPNOKIA_00003411, Sec. 3.11.

Claim element 1[a] requires "assigning a skip coding mode to a first segment of a first frame of the sequence." JVT-F100 defines a "skipped macroblock" as a "macroblock for which no data is coded other than an indication that the macroblock is to be decoded as 'skipped.'" *Id*. at RESPNOKIA_00003416, Sec. 3.118.

Claim element 1[b] requires "assigning either a zero motion vector or a predicted non-zero motion vector for the skip coding mode for the first segment based at least in part on the motion information of a second segment neighboring the first segment." As discussed above, JVT-F100, in Section 8.4.1.1, teaches, for example, that the motion vector for a skip mode macroblock called "P_skip" is "set to zero" if the macroblock to the left has a zero motion vector ("both components of mvL0B are equal to zero") and that as a default the motion vector is assigned to the "predictor," which can be a non-zero motion vector. *Id*. at RESPNOKIA_00003505, Sec. 8.4.1.1.

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Claim element 1[c] requires "forming a prediction for the first segment with respect to a reference frame based at least in part on the assigned motion vector for the skip coding mode, wherein the assigned motion vector is one of the zero motion vector and the predicted non-zero motion vector." The '808 patent explains that INTER-coded blocks use motion compensation to form a prediction. Ex. 11 ('808 patent) at NOKIA_CMPLITC00000034, 3:18-28. JVT-F100 in Section 8.4 teaches an "Inter Prediction Process" that forms a prediction using a motion vector. Ex. 10 (JVT-F100) at RESPNOKIA_00003503, Sec. 8.4. The process includes deriving "motion vector components," which is the process in Sec. 8.4.1.1 discussed above, and then creating "Inter prediction samples," using the process described in Section 8.4.2 that inputs the macroblock and motion information and produces pixel values. *Id*.

Finally, claim element 1[d] requires "providing in an encoded bitstream an indication of the skip coding mode, wherein no further motion vector information for the first segment is coded in the encoded bitstream." As mentioned above, Section 3.11 defines "bitstream" as "a sequence of bits that forms the representation of the data and coded… frames." Ex. 10 (JVT-F100) at RESPNOKIA_00003411, Sec. 3.11. JVT-F100 identifies the bitstream semantics in Section 7 and specifically for how the P_skip coding mode is indicated in the bitstream in Section 7.4.4. *Id.* at RESPNOKIA_00003470, Sec. 7.4.4. JVT-F100 teaches no further motion information is coded in the bitstream because, as mentioned above, the definition of a "skipped macroblock," such as P_skip, is that it is a macroblock for which "no data is coded other than an indication that the macroblock is to be decoded as 'skipped.'" *Id.* at RESPNOKIA_00003416, Sec. 3.118.

2. H.264 Draft JVT-F100 Anticipates '808 Independent Encoding Claim 10.

Like claim 1, claim 10 relates to video encoder and the two claims share similar claim limitations. The preamble recites a "video encoder for encoding a video sequence, the encoder

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comprising….” The ’808 patent acknowledges a video encoder is taught in the prior art, as shown in “Fig. 1 (Prior Art).” Ex. 11 (’808 patent) at NOKIA_CMPLITC00000034, 3:44-50. There is no dispute JVT-F100 discloses an encoder for encoding a video sequence. Section 0.2 is entitled “Purpose” and states, “This Recommendation | International Standard was developed in response to the growing need for higher compression of moving pictures for various applications…. It is designed to enable the use of the coded video representation.” Ex. 10 (JVT-F100) at RESPNOKIA_00003407, Sec. 0.2. Section 3.11 defines “bitstream” as “a sequence of bits that forms the representation of the data and coded… frames.” *Id*. at RESPNOKIA_00003411, Sec. 3.11.

Claim element 10[a] requires “a coding controller for assigning a skip coding mode to a first segment.” The ’808 patent acknowledges a coding control is taught in the prior art, as shown in “Fig. 1 (Prior Art),” coding controller 160. Ex. 11 (’808 patent) at NOKIA_CMPLITC00000035, 5:54-6:44. JVT-F100 discloses and defines a “skipped macroblock” as a “macroblock for which no data is coded other than an indication that the macroblock is to be decoded as ‘skipped.’” Ex. 10 (JVT-F100) at RESPNOKIA_00003416, Sec. 3.118.

Claim element 10[b] requires “a motion estimation block for assigning either a zero motion vector or a predicted non-zero motion vector for the skip coding mode for the first segment based at least in part on the motion information of a second segment neighboring the first segment.” The ’808 patent acknowledges a motion estimation block is taught in the prior art as shown in “Fig. 1 (Prior Art),” motion estimation block 130. Ex. 11 (’808 patent) at NOKIA_CMPLITC00000036, 7:29-8:8. As discussed above, JVT-F100, in Section 8.4.1.1, teaches, for example, that the motion vector for a skip mode macroblock called “P_skip” is “set to

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zero" if the macroblock to the left has a zero motion vector ("both components of mvL0B are equal to zero") and that as a default the motion vector is assigned to the "predictor," which can be a non-zero motion vector. Ex. 10 (JVT-F100) at RESPNOKIA_00003505, Sec. 8.4.1.1.

Claim element 10[c] requires "forming a prediction for the first segment with respect to a reference frame based at least in part on the assigned motion vector for the skip coding mode, wherein the assigned motion vector is one of the zero motion vector and the predicted non-zero motion vector." The '808 patent explains that INTER-coded blocks use motion compensation to form a prediction. Ex. 11 ('808 patent) at NOKIA_CMPLITC00000034, 3:18-28. JVT-F100 in Section 8.4 teaches an "Inter Prediction Process" that forms a prediction using a motion vector. Ex. 10 (JVT-F100) at RESPNOKIA_00003503, Sec. 8.4. The process includes deriving "motion vector components," which is the process in Sec. 8.4.1.1 discussed above, and then creating "Inter prediction samples," using the process described in Section 8.4.2 that inputs the macroblock and motion information and produces pixel values. *Id*.

Finally, claim element 10[d] requires "a multiplexer for providing in an encoded bitstream an indication of the skip coding mode, wherein no further motion vector information for the first segment is coded in the encoded bitstream." The '808 patent acknowledges a multiplexer that forms a bitstream is taught in the prior art, as shown in "Fig. 1 (Prior Art)," video multiplexer 170. Ex. 11 ('808 patent) at NOKIA_CMPLITC00000034, 4:6-12. As mentioned above, Section 3.11 defines "bitstream" as "a sequence of bits that forms the representation of the data and coded… frames." Ex. 10 (JVT-F100) at RESPNOKIA_00003411, Sec. 3.11. JVT-F100 identifies the bitstream semantics in Section 7 and specifically for how the P_skip coding mode is indicated in the bitstream in Section 7.4.4. *Id*. at RESPNOKIA_00003470, Sec. 7.4.4. JVT-F100 teaches no further motion information is coded

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in the bitstream because, as mentioned above, the definition of a "skipped macroblock," such as P_skip, is that it is a macroblock for which "no data is coded other than an indication that the macroblock is to be decoded as 'skipped.'" *Id*. at RESPNOKIA_00003416, Sec. 3.118.

3. H.264 Draft JVT-F100 Anticipates '808 Independent Decoder Claims 7.

Claim 7 relates to a method of decoding but the steps are still like encoding claim 1. The preamble of claim 7 requires a "method of decoding an encoded video sequence, the method comprising:" There is no dispute JVT-F100 discloses a method of encoding a video sequence. Section 0.2 is entitled "Purpose" and states, "This Recommendation | International Standard was developed in response to the growing need for higher compression of moving pictures for various applications…. It is designed to enable the use of the coded video representation." Ex. 10 (JVT-F100) at RESPNOKIA_00003407, Sec. 0.2. Section 3.11 defines "bitstream" as "a sequence of bits that forms the representation of the data and coded… frames." *Id*. at RESPNOKIA_00003411, Sec. 3.11.

Claim element 7[a] requires "receiving an indication of a skip coding mode for a first segment." The '808 patent acknowledges a video demultiplexer for receiving a bitstream with a coding mode is taught in the prior art, as shown in "Fig. 2 (Prior Art)," video multiplex decoder 270. Ex. 11 ('808 patent) at NOKIA_CMPLITC00000036, 8:20-26. JVT-F100 defines a "skipped macroblock" as a "macroblock for which no data is coded other than an indication that the macroblock is to be decoded as 'skipped.'" Ex. 10 (JVT-F100) at RESPNOKIA_00003416, Sec. 3.118.

Claim element 1[b] requires "assigning either a zero motion vector or a predicted non-zero motion vector for the skip coding mode for the first segment based at least in part on the motion information of a second segment neighboring the first segment." As discussed above, JVT-F100,

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in Section 8.4.1.1, teaches, for example, that the motion vector for a skip mode macroblock called "P_skip" is "set to zero" if the macroblock to the left has a zero motion vector ("both components of mvL0B are equal to zero") and that as a default the motion vector is assigned to the "predictor," which can be a non-zero motion vector. *Id*. at RESPNOKIA_00003505, Sec. 8.4.1.1.

Finally, claim element 1[c] requires "forming a prediction for the first segment with respect to a reference frame based at least in part on the assigned motion vector for the skip coding mode, wherein the assigned motion vector is one of the zero motion vector and the predicted non-zero motion vector." The '808 patent explains that INTER-coded blocks use motion compensation to form a prediction. Ex. 11 ('808 patent) at NOKIA_CMPLITC00000034, 3:18-28. JVT-F100 in Section 8.4 teaches an "Inter Prediction Process" that forms a prediction using a motion vector. Ex. 10 (JVT-F100) at RESPNOKIA_00003503, Sec. 8.4. The process includes deriving "motion vector components," which is the process in Sec. 8.4.1.1 discussed above, and then creating "Inter prediction samples," using the process described in Section 8.4.2 that inputs the macroblock and motion information and produces pixel values. *Id*.

4. H.264 Draft JVT-F100 Anticipates '808 Independent Claim 16.

Claim 16 relates to a decoder but the limitations are also similar to claim 1. The preamble of claim 16 requires "A video decoder for decoding an encoded video sequence, the decoder comprising" There is no dispute JVT-F100 discloses a method of encoding a video sequence. Section 0.2 is entitled "Purpose" and states, "This Recommendation | International Standard was developed in response to the growing need for higher compression of moving pictures for various applications…. It is designed to enable the use of the coded video representation." Ex. 10 (JVT-F100) at RESPNOKIA_00003407, Sec. 0.2. Section 3.11 defines "bitstream" as "a sequence

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of bits that forms the representation of the data and coded… frames." *Id*. at RESPNOKIA_00003411, Sec. 3.11.

Claim element 16[a] requires "a demultiplexer for receiving an indication of a skip coding mode assigned to a first segment." The '808 patent acknowledges a video demultiplexer for receiving a bitstream with a coding mode is taught in the prior art, as shown in "Fig. 2 (Prior Art)," video multiplex decoder 270. Ex. 11 ('808 patent) at NOKIA_CMPLITC00000036, 8:20-26. JVT-F100 defines a "skipped macroblock" as a "macroblock for which no data is coded other than an indication that the macroblock is to be decoded as 'skipped.'" Ex. 10 (JVT-F100) at RESPNOKIA_00003416, Sec. 3.118.

Claim element 16[b] requires "a motion compensated prediction block for assigning either a zero motion vector or a predicted non-zero motion vector for the skip coding mode for the first segment based at least in part on the motion information of a second segment neighboring the first segment." The '808 patent acknowledges a motion compensated prediction block for determining motion vectors is in the prior art, as shown in "Fig. 2 (Prior Art)," motion compensated prediction block 240. Ex. 11 ('808 patent) at NOKIA_CMPLITC00000037, 9:33-10:22. As discussed above, JVT-F100, in Section 8.4.1.1, teaches, for example, that the motion vector for a skip mode macroblock called "P_skip" is "set to zero" if the macroblock to the left has a zero motion vector ("both components of mvL0B are equal to zero") and that as a default the motion vector is assigned to the "predictor," which can be a non-zero motion vector. Ex. 10 (JVT-F100) at RESPNOKIA_00003505, Sec. 8.4.1.1.

Finally, claim element 16[c] requires "a motion compensated prediction block for forming a prediction for the first segment with respect to a reference frame based at least in part on the assigned motion vector for the skip coding mode, wherein the assigned motion vector is one of the

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zero motion vector and the predicted non-zero motion vector." The '808 patent acknowledges a motion compensated prediction block for forming predictions is in the prior art, as shown in "Fig. 2 (Prior Art)," motion compensated prediction block 240. Ex. 11 ('808 patent) at NOKIA_CMPLITC00000037, 9:33-10:22. The '808 patent explains that INTER-coded blocks use motion compensation to form a prediction. *Id*. at NOKIA_CMPLITC00000034, 3:18-28. JVT-F100 in Section 8.4 teaches an "Inter Prediction Process" that forms a prediction using a motion vector. Ex. 10 (JVT-F100) at RESPNOKIA_00003503, Sec. 8.4). The process includes deriving "motion vector components," which is the process in Sec. 8.4.1.1 discussed above, and then creating "Inter prediction samples," using the process described in Section 8.4.2 that inputs the macroblock and motion information and produces pixel values. *Id*.

V. CONCLUSION

Respondents do not infringe because the accused products lack at least one required element present in all the asserted claims, i.e., they do not employ a skip mode that analyzes the motion of multiple surrounding macroblocks but instead perform a block-by-block analysis on one of two neighboring macroblocks. Moreover, Nokia's effort to read the claims on a block-by-block approach results in invalidity by the H.264 standard itself if Nokia is properly denied priority under the provisional application. For the foregoing reasons, Respondents respectfully request that summary determination be granted in their favor on the noninfringement and/or priority and invalidity issues raised above.

RESPONDENTS' GROUND RULE 1.7 CERTIFICATION

Pursuant to Ground Rule 1.7, on behalf of Respondents Amazon.com, Inc., Amazon.com Services LLC, and HP Inc., the undersigned hereby certifies that Respondents' Motion for Summary Determination complies with the word-count limitations, and contains 7,647 words

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according to the word-processing program used to prepare the brief (Microsoft Word). The word count includes footnotes. The word count does not include captions, table of contents, table of authorities, words in figures, the word count certificate, the signature block, or the certificate of service.

Dated: May 24, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of **RESPONDENTS' MOTION FOR SUMMARY DETERMINATION THE ASSERTED CLAIMS OF THE '808 PATENT ARE EITHER NOT INFRINGED OR ARE INVALID** has been served on June 4, 2024, as indicated, on the following:

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