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Subject: Request for Reply briefing in Apple Inc. (Petitioner) v. Smith Interface Technologies (Patent Owner), Case No. IPR2024-01091
Date: Monday, December 9, 2024 5:07:20 PM

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Your Honors,

Petitioner respectfully requests authorization for briefing in the form of a 3-page Reply to Patent Owner’s Preliminary Response (POPR) in IPR2024-01091. If Petitioner’s request is granted, Petitioner does not oppose Patent Owner’s submission of an equivalent Sur-Reply. Petitioner respectfully submits that no new evidence should accompany either the Reply or Sur-Reply.

If this request is granted, the Reply would address arguments in the POPR related to independent claims 1, 32, 34, and 64 regarding the claim term “[a]/[the] magnitude of [a]/[the] duration of the gesture.” *See, e.g.*, POPR at 5–7. For example, the Reply would address the POPR’s statement that “the plain and ordinary meaning of ‘magnitude of [a] / [the] duration of the gesture’ is the magnitude of a period of time beginning at the start of the gesture through the point in time at which the evaluation takes place.” POPR at 5 (emphasis in original). The Reply would also address the POPR’s statement that “the plain and ordinary meaning of ‘the duration of the gesture’ requires using the same starting point for each of the three recitations of” [a] / [the] “duration.” POPR at 6–7 (emphasis in the original).

Petitioner respectfully submits that good cause for further briefing on these issues exists, at least because briefing would clarify the record and aid the Board in deliberations on issues that are potentially dispositive to institution. For example, Petitioner could not have reasonably anticipated Patent Owner’s assertion that the claim requires a common gesture for “[a] / [the] gesture” but only requires a common starting point, and not a common ending point, for “[a] / [the] magnitude of [a] / [the] duration.” If requested by the Board, Petitioner will provide further explanation of good cause but limits the present narrative out of respect for the Board’s consistent request for emails to be limited to defining issues and thus omit argumentative content.

In connection with this request, Petitioner proposes the briefing schedule outlined below:

Preliminary Response Filed	Institution Deadline	Petitioner’s Reply Deadline	Patent Owner’s Sur-Reply Deadline
10/18/24	1/18/25	Within 5 business days of the Board’s authorization	Within 5 business days of Petitioner’s Reply

Petitioner notes that any delay in its request for briefing was a result of the number and scope of patents in dispute between the parties and effort on the part of Petitioner to minimize the total number of pre-institution requests in view of the number of petitions, which required, in some cases, waiting for the filing of later POPRs.

Petitioner and Patent Owner have met and conferred. Patent Owner opposes this request. The POPR, filed October 18, responds directly to Petitioner’s grounds based on the plain language of the claims.

Should the Board desire a call to discuss this request, the parties are available on Tuesday (12/10) from 10 am – 1 pm or 2-4 pm EST, Wednesday (12/11) from 10-11 am or 2-3:30 pm EST, or Thursday (12/12) from 9-11 am or 3:30-6 pm EST.

Respectfully,
Jenny

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