

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

SMITH INTERFACE TECHNOLOGIES, LLC,
Patent Owner.

IPR2024-01091
Patent No. 10,936,114 B1

Before JEFFREY S. SMITH, BARBARA A. BENOIT, and
NATHAN A. ENGELS, *Administrative Patent Judges*.

BENOIT, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

In an e-mail to the Board, Petitioner requests authorization to a three-page preliminary reply to Patent Owner's Preliminary Response (Paper 6) to address the claim term "[a]/[the] magnitude of [a]/[the] duration of the gesture." Ex. 3001. Patent Owner opposes Petitioner's request. *Id.*

Our rules permit a petitioner to request authorization to file a reply to a preliminary response upon a showing of good cause. 37 C.F.R. § 42.108(c) (2023). Petitioner's e-mail states, among other things, 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." Ex. 3001.

Patent Owner's Preliminary Response was filed on October 18, 2024, and Petitioner sent its email to the Board's Trial mailbox on December 9, 2024. *Id.*; *see also* Paper 6 (filed 10/18/2024). Petitioner's request is untimely on its face.

Petitioner offers the excuse 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." Ex. 3001. Petitioner, however, does not explain any relation between this request for additional briefing and other later-filed POPRs. This silence is particularly notable because, as Petitioner indicates in its email, the Patent Owner Preliminary Response "responds directly to Petitioner's grounds based on the plain language of the claims." *Id.* It is hard to understand, without further explanation, how waiting for later-filed POPRs is warranted before

requesting the opportunity to respond to arguments based on the plain language of the claims only at issue in this proceeding.

Furthermore, Petitioner's proposed briefing schedule is untenable. Petitioner proposes that its briefing would be due "[w]ithin 5 business days of the Board's authorization" and Patent Owner's briefing would be due "[w]ithin 5 business days of Petitioner's Reply." *Id.* Even with such abbreviated time frames of five days for each party, the earliest due dates for authorized briefing would be December 17, 2024 for Petitioner and December 24, 2024 for Patent Owner. That would leave the Board only three-and-a-half weeks for issuing an institution decision no later than Friday, January 17, 2025 to meet the statutory deadline, which is not extendable. 35 U.S.C. § 314(b) (requiring a determination whether to institute an *inter partes* review "within 3 months after . . . receiving a preliminary response to the petition").

Although Petitioner offered some timeframes when the parties are available "should the Board desire a call to discuss this request," we do not find a call to be necessary in the particular circumstances of this case.

Accordingly, we find that Petitioner has not shown good cause for additional briefing in light of the nearly two-month delay of Petitioner in requesting additional briefing, which would leave the Board less than a month to issue an institution decision after the completion of the requested briefing.

V. ORDER

In view of the foregoing, it is hereby:

ORDERED that Petitioner's request for authorization to file a reply to Patent Owner's Preliminary Response is denied.

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PETITIONER:

W. Karl Renner
Jennifer Huang
FISH & RICHARDSON P.C.
axf-ptab@fr.com
jhuang@fr.com

PATENT OWNER:

Eagle Robinson
Daniel Leventhal
Chad Wallis
NORTON ROSE FULBRIGHT US LLP
eagle.robinson@nortonrosefulbright.com
daniel.leventhal@nortonrosefulbright.com
chad.wallis@nortonrosefulbright.com