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Transcript of Hearing

Date: October 8, 2025

Case: BOE Technology Group Co., LTD -v- Optronix Sciences LLC

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4
5 BOE Technology Group Co., LTD.

6 Petitioner,
7 v.
8 Optronic Sciences LLC
9 Patent Owner.

10 Inter Partes Review No.: IPR2024-01132

11 U.S. Patent No. 7,586,121

12
13 TELEPHONIC HEARING

14 WEDNESDAY, OCTOBER 8, 2025

15 9:01 A.M.

16 BOARD:

17 JUDGE THU A. DANG

18 JUDGE BENJAMIN D. M. WOOD

19 JUDGE BRIAN J. MCNAMARA

20 JOB NO.: 604171

21 PAGES: 1 - 42

22 REPORTED BY: KARISA EKENSEAIR, CCR RPR RMR RDR

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A P P E A R A N C E S

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1 P R O C E E D I N G S

2 JUDGE McNAMARA: Mr. Limbach, you -- the
3 petitioner requested this conference. Can you --
4 I guess I should note this is for IPR2024-1132,
5 BOE versus -- sorry.

6 MR. LIMBACH: Optronic.

7 JUDGE McNAMARA: Thank you. Yes.
8 Optronic Sciences. Thank you.

9 And Mr. Limbach, you -- the petitioner
10 requested this conference, so why don't you start
11 off and let us know what you're requesting.

12 MR. LIMBACH: Okay. Your Honor. And I
13 also want to indicate that Brian Erickson from our
14 firm is also on the line.

15 So there are three basic issues here. The
16 first is simple. It is the petitioner requesting
17 leave to enter the Board's standard protective
18 order for the related litigation materials, and
19 that is unopposed.

20 The second is, the petitioner requests
21 leave to submit a three-sentence excerpt from its
22 August 14, 2025 discovery response. This has to

1 do --

2 JUDGE McNAMARA: Mr. Limbach -- Mr.
3 Limbach, one second.

4 Can the people that are not speaking
5 please put themselves on mute? Because some
6 people are getting an echo and it just helps with
7 the ability to hear. I'm sorry. Go ahead. I'm
8 sorry to interrupt you.

9 MR. LIMBACH: No problem. Thank you.

10 So the day before, or evening before
11 Patent Owners' sur reply was due, they requested
12 that the petitioner make certain interrogatory
13 response public. And we conferred with our client
14 overnight in Asia and responded the following day
15 that they were unwilling to do so.

16 Patent Owner never requested protective
17 order which we would -- which would have been fine
18 and the way to handle it. The passage is just two
19 substantive sentences and the parties can explain
20 their relative -- the positions on the relevance
21 and very succinctly.

22 And this goes to the several instances

1 where the patent owner claimed that Petitioner was
2 violating its duty of disclosure. And so we think
3 it's important that the Board have the ability to
4 look into that issue.

5 The second -- the last issue is the
6 petitioner requests leave to submit excerpts from
7 a September 30th deposition of Patent Owners'
8 litigation expert and certain exhibits thereto,
9 which is an expert report and articles cited in
10 that report to show that the patent owner is
11 making directly punitive arguments regarding the
12 construction of passivation layer in this IPR for
13 validity relative to the related litigation for
14 the purposes of infringement.

15 The petitioner contends that the
16 information could not have been submitted before
17 September 30 because that's when Patent Owners
18 disclosed for the first time through the
19 deposition the contradictory claim construction
20 position that justifies the August 25th
21 infringement position in the expert report.

22 The issue here is passivation layer. It's

1 a very important claim term in this IPR. And the
2 petitioner is taking the position that Patent
3 Owner has disclaimed organic resins because
4 they've argued that organic resins cannot be a
5 passivation layer. Yet, on August 25th, Patent
6 Owner's expert accused an organic resin of
7 infringement for the very first time. No claim
8 construction was offered and it was a
9 single-sentence allegation.

10 And it wasn't until the September 30th
11 deposition that we were able to ask questions
12 about the nature of the allegation. And we were
13 surprised to find that Patent Owner had shielded
14 its expert from the IPR. He had no idea that this
15 argument had been made and it was directly
16 contradictory to his opinions in the litigation
17 case.

18 And so we think it's important that the
19 Board see the diametrically opposed positions in
20 the IPR and in the related litigation.

21 We believe that a three-page brief would
22 be sufficient to bring this issue to the Board.

1 And I know that it is opposed by Patent Owner and
2 they requested -- we want to bring these issues to
3 the Board. They want to have additional expert
4 reports and all these -- an expanded timeline and
5 we don't think that that's justified in this case.

6 It is -- it should be noted that in the
7 deposition, there was no redirect that -- that the
8 testimony is clear. The opinions are clear. And
9 the issue here is clearly, what is the position
10 that the patent owners made in the litigation.

11 And additional expert reports in this IPR will not
12 bring any additional light to that.

13 And so that is what the petitioner is
14 requesting at this time.

15 JUDGE McNAMARA: Thank you, Mr. Limbach.

16 I had two questions, just for clarity.

17 Are you asking to submit two three-page
18 papers, one for the rog response and one for the
19 deposition testimony, or just one three-page
20 paper?

21 MR. LIMBACH: Yeah, I'm sorry I was not
22 clear.

1 So it would be Patent Owner can bring a
2 one-page paper on their -- on the three-sentence
3 excerpt for the interrogatory response. We would
4 bring one-page paper on the passivation layer
5 issue. So it would be simultaneous.

6 JUDGE McNAMARA: Great. Thank you.

7 MR. LIMBACH: And we -- we could entertain
8 a brief reply to those as well.

9 JUDGE McNAMARA: And what kind of timeline
10 were you looking at?

11 MR. LIMBACH: It could be immediate as far
12 as we're concerned. We could -- it could be as
13 early as Friday or Monday, whatever the Board
14 finds acceptable.

15 JUDGE McNAMARA: And -- and do you think
16 that a delay in the hearing is necessary?

17 MR. LIMBACH: We do not. We believe that
18 these issues are very succinct. That's why the
19 page limit is so small and we could work with the
20 patent owner to push back the slide exchange by a
21 few days, if needed. These issues are very --
22 very clear, very succinct, and would not require

1 any delay in the schedule.

2 JUDGE McNAMARA: Great. Thank you very
3 much.

4 Mr. Tong, could we get the patent owner's
5 position on this?

6 MR. TONG: Yes, Your Honor. So this is
7 Peter Tong from Russ August speaking.

8 To start off, I do confirm that the patent
9 owner has no objection to entering the Board's
10 standard protective order, so that issue is
11 unopposed.

12 For the second request related to the
13 interrogatory responses, we do not oppose that in
14 substance. Our only concern is whether or not
15 there's going to be sufficient time to brief all
16 the issues before the oral argument, given how
17 close it is.

18 Oral argument is set for October 22nd
19 which is toward the end of this month and the
20 parties are going to need to --

21 JUDGE McNAMARA: I think it's the 27th. I
22 said, I'm sorry, I think it's the 27th.

1 MR. TONG: The 27th. That's right, Your
2 Honor.

3 JUDGE McNAMARA: Sorry.

4 MR. TONG: If I said -- if I said 20 -- if
5 it sounded like I said "22nd," that was just an
6 artifact of the phone.

7 JUDGE McNAMARA: Sorry, just want to make
8 sure it's clear. It gave me a heart attack when
9 you said "the 22nd." Go ahead.

10 MR. TONG: I apologize. I did said
11 "27th," and if it did not come through, that's
12 probably just bad phone quality.

13 But the parties are filing their motion to
14 exclude soon and they've got other interim
15 deadlines. So it's going to be kind of messy to
16 set the briefing schedule. And we have a holiday
17 on the 13th coming up. And I'm -- I'm going to be
18 out from the 22nd through the 24th for the Eastern
19 District of Texas Bench Bar. On the 25th, I will
20 be traveling to DC. So there's just very little
21 time to get all of this briefing in.

22 Now, if we do end up extending oral

1 arguments and pushing that back, then we will not
2 oppose that request. There will be plenty of time
3 for briefing. So that's our position on Number 2.
4 We do not oppose it in principle; we oppose it
5 only under the time pressures of the current oral
6 argument.

7 So as to Request No. 3, the request to
8 submit allegedly contradictory evidence, let me
9 start by saying what this is: This is, as far as
10 we understand, it is certain paragraphs from the
11 expert report of Dr. Fontecchio, who has not yet
12 appeared in this IPR. It's paragraphs 219 to 223
13 and 273.

14 And we understand that the petitioner is
15 also taking leave to submit a journal article from
16 2012 referenced in his report. We oppose this
17 because of three reasons.

18 First, this looks like a blatant attempt
19 by the petitioner to add new evidence and a
20 completely new ground of invalidity theory after
21 the close of discovery to plug up holes in its
22 case related to the passivation layer under the

1 guise of inconsistency.

2 The law, 35 USC 312, requires that all
3 this evidence should have been included with the
4 petition, and so this is just plainly not allowed.

5 As context, the petition had this fatal
6 problem with dependent claims 3 and 4, which
7 recited a passivation layer and a capping layer.
8 And the petition on page 19 set forth a theory
9 that a POSITA would understand in the '121 patent
10 that there is no special meaning described a
11 passivation layer and capping layer, and that's a
12 direct quote.

13 So in our opposition, our expert,
14 Dr. Bretschneider, said that all they can point to
15 is on organic resin in the prior art, not a
16 passivation layer or a capping layer. And that's
17 why Petitioner apparently wants the opportunity to
18 submit this new evidence to plug up this big hole
19 in their theory.

20 And what the evidence actually is in -- in
21 Dr. Fontecchio's report is, it's related to an
22 organic material. It's not an organic resin.

1 The -- so that brings me to point number
2 2. There is no actual contradiction. This report
3 was served on August 25th, 2025. They could have
4 raised it then and there. Whatever theory they've
5 come up with recently is not a September 30th
6 issue. They are saying that whatever
7 Dr. Fontechhio is pointing to is an organic resin.
8 Dr. Fontechhio didn't say that. That's
9 Petitioner's own interpretation which, you know,
10 they're entitled to have their own opinion.

11 But Dr. Fontechhio is pointing to BOE's
12 only technology in this infringement report. And
13 this -- if BOE really believed that he's pointing
14 to an inorganic resin, BOE has known that since
15 October 26th because BOE, you know, in theory,
16 should have known what its own product is made out
17 of.

18 So it's improper that they've waited this
19 long. And just timing, this is not -- that
20 there's not time left for us to do this.

21 In the report, it does talk about a
22 different material that is not in the prior art

1 and that's not inconsistent with our argument in
2 IPR, Petitioner has to make some logical leaps
3 about the accused material. And we can get into
4 that in briefing, but as a preview the accused
5 material can, in some cases when further combined
6 with other chemicals and used in a certain way, be
7 used as an organic resin. But that's not in the
8 report and there's no evidence that I can see of
9 that in any of these materials.

10 So that is to say, A, it's untimely; and
11 B, there's no actual contradiction.

12 Now, we're not scared of this. We're not
13 hiding it. I could -- I would suggest that if the
14 Board really wants to see what's in these
15 paragraphs of Dr. Fontecchio's report, the Board
16 could review them in camera before making a
17 decision as to whether or not they're relevant at
18 all.

19 So you know, these are two primary bases
20 of our opinions: It's untimely, and no new
21 invalidity theory and no new evidence should be
22 allowed. So that's Dr. Fontecchio's infringement

1 report.

2 The other item which is this 2012 paper
3 that is referenced in Dr. Fontecchio's report, the
4 board should rule on that separately. That should
5 absolutely not come in because it was a publicly
6 available journal article. It should have been
7 included with the initial petition. It's just not
8 allowed under 35 USC, I believe it was 312,
9 required that.

10 JUDGE McNAMARA: I mean, I -- that last
11 argument, I -- I've got to say doesn't -- it seems
12 kind of off to me because, I mean, petitioners
13 routinely submit additional journal articles and
14 patents as evidence in reply. It doesn't form
15 part of the grounds, but it can be used for
16 rebuttal.

17 I guess, I'm having trouble understanding
18 why -- why a petitioner couldn't submit additional
19 evidence like that, such as a journal article, you
20 know, after the petition is filed.

21 MR. TONG: Because they're really trying
22 to use it to kind of create a new ground of

1 invalidity and --

2 JUDGE McNAMARA: I mean --

3 MR. TONG: -- they need to modify their
4 obviousness theory in view of this and to raise a
5 new ground of invalidity well after briefing is
6 concluded is just -- that's improper under the
7 law.

8 JUDGE McNAMARA: I -- I agree with that.
9 But I guess, isn't that for us to decide if -- if
10 they're trying to use this as a new ground of
11 invalidity or whether they're using it as rebuttal
12 evidence? I mean, it seems like -- it seems like
13 it's not improper for them to submit it, but it is
14 improper for them to use it to form a new ground,
15 right? And that's what you're saying.

16 MR. TONG: Right. Right, Your Honor. And
17 that -- that's -- that's going to be a very hard
18 line for them to draw because it doesn't actually
19 fix -- I don't know how they can actually fix
20 their underlying issue without creating a new
21 theory of invalidity. If the Board can craft some
22 way to enforce that distinction in its order,

1 maybe the Board can address it. But even then, we
2 still have the timing issues that I want to get
3 to.

4 So as I suggested earlier, the Board could
5 look at Dr. Fontecchio's report in camera before
6 making a decision. But if it does come in, then
7 Dr. Fontecchio should be given a fair opportunity
8 to respond. He has not filed anything in this IPR
9 yet and he needs time to point out the gap in
10 Petitioner's logic if they're misinterpreting
11 things.

12 JUDGE McNAMARA: I guess again, Mr. Tong,
13 I'm having a little trouble here because I guess
14 is he responding to himself? He's going to rebut
15 his own testimony?

16 MR. TONG: No, Your Honor.

17 JUDGE McNAMARA: I'm being a little
18 facetious, but that -- I mean, that kind of
19 argument seems a little -- a little outlandish to
20 me, that he -- I mean, it's his own words. I
21 guess -- I guess why does he need to submit a
22 declaration about his own testimony?

1 MR. TONG: Your Honor, it would be to
2 explain how Petitioner is misinterpreting his
3 testimony.

4 We believe that his testimony is clear on
5 its face which is why we're happy to show you
6 these paragraphs of his report in camera. We
7 believe that if you look at these, you'll just
8 wonder, okay, what does this have to do with
9 anything; it's not contradictory.

10 But Petitioner is going to make the
11 argument that, pathological guess, is what we
12 understand. And Dr. Fontecchio has to be able to
13 say, okay, they've misinterpreted my sentence;
14 they're making these logical mistakes; here's what
15 they're doing wrong and, you know, this isn't the
16 context for it.

17 You haven't heard from Dr. Fontecchio yet
18 and it would be unfair for him not to have a
19 chance to provide the Board with the full context.

20 So I would ask that, at minimum, the Board
21 hold off on, you know, forming some sort of
22 opinion that he said something contradictory until

1 at least the Board reviews the paragraphs in
2 camera. He did not say that the accused material
3 is an organic resin. That's not in these
4 paragraphs. That results from Petitioner's, what
5 we -- I guess logical fallacies in interpreting
6 his report.

7 JUDGE McNAMARA: I mean, I -- I mean, my
8 only pushback is -- I mean, it seems like -- I
9 mean, the petitioner is not going to be able to
10 submit its own expert. So you know, they're going
11 to make their attorney arguments about what it
12 should mean. And I guess, why can't Patent Owner
13 respond with its arguments, you know, to point out
14 the logical problems in, you know, Petitioner's
15 attorney argument? Why isn't that sufficient?

16 MR. TONG: So because I don't know exactly
17 what argument they're going to make yet, it may
18 very well be the case that it is something that I
19 could rebut with attorney argument. But depending
20 on what exactly they misconstrue from his expert
21 report, what exactly they say about him, we may
22 need him to come and clarify, you know, what the

1 issue is.

2 And this has to do with a particular type
3 of accused material that is used in BOE's product.
4 And it gets into chemical processes and exactly
5 what chemical processes need to be done in order
6 to make something into a resin as opposed to not a
7 resin. So there is some amount of chemistry that
8 is involved in the arguments that's foreseeable.

9 With that explanation -- go ahead, Your
10 Honor.

11 JUDGE McNAMARA: I mean, let's set
12 aside -- can we start with the -- the
13 interrogatory response? How much time would you
14 need -- I mean, is the one-page response
15 that -- or the one-page that you would get that
16 the petitioner is proposing, is that sufficient
17 for the interrogatory response issue?

18 MR. TONG: Your Honor, from --

19 MR. LIMBACH: I'm sorry, may I interrupt?
20 I misspoke if I said one page. I'm sorry, I meant
21 to say three was the proposal. And that's my
22 fault, so I apologize for that.

1 JUDGE McNAMARA: No problem. So three
2 pages, sorry. Thank you, Mr. Limbach. Sorry
3 about that.

4 Yes, go ahead, Mr. Tong.

5 Is that okay in how much time would you
6 need --

7 MR. TONG: Your Honor -- Your Honor, three
8 pages, we agree would be enough. One page is not
9 enough, but it seems like we're in agreement on
10 three. We would probably need about a week to get
11 that on file, given the holiday on Monday. And
12 if -- maybe not even a week, maybe the -- well,
13 either the 14th or 15th. And if -- I'm just
14 looking at the calendar.

15 I don't know how quickly Petitioner could
16 get its response on file, if it wants to do one,
17 but I just ask to be given a fair opportunity to
18 prepare my reply after, keeping in mind, that I'm
19 going to be occupied from the 22nd onward. So if
20 Petitioner could get its response in by the 17th,
21 it might be workable. But otherwise, we're -- I
22 think we need to push a little longer.

1 And that may be a moot issue depending on
2 what we decide to do with the bigger request
3 related to Dr. Fontecchio.

4 And to provide some more context, so I
5 don't know what Petitioner is going to say about
6 Dr. Fontecchio but we need, you know, a full and
7 fair opportunity to respond. Three pages will
8 probably work, but we need a -- at least a full
9 week. Really, we probably need three weeks or
10 four, depending on what they say and depending on
11 how technical the arguments get related to what's
12 a resin and what's not a resin, and how much
13 evidence Dr. Fontecchio needs to gather to say,
14 like, the accused material is only a resin when
15 you further do the -- you know, combine it with
16 these chemicals and use it in these types of
17 processes.

18 So he may need to actually go out and,
19 like, search records and that will just take
20 longer. We're losing a week due to the Bench Bar
21 and due to travel related to oral argument.

22 And if we push oral argument, there are

1 -- there is another set of cases between
2 BOE -- another set of IPRs between BOE and
3 Optronic. This could possibly be combined with
4 the other hearings that are set, but --

5 JUDGE McNAMARA: Which --

6 MR. TONG: What was that?

7 JUDGE McNAMARA: What's the case number of
8 that?

9 MR. TONG: IPR2024 --

10 JUDGE McNAMARA: Is this the 13 --

11 MR. TONG: 131 --

12 JUDGE McNAMARA: 1316?

13 MR. TONG: 1316. That's right, Your
14 Honor.

15 So this could be pushed -- oral argument
16 might be pushed out to November 20th in that case.

17 JUDGE McNAMARA: Okay.

18 MR. TONG: And this might -- and just as
19 preview, this -- the district court has set trial
20 for January -- January 6th, the first week of
21 January. So depending on how soon the Board
22 issues its final written decision after the oral

1 argument, it may be after trial. And there may be
2 supplemental briefing requested by the party to
3 brief the Board on the outcome of the trial and
4 what these experts said on the stand and what else
5 the parties argued and what the district court
6 ruled on related issues.

7 So it's -- it's going to get messier and
8 there will be -- likely be additional briefing
9 requested later if we go down this path.

10 So with that, I would suggest that the
11 Board at least look at the expert report in camera
12 before making a decision and either deny it in its
13 entirety after reviewing and seeing that there is
14 no contradiction about what it is or is not a
15 resin, and if the board decides that additional
16 briefing is warranted, then we push out the oral
17 arguments and Dr. Fontecchio will be given time to
18 submit what he needs to in his reply.

19 JUDGE McNAMARA: Okay. Mr. Limbach, do
20 you have a -- anything you want to say in
21 response?

22 MR. LIMBACH: Yeah. It's important --

1 it's not just the expert report. It's what was
2 said about the expert report in the deposition
3 that is -- that is very enlightening. And I also
4 question that they need Dr. Fontecchio to do
5 supplemental opinions on the issue of resins given
6 what he said he does not know about resins. He's
7 not qualified to opine on these issues, and that
8 will be clear in the excerpts that we want to
9 bring to the Board's attention.

10 There are a block of IPRs that are related
11 to this IPR. They're all scheduled for the same
12 day. It's 1130, 1133, 1134, and 1315. And so if
13 the Board is inclined to push back the hearing, we
14 would be -- we wouldn't oppose taking the entire
15 block so we're all traveling to Washington DC at
16 the same time, but we don't want it to be so
17 delayed that it would affect the final written
18 decision.

19 There are many trials set for January 6th
20 in that court. It's likely that's going to slide,
21 but we just don't know what the timing is going to
22 be. And so we would -- if the Board wants to push

1 back the hearing, we'd be amenable to a short
2 delay in the hearing schedule, but we think it is
3 very critical that the Board see what is going on
4 here.

5 Lastly, gross mischaracterization issues
6 here. The expert report, it's -- an accusation of
7 infringement is a single sentence followed by a
8 citation to this article that's 67 pages long with
9 no citation or explanation of its relevance. We
10 are not bringing that reference in as some type of
11 a shortstop to our argument.

12 That is the sole reliance of
13 Dr. Fontecchio in his opinion of infringement. So
14 this is a gross mischaracterization of what we're
15 trying to do here. We're not trying to short
16 anything. We have a solid invalidity case and we
17 just show -- want to show the Board the
18 contradictory position because it goes to the
19 credibility of Patent Owner's argument on claim
20 construction of passivation layer and their
21 disclaimer of organic resins.

22 JUDGE McNAMARA: Great. All right. I --

1 Mr. Tong, one last thing, anything you want to say
2 for a moment?

3 MR. TONG: I have -- I have nothing
4 further at this time, Your Honor.

5 JUDGE McNAMARA: Okay. Let me consult
6 with Judge Dang and Wood for a few minutes and I'm
7 going to put you on mute and we'll come back in
8 one second in a few minutes to talk about this.

9 MR. LIMBACH: Thank you, Your Honors.

10 (Reporter clarification.)

11 JUDGE McNAMARA: One question for Mr.
12 Tong, if we don't do another declaration of
13 Dr. Fontecchio, do we -- do you need as much time?

14 MR. TONG: I think so because, at this
15 point, we don't know exactly what they're going to
16 argue but we think it's going to be highly
17 technical and we will need to consult with him
18 nonetheless about how they're mischaracterizing
19 what he said.

20 JUDGE McNAMARA: Okay. Thank you very
21 much. We'll speak for -- we'll pause for a minute
22 and we'll be back.

1 (Whereupon a break was had.)

2 JUDGE McNAMARA: All right. We're back.

3 So moving through the request we have, so we're
4 going to grant the request to enter the standard
5 protective order, the -- I mean, given there's no
6 modification and it seems to be in the -- and the
7 parties have shown for good cause for entering it.

8 We're going to grant the leave to submit
9 the interrogatory response and for additional
10 briefing. Sounds like Patent Owner can file a
11 three-page paper on the interrogatory response on
12 October 14th.

13 Does that work, Mr. Tong? Did you want
14 the 15th?

15 MR. TONG: We would prefer the 15th, Your
16 Honor, given the Columbus Day holiday.

17 JUDGE McNAMARA: Sure. No problem.
18 October 15th.

19 And then Petitioner can submit up to a
20 three-page response. And Mr. Limbach, does
21 October 17th work for that, or would you like a
22 little more time?

1 MR. LIMBACH: Yes.

2 JUDGE McNAMARA: Okay. October 17th for
3 the response on the interrogatory response.

4 We're also going to grant Petitioner's
5 request to submit the materials related to
6 Dr. Fontecchio's expert report, his deposition,
7 and the journal article that was an exhibit to
8 Dr. Fontecchio's expert report.

9 We believe that the -- these materials are
10 needed to understand the party's positions and the
11 parallel litigation and to ensure that there are
12 consist -- that we are being consistent, that the
13 parties are being consistent, and that we are
14 being consistent between this proceeding and the
15 parallel litigation.

16 So Petitioner is warned that they won't be
17 allowed to rely on the journal article to craft
18 new grounds of invalidity, but they may submit it
19 so that we can better understand what
20 Dr. Fontecchio is testifying about and so that we
21 can better understand what's going on in that
22 related litigation.

1 We're going to deny Patent Owner's request
2 to submit supplemental declaration for
3 Dr. Fontecchio. We believe that, you know, his
4 testimony will, you know -- we can interpret his
5 testimony. We're going to allow the parties
6 briefing on this so that they can explain their
7 positions. The petitioner will not be submitting
8 supplemental declaration from its experts so we
9 don't see why it is necessary for the patent owner
10 to also submit a supplemental declaration given
11 that this is their own expert, albeit a litigation
12 expert, the litigation expert's testimony. So
13 it's their own expert so we don't believe that a
14 declaration will be helpful. His testimony is
15 what his testimony is.

16 How many -- and the parties are asking for
17 three pages on -- for that matter, for the
18 Fontecchio testimony as well, Mr. Limbach?

19 MR. LIMBACH: That's correct, Your Honors.

20 JUDGE McNAMARA: How soon can you file
21 that -- those materials and that brief?

22 MR. LIMBACH: Well, certainly by the 15th,

1 but if it helps to do earlier, we could go
2 earlier.

3 JUDGE McNAMARA: Well, the one other thing
4 I was going to raise is we're going to -- we'll
5 grant the patent owner's request to move the oral
6 hearing in this matter because -- to enable -- you
7 know, for the interest of justice to allow --
8 allow the full briefing and give everybody an
9 opportunity to respond on this.

10 We were going to move it to the 20th of
11 November. Unfortunately, it looks like the 13th
12 of November is pretty booked here in Alexandria so
13 we're not going to be able to squeeze it in on
14 that day because of in-person hearing requirement,
15 but we -- we'll probably be able to fit it in on
16 the 20th, it looks like.

17 So we're going to delay -- delay the
18 hearing to the 20th. And, you know, we can adjust
19 the other parts of the schedule, too, if the
20 parties -- you know, in terms of the motion to
21 exclude and those things can be maybe adjusted but
22 you guys can work that out.

1 So given that -- with that piece of
2 information, Mr. Limbach, when would you be
3 wanting to file your opening brief on -- your
4 brief on the Fontecchio testimony?

5 MR. LIMBACH: Then October 15th is
6 definitely doable.

7 JUDGE McNAMARA: Mr. Tong, when would you
8 want to file your response given what I said about
9 the hearing and everything?

10 MR. TONG: Yes, Your Honor. Say
11 November -- November 5th.

12 JUDGE McNAMARA: And do the parties just
13 envision, lie, one round of briefing is necessary
14 on these -- on these two matters? So, you know an
15 opening and a response? Is that sufficient?

16 MR. LIMBACH: Yes, for Petitioner.

17 MR. TONG: This is Peter Tong. I agree as
18 well.

19 JUDGE McNAMARA: Okay. Great. All right.
20 So -- so what I have is the -- so we're going to
21 enter the protective order. The -- Petitioner,
22 are you going to file the interrogatory response

1 as an exhibit or how -- how will that work or they
2 already have it?

3 MR. LIMBACH: They already have it.

4 MR. TONG: Your Honor.

5 JUDGE McNAMARA: Okay. And Mr. Tong, will
6 you submit it as an exhibit with your brief?

7 MR. TONG: Yes, Your Honor. We had
8 envisioned submitting it with our brief.

9 JUDGE McNAMARA: Okay. Great. So -- so
10 on the interrogatory response, we'll receive
11 Patent Owner's opening brief along with a copy of
12 the relevant portion of the interrogatory response
13 on October 15th.

14 Petitioner will file its opposition, a
15 three-page -- up to three-page opposition to
16 Patent Owner's three-page opening brief on the
17 interrogatory response on October 17th, will be
18 the opposition.

19 Petitioner will file its opening brief on
20 the Fontecchio testimony with the -- Mr. Limbach,
21 just to clarify: So you envision just filing the
22 export report, the journal article, and the

1 deposition -- portions of the deposition
2 testimony?

3 MR. LIMBACH: Yes, as exhibits to our
4 three-page brief.

5 JUDGE McNAMARA: Great. So Petitioner
6 will file its three-page brief along with those
7 exhibits they just spoke about on October 15th.

8 And then Pat Owner will have an
9 opportunity to respond on November 5th.

10 Mr. Tong, do you envision evidence
11 accommodating that 11-5 response other than
12 testimony?

13 MR. TONG: Your Honor, that's quite
14 possible depending on what arguments that they may
15 make.

16 JUDGE McNAMARA: Okay. Let's -- let's
17 hold off. If you -- at this moment, I'm not going
18 to -- we're not going to authorize evidence but if
19 you -- if you get -- as you write it and if you
20 feel you need to submit evidence, just please
21 contact us and -- and you know, as long as it's
22 nontestimonial evidence, it will probably be

1 allowed but, I just -- is that okay or do
2 you -- given that you're not sure what you want to
3 do yet.

4 MR. TONG: Yes, Your Honor. I think that
5 will work. And if they make the argument that we
6 believe they will, then we will very likely
7 request authorization for nontestimonial evidence
8 such as scientific sources, books, and articles.

9 JUDGE McNAMARA: All right. Well,
10 actually, we can authorize that in this too. So
11 you can submit your three-page response with
12 nontestimonial evidence, any nontestimonial
13 evidence that you want to submit with it on the
14 5th of November.

15 And then we're also going to move the oral
16 hearing in this matter from October the 27th to
17 November the 20th and we'll issue an updated oral
18 hearing order to that effect.

19 Do the parties have anything else -- I'm
20 sorry, go ahead.

21 MR. LIMBACH: Yes. I'm sorry, Your Honor.
22 This is Petitioner.

1 If they are going to introduce new
2 evidence in their three-page response on
3 November 15th, then we would be -- we would like
4 to request to reply back because obviously we
5 don't know what this evidence is going to be.

6 You know, they know what our arguments are
7 already. They don't need any new evidence, but if
8 they're going to introduce new evidence, we would
9 like the ability to respond back.

10 JUDGE McNAMARA: Okay. Why don't we --
11 why don't we wait and see what Mr. Tong and his --
12 and Optronic files on -- I think it was
13 November 5th was what I had said.

14 Is that -- is that correct, Mr. Tong?

15 MR. TONG: That's correct, Your Honor.

16 JUDGE McNAMARA: Yeah.

17 MR. TONG: You said November 5th.

18 JUDGE McNAMARA: Why don't we -- why don't
19 we wait until then, Mr. Limbach. And then if
20 you -- if you believe a reply is necessary after
21 seeing what they wrote, then why don't -- you can
22 just e-mail the Board, e-mail Trials, and we can

1 probably do that over -- over e-mail.

2 MR. LIMBACH: That's fine, Your Honor. We
3 will reach out on November 6th if we believe that
4 a response on our part is warranted.

5 JUDGE McNAMARA: Unless, Mr. Tong, are you
6 willing to consent to them filing a reply if you
7 submit evidence with your opposition on the
8 Fontecchio testimony?

9 MR. TONG: Your Honor, it's too early to
10 take a position on that. I don't know what
11 argument they're going to make, how we're going to
12 respond, and what they envisioning saying in a
13 reply and whether or not we'll need a sur reply
14 after that. So at this point, it's just too
15 speculative.

16 I think the Board's recommendation that
17 the parties meet and confer after November 5th
18 would prefer to reach out to the Board would be
19 the best course of action.

20 JUDGE McNAMARA: Excellent. All right.
21 And then is that -- do you understand,
22 Mr. Limbach?

1 MR. LIMBACH: That -- that's acceptable.
2 We will -- we will reach out to Patent Owner on
3 the 6th, meet and confer, and then we'll jointly
4 approach the Board.

5 JUDGE McNAMARA: Perfect. Thank you very
6 much.

7 Do the parties have anything else they
8 wish to discuss or any other -- anything that I
9 missed that you want to have resolved?

10 MR. TONG: This is Peter Tong, Your Honor.
11 On behalf of Patent Owner, I have one other
12 question.

13 JUDGE McNAMARA: Sure.

14 MR. TONG: So the hearing in this IPR has
15 been moved to November 20th. There are still
16 other oral arguments set for November 20th. Are
17 those going to remain in place, I'd assume?

18 JUDGE McNAMARA: I assume so.

19 MR. TONG: I'm sorry, I misspoke. Are the
20 other oral arguments originally set for
21 October 22nd, those are going to remain in place,
22 I assume; is that right?

1 JUDGE McNAMARA: The 27th -- the 27th,
2 yes, because it's -- I think it's going to be hard
3 for us to move all of them.

4 MR. TONG: Okay. Thank you, Your Honor.

5 JUDGE McNAMARA: I understand it's
6 inconvenient for the parties, but I think it's
7 going to be -- because of all the holidays and
8 everything, I'm just looking at the hearing
9 schedule, it's -- it's pretty full. So it's
10 little hard for us to move -- move everything. So
11 our apologies about that. We don't -- we don't
12 want to make the parties unnecessarily, but it's
13 difficult to move everything.

14 MR. LIMBACH: It's fine with Petitioner,
15 Your Honor. We appreciate the scheduling issues.

16 JUDGE McNAMARA: Great.

17 MR. TONG: Nothing further from Patent
18 Owner.

19 JUDGE McNAMARA: Good. Anything -- and
20 nothing further from Petitioner?

21 MR. LIMBACH: That's it, Your Honor.

22 JUDGE McNAMARA: Great. And thank you all

1 very much.

2 And will the parties please file a copy of
3 this transcript in the record and that will serve
4 as the order for this -- for this request.

5 MR. LIMBACH: Yes. We will do so, Your
6 Honor.

7 JUDGE McNAMARA: Thank you very much.

8 And with that, the call is adjourned.

9 (Whereupon the proceedings were concluded at
10 9:47 a.m. CDT)

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2
3 I, Karisa Ekenseair, Certified Reporter and
4 Notary Public within and for the State of Arkansas
5 do hereby certify: That this hearing that is
6 hereinbefore set forth, was taken before me and is
7 a true record of the record stated.

8 I further certify that the adverse party,
9 Patent Owner was represented by counsel at
10 the deposition.

11 I further certify that the hearing, occurred
12 telephonically on October 8, 2025, commencing
13 at 9:01 a.m. to 9:47 a.m.

14 I further certify that I am not related to any
15 of the parties to this action by blood
16 or marriage, I am not employed by or an attorney
17 to any of the parties to this action, and that I
18 am in no way interested, financially or otherwise,
19 in the outcome of this matter.
20
21
22

1 IN WITNESS WHEREOF, I have hereunto set my hand
2 and affixed my notarial seal this 20th day of
3 October, 2025.

4 My commission expires: 6-18-2028

5

6



7

Karisa Ekenseair, CCR RPR RMR RDR

8

LS #802

9

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Pulaski County, Arkansas

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