Steve Pappas

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Sent: Monday, January 13, 2025 10:37 AM
To: Trials
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Subject: IPR2024-01316 ('823 Patent) - Request for reply to POPR

EXTERNAL EMAIL: Use caution before clicking links or attachments.

IPR2024-01316
Dear Honorable Board,

Petitioner seeks leave to file a 10-page reply to Patent Owner's Preliminary Response involving (1) *Fintiv* issues regarding Patent Owner's request for a discretionary denial; and (2) merits issues that Petitioner believes could not have been anticipated. Patent Owner does not oppose Petitioner's request for a 5-page reply on *Fintiv* issues and requests a 5-page sur-reply, which Petitioner does not oppose. Patent Owner does oppose the request for a reply to address the merits issues.

With respect to the merits issues, Petitioner's position is that good cause exists for granting leave to file a reply because the because Patent Owner's Preliminary Response raises issues that Petitioner could not have foreseen. While Patent Owner purports that no construction of the claim terms is required to resolve the controversy between the parties (POPR at 7), Patent Owner nevertheless proceeds to construe the claim language in its arguments in Sections IV-V of the POPR. *See e.g.*, IV.A (conflating "network session" and "browser session" as an implied construction), IV.B (arguing that two differently named storage areas accessible by the browser are not different), V.A (arguing that a particular storage area accessible to the browser is not a browser storage area). Patent Owner also argues that the Petition fails to show evidence of [1.b.iv] and [6.a.iv] "second *previous* network session," which is based on a mischaracterization of the mapping in the Petition that shows in limitation [1.e] that authentication occurs in subsequent sessions using the second cookie which was saved during the second previous network session. This mischaracterization may not be readily apparent, but becomes clear once explained. Petitioner could not and did not anticipate that Patent Owner would take these positions and therefore seeks authorization for a reply to respond to these unforeseeable arguments and mischaracterizations.

Patent Owner disagrees that good cause exists for allowing additional briefing on the merits. Patent Owner's arguments address the express language of the claims, and it was not unforeseeable that Patent Owner would argue the prior art does not teach the limitations of the challenged claims. *See, e.g.*, *Micron Tech., Inc. v. Yangtze Memory Techs. Company, LTD.*, IPR2024-00792, Paper 12 at 2 (PTAB Sep. 11, 2024). The Board is capable of evaluating Petitioner's and Patent Owner's arguments for purposes of an institution decision, and Petitioner's disagreement with Patent Owner's arguments does not amount to good cause for a reply. To the extent the Board grants Petitioner leave to file a reply addressing the merits of Patent Owner's arguments, Patent Owner requests a sur-reply of the same length.

Counsel for the parties are available for a conference call should the Board so desire on the following dates: 1/17 from 11 AM–2 PM, 3:30–5 PM ET; 1/21 from 10 AM–12 PM, 2–5 PM ET.

Best regards,
Jennifer

Jennifer Librach Nall
Partner

RavenWhite EX2009
Home Depot v. RavenWhite
IPR2024-01316

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