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Subject: IPR2024-01345- Petitioner request for reply to POPR
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Attachments: [image001.png](#)

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Dear Honorable Board,

Petitioner seeks leave from the Board to file a five-page reply to Patent Owner's Preliminary Response to address why two limitations identified by Patent Owner do not invoke §112, ¶6. Good cause for such a reply exists for at least the following reasons:

1. Patent Owner has proposed that the "designation software controller" limitation of claims 1 and 9 is a means-plus-function limitation. Petitioner could not have anticipated that Patent Owner would take this position because there is a presumption that such language is not a means-plus-function limitation and Patent Owner does not assert in its infringement contentions in the district court that this is a means-plus-function limitation.
2. Patent Owner has proposed that limitation 5.c is a step-plus-function limitation. Petitioner could not have anticipated that Patent Owner would take this position because the limitations "step of" language (instead of "step for") does not invoke step-plus-function claiming and Patent Owner does not assert in its infringement contentions in the district court that this is a step-plus-function limitation.

Patent Owner opposes Petitioners' attempt to supplement its trial grounds under the guise of an unanticipated Patent Owner proposal. Petitioners explicitly defined the DSC as an element that **"includes software instructions that cause the system to perform the claimed functions."** (Pet. at 5-6). There can be no "presumption" debate where Petitioners' themselves defined the DSC as a specially programmed element that includes algorithmic instructions for performing the claimed functions in their petition. This is the very definition of a computer-implemented means-plus-function element. Petitioners also acknowledged the same scope with respect to the DSC feature of claim 5, namely that **"[t]his limitation is substantially similar to"** claims 1 and 9 (Pet., 28, 58). Petitioners chose to withhold the complete identity/prior art mapping of the DSC **"software instructions that cause the computer to perform the claimed functions,"** and intentionally reserved these positions for their litigation benefit. Having plainly anticipated, indeed, directly rendered moot the presumption issue in its petition, there is no justification for supplementation. Petitioners should not be permitted to supplement a deliberately incomplete petition utilizing PO's POPR as guidance.

Counsel for the parties are available for a conference call should the Board so desire on the following days: 2/6, 2/10, and 2/13.

IPR2024-01345
Ex. 3001

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