

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

YEALINK (USA) NETWORK TECHNOLOGY CO., LTD., AND YEALINK
NETWORK TECHNOLOGY CO., LTD.,

Petitioners,

v.

BARCO N.V.

Patent Owner.

CASE: IPR2024-01437

U.S. PATENT NO. 11,403,237

PATENT OWNER'S SUR-REPLY

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Exhibits

Exhibit Number	Description
Ex. 2001	Reserved
Ex. 2002	Reserved
Ex. 2003	Reserved
Ex. 2004	Declaration of Dr. Michael Brogioli
Ex. 2005	Curriculum Vitae of Dr. Michael Brogioli
Ex. 2006	June 30, 2025 Deposition Transcript of Kevin C. Almeroth in IPR2024-01436
Ex. 2007	July 1, 2025 Deposition Transcript of Kevin C. Almeroth in IPR2024-01439
Ex. 2008	July 2, 2025 Deposition Transcript of Kevin C. Almeroth in IPR2024-01437
Ex. 2009	July 2, 2025 Deposition Transcript of Kevin C. Almeroth IPR2024-01438
Ex. 2010	Barco Sales Data (<i>Confidential and Redacted Versions Filed</i>)
Ex. 2011	Crestron License Agreement (<i>Confidential and Redacted Versions Filed</i>)
Ex. 2012	<i>Barco and Crestron announce patent license agreement regarding a set of essential ClickShare patents</i> , BARCO (Sept. 12, 2023) https://web.archive.org/web/20240810204702/https://www.barco.com/en/about/press-releases/barco-and-crestron-announce-patent-license-agreement-regarding-a
Ex. 2013	<i>ClickShare conferencing & collaboration</i> , BARCO (April 1, 2025), https://web.archive.org/web/20250401012647/https://www.barco.com/en/products/clickshare-conferencing-collaboration#expand

Exhibit Number	Description
Ex. 2014	<i>ClickShare Button</i> , BARCO (February 12, 2025) https://web.archive.org/web/20250212164931/https://www.barco.com/en/product/clickshare-conferencing-button
Ex. 2015	ECF 65, Joint Claim Construction and Prehearing Statement, <i>Barco, Inc. et al v. Yealink (USA) Network Technology Co., Ltd. et al</i> , 2:2023-cv-521 (E.D. Tex. 11/14/2023)
Ex. 2016	ECF 89, Claim Construction Order, <i>Barco, Inc. et al v. Yealink (USA) Network Technology Co., Ltd. et al</i> , 2:2023-cv-521 (E.D. Tex. 11/14/2023)
Ex. 2017	List of Products Covered by Barco Patents accessible at: https://www.barco.com/en/about/terms-conditions/patents
Ex. 2018	<i>Patent</i> , CRESTRON (June 12, 2025) https://www.crestron.com/legal/patents?page=1
Ex. 2019	Crestron Electronics Private Company Profile, PITCHBOOK
Ex. 2020	ECF 55, Consent Judgment and Permanent Injunction, <i>Barco, Inc. et al v. Vivitek Corporation et al</i> , Case No. 4:19-cv-3250 (N.D. Cal. 4/27/2020)
Ex. 2021	<i>Barco Successfully enforces ClickShare IP against competitors in the U.S.</i> , BARCO (May 26, 2020) https://web.archive.org/web/20240424230846/https://www.barco.com/en/about/press-releases/2020-05-26-barco-successfully-enforces-cs-ip-against-competitors-in-the-us
Ex. 2022	Paul Krzyzanowski, <i>Devices</i> , PK.ORG (updated March 24, 2011).
Ex. 2023	Excerpts from April 18, 2025 Deposition Transcript of Andrew Ludke (<i>Confidential and Redacted Versions Filed</i>)
Ex. 2024	<i>USB device class drivers included in Windows</i> , Microsoft (Apr. 9, 2025) https://web.archive.org/web/20250409210411/https://learn.micros

Exhibit Number	Description
	oft.com/en-us/windows-hardware/drivers/usbcon/supported-usb-classes
Ex. 2025	Reserved
Ex. 2026	Reserved
Ex. 2027	Dr. Kevin Almeroth's Declaration in IPR2024-01438
Ex. 2028	Reserved
Ex. 2029	Reserved
Ex. 2030	Dr. Kevin Almeroth's Declaration in IPR2025-00597
Ex. 2031	Reserved
Ex. 2032	Modified Protective Order
Ex. 2033	December 1, 2025 Deposition Transcript of Kevin C. Almeroth in IPR2024-01436, IPR2024-01437, IPR2024-01438 and IPR2024-01439

I. INTRODUCTION

Petitioner has not met its burden to establish the challenged claims are obvious. Both Ground 1 and Ground 2 provide cursory conclusory statements that a combination “would be obvious” without any articulated motivation. In fact, Petitioner is explicitly clear that the combinations were made by merely identifying a lack of disclosure in one reference (i.e., *Kaplan* or *Maeda*), identifying a reference that allegedly included that limitation (i.e., *Mardiks* or *Deforche*) and concluding that the combination would be obvious. Petition, 21-22, 41-42 (“Maeda’s disclosure, however, does not discuss presenting a peripheral device to the processing device as a ‘human interface device.’ Deforche uses a peripheral device and presents it to a processing device as a human interface device (HID).”). Notwithstanding this blatant hindsight, Petitioner and the Reply still fail to meet its burden that all limitations were disclosed in the prior art. Namely, there is no evidence that “communicating at least one of audio data and display data from the processing device to the external peripheral device via the human interface device” is taught by the cited references.

In addition to the facially weak obviousness challenge, the Reply misstates the laws and facts regarding Patent Owner’s secondary indicia. Considering these un rebutted indicia, and the weakness of the challenge, the record clearly supports a finding of non-obviousness.

II. THE CRESTRON LICENSE STRONGLY SUPPORTS NON-OBVIOUSNESS

Industry-leader Crestron has licensed to the '237 Patent from Patent Owner. The Reply fails to address this undeniable fact and under controlling Federal Circuit case law, the proceeding, which rests entirely on obviousness grounds, can stop here.

Petitioner misstates the law for secondary considerations. “Unlike products, which may incorporate numerous features beyond those claimed or described in a patent and therefore may require careful parsing to establish a nexus, *actual licenses to the subject patent do not demand the same*, as they are, by their nature, directly tied to the patented technology.” *Ancora Technologies, Inc. v. Roku, Inc.*, 140 F.4th 1351, 1362 (Fed. Cir. 2025) (emphasis added).¹ “Licenses to the challenged patent, then, unlike products or other forms of objective evidence of nonobviousness, do not require a nexus with respect to the specific claim at issue, nor does [] nexus law require that a particular patent be the only patent being licensed or the sole motivation for entering into a license.” *Id.*

The Reply fails to provide any explanation for why *Anacora* does not apply. Instead, Petitioner misinterprets caselaw in attempt to impose a stricter nexus requirement for licensed patents. *Id.* For example, *Sibia Neurosciences, Inc. v.*

¹ All emphasis added unless otherwise noted.

[REDACTED]

Cadus Pharm. Corp., a case two-decades before *Anacora*, does not require that licensed patents be practiced by the licensee’s product. Instead, it provides a single instance where a court found the “existence of these licenses is insufficient to ***overcome the conclusion of obviousness***[.]” 225 F.3d 1349, 1358 (Fed. Cir. 2000) (“SIBIA points to three licenses or sub-licenses of the ’629 patent, all of which were part of larger licensing packages.”). *Sibia* fails, however, to undermine *Anacora*, which confirms that when a challenged patent is licensed, a nexus is presumed, even if the license includes more than the challenged patent. So too here—Patent Owner’s license covers three patent families that all claim similar technology—and this is not the case of a broad portfolio-wide license. The Crestron license here is targeted to specific patents necessary to practice the claimed technology.

Likewise, in *Merck & Cie v. Gnosis S.P.A.*, a licensee identified another patent in the licenses as being the more desirable patent from a licensing perspective. 808 F.3d 829, 838 (Fed. Cir. 2015) (“A Pamlab executive explained that Pamlab desired this stable form ‘[b]ecause of its uniqueness and its novel properties’”). It was this desire for another licensed patent which resulted in the difficulty in determining “the extent to which the licensing agreement was a result of the novel features in the [challenged patent], as opposed to the other patents involved.” *Id.* Here, no such evidence exists, and *Anacora*’s clear direction is not overcome by the unique factual circumstances of *Merck*. [REDACTED]

[REDACTED] Ex. 2023,
58:14-19. Conversely, Barco has many other unrelated, unlicensed patents in its portfolio. Ex. 2017.

Last, the Reply cites to *Teva Pharmaceuticals Int’l GmbH v. Eli Lilly & Co.*, in attempt to require a mapping between the licensed patents and the licensee’s products. Reply, 21 (citing 8 F.4th 1349 (Fed. Cir. 2021)). However, here, just like in *Teva*, Petitioner’s “argument loses sight of the true purpose of the nexus requirement, which is to consider whether the fact-finder can infer that the licensing arose out of recognition and acceptance of the subject matter claimed in the patents.” *Teva*, 8 F.4th at 1364. The Crestron license is a license involving three patent families (or 20 patents total) involving related technology. Ex. 2011. This is not comparable to *Teva*, where the license involved 188 patents, so “the nexus between the license and the validity of any particular claim is rather tenuous to say the least.” *Teva*, 8, F.4th at 1363. Moreover, the Reply provides no argument that somehow *Teva*, should govern over the more recent *Anacora*, which is crystal clear: “Licenses to the challenged patent, then, unlike products or other forms of objective evidence of nonobviousness, do not require a nexus with respect to the specific claim at issue, nor does [] nexus law require that a particular patent be the only patent being licensed or the sole motivation for entering into a license.” *Ancora v. Roku*, 140 F.4th at 1362.

Notwithstanding Petitioner's misunderstanding of the case law, the Reply is also flawed with respect to the relevant facts. Patent Owner has demonstrated a nexus between the challenged patent and the Crestron License. For example, Crestron identifies the '237 Patent as embodied in its AM-TX3-100 and AM-TX3-2 products. Ex. 2018.² [REDACTED]

[REDACTED] Ex. 2023, 58:14-19. Indeed, as the Reply itself notes, the '237 Patent is independently valuable. Reply, 18-19 (citing Ex. 1078, 141:20-143:18). Dr. Almeroth did not form any specific opinions in relation to Crestron and its license of the '237 Patent, and Petitioner offers no evidence that Crestron does not practice the '237 Patent. Ex. 2033, 13:20-14:4, 14:16-21. In summary, the Reply's position (Reply, 20-21) regarding the Crestron License is unsupported by law and fact.

Petitioner simply fails to overcome the significance of the Crestron license. Ex. 2011, 15; Ex. 2023, 28:22-29:16. Crestron, a world-wide company with a sophisticated IP portfolio of its own, [REDACTED] [REDACTED] using the claimed patented technology. Ex. 2023, 28:10-18, 58:14-19; Ex. 2019 (showing Crestron owns 460

²<https://web.archive.org/web/20250616134131/https://www.crestron.com/legal/patents?page=1>

patent families). [REDACTED] Ex. 2023, 76:1-18. Creston itself identifies that its AM-TX3-100 and AM-TX3-2 products practice the '237 Patent. Ex. 2018. This direct and un rebutted acquiescence and licensing by a sophisticated entity that owns over 460 patent families strongly favors a finding of non-obviousness.

III. THE EMBODIED PRODUCTS ARE A COMMERCIAL SUCCESS

The Reply does not dispute that a Barco Base unit, when used with a ClickShare Button, practices the claimed invention. Reply, 17-19. While certain Barco Base units may include features not covered by the '237 Patent, it is undisputed that the '237 Patent is practiced by a Barco Base unit used in connection with a ClickShare Button. *See* POR, 49-62. Further, as Mr. Six testified when deposed by Petitioner, when a Barco Base unit is used, 85% (or more) of users use the ClickShare Button over the ClickShare Application. Ex. 1078, 199:23-200:11.

Moreover, “the degree of correspondence between a product and a patent claim falls along a spectrum.” *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1374 (Fed. Cir. 2019). The Reply does not identify any unclaimed features or otherwise advance any evidence to counter Patent Owner’s mapping of the products to the claims. The Reply’s argument that the ClickShare System is not coextensive with the claimed subject matter is conclusory, unsupported by any evidence, and thus unpersuasive. Ex. 2033, 10:21-11:8, 11:16-12:1, 12:14-22, 13:9-12.

IV. THE '237 PATENT CLAIMS ARE PATENTABLE OVER THE CITED REFERENCES

A. Ground 1

1. The Kaplan-Mardiks Combination Does Not Teach Communicating Audio Or Display Data Via The Human Interface Device.

There is no basis to conclude that the HID of *Mardiks* *would* be used to communicate audio data or display data. The Petition argues that:

Mardiks discloses that a peripheral device presents itself as a human interface device (HID) and is *capable of*, through its presentation to the computing device as a human interface device (HID), launching an application residing in its memory upon connection to a host computing device automatically without a user's input or direction. (Ex-1026, ¶¶6, 8, 27-30; Ex-1002, ¶87). It would have, thus, been obvious to combine Kaplan with the teachings of Mardiks because it was a simple application of known techniques to apply Mardiks' presenting the peripheral device as a human interface device to achieve Kaplan's method and system of transmission of audio/video data to a wireless network. (Ex-1002, ¶87).

Petition, 22.

In *Mardiks*, the HID is described as emulating keystrokes to automatically launch an application. Ex. 1026, ¶¶22, 28. Then, the application is launched from the mass storage device driver. *Id.*, ¶¶3, 51. There is no identified reason to use the HID to also communicate display data and audio data and the mere allegation of

capability does not establish that a POSITA *would* have modified *Mardiks* in that manner. Indeed, as Dr. Almeroth noted, different drivers are used for different purposes. Ex. 2033, 19:24-21:22. *Mardiks*'s insufficiency is not cured through combination with *Kaplan*, as the Petition itself admits that *Kaplan* does not disclose presenting the peripheral device as a human interface device (Petition, 21) much less using it to communicate audio or display data.

The Reply argues that the combination of *Kaplan* and *Mardiks* discloses this limitation despite *neither* describing using a HID to communicate audio or display data and Petitioner not identifying *any reason* why a POSITA would implement the system Petitioner seemingly argues. Moreover, there is simply no evidence, other than Dr. Almeroth's conclusory testimony, that anyone would or even could, use a HID to communicate audio data prior to the '237 Patent's priority date. Petitioner merely smashes together multiple references based on buzzwords associated with claim limitations, failing to establish the obviousness of this element.

2. *Mardiks* Is Not Analogous To The '237 Patent

First, the Reply does not establish *Mardiks* is reasonably pertinent to the particular problem of the '237 Patent. Despite framing a 'problem', the Reply simply identifies an aspect of the '237 Patent's *solution* and concludes that the *Mardiks* also addresses this 'problem.' Reply, 4 ("both are directed to solving the same problem of *using standard, pre-installed generic drivers... to access*

programs stored on peripheral devices.”). There is no consideration of the actual problems identified in the background of the ’237 Patent. Ex. 1001, 1:24-5:4 (complex network infrastructure, required technical expertise, barriers of use of complex technology, variety of collaboration software solutions, boring or annoying meetings, complexity of security measures, lack of restriction of participations, time taken to prepare meetings, undue burden involved in recording meetings, need to install proprietary drivers for audio, variety of non-standardized sound cards). Accessing programs stored on the peripheral is not one of these problems—it is part of the ’237 Patent’s solution. *See e.g.*, Ex. 1001, Cls. 4, 5. Likewise, Petitioner fails to identify the actual problem addressed in *Mardiks*. Ex. 1026, ¶5 (“it would be desirable to configure a USB flash driver so that, upon connection to a host supporting the USB standard, or upon restarting the host if the USB flash drive were already connected, the USB flash drive would automatically launch an application residing in its memory”); Ex. 2033, 18:5-10.

Second, the Reply’s argument that *Mardiks* is in the same field is equally unpersuasive and in fact inconsistent with the Petition. The ’237 Patent is directed to wireless presentation systems. Ex. 1001, Title, Abstract; Ex. 2004, ¶80. The Petition itself states that “the ’237 patent claims a system that simply **wirelessly communicates** media content between an electronic device and a display via a peripheral device and base node[.]” Petition, 6. Dr. Almeroth also opines that the

'237 Patent is directed to wireless communication. Ex. 1002, ¶59 (“the claims of '237 patent are simply directed to electronic meeting tools that *wirelessly communicate* media content between an electronic device and a display via a peripheral device and base node.”).

The Reply seeks to redefine the '237 Patent's field to be an electronic meeting tool and method of communicating arbitrary media content. Reply, 4. Such field does not take into consideration the entire '237 Patent specification or the arguments raised in the Petition, and is an improper attempt to side-step a fatal error in the Petition. Notwithstanding these attempts, there is no basis to conclude that *Mardiks* even falls into the Reply's proposed field. The Reply asserts that *Mardiks* is directed to “a USB flash drive to automatically launch an application residing in its memory after it is connected to a host.” Reply, 4 (citing Ex. 1026, ¶6). Other than noting that *Mardiks* relates to peripheral devices, the Reply does not even allege that *Mardiks* discloses an electronic meeting tool or communicating arbitrary media content (it does not). Notably, Dr. Almeroth only considered if *Mardiks* was analogous art after Patent Owner disputed it, rather than when he initially opined there was a motivation to combine. Ex. 2033, 16:1-20. In summary, the Reply attempts to broadly categorize both the '237 Patent and *Mardiks* as relating to “peripheral devices” without any reference to the system and methods described in

the '237 Patent or the purpose of *Mardiks*. Such conclusory and outcome-driven analysis does not carry the day.

3. There Is No Motivation To Combine *Kaplan* With *Mardiks*

Petitioner has not met its burden to establish a POSITA would combine *Kaplan* and *Mardiks*. The Petition's attempt to provide a theory for why a POSITA would arrive at the combination is inseparable from a hindsight reconstruction of the claim limitations.

First, Petitioner identifies a limitation not disclosed in *Kaplan*. Petition, 21 ("Kaplan's disclosure, however, does not disclose the peripheral device being presented to the computer device as a 'human interface device.'"). This is not rooted in *Kaplan* or *Mardiks*, and is instead proof of Petitioner's use of the claims as a roadmap to the prior art.

Second, Petitioner identifies a reference, *Mardiks*, which references a human interface device. *Id.*, 22 ("Mardiks discloses that a peripheral device presents itself as a human interface device (HID) and is capable of, through its presentation to the computing device as a human interface device (HID), launching an application residing in its memory upon connection to a host computing device automatically without a user's input or direction"). This is completely divorced from *Kaplan* (or anything else in the record), other than the claimed HID of the '237 Patent.

Third, Petitioner concludes “[it] would have, thus, been obvious to combine Kaplan with the teachings of Mardiks because it was a simple application of known techniques.” *Id.* Notably, The Reply and Dr. Almeroth both indicate there are “a finite number of identified predictable solutions” despite Dr. Almeroth identifying approximately a half dozen ways. Reply, 5; Ex. 1083, 3; Ex. 2033, 19:22-20:14. Dr. Almeroth’s opinion is also predicated on up to a half dozen USB classes for communicating data within USB. Ex. 2033, 19:22-20:6. The Microsoft operating system identifies 25 different USB device classes (including a miscellaneous and vendor specific class). Ex. 2024. Dr. Almeroth also notes that USB devices also have subclasses, which would increase the alleged finite number of solutions. Ex. 2033, 22:6-8. These conclusory statements are not routed in factual evidence and cannot cure the Petition’s hindsight reconstruction of the claims. Ex. 2033, 21:23-5; Ex. 2024, 4. As Dr. Almeroth himself agrees (1) there are at least 25 different driver classes on the windows operating system, (2) each of these drivers operate in different ways, and (3) vendor specific drivers operate based on the specific function the vendor was providing to the USB peripheral, such that there are a near-infinite number of driver implementations while using USB such that the proposed combination would necessarily require undue experimentation. Ex. 2024; Ex. 2033, 56:8-9, 56:17-24. Notwithstanding these facts, Dr. Almeroth provides no evaluation

of how these different functions relate to the implementation of the identified combination. *See generally*, Ex. 1002; Ex. 1083.

There is not even an attempt to articulate *why* a POSITA would be motivated to make the combination. The Reply does not dispute that *Kaplan* already achieves the auto-launching result through a method different from *Mardiks*, namely through an “autoplay.inf” file. Reply, 5 (“The POR argues that *Kaplan* already solves a problem one way, so there is no reason to do it a different way.”); Ex. 1027, ¶47. This fact alone is fatal to the proposed combination, as there is no articulated reason to look to another auto-launching reference to achieve the outcome that *Kaplan* already accomplished. *Virtek Vision Int’l ULC v. Assembly Guidance Sys., Inc.*, 97 F.4th 882, 887 (Fed. Cir. 2024) (“The mere fact that these possible arrangements existed in the prior art does not provide a reason that a skilled artisan would have substituted” one for the other). The Reply, like the Petition, does not identify any reason why a POSITA would replace *Mardiks*’s auto-launch method with *Kaplan*’s.

Moreover, the Reply incorrectly characterizes *Mardiks*. The Reply states *Mardiks* includes a “method of transmitting audio data using an HID driver” which is not supported by any actual disclosure, as *Mardiks* does not disclose using HID for audio data. Reply, 6. *Mardiks* states that “[t]he term ‘message’ is used broadly in the present disclosure and is intended to include any carrier of information, such as commands, signals and the like, as will be appreciated by one of ordinary skill in

the art.” Ex. 1026, ¶21. To interpret this as meaning that *Mardiks* discloses a method of transmitting audio data over a HID driver is an extreme unsupported extrapolation not commensurate with the scope of *Mardiks*.

Accordingly, Petitioner has not met its burden in proving a POSITA would combine *Kaplan* and *Mardiks*.

B. Ground 2

1. There Is No Motivation To Combine *Maeda* And *Deforche*

As described in the POR, the Petition did not identify sufficient motivation to combine. POR, 32-33. The Reply does not adequately respond. Instead, it merely concludes that such combination “would be obvious[.]” Reply, 7. Such a conclusion is emblematic of the Petition’s approach to this proceeding, unsupported and incorrect.

Deforche is directed to a wireless modem. Ex. 1030, Title. *Maeda* discloses communication to a projector via a base node. Ex. 1031, ¶17. To the extent a LAN card does not have a specific driver, a POSITA would use a driver that corresponds to a LAN cards function. Ex. 2024, 7 (“The RNDIS facility centers the management of all 802-style network cards in a single class driver, Rndismp.sys.... The mapping of remote NDIS to USB is implemented in the Usb8023.sys driver.”). Petitioner has not provided *any* explanation why a POSITA would use a HID driver with a wireless LAN card based on *Deforche*’s teachings relating to a wireless modem; these

technologies are simply too disparate and, other than the fact that the same terms appear in the claims and the references, have nothing to do with each other.

Petitioner's argument is premised on the idea that what is independently known is obvious. This is legally incorrect. *KSR Int. Co. v. Teleflex Inc.*, 550 U.S. 398, 418-19 (2007) (“[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.”); *Vision International ULC v. Assembly Guidance Systems, Inc.*, 97 F.4th 882, 888 (Fed. Cir. 2024) (“That is an error as a matter of law. It does not suffice to simply be known. A reason for combining must exist.”). The Petition, and the Reply, fail to identify such a reason.

2. *Maeda and Deforche Cannot Be Combined With A Reasonable Expectation Of Success*

The Reply's arguments regarding the expectation of success of the combination focus on a patent and ground involved in a different proceeding. *See* Reply, 7-10 (referring to disclosures of the '002 patent and a reference called *Ahmed*, which is not even submitted in this proceeding, indicating the copy-paste exercise that went into preparing the Reply). Accordingly, much of the argument is inapplicable to the patentability of the '237 Patent and deciphering what minimal portions may be application to this proceeding unfairly shifts the burden from Petitioner to Patent Owner and the Board.

Deforche discloses a clear aim: “[i]t is the aim of the present invention to provide a wireless modem device and a method for operating same, ***with which the need for installation of an appropriate driver can be avoided.***” Ex. 1030, ¶4. *Deforche* achieves this aim through “a pre-installed generic driver of an operating system installed on the computer device [] used for setting up modem/host communication interfaces by means of which the wireless modem device and the computer device can communicate with each other.” *Id.*, ¶9. “This has the advantage that the need for a specific driver of the communication between the wireless modem device and the computer device can be avoided.” *Id.* The Petition relies on these aspects of *Deforche*. Petition, 41 (citing Ex. 1030, ¶¶9-11).

This advantage allows a user to use a device with the modem when the user rights are restricted. Ex. 1030, ¶9. These “features... contribute to the advantage that any modification to settings in the kernel protocol stack or in the operating system can be avoided... As used herein, this effect is termed a ‘zero footprint’[.]” *Id.*, ¶16. Despite explicitly relying on the zero footprint benefits to allege a motivation to combine, the Reply states “Deforche’s zero-footprint solution is largely irrelevant.” Reply, 8. Petitioner cannot characterize the same disclosure as both a basis for the combination and irrelevant.

Dr. Almeroth testified that “Dr. Brogioli testified that such a system still has a ‘zero-footprint’ despite having a driver installed permanently on a user’s

computer.” Ex. 1083, ¶9 (citing Ex. 1070, 20:11-24:23); *see also* Ex. 2033, 39:24-40:12 (Dr. Almeroth testifying that he has not defined zero footprint). What Dr. Brogioli actually testified to, is that an *application* could be zero footprint and be compatible with custom drivers, not that the system was zero-footprint. Ex. 1070, 22:1-9. Petitioner’s preference to over-state deposition testimony is not limited to this. Reply, 1 (citing Ex. 1072, 72:13-73:13), 8 (citing Ex. 1072, 6:11-24), 10 (citing Ex. 1072, 72:13-73:13), 11 (citing Ex-1070, 12:2-19; Ex-1071, 4:12-10:23).

The Reply does not dispute that *Maeda* relies on special purpose software. Reply, 7. This software of *Maeda* is what provides its “functional components.” Ex. 1031, ¶22; Ex. 2004, ¶¶116-117. The Reply alleges, without support that installation would not be required to implement *Maeda*’s system. Reply, 8-9. Dr. Almeroth agrees that such disclosure is indicative of the scope of the cited reference’s invention. Ex. 2033, 30:18-24 (Dr. Almeroth explaining to figure out the scope of a cited reference’s invention he looks to “[g]enerally, the reference. I don’t see any reason why there wouldn’t be an aspect of the invention or the disclosure, the – the exhibit, that you wouldn’t look at.”), 43:8-16. The use of specific software is not compatible with *Deforche*.

The benefit, realized through *Deforche*, of using pre-installed generic drivers is unique to *Deforche*’s goal of utilizing its wireless modem even when a user does not have administrator rights to install software is unobtainable in combination with

Maeda. Ex. 1030, ¶9. There’s no basis to extend this benefit of *Deforche* to *Maeda*, where software is required and installed. In other words, the combination renders *Deforche* incapable of achieving its intended purpose of not requiring the installation of additional software. Ex. 2033, 44:11-18 (Dr. Almeroth opining that there is no motivation to combine when “there is a particular objective of the primary reference that would be undermined by considering—by trying to combine it with a secondary reference”), 45:7-15, 59:16-60:4.

For the first time, Petitioner raises in the Reply that *Maeda* could be implemented with a portable application. Reply, 8. This modification is a new argument which was not raised in the Petition. Moreover, neither the Petition, nor Dr. Almeroth provide any explanation for how this would or even could be achieved, let alone why a POSITA would be motivated to make such modification. Ex. 2033, 59:11-60:4 (Dr. Almeroth confirming Petitioner’s burden of establishing a reasonable expectation of success); *see* Reply, 8-9; Ex. 1083, ¶9.

Notwithstanding the fact that this argument is improperly raised for the first time in Reply, there is no basis to conclude that a portable application could even be implemented in *Maeda*, a burden that is Petitioner’s and is not met. *Maeda*’s alleged ‘peripheral device’ is a wireless LAN card. Ex. 1031, ¶17. There is no evidence in the record that a LAN card is capable of storing a portable application run on a

processing device. Instead, devices and associated drivers are designed to interface with computers with certain tasks in mind. Ex. 2024.

The Petition and the Reply have consistently alleged, in conclusory fashion, that a POSITA would be motivated to modify references, and that such modification could be made with a reasonable expectation of success. Notably, Dr. Almeroth agrees that (1) there are at least 25 different driver classes on the windows operating system, (2) each of these drivers operate in different ways, and (3) vendor specific drivers operate based on the specific function the vendor was providing to the USB peripheral, such that there are a near-infinite number of driver implementations while using USB such that the proposed combination would necessarily require undue experimentation. Ex. 2024; Ex. 2033, 56:8-9, 56:17-24. Notwithstanding these facts, Dr. Almeroth provides no evaluation of how these different functions relate to the implementation of the identified combination. *See generally*, Ex. 1002; Ex. 1083. Not only are such allegations conclusory and without sufficient support to even allow a reasonable opportunity for Patent Owner to respond, to the extent they are clear they are not supported by technical fact. It is not enough to merely conclude that such modification could be made with a reasonable expectation of success without considering these technical details.

3. The *Maeda-Deforche* Combination Does Not Disclose “communicating at least one of audio data and display data

from the processing device to the external peripheral device via
the human interface device”

Neither *Maeda* or *Deforche*, alone or in combination, disclose this limitation. *Maeda* provides no disclosure of a human interface device and instead relies on specific special purpose drivers and software. Ex. 2004, ¶102; *see generally*, Ex. 1031. *Maeda*’s insufficiency is not in dispute. Petition, 41 (“*Maeda*’s disclosure, however, does not discuss presenting a peripheral device to the processing device as a ‘human interface device.’” *Deforche* provides no discussion of communicating display data or audio data over a human interface device. Ex. 2004, ¶103; *see generally*, Ex. 1030.

The claimed human interface device class is designed to support functions of input devices, not for audio data and display data communication. Ex. 1026, ¶3; Ex. 2024, 4. Absent blatant hindsight, there is simply no evidence that the combination renders obvious this claim limitation when *Maeda* and *Deforche* are so deficient in their own right.

The Reply provides arguments not relevant to this proceeding. For example, The Reply cites to discussions of an allegedly “substantively identical limitation” but provides not explanation for how they are similar. Reply, 10 (citing Ex. 1072, 72:13-73:13). Notably, this discussion does not describe communication of audio or display data over a human interface device. Likewise, the Reply’s arguments

focus on pre-installed generic drivers, which is not language even included in the claims. Ex. 1001, Cl. 1-20. Such arguments are not relevant and should not be afforded weight.

V. DR. ALMEROTH'S CONCLUSORY TESTIMONY SHOULD NOT BE AFFORDED MUCH, IF ANY WEIGHT

When asked basic questions, such as the support for his conclusion that the claims are obvious “based on [his] experience and understanding of the relevant technology and law,” he was unable to provide any explanation for this “understanding of the relevant...law.” *See* Ex. 2033 at 53:7-55:12. This “trust me” approach is replete throughout his conclusions as it relates to the substitution of drivers and functionality from one system to another. *See e.g.*, Ex. 1002, ¶87 (“the POSITA would have recognized the combination as a simple application of known techniques—applying Mardiks’ presentation as a human interface device to Kaplan’s transmission of audio/video data to enable the automatic launch of a stored application upon the peripheral device’s connection with the computing device.”) This becomes even more problematic when he opines that certain combinations would be an obvious application of “finite” available solutions, but fails to even articulate what predictable solutions exist. *See e.g.*, Ex. 2033 at 19:14-20-6; 21:11-22 (Concluding there are “probably three or four or half a dozen relevant classes” involved for the finite number of identified predictable solutions” but failing to

identify more than two). Dr. Almeroth's willingness to conflate the teachings of the various references and conclude they would be obvious to combine is further evidence of the results-oriented approach he takes to obviousness, and calls into question his conclusions about the prior art and how a POSITA would have interpreted any of the references.

VI. CONCLUSION

For the reasons set forth in the POR and above, the patentability of all claims of the '237 Patent should be upheld.

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Respectfully submitted,

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Certification of Word Count Under 37 C.F.R. § 42.24(d)

The undersigned hereby certifies that the foregoing contains 4,953 words according to the word count of the word-processing software used to prepare the foregoing.

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CERTIFICATE OF SERVICE

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