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Sent: Monday, April 21, 2025 12:44 PM
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Subject: RE: IPR2025-00035 - Preliminary Reply Request

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[EXTERNAL]

Counsel,

Petitioner is authorized to file a three-page preliminary reply to the Preliminary Response, limited to responding to Patent Owner's Fintiv arguments. The preliminary reply is due on or before April 28, 2025.

Patent Owner is authorized to file a three-page preliminary sur-reply to Petitioner's preliminary reply. The preliminary sur-reply is due on or before May 5, 2025.

Regards,

Andrew Kellogg,
Deputy Chief Clerk, Trials
Patent Trial and Appeal Board
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From: Jensen, Travis <tjensen@orrick.com>
Sent: Tuesday, March 25, 2025 11:48 PM
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Subject: IPR2025-00035 - Preliminary Reply Request

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Your Honors:

Petitioner requests authorization in IPR2025-00035 to file a 5-page preliminary reply addressing three points.

First, Patent Owner repeatedly asserts that the conductive portion of the stair step in Petitioner's combinations is "floating" because it does not connect to the bridge and thus is "not connected to the memory array, resulting in an inoperative device." *Id.*, 21; *see also id.*, 24 (combinations "electrically and physically isolate [] the memory to the right of the staircase."). This argument mischaracterizes Petitioner's proposed combinations. For example, the Petition explains that the conductive portion of the stair steps in the proposed combinations "are in direct contact with the bridge." *See Pet.*, 53-54; *see also id.*, 60. There is good cause for a preliminary reply as Petitioner could not reasonably have anticipated that Patent Owner would misrepresent Petitioner's express combination.

Second, Patent Owner argues for discretionary denial under the *Fintiv* factors. POPR, 29-35. Petitioner wishes to respond and update the Board concerning the district court's recent order staying the district court litigation pending completion of IPR proceedings.

Third, Patent Owner notes that claim 15 was identified as a challenged claim, but the Petition provides no analysis for it. POPR, 28. Petitioner wishes to clarify that listing claim 15 was a typographical error and that claim 15 is not being challenged. If the Board authorizes a preliminary reply, Patent Owner does not object to a sur-reply of the same length.

Petitioner and Patent Owner met and conferred regarding this request, and Patent Owner opposes Petitioner's request as follows:

None of Petitioner's three points constitute good cause for a Reply.

Petitioner's **first** point is nothing more than an attempt to backfill gaps in the Petition based on concerns about points made in the POPR. The Board is fully equipped to evaluate the merits of the POPR and the Petition without further briefing, and the Board regularly denies requests for Replies on merits issues.

Second, no Reply is warranted as to *Fintiv* because, as Patent Owner informed the Board on March 21, the district court recently stayed the case pending IPR. Patent Owner's *Fintiv* arguments therefore no longer apply, and a Reply would waste the Board's resources.

Third, an alleged typo is no reason for a Reply. The POPR showed that Petitioner repeatedly and unmistakably identified claim 15 as a challenged claim, including in the P-TACTS system. Petitioner cannot withdraw that identification based on assertions of a typo, and additional briefing would waste the Board's time.

However, if the Board grants Petitioner's Request, Patent Owner requests a Sur-Reply of equal length.

The parties are available for a telephone conference at the Board's convenience. Respectfully submitted, Travis Jensen (counsel for Petitioner)

Travis M. Jensen
Partner, IP Litigation

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