UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUMIO CORPORATION,
Petitioner,

v.

FACETEC, INC.,
Patent Owner.

Patent No. 11,157,606

Inter Partes Review No. IPR2025-00107

PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO STRIKE

TABLE OF CONTENTS

Page

I. DERAKHSHANI-TANII 1

A. The "Spoofing Photograph" Argument Is Not New 1

B. The Reply Does Not Introduce A New Obviousness Position 3

C. The "Close-Up" And "Further-Away" Images Argument Involves Permissible Rebuttal Evidence 3

II. ZHANG-TANII 4

A. The Reply Cites Derakhshani To Rebut The POR Arguments, Not To "gap-fill" 4

TABLE OF AUTHORITIES

Page(s)

Cases

Anacor Pharms., Inc. v. Iancu,
889 F.3d 1372 (Fed. Cir. 2018) 4

Apple Inc. v. Andrea Elecs. Corp.,
949 F.3d 697 (Fed. Cir. 2020) 3

Belden Inc. v. Berk-Tek LLC,
805 F.3d 1064 (Fed. Cir. 2015) 3

Chamberlain Grp., Inc. v. One World Techs., Inc.,
944 F.3d 919 (Fed. Cir. 2019) 1

Haag-Streit AG v. Eidolon Optical, LLC,
IPR2018-01311 (PTAB Sept. 5, 2019).....5

Rembrandt Diagnostics, LP v. Alere, Inc.,
76 F.4th 1376 (Fed. Cir. 2023) 2

Other Authorities

37 C.F.R. § 42.6(e)(4).....6

37 C.F.R. § 42.23(b) 1

The Reply does not introduce any new arguments or theories. Instead, it responds directly to arguments raised in the POR, as permitted under 37 C.F.R. § 42.23(b), and by the Federal Circuit and Consolidated Trial Practice Guide (CTPG). *Chamberlain Grp., Inc. v. One World Techs., Inc.*, 944 F.3d 919, 925 (Fed. Cir. 2019) ("Parties are not barred from elaborating on their arguments on issues previously raised."); CTPG, 73 ("A party also may submit rebuttal evidence in support of its reply."). PO's Motion to Strike should thus be denied.

I. DERAKHSHANI-TANII

A. The "Spoofing Photograph" Argument Is Not New

PO premises its entire Motion on the absence of the "spoofing photograph" in the Petition. But it gets the record wrong. Petitioner argued in *the Petition* that Derakhshani teaches "capturing multiple images of the user's face" and cited 16:44-18:4 as support. (Pet., 16.) Petitioner also cited in *the Petition* the very same passage that PO now claims was never referenced: Derakhshani, 17:16-19. (Pet., 24 ("Derakhshani discloses verifying the face's three-dimensionality by fitting 'the location of multiple landmarks . . . to the closest two dimensional plane and the average distance of the landmarks from this fit plane can be determined as the spatial metric.' *Derakhshani*, ***17:12-26***.").) This argument could not have been raised "for the first time" on reply because even PO cited the relevant page of the

Petition in its POR. (Mot., 1; POR, 42.)

Even if PO is correct, there is nothing improper in bringing these passages to the Board's attention on reply. After all, the POR argued that Derakhshani does not teach capturing images of a face. (POR, 40-44.) As permitted by the Federal Circuit and CPTG, the Reply directly responded to this argument, explaining that Derakhshani captures an image of a face when determining a spatial metric using differences in landmarks at different distances from the sensor. (Reply, 1.) Petitioner further explained that Derakhshani discloses the landmarks being non-eye features, such as "a nose, an ear," "a mouth," or a "background object." (Reply, 1 (citing EX1005, 16:51-54, 17:16-17, 17:29-36).) Petitioner also pointed to Derakhshani's disclosures of multiple "landmarks (e.g., an eye, nose, mouth, and ear)"—PO's so called "spoofing photograph" new embodiment. (Reply, 1 (citing EX1005, 3:5-7, 17:2-6, 17:16-19).) Because these passages were cited and discussed in the Petition and given the POR arguments, Petitioner was in its right to elaborate on the Petition's original argument that Derakhshani teaches capturing an image of a face, pointing in the process to the same supporting passages identified in the Petition. *Rembrandt Diagnostics, LP v. Alere, Inc.*, 76 F.4th 1376, 1384 (Fed. Cir. 2023) ("a reply may be proper if it is responsive and simply expands on previously raised arguments.").

B. The Reply Does Not Introduce A New Obviousness Position

PO next re-packages its argument on the "spoofing photograph" above as an improper obviousness argument. But again PO gets the record wrong. Petitioner in the *Petition* relied on Derakhshani's disclosures of capturing an image having multiple landmarks as teaching capturing an image of a face. (Pet., 17 (describing Derakhshani's "'landmark**s**' such as a user's eyes, nose, ears, and other features").) Petitioner further described Derakhshani's disclosures as "verify[ing] the user's face is three-dimensional by capturing multiple images of the user's face to calculate a 'spatial metric' representing the face's three-dimensionality." (Pet., 16 (citing EX1005, 17:16-19).) The Reply rebutted the POR by explaining—consistent with the Petition—how a POSITA would have understood Derakhshani's multiple "landmarks (e.g., an eye, nose, mouth, and ear)" to mean the captured image is of a face. (Reply, 1.) The identified Reply obviousness arguments are entirely proper.

C. The "Close-Up" And "Further-Away" Images Argument Involves Permissible Rebuttal Evidence

The "close-up" and "further-away" images argument is likewise directly responsive to the POR arguments. *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1080 (Fed. Cir. 2015); *Apple Inc. v. Andrea Elecs. Corp.*, 949 F.3d 697, 706-7 (Fed. Cir. 2020) ("the petitioner in an *inter partes* refbeldview proceeding may

introduce new evidence after the petition stage if the evidence is a legitimate reply to evidence introduced by the patent owner.") (citations omitted).

In the POR, PO argued that every image in Derakhshani must capture the eye vasculature with enough precision, and therefore, it cannot capture a face. (POR, 31, 40-41, 43.) Petitioner's Reply argument addressed PO's argument by explaining how PO misunderstands Derakhshani's disclosures. (Reply, 1-2.) And Dr. Daft's testimony was offered to simply explain how a POSITA would have understood Derakhshani's captured images in view of Derakhshani's disclosures. There is no basis to strike this argument because this type of rebuttal evidence is permitted on reply. *Anacor Pharms., Inc. v. Iancu*, 889 F.3d 1372, 1380-82 (Fed. Cir. 2018) (a petitioner "may introduce new evidence after the petition stage if the evidence is a legitimate reply to evidence introduced by the patent owner.").

II. ZHANG-TANII

A. The Reply Cites Derakhshani To Rebut The POR Arguments, Not To "gap-fill"

PO also accuses Petitioner of improperly relying on Derakhshani to "gap-fill" the Zhang-Tanii Ground. (Mot., 3.) However, the Reply references Derakhshani solely to address PO's arguments that determining color/intensity differences is not determining expected distortion. (POR, 49.) The citation to 19:30-37 of Derakhshani was offered only to explain how a POSITA would have

understood Zhang's disclosures and why PO and its expert's arguments were incorrect. (Reply, 11.) Finally, PO's reliance on *Haag-Streit AG v. Eidolon Optical, LLC*, IPR2018-01311 (PTAB Sept. 5, 2019) is misplaced because, here, the Reply is not introducing a new obviousness position. (Mot., 4.)

For the above reasons, the Board deny should PO's Motion to Strike.

Dated: March 17, 2026

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I hereby certify that the attached PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION TO STRIKE was served on the below date via e-mail (by consent) to the following counsel of record for the Patent Owner:

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