UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RØDE MICROPHONES, LLC AND

FREEDMAN ELECTRONICS PTY LTD,

Petitioners

v.

ZAXCOM, INC.,

Patent Owner.

IPR2025-00231

Patent 7,929,902

PETITIONERS' CORRECTED REQUEST FOR DIRECTOR REVIEW UNDER 37 C.F.R. § 42.75 OF PAPER 32, VACATING INSTITUTION AND DISMISSING PROCEEDING

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Pursuant to 37 C.F.R. § 42.75, Petitioners submit this Request for Director Review of the Board's decision to vacate institution on the ground that Petitioners were alleged privies of their recently acquired subsidiary Lectrosonics. Contrary to law, the Board's decision effectively establishes a *per se* rule that mere status as a subsidiary despite having no influence, role, or definitive interest in the parent-petitioner's IPR subjects said parent-petitioners to 35 U.S.C. § 315(b)'s one year time bar, even when parent-petitioners also had no role in their subsidiary's previous IPR and court proceedings. The Board impinged on Petitioners' due process rights by terminating the proceedings after failing to properly apply governing legal authority, abused its discretion by failing to consider pertinent evidence, and by reaching the clearly erroneous factual and legal conclusions to find that Petitioners are in privity with their corporate subsidiary.

I. LEGAL STANDARD FOR DIRECTOR REVIEW

"[T]he Director may review any decision on institution … any final decision … or any other decision concluding a proceeding brought under 35 U.S.C. 135, 311, or 321." 37 C.F.R. § 42.75(a). Exemplary standards of review are provided on the Director Review webpage. With respect to decisions relating to institution, the Director Review webpage provides that a petition should present: "(a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law."

II. BACKGROUND FACTS AND TIMELINE

On June 6, 2017, Zaxcom filed suit against Lectrosonics Inc. for allegedly infringing, *inter alia*, U.S. Patent 7,929,902 (the "'902 patent"). Ex. 2027. Lectrosonics subsequently filed a petition for IPR on June 12, 2018, which was instituted as IPR2018-01129. Lectrosonics ceased selling its accused PDR product in 2019. Ex, 1041, ¶20. In early 2022, the FWD was affirmed by the Federal Circuit. *Zaxcom, Inc. v. Lectrosonics, Inc.*, 2022 WL 499848, at *1-2 (Fed. Cir. Feb. 18, 2022). Zaxcom's patent infringement suit against Lectrosonics was dismissed in February 2023, and Zaxcom has not sued or accused Lectrosonics of infringement since. Ex. 1041, ¶20. At the time of the Lectrosonics' lawsuit and IPR, Lectrosonics was an independent company, and Petitioners played no role in either proceeding. *Id.*, ¶18 (Petitioner's had no role), ¶12 (parties "first communication" was not until June 2024).

On October 31, 2023, Zaxcom filed suit against Petitioners RØDE and Freedman for allegedly infringing, *inter alia*, the '902 patent. Petition, xi. RØDE is a wholly-owned direct subsidiary of Freedman. Ex, 1041, ¶3.

In August 2024, Petitioners became aware that Lectrosonics was seeking an acquirer. *Id.*, ¶¶8-9. In late November 2024, Petitioners received confidential information from Lectrosonics relating to same. *Id*.

On December 4, 2024, Petitioners filed the instant IPR petition along with two others for related patents. Petition, xii. Lectrosonics played no role in these IPR petitions, including any prior art selection, argument selection, funding, input, influence, direction, or control. Ex. 1041, ¶18. Nor were there any agreements or understandings between Petitioners and Lectrosonics concerning these IPRs. *Id*.

On December 7, 2024, Petitioners' CEO Damien Wilson and founder Peter Freedman visited Lectrosonics to discuss a possible acquisition. *Id.*, ¶10. On January 20, 2025, the parties executed a Letter of Intent. *Id*. On May 9, 2025, the acquisition closed via a 100% stock purchase, and Lectrosonics Inc. became a wholly-owned subsidiary of Petitioner RØDE Microphones LLC. *Id*., ¶¶13-14.

On June 2, 2025, Patent Owner filed a motion to terminate this proceeding based on Lectrosonics allegedly being a real party in interest ("RPI") or privy of Petitioners and thus the petition being time-barred. Paper 15. Petitioners filed an opposition on June 5, 2025. Paper 20. On June 16, 2025, the Board instituted proceedings on the merits for the '902 patent. Paper 23. The Board granted Patent Owner's motion on August 8, 2025. Paper 32. The Board determined that Petitioners were in privity with Lectrosonics but did not address RPI. *Id*., 9.

III. ARGUMENT

Determining whether parties are in privity implicates due process concerns. As a result, the inquiry focuses on whether the Petitioners previously had a full and

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fair opportunity to litigate the validity of the patent.

> [I]mportantly, the reach of privity cannot extend beyond the limits of ***due process***…. Because the rationale behind § 315(b)'s preclusion provision is to prevent successive challenges to a patent by those ***who previously have had an opportunity to make such challenges in prior litigation***, the privity inquiry in the context naturally focuses on the relationship between the named IPR petitioner and the ***party in the prior lawsuit***. For example, it is important to determine whether the petitioner and the prior litigant's relationship – ***as it relates to the lawsuit*** – is sufficiently close that it can be fairly said that the petitioner had a full and fair opportunity to litigate the validity of the patent ***in that lawsuit***.

WesternGeco LLC v. ION Geophysical Corp., 889 F.3d 1308, 1319 (Fed. Cir. 2018) (citing *Taylor v. Sturgell*, 553 U.S. 880, 894 (2008)) (emphasis added); *see also Uniloc 2017 LLC v. Facebook Inc.*, 989 F.3d 1018, 1028 (Fed. Cir. 2021) (privity inquiry is focused on "ensuring that the petitioner is not unfairly limited in its ability to lodge its challenges if it has not had a full and fair opportunity to do so already."); *Shenzhen Pincan Tech. Co. v. Ridge Wallet, LLC*, IPR2024-00340, Paper 18 at 5 (PTAB July 12, 2024) ("[the parties'] relationship ***must be related to the lawsuit*** and be sufficiently close that it can be fairly said the petitioner had a full and fair opportunity to litigate the validity of the patent in that lawsuit.") (emphasis added); *Luminex Int'l Co. v. Signify Holdings B.V.*, IPR2024-00101, Paper 20 at 21-22 (PTAB Nov. 21, 2024) (similar) (Director Decision).

It is undisputed that Petitioners were not parties to, and had no role in, Lectrosonics' IPR2018-01129 or court litigation, and neither Patent Owner nor the Board argue or cite any evidence to the contrary. *See* Ex, 1041, ¶¶18, 12. Indeed, the Lectrosonics FWD was affirmed in February 2022, and litigation dismissed in February 2023, whereas Petitioners were not themselves sued by Zaxcom until October 23, 2023. As a result, it simply cannot be said that Petitioners previously had anything resembling a "full and fair" opportunity to litigate the validity of the claims currently being challenged in the instant IPR. Given the due process concerns implicated by preventing Petitioners from challenging the '902 patent to vindicate their own interests (i.e., to cancel claims presently asserted against Petitioner's products in the district court litigation), Petitioners' complete lack of involvement in the prior proceedings should end the privity inquiry.

A. The Board's Conclusion that Lectrosonics Is In Privity with Petitioners Under *Taylor* Exception 2 Is Legally Erroneous

The Board's finding of privity relies primarily on the fact that, prior to institution, RØDE acquired the stock of Lectrosonics Inc. and it became a subsidiary. The Board found this satisfied *Taylor* exception No. 2's "pre-existing 'substantive legal relationship[s]' between the person to be bound and a party to the judgment." *Taylor*, 553 U.S. at 894; Paper 32, 7-8. But the Board erred by disregarding the law that a parent-subsidiary relationship is insufficient to establish privity. Although it could be argued that a parent and subsidiary "always ha[ve] a

preexisting, established relationship" and are both likely to benefit from an IPR, such a relationship is insufficient. *Puzhen Life USA, LLC v. ESIP Series 2, LLC*, IPR2017-02197, Paper 24 at 9 (PTAB Feb. 27, 2019). "The traditional rule is that mere status as a corporate parent is insufficient to render an entity an RPI (or even a privy)." *Syngenta Crop Prot. AG v. FMC Corp*., PGR2020-00028, Paper 8 at 15 (PTAB Sept. 15, 2020); *see also Gillig v. Nike, Inc*., 602 F.3d 1354, 1362 (Fed. Cir. 2010) ("control of a party to the litigation through stock ownership or corporate officership is not enough to create privity, absent a showing that the corporate form has been ignored"); *TRW Auto. US LLC v. Magna Elecs. Inc.*, IPR2014-01497, Paper 7 at 10 (PTAB Mar. 19, 2015) (finding no privity from "traditional parent/subsidiary business relationship").

The instant case is even less likely to cause concern since Petitioners are the *parents* and would control *subsidiary* Lectrosonics rather than Lectrosonics controlling Petitioners and the instant IPR. *Caterpillar Inc. v. ESCO Corp.*, IPR2015-00409, Paper 9 at 13 (PTAB June 18, 2015) ("CGM is a wholly owned subsidiary of Petitioner, not vice versa…. Such relationship may suggest that Petitioner controls CGM but does not suggest that CGM controls Petitioner. This is not the type of substantive legal relationship discussed in *Taylor*.")

In spite of the foregoing, the Board found *Taylor* exception 2 to be satisfied. The Board mistakenly viewed Petitioner's purchase of Lectrosonics' stock as a

purchase of its assets and obligations and thus conflated the property law principles to which *Talyor* exception 2 is directed, with the corporate law principles, as reflected in the foregoing cases, that do not impute privity to corporate relatives.

Taylor exception 2 focuses on the parties' relationship to property or an asset and sounds in property law rather than corporate law. *Taylor*, 553 U.S. at 894 ("the needs of property law"). As such, the examples provided are property relationships such as "preceding and succeeding owners of property, bailee and bailor, and assignee and assignor." *Id*. Exception 2 reflects the rule that assignees and successors-in-interest to property or assets may take them subject to existing encumbrances (e.g., liens, restrictive covenants, easements, judgments, etc.). For instance, in *Kloster*, relied upon by the Board (Paper 32 at 8), defendant Stora was found to infringe certain patents. *Kloster Speedsteel AB v. Crucible Inc*., 793 F.2d 1565, 1568-69 (Fed. Cir. 1986). After trial, Kloster purchased the Stora facility used to make the infringing products. *Id*. at 1569. The Court held that Kloster was therefore subject to the court's injunction because it was "the successor-operator of Stora ***assets*** used to produce infringing products." *Id*. at 1583 (emphasis added). The court then remarked that "[c]ourts have repeatedly found privity where, after a suit begins, a nonparty ***acquires assets*** of a defendant-infringer." *Id.* (emphasis added). So, *Kloster* fits within *Taylor* exception 2 because Kloster's relationship to

Stora was that of an assignee of a property asset (factory for infringing products) that was subject to a liability (i.e., judgment/injunction).

Power Integrations, Inc. v. Semiconductor Components Indus., LLC, also relied upon by the Board, merely cites *Kloster* for the foregoing proposition that acquiring encumbered "assets" can create a privity relationship. Paper 32 at 8 (citing 926 F.3d 1306, 1316 (Fed. Cir. 2019)). Otherwise, *Power Integrations* is inapplicable as there the petitioner admitted that the barred party was an RPI, so the only issue was the timing of the RPI analysis. *Id*. at 1310.

Here, Petitioners have not acquired any assets from Lectrosonics. Instead, Petitioners merely bought the stock of Lectrosonics, which continues to exist as a separate corporate entity. This has at least two relevant legal ramifications. First, because Lectrosonics continues to exist as a corporate entity, Petitioners are *not* successors-in-interest to any property or liability of Lectrosonics. *Fireman's Fund Ins. Co. v. Fed. Fire Prot. Corp*., No. 18-cv-1962, 2020 WL 978669, at *4 (D. Md. Feb. 28, 2020) (rejecting argument that parent Atkore was a successor-in-interest to acquired subsidiary Allied and remarking "[a]s an existing corporation, Allied plainly has no 'successor,' which is defined as 'one who follows or comes in to the place of another.'"); *ProCentury Ins. Co. v. Harbor House Club Condo. Ass'n, Inc*., 652 F. Supp. 2d 552, 563 (D.N.J. 2009) (parent company "is not a successor-in-interest" to an acquired subsidiary that "still exists"); *United States v. Bestfoods*,

524 U.S. 51, 61 (1998) ("It is a general principle of corporate law deeply 'ingrained in our economic and legal systems' that a parent corporation (so-called because of control through ownership of another corporation's stock) is not liable for the acts of its subsidiaries."); *In re Welding Fume Prods Liability Litigation*, No. 03-cv-17000, 2010 WL 2403355, at *7 (N.D. Ohio June 11, 2010) ("[I]f the original entity still exists, there is no successor—and no successor liability."). Second, owning the stock of Lectrosonics is not the same as acquiring its assets, which still belong to it. *Dole Food Co. v. Patrickson*, 538 U.S. 468, 474-75 (2003) ("A corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary."); *United States v. Bennett*, 621 F.3d 1131, 1136-37 (9th Cir. 2010).

Such corporate law principles are why the decisions above have consistently held that a parent-subsidiary relationship is insufficient to establish privity and to preclude the party who did not participate in the earlier legal proceeding. In view of the foregoing, the Board legally erred in relying on *Kloster* and *Power Integrations* to find that "[i]n acquiring Lectrosonics, Petitioner acquired its rights and obligations with respect to the '902 patent, which includes § 315(b)'s time bar." Paper 32 at 8. While Lectrosonics Inc. continues to be bound by the §315(b) time bar, that time bar liability does not bleed over onto its corporate parents and

their own independent interests (e.g., defending against Zaxcom's infringement allegations against Petitioners' own products).

B. The Board's Conclusion that Lectrosonics Is In Privity with Petitioners Under *Taylor* Exception 5 Is Legally Erroneous

Without analysis, the Board found there was privity under *Taylor* exception 5: "relitigating through a proxy … when a nonparty later brings suit as an agent for a party who is bound by a judgment." *Taylor*, 553 U.S. at 895. The Supreme Court has admonished courts to be "cautious" about applying this exception and that "preclusion is appropriate ***only if*** the putative agent's conduct of the suit ***is subject to the control of the party who is bound by the prior adjudication***." *Id*. at 906 (emphasis added)*; see also* Consolidated Trial Practice Guide, November 2019, 16 ("A common consideration is whether the non-party exercised or could have exercised control over a party's participation in a proceeding.").

The Board made no finding that parent-Petitioners are subject to Lectrosonics's control in any way, let alone relating to the instant IPR. Nor could it. Petitioners Freedman and RØDE control their wholly-owned subsidiary, not vice versa. *See Caterpillar*, IPR2015-00409, Paper 9 at 13 (alleged control went in wrong direction). Relatedly, "[n]o one from Lectrosonics has become an officer or board director … of Rode or Freedman." Ex. 1041, ¶¶15-16. Mr. Wilson and Mr. Freedman, however, became directors of Lectrosonics. *Id*., ¶15. This again shows that any control would be in the wrong direction.

Petitioner's CEO Damien Wilson declared that Lectrosonics "had no input, direction, or control over any of the IPRs filed by Petitioners," that the decisions to file the IPRs were made by him in consultation with inside and outside counsel, and that there were no "written or oral agreements or understandings with Lectrosonics concerning any of the IPRs …" *Id.*, ¶¶17-18. The Board ignored this uncontested evidence that Petitioners were not Lectrosonics' agent or proxy.

The Board's decision defies common sense. Only Petitioners were defending against a Zaxcom lawsuit. *Id*., ¶20. Lectrosonics had stopped selling its accused product in 2019 and its case had been dismissed in 2023. *Id*. Thus, only Petitioners had a non-speculative interest in filing the IPR petition. *Id*. Further, Petitioners and Lectrosonics first met on December 7, 2024 to discuss a potential acquisition, three days *after* the Petition had already been filed. *Id.*, ¶10. And the parties did not even agree on a Letter of Intent until January 20, 2025, six weeks *after* the petition was filed. *Id.* The Board again ignores these facts that demonstrate that Petitioners filed the Petition for their own interests and not as a proxy or agent of Lectrosonics.

C. The Board's Remaining Findings Fail to Establish Privity

The Board cites four additional facts allegedly showing privity. None of them does. The Board abused its discretion by relying on non-evidence and ignoring contrary evidence, causing it to make erroneous findings of material facts.

First, the Board contends that Lectrosonics stands to benefit from Petitioner's IPR. Paper 32 at 8. But the Board's failure to identify any such purported benefit is a material error of fact. It is undisputed that Lectrosonics has not been sued for infringement by Zaxcom since dismissal of their earlier litigation in February 2023. Ex. 1041, ¶20. Patent Owner's argument, summarized by the Board, that Lectrosonics could add certain features to its products or "potentially" resume sale of its previously accused product (Paper 32 at 6-7 (citing Paper 15 at 6)) is naked speculation. *See Hybrigenics SA v. Forma Therapeutics, Inc*. PGR2018-00098, Paper 23 at 19 (PTAB Mar. 19, 2020) (rejecting argument that non-party would benefit from cancellation of claims by being able to develop compounds covered by such claims as "largely speculation"); *Merck Sharp & Dohme Corp. v. Glaxosmithkline Biologicals SA*, IPR2018-01229, Paper 13 at 12-13 (PTAB Dec. 18, 2018) (rejecting patent owner argument that non-party would lose benefit of license with Petitioner in the event of a negative outcome as "based on assumptions and speculation"); *Syngenta*, PGR2020-00028, Paper 8 at 14 (whether "non-party is a ***clear*** beneficiary") (emphasis added).

Moreover, even if Lectrosonics had a general desire to see the '902 claims cancelled, "a common desire among multiple parties to see a patent invalidated, without more, does not establish privity." *Luminex*, IPR2024-00101, Paper 20 at 21 (quoting *WesternGeco*, 889 F.3d at 1321). Patent Owner's argument also ignores

the uncontested testimony that the previously accused Lectrosonics product was discontinued in 2019, was obsolete, and would not be brought back to market. Ex. 1041, ¶20. In sum, neither Patent Owner nor the Board have identified any choate interest of Lectrosonics, let alone any that has had any influence on the instant IPR, which was filed before the parties even met to discuss an acquisition.

Second, the Board asserts that "[m]anagement was also aligned" because three board members of Petitioners joined the board of Lectrosonics. Paper 32 at 9. But this is commonplace for corporate acquisitions, occurred months after the filing of the petition, and says nothing about the instant IPR being influenced by or at the behest of subsidiary Lectrosonics. "[C]ontrol of a party to the litigation through stock ownership or ***corporate officership*** is not enough to create privity, absent a showing that the corporate form has been ignored." *Gillig*, 602 F.3d at 1362 (emphasis added); *Syngenta*, PGR2020-00028, Paper 8 at 15-16 ("mere overlap of personnel … does not indicate sufficient blurring of corporate separation …."). Moreover, as noted above, to the extent there was any control, it was in the wrong direction as Petitioners would control Lectrosonics, not vice versa. *Caterpillar*, IPR2015-00409, Paper 9 at 13.

Third, the Board cites a June 24, 2024, communication from Lectrosonics to RØDE that attached some anonymous internet posts referring to Zaxcom's "patents" and the "Zaxcom lawsuit" against RØDE. Paper 32 at 9 (citing Ex.

2030). The exhibit also includes discussion about setting up a call between Lectrosonics and RØDE. The Board fails to explain, however, how this communication demonstrates a "substantive legal relationship" such that Petitioners were acting as Lectrosonics "proxy" in filing the petition, or privity generally. This exhibit does not mention anything about IPRs, the '902 patent, or even invalidating patent claims. Nor does it propose or suggest any cooperation to do so. As explained by Pieter Schillebeeck, Freedman's Technology Director, Mr. Winkler of Lectrosonics had asked him some "general questions about the status of the case" that he was unable to answer so he referred the matter to Mr. Wilson. Ex. 1042, ¶4. And as Mr. Wilson explained, the call never even happened. Ex. 1041, ¶12. The Board abused its discretion in disregarding this unrebutted evidence but finding the nondescript statements in Exhibit 2030 as evidence of privity. Paper 32 at 9.

Fourth, the Board relies on the fact that nearly three months *after* the petition was filed, Lectrosonics provided a *single* claim chart to RØDE for a *different* patent, to determine if it was relevant to the "pending infringement *litigation*." Ex. 1041, ¶19. The chart was for a reference called "Joey Transcorder" that is *not even cited* in the Petition. *Id*. The Board fails to explain, nor could it, how this demonstrates that Petitioners acted as Lectrosonics proxy in filing the petition three months earlier or that the parties had a "substantive legal relationship" that justifies

denying Petitioners the ability to challenge the ’902 claims when they had no participation in the earlier Lectrosonics lawsuit or IPR. *See Petroleum Geo-Services Inc. v. WesternGeco*, IPR2014-00687, Paper 100 at 37 (PTAB Dec. 15, 2015) (sharing of potentially invalidating prior art references fails to demonstrate control, direction, or funding of petition); *WesternGeco*, 889 F.3d at 1322 (post-trial phone call to discuss prior art failed to demonstrate that Petitioner was in privity with non-party such that Petitioner had a full and fair opportunity to litigate the validity of the patents).

IV. CONCLUSION

The Board erred in expanding the scope of privity[1] and disregarding unrebutted evidence demonstrating that Petitioners played no role in the earlier Lectrosonics’ proceedings and that Lectrosonics played no role in the instant IPR. The Board’s decision impinges on Petitioners’ due process rights and should be reversed.

Dated: September 22, 2025

/ Jeffrey B. Plies/
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Counsel for Petitioners

[1] The privity inquiry is “broader” than the RPI inquiry. *WesternGeco*, 889 F.3d at 1320. Since there is no privity between the parties, Lectrosonics is also not an RPI.

CERTIFICATE OF SERVICE

I certify that today in: *RØDE Microphones, LLC., et al. v, Zaxcom, Inc.*, IPR2025-00231 (U.S. Patent 7,929,902) I caused to be served a copy of:

Petitioners' Corrected Request for Director Review Under 37 C.F.R. § 42.75 Of Paper 32, Vacating Institution and Dismissing Proceeding

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