

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RØDE MICROPHONES, LLC and
FREEDMAN ELECTRONICS PTY LTD,
Petitioner,

v.

ZAXCOM, INC.,
Patent Owner.

IPR2025-00230 (Patent 7,711,443 B1)
IPR2025-00231 (Patent 7,929,902 B1)
IPR2025-00232 (Patent 10,276,207 B1)¹

Before JUSTIN T. ARBES, ROBERT J. WEINSCHENK, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
Granting in Part and Denying in Part Petitioner's
Request for Additional Preliminary Briefing
37 C.F.R. §§ 42.5, 42.108(c)

¹ The Board is entering the same Order in all captioned proceedings. The parties are not authorized to use this combined caption.

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I. BACKGROUND

In the Petition (Paper 1, “Pet.”)² in each of these proceedings, Petitioners RØDE Microphones, LLC and Freedman Electronics Pty Ltd (collectively “Petitioner”) identify three prior *inter partes* reviews that involved the same patent or related patents in the same patent family. *See* Pet. xii. In particular, the Petition identifies *Lectrosonics, Inc. v. Zaxcom, Inc.*, IPR2018-00972 (Patent 9,336,307 B2), IPR2018-01129 (Patent 7,929,902 B1), and IPR2018-01130 (Patent 8,385,814 B2) (collectively “the Lectrosonics IPRs”). *Id.* In each of the present petitions, Petitioner argues that collateral estoppel precludes Zaxcom, Inc. (“Patent Owner”) from relitigating certain issues that were resolved by final written decisions in the Lectrosonics IPRs.³

In an email to the Board dated April 3, 2025, Petitioner requests leave to file a preliminary reply to Patent Owner’s Preliminary Response in these proceedings. Ex. 3002. In the email, Petitioner requests leave to file a seven page preliminary reply in order to address the following issues: (1) “[c]onstruction of ‘master timecode’ and ‘master timecode generator,’ and relatedly, the application of collateral estoppel in view of Zaxcom’s construction, and the presence of such features in the prior art in view of said

² For expediency, we refer to Paper and Exhibit numbers filed in IPR2025-00230. Similar Papers and Exhibits were filed in IPR2025-00231 and IPR2025-00232.

³ The final written decision in each prior *inter partes* review proceeding was affirmed by the Federal Circuit. *See Zaxcom, Inc. v. Lectrosonics, Inc.*, Nos. 2020-1350, 2020-1405, 2022 WL 499843, at *1–2 (Fed. Cir. Feb. 18, 2022); *Zaxcom, Inc. v. Lectrosonics, Inc.*, Nos. 2020-1921, 2020-1922, 2020-1943, 2020-1944, 2022 WL 499848, at *1–2 (Fed. Cir. Feb. 18, 2022).

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construction,” and (2) “[c]onstruction of ‘locally generated audio,’ and relatedly, the application of collateral estoppel in view of Zaxcom’s construction, and the presence of such features in the prior art in view of said construction.” *Id.* Petitioner’s email indicates that Patent Owner opposes additional preliminary briefing.

On April 8, 2025, Judges Arbes, Weinschenk, and McNeill held a conference call with counsel for the parties.

II. ANALYSIS

A petitioner “seek[ing] leave to file a reply to the preliminary response . . . must make a showing of good cause.” 37 C.F.R. § 42.108(c) (2024). “However, the Board does not expect that such a reply will be granted in many cases due to the short time period the Board has to reach a decision on institution.” Consolidated Trial Practice Guide at 52.⁴

When determining whether a petitioner has shown good cause for a reply to a preliminary response, the Board may assess whether the argument at issue in the preliminary response was reasonably foreseeable. *See, e.g., Illumina, Inc. v. The Trs. of Columbia Univ. in the City of New York*, IPR2018-00797, Paper 17, 3 (PTAB Aug. 7, 2018) (Order) (stating that “the Board may authorize a reply to afford a petitioner the opportunity to address evidence or arguments that it could not have reasonably foreseen”); *Sandoz Inc. v. Abbvie Biotechnology Ltd.*, IPR2017-01824, Paper 13, 3 (PTAB Dec. 15, 2017) (Order) (same).

⁴ Patent Trial and Appeal Board Consolidated Trial Practice Guide (November 2019) (“Consolidated Trial Practice Guide” or “CTPG”), available at <http://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>.

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During the conference call, Petitioner argued that good cause exists because it was not foreseeable that Patent Owner would propose different claim constructions for claim terms that were addressed in the Lectrosonics IPRs. According to Petitioner, the construction of the claim phrase “locally generated audio” was not raised in any of the Lectrosonics IPRs and was only raised in the co-pending district court litigation seven weeks after the petitions were filed in the instant proceedings.

Petitioner also argued that it could not have foreseen Patent Owner’s new constructions for the claim terms “master timecode” and “master timecode generator” that are substantially different from the constructions adopted in the final written decisions in the Lectrosonics IPRs. Petitioner argued that Patent Owner’s new construction does not require a “master timecode generator” to control other timecode generators (plural), which makes Patent Owner’s new construction for “master timecode generator” broader than the construction adopted in the Lectrosonics IPRs (i.e., broader than the broadest reasonable interpretation), which was unforeseeable. Petitioner also argued that the prior art cited in the Petition discloses the disputed claim terms under either Patent Owner’s proposed construction or Petitioner’s.

Patent Owner argued that it was reasonably foreseeable that the parties would disagree regarding claim construction. Patent Owner argued that Petitioner could have addressed claim construction in the petitions and it was Petitioner’s choice whether or not to address these issues.

Patent Owner also pointed out that the claim constructions adopted by the Board in the Lectrosonics IPRs were based on the broadest reasonable interpretation (“BRI”) standard, whereas the Board in the instant

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proceedings will apply the *Phillips* standard. Patent Owner argued that Petitioner has not cited any case law involving the application of collateral estoppel to claim construction issues where a prior decision applied the BRI standard and estoppel was applied in a subsequent proceeding applying *Phillips*.

After considering the parties' arguments and reviewing the Petition and Preliminary Response in each of these proceedings, as well as the final written decisions in the Lectrosonics IPRs, we find that Petitioner has shown good cause for additional briefing regarding Patent Owner's proposed construction of the claim phrases "master timecode," "master timecode generator," and "locally generated audio," as well as the alleged presence of such features in the prior art in view of Patent Owner's proposed constructions. Specifically, Petitioner has shown that it was not reasonably foreseeable that Patent Owner would propose a construction different from, and potentially broader than, the construction adopted in the Lectrosonics IPRs. Accordingly, Petitioner's request for leave to file a preliminary reply to address construction of the above-identified claim terms, and disclosure of the prior art cited in the Petition in view thereof, is *granted-in-part*.

We also find that Petitioner has not shown good cause for additional briefing regarding the application of collateral estoppel in these proceedings. We agree with Patent Owner that collateral estoppel issues were foreseeable when the Petitions were filed, as evidenced at least by the fact that Petitioner argued for collateral estoppel in each of the Petitions. Accordingly, Petitioner's request for leave to file a preliminary reply to address "the application of collateral estoppel" as it relates to the above claim construction issues is *denied*.

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ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner's request for leave to file a preliminary reply to Patent Owner's Preliminary Response in each proceeding to address issues of collateral estoppel related to claim construction is *denied*;

FURTHER ORDERED that Petitioner's request for leave to file a preliminary reply in each proceeding addressing (1) Patent Owner's proposed constructions of the claim terms "master timecode," "master timecode generator," and "locally generated audio," and (2) "the presence of such features in the prior art in view of" Patent Owner's proposed constructions, is *granted*;

FURTHER ORDERED that, within five (5) business days of the entry of this Order, Petitioner may submit its Preliminary Reply in each of these proceedings, limited to five (5) pages, addressing only the above-authorized issues;

FURTHER ORDERED that, within five (5) business days of the entry of Petitioner's Preliminary Reply in each proceeding, Patent Owner may submit a Preliminary Sur-reply, limited to five (5) pages and respond to the Preliminary Reply.

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