

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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RØDE MICROPHONES, LLC AND  
FREEDMAN ELECTRONICS PTY LTD,  
Petitioners

v.

ZAXCOM, INC.,  
Patent Owner.

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IPR2025-00231

Patent 7,929,902

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**PRELIMINARY SUR-REPLY**

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Pursuant to Paper 9 (“Board’s Order”), Patent Owner Zaxcom, Inc. (“Patent Owner” or “Zaxcom”) submits this Preliminary Sur-reply to rebut Petitioners’ Preliminary Reply (“Preliminary Reply”). Zaxcom also intends to separately request expungement of the Preliminary Reply for Petitioners’ failure to follow the Board’s Order by arguing the construction of a claim term that was not authorized therein, namely, “local audio.” In any case, Petitioners’ Petition and its Preliminary Reply fail to meet the threshold for institution, pursuant to 35 U.S.C. §314(a).

**A. “master timecode generator” and “master timecodes”**

Petitioners’ Preliminary Reply does not rebut Zaxcom’s construction that a “master timecode generator” is “a producer of a master time reference signal that controls at least one other timecode generator,” nor do Petitioners provide a claim construction for this term. Rather, Petitioners erroneously assert that Strub and Woo disclose a GPS signal as a master time reference signal, which control at least one timecode generator of at least one other device. Preliminary Reply, pp. 1, 3.

The GPS signals disclosed in Strub and Woo, if available, provide time information to their internal clocks – they do not exercise control over how the internal clocks operate (e.g., the speed of such clocks). This is in sharp contrast to Zaxcom’s claimed invention in which the operation of the local timecode generator is synchronized to the operation of the master timecode generator, which controls how the local timecode generator operates. For example, as taught by the ‘902

Specification, the speed of the local timecode generator is modified to maintain synchronization with the speed of the master timecode generator. Ex-1001, 14:55-15:9. Because the GPS signals of Strub and Woo do not control the internal clocks, they run under their own, likely different, parameters, and, as such, the “clock drift” admitted by the Petitioners is inevitable whenever communication is lost with the GPS satellites. Thus, by Petitioners’ own statements, the reliability of a GPS time signal as a “master timecode generator” is entirely contingent upon continuous signal availability because Strub and Woo do not teach the ability of the GPS signals to control the operation of the internal clocks. These admissions directly undermine Petitioners’ assertion that GPS can serve as a reliable master timecode reference in the professional field of motion picture and television production. Zaxcom’s invention anticipated these problems and intentionally incorporated master timecode generator control of the local timecode generators including the control of the local timecode generator speed to ensure that the output of the local timecode generator continuously mimics the output of the master timecode generator. Ex-1001, 10:29-32, 11:29-45, 15:26-29.

Also, GPS signals are incapable of being a master timecode reference signal or controlling other timecode generators because the signals are either not continuously available or are simply never available. Strub admits this limitation at 63:34-40 which states “[i]f the event is one that takes place in a building or other

environment (such as a high mountain or a city with tall buildings) in which the recorder may be shielded from GPS satellites, the GPS receiver(s) will be ineffective to establish the location of the recording unit. In such a situation, it is necessary to make use of an alternative position sensing system...”

Separately, Petitioners’ Preliminary Reply points to an “‘external communication port’ to receive a ‘SMPTE time code input,’” which Petitioners equate to an SMPTE master time reference signal. Preliminary Reply, pg. 3. However, as explained by Zaxcom’s expert, Mr. DeFilippis, the “connection of an SMPTE time code input thereto would merely allow the recorder to use the SMPTE time code as its time code source, rather than using its own internal clock.” Ex-2015, ¶91. As such, any external device connected to this external communication port is not a master timecode generator because it does not control at least one other timecode generator.

**B. “locally generated audio” and “local audio”**

Petitioners’ arguments for “local audio” were never authorized by, and blatantly violate, the Board’s Order, which states: “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* ... Petitioner may

submit its Preliminary Reply ... addressing only the above-authorized issues.” The Board’s Order authorized construction of three claim terms, not four, and as such the Preliminary Reply should be expunged per 37 C.F.R. § 42.7(a) and 42.23(b).

Further, the Preliminary Reply incorrectly states “[i]ndeed, the specification is clear that for some embodiments the local audio device 102 need not be worn, since microphone 312 may be worn instead. Ex. 1001, 10:7-10.” Preliminary Reply, pg. 4. Section 10:7 of the ‘902 Specification states nothing of the sort, as can be seen by the plain language: “local control unit 310 receives recordable audio from local audio input device 312, which may be worn by the performer and connects to local audio device 102 at local audio input device port 314.” The fact that the local audio input device can be worn does not in any way infer that the local audio device is not simultaneously worn. The Specification makes clear that the creator of audio typically wears both the local audio device *and* the local audio input device. Ex-1001, 10:7-10 and 10:34-41. Nowhere does the Specification refer to an embodiment in which the local audio device 102 is not worn.

Petitioners also mischaracterize the Specification in stating “the specification does not preclude a local audio device worn by one performer from receiving audio being created by a different performer. *Id.* 4:10-14, 10:38-41, 11:45-50, 13:46-49, 16:50-55. In that case, the device is wearable, but the creator and wearer may be different.” None of the cited references provide support for an

embodiment in which a local audio device worn by one performer is receiving the audio created by a different performer, and the Specification does not support such an embodiment as it is directed to “multitrack” recording as referenced in the Title, Abstract, and throughout the specification. A POSA understands that any reference to multitrack recording inherently requires a track of audio per performer or sound source. See POPR, pp. 21-24; Ex-2015, ¶31; *see also* Ex-2021, ¶13.

Petitioners state there is no “lexicographic definition or disclaimer” that supports the narrowing of “locally generated audio” and “local audio data” to a definition that requires audio that “is suitable for use as an independent track of audio,” and that “Zaxcom cites no evidence suggesting that multiple voices ... cannot be recorded as an independent audio track.” Zaxcom’s Preliminary Response is replete with arguments, expert testimony, and Specification support that shows that the claimed invention of the ‘902 Patent is directed to multitrack recording, and a POSA understands that multitrack recording inherently requires independent audio tracks for each performer. See POPR, pp. 21-24; Ex-2015, ¶31; *see also* Ex-2021, ¶13. Further, the claim construction standard articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc) applies here and requires that claim terms are given their ordinary and customary meaning *as understood by a POSA at the time of the invention and in the context of the entire patent disclosure*. (*Id.* at 1312-14, emphasis added).

Dated: April 28, 2025

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on April 28, 2025, a complete and entire copy of the foregoing “Preliminary Sur-Reply” is being served on the petitioners at the electronic addresses shown below per consent.

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