

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.**

IPR2025-00230 (Patent No. 7,711,443)

IPR2025-00232 (Patent No. 10,276,207)

**PETITIONERS' RESPONSE TO PATENT OWNER'S
MOTION FOR SANCTIONS AND
VACATUR OF INSTITUTION/TERMINATION**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. Zaxcom Waived Its RPI Argument by Failing to Timely Raise It.....	1
II. The Record Establishes That Lectrosonics Is Not An RPI	2
A. Lectrosonics’ Has Had No Involvement With or Control Over the IPRs	2
B. Lectrosonics Is a Separate Legal Entity	5
C. Notwithstanding Zaxcom’s Speculation, Lectrosonics Has No Interest in the Challenged Patents	8
III. The Proper Remedy Would Be To Permit Updated Mandatory Notices	12
A. <i>Corning</i> and the Director’s Memorandum Are Inapposite	12
B. There is Good Cause to Update The Mandatory Notices	12
C. Patent Owner’s Allegations of Bad Faith Are Meritless.....	14
IV. Conclusion	15

TABLE OF AUTHORITIES

Cases

<i>Adello Biologics LLC v. Amgen Inc.</i> , PGR2019-00001, Paper 11 (PTAB, Feb. 14, 2019)	14
<i>Askeladden LLC v. McGhie</i> , IPR2015-00122, Paper 30 (PTAB Mar. 6, 2015)	14
<i>Barber v. DePuy Synthes Pros., Inc.</i> , 2021 WL 3076933 (D.N.J. July 21, 2021)	7
<i>Caterpillar Inc. v. ESCO Corp.</i> , IPR2015-00409, Paper 9 (PTAB June 18, 2015)	4
<i>Celgene Corp. v. Mylan Pharms. Inc.</i> , 17 F.4th 1111 (Fed. Cir. 2021)	7
<i>Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.</i> , IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015).....	2, 4, 12
<i>Faniola v. Mazda Motor Corp.</i> , 2004 WL 1354471 (D.N.M. Apr. 22, 2004)	8
<i>Gillig v. Nike, Inc.</i> , 602 F.3d 1354 (Fed. Cir. 2010)	3
<i>Gonzalez v. Goodyear Tire & Rubber Co.</i> , 2006 WL 8443801 (D.N.M. July 7, 2006)	7
<i>Hybrigenics SA v. Forma Therapeutics, Inc.</i> , PGR2018-00098, Paper 23 (PTAB Mar. 19, 2020)	9
<i>In re Baby Food Prods. Liab. Litig.</i> , 2025 WL 986959 (N.D. Cal. Apr. 2, 2025)	7
<i>In re Santa Fe Natural Tobacco Co.</i> , 288 F. Supp. 3d 1087 (D.N.M. 2017)	7
<i>Interactive Commc'ns Int'l, Inc. v. Blackhawk Network Inc.</i> , IPR2024-00465, Paper 36 (PTAB July 14, 2025)	2
<i>Lumentum Holdings, Inc. v. Capella Photonics, Inc.</i> ,	

IPR2025-00230 (Patent No. 7,711,443)	
IPR2025-00232 (Patent No. 10,276,207)	
IPR2015-00739, Paper 38 (PTAB Mar. 4, 2016)	14
<i>Luminex Int’l Co. v. Signify Holdings B.V.</i> ,	
IPR2024-00101, Paper 20 (PTAB Nov. 21, 2024)	9
<i>Merck Sharp & Dohme Corp. v. Glaxosmithkline Biologicals SA</i> ,	
IPR2018-01229, Paper 13 (PTAB Dec. 18, 2018)	9
<i>Petroleum Geo-Servs., Inc. v. WesternGeco LLC</i> ,	
IPR2014-00687, Paper 100 (PTAB Dec. 15, 2015)	3
<i>Power Integrations, Inc. v. Semiconductor Components Indus., LLC</i> ,	
926 F.3d 1306 (Fed. Cir. 2019)	12
<i>Proppant Express Invs., LLC, v. Oren Techs., LLC</i> ,	
IPR2017-01917, Paper 86 (PTAB Feb. 13, 2019)	13
<i>Ranza v. Nike, Inc.</i> ,	
793 F.3d 1059 (9th Cir. 2015)	8
<i>RPX Corp. v. Applications in Internet Time, LLC</i> ,	
IPR2015-01750, Paper 128 (PTAB Oct. 2, 2020) (“RPX”)	4, 5
<i>Scott v. AZL Res., Inc.</i> ,	
107 N.M. 118 (N.M. 1988)	6, 8
<i>Special Indus., Inc. v. Zamil Grp. Holding Co.</i> ,	
578 F. App’x. 325 (5th Cir. 2014)	6
<i>Syngenta Crop Protection AG v. FMC Corp.</i> ,	
PGR2020-00028, Paper 8 (PTAB Sept. 15, 2020)	3, 4
<i>Tahaya Misr Inv., Inc. v. Helwan Cement S.A.E.</i> ,	
2016 WL 9024808 (C.D. Cal. May 23, 2016)	10
<i>Tercero v. Sacramento Logistics LLC</i> ,	
2024 WL 4884268 (E.D. Cal. Nov. 25, 2024)	7
<i>TRW Auto. US LLC v. Magna Elecs. Inc.</i> ,	
IPR2014-01497, Paper 7 (PTAB Mar. 19, 2015)	3
<i>Unified Pats. Inc. v. Nonend Invention, N.V.</i> ,	
IPR2016-00174, Paper 28 (PTAB July 25, 2017)	2

Statutes

35 U.S.C. § 312(a)	12, 13, 15
--------------------------	------------

Other Authorities

Consolidated Trial Practice Guide (Nov. 2019) (“CTPG”).....	2
---	---

Rules

37 C.F.R. § 42.8(a)(3)	1, 12, 14
37 C.F.R. § 42.1	14
37 C.F.R. § 42.5(b)	15
37 C.F.R. § 42.5(c)(3)	12

Patent Owner (or “Zaxcom”) fails to identify a basis to terminate this Petition filed by Petitioners RØDE Microphones, LLC, and Freedman Electronics Pty Ltd (“Petitioners,” “RØDE” or “Freedman”). Zaxcom waived the issue by not timely raising it and including it in its POR. In any event, the record clearly demonstrates that Lectrosonics is not an RPI, which is a narrower finding than privity, given Lectrosonics’ lack of involvement and interest in the IPRs. Furthermore, the appropriate remedy would be, at most, to permit filing of a mandatory notice under 37 C.F.R. § 42.8(a)(3) in accordance with *Lumentum*.

I. Zaxcom Waived Its RPI Argument by Failing to Timely Raise It

Petitioners acquired Lectrosonics’ stock on May 5, 2025. Mot., xvi. According to Zaxcom, Petitioners failed to file a mandatory notice on May 26th pursuant to 37 C.F.R. § 42.8(a)(3) (“within 21-days of a change”). So, Zaxcom could have raised the RPI issue on June 2nd when it filed its motion to terminate in IPR2025-00231. And despite being aware of the issue, it failed to mention it in its September 8 PORs. Paper 23. Indeed, by September 8, not only did Zaxcom possess the evidence it cited in its ’231 motion, but also much of the new alleged evidence it cites in its current motion. *See* IPR2025-00230, Exs. 2162, 2163, 2164, 2177; IPR2025-00232, Exs. 2065, 2066, 2067, 2080; Exs. 1083, 1084.

The Scheduling Order and precedent make clear “that any arguments not raised in the [POR] may be deemed waived.” Paper 15, 10. Such waiver includes

RPI. *See Interactive Commc'ns Int'l, Inc. v. Blackhawk Network Inc.*, IPR2024-00465, Paper 36 at 5 (PTAB July 14, 2025); *Unified Pats. Inc. v. Nonend Invention, N.V.*, IPR2016-00174, Paper 28 at 3-4 (PTAB July 25, 2017) (citing *In re Nuvasive, Inc.*, 842 F.3d 1376, 1380 (Fed. Cir. 2016)).

Zaxcom's reliance on *Corning* is misplaced. There, the Patent Owner discovered information tying the non-party to the infringing act at issue in a related ITC proceeding triggering its RPI challenge. *Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 at 6 (PTAB Aug. 18, 2015) (precedential) ("*Corning*"). But here, Zaxcom possessed sufficient information to trigger the RPI issue back in May. The Audinate press release and other purportedly new "integration" evidence comprise, at most, additional cumulative evidence allegedly relating to RPI.

II. The Record Establishes That Lectrosonics Is Not An RPI

RPI is *narrower* than privity. Consolidated Trial Practice Guide at 14 (Nov. 2019) ("CTPG") ("The notion of 'privity' is more expansive [than RPI]"). "At a general level, the [RPI] is the party that desires review of the patent.... or parties at whose behest the petition has been filed." *Id.*

A. Lectrosonics' Has Had No Involvement With or Control Over the IPRs

The evidence is clear. Lectrosonics has "had no input, influence, direction, or control over any of the IPRs." Ex. 1082, ¶ 18; *see also id.*, ¶¶ 23-25. This

includes no funding, preparation, drafting, strategy, prior art selection, or argument selection. *Id.* Nor have there been “any written or oral agreements or understandings with Lectrosonics concerning any of the IPRs.” *Id.* Although Petitioners received a single claim chart for a *different patent* from Lectrosonics months *after* the petitions were filed, it was for the court litigation and involved a reference *not cited* in the Petitions. Ex. 1082, ¶ 19. This cannot logically show any control or interest in the IPRs. *Petroleum Geo-Servs., Inc. v. WesternGeco LLC*, IPR2014-00687, Paper 100 at 37 (PTAB Dec. 15, 2015) (sharing prior art references fails to demonstrate control, direction, or funding of petition). Zaxcom’s complaint about unanswered discovery concerning Lectrosonics’ litigation files is also immaterial. Mot. 5. Zaxcom never asserted the ’207 or ’443 patents against Lectrosonics, so the issue is irrelevant here. IPR2025-00230, Ex. 2178; IPR2025-00232, Ex. 2081.

Further, “[t]he traditional rule is that mere status as a corporate parent is insufficient to render an entity an RPI.” *Syngenta Crop Protection AG v. FMC Corp.*, PGR2020-00028, Paper 8 at 15-16 (PTAB Sept. 15, 2020); *see also Gillig v. Nike, Inc.*, 602 F.3d 1354 (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”);

Petroleum Geo-Servs., IPR2014-00687, Paper 100 at 39 (“a new, and allegedly wholly owned subsidiary of Petitioner Does not by itself indicate that [subsidiary] has any ability to control the present IPR proceeding.”).

Significantly, here the Petitioners are the *parents* of Lectrosonics, so any opportunity for control goes in the wrong direction. *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.”).

Lectrosonics has had no opportunity to control the IPRs. *Contra* Mot., 6. Nobody from Lectrosonics assumed a management or Board position at Petitioners. Ex. 1082, ¶¶ 15-16. To the extent some of Petitioners’ personnel are now officers or directors of Lectrosonics is inconsequential as “mere overlap of personnel between [parent and subsidiary] does not indicate a sufficient blurring of corporate separation such that the parent corporations could have controlled the filing and participation of the Petition.” *Syngenta*, PGR2020-00028, Paper 8 at 15-16. And again, any control due to such positions would be in the wrong direction.

The *RPX Corp. v. Applications in Internet Time, LLC* decision cited by Zaxcom (Mot., 2) is readily distinguishable. IPR2015-01750, Paper 128 (PTAB Oct. 2, 2020) (“*RPX*”). RPX’s business model was “to file IPRs where its clients

have been sued by non-practicing entities to reduce expenses for [its] clients,” one of which was Salesforce. *Id.*, 11 (quoting *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1353 (Fed. Cir. 2018)). The Board stressed that the relationship between Petitioner, RPX, and non-party Salesforce were “naturally tied to possible defenses” of patent infringement litigation “of which an IPR challenge is one.” *Id.*, 30.

In contrast, the Lectrosonics acquisition/relationship has nothing to do with Zaxcom or the IPRs. Instead, it was motivated by Petitioner’s interest in Lectrosonics’ [REDACTED] and desire to expand the Freeman Group’s presence into the professional market. Ex. 1082, ¶¶ 8, 12, 28. Petitioners never had a call with Lectrosonics to discuss Zaxcom, the IPRs, or the ’443 and ’207 patents (Mot., 2-3). *Id.*, ¶¶ 8, 12 (citing IPR2025-00230, Ex. 2167 at 1; IPR2025-00232, Ex. 2070); Ex. 1085, ¶ 4 (citing Ex. 2030). Nor have the IPRs been discussed at Lectrosonics’ board meetings. Ex. 1082, ¶ 27.

B. Lectrosonics Is a Separate Legal Entity

To circumvent the law that parent-subsidary relationships do not normally demonstrate an RPI, Zaxcom resorts to arguing that Petitioners and Lectrosonics are a “merged entity” that disregards “corporate separateness.” Mot., 3-6. But such an “alter ego” or “piercing of the veil” argument can overcome the strong presumption of legal corporate separateness only in special circumstances, which

are not present here. *Scott v. AZL Res., Inc.*, 107 N.M. 118, 121 (N.M. 1988).

Under governing New Mexico law (Ex. 1082, ¶ 32; IPR2025-00230, Ex. 2186 at 79 (Section 13.8); IPR2025-00232, Ex. 2089 at 79 (Section 13.8)), the doctrine only applies when recognition of the corporations' separate existences would sanction a fraud or other improper purposes. *Scott*, 107 N.M. at 121. But here the acquisition was for legitimate business interests, including technology sharing and market expansion, not to evade RPI disclosures to attack Zaxcom's patents. Ex. 1082, ¶¶ 8, 12, 28. That is dispositive. The evidence also shows that Petitioners and Lectrosonics have maintained corporate formalities, including having separate: Boards with differing personnel and meetings, ownership and management of different facilities, employees, retirement plans, bank accounts, revenue streams, auditors, insurance, marketing teams, engineering teams, tax returns, product distribution networks, product lines, etc. *Id.*, ¶¶ 15-16, 29. Neither Petitioners nor Lectrosonics exercise day-to-day control over the other. *Id.*, ¶ 29.

Zaxcom's supposed contrary evidence is unsupported by any case authority. Zaxcom relies heavily on use of the informal term "Freedman Group." Mot., 3-4. But courts have consistently rejected the argument that the use of such corporate "group" or "family" names support a finding of alter ego or veil piercing. *See, e.g., Special Indus., Inc. v. Zamil Grp. Holding Co.*, 578 F. App'x. 325, 333 (5th Cir. 2014) (rejecting plaintiff's alter ego claim based on company's "promotional

literature boasting ‘complete control’ and the existence of a ‘Vallourec Group’ of companies, which does not indicate anything other than a standard corporate-family structure.”); *In re Baby Food Prods. Liab. Litig.*, 2025 WL 986959, at *7 (N.D. Cal. Apr. 2, 2025); *Tercero v. Sacramento Logistics LLC*, 2024 WL 4884268, at *3 (E.D. Cal. Nov. 25, 2024); *Barber v. DePuy Synthes Pros., Inc.*, 2021 WL 3076933, at *3 (D.N.J. July 21, 2021).

Nor does cooperation between related companies demonstrate integration. *Celgene Corp. v. Mylan Pharms. Inc.*, 17 F.4th 1111, 1126 (Fed. Cir. 2021) (sharing marketing, trade names, a corporate officer, and cooperating on FDA regulatory submissions “[a]t most ... shows collaboration, not commonality.”); *In re Santa Fe Natural Tobacco Co.*, 288 F. Supp. 3d 1087, 1214-15 (D.N.M. 2017) (parent-subsidary service agreement did not indicate the entities were alter egos). This would include Lectrosonics potentially making certain products for RØDE. *Gonzalez v. Goodyear Tire & Rubber Co.*, 2006 WL 8443801, at *3 (D.N.M. July 7, 2006) (manufacture of tires for parent was “well within the scope of a normal parent-subsidary relationship”). In actuality, such manufacturing has **not** occurred [REDACTED]. Ex. 1082, ¶ 31. The YouTube video (Ex. 2164B) is unremarkable and merely demonstrates modest cooperation among related entities. It is fully consistent with Lectrosonics being a separate entity. *See*,

e.g., id., 08:30 (“I don’t get the sense of any kind of absorption ... the Freedman Group is investing in Lectrosonics to succeed as a brand and as a company ...”).

The Audinate Press Release is not evidence of “[t]he Freedman Group’s full control of Lectrosonics.” Mot., 4. Lectrosonics has been an Audinate Dante licensee since 2020. Freedman separately licensed Dante for itself in April 2025. Freedman did not negotiate a license on behalf of Lectrosonics. Ex. 1082, ¶ 30. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1074 (9th Cir. 2015) (that a subsidiary “negotiates its own contracts and licenses” is evidence of separateness).

Nor does an employee moving between companies or placement of individuals from the acquiring company on the acquired company’s board (Mot., 4-5) suggest a breakdown of the corporate form. *Faniola v. Mazda Motor Corp.*, 2004 WL 1354471, at *5 (D.N.M. Apr. 22, 2004) (holding that, among other things, corporation’s placing of its officers, directors and/or employees on other corporation’s board did not establish alter ego); *Scott*, 107 N.M. at 121-22 (“that the corporations have common officers and directors ... is not sufficient”).

C. Notwithstanding Zaxcom’s Speculation, Lectrosonics Has No Interest in the Challenged Patents

Zaxcom has not asserted the ’443 or ’207 patent against Lectrosonics, nor has Zaxcom accused any of Lectrosonics’ products of infringement. Ex. 1082, ¶¶ 20-22, 25; IPR2025-00230, Ex. 2178; Ex. IPR2025-00232, Ex. 2081. Therefore,

Lectrosonics is not a “clear beneficiary” of the IPRs. *Syngenta*, PGR2020-00028, Paper 8 at 14.

Zaxcom theorizes that because Lectrosonics has firmware for non-U.S. products that enables simultaneous recording and transmitting of audio, it *might* extend such firmware to its U.S. products *if* the challenged claims are canceled. Mot., 7-8. This is precisely the type of speculation that the Board has rejected as establishing interest. *See, e.g., Hybrigenics SA v. Forma Therapeutics, Inc.*, PGR2018-00098, Paper 23 at 19 (PTAB Mar. 19, 2020) (rejecting as speculative an argument that non-party would benefit from cancelling claims by being able to develop compounds covered by the claims); *Merck Sharp & Dohme Corp. v. Glaxosmithkline Biologicals SA*, IPR2018-01229, Paper 13 at 12-13 (PTAB Dec. 18, 2018) (rejecting argument that non-party would lose benefit of license with Petitioner if Patent Owner prevailed as “assumptions and speculation”). Even if Lectrosonics has a general desire to see the claims cancelled, “a common desire among multiple parties to see a patent invalidated, without more, does not establish privity.” *Luminex Int’l Co. v. Signify Holdings B.V.*, IPR2024-00101, Paper 20 at 21 (PTAB Nov. 21, 2024) (Director Decision) (quoting *WesternGeco LLC v. ION Geophysical Corp.*, 889 F.3d 1308, 1321 (2018)).

Zaxcom’s “mutual interest” argument is a non-sequitur. Mot., 8. That Lectrosonics’ financial results will be consolidated with its parent-Petitioners is

standard practice and does not show Lectrosonics has any particular interest in cancelling the claims. *Tahaya Misr Inv., Inc. v. Helwan Cement S.A.E.*, 2016 WL 9024808, at *5 (C.D. Cal. May 23, 2016) (“it is a standard business practice in many industries for a parent company to prepare consolidated financial statements on behalf of its subsidiaries.”). And Zaxcom’s allegation that the acquisition was motivated by Zaxcom is false. Unrebutted evidence establishes that Freedman contacted Lectrosonics to discuss a joint project [REDACTED]. Ex. 1085, ¶¶ 3-4. The call referenced in IPR2025-00230, Ex. 2167 and IPR2025-00232, Ex. 2070 to discuss litigation never happened. Ex. 1082, ¶ 12.

Patent Owner’s “interest” theory also suffers from other fatal flaws. Zaxcom has never accused Lectrosonics of infringing the ’207 patent. Ex. 1082, ¶¶ 20-22, 25. This patent expired on July 14, 2025, whereas a Final Written Decision (“FWD”) is not due until mid-2026. Lectrosonics has been free to practice the ’207 patent since July 14. Thus, Lectrosonics has had no interest in the ’207 IPR and its future FWD.

Zaxcom’s “interest” theory also fails for the ’443 patent. Zaxcom asks the Board to assume that the ’443 patent covers any product with simultaneous record and transmit capability. Mot., 7-8. Zaxcom then argues that Lectrosonics has an interest in the ’443 patent because it prevents Lectrosonics from incorporating its non-U.S. firmware with this feature into its U.S. products. But Zaxcom ignores that

claim 1 concerns the implementation of timecodes and does not broadly cover just recording and transmitting. *See* Claim 1, Elements [A], [C], [H], [I], and [J].

Zaxcom fails to present even a *prima facie* case that any Lectrosonics' product with non-U.S. firmware would practice the timecode elements of claim 1. Element 1[C] requires "at least one audio device receiver for *wirelessly* receiving said master timecodes." Lectrosonics' products, however, either do not support receiving master timecodes *at all*, or only receive them via a *wired cable* connected to a multi-pin port. Ex. 1082, ¶ 26; Ex. 1081, 2, 25 (no master timecode capability per Table of Contents and Specifications); Ex. 1080, 13 ("NOTE: The timecode input for the DBSM is in the 5-pin mic input."). Indeed, this is why Zaxcom did not assert the '443 patent against Lectrosonics' PDR product in their earlier litigation despite alleging that it included the same record-transmit feature. Mot., 7; IPR2025-00230, Ex. 2178 and IPR2025-00232, Ex. 2081, ¶¶ 4, 19, 28, 37. Like Lectrosonics' current products, the PDR did *not* receive *wireless* timecodes as customers had to plug the PDR into "an external [time code] source." Ex. 1079. Because Lectrosonics' products do not receive *wireless* master timecodes, and [REDACTED] Lectrosonics has no interest in the IPR. Ex. 1082, ¶ 26. Lectrosonics could implement its non-U.S. firmware today in its U.S. products without practicing the '443 patent.

Finally, Zaxcom's proffered evidence, an August 26, 2025 press release and

November 5, 2025 non-U.S. firmware update instructions (IPR2025-00230, Exs. 2163, 2179; IPR2025-00232, Exs. 2066, 2082), come after the June 16, 2025 institution decision and are not legally relevant. *Power Integrations, Inc. v. Semiconductor Components Indus., LLC*, 926 F.3d 1306, 1310 (Fed. Cir. 2019).

III. The Proper Remedy Would Be To Permit Updated Mandatory Notices

A. *Corning* and the Director’s Memorandum Are Inapposite

Corning interpreted the statute and held that a petition filed with a notice that did not identify all RPIs is “incomplete” under § 312(a)(2) and “must be given a new filing date” if corrected. *Corning*, IPR2014-00440, Paper 68 at 23-25. The Memo made *Corning* precedential as the “better interpretation of the statute.” Director Memorandum at 1 (Oct. 28, 2025) (citing §312(a)(2))

In contrast, here it is undisputed that the Petitions’ notices were complete when filed on December 4, 2024, and secured that filing date. The issue is whether *post*-petition events require new notices under 37 C.F.R. § 42.8(a)(3), which is a *regulatory* requirement. Neither *Corning* nor the Memorandum address regulatory notices for post-petition events, and therefore provide no support to Zaxcom.

B. There is Good Cause to Update The Mandatory Notices

The Board has discretion to permit late mandatory notices for good cause. 37 C.F.R. § 42.5(c)(3). Here, numerous factors establish good cause, including that: (a) Petitioners’ legal position on RPI has been credible and advanced in good faith (IPR2025-00230, Exs. 2168, 2175; IPR2025-00232, Exs. 2071, 2078); (b) there

has been no gamesmanship or intent to frustrate the proceedings, there is no time bar at issue for the '443 and '207 patents, and the IPRs would have proceeded in the same manner even if a post-petition RPI notice had been filed, (c) the notice does not run afoul of the Director's stated policy on identifying foreign RPIs, as Lectrosonics is an American company (Ex. 1082, ¶¶ 6, 15, 32; IPR2025-00230, Ex. 2186; IPR2025-00232, Ex. 2089); (d) Petitioner did not conceal relevant facts, which were either produced in discovery and/or announced publicly; (e) Patent Owner and Board have been well aware of the RPI issue from the '231 case since early May; (f) there has been no prejudice to Patent Owner given that the status of the proceedings would be unchanged if a timely notice had been filed; and (g) to the extent that the Director's memo excuses Patent Owner's delay (Mot., 12), so too should Petitioners' conduct be viewed in accordance with the alleged change in policy.

Proppant involved a defective RPI notice filed with the Petition under § 312(a) and supports Petitioners. First, the Board rejected prejudice due to the "cost of having to litigate a good faith dispute...." *Proppant Express Invs., LLC, v. Oren Techs., LLC*, IPR2017-01917, Paper 86 at 10 (PTAB Feb. 13, 2019). Second, there was no circumvention of time bar or estoppel requirements. *Id.*, 9. Similarly, here there is no time-bar issue, and Zaxcom instead resorts to arguing about the time bar in the '**231 case** ('902 patent). Mot., 10. Third, the timing was affected by

changes in law like Patent Owner argues here with respect to the Memorandum.

Id., 13-14. In other cases, the Board has also permitted late notices for RPI even when the Petition was incomplete. *See Adello Biologics LLC v. Amgen Inc.*, PGR2019-00001, Paper 11 (PTAB, Feb. 14, 2019) (citing 37 C.F.R. § 42.1); *Askeladden LLC v. McGhie*, IPR2015-00122, Paper 30 at 15-16 (PTAB Mar. 6, 2015) (cited by *Corning* at 23).

Zaxcom does not identify any authority for terminating an IPR proceeding simply because a petitioner did not update its mandatory notices within 21 days pursuant to Rule 42.8(a)(3). Indeed, *Lumentum* demonstrates otherwise. *Lumentum Holdings, Inc. v. Capella Photonics, Inc.*, IPR2015-00739, Paper 38 (PTAB Mar. 4, 2016). As here, the *Lumentum* Petition's notices were complete, but post-petition events created an RPI issue. The Board accepted a late-filed notice under 42.8(a)(3). The Board rejected Patent Owner's argument that jurisdiction was lost the moment the petition no longer identified all RPIs and that the petition needed to be "corrected" prior to the institution decision. *Id.*, 4-6. There was no finding of gamesmanship because, as here, the RPI issue was known for months and Patent Owner was the party who delayed raising it. *Id.*, 7.

C. Patent Owner's Allegations of Bad Faith Are Meritless

Petitioners' arguments relating to Lectrosonics being a separate entity were not misrepresentations. Mot., 9. As shown above (*supra* §§ IIA-B., III.B), applying

the law to the evidence and testimony of record, a finding that Lectrosonics is *not* a “single merged entity” (Mot. 6) is the only legally supportable finding. Zaxcom does not even attempt to apply governing corporate law to the facts. Petitioners’ disagreement with Zaxcom’s erroneous attorney arguments is not bad faith. Similarly, Petitioners’ arguments that Lectrosonics has no interest in the IPRs is correct and not a misrepresentation, since Lectrosonics is not the subject of any infringement accusations by Zaxcom. *Supra* II.C. Moreover, Zaxcom’s theory continues to be speculative—that Lectrosonics *might* introduce allegedly infringing firmware in the future *if* Zaxcom’s patent claims are cancelled. It was hardly bad faith for Petitioners to argue that such speculation is legally insufficient to show a clear interest. IPR2025-00231, Paper 38 at 12-13. Finally, Zaxcom’s reliance on briefing for a different patent in a different proceeding, IPR2025-00231, is improper and irrelevant to the IPR at issue here. Paper 37, 3-4.

IV. Conclusion

There is no basis for the Board to terminate this proceeding under 35 U.S.C. § 312(a), because Lectrosonics is not an RPI. In the event that the Board finds that Lectrosonics is an RPI, Petitioners respectfully request permission to update its mandatory notices. 37 C.F.R. § 42.5(b).

Dated: December 10, 2025

/ Jeffrey B. Plies /
Jeffrey B. Plies, reg. no. 46,999
DECHERT LLP
Counsel for Petitioners

CERTIFICATE OF SERVICE

I certify that today in:

RØDE Microphones, LLC., et al. v. Zaxcom, Inc., IPR2025-00230 (U.S. Patent 7,711,443); IPR2025-00232 (U.S. Patent No. 10,276,207)

I caused to be served a copy of:

PETITIONERS' RESPONSE TO PATENT OWNER'S MOTION FOR
SANCTIONS AND VACATUR OF INSTITUTION/TERMINATION
Exhibits 1077-1085

upon:

ZAXCOM INC., c/o:

Rita Chipperson - rcc@chippersonlaw.com
Janice Kwon - jk@chippersonlaw.com
Morgan Golightly - mdg@chippersonlaw.com
Gerard O'Rourke - gorourke@okorlaw.com
Sean O'Kelly - sokelly@okorlaw.com
Laura Carrig - lcarrig@okorlaw.com

via:

Electronic Mail

Dated: December 10, 2025

By: / Michael A. Fisher /
Michael A. Fisher, Reg. No. 42,536
Dechert LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
Tel: 215-994-2079
Fax: 215-655-2279
michael.fisher@dechert.com