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

IPR2025-00232

U.S. Patent No. 10,276,207

Patent Owner's Sur-Reply to Petitioners' Reply to Patent Owner's Response

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GLOSSARY OF TERMS

Term	Definition
"§ 103"	35 U.S.C. § 103
"'207 Patent"	U.S. Patent No. 10,276,207
"'207 Specification"	Specification of U.S. Patent No. 10,276,207
"Board"	USPTO Patent Trial and Appeal Board
"CAFC"	U.S. Court of Appeals for the Federal Circuit
"CTPG"	Consolidated Trial Practice Guide
"DSP"	Digital Signal Processor
"IPR"	Inter Partes Review
"Lectrosonics"	Lectrosonics, Inc.
"MPEP"	Manual of Patent Examining and Procedure
"Petition"	Petitioners' Petition, IPR2025-00232, Paper 1 (PTAB Dec. 4, 2024)
"Petitioners"	RODE Microphones, LLC and Freedman Electronics Pty Ltd.
"PO", "Patent Owner", or "Zaxcom"	Patent Owner, Zaxcom, Inc.
"POPR" or "Preliminary Response"	Patent Owner's Preliminary Response, IPR2025-00232, Paper 8 (PTAB Mar. 18, 2025)
"POPR Reply"	Petitioners' Reply to Patent Owner's Preliminary Response, IPR2025-00232, Paper 10 (PTAB April 21, 2025)
"POR" or "Response"	Patent Owner's Response, IPR2025-00232, Paper 23 (PTAB Sep. 8, 2025)
"POSA"	Person of Ordinary Skill in the Art at the Time of the Invention
"RF"	Radio Frequency
"Reply" or "Petitioners' Reply"	Petitioners' Reply, IPR2025-00232, Paper 42 (PTAB Dec. 1, 20257
"Strub"	U.S. Patent No. 6,825,875
"Winningstad"	U.S. Patent No. 7,483,485
"Woo"	U.S. Patent No. 5,479,351

I. INTRODUCTION

Petitioners' "Reply" is an improper attempt to remake their entire unpatentability case through shifting theories and new evidence. Rather than responding to the POR, Petitioners introduce eleventh-hour claim constructions, new obviousness rationales, and over 60 paragraphs of expert testimony that should be disregarded as untimely. The Petition remains fundamentally deficient because the prior art fails to teach the claimed limitations and provides no motivation for a POSA to combine the cited references. Because Petitioners have failed to demonstrate unpatentability by a preponderance of the evidence, the Board should find all challenged claims patentable.

II. REPLY SHOULD NOT BE CONSIDERED

The Reply is replete with new constructions, obviousness theories, motivation-to-combine rationales, expert testimony, and exhibits. "[A] reply or sur-reply that raises a new issue or belatedly presents evidence *may not be considered*. The Board is not required to attempt to sort proper from improper portions of the reply or sur-reply. Examples … include new evidence necessary to make out a *prima facie* case for the … unpatentability of an original … claim, such as newly raised rationale to combine the prior art references … not expressed in the Petition. *See Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369–

70 (Fed. Cir. 2016) (holding *that the Board did not err in refusing the reply brief as improper* under 37 C.F.R. § 42.23(b) because petitioner relied on an entirely new rationale to explain why one of skill in the art would have combined the references at issue).” CTPG at 74 (emphasis added).

Petitioner’s new motivation-to-combine rationales include: a “POSA would have been motivated to apply Woo’s teaching of using GPS to ‘jam-sync’ a local timecode generator”; “GPS is free”; a “POSA would use Strub’s … recording units as Woo’s recording units to increase flexibility, mobility, and convenience”; and Strub could have an “audio-only unit.” (Paper 42 at 11, 15-16). None are in the Petition. Neither the Petition nor POR even mentions “audio-only unit”; and “wearable” is not mentioned in Petitioners’ motivation-to-combine analysis. Petitioners fail to address PO’s actual argument that no motivation exists because Strub already addressed post-production editing. The Reply should be refused as improper. *See Yita LLC v. MacNeil IP LLC*, 69 F.4th 1356 (Fed. Cir. 2023) (affirming the Board’s decision to not review Petitioner’s new arguments that it could have presented in its petition); and *Dell, Inc. v. Acceleron, LLC,* IPR2013-00440, Paper 49 at 9 (PTAB Aug. 22, 2016) (refusing to give any “weight” to new arguments presented in the Petitioners’ Reply).

Petioner’s new unpatentability theories should also be stricken including: “record[ing] resulting ‘local audio data’ in memory 305” (Paper 42 at 3); teaching

"isolated audio of the wearer" (*Id.* at 4); the "['207] specification does not preclude locally generated audio from including audio from performers other than the wearer" (*Id.* at 5); snow skiing, bicycling, and water skiing are "solitary" activities (*Id.* at 4); Strub's "'Overview of Recording Unit Apparatus and Operation'" teaches wearability (*Id.* at 5); Strub teaches "species" (*Id.* at 6); Strub's units could be made "lighter (and smaller)" by removing unclaimed camera components (*Id.* at 6-7); the challenged claims do not require "invisible use" (*Id.* at 7); master generator control of another generator excludes the "asynchronous" embodiment (*Id.* at 8); Woo teaches master generator control of another generator via a "'jam sync' process" (*Id.* at 10); the claims do not require continuous timecodes or any particular level of availability (*Id*. at 10); and the "pulse" is generated "by counting the epochs of the coded GPS signal" (*Id*. at 13). *See Henny Penny Corp. v. Cymaster LLC*, 938 F.3d 1324, 1329–31 (Fed. Cir. 2019) (rejecting a new unpatentability theory where petitioner argued for the first time in its reply that a reference disclosed a limitation); *Wasica Fin. GmbH v. Cont'l Auto. Sys., Inc.*, 853 F.3d 1272, 1286 (Fed. Cir. 2017) (petitioner's "subsequent arguments amount to an entirely new theory of *prima facie* obviousness absent from the petition"); and *Haag-Streit, AG v. Eidolon Optical, LLC*, IPR2018-01311, Paper 31 at 2-3 (PTAB Sep. 5, 2019) (striking new theories of unpatentability).

A Reply, "may respond to … new claim construction issues raised by the patent owner, but cannot raise new claim construction issues that were not previously raised in its petition." CTPG at 45. *See* 37 C.F.R. § 42.23(b) ("A reply may only respond to arguments raised in the corresponding opposition, patent owner preliminary response, patent owner response, or decision on institution."). After not "seek[ing] construction of any terms" in the Petition, (Paper 1 at 14) or POPR Reply ("at this time RODE does not present claim constructions") (Paper 10 at 1), the Reply construes Elements 17[Pre], 17[F], 17[G], 17[H], 59[Pre], 59[E], 59[F], and 59[G]. A construction is not "raised" under § 42.23(b) when it was already presented pre-institution and simply carried forward in the POR unchanged. *See Rembrandt Diagnostics, LP v. Alere, Inc.*, 76 F.4th 1376 (Fed. Cir. 2023). Petitioners were required to address construction in the Petition or POPR Reply.

The Reply's word limit has been violated. Petitioners incorporate-by-reference over 60 paragraphs of new expert testimony to supply arguments not otherwise in the Reply. In *Cisco Sys., Inc. v. C-Cation Techs., LLC*, IPR2014-00454, Paper 12 at 7-10 (PTAB Aug. 29, 2014) (informative), the Board held that incorporating by reference "seventeen pages" of an expert's declaration, "without sufficient explanation of those portions" and "citations to the Declaration to support conclusory statements for which the Petition does not otherwise provide an

argument or explanation" was completely improper and not considered. *Id*. The Reply is replete with *one-sentence conclusions* supported by extensive "expert" arguments not in the Reply. *See* references to Ex-1073: ¶10 (311-words regarding legal interpretation of "in some aspects" and "e.g.") (Paper 42 at 2); ¶13-14 (299-words regarding Claim 15 redundancy) (*Id*. at 2); ¶15-17 (362-words regarding "comprising" meaning) (*Id.* at 5); ¶67 (*Id*. at 7); ¶68,70-71 (880-words) (*Id.* at 9); ¶104 (109 words) (*Id*. at 18); ¶159 (293 words) (*Id*. at 18); and ¶143 (142 words legally analyzing secondary considerations of non-obviousness) (*Id*. at 20). The Reply and Ex-1073 are improper for failing to include the arguments in the Reply and should not be considered.

III. POSA

Dr. Kyriakakis is not a POSA, which is "a hypothetical person who is presumed to know the relevant prior art." *In re GPAC*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (internal citations omitted). Petitioners define POSA as having "at least a Bachelor's degree in electrical engineering or a related or equivalent field, and two or more years of experience working with audio systems … additional years of education … may compensate for fewer years of experience." Paper 1 at 3. Dr. Kyriakakis is a college professor (Ex-2030 at 26), has no paid sound mixing/working experience (*Id*. at 47-49), his use was primarily in the classroom/experimental (*Id*. at 45-49, 104), has audio experience that doesn't relate

to sound mixing, and during his deposition, demonstrated lack of knowledge in the relevant art. He testified that "radio frequency dropout" is "not a term that a POSA would use." *Id*. at 86. Yet, Petitioner's own subsidiary, Lectrosonics, uses this term: https://lectrosonics.com/wire-lists10-1-tip-to-identify-types-and-9-ways-to-prevent-wireless-mic-rf-drop-outs/.

He only reviewed "some of the prior art" (Ex-2030 at 40), repeatedly did not remember what prior art he reviewed, stating he was "not sure" what was included and may rely on "knowledge" from many years ago rather than actual review (*Id*. at 33-34), and conceded he only reviewed "some of the prior art." *Id*. at 40. He doesn't consider Zaxcom's patents to be dropout related. *Id*. at 77-78. He contradicts Strub in stating blending individual recordings from each recording unit is a "rudimentary editing operation" (Ex-1073, ¶81), whereas Strub says: "recorders may be sufficiently far removed from each other that their recording units acquire … audio content that is so different that the audio content cannot be blended in a meaningful way." Ex-1003, 92:30-37. Dr. Kyriakakis clearly lacks the knowledge and expertise to testify as a POSA in this matter.

IV. PETITIONERS FAIL TO DEMONSTRATE UNPATENTABILITY

A. "locally generated audio"/"local audio data"

Petitioner's new argument that "'[l]ocally generated audio' is audio generated near the local audio device" (Paper 42 at 2) due to the use of "*[i]n some*

aspects" fails because this phrase relates to the master recorder, not the locally generated audio. *See* Ex-1001, Abstract ("In some aspects, each performer is equipped with a local audio device capable of locally recording the respective performer's audio while also transmitting it to a master recorder…In other aspects, a master recorder is not required…").

Regarding "independent track of audio" at Ex-1001, 11:62-12:25, a POSA understands that in a "multitrack" system, (Ex-1001, Title), "locally generated audio" refers to audio received from local audio device 102. The specification uses "locally generated audio" and "independent track of audio" interchangeably. *See*, e.g., Ex-1001, 36:33.

Petitioners' argument that PO's claim construction cannot include "mono" because it is not specifically called out in the '207 Specification (Paper 42 at 2) disregards a POSA's inherent understanding that a stereo mode (*see* '207 Patent, 13:5-10) is an obvious option to "mono" mode, negating the need to separately specify "mono." *See* Ex-2058, ¶¶210, 213.

Petitioners argue the irrelevance of their expert's "scratch track"/"ambient mic" testimony because "it does not follow that a track containing audio of both wearer and non-wearer(s) would be useless." Paper 42 at 3. PO never argued "uselessness," but merely cited Petitioners' expert:

> [T]racks created by an "ambient mic" (i.e., a scratch track) that could pick up all "reflected sound in a hall," and a "scratch track" that is "recorded by the camera … trying to pick up everything there for reference" is "not used in production unless there was some disaster." Ex-2030, 54:2–55:2. "A multi-track recording based on those [ambient and scratch] microphones … wouldn't have been very good … The intent was not to just record … but to have useful content." Ex-2030, 56:21-57:5.
>
> Paper 23 at 12.

Multitrack requires independent sources of audio, and Petitioners' expert confirms the uselessness of combined audio recordings lacking independent sources of audio (as in Strub). The question was not hypothetical, but on point to the sound recorded by Strub's and Woo's recorders, each of whom has a camera that records all event sound in one track. Ex-1003, 8:10-13; 11:48-50.

Strub teaches away from: capturing "isolated audio of the wearer" (Paper 42 at 4) as it: teaches "'social recording,' i.e., … in which multiple participants in an event are recording the event" (Ex-1003, Abstract); positioning microphones to capture sounds heard, not created, by the recorder; and isolated audio cannot be combined, i.e., "it may also be possible to blend audio recordings obtained by … different recording units. However, … recorders may be sufficiently far removed from each other that their recording units acquire … audio content that is so different that the audio content cannot be blended in a meaningful way." Ex-1003, 92:30-37.

Petitioners argue isolation of recorders to attempt to show that Strub obtains isolated tracks, but Strub specifically states this will negate any combination of those tracks, and as such, does not operate as per Zaxcom's invention. Nothing in Strub indicates an intent to capture the recorder (i.e., breathing or other narration), but rather to capture what is heard by the recorder (Ex-1003, 22:16-33; Ex-1004, 5:3-5), which is "not suitable for multi-track recording." Ex-2058, ¶232; Ex-2021, ¶15.

B. "[local] audio device wearable by a user for storing locally generated audio"

The '207 Specification is not required to "preclude" embodiments, but rather to teach embodiments. It clearly teaches a single creator/performer per local audio device – not one local audio device recording multiple performers. Ex-1001, abstract; 2:3-10; 4:1-3; 5:1-10. *See Insituform Techs., Inc. v. Cat Contr., Inc.*, 99 F.3d 1098, 1105 (Fed. Cir. 1996) ("claim 1 refers to 'a cup' and 'the cup' repeatedly, suggesting that only one cup is involved… neither the specification nor the drawings disclose the use of more than one cup.") Similarly, nothing in the '207 Specification suggests more than one creator per local audio device.

Petitioners argue that Strub's use of "in accordance with"/"according to the invention" renders units 200/300 a "species" of a "recording unit," therefore, "units 105-108 may comprise species 300, which discloses the pertinent [claimed]

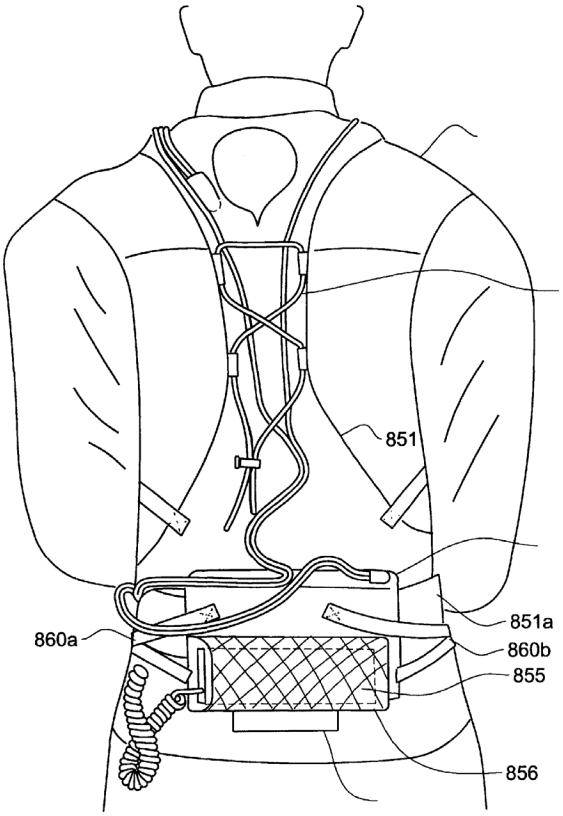
components." Paper 42 at 6. "Species" is absent from Strub, and every Strub embodiment is a recording unit, and clearly all embodiments do not include identical components (contrast Fig. 2, unit 200 vs. Fig. 3, unit 300). If true, units 105-108 would include the pertinent components of species 800, which they do not (contrast Fig. 1 to Figs. 8A-C).

Petitioners incorrectly equate general invention features to recording units 105-108 (Paper 42 at 6), when these units are not described outside Strub 8:7-29. Strub never states units 105-108 are "adapted to obtain [position] data" or "communicate with each other," (*Id*. at 6) but rather that "recording units" generally "*can* also be adapted to obtain [position] data" and "if the recording units … include the capability … to communicate with each other" with no reference to 105-108. Ex-1003, 8:60-62; 10:38-43. Petitioners' statement that "[t]his indicates they have receivers and transmitters consistent with recording unit 300" (Paper 42 at 6) is entirely unsupported by Strub.

In a complete turnaround, Petitioners argue that although unit 300 is a species and its components are imparted to units 105-108, Fig. 6's embodiment is inexplicably not a species, and its weight cannot be imparted to units 105-108. *Id*. at 6. Petitioners cannot have it both ways.

Petitioners argue: "[t]he exemplary recording unit is not merely *in* a backpack but is itself '*constructed* in [sic] manner *similar* to a conventional

backpack,'" (*Id*. at 7). This applies to Strub unit 700 (Figs. 7/8A-8C) only, which was not relied on in the Petition and should be excluded. *See* supra § II. It does not include a transmitter or receiver (Ex-1003, Fig. 7), is only "*similar* to a backpack" (Ex-1003, 70:57-60) (there is no zipper section to put items inside) as it is a harness 851 with backpack-style straps (*Id*., 71:11-19):



For other embodiments, the "components of the recording unit are positioned within a backpack" (*Id*., 16:49-53); "part of the recording unit … is located with other parts of the recording unit in a backpack" (*Id*., 65:15-22); and "[m]ost of the components of the recording unit are enclosed within backpack 601"

(*Id*., 67:31-33). The backpack is *not* a recording unit component as it cannot be positioned within itself, and Strub never refers to the backpack as a *recording unit*.

Petitioners declare that snow skiing, bicycling, and water skiing are "solitary" activities (Paper 42 at 7). Strub does not teach this, and these activities can be group activities. Either way, this pertains solely to Strub unit 700 for "vigorous physical activity" (Ex-1003, 7:59-60), which has no transmitter/receiver (*Id*., Fig. 7) and which embodiment was not relied on in the Petition. Strub teaches away from capture of individual isolated audio capture. *See* supra § IV.A.

C. "master timecode generator"/"master timecodes"

The Board correctly held "'master timecode generator' produces a signal that 'controls' another timecode generator." Paper 14 at 28. PO's and the Board's construction does not exclude asynchronous mode. The '207 Patent does not teach synchronous and asynchronous embodiments, but rather one embodiment with two modes. Ex-1001, 13:5-10. Every embodiment requires a master timecode generator that controls another timecode generator to allow it to operate in synchronous mode when enabled by the user. Although this ability may be disabled in asynchronous mode, the synchronous technology must always be available. *See Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361 (Fed. Cir. 2003) (construing claim limitations as requiring "play" because the specification consistently showed and required play in every embodiment).

GPS is not a "master timecode generator" as the claims require it to be a system component (Ex-1001, claims 17 & 59). GPS satellites and their broadcast time signals are not the claimed system components, but external infrastructure. The CAFC recognizes this distinction: the "GPS system itself is not patented" and claims are instead directed to devices that receive and process GPS signals, not to GPS as a system component (*SiRF Tech., Inc. v. Int'l Trade Comm'n*, 601 F.3d 1319, 1323 (Fed. Cir. 2010)); Likewise, the CAFC has clarified that a claimed "system" consists of its recited components, and external entities or infrastructure that merely interact with the system are not themselves components of the claimed apparatus. *See Centillion Data Sys., LLC v. Qwest Commc'ns Int'l, Inc.*, 631 F.3d 1279, 1284–85 (Fed. Cir. 2011) ("In order to 'make' the system … Qwest would need to combine all of the claim elements."). GPS is an external time source and cannot be the claimed "master timecode generator," because it is required to be part of and structurally integrated with the system.

Woo does not teach master generator control of another generator via a jam sync process that includes hard or soft locking. Paper 42 at 10. Woo only discusses hard/soft control of a generator in the background and never teaches application thereof. Ex-1004, 3:38-67.

The Petition fatally fails to show how Strub is actually combined with Woo (i.e., what parts of Woo are integrated with what parts of Strub), and the references

themselves are not in fact combinable and teach away from combinability. The Petition teaches "Strub's local audio device (a recording unit) includes a local timecode generator—an internal clock—that generates a timecode," and Woo includes "local timecode generator 43." Paper 1 at 48. Woo teaches away from the latter, stating timecode generator 43 is "*preferably*" used as a "*master clock*," not a local timecode generator. Ex-1004, 7:27-49-50, and that Woo's generator 43 connects to the device that receives the GPS signal, i.e., navigation receiver 18, 22, via a first wire to connector 38, and *drives a time code camera*, presumably via a second wire. *Id*., 7:27-40. As such, Woo teaches that generator 43 would drive recording unit or camera 300 as a whole and never teaches that generator 43 would replace the recording unit's internal clock. Therefore, even if "generator 43 'jams'/synchronizes to … the GPS receiver output, this is irrelevant. The limitations of claims 17 and 59 are not met as they require the "at least one audio device" to *include* the "local timecode generator" and the local audio device's "control unit" be coupled thereto. Further, the claim requires the "control unit" "receive a master timecode from the master timecode generator and jam synchronize the local timecode generator to the master timecode generator," but in a Strub/Woo embodiment, as best understood by PO, there is no communication between unit 300 or system controller 301 (Petitioners' "control unit") and the GPS satellite or receiver 18, 22, therefore, the control unit of unit 300 cannot receive

GPS master timecodes from the GPS satellite or receiver 18,22, nor "jam sync" its internal local generator to them.

Petitioners also argue "the challenged claims do not require 'continuous' timecodes or any particular level of availability." Paper 42 at 11. To invalidate a patent, prior art must teach a working embodiment. *See Elan Pharms., Inc. v. Mayo Found. for Med. Educ. & Research*, 346 F.3d 1051, 1054 (Fed. Cir. 2003) ("To serve as an anticipating reference, the reference must enable that which it is asserted to anticipate."); *see also Alloc*, 342 F.3d at 1370 (the specification's consistent description of a feature can limit the claims). A non-continuous timecode is not a working embodiment, is unable to synchronize audio data, and is inconsistent with the '207 Specification, which teaches accurate, continuous transmission of master timecodes in all locations. Ex-2021, ¶27.

D. "jam synchronize"

Petitioners state that the "contention that neither reference teaches a 'master timecode generator' or a 'master timecode'" "is erroneous." Paper 42 at 11-12. As explained supra § IV.C. this contention is based in fact and reason.

As also explained supra § IV.C., hard/soft slave or "jamming" is only described in Woo in the background section and is merely informational. Woo does not teach any implementation thereof or embodiment related thereto in its specification.

Petitioners further state that "[t]o a POSA, the term 'jam sync' itself means that one time reference or clock is synchronized to another time reference or clock" (Paper 42 at 13) but only cites to one newly presented U.S. patent (Ex-1039), which was not included in the Petition. The reliance on a new patent (rather than their own expert) of how a POSA defines jam sync is completely erroneous. This argument should be disregarded for the reasons set forth supra § II. In fact, this new exhibit is the only one relied upon throughout this section of the argument.

Petitioners assertion that: "Zaxcom's contention that the GPS implementation in Woo is inadequate to synchronize the local clock, POR, 24-25, cannot render Woo's jam-sync process ineffective" is incorrect. Even if Woo's jam-sync process were effective, which it is not, the combinability of Strub and Woo has not been shown by Petitioners, Woo teaches away from this combination, and this combination does not teach the limitations of the challenged claims for the reasons discussed in the POR and supra § IV.C.

Next, Petitioners erroneously refute Mr. Defilippis' contention that a GPS signal "is insufficient to achieve synchronization." Paper 42 at 13. They conclude that the "pulse to which he refers is generated by counting the epoch of the coded GPS signal and therefore is also based on GPS" without any support, and this assertion is not confirmed by their expert. Additionally, this is considered new argument and should be disregarded. *See* supra § 2.

Despite Petitioners stating that "Strub also teaches the use of GPS time signals to control/sync the internal clocks of the recording units," (Paper 42 at 14) Strub actually on teaches that the GPS time signals time stamp the units. Those units do not include clocks to be synchronized with a master timecode, nor does Strub teach synchronization of any form of secondary clocks to the GPS time stamp. *See* Ex-2058, ¶ 255.

Lastly, the Petitioners attempt to remedy the shortcomings of Strub by stating that "it would have been obvious to use Woo's 'jam-sync process'" to "the extent that Strub fails to teach using its disclosed use of GPS to jam-sync the clocks of its recording units" (Paper 42 at 14) is: a new argument that should not be considered (see supra §2); is a technical argument completely unsupported by its expert; and fails for at least the reasons set forth in the POR and supra § IV.C.

V. STRUB IS NOT ENABLING

A party overcomes the procedural presumption of patent validity by "identif[ying] specific, concrete reasons why" the prior art is not enabling. *In re Morsa*, 713 F.3d 104, 110 (Fed. Cir. 2013). *See also Dynamic Drinkware, LLC v. Nat'l Graphics*, Inc., 800 F.3d 1375, 1380 (Fed. Cir. 2015). "If this burden is met, the party relying on validity is then obligated to come forward with evidence to the contrary." *Ralston Purina Co. v. Far-Mar-Co*, 772 F.2d 1570, 1573-74 (Fed. Cir. 1985).

PO's 25-page showing of Strub's lack of enablement (Paper 23 at 29-54), shifted the burden to Petitioners to show Strub's enablement, yet they devote barely two pages to rebuttal and fail to satisfy *their burden* of proving Strub's enablement. Petitioners fail to counter any POR-cited authority and rely on a ***single*** PGR decision for its assertion that "PO erroneously uses Strub's filing date of April 2000." Paper 42 at 16. "Enablement is determined as of the effective filing date of the patent." *Plant Genetic Sys. v. DeKalb Genetics Corp.*, 315 F.3d 1335, 1339 (Fed. Cir. 2003). The application's "sufficiency must be judged as of the filing date." *In re Glass*, 492 F.2d 1228, 1231 (Fed. Cir. 1974). *See In re Wands*, 858 F.2d 731 (Fed. Cir. 1988) (enumerating factors that bear on enablement, including the level of ordinary skill in the art at the time of filing of the parent application at issue); *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) ("[T]he test for sufficiency is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.")

Strub cannot support obviousness because it is non-enabled for what it purports to teach. To satisfy 35 U.S.C. §103, each reference must enable a POSA to make and use the subject matter that the reference itself discloses, and the combination must enable the claimed invention as a whole without undue experimentation. *See*, e.g., *Morsa*, 713 F.3d at 110 (Enablement of prior art

requires that the reference teach a skilled artisan—at the time of filing—to make or carry out what it discloses in relation to the claimed invention without undue experimentation). PO established Strub presents a high-level, aspirational description of a purportedly wearable, multi-component recording system with extensive functionality, but does not teach a POSA how to implement that system without undue experimentation, including with respect to size, power, component integration, and operational feasibility, nor does it teach an audio-only system. The law is clear that a reference must enable what it teaches, not merely describe a desired result. *See Rasmusson v. SmithKline Beecham Corp.*, 413 F.3d 1318, 1326 (Fed. Cir. 2005) (internal citations omitted) ("A patent claim 'cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.'"). Even if aspects of Strub fall outside the claim scope, Strub must be enabled for its disclosed subject matter to qualify as an obviousness reference. Because a POSA could not make and use the Strub system without undue experimentation, Strub is non-enabling and cannot support obviousness under §103.

Petitioners attack PO for "focus[ing] ***heavily*** on the 'video' aspects of Strub" (Paper 42 at 17) in direct contradiction to Petitioner's own reliance on Strub and Woo's video. Petitioners argue "Strub … discloses a plurality of wearable, audio/**video recording units**, each storing locally generated audio and **video** and

wirelessly transmitting the audio and **video** to one or more of the other wearable devices." Paper 1 at 14 (emphasis added). Petitioners' rely on Woo's video only system, and the IPR2025-00557 Board held that Petitioners' synchronization pulse argument applied to visual data, not audio data. *See RØDE Microphones, et al. v. Zaxcom, Inc.*, IPR2025-00557, Paper 15 at 22-23 (PTAB Sep. 30, 2025). Petitioners cannot argue that prior art video features should be ignored while simultaneously relying on them.

Enablement is evaluated under the eight *Wands* factors. Paper 23 at 30-31. Petitioners' Exs-1048, 1050, 1051, 1054, 1055, 1065, 1069, and 1071 were not publicly available as of Strub's April 2000 filing date and cannot be treated as prior art for assessing enablement. The remaining exhibits are insufficient to fill the gaps in Strub's disclosure. Petitioners provide no meaningful analysis demonstrating that these materials cure Strub's enablement deficiencies.

Petitioners' expert explains that implementing Strub would require a "team of engineers." Ex-2030, p. 139-40. This demonstrates that Strub fails the enablement requirement, which requires the ability of a POSA – not a "team of engineers" – to practice the disclosure without undue experimentation. A POSA "is a hypothetical *person* who is presumed to have known the relevant art at the relevant time." MPEP § 2141 (emphasis added). *See also Custom Accessories, Inc.*

v. Jeffrey-Allan Indus., Inc., 807 F.2d 955 (Fed. Cir. 1986); and *GPAC Inc.*, 57 F.3d at 1573.

Petitioners use impermissible hindsight analysis in naming parts that purportedly could have been used to create Zaxcom's invention but largely did not exist as of Strub's filing date. Petitioners cannot rely on Strub as enabling prior art while their expert concedes that its implementation requires far more than undue experimentation. Ex-2030, p. 139-40.

VI. OBJECTIVE INDICIA FAVORS NONOBVIOUSNESS

Petitioners' own expert and subsidiary identified the long-felt need of Zaxcom's invention: the best way of preventing dropouts was "crossing fingers" (Ex-2030 at 86); and "[o]ur [Lectrosonics'] customers worldwide have long asked for the ability to transmit and record simultaneously." Ex-2033. The latter disputes that "the ability to transmit and record … was well known" (Paper 42 at 19), as Lectrosonics only implemented this feature in August 2025 ("We're pleased to now offer that feature for our international customers." Ex-2033. *See also* Ex-2037, ¶5 ("This went a long way in solving some of the problems associated with frequency allocation."); Ex-2036, ¶3 ("…the work of Zaxcom … was a revolutionary concept. No other manufacturers had anything remotely similar."). "I can't emphasize enough the revolution these locally recording radios brought on. If the actors … went in and out of radio range, the SD card on the transmitter would

continue to record a backup recording of the audio … NO ONE else has local backup recording capability...” Ex-2036, ¶¶6-7.

Petitioners state, “Mr. Sarokin focuses on the benefits of digital transmission, remote controllability, and the size of the product” (Paper 42 at 19) while ignoring his comments on dropout repair. *See* Ex-2036, ¶6. The microSD card is claimed as “memory,” and product size is claimed as “wearable.” Ex-1001, claims 17 & 59.

Messrs. Wexler and Sarokin are first and foremost professional business associates of Mr. Sanders, and their industry praise is entitled to full weight. Both of their initial meetings with Mr. Sanders were for business development. Ex-1074 at 19; Ex-1075 at 17; Ex-1075 at 20. (“No. I didn’t know him before I purchased the first product.”).

The **face of the Academy Award** shows nexus to Zaxcom’s claimed invention, acknowledging, “local recording capability within the belt pack.” Exs-2044, 2045. *See also* Exs-2041-43 (the face of the Emmy award includes “Digital Recording Wireless”); Ex-2038 at 11 (listing “digital recording of microphone signal in the wireless transmitter to provide backup recording of the original microphone signal”; “distribution … of a common time code signal”; and “wireless digital remote control”); Ex-2039 at 3 (“a recording device located within the actor’s body pack”).

VII. CONCLUSION

For these reasons, all challenged claims should be held patentable.

Date: January 12, 2026

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), I certify that this "PATENT OWNER'S SUR-REPLY TO PETITIONERS' REPLY TO PATENT OWNER'S RESPONSE" contains 4,979 words, as determined by Microsoft Word, excluding the portions exempted by 37 C.F.R. § 42.24(a)(1). More specifically, the portions exempted from this word count are the title page, table of contents, table of authorities, table of exhibits, glossary of terms, this certificate, the signature block, and the certificate of service. Accordingly, this Patent Owner's Sur-Reply complies with the requirements of 37 C.F.R. § 42.24(c)(4) ("Sur-replies to replies to patent owner responses to petitions: 5,600 words.").

Date: January 12, 2026

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 12, 2026, a complete and entire copy of the foregoing "PATENT OWNER'S SUR-REPLY TO PETITIONERS' REPLY TO PATENT OWNER'S RESPONSE" is being served on the petitioners at the electronic addresses shown below per consent:

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