

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ANTHONY INC.,
Petitioner,

v.

CONTROLTEC, LLC,
Patent Owner.

Case IPR2025-00559
Patent 7,207,181

**PETITIONER'S SUR-REPLY TO PATENT OWNER'S
REPLY IN SUPPORT OF DISCRETIONARY DENIAL**

LIST OF EXHIBITS

EX1001	U.S. Patent No. 7,207,181
EX1002	U.S. Patent No. 7,207,181 File History
EX1003	Declaration of Dr. Gregor P. Henze
EX1004	U.S. Patent No. 7,137,262 (Carter)
EX1005	U.S. Patent No. 6,422,062 (King)
EX1006	U.S. Patent No. 5,778,689 (Beatenbough)
EX1007	U.S. Patent No. 6,502,409 (Gatling)
EX1008	U.S. Patent No. 5,396,796 (Kotani)
EX1009	U.S. Publication No. 2005/0172649
EX1010	U.S. Prov. Appl. No. 60/569,581
EX1011	U.S. Prov. Appl. No. 60/559,113
EX1012	U.S. Patent No. 3,939,666
EX1013	U.S. Patent No. 3,696,360
EX1014	U.S. Publication No. 2005/0007136
EX1015	ACT2-CS Convenience Store Controller, Johnson Controls (1999)
EX1016	U.S. Patent No. 4,260,876
EX1017	CPC Products, Computer Process Controls (Sept. 1, 2004), https://web.archive.org/web/20040901092452/http://www.cpcus.com/products.htm

- EX1018 Altech Controls XPRT Eagle Controls Manual (Section A-B)
- EX1019 Altech Controls XPRT Eagle Controls Manual (Section C)
- EX1020 Sensirion, SHT1x/SHT7x Humidity & Temperature Sensor (revised May 2005).
- EX1021 Altech Controls AASC Anti-Sweat Heater Controller
- EX1022 Anthony Engineering Change Notice—Engineering Drawings for Altech Controls AASC Control Assembly and Altech Controls Sensors
- EX1023 Steven J. Slayzak & Joseph P. Ryan, Instrument Uncertainty Effect on Calculation of Absolute Humidity Using Dewpoint, Wet-Bulb, and Relative Humidity Sensors (National Renewable Energy Laboratory) 1998
- EX1024 David H. Walker et al., Investigation of Energy-Efficient Supermarket Display Cases, Oak Ridge National Laboratory (Dec. 2004)
- EX1025 P.H.J. van Eijk, Verifying Relay Circuits using State Machines (Utrecht University, Department of Philosophy) (1997)
- EX1026 Robert P. Benedict, P.E., Fundamentals of Temperature, Pressure, and Flow Measurements (3d ed. 1984)
- EX1027 Contemporary Control Systems Inc., Introduction to Control, Vol. 2. Issue 2 (2001)
- EX1028 Shivakumar Raman & Paul H. Cohen, Remote sensing for on-line temperature estimation in machining: A basic framework, 38 J. of Materials Processing Tech. 613 (1993)
- EX1029 U.S. Publication No. 2004/0050072
- EX1030 Sensirion, SHTxx Humidity & Temperature Sensmitter, Application Note Dew-point Calculation (revised January 2005)

- EX1031 ASHRAE Psychometric Chart No. 1 (1992)
- EX1032 Low Cost Humidity Sensor SHT10, Sensirion (Mar. 12, 2006),
https://web.archive.org/web/20060312033617/http://www.sensirion.com/en/02_sensors/00_products.htm?cat=3&category=&art=11&product=humidity%20sensor%20SHT10
- EX1033 Larry D. Wittie, Microprocessors and Microcomputers (Encyclopedia of Computer Science) (2003)
- EX1034 Ramin Faramarzi, P.E. et al., Anti-Sweat Heaters in Refrigerated Display Cases, ASHRAE J. 64 (2001)
- EX1035 U.S. Publication No. 2007/0130968
- EX1036 U.S. Patent No. 5,369,753
- EX1037 Complaint (Document 1), *ControlTec, LLC v. Anthony, Inc. et al.* 1:24-cv-00883 (DDE)
- EX1038 Stipulation and [Proposed] Order to Stay Proceedings (Document 20), *ControlTec, LLC v. Anthony, Inc. et al.* 1:24-cv-00883 (DDE)
- EX1039 American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 2002 ASHRAE Handbook: Refrigeration (excerpt)
- EX1040 U.S. Patent No. 5,778,147
- EX1041 U.S. Patent No. 3,859,502
- EX1042 U.S. Patent No. 4,862,701
- EX1043 Order to Stay Proceedings, *ControlTec, LLC v. Anthony, Inc. et al.* 1:24-cv-00883 (DDE)
- EX1044 Joint Status Report Regarding Order to Stay Proceedings (Document 21), *ControlTec, LLC v. Anthony, Inc. et al.* 1:24-cv-00883 (DDE)

- EX1045 Order of Dismissal with Prejudice and to Close Case (Document 26),
ControlTec, LLC, et al. v. Anthony Doors, Inc. 1:06-cv-00295
(D. Colo)

- EX1046 Time to Milestones Report: Delaware District, Docket Navigator
(retrieved May 4, 2025)

- EX1047 District Report Delaware District Court in Patent Cases (January
2000–January 2025), LegalMetric (excerpt)

- EX1048 Federal Court Management Statistics–Profiles, Administrative Office
of the U.S. Courts (December 31, 2024)

- EX1049 Declaration of John Roche

- EX1050 Settlement Agreement and Release (redacted)

This is not a case where a petitioner discovered a problematic patent, disregarded the infringement risk, and sat on its hands waiting to be sued. Indeed, the facts here distinguish the Director’s *iRhythm* decision in two important ways.

First, on April 13, 2007, years before the 2009 IDS that Patent Owner relies on, (PO_Reply, 4), the parties executed a broad settlement and ***release of all existing and future causes of action*** in any way related to their co-development contract dispute that Patent Owner says produced the “AS-20 model anti-sweat controllers, which embody the ’181 patent’s claimed technology,” (PO_Br., 20). *See* EX1050, p.2. Thus, unlike *iRhythm*, Petitioner had every expectation following the release and the years of peace afterward that its dealings with Patent Owner were put to bed—forever. Those settled expectations were disrupted when Patent Owner breached the settlement agreement and filed an out-of-no-where infringement complaint on the eve of the ’181 patent’s expiration. *See, e.g.*, IPR2025-00225, Paper 8 at 2 (the Director holding that a patent owner allowing its patent to expire before filing suit created a “non-enforcement” expectation that precluded denial).

Second, Patent Owner ignores that Petitioner’s actions are fundamentally different than the petitioner in *iRhythm*, whose founding engineer was “focused on patent searches” and “dived...deeply in the analysis of specific [competitor patent] claims.” IPR2025-00363, Paper 7 at 29–31; *iRhythm* at 3. For one, given the parties’ amicable separation, mutual comprehensive release, and lack of subsequent business

dealings, Patent Owner was not on Petitioner's radar at the time of the IDS in 2009. *See* EX1050, p.2. Accordingly, testimony from Petitioner's Director of New Product Development from 2008 to 2013 confirms that he had no knowledge of Patent Owner, Patent Owner's products, or Patent Owner's patents throughout his tenure. EX1049, pp.2-3. Besides, as Patent Owner put it, Anthony did not "change[its] anti-sweat unit controller to [the accused] design" until eight years after the 2009 IDS—"in 2017." EX1037 at 7 (¶24). Simply put, Petitioner had no business reason to monitor or evaluate Patent Owner's patents, much less to challenge them.

Finally, *iRhythm* does not support Patent Owner's claim that a mere citation in an IDS means the petitioner was "aware" of the challenged patent. PO_Reply, 4. The duty to disclose requires anyone associated with the application, including outside counsel, to cite any information material to patentability. 37 C.F.R. § 1.56(c)(2). An IDS submitted by *outside counsel* alone shows nothing more than compliance with this duty. It does not establish that the *applicant/assignee* knew the cited patent was invalid, knew there was a risk the cited patent might be asserted, or even knew about the cited patent at all. In *iRhythm*—but not here—there was additional evidence beyond the IDS indicating that the petitioner's founder analyzed "specific claims" in the cited patent. IPR2025-00363, Paper 7 at 29–31.

For all these reasons, it is Patent Owner, not Petitioner, who is acting contrary to ordinary practice and settled expectations. Thus, the equities support institution.

Respectfully submitted,

Dated: June 17, 2025

/Kenneth Wayne Darby Jr./

Kenneth W. Darby Jr., Reg. No. 65,068

Kenneth Hoover, Reg. No. 68,116

Christopher Dillon, *pending admission pro
hac vice*

Fish & Richardson P.C.

60 South Sixth Street, Suite 3200

Minneapolis, MN 55402

T: 202-783-5070

F: 877-769-7945

Attorneys for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e), the undersigned certifies that on June 17, 2025, a complete and entire copy of this Petitioner's Sur-Reply to Patent Owner's Reply in Support of Discretionary Denial and Accompanying Exhibits were provided by email, to the Patent Owner, by serving the correspondence address of record as follows:

Robert P. Ziemian
Ian Rainey
Theodore M. Foster
HAYNES AND BOONE, LLP
2801 N. Harwood Street, Suite 2300
Dallas, TX 75201

Email: robert.ziemian.ipr@haynesboone.com
ian.rainey.ipr@haynesboone.com
ipr.theo.foster@haynesboone.com

/Diana Bradley/
Diana Bradley
Fish & Richardson P.C.
60 South Sixth Street, Suite 3200
Minneapolis, MN 55402
bradley@fr.com