

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC. and AMAZON WEB SERVICES, INC.,¹
Petitioner,

v.

ZIKLAG IP LLC,
Patent Owner.

Case IPR2025-00700
Patent No. 6,182,128

**PATENT OWNER'S OPPOSITION TO
PETITIONER'S MOTION TO STRIKE
A PORTION OF PATENT OWNER'S SUR-REPLY**

¹ Amazon Web Services, Inc. filed a petition and a motion for joinder in IPR2026-00047 and has been joined as a petitioner in this proceeding.

I. INTRODUCTION

Ziklag IP LLC (“Patent Owner”) submits this Opposition to Petitioner's Motion to Strike a Portion of Patent Owner's Sur-Reply (“Sur-Reply,” Paper 15) pursuant to the Board's e-mail authorization. See Ex.1019. As explained below, the Sur-Reply does not present a new argument regarding “substantially real time”, nor does Patent Owner present a new theory.

Petitioner requests that the Board strike from the record a portion of the Sur-Reply. Specifically, Petitioner's motion is directed to Section I - “[t]he claimed invention ... allows delivery of digital audio files through a coordinated, request-driven system” (p. 2) and “... the claimed system architecture, which requires dynamic, request-driven orchestration across distributed systems with concurrent routing and playback” (pp. 3-4); Section II, 4-11, and Section VI - the sentence stating “... ‘substantially real time’ as coordinated system behavior” (p. 19). *See* Petitioner's Motion to Strike 2, footnotes 3 and 4.

The Board is capable of identifying new issues or belatedly presented evidence when weighing the evidence at the close of trial, and disregarding any new issues or belatedly presented evidence that exceeds the proper scope of reply or sur-reply. As such, striking the entirety or a portion of a party's brief is an exceptional remedy that the Board expects will be granted rarely. *See* Trial Practice Guide (“TPG”), §II.K.²

² Citations to the Trial Practice Guide refer to the online version available at <https://www.uspto.gov/patents/ptab/trial-practice-guide>.

Patent Owner disputes Petitioner's contention that any "new issue" or "new theory" has been belatedly presented. However, even accepting Petitioner's contention that the Sur-Reply presents a "new issue" or "new theory", the facts do not merit granting Petitioner's motion to strike. Addressing what Petitioner characterizes as a "new issue" or "new theory" during oral hearing, rather than striking portions of the Sur-Reply, would not seriously prejudice Petitioner.³ Accordingly, striking the portion of the Sur-Reply containing the "new issue" or "new theory" is not appropriate. Patent Owner respectfully submits that the Board should wait until the close of the evidence to determine whether consideration of the supposed "new issue" or "new theory" actually poses any great prejudice to Petitioner. *See* Trial Practice Guide ("TPG"), §II.K.

II. PATENT OWNER HAS NOT PRESENTED A "NEW ISSUE" OR "NEW THEORY" REGARDING "SUBSTANTIALLY REAL TIME"

Petitioner erroneously argues that in the Sur-Reply, Patent Owner switched from the position that "substantially real time" means "playback while transmission is ongoing", to the position that it means "orchestration / coordinated system behavior". Patent Owner does not argue that "substantially real time" independently means orchestration. Instead, the Sur-Reply responds directly to the argument in Petitioner's Reply to Patent Owner's Response ("Reply", Paper 14) that the patent claims at issue are directed to playback timing alone.

³ Petitioner offers only conclusory allegations of "prejudice" and has not articulated any compelling showing as to how the Board's denial of its Motion to Strike would result in any particular substantial or serious prejudice to Petitioner.

Specifically, the Sur-Reply points out that the claims need to be understood in the proper context, namely the broader distributed, request-driven system architecture previously discussed in the Patent Owner's Response to Petition for Inter Partes Review ("POR", Paper 11).⁴

The Sur-Reply does not introduce a "new issue" or "new theory". It merely clarifies why Petitioner's playback-only argument in its Reply mischaracterizes the nature of the patent claims at issue by ignoring the surrounding context of the patented invention involving system architecture and behavior, which was already at issue in this inter partes review.

For example, with respect to the Yurt prior art reference, even assuming Yurt permits some playback before full transfer is complete, Yurt still fundamentally operates as a download / buffer / decompress model centered on local receipt and local playback from the receiving device. In contrast, Patent Owner's U.S. Patent 6,182,128 describes a system configured to provide a specific architecture: (1) request-driven locating of content; (2) routing across distributed systems; and (3) playback occurring while transmission/routing continues. Yurt describes a fundamentally different delivery model centered on local receipt and decompression of transmitted file data—not the distributed request-driven routing and concurrent delivery architecture claimed in the '128 patent.

⁴ See, e.g., POR at 3, 4, 7, 16, 19-20, 24, 27, 29-32; EX2009, McCulloh Decl. ¶¶ 12, 14, 26, 30; and EX2007, Johnson Decl. ¶¶ 24, 25, 29-30, 34, 37, 39, 44, 48-49.

Thus, the claimed system is fundamentally different from Yurt's local download / decompression architecture.

Patent Owner's discussion of Yurt in the Sur-Reply did not introduce a new theory regarding "substantially real time", but merely clarified why Petitioner's playback-focused characterization does not address the broader distributed, request-driven system architecture already discussed throughout the Patent Owner Response. Patent Owner's position has consistently been that Yurt describes a fundamentally different delivery architecture than the distributed routing system claimed in the '128 patent.

Petitioner's Reply repeatedly argued that "substantially real time" is satisfied merely because playback may occur while transmission is still ongoing. Patent Owner properly responded by explaining that the limitation cannot be divorced from the surrounding claim language and claimed distributed system architecture already discussed throughout the Patent Owner Response. Petitioner identifies no new evidence, new prior-art combination, or new claim construction introduced in the Sur-Reply. At most, Petitioner disputes Patent Owner's characterization of arguments already in the record.

III. CONCLUSION

Because the Sur-Reply merely responds to the Petitioner's Reply by presenting clarification and relevant context for the issues the Board will decide, rather than proffering any "new issue" or "new theory", Petitioner's Motion asking the Board to strike the portion of the Sur-Reply in Section II is not appropriate and should be denied.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2026, I caused a true and correct copy of the foregoing materials to be served via the Patent Office electronic filing system, and electronic service via email to the following attorneys of record pursuant to Petitioner's consent:

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