

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SPOTIFY USA INC.,

Petitioner,

v.

MANUEL TIJERINO,

Patent Owner.

IPR2025-01280

Patent No. 9,146,925

PATENT OWNER'S OPPOSITION TO

PETITIONER'S MOTION TO STRIKE

I. INTRODUCTION

Petitioner seeks the exceptional remedy of striking portions of Patent Owner's Sur-Reply (Paper 16). But the challenged passages did what 37 C.F.R. § 42.23(b) permits: they answered arguments materially developed in Petitioner's Reply (Paper 15) and EX1035. Paper 16 added no exhibit, declaration, calculation, reference, ground, or claim limitation. Petitioner's Motion to Strike (Paper 17) states that Paper 15 and EX1035 responded that the POR "improperly excluded playback-stage processing, including for limitations [P] and [Q]." Mot. 2. Paper 16 answered that precise issue using the issued claims and arguments already presented in the POR. Paper 14 had already described a unified architecture involving ingestion, analysis, metadata storage, and subsequent distribution and use, and then applied those relationships limitation by limitation. POR 30, 32-33, 34-60. Paper 16's phrase "ordered workflow" condensed that expressly presented theory in response to Paper 15 and EX1035; it did not introduce a new patentability theory.

II. LEGAL STANDARD

A sur-reply may respond to arguments raised in the corresponding reply. 37 C.F.R. § 42.23(b). Responsiveness includes refuting, rebutting, explaining, or discrediting a preceding argument and fairly elaborating an issue already raised. *Rembrandt Diagnostics, LP v. Alere, Inc.*, 76 F.4th 1376, 1384-85 (Fed. Cir. 2023). The Trial Practice Guide states that the Board ordinarily can identify and disregard new matter

when weighing the record; striking a brief is an "exceptional remedy" expected to be granted "rarely." TPG 80-81. Petitioner bears the burden. 37 C.F.R. § 42.20(c).

III. THE SUR-REPLY PROPERLY RESPONDED

A. The "Ordered Workflow" Was Presented in the POR

Paper 14 expressly presented the same integrated, functionally ordered system before the Sur-Reply. It explained that "[t]he challenged claims require a server-side architecture that performs ingestion of new media, automated analysis of that media, and storage of derived metadata for subsequent network-based distribution and use." POR 30. It similarly explained that "new media is ingested, processed, and made available through a unified server-side architecture." *Id.* at 32-33. Paper 14 then applied those relationships limitation by limitation: [E]-[H] address receipt, metadata/storage, central storage, and API access; [I] requires the processor to obtain the positive RMS value; [J] requires the processor to store "the obtained RMS value" as metadata; [K]-[M] address metadata, request, and streaming; [P] permits the "processor or jukebox" to normalize using "the obtained positive RMS value"; and [Q] requires the signals to be "further compressed." POR 34-60. Paper 16 did not rely on enumeration alone. [J] stores the value obtained under [I]; [P] uses that obtained value; and [Q] says "further compressed." The actors also change from "the processor" in [I]/[J] to "the processor or jukebox" in [P]. Thus, jukebox-side performance of [P] does not relocate or eliminate [I]/[J]. Paper 16 introduced this synthesis with "As explained in the POR." Sur-Reply 20

(citing POR 34-47). It did not seek a new rigid ordering of every limitation.

B. The Alleged Contradiction Disappears on the Full Record

The Motion creates a false contradiction between (1) the POR's argument that Kincaid's and Bongiovi's isolated playback operations do not disclose the complete architecture and (2) an assertion that the claims exclude every playback operation. The POR argued the first. Its [P] section quoted "processor or jukebox" and addressed Kincaid's "playback-side normalization." POR 57-58. Paper 16 therefore did not reverse course by explaining that [P] may occur during playback while using the value previously obtained under [I] and stored under [J]. The Motion itself confirms responsiveness. Mot. 2 (citing Reply 21-24; EX1035 ¶¶ 82-90). EX1035 quoted and rejected the POR's ingestion/playback distinction, invoked claims 10 and 17, relied on paragraph [0081], asserted server-side performance was optional, and used those assertions to reinforce the proposed combination. EX1035 ¶¶ 82-90. The Petition and original declaration, by contrast, said no construction was necessary. Pet. 3; EX1003 ¶ 29. Paper 16 answered the materially developed Reply presentation without new evidence.

C. ParkerVision Permits This Response

ParkerVision excluded a theory absent from the POR and supported by “numerous new attorney calculations.” *ParkerVision, Inc. v. Vidal*, 88 F.4th 969, 980–81 (Fed. Cir. 2023). Here, the POR applied the claim language limitation by limitation: [I]/[J] require the processor to obtain and store the RMS value; [P] permits the processor or jukebox to

use that value for normalization; and [Q] requires further compression. POR 34–60. It also addressed playback-side normalization. Paper 16 merely clarified these relationships without new evidence or calculations. *ParkerVision* upheld consideration of a responsive claim construction based on existing intrinsic evidence and the opportunity to answer it in sur-reply. *Id.* at 978–80. Paper 16 falls on that permitted-response side of *ParkerVision*.

IV. THE GROUND 2 DISCUSSION WAS RESPONSIVE

Paper 15 did not merely note silence. It asserted that Ground 2 independently rendered all claims obvious, invoked waiver, and incorporated the Petition’s Ground 2 analysis and EX1003. Reply 24–26. That incorporated analysis relied on Nathan-204 through Dion for jukebox structure. Pet. 59; EX1003 ¶148. Paper 11 states only that omitted arguments “may be deemed waived.” Paper 11 at 11. Paper 16 therefore responded to Spotify’s affirmative request for an independently dispositive Ground 2 ruling. It also correctly noted that both grounds remained instituted. Sur-Reply 1, 3–6; Paper 10 at 61–62. This conceded neither Ground 2 nor waiver. In any event, the abbreviated “Nathan” references are severable; even if the Board finds them improper, it should disregard only those references without striking the separate Ground 1 responses to Paper 15 and EX1035.

V. PETITIONER HAS NOT SHOWN PREJUDICE

Petitioner introduced EX1035 after the POR, identified each challenged passage, and

has a Board-authorized three-page response. Paper 16 introduced no new evidence. The asserted prejudice therefore does not justify the exceptional remedy. The Motion is overbroad: it targets six sections addressing EX1035, paragraph [0081], motivation, reasonable expectation of success, and claim relationships. Mot. 1, 4-5. If the Board views "only thereafter" as stronger than the POR's presentation, the proportionate course is to disregard that phrase or assign it appropriate weight, not strike surrounding responsive analysis. TPG 80-81.

VI. CONCLUSION

The Motion should be denied. The POR presented the integrated architecture, addressed playback-side normalization, and analyzed the relevant limitations. Paper 15 and EX1035 materially developed Petitioner's actor, timing, and playback assertions; Paper 16 answered from the claims and existing record without new evidence. Nothing in this Opposition concedes waiver or the merits of Ground 2. Alternatively, any concern should be addressed by disregarding only the particular phrase or sentence at issue, not by striking the surrounding responses.

Dated: August 4, 2026

Respectfully submitted,

/Manuel Tijerino/

Manuel Tijerino

Patent Owner, Pro Se

2141 Leslie Street

Gretna, LA 70056

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that a true and correct copy of the foregoing **Patent Owner's Opposition To Petitioner's Motion To Strike in IPR2025-01280** was served on Petitioner's counsel of record by electronic mail on **August 4, 2026**, at the following addresses:

Morrison & Foerster LLP (Petitioner's Counsel):

- Mehran Arjomand – marjomand@mofo.com
- Alex Yap – ayap@mofo.com
- Bryan Blumenkopf – bblumen@mofo.com
- Kyle W.K. Mooney – kmooney@mofo.com
- Charles Calhoun Provine – cprovine@mofo.com
- John Sebastiano Douglass – jdouglass@mofo.com
- **Group Email:** mofospotifytijerino@mofo.com

Phelps Dunbar LLP (Local Counsel):

- David Patron – patrond@phelps.com
- Lindsay J. Calhoun – lindsay.calhoun@phelps.com
- Mark Ackal – mark.ackal@phelps.com

Dated: August 4, 2026

/Manuel Tijerino/

Manuel Tijerino

Patent Owner, Pro Se

2141 Leslie Street

Gretna, LA 70056