UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAPITAL ONE, N.A. AND CAPITAL ONE SERVICES LLC,
Petitioners,

v.

WAPP TECH CORP.,
Patent Owner.

Case IPR2025-01325
Patent 8,924,192

PATENT OWNER'S AUTHORIZED REPLY TO PETITIONER'S DISCRETIONARY DENIAL BRIEF

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EXHIBIT LIST

Exhibit	Description
EX2001	**Complaint for Patent Infringement,** Dkt. No. 1, *Wapp Tech. Ltd. P'ship v. Apple, Inc.,* Case No. 4:25-cv-230 (E.D. Tex. Filed March 6, 2025)
EX2002	**Complaint for Patent Infringement,** Dkt. No 1, *Wapp Tech. Ltd. v. Micro Focus Int'l PLC*, Case No. 4:18-cv-469 (E.D. Tex. Filed July 2, 2018)
EX2003	**Complaint for Patent Infringement** in first Wells Fargo suit, Dkt. No. 1, *Wapp Tech. Ltd. v. Wells Fargo & Co.*, Case No. 4:18-cv-501 (E.D. Tex., July 16, 2018)
EX2004	**Complaint for Patent Infringement** in first Bank of America suit, Dkt. No. 1, *Wapp Tech. Ltd. v. Bank of America Corp..*, Case No. 4:18-cv-519 (E.D. Tex., July 20, 2018)
EX2005	**Markman Order**, Dkt. No. 176, *Wapp Tech. Ltd. v. Micro Focus Int'l PLC*, Case No. 4:18-cv-469, (E.D. Tex., April 27, 2020)
EX2006	**Motion to Stay by Defendant Wells Fargo,** Dkt. No. 137, *Wapp Tech. Ltd. v. Wells Fargo & Co.*, Case No. 4:18-cv-501 (E.D. Tex., Oct. 30, 2020)
EX2007	**Motion to Stay by Defendant Bank of America,** Dkt. No. 12, *Wapp Tech. Ltd. v. Bank of America Corp..*, Case No. 4:18-cv-519 (E.D. Tex., Oct. 17, 2018)
EX2008	**Trial Transcript Volume 5 of 5,** Dkt. No. 478, *Wapp Tech. Ltd. v. Micro Focus Int'l PLC*, Case No. 4:18-cv-469, (E.D. Tex., March 5, 2021)
EX2009	**Order regarding Defendants' Opening Brief Opposing Enhancement of Damages,** Dkt. No. 486, *Wapp Tech. Ltd. v. Micro Focus Int'l PLC*, Case No. 4:18-cv-469 (E.D. Tex. April 22, 2021)
EX2010	**Final Judgement,** Dkt. No. 487, *Wapp Tech. Ltd. v. Micro Focus Int'l PLC*, Case No. 4:18-cv-469 (E.D. Tex. April 22, 2021)
EX2011	**Docket sheet for** *Wapp Tech. Ltd. v. Micro Focus Int'l PLC*, Case No. 4:18-cv-469
EX2012	**Docket sheet for** *Wapp Tech. Ltd. v. Wells Fargo & Co.*, Case No. 4:18-cv-501
EX2013	**Docket sheet for** *Wapp Tech. Ltd. v. Bank of America Corp..*, Case No. 4:18-cv-519

EX2014	**Complaint for Patent Infringement** in second Wells Fargo suit, Dkt. No. 1, *Wapp Tech. Ltd. v. Wells Fargo Bank, N.A.*, Case No. 4:21-cv-00671 (E.D. Tex., August 27, 2021)
EX2015	**Complaint for Patent Infringement** in second Bank of America suit, Dkt. No. 1, *Wapp Tech. Ltd. v. Bank of America Corp..*, Case No. 4:21-cv-00670 (E.D. Tex., August 27, 2021
EX2016	**Markman Order** in second Wells Fargo suit, Dkt. No. 96, *Wapp Tech. Ltd. v. Wells Fargo Bank, N.A.*, Case No. 4:21-cv-00671 (E.D. Tex. July 6, 2022)
EX2017	**Docket sheet for** *Wapp Tech. Ltd. v. Bank of America Corp..*, Case No. 4:21-cv-00670
EX2018	**Docket sheet for** *Wapp Tech. Ltd. v. Wells Fargo Bank, N.A.*, Case No. 4:21-cv-00671
EX2019	**Complaint for Patent Infringement,** Dkt. No. 1, *WAPP Tech. Ltd. P'ship v. JPMorgan Chase Bank, N.A.,* Case No. 4:23-cv-01137 (E.D. Tex., December 22, 2023)
EX2020	**Markman Order** in JPMorgan Chase Bank case, Dkt. No. 80, *WAPP Tech. Ltd. P'ship v. JPMorgan Chase Bank, N.A.,* Case No. 4:23-cv-01137 (E.D. Tex. Nov. 11, 2024)
EX2021	**Docket sheet for** *WAPP Tech. Ltd. P'ship v. JPMorgan Chase Bank, N.A.,* Case No. 4:23-cv-0113
EX2022	**Docket sheet for** *ams Sensors USA v. Intersil Corporation,* Case No. 4:08-cv-00451 (E.D. Tex. Filed Nov. 25, 2008)
EX2023	**Docket sheet for** *Oasis Research, LLC v. Adrive, LLC et al.,* Case No. 4:10-cv-00435 (E.D. Tex. Filed Aug. 20, 2010)
EX2024	**Order regarding Scheduling Conference,** Dkt. No. 161, *Oasis Research, LLC v. Adrive, LLC et al.,* Case No. 4:10-cv-00435 (E.D. Tex. Feb. 23, 2011)
EX2025	**Docket sheet for** *Frito-Lay North America, Inc. v. Medallion Foods, Inc et al.,* Case No. 4:12-cv-00074 (E.D. Tex. Filed Feb. 10, 2012)
EX2026	**Docket sheet for** *Motito, Inc. v. BSP Software LLC,* Case No. 4:12-cv-00647 (E.D. Tex. Filed Oct. 10, 2012)
EX2027	**Docket sheet for** *Imperium IP Holdings (Cayman), Ltd. v. Samsung Electronics Co., Ltd. et al,* Case No. 4:14-cv-00371 (E.D. Tex. Filed June 9, 2014)
EX2028	**Order Governing Proceedings,** Dkt. No. 44, *Imperium IP Holdings (Cayman), Ltd. v. Samsung Electronics Co., Ltd. et al,* Case No. 4:14-cv-00371 (E.D. Tex. Oct. 15, 2014)

EX2029	**Docket sheet for** *Tech Pharmacy Services, LLC v. Alixa Rx LLC et al,* Case No. 4:15-cv-00766 (E.D. Tex. Filed Nov. 2, 2015)
EX2030	**Order Governing Proceedings,** Dkt. No. 21, *Tech Pharmacy Services, LLC v. Alixa Rx LLC et al,* Case No. 4:15-cv-00766 (E.D. Tex. Feb. 22, 2016)
EX2031	**Docket sheet for** *Evicam International, Inc. v. Enforcement Video, LLC,* Case No. 4:16-cv-00105 (E.D. Tex. Filed Nov. 24, 2015)
EX2032	**Order Governing Proceedings,** Dkt. No. 12, *Evicam International, Inc. v. Enforcement Video, LLC,* Case No. 4:16-cv-00105 (E.D. Tex. Feb. 22, 2016)
EX2033	**Docket sheet for** *Innovation Sciences, LLC v. Amazon.com Inc.,* Case No. 4:18-cv-00474 (E.D. Tex. Filed July 5, 2018)
EX2034	**Order Governing Proceedings,** Dkt. No. 10, *Innovation Sciences, LLC v. Amazon.com Inc.,* Case No. 4:18-cv-00474 (E.D. Tex. Oct. 3, 2018)
EX2035	**Docket sheet for** *SB IP Holdings LLC v. Vivint, Inc.,* Case No. 4:20-cv-00886 (E.D. Tex. Filed Nov. 17, 2020)
EX2036	**Order Governing Proceedings,** Dkt. No. 25, *SB IP Holdings LLC v. Vivint, Inc.,* Case No. 4:20-cv-00886 (E.D. Tex. March 30, 2021)
EX2037	**Order Governing Proceedings,** Dkt. No. 82, *Wapp Tech. Ltd. v. Micro Focus Int'l PLC*, Case No. 4:18-cv-469 (E.D. Tex. Aug. 21, 2019)
EX2038	**Order Governing Proceedings,** Dkt. No. 56, *Wapp Tech. Ltd. P'ship v. Apple, Inc.,* Case No. 4:25-cv-230 (E.D. Tex. Aug. 20, 2025)
EX2039	**Wapp's Production Notice Letter to Capital One** in *Wapp Tech. Ltd. P'ship v. Apple, Inc.,* Case No. 4:25-cv-230 dated Sept. 30, 2025
EX2040	**Wapp's First Set of Interrogatories to Capital One (Nos. 1-2)** in *Wapp Tech. Ltd. P'ship v. Apple, Inc.,* Case No. 4:25-cv-230 dated Sept. 30, 2025
EX2041	**Wapp's Venue Interrogatories to Apple (Nos. 1-4)** in *Wapp Tech. Ltd. P'ship v. Apple, Inc.,* Case No. 4:25-cv-230 dated Sept. 8, 2025
EX2042	**Wapp's Request for Production to Apple (Nos. 1-7)** in *Wapp Tech. Ltd. P'ship v. Apple, Inc.,* Case No. 4:25-cv-230 dated

	Sept. 8, 2025
EX2043	**U.S. Patent No. 9,965,797**
EX2044	**U.S. Patent No. 10,665,204**

Wapp Tech Corp. ("Wapp") submits this reply, authorized by email on Nov. 7, 2025, to Capital One, N.A. and Capital One Services LLC's (collectively, "Capital One") Discretionary Denial Opposition Brief (Paper 8, "Opp."). Wapp's Discretionary Denial Brief (Paper 6, "DD Br.") detailed the numerous reasons why discretionary denial is merited in this proceeding, including the strong settled expectations surrounding the '192 Patent. *See, e.g.,* DD Br. at 18–20. Unable to marshal a credible response on settled expectations, Capital One had to misstate the Director's guidance in *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 (Dir. June 26, 2025) and omit key facts to have any argument at all.

In *Proxsense*, the Director found that settled expectations favored discretionary denial because the patent had been in force for many years but also noted certain facts that, if present, might "weigh against a patent owner's claim of settled expectations." *Id.* at 2–3. For example, "a patent may have been in force for years but may not have been commercialized, asserted, marked, licensed, or otherwise applied in a petitioner's particular technology space." *Id.* This scenario is absent here. The '192 Patent has been repeatedly asserted for years prior to its IPR Petition against others, including those in the same technology space as Capital One (*e.g.*, consumer banking mobile applications). *See* DD Br. at 3–5. Capital One does not (and cannot) deny those facts, so it deliberately omits "assert[ion]" from its discussion of *Proxsense*, even though that is one of the four non-limiting examples

of how a patent may be "applied." *Proxsense*, Paper 12 at 2; *see* Opp. at 15.

Capital One is also incorrect that there has been a "lack of commercialization, marking, and licensing of WAPP's claims." Opp. at 15. The '192 Patent's invention has been heavily commercialized, as demonstrated by the $172.5 million dollar judgment awarded to Wapp for commercial products that infringed the '192 Patent (and related patents). *See* EX2009 at 7 (noting damages awarded by verdict); EX2010 (Final Judgment); DD Br. at 3–5. The '192 Patent has also been licensed by many entities. In fact, evidence of such licenses was produced to Capital One in the parallel district court litigation at the time that it filed its Opposition.[1] This fact is confirmed by the concession of Capital One's co-defendant in the litigation, Frost Bank (*see* EX2001 at 1), in District Court briefing in September that "there are licensees to the Asserted Patents." Frost Bank's Motion to Dismiss, *WAPP Tech Corp. et al., v. Apple, Inc., et al.,* Case No. 4:25-cv-00230, Dkt. 60 at 2 (E.D. Tex. Sept. 5, 2025). Indeed, Capital One's argument regarding marking—"WAPP is a non-practicing entity that hasn't shown . . . marking ***by licensees***," Opp. at 15 (emphasis added)—shows that it knew the '192 Patent had been previously licensed.

[1] To the extent Capital One persists in denying receipt of the produced licenses, Wapp can produce direct evidence of the production and (if helpful to the Director's determination) requests the opportunity to do so.

Moreover, as the party asserting a failure to mark products, Capital One carries the "initial burden of production to articulate the products it believes are unmarked 'patented articles' subject to § 287." *Arctic Cat Inc. v. Bombardier Rec. Prods.*, 876 F.3d 1350, 1368 (Fed. Cir. 2017). Nothing Capital One has submitted here or in the district court meets that burden. In addition to Capital One's failure to meet this burden, the evidence still shows that the '192 Patent has been commercialized, asserted, ***and*** licensed. *Proxsense* requires showing that ***none*** of the listed activities happened, and that the patent had not been "otherwise applied." *Proxsense*, Paper 12 at 2.

Finally, there is no question that the '192 Patent has previously been "applied in [Capital One's] particular technology space." *See id.* at 2–3. For example, Wapp accused Capital One of infringing the '192 Patent based on its use of Xcode to develop its mobile banking applications. *See* EX2001 ¶¶113–119 ("Capital One [] use[s] Apple's Xcode on an ongoing basis to author [its] mobile applications."). Wapp made the same allegations regarding the '192 Patent against Bank of America, Wells Fargo, and JPMorgan Chase in earlier lawsuits. *See* EX2003 ¶¶93–95; EX2015 ¶¶94–96; EX2019 ¶¶73–75.

Dated: November 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a copy of the foregoing was served via email to counsel of record for Petitioners as follows:

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