

Filed on behalf of: Capital One, N.A. and Capital One Services, LLC

Entered: November 12, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAPITAL ONE, N.A. and CAPITAL ONE SERVICES, LLC,
Petitioner,

v.

WAPP TECH CORP.,
Patent Owner.

IPR2025-01325
Patent 8,924,192

**PETITIONERS' AUTHORIZED SUR-REPLY TO PATENT OWNER'S
BIFURCATED DISCRETIONARY DENIAL BRIEF**

Exhibit List

Ex.	Description
1001	U.S. Patent No. 8,924,192 (“’192 patent”)
1002	Prosecution History of U.S. Patent No. 8,924,192 (“’192 PH”)
1003	Declaration of Nenad Medvidovic, Ph.D., with <i>curriculum vitae</i>
1004	U.S. Patent Application No. 12/759,543 (“’543 application”)
1005	Certified Translation of Korean Patent Publication No. KR 2003-0049670 (“Lee”)
1006	Korean Patent Publication No. KR 2003-0049670
1007	U.S. Patent Application Publication No. 2005/0102638 (“Jiang”)
1008	U.S. Patent Application Publication No. 2006/0015404 (“Tran”)
1009	U.S. Patent No. 7,813,910 (“Poulin-910”)
1010	Hassan Artail, <i>A Multiplatform Methodology: Developing Mobile Device Applications</i> , 4 IEEE Pervasive Computing 92 (Apr. – June 2005)
1011	Lynne Hall et al., <i>A Development Environment for Intelligent Applications on Mobile Devices</i> , 27 Expert Sys. Applications 481 (2004)
1012	U.S. Patent Application Publication No. 2002/0184610
1013	European Patent Specification No. EP 1 332 439 B1
1014	Stuart J. Barnes, <i>The Mobile Commerce Value Chain: Analysis and Future Developments</i> , 22 Int’l J. Info. Mgmt. 91 (2002)
1015	U.S. Patent Application Publication No. 2004/0192277
1016	Bert de Reyck & Zeger Degraeve, <i>Broadcast Scheduling for Mobile Advertising</i> , 51 Operations Rsch. 509 (2003)

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1017	Ichiro Satoh, <i>Software Testing For Wireless Mobile Computing</i> , 11 IEEE Wireless Commc'ns 58 (Oct. 2004)
1018	Trevor J. Young, <i>Using AspectJ to Build a Software Product Line for Mobile Devices</i> (Aug. 2005) (Master's thesis, University of British Columbia)
1019	Microsoft Computer Dictionary (5th ed. 2002) (excerpts)
1020	Webster's Unabridged Dictionary of the English Language (2001) (excerpts)
1021	S. Kumar & C. Zahn, <i>Mobile Communications: Evolution and Impact on Business Operations</i> , 23 Technovation 515 (2003)
1022	Anthony Cataldo, <i>Kyocera Shows Portable Video Phone</i> , EDN (May 18, 1999), https://www.edn.com/kyocera-shows-portable-video-phone/
1023	Anita Wilhelm et al., <i>Photo Annotation on a Camera Phone</i> , CHI'04 Extended Abstracts of the 2004 Conference on Human Factors in Computing Systems 1403 (Apr. 2004)
1024	Risto Sarvas et al., <i>Metadata Creation System for Mobile Images</i> , Proceedings of the 2nd International Conference on Mobile Systems, Applications, and Services 36 (June 2004)
1025	Russell Beale, <i>Supporting Social Interaction with Smart Phones</i> , 4 IEEE Pervasive Computing 35 (Apr. – June 2005)
1026	BBC, <i>A History of Mobile Phones and Smartphones</i> , https://www.bbc.co.uk/bitesize/articles/z62gjfr (last visited July 10, 2025)
1027	Nenad Medvidovic, <i>Software Architectural Support for Handheld Computing</i> , 36 Comput. 66 (Sept. 2003)
1028	Tim Kindberg et al., <i>The Ubiquitous Camera: An In-depth Study of Camera Phone Use</i> , 4 IEEE Pervasive Computing 42 (2005)

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1029	<i>App</i> , Britannica, https://www.britannica.com/technology/mobile-app (last visited July 10, 2025)
1030	U.S. Patent Application No. 11/449,958
1031	U.S. Provisional Application No. 60/689,101
1032	Matt Curtin, <i>Write Once, Run Anywhere: Why it Matters</i> (Apr. 9, 1998)
1033	Memorandum from the Chief Admin. Pat. Judge on Guidance on USPTO's Recission of "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation" (Mar. 24, 2025), https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_recission_20250324.pdf ("Interim Procedure for Discretionary Denials")
1034	United States District Courts – National Judicial Caseload Profile (for period ending June 30, 2025), https://www.uscourts.gov/data-news/data-tables/2025/06/30/statistical-tables-federal-judiciary/c-5 ("Caseload Stats")
1035	U.S. District Courts – Table C-5. Median Time Intervals from Filing to Disposition of Civil Cases Terminated (for period ending June 30, 2025), https://www.uscourts.gov/data-news/data-tables/2025/06/30/statistical-tables-federal-judiciary/c-5 (printed July 31, 2025) ("Median Time Intervals")
1036	Lex Machina, District Judge Amos Louis Mazzant III: Federal District Court & Patent Cases Statistics (retrieved Oct. 28, 2025) ("Judge Mazzant Cases Statistics")
1037	RESERVED
1038	USPTO, Patent Trial and Appeal Board, https://www.uspto.gov/about-us/organizational-offices/patent-trial-and-appeal-board (last visited Oct. 15, 2025)

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1039	<i>Reforming the Patent Trial and Appeal Board—The PREVAIL Act and Proposals to Promote U.S. Innovation Leadership: Hearing Before the Subcomm. on Intell. Prop., U.S. Sen. Comm. on the Judiciary</i> , 118th Cong. (Nov. 8, 2023) (statement of Joseph Matal, Clear IP, LLC)
1040	Memorandum Opinion and Order, <i>WAPP Tech Ltd. P’ship v. JPMorgan Chase Bank, N.A.</i> , No. 4:23-cv-01137 (E.D. Tex. Dec. 3, 2024), Dkt. No. 83
1041	Brief for the Federal Respondent in Opposition, <i>Gesture Tech. Partners, LLC v. Apple Inc.</i> , No. 24-1280 (U.S. Sept. 26, 2025), https://www.supremecourt.gov/DocketPDF/24/24-1280/378057/20250926164730081_24-1280_Gesture_Opp.pdf
1042	Sarah Perez, <i>Capital One Debuts New Apps To Accept Check Deposits By Phone</i> , TechCrunch (Dec. 3, 2012, 9:21 A.M. PST), https://techcrunch.com/2012/12/03/capital-one-debuts-new-apps-to-accept-check-deposits-by-phone/ (last visited Oct. 31, 2025)
1043	Jeffrey Kopchik, <i>Remote Deposit Capture: A Primer</i> , Supervisory Insights, (2009), https://www.fdic.gov/bank-examinations/remote-deposit-capture-primer-summer-09-article-2.pdf
1044	U.S. Patent No. 7,245,765 (“Myers”)
1045	Manual of Patent Examining Procedure (MPEP) ch. 900 (Mar. 2014), https://www.uspto.gov/web/offices/pac/mpep/old/e9r0/mpep-0900.pdf
1046	USPTO, USPC Class 703 – Data Processing: Structural Design, Modeling, Simulation, and Emulation (Jan. 2011), https://www.uspto.gov/web/patents/classification/uspc703/sched703.pdf
1047	USPTO, USPC Class 709 – Electrical Computers and Digital Processing Systems: Multicomputer Data Transferring (Jan. 2011), https://www.uspto.gov/web/patents/classification/uspc709/sched709.pdf

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1048	USPTO, USPC Class 715 – Data Processing: Presentation Processing of Document, Operator Interface Processing, and Screen Saver Display Processing (Feb. 2011), https://www.uspto.gov/web/patents/classification/uspc715/sched715.pdf
1049	USPTO, USPC Class 345 – Computer Graphics Processing and Selective Visual Display Systems (Jan. 2011), https://www.uspto.gov/web/patents/classification/uspc345/sched345.pdf
1050	Manual of Patent Examining Procedure (MPEP) ch. 2100 (Mar. 2014), https://www.uspto.gov/web/offices/pac/mpep/old/e9r0/mpep-2100.pdf
1051	[Model] Order Focusing Patent Claims and Prior Art to Reduce Costs (E.D. Tex.), https://www.txed.uscourts.gov/sites/default/files/forms/ModelPatentOrder.pdf (last visited Oct. 27, 2025)
1052	Transcript of Case Management Conference, <i>Wapp Tech Ltd. P'ship v. Apple Inc.</i> , No. 4:25-cv-00230 (E.D. Tex. Oct. 27, 2025) (“CMC Tr.”)
1053	USPTO, USPC Class 345 – Computer Graphics Processing and Selective Visual Display Systems: Classification Definitions (Jan. 2011), https://www.uspto.gov/web/patents/classification/uspc345/defs345.pdf
1054	Order, <i>Wapp Tech Ltd. P'ship v. Apple Inc.</i> , No. 4:25-cv-00230 (E.D. Tex. Oct. 29, 2025), Dkt. No. 85 (“Claim Narrowing Order”)
1055	Exhibit A-15a to Defendant’s Invalidity Contentions, Invalidity of U.S. Patent No. 8,924,192 over Nokia 3650 User Guide, <i>WAPP Tech Ltd. P'ship v. JPMorgan Chase Bank, N.A.</i> , No. 4:23-cv-01137 (E.D. Tex.)
1056	Exhibit H to Plaintiff’s First Amended Complaint, <i>Wapp Tech Ltd. P'ship v. Apple Inc.</i> , No. 4:25-cv-00230 (E.D. Tex. Aug. 15, 2025)

Capital One exposed that WAPP's minimal "settled expectations" argument was meritless because WAPP relied on little more than the patent's age, which was outweighed by the *Proxense* factors, among others. *See* Paper 8 ("DDOpp.") 15. After ignoring *Proxense* in its opening brief, WAPP now (Paper 9, "DDReply") relies on baseless accusations against Capital One, mischaracterizations of the facts, and misunderstandings of the law. Discretionary denial remains unwarranted.

The "**lack** of commercialization, marking, and licensing **of WAPP's claims cut against** WAPP's settled expectations claim." DDOpp. 15 (emphasis added). Capital One stands by that accurate application of *Proxense*, which found that such facts "weigh against" settled expectations claims. *Intel Corp. v. Proxense LLC*, IPR2025-00327, Paper 12 at 3 (Dir. June 26, 2025). *Proxense* provides "non-limiting examples" of what may defeat settled expectations, as WAPP concedes (DDReply 1-2). *Proxense* does not "require[] showing that **none** of the listed activities happened" as WAPP later claims (DDReply 3). WAPP's failure in its opening brief to show the challenged claims were commercialized, marked, or licensed remains compelling evidence that settled expectations do not support discretionary denial.

WAPP continues to conflate the challenged claims (claims 60-69) with the other claims of the '192 patent; facts relevant to the other claims do not automatically apply to these challenged claims. DDReply 2. There is no dispute that WAPP has previously asserted the patent (*see generally* DDReply), but legal determinations

(e.g., invalidity and infringement) are made on a claim-by-claim basis, including for discretionary factors. *See Proxense*, 2 (“reasons why the Board should review **challenged claims**”) (emphasis added). WAPP’s repeated references to its previous ’192 patent assertions fail to acknowledge this fundamental legal truth. WAPP’s allegation that the prior infringement verdict shows the patent’s “invention has been heavily commercialized” therefore remains irrelevant: that trial **did not address** the challenged claims, as the record and Capital One unmistakably show (*see* DDOpp. 2; Ex.2008, 1227:14-17). WAPP cannot rebut this. The previous trial and verdict do not support commercialization of the purported inventions of claims 60-69. There is no evidence these claims were commercialized by anyone; WAPP provides none.

WAPP’s licensing argument likewise fails to move the needle. DDReply 2. First, WAPP misunderstands Capital One’s argument, which focused on WAPP’s failure to provide “evidence of marking compliance” or “marking by licensees.” DDOpp. 15. WAPP still has not provided such evidence. Second, WAPP has only produced one settlement/license, with Bank of America, but that litigation did not involve the claims challenged here, and WAPP presents no evidence in this proceeding to show that settlement/license is relevant to the challenged claims at all. WAPP has not produced any purported license with JP Morgan, the sole defendant charged with infringing independent claim 60.

WAPP’s odd argument that Capital One did not carry its burden to “articulate”

unmarked products is wrong on multiple levels. DDReply 3. First, Capital One satisfied the “low bar” (*Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.*, 876 F.3d 1350, 1368 (Fed. Cir. 2017)) of putting WAPP on notice by accurately stating WAPP “is a non-practicing entity” with no products to mark, which WAPP tacitly concedes. DDOpp. 15. Second, WAPP misunderstands the relevant burdens. At the Board, any “request for relief” is a motion (37 C.F.R. § 42.2), in which the “moving party” (WAPP) “has the burden of proof to establish” entitlement to relief (37 C.F.R. § 42.20(c)). WAPP therefore bears the burden to produce licensing evidence and supporting argument, pertinent to claims 60-69, sufficient to demonstrate entitlement to discretionary denial of Capital One’s meritorious IPR of claims 60-69. WAPP fails to meet that burden, and it is not entitled to relief.

Finally, WAPP’s argument that the patent has been applied in Capital One’s technology space fails for the same reasons. DDReply 3. The Reply focuses on **developing** applications, which may be relevant to other asserted claims, but WAPP conspicuously presents nothing to show that claim 60’s specific requirement for an “application configured to enable a user to modify a photo on the mobile device” has been applied. The earliest that claim 60 could even be considered to be “applied” in Capital One’s technology space is 2024 (against JP Morgan). One year is an insufficient period to create settled expectations to support discretionary denial.

The Director should reject WAPP’s discretionary denial request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 12th day of November, 2025, a true and correct copy of the foregoing **Petitioners' Authorized Sur-Reply to Patent Owner's Bifurcated Discretionary Denial Brief** were served by electronic mail on Patent Owner's lead and backup counsel at the following email addresses:

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