UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COLLEGE PRODUCTS, INC.,

Petitioner,

v.

INTIRION CORPORATION,

Patent Owner.

_____

Case PGR2024-00003

Patent No. 11,674,745 B2

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PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY TO PRELIMINARY RESPONSE

Rather than "correct" any mischaracterizations, Petitioner's Reply (Paper 8) ("Reply") underscores a subset of the deficiencies in its Petition. Petitioner made arguments, using shorthand for claim elements. What Petitioner has failed to do is engage with the actual claims. Even now, Petitioner contends it met its burden simply by citing (broad) page ranges and arguing the alleged prior art discloses its shorthand notation for the claim elements. Petitioner does not, however, meaningfully respond to the deficiencies Intirion identified or attempt to explain how each alleged reference meets the *actual* claim requirements. For the Board's convenience, Intirion addresses the Petitioner's complaints in order.

First, Intirion asserts Petitioner failed to allege Emma meets the "withhold and deliver electrical power" element not because Petitioner did not include some attorney argument under a "withhold and deliver electrical power" header in the Petition. Rather, Petitioner fails because it included only one sentence possibly addressing even a portion of the actual claim language, which requires *enablement*, not *disablement*, of power to the refrigerator. And this one sentence is supported by improperly incorporated expert argument. *See* Petition at 46.

Second, Intirion asserts Petitioner "failed to even allege" the smoke sensor in ISDU/Smith/Butt is in operative connection with Emma, because *nowhere* in any page Petitioner cited is this discussed. Reply at 1-2 (citing Petition at 20-25 (ISDU, Butt, and Smith *separately*; no reference to Emma) and 68-81 (describing

combinations; no mention of control circuit of Emma in operative connection to smoke sensor of ISDU, Butt, or Smith)). The Reply underscores Intirion's point.

Third, Intirion asserts Petitioner "failed to allege" the "shut down function" element, at least because Petitioner did not address the actual claim language *at all*. Indeed, Petitioner failed to demonstrate or argue ISDU (which it did not show is prior art) causes cooking power to be withdrawn, or causes the current cooking session to end, "prior to a set end time of the current cooking session." Petitioner's cited quotes from ISDU similarly do not discuss this.

Fourth, Petitioner does not properly *allege* ISDU against the "Reset Enable Function" element because Petitioner again ignores the actual claim requirements: the control circuit is operative or configured to enable power to the magnetron in a next subsequent cooking session. *See* Response at 21-22. Petitioner cannot simply sub in ISDU's "control circuit" that it does not argue is the claimed control circuit. Regardless, the quote Petitioner relies on merely states ISDU resets the "smoke detector circuit," which is not sufficient as identified in the Response.

Fifth, Smith does not disclose the claimed smoke sensor, and Petitioner fails to properly allege the same. Instead, Petitioner relies on the separate Figaro sensor (even admitting so in the Reply) to supplement the deficient teachings of Smith. Put simply, Petitioner cannot inject Smith with extrinsic evidence, especially a different sensor than that disclosed by Smith, to attempt to argue Smith itself meets the

"smoke sensor" element. Of course, Petitioner failed to allege that Smith discloses the claimed smoke sensor for many other reasons. Response at 27-30.

Sixth, and *Seventh*, Intirion argues Petitioner failed to allege Smith discloses the "Shut-Down Function" and "Reset Enable Function." Petitioner's Reply doubled down on its approach to arguing that claim elements are met, directing the Board to portions of its Petition that do not address the *actual* claim limitations missing from Smith's disclosure. The "Shut-Down" function requires, *inter alia*, the control circuit be configured to or operative to end a cooking session "prior to a set end time" and "responsive at least in part to a level of smoke sensed by the smoke sensor." The "Reset Enable" function requires, *inter alia*, the control circuit is configured or operative to enable cooking power in a next subsequent cooking session. Petitioner's failure to identify or explain how anything in Smith meets the actual claim language dooms its Petition.

The last ditch handwaving cannot save the Petition. Petitioner decided to make arguments regarding each piece of alleged prior art, discretely, under its shorthand headers for claim terms. Petitioner did not—and could not—however, argue each piece of alleged prior art met the *actual requirements of the claim.* Nor, for that matter, did it argue or explain how the alleged prior art would be combined. Thus, Intirion respectfully asks the Board decline to institute PGR2024-00003.

Dated: March 15, 2024

/R. Scott Johnson/

R. Scott Johnson
Reg. No. 45,792

Counsel for Patent Owner Intirion

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(c)(4), the undersigned hereby certifies that the foregoing Patent Owner's Sur-Reply to Petitioner's Reply to Preliminary Response contains 713 words, excluding parts of this Sur-Reply to Petitioner's Reply to Preliminary Response exempted under § 42.24(c), as measured by the word-processing system used to prepare this paper.

Dated: March 15, 2024

/R. Scott Johnson/
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Counsel for Patent Owner Intirion

CERTIFICATE OF SERVICE

Per agreement of the parties and pursuant to 37 C.F.R. ¶ 42.105(b), the undersigned certifies that a copy of this Sur-Reply to Petitioner's Reply to Patent Owner's Preliminary Response was served on March 15, 2024, by email on the following:

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