IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROCHIP TECHNOLOGY INC.,
Petitioner,

v.

APTIV SERVICES US, LLC,
Patent Owner.

Case No. PGR2024-00011
U.S. Patent No. 11,681,643

PETITIONER'S PRELIMINARY REPLY

As authorized by email on May 10, 2024, Petitioner ("Microchip") submits this Preliminary Reply to address Patent Owner ("Aptiv") arguments and evidence in its POPR concerning internal Microchip emails and CarPlay development.

Lacking meritorious prior art arguments, Aptiv prefers to tell a story. Or rather, spin a tale. Aptiv's storyline (focused on Apple CarPlay and Microchip product development) presents a misleading narrative and has no legal relevance.

A. Aptiv Omits Key Information to Present a Misleading Narrative

Aptiv's POPR references CarPlay dozens of times, as if this were an infringement case where CarPlay (or a Microchip or Aptiv product) was at issue. It is not. This is an invalidity challenge where CarPlay has little (if any) relevance. The Challenged Patent does not claim CarPlay, nor does CarPlay appear anywhere in the specification. None of the prior art at issue mentions CarPlay. Aptiv has not submitted the Apple CarPlay specification as evidence. CarPlay is not cited by either party's definition of a POSITA. And Aptiv's purported expert has no stated experience or expertise with CarPlay. *See* EX2001, ¶¶2-16 and Appendix A. Nevertheless, Aptiv's primary nonobviousness attack centers on six internal email threads (EX2005-2010) in which Microchip personnel discuss product development issues relating to a CarPlay specification they did not possess. *See, e.g.*, POPR, 9-11 (quoting emails). Aptiv spins Microchip's lack of clarity regarding CarPlay's requirements vis-à-vis the USB standards as a proxy for the obviousness of the

Challenged Claims, none of which (as noted) require, recite, or otherwise refer to CarPlay. *See generally* EX1011.

Aptiv repeatedly insinuates the Challenged Claims are nonobvious on the basis that, in 2014, certain Microchip employees (largely marketing and sales personnel) did not fully understand the interplay between Apple's CarPlay specification (which they knew little about) and certain USB standards. For example, Aptiv asserts that Microchip "[lacked] a solution to the CarPlay problem" and "[i]f there were an obvious solution …, Microchip would have found it." POPR, 8; *see also id.*, 2, 9-11, 12, 30-31.[1] But even if Microchip's product development decisions and timeline were relevant to the patentability of the Challenged Claims (they are not), there is a simple and straightforward answer to Aptiv's rhetorical statements that it omits from its POPR: Aptiv got ***early, insider access*** to Apple's confidential CarPlay requirements through a relationship with the Jaguar car company. *See, e.g.*, EX2003, 71 (109:6-12), 119 (157:6-15). The lead '643 patent inventor, Mr. Voto, testified that "we were probably one of the first ones to find out

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[1] The emails simply say Microchip's existing FlexConnect solution did not support USB persistence, not that it would be difficult or "impossible" (POPR, 10) to architect a solution that would. *See generally* EX2005-2010. As such, the emails are not probative of the obviousness/nonobviousness of a ***different*** solution.

about this new [] CarPlay thing that Apple was trying to do" and that "it was quite fortunate that we were in [that] position." *Id*. 119 (157:6-15); *see also id*., 111 (149:12-22) (CarPlay was "not publicly known" and "Apple is pretty secret"). Mr. Voto explained that "Apple and Jaguar are talking to each other and they're saying hey, you know, we are going to have this new CarPlay thing. Jaguar, here are some of the requirements, right … [I]t just became, you know, natural for Jaguar to start feeding us some of these requirements." *Id*., 70-71 (108:13-109:10-12).

In contrast, Apple did not grant Microchip access to its confidential CarPlay specification until much, much later. Thus, it is both unsurprising and irrelevant that Microchip had some questions in 2014 about the interplay between Apple's CarPlay requirements and the USB standards.

To the extent Aptiv is arguing secondary considerations, its POPR made no effort to map the Challenged Claims to Aptiv's product, or otherwise show the required nexus. *Lectrosonics, Inc. v. Zaxcom, Inc.*, IPR2018-01129, Paper 33 at 31-34 (PTAB, Jan. 24, 2020) (precedential).

B. Aptiv Improperly Substitutes Microchip Personnel for a POSITA

It is black letter law that obviousness is assessed from the perspective of a hypothetical POSITA, not any actual individual(s), such as a Microchip employee. *See, e.g.*, 35 U.S.C. §103; *McCoy v. Heal Sys., LLC*, 850 F. App'x 785, 788 (Fed. Cir. 2021). The Petition provides copious evidence that basic USB concepts such as

USB bridges, USB hubs, and USB multiplexers were well-known to POSITAs. *See, e.g.*, Petition, 6-15; *see also* EX1013 (Welch Decl.), ¶¶50-107. Rather than dispute this (which Aptiv cannot legitimately do), Aptiv applies a fundamentally flawed approach by substituting out-of-context email snippets from various Microchip employees (primarily in sales/marketing roles) for the knowledge and perspective of a POSITA. *See, e.g.*, POPR, 8-10 (quoting emails); EX2005-2010. This is legal error and is fatal to Aptiv's argument.

Ignoring that obviousness is evaluated from the perspective of a *hypothetical* POSITA, not a real person, Aptiv did not even attempt to describe the education, qualifications, or experience of anyone who authored the emails that are the centerpiece of its nonobviousness assertions. And for good reason—the majority (Ray Kamps, Kurt Ebert, Don Perkins, David Sroka, and Stefan Saenger) were in sales/marketing roles,[2] two individuals (Chris Behal and Sal Canu) provided field application support,[3] and one was a "self-taught" Delphi staffer who said he "work[ed] on these products a little over a year" (EX2005, 1). It is questionable at best whether any of these individuals qualify as a POSITA, even under Aptiv's artificially low level of skill in the art, let alone under the correct level of skill in the

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[2] *See, e.g.,* EX2006, 4; EX2007, 2; EX2008, 3; www.linkedin.com/in/stefansaenger

[3] *See* EX2006, 3; EX2002, 99 (291:16-18), 134 (11:14-19); EX2007, 3.

art.[4] *Compare* POPR, 13 (requiring no experience designing USB systems nor knowledge of USB 2.0 and 3.0 industry standards) *with* Petition, 28-29 (POSITA would have "substantial experience (e.g., several years) designing USB systems, including USB hosts, USB hubs, and USB devices" and be "well-versed in USB standards (including the USB 2.0 and 3.0 Specifications and the OTG Supplement)"); *see also* EX2016, ¶¶32-33 (similar).

Nor is it proper for Aptiv to substitute Microchip (*i.e.*, the company as a whole)—whose primary business is ***not*** USB devices or hubs—for a POSITA, which is a *hypothetical* individual presumed to be familiar with all relevant prior art. *See, e.g.*, *In re Carlson*, 983 F.2d 1032, 1037 (Fed. Cir. 1992) ("hypothetical [POSITA] is charged with knowledge of all the contents of the relevant prior art.").

* * *

Aptiv wants this *invalidity dispute* to turn on CarPlay, and what Microchip did or did not do. But that is not the purpose of an PPR. Respectfully, the Board should focus on what the prior art discloses to a POSITA and institute PGR.

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[4] Aptiv ignores a POSITA's knowledge of basic USB standards, notwithstanding the '643 specification's express and repeated reference to them. *See* EX1011, 3:21-27 (discussing USB OTG standard), 6:32-34 ("The [] processes are ***defined by USB standards*** and not explained here in detail.") (emphasis added), 8:3-12.

Respectfully submitted,

Dated: May 17, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies that on May 17, 2024, a copy of the following was served in its entirety via electronic mail, upon the following attorneys of record for the Patent Owner:

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