

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.; AND
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,

v.

OURARING, INC.
Patent Owner.

PGR2024-00039
U.S. Patent No. 11,874,702

PATENT OWNER'S SUR-REPLY

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. SCHRÖDER-BASED GROUNDS FAIL	1
A. Schröder fails to disclose limitation 1[b].	1
B. Schröder’s failure to disclose limitation 1[c] is fatal to Grounds 1-4.....	2
C. Schröder-based grounds fail to render claims 12 and 13 obvious.	11
III. GROUNDS 5-7: LEBOUUEF-SCHRÖDER COMBINATION FAILS	15
IV. SECONDARY CONSIDERATIONS	16
A. Petitioner’s incorporation of expert declarations by reference should be given no weight.....	16
B. Oura is entitled to presumption of nexus.	17
C. Oura is a commercial success.....	20
1. Petitioner’s claim that sales are based on unclaimed features is false.....	22
2. Petitioner’s argument that contribution from Gens. 3 and 4 to Oura fails to show success is also flawed.....	24
3. Petitioner’s argument that Oura did not create a market segment within the wearable market is legally deficient.....	25
D. Evidence of copying of Oura Ring by the Industry.	26
E. The ’702 patent fulfilled a long-felt need.	27
V. CONCLUSION.....	28

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Al-Site Corp. v. VSI Int’l, Inc.</i> , 174 F.3d 1308 (Fed. Cir. 1999)	14
<i>Belden Inc. v. Berk-Tek LLC</i> , 805 F.3d 1064 (Fed. Cir. 2015)	15
<i>Certain Smart Wearables Devices, Systems, and Components Thereof</i> , 337-TA-1398 (Initial Determination April 18, 2025), <i>aff’d</i> , Comm’n Op. (ITC Aug. 21, 2025)	18
<i>Continental Can Co., USA, Inc. v. Monsanto Co.</i> , 948 F.2d 1264 (Fed. Cir. 1991)	21
<i>Fox Factory, Inc. v. SRAM, LLC</i> , 944 F.3d 1366 (Fed. Cir. 2019)	17, 18, 20
<i>Intelligent Bio–Sys., Inc. v. Illumina Cambridge Ltd.</i> , IPR2013-00517, 2015 WL 996355 (PTAB Feb. 11, 2015), <i>aff’d</i> , 821 F.3d 1359 (Fed. Cir. 2016)	17
<i>Juniper Networks, Inc. v. Swarm Technology LLC</i> , IPR2021-01445, Paper 62 (P.T.A.B. Feb. 7, 2023).....	5
<i>Medtronic, Inc. v. Teleflex Innovations S.a.r.l.</i> , 70 F.4th 1331 (Fed. Cir. 2023)	26
<i>WBIP, LLC v. Kohler Co.</i> , 829 F.3d 1317 (Fed. Cir. 2016)	19
Other Authorities	
37 CFR § 42.6(a)(3)	17

TABLE OF EXHIBITS

Exhibit No.	Description
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Exhibit No.	Description
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2019	Declaration of Andrew Clarke, CFA (Outside Attorney's Eyes Only - Protective Order Material)
2020	Deposition Transcript of Dr. Brian Anthony, Volume I, dated February 25, 2025
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2022	RESERVED
2023	Wikipedia - Printed Circuit Board (Dr. Anthony Depo. Ex- 4)
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2025	U.S. Patent No. 5,964,701 to Asada
2026	Coin Cell vs. Button Cell vs. Pouch Cell: Understanding the Differences

Exhibit No.	Description
2027	Ultrahuman Air Ring Teardown Images
2028	RingConn Smart Ring Teardown Images
2029	Oura Ring Gen. 3 Tear Down Images
2030	Oura Ring Gen. 4 Tear Down Images
2031	Capture from Go Inside Oura Ring Video
2032	Capture of Oura Ring Instagram Page Site
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Exhibit No.	Description
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Exhibit No.	Description
2103	Samsung Electronics Co., Ltd. and Its Subsidiaries Consolidated Statements of Profit or Loss For the Years Ended December 31, 2020 and 2021
2104	Samsung Electronics Co., Ltd. and Its Subsidiaries Consolidated Statements of Profit or Loss For the Years Ended December 31, 2021 and 2022
2105	Samsung Electronics Co., Ltd. and Its Subsidiaries Consolidated Statements of Profit or Loss For the Years Ended December 31, 2022 and 2023
2106	Samsung Electronics Co., Ltd. and Its Subsidiaries Interim Consolidated Statements of Profit or Loss For the Three- and Nine-Month Periods Ended September 30, 2023 and 2024
2107	FY22 USD Consolidated Income Statement (Outside Attorney's Eyes Only - Protective Order Material)
2108	FY23 USD Consolidated Income Statement (Outside Attorney's Eyes Only - Protective Order Material)
2109	FY24 USD Consolidated Income Statement (Outside Attorney's Eyes Only - Protective Order Material)
2110	Q1 FY25 USD Consolidated Income Statement (Outside Attorney's Eyes Only - Protective Order Material)
2111	Rings sold ALL TIME – Cumulative (Outside Attorney's Eyes Only - Protective Order Material)
2112	Gross Booked Walk (Outside Attorney's Eyes Only - Protective Order Material)
2113	Ultrahuman Marketing Graphics
2114	RingConn Marketing Graphics
2115	Pingu: another User-Friendly Interface Device (2012).

Exhibit No.	Description
2116	RESERVED
2117	RESERVED
2118	Deposition Tr. of Mr. Michael Davies (Outside Attorney's Eyes Only - Protective Order Material)

I. INTRODUCTION

Oura is a pioneer in the smart ring market, and its Oura Ring is embodied in the claims of the '702 Patent. Petitioner fails to rebut any of Oura's arguments and offers no sound basis for why any challenged claims are unpatentable.

II. SCHRÖDER-BASED GROUNDS FAIL

Grounds 1-4 that are based primarily on Schröder fail to render claim 1 and corresponding dependent claims obvious.

A. Schröder fails to disclose limitation 1[b].

Limitation 1[b] requires that “the internal housing component comprises a substantially transparent material that enables light to pass through the internal housing component.” Ex-1001, 45:4-7. As discussed below, Schröder does not disclose an “internal housing component” (Section II.B *infra*) much less that the internal housing component that is substantially transparent material that enables light to pass through.

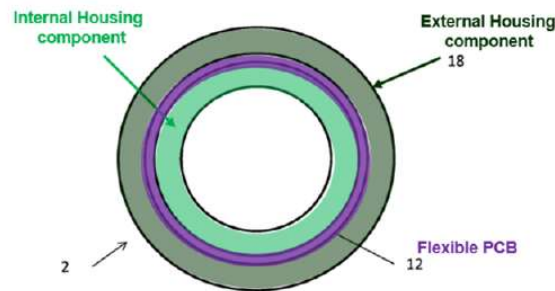
The Petition pointed to Schröder's discussion of “transparent regions, e.g., windows” (Ex-1007, 9:28-53) to meet this limitation, but those windows are on the *outer* surface of Schröder's ring. Ex-2018, ¶91; Ex-1082, 194:14-18 (“Schröder is referring to windows. But, again, in this context he's referring to windows on the outer area of the secure external unit for the purpose of displaying something like a hologram.”). The Board agreed. Paper 8, 20-21.

The Reply now suggests that in order to satisfy this limitation, the housing need only be transparent to infrared. Reply, 2 (“Schröder’ s housing *must* have a window made of material transparent to IR light.”). But as Dr. Mercier explained, a POSITA would understand “a substantially transparent material that enables light” to refer to visible light. Ex-1082, 179:11-18; 180:2-4 (“Normally, in the art, if we’re referring to non-visible light, we would specify if it were non-visible light.”). This is because a material such as plastic can be transmissive to infrared without needing to be substantially transparent or requiring any windows. Ex-2018, ¶92. Thus, Petitioner’s suggestion that “there must be a transparent region . . . on the internal housing for Schröder’s infrared diode to image the user’s vein pattern” is based on a false premise that infrared light cannot penetrate non-transparent materials such as plastic that is the housing material disclosed in Schröder. Reply, 2; Ex-1007, 12:15-16 (“An expedient material for the components 16, 18 is plastic or metal.”).

B. Schröder’s failure to disclose limitation 1[c] is fatal to Grounds 1-4.

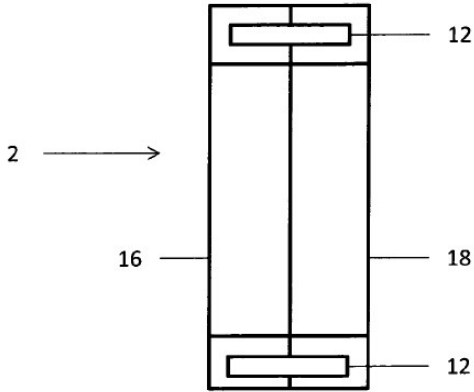
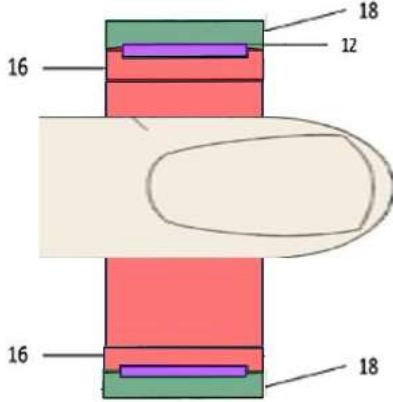
Limitation 1[c] requires that “a printed circuit board disposed within a cavity defined by the external housing component and the internal housing component, wherein the printed circuit board is configured to conform to arc within the cavity.” Ex-1001, 45:8-11. The Petition labeled the outer and inner portions of Fig. 4 as

external and internal housing components, and cited the inlay as being between the two housing components:



Pet., 24.

Petitioner's arguments rest heavily on incorrect figure labels and arbitrary coloring, each of which misrepresents Schröder. Schröder does not disclose internal or external housing components but rather two ring halves. Ex-1007, 12:7-8 ("The finger-ring 2 consists of two ring halves 16 and 18."). In its Reply (at 4), Petitioner now provides a modified Fig. 5 (reproduced below) that is completely divorced from the disclosure of Schröder. *Id.*, Fig. 5. Petitioner argues that "[w]hen viewing Schröder's ring halves 16 and 18 configuration in Figure 7's arrangement, as shown in Figure 5 below, Schröder's PCB (inlay 12, purple) is between the internal housing component (16, red) and external housing component (18, green)." Reply, 3.

Schröder	Petitioner's Reply
 Fig. 5 Ex-1007, Fig. 5.	 Fig. 5' Reply, 4.

This fabricated modification of Fig. 5 now removes the center line that denotes the two ring halves coming together, extending the internal lines (in red) all the way to inlay 12 (in purple) to abut against its arbitrary external housing (now in green) such that inlay conveniently lays between an internal and external housing. Reply, 3-4 (labeling the “internal housing component (16, red) and external housing component (18, green).” None of these arbitrary modifications are shown or described anywhere in Schröder, much less argued in the Petition.

Petitioner's excuse that Fig. 7 is a different embodiment than the rest of the disclosures of Schröder that teaches two ring halves is belied by the evidence. *Id.*, 3

(“In Figure 7’s configuration, inlay 12 conforms to the arc of the cavity between housing components 16 and 18 because they wrap around the finger’s circumference.”); Ex-1079, ¶¶20-21. Petitioner’s new theory attempting to correct the Petition’s misinterpretation of Schröder by modifying Fig. 5 in Reply should be rejected. *Juniper Networks, Inc. v. Swarm Technology LLC*, IPR2021-01445, Paper 62 at 28-29 (P.T.A.B. Feb. 7, 2023) (Board rejecting Petitioner’s new theory that was not raised in Petition). Nonetheless, Petitioner is still wrong in its interpretation of Schröder.

As Dr. Mercier testified, Fig. 7 is simply a different *cross-section* of the same configuration that Schröder discusses throughout its disclosure. Ex-1081, 89:22-25 (“[A]s a POSITA, I don’t think that I would look at figure 7 and assume that this is some new ring construction that uses ring halves in kind of a new and unexpected way that wasn’t introduced before.”). Dr. Mercier’s testimony is supported by the disclosure of Schröder. Ex-1007, 12:43-45 (“FIGS. 6 to 10 show ***different cross sections*** through a finger-ring 2, consisting of ring-shaped components 16, 18 of the finger-ring 2 and of an inlay 12.”); 3:51-52.

As Dr. Mercier explained, “figure 4 is showing one half of the ring sliced down the middle,” (Ex-1081, 82:21-83:1) as shown below:

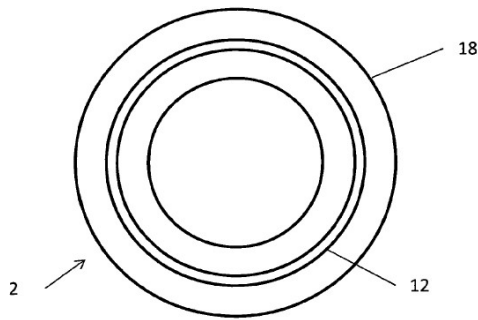
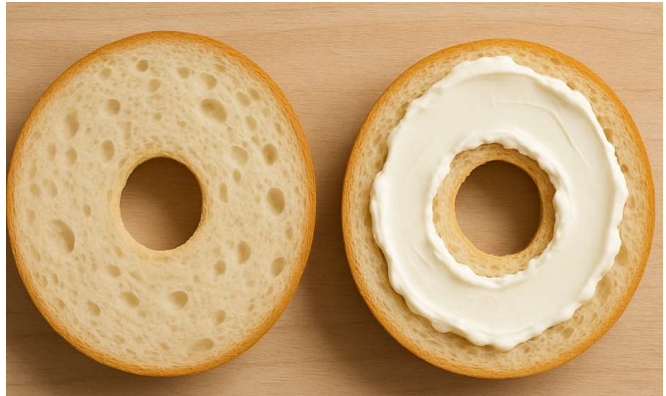


Fig. 4



Ex-1007, 12:5-6 (“FIG. 4 shows a longitudinal section through a finger-ring 2. Here, an inlay 12 is inserted into one half 18 of the finger-ring 2. . . .The finger-ring 2 consists of two ring halves 16 and 18. The two ring halves 16 and 18 respectively have a recess into which the inlay 12 is inserted.”). Dr. Mercier explained:

[A] good analogy for this would be thinking like a bagel. The normal dimension that you would cut a bagel is in half. You would open up the bagel. To complete the analogy, maybe you’d use your finger and dig a little trench into one half of the bagel or possibly both sides of the bagel, put some cream cheese in here, which would correspond in this analogy to the inlay, and then take those two halves and bring them back together. That’s my interpretation of the ring halves of figure 4.

Ex-1081, 82:21-83:11.

Fig. 5 of Schröder corresponds to Fig. 4 where the same ring halves are joined together:

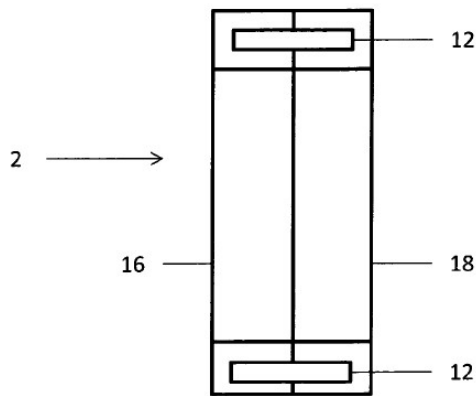
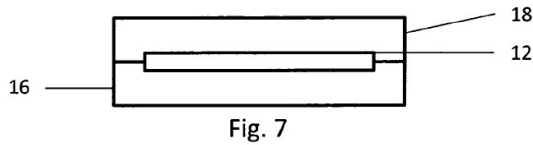


Fig. 5



Ex-1007, 3:47-50 (“FIG. 5 shows a cross section, corresponding to FIG. 4, of the finger-ring.”); 12:6-7; Ex-1081, 83:12-19; 84:16-17 (“figure 5 is a cross section right down the middle of...these two ring halves.”)

Fig. 7 again shows the *same* configuration of ring halves 16 and 18. Dr. Mercier explained that “figure 7 is simply just showing figure 5 rotated by 90 degrees and with a different cross section through the ring. So it’s actually showing the two ring halves with the carrier foil in between them,” (Ex-1081, 85:13-23) as shown below:



Id., 84:4-85:8; 86:12-21; 93:23-95:11.

Schröder expressly states that “FIGS. 6 to 10 show different *cross sections* through a finger-ring”—not different *embodiments*. Ex-1007, 3:51-52; 12:43-45. Thus, Petitioner’s argument that “inlay 12, with chip module 10 and other components, is inserted between ring halves 16 and 18” (Reply, 5) still fails because under such configuration, the inlay and chip module 10 would be placed between two ring halves 16 and 18 that are top and bottom of a bagel—not “a cavity defined by the external housing component and the internal housing component,” as required by the ’702 patent. Ex-1001, 45:8-11.

In addition to being wrong on the placement of the inlay in Schröder, the Reply still fails to offer any evidence that a POSITA would have understood a mere inlay to be a PCB. Petitioner tries to backtrack Dr. Anthony’s use of the Wikipedia definition. Reply, 3-5. This is contrary to Dr. Anthony’s testimony. Ex-2020, 74:7-

11; 76:14-20. The Wikipedia excerpt on which Petitioner relies specifies that a PCB is a “laminated sandwich structure of conductive and insulating layers, each with a pattern of traces...etched from one or more sheet layers of copper.” Ex-1081, 43:12-19. Schröder’s inlay lacks every one of those elements. It is a single-layer strip such as a tape made of PET, Kapton, etc. Ex-1007, 12:28-29.

Given the shortcomings of Schröder, Petitioner tries to shift the focus to the disclosure of the ’702 patent. Reply, 3 (“’702 patent itself does not ‘specifically show the wiring between components’ for its PCB.”). This is a false equivalence because the ’702 patent, through both the figures and the specification, actually discloses a PCB and provides precise guidance where to position the PCB. *See e.g.*, Ex-1001, Fig. 4, element 415; Fig. 5, element 515; Fig. 6, element 615; Fig. 8, element 815; 18:40-50; 18:56-66. Schröder, in contrast, discloses an inlay—not a PCB.

Petitioner argues that inlay is made of materials used for flexible printed circuits such as Kapton. Reply, 4. But as Dr. Mercier explained, a POSITA would require, at minimum, etched or printed conductive traces, multiple layers, and mounted components before calling a structure a “printed circuit board.” Ex-1081, 69:18-71:17. When asked whether inlay 12 could be a PCB, Dr. Mercier responded

that while Kapton and PET are materials sometimes used in flexible PCBs, that does not necessarily make it circuit board:

Q. PET, Kapton, et cetera, are carrier materials that would have been understood as materials that are used for a printed circuit board, correct?

A. They could be, but not necessarily so. Printed -- flexible printed circuit boards often use polyimide and other materials as well. But despite that, you know, there's things like Kapton tape that I've used in my own work that I don't use for printed circuit boards but just as thin, you know, substrates on which to place for items or stick things together, for example.

Q. Okay. But you don't disagree that PET and Kapton are materials that could be used for printed circuit boards, correct?

A. That's right. They could be used.

Id. at 80:8-81:10. In other words, the mere use of Kapton or PET that is typically 100 micron thin does not convert a passive foil into a multilayer printed wiring board. *Id.*, 98:1-9.

Schröder's chip module likewise is not a "printed circuit board configured to conform to art within the cavity." Ex-1001, 45:8-11. Even if the chip module of Figure 3 was treated as a flexible PCB, it protrudes through the exterior surface and

is topped by a hinged cover. As Dr. Mercier explained, “if the intention of Schröder was to make it such that the devices would be kind of even with the rest of the surface of the carrier foil, I didn’t see . . . how that was possible.” Ex-1081, 111:25-112:17. Petitioner’s Reply provides no mechanism by which this protruding module could be repositioned between the ring halves or bent into an arcuate shape conforming to the arc within the cavity because Schröder’s inlay is too narrow to host the chip module. Ex-1081, 99:15-100:17 (“Schröder already shows that the chip module is too large to reside inside the housing . . . it needs to protrude from the top”); 89:17-18 (“[F]igure 3 is the only one that actually shows the chip module . . .”)

Petitioner offers no evidence that a POSITA in 2013 would have called the antenna inlay a printed circuit board and offers no evidence that the chip module could be located around a portion of a circumference of an interior surface of the internal housing.

C. Schröder-based grounds fail to render claims 12 and 13 obvious.

Claims 12 and 13 require that the power management module is disposed within the cavity between the inner and outer circumferential surfaces. Ex-1001, 46:23-37. With the exception of *one* passing mention of an unshown optional battery, Schröder fails to disclose any of the structural elements related to the power management module or the battery.

Petitioner argues that because Fig. 4 shows an inlay, all the other components and chip module, and therefore the battery and power management module must also be within the ring. Reply, 6-7. Indeed, Petitioner makes a remarkable leap that Figure 4 “shows chip module 10 and other electronic components inside the ring.” *Id.*, 7. That is not true:

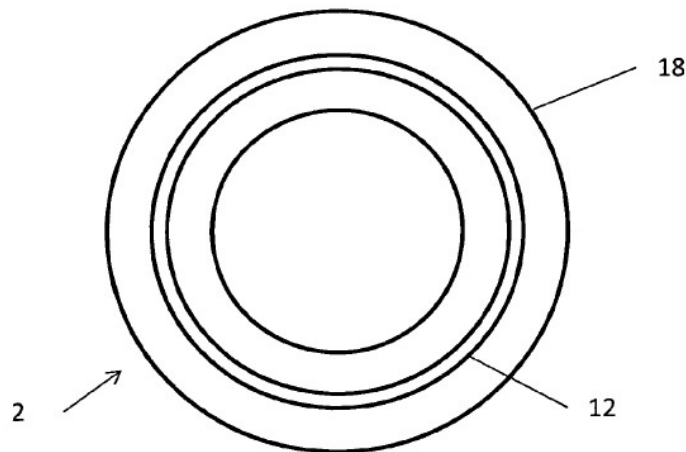


Fig. 4

Ex-1007, Fig. 4.

The only element shown in Fig. 4 is one ring half with an inlay. *Id.*; Ex-1081, 78:20-23 (“Schröder talks about chip module 10, but it’s not shown in figure. 4.”). Simply because an inlay is in the recess and chip module is located *on* the inlay does not mean that the chip module and other components are also inside the ring. Ex-2018, ¶75 (“Schröder discloses that the chip module 10 is connected to an antenna coil 8 that is located on the inlay 12.”); ¶98 (“Schröder teaches and shows that the

chip module is located ‘on’ the carrier inlay, which is located ‘in’ the recess”). This is confirmed by other portions of Schröder, including Fig. 3 where the chip module is still “on” the inlay that is located “in” the recess but still external to the ring:

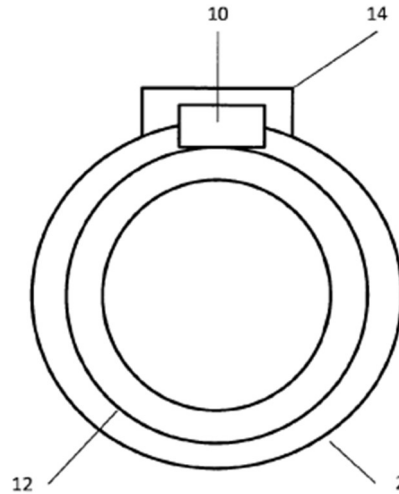


Fig. 3

Ex-1007, Fig. 3.

Unable to point to evidence in Schröder that the chip module and power management module must be inside the ring, Petitioner resorts to misrepresenting Dr. Mercier’s testimony. For example, for its proposition that Figure 4 “shows chip module 10 and other electronic components inside the ring,” Petitioner cites Dr. Mercier’s deposition testimony. Reply, 7 (citing Ex-1081, 77:12-18; 82:4-13; 124:3-7; 145:24-146:2). But that conclusion is inconsistent with Dr. Mercier’s testimony:

Q. And what's shown in figure 4 doesn't have an insertable chip module or a cover, correct?

A. **Correct.**

Ex-1081, 77:12-18.

Q. And in the figure 4 embodiment . . . the structure is made of ring halves 16 and 18, respectively, that have a recess into which the inlay 12 is inserted.

Do you see that?

A. **Yes.**

Q. And so inlay 12, with chip module 10 and various other components on it, is inserted into a recess between ring halves 16 and 18 in Schröder, right?

A. **Yes.**

Id., 82:4-13. There is no dispute that **inlay 12** is in the recess of ring half in Figure 4, with which Dr. Mercier agrees. But that does not imply that Dr. Mercier also agreed that the “chip module 10 and various other components” are also in a recess between ring halves. Petitioner mischaracterizes Dr. Mercier's testimony. Indeed, Dr. Mercier testified that with the exception of inlay 12, there is no “disclosure of those components, of their relative size, location, arrangements or anything like that” in Figs. 4-10 (or corresponding disclosure) *Id.*, 124:11-21.

Thus, Petitioner's hindsight-driven conclusions that all the components including the power management and battery must be located in the ring is not

supported by the evidence in Schröder. Petitioner attempts to fill Schröder's gaps through conclusory pronouncements by its expert should be rejected. *Al-Site Corp. v. VSI Int'l, Inc.*, 174 F.3d 1308, 1324 (Fed. Cir. 1999) ("Skill in the art does not act as a bridge over gaps in substantive presentation of an obviousness case, but instead supplies the primary guarantee of objectivity in the process.").

III. GROUNDS 5-7: LEBOUF-SCHRÖDER COMBINATION FAILS

Petitioner also relies on a LeBouef-Schröder combination for claim 1 and corresponding dependent claims. Pet., 63-99. But as explained in the POR, a POSITA would not combine LeBouef with Schröder with a reasonable expectation of success. POR, 56-57. In reply, Petitioner offers a sweeping statement without any support that "a POSITA would have been motivated to curve LeBouef's PCB to arc like Schröder's PCB." Reply, 15. In other words, a POSITA would be motivated to curve LeBouef's PCB because the challenged claim requires "the printed circuit board is configured to conform to arc within the cavity." This motivation is nothing more than hindsight guided by the patented invention. *See Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073 (Fed. Cir. 2015).

But even if a POSITA would combine LeBouef-Schröder, the combination does not disclose limitation 1[c] where "the printed circuit board is configured to conform to arc within the cavity." Ex-1001, 45:8-11. The entire support of

Petitioner's challenge is based on the presumption that Schröder's inlay is a PCB housed between the internal and external housing components and thus conforms to the arc of the ring. Reply, 16 ("POSITA would have been motivated to curve LeBouef's PCB in view of Schröder's inlay 12 between the housing components, to conform to the ring and thus correspond to an arc."). But as discussed above, Section II.B (*supra*), Schröder's inlay is a single-layer strip such as a tape made of PET, Kapton, etc. Ex-1007, 12:28-29. Schröder's inlay is not a PCB that is disposed between external and internal housing components or "configured to conform to arc within the cavity," as claimed. Ex-1001, 45:8-11. Thus, a POSITA would not look to a carrier foil as a reason to curve LeBouef's PCB.

Simply put, none of the grounds render the challenged claims obvious.

IV. SECONDARY CONSIDERATIONS

A. Petitioner's incorporation of expert declarations by reference should be given no weight.

The Reply is often supported only by wholesale incorporation by reference to Petitioner's two supplemental declarations. Petitioner devotes less than eight pages of its reply addressing secondary considerations (Reply, 17-25) but repeatedly cites multiple sections—or the entire declarations—that span over 190 pages and 300 paragraphs. Ex-1079, ¶¶69-85; Ex-1080, ¶¶18-341. For example, Petitioner cites the *entirety* of the Davies declaration (Ex-1080) for its conclusory statement that

“Earlier generations with the same features did not succeed, and sales increases are due to unclaimed features....” Reply, 19; *id.*, 19 (citing wholesale “Sections III.H, III.E6, III.E.8” of expert decl.); *id.*, 20-21 (citing over 30 paragraphs); *id.*, 23 (citing 115 paragraphs of Ex-1080).

Such incorporation by reference of expert declarations to rebut secondary considerations should be rejected. 37 CFR § 42.6(a)(3); *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, IPR2013-00517, 2015 WL 996355, at *9 (PTAB Feb. 11, 2015) (excluding arguments in Petitioner’s Reply that relied on “in-depth explanations and supporting documentary evidence presented in [expert’s] Declaration” in contravention of 37 C.F.R. § 42.6(a)(3)’s prohibition on incorporation by reference), *aff’d*, 821 F.3d 1359 (Fed. Cir. 2016).

B. Oura is entitled to presumption of nexus.

Oura is entitled to presumption of nexus because the “evidence is tied to a specific product and that product embodies the claimed features, and is coextensive with them.” *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1373–74 (Fed. Cir. 2019). The Oura Ring is Oura’s only product offering. Ex-2019, ¶13. Petitioner does not dispute that Oura Ring (Gens. 3 or 4) embodies the challenged claims. *See generally*, Reply, 19-24; Ex-2118, 52:15-17 (“I do not dispute that the Gen. 3 Horizon and the Oura Ring Gen 4 practice those claims.”).

First, Petitioner’s focus on the Oura Ring Application does not rebut the coextensive nature of the Oura Ring and the claimed ’702 patent technology. The Federal Circuit has “never held that the existence of one or more unclaimed features, standing alone, means nexus may not be presumed” because “there is rarely a *perfect correspondence* between the claimed invention and the product.” *Fox Factory*, 944 F.3d at 1374 (emphasis in original). Here, the Oura Ring works in conjunction with the Oura Application. Ex-2019, ¶¶20-21. The Application cannot receive or display *any* information absent the Oura Ring’s claimed ring form factor and ability to collect the relevant information from the user’s finger. *Id.*, ¶24. Indeed, the ALJ in parallel ITC Investigation on a related patent (’178 patent) rejected similar arguments advanced by respondents that the existence of the Application means there can be no presumption of nexus. *Certain Smart Wearables Devices, Systems, and Components Thereof*, 337-TA-1398 (Initial Determination April 18, 2025) at 109-10 (“the evidence supports that the driver of the experience is the ring itself.”), *aff’d*, Comm’n Op. (ITC Aug. 21, 2025). Petitioner’s similar arguments should also be rejected.

Second, Petitioner’s focus on the membership is equally unavailing. Reply, 18. Without the Oura Ring, there could be no revenue from ring sales, Oura Membership revenue, extended warranties, partnership commissions, or from any of

the other revenue streams. Ex-1083, 192:10-17. There is no evidence in the record that customers pay for a membership or warranty without owning a ring. Oura Ring is the fundamental product from which all other activities and derivative revenue streams are based. Indeed, the performance and success of Oura as a company is directly a result of the success of the Oura Ring embodying the '702 patent. Petitioner fails to consider the fact that more than [REDACTED] of Oura's revenue is attributable to ring sales, totaling more than [REDACTED] Ex-2019, Appx. 4.

Third, Petitioner's suggestion that Gen. 3 and 4's "sleek and comfortable design and materials are not claimed in the '702 Patent" also fails. Reply, 18. As Dr. Mercier testified, the claimed arrangement of the '702 patent that leverages the inner and outer housing components to form a cavity to allow the housing of components within the ring is what contributes to the "wedding band-like comfort and compactness." Ex-2018, ¶201. Such a design deviates from prior art that stacks components on top of the ring. *Id.*, ¶¶198. The specific structure of the Oura Ring is the invention disclosed and claimed.

Finally, Petitioner's argument that Oura's reliance on Oura Ring for objective indicia across four patents means that "nexus cannot be presumed" is also flawed. Reply, 18-19. Multiple patents covering essentially the same invention can share a

presumption of nexus. *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1324–25 (Fed. Cir. 2016) (presuming nexus between a product and the asserted claims of two related patents where the patents covered essentially the same invention).

Here, U.S. Patent Nos. 11,874,702; 10,139,859; 10,281,953; and the '178 patent are part of the same family and claim essentially the same invention, namely, the structure of a finger-worn wearable ring device. Petitioner makes a sweeping statement that the four patents “do not cover the same invention,” yet Petitioner fails to identify any limitations that vitiate any presumed nexus. Reply, 18-19. The '702 patent’s recitation of “substantially transparent material” as part of the inner housing component claimed does not remove the presumption of nexus. *Fox Factory*, 944 F.3d at 1374.

Oura is entitled to a presumption of nexus based on the presented evidence.

C. Oura is a commercial success.

Petitioner does not materially dispute that Oura Ring Gens. 3 or 4 were a commercial success. Reply, 19-24. Although Petitioner’s expert opines that “Oura is not a *significant* commercial success” (Ex-1080, ¶22), Petitioner abandons this position in the Reply. Reply, 19-24. The un rebutted evidence shows that Oura’s Gens. 3 and 4 rings, embodied by the claims of the '702 patent, are an overwhelming commercial success:

- [REDACTED] rings sold since October 2021;
- [REDACTED] in ring revenue from 1/2022-12/2024;
- Increase in company valuation from [REDACTED] in 4/2021 (prior to the launch of Gen 3) to [REDACTED] as of 12/2024; and
- Nearly [REDACTED] of the smart ring market share.

Ex-2019, ¶¶26, 33, 35, 38, 42. Petitioner’s expert begrudgingly admits that such sales volume and market share show *some* commercial success. Ex-2118, 15:13-17; 18:11-19 (“I would be unsurprised if it had at least some commercial success.”).

Unable to dispute Oura’s commercial success, Petitioner tries to pin Oura’s success to other factors. Petitioner argues that any success of the Oura Ring is attributable to (1) factors other than the ring form factor (the ’702 Patented Technology), (2) “serendipitous timing,” (3) sales from sources other than rings, or (4) the Oura Ring did not create a new market segment. Reply, 19-24. None of these reasons overcome the evidence of commercial success. Regardless, the patented invention need not be solely responsible for a product’s commercial success provided a nexus between the success of the product and the patent exists. *Continental Can Co., USA, Inc. v. Monsanto Co.*, 948 F.2d 1264, 1273 (Fed. Cir. 1991). The possible existence of other demand drivers for a product does not preclude a finding of commercial success; the patented technology can be just one

driver of the product's success. *Id.*; Ex-2019, ¶31. Nor do other unclaimed features that may also drive demand diminish the nexus between the ring form factor and marketplace success. Ex-2019, ¶¶32-42.

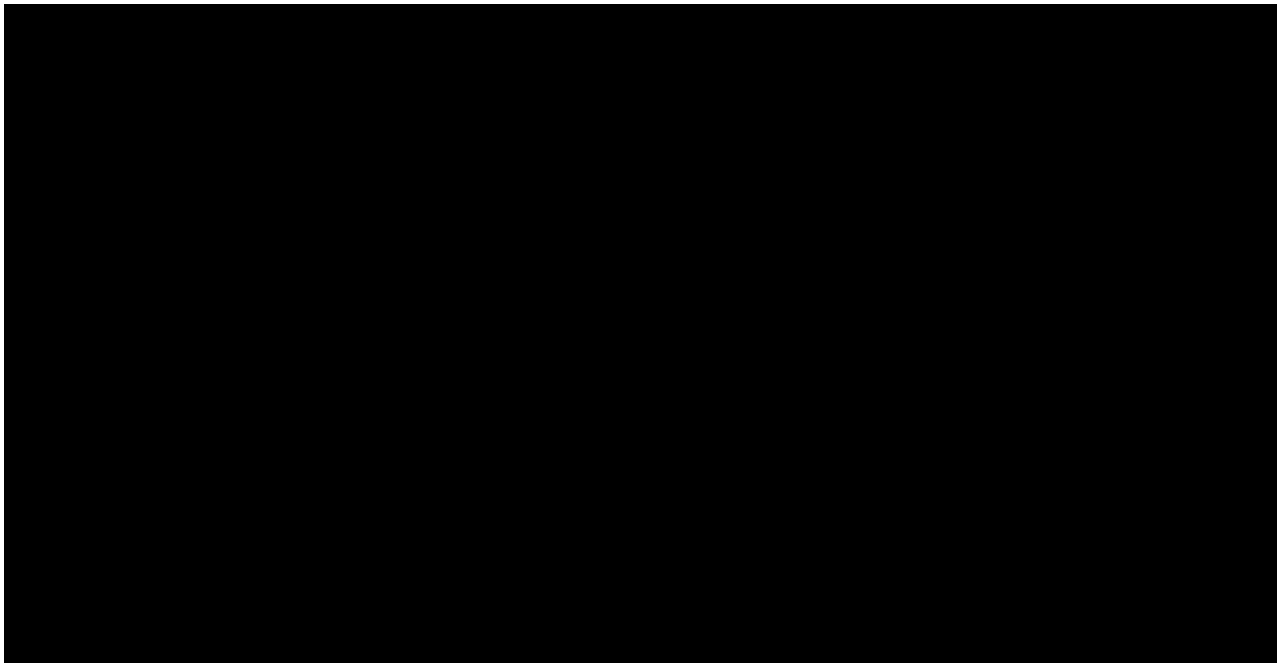
1. Petitioner's claim that sales are based on unclaimed features is false.

Petitioner tries to focus on the earlier generations of Oura as a hook to argue that the earlier generations “were not *as* commercially successful,” and therefore Gens. 3 and 4's success cannot be attributed to the unique features of the '702 patent. Reply, 20. This is a red herring. Whether Gens. 1-2 were commercial success or not is irrelevant to the inquiry on whether Gens. 3 and 4 are commercial success and evidence supports they are. Petitioner also does not offer any analysis in its Reply on what it means by “[t]here is little difference from Gens. 1 and 2.” Reply, 20. Indeed, in contrast to Gens. 3 and 4, Gen. 1, for example, included components stacked on top of the ring similar to prior art. Ex-2034. In either event, Petitioner's broad generalization is irrelevant to the inquiry of whether Oura Ring Gens. 3-4 are commercially successful and the overwhelming evidence supporting their commercial success.

Petitioner also claims that sales data does not distinguish between Gen 2 and Gen 3 sales data after Gen 3's launch. Reply, 20. Since manufacture of the old generation ceases once a new generation is launched (Ex-1083, 106:11-19), this

transition period where both generations are available for sale is temporary and is insufficient to explain the marked increase in sales from the twelve months prior to Gen 3's launch [REDACTED] to the 12 months after Gen 3's launch [REDACTED]

[REDACTED]



Ex-2019, Appx. 10. Even accounting for a transition period from Gen 2 to Gen 3, Petitioner fails to consider that in the following year, fiscal 2023, monthly sales were higher each month compared to that month in fiscal 2021 (during which only Gen 2 was available). *Id.*

Petitioner also broadly alleges that the sales of the Oura Ring is attributable to “serendipitous timing,” incorporating thirty paragraphs from its expert’s declaration. Reply, 20-21 (citing Ex-1080, ¶¶222-54). Petitioner (or its expert) never

explains what is “serendipitous” about the launch of the Oura Ring Gen 3 or Gen 4; instead, the he recites a litany of other wearable and smart ring products. Ex-2118, 40:12-41:15 (discussing other types of wearables). Such evidence shows not the “serendipity” of Oura’s success, but rather that Oura was a pioneer in smart ring products blazing a trail for others to follow.

Petitioner also suggests that the success of the Oura Ring is attributable to marketing. Reply, 21. This ignores that marketing expenses as a percent of sales *decreased* from FY 2021 to the end of Q1 FY 2025. Ex-1083, 18:11-20:13; Ex-2019 (Appx. 4). Over time, less was spent on marketing to generate each dollar of sales. Ex-108, 184:2-18. This is hardly suggestive that the success of the Oura Ring is due to marketing. Petitioner also ignores that Oura’s marketing highlights the very ring form factor that is the embodiment of the ’702 patented technology. Oura’s marketing efforts explicitly discuss its design and hardware capabilities, as well as its craftsmanship and discreet sensors. Ex-2019, ¶¶48-49; Ex-2098; Ex-2101.

2. Petitioner’s argument that contribution from Gens. 3 and 4 to Oura fails to show success is also flawed.

Petitioner’s allegation that all revenues are not attributable to the Oura Ring is false. Reply, 22. Without the Oura Ring, there could be no revenue from ring sales, Oura Membership revenue, extended warranties, partnership commissions, or from any of the other revenue streams. Ex-1083, 192:10-17. There is no evidence in the

record that customers pay for a membership or warranty without owning a ring. Oura Ring is the fundamental product from which all other activities and derivative revenue streams are based. Indeed, the performance and success of Oura as a company is directly a result of the success of the Oura Ring embodying the '702 patented technology. Assuming, *arguendo*, that the other revenue streams were unrelated to the '702 patented technology, Petitioner fails to consider the fact that more than [REDACTED] of Oura's revenue is attributable to ring sales, totaling more than [REDACTED] Ex-2019, Appx. 4.

Finally, Petitioner ignores that Oura's valuation as a company has increased more than five-fold since the introduction of Oura Ring Gen 3 and Gen 4, with a valuation of [REDACTED] as of December 2024. Ex-2019, ¶38. Market research indicates that smart rings are expected to be the fastest growing segment of the wearables marketplace, with compound annual growth rates of nearly 30 percent through 2028. EX-2019, ¶25; EX-2075.

3. Petitioner's argument that Oura did not create a market segment within the wearable market is legally deficient.

Petitioner's assertion that Oura did not create a new market segment is irrelevant. Reply, 23-24. There is no requirement to show a nexus that the success of a product be measured only through the creation of a *de novo* market; Petitioner offers no authority to suggest otherwise. *Id.*

Moreover, Petitioner’s entire premise is contradicted by third parties that refer to Oura as “one of the pioneers” of the smart ring segment and that Oura has “long been synonymous with ‘smart ring.’” EX-2019, ¶41; EX-2036; EX-2089. Petitioner’s expert also characterizes smart rings introduced prior to the Oura Ring Gen 3 and Gen 4 as “limited and weak competition,” describing many of them as “unknown start-ups reliant on crowdsourcing for funding.” Ex-1080, ¶¶224-25. Collectively, this suggests that Oura did, in fact, help create the market segment of smart rings.

Petitioner’s claim that the Oura Ring Gen 3 “was not novel enough to garner any praise,” (Reply, 23) is belied by the evidence. Ex-2019, ¶¶41, 48; Ex-2058; Ex-2089; Ex-2090; Ex-2048; Ex-2091; Ex-2098; Ex-2099; Ex-2100). The industry praise continued for the Oura Ring Gen 4 as well. Ex-2019, ¶¶42, 49; Ex-2092; Ex-2060; Ex-2058; Ex-2102.

D. Evidence of copying of Oura Ring by the Industry.

Petitioner argues that PO has failed to provide evidence of actual copying. Reply, 24. But “[e]vidence of access and substantial similarity *is* evidence of copying.” *Medtronic, Inc. v. Teleflex Innovations S.a.r.l.*, 70 F.4th 1331, 1340 (Fed. Cir. 2023). Multiple competitors admitted to purchasing Oura Rings, tearing them down, and creating competing rings with remarkable similarities to Oura Ring. POR,

85-92; Ex-2024, 683:19-21; 685:16-24; 95:1-21; 698:3-24; 696:12-698:2; 699:2-5; Ex-2031; Ex-2032; Ex-2113; Ex-2114.

Petitioner argues that the mere fact that Ultrahuman and RingConn in a related ITC Investigation does imply copying. Reply, 24. That is correct. But PO does not rely on the respondents' infringement as the basis of evidence of copying, but rather the evidence of respondent's copying of Oura Ring.

E. The '702 patent fulfilled a long-felt need.

Petitioner argues that “[c]omfortable, compact rings with curved batteries and PCBs were well known in the art.” Reply, 25. Petitioner offers three cites for this proposition: Ex-1002, ¶44; Ex-1079, ¶79-81, and Ex-1080 ¶¶313-328. But Petitioner's own cites show that the prior art rings, as shown below, were not compact, nor included curved batteries, nor were comfortable but instead mounted all the circuit board and battery all on top of the ring:

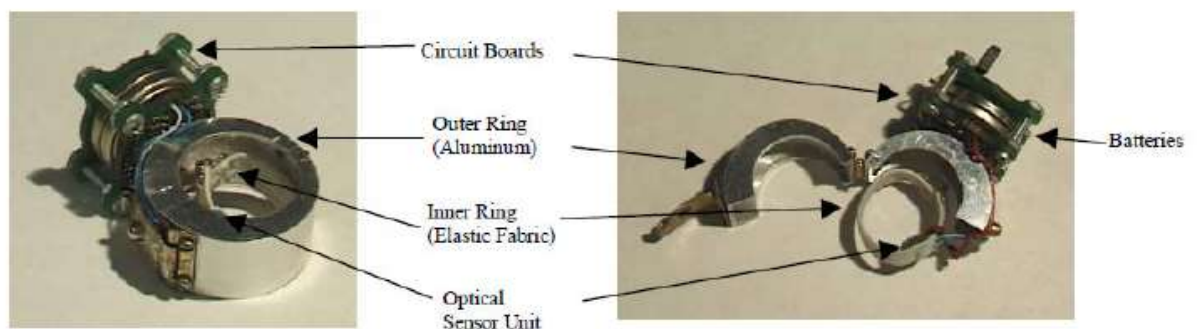


Figure 1 : Isolating ring sensor designed for motion artifact minimization

Ex-1035. Petitioner’s citations prove that the ’702 patent satisfied the long-felt need more so than refute this finding.

Finally, Petitioner puts up a strawman arguing Asada and Dr. Mercier only failed to “successfully *commercialize*” their rings. Reply, 25. But both Asada and Mercier admit their designs, like others in the field, failed to solve the problem of making the ring with components and battery housed within the ring as subsequently disclosed by the ’702 patent—their failure had nothing to do with commercialization. Ex-1035, 74 (“the size of the first prototype...was too large to be of use in real life.”); Ex-1081, 35:16-37:10 (“I very quickly concluded that the most logical way to build such a design was to follow the prior art...and place the battery at the top of the device.”)

V. CONCLUSION

For the reasons stated herein, the Board should find in favor of the Patent Owner on all claims.

Dated: August 26, 2025

Respectfully submitted,

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CERTIFICATE OF WORD COUNT UNDER 37 C.F.R. § 42.24(D)

I hereby certify that the foregoing Patent Owner's Sur-Reply contains 5,361 words as measured by the word-processing software used to prepare the document, in compliance with 37 C.F.R. § 42.24(d).

Dated: August 26, 2025

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CERTIFICATE OF SERVICE

I hereby certify that, on August 26, 2025, I caused a true and correct copy of Patent Owner's Sur-Reply to be served in its entirety, via filing through the Patent Trial and Appeal Case Tracking System (P-TACTS), as well as by delivering copies via email to the following counsel for Petitioner:

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