

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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PHISON ELECTRONICS CORPORATION,  
Petitioner,

v.

VERVAIN, LLC,  
Patent Owner.

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PGR2025-00011  
U.S. Patent No. 11,967,370

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**PATENT OWNER'S SUPPLEMENTAL BRIEF**

### **EXHIBIT LIST**

| <b>Exhibit No.</b> | <b>Description</b>                                                                                                                                                             | <b>Previously Submitted</b> |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 2001               | Declaration of Dr. Sunil Khatri                                                                                                                                                | X                           |
| 2002               | [RESERVED]                                                                                                                                                                     |                             |
| 2003               | [RESERVED]                                                                                                                                                                     |                             |
| 2004               | [RESERVED]                                                                                                                                                                     |                             |
| 2005               | [RESERVED]                                                                                                                                                                     |                             |
| 2006               | <i>Vervain v. Western Digital Corp. et al.</i> , No. 6:21-cv-488-ADA, Dkt. 41 (W.D. Tex. Jan. 24, 2022) (Claim Construction Order)                                             | X                           |
| 2007               | [RESERVED]                                                                                                                                                                     |                             |
| 2008               | [RESERVED]                                                                                                                                                                     |                             |
| 2009               | U.S. Patent Application Pub. No. 2011/0099460 (“Dusija”)                                                                                                                       | X                           |
| 2010               | Highlighted Version of U.S. Patent No. 8,634,240 (“Gavens”), indicating which material from Gavens is also present in U.S. Patent Application Pub. No. 2011/0099460 (“Dusija”) | X                           |
| 2011               | [RESERVED]                                                                                                                                                                     |                             |
| 2012               | [RESERVED]                                                                                                                                                                     |                             |
| 2013               | [RESERVED]                                                                                                                                                                     |                             |
| 2014               | [RESERVED]                                                                                                                                                                     |                             |
| 2015               | [RESERVED]                                                                                                                                                                     |                             |
| 2016               | [RESERVED]                                                                                                                                                                     |                             |
| 2017               | [RESERVED]                                                                                                                                                                     |                             |

| Exhibit No. | Description                                                                                                                                                                                                                                               | Previously Submitted |
|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 2018        | <i>Vervain, LLC v. Phison Electronics Corporation</i> , No. 1:24-cv-259-ADA, Dkt. 16 (W.D. Tex. Jul. 15, 2024) (agreed scheduling order)                                                                                                                  | X                    |
| 2019        | [RESERVED]                                                                                                                                                                                                                                                |                      |
| 2020        | [RESERVED]                                                                                                                                                                                                                                                |                      |
| 2021        | “Judge Albright Patent FAQ,” <a href="https://www.txwd.uscourts.gov/for-attorneys/judge-albright-courtroom-faq/">https://www.txwd.uscourts.gov/for-attorneys/judge-albright-courtroom-faq/</a> . Accessed December 18, 2024)                              | X                    |
| 2022        | [RESERVED]                                                                                                                                                                                                                                                |                      |
| 2023        | Judge Albright’s Standing Order Governing Proceedings (OGP) 4.4—Patent Cases, Filed January 23, 2024.                                                                                                                                                     | X                    |
| 2024        | Excerpts from the Prosecution History of U.S. Patent No. 11,830,546                                                                                                                                                                                       | X                    |
| 2025        | U.S. Patent App. Pub. No. 2011/0096601 to Gavens et al. (“Gavens-601”)                                                                                                                                                                                    | X                    |
| 2026        | [RESERVED]                                                                                                                                                                                                                                                |                      |
| 2027        | [RESERVED]                                                                                                                                                                                                                                                |                      |
| 2028        | [RESERVED]                                                                                                                                                                                                                                                |                      |
| 2029        | [RESERVED]                                                                                                                                                                                                                                                |                      |
| 2030        | [RESERVED]                                                                                                                                                                                                                                                |                      |
| 2031        | Preliminary Claim Constructions for <i>Vervain, LLC v. Phison Electronics Corporation</i> , No.1:24-cv-259-ADA and <i>Vervain, LLC v. Kingston Technology Company., et al.</i> , No. 1:24-cv-254-ADA – email from Mr. Brown received on February 5, 2025. | X                    |

| Exhibit No. | Description                                                                                                                                                                                                             | Previously Submitted |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 2032        | Markman Hearing Transcript dated February 6, 2025, for <i>Vervain, LLC v. Phison Electronics Corporation</i> , No. 1:24-cv-259-ADA and <i>Vervain, LLC v. Kingston Technology Company., et al.</i> No. 1:24-cv-254-ADA. | X                    |
| 2033        | <i>Vervain v. Western Digital Corp. et al.</i> , No. 6:21-cv-00488-ADA, Dkt. 180 (W.D. Tex. Jul. 26, 2023) (Redacted Copy of Order on the Pending Motions and Motions <i>In Limine</i> ).                               | X                    |
| 2034        | [RESERVED]                                                                                                                                                                                                              |                      |
| 2035        | [RESERVED]                                                                                                                                                                                                              |                      |
| 2036        | [RESERVED]                                                                                                                                                                                                              |                      |
| 2037        | <i>Vervain, LLC v. Phison Electronics Corp.</i> , No. 1:24-cv-00259, Dkt. 53 (W.D. Tex. Jan. 29, 2025) (Joint Notice Extending Deadlines)                                                                               | X                    |
| 2038        | [RESERVED]                                                                                                                                                                                                              |                      |
| 2039        | <i>Phison Electronics Corp. v. Vervain, LLC</i> , PGR2024-00047, Paper 9 (P.T.A.B. Mar. 17, 2024) (Decision Denying Institution of Post-Grant Review of U.S. Patent No. 11,830,546)                                     | X                    |
| 2040        | [RESERVED]                                                                                                                                                                                                              |                      |
| 2041        | <i>Phison Electronics Corp. v. Vervain, LLC</i> , PGR2024-00048, Paper 9 (P.T.A.B. April 28, 2025) (Decision Denying Institution of Post-Grant Review of U.S. Patent No. 11,854,612)                                    | X                    |
| 2042        | Docket Sheet for <i>Vervain, LLC v. Phison Electronics Corporation</i> , No. 1:24-cv-259-ADA (W.D. Tex.) (accessed May 12, 2025)                                                                                        | X                    |

| <b>Exhibit No.</b> | <b>Description</b>                                                                                                                                                                                                                                                                                                               | <b>Previously Submitted</b> |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| 2043               | Phison’s Final Invalidity Contentions served on February 28, 2025 in <i>Vervain, LLC v. Phison Electronics Corporation</i> , No. 1:24-cv-259-ADA (W.D. Tex.)                                                                                                                                                                     | X                           |
| 2044               | “Interim Processes for PTAB Workload Management Memorandum,” issued March 26, 2025, <a href="https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf">https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf</a> . Accessed May 13, 2025. | X                           |
| 2045               | U.S. Patent No. 10,824,340, assigned to Phison Electronics Corp.                                                                                                                                                                                                                                                                 |                             |
| 2046               | Excerpts from the Prosecution History of U.S. Patent Application No. 14/811,844 (issued as U.S. Patent No. 10,824,340), including Office Action dated May 9, 2019.                                                                                                                                                               |                             |

**I. Patent Owner’s Supplemental Brief Regarding “Settled Expectations”**

Patent Owner submits this supplemental brief pursuant to the Court’s June 12, 2025 email. *See* Ex. 3101. U.S. Patent No. 11,967,370 (the “Challenged Patent”) is part of an established patent family including U.S. Patent Nos. 8,891,298 (the “298 Patent”); 9,196,385; 9,997,240; 10,950,300; 11,830,546; 11,854,612; 11,967,369; and 11,967,370 (the “Vervain Patents”). All share a common specification and are continuations of the 298 Patent, which issued in 2014.

In similar cases, the Board has found that “Petitioner’s awareness of Patent Owner’s applications and failure to seek early review of the patents favors denial,” particularly where the Petitioner “cited the then-pending application ... in an Information Disclosure Statement Petitioner filed in its own patent application,” resulting in “settled expectations.” *iRhythm Techs., Inc. v. Welch Allyn, Inc.*, No. IPR2025-00363, 2025 WL 1605274, at \*1 (P.T.A.B. June 6, 2025).

Here, Petitioner Phison has been aware of the Vervain Patents since at least 2019. During prosecution of U.S. Patent No. 10,824,340—assigned to Phison—the Examiner cited the 298 Patent as prior art and provided a detailed explanation of its relevance. *See* Ex. 2045, Cover Page 2; Ex. 2046 (May 9, 2019 Office Action), 31-32 (“Rao (Pat 8,891,298) discloses...”). Phison was aware of the 298 Patent in 2019 but chose not to seek early review. Accordingly, the settled expectations of *all* the Vervain Patents—including the Challenged Patent—favor denial of institution.

Date: June 13, 2025

Respectfully submitted,

/Alan Whitehurst/

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**CERTIFICATE OF SERVICE**

I hereby certify, in accordance with 37 C.F.R. § 42.205, that the foregoing  
**PATENT OWNER'S SUPPLEMENTAL BRIEF** was served via electronic mail  
on June 13, 2025 on the following counsel of record for Petitioner:

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