

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,
Petitioner

v.

HBCU MESSAGING US LP,
Patent Owner

IPR2025-01493
U.S. Patent No. 11,089,450

PATENT OWNER'S PRELIMINARY SUR-REPLY

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
Submitted Electronically via PTAB E2E

TABLE OF EXHIBITS

Exhibit	Description
2023	January 23, 2026, Markman Hearing Transcript
2024	January 26, 2025, email from Michael Shore to the Court
2025	January 28, 2025, email response from the Court

A. Introduction

Petitioner continues to mischaracterize the record and its own actions with respect to claim construction. Contrary to Petitioner’s claims, its position has *not* been consistent across the forums. (Reply at 1.) While all of the related Petitions adopt the plain and ordinary meaning for all claim terms, including here, at the District Court, Petitioner asserted constructions for a number of challenged terms, and asserted indefiniteness for another. Indeed, at the recent Markman hearing, even Judge Albright expressed concern about Apple’s inconsistent positions: “Why are you proffering a construction in this case when you did not proffer one at the PTAB?” (Ex. 2023 at 24-25.)

Even with the ’450 patent, where no terms were subject to construction at the District Court, Petitioner’s actions both at the District Court and in the other related patents cast doubt on Petitioner’s purported application of the “plain and ordinary meaning” of the claim terms here.

B. Petitioner’s Actions Raise Questions About How Petitioner Actually Interpreted and Applied the ’450 Patent Claim Terms

For this IPR, as with all of the other related IPRs, Petitioner relies solely on the plain and ordinary meaning of each term. But Petitioner never reveals exactly what “plain and ordinary” meaning it applies, just as they failed to do in the District Court. Normally, this would be perfectly acceptable. However, Petitioner has

already shown in the District Court that it disputes what the “plain and ordinary meaning” is of some claim terms.

Following the *Markman* hearing in District Court, the parties agreed and proposed to the Court that it adopt the plain and ordinary meaning for certain terms at this stage. (Ex. 2024.) At the same time, both the Court and the parties currently understand that the Court’s ruling will likely need to be revised later, on a fuller record, because the parties disagree about what that ordinary meaning is. (*See* Ex. 2024 Email from Shore to Court, “The parties have differing positions on what the plain and ordinary meaning for these four terms should be.”; Ex. 2025 Email from Court, “Judge Albright would like to see more briefing at the summary judgment stage.”)

Judge Albright’s frustration is the very reason why Petitioner’s failure to seek any construction for the ’450 patent, either here or at the District Court, is concerning. In some ways, the situation is even worse compared with claims that have been identified for construction, because nothing here would stop Petitioner from applying one “plain and ordinary” meaning of the terms here and a different “plain and ordinary” meaning at the District Court. In light of Petitioner’s differing positions on various terms before the District Court and the Board in other IPRs, the potential for the Petitioner to do the same here—with any ’450 patent claim term of its choosing, and without any notice to anyone—is too real to ignore.

Petitioner should not be “confounded” by Patent Owner’s concern. It is the direct result of its actions in the other related IPRs and at the District Court. For this and all the other reasons set forth in Patent Owner’s Preliminary Response, the Petition should be denied.

Respectfully submitted,

Dated: February 6, 2026

/ Timothy Devlin /
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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2026, I caused a true and correct copy of **PATENT OWNER'S PRELIMINARY SUR-REPLY** to be served via electronic mail on the following counsel for Petitioner:

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