Nos. 24-1876, 24-1885

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

ORANGE ELECTRONIC CO. LTD,

Plaintiff-Appellant,

v.

AUTEL INTELLIGENT TECHNOLOGY CORP., LTD.,

Defendant-Cross-Appellant.

On Appeal from the United States District Court for the Eastern District of Texas, No. 2:21-cv-00240-JRG

DEFENDANT-CROSS-APPELLANT'S RESPONSE TO PETITION FOR REHEARING AND REHEARING *EN BANC*

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 24-1876, 24-1885

Short Case Caption Orange Electronic Co. Ltd. v. Autel Intelligent Technology Corp., Ltd.

Filing Party/Entity Autel Intelligent Technology Corp. Ltd.

Instructions:

1. Complete each section of the form and select none or N/A if appropriate.
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Date: 03/30/2026

Signature: /s/ Nicole A. Saharsky

Name: Nicole A. Saharsky

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☑ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☑ None/Not Applicable
Autel Intelligent Technology Corp. Ltd.		

☐ Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

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INTRODUCTION

In this patent case, the Court correctly determined that the asserted claims are invalid as obvious. Orange disagrees with the Court's determination, but it does not present any issue that comes close to meeting the standards for rehearing or rehearing *en banc*.

The Court's unpublished opinion does not break any new legal ground, but instead merely applies settled legal principles to the facts of this case. Orange identifies no conflict with another circuit decision on a legal question, issue of exceptional importance, or critical issue that the Court overlooked or misapprehended. Instead, Orange just quibbles with the Court's application of its precedents. But Orange does not identify any error, much less one that would justify rehearing.

Orange's arguments come in two flavors: one argument that it previously presented to the Court and the Court rejected, as to which Orange does not show any error; and two arguments that Orange failed to develop in its appellate briefs and thus forfeited, and that lack merit in any event.

Orange first rehashes its argument that the prior art references did not disclose a "portable" apparatus for reprogramming vehicles' tire pressure detectors. But as the Court explained, the claims do not use "portable" in some general sense. Instead, the claims specify that "portable" means

"portable relative to the vehicle" – and there is no dispute that the apparatus in the prior art could be moved to and around the vehicle. Orange entirely fails to address the Court's reasoning, much less show any error that could warrant rehearing.

Orange next argues that secondary considerations show the asserted claims are not obvious, pointing to an industry award it received. But as the Court explained, Orange forfeited this argument by devoting only a single sentence to it in its appellate brief. In any event, Orange fails to show that the award even was about the claimed invention – so the award cannot be evidence that the claimed invention was not obvious.

Finally, Orange argues that, with respect to radio frequencies used to send and receive data to the tire pressure sensor, a skilled artisan would have lacked the motivation to combine the prior art references. But Orange never made this argument in its appellate brief – in fact, it did not even cite the testimony on which it now relies. The Court cannot be accused of overlooking evidence that Orange never presented to the Court. In any event, the Court did not need to find a motivation to combine the two prior art references, because one reference by itself discloses the radio frequencies recited in the asserted claims.

The Court should deny the petition.

ARGUMENT

NEITHER PANEL REHEARING NOR REHEARING *EN BANC* IS WARRANTED

To warrant panel rehearing, a petitioner must identify "with particularity" a point of "law or fact" that the Court has "overlooked or misapprehended." Fed. R. App. P. 40(b)(1)(A). The petitioner must previously have presented the issue to the Court; the Court "will not address issues raised for the first time" in a petition for rehearing. *Pentax Corp. v. Robinson*, 135 F.3d 760, 762 (Fed. Cir. 1998). Further, the petitioner must demonstrate that the Court made a mistake with respect to a material issue or omitted material information in its opinion, *see id.*; the petitioner may not merely reargue a point already considered and rejected by the Court, *see, e.g.*, *Stack v. United States*, 368 F.2d 788, 791 (1st Cir. 1966).

To warrant rehearing *en banc*, a petitioner must establish that the Court's decision directly conflicts with a prior decision of the Court or of the Supreme Court on a question of law; mere disagreement with the Court's "treatment of [a] factual issue" does not suffice. *Dow Chem. Co. v. Nova Chems. Corp. (Can.)*, 809 F.3d 1223, 1228 (Fed. Cir. 2015) (Moore, J., concurring in the denial of rehearing *en banc*); *see* Fed. R. App. P. 40(b)(2)(A)-(B). Alternatively, the petitioner must show that the case involves a question of "exceptional importance," Fed. R. App. P. 40(b)(2)(C), meaning an

issue that is likely to recur in cases involving other litigants and involves significant pecuniary or nonpecuniary interests, *see, e.g.*, *Sony Elecs., Inc. v. United States*, 382 F.3d 1337, 1349 (Fed. Cir. 2004).

None of the arguments Orange raises satisfies these stringent standards.

A. The Prior Art Discloses The Portable Limitation

The asserted claims are directed to tire pressure monitoring systems in vehicles. Specifically, the claims disclose a system that allows users to replace tire pressure detectors without needing to reprogram the vehicle's onboard computer. Appx117. The system does this by using a "portable setting apparatus" to clone the identifiers of the old detectors into the new detectors. Appx128-129. The asserted claims specify that the "portable setting apparatus" is "not equipped in the vehicle and is portable *relative to the vehicle*." Appx128-129 (emphasis added).

Orange first argues (Pet. 3) that the prior art does not disclose a "portable" setting apparatus in the sense of the claims. It made the same argument in its response brief on cross-appeal, *see* Orange Resp.-Reply Br. 18-19, and the Court correctly rejected the argument, *see* Opinion (Op.) 8-9.

Specifically, the Court correctly concluded that U.S. Patent Application Publication No. 2007/0055411 (Nihei) discloses a setting apparatus that

is "portable" within the meaning of the claims. Op. 8-9. Nihei discloses a system for setting the identifier of a tire pressure detector using an "apparatus that communicates" with the detector. Appx2861. That apparatus consists of a "setting device" that is connected to a "PC," such as desktop, laptop, or tablet. Appx3866. As the Court explained, Joseph McAlexander (Orange's technical expert) admitted that Nihei's PC and setting device "'can move independently from [the] vehicle,'" and thus are "portable relative to the vehicle" as disclosed in the claims. Op. 9 (quoting Appx3166-3168). As there was no evidence to the contrary, the Court concluded that Nihei discloses the "portable" limitation as a matter of law. *Id.*

Orange's arguments disregard the claim language. Orange argues that the jury could have been using "portable" in the sense of "easily carried or moved" or "lighter and smaller" than usual. Pet. 4-5 (internal quotation marks and emphasis omitted). But the claims do not use "portable" in the abstract; they refer to a setting apparatus that is "portable *relative to the vehicle*." Appx128-129 (emphasis added). Because Orange did not ask the district court to construe "portable," the jury was required to give that term its plain and ordinary meaning, "which is the meaning that one of ordinary skill in the art would ascribe to a term when read in the context of the claims, specification, and prosecution history." *Regeneron Pharms., Inc. v.*

Mylan Pharms., Inc., 130 F.4th 1372, 1379 (Fed. Cir. 2025). Here, the claims expressly state that "portable" means "portable relative to the vehicle," as opposed to some other meaning of "portable." Appx128-129. The Court's opinion explained this, *see* Op. 8, and Orange has no response, *see* Pet. 4-6.

Further, even if Orange's definition of "portable" were correct, its argument still would fail. Orange's technical expert McAlexander admitted that Nihei's "PC" could be a "laptop," Appx3166, and a laptop obviously is portable in any sense of the term (including "easily carried or moved," Orange's preferred definition, Pet. 4-5). Orange fails to address this testimony. It points (Pet. 4) to McAlexander's conclusory assertion that Nihei does not disclose a "portable device" because Nihei requires a "PC" – without acknowledging that McAlexander also said that a "PC" can be a "laptop." McAlexander's bare assertion, which is inconsistent with the rest of his testimony, is the type of "factually incorrect" and "conclusory" statement that is "insufficient to sustain a jury's verdict." *Koninklijke Philips N.V. v. Zoll Med. Corp.*, 656 F. App'x 504, 513-14 (Fed. Cir. 2016).

Orange contends (Pet. 3-4) that the decision in this case conflicts with *Apple, Inc. v. Samsung Electronics Co.*, 839 F.3d 1034 (Fed. Cir. 2016) (*en banc*), and *Transocean Offshore Deepwater Drilling, Inc. v. Maersk Drilling*

USA, Inc., 699 F.3d 1340 (Fed. Cir. 2012). It does not. *Apple* and *Transocean* stand for the unremarkable proposition that a jury's factual determinations are reviewed for substantial evidence. *See* 839 F.3d at 1047; 699 F.3d at 1347. The Court's decision in this case does not set out a legal rule that conflicts with that settled rule. To the contrary, the Court expressly cited the substantial-evidence standard, Op. 6, and then determined that the standard is not met in light of the claim terms and evidence presented, *id.* at 9. Orange may disagree with the Court's conclusion, but that is not a basis for either panel rehearing or rehearing *en banc*.

B. Orange Forfeited Its Argument Regarding Secondary Considerations

Orange next argues (Pet. 5-8) that the Court incorrectly disregarded secondary considerations of non-obviousness – namely, evidence of an industry award Orange received for its tire pressure monitoring systems. But as the Court explained, this argument was "undeveloped" in Orange's appellate brief. Op. 11. Autel explained that the secondary consideration evidence in this case did not actually relate to the claimed invention, dedicating three pages of its brief to this argument replete with quotations from the testimony and citations to case law. *See* Autel Opening-Response Br. 49-51. In response, Orange included *a single sentence* on secondary considerations that completely failed to address any of Autel's arguments or case

law: "The jury also heard evidence of secondary considerations of non-obviousness from Mr. Yu and Mr. McAlexander, including praise by others via the awards that Orange received for the patented technology. Appx2604-2606; Appx3156; Appx9698-9699." Orange Resp.-Reply Br. 19. That is the entirety of Orange's appellate briefing on this argument. It is not as though Orange lacked the space to develop this argument; its brief was more than 8,000 words under the limit for a response-reply brief on cross-appeal. *See id.* at 31.

As this Court has explained, a litigant must actually "develop[]" an argument for the Court to consider it. *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006). An issue that is "merely alluded to and not developed as an argument in a party's brief is deemed forfeited." *Ute Indian Tribe of the Uintah & Ouray Indian Rsrv. v. United States*, 99 F.4th 1353, 1364 (Fed. Cir. 2024) (internal quotation marks omitted).[1]

In particular, the Court repeatedly has refused to consider "one-sentence" arguments that were "not supported by authority or further developed as an argument." *Rodriguez v. Dep't of Veterans Affs.*, 8 F.4th 1290,

[1] Of course, the Court retains discretion to consider a forfeited argument, particularly if "injustice might otherwise result." *Ute Indian*, 99 F.4th at 1370 (internal quotation marks omitted). But the Court's decision not to exercise that discretion does not justify rehearing.

1305 (Fed. Cir. 2021); *see, e.g.*, *Arunachalam v. Int'l Bus. Machines Corp.*, 989 F.3d 988, 999 (Fed. Cir. 2021) (holding forfeited a one-sentence argument). In light of that precedent, the Court was well within its discretion to treat Orange's brief allusion to secondary considerations as insufficient to preserve an argument on that point. *See* Op. 11.

Even if it were preserved, Orange's argument would fail. Orange points (Pet. 7) to one industry award it received, the 19th Taiwan Small & Medium Enterprises Innovation Award. As Autel explained, Orange failed to demonstrate that this award specifically related to the claimed invention. *See* Appx2599, 2605. In Orange's own words, it received the award for its general "programmable sensor system." Pet. 7. The claimed identification-cloning invention in this case is just one part of that system, and Orange points to no evidence that identification cloning played any role, let alone a central role, in why it received the award.

As this Court has explained, for secondary considerations to be probative of non-obviousness, the patent owner must show "a clear nexus" between the secondary considerations and the claimed advances in the asserted patents. *ABT Sys., LLC v. Emerson Elec. Co.*, 797 F.3d 1350, 1361 (Fed. Cir. 2015); *see Metso Minerals, Inc. v. Powerscreen Int'l Distrib., Ltd.*,

526 F. App'x 988, 998 (Fed. Cir. 2013). That nexus is entirely missing here, and so the award cannot overcome the clear evidence of invalidity.

Orange cites (Pet. 7) *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983), for the proposition that a court should always consider evidence of secondary considerations. But *Stratoflex* does not address appellate forfeiture, and it expressly holds that "[a] nexus is required between the merits of the claimed invention and the evidence" of secondary considerations for that evidence to be probative "on the obviousness issue." *Id.* at 1539. The Court's decision thus does not conflict with *Stratoflex*.

Here again, there is no legal conflict or critical error that would warrant any type of rehearing.

C. Orange Also Forfeited Its Argument Regarding Motivation To Combine With Respect To Transmission Frequencies

Finally, Orange argues (Pet. 8-11) that a skilled artisan would have lacked the motivation to combine the prior art references with respect to the radio frequencies recited in the asserted claims. Orange did not make that argument below, and it ultimately is irrelevant because one reference alone discloses the frequencies recited in the asserted claims.

The asserted claims recite a system in which a "setting apparatus" reads the identification of an old tire pressure detector and then sends that

identification to the new detector. Appx128-129. The claims recite using a higher frequency RF signal to receive the identifier from the old detector, and using a lower frequency LF signal to send the identifier to the new detector. Appx128-129. Orange asserts (Pet. 8) that a skilled artisan would not have been motivated to combine Nihei with U.S. Patent Application Publication No. 2006/0208864 (Nantz) to achieve this combination of frequencies, because Nantz teaches using LF signals to both send and receive signals from the detector.

Again, Orange did not develop any motivation-to-combine argument in its appellate brief, so the Court correctly deemed any such argument forfeited. *See* Op. 11. As relevant here, at no point in its brief did Orange expressly argue that a skilled artisan would not have been motivated to combine Nantz's and Nihei's teachings regarding transmission frequencies. *See* Orange Resp.-Reply Br. 16-17. Orange instead argued that Nantz's use of two-way LF signals "is not the direction of the claimed invention," echoing the teaching-away argument it had pressed in the district court. *Id.* at 16.

Then, in passing, Orange stated that even if Nantz did not teach away from the claimed invention's choice of transmission frequencies, Nantz's "preferences" on this subject "are relevant to a finding regarding whether a skilled artisan would be motivated to combine that reference with another

reference." Orange Resp.-Reply Br. 17 (quoting *Polaris Indus., Inc. v. Arctic Cat, Inc.*, 882 F.3d 1056, 1069 (Fed. Cir. 2018)). Orange never linked this single sentence to Nihei's teachings, or otherwise made clear that it was making an independent motivation-to-combine argument with respect to transmission frequencies. Indeed, Orange did not even cite the testimony on which it now relies. *Compare id.* at 16-17, *with* Pet. 9 (citing Appx2948-2949). So again, Orange did not develop this argument and the Court appropriately deemed it forfeited. *See Rodriguez*, 8 F.4th at 1305.

Orange's argument lacks merit in any event. As Autel explained, a skilled artisan would not need to "combine" Nantz and Nihei to achieve the transmission frequencies recited in the asserted claims, because Nihei – the primary reference in this combination – on its own discloses the claimed frequencies. *See* Autel Opening-Response Br. 39-42; Autel Reply Br. 17. Specifically, Nihei discloses a detector configured to receive an LF signal (at 125 KHz) and to transmit an RF signal (at 315 MHz), Appx3754 – the same configuration as the asserted claims, Appx128-129. *See* Appx2934 (explaining that 125 KHz is an LF frequency); Appx3754 (explaining that 315 MHz is an RF frequency). Thus, Nihei alone discloses the combination of frequen-

cies set out in the asserted claims; the skilled artisan does not need to consider Nantz for this purpose. Autel explained all this in its briefing, and Orange has no response.

Instead, Orange points (Pet. 9) to testimony from Autel's technical expert, Dr. Shukri Souri – testimony it did not cite in its appellate briefing – to try to show that Nantz and Nihei had to be combined. In essence, Orange argues that Dr. Souri testified that he would have combined Nantz's teachings regarding specific transmission frequencies with those of Nihei.

Orange misreads Dr. Souri's testimony. Dr. Souri stated that "using the radio frequency disclosures and teachings of the Nantz, a person of ordinary skill would take advantage of those multiple radio frequency communication channels to implement essentially what the '064 is teaching." Appx2948-2949. In that sentence, Dr. Souri was referring to Nantz's teachings only in general terms; he did not mention Nantz's specific transmission frequencies.

Dr. Souri elsewhere explained that Nihei alone disclosed the combination of frequencies set out in the claims. *See* Appx2870 (explaining that Nihei disclosed using an RF signal for transmitting information from the detector); Appx2934 (explaining that Nihei disclosed using an LF signal for receiving information at the detector). Further, Dr. Souri never testified

that a skilled artisan would need to combine Nantz's and Nihei's teachings with respect to transmission frequencies to achieve the asserted claims. Dr. Souri thus does not support Orange's new motivation-to-combine argument. There is no error here that could warrant rehearing.

CONCLUSION

The Court should deny the petition for rehearing.

Dated: March 30, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), undersigned counsel certifies that this brief:

(i) complies with the type-volume limitation of Circuit Rule 40(e) because it contains 2,876 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2016 and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

Dated: March 30, 2026

/s/ *Nicole A. Saharsky*
Nicole A. Saharsky

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system on March 30, 2026. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ *Nicole A. Saharsky*
Nicole A. Saharsky