

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.; INSTAGRAM, INC.; WHATSAPP LLC; META
PLATFORMS TECHNOLOGIES, LLC; AND GIPHY, INC.

Petitioners

v.

VL COLLECTIVE IP LLC

Patent Owner

Case IPR2023-00924
U.S. Patent 7,436,980

**PATENT OWNER'S REQUEST FOR REHEARING
OF INSTITUTION DECISION**

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I. Introduction

Patent Owner, VL Collective IP LLC, (“Patent Owner”) requests rehearing of the Decision Granting Institution of *Inter Partes* Review dated December 6, 2023 (Paper 11) (“Institution Decision” or “ID”). Under 37 C.F.R. § 42.71(d), a request for rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” Rehearing here is warranted because the Board’s decision (i) misapprehended the scope of claim element 1[e], (ii) relied on a theory of how Zhao allegedly teaches element [1e] that is not in the Petition, and (iii) misapprehended the disclosures of Zhao’s “motion information.” These errors, which affect each Ground for which the Board found Petitioner had shown a reasonable likelihood of success, compel rehearing and denial of institution.

II. Argument

A. The reference to “each image” in limitations 1[e] and 9[e] necessarily encompasses two or more images, not a single image.

Claim 1 of the ’980 patent, which for present purposes is representative of independent claim 9, is shown below:

1. A computer implemented method for object detection comprising:
[1a] providing a spatio-temporal model for an object to be detected;
[1b] providing a video comprising *a plurality of images* including the object;
[1c] measuring the object as a collection of components in *each image*;

[1d] determining a probability that the object is in *each image*; and

[1e] detecting the object in *any image* upon comparing the probabilities for *each image* to a threshold for detecting the object.

'980 patent, claim 1 (emphasis added).

As can be seen, the claim requirement of a “plurality of images” is introduced in limitation 1[b]. It is well established that “a plurality” means “at least two.” *SIMO Holdings Inc. v. Hong Kong uCloudlink Network Tech. Ltd.*, 983 F.3d 1367, 1377 (Fed. Cir. 2021) (“The phrase ‘a plurality of’ means ‘at least two of.’”); *York Prod., Inc. v. Cent. Tractor Farm & Fam. Ctr.*, 99 F.3d 1568, 1575 (Fed. Cir. 1996) (“The term [plurality] means, simply, ‘the state of being plural.’”); *Resqnet.com, Inc. v. Lansa, Inc.*, 346 F.3d 1374, 1382 (Fed. Cir. 2003) (“As previously noted, “plurality” ordinarily means “at least two.”). Thus, limitation 1[b] requires providing a video with at least two images.

The “plurality of images” in 1[b] is referenced in each of the subsequent claim limitations, and in such a way that each step builds on the output of the previous step. Limitation 1[c] requires, for “each image,” measuring the object as a collection of components. Based on this measurement for the two or more images, limitation 1[d] further requires determining a probability that the object is in “each image.” Limitation 1[e] then detects the object (or not) in “any image” based on the previously determined probabilities for “each image.” In essence, after making a

series of measurements and determining the probability that the object is in “each” image (i.e., image-specific analyses), the ultimate conclusion of whether an object is “detect[ed]” in “any image” is based on the object probabilities for “each image” (i.e., a multi-image analysis). That the final step is a multi-image analysis is further confirmed by the reference to “the probabilities” (plural), which refers to the probabilities determined for “each image.” The multi-image analysis of limitation 1[e] is fundamental to the patented invention, as it is core to what makes the object detection model “*spatio-temporal*.”

In its institution decision, the Board analyzed the intrinsic evidence identified by Patent Owner and ultimately determined that limitation 1[e] does not require a multi-image analysis. ID at 26-27 (“On this record, Patent Owner’s contention that the scope of this term [“probabilities for each image”] as read in light of the specification requires comparing multiple probabilities from multiple images to a threshold is inconsistent with the specifications’ disclosure of this term.”). This finding by the Board was erroneous, as the “plurality of images” introduced in limitation 1[b] is necessarily “two or more images,” and it is these “two or more images” that are referenced in limitation 1[e].

In its POPR, Patent Owner explained that limitations 1[e] and 9[e] necessarily require “comparing the probabilities” for two or more images due to the express language of the claims. POPR at 42 (“Here, ‘probabilities’ is plural and refers to the

probabilities for ‘each image.’ And ‘each image’ refers to the ‘plurality of images including the object,’ where ‘in each image’ the object is measured and ‘a probability that the object is in the image’ is determined.”). Patent Owner then pointed to the specification’s ample support for embodiments where an object is detected or not based on a multi-image probability-threshold analysis. POPR at 42-43. To be sure, the portions of the specification that Patent Owner cited include descriptions where only one image is analyzed. But Patent Owner did not argue (and certainly did not intend to argue) that the plain language of the claims, which require a multi-image analysis, should be over-ridden by these disclosures. Yet that is how the Board appears to have interpreted Patent Owner’s arguments. ID at 26-27 (“Even accepting Patent Owner’s construction that the scope of this term encompasses the specification’s disclosure . . .”). Patent Owner’s misunderstood arguments thus appear to have led the Board to error.

The plain language of the claims is express; limitations 1[e] and 9[e] require “comparing the probabilities” for *two or more* images. This requirement is unambiguous and so controls. “[C]laim construction must begin with the words of the claims themselves.” *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 457 F.3d 1293, 1301 (Fed. Cir. 2006) (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005)); *Vitronics Corp. v. Conceptiontronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996) (“First, we look to the words of the claims themselves . . . to define the scope of the

patented invention.”). When construing claims, “[t]he actual words of the claim are the controlling focus.” *Digital Biometrics, Inc. v. Identix, Inc.*, 149 F.3d 1335, 1344 (Fed. Cir. 1998). While claims “must be read in view of the specification,” *Phillips*, 415 F.3d at 1315, “the written description is not a substitute for, nor can it be used to rewrite, the chosen claim language.” *Resonate Inc. v. Alteon Websystems, Inc.*, 338 F.3d 1360, 1364 (Fed. Cir. 2003); *see also Cent. Admixture Pharmacy Servs., Inc. v. Advanced Cardiac Sols., P.C.*, 482 F.3d 1347, 1355 (Fed. Cir. 2007) (“Claims mean precisely what they say.” (citing *Phillips*, 415 F.3d at 1312)).

Indeed, the specification of the ’980 patent repeatedly describes detecting objects based on a single-image analysis as existing technology on which their invention was made. EX1001 at 7:45-8:8 (describing a real-world test where a “3-frame spatio-temporal object model” was compared against an object detection model that was run “independently at each frame” and finding the spatio-temporal object model’s performance to be “consistent” while the single frame non-temporal “simple fusion detection” model’s performance was “poor”); *id.* at 7:20-22 (“Note that with $w=1$, the algorithm resembles single frame component-based fusion.”). It is common for a specification to discuss existing technologies as background upon which the inventions were made, and for the distinctions between the old and the new to be made clear in the claims. *See Sjolund v. Musland*, 847 F.2d 1573, 1579-80 (Fed. Cir. 1988) (“One difference between the invention and what was old is

immediately apparent: claim 7 of the '071 patent claims a '**plurality**' of panels -- that is to say, **more than one** -- whereas the old practice was to use a single framed panel.”) (emphasis added)). That is the case here. Indeed, it would do violence to the plain language of the claims and the inventive concept disclosed in the specification to find that the claims encompass nothing more than detecting objects in single images.

Nothing in the parts of the specification that the Board analyzed suggest a different result. Even accepting the Board’s observation that “with $w=1$, the algorithm resembles single frame component-based fusion,” claims 1 and 9 by their plain language are directed to embodiments where “ w ” is greater than 1, *not* where $w=1$. That is, because the claims require detecting the object in any image by comparing multiple probabilities determined for a *plurality* of images to a threshold. They do not describe a single-frame analysis. See POPR at 42-43.

The Board also observed that “Element 505 of Figure 5 discloses ‘detecting the object in any image upon comparing the probabilities for *the image* to a threshold for detecting the object.” ID at 27. The Board’s focus on the words “*the image*” in Figure 5 overlooks the context provided by the specification as a whole, which must be considered, and which supports Patent Owner’s interpretation that the claims require comparing multiple probabilities determined for multiple images to a threshold. *Phillips*, 415 F.3d at 1313 (claims are read “in the context of the entire

patent”); *Seal-Flex, Inc. v. Athletic Track and Court Const.*, 172 F.3d 836, 845 (Fed. Cir. 1999) (One “cannot alter the plain meaning of the claim language by referring to parts of the specification out of context.”). Figure 5, like claims 1 and 9, describes providing multiple “images” (plural), “measuring the object ... in *each image*,” “determining a probability that the object is in *each image*,” and “detecting the object in any image up on comparing *the probabilities* ... to a threshold for detecting the object.” EX1001, Fig. 5 (emphasis added). In Figure 5, “the probabilities” are the multiple probabilities determined for “each image” of the previously-referred-to “images” (plural). *Id.* Figure 5 is thus consistent with claim 1, in that they both describe comparing multiple probabilities determined for multiple images to a threshold, and with other teachings of the specification. *See arguments supra.*

Regardless, element 1[e] says “*each image*,” not “*the image*.” Accordingly, element 1[e] should be interpreted just as it is written, using the words “*each image*” and not the words “*the image*” appearing in Figure 5. *Digital Biometrics*, 149 F.3d at 1344; *Resonate*, 338 F.3d at 1364; *Cent. Admixture Pharmacy Servs.*, 482 F.3d at 1355.

Accordingly, Patent Owner respectfully requests that the Board reconsider and reverse its determination that the “probabilities for each image” limitations can be met by a probability for a single image.

B. The Board’s analysis of how Zhao allegedly meets limitations 1[e] and 9[e] is not in the Petition and so cannot be the basis for institution.

In *Sirona Dental Sys. GMBH v. Institut Straumann AG*, the Federal Circuit explained that in light of the Supreme Court’s guidance in *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348 (2018), “[a]n inter partes review must proceed ‘in accordance with or in conformance to the petition.’” 892 F.3d 1349, 1356 (Fed. Cir. 2018) (quoting *SAS*, 138 S. Ct. at 1356). “Nothing suggests the Director enjoys a license to depart from the petition and institute a *different* inter partes review of his own design.” *Id.* “The rest of the statute confirms, too, that the petitioner’s petition, not the Director’s discretion, is supposed to guide the life of the litigation.” *Id.* “[T]he statute tells us that the petitioner’s contentions, not the Director’s discretion, define the scope of the litigation all the way from institution through to conclusion.” *Id.* (quoting *SAS*, 138 S. Ct. at 1357).” In light of this guidance, the Federal Circuit held that “[i]t would thus not be proper for the Board to deviate from the grounds in the petition and raise its own obviousness theory.” *Id.*; *see also Axonics, Inc. v. Medtronic, Inc.*, 75 F.4th 1374, 1380 (Fed. Cir. 2023) (“An IPR is an expedited administrative procedure, driven by the invalidity theories presented in a petition.”).

The Federal Circuit has, on multiple occasions, “reprimanded the Board for finding a claim unpatentable based on theories not presented in the petition.” *Netflix, Inc. v. DivX, LLC*, 84 F.4th 1371, 1377 (Fed. Cir. 2023) (collecting cases). New

theories include theories supported by parts of the asserted references not relied on by the petitioner. *See Netflix, Inc. v. DivX, LLC*, 2023 WL 2298768, at *4 (Fed. Cir. Mar. 1, 2023) (“fundamental legal error” for the Board to substitute its own focus on parts of a reference for the petitioner’s focus on different parts); *In re NuVasive, Inc.*, 841 F.3d 966, 971 (Fed. Cir. 2016) (error for the Board to rely on different parts of the prior art than the petition as an “essential part of its obviousness findings”). New theories also include relying on theories presented by petitioner in the context of a particular limitation as a basis for finding a different limitation met. *Oren Techs., LLC v. Proppant Express Invs. LLC*, 2021 WL 3120819, at *4-5 (Fed. Cir. July 23, 2021). New theories also include the Board’s own theories that the petitioner never presented. *Masimo Corp. v. Apple Inc.*, 2023 WL 5921622, at *3 (Fed. Cir. Sept. 12, 2023) (finding the Board relied on “its own theories” to argue that the asserted references disclosed claim elements for reasons not argued by the petitioner).

Here, the Board found that, even if Patent Owner is correct that “each image” in limitations 1[e] and 9[e] requires at least two images, Zhao still meets limitations 1[e] and 9[e]. ID at 27-28 (“[W]e are sufficiently persuaded that Zhao teaches detecting the object of a person walking in a plurality of frames by comparing the probabilities of the current image and other images to a threshold.”). But the Board’s analysis of how Zhao allegedly meets these limitations is not in the Petition. Indeed, the Petition’s analysis of Zhao is premised on the incorrect view that limitations 1[e]

and 9[e] do not require a multi-image analysis, and so is completely bereft of any analysis of how Zhao describes “comparing the probabilities for [at least two images] to a threshold.” Pet. 26-27. Under controlling Federal Circuit law, the Board cannot find the challenged claims unpatentable based on its own theories not advanced by Petitioners, thus it should not institute review based on such theories.

Petitioners argued that Zhao teaches element 1[e] based on Zhao’s disclosures at pages 64-65. Paper 3 (“Pet.”) at 26-27. Petitioners’ theory was based on Zhao’s disclosure of a “decision rule to detect a human that compares the probability of an extracted contour matching a person with a threshold” and “applying Bayes’ formula and conditioning the hypothesis for body part identification.” *Id.* (citing EX1006 at 64-65). Petitioners’ expert relies on the same portions of Zhao. EX1004 ¶¶98-100.

Patent Owner argued in its Preliminary Response that “Petitioners fail to show that Zhao discloses ‘detecting the object *in any image*’ i.e., in a singular image, ‘upon comparing *the probabilities for each image*,’ i.e., each image in the plurality,[] to a threshold using Zhao’s decision rule.” POPR at 44-45 (addressing Zhao’s disclosures at EX1006, 64-65 and Petitioners’ arguments at Pet. 26-27).

In the Institution Decision, the Board found that “Petitioner has sufficiently demonstrated that Zhao teaches” limitations 1[e] and 9[e] based on completely different portions of Zhao than those Petitioners relied on in addressing those limitations. ID at 27-28. Specifically, the Board relied on Zhao at pages 91-93

(including Figures 5.4(a)-(e) and 5.5), while the Petition relied on Zhao at pages 64-65. ID at 27-28 (citing EX1006, 91, 93 and Figs. 5.4, 5.5); Pet. 26-27. The Board also relied on portions of the Petition and the Bajaj declaration addressing different claim elements, *i.e.*, 1[a] and 1[b]. *Id.* (citing Pet. 15-17, 21-22 and EX1004 ¶¶ 79-82, 87). Relying on those portions of Zhao, the Petition, and the Bajaj declaration (none of which Petitioners relied on for element 1[e]), the Board articulated a theory that Petitioners did not advance for element 1[e], specifically that “before comparing the current image to a threshold for detecting the object, Zhao has compared other images to a threshold, and uses the resulting information when comparing the current image to a threshold,” and thus “Zhao teaches detecting the object of a person walking in a plurality of frames by comparing the probabilities of the current image and other images to a threshold.” ID at 27-28. Petitioners did not present this theory anywhere, *compare* ID at 27-28 with Pet. 26-27, or anywhere else in the Petition.

It was legal error for the Board to advance a theory and supporting evidence for how limitations 1[e] and 9[e] are supposedly satisfied that is not in the Petition. That the underlying evidence existed in parts of the Petition different than those analyzing limitations 1[e] and 9[e] does not alter the analysis. Relying on a Petition’s analysis of one claim limitation to meet another claim limitation also constitutes reversible error. *Sirona*, 892 F.3d at 1356; *Axonics*, 75 F.4th at 1380; *Netflix*, 2023 WL 2298768, at *4; *NuVasive*, 841 F.3d at 971; *Oren Techs.*, 2021 WL

3120819, at *4-5; *Masimo*, 2023 WL 5921622, at *3. And here, nowhere in the Petition’s analysis of limitations 1[a] and 1[b] was there an assertion that what was being analyzed also satisfied the requirements of limitation 1[e]. Nor does the Petition incorporate (by reference or otherwise) its analysis of limitations 1[a] and 1[b] into its analysis of limitation 1[e].

Patent Owner thus respectfully requests that the Board reconsider and reverse its finding that, for purposes of institution, the Petition establishes that Zhao meets limitations 1[e] and 9[e].

C. The Board misapprehended Zhao’s disclosures regarding “motion information” in finding that Zhao teaches element 1[e].

In finding that “Zhao teaches [element 1[e]],” the Board appears to have misapprehended Zhao’s teachings about the use of “motion information.”

The Board says in the Institution Decision that “Zhao discloses that *motion information of limbs* of an object, such as the person walking in the parking lot, *obtained from other frames, can be used to predict the orientations of the limbs in a current frame.*” ID at 27-28. (emphasis added). “Thus,” the Board says, “before comparing the current image to a threshold for detecting the object, *Zhao has compared other images to a threshold, and uses the resulting information when comparing the current image to a threshold.*” *Id.* at 28 (emphasis added). The Board appears to assume or suggest that Zhao’s use of “motion information of

limbs...obtained from other frames” to “predict the orientations of limbs in a current frame” involves “compar[ing] other images to a threshold” and using “the resulting information” from prior “compar[isons] [of] other images to a threshold.” *Id.* None of the portions of Zhao that the Board cites, however, teach this.

As noted above, the Board relied on portions of Zhao at pages 91-93. ID at 27-28. Zhao at pages 91-93 (including Figs. 5.4 and 5.5) describe how “the body parts of a person are located.” EX1006, 91. Petitioners and the Board map the “human” or “person” (*i.e.*, the body) in Zhao to the “object” of claim 1, and the “body parts” of Zhao to the claimed “components.” Pet. 20, 26-27; ID at 25-28. Thus, at pages 91-93, Zhao is describing how to determine where a body part (alleged “component”) is located in the image, not detecting the “object” (*i.e.*, the person). In connection with this body part detection process, Zhao states that “[w]hen the arms are overlapped with the torso, it is very hard to locate them,” and that “[a]nother problem is that the left and right limbs tend to be confused in a side-view.” EX1006, 91. Thus, Zhao states that “[m]otion information obtained from previous frames can be used to predict the orientations of the limbs and to solve the ambiguity.” *Id.* In discussing the use of motion information, Zhao does not state what specifically the “motion information” is, but states that “the prediction from previous frames (constant angular velocity is assumed) is used to get better results of body *part* localization” and that “Figure 5.5 illustrates how the *left knee* angle

changes with time.” EX1006, 92 (emphasis added). Accordingly, the Board relies on Zhao’s teachings of predicting orientations of a limb (the alleged “component”) in a frame based on motion information of limbs (alleged “components”) obtained from another frame rather than detection of “objects.”

Absent from Zhao’s discussions of motion information on pages 91-93 is any disclosure of probabilities or comparing them to a threshold. Zhao does not teach that “motion information” involves probabilities or the results of comparing them to a threshold. See EX.1006, 91-93. Nor does Zhao teach that “the prediction from previous frames” involves probabilities or the results of comparing probabilities to a threshold—all it says is that “constant angular velocity is assumed.” *Id.* at 92.

In sum, Zhao does not teach that any of the information used from previous frames to predict limb orientations or solve limb ambiguities involves probabilities or the results of comparing probabilities to a threshold. See *id.* at 91-93. That Zhao does not discuss probabilities or comparing them to thresholds anywhere in pages 91-93 makes sense because Zhao’s alleged comparison of a probability to a threshold is for determining whether “the contour C corresponds to a person,” *i.e.*, to the alleged “object.,” not for “predict[ing] the orientations of the limbs and [] solv[ing] [limb] ambiguity. EX1006, 91-93; see Pet. 25-27 (citing EX1006, 54-56, 64-65); ID at 26 (citing Pet. 25-27 and EX1006, 54-56, 64-65).

For the above reasons, the Board’s conclusions that “before comparing the current image to a threshold for detecting the object, Zhao has compared other images to a threshold, and uses the resulting information when comparing the current image to a threshold” and “Zhao teaches detecting the object of a person walking in a plurality of frames by comparing the probabilities of the current image and other images to a threshold” are not supported by Zhao’s teachings on pages 91-93 (*i.e.*, EX1006, 91-93). The Board’s Decision thus relies on clear errors of fact.

D. In view of the matters misapprehended or overlooked, institution should be denied.

In view of these matters misapprehended or overlooked, the Board should find that Petitioners have failed to sufficiently demonstrate that that Zhao teaches element 1[e]. And because each of Petitioners’ Grounds I-III relies on Zhao as allegedly teaching element 1[e], the Board should find that Petitioners have not met their burden of demonstrating a reasonable likelihood of prevailing as to any challenged claim under Grounds I-III. Furthermore, because the Board found that Petitioners did not show a reasonable likelihood that TLP (Petitioners’ Ground IV reference) was published before May 27, 2004, the Board should find that Petitioners have not demonstrated a reasonable likelihood of prevailing as to any challenged claim under any of Grounds I-IV (*i.e.*, all asserted Grounds).

III. CONCLUSION

Patent Owner respectfully requests rehearing and denial of institution.

Case IPR2023-00924

Patent No. 7,436,980

Dated: December 20, 2023

By: / Christine E. Lehman /

Christine E. Lehman

PTO Reg. No. 38,535

Counsel for Patent Owner

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Patent Owner's Request for Rehearing of Institution Decision (the "Request") complies with the type-volume limits of 37 C.F.R. § 42.24 and consists of no more than 15 pages, excluding the table of contents, table of authorities, certificate of service, and this certificate of compliance.

Dated: December 20, 2023

Respectfully submitted,

/Christine E. Lehman/

Christine E. Lehman

PTO Reg. No. 38,535

Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PATENT OWNER'S REQUEST FOR REHEARING OF INSTITUTION DECISION** was served on December 20, 2023, via electronic mail to Meta_VideoLabs@kirkland.com, as agreed to by counsel for Petitioners, upon the following counsel:

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