

PETITION FOR DIRECTOR REVIEW

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG ELECTRONICS, INC. and LG ELECTRONICS U.S.A., INC.
Petitioners,

v.

MULTIMEDIA TECHNOLOGIES PTE. LTD.,
Patent Owner.

Case IPR2024-00353
U.S. Patent No. 9,055,254

**PATENT OWNER REQUEST FOR DIRECTOR
REVIEW OF FINAL WRITTEN DECISION**

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I. INTRODUCTION

Pursuant to 37 C.F.R § 42.75(a), Multimedia Technologies Pte., Ltd. (“Patent Owner”) requests Director Review of the final written decision finding all challenged claims unpatentable in the *inter partes* review (“IPR”) of U.S. Patent No. 9,055,254 (the “254 Patent”). *See* Paper 28 (“Decision” or “FWD”).

That decision rests on fundamental errors of law and abuse of discretion. For example, the Board held that actual dissemination to a single person is sufficient to prove public accessibility.

The Board also held that a non-patent reference was publicly accessible based on a declaration from the Internet Archive. To Patent Owner’s knowledge, there is no precedential decision from the Director or PTAB addressing the issue of whether an Internet Archive declaration establishes public accessibility.

The Director should grant this request for Director Review to provide guidance for the benefit of the Board, patent owners, and petitioners.

II. LEGAL STANDARD

Decisions of the Board challenged under Director Review are reviewed *de novo*. *See* Director Review Process at 5.A.ii.c, Standard of Review. *See* www.uspto.gov/patents/ptab/decisions/director-review-process. (Hereinafter “Director Review Process Guidelines” or “DRPG”).

“Requests for Director Review of a Board’s final decision ... shall be limited to decisions presenting (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.” DRPG, Proceedings under part 42 of 37 C.F.R., at 2B.

III. BACKGROUND

LG Electronics Inc. (“LG” or “Petitioner”) challenged certain claims of the ’254 Patent. The claims of the ’254 Patent are generally directed to improved user interfaces having Electronic Program Guides (“EPGs”) for use with enhanced televisions. POR, 2-8.

Petitioner argued that the claims were unpatentable based on grounds including a non-patent reference named the “WD TV Live Hub Media Center User Manual” (“WD-Manual,” Ex. 1006). Pet., Paper 3, 13.

Petitioner argued that the WD-Manual file was publicly accessible at its URL allegedly located on the www.wdc.com website. See Reply, Paper 20, 8, 10; Sur-reply, 3 (citing POR, 19). As support for this argument, the Board and Petitioner relied on the Declaration of Nathaniel Frank-White of the Internet Archive, Ex. 1012 (“IA declaration”). The IA declaration asserted that the Wayback Machine had archived the WD-Manual at its URL, and several collateral webpages at their URLs, in the 2010-2011 timeframe.

The Board found that WD-Manual was publicly accessible and thus was a prior art printed publication. FWD, 19-25.

IV. ARGUMENT

The Board’s decision reflects multiple legal errors, any one of which justifies reversal, including:

1. The Board’s holding, that actual dissemination to a single person is sufficient to prove public accessibility, is contrary to law and an abuse of discretion.

2. The Board’s analysis on whether a document stored at a location on the Internet is publicly accessible failed to apply the framework established in the Federal Circuit’s *Samsung* and *Acceleration Bay* decisions. FWD, 19-25. For example, there was no evidence of record and no explanation by the Board as to how an interested artisan could locate WD-Manual on the Internet, such as how a person could conduct a search or otherwise navigate from the www.wdc.com website to arrive at WD-Manual.

3. The Board’s determination was based on the IA declaration, which establishes mere “technical accessibility” that a document could be found at its particular URL. The Board overlooked the critical difference between mere “technical accessibility” and public accessibility under governing case law.

Further, the IA declaration submitted by a records processor is completely untethered from the touchstone of the relevant artisan interested in the field of user interfaces with EPGs.

A. Overview of the Board’s Findings on WD-Manual

There are two ways in which a reference can be publicly accessible: [1] actual dissemination to a sufficient number of interested persons, or [2] the reference is otherwise publicly available at a location (e.g., a library or the Internet) such that persons interested in the subject matter of the patent could reasonably locate it exercising reasonable diligence. *Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 772 (Fed. Cir. 2018).

The Board does not clearly state whether the WD-Manual is publicly accessible from actual dissemination or from being publicly accessible on the Internet, or both. Findings (1)-(3) suggest that the Board finds the WD-Manual to be publicly accessible on the Internet. FWD, 21. On the other hand, finding (4) (“at least one user did, indeed, download the WD manual”) and the Board’s statements on pages 22-24 suggest its determination was based on actual dissemination. FWD, 21-24.

Patent Owner shall address each in turn, starting with the alleged actual dissemination of WD-Manual.

B. The Board Erred in Finding Public Accessibility Through Actual Dissemination

The Board erroneously found that WD-Manual was publicly accessible by virtue of actual dissemination to a single person. FWD, 22 (“we find that the WD-Manual qualifies as a prior art printed publication ... because it was disseminated to the interested public”), 24. The Board stated: “LG need not establish that the WD-Manual was publicly accessible by demonstrating that the www.wdc.com webpage was meaningfully indexed, or otherwise searchable, such that interested persons of ordinary skill in the art would be able to locate the WD-Manual on this webpage by exercising reasonable diligence. Rather, ... it was sufficient for LG to establish that the WD-Manual was publicly accessible by **demonstrating its dissemination to the interested public.**” FWD, 24 (emph. added).

The Board’s finding of actual dissemination is based on a product reviewer on the Photography Bay website who possibly obtained a single copy of WD-Manual. The product reviewer stated: “there’s no manual in the box. ... If you are looking for the manual – [here is a link to it.](#)” Ex. 1023, 3. FWD, 25. This indicates that a single person possibly obtained WD-Manual, having learned of its URL in an unknown manner. There is no evidence that any other person downloaded a copy of WD-Manual from the Ex. 1023 webpage or any other webpage. It is well settled that the distribution of a single copy of a reference does not establish actual

dissemination. *See, e.g., In re Cronyn*, 890 F.2d 1158, 1159-60 (Fed. Cir. 1989) (copy to four persons is insufficient); *In re Bayer*, 568 F.2d 1357, 1360-61 (C.C.P.A. 1978) (copy to three persons is insufficient). Sur-reply, 12. Finding actual dissemination based on the receipt of a copy by one person was an abuse of discretion and contrary to law.

The Board also makes related factual findings that are not supported by the record and that constitute an abuse of discretion. The Board asserts that Ex. 1023 shows that the “WD-Manual was actually **found online** by an interested person.” FWD, 25 (emph. added). The Board’s assumption is that the product reviewer searched the Internet and located the reference. However, the product reviewer only states that WD-Manual was not included with the product, and he provides a link to it. Ex. 1023, 3. He does not state or suggest that he searched online for WD-Manual and was able to locate it. For example, the product reviewer may have contacted the manufacturer, or vice-versa, and received an email with the URL. There is no evidence that the product reviewer located the reference by searching the www.wdc.com website or any other website. The Board’s conclusion is unsupportable because it is based on pure speculation instead of articulated reasoning tied to evidence. *In re Stepan Co.*, 868 F.3d 1342, 1346 (Fed. Cir. 2017) (Board must provide articulated reasoning with rational underpinnings that explain

its conclusions); *In re Warsaw Orthopedics, Inc.*, 832 F.3d 1327, 1335 (Fed. Cir. 2016) (PTAB must provide “reasoned explanation to support its conclusions”).

Additionally, the Board vaguely refers to the product reviewer as an “interested person.” The product review is on Photography Bay, which is a *photography hobbyist* website. See Ex. 1023. A photography hobbyist is not an artisan interested in user interfaces with EPGs, the relevant field at issue for the ’254 Patent. Sur-reply, 12. The Board’s insinuation that the product reviewer was a relevant artisan for this patent is unsupportable.

Accordingly, Ex. 1023 at most demonstrates that a single person, who was not a relevant artisan, obtained a copy of WD-Manual. It does not establish public accessibility via actual dissemination. *In re Cronyn*, 890 F.2d at 1159-60; *In re Bayer*, 568 F.2d at 1360-61.

C. The Board Erred in Finding Public Accessibility Based On the IA Declaration, Which Pertains to Mere Technical Accessibility

The Board’s decision was based on the IA declaration in which Mr. Nathaniel Frank-White, a records processor, verified that WD-Manual was archived at a fifth-level URL (www.wdc.com/wdproducts/library/UM/ENG/4779-705046.pdf), in December 2010. IA Decl., 2. He also verified that several collateral webpages (Ex. 1020, 1022, 1023-1024) discussed in Section IV.D.2 below were archived at various URLs.

In relying on the IA declaration, the Board failed to appreciate the difference between the mere “technical accessibility” of a document on the Internet with its “public accessibility” within the meaning of the law on printed publications.

Samsung Electronics Co. Ltd. v. Infobridge Pte. Ltd., 929 5.3d 1361, 1369 (Fed. Cir. 2019) (fact that reference was uploaded to a website means that “someone could theoretically find it on the Internet,” whereas “we explained that ‘public accessibility requires more than technical accessibility’”) (citing *Acceleration Bay*); *Acceleration Bay*, 908 F.3d at 773 (storage of reference on a website is insufficient because “‘public accessibility’ requires more than technical accessibility”); *First Solar, Inc. v. Sade*, IPR2023-00881, Paper 13 (PTAB Nov. 16, 2023), 2023 WL 7923924, at *7 (Internet Archive declaration only “make[s] a showing that [reference] was technically accessible” but “‘public accessibility requires more than technical accessibility.’”) (citing *Samsung*).

A person pre-informed of a reference’s URL can, of course, locate the reference on the Internet—that is mere “technical accessibility.” *Samsung*, 929 5.3d at 1369. Public accessibility, on the other hand, exists when an artisan interested in the relevant field—and who is not pre-informed of the reference’s URL—could reasonably find the reference such as by conducting a search on the Internet or a website. *Samsung*, 929 5.3d at 1369; *Acceleration Bay*, 908 F.3d at

773-74.

The IA declaration goes only to technical accessibility: it indicates that a person pre-informed of the WD-Manual's URL could obtain the reference.¹ The IA declaration provides no evidence that a search could be conducted on the www.wdc.com website or any other website to locate WD-Manual. IA Decl., ¶¶ 1-8. *First Solar*, 2023 WL 7923924 at *6-7 (IA declaration does not establish public accessibility) (citing *Samsung*). Similarly, the IA declaration provides no evidence that a search could be performed to locate any of the collateral webpages discussed in Section IV.D.2.

In short, the IA declaration does not establish that WD-Manual was publicly accessible, and the Board's reliance on it for that conclusion is an error of law.

D. The Evidence Did Not Establish Public Accessibility Via the Internet

¹ In essence, the IA declaration at most establishes authenticity, i.e., that the proffered webpage was located at its specified URL at a specified time. See Fed. R. Evid. 901(a).

1. WD-Manual Was Not Publicly Accessible Via the Western Digital Website

The Board suggests that WD-Manual was publicly accessible on the Internet via the Western Digital website at www.wdc.com. FWD, 21, 24-25.

The Federal Circuit has held that establishing public accessibility using a first website allegedly providing a “pathway” to a reference requires a two-prong showing: (1) the first website was itself publicly accessible in that an interested artisan would “have independently been aware of [the website]” or “could have reasonably found the [website],” and (2) once at the website, an interested artisan could reasonably locate the reference such as from the website being “*meaningfully* indexed such that an interested artisan exercising reasonable diligence would have found” the reference. *Samsung*, 929 F.3d at 1369. *See Blue Calypso, LLC v. Groupon, Inc.* 815 F.3d 1331, 1350 (Fed. Cir. 2016); *First Solar*, 2023 WL 7923924 at *7. Sur-reply, 4-8.

The Board does not even apply the *Samsung* framework to the www.wdc.com website. The Board does not attempt to establish that the www.wdc.com website was known to or could be reasonably located by an artisan interested in user interfaces with EPGs. Indeed, the Board does not establish that the www.wdc.com website could be obtained other than by telling the user its URL in advance. As with *Samsung*, the Board does “not offer evidence ... that a person

of ordinary skill, exercising reasonable diligence, would have located the [www.wdc.com] website or even known to look for it.” *Id.* at 1372.

The Board does not establish the second prong of *Samsung* because there is no explanation and there is no evidence that an interested artisan, once at the www.wdc.com website, could search or otherwise reasonably navigate it to arrive at WD-Manual. As with *Samsung*, “a person who found the [www.wdc.com] website lacked a reasonable way of locating the [WD-Manual] reference unless they already knew what to look for and where to look for it.” *Samsung* at 1372. See IA Decl., ¶¶ 1-8.

For example, the IA Declaration provides no evidence that WD-Manual was indexed or cataloged or searchable on the www.wdc.com website. It provides no evidence that the www.wdc.com website itself was indexed or cataloged or searchable in any way. The IA declaration also provides no evidence explaining the structure and layout of the www.wdc.com website. IA Decl., ¶¶ 1-8. In sum, the IA declaration provides no evidence that any user—let alone the relevant artisan interested in user interfaces with EPGs— could search or reasonably navigate the www.wdc.com website to locate WD-Manual. Reply, 9-10; FWD, 17. See POR, 18-20; Sur-reply, 3-8.

The Board’s assertion that “the www.wdc.com webpage was organized in such a manner that the interested public was capable of accessing the WD-Manual via a URL” (FWD, 21) is incorrect and off the mark. First, that the reference could be accessed “via [its] URL,” if provided to the user in advance, goes to technical accessibility, not public accessibility. *Samsung*, 929 F.3d at 1369. Second, there is no evidence, let alone any explanation by the Board, as to how the www.wdc.com webpage was allegedly organized. Third, the Board’s implication that WD-Manual could be reasonably located on the www.wdc.com website is not supported by evidence, let alone articulated reasoning tied to such evidence. *Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1045-46 (Fed. Cir. 2017). The Board gives no examples and no explanation as to how an interested artisan would go about locating WD-Manual—other than by being given the answer (i.e., its URL) in advance.

Finally, the Board’s analysis is also defective because it is completely untethered to the relevant artisan interested in the field of *user interfaces with EPGs*. See POR, 19-20; Sur-reply, 4, 12; FWD, 15. Mr. Nathaniel Frank-White is a records processor at the Internet Archive. IA Decl., ¶ 1. It is undisputed that he is not an artisan in the relevant field and that he does not provide any testimony pertaining to such an artisan. Sur-reply, 4-5 (citing Petitioner’s Reply, 8-9); FWD,

19-20 (Mr. Frank-White is a “Records Request Processor at the Internet Archive.”).

In sum, the IA declaration does not establish WD-Manual as being publicly accessible.

2. WD-Manual Was Not Publicly Accessible Via the Collateral Webpages

The Board also relied on a handful of collateral documents as allegedly providing a pathway to WD-Manual. These documents include: (1) a press release webpage on the Western Digital website (Ex. 1020), (2) a WD TV Live Hub webpage on the Western Digital website (Ex. 1022), (3) a product review webpage on the Photography Bay website (Ex. 1023), and (4) a sales listing on the B&H Photo website (Ex. 1024). FWD, 19-25.

But the Board fails to make the requisite showing that any of the collateral webpages are themselves publicly accessible such that an interested artisan would “have independently been aware of” the webpage or “could have reasonably found” the webpage. *Samsung*, 929 F.3d at 1369. *See Blue Calypso*, 815 F.3d at 1350. In short, the Board fails to establish the first prong of *Samsung* for these webpages.

The Board’s citation to the IA declaration for these webpages does not meet the *Samsung* test. Mr. Nathaniel-White provides no testimony on whether a

relevant artisan would have known of any of these webpages or could have reasonably located them. See IA Decl., ¶¶ 1-8. His declaration only establishes technical accessibility of the webpages at their URLs. *Samsung*, 929 F.3d at 1369.

For example, the URL for Ex. 1020 (Western Digital press release) is: www.wdc.com/en/company/pressroom/releases.aspx?release=f53cc823-7874-41b1. IA Decl., 16. Other than citing the IA declaration, the Board cites no evidence showing that Ex. 1020 was publicly accessible and does not explain how the relevant artisan would locate this webpage or already have knowledge of it. *Samsung*, 929 F.3d at 1369.

The URL for Ex. 1022 (WD TV Live Hub webpage) is: www.wdc.com/wdproducts/library/?id=254&type=25. IA Decl., 19. The Board asserts that “the interested public was provided with the ability to download the WD-Manual” from this webpage (FWD, 21), but there is no showing that the relevant artisan could reasonably locate this webpage in the first instance. *Samsung*, 929 F.3d at 1369. The Board only cites the insufficient IA declaration. FWD, 20.

The URL for Ex. 1023 (Photography Bay product review webpage) at photographybay.com is identified in the IA declaration. IA Decl., 4. The Board cites the IA declaration but makes no showing that a skilled artisan could

reasonably locate this webpage or would have knowledge of it. *Samsung*, 929 F.3d at 1369. The Board asserts that the webpage shows that the reference was accessible to the “interested public” (FWD, 20), but the Photography Bay website—directed to *photography hobbyists*—would not be of interest to artisans interested in *user interfaces for enhanced televisions*. Patent Owner made this point in its papers. Sur-reply, 12. The Board did not dispute that Ex. 1023 was not directed to the relevant artisan.

V. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests Director Review of the Board’s decision.

Respectfully submitted,

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Date: May 23, 2025

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITS

This paper contains 15 pages, excluding table of contents, table of authorities, certificate of service, this certificate, or table of exhibits. This paper complies with the type-volume limitation of 15 pages as mandated in 37 C.F.R. § 42.24(a)(1)(v).

Respectfully submitted,

/James T. Carmichael/

Date: May 23, 2025

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following document was served on the Petitioner by electronic service, by agreement between the parties, on the date below:

**PATENT OWNER REQUEST FOR DIRECTOR REVIEW
OF FINAL WRITTEN DECISION**

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