

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIAnt TECHNOLOGY LLC,
Petitioner,

v.

INTENT IQ, LLC,
Patent Owner.

IPR2024-00422
Patent 7,861,260¹

**PATENT OWNER’S RESPONSE TO PETITIONER’S BRIEF (PAPER 39)
REGARDING “CONTRACTED TO...”
LIMITATIONS OF CLAIMS 121 AND 146**

¹ Viant Technology LLC was joined as a party to this proceeding via a Motion for Joinder in IPR2025-00129.

I. Petitioner does not defend its prior interpretation of “contracted to....”

In the Petition, Petitioner argued that TV ads were TV ads not by virtue of being “*suitable for*” display on a TV, but by virtue of *actually being provided to a STB*. Pet. 27 (“***By providing Baig’s advertisements to a STB*** for presentation on a television, ***such advertisements constitute ‘television advertisements....’***”). And Petitioner’s claim 121 and 146 theory was that an advertiser “contracted to display a TV ad” if a contract results in an ad that is “displayed on a television.” Pet. 50–51.

The POR addressed this theory, noting that “the Petition provides no evidence that Baig... renders obvious advertisers contracting to display a ***TV ad***... because Baig does not contemplate its website being ***displayed on a TV***.” POR 2; *id.* at 17–18 (noting that under Petitioner’s theory, there was no contract to display TV ads).

Petitioner’s Reply doubled down on “TV ad” as meaning an ad that “***would***” (not “***could***”) be displayed on a TV. *See* Reply at 17 (“As explained in the Petition, because Baig’s [advertisements] ***would*** be provided ‘to [a] STB for presentation on a television,’ these advertisements are TV ads....”) (cleaned up). Petitioner also disagreed with Patent Owner’s plain meaning interpretation of “contract[] to display a TV ad” the Board asked the parties to address and instead argued that the contract could be “completely agnostic as to whether any TV ads were displayed,” because an interpretation to the contrary would supposedly “read[] additional limitations into the claims.” *Id.* Of course, if Petitioner’s theory really ***was*** that TV ads are defined

as ads “suitable for” display on a TV (which Petitioner at the hearing alleged include *all* of Baig’s advertisements), Petitioner would have argued that Baig’s contracts were *not* “agnostic to whether TV ads are displayed,” on the theory that Baig’s contract is for display of ads on Baig’s website (*all* of which are now allegedly “TV ads”). Petitioner, however, waived that argument and instead chose to argue that Baig’s contracts *were* agnostic as to the display of TV ads (i.e., agnostic to ads being displayed on a TV under Petitioner’s pre-hearing interpretation).

In post-hearing briefing, Petitioner does not even attempt to defend its pre-hearing interpretation that a “contract[] to display a TV ad” can be agnostic as to whether TV ads are displayed, thus conceding the weakness of that interpretation.

II. Petitioner’s belated construction of “TV ad” is untimely and waived.

The Board’s regulations make clear that the Board is “obligated to dismiss” an argument as untimely if it is “raised for the first time during oral argument.” *Dell Inc. v. Accelaron, LLC*, 884 F.3d 1364, 1369 (Fed. Cir. 2018) (quoted by Consolidated Trial Practice Guide at 84). The Board’s Order for supplemental briefing is not a waiver of this requirement; it instead makes clear that the Board will consider only “theories presented in the briefing *before* the hearing.” Paper 38 at 2.

Here, regardless of any merit of Petitioner’s newly alleged construction of “TV ad,” Petitioner did not argue *before* the hearing that “TV ad” should be construed as “any ad suitable for display on a television.” *See* Pet. 6 (no

constructions);² *see generally* Pet. & Reply (no mention of “suitable for...”); *see also* Section I, *supra* (summary of Petitioner’s theory that claims 121 / 146 are satisfied by contracts agnostic to display of TV ads). Tellingly, despite quoting the specification’s disclosure of ads “suitable for” TV display **six** times in just 5 pages of post-hearing briefing (Paper 39), Petitioner’s pre-hearing briefing did not **once** quote that disclosure, and applied a different meaning of “TV ad.” *See* Section I, *supra*. Petitioner also now argues an ad “presented by a set-top box” is “necessarily” an ad “suitable for” presentation by a TV under Petitioner’s new construction (Paper 39 at 3), which argument was never articulated **before** the hearing.

Because Petitioner did not present its current interpretation of “TV ad” or any invalidity theory applying that interpretation before the hearing, those arguments are waived. And for the same reasons, any other invalidity theories presented for the first time at the hearing (such as theories regarding contracts for ads displayed on a “billboard” at “Times Square,” which were not part of Petitioner’s pre-hearing combination of references) are also waived.

² Petitioner at the hearing implied that a **citation** to the alleged specification definition, with no argument regarding its meaning, was sufficient. But as Patent Owner pointed out, Petitioner’s pre-hearing briefing never substantively addressed that disclosure, and applied a very different understanding regarding its meaning.

IPR2024-00422 PO's Responsive Supplemental Brief
Patent 7,861,260

Date: September 18, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e)(1))

The undersigned hereby certifies that the above document was served on September 18, 2025, by filing this document through the Patent Trial and Appeal Case Tracking System as well as delivering a copy via electronic mail upon the following attorneys of record for the Petitioners:

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