UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

ENTROPIC COMMUNICATIONS, LLC,
Patent Owner.

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Case IPR2024-00438
Patent 11,399,206

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**PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW**

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| EXHIBIT LIST | |
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| 2001 | Table Of Parallel Petitions Filed By All Petitioners (July 16, 2019-June 29, 2024) [All-Parallel-Petitions] |
| 2002 | Table of All Petitions Filed By Comcast (As Petitioner or RPI) (2016-2024) [All-Comcast-Petitions] |
| 2003 | PTAB Multiple Petitions Study [Multiple-Petitions-Study] |
| 2004 | PTAB Multiple Petitions Study Executive Summary [Executive-Summary] |
| 2005 | FreeWheel About Webpage (www.freewheel.com/about) |
| 2006 | Declaration of Kenneth K. Wang [Wang-Decl.] |
| 2007 | Pro Hac Vice Declaration of Nathan Lowenstein [PHV-L] |
| 2008 | Pro Hac Vice Declaration of Colette Woo [PHV-W] |
| 2009 | Declaration of Samuel H. Russ, Ph.D. [Russ-Decl.] |
| 2010 | Curriculum Vitae of Samuel H. Russ, Ph.D. [Russ-CV] |
| 2011 | European Patent Application No. 02759732.7.2415 Communication From Examining Division [EPO-Communication-Annex] |
| 2012 | European Patent Application No. 02759732.7.2415 Reply To Communication From Examining Division [Zhang-EPO-Reply] |
| 2013 | European Patent Application No. 02759732.7.2415 Intent To Grant European Patent [EPO-Grant-Intent] |
| 2014 | Reserved |
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| 2017 | Reserved |
| 2018 | David Lett 1st Deposition Volume I [Lett-1st-Depo.-Volume-I] |
| 2019 | David Lett 1st Deposition Volume II [Lett-1st-Depo.-Volume-II] |
| 2020 | IPR2024-00432, Exhibit 1002, Declaration of David Lett [IPR2024-00432-Lett-Decl.] |
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## I. INTRODUCTION

Patent Owner respectfully requests that the Director grant review of the Final Written Decision because the Board failed to reconcile its decision finding the claims unpatentable with a reexamination determination confirming substantially similar claims, in violation of the Director's recent guidance. Patent Owner did not raise the arguments in this Request before the Board because the Director's guidance was issued shortly prior to the issuance of the Final Written Decision, and after oral argument and close of all briefing, and the arguments raised herein were not demonstrably relevant under the Office's policy at those times. For example, it was not demonstrably relevant that the Zhang Patent identified to the Examiner in the reexamination contains the same disclosure as the Zhang application relied upon by the Board here. Nor was it demonstrably relevant to show that the arguments accepted in other Office proceedings are similar to the arguments rejected by the Board here. A similar Director Review Request is being filed in each of IPR2024-00432 and IPR2024-00435, which concern patents with a common specification and substantially similar claims.

On September 16, 2025, the Director issued a Memorandum titled "*PTAB Consideration Of Prior Findings Of Fact And Conclusions Of Law*" ("Memorandum"). The Memorandum provides that the Board should reconcile its decisions with prior, contrary determinations of fact or law made by the Office in

post-grant proceedings of patents with substantially similar claims, with a more detailed explanation required when both proceedings rely on "substantially the same evidence and/or arguments." Memorandum, 1.

The Board in this proceeding determined that Ex 1013 ("Zhang") alone discloses the relevant limitations of the independent claims requiring "selecting each of the plurality of desired channels." Paper 46 [FWD] 19. But Zhang and arguments similar to those adopted by the Board were previously considered and rejected by the Office in connection with similar limitations. *See* Section II, *infra*.

In the Reexamination of U.S. Patent 9,210,362, which shares a common specification and substantially similar claims with the '206 patent, Zhang was presented to the Office. The Examiner found that "the art of record" fails to show "select[ing] plurality of desired television channels from the digitized plurality of frequencies and output the selected plurality of television channels to a demodulator as a digital stream." Ex. 1082, 6; *see* Section II.B, *infra*. The Examiner likewise found persuasive Patent Owner's argument that another reference failed to disclose the claims because it only selected "ranges of frequencies containing the desired channels." *See* Section II.B, *infra.*

The Office also rejected Zhang and arguments similar to those adopted by the Board here during the prosecution of U.S. Pat. 11,785,275, which shares the same specification and substantially similar claims with the '206 patent, and which

occurred after the issuance of the ’206 patent. During the prosecution of the ’275 patent, the Examiner, after considering Zhang, determined that the prior art of record did not disclose the claimed step of selecting desired channels because the prior art instead used a demultiplexer to separate an input signal into its constituent channels. *See* Section II.C, *infra*. The distinction the Examiner accepted in the prosecution of the ’275 patent is substantively identical to Patent Owner’s argument here—that Zhang does not “select” any channels, but merely demultiplexes the input signal into its constituent channels. Paper 45 [FWD] 17 (reciting Patent Owner’s arguments).

The Board failed to acknowledge, let alone explain, any of the above prior findings by the Office. Thus, Patent Owner respectfully requests that the Director grant review of the Final Written Decision and remand this matter to the Board for issuance of a decision consistent with the Memorandum.

## II. THE BOARD ERRED BY FAILING TO ADDRESS THE OFFICE’S PRIOR CONTRARY FINDINGS AS REQUIRED BY THE DIRECTOR’S MEMORANDUM.

As noted, on September 16, 2025, the Director issued a Memorandum titled “*PTAB Consideration Of Prior Findings Of Fact And Conclusions Of Law*” (“Memorandum”). The Memorandum provides that when a patent with “substantially similar” claims to the patent under review has been adjudicated in another post-issuance proceeding, then:

> if the Board reaches an initial or final decision on a finding of fact or conclusion of law that is different than the prior finding or conclusion of the Office, district court, or the ITC, ***the Board shall explain in the institution or final written decision why a different outcome is warranted***. ***A more detailed explanation is required*** from the Board ***when the same or substantially the same evidence and/or arguments that were previously presented to the Office***, the district court, or the ITC ***are being relied upon in the subsequent AIA trial proceeding***.

Memorandum, 1.

The Board in this proceeding found all claims of the ’206 patent unpatentable. As relevant here, the Board found that Ex 1013 (“Zhang”) alone discloses independent claim 1’s limitation that “concurrently ***selecting*** each of the plurality of ***desired channels*** from the input signal without selecting any of the plurality of undesired channels.” Paper 45 [FWD] 17-21. The Board likewise concluded that similar limitations in the remaining independent claims are also disclosed by Zhang alone. *Id*., 30-31.

Both Zhang and arguments similar to those accepted by the Board here were previously presented to, and rejected by, the Office, including in the post-grant proceeding involving the ’362 patent, which shares the same specification and substantially similar claims to the ’206 patent. The Board’s Final Written Decision, however, failed to address any of the Examiner’s prior contrary findings

or to reconcile them with the Final Written Decision, as required by the Memorandum. These points are discussed in more detail below.

### A. A Patent With Substantially Similar Claims To The Patent At Issue Here Was The Subject Of An Adjudicated Post-Grant Proceeding.

U.S. Patent No. 11,399,206, at issue in this proceeding, shares a common specification and substantially similar claims with U.S. Patent 9,210,362. As relevant here, both claims 1 of the ’362 and the ’206 patents receive frequencies “comprising a plurality of desired [television] channels and a plurality of undesired [television] channels,” and require “select[ing] [said]/[each of the] plurality of desired [television] channels.” For both patents, the Board in this Final Written Decision here and a similar final written decision concerning the ’362 patent relied upon Zhang’s Demultiplexer 230 outputting channels $C_1$-$C_n$ as “select[ing] desired channels.” [1]

On September 20, 2023, a request for *ex parte* reexamination of the ’362 patent was filed with the Office. On November 1, 2023, reexamination was ordered by the Office. On February 10, 2025, the Office issued a Notice of Intent

[1] Petitioner challenged the ’362 patent in the concurrently filed IPR2024-00432, relying on the same Zhang reference and on similar arguments at issue here, confirming the similarity of the claims of the ’362 and ’206 patents.

to Issue Reexamination Certificate. Ex. 1082, 3-11. On April 1, 2025, the Office issued a Reexamination Certificate, confirming the patentability of all claims 1-20 of the ’362 patent. *Id*., 1-2.

The Parties identified the *ex parte* reexamination of the ’362 patent to the Board on multiple occasions. Patent Owner identified the ’362 patent as a “related patent” in its mandatory notices. *See*, *e.g*., Paper 4 [Mandatory Notices] 3. The parties identified the Reexamination in an email to the Board on September 25, 2025. In addition, the Petition in IPR2024-00432, which challenges the ’362 patent, identified the Reexamination. The IPR2024-00432 petition was filed on the same day as the instant IPR2024-00438 petition, and both proceedings were heard together in a consolidated hearing before the Board.

Thus, a patent with substantially similar claims to the patent at issue in this proceeding was the subject of a post-grant adjudication by the Office.

### B. The Zhang Patent Was Considered During The Post-Grant Proceeding Of The ’362 Patent.

While the Memorandum requires an explanation by the Board anytime it reaches a conclusion of fact or law contrary to the ones reached in other post-grant proceedings of patents with substantially similar claims, the Memorandum specifically requires that “[a] more detailed explanation is required from the Board when the same or substantially the same evidence and/or arguments that were

previously presented to the Office … are being relied upon in the subsequent AIA trial proceeding." Memorandum, 1. As explained in this section, because the Zhang Patent was listed in an IDS and initialed by the Examiner, the same prior art was previously presented to the Office and considered by the Examiner. Patent Owner did not present the arguments raised herein to the Office because the Memorandum was issued after the oral argument and close of all briefings, and just days before the issuance of the Final Written Decision, and the arguments raised herein did not have demonstrable relevance at the time of briefing before the Board. For example, it was not demonstrably relevant that the Zhang Patent identified in an IDS in the reexamination contains the same disclosure as the Zhang application that forms the basis of the Board's decision here.

During the Reexamination of the '362 patent, Patent Owner identified, and the Examiner considered, a Zhang reference ("Zhang Patent") with substantially identical disclosure to the Zhang reference that was the basis of the Final Written Decision here. Specifically, during Reexamination, Patent Owner listed U.S. Pat.

6,704,372 [Zhang-Patent] in an IDS. Application No. 90,019,255, *Information Disclosure Statement* (June 18, 2024) at 3.[2]

The Zhang Patent submitted by the Patent Owner in the IDS is the patent that issued from the same application that published as the Zhang reference relied upon by the Board here. Ex. 1013 [Zhang] 1 (Appl. No.: 09/956,479); U.S. Pat. No. 6,704,372 [Zhang-Patent] (Appl. No.: 09/956,479). Both the Zhang Patent submitted by the applicant in the IDS and the Petition's Zhang reference have substantially identical disclosures. *Compare generally* Ex. 1013 [Zhang] *with* U.S. Pat. No. 6,704,372 [Zhang-Patent].

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[2] On October 23, 2025, Patent Owner sought authorization from the Director to file as exhibits supporting its Director Review Request the USPTO documents referenced in this Request. *See* Exhibit 3100. Patent Owner's request was denied and, consequently, Patent Owner has not filed those documents as exhibits. Patent Owner does not understand the denial of authorization to file additional exhibits as precluding discussion of the underlying facts. Furthermore, the Director is empowered to take official notice of documents from proceedings before the USPTO should the Director deem that necessary and appropriate. 37 C.F.R. § 42.62(c); Fed. Rule Evid. 201; 5 U.S.C. § 556(e).

The Examiner stamped every page of the IDS, including the page listing the Zhang Patent, confirming consideration of the Zhang Patent. Application No. 90,019,255, *Signed Information Disclosure Statement* (July 31, 2024) at 3.

Identification of the Zhang Patent in the IDS is sufficient to show that the same prior art references were previously presented to the Office. When a reference was previously identified in an IDS, "the same or substantially the same prior art or argument previously was presented to the Office." *Ecto World LLC and SV3, LLC v. Rai Strategic Holdings, Inc*., IPR2024-01280, Paper 13, 3-4 (May 19, 2025). The same rationale should apply here.

Thus, the same Zhang reference was previously presented to the Office.

### C. The Board Erred By Failing To Reconcile Its Decision With The Contrary Conclusions Of The Reexamination.

The Board in its Final Written Decision determined that Zhang alone, unmodified, discloses "concurrently selecting each of the plurality of desired channels from the input signal without selecting any of the plurality of undesired channels." Paper 45 [FWD] 14-28. In reaching this conclusion, the Board rejected Patent Owner's argument that Zhang's relied upon channels $C_1$-$C_n$ are not "desired channels." *See, e.g*., *id*. 17-19. This determination stands in sharp contrast to the Examiner's conclusion in the Reexamination that the prior art of record, including

Zhang, failed to disclose a similar limitation to the one the Board found to be disclosed by Zhang.

In the ’362 patent Reexamination, the Examiner, subsequent to its consideration of the Zhang Patent, issued a notice of intent to issue reexam certificate, explaining that:

> ***the cited prior art of record fails to teach*** the system and method as disclosed in claims 1 and 11, comprising … a digital circuit (interpreted as element 230 in Figure 2 and also described in column 5, lines 49-60) to ***select plurality of desired television channels*** from the digitized plurality of frequencies and output the selected plurality of television channels to a demodulator as a digital stream.

Ex. 1082, 6; *see also* Application No. 90,019,255, *Signed Information Disclosure Statement* (July 31, 2024) at 3 (identifying Zhang patent).

The Examiner’s finding that Zhang does not disclose the claims is not an isolated determination, but a continuation of other instances where the Office—by different examiners—has found Zhang or similar disclosures to not disclose similar limitations. For example, in the same Reexamination of the ’362 patent, the Examiner accepted Patent Owner’s argument that the McNeely reference that selected “ranges of frequencies containing the desired channels” failed to disclose the claims. Application No. 90,019,255, *Non-Final Rejection* (August 7, 2024) at 10-11.

The Office has also expressly reviewed and rejected the Zhang Patent in yet another instance. U.S. Pat. 11,785,275 also shares the same specification with the ’206 patent, and similarly recites, in its claim 1, “selecting, by a digital frontend (DFE) … the plurality of desired channels from the digitized signal.” During prosecution of the ’275, conducted after the issuance of the ’206 patent at issue here, Patent Owner identified the Zhang Patent in an IDS. Application No. 17/956,889, *Information Disclosure Statement* (August 16, 2023) at 1. In the Notice of Allowance, the Examiner expressly confirmed consideration of that IDS containing the Zhang Patent. Application No. 17/956,889, *Notice of Allowance* (August 28, 2023) at 7 (“The prior art comprising Information Disclosure Statements filed 16 August 2023 and 18 August 2023 was considered by the Examiner in view of the instant application.”). The Examiner then determined that the prior art of record did not disclose the claimed step of selecting desired channels, but instead used a demultiplexer to separate an input signal into its constituent channels. Application No. 17/956,889, *Notice of Allowance* (August 28, 2023) at 7. The argument the Examiner accepted in the prosecution of the ’275 patent is substantially similar to the argument advanced by Patent Owner in the instant IPR, *i.e.*, that Zhang does not “select” any channels but instead demultiplexes the input signal into its constituent channels. Paper 45 [FWD] 17-18 (reciting Patent Owner’s arguments).

The Board did not address any of the above prior, and contrary, Office determinations in its Final Written Decision. In fact, given that the same Zhang reference was previously presented to the Office, the Board was required to provide an even "more detailed explanation." Thus, the Final Written Decision failed to comply with the procedure set forth in the Memorandum.

## III. CONCLUSION

For the aforementioned reasons, Patent Owner respectfully requests that the Director grant review and reverse the Final Written Decision.

Respectfully submitted,

/ Parham Hendifar /

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LOWENSTEIN & WEATHERWAX LLP

Date: October 31, 2025

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following documents were served by electronic service, by agreement between the parties, on the date signed below:

**PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW**

The names and addresses of the parties being served are as follows:

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Respectfully submitted,

/ Parham Hendifar /

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