UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

ENTROPIC COMMUNICATIONS, LLC,
Patent Owner.

Case IPR2024-00438
Patent 11,399,206

AUTHORIZED RESPONSE TO PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

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I. INTRODUCTION

Requests for Director Review of a Board's final decision are "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." U.S. Patent & Trademark Office, Director Review Process, https://www.uspto.gov/patents/ptab/decisions/director-review-process (last visited Nov. 3, 2025) (describing, in Section 2.B, availability of Director Review for proceedings under part 42 of 37 C.F.R.). Patent Owner does not allege an abuse of discretion, an important issue of law or policy, or an erroneous finding of material fact or conclusion of law. Rather, Patent Owner only argues that, under Acting Director Stewart's September 16 memorandum (the "Memorandum"), the Board was obligated to provide in the Final Written Decision (FWD) a more detailed explanation of how the Board reached a different finding of fact with respect to Zhang (U.S. Pat. App. Pub No. 2003/0056221 A1), the primary reference in the IPR, than was allegedly reached in U.S. Reexamination App. No. 90/019,255 of related U.S. Pat. No. 9,210,362 (the "'362 Reexamination") or in the prosecution of related U.S. Pat. No. 11,785,275 (the "'275 Patent"). Patent Owner claims ignorance in not previously raising this issue with the Board, arguing that "the arguments raised herein were not demonstrably relevant under the Office's policy at those times [prior to the Final Written Decision]." Request at 1.

Patent Owner's claim of ignorance regarding the relevance of its arguments flies in the face of the Board's September 19 order, which required the parties to respond to the Memorandum, and the parties' subsequent response on September 26 that provided all potentially relevant evidence. Furthermore, regardless of Patent Owner's claims, the Board's findings regarding Zhang are not contrary to any prior findings by the Office, as the Office did not address Zhang in those proceedings. Therefore, the Board was not required to provide additional explanation under the Memorandum.

Specifically, the Patent Owner states only that Zhang, or a different patent (U.S. Pat. No. 6,704,372) related to Zhang (the "Zhang '372 Patent"), was cited along with other prior art in IDSs in the previous proceedings, and that the Examiner stated that the prior art of record failed to disclose the feature in the claim elements at issue. The Examiner in each case did not directly address or provide any findings of fact regarding Zhang or the related Zhang '372 Patent, and therefore, there is nothing for the Board to address. This is especially not surprising regarding the '362 Reexamination, where it appears from the publicly available file wrapper that the

Patent Owner only cited the related Zhang ’372 Patent and did not cite Zhang or the related IPR papers even after informing the Board that they would do so.[1]

To the extent the Board was obligated to provide a more detailed explanation of why it reached a different conclusion about Zhang than the Examiners purportedly did in reexamination and prosecution, the Board already did so. As the Examiners were silent about Zhang and the Zhang ’372 Patent, it is possible they simply overlooked its relevance since the IPR papers explaining their significance were not submitted. And, if they did consider and dismiss Zhang or the related Zhang ’372 Patent, their reasons for doing so are not in the record and unknowable. Thus, the only action the Board could have taken was to review Zhang *de novo* during the IPR. That is exactly what the Board did, providing a detailed explanation (as required in the Memorandum) of how Zhang disclosed every feature of the independent and other claims of the challenged patent.

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[1] The Director denied Patent Owner’s request to submit new evidence into the record on October 29, 2025. Ex. 3100. Because the file wrappers of the ’362 Reexamination and the ’275 Patent cited by Patent Owner are not of record, they should not be considered. Petitioner cites to this information only to rebut Patent Owner’s arguments and does not concede that it was proper for Patent Owner to rely on evidence not of record.

II. The Board Required Patent Owner to Respond to the September 16 Memorandum Before the Final Written Decision, and Patent Owner Filed Everything It Thought Responsive at That Time.

Patent Owner's assertion that the information in the Request was not demonstrably relevant before the Final Written Decision (FWD) under the Memorandum is disingenuous at best. The Board expressly *required* the parties to provide any relevant information in its September 19 order (Paper No. 44), and the parties jointly filed (Exhibits 1082-1085) what each party identified as relevant on September 26, 2025 (prior to the FWD). Indeed, in an email to the undersigned counsel prior to that joint filing, Patent Owner stated: "It is patent owner's understanding that no relevant developments have occurred, and no relevant documents exist to be filed." Ex. 3100 at 1-2.

The Director's guidance has not changed since Patent Owner responded on September 26, and Patent Owner does not explain any change of circumstance that makes the issues it attempts to raise in its Request more relevant now than when it was obligated to raise them with the Board. Thus, Patent Owner's representations in this Request about what might be relevant directly contradict its representations to the Board when the Board asked for such information.

If the information Patent Owner now presents was relevant, Patent Owner was obligated to provide it to the Board while the IPR was pending. Even before the Memorandum, Patent Owner had the opportunity to argue that Petitioner's

arguments were rejected in other Office proceedings. Patent Owner's sur-reply was filed on May 30, 2025, almost two months after the reexamination certificate was issued in the '362 Reexamination on April 1, 2025, and Patent Owner's Response was filed on January 14, 2025, more than a year after the '275 Patent issued on October 10, 2023. Patent Owner failed to do so, because there is no basis for arguing that the Office previously rejected Petitioner's arguments that Zhang discloses the claims. Patent Owner's attempt to make new arguments to the Director now is improper and should be found waived. 37 C.F.R. § 42.23.

III. The Board Did Not Reach Any Finding of Fact Conflicting with the Office's Findings in the Previous Proceedings

The only alleged "contrary determinations of fact" that the Patent Owner asserts are:

1) "The Examiner [in the '362 Reexamination] 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'";
2) "The Examiner [in the '362 Reexamination] 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'"; and

3) "During the prosecution of the '275 patent, the Examiner, after considering [the Zhang '372 Patent], 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." Request at 2-3.

Contrary to Patent Owner's arguments, the Examiners in the respective proceedings never made any findings of fact with respect to Zhang. Each of these assertions is addressed below.

A. The Office in the '362 Reexamination Was Not Provided, and Did Not Consider Zhang or Other Relevant IPR Papers, Contrary to Patent Owner's Assertion to the Office That it Submitted Such Papers

Patent Owner's assertion that the Examiner in the '362 Reexamination found that the Zhang '372 Patent failed to disclose "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" is quoted out of context and wrong. The statement the Patent Owner cites is regarding the "art of record" and does not mention the above limitation in isolation but instead refers to the entirety of claims 1 and 11 of the '362 Patent. Ex. 1082 at 6. Thus, the Examiner never made any finding as to whether any particular limitation of the claims was shown or not shown by the art. Moreover, the Examiner never discusses the related Zhang '372 Patent.

Indeed, it appears the Examiner was not made aware of Zhang or the Zhang ’372 Patent’s relevance to the ’362 Patent because Patent Owner never submitted the IPR papers. On May 7, 2024, Patent Owner notified the Examiner in the ’362 Reexamination of the IPRs but did not identify Zhang as the reference relied upon in those IPRs. *See* ’362 Reexamination, Patent Owner’s Petition For Extension of Time Under 37 C.F.R. § 1.550(C) (May 7, 2024) at 2.

On June 18, 2024, Patent Owner filed an IDS with a response to a non-final office action. The IDS included secondary references relied upon in the IPRs and the related Zhang ’372 Patent (but not Zhang itself). With the IDS, the Patent Owner submitted a statement identifying the secondary references as relevant to the IPRs but omitted any mention of Zhang (the primary reference in the IPR) or how the related Zhang ’372 Patent might be relevant. *See* ’362 Reexamination, IDS Transmittal Letter, June 18, 2024. This alone would be enough to obfuscate (at the very least) the relevance of the related Zhang ’372 Patent that was cited. But the letter went further, affirmatively attesting with respect to the IPRs:

> We are, herewith, submitting the petitions, declarations, and prior art asserted in the various grounds to the extent not already in the reexamination record and believe the information submitted to be the extent of the information that could be considered material to patentability. However, the identification of this information shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in 37 CFR 1.56(b). To the extent the Office believes any additional information would be helpful to consider, we can provide it upon request.

Id., at 3. Contrary to this statement, the Patent Owner does not specifically identify the Petitions, Declarations, or Zhang itself in the IDS, and the Petitioner does not see any such papers in the reexamination file wrapper.[2] In view of identifying some prior art as involved in the IPR, but not Zhang, and the failure to submit the IPR

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[2] The entire certified file history of the Reexamination is not of record. The file wrapper on Patent Center does not make NPL documents available for viewing, and a certified file wrapper could not be obtained within the deadline for filing this response. But the public file wrapper does indicate that the number of NPLs filed on June 18, 2024 (9), is the same as the number of NPLs listed in the IDS, and no more. It appears that at least the Petition and Petitioner's Expert Declaration (Ex. 1002) were not submitted, since no NPLs listed approximate the page counts of those IPR documents. PO's Request also does not allege that those papers were submitted.

papers, the Examiner would have had no reason to believe that the cited Zhang ’372 Patent was relevant to the IPRs and warranted closer scrutiny.

On September 30, 2024, the Patent Owner filed a response to a final office action, but still did not identify the relevance of Zhang to the Examiner.

On February 10, 2025, the Office issued a Notice of Intent to Issue a Reexam Certificate, which included the following reminder of the Patent Owner’s duty of updating the Examiner of changes in related proceedings throughout the course of the reexamination proceedings:

> *Litigation Reminder*
>
> The patent owner is reminded of the continued responsibility under 37 CFR 1.565(a) to apprise the Office of any litigation activity, or other prior or concurrent proceeding, throughout the course of this reexamination proceeding. The third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP § 2207, 2282 and 2286.

’362 Reexamination, Notice of Intent to Issue a Reexam Certificate, February 10, 2025 at 5.

Even given this express notice of its duty of candor, the Patent Owner appears not to have cited Zhang or submitted the related IPR papers.[3]

This lack of filing of the IPR papers combined with the fact that the related Zhang ’372 Patent was only cited after the IPR had commenced, but without any indication that it was related to the IPR, raises the question of whether Patent Owner was attempting to thwart the IPR proceeding by “washing” the related Zhang ’372 Patent through the parallel ’362 Reexamination. Such potential gamesmanship should not be permitted.

B. Patent Owner’s Assertion that the Office Previously Rejected Arguments Similar to Those in the IPR is Wrong

Patent Owner notes that the Examiner in the ’362 Reexamination accepted Patent Owner’s argument that the McNeely reference selected “ranges of frequencies containing the desired channels,” which failed to disclose the claims of the ’362 Patent. Request at 10. McNeely has no relationship to Zhang and is not even part of the IPR record. Yet, the Patent Owner now reasons that Zhang discloses a similar feature to that of McNeely, and thus similarly fails to disclose the claims. But the FWD did not find that Zhang disclosed selecting frequency ranges like in

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[3] Petitioner was not the third party requester and thus had no role in the ’362 Reexamination.

McNeely. Instead, the Board found that Zhang selected desired channels within a frequency range and did not select undesired channels. IPR2024-00438, Final Written Decision at 19-28. Thus, there was no contrary finding of fact for the Board to address.

Indeed, it is surprising Patent Owner is trying to draw parallels between Zhang and McNeely, given that it acknowledged at the oral hearing for the IPR, that "[t]here is no dispute that in both Zhang and the patent, an RF signal that has both desired and undesired channel[s] comes in and what's sent to demodulators are desired channels. Nobody is disputing that," and that "[t]he issue is not whether the black box 230-plus-240 is the digital circuitry. It is. The issue is not whether or not that overall circuitry selects channels. At some level, it does." IPR2024-00432, Final Written Decision at 22 (citing oral hearing transcript at 71:14–17, 134:3–5). As the Board found, these views of Patent Owner about Zhang were "highly probative" to the patentability of the '362 Patent claims. *Id.* Patent Owner's concession in the IPR that Zhang's system selects and outputs only desired channels does not square with its new assertion that Zhang merely selects frequency ranges (including desired and undesired channels), allegedly like McNeely.

C. The Zhang '372 Patent was Not Rejected in the '275 Patent Prosecution

Patent Owner also misleadingly argues that the Examiner "rejected" applying the related Zhang '372 Patent during the prosecution of the related '275 Patent.

Request at 11. Although the Zhang ’372 Patent was cited in an IDS, the Examiner never mentioned it, much less distinguished it from the claims. Instead, the Notice of Allowance merely referred to another reference, “Claxton,” and distinguished the ’275 claims from Claxton’s channelizer—not from Zhang’s demultiplexer 230. US. App. No. 17/956,889, Notice of Allowance, August 28, 2023, at 2-3. Moreover, the Examiner for the ’275 Patent erred by apparently attributing all the IDS materials, including the Zhang ’372 Patent, as being cited for “other patents, i.e., US 8223,775 [*sic*]” involved in Entropic’s litigations. *Id.*, at 2. Thus, in direct contradiction to the Request (Request at 11), the Examiner for the ’275 Patent never accepted Patent Owner’s argument, in this proceeding, that Zhang does not “select” any channels.

IV. The Board’s Final Written Decision Provides the Detailed Explanation Required by the Memorandum if One Were Required

Even if the prior Office examinations are contorted to contrive some finding with respect to Zhang, the Board’s FWD clearly articulates how Zhang discloses each and every limitation of the challenged claims, which necessarily satisfies the Memorandum’s call for a detailed explanation why a different outcome is warranted. Significantly, Patent Owner’s Request does not raise a single flaw in the merits of the Board’s FWD (e.g., no claim construction error or misreading of Zhang) or assert a lack of substantial evidence for the Board’s finding that Zhang teaches selecting desired channels. Patent Owner merely disagrees with the Board’s ultimate finding of fact and holding without providing any support for its disagreement.

V. CONCLUSION

For the reasons above, Patent Owner has failed to identify (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law. The Request for Director Review should be denied. Alternatively, if the Director is minded to accept the Request, the Board's Final Written Decision should be affirmed because it correctly decides the issues before the Board and satisfies the Memorandum.

Dated: November 10, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §42.6(e)(4), the undersigned hereby certifies that the foregoing PETITIONER'S AUTHORIZED RESPONSE TO PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW was served electronically via e-mail on November 10, 2025 on the following counsel of record for Patent Owner:

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