

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: IPR2024-00441

U.S. PATENT NO. 8,792,008

PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

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Ex. 2001	Joint Claim Construction and Pre-Hearing Statement (Case 2:23-cv-01050-JWH-KES)
Ex. 2002	Kishore Seendripu, <i>At MaxLinear, our drive towards excellence shows in all that we do</i> , The Silicon Review
Ex. 2003	U.S. Patent No. 9,210,362 to Reddy et al.
Ex. 2004	K. Scott Helms, et al., Maxlinear White Paper, entitled "Leveraging Wideband and Full Spectrum Receiver Capabilities to Develop and Utilize Software-based Tools for Remote Spectrum Analysis and Troubleshooting"
Ex. 2005	Excerpts from Deposition of Timothy Gallagher, held on July 19, 2023 in <i>Entropic Communications, LLC v. Charter Communications, Inc.</i> , Case 2:22-cv-00125-JRG
Ex. 2006	Broadcom Corporation, "Full-Band Capture Cable Digital Tuning" White Paper, June 2011
Ex. 2007	DOCSIS® Best Practices and Guidelines: PNM Best Practices: HFC Networks (DOCSIS 3.0)
Ex. 2008	DOCSIS® Best Practices and Guidelines: Proactive Network Maintenance Using Pre-equalization (Ver. 2)
Ex. 2009	Jim Walsh, et al., SCTE White Paper, entitled "The Full (Band) Story: How Smart CPE Will Change HFC Maintenance Forever"
Ex. 2010	<i>Reserved</i>
Ex. 2011	<i>Reserved</i>
Ex. 2012	Diagram used at Mr. Lett's Deposition
Ex. 2013	Declaration of Dr. Samuel H. Russ
Ex. 2014	Deposition Transcript for Mr. David Lett
Ex. 2015	SCTE White Paper, entitled "Leveraging Full Band RF Capture to Improve the Customer Experience and Operational Performance"
Ex. 2016	MaxLinear Press Release regarding Remote Spectrum Monitoring
Ex. 2017	<i>Reserved</i>
Ex. 2018	ANSI/SCTE 06 2019 standard
Ex. 2019	DOCSIS 3.0 Standard (CM-SP-PHYv3.0-I09-101008)

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Ex. 2020	SCTE White Paper, entitled “Full Band Capture Revisited”
Ex. 2021	Deposition Transcript for Mr. David Lett (April 4, 2025)
Ex. 2022	Patent Owner Demonstrative Slides

Revoking patent claims issued long ago is not something the Board is permitted to take lightly. Sound decisions are required, and they must clearly set forth the Board's reasons and logic. That is why the Office has numerous legal and procedural safeguards to prevent the Board from running roughshod over statutory law and settled precedent on a mission to invalidate a patent. When the Board refuses to abide by its own rules and procedures, the Board must be corrected.

The Final Written Decision ("FWD") here is, unfortunately, an example of such error. The analysis for Grounds A-C falls far short of the most basic regulatory, legal, and due process requirements imposed upon the Board.

First, the FWD violates the most basic procedural safeguards in IPRs. *See* Section I.A., *infra*. The FWD does not address each and every element of *any* challenged claim. Perhaps worse, it does not address many of the dependent claims at all, despite Petitioner having failed to meet its burden on those claims (*see also* Section II, *infra*). The FWD's rush to reach unpatentability is also revealed by its failure to follow a bedrock rule—it is the Petitioner's burden to prove that the Petitioner's contentions, evidence, and argument clear the hurdle of invalidity. But the FWD stepped in where Petitioner had failed to meet its burden and not only invented motivation-to-combine arguments never raised by Petitioner but faulted Patent Owner for failing to divine them and respond. *See* Section I.B., *infra*. The entire approach of the FWD appears to be an exercise in attempting to justify a result

the Board had pre-ordained, and neither the law nor PTAB procedure was allowed to be an obstacle. The Federal Circuit routinely vacates decisions far more robust than the FWD here, and analysis far more respectful of fundamental procedures to the IPR system. Respectfully, the Director should intercede before that stage.

Second, due to the FWD's complete lack of analysis of most of the dependent claims, the FWD is irreconcilably in conflict with an earlier decision from the Board on a continuation of the '008 Patent at issue here. *See* Section II, *infra*. The Board earlier found Petitioner had failed to meet its burden as to certain subject matter when it was claimed in the related '826 Patent. The Board thus found those claims ***not unpatentable***. Yet when that same Petitioner raised the same § 103 challenge using the same prior art, same expert witness, and same faulty reasoning, the Board here found that same subject matter met by the prior art, and those claims ***unpatentable***. The recent guidance from then-Acting Director Stewart on this issue would have prevented such divergent decisions or at least required the Board to explain itself. Regardless, the Board abused its discretion in this FWD.

Third, the Board violated accepted PTAB procedure and legal precedent by permitting Petitioner to freely rewrite the core nature of its obviousness challenge as the case progressed. *See* Section III, *infra*. The Petition raised a physical substitution of elements / bodily incorporation obviousness challenge. As briefing exposed the critical failures of that argument, Petitioner invented a new "combination of

concepts” challenge. The Board not only allowed the new line of argument not raised in the Petition but forgave Petitioner’s failure to explain how its proposed combination would result in the challenged claims (let alone actually be a combination obvious for a POSITA to make). Again, the appearance is one of *post-hoc* justification of a pre-ordained decision to revoke. Regardless of the reason, the Board’s abuse of discretion and violation of Office procedure and precedent both from the Supreme Court and the Federal Circuit merits the Director’s intervention.

The Director should reverse on Grounds A-C and terminate the proceeding. Petitioner simply did not set forth a cognizable challenge sufficient to meet Petitioner’s burden. A remand to the Board merely affords another attempt to justify the unjustifiable outcome. *See* Section IV, *infra*.

I. THE BOARD ABUSED ITS DISCRETION AND VIOLATED THE APA AND THE AIA BY BOTH FAILING TO PROVIDE A “REASONED BASIS” FOR ITS DECISION AND INVENTING ARGUMENTS TO HELP PATENT OWNER MEET ITS BURDEN

A. The FWD Failed to Address a Single Challenged Claim in Its Entirety but Found All 18 Unpatentable Anyway

The Board abused its discretion and violated the law in concluding all eighteen challenged claims unpatentable with *zero discussion* of how Petitioner has allegedly met its evidentiary burden as to many elements of the independent claims and with *zero discussion* of why *fifteen of the eighteen* challenged claims were found unpatentable. The FWD cannot satisfy the Board’s obligations to Patent Owner or

its accountability to the public because it fails to provide a “reasoned basis” for a decision to find issued patent claims unpatentable. *Securus Techs., Inc. v. Glob. Tel*Link Corp.*, 685 F. App’x 979, 987 (Fed. Cir. 2017).

The Board, like all tribunals of administrative agencies, is governed by the APA, which requires not only that the Board “reach[] a sound decision, but have articulated the reasons for that decision.” *In re Sang Su Lee*, 277 F.3d 1338, 1342 (Fed. Cir. 2002). Those reasons must be enumerated and well-documented on the record for “all material facts,” lest the Board or the Patent Office “acquire insulation from accountability.” *Id.* at 1344-45. This requirement is “critical to the performance of agency functions and judicial reliance on agency competence.” *Id.* at 1344 (citation omitted). It is not enough that the Board previously instituted on the challenged claims; “the Board has an obligation to assess the question [of whether Petitioner met its burden] anew after trial based on the totality of the record.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1377 (Fed. Cir. 2016).

Despite the Board’s clear obligation, the FWD fails to address the entirety of any one challenged claim. The only arguments addressed by the FWD, and the only findings made in the FWD, relate to objective indicia (not at issue in this Request (FWD at 28-33)), motivation to combine (FWD at 12-21), and what the FWD calls “Allegedly Missing Elements,” consisting solely of three of Patent Owner’s arguments why the disclosures of the prior-art references Kamieniecki,

Konstantinos, and Cholas did not satisfy the challenged claims (FWD at 22-28). Those counter-arguments relate only to *portions* of what Petitioner classified as claim elements [1C] and [1E], and to claims 9 and 17. *E.g.*, Petition at 80-83.

Nowhere in the FWD is there any discussion or findings as to the remainder of claim elements [1C] or [1E], or anything recited in [1A], [1B], or [1D], let alone anything about dependent claims 2, 4-8, 10, 12-16, and 18, or the differences between independent claim 1 and independent claims 3 and 11. The FWD does provide a throw-away, catch-all line at the end that, “[i]n view of the prior art and arguments presented in the Petition, and having found Patent Owner’s arguments unpersuasive, we conclude that Petitioner has shown, by a preponderance of the evidence, that claims 1-18 of the ’008 patent are unpatentable.” FWD at 33. But that single, conclusory line cannot justify the Board’s lack of attention to the claim elements. The Board simply analyzed a few words from a few claim elements and decided that was enough to render unpatentable all 18 challenged claims.

The Federal Circuit has routinely vacated Board decisions containing far more explanation, meaning the FWD at issue is an outlier even in relation to other legally faulty decisions from the Board in the past. For example, in *In re Nuvasive, Inc.*, the Board summarized the parties’ contentions on all the issues (missing from the FWD here), but the Federal Circuit still vacated because “the PTAB never actually made an explanation-supported finding that the evidence affirmatively proved” the

obviousness of the claims. 842 F.3d 1376, 1384 (Fed. Cir. 2016). In *Cutsforth v. MotivePower*, the Board “specif[ied] when it is rejecting a party’s argument” as the FWD does here for some of Patent Owner’s arguments, but the Federal Circuit still vacated because the Board “d[id] not explain why it accepts the remaining arguments as its own analysis,” as the FWD also fails to do here. *Cutsforth, Inc. v. MotivePower, Inc.*, 636 F. App’x 575, 578 (Fed. Cir. 2016). The FWD here is just as inappropriate as the vacated decision in *Cutsforth* because it “leaves little explanation for why the Board found the claimed invention obvious.” *Id.* In *Securus*, the Federal Circuit vacated due to the Board’s treatment of dependent claims. 685 F. App’x at 981. There, the Board provided only a conclusory, boilerplate statement that the dependent claims were obvious. *Id.* at 982-983. While that is far more than the FWD provides here, the lack of explanation was still insufficient. *Id.* at 987.

The FWD here cannot stand. It should be reversed as to Grounds A-C, and the proceeding terminated. The Director has the authority to provide such relief. *Cf. Interactive Commcn’s Int’l, Inc. v. Blackhawk Network Inc.*, IPR2024-00465, Paper 39 (P.T.A.B. Oct. 1, 2025). The proper remedy is not to allow the Board to dig in its heels and invent justifications now. The fact that the FWD lacks the required “reasoned findings” confirms there are none to be had. The Board could not explain how the prior art Kamieniecki and Konstantinos references would obviously be combined and result in the challenged claims. But this failure was not oversight, it

was reality—Petitioner and its expert Mr. Lett also failed to provide the necessary factual or legal basis throughout the proceedings. *See, e.g.*, POR at 21-25; Sur-Reply at 2-4; Ex. 2014 (Lett Deposition) at 170:2-171:18.

B. The FWD Invented an Argument That Petitioner Never Raised, Then Faulted Patent Owner for Not Rebutting It

In one of the few circumstances where the FWD does provide analysis, the Board improperly invented an argument on motivation to combine that Petitioner never raised and then compounded that abuse of discretion by faulting Patent Owner for failing to rebut the invented argument. At the outset, this is a plain admission that the arguments Petitioner did raise were insufficient to meet its burden. If Petitioner's actual arguments were sufficient, the Board would have no need to invent new ones to defeat Patent Owner's contentions. But even worse, the Board stepped in for Petitioner, when it is the Petition that sets forth the patentability challenge. *See SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 366 (2018) (“[P]etitioner's petition, not the Director's discretion, [] guide the life of the litigation.”). That is because, “[i]n an inter partes review ... the petitioner shall have the burden of proving a proposition of unpatentability by a preponderance of the evidence.” 35 U.S.C. § 316(e). The Board cannot serve as a second in the duel between the parties.

The Board took over for Petitioner in connection with element [1C], “analyze said digitized signal to determine a characteristic of said digitized signal.” There, the

FWD contends that “[t]he Petition stated ... that Kamieniecki’s monitor would analyze digital signals from the IB/OOB tuners” and thus that the Petition “implies, contrary to Patent Owner’s argument, that Kamieniecki’s monitor analyzes signals in the digital domain.” FWD at 24 (citing Petition at 36-40). The FWD continues, and this is the critical part: “Patent Owner does not explain why it would have been beyond the level of ordinary skill to modify Kamieniecki’s monitor to operate in the digital, rather than analog, domain to analyze the signal quality, as the Petition suggests.” *Id.* The problem? The Petition says and suggests no such thing, even on a generous and strained reading of it.

Nowhere in the Petition, much less the pages of it cited for support by the Board (pages 36-40), does the Petition ever state or suggest that (1) Kamieniecki’s monitor can analyze signals in the digital domain or (2) that a POSITA would be motivated to modify Kamieniecki’s monitor to operate in the digital domain. At most, the Petition alleged that, *in its combination*, Kamieniecki’s monitor would now *receive* digitized signals due to the analog-to-digital converter (ADC) from Konstantinos. *E.g.*, Petition at 38 (“The digitization of the IB and OOB channels of Kamieniecki by the ADC 204 [from Konstantinos] results in a multi-channel digital signal (‘digitized signal’)...”); *id.* at 39 (“In the proposed combination, the monitor 116 [of Kamieniecki] would receive a selected IB and/or OOB channel as a digital output stream from the Konstantinos receiver 200.”). But *receiving* a digital signal

is much different than *being able to process it*, given that the digital signal is received solely because of the proposed combination. The Petition hardly contains a sufficient “suggestion” to support the FWD’s conclusion and approach here, and the Board lacked the necessary skepticism to dig into the details of what Petitioner actually alleged to determine if it met its burden.

Even looking past the technical details, the FWD plainly put the burden on Patent Owner to *disprove* a POSITA’s motivation to “modify Kamieniecki’s monitor” when the Petition never proposed that a POSITA would modify Kamieniecki’s monitor at all. FWD at 24. The Board cannot shift the burden to Patent Owner on unpatentability, let alone invent a new argument on Petitioner’s behalf. *See Netflix, Inc. v. DivX, LLC*, 84 F.4th 1371, 1377 (Fed. Cir. 2023) (noting that the Federal Circuit has repeatedly “reprimanded the Board for finding a claim unpatentable based on theories not presented in the petition.”); *see also Koninklijke Philips N.V. v. Google LLC*, 948 F.3d 1330, 1336 (Fed. Cir. 2020); Section III, *infra*. The Director should reverse and terminate.

II. THE BOARD’S DECISION ON CLAIMS 5 AND 13 IS AT ODDS WITH ITS DECISION IN IPR2024-00442 ON A RELATED PATENT

The Board also abused its discretion by issuing a FWD that is irreconcilably in conflict with a decision issued just two weeks earlier regarding related U.S. Patent No. 9,825,826 (“the ’826 FWD”). That case (IPR2024-00442) had been brought by

the same Petitioner on the same prior art grounds supported by the same expert witness and with nearly the same exact reasoning in the Petition as what was provided in the instant case (IPR2024-00441). The two cases were so related that Petitioner sought a consolidated oral argument, arguing the patents are related, both IPRs involve the same primary references (Kamieniecki and Konstantinos), and duplication of the disputed issues. Although the Board did not consolidate, that does not change the clear overlap in proceedings.

There are also similarities in the challenged claims of the '008 and '826 Patents that are material to this Request. In particular, the '826 Patent recites claims 6-8 and 15-17, each of which is a dependent claim, and adds the further requirements as follows: “wherein said characteristic is signal power vs. frequency” (claims 6 and 15), “wherein said characteristics is signal phase vs. frequency” (claims 7 and 16), and “wherein said characteristic is one of: signal-to-noise ratio, peak-to-average ratio, noise levels, bit error rate, and symbol error rate” (claims 8 and 17). Dependent claims 5 and 13 of the '008 Patent are also dependent claims that add the same requirements, though in a single dependent claim rather than split up in several: “wherein said one or more characteristics is one of: signal power vs. frequency, phase vs. frequency, signal-to-noise ratio, peak-to-average ratio, noise levels, bit error rate, and symbol error rate.” Likewise, the independent claims recite similar subject matter for those “characteristics” of the dependent claims. For the '826

Patent, independent claims 1 and 10 recite in pertinent part, “analyzing said selected first portion of said digitized signal to measure a characteristic of said received signal;” for the '008 Patent, independent claims 3 and 11 recite in pertinent part, “a signal analyzer [which / that is operable to] analyze[s] said [selected] first portion to determine one or more characteristics of [the received signal / said first portion].”

Despite these similarities in the challenges, prior art, analysis by the Petitioner, and claims, the Board's decisions are in conflict. In the '826 FWD, the Board found that Petitioner had not met its burden as to claims 6-8 and 15-17 and ruled those claims not unpatentable over Petitioner's challenges. '826 FWD at 43-44. For only one of those sets of claims (claims 6 and 15) did the Board look to Patent Owner's arguments, and even then, the Board's agreement with Patent Owner was ancillary to its finding on the technical merits that Petitioner simply did not show that the prior art satisfied the requirements of those claims. *See id.* at 43. For the others (claims 7, 8, 16, and 17), which similarly depend directly from the independent claims, Patent Owner had not raised a counterargument, but the Board still assessed—and found lacking—Petitioner's contentions.¹ *Id.* at 43-44.

¹ Further to Section I.A., *supra*, this shows why the Board must assess Petitioner's evidence and argument for each claim element, regardless of whether Patent Owner raised a counterargument. *See Fanduel, Inc. v. Interactive Games LLC*,

The instant FWD lacks any discussion or even recognition of the '826 FWD, its findings, its reasoning, or how the Board could justify so divergent an approach in this FWD. While then-Acting Director Stewart's September 16 Memorandum regarding prior findings was not in effect at the time of the FWD, that does not abdicate the Board from its legal and administrative duty to fairly and consistently apply the facts to the law. Indeed, the Acting Director's Memorandum shows that consistency is a prime concern for the Office, so much so that it is now required for the Board to explain departures from prior findings, along with a "more detailed explanation" where, as here, "substantially the same evidence and/or arguments" were presented in both proceedings. Again, the Director should reverse.

III. THE BOARD ERRONEOUSLY ALLOWED PETITIONER TO REWRITE ITS CHALLENGE POST-INSTITUTION

In addition to sometimes inventing new arguments to help Petitioner's case (*e.g.*, Section I.B., *supra*), the Board at other times looked the other way, in contravention of its basic procedural constraints, as Petitioner created its own new challenge. The Petition set forth a combination of prior-art Kamieniecki and Konstantinos such that the "combination *replaces* the IB and OOB tuners in

966 F.3d 1334, 1342 (Fed. Cir. 2020) (reasoning that patent owners can stay silent and still succeed).

Kamieniecki's STB *with Konstantinos' multi-channel receiver*." Petition at 32 (emphasis added). This was a physical-substitution combination, plain as day, and the Petition did not shy away from that fact in several portions of the Petition: (a) referring to "using *Konstantinos' multi-channel receiver in place of* the Kamieniecki IB and OOB tuners" (*id.* at 34 and 35); (b) arguing a POSITA would have "been able to *implement Konstantinos' multi-channel receiver* into Kamieniecki's STB" (*id.* at 35); (c) stating a claim element is met because "the IB and OOB channels of Kamieniecki would be the RF input *that is received by the Konstantinos multi-channel receiver*" (*id.* at 38) and that the monitor of Kamieniecki "would *receive* a selected IB and/or OOB channel as a digital output stream *from the Konstantinos receiver*" (*id.* at 39); (d) arguing a claim element would be met "[o]nce Kamieniecki is *updated with Konstantinos' multi-channel receiver*" (*id.* at 43); and (e) confirming at the end of claim 1 that a POSITA would have recognized a claim element met "as a result of *replacing* Kamieniecki's IB and OOB tuners *with Konstantinos' multi-channel receiver* (*id.* at 44) (emphasis added for all). Other examples abound. And if that were not enough, Petitioner's expert Mr. Lett testified up and down that it was a "replacement" of physical components in the § 103 combination. Ex. 2014, 128:6-8, 149:22-150:6, 151:12-152:3, 154:7-10, 155:3-6, 199:16-17, 150:21-152:3, 153:22-155:6; Ex. 2021, 33:16-34:1, 39:23-40:2; *see also* Ex. 1002, ¶¶ 112, 116, 126-127 (using the phrase "in place of").

Only when presented with the gaping holes and unfixable flaws in its arguments in the POR and Sur-Reply did Petitioner attempt to run away from its Petition, saying it really meant a combination using only the “teachings” from Konstantinos. *E.g.*, Reply at 5; Oral Hearing Transcript at 10:11-12. Despite this argument coming only in the Reply (in an oblique way) and the Oral Hearing (more directly), the Board allowed it over Patent Owner’s objections (*e.g.*, Sur-Reply at 1-4) and then used it in the FWD to reject a large part of Patent Owner’s arguments. Perhaps the most absurd sentence of the entire FWD follows: “***We understand*** Petitioner’s assertion that ‘[t]he Kamieniecki-Konstantinos combination ***replaces*** the IB and OOB tuners in Kamieniecki’s STB with Konstantinos’ multi-channel receiver’ (Pet. 32) to simply suggest a ***combination of the concepts*** disclosed in the references.” FWD at 15 (emphases added). A Petition based on a “combination of the concepts” could have been brought, but it was not, and for that matter, there is insufficient support in the record for Petitioner to have met its burden under such a “combination of the concepts,” having relied so heavily on bodily incorporation in the papers. “We understand” the Petitioner’s argument to be entirely different than the argument actually made is a leap too far.

The Board is not permitted to rewrite Petitioner’s grounds the way a panel intent on an unpatentability finding later wishes they would have been written, because the Board must “evaluate the combination as Petitioner has chosen to frame

it,” even if it is “seemingly unnecessarily complex” or includes unnecessary details. *Precision Planting, LLC v. Deere & Co.*, IPR2019-01044, Paper 94 at 23-26 (P.T.A.B. Nov. 30, 2020); *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (“[T]he expedited nature of IPRs bring with it an obligation for petitioners to make their case in their petition to institute.”). Regardless, the FWD’s adoption of belated, untimely arguments made only on Reply and at the Oral Hearing is inappropriate. *See Wasica Fin. GmbH v. Cont’l Auto. Sys., Inc.*, 853 F.3d 1272, 1286 (Fed. Cir. 2017) (“[s]hifting arguments” “is foreclosed by statute, [] precedent, and Board guidelines.”). The Director, again, should reverse.

IV. REMAND TO THE BOARD WOULD BE INAPPROPRIATE

Given the complete lack of adherence to basic legal principles and administrative protections for patent owners demonstrated in the FWD, Patent Owner respectfully submits that remand to the Board would be inappropriate and likely to lead to yet another Request for Director Review. Instead, Patent Owner seeks a reversal and termination, as the Director has the authority to grant. *Cf. Blackhawk Network*, IPR2024-00465, Paper 39. At most, the Director should delegate to the Delegated Rehearing Panel for further proceedings.

V. CONCLUSION

For the foregoing reasons, Patent Owner respectfully requests that the Director review the FWD, reverse as to Grounds A-C, and terminate the proceeding.

Dated: October 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2025, a true and correct copy of the foregoing was caused to be served on the following counsel of record for Petitioner by electronic mail at the following addresses:

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