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Subject: Comcast Cable Communications, LLC v. Entropic Communications, LLC, IPR2024-00445, Patent No. 10,135,682
Date: Wednesday, October 9, 2024 6:16:40 PM
Attachments: [Petitioner Request for Director Review \(682-2\).pdf](#)

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Dear Director –

Petitioner is concurrently filing herewith, via P-TACTS, a Request for Director Review of Decision Denying Institution in the above-identified IPR proceeding. This email is provided in accordance with the USPTO's Revised Interim Director Review Process, Sec. 3.A. Counsel for Patent Owner is copied.

Review is sought to correct the Board's abuse of discretion in improperly considering obviousness references in isolation, rather than by viewing their teachings as they would be combined by an ordinarily skilled artisan. The Federal Circuit has held that such an approach is in error. *See Provisur Techs., Inc. v. Weber, Inc.*, 50 F.4th 117, 125 (Fed. Cir. 2022) (the Board erred by viewing the teachings of a prior art reference in isolation rather than in the context of the combination asserted in the Petition); *Netflix, Inc. v. DivX, LLC*, No. 2022-1043, 2023 WL 3115576, at *5 (Fed. Cir. Apr. 27, 2023) (nonprecedential) (the Board erred by failing to adequately assess the teachings of the proposed combination as opposed to an individual reference). However, the Board does not appear to have any precedential opinions on this issue.

In particular, the Board erred in finding that the Petition did not demonstrate that the three proposed obviousness combinations teach Limitations [1D] and [10D]. With regard to the proposed Thibeault-Cioffi combination, the Board concluded that "Petitioner does not demonstrate sufficiently that Cioffi discloses or suggests Limitations [1D] and [10D]." The Petition, however, does not assert that Cioffi alone discloses or suggest Limitations [1D] and [10D]. Rather, it asserts that the *combination* of Thibeault's infrastructure of cable modem groupings based on SNR measurements in view of Cioffi's teachings regarding using worst case signal-to-noise ratio. In addition, it supports this assertion by providing multiple motivations to combine the references. Because the Board fails to address these arguments in the Petition and instead focuses on Cioffi in isolation, the Board erred. The Board similarly erred with respect to the two other combinations asserted by Petitioner, *i.e.*, Thibeault-Saey and Thibeault-Gross. For these additional combinations, the Board again focused on the secondary references in isolation and failed to analyze whether the proposed *combinations* taught Limitations [1D] and [10D].

Director Review to correct this improper legal analysis is appropriate.

Lastly, there may be third parties interested in submitting amicus briefs in support of the request for Director review. Rule 42.75(g) provides that “Communications from third parties regarding a specific Director Review request or proceeding, aside from authorized amicus briefing, are not permitted and will not be considered.” Does Rule 42.75(g) allow third parties to make a request for authorization to file an amicus brief in support of a petition for Director review, or are all submissions from third parties disallowed until after the Director has indicated in response to a particular request for Director review that she would like to receive amicus briefs?

Thank you in advance for any clarity you could provide with respect to whether third parties can submit requests to file amici briefs, or if instead they have to wait for the Director to authorize such briefs.

Best regards,

Fred

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