

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 IPR2024-00446
Patent 8,223,775

**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 Oct. 6, 2025) (describing, in Section 2.B., availability of Director Review for proceedings under part 42 of 37 C.F.R.). Patent Owner fails to identify which of the above-recited categories provides the required basis for Director Review. Req., 4-14 (alleging “the Board erred by invalidating the claims based upon untimely arguments, ignoring Patent Owner’s arguments, and misreading the claims”). This, alone, would justify denying the request. In any event, none of Patent Owner’s complaints indicate an abuse of discretion, an important issue of law or policy, or an erroneous finding of material fact or conclusion of law that would justify its request. Patent Owner simply rehashes failed arguments from its briefs that the Board soundly rejected. That Patent Owner disagrees with the Board’s well-reasoned analysis is no basis for Director Review.

II. THE BOARD DID NOT REJECT PETITIONER’S ARGUMENT

Patent Owner argues that the Board was “required...to reject the Petition’s grounds” because “the Board rejected the Petition’s argument that Rabenko’s VDP

is the claimed ‘DOCSIS controller’.” Req., 4. But far from rejecting the Petition’s argument, the Board expressly adopted it. FWD, 16-19 (“having carefully considered the fully developed record, we conclude that the Petition establishes that Rabenko’s voice and data processor 136/213 is a ‘DOCSIS controller’”). To the limited extent the Board credited any of Patent Owner’s positions, it did so narrowly and only “[w]ith respect to the embodiment shown in Rabenko’s Figure 1b,” which it found did “not appear to implicate DOCSIS.” FWD, 17. This was not a wholesale rejection of the Petition’s arguments. To the contrary, in the very next paragraph the Board held that Rabenko’s VDP, as described in its Figure 2 and other disclosures (raised in the Petition), was “a controller that controls, implements, or performs a DOCSIS function, i.e., a DOCSIS controller.” FWD, 17; Pet., 24-25 (discussing Rabenko’s Figure 2), 31. Patent Owner’s assertion to the contrary mischaracterizes the Board’s actual findings and the substance of the Petition.

Patent Owner’s argument amounts to nothing more than an assertion that, if the Board finds that any portion of a piece of prior art fails to disclose a claim element, the Board cannot rely on other cited portions of the art to find the claims unpatentable. Of course, this is not the case; the Board was well within its rights to find that the VDP was a DOCSIS controller because, as described in portions of Rabenko cited in the Petition, it controls certain DOCSIS functions. That the Board found that not *every* description in Rabenko of the VDP described it controlling a

DOCSIS function is immaterial – prior art is useful for all it teaches. *See, e.g., Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551 (Fed. Cir. 1989).

Patent Owner argues that Petitioner advanced only a single theory for why Rabenko’s VDP teaches the claimed DOCSIS controller, and that it was rejected by the Board. Req., 4-5 (“Having failed to make its case, the Petition’s grounds had to be rejected.”). Patent Owner is wrong. The Petition argued that the VDP was a DOCSIS controller, and that is exactly what the Board found to be the case. And, in so doing, the Board correctly indicated that the portions of Rabenko it relied upon were set forth in the Petition. FWD, 17; Pet. 24-25. Indeed, the Board noted that Petitioner even raised additional theories of unpatentability that it need not address. *See* FWD, 17 (FN 3) (“Because we find that the embedded MTA call client registers and provides services over the DOCSIS network, we need not consider Petitioner’s arguments regarding VOIP generally or PacketCable.”); Pet., 31; Ex. 1005, ¶ [0085], [0087]; Ex. 1002, ¶ 137. In short, the Board carefully analyzed the record evidence and explained why the Petition supported Rabenko’s VDP as teaching the claimed DOCSIS controller. Director Review should not be granted just because Patent Owner disputes the outcome of this well-reasoned analysis.

III. THE BOARD DID NOT INVALIDATE THE CLAIMS BASED UPON UNTIMELY AND INCONSISTENT ARGUMENTS

Patent Owner contends that the Board improperly adopted a “pivotal new argument” that was both untimely and “inconsistent with the Petition’s theory” when invalidating the claims. Req. 5. The record—including the Board’s own words—establishes otherwise. The Board was crystal clear that its analysis and finding rested on “Rabenko’s paragraph 74, *which is cited in the Petition*” (emphasis added). FWD, 17-19; Pet., 24–25, 31. It further relied on Rabenko’s Figure 2 and paragraph 97, each also expressly cited and discussed in the Petition. FWD, 18; Pet., 24–25, 31. Thus Patent Owner’s suggestion of a “new” theory is baseless.

Patent Owner’s “pivotal new argument” theory is based on Petitioner allegedly “[making] a strategic choice in the Petition to place the proxy gateway in the MIPS core” but then “shifting the proxy gateway functions from the MIPS core to the VDP” in the Reply. Req., 6-7. Both assertions misrepresent the record.

The Petition set forth: “A POSITA would have understood that Rabenko’s cable modem engine is programmed with software that when implemented by DOCSIS MAC 134/212, core 228, and/or voice and data processor 136/213, causes the cable modem engine to perform the cable modem functions other than the home networking functions performed by the data networking engine, including interfacing with cable media.” Pet., 25-26. The Petition further explained: “Rabenko also describes that voice and data processor 213 ‘may be implemented with a variety

of technologies including, by way of example, embedded communications software that enables transmission of voice over packet based networks.’ Ex. 1005, [0074]”, Pet., 25 citing paragraph 74 of Rabenko (“In the described exemplary embodiment, the voice and data processor 213 includes the proxy gateway function described in connection with FIG. 1b. Alternatively, the proxy gateway function could be implemented in the MIPS core 228.”).

The Board based its decision on one of the examples in the Petition, *i.e.*, the proxy gateway functions implemented in the voice and data processor 213. The Board need not have based its final written decision on *every* example in the Petition to properly find the claims unpatentable. FWD, 17 (FN 3). The Board was correct (*see* FWD, 18) when it rejected this argument from Patent Owner.

In short, the Reply did not “shift[] the proxy gateway functions from the MIPS core to the VDP.” Req., 6. The referenced discussion in the Reply relied primarily on Rabenko’s paragraph 97 (which was cited and discussed in the Petition) to explain that the inclusion in Rabenko of MTA call client 520 on VDP 213 was sufficient to teach a “DOCSIS controller” under Patent Owner’s construction. Reply, 7-8.¹ Similarly, the Board relied primarily on portions of Rabenko that were cited

¹ The Reply was the first opportunity Petitioner had to address Patent Owner’s construction.

and discussed in the Petition (Rabenko's Fig. 2 and paragraphs 74 and 97) when finding that Rabenko taught a DOCSIS controller. FWD, 17, Pet. 24-25. Thus, neither the Reply nor the Board relied on "new arguments."

IV. THE BOARD DID NOT IGNORE PATENT OWNER'S ARGUMENTS; IT CORRECTLY FOUND THEM UNPERSUASIVE

Patent Owner accuses the Board of ignoring Patent Owner's arguments that (1) the VDP is a voice DSP, and (2) the MTA call client therefore cannot be part of the VDP (Rabenko's express disclosure to the contrary notwithstanding). Req., 7. The Board did not ignore Patent Owner's arguments; it properly rejected them as unpersuasive. Indeed, Patent Owner's arguments misunderstand or misstate both the '775 claims and the teachings of Rabenko.

A. Patent Owner misguidedly imports unclaimed features into the claims

Patent Owner essentially argues that, because the '775 patent shows a DOCSIS controller that is separate from a voice DSP, Rabenko's VDP which includes a DSP cannot serve as a DOCSIS controller. Req., 7-9. This fails for at least two reasons: (1) as noted immediately above, Rabenko teaches that the DSP of its VDP controls certain DOCSIS functions (FWD, 17-19); and (2) nothing in the claims precludes a DSP (or VDP) from being a DOCSIS controller. On this second point, the Board previously cautioned Patent Owner that it cannot "import into a claim limitations that are not a part of the claim." Institution Decision, 14. *See also SuperGuide Corp. v. DirecTV Enterprises, Inc.*,

358 F.3d 870, 875 (Fed. Cir. 2004) (“a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.”); *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1346–47 (Fed. Cir. 2015) (“This court has repeatedly cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification.” (internal quotation omitted)); *Electro Med. Sys. S.A. v. Cooper Life Sci., Inc.*, 34 F.3d 1048, 1054 (Fed. Cir. 1994). Claim 18 merely recites a “cable modem engine including a DOCSIS controller.” While claim 18 requires that the cable modem engine be on a separate circuit from the data networking engine, it includes no requirement that the components of the cable modem engine be separated from each other. Patent Owner improperly entreats the Director to read claim 18 as requiring a “cable modem engine including a DOCSIS controller **that is separate from a DSP.**” The Board instead determined (properly) that a controller that controls a DOCSIS function is a DOCSIS controller. FWD, 16. Claim 18 requires nothing more or less from its DOCSIS controller.

And, as explained above, the Board also correctly determined that the DSP of Rabenko’s VDP does control certain DOCSIS functions. Rabenko clearly states that “the voice and data processor 213 includes the proxy gateway function.” Ex. 1005, ¶ [0074]; Pet., 5 (“bypassing both the proxy gateway 142 and voice/data processor 136 (like the bypassing of the DOCSIS controller in the ’775 Patent.”)), 31; Ex.

1002, ¶ 136 (“the voice and data processor 213 includes the proxy gateway function.”)). As properly understood, nothing in the claims of the ’775 patent prohibit the DSP in Rabenko’s VDP from being a DOCSIS controller.

B. The Board correctly applied Rabenko’s clear teachings, instead of adopting Patent Owner’s misreading of Rabenko

Patent Owner appears to mistakenly equate Rabenko’s “voice and data processor” with Rabenko’s Fig. 5b “voice processor DSP.” Req., 10 (“Rabenko’s VDP is a voice DSP”); *see id.* at 7-12; Ex. 1005, ¶ [0097]. From this faulty premise (and the additional faulty premise that no VDP that includes a voice DSP can also control DOCSIS functions), Patent Owner asserts that Rabenko “unambiguously” confirms that its MTA call client (which performs a DOCSIS function) is a separate and discrete element from the VDP.² Aside from assuming its conclusion, Patent Owner simply misreads Rabenko.

As described above, and as confirmed by the Board, Rabenko describes (and the Petition argued) that the proxy gateway function in Rabenko can be implemented in the VDP. FWD, 17-19; Pet., 5 (“bypassing both the proxy gateway 142 and voice/data processor 136 (like the bypassing of the DOCSIS controller in the ’775

² Petitioner assumes Patent Owner actually means “DSP” because Fig. 5b does not show a “VDP” element.

Patent).”), 31; Ex. 1002, ¶ 136 (“the voice and data processor 213 includes the proxy gateway function.”); Ex. 1005, ¶ [0074]. In addition, Rabenko describes that its VDP can implement a second feature called “**voice** processor DSP.” *Id.*, ¶ [0097]. But Rabenko’s VDP still includes the MTA call client and handles proxy gateway functions. Rabenko clearly states (as the Board understood):

[T]he proxy gateway function can be implemented in the voice and data processor [(VDP)]. In the described exemplary embodiment, the proxy gateway function is implemented with embedded software at the applications layer. Referring to FIG. 5b, the applications layer includes an MTA call client 520

Id., ¶ [0097]; *see also id.*, ¶ [0074].

Simply put, Rabenko teaches that proxy gateway functions and the MTA call client are part of the VDP that the Petition and the Board identified as being a DOCSIS controller, and Patent Owner is wrong to argue otherwise. For the same reasons, Patent Owner is wrong when it argues that the Board “misapprehended Rabenko in finding the MTA call client is implemented **in the VDP**” because the “applications layer is not a block **in the DSP**.” Req., 12-13 (emphasis added); *see also id.*, 13-14. Patent Owner’s complaints notwithstanding, the Board correctly reproduces Rabenko’s unambiguous description that the call client is implemented at the applications layer in the voice and data processor (which Rabenko does not equate with its Fig. 5b voice processor DSP). FWD, 19; Ex. 1005, ¶ [0097].

V. THE BOARD DID NOT MISREAD THE CLAIMS

Patent Owner contends that the Board “flatly misread the claims” when it noted that the word “partitioning” is not itself in the claims. Req., 14. This misleading argument takes the Board’s words out of context.

While discussing the claim element requiring the “second circuit being separate from the first circuit,” the Board responds to Dr. Russ questioning “why one would ‘conclude these elements [in the prior art] are on separate circuits that are **partitioned** from one another in view of these direct connections.’” FWD, 24-25 (emphasis added); *see also id.*, 19-25. Dr. Russ was suggesting that the claim element “second circuit being separate from the first circuit” required circuits that were partitioned from each other and had no direct connections. To this question, the Board rightly responded: “The claims, however, do not require that the circuits be ‘partitioned from one another,’ nor do they preclude direct connections between the two circuits.” FWD, 24. The Board was clearly saying that the claim feature at issue, the “*second circuit being separate from the first circuit*,” does not recite “partitioning” as Patent Owner’s expert, Dr. Russ proposed. And, the Board was correct. Indeed, the ’775 patent’s embodiments *do* have direct connections. Ex. 1001, Fig. 2; 3:14-16, 3:35-38.

It is true that a later limitation requires “the cable modem *functions* performed by the cable modem engine are completely partitioned from the home networking

functions performed by the data networking engine,” but this limitation is directed to functional, not physical, separation. FWD, 9 (noting the district court claim construction for this limitation, “not necessarily physically separate but are functionally separate”). Thus, Dr. Russ’s statements suggesting the claims preclude “direct connections,” even if applied to the above limitation are irrelevant because they are inconsistent with the ‘775 Specification and the District Court’s construction of what “partitioned” means.

VI. 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.

Dated: October 7, 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 AUTHORIZED RESPONSE TO PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW was served electronically via e-mail on October 7, 2025 on the following counsel of record for Patent Owner:

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