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Subject: RE: Comcast Cable Communications, LLC v. Entropic Communications, LLC, IPR2024-00452, Patent No. 7,889,759
Date: Wednesday, September 18, 2024 6:30:45 PM
Attachments: [Petitioner's Request for Director Review of Decision Denying Institution.pdf](#)

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Subject: Comcast Cable Communications, LLC v. Entropic Communications, LLC, IPR2024-00452, Patent No. 7,889,759

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 finding that the Petition did not demonstrate a reasonable likelihood of proving that a person of ordinary skill in the art would have been motivated to make the proposed combination. In particular, the Board factually erred in finding that Petitioner's primary reference teaches multi-casting when it does not describe (or even mention) multi-cast. As a result, the Board also incorrectly found that Petitioner's primary reference "already accomplishes the same goal that Petition[er] proposes a skilled artisan would have sought to achieve through the proposed modification" and rejected the combination on that basis. This is contrary to *Intel Corp. v. PACT XPP Schweiz AG*, 61 F.4th 1373, 1380-81 (Fed. Cir. 2023) ("That [the two references] address the same problem and that [the second reference discloses] a known way to address that problem is precisely the reason that there's a motivation to combine under KSR and our precedent."). The Board further erred by requiring a bodily incorporation of Petitioner's secondary reference into its primary reference when it is well settled that bodily incorporation is not required for a combination of references. See, e.g., *Intel Corp. v. PACT XPP Schweiz AG*, No. 2022-1038, 2023 WL 2198649, *2-4 (Fed. Cir. 2023) (non-precedential) (summarizing precedent in reversing PTAB's determination that IPR petitioner failed to prove obviousness of combination for want of explanation of how base reference would have been modified to bodily incorporate element of secondary reference). The Board does not appear to have any precedential opinions on these issues.

Finally, the Decision here is inconsistent with the institution decision on a related patent, U.S. Patent No. 7,295,518, where a different panel found sufficient motivation

to combine similar references. IPR2024-00431, Paper 8 (Sept. 6, 2024).

The Board's approach to the obviousness issue presented runs contrary to the "expansive and flexible" approach mandated by *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 415 (2007) and merits review by the Director.

Petitioner notes that a similar issue of law pertaining to the *PACT* decision is raised by another petitioner in its Request for Director Review filed on September 16, 2024, in *Dish Network L.L.C. v. Entropic Communications, LLC*, IPR2024-00560 (U.S. Patent No. 8,631,450).

Best regards,

Fred

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