

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COX COMMUNICATIONS, INC.,
Petitioner,

v.

ENTROPIC COMMUNICATIONS, LLC,
Patent Owner.

CASE: IPR2024-00578

U.S. PATENT NO. 9,825,826

PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY

Petitioner's Ground 1 rests on Renken's Provisional (the "Provisional") disclosing that its Central Management Controller ("CMC") is located at the headend. The Provisional says nothing of the sort, and the Petition fails to meet its burden to show otherwise. Now, Petitioner seeks to clean things up in its Reply. Yet nothing Petitioner has said—including arguments relying on irrelevant evidence and inapplicable legal standards—can change the Provisional's plain disclosures or its clear failure to disclose that the CMC is at the headend. Renken just is not prior art.

Petitioner has the burden to prove Renken's priority to the Provisional by demonstrating that the disclosure of the Provisional satisfies the written description requirement of § 112. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378-79 (Fed. Cir. 2015). The written description requirement requires an objective inquiry from the perspective of a POSITA into what is described within "the four corners" of the provisional application. *Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). Therefore, the Provisional "must actually or inherently disclose" the later-filed subject matter relied on. *Research Corp. Techs. v. Microsoft Corp.*, 627 F.3d 859, 870 (Fed. Cir. 2010). "Inherency, however, may not be established by probabilities or possibilities." *Bettcher Indus., Inc. v. Bunzl USA, Inc.*, 661 F.3d 629, 639 (Fed. Cir. 2011).

Here, the Provisional simply does not disclose an architecture with the CMC located at headend. Consequently, Petitioner cannot and has not carried its burden.

Though Petitioner cites to broad swaths of the Provisional (*see* Reply at 2), none of those citations yield results because none disclose the CMC being located at the headend. Because the Provisional lacks this disclosure, the Reply attempts to rely upon a range of disclosures: (1) a “DOCSIS connection” that provides the path for the CMC to direct the cable modems; (2) the fact Renken’s cable modems may be “directed by remote control”; and (3), when required, “the CMC communicates with the Cable Modem Termination System (CMTS).” Reply at 2. Yet the first and third disclosures only specify the CMC’s communication partners, and the second discloses only that a CMC can be somewhere remote from cable modems, not that it is at the cable headend. None of these disclose where in the network architecture the CMC *is*. It is telling that Petitioner cites large sections of the Provisional in search of what would be a simple, compact disclosure—if it existed. In fact, the nonprovisional Renken does not even disclose that the CMC *is* at the headend, only that it *may be*. Ex. 1005, 8:40-43. Thus, it is not surprising that the Provisional does not *actually* support Petitioner’s contention that the CMC *is located at the headend*.

Petitioner also fails to demonstrate that the Provisional *inherently* discloses that the CMC is located at the headend. Petitioner’s argument “i.e., located at the head end” (Reply at 2) has no support *in the reference* where it must legally be found. *See Ariad*, 598 F.3d at 1351 (the analysis must be constrained to the “four corners” of the earlier disclosure). Petitioner also asks too much with its innocent-looking

“i.e.” by asserting that the CMC is located at the headend based on a series of disparate citations with no accompanying expert testimony. This cannot legally establish inherency because “[t]he mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *Bettcher Indus.*, 661 F.3d at 639. Moreover, nonprovisional Renken again undercuts Petitioner’s contention; its disclosure that the CMC may *or may not* be located at the headend (*see* Ex. 1005, 8:40-43) makes it far less than “certain” that the CMC *is* at the headend.

Ultimately, Petitioner really is arguing that it would be “obvious” the CMC is at the headend by arguing “a POSITA would have recognized” that the MCCM is transmitting to a CMC at the headend. Reply at 3. But whether that particular architecture would make sense—and whether Renken *later* had that thought—is not the test. “Entitlement to a filing date extends only to subject matter that is disclosed; not to that which is obvious.” *Research Corp.*, 627 F.3d at 870; *accord Ariad*, 598 F.3d at 1352 (“a description that merely renders the invention obvious does not satisfy the [written description] requirement”). Indeed, the fact that Petitioner had to go outside the four corners of the Provisional to support its “obviousness” argument shows how far afield of the applicable legal standards Petitioner is asking the Board to go. *See* Reply at 3 (quoting Ex. 2008, p. 15). Regardless, upstream is an indication of direction (away from the customer premises), not a particular destination. In sum, Petitioner has failed to carry its burden to show the CMC is located at the headend.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2024, 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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