

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD., and
NINTENDO OF AMERICA INC.,
Petitioners,

v.

AMERICAN GNC CORPORATION,
Patent Owner

IPR2024-00667
U.S. Patent No. 6,508,122

**PATENT OWNER AMERICAN GNC'S
REQUEST FOR DIRECTOR REVIEW**

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EX2003	Webpage, AGNC Founder, <i>available at</i> https://www.americangnc.com/ceo/Founder.htm (accessed June 6, 2024)
EX2004	Excerpts from Ching-Fang Lin, “Modern Navigation, Guidance, and Control Processing,” Prentice Hall, 1991
EX2005	Excerpts from Inventor Notebook of Hiram McCall, Feb. 6, 1999 to Dec. 14, 1999
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EX2008	Declaration of Professor Lawrence Larson, Ph.D. under 37 C.F.R. § 1.68 in support of Patent Owner's Preliminary Responses in IPR2024-00667 & -00668.
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EX2012	Complaint in <i>American GNC Corporation v. OnePlus Technology (Shenzhen) Co., Ltd. et al.</i> , No. 6:20-cv-00171-ADA, D.I. 1 (W.D. Tex. Mar. 4, 2020)
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EX2017	Order Denying Motion to Dismiss in <i>American GNC Corp. v. Nintendo Co., Ltd., et al.</i> , No. 2:23-cv-00302-TL, D.I. 38 (W.D. Wash. Jan. 10, 2024)
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Patent Owner American GNC Corp. respectfully requests Director Review pursuant to 37 C.F.R. § 42.75 of the Final Written Decision in this proceeding. The panel's decision makes errors of fact and law, improperly applying hindsight and ignoring evidence of inventive non-obviousness. The Decision deems American GNC's expired patent claim obvious over a complex mosaic of references and argument—despite twenty-five years of technical success, commercial use, citation, litigation, and licensing of the '122 patent invention.

The Decision includes only one paragraph on the key “analyzing” claim element identified by American GNC, and that paragraph contains both technical and legal error. It not only cites to the wrong signals, but also improperly proposes a modification not taught in any reference. The Decision further errs in its dismissal of un rebutted evidence on objective indicia of non-obviousness.

I. The Final Written Decision erroneously overturns long-settled rights in American GNC's foundational MEMS gyroscope invention

Beginning in 1999, American GNC's inventors pioneered new designs in the emerging field of Microelectromechanical System (MEMS) gyroscopes and inertial measurement units. These inventions allowed the company to beat other esteemed research institutions like Draper Labs and NASA Jet Propulsion Laboratories to be the first to achieve technical viability. EX2023 (McCall Decl.), ¶¶8, 11-14, 21-23. American GNC filed for, and has been issued, 79 patents for its various technological contributions, including the '122 Patent that Nintendo challenged here.

In the ensuing years and decades, its inventions were productized, and found success in the government (notably DoD and NASA) and commercial markets. *Id.*, ¶¶15-20; Response, Paper 21, 1-5. They were cited by others in industry numerous times, were broadly licensed, and have been proven foundational in the practical application of MEMS-based inertial measurement units. *Id.*; EX2007, ¶¶16-38.

Today, MEMS gyroscopes and inertial measurement units are in every phone, navigation device, drone, and are used in many other applications requiring motion tracking or control—such as Nintendo’s infringing Switch consoles and controllers. American GNC’s inventions were important, early, well disclosed, and were granted broad protection by the Office—recognizing that American GNC was first, among many working in the field of MEMS around the turn of the century, to teach and claim patents to these specific inventions.

But after explaining the history and success of its inventions to the Board, American GNC and the surviving inventor of the ’122 Patent have now been told by the panel that their invention was obvious 25 years ago. Paper 50 (“FWD”). This inexplicable result frustrates American GNC’s settled expectations and reliance on rights long-ago granted to it by the Office—and flies in the face of the Director’s policies promoting stability, fairness, and stakeholder confidence in the patent system. The Decision’s over-extended and hindsight-based obviousness analysis diminishes the patent’s important contribution to the MEMS inertial sensing field

during its infancy.

Nintendo—and its alleged indemnitor and RPI STMicroelectronics—have achieved an on-demand, litigation motivated invalidation, of what had been, for its entire term, a good, practiced, and licensed patent. Nintendo—first informed of their infringement in April of 2017, see EX2007, ¶¶39-44—brought this challenge 364 days after being served with a lawsuit, and long after the '122 patent had expired. The challenge is not based on another inventors' work, but instead on four separate references, arranged three different ways to reach different claim elements, along with several other references to show alleged “background” knowledge—all supposedly held together with “universal” alleged motivations like reducing noise or size. Sur-Reply, Paper 37, at 1, 10. Obviousness analysis cannot be stretched to prior art mosaics like this except via improper hindsight.

But more germane to the Director's review here, this result—undoing established rights and settled expectations of American GNC—comes based on legal and factual error, amounting to abuses of discretion, as further explained herein.

II. The Decision's single paragraph of discussion of the key inventive element contains error and must be reversed

In its papers and via unrebutted testimony from surviving inventor Hiram McCall, American GNC told the Board the invention story of the '122 Patent. EX2023, ¶¶5-18, Response, Paper 21, at 1-3; Sur-Reply, Paper 37, at 20-22. As Mr. McCall explained, he came to American GNC in 1999—with signal processing

experience still uncommon in the field of MEMS inertial sensors—to work on specific unsolved challenges in the design of MEMS-based gyroscopes. EX2023, ¶¶5-6, 7-12. He figured out that “the dither motion” signals were “the crucial place to apply the advanced control and digital signal processing electronics of the inventions.” *Id.*, ¶10. He applied DSP techniques to *the analysis of those specific signals* within the gyroscope control path. *Id.*, ¶¶13-14; EX2019 (Larson Decl.), ¶¶81-84. And it worked, well. EX2023, ¶¶14, 17-20.

Knowing specifically where and how, in a complex electro-mechanical system, to use digital signal analysis and processing to improve performance, was the inventive spark that enabled American GNC’s technical success, and that is reflected in claim 1 of the ’122 Patent. EX2023, ¶¶10-14; EX1001, 9:51-54 (claim 1: “...a digital signal processing system *analyzing said digital low frequency inertial element displacement signals* and feeding back said dither driver signals to said angular rate sensor unit.”); EX2019, ¶¶43-47.

Through its papers, testimony, and argument, American GNC drew the Board’s attention to this key inventive aspect—because this aspect was not taught or suggested in *Townsend* or any other of the collection of references that Nintendo tossed into its mix. Response, 5, 28-35; Sur-Reply, 15-16,19; Hearing Tr., Paper 48, at 32-33 (“This is not a patent on using DSP in a MEMS gyroscope, it is *using DSP to analyze and improve the performance of those specific signals in that specific*

loop”), 39-40 (“use the digital signal processing to analyze the specific signals”), 42-44, 62-65 (“It has a very specific signal that has to be analyzed and they don't have it. They haven't shown it”). *Townsend*, the only reference to mention digital signal processing, says nothing about any analysis performed by its DSP, or about which signals one might analyze. *See, e.g.*, Sur-Reply, 15, 19. This was a failure of proof by Nintendo, the party with the burden of proof, that should have been dispositive.

A. The Decision identified the wrong signals for analysis

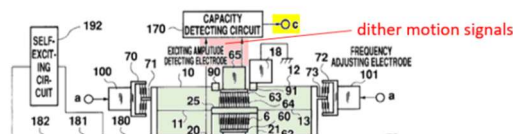
The Final Written Decision contains only one paragraph discussing this key claim language of “a digital signal processing system analyzing said digital low frequency inertial element displacement signals.” FWD, at 52-53; *see also id.*, at 75 (Ground 2, referring to “the same reasons” as prior discussion). The Decision treats this language as if it were a throwaway, never acknowledging its importance—or relation to the core of the invention story that Mr. McCall and American GNC told. That single Decision paragraph also cites to an expert's discussion of completely *different language* involving feedback of signals—and perhaps for this reason, also gets the technical facts wrong.

The Decision quotes and relies on Nintendo's expert declaration at paragraph 177, which points to the “amplitude control circuit 177” of *Fujiyoshi*. FWD at 52-53. But that declaration paragraph is directed to the *different* “feeding back said dither driver signals to said angular rate sensor unit” language of the claim element. EX1002, ¶177. Then the Decision points to “the excitation control signal [the dither

driver signals].” FWD at 53. Those “dither driver” signals *are not* the alleged “digital low frequency inertial element displacement signals” of the claims that must be analyzed by the digital signal processor—even in Nintendo’s alleged combination. See EX1002, ¶177 (explaining that “dither motion signals” go through “capacity detecting circuit 170,” “self-exciting circuit 176,” and “amplitude control circuit 177” to become “dither driver signals”).

In short, the Decision confuses “dither *driver*” signals output from the *Fujiyoshi* analog circuit blocks, with “dither *motion*” displacement signals extracted from the MEMS structure—claiming, incorrectly, that the claim element can be found in modification of circuits operating on “dither driver signals.” FWD at 53.

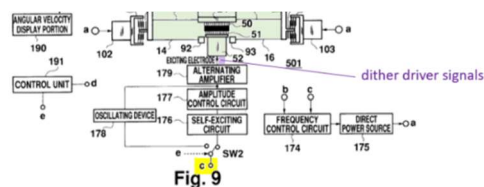
Nintendo’s complex and disputed combination theory alleged that analog “dither *motion* signals” in *Fujiyoshi* would be digitized (citing *Townsend*) and low-pass filtered (citing *Cox*, and also *Irwin* for background). See EX1002, ¶166 (“dither motion signals” as “inertial element displacement signals”), ¶177 (annotated figure):



Nintendo’s Petition and Declaration, and the Board’s Decision, never discuss any digital analysis of these dither *motion* or displacement signals. Even if—as American GNC does not concede—a POSITA would know to convert analog “motion” signals into the “digital low frequency inertial element displacement

signals,” subsequent analysis of those specific digitized displacement signals is claimed. And that is not taught or suggested in any reference. Response, 5, 28-35; Sur-Reply, 15-16,19; Hearing Tr., Paper 48, at 32-33, 39-40, 42-44, 62-65 (“It has a very specific signal that has to be analyzed and ... They haven’t shown it.”)

The “dither driver signals” the Board points to as being analyzed are instead an ***output*** of several analog circuit blocks in *Fujiyoshi*, and they are not specifically discussed in *Townsend*. Neither Nintendo nor the Decision say otherwise. *See, e.g.*, EX1002, ¶177 (annotated figure):



Operating on dither *driver* signals is not “analyzing said digital low frequency inertial element *displacement* signals”—not even on the Board’s, or Nintendo’s, own terms. Nor is it what the ’122 Patent teaches or claims. Claim 1 requires a signal path in which “dither *motion* signals” are received by “central circuitry,” then output as “digital low frequency inertial element displacement signals.” And then *those* digitized motion signals must be “analyz[ed]” by “a digital signal processing system.” EX1001, 9:39-55; Figs. 6 & 7.

The Decision is in error and should be reversed—because it incorrectly points to an argument about “dither driver signals” instead of showing analysis of the different “digital low frequency inertial element displacement signals.” Errors of

technical fact like this are an abuse of discretion and must be reversed. *See, e.g., Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016) (explaining abuse of discretion occurs when a decision “rests on clearly erroneous fact finding”). Nintendo never discussed the “analyzing ... displacement signals” portion of the claim, and the Board panel erroneously pointed to analyzing “[the dither driver signals]” instead. FWD at 53.

B. The Decision improperly relies on a modification not taught or suggested in any reference

In addition to the factual error discussed above, the Board’s cursory discussion of the “analyzing” element rests on the idea of a POSITA “modifying” an analog reference to insert digital processing. FWD, at 53 (“motivated to incorporate digital circuitry” into “modified circuit of Fujiyoshi”); *see also id.*, 75 (“modifying Mitamura”). The discussion in the Decision is as brief and non-specific as the testimony it cites. *See* EX1002, ¶181 (“a POSITA would have found it obvious that amplitude control circuit 177” ... “would have contained some or all of the digital signal processing system”). None of it is based on teachings of any reference—but is simply an unsupported statement about the alleged creativity of a POSITA.

It is error to find an important missing claim element—one that is not taught or suggested in any reference, as with the “analyzing said digital low frequency inertial element displacement signals” element here—merely with cursory reference to “a gap-filler” such as “modifying” from ordinary skill. *See, e.g., DSS Technology*

Management, Inc. v. Apple Inc., 885 F.3d 1367, 1374-76 (Fed. Cir. 2018) (rejecting a “one paragraph” analysis relying on “motivation to modify” per the “‘ordinary creativity’ of the skilled artisan”). But this is precisely what the Decision does in its one paragraph. FWD, at 53 (“motivated to incorporate digital circuitry” into “modified circuit of Fujiyoshi”), 52 (“ordinary creativity”). The Decision’s brief analysis, in addition to being based on a technical error, fails to employ the “‘searching’ inquiry” required by the Federal Circuit to support untaught modifications from common knowledge. *DSS*, 885 F.3d at 1374-1376 (“‘conclusory statements and unspecific expert testimony’ are insufficient”).

In other words, even if the Decision had identified a location for circuit modification that could function according to the specifics of the claim—as neither it nor Nintendo did—it was further an abuse of discretion to ground the core inventive “digital signal processing system analyzing ... displacement signals” element in a one-sentence assertion that a POSITA “would have been motivated to incorporate” digital. FWD, 52-53. As the Director has recently instructed, general knowledge, including as described in “expert testimony,” “may not be used to supply a missing claim limitation.” Memorandum, Enforcement and Non-Waiver of 37 C.F.R. § 42.104(B)(4) and Permissible Uses of General Knowledge in Inter Partes Reviews, July 31, 2025, at 1.¹

¹ The Memorandum purports to apply prospectively (*id.*, 3), but the rationale, rule,

The *Fujiyoshi* and *Mitamura* references disclose analog systems. EX2019, ¶¶48-49, 63-64, 70-71. *Townsend* disclosed digital processing, with no specifics identified as to where and how to use it. *Id.*, ¶¶67, 74; Response, 28-35, 44-48; Sur-Reply, 6, 15-16, 19. The Decision, citing only to unsupported statements from Nintendo's expert, merely says a POSITA would have been motivated to modify the reference to "incorporate digital circuitry." FWD, at 52-53, 75. But even if this were proper, it is not enough. The claim language is not directed just to "using DSP in an analog MEMS"—the DSP must be used for "analyzing" specific digitized displacement signals where it matters. *See, e.g.*, Paper 48 at 42-45 (as "[inventor] McCall figured out ... [w]as the most useful and best place to do that work").

The Decision, like the Petition and its declaration, fails to show teaching or suggestion of this key inventive element in the prior art or its combination. Its few relevant sentences fail to provide the "'searching' inquiry" required by the Federal Circuit to locate such an inventive insight in the ordinary skill of a POSITA.

It was an abuse of discretion to retroactively invalidate American GNC's foundational contribution to the MEMS gyroscope art based on a technically incorrect evaluation of a proposed prior art mosaic—with the core inventive aspect

and precedents against supplying elements from general knowledge already existed, and they apply here. *See, e.g., Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1363 (Fed. Cir. 2016); *DSS*, 885 F.3d at 1374-76.

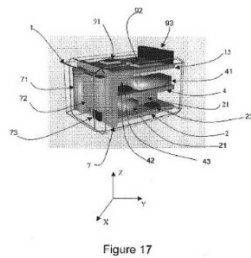
of the claims actually missing from the reference puzzle, and alleged to be obvious only to a POSITA's general knowledge. The Decision should be reversed and the proceeding dismissed.

III. The Decision's dismissal of unrebutted non-obviousness evidence is error

From the outset of this proceeding, American GNC has presented substantial evidence and testimony showing non-obviousness as a matter of objective fact. *See, e.g.,* Response, at 1-5; EX2023 (McCall Decl.), ¶¶7-12 (technical success where others failed), 19-20 (commercial interest and success); 21-23 (lack of success by others, copying); EX2007, ¶¶16-38; Sur-Reply, at 1, 5, 8-9; Paper 48, at 29-32, 34, 37-38, 55; EX1048 (McCall Tr.), 37:18-38:16 (licensing). Neither Nintendo nor the Board's Decision countered these facts with rebuttal evidence.

A. The Decision erroneously ignored unrebutted evidence of nexus to American GNC's coremicro product

American GNC presented corroborated and unrebutted testimony that the inventions of claim 1 of the '122 Patent—and claim 1 of the '648 Patent challenged in IPR2024-00668—were developed for and embodied in its coremicro IMU product. *See, e.g.,* EX2023, ¶¶15-20; EX2005 (“uMEMS IMU” and “Miniature MEMS IMU”); EX2024; EX2002; Sur-Reply, at 8-9; EX1001, 2:31-34 (“The present invention enables the core micro IMU”); *see also* IPR2024-00668, EX1001 ('648 Patent), 17:37-45 (“circuit board 7 for producing X axis angular sensing signal”), Fig 17 (diagram of coremicro IMU):



American GNC's coremicro IMU product, containing the '122 Patent MEMS angular rate sensors as its gyroscopes, "embodies the claimed features." *Polaris Indus, Inc. v. Arctic Cat, Inc.*, 882 F.3d 1056, 1072 (Fed. Cir. 2018). "When the patentee has presented undisputed evidence that its product is the invention disclosed in the challenged claims, it is error for the Board to find to the contrary without further explanation." *PPC Broadband, Inc. v. Corning Optical Comm's RF, LLC*, 815 F.3d 734, 747 (Fed. Cir. 2016); *Polaris*, 882 F.3d at 1073. But that is exactly what the Decision does, reciting American GNC's various evidence while merely asserting that each thing is not enough. FWD, at 56-57.

American GNC brought the person who both invented the '122 Patent circuits and prototyped them during development of the coremicro IMU, to testify that the patent claim is embodied in the product. That is further corroborated by his 25 year old notebooks and reports, other documents, and the patent itself. It was an abuse of discretion for the Board to conclude otherwise without evidence disputing these unrebutted facts. American GNC was entitled to a presumption of nexus for its non-obviousness evidence here. *PPC Broadband*, 815 F.3d at 747 ("This is true even when the product has additional, unclaimed features").

B. The Decision’s weighing of five categories of American GNC’s un rebutted evidence as “weak” improperly shifted the burden of proof and abused discretion

After discussing and improperly dismissing nexus, the Decision goes through five categories of non-obviousness evidence, concluding that each was, in the panel’s opinion, “very weak.” FWD, at 58-63. Remarkably, and improperly, none of that discussion comes from argument raised by Nintendo—because Nintendo did not provide rebuttal evidence to American GNC’s non-obviousness evidence. Instead, this portion of the Decision is *the panel’s* argument as to why it needn’t credit otherwise unchallenged evidence.

This is a further abuse of discretion. It is not for the panel to find “ways to discount this evidence” of non-obviousness when Petitioner offers no rebuttal to the evidence. *See, e.g., PPC Broadband, Inc. v. Iancu*, 739 Fed. Appx. 615, 625-626 (Fed. Cir. 2018) (“Rather than treat this evidentiary failure for what it was ... it placed the burden on [Patent Owner] to show more. That was error”). Neither Petitioner nor the Board can “successfully rebut the presumption with argument alone—it must present evidence.” *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1329-30 (Fed. Cir. 2016). “Unrebutted evidence” of non-obviousness must be given some weight—and a “blanket dismissal of it” is error. *PPC Broadband*, 739 Fed. Appx. at 627 (*citing ClassCo, Inc. v. Apple, Inc.*, 838 F.3d 1214, 1222 (Fed. Cir. 2016)).

The unrebutted evidence established, e.g., that Draper Labs, JPL, and Analog Devices were trying to make a viable MEMS gyroscope, and American GNC

succeeded first, *because of the claimed invention*. See, e.g., EX2023, ¶¶7-14, 15-18 (“excellent results, with initial drift of ‘less than .1 deg.hr.’”), 21-23 (“Analog Devices was awarded multiple subsequent patents that cite to, and copy aspects of, the ... ’122 Patent”). The Decision calls this of “little probative value,” and then invokes caselaw calling others’ failure and copying “‘virtually irrefutable’ evidence of nonobviousness.” FWD, at 59-60; *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1285 (Fed. Cir. 2000) (“the most probative and cogent evidence”). The Board’s dismissive treatment of this unrebutted evidence abuses discretion.

IV. The Decision incorrectly discounts evidence in avoidance of a Real-Party-in-Interest dispute

Early in the proceedings, American GNC identified STMicroelectronics entities, previously co-defendants in a lawsuit asserting the ’122 Patent, as unnamed RPIs here. American GNC sought to file a Motion for Discovery—which was authorized six months later. EX2018; Motion, Paper 40, at 1. American GNC raised an issue of first impression concerning treatment of co-defendants under the time-bar statute, and sought discovery into agreements and communications between Nintendo and the alleged RPIs. See, e.g., Sur-Reply, at 23-25.

The Decision, and accompanying Order denying American GNC’s Motion, purports to moot these issues by finding a lack of evidence of Rule 4 service of the Complaint triggering the time bar. FWD, at 12; Order, Paper 49, at 4-5. But the

record contains evidence that the Complaint was served, including in accordance with the Hague Convention. Paper 49, at 4; Paper 48, at 23-25; EX1070; EX1071; Response, at 62. Hague Convention service is one of the service methods permitted by Rule 4. Fed. R. Civ. Proc. 4(f)(1); *Dutrisac v. STMicroelectronics, Inc.*, 2024 WL 3646949, *8 (N.D. Cal. Aug. 2, 2024). The Board erred in its avoidance of the RPI discovery and analysis—because Rule 4 service was shown to have occurred.

V. Conclusion

The adversarial treatment and dismissal of a long successful patent by the Board, stands in stark contrast to how other patents—not targeted for invalidation by large multinational corporations—have been recognized. For example, another inventor's MEMS gyroscope patent—that was *filed five years after* the '122 Patent—is proudly



featured on the wall of the National Inventors Hall of Fame Museum at the USPTO.² Instead of seeing its inventions enshrined, American GNC's has seen its '122 Patent—for its entire term a good, practiced, and licensed patent—improperly deemed obvious in hindsight. Each of the Decision's errors and abuses of discretion warrants reversal, and dismissal of this proceeding.

² See <https://www.invent.org/inductees/asad-madni>. Counsel for the parties observed this display upon visiting the museum after completing oral argument in this case.

Dated: September 19, 2025

Respectfully submitted,

/s/ Corey Johanningmeier

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CERTIFICATE OF SERVICE

Petitioner has consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. §42.6, the undersigned certifies that on September 19, 2025, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

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