

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC.,	)	
AMAZON.COM SERVICES LLC,	)	
Petitioner,	)	
vs.	)	Case No. IPR2024-00691
NOKIA TECHNOLOGIES OY,	)	U.S. Patent No. 8,050,321
Patent Owner.	)	

HEARING IN RE PETITIONER'S REQUEST FOR
AUTHORIZATION FOR PRELIMINARY REPLY
Via Remote Telephonic Conference

Tuesday, July 16, 2024, at 8:30 a.m.

Before Administrative Patent Judges:
Steven Amundson
Gregg Anderson
Jason Repko

Stenographically Reported by:
ALYSSA PACHECO, CA CSR 13391

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1 Tuesday, July 16, 2024, 8:30 a.m.

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3 JUDGE AMUNDSON: Hello and good morning. This is
4 a conference call for IPR2024-00691, Amazon versus Nokia.
5 I am Administrative Patent Judge Amundson, and with me on
6 the call are Judges Anderson and Repko.

7 Let's start by getting the appearances of counsel.
8 Who do we have for the petitioner?

9 ATTORNEY KAISER: Good morning, Your Honor. This
10 is Jessica Kaiser from Perkins Coie, LLP, on behalf of
11 Petitioner Amazon.

12 We've also arranged to have a court reporter on
13 the line.

14 JUDGE AMUNDSON: All right. Thank you. Very
15 well. And when that transcript is finalized, could you
16 please submit that as an exhibit?

17 ATTORNEY KAISER: We will, Your Honor.

18 JUDGE AMUNDSON: All right. Thank you.

19 And who do we have for the patent owner?

20 ATTORNEY HEJNY: Good morning, Your Honor. This
21 is Scott Hejny, McKool Smith, on behalf of Patent Owner
22 Nokia, and with me is my colleague Steven Udick,
23 U-D-I-C-K.

24 JUDGE AMUNDSON: All right. Thank you.

25 So based on an email to the board, we understand

1 that the petitioner seeks authorization to file a
2 preliminary reply. The -- the board's rules require a
3 showing of good cause for a preliminary reply.

4 So, Ms. Kaiser, can you explain why good cause
5 exists here for a preliminary reply?

6 ATTORNEY KAISER: Yes, Your Honor.

7 So, first of all, I want to thank the board for
8 having this call today to address our request.

9 To be clear, Petitioner is not seeking a do-over
10 for its petition or trying to get extra pages to make its
11 arguments. Instead, the petition itself and the
12 supporting evidence cited therein is sufficient for
13 institution. The patent owner preliminary response,
14 however, contains arguments that Petitioner could not
15 have anticipated in which characterizes --
16 mischaracterized the prior art's teachings or how those
17 teachings apply to the claims. And it's because
18 Petitioner could not have reasonably anticipated those
19 arguments that there is good cause for a preliminary
20 reply here on the two issues that Petitioner identified
21 in its email to the board.

22 The first of those has to do with Element 8[a] of
23 the challenged claims. That is an element that has to do
24 with decoding an indication of an -- of at least one
25 image frame, which is the first image frame in decoding

1 order of an independent sequence. And Petitioner maps
2 two different prior art references to that limitation,
3 the MPEG-1 reference and the Kim reference. And for the
4 MPEG-1 reference, Petitioner maps two alternatives as
5 meeting that limitation. One is the closed_gop flag --
6 GOP stands for "group of pictures," the closed_gop
7 flag -- and the other is what's called Temporal
8 Reference.

9 In both of those mappings, there are
10 mischaracterizations in the POPR of both MPEG-1's
11 teachings and as well as the scope of the limitation.
12 And as one example -- this is for the closed_gop flag --
13 patent owner mischaracterizes MPEG-1 as suggesting that
14 the group of pictures header, which included closed_gop
15 flag, is decoded with each frame, but that's contrary to
16 MPEG-1's teachings where that --

17 JUDGE AMUNDSON: Okay. This is judge -- this --
18 let me --

19 ATTORNEY KAISER: Yes.

20 JUDGE AMUNDSON: -- let me just, if I may
21 interrupt here.

22 ATTORNEY KAISER: Sure.

23 JUDGE AMUNDSON: This is Judge Amundson. I hope
24 no one takes this the wrong way, but with regard to the
25 references --

1 ATTORNEY KAISER: Yes.

2 JUDGE AMUNDSON: -- you know, the panel is going
3 to read the references, okay? We're not going to take
4 your word for what they disclose; we're not going to take
5 their word for what they disclose, okay? We're -- the
6 panel's going to read the references. So -- and if there
7 has been a mischaracterization by one side or the other,
8 I'm pretty sure the panel can understand that.

9 But could you address the claim construction issue
10 that was raised in the email.

11 ATTORNEY KAISER: Yes, Your Honor. So a couple of
12 different points.

13 One is that the patent owner mischaracterizes this
14 limitation 8[a] to -- and I'm still in -- in this -- the
15 first issue --

16 JUDGE AMUNDSON: Okay.

17 ATTORNEY KAISER: -- because the
18 mischaracterization of the claim that's a part of that,
19 which is that the patent owner mischaracterizes 8[a] to
20 require that the indication has to be part of the frame
21 information or in the picture layer, and both the
22 specification of the challenged patent as well as
23 dependent claims show that -- that that limitation is
24 broader, for example, that that information can be part
25 of the slice level.

1 So Petitioner would like to address that, that
2 issue, because it does involve claim interpretation and
3 the intrinsic evidence. So that's one piece of claim
4 interpretation.

5 The other piece, then, is the second issue in --
6 in the email that we sent to the board about the order of
7 steps. This has to do with an argument that Patent Owner
8 makes in the POPR. I believe it's at pages 34 and 35 as
9 to the Kim reference where Patent Owner talks about
10 that -- essentially that some of the frames are being
11 decoded before the indication is decoded, and the way
12 that Petitioner understands that argument is that Patent
13 Owner is arguing that Element 8[a] has to happen before
14 8[b], and so the petitioner wants to address that -- that
15 claim construction issue.

16 JUDGE AMUNDSON: Okay. Now, so I understand the
17 email, it's your position that -- Petitioner's position
18 that the implicit claim construction that Patent Owner
19 has taken, according to Petitioner, would exclude
20 preferred embodiment? Is that it?

21 ATTORNEY KAISER: So the preferred embodiment that
22 would be excluded is on the first issue that I talked
23 about or -- that I talked about, which is the picture
24 level because the -- their embodiments both in the
25 specification and the dependent claims that have the

1 indication and the slice level, so that's the embodiment
2 issue, Your Honor.

3 JUDGE AMUNDSON: Okay. And I take it that you
4 couldn't anticipate that the patent owner would --
5 whatever -- apply a claim construction that would exclude
6 a preferred embodiment?

7 ATTORNEY KAISER: That's correct, Your Honor, as
8 well as we couldn't have anticipated the order-of-steps
9 argument either.

10 It's my understanding that -- although I'm not
11 counsel in litigation between the parties, the copending
12 litigation. It's my understanding that neither of these
13 issues came up in the -- in the copending litigation.

14 JUDGE AMUNDSON: All right. All right. Thank
15 you. And is there anything else you want to add?

16 ATTORNEY KAISER: Your Honor, only that I agree
17 with you, certainly, that the board is capable of
18 reviewing the references and understanding, you know,
19 what -- what is argued. I will say that there are other
20 mischaracterizations in the POPR about the petition and
21 what it argues. I think the board can -- can sort those
22 out, as well, you know, about this exemplary embodiment
23 that's in MPEG-1. That is only relied in for the
24 Temporal Reference mapping, not for the closed_gop flag
25 mapping, but the preliminary response conflates the two

1 so, you know -- but I do think the board is capable of
2 sorting out that issue.

3 JUDGE AMUNDSON: Okay. All right. All right.
4 Thank you.

5 All right. So let's hear from Patent Owner's
6 counsel, Mr. Hejny. I hope I didn't mispronounce that.

7 ATTORNEY HEJNY: No, that's correct, Your Honor.
8 Thank you.

9 With respect to the first issue that counsel
10 raised, counsel suggested that Nokia's arguing that the
11 indication has to be part of a picture layer, and that's
12 actually not an argument that Nokia has made in the POPR.
13 The only argument that -- that Nokia's making is that in
14 the exemplary case put forth by the petitioners, the
15 closed GOP doesn't tell the decoder anything about the
16 underlying frames, for example, if there's multiple
17 I-frames in a closed GOP.

18 So there's simply no indication of a first image
19 frame. So that was certainly not a construction that
20 Nokia was trying to end run into the -- into the POPR,
21 and there's argument whatsoever in the POPR itself that
22 the indication has to be part of the picture layer.

23 With respect to the second issue -- this relates
24 to the Kim reference, and it relates to Elements 8[a] and
25 8[b], and this is an instance in which Nokia's not

1 proposing an order of operations, for example, where 8[b]
2 has to come before 8[a]. The argument in the POPR simply
3 raises an order in which the system in Kim operates
4 because if you look closely --

5 JUDGE AMUNDSON: I'm sorry. This is Judge
6 Amundson. It looks like you're taking a deep dive into
7 the merits of the issues and, you know, whether the
8 reference does or does not teach -- whatever --
9 limitation 8[a].

10 Could you just focus on the good cause issue.

11 ATTORNEY HEJNY: Yes, Your Honor. And these
12 are -- simply stated, the entire substance of the email
13 relates to a dispute over what the art teaches. Nokia's
14 not proposing any claim constructions. They're not
15 proposing any specific order of operations, and they
16 disagree that good cause exists for a preliminary reply
17 and certainly a preliminary reply of ten pages.

18 JUDGE AMUNDSON: Okay. I think -- I think we
19 understand your position. And is there anything you want
20 to add at this point?

21 ATTORNEY HEJNY: No, Your Honor. I'm afraid all
22 my arguments kind of get into the operation of Kim and
23 how the arts are framed in the POPR, and I don't want to
24 waste your time because obviously you can read it as well
25 as I can.

1 JUDGE AMUNDSON: Okay.

2 ATTORNEY HEJNY: And we appreciate your time this
3 morning.

4 JUDGE AMUNDSON: Okay. So, Ms. Kaiser, is there
5 anything you want to say in reply?

6 ATTORNEY KAISER: I guess on the -- you know, we
7 can accept Mr. Hejny's representation that Nokia didn't
8 intend to propose -- or implicitly propose claim
9 constructions in the POPR. Certainly that's the way that
10 we read it, and, for example, if you look in the POPR at
11 page 24, there is an argument about syntax elements in
12 the GOP layer versus syntax elements in the picture layer,
13 and that's what our understanding was derived from.

14 You know, we would still like the opportunity to
15 address those arguments if the board is inclined to
16 consider them as part of the POPR. If the board is
17 inclined to accept Mr. Hejny's representation that those
18 aren't the arguments that they're making, then I don't
19 know that we actually need the -- the preliminary reply.

20 But certainly if -- you know, I also would say the
21 ten pages was proposed as something that I've seen from
22 other panels in similar circumstances based on the issues
23 that we have raised in the email. Certainly, you know,
24 we would also be asking for a -- a smaller amount of
25 pages if the board is inclined to grant a more limited

1 preliminary reply.

2 JUDGE AMUNDSON: All right. Thank you. I
3 think -- I think we understand the parties' positions
4 here. If you'll give us some -- give us a few moments to
5 confer among ourselves, all right?

6 ATTORNEY KAISER: Thank you, Your Honor.

7 JUDGE AMUNDSON: Well -- well, okay. I think, in
8 retrospect, there's a follow-up question on what you just
9 said. And I'm sorry; I wasn't 100 percent clear.

10 So you said you could -- whatever -- forgo the
11 preliminary reply if the panel accepts Patent Owner's
12 position with regard to a certain argument on page 24 in
13 the preliminary response? Do I have that right?

14 ATTORNEY KAISER: Your Honor, I think it's really
15 related to two arguments. One is on page 24, that the
16 fact that the closed_gop flag is part of the GOP layer
17 doesn't mean that it is not the recited indication
18 because it's not in the picture layer. I believe that's
19 what Mr. Hejny just represented, which I think is
20 different than what their argument is on page 24. So it
21 would be that.

22 And then, also, I believe it's pages 34 to 35 -- I
23 can double-check those page numbers, but it was the
24 argument that was in the email to the board about the
25 order of operations, and Mr. Hejny, I think, represented

1 that Nokia's not arguing a specific order of operations.

2 JUDGE AMUNDSON: Okay. I understand. And so,
3 Mr. Hejny, is there anything you want to say in response?

4 ATTORNEY HEJNY: Your Honor, I kind of lost track
5 on -- on the first part of counsel's statement, but --
6 but she's correct that Nokia's not arguing an indication
7 has to be in the picture layer. That's not an argument
8 that Nokia's presenting. And, again, we point to we're
9 not arguing that there has to be any necessary order of
10 operations between Elements 8[a] and 8[b].

11 JUDGE AMUNDSON: Okay. I think the panel
12 understands the respective positions here, and so, as I
13 said, now if you'll give us a few moments to confer among
14 ourselves, all right? So just please hold on.

15 JUDGE REPKO: Hello. This is Judge Repko. I have
16 a question for Petitioner's counsel, and I'm wondering --
17 you mentioned there's a district court case. Is there a
18 claim construction that came up after the petition was
19 filed that we need to be aware of here that's relevant to
20 your request for a reply?

21 ATTORNEY KAISER: Thank you, Judge Repko. There's
22 actually copending ITC litigation as well as copending
23 district court litigation, is my understanding. I don't
24 believe that there -- so, as I said, I'm not counsel in
25 the copending litigation, but it's my understanding --

1 and Mr. Hejny can correct me if I'm wrong, if he knows --
2 I don't believe there's claim construction that came up
3 after this request. My point earlier was that these
4 issues were not part of that claim -- you know, claim
5 construction issues that have arisen in the copending
6 litigation, and so they weren't things that Amazon could
7 have anticipated and prebutted in its petition.

8 JUDGE REPKO: It's your view, essentially, that
9 the issues in the ITCs would have to mirror the issues in
10 the IPR, and if they don't, that would warrant a reply?

11 ATTORNEY KAISER: No, Your Honor. I think there
12 can -- I guess what I -- what I would say is there has to
13 be issues that are reasonably foreseeable. One way that
14 can happen, in my view, is if they've arisen already
15 in -- in the litigation or in communications between the
16 parties, or contentions, or other things like that. You
17 know, and you can see certain ways in the petition where
18 Petitioner tried to address issues like that. The issues
19 that we've raised in our email are issues that we didn't
20 have any indication or any way to foresee that
21 Petitioner -- I'm sorry -- that Patent Owner might raise.

22 JUDGE REPKO: I mean, isn't it always the case
23 that Petitioner's not going to be able to anticipate
24 every single argument the patent owner raises? Why is
25 this case any different? Because of the ITC litigation?

1 Because those issues weren't available? I guess that's
2 what I'm trying to drill down on.

3 ATTORNEY KAISER: I think when there are implicit
4 claim construction issues, certainly, you know, it seems
5 to me that most of the time in POPRs patent owners are
6 not explicitly raising claim construction issues because
7 that -- panels often find that does create good cause or
8 want to know what the petitioner says about that, and so
9 claim construction issues are raised implicitly as part
10 of the arguments against the grounds, and oftentimes
11 those are not reasonably foreseeable.

12 Now, I would propose that oftentimes those are
13 issues that are best resolved during the trial and not
14 necessary to resolve, you know, for reasonable likelihood
15 of success. And, frankly, I think that's the case here,
16 but it's still also the case that those issues weren't
17 reasonably foreseeable. And if the board thinks it would
18 be helpful to determine reasonable likelihood of success,
19 then the petitioner would lying the opportunity to
20 address that.

21 JUDGE REPKO: Okay. Thank you. I have no further
22 questions on that.

23 Patent Owner, I want to just give you a moment to
24 kind of respond on that and particularly the implicit
25 claim construction. I think you said earlier you didn't

1 think that there were implicit claim construction
2 arguments, but I just want to give you an opportunity to
3 respond to that to help clarify the issue.

4 ATTORNEY HEJNY: That's correct, Your Honor.
5 There were no implicit -- there was no intention to
6 attach an implicit claim construction in the POPR
7 briefing, and I am unaware of any issues in the ITC that
8 parallel the issues that we're discussing today.

9 JUDGE REPKO: Okay. Thank you.

10 Just a moment. I'm going to confer with my
11 colleagues.

12 (Pause in proceedings.)

13 JUDGE AMUNDSON: All right. This is Judge
14 Amundson again. The panel has conferred, and I just want
15 to check:

16 Ms. Kaiser, are you still on the line with us?

17 ATTORNEY KAISER: Yes, Your Honor.

18 JUDGE AMUNDSON: And, Mr. Hejny, are you still on
19 the line with us?

20 ATTORNEY HEJNY: Yes, Your Honor.

21 JUDGE AMUNDSON: Okay. The -- well, the panel
22 will take these arguments from both sides under
23 advisement, and we'll send out an order, and I expect
24 that will happen in a day or two or by the end of the
25 week, and so we want to thank counsel for their helpful

1 arguments on the issue of the preliminary reply.

2 And so before we conclude the call, let me just
3 ask if there's anything else that the parties want the
4 panel to address.

5 ATTORNEY KAISER: Not from Petitioner, Your Honor.

6 ATTORNEY HEJNY: And nothing from Patent Owner --

7 JUDGE AMUNDSON: All right.

8 ATTORNEY HEJNY: -- Your Honor. Thank you very
9 much.

10 JUDGE AMUNDSON: All right. Very well. So with
11 that, the call is adjourned and have a nice day. Thank
12 you.

13 ATTORNEY KAISER: Thank you, Your Honor.

14 (Proceedings concluded at 9:46 a.m.)

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preferred (3)	respect (2)	start (1)	TRADEMARK (1)
PRELIMINARY (14)	respective (1)	STATE (1)	transcribed (1)
present (1)	respond (2)	stated (1)	transcript (2)
presenting (1)	response (4)	statement (1)	transcription (3)
pretty (1)	retrospect (1)	STATES (1)	TRIAL (2)
prior (2)	reviewing (1)	Stenographic (2)	tried (1)
proceedings (4)	right (15)	Stenographically (1)	true (2)
propose (3)	rule (1)	steps (1)	trying (3)
proposed (1)	rules (1)	Steven (3)	Tuesday (2)
proposing (3)	run (1)	Street (1)	two (6)
provide (1)		submit (1)	TX (1)
purchased (1)	< S >	substance (1)	
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question (2)	second (2)	suggested (1)	unaware (1)
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require (2)	specification (2)	times (1)	