

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIZIO, INC,
Petitioner,

v.

MULTIMEDIA TECHNOLOGIES PTE. LTD.,
Patent Owner.

Case No. IPR2024-00722
U.S. Patent No. 9,232,168

PETITIONER'S PRELIMINARY REPLY

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Petitioner VIZIO, Inc. files this Preliminary Reply as authorized by the Board's October 21, 2024 Order. (Paper 12.)

I. BACKGROUND

Three and a half months after VIZIO filed its Petition, the Eastern District of Texas issued a claim construction order in a pending district court litigation filed by Patent Owner, Multimedia Technologies Pte. Ltd. ("MMT) against LG Electronics, Inc. and LG Electronics USA, Inc. (collectively, "LGE") concerning U.S. Patent No. 9,232,168 ("168 patent"). The court concluded that the phrases "determining if a second user interface, associated with the selection, can contain a second navigation bar" and "if a second user interface, associated with the selection, can contain a second navigation bar, rendering a horizontal navigation bar as the second navigation bar in the second user interface" should be interpreted according to their "plain and ordinary meaning." (Ex. 2001 ("LGCCO"), 18-21.) Additionally, the court found the phrase "if a second user interface, associated with the selection, cannot contain a second navigation bar, rendering a different user interface device for the second navigation bar in the second user interface" to be indefinite. (Ex. 2001, 21-25.)

II. THE DISTRICT COURT'S INDEFINITENESS FINDING DOES NOT PRECLUDE INSTITUTION

MMT asserts that the district court's indefiniteness ruling precludes institution of *inter partes* review. (Paper 11 ("POPR"), 1-2, 8-12.) MMT is wrong.

The Federal Circuit has expressly stated that a finding of indefiniteness “does not necessarily preclude the Board from addressing the patentability of the claims on section 102 and 103 grounds.” *Samsung Elecs. Am., Inc. v. Prisia Eng’g Corp.*, 948 F.3d 1342, 1353 (Fed. Cir. 2020); *see also Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 813 (Fed. Cir. 2021) (holding “it is not always impossible to adjudicate a prior-art challenge, one way or the other, simply because some aspect of a claim renders the claim indefinite”); *Draftkings, Inc. v. AG 18, LLC*, IPR2022-01447, Paper 33, at 68 (PTAB Mar. 13, 2024) (reiterating that “indefiniteness or the potential indefiniteness of a term does not always preclude a prior-art analysis”). Indeed, the Federal Circuit has upheld decisions finding patents invalid for both indefiniteness and obviousness. *Standard Oil Co. v. Am. Cyanamid Co.*, 774 F.2d 448, 453-55 (Fed. Cir. 1985).

Similarly, the Board has granted institution even when the Petitioner argued that claim terms were indefinite in district court proceedings, reaffirming that indefiniteness does not categorically bar prior art analyses. For instance, in *Zillow Group, Inc. et al. v. IBM Corp.*, IPR2020-01655, Paper 8, at 11-12 (PTAB Mar. 15, 2021), the Board found no authority prohibiting patentability assessments under § 102 in *inter partes* reviews, despite district court indefiniteness challenges.

Further, 37 C.F.R. § 42.104(b)(3) does not require a petitioner to endorse the correctness of proposed claim constructions. *Western Digital Corp. v. SPEX*

Techs., IPR2018-00084, Paper 14, at 11 (PTAB Apr. 25, 2018). Nothing in the LGCCO detracts from the fact that VIZIO has complied with the Board’s “rules by identifying claim constructions it proposes as the basis for requesting review of the challenged claims.” *Id.*; *see also* POPR, 1 (acknowledging “it is ordinarily acceptable for a Petitioner to construe all terms according to their ‘ordinary and customary’ meaning to those skilled in the art...”).

Recently, the Board in *Aptiv Servs. US, LLC v. Microchip Tech., Inc.*, IPR2024-00646, Paper 11, at 11 (PTAB Sept. 25, 2024), rejected a similar argument that institution should be denied due to the petitioner’s assertion of indefiniteness in district court. The Board reaffirmed that indefiniteness precludes a patentability determination only where it renders such a determination “logically impossible.” *Id.* (citing *Intel*, 21 F.4th at 813).

Here, although the LGCCO found the “user interface device” term indefinite, nothing prevents the Board from also analyzing the prior art for invalidity under Sections 102 or 103. The challenged claims clearly distinguish the “user interface device” from the “second navigation bar,” allowing the Board to assess whether the prior art discloses rendering something other than the second navigation bar if it is determined that the second user interface cannot contain a second navigation bar. MMT has not established the “logically impossible” requirement necessary to preclude institution. *See Hilti Aktiengesellschaft v.*

Specified Technologies Inc., IPR2024-00192, Paper 16, at 12-13 (PTAB May 14, 2024) (granting institution where “we do not discern an indefiniteness issue that renders it logically impossible to adjudicate the prior-art challenges in the Petition.”).

III. MMT’S CASE LAW IS INAPPOSITE

MMT contends that VIZIO’s position that “a different user interface device” should be given its ordinary meaning implies an indefiniteness argument. (POPR, 1.) This mischaracterizes VIZIO’s position. VIZIO has not proposed a specific construction for any term in the ’168 patent. (Paper 1 (“Pet.”), 15.) Moreover, MMT’s cited cases are distinguishable.

In *Ebates Performance Marketing, Inc. d/b/a Rakuten Rewards v. Int’l Bus. Mach. Corp.*, IPR2022-00439, Paper 11 (PTAB Oct. 3, 2022), the petitioner sought a broad construction that conflicted with its own § 112, ¶ 6 indefiniteness argument. The Board declined to adopt the petitioner’s construction because it failed to identify the required structure for the means-plus-function claims under 37 C.F.R. § 42.104(b)(3). *Id.* at 12. Similarly, in *Cochlear Bone Anchored Solutions AB v. Oticon Medial AB*, 958 F.3d 1348, 1359 (Fed. Cir. 2020), the Federal Circuit held that means-plus-function claims without corresponding structure were incapable of prior art analysis. Here, no means-plus-function elements are at issue, and VIZIO’s Petition does not argue indefiniteness. Nor does

the LGCCO make any § 112, ¶ 6 findings that impact the Petition.

IV. THE INTERLOCUTORY NATURE OF THE LGCCO FAVORS INSTITUTION

The November 2019 Consolidated Trial and Practice Guide (“TPG”) instructs the Board to consider “whether the prior claim construction is final or interlocutory.” (TPG, 47.) Claim construction orders issued prior to final judgment—such as the LGCCO—are inherently interlocutory. *See Portney v. CIBA Vision Corp.*, 401 F. App’x 526, 529 (Fed. Cir. 2010); *Akeva, L.L.C. v. Adidas Am., Inc.*, 385 F. Supp. 2d 559, 565 (M.D.N.C. 2005); *Koninklijke Philips N.V. v. ZOLL Lifecor Corp.*, No. 2:12-CV-1369, 2015 WL 12781198, at *7 (W.D. Pa. July 15, 2015). District courts retain the authority to revise interlocutory claim construction rulings until final judgment is rendered. *Siemens Gamesa Renewable Energy A/S v. Gen. Elec. Co.*, 605 F. Supp. 3d 198, 205 (D. Mass. 2022).

The LGCCO is not final and remains subject to appeal. Further, MMT has not sought an adverse judgment under 37 C.F.R. § 42.73(b), signaling its intent to preserve the ’168 patent for potential future assertion should MMT successfully appeal the indefiniteness ruling. Because VIZIO would be precluded from filing an IPR in such a situation (*see* 35 U.S.C. § 315(b)), institution is warranted to preserve VIZIO’s ability to challenge validity via *inter partes* review.

V. CONCLUSION

The LGCCO does not prevent institution on VIZIO’s Petition.

Dated: October 24, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petitioner's Preliminary Reply was served on October 24, 2024, by delivering a copy to the attorneys of record for Patent Owner as follows:

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