

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

PATENT OWNER'S PRELIMINARY SUR-REPLY

As authorized by the Board (Paper 12), Patent Owner Multimedia Technologies PTE. Ltd. submits this Sur-Reply to Petitioner’s Preliminary Reply (Paper 13) addressing the claim construction order in *Multimedia Technologies PTE. Ltd. v. LG Electronics Inc.*, 2:22-cv-0494-JRG-RSP (E.D. Tex. June 30, 2024) (EX2001, “District Court Claim Construction Order”).

I. VIZIO DOES NOT CONTEST THAT THE DISTRICT COURT CLAIM CONSTRUCTION ORDER PRECLUDES THE ALLEGED PRIOR ART FROM TEACHING OR SUGGESTING “A DIFFERENT USER INTERFACE DEVICE”

The District Court Claim Construction Order explicitly determined that “a different user interface device” under its ordinary and customary meaning excludes a navigation bar, a menu, or any other element of a user interface. Ex. 2001, 24 (“[T]he Court finds that ‘user interface device’ cannot be any one of a navigation bar, a menu, a button, a captioned picture, or any arbitrary element of the user interface”). The Preliminary Reply does not dispute this determination. Nor does the Reply argue that the Board should not adopt this understanding or propose any alternative understanding for consideration.¹ Because the Petition relies exclusively

¹ Because VIZIO has not provided an alternative construction of “a different user interface device,” the Board cannot consider any understanding that conflicts with the District Court Claim Construction Order without granting Multimedia

on prior art navigation bars, menus, and other user interface elements to teach or suggest the claimed “different user interface device” and the claimed “different user interface device” cannot be any of these elements, VIZIO has not shown that the alleged prior art renders obvious any claim. POPR (Paper 11), 13-14.

II. VIZIO’S FAILURE TO PROVIDE A CONSTRUCTION AS REQUIRED BY 37 CFR § 42.104(b)(3) PRECLUDES INSTITUTION BECAUSE IT IS NOT LOGICALLY POSSIBLE UNDER THE DISTRICT COURT CLAIM CONSTRUCTION TO CONDUCT A PRIOR ART ANALYSIS

VIZIO’s inability above to identify “a different user interface device” in the prior art highlights why it must be required to provide a construction pursuant to 37 CFR § 42.104(b)(3). The District Court Claim Construction Order only determined what “a different user interface device” *is not*—the Order did not determine what “a different user interface device” *is*. But to perform a prior art analysis and compare the prior art against the claims, the scope of the claims must be sufficiently ascertainable to determine whether the prior art falls within their

additional supplemental briefing to address the conflict prior to institution, as required by the Administrative Procedure Act. *Google LLC v. Ecofactor, Inc.*, 92 F.4th 1049, 1057 (Fed. Cir. 2024) (“The Board[] cannot, without notice and opportunity for the parties to respond, [adopt] a claim construction[] that neither party requested nor anticipated.”).

ambit. *Cochlear Bone Anchored Solutions AB v. Oticon Medial AB*, 958 F.3d 1348, 1359 (Fed. Cir. 2020) (“Where a claim contains a requirement that must be met by any device or process within its scope, and the meaning of that requirement is entirely unknown, the claim cannot be compared to the prior art for purposes of an invalidity analysis, and so that analysis cannot be conducted.”). No prior art analysis can be conducted if it cannot be determined whether the prior art satisfies the claims. *Id.*

That is the case here. The District Court has said that “it is ***indiscernible*** what subset of the user interface, if any, is the user interface device.” Ex. 2001, 24. It found that “[the term] is rendered ***utterly ambiguous*** by the inconsistent applications in the intrinsic evidence.” *Id.*, 25. And its findings conclude that the term “has ***no discernable meaning***.” *Id.* This case is not remotely like *Samsung Elecs. Am., Inc. v. Prisia Eng’g Corp.*, 948 F.3d 1342 (Fed. Cir. 2020), *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801 (Fed. Cir. 2021), *Draftkings, Inc. v. AG 18, LLC*, IPR2022-01447, Paper 33 (PTAB Mar. 13, 2024), *Zillow Group, Inc. et al. v. IBM Corp.*, IPR2020-01655, Paper 8 (PTAB Mar. 15, 2021), *Aptiv Servs. US, LLC v. Microchip Tech., Inc.*, IPR2024-00646, Paper 11 (PTAB Sept. 25, 2024), or *Hilti Aktiengesellschaft v. 3 Specified Technologies Inc.*, IPR2024-00192, Paper 16 (PTAB May 14, 2024), where it was possible to compare the claims against the

prior art under a proposed construction. Without ascribing a meaning to “a different user interface device,” it is logically impossible under the District Court’s construction to determine whether the term is found in the prior art. *Cochlear Bone*, 958 F.3d at 1359. And 37 CFR § 42.104(b)(3) requires VIZIO to provide the meaning in order to make that determination.

Finally, to the extent VIZIO argues that Multimedia “has not established the ‘logically impossible’ requirement necessary to preclude institution,” VIZIO mistakenly places the burden on Multimedia. Prelim. Reply (Paper 13), 3. It is VIZIO’s burden *as the Petitioner* to provide a construction to show that it is logically possible to perform the prior art analysis—not Multimedia’s burden to argue every possible construction to establish that it is logically impossible to perform the analysis. 35 U.S.C. § 316(e); *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (holding that the burden is on petitioner and “never shifts to the patentee.”). That is what 37 CFR § 42.104(b)(3) requires. By failing to provide a construction, VIZIO fails to meet its burden.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following document was served by electronic service, by agreement between the parties, on the date below:

PATENT OWNER'S PRELIMINARY SUR-REPLY

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