

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIKTOK INC.
Petitioner,

v.

CELLSPIN SOFT, INC.,
Patent Owner

IPR2024-00770
Patent 8,904,030

**PETITIONER'S REPLY
TO PATENT OWNER'S PRELIMINARY RESPONSE**

I. PETITIONER’S *SOTERA* STIPULATION RENDERS PATENT OWNER’S *FINTIV* ANALYSIS MOOT

The *Sotera* stipulation filed by Petitioner, and notified to Patent Owner, is controlling to obviate a *Fintiv* analysis. TTI-1035. Director Vidal’s Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation is dispositive, stating “the PTAB will not discretionarily deny institution in view of parallel district court litigation where a petitioner presents a stipulation not to pursue in a parallel proceeding the same grounds or any grounds that could have reasonably been raised before the PTAB.” TTI-1034. Petitioner’s stipulation makes precisely that representation, and “[u]nder the mandatory *Fintiv* guidance discussed above, this stipulation is dispositive.” *BMW v. Northstar*, IPR2023- 01017, Paper 12, 10 (PTAB Dec. 8, 2023).

The POPR points out that a reexamination was subsequently filed for the ’030 patent but points to no authority to support denial based on *Fintiv* applied in the context of a reexamination. POPR, 12. Indeed, the Board has granted institution under similar facts. *See Google LLC v. Proxense, LLC*, IPR2024-00234, Paper 10, 32 (PTAB July 23, 2024); *Netnut Ltd. v. Bright Data Ltd.*, IPR2021-01493, Paper 11, 15 (PTAB Mar. 21, 2022). Here, the reexamination was recently granted and thus is not likely to be completed by the time the final written decision issues in this proceeding. Additionally, there is no overlap between issues raised in the Petition

and the reexamination. Further, the *Sotera* stipulation is conditional on institution, and if institution is granted, Petitioner will abide by its stipulation. TTI-1035 (“if the PTAB institutes”). Accordingly, the Board should grant institution.

II. CELLSPIN’S §316(B) ARGUMENTS SHOULD BE REJECTED

In the parallel District Court litigation, Cellspin is asserting a patent that should never have been granted. As the unwilling defendant in a patent lawsuit, TikTok availed its right as a member of the public to petition the Board to review and ultimately cancel the asserted claims on the basis that they are unpatentable. Cellspin now seeks to avoid Board review of a meritorious challenge to its patent under 35 U.S.C. §316(b) on the basis that TikTok should be barred from access to the PTAB. POPR, 20-30. Cellspin’s argument should be rejected for multiple reasons.

First, the petition does not implicate §316(b), which concerns the Director’s prescribing of regulations: “In prescribing regulations under this section, the Director shall consider the effect of any such regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted under this chapter.” 35 U.S.C. §316(b). And yet, the §316(b) argument takes root in a single petition against the asserted Cellspin patent. Nothing about the implicated petition is inconsistent with the intent of Congress in making the same available to members of

the public that seek to challenge the patentability of a granted patent. It therefore cannot be credibly disparaged as negatively affecting the “economy,” the “integrity of the patent system,” or the “efficient administration of the Office.” At bottom, the petition concerns Cellspin’s patent and demonstrates that Cellspin’s asserted patent claims are unpatentable. More, **nothing** in this petition implicates TikTok’s intellectual property, nor does the petition ask the Board to take any action concerning TikTok. There is no basis for Cellspin to assert that TikTok is (or should be) barred from seeking review of unjustifiably broad patent claims that have been asserted against it in litigation.

Second, even assuming that §316(b) applies to institution decisions (rather than regulation promulgation), Cellspin asks this Board to extend §316(b) to considerations of “foreign policy” and “national security.” POPR, 20-30. There is no justification for such an expansion, and Cellspin’s theory clearly goes far beyond the statutory text. The evaluation of foreign policy and national security concerns would involve an evidentiary review that is not provided for in the IPR procedures. Even Cellspin admits that “such analysis is impossible to achieve at the case-by-case adjudication level, and should rather occur through formal rulemaking to involve the expertise of policy experts on all sides” and “national security and related policy issues are unfamiliar in the Board’s day-to-day activities.” *Id.*, 24-26. Moreover, IPR proceedings benefit the domestic economy by clearing out invalid patents. That

public benefit is in no way affected by a *bona fide* petition by a party being sued for patent infringement—regardless of who that party is. Cellspin alleges no ill intent on the part of TikTok, and there is no allegation that TikTok is in any way trying to game the system. On the contrary, Cellspin is asserting patent claims that TikTok alleges are clearly unpatentable, and the public interest is clearly served by the PTAB considering TikTok’s petition.

Third, Cellspin relies on Declarations submitted by two alleged “experts” in an unrelated IPR—two experts that Cellspin has not retained and that Cellspin has not made available for deposition. POPR, 25-30 (citing IPR2021-00476, Paper 8). Further, the “experts” do not purport to provide an analysis of foreign policy or economics that the Board may find helpful, but instead provide unique and subjective theories concerning how they believe the Patent Office should conduct itself. *Id.* It would be improper for the Board to embrace such theories outside of rulemaking after public notice and a comment period have been provided.

Fourth, assuming *arguendo* that these flawed theories are applied, Cellspin fails their own “test” because, despite what Cellspin contends, the patent at issue is not related to “Data Science and Storage.” POPR, 28-29. In fact, Cellspin admits elsewhere that they abandoned their “mobile blogging service” for “host[ing] ... media” in January 2013. See <http://www.cellspin.net/mplatform/>. Cellspin’s “test” requires technology relevant to the “Critical and Emerging Technologies list” to

deny institution, which they cannot demonstrate. POPR, 28-29.

III. THE BOARD SHOULD REJECT PO'S CONSTRUCTION OF "OBJECT"

The POPR's construction of "object" is not supported by the evidence. First, to clarify, the term at issue in the '030 patent is "new data object." *E.g.*, TTI-1001, claim 1. In the claims, after new-data is acquired, a new-data object is created that is defined to include 1) new data, 2) data associated with new data, and 3) a timestamp as data signal notification. *E.g.*, *id.* This "new data object" is then encrypted and the encrypted data object is transferred to the cellular phone. *E.g.*, *id.* The claims define "new data object," and Petitioner submits that no construction is needed beyond the plain meaning recited in the claims. Fundamentally, the "new data object" is something that includes the three elements described above that is wirelessly transferred from the data capture device to the cellular phone.

While the term "new data object" is not found in the '030 patent specification, the specification is instructive, to better understand the plain meaning of "new-data object." For example, the specification discusses transferring files between the data capture device and the cellular phone, including using specific "file transfer protocols," including OBject EXchange (OBEX). *Id.*, 4:38-5:3. The specification provides examples for transferring files, including the use of a "file event listener" that is used to detect the "creation of a new file." *Id.* Thus, the specification seems

to conflate a “new-data object” with a file created by the data capture device that includes “captured data, the multimedia content, and files associated with the captured data and the multimedia content.” *See, e.g., id.*, 4:38-5:17.

PO’s construction of “object” first ignores the context of the term as a “new-data object” and instead relies on a Wikipedia definition from object-oriented programming. POPR, 51. The specification teaches that “software programs can be stored as “an object code,” but the term at issue is not a software program. TTI-1001, 10:56-57. Object-oriented programming is not relevant to the construction the claims of the ’030 patent. Instead, the plain meaning is sufficient.

If the PO’s construction of object is accepted, the prior art still applies to the claims because the prior art teaches a data structure, which is a data organization and storage format. Based on the evidence provided in the POPR, a file meets the definition of a data structure: “A file may be designated to store an image, a written message, a video, a program, or any wide variety of other kinds of data. Certain files can bstore multiple data types at once.” POPR, 59 (quoting https://en.wikipedia.org/wiki/Computer_file). The Petition provides an example of a new data object created by the Hiroishi-Takahashi-Bluetooth combination that includes the new data picture and a timestamp. *E.g.*, Petition, 45 (citing TTI-1030, [235]).

IV. THE BOARD SHOULD REJECT PO'S CONSTRUCTION OF "SUPPORTED DATA CAPABILITY"

The POPR suggests that "supported data capability" be construed to be types of data (e.g., audio, video, text, or images). POPR, 53-54. Such a construction is narrower than the plain meaning of the term, and should be rejected for lack of evidentiary support by the intrinsic record. The POPR does not point to any evidence to support its construction because no such evidence exists. The patent specification does not teach "sending a message to the Bluetooth enabled mobile device, corresponding to supported data capability of the Bluetooth enabled data capture device." The recitation to capabilities in the '030 patent specification is limited to "bluetooth capability," TTI-1001, 2:7-13, 3:41-48, 6:12-16, 8:28-32, "memory and processing capabilities," *id.*, 5:4-7, 7:23-27, 7:52-55, 8:62-65, and "wireless network and telephony data capabilities," *id.*, 10:1-4. In each of these sections, the '030 patent is talking about underlying capabilities of the device, and is not limited to a type of data. Thus, assuming that these sections even support the claimed feature, they suggest that the plain meaning of supported data capabilities is broader than "types of data."

As discussed in the Petition, the Bluetooth specification teaches sending a message that includes supported data capabilities, including max supported page,

slots per packet, Adaptive Frequency Hopping (AFH), Channel Quality Drive Data Rate, and Enhanced Data Rate (EDR). Petition, 26.

V. THE PRIOR ART GROUNDS PERFORM THE RECITED ORDER OF OPERATION

The POPR raises a claim construction issue pertaining to the recited order of certain operations. POPR, 46-47. Without commenting on the merits of PO's constructions, Petitioner notes that the prior art satisfies the order of certain operations. *E.g.*, Petition, 17. The petition proves that the Hiroishi-Takahashi-Bluetooth combination and Hiroishi-Kahn-Bluetooth combination teach new-data is necessarily limited to data acquired after establishing the short-range paired wireless connection [that is maintained continuously]. *E.g.*, Petition, 23-27, 63.

The POPR's reliance on BIP (EX2015) to show non-obviousness of the claims in view of the Hiroishi-Takahashi-Bluetooth and Hiroishi-Kahn-Bluetooth combinations is misplaced. POPR, 76-79. Hiroishi specifically discusses using Bluetooth to support remote control operations between the mobile phone and the digital camera and transferring instructions to the camera and transferring images and other data to the mobile phone. *E.g.*, Petition, 11, 14, 16. And Bluetooth specifically describes pairing and authentication. *E.g.*, Petition, 24-25.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4), the undersigned certifies that on August 16, 2024, a complete and entire copy of this Petitioner's Reply to Patent Owner's Preliminary Response was provided by email to Patent Owner by serving the email correspondence addresses of record as follows:

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