Filed on behalf of: Orca Security Ltd.

Entered: January 7, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WIZ, INC.,
Petitioner,

v.

ORCA SECURITY LTD.,
Patent Owner.

IPR2024-00863
Patent 11,663,031

PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

TABLE OF CONTENTS

Page

I. Introduction....1

II. Legal Standard....2

III. The Board's Conclusion on Limitation [1.3] Is Based On New Evidence And Arguments That Are Incorrect....3

A. The Final Written Decision Relied on a Theory for Limitation [1.3] That Petitioner Did Not Raise....4

B. The Final Written Decision's New Argument Is Factually Wrong....9

IV. Conclusion....13

TABLE OF AUTHORITIES

Page(s)

CASES

Belden Inc. v. Berk-Tek LLC,
805 F.3d 1064 9

Dell Inc. v. Acceleron, Inc.,
818 F.3d 1293 9

Epic Games, Inc. v. Ingenioshare, LLC,
IPR2022-00294, Paper 30 (PTAB May 19, 2023) 10

In re Magnum Oil Tools Int'l, Ltd.,
829 F.3d 1364 (Fed. Cir. 2016) 3, 7

In re NuVasive,
841 F.3d 966 (Fed. Cir. 2016) 8, 9

Palo Alto Networks, Inc. v. Finjan, Inc.,
IPR2015-01979, Paper 62 (PTAB Mar. 15, 2017).....10, 11

SAS Inst., Inc. v. Iancu,
584 U.S. 357 (2018).....2, 3

Zhuhai CosMX Battery Co. Ltd. v. Ningde Amperex Technology Limited,
IPR2025-00524, Paper 17 (PTAB Dec. 22, 2025) 2, 3, 11

STATUTES

5 U.S.C. § 554.....8

5 U.S.C. § 556.....8

I. Introduction

Patent Owner Orca Security, Ltd. ("Patent Owner" or "Orca") respectfully requests Director Review of the Board's Final Written Decision ("FWD", Paper 85[1]) finding unpatentable all claims of U.S. Patent No. 11,663,031 ("the '031 patent", Ex.1001). The FWD raises issues of particular importance to the Office, the Director, and the patent community, and allowing the FWD to stand detracts from the Office's goal of predictability and certainty in the patent system.

Instead of adhering to the Board's role as adjudicator, the Board here became another party to the proceeding, creating and relying on its own evidence and argument, not part of the Petition or any expert's opinion, to conclude that the prior art's discussion of a "file system of a virtual machine instance" rendered obvious the claimed "location of at least one of the identified virtual disks." FWD, 21-22 (discussing limitation [1.3] ("use the computer platform APIs to query a location of at least one of the identified virtual disks" and incorporating analysis from IPR2024-00865, Paper 84, 43-44))[2]. Not only was it legal error for the Board to introduce this new evidence and argument, because the Board is limited to considering the

[1] Citations herein are to the original, sealed versions of the papers.

[2] Nearly identical or identical limitations are found in the other independent claims of the '031 patent: claim 9 ([9.3]) and claim 16 ([16.3]).

evidence and arguments raised by the petitioner, but additionally, the Board's new argument is factually incorrect and based on a misunderstanding of the prior art (Veselov, Ex.1007). The file system disclosed in Veselov represents how contents of a virtual disk are stored, distinct from any location of a virtual disk, and a file system cannot teach the claim language.

The Board's new theory is the sole basis for its unpatentability findings as to independent claim limitations [1.3] (as well as parallel limitations [9.3] and [16.3]) in each of Grounds 1-3, and thus the FWD should be reversed and all claims found not unpatentable.

II. Legal Standard

The Director may reverse Board decisions where, as here, those decisions involve an abuse of discretion, important issues of law or policy, erroneous findings of material fact, or erroneous conclusions of law. Director Review Process §2.B. As the Director recently reminded the Board, an *inter partes* review is "a party-directed, adversarial process," not an "agency-led, inquisitorial process for reconsidering patents." *Zhuhai CosMX Battery Co. Ltd. v. Ningde Amperex Technology Limited,* IPR2025-00524, Paper 17 at 3 (PTAB Dec. 22, 2025) (granting Director Review), quoting *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 364 (2018). Accordingly, the "Board must base its decision on arguments that were advanced by a party, and to which the opposing party was given a chance to respond," and the

Board cannot rely on arguments or evidence that were not raised by the petitioner during the proceeding. *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1361 (Fed. Cir. 2016); *see also Zhuhai*, IPR2025-00524, Paper 17 at 3 ("it is inappropriate for the Board to introduce its own evidence into the record.").

III. The Board's Conclusion on Limitation [1.3] Is Based On New Evidence And Arguments That Are Incorrect

It is axiomatic in IPR proceedings that the petitioner defines the scope and evidence for its raised patent challenge, not the Board. *See SAS Inst.*, 584 U.S. at 367 ("In all these ways, the statute tells us that the petitioner's contentions, not the Director's discretion, define the scope of the litigation all the way from institution through to conclusion."). The Board here ignored that directive, instead introducing its own evidence and arguments to buttress insufficient arguments raised by Petitioner for limitation 1.3, a limitation critical to the '031 patent's invention. *See* Paper 32 (Patent Owner Response, "POR"), 24-31. Patent Owner addressed the arguments Petitioner raised, but had no opportunity to consider the Board's new evidence and arguments regarding that evidence in violation of Patent Owner's due process rights. If it had that opportunity, Patent Owner (and its expert) would have been able to identify for the Board the factual errors with such an interpretation.

As a preliminary note, as relevant to this Director Review request, the FWD in this proceeding adopts the reasoning in the Board's final written decision entered in IPR2024-00865, involving Patent Owner's U.S. Patent No. 11,693,685, which

includes an identical limitation as in the '031 patent. *See* FWD, 21-22 (addressing limitation [1.3] and stating: "We addressed this same issue based on the same arguments and evidence in our Final Written Decision in IPR2024-00865 …. For the same reasons explained in IPR2024-00865, we agree with Petitioner ….") . The final written decision in IPR2024-00865 (Paper 84 in that proceeding) is referred to and cited herein as the "685FWD." The parties briefing in this proceeding, relative to limitation [1.3], is similar to the briefing in IPR2024-00865; however, for clarity of the record, citations to the briefing and evidence are to papers in this proceeding, IPR2024-00863, unless otherwise specified.

A. The Final Written Decision Relied on a Theory for Limitation [1.3] That Petitioner Did Not Raise

The Board's finding that "Veselov teaches us[ing] the computer platform APIs to query a location of at least one of the identified virtual disks" (limitation [1.3])—is set forth on pages 43-44 of the 685FWD. There, the Board cited Veselov's column 9, lines 25-32, to find "Veselov discloses that, '[w]hen … requesting the snapshot, the scanning service may include instructions identifying the data to include in the snapshot,' such as which 'file system of a virtual machine instance' to analyze (e.g., the location of the virtual disk drive of a VM to analyze)." 685FWD, 43, *citing* Ex.1007 (Veselov), 9:25-32. In other words, the Board equated Veselov's "data" including a "file system of a virtual machine instance to analyze" as the

recited "location of the virtual disk drive of a VM to analyze." The Board does not cite any part of the Petition in support of this theory. *See* 685FWD, 43.

The Board does cite to the declaration of "Wiz's declarant, Dr. Stavrou" in alleged support of the Board's theory. 685FWD, 43-44, citing IPR2024-00865, Ex.1002 ¶140; *see also* IPR2024-00863, Ex.1002, ¶134 (identical testimony). But the cited discussion only highlights that the Board's theory was new and unsupported by Petitioner Wiz. Indeed, Dr. Stavrou's paragraph 140 in IPR2024-00865 (and his identical testimony in his declaration in this proceeding (IPR2024-00863, Ex.1002, ¶134)) does not mention Veselov's "file system," and doesn't cite Veselov's column 9 lines 28-32 where the "file system details" are referenced; yet this passage is the sole basis for the Board's findings for limitation [1.3]. *Compare* 685FWD, 43, *with* IPR2024-00865, Ex.1002 ¶140 (citing Ex.1007 (Veselov), 9:9-25, 9:25-28 (no reference to "file system"); Ex.1020 (Sancheti) 21:9-22:18, Ex.1055 (Virtual Disk), 55-56; Ex.1052 (VirtualCenter), 445-46)). This is unsurprising, because the Petition did not articulate any theory about Veselov's "file system" as satisfying a "location of the virtual disk drive of a VM," only the Board did.

The Board tacitly admits the Petition (Paper 2, "Pet.") *did not* present the Board's relied upon argument by summarizing the myriad arguments that Petitioner *did* make with respect to limitation [1.3], reproduced below, none of which mention

a "file system" or lines 28-32 of Veselov's column 9 that refer to such a "file system":

> Element 1.3 recites "use the computer platform APIs to query a location of at least one of the identified virtual disks." Ex. 1001, 9:40–41. Wiz contends that Veselov teaches this limitation because a person of ordinary skill in the art would have understood that "Veselov's scanning service . . . queries the location of the identified virtual disks so that it can locate them when generating a snapshot that includes those disks." Pet. 33 (citing Ex. 1007 [Veselov], 9:9–28; Ex. 1002 ¶ 140). According to Wiz, "[d]isk-location queries were a well-known feature of standard cloud computing platform APIs . . . and virtual-disk locations were routinely determined using such queries for snapshot-generation purposes and for VM management generally." *Id*. (citing Ex. 1002 ¶ 141). Wiz also argues that Veselov teaches or suggests using "APIs to query an endpoint/network address of the VM to which the disks are allocated." *Id*. at 34. Wiz asserts that using APIs to query the VM's endpoint/network address "was an obvious way to determine this information so that the scanning service can perform [certain] functions," such as generating a snapshot or monitoring the VM's activity/connections. *Id*. (citing Ex. 1002 ¶¶ 142, 143).

685FWD, 25-26; *see also* FWD, 21-22 (similar discussion summarizing equivalent portions of Petition in IPR2024-00863).[3]

Petitioner's Reply also didn't make the argument: the phrase "file system" doesn't appear in the Reply. *See generally* Reply (IPR2024-00863, Paper 42). And likewise, nothing in Dr. Stavrou's Reply declaration (IPR2024-00863, Ex.1400) supports the Board's theory that the "file system" discussion in Veselov discloses or renders obvious the recited "location." *See generally* Ex.1400. Thus, again, Patent Owner did not have notice of the argument or the opportunity to argue why the Board's theory is wrong. The Board thus clearly erred and violated Patent Owner's rights under the Administrative Procedure Act ("APA"). *Magnum Oil Tools.*, 829 F.3d at 1371 ("The Board must base its decision on arguments that were advanced by a party, and to which the opposing party was given a chance to respond.").

The Board's error is not resolved or excused because Veselov was otherwise discussed in the proceedings. The Federal Circuit has explained that a patent owner's due process rights are violated where the Board relies on a new factual assertion about a reference, even though other factual assertions had been

[3] Not expressly referred to by the FWD, but for completeness, the Petition also cited Veselov at 4:59-5:5, 10:48-11:4, and 15:41-16:14 for limitation 1.3. *See* Pet. at 33-34.

extensively briefed during the proceeding. *In re NuVasive*, 841 F.3d 966, 971-972 (Fed. Cir. 2016). The Court wrote that the patent owner was "entitled to an adequate opportunity to respond to [the] asserted fact" and that "entitlement was not lessened … by virtue of the opportunity [the patent owner] had to respond to *other* factual assertions about [the reference]." *NuVasive*, 841 F.3d at 972 (emphasis original) (also discussing APA violation where "the thrust of the rejection" changed even though same prior art reference was used). Likewise, here, the parties' other briefing about Veselov does not permit the Board to create and rely on a **different** factual assertion and obviousness argument about Veselov.

Just as the Court wrote in *NuVasive*, to comply with the APA, the Office "must 'timely inform[]' the patent owner of 'the matters of fact and law asserted,' 5 U.S.C. § 554(b)(3), must provide 'all interested parties opportunity for the submission and consideration of facts [and] arguments ... [and] hearing and decision on notice,' *id*. § 554(c), and must allow 'a party ... to submit rebuttal evidence ... as may be required for a full and true disclosure of the facts,' *id*. § 556(d)." *NuVasive*, 841 F.3d at 971. The Board did not do so here. As discussed above, Petitioner's briefing did not assert, as a "matter of fact" that Veselov's "file system" equated to the recited "location." And Patent Owner's Response and Sur-Reply similarly did not discuss Veselov's "file system" or respond to any such argument. *See generally* IPR2024-00863, Paper 32 (Patent Owner Response, "POR"), 24-31 (responding to arguments

regarding limitations [1.2]-[1.4]); IPR2024-00863, Paper 60 (Patent Owner Sur-Reply, "POSR"), 8-10 (same). And while, just as in *NuVasive*, the Board isn't limited to citing portions of the evidence presented by the parties, it cannot newly leverage disclosures of Veselov as "an essential part of its obviousness findings identifying claim elements in the prior art." *NuVasive*, 841 F.3d at 971. Here, the FWD's sole basis for finding limitation [1.3] in the prior art is based on the Board's new theory.

In sum, the Board's conclusion that Veselov taught limitation [1.3] in Ground 1 rests solely on arguments created by the Board itself. Under precedent, that is plainly a violation of Patent Owner's due process rights afforded by the APA, and therefore represents an abuse of discretion for Ground 1 that should be reversed. *See Dell Inc. v. Acceleron, Inc.*, 818 F.3d 1293, 1301 (also citing, e.g., *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1081 ("A patent owner [in an IPR] is undoubtedly entitled to notice of and a fair opportunity to meet the grounds of rejection.")). The error infects Grounds 2 and 3 and the Board's finding regarding those Grounds should be reversed too. *See* FWD, 29-34 (discussing Ground 2 and 3 claims which depend from and incorporate limitations of independent claims 1 and 9).

B. The Final Written Decision's New Argument Is Factually Wrong

Notwithstanding the due process violation and error of law, had Patent Owner been presented with the Board's new argument during the proceeding, it would have

shown that the Board misapprehended or overlooked that Veselov's "file system" is distinct from a "physical storage device" like the claimed virtual disk drive, and does not include or render obvious the location of a virtual disk drive. These erroneous findings of fact are material to the Board's unpatentability finding—they are the only argument relied on—and provide a separate basis for reversing the FWD.

For example, Veselov explains (in disclosures that the Board did *not* cite) that a "file system" of a "target resource" (i.e., a virtual machine) is expressly distinct from any "properties of physical storage devices allocated to the logical volumes." *See, e.g.*, Ex.1007, 9:59-63 (listing separately); *see also id.* 11:50-55 ("physical storage device contents may be independent of the file system"). More specifically, the "file system" in Veselov represents the particular technique for *organizing data* on a virtual disk, not the virtual disk's **location**. Ex.1007, 11:12-18 ("files 366 which … may be organized and/or accessed using a file system (e.g., NTFS, procfs).", 18:23-26 (identifying a "file system … to produce the volume image."); *see also* Microsoft Computer Dictionary (5th ed.), 213 ("file system *n.* In an operating system, the overall structure in which files are named, stored, and organized")[4]. This

[4] The Office routinely relies on definitions in the Microsoft Computer Dictionary to explain technical concepts. *See, e.g.*, *Epic Games, Inc. v. Ingenioshare, LLC*, IPR2022-00294, Paper 30 at 21 (PTAB May 19, 2023); *Palo Alto Networks, Inc. v.*

distinction is critical, as the Board overlooked that Veselov's "physical storage devices allocated to the logical volumes" are what the Petition, and the FWD, relied on as teaching the claimed "virtual disk drive." 685FWD 26-27, citing IPR2024-00865 Petition (Paper 2), 35; *see also* IPR2024-00863 Petition (Paper 2), 40. It follows that where a "file system" is distinct from a "virtual disk drive," the file system is not the "location of the virtual disk" recited in limitation [1.3] of the challenged claims. Because that is the sole theory that the FWD relies on as purportedly disclosing limitation [1.3] in each of Grounds 1-3, the FWD should be reversed.

Other disclosure confirms this point, as Veselov later explains that a "volume image's copy of the physical storage device contents may be independent of the file system." Ex.1007, 11:50-55. Later, Veselov discusses identifying a "file system … to produce the volume image," confirming the file system is unrelated to the disk location.

Finjan, Inc., IPR2015-01979, Paper 62 at 13 (PTAB Mar. 15, 2017). This is consistent with the Director's note in *Zhuhai*'s that panels may "take judicial notice of adjudicative facts that are 'not subject to reasonable dispute.'" *Zhuhai*, IPR2025-00524, Paper 17 at 3.

While the Board credited Petitioner's expert's statement in IPR2024-00865, Ex.1002 ¶140, as supporting its conclusion, any credit afforded was minimal: the Board only credited Dr. Stavrou's testimony because it was "consistent with Veselov's disclosure." 685FWD, 43-44. But the Board didn't credit Dr. Stavrou's testimony that a "file system" equates to a location and adopt it as its own, because there is no such testimony, and it would be wrong. Accordingly, the Board's reliance on Veselov's disclosure and its factual finding is wrong and also requires review and reversal.

In fact, tertiary references cited by Dr. Stavrou confirm that a "file system" is not equivalent to a "location of the virtual disk drive" as the Board found. For example, in the Background portion of Dr. Stavrou's declaration, Dr. Stavrou provided explanation regarding "different types of virtual or non-virtual locations." But in that paragraph, he didn't allege that a "file system" is a location of a virtual disk drive. Rather, Dr. Stavrou cited, for example, Exhibit 1015, which explains that a datastore is analogous to a file system, and that both "hide specifics of the physical storage device" and therefore a file system is not a location of a virtual disk drive. IPR2024-00863, Ex.1002 ¶30, quoting Ex.1015, 124.

Accordingly, the Board's error of fact, that a "file system" teaches a "location of the virtual disk drive" as recited in the claims, also compels Director Review and reversal.

IV. Conclusion

The Board's violation in the Final Written Decision of Patent Owner's due process rights afforded by the APA compels Director Review and reversal.

Respectfully submitted,

Dated: January 7, 2026

By: / Blake R. Davis /

Blake R. Davis (admitted *pro hac vice*)
blake.davis@lw.com
Latham & Watkins LLP
505 Montgomery Street, Ste. 2000
San Franscisco, CA 94111-6538
Telephone: 415.395.8033
Fax: 415.395.8095

Counsel for Patent Owner
Orca Security Ltd.

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 7th day of January, 2026, a true and correct copy of the foregoing **Patent Owner's Request for Director Review** were served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

Matthew A. Argenti (Reg. No. 61,836)
WILSON SONSINI GOODRICH & ROSATI
650 Page Mill Road
Palo Alto, CA 94304
Tel.: 650.354.4154
Fax: 650.493.6811
margenti@wsgr.com

Michael T. Rosato (Reg. No. 52,182)
WILSON SONSINI GOODRICH & ROSATI
701 Fifth Avenue, Suite 5100
Seattle, WA 98104
Tel.: 206-883-2529
Fax: 206-883-2699
mrosato@wsgr.com

Wesley E. Derryberry (Reg. No. 71,594)
Tasha M. Thomas (Reg. No. 73,207)
Joseph M. Baillargeon (Reg. No. 79,685)
WILSON SONSINI GOODRICH & ROSATI
1700 K Street, NW, Fifth Floor
Washington, DC 20006
Tel.: 202-973-8947
Fax: 202-973-8899
wderryberry@wsgr.com
tthomas@wsgr.com
jbaillargeon@wsgr.com

By: / Blake R. Davis /

Blake R. Davis (admitted *pro hac vice*)
blake.davis@lw.com
Latham & Watkins LLP
505 Montgomery Street, Ste. 2000
San Francisco, CA 94111-6538
Telephone: 415.395.8033
Fax: 415.395.8095

Counsel for Patent Owner
Orca Security Ltd.