

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AYLO FREESITES LTD,

Petitioner

v.

DISH TECHNOLOGIES L.L.C.,

Patent Owner

U.S. Patent 11,991,234

Issue Date: May 21, 2024

Title: APPARATUS, SYSTEM, AND METHOD FOR MULTI-BITRATE
CONTENT STREAMING

**PETITIONER'S NOTICE RANKING PETITIONS FOR *INTER PARTES*
REVIEW OF U.S. PATENT 11,991,234**

IPR2024-00940; IPR2024-00941

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450
Submitted Electronically via PTAB E2E

I. INTRODUCTION

Aylo Freesites Ltd (“Petitioner”) presents two concurrent petitions for *inter partes* review of U.S. Patent No. 11,991,234 (“the ’234 Patent”) (EX1001). Petitioner hereby ranks the concurrent petitions and explains why two petitions were necessary and why both petitions should be instituted.

II. RANKING OF THE PETITIONS

Petitioner requests that the Board consider the petitions in the following order:

Rank	Petition	Primary Reference	Claims
1	IPR2024-00940 (“Leaning-based petition”)	Leaning	1-20
2	IPR2024-00941 (“Ogdon-based petition”)	Ogdon	1-20

III. MATERIAL DIFFERENCES BETWEEN PETITIONS

Both the Leaning-based petition and the Ogdon-based petition challenge all 20 claims of the ’234 Patent, but each petition relies on different prior art—most notably, different primary references, to demonstrate that all claims 1-20 are invalid as obvious in different ways. The Leaning-based petition demonstrates how Leaning discloses or teaches every limitation of all independent claims and most of the dependent claims in the ’234 Patent. The Leaning-based petition further provides obviousness grounds using Klements and Gamble as secondary references. The Ogdon-based petition demonstrates how Ogdon in view of secondary reference Allen discloses or teaches every limitation of all independent claims and most of the

dependent claims in the '234 Patent. The Ogdon-based petition further provides obviousness grounds using Klements and Gamble as secondary references for certain claims. Thus, each petition challenges every claim of the '234 Patent and relies on a different analysis of different primary prior art references—namely Leaning and Ogdon.

IV. THE BOARD SHOULD INSTITUTE BOTH PETITIONS

Here, the Board should exercise its discretion to institute both petitions because (1) Patent Owner's own conduct necessitates multiple petitions, (2) both petitions contain strong invalidating prior art, and (3) the Board has already instituted IPRs with Ogdon and Allen grounds (in IPR2024-00043, -00044, -00045, -00046, -00146)¹ and other petitions are pending challenging these and additional related patents with Leaning grounds (IPR2024-00512, 00513, -00514, -00515, -00516, -00517, -00518, and -00519)².

¹ An unrelated party to Petitioner, fuboTV Media Inc., has recently filed “copycat” petitions and moved to join these IPR proceedings in IPR2024-00901, -00902, -00903, -00904, and -00905.

² Unrelated parties to Petitioner, fuboTV Media Inc. and Yanka Industries, Inc., have recently filed “copycat” petitions and moved to join three of these IPR proceedings in IPR2024-00917, -00918, and -00919.

First, Patent Owner’s conduct in its patent-assertion campaign asserting nearly every claim of its eight related patents **and asserting all 20 claims of the ’234 Patent against Petitioner immediately upon issuance** (collectively, the “ABR Patents”) requires Petitioner to challenge all of Patent Owners independent and dependent claims across the ABR Patents—including claims 1-20 of the ’234 Patent.

Additionally, Patent Owner has recently moved to amend its complaint against another defendant fuboTV in the District of Delaware to assert every one of the nearly 200 independent and dependent claims across its asserted ABR patents in response to fuboTV’s motion to dismiss pursuant to 35 U.S.C. § 101. EX1014. Patent Owner also contacted Petitioner several days before the ’234 Patent was to issue and threatened to assert the ’234 Patent against Petitioner by amending its complaint in *DISH Technologies L.L.C. et al v. Aylo Freesites Ltd et al*, Civ. No. 2:24-cv-00066-DAK-JCB (D. Utah) on the day the ’234 Patent issued. Based on Patent Owner’s conduct asserting every independent and dependent claim against its litigation targets, Petitioner must challenge each of Patent Owner’s lengthy claims in the ’234 Patent. Given the 14,000 word limit for IPR petitions, there is not sufficient space to challenge every claim and include independent invalidity grounds based on *Leaning* and based on *Ogdon and Allen*. This weighs in favor of the Board exercising its discretion and instituting both petitions.

Second, here Petitioner ranks the Leaning-based petition #1 for the Board’s consideration, and Leaning is undoubtedly very strong invalidating prior art.³ But Ogdon in view of Allen in the #2 ranked Ogdon-based petition also presents strong invalidity grounds for the challenged claims. This is supported by the fact that the Board has already instituted on related patents having similar claims in IPR2024-00043, -00044, -00045, -00046, -00146—each of which presented similar Ogdon in

³ Patent Owner has acknowledged the strength of Leaning before the United Kingdom High Court, where Patent Owner has asserted related European patents against Petitioner that share the same parent application as the ’234 Patent. Specifically, Patent Owner represented to the UK High Court that it “likely” will need to amend its European claims, which contain similar limitations as the ’234 Patent, to try to overcome Leaning. EX1015, 58:19-59:15 (DISH’s UK Counsel, Mr. Moody-Stuart: “if we seek to amend, which would seem to be likely”), 62:4-25 (“[W]e may well amend the patent, we are contemplating it”), 64:22-65:7 (“There is a likelihood we may amend . . . it is something that it is a real possibility”), 65:12-14 (“MR. JUSTICE MEADE: For all I know, Mr. Moody-Stuart, you have reached the conclusion that you have to amend over Leaning”).

view of Allen obviousness grounds in the #2 ranked Ogdon-based petition here. This also supports the Board exercising its discretion and instituting both petitions.

Third, instituting both petitions should not impose an undue burden on the Board. As already mentioned, the Board has instituted Ogdon and Allen invalidity grounds in IPR2024-00043, -00044, -00045, -00046, -00146 already. There is significant overlap with the second-filed petition here.⁴ Further Petitioner relies on the same secondary references (Klements and Gamble) in a similar manner in both the Leaning-based petition and the Ogdon-based petition which provides further overlap and minimizes the additional issues that the Board must consider. Though two petitions were required due to the need to challenge all twenty claims, the issues presented in these two petitions is collectively only two primary references (Leaning and Ogdon) and contains overlapping secondary references (Klements and Gamble), which should minimize the burden on the Board.

For the foregoing reasons, the Board should institute both petitions.

⁴ Petitioner also has IPRs based on Leaning challenging these same and other related patents pending in IPRs IPR2024-00512, 00513, -00514, -00515, -00516, -00517, -00518, and -00519. The #1 ranked Leaning-based petition for the instant '234 Patent will also have significant overlap with these IPR proceedings if instituted.

DATED: May 21, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2024 I caused a true and correct copy of this Petitioner's Notice Ranking Petitions to be served via overnight delivery on the USPTO Patent Center (PAIR) Correspondence Address for U.S. Patent 11,991,234 as follows:

70540 – KW LAW LLP (Dish Technologies L.L.C.)
6122 N 7th St Suite D
Phoenix, AZ 85014

I also caused a courtesy copy of the foregoing materials to be served via email on DISH's counsel of record in the district court litigations and related IPR proceedings:

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DATED: May 21, 2023

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