

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE LLC,  
Petitioner,

v.

138 EAST LCD ADVANCEMENTS LIMITED,  
Patent Owner.

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Case No. IPR2024-00959  
U.S. Patent No. 7,428,082

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**PATENT OWNER'S SUR-REPLY**

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| <b>Number</b> | <b>Description</b>                                      |
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| 2001          | Declaration of Nikolaos Papanikolopoulos, Ph.D.         |
| 2002          | CV of Nikolaos Papanikolopoulos, Ph.D.                  |
| 2003          | Deposition Transcript of Robert Stevenson               |
| 2004          | ICC White Paper No. 7                                   |
| 2005          | Microsoft Press Computer Dictionary, 1999 Ed. (excerpt) |

## **I. PRELIMINARY STATEMENT**

Patent Owner submits this Sur-Reply in response to Petitioner's Reply (Paper 16, "Reply") to Patent Owner's Patent Owner Response (Paper 13, "POR"). Petitioner fails to show that the challenged claims are unpatentable, for at least the reasons below.

*First*, with regard to Ground 1, Petitioner fails to rebut Patent Owner's arguments and evidence in its POR that neither Kuwata nor Fisher, alone or in combination, teach the claim limitation "specification data, which specifies . . . data to be updated" because neither reference teaches updating any information based on "specification data." Petitioner relies on cherry-picked disclosures in Fisher to argue otherwise, but a POSITA would not understand those disparate teachings in the way Petitioner proposes. Petitioner further fails to show that a POSITA would have been motivated to combine Kuwata with Fisher and would have had a reasonable expectation of success in doing so, in view of known challenges at that time in matching cameras with printers.

*Second*, with regard to Ground 2, Petitioner fails to show that Ohga teaches using specification data to update image processing control data. In particular, Petitioner's attempt to analogize Ohga's ICC profiles to the PIM in preferred embodiments of the '082 patent falls short, as it fails to acknowledge differences fundamental to the patent claims: the ICC profile describes properties of an

individual device, while PIM data actually controls image processing at a printer or other output device according to the photographer's intent.

*Third*, with regard to Ground 3, Petitioner fails to show that Kuwata and Ohga render obvious claim 7. Focusing its Reply arguments on claim element 7[a], Petitioner fails to rebut Patent Owner's showing that the Kuwata/Ohga combination fails to teach the limitation of claim element 7[b] "configured to acquire update data of the image processing control data *based on the attribute data*."

*Fourth*, with regard to Grounds 4-6, Petitioner fails to show that Ohga alone or in view of Kuwata teaches "identification data" as claimed, because Ohga's alleged identification data is not used to download image processing control data as required.

*Fifth* and finally, with regard to the dependent claims of the '082 patent, Petitioner cannot point to any teaching in Kuwata or Fisher of sending specification data out to a server via a network, and Petitioner therefore fails to show that claim 6 is obvious in view of that combination.

## **II. THE PETITION DOES NOT ESTABLISH UNPATENTABILITY BY A PREPONDERANCE OF THE EVIDENCE.**

### **A. Petitioner Fails to Show that Kuwata in View of Fisher Renders Obvious Claims 1-3, 5-6, or 10 (Ground 1).**

#### **1. Patent Owner Does Not Attack the Ground 1 References Individually: Petitioner fails to show that either Kuwata or Fisher, separately or in combination, teaches a storage manager “configured to update at least a part of the image processing control data . . . based on specification data” as claimed**

Petitioner fails to show that either Kuwata or Fisher teaches or discloses a storage manager “configured to update at least a part of the image processing control data . . . based on specification data.” In particular, Petitioner has failed to show that either reference teaches updating any information based on “specification data,” as claim 1 of the ’082 patent requires. As neither reference teaches the claim limitation individually, the Kuwata/Fisher combination cannot disclose it either.

Apparently conceding that Fisher does not expressly disclose using “descriptors” to download ancillary data files, Petitioner argues that descriptors are just “one example” of specification data provided in the Petition (Reply, 5)—but “descriptors” are the *only* example given in the Petition, which does not cite any other examples of alleged specification data in paragraphs [0010], [0023], [0049], or [0053], or anywhere else for that matter. As Petitioner does not show that

descriptors or any other information in Fisher are used as specification data, it cannot meet its burden to prove that all claim limitations are disclosed in the prior art. *See Par Pharm., Inc. v. TWi Pharm., Inc.*, 773 F.3d 1186, 1194 (Fed. Cir. 2014).

Petitioner then alleges that because Fisher contains one teaching of descriptors that describe ancillary data files, and a separate teaching of downloading ancillary data files from an Internet server, a POSITA would have understood Fisher to teach downloading *based on* descriptors. Reply, 5-6. But Petitioner's strained logic also fails to satisfy its burden. Petitioner's examples are cobbled together from cherry-picked language in disparate sections of Fisher describing unrelated functionalities. Petitioner's alleged support in Fisher is drawn from one paragraph describing descriptors generally ([0023]), another paragraph describing the embodiment of Figure 7 showing ancillary data files ([0053]), another paragraph describing online management procedures as depicted in Figure 8 ([0057]), and another paragraph describing how the ancillary data module analyzes descriptors to assign downloaded ancillary data files to appropriate categories ([0059]). Reply, 5-6. Given these disparate and unrelated teachings, Petitioner's contention that a POSITA would understand these disparate disclosures to teach using descriptors as specification data to retrieve image processing control data from an external source strains credulity.

Indeed, a POSITA reading Fisher would not have understood the reference to teach any association between descriptors and downloading data from the Internet or other external server. Instead, Fisher teaches storing the descriptors completely *separate* from the download manager, which coordinates downloading of ancillary data files. This separation is illustrated in annotated Figure 4 in Patent Owner's Response, which shows how memory is allocated to different blocks or functions in Fisher's camera. POR, 23. As further described in Patent Owner's Response, Fisher's download manager, which coordinate[s] "the accessing, selecting, downloading, analyzing, and storing of various types of ancillary data files 418 from any appropriate data source," resides in the Ancillary Data Module 416. POR, 22. Fisher's descriptors, on the other hand, reside in the Ancillary Data Files block 418. POR, 23. As Patent Owner's expert, Dr. Papanikolopoulos, explained in his declaration, a POSITA would not have understood Fisher to teach using descriptors to specify files for download, especially when the download manager is a separate module from the ancillary data storage module. Ex. 2001, ¶¶ 57-59.

**2. Petitioner Fails to Show a Motivation to Combine and Reasonable Expectation of Success in Combining Kuwata and Fisher**

Petitioner's combination of Kuwata and Fisher is further deficient because Petitioner fails to show that a POSITA would not have been motivated to combine

Kuwata with Fisher in the first place. Petitioner first attacks Patent Owner’s argument that Kuwata teaches away from the proposed combination. Reply, 8-9. But the law is not as rigid as Petitioner suggests. In particular, whether a reference “teaches away” is not dispositive of a motivation to combine, which looks more broadly at whether a POSITA, “upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken” in the claim.” *Meiresonne v. Google, Inc.*, 849 F.3d 1379, 1382 (Fed. Cir. 2017) (internal citations omitted). “Evidence suggesting reasons to combine cannot be viewed in a vacuum apart from evidence suggesting reasons not to combine.” *Arctic Cat Inc. v. Bombardier Recreational Products Inc.*, 876 F.3d 1350, 1359-63 (Fed. Cir. 2017). Relevant here, a finding of no motivation to combine references is appropriate where doing so ‘would destroy the basic objective’ of the prior art. *Trivascular, Inc. v. Samuels*, 812 F.3d 1056, 1068 (Fed. Cir. 2016).

Here, the “basic objective” of Kuwata is to provide standalone printing via direct uploads to an output source (whether printer, projector, LCD, or PC) *without* external dependencies. Ex. 2001, ¶ 62. Performing the extensive modification of Kuwata needed to enable network communications and match Kuwata’s camera with new, unspecified output sources destroys this basic objective. *Id.*, ¶¶ 61-63.

Petitioner also fails to rebut Patent Owner's evidence showing that a POSITA would not have had a reasonable expectation of success in combining Kuwata and Fisher. Petitioner first mis-applies the law on reasonable expectation of success. Properly stated, "[t]he reasonable expectation of success requirement refers to the likelihood of success in combining references to meet the limitations of the *claimed invention*." *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367-68 (Fed. Cir. 2016) (emphasis added). Patent Owner properly focuses on the claimed invention, specifically, the limitation "updat[ing] at least a part of the image processing control data stored in the control data storage, *based on specification data*, which specifies the image processing control data to be updated." *E.g.*, POR, 29.

Further, it is appropriate to consider factors not expressly claimed when determining whether a POSITA would have had a reasonable expectation of success in combining references. *See, e.g., Auris Health, Inc. v. Intuitive Surgical Operations, Inc.*, 2021-1733, 2022 WL 1419593, \*4 (Fed. Cir. May 5, 2022) (crediting expert testimony that unclaimed but difficult "dissociating" step was required to achieve claimed combination in finding no reasonable expectation of success); *see also MobileMedia Ideas LLC v. Apple Inc.*, 780 F.3d 1159, 1166 (Fed. Cir. 2015) (affirming finding of no reasonable expectation of success in combining references due to "complexity and sophistication of software and

hardware integration and development”). As Dr. Papanikolopoulos explained, modifying Kuwata in view of Fisher to arrive at the claim limitation updating image processing control data “based on specification data, which specifies the image processing control data to be updated” would have required extensive knowledge of printer drivers, which a POSITA would not have had as of the priority date of the ’082 patent. Ex. 2001, ¶¶ 65-67.

In *Allergan*, the case on which Petitioner relies, the Federal Circuit faulted the lower court for reaching its non-obviousness findings based on examination of only a small subset of compounds when the claims were directed to a much broader set. *Allergan, Inc. v. Apotex Inc.*, 754 F.3d 952, 962–63 (Fed. Cir. 2014). Patent Owner does not make that same mistake here, properly focusing instead on the full scope of the claim limitation “updating image processing control data . . . based on specification data.” POR, 28-29.

Patent Owner did not mischaracterize Kuwata’s drivers, as Petitioner alleges. Reply, 13. Patent Owner correctly noted that Kuwata teaches a single “printer driver” that manages printing of image data between one particular camera and one particular printer. The exact location of the driver—whether on the camera or on the printer—is irrelevant. Relevant instead is that modifying Kuwata for compatibility with different output devices for printing or reproducing images was not common knowledge, as Dr. Papanikolopoulos explains. Ex. 2001, ¶¶ 65-67.

Petitioner has not substantively rebutted this evidence and did not raise it in Dr. Papanikolopoulos's deposition. And those challenges apply equally regardless of output device: Kuwata does not teach any different or simpler approach to matching a particular camera with a single non-printer output device such as a CRT, LCD, or projector. Petitioner therefore fails to meet its burden to show that the combination of Kuwata and Fisher leads to claim 1.

Finally, the simple fact that the term "driver" does not appear in the '082 patent does not mean that the challenges of navigating drivers did not exist, as Petitioner suggests in its Reply. Reply, 14. The '082 patent contains extensive disclosure regarding issues a POSITA would have understood to be handled by printer drivers. Printer drivers are specialized software programs for specific printer models, incorporating sophisticated color management systems and improved print quality algorithms to convert digital documents and images into the precise commands and data formats that the printer hardware can understand and execute. The '082 patent discloses these same operations, *see generally* Ex. 1001 at 9:11-10:67.

Petitioner devotes scant attention to claim 10 in its Reply, noting only that claim 10 does not recite "specification data." Reply, 8. But a POSITA would still have needed to modify Kuwata in view of Fisher to arrive at the claim element "a memory management module configured to acquire additional image processing

control data from an external memory device separate from the digital camera,” and Petitioner fails to rebut Patent Owner’s evidence that a POSITA would not have been motivated to modify Kuwata in this way and would not have had a reasonable expectation of success in doing so. Petitioner therefore fails to meet its burden to show that claims 1 and 10 are obvious in view of Kuwata and Fisher.

**B. Petitioner Fails to Establish that ICC Profiles Are Image Processing Control Data**

Petitioner’s attempt to liken Ohga’s ICC profiles to image processing control data as described and claimed in the ’082 patent misses the mark. The fact that ICC profiles have certain individual parameters in common with the PIM in the preferred embodiment of the ’082 patent does not make ICC profiles image processing control data. Unlike PIM, the exemplary image processing control data in the ’082 patent, ICC profiles do not *control* processing of image data. They have a fundamentally different purpose and therefore cannot be image processing control data in view of the plain and ordinary meaning of that term.

According to the ICC white paper submitted by Patent Owner with its POR and explained by Dr. Papanikolopoulos, an ICC profile “defines the colour to be expected with any set of image values – which are often device values, but may be in some standard colour image encoding (such as sRGB).” Ex. 2004, 003. As Dr. Papanikolopoulos further explained, ICC profiles “describe how a specific device

reproduces or captures color relative to a device-independent color space.”

Ex. 2001, ¶ 75. ICC profiles are therefore specific to a particular device: they describe how that device, such as a camera, printer, or monitor, handles color. To ensure uniformity, that description is expressed relative to a device-independent or universal color space.

By contrast, image processing control data—as explained in the ’082 patent—“is used to control image processing of the image data.” Ex. 1001 at 5:62-63. In a preferred embodiment of the ’082 patent, the image processing control data is PIM, and as further explained therein, a printer receives an image file from the camera (the DSC), extracts the image data and the PIM, and then “executes the image processing of the image data according to the PIM and prints out the image.” *Id.* at 6:14-18. As further described in the ’082 patent, the PIM corresponds to a particular processing mode selected by the user. *Id.* at 8:65-9:3. Different PIMs contain different parameter values that are “pre-determined for each of the[] processing modes.” *Id.* at 9:4-7. PIM data therefore controls image processing at the printer according to the photographer’s intent.

In contrast to ICC profiles, therefore—which merely describe a device (as the name “profile” suggests)—PIM contains the information needed to actually instruct a downstream device such a printer how to perform image processing. PIM controls how the downstream device processes and renders the image data,

whereas an ICC profile—standing alone and without a color management module to interpret it—does not control any image processing at all. *See* Ex. 2001, ¶¶ 86-88. PIM and the like comprise image processing control data: they control, or include information that controls, processing of the image data in accordance with the photographer’s desires. ICC profiles merely describe color-specific properties of a device.

Petitioner’s likening of PIM data in the ’082 patent to parameters in the ICC profiles is inapt. Reply, 16-18. The fact that a parameter such as gamma value may be common to both does not make the ICC profile “image processing control data.” Unlike PIM, which contains the information needed to instruct the printer or other output device on how to process image data according to the photographer’s intent, the ICC profile is a passive source of information. PIM controls the process while the ICC profile does not. The printer may include additional control information, such as transformation matrices, that use the instruction provided by the PIM to carry out image processing. Petitioner notes, for example, that the ’082 patent’s “processing modes” are “predetermined sets of PIM parameters that are added to an image file when an image is captured with that mode selected.” Reply, 19. But unlike the information in an ICC profile, those PIM parameters are specific to the photographer’s selection and provide information that the printer uses to process the image according to the photographer’s intent. *E.g.*, Ex. 1001 at 8:65-

9:3. An ICC profile, by contrast, merely describes color properties of a device, independent of any image processing the user wants to carry out.

Finally, Dr. Papanikolopoulos's characterization of ICC profiles does not contradict Patent Owner's position as Petitioner suggests. Reply, 18. His description of an ICC profile as a "translator" at ¶ 87 of his declaration accurately describes those profiles as representing a translation between a device's color space and a reference standard or universal color space. Unlike PIM, the ICC profile cannot on its own translate between two *actual* color spaces, such as those of two different devices. As Dr. Papanikolopoulos explains, the ICC profile describes only the device with which it is associated. Ex. 2001, ¶¶ 86-88. Unlike PIM, therefore, ICC profiles are not image processing control data because they do not control processing of image data. *See id.*

**C. Petitioner Fails to Show that Ohga Remedies the Deficiencies of the Kuwata/Fisher Combination (Ground 2)**

The addition of Ohga does not cure the deficiencies of the Kuwata/Fisher combination, even if Petitioner brings in Ohga only to teach the "specification data" missing from Kuwata and Fisher. Nothing in the Kuwata/Fisher/Ohga combination teaches using specification data as claimed, that is, to "update at least a part of the image processing control data stored in the control data storage." POR, 42-43. Further, as described *supra* at § II.A.2 and at § VI.A.3 of the POR, a

POSITA would not have been motivated to combine Kuwata and Fisher and would not have had a reasonable expectation of success in doing so. Ohga does not fix this incompatibility. Ohga is set against the rigid backdrop of ICC standardization and does not supply the teachings a POSITA would have needed to modify Kuwata in view of Fisher to work with new printers or other output devices. *See* Ex. 2001, ¶ 77-78.

Petitioner again glosses over claim 10 for Ground 2, noting only that it does not recite “specification data.” Reply, 20. But Petitioner fails to cure its conclusory statements in the Petition and therefore fails to meet its burden to show that claims 1 and 10 are obvious in view of Kuwata and Fisher.

**D. Petitioner Fails to Rebut Patent Owner’s Arguments that Kuwata in View of Ohga Fails to Disclose the Limitations of Claim 7 (Ground 3)**

Petitioner further fails to show that Kuwata in view of Ohga teaches all the limitations of claim 7. Petitioner focuses its Reply arguments on claim element 7[a], which recites in part “an input module configured to input image data and attribute data related to the image data.” Ex. 1001 at 15:49-50. But the deficiencies in Petitioner’s arguments identified in the POR are with claim element 7[b], which recites “an update data acquiring module configured to acquire update data of the image processing control data based on the attribute data from the server.” *Id.* at 15:54-56. Even if Kuwata discloses attribute data, as Petitioner contends, Petitioner

still fails to show that a POSITA would have combined Kuwata and Ohga to arrive at claim element 7[b]. In particular, Petitioner fails to show that a POSITA would have combined Kuwata and Ohga to obtain an update data acquiring module “configured to acquire update data of the image processing control data *based on the attribute data*,” because neither Kuwata nor Ohga teaches this limitation. Kuwata does not teach any updating of image processing control data (as explained *supra* at § II.A.1) and Ohga does not teach using attribute data to acquire image processing control data (as explained *supra* at § II.C).

Petitioner further fails to show that a POSITA would have been motivated to combine Kuwata and Ohga and would have had a reasonable expectation of success in doing so as addressed *supra* in § II.C and at § VI.B.2.a.iii of the POR.

**E. Petitioner Fails to Rebut Patent Owner’s Arguments that Ohga Alone or in View of Kuwata Does Not Disclose the Limitations of Claims 8 and 9 (Grounds 4-6)**

Petitioner incorrectly states that Patent Owner’s arguments concerning the Ohga/Kuwata combination for claim 8 (Ground 4) and the Ohga-based grounds for claim 9 (Grounds 5 and 6) “all depend” on the argument that Ohga’s input and output profiles are not image processing control data. Reply, 25. Patent Owner’s argument is not so limited. Patent Owner also noted that Petitioner failed to show any teaching in Ohga of “identification data” in both claim elements 8[a] and 9[a]. POR, 54-55, 58. In particular, Petitioner failed to show that Ohga’s device

names—the alleged identification data—are used to download a color management module, which instead is downloaded as part of an HTML document designated by the user. *Id.* Ohga’s omission of “identification data” is fatal not only to Petitioner’s Ohga-only Grounds (5 and 6) but also to its Kuwata/Ohga Ground 4, as neither of those references teaches the missing limitation.

And in any case, Petitioner fails to show that Ohga alone or in view of Kuwata teaches all limitations of elements [a]-[d] of claim 8 or [a]-[c] of claim 9 because Ohga does not teach using identification data to identify “image processing control data” as claimed, for the same reasons described *supra* at § II.C.

**F. Petitioner Fails to Show that Dependent Claims 2-6 Are Unpatentable**

Patent Owner reiterates its position that claims 2-6 are unpatentable for the same reasons as claims 1 and for the additional reasons presented in the POR, and Petitioner fails to meet its burden to show otherwise.

Petitioner notes in its Reply that its obviousness combination for claim 6 is based on sending specification data to a server to download preset conditions rather than on uploading ancillary data files, but Petitioner’s argument does not save the Kuwata/Fisher combination with regard to claim 6.

As described in § II.A.1 *supra*, the only specification data that Petitioner identifies in Fisher is the descriptors, which Fisher describes as being part of the

ancillary data files themselves. Petitioner has not pointed to any teaching in Fisher of uploading ancillary data files, and Petitioner's expert was not able to point to any such disclosure when asked about it in his deposition. Petitioner has therefore failed to identify any teaching in Fisher of sending descriptors—Petitioner's alleged "specification data"—from a camera to an external server. As such, neither Kuwata nor Fisher teaches the claim limitation "the storage manager *send[ing] specification data . . . to the server.*" Ex. 1001 at 15:44-46 (emphasis added).

Petitioner's combination fails.

### **III. CONCLUSION**

The Petition and Petitioner's reply do not establish the unpatentability of any of the challenged claims by a preponderance of the evidence. The Board should deny the request for cancellation.

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U.S. Patent No. 7,428,082

Date: August 22, 2025

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION**

I certify that this Patent Owner's Sur-Reply complies with the word count limit and contains 3,816 words in 14-point Times New Roman font as calculated by the word count feature of Microsoft Office, in compliance with 37 C.F.R. § 42.24(c)(4) and (d). This word count is inclusive of all text and footnotes but does not include the table of contents, table of authorities, certificate of service or word count, or appendix of exhibits.

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**CERTIFICATE OF SERVICE**

I certify that on August 22, 2025, a copy of Patent Owner's Sur-Reply was served in its entirety by electronic mail to Petitioner's counsel at the following addresses indicated in Petitioner's Mandatory Notices:

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