

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MOBILEYE GLOBAL, INC.,  
Petitioner

v.

FACET TECHNOLOGY CORP.,  
Patent Owner

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IPR2024-01110  
U.S. Patent No. 9,335,255 B2

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**PATENT OWNER'S REQUEST FOR REHEARING  
OF THE DECISION ON INSTITUTION (Paper 16)**

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**Cases**

*Juniper Networks, Inc. v. Core Optical Technologies, LLC*,  
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*Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*,  
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*Personal Web Techs., LLC v. Apple, Inc.*,  
848 F. 3d 987 (Fed. Cir. 2017) ..... 8, 9, 11

*TASER Int’l, Inc. v. Digital Ally, Inc.*,  
IPR2017-00515, Paper 10 (PTAB Jun. 6, 2017) ..... 9, 11

*Thorner v. Sony Computer Entertainment America LLC*,  
669 F. 3d 1362 (Fed. Cir. 2012) .....7, 8

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**Patent Owner's Exhibit List**

| <b>Exhibit No.</b> | <b>Description</b>                                                                                                                                                                                                                                            |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2001               | Exclusive Patent License Agreement between Facet Technology Corp. and Mandli Communications, Inc. (and patent assignment coversheet), recorded at Reel No. 062371, Frame 0313                                                                                 |
| 2002               | Statutory Disclaimer of certain claims filed in file wrapper of U.S. Patent No. 9,335,255                                                                                                                                                                     |
| 2003               | U.S. Provisional Patent Appl. No. 60/296,596                                                                                                                                                                                                                  |
| 2004               | Docket Control Order filed in <i>Facet Tech. Corp. v. Mobileye Glob., Inc.</i> , No. 2:24-cv-00058 (E.D. Tex.)                                                                                                                                                |
| 2005               | Excerpts from U.S. District Court — Judicial Caseload Profile (2024 Ed.), <i>available at</i> <a href="https://www.uscourts.gov/file/78884/download">https://www.uscourts.gov/file/78884/download</a>                                                         |
| 2006               | Complaint Filed in <i>Facet Tech. Corp. v. Mobileye Glob., Inc.</i> , No. 2:24-cv-00058 (E.D. Tex.)                                                                                                                                                           |
| 2007               | Cover Pleading to Plaintiff's Disclosure Of Asserted Claims And Infringement Contentions, as served on August 26, 2024 in <i>Facet Tech. Corp. v. Mobileye Glob., Inc.</i> , No. 2:24-cv-00058 (E.D. Tex.)                                                    |
| 2008               | Cover Pleading to Defendant's Invalidity Contentions, as served on November 4, 2024 in <i>Facet Tech. Corp. v. Mobileye Glob., Inc.</i> , No. 2:24-cv-00058 (E.D. Tex.)                                                                                       |
| 2009               | National Institute of Standards and Technology, "Redefinition of 'Candela,'" <i>available at</i> <a href="https://www.nist.gov/si-redefinition/candela">https://www.nist.gov/si-redefinition/candela</a>                                                      |
| 2010               | International Commission on Illumination, Standard. No. CIE S 017:2020 ILV: International Lighting Vocabulary, 2nd edition., entry no. 17-21-050, <i>available at</i> <a href="https://cie.co.at/eilvterm/17-21-050">https://cie.co.at/eilvterm/17-21-050</a> |
| 2011               | Excerpts from Stefanov, Konstantin D. CMOS Image Sensors. Bristol, UK: IOP Publishing, 2022.                                                                                                                                                                  |

| Exhibit No. | Description                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2012        | Ang, Bernard, Keysight Technologies, “How to Achieve Accurate Sensor Characterization Using a Digital Multimeter” (Feb. 21, 2019), <i>available at</i> <a href="https://www.keysight.com/blogs/en/tech/bench/2019/01/24/how-to-achieve-accurate-sensor-characterization-using-a-digital-multimeter">https://www.keysight.com/blogs/en/tech/bench/2019/01/24/how-to-achieve-accurate-sensor-characterization-using-a-digital-multimeter</a> |
| 2013        | Steely, Sidney L., H. S. Lowery III, and R. H. Fugerer. "Laser-based direct-write scene generation methods for closed-loop focal-plane-array diagnostics." Technologies for Synthetic Environments: Hardware-in-the-Loop Testing. Vol. 2741. SPIE, 1996.                                                                                                                                                                                   |
| 2014        | Collins Dictionary Entry for “profile,” <i>available at</i> <a href="https://www.collinsdictionary.com/us/dictionary/english/profile">https://www.collinsdictionary.com/us/dictionary/english/profile</a>                                                                                                                                                                                                                                  |
| 2015        | Plaintiff Facet Technology Corp.’s Opposed Motion For Leave To Join Additional Parties, filed as Dkt. No. 32 in <i>Facet Technology Corp. v. Mobileye Global, Inc.</i> , Case No. 2:24-cv-00058-RWS-RSP (E.D. Tex.).                                                                                                                                                                                                                       |
| 2016        | Defendant Mobileye Global, Inc.’s Opposition To Facet’s Motion For Leave To Join Additional Parties, filed as Dkt. No. 35 in <i>Facet Technology Corp. v. Mobileye Global, Inc.</i> , Case No. 2:24-cv-00058-RWS-RSP (E.D. Tex.).                                                                                                                                                                                                          |
| 2017        | Complaint For Declaratory Judgment Of Noninfringement And Demand For Jury Trial, filed as Dkt. No. 1 in <i>Mobileye Vision Technologies Ltd. et al v. Facet Technology Corp.</i> , Case No. 0:24-cv-04149-NEB-DLM (D. Minn.)                                                                                                                                                                                                               |
| 2018        | Complaint for Patent Infringement, filed as Dkt. No. 1 in <i>Facet Technology Corp. v. General Motors LLC</i> , Case No. 2:24-cv-00035-RWS-RSP (E.D. Tex.)                                                                                                                                                                                                                                                                                 |
| 2019        | Docket Control Order, filed as Dkt. No. 22 in <i>Facet Technology Corp. v. General Motors LLC</i> , Case No. 2:24-cv-00035-RWS-RSP (E.D. Tex.)                                                                                                                                                                                                                                                                                             |

| <b>Exhibit No.</b> | <b>Description</b>                                                                                                                                                                                                                                                                                               |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2020               | Mobileye, “Fact Sheet: Mobileye Advanced Driver-Assistance Systems (ADAS)” (July 19, 2020) (available at <a href="https://www.mobileye.com/blog/fact-sheet-mobileye-advanced-driver-assistance-systems-adass/">https://www.mobileye.com/blog/fact-sheet-mobileye-advanced-driver-assistance-systems-adass/</a> ) |
| 2021               | SEC, “Mobileye to Offer User-Generated Mapping for Autonomous Driving” (January 6, 2016) (available at <a href="https://www.sec.gov/Archives/edgar/data/1607310/000157104916010521/t1600008_ex99-1.htm">https://www.sec.gov/Archives/edgar/data/1607310/000157104916010521/t1600008_ex99-1.htm</a> )             |
| 2022               | Joseph White, “GM Has 'Heightened Partnership' with Mobileye for Autonomous Cars” (October 1, 2015) (available at <a href="https://www.reuters.com/article/us-gm-investors-mobileye-idUSKCN0RV4ZC20151001/">https://www.reuters.com/article/us-gm-investors-mobileye-idUSKCN0RV4ZC20151001/</a> )                |

## I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71(d), Patent Owner respectfully requests that the Board grant rehearing of its decision granting institution of *inter partes* review (Paper 16), vacate that decision, and hold that no review should be instituted. The Board’s decision on institution misapprehended or overlooked issues relating to two key matters.

First, in construing the term “characterization profile,” the Board rejected Patent Owner’s proposed interpretation, concluding that disclosures in the specification of the ’255 patent necessitated construing “characterization profile” as “a conversion factor to convert measured light intensity into luminance.” Paper 16 at 21 (citing Ex. 1001, 11:41-53).<sup>1</sup> However, it appears that the Board misapprehended these disclosures by confusing the function of look-up table 475—which contains the information used to map intensity to luminance—with the function of light intensity sensor characterization 275, which “is empirical information about the light intensity sensor 280 that is used to create the LUT 475.”

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<sup>1</sup> Notably, the Decision on Institution relied on column 11, lines 41-53 of the ’255 Patent in support of its construction (Paper 16 at 21), despite the fact that Petitioner did not cite or rely on that disclosure in its pre-institution reply regarding claim construction. Paper 8 at 1-3. And, it adopted a construction proposed by neither party. *Id.*

Ex. 1001, 11:56-59 (cited by Paper 7 at 11). The Board also overlooked the implication of the passage it did cite (Ex. 1001, 11:41-53), which discloses that the sensor characterization is necessary to address how the sensor responds to multiple colors (i.e. in various conditions) (cited by Paper 7 at 11). And, the Board overlooked Patent Owner’s dictionaries and technical treatises demonstrating the ordinary meaning of the term in the field—which, under Federal Circuit precedent can only be deviated from by clear lexicography or manifest disclaimer. Paper 7 at 12.

Second, in the preliminary response, citing the Federal Circuit’s *Personal Web Techs.* and *Kinetic* concept cases, Patent Owner argued that the Petition failed to articulate *how* it was proposing that Gallagher and Lumia were to be combined. Paper 7 at 13-15. However, the Decision on Institution appears to have misapprehended or overlooked this argument, characterizing it as arguing that the “Petition fails to rely on evidence.” Paper 16 at 30. In particular, Patent Owner’s argument was not that the Petition failed to cite evidence, but rather that it failed to explain the details of the proposed combination (based on the disclosures of the two references) which Petitioner alleged to render the claim obvious. Paper 7 at 13-15. Indeed, Patent Owner noted that, instead of a clear explanation of the proposed combination, the Petition contained contradictory statements—identifying the claimed “at least one light intensity sensor” as being one sensor in Gallagher in the context of the limitations of claim 12 (from which claim 15 depends) and being a

different sensor in Lumia in the context of the additional limitation of claim 15. Paper 7 at 18-20. The Decision on Institution entirely failed to address that argument.

Because the Board misapprehended or overlooked these arguments, it should grant rehearing to vacate the decision on institution.

## II. ARGUMENT

### A. The Decision on Institution’s Preliminary Construction of “characterization profile” Was Based on a Misapprehension of the Specification of the ’255 Patent and Overlooking Evidence

In the preliminary response, Patent Owner provided unrebutted evidence from dictionaries, technical articles, and treatises that “sensor characterization” is the process of describing the properties and performance characteristics of a sensor across various conditions, and that a characterization profile is thus the compilation of that description into a set of characteristics presented in a usable format. Paper 7 at 12. Patent Owner also explained that this was consistent with the specification of the ’255 Patent, which describes that “[t]he light intensity sensor characterization 275 is *empirical information* about the light intensity sensor 280 that is used to create the LUT 475.” Ex. 1001 at 11:56-60 (cited by Paper 7 at 11) (emphasis added). In its pre-institution reply, Petitioner presented no citations to the intrinsic record to dispute Patent Owner’s construction, nor did it cite any dictionaries, technical treatises or similar evidence as providing a different construction. Paper 8 at 1-3.

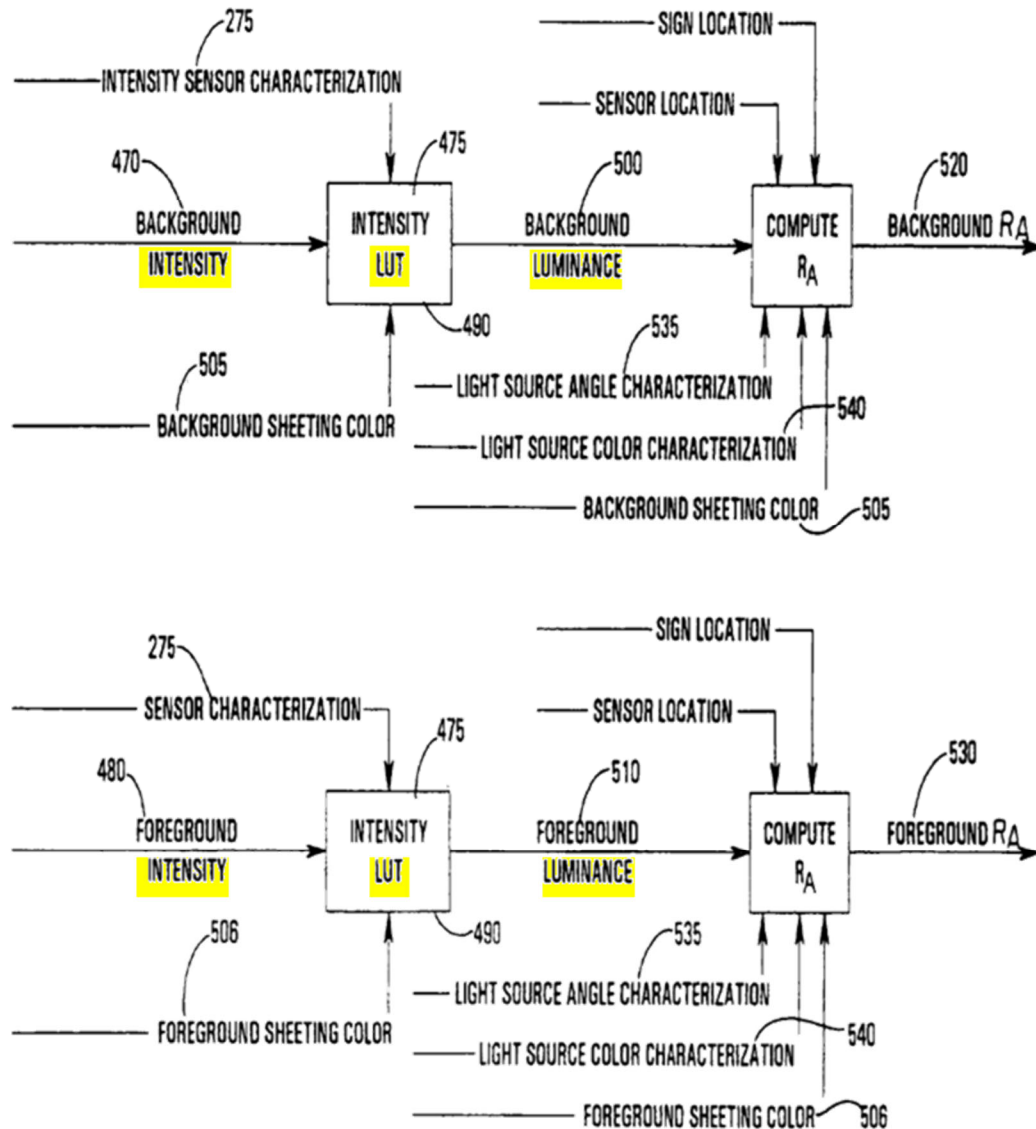
Nonetheless, the Decision on Institution provided a preliminary construction

of “characterization profile” as “a conversion factor to convert measured light intensity into luminance.” Paper 16 at 21. In its claim construction analysis, the Decision on Institution based its construction solely on the disclosures of column 11, lines 41-56 of the ’255 Patent. *Id.* However, the Board’s preliminary construction misapprehended or overlooked the claim construction evidence in at least four ways.

First, the Decision on Institution appears to have overlooked or misapprehended the language in the specification that immediately follows the cited passages, which states that “[t]he light intensity sensor characterization 275 is *empirical information* about the light intensity sensor 280 that is used to create the LUT 475.” Ex. 1001 at 11:56-60 (emphasis added) (cited by Paper 7 at 11). Notably, by construing the “characterization profile” as merely a “conversion factor,” the Decision on Institution improperly disregards the express statement that the sensor characterization is *empirical* information, which is consistent with Patent Owner’s proposed construction and supporting extrinsic evidence. Paper 7 at 11-12.

Second, by construing “characterization profile” as a “conversion factor to convert measured light intensity into luminance,” the Board misapprehended or overlooked that converting light intensity into luminance is the role of the *look-up table* (LUT 475) of the preferred embodiments of the ’255 Patent, rather than the sensor characterization profile:

**Fig.7**



**Ex. 1001, Fig. 7 (yellow highlighting added) (cited by Paper 7 at 11)**

Indeed, in describing Fig. 7, the specification delineates the distinct roles of the look-up table and sensor characterization. In particular, “look-up-table (LUT) 475 shown in FIG. 7 is a digital table stored in memory that *uses* the indexes of *intensity* (a single gray level value from the intensity measurement 300) and sheeting

color *to determine the luminance.*” Ex. 1001, 11:53-56 (emphasis added) (cited by Paper 7 at 11). By contrast, “light intensity sensor characterization 275 is *empirical information* about the light intensity sensor 280 that is *used to create the LUT 475.*” *Id.* at 11:56-59 (emphasis added) (cited by Paper 7 at 11). Rather than discussing these disclosures, the Decision on Institution relied on the specification’s disclosure that “light intensity sensor 280 characterization is *essential* for high precision computations since N photons of a given particular color (or wavelength) of light will represent a different gray value (intensity level) in the sensor than N photons of another color (or wavelength) of light.” Paper 16 at 21 (citing Ex. 1001, 11:41-53) (emphasis added). However, the specification’s disclosure of *why* sensor characterization is *important* is not a disclosure of what sensor characterization *is*. As the portions of the specification overlooked by the Decision on Institution demonstrate, sensor characterization *is* “empirical information,” i.e. a description of the properties and performance characteristics of a sensor across various conditions.

Third, the Decision on Institution’s preliminary construction appears to have overlooked or misapprehended the disclosure in the specification of the ’255 Patent at column 11, lines 41-53 that the sensor characterization profile of the preferred embodiment is used to account for different intensity level responses by the sensor to the same amount of light at different color wavelengths (i.e. under various conditions). *See* Paper 16 at 21; Paper 7 at 11. Indeed, despite citing this disclosure,

the Decision on Institution characterizes the “characterization profile” as merely a single conversion factor to convert measured light intensity into luminance (without regards to different colors or other varied conditions). Paper 16 at 21. Thus, the Board’s single “conversion factor” preliminary construction does not reflect the scope of the very disclosure it cites as the basis for its construction. This is notable because the calibration procedure in Lumia only uses a single condition with a single sign of a single color. Ex. 1014 at 15 (“an image of a calibrated white sheeting material”) (cited by Paper 7 at 13).

Fourth, the Decision on Institution appears to have overlooked Patent Owner’s un rebutted evidence as to the ordinary meaning of “sensor characterization” in the field. Paper 7 at 12 (citing Exs. 2011 to 2014). Although the Decision on Institution *mentions* that Patent Owner cited such evidence (Paper 16 at 20), it contains no analysis of such evidence in reaching its preliminary construction. *Id.* at 20-21. This was erroneous because claim terms must be given their ordinary and customary meaning unless the patentee acts as his own lexicographer or disavows claim scope. *Thorner v. Sony Computer Entertainment America LLC*, 669 F. 3d 1362, 1365 (Fed. Cir. 2012). To act as a lexicographer, a patentee must “‘clearly express an intent’ to redefine the term.” *Id.* at 1365. To disavow claim scope, the patentee must use “expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.” *Id.* at 1366. Nothing in the portions of the specification cited in the

Decision on Institution rise to that exacting standard. Paper 16 at 20 (citing Ex. 1001, 11:41-56). Rather, the specification’s statement that “[l]ight intensity sensor 280 characterization is essential” to address multiple colors of lights is merely a statement of benefits—which does not rise to the level of lexicography or disavowal. *Thorner*, 669 F.3d at 1366. Thus, “sensor characterization profile” is entitled to its plain and ordinary meaning in the field, as demonstrated by Patent Owner’s un rebutted evidence. Paper 7 at 12.

Notably, the Decision on Institution held that Lumia does not disclose a “characterization profile” under Patent Owner’s proposed construction. Paper 16 at 28 (“We agree with Patent Owner that Lumia does not appear to teach a ‘characterization profile’ based on a set of sensor characteristics across various conditions”). Thus, correcting the Decision on Institution’s erroneous construction of “characterization profile” to adopt Patent Owner’s construction would require that institution be denied.

**B. The Decision on Institution Misapprehended or Overlooked Patent Owner’s Argument that the Petition Fails to Detail the Nature of the Proposed Combination of Gallagher and Lumia**

In the preliminary response, Patent Owner cited Federal Circuit case law which explains that a prima facie case of obviousness must disclose the “contemplated workings of the [proposed] combination.” Paper 7 at 13 (citing *Personal Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017), *Kinetic*

*Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F. 3d 1342, 1368 (Fed. Cir. 2012)).

However, the Decision on Institution appears to have misapprehended this argument by characterizing it as arguing that “the Petition fails to rely on evidence.” Paper 13 at 30.

Patent Owner’s argument was not that the Petition fails to cite evidence, but rather that it fails to contain sufficient *details* regarding the “contemplated workings” of the proposed combination. Paper 7 at 13-15, 18-20. That is, neither the Petition nor Petitioner’s expert’s declaration explains *how* Lumia’s teachings of measuring luminance values would be combined into Gallagher’s system. Or, stated another way, Petitioner fails to provide details as to how it contends Gallagher’s system would be modified in light of Lumia’s disclosures so as to practice claim 15.

Alternatively, the Decision on Institution may have misapprehended the legal requirements of the Federal Circuit’s *Personal Web Techs.* precedent. However, other decisions from the Board on this point are instructive. For example, in *TASER Int.’l, Inc. v. Digital Ally, Inc.*, IPR2017-00515, Paper 10 at 18-19 (PTAB Jun. 6, 2017) the Board denied institution, citing *Personal Web Techs.*, holding that Petitioner had failed to “explain[] in sufficient detail the nature of Petitioner’s proposed modification.” Similarly, in *Juniper Networks, Inc. v. Core Optical Technologies, LLC*, IPR2020-01664, Paper 9 at 11 (PTAB Apr. 16, 2021), the Board denied institution, citing *Personal Web Techs.*, noting that the Petition “addresse[d]

each limitation separately” and failed to include “an explanation as to how a relied-on circuit from a prior art reference [for one limitation] would be compatible and work with the circuits relied on” for the other limitations. As these other cases from the Board demonstrate, an obviousness ground is inadequate if it does not set forth a sufficiently detailed explanation of the proposed combined apparatus, system, or process that a petitioner contends would result from the combined disclosures of the cited prior art references.

As explained in Patent Owner’s preliminary response, the Petition here is similarly deficient in explaining how the references are proposed to be combined and how such combined system operates. Paper 7 at 13-15. Notably, neither the Petition nor Petitioner’s expert declaration contains any section directed to describing the proposed combination of Lumia and Gallagher. Paper 1 at 44-47; Ex. 1003 ¶¶ 113-117. Instead, they first identify the separate disclosures of each reference. Pet. at 9-19; Ex. 1003 ¶¶ 55-65. Next, they compare the separate disclosures of the references to the limitations of claim 15 (as well as claim 12 from which it depends). Pet. at 44-46, 27-35; Ex. 1003 ¶¶ 114-115, 80-93. Then, they present a conclusory statement that it would be obvious to “implement Lumia’s determining a luminance value utilizing the plurality of light intensity values and a characterization profile of the at least one light intensity sensor to allow Gallagher’s apparatus to calculate the retroreflectivity of road markers” without explaining *how* it would be implemented.

Pet. at 46; Ex. 1003 ¶ 116. Rather, they simply explain that a POSITA would recognize that measuring retroreflectivity is important. *Id.* Finally, they argue that the combination would have a reasonable expectation of success and repeat the statement that “Lumia’s determining a luminance value could be readily implemented in Gallagher’s apparatus.” Pet. at 46-47; Ex. 1003 ¶ 117. But again, they do not explain the structure or operation of a proposed system practicing claim 15 based on the combined disclosures of the references. Instead, they simply identify similarities in the references. *Id.*

Indeed, Petitioner’s failure to articulate the “contemplated workings” of the proposed combination of Lumia and Gallagher is far more egregious than *Personal Web Techs.* and the cases applying it. In particular, in those cases, there was *some* attempt at an articulation of the proposed combination—the articulation was simply inadequate. However, here the Petition and Petitioner’s expert’s declaration contain nothing more than a bare identification of the different disclosures of the different prior art references that Petitioner relies on, without any attempt to explain how they are proposed to be combined into a system practicing all of the limitations of claim 15 (including the limitations of claim 12 from which claim 15 depends). Pet. at 44-47. Ex. 1003 ¶¶ 80-93, 113-117.

Even worse, the Petition mixes and matches different components of the different disclosures against the same limitations of claim 15 without any

explanation. Paper 7 at 18-19. In particular, it relies on Lumia’s “video camera” to be the claimed “light intensity sensor” of claim 15 in some places (Pet. at 44; Ex. 1003 ¶ 115), while also relying on Gallagher’s photodiode “light sensor[s]” to be the claimed “light intensity sensor” in other places (Pet. at 31-32; Ex. 1003 ¶ 87). The Decision on Institution also overlooked that point. *Compare* Paper 7 at 18-19 with Paper 16 at 29-31.

Rehearing is especially important here. Petitioner’s articulation of its obviousness combination is not only plainly inadequate under the law, but institution on that ground leaves Patent Owner guessing in the trial of this IPR. Which prior art reference’s sensor is being used to satisfy the “light intensity sensor” limitation and how is it being used? How can Patent Owner explain why the proposed combination does not satisfy the claims, or why a POSITA would not be motivated to make the proposed combination, if the Petition does not provide any details regarding what the proposed combination is?

### **III. CONCLUSION**

For the above reasons, Patent Owner respectfully requests that the Board grant rehearing, vacate the institution decision, and deny institution of Petitioner’s petition for *inter partes* review.

Dated: March 19, 2025

Respectfully submitted,

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**Certificate of Service 37 C.F.R. § 42.6(e)**

The undersigned certifies that on March 19, 2025, I will cause true and correct copies of the foregoing Patent Owner's Request for Rehearing of the Decision on Institution (Paper 16), and all associated exhibits or appendices referred to therein, to be served electronically upon the following attorneys who have consented to service via email. Pet. at 58.

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