

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOBILEYE GLOBAL, INC.,
Petitioner

v.

FACET TECHNOLOGY CORP.,
Patent Owner

IPR2024-01111
U.S. Patent No. 9,671,328 B2

**PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW
OF THE DECISION ON INSTITUTION (Paper 14)**

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Patent Owner's Exhibit List

Exhibit No.	Description
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. 9,671,328
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> https://www.uscourts.gov/file/78884/download
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	Intentionally Omitted
2010	Intentionally Omitted
2011	Intentionally Omitted
2012	Intentionally Omitted
2013	Intentionally Omitted
2014	Intentionally Omitted

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

Pursuant to 37 C.F.R. § 42.75, Patent Owner requests Director Review of the Board's Decision on Institution (Paper 14).

I. INTRODUCTION

Director Review is appropriate because the Board's Decision on Institution was based on an erroneous claim construction that ignored Federal Circuit precedent providing that: (1) separate elements of a claim are presumed to be distinct components; and (2) steps must be carried out in order when compelled by the logic of the claims (such as when a subsequent step recites an input to the step an element provided as an output by a prior step).

In particular, claims 1 and 9¹ of the '328 Patent recite a computer system configured to *both*: (1) “detect objects of interest within the field of view”; *and* (2) “for each [such detected] object of interest: determine whether *the object of interest* includes” a reflective surface of a road marker using light intensity value(s). However, the Board's decision erroneously disregarded this relationship, holding that the same single step in the prior art “simultaneously” performed both claim steps.

¹ The Petition challenged claims 1-22. Pet. at 1-2. However, because of a statutory disclaimer of claims 17-22 submitted by Patent Owner with its preliminary response, the only remaining challenged claims are independent claims 1 and 9 and their dependent claims (i.e. claims 1-16). Ex. 2002; Ex. 1001, cls. 1-22; Paper 14 at 6-7 (citing 37 C.F.R. § 42.107(e)).

The Board justified its decision, in part, based on its misreading of non-precedential case law and irrelevant case law from the 1930s. Paper 14 at 28.

Moreover, the Board based its decision on a *wholly* new, legally erroneous rule that it may disregard express claim structure requiring a particular ordering of steps where they are recited in the form of “functional language in an apparatus (system) claim.” *Id.* And, in holding that the “detect” and “determine” steps could be performed “simultaneously” by a single step of the prior art, the Board violated the well-established rule that separately recited claim elements must generally be satisfied by distinct components in the prior art.

Thus, the Director should grant review because the Board’s decision is plainly contrary to Federal Circuit precedent, and review is necessary to dissuade future panels of the Board from embracing the erroneous legal holdings in Board’s decision in this IPR. Review would make clear that the Board should not use such unreasonably broad claim interpretations at institution, which can cause *inter partes* reviews to be improperly and unnecessarily instituted.

II. ARGUMENT

A. Claims 1 and 9 Require the Computer Processing System be Configured to Perform an Ordered Sequence of Steps

Claim 9 of the ’328 Patent recites a “computer processing system” which, among other things, is configured to *both* “detect objects of interest within the field of view” *and* “for each [such detected] object of interest: determine whether the

object of interest includes at least one light intensity value associated with a reflective surface of a road marker in the field of view.” Ex. 1001 (’328 Patent), cl. 9. That is, the “determin[ing]” is performed on “object[s] of interest” which have already been “detect[ed].” *Id.* Similarly, claim 1 recites a “computer processing system” which, among other things, is configured to *both* “detect objects of interest within the field of view” *and* “for each [such detected] object of interest,” perform a “determin[ation]” as to whether the object includes a reflective surface. *Id.*, cl. 1. Both claims 1 and 9 therefore require that the recited “determin[ation]” be performed on an already “detect[ed]” “object[] of interest.” Thus, the express language of both claims demonstrates that the “detect[ing]” step must precede the “determin[ing]” step because the determination must be performed on “each” of “*the* objects of interest,” i.e. the objects of interest which had been “detect[ed]” in the “detect” step.

Although there is a presumption that claim steps need not be performed in a particular order, case law holds that where a claim step references that a prior step has been performed, the claim will be interpreted to require those steps be performed in the recited order. For example, where, as here, a step acts on or uses the output of a prior step, the claim requires a particular order. *See Mantech Envtl. Corp. v. Hudson Envtl. Servs., Inc.*, 152 F.3d 1368, 1375-76 (Fed.Cir.1998) (“Step (b) introduces acetic acid, via the wells provided in step (a) [h]ence, in order to accomplish step (b), the wells of step (a) must already have been provided.”); *E-Pass*

Tech., Inc. v. 3COM Corp., 473 F.3d 1213, 1222 (Fed. Cir. 2007) (“transferring a data set” must occur before “storing said transferred data set”). Indeed, the Federal Circuit recently held last month that, in a case involving claim requiring a “cascade” of four messages (which it denoted as messages A, B, C, and D), that the Board erred by “not requiring this ordering of steps” dictated by the language of the claim. *Telit Cinterion Deutschland GmbH v. 3G Licensing, S.A.*, No. 2023-1497, 2025 WL 401647, at *2-3 (Fed. Cir. Feb. 3, 2025) (non-precedential). More specifically, the Federal Circuit in *Telit* held that, because the claim recited a “predefined configuration mode” that must “include[] information indicating at least one available configuration mode for transmitting a second message.” *Id.* at *3. The Federal Circuit found that, because message A must include the recited information, the claims therefore “require that messages A and B *precede* messages C and D.” *Id.* (emphasis added). Thus, *Telit* reaffirmed that claim steps need to be performed in order “when logic or grammar requires that the steps be performed in the order written.” *Id.* (citing *Mformation Techs., Inc. v. Rsch. in Motion Ltd.*, 764 F.3d 1392, 1398 (Fed. Cir. 2014)) (internal quotation marks and brackets omitted).

Thus, under Federal Circuit precedent, claims 1 and 9 require a specific order—that the “detect[ing]” be performed before the “determin[ing].”

B. The Board Legally Erred in Disregarding Precedent Requiring Steps Be Taken In Sequence When Compelled by the Logic of the Claim

The Board, in its institution decision, acknowledges that claim steps should be construed to require a particular order “when the claim language, as a matter of logic or grammar, requires that the steps be performed in the order written, or the specification directly or implicitly requires an order of steps.” Paper 14 at 28-29 (citing *Mformation Techs.*, 764 F.3d at 1398). Moreover, the Board then agreed with Patent Owner “that logic requires that the step of determining whether an object of interest includes at least one light intensity value associated with a reflective surface of a road marker cannot occur before the object of interest is detected.” Paper 14 at 29. That is, the Board correctly determined that claims 1 and 9 of the ’328 Patent contain language departing from the general rule and instead require a particular order of steps (i.e. determining after detecting).

However, despite reaching the correct conclusion that the claims recite an ordered performance of steps, the Board inexplicably disregarded this claim requirement and instituted on this ground, holding that the Gallagher reference “simultaneously performs the steps of detecting objects of interest and determining whether the objects of interest include at least one light intensity value associated with a reflective surface of a road marker.” *Id.* But, even accepting the Board’s assertion that Gallagher teaches simultaneous “detecting” and “determining,” that

would not satisfy the explicit language of the claims which requires objects of interest first be “detect[ed]” and then the “determin[ation]” be performed on “each [such detected] object of interest.” Ex. 1001, cls. 1, 9.

Here, the Board justified disregarding the explicit ordering recited in claims 1 and 9 by citing two decisions that are inapplicable. First, the Board cited a 95 year old CCPA decision as stating “ordinarily in process claims steps taken concurrently are the equivalent of steps taken successively.” Paper 14 at 29 (citing *In re White*, 39 F.2d 974, 975 (CCPA 1930)). However, that case is entirely inapplicable because the claims at issue there did not “assert [] order as a necessity.” *In re White*, 39 F.2d at 975. In other words, that decision involved claims that did not include language overcoming the general presumption that ordering of steps is not required. Thus, the Board legally erred by interpreting *In re White* as permitting it to disregard the Federal Circuit’s *Mantech Envtl. and Mformation* precedent.

Second, the Board cites the non-precedential *Cybersettle, Inc. v. Nat’l Arb. F., Inc.*, 243 F. App’x 603, 605-609 (Fed. Cir. 2007), which involved claims which received and processed “multiple demands and offers.” *Id.* at 609-610 (cited by Paper 14 at 28). In that case, the court analyzed whether comparison of demands and offers was allowed only after receiving *multiple* offer-demand pairs. In particular, one of the proposed constructions would have required receiving “at least two demands and at least two offers before any pair of bids is compared and tested

against the settlement criterion.” *Id.* at 609. The *Cybersettle* court found that although comparison “logically cannot begin until an offer and a demand are received,” comparison and testing of *individual pairs* of offers and demands could occur as they were received. *Id.* That is, the Federal Circuit in *Cybersettle* actually agreed that steps must be performed in order when logically required.

Thus, the Board misinterpreted *Cybersettle* as generally permitting “concurrently” performing any steps in any claim. Instead, *Cybersettle* merely held that where a claim required repeating the same processing steps *multiple times* on different inputs, the claim permitted processing individual inputs before a plurality of inputs were received. *Id.* (“[a]s each new pair of bids is received, the bids are compared”). In short, *Cybersettle* in no way supports a general conclusion that all claim steps can be performed “concurrently,” even when the clear structure of the claim requires a particular logical order. Indeed, Patent Owner never contended that multiple objects of interest had to be detected before any “determin[ation]” could occur. Rather it simply noted that the claim provides that any particular object of interest has to be “detect[ed]” before a “determin[ation]” could be performed *on that object*. The Board legally erred in rejecting Patent Owner’s argument based on the Board’s misinterpretation of *Cybersettle*.

Finally, the Board disregarded Federal Circuit precedent because “the recitations at issue are functional language in an apparatus (system) claim.” Paper

14 at 29. The Board cited no precedent supporting that novel theory. That theory is legally erroneous because it is plainly contradicted by Federal Circuit precedent. As a threshold issue, the “detect” and “determine” steps are recited as part of the “configur[ation]” of the “computer processing system” of claims 1 and 9. Ex. 1001, cls. 1, 9. As the Federal Circuit has held, where, as here, a claim recites a computer configured to perform a particular algorithm (i.e. a specific sequence of steps), that is a *structural* limitation. *WMS Gaming, Inc. v. International Game Technology*, 184 F. 3d 1339, 1348 (Fed. Cir. 1999); *see also In re Bernhart*, 417 F.2d 1395, 1399-1400 (CCPA 1969) (“[I]f a machine is programmed in a certain new and unobvious way, it is physically different from the machine without that program; its memory elements are differently arranged.”).

Moreover, even if the recited steps *were* functional (they are not), that would not be a basis for ignoring the clear requirements of the claim that they occur in a particular order. *In re Swinehart*, 439 F.2d 210, 212 (CCPA 1971) (“[T]here is nothing intrinsically wrong with [defining something by what it does rather than what it is] in drafting patent claims.”); *In re Schreiber*, 128 F. 3d 1473, 1478 (Fed. Cir. 1997) (holding that functional limitations are to be given patentable weight unless they are an “inherent characteristic of the prior art”); *INVT SPE LLC v. Int’l Trade Comm’n*, 46 F.4th 1361, 1365 (Fed. Cir. 2022) (to satisfy “a computer-implemented claim drawn to a functional capability requires” that the asserted prior art or accused

“computer-implemented device is programmed or otherwise configured ... to perform the claimed function when in operation”).

Thus, the Director should grant review to correct this novel claim construction theory which is plainly inconsistent with Federal Circuit precedent.

C. The Board Legally Erred by Ignoring Federal Circuit Precedent Requiring Different Elements Be Satisfied by Distinct Components

Patent Owner argued that Petitioner’s theory that Gallagher could simultaneously perform the steps of “detecting objects of interest” and “determining whether the objects of interest include ...” improperly suggests that determining and detecting can be the same thing. Paper No. 8 at 1. In particular, Patent Owner noted that, unlike claims 1 and 9 of the ’328 Patent, Gallagher “reflects a single step approach” where “road markers are identified as being road markers simply on the presence of peak responses.” Paper No. 6 at 10. Nevertheless, the Board’s Decision on Institution disregarded these arguments, and found that the “detecting” and “determining” steps were satisfied by the same, single step in Gallagher. Paper 14 at 29 (citing Ex. 1005 ¶¶ 65–66, “Gallagher’s system simultaneously performs the steps of detecting objects of interest and determining whether the objects of interest include at least one light intensity value associated with a reflective surface of a road marker”).

However, under Federal Circuit precedent, “[w]here a claim lists elements separately, ‘the clear implication of the claim language’ is that those elements are

‘distinct component[s]’ of the patented invention.” *Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1255 (Fed. Cir. 2010). And, a claim is not satisfied when it “requires two separate structures and one such structure is missing.” *Regeneron Pharms., Inc. v. Mylan Pharms. Inc.*, No. 2024-2351, __ F.4th __, 2025 WL 807962, at *2 (Fed. Cir. Mar. 14, 2025). Thus, by separately reciting “detect” and “determine” steps, the claims are presumed to require a computer system configured to perform separate steps. By reading the same step of the Gallagher reference on the distinct “detect” and “determine” steps—without any contrary evidence to overcome that presumption—the Board violated Federal Circuit precedent.

D. The Specification Does Not Compel the Board’s Construction

Finally, the Board pointed to a portion of the ’328 Patent’s specification describing the computer’s evaluation of frames or images to determine a set of color values of a road sign can be performed “concurrent with or subsequent to” the step of identifying the road signs. Paper 14 at 29-30 (citing Ex. 1001, 5:52-60). However, this portion of the specification does not alter the plain meaning of the claim language itself requiring the recited ordering of steps.

First, there is no requirement that every claim be construed to “encompass all disclosed embodiments.” *Tip Systems, LLC V. Phillips & Brooks/Gladwin*, 529 F.3d 1364, 1373 (Fed. Cir. 2008); *see also PPC Broadband, Inc. v. Corning Optical*

Communications RF, LLC, 815 F.3d 747, 755 (Fed. Cir. 2016) (rejecting proposition that “each and every claim ought to be interpreted to cover each and every embodiment”) (cited by Paper 8 at 3). Indeed, the general rule against adopting constructions that would exclude embodiments “is not even ‘applicable’ where a contrary construction covers a preferred embodiment.” *SIMO Holdings Inc. v. Hong Kong uCloudlink Network Tech. Ltd.*, 983 F.3d 1367, 1378 (Fed. Cir. 2021). That is exactly the case here, as the specification permissively recites “concurrent *or subsequent*” processing. Thus, even if the Board’s interpretation of the specification were correct, the permissive recitation in the specification is no reason to deviate from the clear language of the claim. The Board erroneously ignored this case law. Paper 14 at 29-30.

Second, the Board did, in fact, misapprehend the “concurrent or subsequent” language in the specification. The specification’s statement that a determination may occur “[e]ither concurrent with or subsequent to the identification of road signs 30 and generation of asset management database” demonstrates that the invention encompasses embodiments using essentially batch processing as well as embodiments where such batch processing need not be performed. Ex. 1001, 5:41-57 (emphasis added). That is, the plural form of “road signs” indicates that identification of the collective *group* of road signs can occur concurrently with evaluation of the collective *group* of image frames containing road signs. But

nothing in that passage states or suggests that for the *same* road sign, identification of the sign occurs simultaneously with evaluation of the signs' reflective surfaces.

In particular, in the '328 Patent's batch processing embodiments, identifications and determinations are performed in "post-processing," and thus all signs in a batch can be first identified, and subsequent analysis/determination can be performed on all identified signs. *Id.*, 9:39-45, 9:58-10:1. In non-batch processing embodiments—such as when determinations are performed "on-the-fly" and/or in "real time"—detection and determination steps for *different signs* can occur concurrently. *See id.*, 10:1-5 (with sufficient computing power, "most, if not all, of the post-processing functions [could be] performed in the capture vehicle 225, perhaps even in real time."), 10:30-34, cls. 3, 11 ("the computer processing system is configured to operate in a mode selected from post-processing or on-the-fly"). But, neither embodiment requires the claimed "determin[ation]" to be capable of being performed on a *particular* road sign before or at the same time that road sign is detected or identified.

However, even if the Board's interpretation of the specification as disclosing an optional concurrent embodiment were correct, the merely permissive language in the specification is not sufficient to overcome the legal presumption that separately recited elements imply distinct components, or the plain text of the claims reciting a specific order as a matter of logic. Accordingly, the Board's Decision on Institution

is legally erroneous regardless of how the specification of the '328 Patent is interpreted.

E. The Prior Art Does Not Satisfy the Claims Under the Appropriate Construction

In its preliminary response, Patent Owner argued that, under the appropriate construction, the cited prior art failed to disclose the steps of “detect[ing]” objects of interest and then performing a “determin[ation]” on the detected objects of interest as recited in claims 1 and 9 of the '328 Patent. Paper 6 at 7-12, 15-19. In particular, the Petition relies exclusively on the Gallagher reference for those limitations. Pet. at 20-23, 39-40. However, rather than using the claimed steps of detect[ing]” of objects of interest and subsequent performing a “determin[ation]” on the already detected objects of interest, Gallagher uses a single step approach. In particular, in Gallagher, road markers are identified as being road markers simply on the presence of peak responses in the collected light sensor data, without any prior detection of objects of interest, or any subsequent analysis of the presence of reflective surfaces. Ex. 1005, [0066] (“the peak responses sensed are determined as the highly reflective surfaces of a road mark”).

Indeed, the Petition itself admits that Gallagher “identif[ies] road markers based on ‘peak responses sensed’ by light sensors.” Pet. at 14. Moreover, despite being granted a pre-institution reply brief to “present arguments regarding ... the order in which recited actions must be performed” (Ex. 3001), Petitioner never

presented any argument other than the erroneous claim construction argument that the different claim steps may be performed “concurrently.” Paper 7 at 1-4. That is, Petitioner never disputed or attempted to dispute that Gallagher uses a single-step to identify road markers (as opposed to the distinct “detect” and “determine” steps recited in claims 1 and 9).

The Board’s decision on institution did not dispute Patent Owner’s characterization of Gallagher’s disclosures, but rejected Patent Owner’s arguments based solely on its erroneous claim construction. Paper 14 at 29. Accordingly, the Director should correct the Board’s erroneous construction and order that institution be denied.

III. CONCLUSION

For the above reasons, Patent Owner respectfully requests that the Director grant review of the Board’s Institution Decision and deny institution of Petitioner’s request for *inter partes* review.

Dated: March 17, 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 Director Review of the Decision on Institution (Paper 14), 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 75-76.

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