

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOBILEYE GLOBAL, INC.,

Petitioner,

v.

FACET TECHNOLOGY CORP.,

Patent Owner.

Case IPR2024-01111

Patent No. 9,671,328

**PETITIONER'S RESPONSE TO PATENT OWNER'S
REQUEST FOR DIRECTOR REVIEW**

Patent Owner's Request for Director Review (Paper 18, "Request") should be denied because (1) Patent Owner waived the ability to seek Director Review based on claim construction by telling the Board that claim construction was unnecessary, (2) the prior art satisfies the claims even under Patent Owner's interpretation, and (3) the Board properly rejected Patent Owner's pre-institution arguments.

I. PATENT OWNER WAIVED ITS ABILITY TO SEEK DIRECTOR REVIEW BASED ON CLAIM CONSTRUCTION

Patent Owner argues that "Director Review is appropriate because the Board's Decision on Institution was based on an erroneous claim construction." Request 1. To the contrary, the Board found no claim construction was needed because Patent Owner's pre-institution argument was that no "claim term should receive an express construction." Paper 6 ("POPR") at 4-5; Paper 14 ("DI") at 19. By arguing that claim construction was unnecessary, Patent Owner waived the ability to seek Director Review based on the Board purportedly applying an improper claim construction. *See* Director Review Process § 3.E, available at <https://www.uspto.gov/patents/ptab/decisions/director-review-process> (last accessed Mar. 24, 2025) ("The Director will not consider . . . new arguments not part of the official record.").

II. THE ASSERTED PRIOR ART SATISFIES THE CLAIMS EVEN UNDER PATENT OWNER'S INTERPRETATION

The Request should also be denied because the prior art teaches what Patent Owner now acknowledges is within the scope of the claims. Independent claims 1

and 9 of U.S. Patent No. 9,671,328 (Ex. 1001, “the ’328 patent”) each recite a computer processing system “configured to detect objects of interest within the field of view and for each object of interest” perform additional functions. Ex. 1001, 17:44-53, 18:34-44. In claim 1, those additional functions include “determin[ing] whether the object of interest includes a reflective surface based on the light intensity values.” Ex. 1001, 17:48-49. In claim 9, they include “determin[ing] 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, 18:38-41.

Patent Owner argued in its POPR that claims 1 and 9 both require that the claimed “determin[ing]” be “performed on ‘object[s] of interest’ which have already been detect[ed].” POPR 5-6, 13-14. After receiving authorization to address “the order in which recited actions must be performed” (Ex. 3001), Petitioner explained that Patent Owner’s interpretation was overly narrow because the computer processing system need not “*complete* the step of detecting objects of interest *before* beginning the determining step.” Paper 7 (“Pre-institution Reply”) at 1-4. Instead, “[t]he computer processing system can begin the determining step as it continues to detect objects.” *Id.* at 3. Thus, the claims encompass performing both steps concurrently. Notwithstanding its prior arguments, Patent Owner now *agrees* with that interpretation. Request 7 (agreeing that the claims do not require detecting “multiple objects of interest . . . before any ‘determin[ation]’” is made).

The asserted prior art teaches what Patent Owner now acknowledges is within the scope of the claims. The Petition mapped features relevant to this Request to disclosures in Exhibit 1005 (“Gallagher”). *See* Paper 1 (“Petition”) at 20-23, 38-39. Gallagher discloses a “reflectivity measuring apparatus” attached to a vehicle that measures “the reflectivity of road markings 2 when in transit.” Gallagher ¶¶ [0001], [0032]. As the Petition explains, Gallagher teaches a computer configured to perform the relevant features. Petition 20-23, 38-39.

For the detecting feature, Gallagher’s computer detects an object of interest based on “which light sensor 6 is reading the highest reflectance reading” and “provide[s] the operator with that information” to help the driver keep the vehicle properly positioned on the road while measurements are taken. Petition 21-22 (citing Gallagher ¶¶ [0033], [0060]-[0064]; Ex. 1003 ¶ 72). As Gallagher explains, the highest reflectance reading from the light sensors, each of which “covers a section” of the field of view, represents an object of interest within the field of view because “background reflectance levels on non road marking sections of the road are low” and reflectance levels from “road markers 2 are relatively high.” Gallagher ¶ [0060]; Petition 21-22. The Board preliminarily found that “Gallagher supports Petitioner’s contentions” for the detecting feature. Paper 14 (“DI”) at 26, 34-35.

For the determining features of claims 1 and 9, Gallagher’s computer then “determine[s] the background reflectance level on the road,” “establish[es] non-

marker reflectance levels,” and selects “which reflectance levels” indicate a reflective surface of a road marker. Petition 22-23 (citing Gallagher ¶¶ [0033], [0055]-[0056], [0065]-[0066]; Ex. 1003 ¶ 74). Stated another way, as the vehicle traverses the road, for each reflectance reading that Gallagher’s computer interprets as an object of interest, Gallagher’s computer determines whether that reflectance reading indicates a reflective surface of a road marker. *See* Gallagher ¶¶ [0055]-[0071] (describing Gallagher’s “computer controlled process”). This is all the claims require. The Board preliminarily agreed with Petitioner that “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.” DI 29. The Board also correctly recognized that the ’328 patent “discloses such concurrent performance” of the detecting and determining steps. DI 29-30 (citing Ex. 1001, 5:52-60).

Because Patent Owner now recognizes that the claims do not require the computer processing system completing the detecting function before beginning the determining function (Request 7), and Gallagher teaches such computer functionality, the Request should be denied.

III. THE BOARD PROPERLY INTERPRETED THE CLAIMS IN REJECTING PATENT OWNER’S ARGUMENTS

The Board did not “ignore[] Federal Circuit precedent” in rejecting Patent Owner’s arguments. Request 1. Instead, it correctly applied the legal standards and

relied on the analogous *Cybersettle, Inc. v. Nat'l Arbitration Forum, Inc.*, 243 F. App'x 603 (Fed. Cir. 2007) case to reject Patent Owner's position (at that time) that the claims preclude the computer processing system performing the detecting and determining functions concurrently. *See* DI 28-30.

Patent Owner's argument to the contrary is nonsensical. According to Patent Owner, "the Board correctly determined that claims 1 and 9 . . . require a particular order of steps (i.e. determining after detecting)." Request 5. Then, according to Patent Owner, the Board "disregarded this claim requirement" in the *very next paragraph* of the DI. *Id.* The Board did no such thing. Tellingly, Patent Owner fails to acknowledge the portion of the DI where the Board preliminarily found Gallagher teaches the claimed detecting feature and focuses exclusively on the Board's analysis for the claimed determining features. DI 26, 34-35; *see generally* Request.

The Board's discussion of *Cybersettle* and the '328 patent's disclosure of concurrent performance that is consistent with the prior art demonstrates the Board's correct understanding of the claims. DI 29-30 (citing *Cybersettle*, 243 F. App'x at 609; Ex. 1001, 5:52-60). The claims permit the computer processing system concurrently determining whether an object of interest previously detected includes a reflective surface even as it continues to detect additional objects. As the Board preliminarily found, Gallagher teaches these features. *See* DI 26-30, 34-36.

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Response to Request for Director Review

Date: March 27, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Petitioner's Response to Patent Owner's Request for Director Review** was served electronically via email on March 27, 2025, in its entirety on the following:

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Patent Owner has consented to service by email.

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