

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARISTA NETWORKS, INC.,

Petitioner,

v.

ORCKIT CORPORATION,

Patent Owner.

Case IPR2024-01238
Patent No. 8,830,821

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

I. INTRODUCTION

This Petition is a serial petition that copies arguments made in IPR2023-00402 in an attempt to invalidate the surviving claims of the '821 Patent. But even after roadmapping against the prior IPR, the single new piece of prior art in the Petition (Ashwood Smith) fails to teach or suggest the missing limitation.

Ashwood Smith only determines the probability of failure at a *single point* in the network, not (as required by the claims) the probability of *concurrent* failure for two different *network paths*.

Petitioner now seeks Director Review of a factual issue where the Board has twice rejected substantially the same arguments across two separate IPRs. The Board's conclusions were correct. The Director should decline this review.

II. PETITIONER'S ARGUMENTS FAIL

Petitioner's arguments confirm that the Board correctly denied institution. Ashwood Smith does not teach or suggest "logic configured to determine a probability of concurrent failure of said working entity and said protection entity." EX1001 ['821 Patent], cl. 14. At best, Ashwood Smith teaches the "*probability of failure at a common point* shared by two or more working paths." Paper 8 at 9; citing EX1037 [Ashwood Smith] at 10:21-26 (emphasis added).

To explain, the working entity and protection entity in the '821 Patent are two different network paths between the same endpoints. EX1001 ['821 Patent],

1:46-51. As such, the working entity and protection entity are necessarily composed of different “spans” and “nodes.” *Id.* The probability of failure for a network path (i.e., the working entity *or* the protection entity) is the probability that any span or node in that network path fails. The probability of *concurrent* failure of two network paths (i.e., the working entity *and* the protection entity) is the probability of failures of the working and protection paths that overlap in time (though both need not begin at the same time).

As Petitioner admits, Ashwood Smith only teaches the probability of failure at a single common point in a network. Paper 8 at 9. But the probability of failure at a *single point* in the network is not a probability of failure of an entire network path, let alone the probability of failure for two different paths as required by the claims. Paper 6 at 18. Even if two paths share a node, they also have other nodes and spans that can also fail. The claims recite the probability of concurrent failure, which may result from failures other than in such a shared node. And the ’821 Patent teaches that there can be “pair[s] of working and protection entities] having no spans or nodes in common.” EX1001 [’821 Patent], 3:47-50. The probability of failure at a single point is irrelevant in those cases.

The Board based its ruling on this distinction. Paper 7 at 22 (“We agree with Patent Owner’s arguments. We find that Petitioner does not show sufficiently that

Ashwood Smith discloses, teaches, or suggests” limitation 14[d]). Petitioner’s Request never explains why the Board’s finding (or PO’s argument) is incorrect.

Instead, Petitioner attempts to confuse the issue. Petitioner couches its request as an implicit claim construction issue (*see, e.g.*, Paper 8 at 1, 5-9), but does not explain why the purported implicit claim construction issue is relevant to the outcome. Rather, the Request incorrectly asserts (but without explanation or support) that Ashwood Smith teaches limitation 14[d] even under the Board’s purported interpretation. Paper 8, 14-15.

Petitioner accuses the Board of misinterpreting the Petition. Paper 8 at 5-7. This is incorrect. The Board cites two instances where Petitioner (incorrectly) characterized Ashwood Smith and Doshi as “calculat[ing] the probability of concurrent failure” and one instance where Petitioner argued that Doshi teaches “calculating the cost for each LSP path.” Paper 7 at 22 (quoting Petition at 77 (twice) and 78). Thus, the Board accurately characterized the Petition. *Id.*

Nor did the Board overlook “alternative theories for limitation 14[d]” including Doshi. Paper 8 at 5. The FWD held “[c]onsistent with our findings in the Final Written Decision of IPR2023–00402 [discussing Doshi], we find that Doshi does not disclose, teach, or suggest” limitation 14[d]. Paper 7 at 18.

Petitioner argues that “Patent Owner’s arguments attack Ashwood Smith individually, instead of the combination of Doshi, Guichard, and Ashwood Smith.”

Paper 8 at 10. This is incorrect. As PO argued and the Board agreed, neither Doshi nor Ashwood Smith nor Guichard (which the Petition does not allege discloses limitation 14[d] (Paper 2 at 74-78)) disclose, teach or suggest limitation 14[d]. Paper 7 at 18-19, 22-24. The Board agreed with PO that limitation 14[d] is completely missing from any reference or combination in this IPR.

Petitioner argues that the “Doshi-Guichard-Ashwood Smith combination teaches limitation 14[d]” even under the Petition’s interpretation of limitation 14[d] because, allegedly, “a determination that a probability of failure at a common point is ‘below a certain level’ requires at least a basic mathematical comparison (i.e., a calculation).” Paper 8, 14. First, this argument was not raised in the Petition. Second, as discussed above, the claims address “a probability of concurrent failure of said working entity and said protection entity,” not a probability of failure at a single common point as Ashwood Smith teaches. Accordingly, Petitioner’s arguments fail. And, in any event the term “calculation,” which Petitioner effectively construes in its Request, is not a term recited in the claims.

Finally, Petitioner argues that “the ’821 Patent’s disclosure” “suggests that Ashwood Smith’s disclosure, combined with Doshi and Guichard [] is within the scope of the claims.” *Id.*, 15. As discussed above, the claim language contradicts Petitioner’s argument. A probability of failure at a single point is not a probability of concurrent failure for two separate network paths.

III. DISCRETIONARY DENIAL

Because Petitioner's merits arguments are weak, the Board did not reach PO's discretionary denial arguments. *See* Paper 6 at 13-22. The roadmapping nature of this IPR weighs in favor of declining Director Review. *Id.* Acting Director Stewart's March 26, 2025 Memorandum titled "Interim Processes for PTAB Workload Management" provides additional reasons for the Director to decline review. First, the PTAB has already adjudicated the validity of the claims in prior IPR2023-00402. Second, Petitioner's new argument regarding Ashwood Smith is weak and suffers from similar flaws as the references used in the -00402 IPR. Third, the Director Review Request repeatedly argues the Board erred by not crediting statements from Petitioner's expert. Paper 8 at 2, 9, 12. This reliance on expert testimony suggests Petitioner's arguments would be better placed at the district court, where Dr. Min's credibility can be better evaluated. Fourth, settled expectations of the parties is that claims 14-16 are valid and enforceable. The '821 Patent issued over ten years ago (on September 9, 2014) and claims 14-16 survived a prior IPR where substantially the same arguments were presented. The Director should decline to review the FWD for these additional reasons.

IV. CONCLUSION

The Board committed no abuse of discretion or error. The Director should decline to review the FWD for the reasons discussed above.

Date: May 2, 2025

Respectfully submitted,

/ Stephen McBride /

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following document was served by electronic service, by agreement between the parties, on the date below:

**PATENT OWNER'S RESPONSE TO PETITIONER'S REQUEST FOR
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Respectfully submitted,

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