

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CHARTER COMMUNICATIONS INC.,

Petitioners

v.

IARNACH TECHNOLOGIES LIMITED,

Patent Owner

Case IPR2024-01287

Patent 9,287,982

**PATENT OWNER'S RESPONSE
TO PETITION FOR INTER PARTES REVIEW
OF U.S. PATENT NO. 9,287,982**

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Patent Trial and Appeal Board
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EXHIBIT LIST

Exhibit	Description
EX2001	Declaration in support of motion for pro hac vice admission of Eric J. Enger
EX2002	Declaration in support of motion for pro hac vice admission of William B. Collier, Jr.
EX2003	Excerpts from Data-Over-Cable Service Interface Specifications DOCSIS 3.0, Operations Support System Interface Specification (Apr. 3, 2014) <i>available at</i> https://www.cablelabs.com/specifications/CM-SP-OSS/v3.0?v=123 .
EX2004	Texas Eastern, U.S. District Court—Judicial Case Load Profile excerpt from Federal Court Management Statistics (June 30, 2024), <i>available at</i> https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0630.2024.pdf
EX2005	Defendant’s Preliminary Invalidity Contentions Cover Pleading, <i>Iarnach Technologies Ltd. v. Charter Communications, Inc. et al.</i> , No. 2:23-cv-00230-JRG (E.D. Tex. served Sept. 5, 2024)
EX2006	Declaration of Eric J. Enger in Support of Patent Owner’s Preliminary Response
EX2007	Disclaimer of ’982 Patent Claim 4
EX2008	Declaration of Dr. Kerry Litvin in Support of Patent Owner’s Response
EX2009	Defendants’ Preliminary Claim Constructions And Identification Of Extrinsic Evidence, <i>Iarnach Technologies Ltd. v. Charter Communications, Inc. et al.</i> , No. 2:23-cv-00230-JRG (E.D. Tex. served Apr. 28, 2025)
EX2010	Iarnach Technologies Ltd.’s Local Patent Rule 4-2 Statement, <i>Iarnach Technologies Ltd. v. Charter Communications, Inc. et al.</i> , No. 2:23-cv-00230-JRG (E.D. Tex. served Apr. 28, 2025)

Exhibit	Description
EX2011	Excerpts from Data-Over-Cable Service Interface Specifications DOCSIS® 3.1 MAC and Upper Layer Protocols Interface Specification, Annex D (April 19, 2023)
EX2012	Excerpts from DOCSIS® Provisioning of EPON Specifications DPoEv2.0, DPoE MAC and Upper Layer Protocols Interface Specification, Annex C (Feb. 28, 2018)

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I. Introduction

Petitioner Charter Communications, Inc. (“Petitioner”) filed a Petition (“Pet.”) challenging all claims of U.S. Patent No. 9,287,982 (“the ’982 Patent”) on four grounds. *See* Pet., 22. Patent Owner Iarnach Technologies Limited (“Patent Owner”) respectfully requests the Board affirm the Patentability of the ’982 Patent.

Petitioner’s grounds are based primarily on two patents: (1) “Bernstein” and (2) “Tsuge.” In both instances, Petitioner asserts that Bernstein and Tsuge render all claims obvious, either alone or in combination. However, in its analysis of the independent claims, Petitioner either ignores several claim elements or provides only a cursory analysis that is not sufficient to prove invalidity.

For example, the preambles of claims 1 and 6 recite a “service auto-configuration” method or network. The Parties agree that the preambles of these claims are limiting in their entirety. Yet Petitioner entirely ignores these preamble limitations. The Board agrees, finding in its Institution Decision that “Petitioner does not appear to have addressed how [Bernstein or Tsuge] teaches or suggests ‘a service auto-configuration method.’” Paper 12 at 32, 42. This affects all Grounds.

Similarly, in Ground 1, Petitioner ignores the “analyzing” element of the independent claims. Instead, Petitioner points to a “converting” step in Bernstein. But Petitioner made no attempt to explain how Bernstein’s converting teaches the claimed analyzing. Moreover, Petitioner ignored language in the claims themselves

that distinguishes between analyzing and converting. The Board has already confirmed that “the terms analyzing and converting are not the same.” Paper 12 at 33.

And in Ground 3, both Petitioner and the Board recognize that Tsuge did not disclose the element of “convert[ing] the configuration information of the OLT into a message format which can be identified by the OLT.” *See* Paper 12 at 43 (“[I]t is not clear how the sections of Tsuge cited by Petitioner [] teach or suggest” this claim element). So Petitioner has to argue it would be obvious to modify Tsuge to do the claimed converting because “the setting information would otherwise be unusable.” Pet., 73. But nothing in Tsuge suggests that this is true, and the Petition provides no substantive argument to support its reasoning.

The Petition also fails to explain in Ground 3 how Tsuge renders obvious “sav[ing] the configuration file” of claim 6. Instead, Petitioner only points to discussions about “obtaining” configuration information—not “saving” that information. Pet., 81.

Finally, the Petition completely ignores the elements of several dependent claims, instead citing to earlier discussions of independent claims that do not address the claimed elements.

Having failed to articulate its positions in the Petition, Petitioner is prohibited from raising new arguments in reply to correct these deficiencies. These bare-bones arguments are not enough to establish invalidity of any claims of the '982 Patent.

II. Background

A. Data Over Cable Service Interface Specification (“DOCSIS”)

The data over cable service interface specification (“DOCSIS”) allows data transmission over cable systems that were originally built for television transmissions. EX2008 ¶22; EX2003 at 21. The basic model of DOCSIS is illustrated by the DOCSIS 3.0 specification:

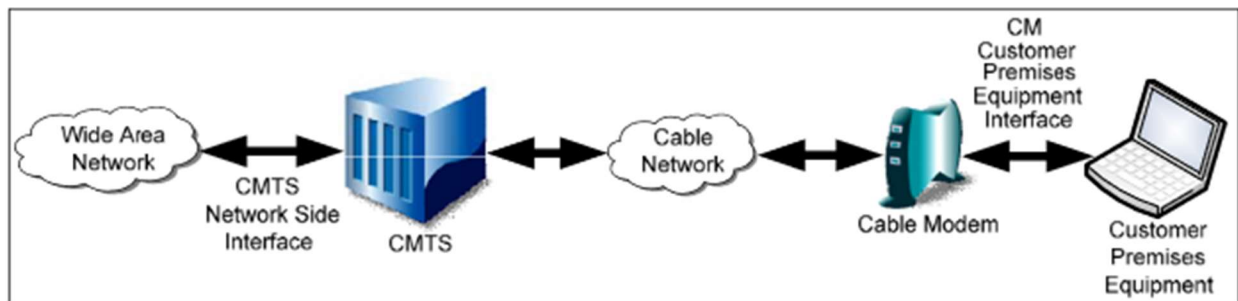
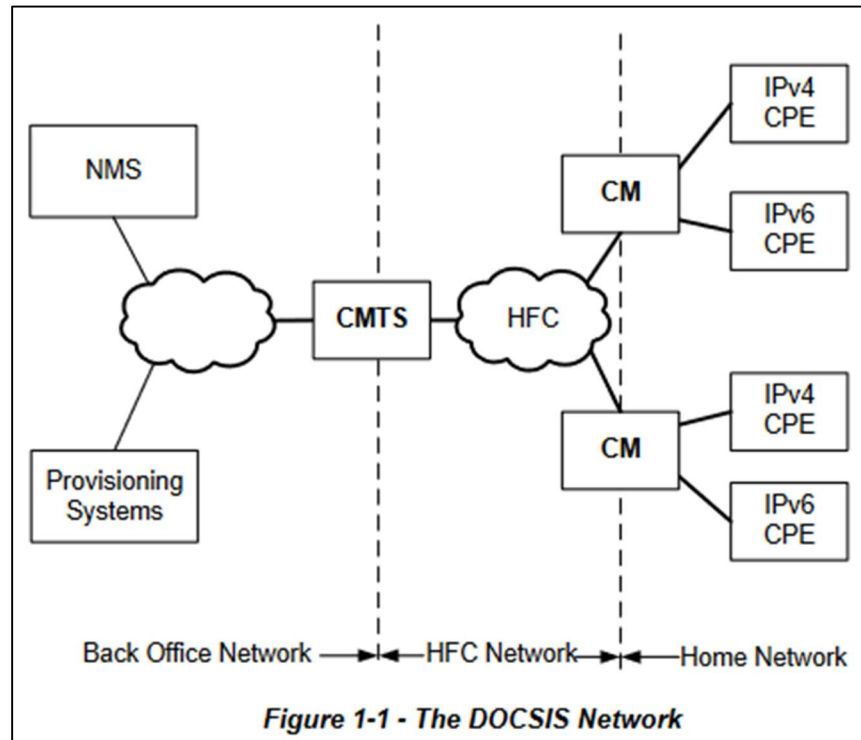


Figure 1-2 - Transparent IP Traffic through the Data-Over-Cable System

Id.

In DOCSIS, a cable modem (“CM”) connects a home network to an operator’s cable network (which can be hybrid-fiber/coax (“HFC”) or all-coax). EX2008 ¶23; EX2003, 21. Multiple customer premises equipment (“CPEs”) devices, such as home routers or personal computers, can connect to the CMs’ LAN interfaces. EX2008 ¶23; EX2003, 20-21. On the back end, the cable modem termination system

(“CMTS”) connects the operator’s back-end systems and core network to the cable network. EX2008 ¶23; EX2003, 20. The CMTS primarily functions to forward packets between the two domains. *Id.* The back-end systems include both network management systems (“NMS”) and provisioning systems:



EX2008 ¶24; EX2003, 20. These back-end systems allow DOCSIS based networks to configure the DOCSIS network and manage user accounts. EX2008 ¶24; EX2003, 20-21.

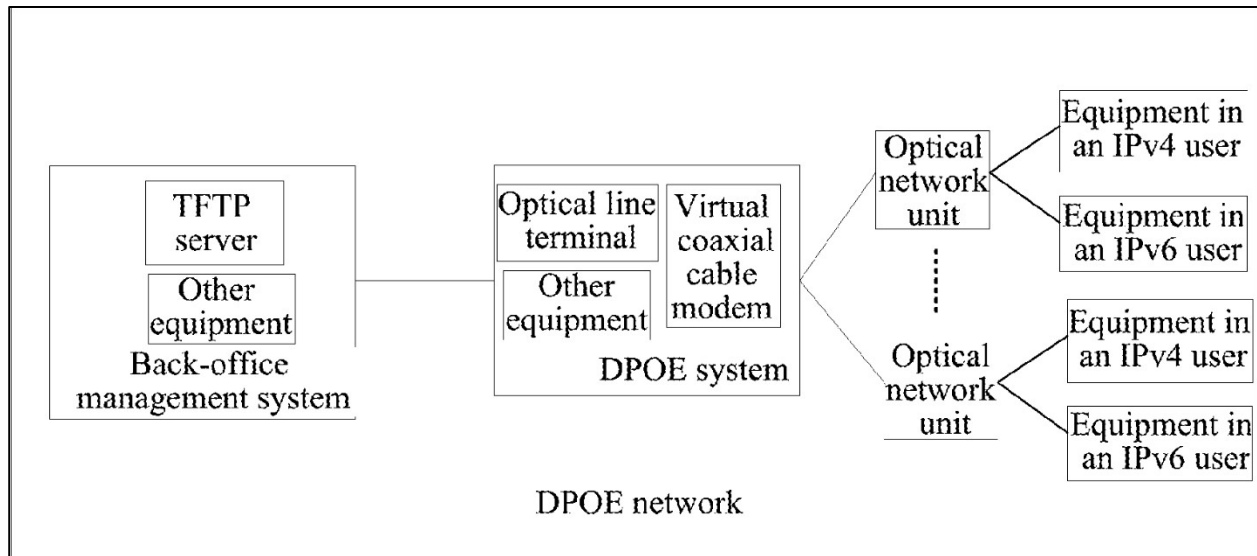
Though many DOCSIS networks began as a coax-based (*i.e.*, all copper) transmission infrastructure, these evolved into HFC, and then all-optical networks, such as PONs, as demand for bandwidth increased. EX2008 ¶25; *see* EX2003, 21. In optical networks, CPEs are connected to optical network units (“ONUs”), rather

than CMs. EX2008 ¶26; *see* EX1001 Fig. 1. These ONUs are connected to optical line terminals (“OLTs”) often in the form of a passive optical network (“PON”). EX2008 ¶26; EX1001, Fig. 1, 1:7-12, 1:17-26. One type of PON discussed by the ’982 Patent is an ethernet passive optical network (“EPON”). EX2008 ¶27; EX1001, 1:7-12. To create a network across the PON, an ONU must be registered, initialized, and configured, and the OLT must also be configured. EX2008 ¶28; EX1001, 1:26-56, 2:51-58. This configuration process was separate from the management system described by DOCSIS; in the past, the OLT had to be configured manually. EX2008 ¶28; EX1001, 1:57-64.

B. The ’982 Invention

The inventors of the ’982 Patent recognized that the DOCSIS management system could be used to automatically configure both the ONU and OLT. EX2008 ¶29; EX1001, 2:51-62. This process is known as DOCSIS Provisioning Of EPON (“DPoE”). EX2008 ¶29; EX1001, 2:59-62.

Figure 1 illustrates a typical DPoE network:



EX2008 ¶29; EX1001, Fig. 1. As shown, a DPoE network includes a back-office management system (left) that is connected to a DPoE system (middle), which is then connected several ONUs (right). EX2008 ¶30; EX1001, Fig. 1. The DPoE system includes both an OLT and virtual coaxial cable modem (“vCM”). *Id.* At times, the vCM can be integrated on the OLT and be part of the OLT. *Id.* at 5:54-56.

When initializing an ONU, the ’982 Patent teaches that the vCM initiates a DOCSIS configuration request to a back-office management system in the form of a Dynamic Host Configuration Protocol (“DHCP”) request. EX2008 ¶31; EX1001, 6:26-28 (describing S404 in Fig. 4). The DHCP server then responds and assigns an IP address for the vCM. EX2008 ¶31; EX1001, 6:29-31 (describing S405 in Fig. 4). The vCM then initiates a Trivial File Transfer Protocol (“TFTP”) request, the server which has the saved configuration file. EX2008 ¶31; EX1001, 4:57-59, 6:32-35. The

configuration file sent back to the vCM includes configuration information for the OLT, and that configuration information corresponds to services requested by the ONU. EX2008 ¶31; EX1001, 4:57-67. The DPoE system analyzes this configuration information and converts it into a message format that can then be used to configure the ONU. EX2008 ¶31; EX1001, 5:1-8. Then, the DPoE system sends the configuration message to the ONU (via a management channel between the OLT and ONU) to configure the ONU. EX2008 ¶31; EX1001, 5:9-11. The DPoE system also locally configures the OLT. EX2008 ¶31; EX1001, 5:9-20.

The '982 Patent effectively now has three independent claims, claims 1, 5,¹ and 6. Each independent claim recites a “service auto-configuration method” of a DPoE system, a DPoE system, and a “service auto-configuration network” of a DPoE system, respectively. Claims 1, 5, and 6 are presented below, using the same annotations as Petitioner for denoting claim limitations:

1[pre]. A service auto-configuration method of a DOCSIS Provisioning Of EPON (DPoE) system, comprising:

1[a] the DPoE system acquiring a configuration file from a back-office management system, wherein the configuration file comprises both configuration information of an optical network unit (ONU) and configuration information of an optical line terminal (OLT) in the DPoE system;

¹ Patent Owner has disclaimed claim 4 of the '982 Patent. EX2007. Thus, claim 5 (which previously depended from claim 4) is now effectively an independent claim.

1[b] the DPoE system analyzing the acquired configuration file, and obtaining both the configuration information of the ONU and the configuration information of the OLT; and

1[c] the DPoE system configuring the OLT locally according to the configuration information of the OLT **1[d]** and meanwhile configuring the ONU according to the configuration information of the ONU via a management channel between the OLT and the ONU;

1[e] wherein, the method is performed in a process of ONU initialization; and

1[f] wherein, when analyzing the acquired configuration file, the DPoE system further converts the configuration information of the ONU into a message format which can be identified by the ONU, and **1[g]** converts the configuration information of the OLT into a message format which can be identified by the OLT.

4[pre]. A data over cable service interface system (DOCSIS) Provisioning Of EPON (DPoE) system, comprising **4[a]** an acquisition unit, an analyzing unit and a configuration unit; wherein, during a process of an optical network unit (ONU) initialization,

4[b] the acquisition unit is configured to acquire a configuration file from a back-office management system, wherein the configuration file comprises configuration both information of the ONU and configuration information of an optical line terminal (OLT) in the DPoE system;

4[c] the analyzing unit is configured to analyze the acquired configuration file and obtain both the configuration information of the ONU and the configuration information of the OLT; and

4[d] the configuration unit is configured to configure the OLT locally according to the configuration information of the OLT and meanwhile configure the ONU according to the configuration information of the ONU via a management channel between the OLT and the ONU.

5. The system according to claim 4, wherein,

the analyzing unit is further configured to, when analyzing the acquired configuration file, convert the configuration information of the ONU into a message format which can be identified by the ONU and convert the configuration information of the OLT into a message format which can be identified by the OLT.

6[pre]. A service auto-configuration network of a DOCSIS Provisioning Of EPON (DPoE) system, comprising **[6a]** a DPoE system, a back-office management system and a plurality of optical network units (ONUs); **[6b]** wherein,

the DPoE system comprises an acquisition unit, an analyzing unit and a configuration unit; wherein, during an process of an optical network unit (ONU) initialization,

6[c] the acquisition unit is configured to acquire a configuration file from a back-office management system, wherein the configuration file comprises configuration both information of the ONU and configuration information of an optical line terminal (OLT) in the DPOE system;

6[d] the analyzing unit is configured to analyze the acquired configuration file and obtain both the configuration information of the ONU and the configuration information of the OLT; and

6[e] the configuration unit is configured to configure the OLT locally according to the configuration information of the OLT and meanwhile configure the ONU according to the configuration information of the ONU via a management channel between the OLT and the ONU; and

6[f] the back-office management system is configured to: save the configuration file, and download the configuration file to the DPoE system, wherein the configuration file comprises the configuration information of the ONU and the configuration information of the OLT in the DPoE system.

EX1001, 8:33-10:14 (claims). *See also* Pet., ix-xii.

C. Effective Filing Date of the '982 Patent

The '982 Patent issued from U.S. Patent Application No. 14/009,703 and claims priority to Chinese Patent Application No. 2011100921130 filed on April 13, 2011. EX1001, cover. It issued on March 15, 2016. *Id.* Petitioner does not dispute that the priority date of the '982 Patent is April 13, 2011. *See* Pet., 4.

D. Level of Ordinary Skill in the Art

Patent Owner disagrees with Petitioner's recitation of the level of skill in the art. However, even under Petitioner's proposed level of skill (Pet., 11), Petitioner has failed to establish that the prior art renders any claim obvious.

III. Petitioner's References

Petitioner asserts four grounds of invalidity based on combinations of three references and "the knowledge of one of skill in the art."

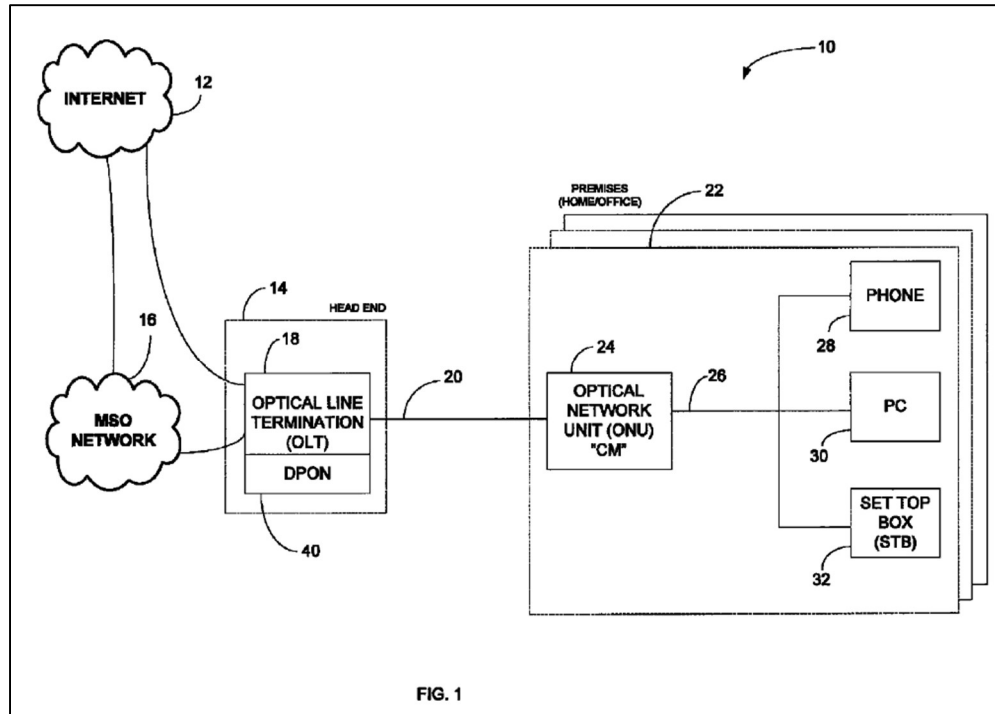
Ground	Claims	Statute	References
1	1-2, 4-9 and 11	§ 103	Bernstein, Tsuge, and Knowledge in the Art
2	3 and 10	§ 103	Bernstein, Tsuge, Knowledge in the Art, and MEF 6.1
3	1-2, 4-9 and 11	§ 103	Tsuge, Bernstein, and Knowledge in the Art
4	3 and 10	§ 103	Tsuge, Bernstein, and MEF6.1

Pet., 22, 23, 55, 60, 84.

A. Bernstein [EX1006]

Bernstein is U.S. Patent No. 8,831,425 to Alon Bernstein and John Chapman, titled “Data Over Cable Service Interface Specification (DOCSIS) Over Passive Optical Network (PON).” EX1006, cover.

Bernstein discusses embodiments related to DOCSIS PON systems (together “DPON”). According to Bernstein, these systems allow optical end users to appear as cable subscribers. EX2008 ¶33; EX1006, Abstract. Bernstein describes using a cable modem proxy located in an OLT to communicate with a back office. *Id.* In this embodiment, the data received by the CM proxy is translated by the OLT into commands that can be recognized by an ONU. *Id.* In another embodiment, the CM proxy is located in the ONU, and the CM proxy in the ONU receives commands directly from the back office system. *Id.* This general system is illustrated in Figure 1:

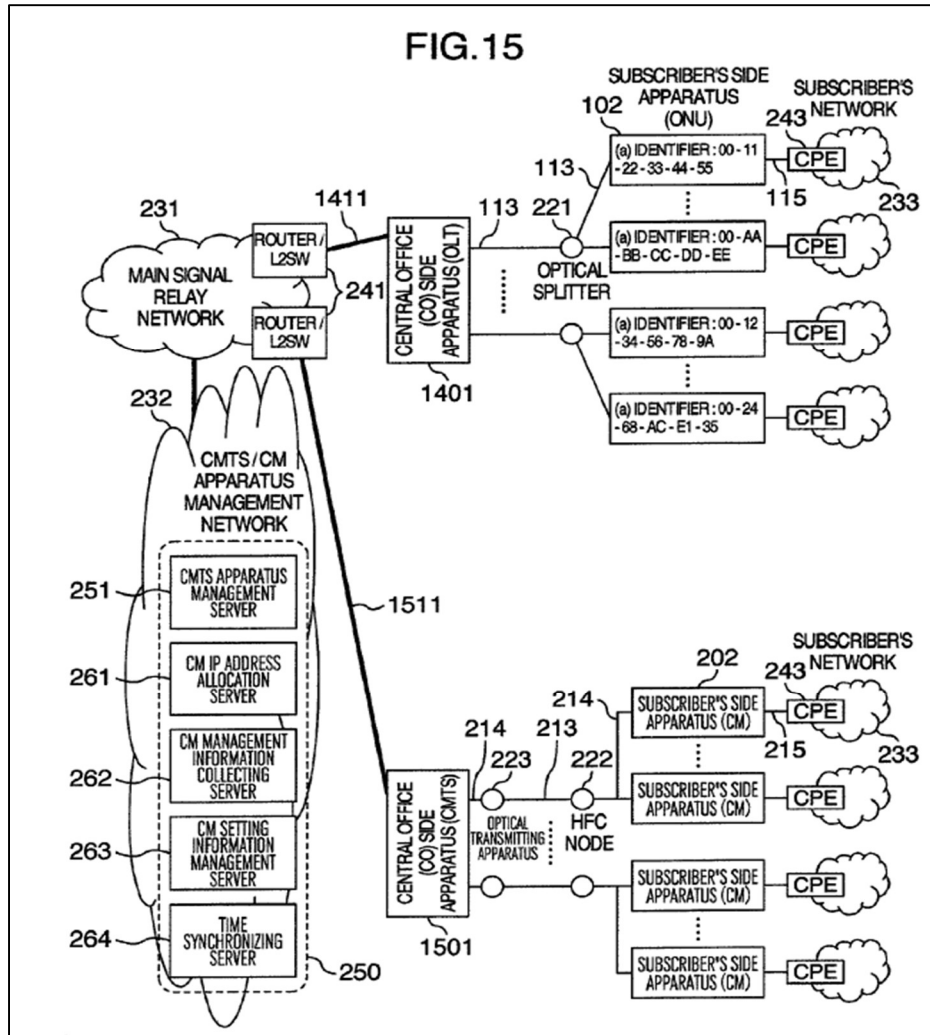


EX2008 ¶33; EX1006, Fig. 1. Bernstein differs in several key aspects related to the claims of the '982 patent, as explained in detail below.

B. Tsuge [EX1008]

Tsuge is U.S. Patent No. 8,160,448 to Munetoshi Tsuge, *et al.*, titled “Communication System Using Passive Optical Network and Passive Optical Network.” EX1008, cover.

The purported objective of Tsuge is to provide a PON system that can be installed in a preexisting coax systems. EX2008 ¶35; EX1008, 4:12-21; *see supra* §II.A. In one embodiment, Tsuge describes an OLT connected on one end to several ONUs and on the other to a number of back-end systems:



EX2008 ¶35; EX1008, Fig. 15; *see also* EX1008, Fig. 19. Tsuge goes on to explain several methods that can be used to convey setting information from the backend systems to the OLT and ONUs. EX2008 ¶35; *see, e.g.*, EX1008, at 14:20-15:15. But, Tsuge’s techniques do not align with those claimed by the ’982 patent, as explained below.

C. MEF 6.1 [EX1007]

MEF 6.1 is a technical specification that provides “ethernet services definitions.” EX1007, 1. The cover of MEF 6.1 reflects a date of April 2008.

EX2008 ¶36; EX1007, 1. MEF 6.1 purports to use “the service attributes and parameters that are defined in” a separate document “and applies them to create different Ethernet services.” EX2008 ¶36; EX1007, 6. MEF 6.1 “defines three generic service constructs called Ethernet Service types and specifies their associated service attributes and parameters used to creates Point-to-Point, Multipoint-to-Multipoint, and Rooted-Multipoint Ethernet services.” *Id.*

IV. Claim Construction

The Petition contends that no terms require construction. Pet., 11. However, in the parallel district court litigation (*Iarnach Techs. Ltd. v. Charter Comms, Inc.*, No. 2:24-cv-230 (E.D. Tex.) (“the District Court Litigation”)), Petitioner now contends that at least the following terms require construction:

- “configuring the OLT locally according to the configuration information of the OLT and meanwhile configuring the ONU according to the configuration information of the ONU”
- “back-office management system”
- “service auto-configuration method for a DOCSIS Provisioning of EPON (DPoE) System”

EX2009 at 3. In that same litigation, Patent Owner also contends that the following terms require construction:

- “DPOE system”

- “optical line terminal (OLT)”
- “optical network unit (ONU)”
- “back-office management system”

EX2010 at 6. The chart below identifies the parties’ proposed constructions for certain terms as of their Local Patent Rule 4-2 disclosures:

Term	Petitioner’s proposed Construction	Patent Owner’s proposed construction
configuring the OLT locally according to the configuration information of the OLT and meanwhile configuring the ONU according to the configuration information of the ONU	“configuring the OLT, by functionality running on the OLT, according to the configuration information of the OLT and at the same time, configuring the ONU according to the configuration information of the ONU”	No construction necessary; plain and ordinary meaning
back-office management system	“a system comprising network management equipment within a DPoE Network, which includes a Trivial File Transfer Protocol (TFTP) Server and Dynamic Host Control Protocol (DHCP) Server”	a system that provides configuration files to the DPoE system
service auto-configuration method for a DOCSIS Provisioning of EPON (DPoE) System (claims 1, 6)	Preamble as limiting.	No construction necessary; the preamble is limiting.
back-office management system	“a system comprising network management equipment within a DPoE	“a system that provides configuration files to the DPoE system”

	Network, which includes a Trivial File Transfer Protocol (TFTP) Server and Dynamic Host Control Protocol (DHCP) Server”	
DPOE system	Plain and ordinary meaning: “A system for enabling Ethernet Passive Optical Network (EPON) equipment to be used for DOCSIS (Data Over Cable Service Interface Specification)-based provisioning”	One or more devices, software and/or firmware that provide DPoE functionality within a network”
optical line terminal (OLT)	Plain and ordinary meaning: “service operator-end device in an Ethernet Passive Optical Network (EPON)”	a device in a passive optical network that communicates information to/from optical network units (ONUs) in the passive optical network
optical network unit (ONU)	Plain and ordinary meaning: “subscriber-end device in an Ethernet Passive Optical Network (EPON) that is DPoE compliant”	a device in a passive optical network that communicates information to/from an optical line terminal (OLT) in the passive optical network

Patent Owner does not agree with Petitioner’s newly proposed constructions (except one as discussed below). Both Parties agree that preamble of claims 1 and 6 are limiting.

A. The Preamble of Claims 1 and 6 is limiting.

In its Institution Decision, the Board determined that parts of the preamble of claim 1 were limiting, but that the preamble of claim 6 was not limiting, and that the Board would “wait for further briefing from the parties before deciding whether the

entire preamble of claim 1 is limiting.” Paper 12 at 16-17. The parties now agree that the entire preambles of both claims 1 and 6 are limiting. EX2010 at 6; EX2009 at 3. The Board routinely accepts the parties’ decision to treat the preamble as limiting. *E.g., Bausch & Lomb Inc., v. Zeavision, LLC*, IPR2022-00089, Paper 34 at 9 (P.T.A.B. April 10, 2023) (“Although there is no longer a dispute, we agree with the parties that the preamble is limiting in this case for the reasons stated in our Institution Decision.”); *Bandit Indus., Inc. et al., v. St. Martin Inv., Inc.*, IPR2017-01849, Paper 18 at 33 (P.T.A.B. Feb. 6, 2019) (determining that the preamble is limiting where “neither party disputes that the preamble is limiting...”); *BeOne Medicines USA, Inc. v. Pharmacyclics LLC*, PGR2024-00009, Paper 51 at 15 (P.T.A.B. April 29, 2025) (“we agree with the parties that the preamble is limiting...”). Patent Owner requests that the Board reconsider the arguments made below in light of the agreed constructions.

These preambles are limiting when applying general claim construction techniques. Claims 1 and 6 both recite, in part, “[a] service auto-configuration method of a DOCSIS Provisioning Of EPON (DPOE) system.” EX1001 8:33-34, 9:31-34; *see also id.* 9:2-7 (claim 4, similar). “Whether a preamble is treated as a limitation is determined. . . upon an understanding of what the inventors actually invented and intended to encompass by the claims.” *Novatek, Inc. v. Sollami Co.*, 559 F. App'x 1011, 1015 (Fed. Cir. 2014).

The preambles of claims 1 and 6 are limiting because they “serve[] to define the invention that is claimed” and are not “simply a description of the prior art.” *See, e.g., Applied Materials, Inc. v. Advanced Semiconductor Materials Am., Inc.*, 98 F.3d 1563, 1573 (Fed. Cir. 1996). “In general, a preamble limits the invention if it recites essential structure or steps, or if it is necessary to give life, meaning, and vitality to the claim.” *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002) (quotations omitted) (quoting *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999)). For example, a preamble is limiting where “it provides important context for the nature and structure of the invention being claimed, and that without the context provided by the preamble it is difficult to make sense of the claims.” *Lemoine v. Mossberg Corp.*, No. 2020-2140, 2021 U.S. App. LEXIS 27807, at *5 (Fed. Cir. Sept. 15, 2021).

Here, the preamble gives life to the claims. As the specification explains, the invention is directed towards “a DOCSIS Provisioning Of EPON (DPOE) system and a service auto-configuration method and network based on that system.” EX1001 2:51-58; *see also id.* Abstract, 1:7-12, 4:49-51. The specification includes other example of “automatically” configuring aspects of the DPOE system. *E.g., id.* 7:65-8:2 (“It can be seen from the above-mentioned embodiments that, compared with the related art, the present document adds the configuration information about the OLT of the DPOE system in the configuration file, and completes the automatic

configuration on the OLT and the ONU at the same time....”). Thus, the preamble is limiting at least because it gives life to the invention and defines the invention. *See, e.g., Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989) (limiting claim scope to "optical waveguides" rather than all optical fibers in light of specification); *General Electric Co. v. Nintendo Co.*, 179 F.3d 1350, 1361-62 (Fed. Cir. 1999) (limiting claim scope to a "raster scanned display device" rather than all display systems in view of specification's focus on the prior art problem of displaying binary data on a raster scan display device); *Rowe v. Dror*, 112 F.3d 473, 479-80 (Fed. Cir. 1997) (similar); *Applied Materials*, 98 F.3d at 1573 (similar).

Further, “the preamble constitutes a limitation when the claim(s) depend on it for antecedent basis.” *In re Fought*, 941 F.3d 1175, 1178 (Fed. Cir. 2019) (quotation omitted) (quoting *C.W. Zumbiel Co., Inc. v. Kappos*, 702 F.3d 1371, 1385 (Fed. Cir. 2012)). Here, the preamble forms the antecedent basis for the rest of the claims. The preamble for each independent claim recites “a DOCSIS Provisioning Of EPON (DPOE) system.” The further limitations of independent claim 1 refers to “the DPOE system.” EX1001 8:33-57, 9:3-22. For example, claim 1[a] recites “***the DPOE system*** acquiring a configuration file from a back-office management system....” *Id.* 8:35-36. Without the preamble, there is no other basis for “the DPOE system.” Similarly, the claim 1 preamble states the claims is a “service auto-configuration

method” which is the only antecedent basis for “the method” recited in claim 1[e]. *Id.* 8:33-57. Likewise, the claim 6 preamble states that claim is “a service auto-configuration network of a DOCSIS Provisioning of EPON [] system.” *Id.* 9:31-34. This preamble also provides the only antecedent basis for dependent claims 7-11, which refer to “[t]he network according to claim 6....” *Id.* 10:15-40. Accordingly, and as the parties agree, the preamble is limiting in independent claims 1 and 6.

V. Arguments

A. Grounds 1 and 2

1. Petitioner has not shown that Bernstein renders obvious “a service auto-configuration” method/network (claims 1, 6)

The preambles of independent claims 1 and 6 recite, in part, “a service auto-configuration [method/network].”

In its Institution Decision, the Board did not find that the entire preamble of claims 1 and 6 was limiting. However, as explained above, both parties agree that it is. The Institution Decision then recognized that “Petitioner does not appear to have addressed how Bernstein teaches or suggests “[a] service auto-configuration method.” Paper 12 at 32. That conclusion equally applies to claim 6 and is fatal to the Petition. By failing to address this element in the Petition, Petitioner has failed to carry its burden to show that claims 1 and 6 or their dependents are obvious.

Petitioner always bears the burden of persuasion. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). “[T]he expedited

nature of IPRs bring with it an obligation for petitioners to make their case in their petition to institute.” *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016). This burden of persuasion never shifts to the patent owner. *See Dynamic Drinkware*, 800 F.3d at 1378. “[T]he Board must base its decision on arguments that were advanced by a party, and to which the opposing party was given a chance to respond.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016)).

“To satisfy its burden of proving obviousness, a petitioner cannot employ mere conclusory statements. The petitioner must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.” *In re Magnum Oil Tools*, 829 F.3d at 1380. Where the petition fails to meet this burden, the Board is not “free to adopt arguments on behalf of petitioners that could have been, but were not, raised by the petitioner.” *Id.* at 1380-81 (noting that while “[i]t is true that the entire IPR process is one designed as an ‘efficient system for challenging patents that should not have issued,’” “it is still a system that is predicated on a petition followed by a trial in which the petitioner bears the burden of proof.”).

Indeed, the Federal Circuit has cautioned that “[i]t is of the utmost importance that petitioners . . . adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each

claim.”” *Intelligent Bio-Systems*, 821 F.3d at 1369 (citing 35 U.S.C. § 312(a)(3)).

Arguments that are not “particularly” asserted in a petition are not to be given any weight. *See Microsoft Corp. v. FG SRC, LLC*, 860 F. App’x 708, 713 (Fed. Cir. 2021).

In *Microsoft*, the petitioner challenged several claims in a patent, including claims 1, 2, 3, and 18. *Id.* at 711. The Board concluded that claim 1 was anticipated by prior art, claims 2 and 3 were obvious over prior art, but that the petition failed to challenge claim 18 as obvious. *Id.* On appeal, the petitioner argued that its petition did address claim 18 based on obviousness by pointing to several parts of the discussion of claim 18 in the petition, including references to claim 2. *Id.* at 712. Petitioner also argued that the fact that patent owner addressed the claim 18 obviousness argument justified addressing it in the IPR. *Id.* at 712-13. The Federal Circuit rejected these arguments. *Id.* at 713. Instead, the Federal Circuit observed that “[a]rguments in a petition must be made with particularity, not opacity” and concluded “there is no plausible argument that [the] petition challenged claim 18 based on obviousness over [the art] with any particularity whatsoever.” *Id.*

Petitioner’s challenge to claims 1 and 6 should be rejected for the same reason: the Board recognizes that the Petition fails to address elements of the claims with any particularity. Claim 1[preamble] recites “a service auto-configuration method” and claim 6[preamble] recites “a service auto-configuration network.” For claim

1[preamble], Petitioner and its expert point solely to Bernstein’s discussion of a DOCSIS Passive Optical Network (PON) system and separate references to an “Ethernet PON (EPON).” Pet., 24 (citing EX1006, abstract, 2:2-5, 2:44-3:36, 3:37-46). For claim 6, the Petition merely refers back to the discussion of 1[preamble]. Pet., 50.

As the Board recognized in its Institution Decision, the Petition is silent about a “service auto-configuration” method or network. Paper 12 at 32 (“Petitioner does not appear to have addressed how Bernstein teaches or suggests ‘a service auto-configuration method.’”); *also* EX2008 ¶¶40-42. Indeed, none of the cited sections of Bernstein discuss “service auto-configuration.” EX2008 ¶¶40-42. For example, Bernstein’s Abstract discusses that DOCSIS of PON makes optical subscribers appear as cable subscribers. EX2008 ¶¶40-41; EX1006, abstract. It also explains that Bernstein’s basic structure and communications between the CM proxy, OLT, and ONU. *Id.* But it says nothing about “service auto-configuration.” EX2008 ¶¶40-42. Similarly, Bernstein at column 2 lines 2 through 5 only discusses the different types of PON networks. EX2008 ¶41; EX1006, 2:2-5. And column 2 line 44 through column 3 line 46 again describes the structure and components of Bernstein’s PON network. EX2008 ¶41; EX1006 2:44-3:46. There, the word “configuration” only appears twice: first in reference to DHCP (“Dynamic Host Configuration Protocol”), and second in describing the structure of one embodiment. EX2008 ¶¶41-42;

EX1006, 3:13-14, 3:44-46. The Petition fails to even suggest anything that could disclose “service auto-configuration.” EX2008 ¶42.

Without articulating “with particularity” any reasoning for these limitations, Petitioner has not met its burden to show that Bernstein renders obvious the claimed “service auto-configuration” method/network. *See* 37 C.F.R. § 42.22(a)(2) (the petition must include “[a] full statement of the reasons for relief requested, including a detailed explanation of the significance of the evidence including material facts....”).

2. Petitioner has not shown that Bernstein renders obvious “analyzing” a configuration file (claims 1, 5, 6, 11)

Each challenged claim requires “analyzing” a configuration file. For example, claim 1[b] recites “the DPOE system *analyzing* the acquired configuration file....” Similarly, claim 4[c] (from which claim 5 depends) states that an “*analyzing* unit is configured to *analyze* the acquired configuration file....” And claim 6[d] likewise requires that an “*analyzing* unit is configured to *analyze* the acquired configuration file....” For the reasons explained below, the Petition failed to explain how Bernstein renders obvious the claimed “analyzing” elements.

For claim 1[b], Petitioner and its expert point only to Bernstein’s disclosure at column 3 lines 53 through 63 for this limitation. Pet., 28; EX1005 ¶¶66-68. Petitioner’s arguments for claim 4[c] simply incorporates its argument for claim

1[b], and the argument for claim 6[d] just points to the argument for claim 4[c]. Pet., 48-49, 52.

The cited section of Bernstein discusses a “DOCSIS-to-PON translator” that converts parameters from DOCSIS parameters to PON parameters for the OLT or ONU:

A DOCSIS-to-PON translator 84 is then used for converting any of the parameters 61 obtained by the cable modem proxy 60 into associated PON parameters 63 that can be used by the OLT 18 and ONU 24. Some of the translated PON parameters 63 are programmed into a PON driver 86 for either communicating with the ONU 24 or sent over the optical cable 20 for configuring the ONU 24. The PON driver 86 represents any of the EPON 64, GPON 66, or WDM 68 previously shown in FIG. 2. The translated PON parameters 63 may also be used for operating or configuring OLT hardware 88.

EX1006, 3:53-63; EX2008 ¶47. Though this section describes “converting” and “translating” parameters obtained by a cable modem proxy, it does not discuss “analyzing” that information. EX2008 ¶48. Other than conclusory attorney-argument statements that the “DPOE system analyzes the acquired configuration file,” Petitioner has not attempted to explain how Bernstein’s disclosure describes the claimed “analyzing.” *Id.* Certainly, Petitioner has not introduced evidence from Bernstein proving the claimed “analyzing.” *Id.*

The claim language of the ’982 Patent further highlights Petitioner’s failure to meet its burden. When a patent uses two different terms in the claims, “the general presumption [is] that different terms have different meanings. . . .” *Chicago Bd.*

Options Exch., Inc. v. Int’l. Sec. Exch., LLC, 677 F.3d 1361, 1369 (Fed. Cir. 2012) accord *Becton Dickinson & Co. v. Tyco Healthcare Group, LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2010) (internal quotation omitted) (“Where a claim lists elements separately, the clear implication of the claim language is that those elements are distinct component[s] of the patented invention.”); *Engel Indus., Inc. v. Lockformer Co.*, 96 F.3d 1398, 1404–05 (Fed. Cir. 1996) (concluding that two separately recited elements could not be the same element because it would contradict the plain language of the patent and “they logically cannot be one and the same.”).

The failure to distinguish between different elements in a claim fails to show unpatentability. See *Chongqing Optoelectronics Tech. Co. v. 138 East LCD Advancements Ltd.*, IPR2023-00476, Paper 9 at 12-14 (P.T.A.B Aug. 28, 2023). In *Chongqing*, the claims were directed to “wiring lines for driving the circuit unit and the display electrodes” and “a plurality of lead wiring lines provided on the extending portion and that are led from one of the sides of the wiring lines to the extending portion.” *Id.* at 12. The Board determined that these elements are separate: “wiring lines” and “lead wiring lines.” *Id.* 12-13. However, the petition there failed to distinguish between the two. *Id.* at 14. The Board concluded there was “no argument of record that the wiring lines and lead wiring lines are not set forth as distinct elements in the claim” and “there [was] no explanation why [the prior art]’s wiring group 13a/13b would be understood to include distinct ‘segments’ and, if it

was, there [was] no explanation why different ‘segments’ would be understood to be separate, distinct elements.” *Id.* On this record, the petitioner failed to establish unpatentability. *Id.*

Here, Claim 1[f] was originally written as a separate dependent claim and was only rewritten into claim 1 after the examiner objected to it. EX1002 at 291, 313. As rewritten, it recites “wherein, ***when analyzing*** the acquired configuration file, the DPOE system ***further converts*** the configuration information...” In other words, from the very beginning—as separate claims or as one independent claim—the claim differentiates between “analyzing” and “converting.” Because analyzing and converting are two separate steps in the claims of the ’982 Patent, the terms must mean different things, as the Board has recognized. Paper 12 at 33. Despite this, Petitioner does not explain why it contends that “converting” in Bernstein renders obvious “analyzing” in claims 1[b], 4[c], 6[d], and 11. EX2008 ¶¶45-46, 53. Without addressing both elements, the Petition fails to show unpatentability invalid in light of Bernstein. *Chongqing*, IPR2023-00476, Paper 9 at 14.

Despite recognizing that “the terms analyzing and converting are not the same,” the Board noted that claim 1 does not appear to preclude the step of analyzing from being part of the same process as the recited conversion. The Board then noted that Petitioner and its expert contend that Bernstein’s conversion process also analyzes the configuration file. Paper 12 at 33.

Patent Owner respectfully disagrees. Petitioner and its expert did not address how Bernstein’s conversion process analyzes the configuration file. EX2008 ¶¶48, 50-53. With respect to claim 1[b], Petitioner’s expert merely mirrors the language in the petition. EX1005 ¶¶66-68. As noted above, that language asserts that Bernstein describes a translator “that analyzes the configuration file” with no further discussion of the analyzing step. *Id.* ¶66; EX2008 ¶¶47-48. The remainder of that discussion only references Bernstein’s discussion of translating parameters. EX1005 ¶67; EX2008 ¶¶47-48.

Paragraphs 95 and 96 of the expert declaration, which the Board cited, also mirrors the petition. EX1005 ¶¶95-96; *see* Paper 12 at 33. This section also does not discuss “analyzing.” EX2008 ¶¶49-52. Petitioner and its expert here only reference Bernstein’s description of “translat[ing] the data...” and make the conclusory statement that Bernstein discloses the claim. EX1005 ¶¶95-96. Even if this step included “analyzing the acquired configuration file,” Petitioner and its expert failed to explain how. EX2008 ¶¶49-52. Accordingly, the Petition has not shown how Bernstein renders obvious the claimed “analyzing” elements. EX2008 ¶53.

3. Petitioner has not shown Bernstein renders obvious that the configuration information relates to services opened by the ONU (claims 2, 8, and 9)

Claim 2 recites “the method according to claim 1, wherein, the configuration information of the OLT is configuration information *related to services opened by*

the ONU.” EX1001, 8:58-60 (emphasis added). Claims 8 and 9 recite similar language: “The network according to claim [6/7], wherein, the configuration information of the OLT is configuration information *related to services opened by the ONU.*” *Id.* at 10:21-26 (emphasis added). Petitioner does not truly address these elements. Instead, Petitioner and its expert both nakedly contend that “Bernstein discloses” the claim language. Pet., 46, 54; EX1005 ¶¶101, 121, 122. The only citation is back to the discussion of claim 1[c] (claims 8 and 9 only cite back to claim 2). *Id.*

But nothing in the Petitioner’s or its expert’s discussion of claim 1[c] describes services opened by the ONU. EX2008 ¶¶55-57. Indeed, this section only discusses the ONU twice: *first*, discussing the OLT loading PON parameters into a translation table for use in handling packets directed to an ONU, Pet., 30; and *second*, describing that the OLT will translate various service requirements into over bandwidth requires for a “pipe” to an ONU, *id.* 31-32; EX2008 ¶¶55-56. However, neither section describes that these parameters or service requirements relate to “services opened by the ONU.” EX2008 ¶57.

The Federal Circuit observed that “[a]rguments in a petition must be made with particularity, not opacity” and concluded that in such situation where arguments are not made with particularity, “there is no plausible argument that [the] petition challenged [the claim] based on obviousness over [the art]. . . .” *Microsoft*, 860 F.

App'x at 713. By failing to particularly identify this element in any way, the Petitioner has not met its burden to show that claims 2, 8, and 9 are obvious. EX2008 ¶57.

B. Grounds 3 and 4

1. Petitioner has not shown that Tsuge renders obvious “a service auto-configuration method/network” (claims 1, 6)

As noted above, the parties agree that the preambles of independent claims 1 and 6, which recite “a service auto-configuration method” or “a service auto-configuration network,” are limiting. *Supra* §§IV.A, V.A.1. The Institution Decision recognized that “Petitioner does not appear to have addressed how Tsuge teaches or suggests ‘[a] service auto-configuration method.’” Paper 12 at 42. That conclusion equally applies to claim 6 and is fatal to the petition. By failing to address this element in the Petition, Petitioner has not met its burden to show that Tsuge renders obvious claims 1 and 6 and their dependents. *See supra* §V.A.1.

For claim 1, Petitioner points to Tsuge’s discussion of DOCSIS services in a GE-PON network. Pet., 60 (citing EX1008, 6:47-55, 14:40-15:22). For claim 6, the Petition simply refers back to the discussion of 1[preamble]. *Id.* at 78.

As explained above, “[a]rguments in a petition must be made with particularity, not opacity. . . .” *Microsoft*, 860 F. App'x at 713; *supra* §V.A.1. But the Petition is completely silent about the “service auto-configuration” method or network elements. EX2008 ¶¶60-61. As the Board recognized in its Institution

Decision, none of the cited sections of Tsuge discuss “service auto-configuration.” *See* Paper 12 at 42; *see also id.* Column 6 lines 47 through 55 merely state that the invention relates to PON networks. EX2008 ¶¶60. Column 14 line 40 through column 15 line 22 describes a “CM setting sequence.” *Id.* But as the Board recognized, the Petition says nothing about how either passage discloses a “service auto-configuration” method or network. *Id.* ¶¶60-61. And the expert declaration simply mirrors the Petition. Merely pointing to these Tsuge passages is not enough to show “with particularity” how the service auto-configuration limitations are met. *See Microsoft*, 860 F. App’x at 713; EX2008 ¶¶61.

2. Petitioner has not shown that Tsuge renders obvious “converting configuration information for the OLT into a message format” (claims 1, 5)

Claim 1[g] of the ’982 Patent states that “the DPOE system...converts the configuration information of the OLT into a message format which can be identified by the OLT.” Claim 5 similarly recites “[t]he system according to claim 4, wherein, the analyzing unit is further configured to...convert the configuration information of the OLT into a message format which can be identified by the OLT.”

Petitioner asserts that Tsuge converts “CM setting information” “into settings to the OLT itself” and also that Tsuge illustrates storage of settings in the OLT. Pet., 72-73. But the Petition cites only two sections from Tsuge as proof. *Id.* at 73 (citing EX1008, 4:46-51, 18:25-36), 77 (referring back to 1[g]). Neither of these sections

of Tsuge describe converting information of the OLT into a message format that can be read by the OLT. EX1008, 4:46-5162-68; EX2008 ¶¶64-68.

The first section cited in the Petition, column 4 lines 46 through 51, is recited below:

Subsequently, the OLT receives the initial setting information of the CM by using the address information and the file name of the TFTP server obtained by the DHCP and makes initial setting corresponding to its contents to the ONU by using the protocol of the PON interval (or, reflects it to the setting of the OLT itself).

EX1008, 4:46-51. This discussion says nothing about converting the setting information at all, much less converting it to a message format which can be identified by the OLT. EX2008 ¶65. Instead, it distinguishes between OLT setting, which requires no conversion, and ONU setting, which uses “the protocol of the PON interval.” *Id.*

Tsuge’s column 18 lines 25 through 36 describe aspects of the CM setting sequence and OLT-ONU setting sequence illustrated by Figure 9:

The OLT **101** obtains a CM setting information file corresponding to a certain ONU by the CM setting information obtaining sequence **920** shown in FIG. 9. The setting information of the upstream communication bandwidth of the service flow corresponding to the LLID allocated to the ONU is included in the CM setting information file. Based on the DOCSIS standard, information such as continuous upstream maximum communication bandwidth, upstream maximum burst length, and upstream minimum reservation communication bandwidth is included in the upstream communication bandwidth setting. Those upstream communication bandwidth setting information is stored as setting for the LLID into the OLT by the OLT•ONU setting sequence **930** shown in FIG. 9 (step **1810**).

This section simply explains that CM setting information corresponds to the ONU and that setting information may include various settings.² EX2008 ¶66. It then also states that upstream settings are simply stored in the OLT. *Id.* Nothing in this section suggests “converting” anything. *Id.*

The Board recognized in its Institution Decision that Tsuge does not describe converting the configuration information, as claimed. Paper 12 at 43. Petitioner also recognized this, but Petitioner asserts that it would have been obvious to a POSA to convert the CM setting information into a message format that could be understood by the OLT. Pet., 73. Petitioner’s only reasoning for this modification is that “the setting information would otherwise be unusable.” *Id.* This naked assertion is merely repeated by Petitioner’s expert. EX1005 ¶153. Petitioner provided no other evidence to support this conclusion. EX2008 ¶67.

Petitioner’s assertion also ignores that the cited Tsuge sections do not require conversion in the OLT. *Id.* ¶¶67-68. There, Tsuge explains that “OLT receives the initial setting information of the CM” and when the settings are for the OLT, it “reflects [the setting information] to the setting of the OLT itself.” EX1008, 4:46-51. Plainly, this section does not state that the CM setting information needs to be

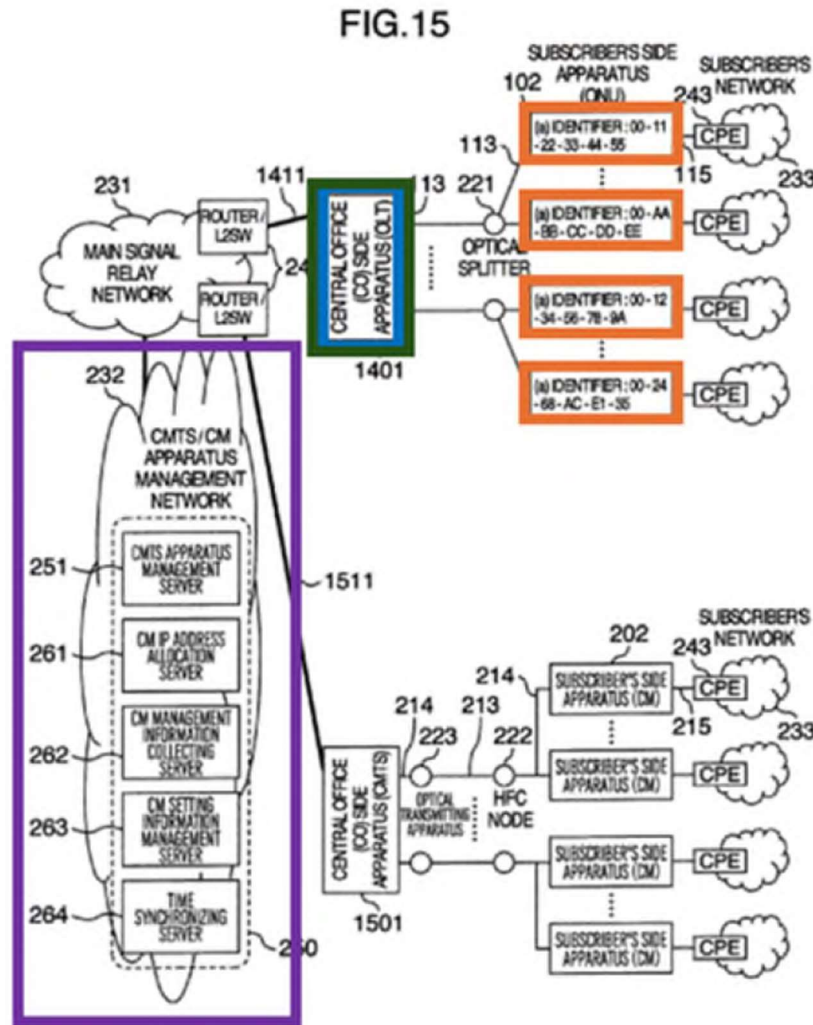
² LLID is a Logical Link ID which indicates a destination or transmitting ONU for a frame. EX2008 ¶66 n.3; EX1008, 9:26-30.

converted. EX2008 ¶68. In other words, Tsuge suggests that CM setting information is provided in a format that the OLT can understand natively. *Id.* Because nothing in Tsuge suggests that reflection requires any change to the format of the CM setting information, Petitioner has not shown Tsuge renders obvious claims 1 and 5 of the '982 Patent and their dependents. *See Microsoft*, 860 F. App'x at 713 (“Arguments in a petition must be made with particularity, not opacity....”); *supra* §V.A.1; EX2008 ¶68.

3. Under Petitioner’s litigation construction, Petitioner has not shown that Tsuge renders obvious a “back-office management system” (claims 1, 5, 6, and 7)

In the District Court Litigation, Petitioner proposes a narrow construction of the claim element “back-office management system” as found in claims 1, 5, 6 and 7. Petitioner contends that it means “a system comprising network management equipment within a DPoE Network, which includes a Trivial File Transfer Protocol (TFTP) Server and Dynamic Host Control Protocol (DHCP) Server.” Patent Owner does not agree with this construction, but under Petitioner’s own construction, it has failed to identify a DHCP server as part of network management system. EX2008 ¶70.

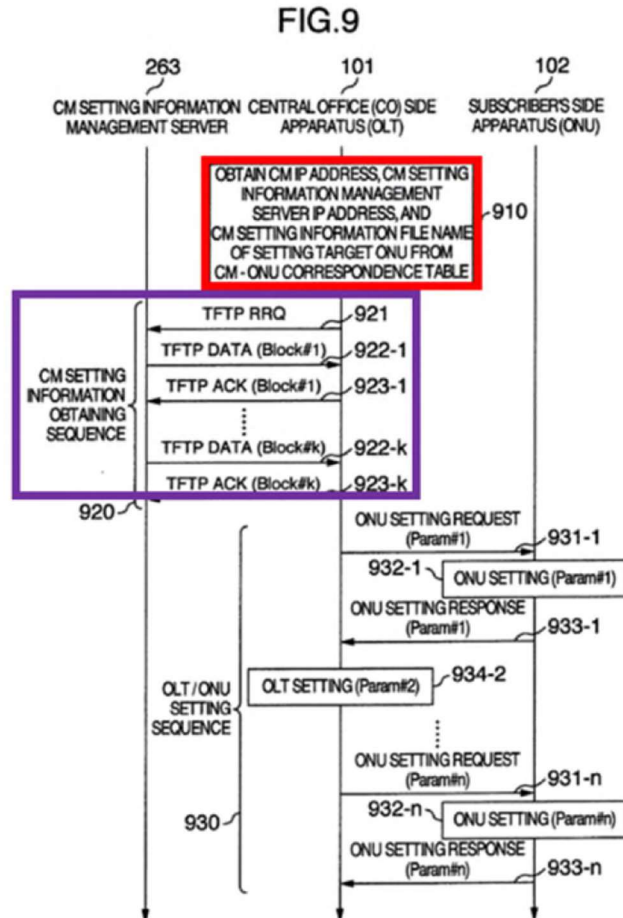
Petitioner describes the back-office management system primarily in reference to Tsuge’s Figure 15, in which petitioner annotates a purple box around what it contends is “a conventional DOCSIS back-office management system”:



See Pet., 61 (citing EX1005 ¶134), 76 (citing discussion of element 1[a]), 78-79, 82 (citing discussion of element 1[a]). As the above figure illustrates, Tsuge describes that the several servers, including a “CMTS Apparatus Management Server,” a “CM IP Address Allocation Server,” a “CM Management Information Collecting Server,” and a “Time Synchronizing Server.” EX1008, Fig. 15; EX2008 ¶¶70-71.

Petitioner also contends that “[t]he OLT sends the request to the CM setting information management server 263, which ‘[a]ccording to the DOCSIS

standard . . . is executed . . . by the TFTP . . .” and highlights this purported step in purple over Tsuge’s Figure 9:



Pet., 62-63 (citing EX1005 ¶136), 76 (citing discussion of element 1[a]), 78-79 (citing discussion of element 1[a]), 82 (citing discussion of element 1[a]).

But, the Petition never explains how the purported back-office management system in Tsuge includes a DHCP server. EX2008 ¶¶71-73. Indeed, Petitioner’s discussion is entirely silent as to DHCP in relation to the back-office management system. *Id.* Because the petition fails to address this element in its proposed

construction, it cannot meet its burden to establish obviousness of the '982 Patent in light of Tsuge. *See Microsoft*, 860 F. App'x at 713 (“Arguments in a petition must be made with particularity, not opacity....”); *supra* §V.A.1; EX2008 ¶73.

4. Petitioner has not shown that Tsuge renders obvious a back-office management configured to “save” a configuration file (claim 6)

Claim 6[e] recites “the back-office management system is configured to: save the configuration file....” Petitioner erroneously argues that Tsuge discloses a DOCSIS back-office TFTP server that saves configuration files. Pet., 80-81.

Petitioner first points to Figure 11, which Petitioner annotated as illustrated below:

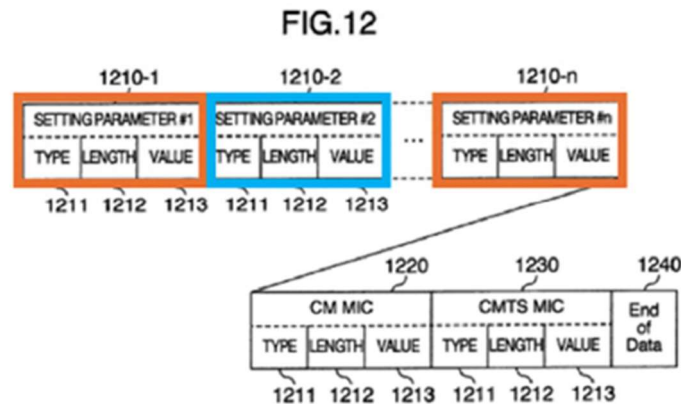
FIG.11

551 1101	1102	1103	1104
CM IP ADDRESS	CM SETTING INFORMATION MANAGEMENT SERVER IP ADDRESS	CM SETTING INFORMATION FILE NAME	ONU INTRINSIC IDENTIFIER
10.1.2.3	10.100.1.253	default.cm	00-11-22-33-44-55
10.1.2.4	10.100.1.253	default.cm	00-AA-BB-CC-DD-EE
10.1.2.129	10.100.1.253	premium.cm	00-12-34-56-78-9A
⋮	⋮	⋮	⋮

Id., 81 (also citing EX1008, 14:40-61, 15:59-62, Fig. 12). Figure 11 “is a constructional diagram of a memory showing an example of a construction of the CM-ONU correspondence table provided for the OLT.” EX1008, 15:59-61; EX2008 ¶76. In Petitioner’s annotation, purple illustrates a TFTP server and dark

green highlights the configuration information. Pet., 80-81. But, plainly, the correspondence table depicted in Figure 11 does not teach or suggest a step of “sav[ing] a configuration file.” EX2008 ¶¶76-77. And Petitioner’s only argument on the matter is the conclusory assertion that “Tsuge discloses a ... server ... that saves configuration information....” Pet, 80. There is no explanation for how this table at Figure 11 could teach the claim element. EX2008 ¶77.

Petitioner next annotates Figure 12:



Pet., 82. Here, orange indicates parameters for configuring ONUs and blue indicates parameters for OLTs. Pet., 81. But the Petition does not appear to contend that this section discloses a back office management system saving a configuration file. EX2008 ¶78.

Regardless, Tsuge does not support that conclusion. EX2008 ¶¶78-79. Tsuge explains that Figure 12 “is a frame constructional diagram showing an example of a construction of the CM setting information file which is *obtained* from the CM setting information management server by the OLT by the CM setting information

obtaining sequence.” EX1008, 16:9-13 (emphasis added). Other than its conclusory statement, Petitioner has not argued that **obtaining** by the OLT is **saving** by the back-office management system. EX2008 ¶¶78-79.

Finally, without providing any analysis, the Petition also points to Tsuge at column 14 lines 40 through 61. Pet., 81. As noted above, this section describes a “CM setting information obtaining sequence.” EX1008, 14:40-42; EX2008 ¶79. Here, Tsuge repeatedly describes steps of **obtaining** setting information, but never discusses the back-office **saving** any information. Again, **obtaining** is not **saving**. EX2008 ¶79.

As explained above, Petitioner bears the burden to establish obviousness and “cannot employ mere conclusory statements.” *In re Magnum Oil Tools*, 829 F.3d at 1380; *supra* §V.A.1. Where the petition fails to meet this burden, the Board is not “free to adopt arguments on behalf of petitioners that could have been, but were not, raised by the petitioner.” *In re Magnum Oil Tools*, 829 F.3d at 1381; *supra* §V.A.1.

Here, Petitioner has not identified anything in Tsuge that describes or renders obvious saving any files, much less saving a configuration file by the back-office management system. EX2008 ¶80. Accordingly, Grounds 3 and 4 fail to establish unpatentability. *See Microsoft*, 860 F. App’x at 713 (“Arguments in a petition must be made with particularity, not opacity....”); *supra* §V.A.1; *id.*

5. Petitioner has not shown that Tsuge renders obvious that the configuration information relates to services opened by the ONU (claim 2, 8, and 9)

Claim 2 recites “the method according to claim 1, wherein, the configuration information of the OLT is configuration information related to services opened by the ONU.” Claims 8 and 9 recite similar language: “The network according to claim [6/7], wherein, the configuration information of the OLT is configuration information related to services opened by the ONU.” Petitioner does not truly address these elements. EX2008 ¶¶82-83. Instead, Petitioner and its expert both nakedly contend that “Tsuge discloses” the claim language. Pet., 73, 83; EX1005 ¶¶154, 174, 175. The only citation is back to the discussion of claim 1[c] (claims 8 and 9 only cite back to claim 2).

But nothing in the Petitioner’s or its expert’s discussion of claim 1[c] describes services opened by the ONU. EX2008 ¶¶82-83. In fact, the only mention of the ONU in the discussions of claim 1[c] is a quote that includes a reference to “the OLT-ONU setting sequence 930” of Tsuge. Pet., at 67-68, EX1005 ¶143; EX2008 ¶¶82-84;.

The Federal Circuit observed that “[a]rguments in a petition must be made with particularity, not opacity” and concluded that in such situation where arguments are not made with particularity, “there is no plausible argument that [the] petition challenged [the claim] based on obviousness over [the art] with any particularity

whatsoever.” *Microsoft*, 860 F. App’x at 713. By failing to particularly identify this element in anyway, the Petitioner has not met its burden to show that claims 2, 8, and 9 are obvious. EX2008 ¶84.

VI. Conclusion

Petitioner repeatedly failed to meet its burden to show that numerous elements of the claims were rendered obvious by the prior art. The Petitioner either ignores elements altogether, or points to irrelevant and incomplete disclosures in Tsuge or Bernstein. Due to Petitioner’s failure to meet its burden of proof, Patent Owner respectfully requests that the Board confirm the patentability of the ’982 Patent.

Dated: May 15, 2025

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Per § 42.24(a)–(b) the undersigned certifies that the number of words in the paper is 8232.

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Dated: May 15, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that on the fifteenth day of May, 2025, a complete and entire copy of the foregoing “Patent Owner’s Response to Petition for *Inter Partes* Review of U.S. Patent No. 9,287,982,” including exhibits, if any, was served on the following counsel of record via email per Petitioner’s consent to electronic service. *See* Paper 1 at 3:

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