

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CHARTER COMMUNICATIONS INC.,  
Petitioners

v.

IARNACH TECHNOLOGIES LIMITED,  
Patent Owner

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Case IPR2024-01287  
Patent 9,287,982

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**PATENT OWNER'S OPPOSITION TO  
PETITIONER'S MOTION TO EXCLUDE EVIDENCE**

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Pursuant to 37 C.F.R. § 42.64(c) and the Scheduling Order (Paper 13), Patent Owner, Iarnach Technologies Ltd. (“Iarnach”), hereby opposes Petitioner Charter Communications, Inc.’s (“Charter”) motion to exclude Dr. Litvin’s declaration, EX2008.

## **I. INTRODUCTION**

The Petition failed to comply with the requirements of 35 U.S.C. § 312(a)(3) to identify its arguments *with particularity*. In Response, Patent Owner and its expert, Dr. Litvin, explained how the evidence and analysis actually presented in the Petition, and mirrored by Petitioner’s expert Dr. Min, do not render obvious several elements of the asserted claims.

Since that response, Petitioner has used every opportunity to violate the rules of this proceeding and inset new arguments and grounds in an attempt to “fix” the failed Petition. This includes attempting to elicit new evidence from Dr. Litvin that went beyond the scope of his opinions, raising new grounds in reply, and now, attempting to strike Dr. Litvin’s opinions because he allegedly did not “consider the totality of the Petition.” These arguments rely largely on points Petitioner made for the first time in its Reply. In effect, Petitioner argues that Dr. Litvin’s testimony is unreliable because it does not consider Petitioner’s Reply arguments—arguments that the rules governing IPR proceedings do not permit Dr. Litvin to consider. 37 C.F.R. § 42.23 (“A sur-reply may only respond to arguments raised in the

corresponding reply and may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness”).

## II. LEGAL AUTHORITY

A petition for inter partes review (“IPR”) must identify “with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3); *see also* 37 C.F.R. § 42.104(b)(4) (“The petition must specify where each element of the claim is found in the prior art patents or printed publications relied upon”). “It 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)).

As the Federal Circuit has explained, “[i]n an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (emphasis added) (citing 35 U.S.C. § 312(a)(3)); *see also Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (“It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim.’” (quoting 35 U.S.C. § 312(a)(3)). The

Board’s Trial Practice Guide further advises that a petitioner should “focus on concise, well organized, easy-to-follow arguments supported by readily identifiable evidence of record.” Patent Trial and Appeal Board Consolidated Trial Practice Guide, 39 (Nov. 2019). Moreover, a petitioner “may not submit new evidence or argument in reply that it could have presented earlier, e.g. to make out a prima facie case of unpatentability” (*id.* at 73), and “[i]t is also improper for a reply to present new evidence . . . that could have been presented in a prior filing” (*id.* at 74).

Any marked departure from the grounds identified with particularity in the petition would impose “unfair surprise” on the patent owner and, consequently, violate both the Administrative Procedure Act and the inter partes review statute. *Arthrex Inc. v. Smith & Nephew, Inc.*, 935 F.3d 1319, 1328 (Fed. Cir. 2019). Thus, 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).

### **III. NONE OF DR. LITVIN’S OPINIONS SHOULD BE EXCLUDED**

#### **A. Paragraphs 39-42 Are Reliable And Should Not Be Struck.**

Paragraphs 39-42 relate to the preamble to claims 1 and 6, which all parties agree is limiting and requires a “a service auto-configuration” method or network. EX2008 at 18-19. In those paragraphs, Dr. Litvin analyzes the evidence and analysis, or lack thereof, provided for the preambles within the Petition and by his counterpart,

Dr. Min—namely Bernstein at abstract, 2:2-5, 2:44-3:36, 3:37-46. *Id.* Dr. Litvin concludes that none of that evidence and analysis teaches or suggests the claimed “service auto-configuration” method or network. *Id.* There is nothing unreliable in that.

Petitioner’s only argument is that, since Dr. Litvin did not expressly mention other parts of the Petition that relate to other claim elements and are not cited in connection with the preamble, his opinions are unreliable. Paper 32 at 5-7. Based on cases that address briefing requirements (not expert reliability) and that were not discussed by Dr. Litvin in his declaration, Petitioner contends that Dr. Litvin should have considered every single citation found within Ground 1 of the Petition when analyzing every single claim element—even if the Petition (and Dr. Min) made no attempt to connect those citations to the preamble or analyze those citations with respect to the preamble. *Id.* Accepting Petitioner’s contention—that citing part of a reference somewhere in the petition puts a Patent Owner on notice of how that citation applies to every other claim limitation—would destroy the statutory requirement to point out arguments “with particularity.” 35 U.S.C. § 312(a)(3); *see also* 37 C.F.R. § 42.104(b)(4). Petitioner’s contention would permit a petitioner to extensively cite a prior art reference in its discussion of, say, the preamble to a claim, provide no additional discussion of any other elements of that claim, and expect a patent owner to intuit how the petitioner will use these citations later for other claim

limitations. This is plainly not consistent with the particularity requirements of 35 U.S.C. § 312.

As Dr. Litvin points out, Petitioner made no attempt to directly address the admittedly limiting preamble. EX2008 at 19. Petitioner's failure to address this element does not make Patent Owner's expert's opinion unreliable.

**B. Paragraphs 43-53 Are Reliable And Should Not Be Struck.**

Paragraphs 43-53 relate to claims 1[B], 5, 6, and 11, which require the "DPEO system analyzing the acquired configuration file" and "when analyzing the acquired configuration file, the DPEO system further converts the configuration information of the ONU into a message format which can be identified by the ONU, and converts the configuration information of the OLT into a message format which can be identified by the OLT." EX2008 at 19-24. In those paragraphs, Dr. Litvin examines all the evidence and analysis provided for claims 1[B], 5, 6, and 11 by the Petition and Dr. Min—namely, Bernstein at 3:53-63 re the "analyzing" elements, and Bernstein at 1:52-57 and Figure 7 re the "analyzing...further converts" elements. He concludes that these two paragraphs and one figure from Bernstein do not teach or suggest the claimed "analyzing." EX2008 at 19-24. Dr. Litvin goes on to provide an example of what analyzing could look like in a modern (non-prior art) system implementing aspects of DOCSIS 3.1. *Id.*

Petitioner now argues only that Dr. Litvin fails to consider the totality of the Petition (and Dr. Min's) analysis. Paper 32 at 7. But Petitioner does not identify even a single example of what Dr. Litvin failed to consider. *Id.* Dr. Litvin's analysis discussed every citation included in the relevant sections of the Petition and explained why they do not support Petitioner's contentions. There is nothing unreliable about this opinion.

**C. Paragraphs 55-57 Are Reliable And Should Not Be Struck.**

Paragraphs 55-57 relate to claims 2, 8, and 9, which require that “the configuration information of the OLT is configuration information related to services opened by the ONU.” EX2008 at 24-25. In those paragraphs, Dr. Litvin noted that the Petition and Dr. Min's analysis only consisted of a citation to claim 1[c]—a claim which does not discuss services opened by the ONU. *Id.* Nonetheless, Dr. Litvin reviewed the discussion of claim 1[c] and all the evidence cited therein. *Id.* He concluded that, although that section mentioned an ONU twice, neither reference related to “services opened by the ONU.” *Id.* He went on to contrast that discussion with examples provided by the '982 Patent of services opened by the ONU. *Id.*

Petitioner first argues that Dr. Litvin's analysis is contradicted by his testimony. But at that deposition, Dr. Litvin explained what he described in his declaration: that, in the abstract, a “service” might be internet service or other

services that a customer could subscribe to. EX1017 at 72:7-20 and 73:9-22. He also explained that “service opened *by the ONU* relates to the technical setup *of the ONU.*” *Id.* He never testified that *the prior art Bernstein reference* disclosed OLT configuration information that related to services opened by the ONU. *Id.*

Next, Petitioner argues that the Petition’s citation to Bernstein’s discussion of a “pipe” renders Dr. Litvin’s opinion unreliable. But as Dr. Litvin explained in detail, this discussion that “the OLT will translate various service requirements into bandwidth requirements for a ‘pipe’ to an ONU” “would render the claim elements relating to services *opened by the ONU* obvious to a POSITA” in part because it does not describe services opened by the ONU; instead, it discusses functions of the OLT. EX2008 at 25. Moreover, Dr. Litvin noted that the Petition and Dr. Min did not explain how this bandwidth of the OLT could be a service. *Id.* That Petitioner disagrees with Dr. Litvin does not render Dr. Litvin’s opinion unreliable.

**D. Paragraphs 58-61 Are Reliable And Should Not Be Struck.**

Paragraphs 58-61 relate to the preamble to claims 1 and 6, which all parties agree is limiting and requires “a service auto-configuration” method or network. EX2008 at 26. In those paragraphs, Dr. Litvin analyzes the evidence and analysis (or lack thereof) provided for the preambles within the Petition and by his counterpart, Dr. Min—namely Tsuge at 6:47-55 and 14:40-15:22. Dr. Litvin noted that this analysis only relates to “Tsuge's discussion of DOCSIS services in a GE-

PON network” and concluded that none of that evidence and analysis teaches or suggests the claimed “service auto-configuration” method or network. *Id.* There is nothing unreliable in that.

Petitioner now argues that because the Petition stated (without further discussion) that “Tsuge discloses a method for provisioning DOCSIS services on ONU/OLT hardware in a “GE-PON,” Dr. Litvin’s opinion is unreliable. Paper 32 at 10-11. Petitioner’s theory is that Dr. Litvin is unreliable “because [he] directly contradict[s] the language of the Petition.” *Id.* This argument ignores Dr. Litvin’s analysis, where he explains why this assertion in the Petition is not supported by the cited evidence and fails to explain how Tsuge teaches a “service auto-configuration” method or network. EX2008 at 26. Dr. Litvin also explained that “[t]here is nothing in these cited disclosures the describes, for example, the automatic configuration of the OLT and ONU....” *Id.* That Dr. Litvin disagrees with Petitioner and the expert does not make his opinions unreliable.

**E. Paragraphs 64-68 Are Reliable And Should Not Be Struck.**

Paragraphs 64-68 of Dr. Litvin’s declaration relate to claims 1[F], 5, and 11, which require “converting” configuration information into a message format that can be identified by the OLT. EX2008 at 27-29. In those paragraphs, Dr. Litvin examines all the evidence and analysis provided for claims 1[F], 5, and 11 within the Petition and by Dr. Min—namely Tsuge at 4:46-51 and 18:25-36. *Id.* He concludes that none

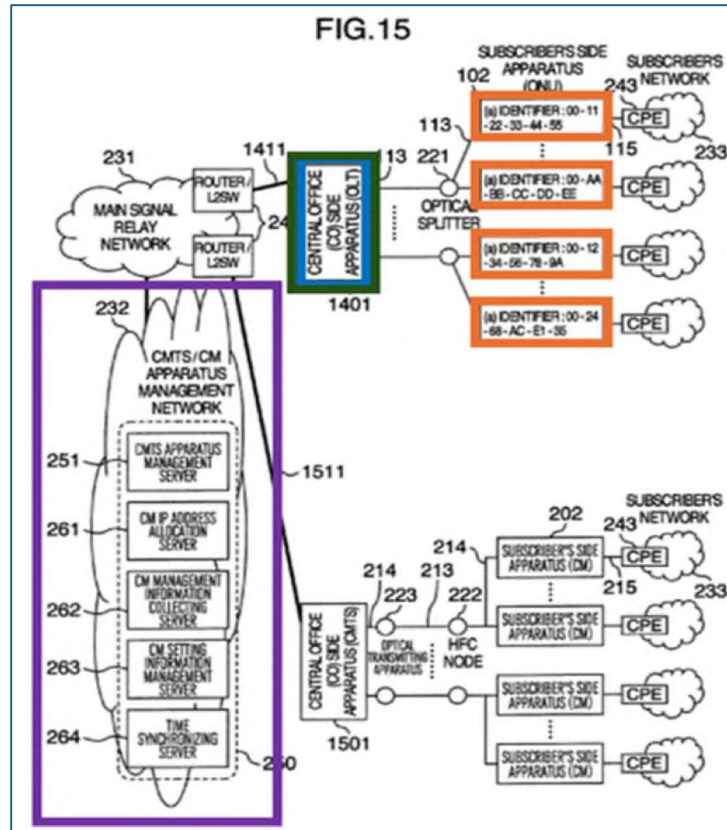
of that evidence and analysis teaches or suggests the claimed “converting” of claims 1[F], 5, and 11. *Id.* There is nothing unreliable in that.

Petitioner first accuses Dr. Litvin of “cherry-pick[ing] a limited subset of citations to the prior art.” Paper 32 at 11. Not true. Dr. Litvin analyzed *every* prior art citation provided by the Petition and Dr. Min with respect to 1[F], 5, and 11. EX2008 at 27-29. Petitioner then points to a *different* part of the Petition relating to a *different* claim element and suggests the evidence cited therein somehow put Dr. Litvin “on notice of [Petitioner’s] arguments” relating to 1[F], 5, and 11. False. The part of the Petition that supposedly provided notice is found 12 pages earlier than the discussion regarding 1[F], relates solely to the preamble of claim 1, and merely states that “Tsuge discloses a method for provisioning DOCSIS services on ONU/OLT hardware in a ‘GE-PON.’” Paper 1 at 60. And while that part of the Petition addressing the preamble of claim 1 does cite Tsuge at 14:64-15:6 (among other things), there is *zero* explanation as to why that passage from Tsuge discloses the claimed “converting” of claims 1[F], 5 and 11. *Id.* Thus, Petitioner did not put Patent Owner on notice as to its theory regarding why Tsuge at 14:64-15:6 taught or suggested the claimed “converting.” Accordingly, Petitioner’s new theory for claims 1[F], 5 and 11 involving Tsuge at 14:64-15:6 should be given no weight. *Microsoft*, 860 F. App’x at 713.

**F. Paragraphs 70-73 Are Reliable And Should Not Be Struck.**

Paragraphs 70-73 of Dr. Litvin's declaration relate to claims 1[A], 4[B], and 6[A], each of which recite a "back-office management system." EX2008 at 30-33. Importantly, Petitioner proposed to construe "back-office management system" to include a "Dynamic Host Control Protocol (DHCP) Server." EX2009 at 7. In paragraphs 70-73 of his declaration, Dr. Litvin examines all the evidence and analysis provided for claims 1[A], 4[B], and 6[A] within the Petition and Dr. Min's declaration. EX2008 at 30-33. He concludes that none of that evidence and analysis teaches or suggests the claimed "back-office management system" of claims 1[F], 5, and 11 as construed by Petitioner because "Dr. Min and the petition did not address the DHCP Server in their analysis." *Id.* at 30. Because this opinion is reliable, it should not be struck.

Petitioner argues annotated Figure 15 from Tsuge contradicts Dr. Litvin's opinion because the purple box purportedly shows a DHCP server as part of a "back-office management system":



Paper 32 at 12-13 (citing EX1008 at Fig. 15, annotations added). But **nothing** in Tsuge Figure 15—whether in the purple box or outside—discloses a DHCP server. And nothing in the Petition or Dr. Min’s declaration explains why a person of skill would recognize a DHCP server in Tsuge Figure 15. *See* Paper 1 at 61-64, 76, 78-79; EX1005 at ¶¶133-138, 161, 166. Accordingly, Tsuge Figure 15 does not contradict Dr. Litvin’s opinions or put Patent Owner on notice of Petitioner’s new, previously undisclosed theories regarding a DHCP server in Tsuge Figure 15.

### **G. Paragraphs 76-80 Are Reliable And Should Not Be Struck.**

Paragraphs 76-80 of Dr. Litvin’s declaration relate to claim 6[F]’s requirement that the back-office management system be configured to “save the

configuration file.” EX2008 at 33-36. In those paragraphs, Dr. Litvin examines all the evidence and analysis provided for claim 6[F] within the Petition and Dr. Min’s declaration. *Id.* He concludes that none of that evidence and analysis—particularly annotated Tsuge Figures 11 and 12—teaches or suggests the claimed back-office management system that is configured to save a configuration file, as per claim 6[F]. *Id.* This opinion is reliable and should not be struck.

Petitioner accuses Dr. Litvin of “fail[ing] to consider the totality of the Petition” and “instead only cherry-pick[ing] a limited subset of citations to the prior art.” Paper 32 at 13. But Dr. Litvin considered every part of the Petition that related to claim 6[F]’s back office management system that is configured to save the configuration file. EX2008 at 33-36. And importantly, Petitioner has not identified a single passage from the prior art that supposedly teaches the relevant aspects of claim 6[F] and which Dr. Litvin did not consider. Paper 32 at 13. As such, Petitioner’s criticisms of Dr. Litvin have no merit.

#### **H. Paragraphs 82-85 Are Reliable And Should Not Be Struck.**

Paragraphs 82-85 of Dr. Litvin’s declaration relate to claims 2, 8, and 9’s requirement that the OLT’s configuration information “relate[s] to services opened by the ONU.” EX2008 at 36-37. In those paragraphs, Dr. Litvin examines all the evidence and analysis provided for claims 2, 8, and 9 within the Petition and Dr. Min’s declaration. *Id.* He concludes that none of that evidence and analysis teaches

or suggests the claimed OLT configuration information that relates to services opened by the ONU recited by claims 2, 8, and 9. This opinion is reliable and should not be struck.

Petitioner again criticizes Dr. Litvin for “fail[ing] to consider the totality of the Petition” and “instead only cherry-pick[ing] a limited subset of citations to the prior art.” Paper 32 at 14. But Petitioner fails to identify even one passage from the prior art that supposedly teaches the relevant aspects of claims 2, 8 and 9 and which Dr. Litvin did not consider. *Id.* Petitioner also argues that Dr. Litvin’s opinions contradict his deposition testimony at 72:7-20 and 73:9-22. *Id.* But at deposition, Dr. Litvin merely provided abstract examples of “services opened by the ONU.” EX1017 at 72:7-20, 73:9-22. He never contradicted his declaration by testifying that ***the prior art Tsuge reference*** disclosed OLT configuration information that related to services opened by the ONU. *Id.* Consequently, there is no good reason to strike paragraphs 82-85 of Dr. Litvin’s declaration.

#### **IV. CONCLUSION**

For at least the reasons stated above, Patent Owner respectfully requests that the Board deny Petitioner’s Motion to Exclude.

Dated: November 6, 2025

Respectfully submitted,

/Michael F. Heim/

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the sixth day of November, 2025, a complete and entire copy of the foregoing “Patent Owner’s Opposition to Petitioner’s Motion to Exclude Evidence,” 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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