

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GENIUS SPORTS LTD.,
Petitioner,

v.

SPORTSCASTR INC. d/b/a PANDA INTERACTIVE,
Patent Owner.

IPR2024-01310

U.S. Patent No. 11,039,218 B1

PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

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U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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I. INTRODUCTION

Patent Owner SportsCastr Inc. (“Patent Owner” or “PANDA”) respectfully requests Director Review of the Board’s March 13, 2026 Final Written Decision (Paper 47, the “Decision”) finding claims 1–15 of U.S. Patent No. 11,039,218 (the “’218 patent”) unpatentable. Director Review is warranted because the Board failed to address Patent Owner’s arguments concerning the claimed “webserver” limitation—a dispositive issue that applies across multiple grounds of unpatentability.

Challenged claims 1-11 require “at least one webserver” that performs specific functions, including transmitting instructions to a client device that cause the client device to connect to media sources and socket servers and render video and event information. The Decision itself expressly recognizes that the primary prior art combination of Ellis and Spivey “does not disclose a webserver implemented specifically to facilitate communication between a client device and socket server.” (Decision at 57.) To fill this gap, Petitioner relied on Herzog to supply the missing “webserver” limitation for Ground 1B (Decision at 57), and Herzog likewise served as the basis for the “webserver” in Grounds 2A and 2B (Decision at 58, 66). But the Board never analyzed whether Herzog satisfies the claimed “webserver” limitation, despite Patent Owner’s detailed arguments explaining why it does not.

Patent Owner squarely addressed the “webserver” limitation in its Patent Owner Response (“POR”), devoting an entire subsection to explaining why neither Ellis, Spivey, nor Herzog teaches the claimed “webserver,” and expressly stated that these arguments “apply equally to all grounds challenging any one of claims 1-2, 4-5, and 8-10.” (POR at 52-59.) Patent Owner further presented these arguments during oral argument. (Paper 46, at 57:22-60:13.) Yet, the Board never analyzed whether Herzog satisfies the claimed “webserver” limitation in the context of Ground 1B—the first ground in which the “webserver” limitation was at issue—and instead summarily characterized Patent Owner’s arguments as “the same arguments” raised under Ground 1A, even though Ground 1A did not involve the “webserver” limitation at all. And while the Board found in Patent Owner’s favor on Ground 2A by concluding that Petitioner’s reasons for combining Herzog and Spivey “lack rational underpinning” (Decision at 66), the Board’s Ground 2A analysis similarly never addressed Patent Owner’s substantive arguments about why Herzog’s application server does not teach the claimed “webserver.” The Board’s omission is particularly striking because, in the related ’088 patent proceedings (IPR2025-00251 and IPR2025-00252), the Board denied institution on the merits based on the very same “webserver” limitation, finding that Herzog’s application server does not perform the claimed functions. (IPR2025-000251, Paper 9, at 30-32; IPR2025-00252, Paper 9, at 26-28.)

Because the Board's failure to address Patent Owner's "webserver" arguments constitutes an abuse of discretion and reflects a failure of reasoned decision-making, Patent Owner respectfully requests that the Director grant review and reverse the Decision as to claims 1-11 on Grounds 1B, 2A, and 2B, applying the same reasoning the Board itself applied in the related '088 patent proceedings. In the alternative, Patent Owner requests that the Director vacate the Decision as to claims 1-11 and remand for proper consideration of the "webserver" limitation.

II. LEGAL STANDARD

Requests for Director Review of a Final Written Decision are governed by 37 C.F.R. § 42.75 and the Director's supervisory authority over the Board. Director Review is available for decisions presenting (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law. *See* USPTO, Director Review Process at 2.B, Availability of Director Review: Proceedings under part 42 of 37 C.F.R., <https://www.uspto.gov/patents/ptab/decisions/director-review-process>.

"An abuse of discretion is found if [a] decision: (1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact finding; or (4) involves a record that contains no evidence on which the Board could rationally base its discretion." *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016) (quoting *Bilstad v. Wakalopulos*, 386 F.3d 1116, 1121 (Fed. Cir. 2004) (citations omitted)).

Here, the Board failed to address Patent Owner’s arguments concerning the claimed “webserver” limitation for claims challenged under Grounds 1B, 2A, and 2B. The Board’s failure to address Patent Owner’s arguments on a dispositive claim limitation constitutes an abuse of discretion warranting Director Review.

III. ARGUMENT

The Board’s Decision addressed four grounds of unpatentability. Ground 1A challenged claims 12-15 based on Ellis and Spivey alone, without reliance on Herzog. Notably, claims 12-15 do not require the “webserver” limitation. Grounds 1B, 2A, and 2B each challenged claims 1-11 (all of which require the “webserver” limitation) based on combinations involving Ellis, Spivey, and Herzog. (Decision at 10.) Because claims 1-11 require the “webserver” limitation and because the Board acknowledged that Ellis and Spivey do not disclose it, the question of whether Herzog supplies the missing “webserver” limitation is central to Grounds 1B, 2A, and 2B. But the Board did not address Patent Owner’s arguments on why Herzog fails to teach or suggest the “webserver” limitation.” Accordingly, the Decision lacks the reasoned explanation required, and Director Review is warranted.

A. The Board Failed To Address Patent Owner’s Arguments Regarding The Claimed “Webserver” Limitation

Director Review is warranted because the Board overlooked and failed to address the Patent Owner’s arguments concerning the claimed “webserver” limitation, which is required for independent claim 1 and all dependent claims

challenged in Grounds 1B, 2A, and 2B.

1. Patent Owner's Arguments Were Squarely Presented

Patent Owner devoted an entire subsection of its Patent Owner Response to the “webserver” limitation under Ground 2A and expressly stated that these arguments applied across all relevant grounds. Specifically, Patent Owner explained:

Limitations regarding the claimed “webserver” are found in each of claims 1-2, 4-5, 8-10. Claims 2, 4-5, and 8-10 each depend, directly or indirectly, from independent claim 1. Petitioner has challenged one or more claims 1-2, 4-5, and 8-10 on three different grounds (grounds 1B, 2A, and 2B) each of which involve Ellis, Spivey, and Herzog. Patent Owner addresses the “webserver” limitations here in ground 2A, but ***the arguments presented here apply equally to all grounds*** challenging any one of claims 1-2, 4-5, and 8-10.

(POR at 52 (emphasis added).)

Patent Owner then presented detailed, substantive arguments as to why the prior art fails to teach or suggest the claimed “webserver.” These arguments addressed the distinction between what the claims require, what Petitioner argued the prior art teaches, and what the prior art actually discloses. The claims require an orchestrator-type webserver that transmits addresses and instructions to a client device, causing the client device to establish connections to media sources and socket servers, and then “steps out of the way.” (Paper 46, at 58:23-59:6.) But Petitioner’s prior art references disclose only relay-type webserver that sit in the middle of the data flow, receiving and forwarding content, rather than orchestrating

client connections. (POR at 54-56; Paper 46, at 57:22-58:16.) Specifically, Patent Owner argued: (1) that Herzog’s application server “bears little resemblance to the claimed webserver” because it relies on an intermediary origin server and other components to reach the client device, and thus does not transmit instructions directly as the claims require (POR 54-56); (2) that Petitioner failed to show how Herzog’s application server transmits the addresses and instructions necessary to cause the client device to establish connections to the media source and socket server (the core orchestrator function the claims require) (POR at 55-56; Paper 46, at 57:22-58:16); and (3) that Petitioner’s proposed orchestrator-type webserver architecture is a “radical deviation” from the relay-type architecture actually disclosed in the prior art, and no reference teaches or suggests the claimed facilitator-type webserver (POR at 56-67).

2. The Board Summarily Dismissed These Arguments Under Ground 1B

Ground 1B (Ellis, Spivey, and Herzog) challenging claims 1-11 was the first ground under which the “webserver” limitation was at issue. (Decision at 10 (listing asserted grounds).) Unlike claims 1-11, claims 12-15 (challenged under Ground 1A which relied on Ellis and Spivey and did not involve Herzog) do not require the “webserver” limitation. The Board acknowledged the importance of the “webserver” limitation, noting that “the combination of Ellis and Spivey discloses a webserver, generally,” but “does not disclose a webserver implemented specifically

to facilitate communication between a client device and socket server,” which is why “Petitioner turns to Herzog.” (Decision at 57.) Yet, rather than analyze Patent Owner’s arguments about why Herzog fails to teach the claimed “webserver,” the Board stated only that “Patent Owner disputes Petitioner’s contentions using only the same arguments that Patent Owner proffered for claims 12–15 in Ground 1A,” and found those arguments “unavailing.” (Decision at 57.) This statement by the Board was incorrect.

Patent Owner’s arguments fell into two distinct categories. First, Patent Owner carried forward its “event socket” arguments from Ground 1A, stating that “Ground 1B fails for the same reasons” as Ground 1A with respect to those overlapping limitations.¹ (POR at 51.) Second, and separately, Patent Owner

¹ Separately, Patent Owner contends that the Board’s decision regarding Ground 1A and whether Ellis and Spivey disclose the claimed “event socket” limitation is also incorrect, and Patent Owner intends to appeal the Board’s findings to the Federal Circuit. In addition to this -1310 IPR, the Board’s same decision on “event socket” applies equally to IPR2024-01305 and -1307 (directed towards the ’687 patent), IPR2024-01308 and -1309 (directed to the ’697 patent), and IPR2024-01311 (directed to claims 16-30 of the ’218 patent), and Patent Owner intends to appeal the Final Written Decisions of all six IPRs.

presented substantive arguments on the “webserver” limitation under Ground 2A, with the express statement that its arguments “apply equally to all grounds challenging any one of claims 1-2, 4-5, and 8-10” which includes Ground 1B (POR at 52-53). Patent Owner’s “webserver” arguments addressed a distinct limitation (the “webserver”) that was not at issue in Ground 1A (which was directed to different claims and did not involve the addition of Herzog) and thus could not have been “the same arguments” raised in Ground 1A. The Board’s failure to recognize this distinction, and its resulting failure to address Patent Owner’s “webserver” arguments, is reversible error.

Indeed, the Board acknowledges that Ellis and Spivey do not disclose the claimed “webserver” and relied on Herzog as the sole reference to supply that missing limitation, yet the Board never analyzed whether Herzog actually teaches it. (Decision at 57.) It does not. Herzog’s application server plays no role in transmitting instructions to clients, or facilitating a connection among client devices and socket servers, as the claims require. (POR at 53-56.) Instead, Herzog discloses a system in which a client device requests metadata from an application server that retrieves and relays that metadata to the client, rather than enabling the client to establish independent connections to separate sources. (See Ex. 1015 ¶¶ 51, 58.) The differences between Herzog’s disclosure and the claimed “webserver” limitation require a finding that the combination of Ellis, Spivey, and Herzog fails

to render the challenged claims obvious. (POR at 56-59; Paper 46, at 57:22-60:2.)

Because the Board failed to engage with this threshold question, there is no finding—explicit or implicit—that the “webserver” limitation is satisfied, and no evidentiary support for the unpatentability of claims 1-11 under Ground 1B. Moreover, the Board’s failure to make any finding that Herzog satisfies the “webserver” limitation means there is no evidentiary path to unpatentability on *any* ground that includes the “webserver” limitation. This is not a matter of weighing evidence, but rather a complete failure to address a required claim element that the prior art failed to teach.

3. The Board’s Ground 2A Analysis Also Failed To Address The “Webserver” Arguments

The Board correctly found in Patent Owner’s favor on Ground 2A, concluding that “Petitioner’s proffered reasons for combining Herzog and Spivey to achieve the subject limitations lack[ed] rational underpinning” based on its analysis of the *motivation to combine* the references, namely the latency issues associated with merging Spivey’s push-based architecture with Herzog’s timestamp-synchronization system. (Decision at 63-66.) Though addressing the “webserver” limitations was not necessary for the Board to reach its proper conclusion that Ground 2A failed, that Ground represented another opportunity for the Board to address the merits of Patent Owner’s independent argument on that issue—namely, that even if a person of ordinary skill had reason to combine the references, Herzog’s

application server does not teach the claimed “webserver” functionality. But the Board again failed to address those arguments.

B. The Board’s Failure to Address The “Webserver” Limitation Is Inconsistent With Its Own Prior Decisions In The Related ’088 Patent IPRs

The Board’s failure to address the “webserver” limitation is further underscored by its treatment of the identical limitation in related proceedings involving U.S. Patent No. 11,871,088 (the “’088 patent”). In two institution decisions issued on June 3, 2025 in IPR2025-00251 and IPR2025-00252, the Board denied institution on the merits based on Petitioner’s failure to establish that the same prior art at issue here—Ellis, Spivey, and Herzog—disclosed the claimed “webserver.” (IPR2025-00251, Paper 9, at 33-34; IPR2025-00252, Paper 9, at 28-29.) The ’088 patent claims recite the same “webserver” limitation at issue here—a webserver configured to transmit instructions to a client device to cause the client device to connect to media sources and socket servers and render video and event information.

In those decisions, the Board directly engaged with Patent Owner’s arguments and reached several dispositive conclusions about the prior art. *First*, regarding the Ellis–Spivey combination and a “known webserver,” the Board found that “the addition of a facilitator-type webserver lacks any basis in the disclosures of Ellis and Spivey,” because “[n]either reference mentions using a webserver for orchestrating

connections between components in the system via transmitted instructions as recited in the challenged claims.” (IPR2025-00251, Paper 9, at 23-24; IPR2025-00252, Paper 9, at 19-20.) The Board also found that adding a webserver to the Ellis–Spivey combination “tends to undermine Petitioner’s foundational rationale for combining these references, which is the reduction of latency,” because an additional component “is likely to create latency insofar as it must receive, process, and/or handle data.” (IPR2025-00251, Paper 9, at 22-23; IPR2025-00252, Paper 9, at 19.) The Board concluded that “Petitioner fails to provide any persuasive reason with a rational underpinning why an ordinarily skilled artisan would have been motivated to add a webserver to the existing Ellis–Spivey combination.” (IPR2025-00251, Paper 9, at 24; IPR2025-00252, Paper 9, at 20.)

Second, and critically, the Board squarely addressed whether Herzog’s application server teaches the claimed “webserver” and concluded that it does not. The Board found that “Petitioner does not establish how Herzog’s application server acts as a webserver that transmits instructions to clients, or how the application server enables clients to make connections, receive audio/video feed and event information, and then render them on a display.” (IPR2025-00251, Paper 9, at 30; IPR2025-00252, Paper 9, at 26.) The Board determined that “[r]ather than transmitting instructions to a client device to enable display of video and event information, Herzog’s application server receives requests for meta-data from the

client and then sends the meta-data with a time stamp.” (IPR2025-00251, Paper 9, at 30; IPR2025-00252, Paper 9, at 26.) The Board further found that “Herzog’s general passages about computing technology . . . do not teach the specific transmission of instructions” by a webserver as recited in the claims. And the Board rejected Petitioner’s reliance on the knowledge of a person of ordinary skill, finding that Petitioner’s analysis and Dr. Wicker’s testimony “do not indicate how or why an ordinarily skilled artisan would have regarded Herzog’s application server as a webserver that transmits instructions enabling clients to display video and event information.” (IPR2025-00251, Paper 9, at 31; IPR2025-00252, Paper 9, at 27.)

These conclusions applied across multiple grounds in both the -251 and -252 proceedings regarding the ’088 patent. The Board found that Petitioner’s faulty analysis of the “webserver” limitation in claim 1 was dispositive not only for that claim but for all dependent claims and for every asserted ground that relied on the same analysis. (IPR2025-00251, Paper 9, at 31-34; IPR2025-00252, Paper 9, at 27-28.) Thus, the Board denied institution on all challenged claims in both proceedings.

The contrast between the Board’s thorough engagement with the “webserver” limitation in the ’088 proceedings and its complete failure to address the same limitation in the present case is stark. In the ’088 proceedings, the Board analyzed Patent Owner’s arguments regarding Herzog’s application server, rejected Petitioner’s reliance on general knowledge, and found the “webserver” limitation

dispositive across all grounds. In the present case, involving the same parties, the same prior art, and similar “webserver” limitations, the Board again acknowledged that Ellis and Spivey do not teach the claimed “webserver” and that Petitioner relied on Herzog to supply that limitation, but then failed to address Patent Owner’s arguments explaining why Herzog does not do so. The Board’s failure to address Patent Owner’s “webserver” arguments—particularly where the Board has previously found the same limitation dispositive on the same prior art—reflects a failure of reasoned decision-making and warrants Director Review and reversal of the Board’s decision.

IV. CONCLUSION

For the reasons set forth above, Patent Owner respectfully requests that the Director grant review and reverse the Decision as to claims 1-11 on Grounds 1B, 2A, and 2B, applying the same reasoning the Board itself applied in the related ’088 patent proceedings. In the alternative, Patent Owner requests that the Director vacate the Decision as to claims 1-11 and remand for proper consideration of the “webserver” limitation.

Dated: April 2, 2026

/Andrew J. Cochran /

Andrew J. Cochran (Reg. No. 69,620)

CAHILL GORDON & REINDEL LLP

32 Old Slip

New York, NY 10005

Telephone: (212) 701-3000

Counsel for Patent Owner

SportsCastr Inc. (d/b/a PANDA

Interactive)

CERTIFICATE OF SERVICE

I certify that I caused to be served a true and correct copy of the foregoing
PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW by filing this
document through the Patent Trial and Appeal Case Tracking System (P-TACTS)
on April 2, 2026, in its entirety on the following:

W. Todd Baker (Reg. No. 45,265)
todd.baker@kirkland.com
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Jeanne M. Heffernan
jheffernan@kirkland.com
Michael T. Dinnella (Reg. No. 82,580)
michael.dinnella@kirkland.com
KIRKLAND & ELLIS LLP
401 Congress Avenue
Austin, TX 78701

Dated: April 2, 2026

/Andrew J. Cochran /
Andrew J. Cochran (Reg. No. 69,620)
CAHILL GORDON & REINDEL LLP
32 Old Slip
New York, NY 10005
Telephone: (212) 701-3000
Counsel for Patent Owner
SportsCastr Inc. (d/b/a PANDA
Interactive)