

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

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

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I. INTRODUCTION

On April 2, 2026, Patent Owner (“PANDA”) filed a Request for Director Review (“Request”) of the Board’s March 13, 2026 Final Written Decision (“FWD”). The Director authorized this response on April 3, 2026.

The FWD thoroughly analyzes each of the four grounds of unpatentability presented in the Petition, three prior art references, competing expert testimony, extensive briefing, and oral argument from both parties. On this record, the Board expressly found that the Petitioner provided “detailed” and “sufficient” reasons to “modify Ellis and Spivey” in view of Herzog to include the claimed “webserver.” FWD at 56–58. The Request asks the Director to second-guess the Board’s weighing of evidence after a full merits trial. PANDA’s primary complaint with the FWD rests on one particular observation by the Board in its decision on Ground 1B: “Patent Owner disputes Petitioner’s contentions using only the same arguments that Patent Owner proffered for claims 12–15 in Ground 1A.” Request at 7 (quoting FWD at 57). The Board’s assessment of PANDA’s Ground 1B arguments does not warrant the Director’s intervention under 37 C.F.R. § 42.75: it is not an abuse of discretion, an important question of law or policy, or an erroneous finding of material fact. It is a garden-variety sufficiency-of-reasoning challenge that belongs before the Federal Circuit, where PANDA acknowledges it “intends to appeal.” *Id.* at 7 n.1.

Worse still, PANDA invited the very assessment it now challenges. In its

Patent Owner Response (“POR”), PANDA expressly told the Board that “Ground 1B fails *for the same reasons*” as Ground 1A. Paper 16 (POR) at 51. PANDA now faults the Board for failing to expressly mention in its decision on Ground 1B arguments PANDA presented in a *different* section under a *different* ground, which PANDA *neither cited nor mentioned* in the Ground 1B section of its POR. A party that tells the Board its positions are “the same” cannot credibly claim abuse of discretion when the Board accepts that characterization and repeats it. To the extent any ambiguity resulted from the Board’s treatment of PANDA’s Ground 1B arguments, it is an ambiguity of PANDA’s own making. The proper avenue is appellate review on a full record—not Director intervention to re-write PANDA’s original briefing and entertain arguments PANDA itself relegated to a vague cross-reference buried in another ground.

PANDA’s second argument, in which it relies on the Board’s institution denials in the related ’088 patent proceedings, is equally unavailing. Those decisions were decided on a preliminary record without the benefit of a POR, Reply, Sur-Reply, expert testimony, or oral hearing. As the Board itself recognized in the very decision under review, “the decision to institute and the final written decision are ‘two very different analyses,’ and each applies a ‘qualitatively different standard.’” FWD at 61–62. Non-precedential institution decisions in a different proceeding involving a different patent cannot form the basis for reversing a final judgment

rendered after a full trial here.

PANDA has not met the standard for abuse of discretion and its Request should be denied. *See Intelligent Bio-Systems, Inc. v. Illumina Cambridge, Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016).

II. ARGUMENT

A. The Board Did Not Overlook PANDA's "Webserver" Arguments

PANDA's Request is built on a false premise that the Board "never analyzed whether Herzog satisfies the claimed 'webserver' limitation in the context of Ground 1B." Request at 2. A fair reading of the FWD reveals that the Board engaged with the webserver issue at multiple points and resolved it, just not in PANDA's favor.

First, the Board expressly acknowledged the role of the webserver limitation in Ground 1B. The Board recited Petitioner's explanation 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," and that "Petitioner turns to Herzog" to supply the missing limitation. FWD at 57. Far from overlooking this claim limitation, the Board identified the webserver as the precise gap in the Ellis-Spivey combination, identified Herzog as the reference relied upon to fill that gap, and then evaluated whether Petitioner's showing was sufficient. *Id.* That showing included Petitioner's "detailed assessment of claims 1–11, with references to the Petition's analysis of

independent claim 12, disclosures in Ellis, Spivey, and Herzog, and the declaration testimony of Dr. Wicker.” *Id.* The Board found Petitioner’s contentions were sufficiently supported by the cited evidence “for the same reasons provided above for claims 12–15, ***and the reasons set forth in the Petition.***” *Id.* Thus, contrary to PANDA’s contention that there “is no finding ... that the ‘webserver’ limitation is satisfied” nor that “Herzog satisfies” this limitation (Request at 9), the Board expressly found the Ellis-Spivey-Herzog combination to render that limitation obvious.

Second, the FWD’s footnote 6 demonstrates that the Board conducted a ground-specific analysis of Ground 1B rather than mechanically importing its findings from other grounds. FWD at 57 n.6. In that footnote, the Board expressly distinguished the motivation-to-combine for Ground 1B from Ground 2A and found that “Petitioner proffers sufficient reasons” for a POSITA to “use certain teachings from Herzog ***to modify Ellis and Spivey.***” *Id.* (emphasis in original). Again, far from ignoring the webserver limitation, the Board differentiated the two grounds, reflecting a reasoned evaluation of how Herzog’s teachings operate in the context of each combination, which necessarily encompasses the question of whether Herzog supplies the claimed webserver functionality when used to modify Ellis and Spivey.

Third, PANDA confuses the Board’s decision not to write a separate section analyzing the webserver limitation with a failure to consider it. Petitioner presented

the Board with a “detailed assessment” of how the Ellis-Spivey-Herzog combination maps onto claims 1–11, including the webserver limitation. PANDA presented the Board with a POR in which PANDA told the Board that “Ground 1B fails for the same reasons” as Ground 1A. Having evaluated the full trial record—including the Petition, POR, Reply, Sur-Reply, and oral argument at the hearing—the Board found Petitioner’s contentions sufficiently supported. The Board is not required to “play archeologist with the record” to unearth arguments that a party failed to clearly present. *See Parus Holdings, Inc. v. Google LLC*, 70 F.4th 1365, 1372 (Fed. Cir. 2023) (*quoting Gen. Access Sols., Ltd. v. Sprint Spectrum L.P.*, 811 F. App’x 654, 657–58 (Fed. Cir. 2020) (unreported)). Nor was the Board required to address every argument in *haec verba* when the party advancing those arguments characterized them as duplicative of arguments the Board had already addressed.

Fourth, the Board actively engaged with the “webserver” arguments during oral argument. APJ Belisle posed a pointed question directly addressing the heart of PANDA’s relay-versus-orchestrator webserver theory:

In the context of obviousness and when we’re dealing with a skilled artisan here means good education and probably computer science, years of experience. If that person is aware of knowing how to tell one server to communicate with another server and knows the destinations and the endpoints, why is it of any importance to that skilled artisan whether they set it up as a relay or set it up as just telling them where

to go?

Paper 46 at 58:18-25. This demonstrates that the Board perfectly understood PANDA's argument, and was probing whether PANDA's distinction between relay and orchestrator webserver architectures was a meaningful or one without a difference in the context of obviousness.

The FWD reflects that the Board identified the webserver limitation and, after considering the evidence, recognized Herzog as the secondary reference in Ground 1B that supplies it. That the Board did not write a standalone subsection titled "Does Herzog Teach the Webserver?" does not mean the Board failed to consider the issue. PANDA's argument that the Board "overlooked" its webserver arguments is really a disagreement with how the Board presented its analysis—a matter of form, not substance, and not a basis for Director Review.

B. PANDA Waived Its "Webserver" Arguments Under Ground 1B

PANDA's central complaint is that the Board characterized its Ground 1B arguments as "the same arguments" raised under Ground 1A. But the Board did not conjure that characterization out of thin air—it parroted PANDA's own words. In its POR, PANDA expressly told the Board: "Because Ground 1A fails, Ground 1B fails *for the same reasons*." POR at 51. PANDA cannot now credibly claim the Board abused its discretion by doing exactly what PANDA invited it to do: treat Grounds 1A and 1B the same. By deciding not to expressly make "webserver"

arguments under Ground 1B and deciding instead to refer to “the same reasons” raised under Ground 1A, PANDA waived its “webserver” arguments.

PANDA attempts to rewrite the procedural history in its Request. It now claims its POR actually contained two distinct categories of arguments under Ground 1B: first, the “event socket” arguments carried forward from Ground 1A, and second, independent “webserver” arguments under Ground 2A that it says “apply equally to all grounds challenging any one of claims 1-2, 4-5, and 8-10.” Request at 5 (citing POR at 52). But within Ground 1B, PANDA did not reference its Ground 2A arguments at all. POR at 51. PANDA made a strategic decision: rather than expressly briefing the webserver limitation under Ground 1B—the first ground in which that limitation was at issue—it instead presented those arguments under Ground 2A with a blanket cross-reference stating they “apply equally” to all grounds involving claims 1–11. By consolidating its arguments through a vague cross-reference rather than separately and expressly presenting them under each ground, PANDA assumed the risk that the Board would treat its Ground 1B presentation exactly as PANDA itself described it—as raising “the same reasons” as Ground 1A. The Board was not obligated to parse PANDA’s cross-referencing and construct arguments PANDA itself chose not to independently present under Ground 1B.

This is a textbook case of invited error. A party that tells the tribunal its arguments for two grounds are “the same” cannot then seek review of a decision that

relies upon that characterization, claiming the tribunal failed to discern that the arguments were, in fact, different. The Board's characterization of the arguments tracked PANDA's own language. If PANDA believed the webserver limitation warranted independent treatment by the Board under Ground 1B, it should have presented its arguments that way—at least by expressly pointing out, within the Ground 1B section, where additional applicable arguments could be found. Instead, PANDA made passing reference to its arguments in a later section, and hoped the Board would connect the dots. *See Parus*, 70 F.4th at 1371–72 (Board's was not required to “hunt[] for truffles buried in briefs”); *Netflix, Inc. v. DivX, LLC*, 84 F.4th 1371, 1377 (Fed. Cir. 2023) (a party cannot rely on “meandering [brief] and later fault the Board for failing to understand what the [brief] really meant.”).

Moreover, PANDA was not without recourse. If PANDA believed the webserver limitation warranted an independent discussion by the Board under Ground 1B, it was incumbent upon PANDA to present its arguments clearly and distinctly under that ground. Like the patent owner in *Parus Holdings*, PANDA had ample room in its brief to present its webserver arguments under Ground 1B if it wished to do so. PANDA's POR used only 13,702 words of the 14,000-word limit, leaving nearly 300 words unused. Even assuming PANDA needed more room, “it could have sought leave to exceed its word count under 37 C.F.R. § 42.24(a)(2) or reallocated more of its briefs to that argument. [Parus] chose not to use the avenues

available to it.” *Parus Holdings*, 70 F.4th at 1372.

But all of that is a red herring because the Board's treatment of Ground 1B was not the summary dismissal PANDA portrays. In its footnote 6, the Board expressly distinguished between the motivation-to-combine analysis for Ground 1B (Ellis, Spivey, and Herzog) and Ground 2A (Herzog and Spivey), explaining that while it found the motivation to combine lacking under Ground 2A—where Petitioner sought to use Spivey's teachings to modify Herzog—Petitioner “proffers sufficient reasons” under Ground 1B, where the combination ran in the opposite direction. This demonstrates that the Board engaged in a ground-specific analysis and did not simply rubber-stamp its Ground 1A findings for Ground 1B as PANDA claims. The Board concluded that the evidence sufficiently supported Petitioner's contentions for claims 1–11 under Ground 1B “for the same reasons provided above for claims 12–15, *and the reasons set forth in the Petition.*” That is a permissible—indeed, common—approach for a tribunal adjudicating overlapping grounds in an IPR proceeding.

C. The Structural Differences Between Grounds 1B, 2A, and 2B Undermine PANDA's Assumption That Its Webserver Arguments Apply Interchangeably Across Grounds

PANDA argues that its “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.” Request at 8. PANDA extends this argument to seek reversal or remand not only on Ground 1B, but also on Grounds 2A and 2B. Request at 13. Yet PANDA ignores the structural differences among these grounds that make cross-referencing arguments problematic.

Ground 1B involves using teachings from Herzog as a secondary reference to modify the Ellis-Spivey combination. Ground 2A involves using Spivey to modify Herzog, where Herzog serves as the primary reference. Ground 2B presents yet another distinct combination (Herzog in view of Spivey and Ellis). Each ground thus involves a different direction of modification and a different role for the prior art references, meaning that whether Herzog supplies the claimed webserver functionality must be evaluated in the context of each specific combination; Herzog’s role is not assumed to carry over wholesale from one ground to the next. PANDA’s blanket cross-reference in Ground 2A—that its webserver arguments “apply equally to all grounds challenging any one of claims 1-2, 4-5, and 8-10”—does not relieve PANDA of its obligation to present its arguments distinctly under each ground. As set forth in Section III.B above, PANDA waived its webserver arguments under Ground 1B by failing to present them there, and the same reasoning applies with equal force to PANDA’s failure to present them in Ground 2B.

Moreover, the Board's analysis of Ground 2A—the *only* ground under which PANDA actually briefed the webserver limitation—resulted in a finding in PANDA's favor on motivation-to-combine grounds without having to reach the webserver limitation—meaning PANDA suffered no prejudice under Ground 2A. PANDA cannot credibly claim that the Board's alleged failure to reach the webserver limitation under Ground 2A constitutes reversible error when the Board ruled in PANDA's favor on an independent basis. In sum, PANDA's apparent assumption that Herzog's webserver teachings are context-*independent* such that they can be applied identically across disparate grounds involving different primary references and different modifications was not even mentioned, much less established, by PANDA in its POR, nor is such an assumption self-evidently true. PANDA's failure to develop its arguments under Grounds 1B and 2B forecloses its request for Director Review on those grounds.

D. The Board's Ground 2A Ruling Did Not Require Additional Findings on the Webserver Limitation

PANDA's argument that the Board's Ground 2A analysis “[a]lso [f]ailed [t]o [a]ddress” the webserver arguments mischaracterizes the nature of the Board's ruling and mistakes a favorable outcome for reversible error. Request at 9. The Board found in PANDA's favor on the specific Ground 2A combination, concluding that “Petitioner's proffered reasons for combining Herzog and Spivey to achieve the subject limitations lack[ed] rational underpinning.” FWD at 62. Having determined

that motivation to combine was lacking—a threshold requirement for any obviousness ground—the Board had no obligation to proceed further and address every additional argument PANDA raised under that ground. *E.g., Sage Prods., LLC v. Stewart*, 133 F.4th 1376, 1386 (Fed. Cir. 2025) (where deciding one issue is “disposit[ive],” it is “unnecessary” to address alternative grounds). The Board’s alleged “failure” to address an argument the Board did not need to reach—because it had already ruled in PANDA’s favor on an independent, dispositive basis for Ground 2A—does not constitute an abuse of discretion or a failure of reasoned decision-making. The Board is not obligated to issue unnecessary advisory findings.

In any event, the proper course is for PANDA to make its argument on appeal to the Federal Circuit—not to seek Director intervention to compel advisory findings on a ground already decided in PANDA’s favor.

E. The FWD Is Not Inconsistent with the Institution Decision in the Related '088 IPRs

The FWD’s finding that claims 1–11 are unpatentable under Ground 1B (Ellis in view of Spivey and Herzog) is not inconsistent with the Board’s denial of institution in the '088 proceedings given the procedural and substantive differences in those proceedings. The '088 Institution Decisions involved a different patent with different claims, different grounds, and a fundamentally different role for Herzog in the asserted combinations. In the '088 proceedings, the Board denied institution of

(i) grounds based on Ellis and Spivey and (ii) grounds based on Herzog and Spivey. The '088 petitions do not present and the Board did not consider any grounds applying Herzog as a secondary reference used to modify Ellis and Spivey. IPR2025-00251, Paper 9 at 9; IPR2025-00252, Paper 9 at 9.

By contrast, Ground 1B in the current proceeding involved a fundamentally different combination. Under Ground 1B, Ellis is the primary reference and Herzog was introduced only as a supplemental reference to supply a specific aspect of the already-present webserver: a webserver “implemented specifically to facilitate communication between a client device and socket server.” Petition at 26. That is, under Ground 1B, the question was not whether Herzog’s own system could perform the “webserver” functions recited in the claims, but rather whether a POSITA would have been motivated to modify the Ellis-Spivey combination in view of Herzog’s webserver teachings to arrive at the claims—an issue not before the Board in the '088 IPRs.

Finally, the '088 Institution Decisions were made on a preliminary record under the “reasonable likelihood” standard—before the benefit of full briefing, expert cross-examination, and oral argument. The Board has repeatedly recognized that there is “nothing inherently inconsistent about the Board instituting IPR on obviousness grounds and then ultimately finding that the petitioner did not provide preponderant evidence,” and *vice versa*. See *Fanduel, Inc. v. Interactive Games LLC*,

966 F.3d 1334, 1340 (Fed. Cir. 2020). If an institution decision and a final written decision in the *same* proceeding need not be consistent, *a fortiori*, institution decisions in a different proceeding involving a different patent at a different procedural moment impose no constraint on the Board's analysis in this case.

III. CONCLUSION

For the foregoing reasons, PANDA's Request for Director Review should be denied. The FWD reflects a thorough, ground-specific analysis that expressly identified and evaluated the webserver limitation under Ground 1B, and to the extent PANDA's arguments were not addressed in the manner it preferred, that outcome was invited by PANDA's own litigation strategy. PANDA's Request presents no abuse of discretion, no important question of law or policy, and no erroneous finding of material fact. Rather, it is a sufficiency-of-reasoning challenge that belongs before the Federal Circuit. The Director should deny the Request in its entirety.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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