

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TABLEAU SOFTWARE, LLC,
Petitioner

v.

iCHARTS LLC,
Patent Owner

Case IPR2024-01387
U.S. Patent No. 8,271,892

AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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Pursuant to the authorization granted by e-mail on June 9, 2026, (EX3102), Tableau Software, LLC (“Petitioner”) submits this response to Patent Owner’s Request for Director Review (Paper 37, “Req.”).

I. INTRODUCTION

Patent Owner’s Director Review request should be denied. At the outset, Patent Owner’s request is unclear as to whether it seeks review of the FWD or review of the Board’s institution decision. Patent Owner ostensibly “requests Director Review of the Final Written Decision,” Req., 1, but also argues that IPR “would have been denied under current standards,” *id.*, ultimately requesting “a finding that institution should have been denied.” *Id.* at 15. Patent Owner attempts to improperly raise discretionary institution issues at this late stage. *See, e.g.*, Req., 1-2, 4-7. But review of the Board’s institution decision at this stage is improper because the deadline for challenging the institution decision has long passed. Patent Owner’s arguments directed to the general “shortcomings of the IPR process,” Req., 4, are likewise inappropriate for Director Review.

In any event, Patent Owner’s arguments do not show any abuse of discretion or erroneous findings of material fact or erroneous conclusions of law, nor do they implicate important issues of law or policy. Rather, Patent Owner’s arguments attempt to create alleged inconsistencies in the Board’s treatment of the claim

language where none exists and fault the Board for properly applying its procedural rules to Patent Owner's arguments and evidence.

For all the reasons discussed herein, Patent Owner's request for Director Review should be denied.

II. DIRECTOR REVIEW IS NOT WARRANTED BECAUSE PATENT OWNER'S ARGUMENTS LACK MERIT.

A. Patent Owner's arguments regarding "settled expectations" are untimely because Director Review of the institution decision after a Final Written Decision is improper.

Review of the institution decision at this stage is improper. *See* 37 C.F.R. §§ 42.71(d)(1), 42.75(c)(1) (deadline to request Director Review of a decision granting institution is within 14 days). The PTAB's Director Review process guidance makes clear that "[a]s a general matter, a request for Director Review of a final decision *is not an opportunity to raise issues related to the Board's decision on institution*, for example, ... *how the Board exercised the Director's institution discretion*." Director Review Process¹, § 2.B (emphasis added). Thus, Patent Owner's challenge to the (lack of) exercise of discretion at the institution stage is inappropriate after a Final Written Decision.

Contrary to Patent Owner's assertion, the Board's precedential decision in *Magnolia* does not provide otherwise. *Cf.* Req., 7 (contending "settled expectations

¹ <https://www.uspto.gov/patents/ptab/decisions/director-review-process>

... can be considered while reviewing a FWD”) (citing *Magnolia Medical Techs., Inc. v. Kurin, Inc.*, IPR2026-00097, Paper 17 at 8-9 (Squires May 14, 2026) (precedential))). Instead, *Magnolia* simply indicates that “[s]ettled expectations of either party may be a factor in determining whether to institute an AIA review.” *Magnolia*, Paper 17 at 8-9. It says nothing about the reviewability of discretionary institution issues after a FWD.

Further, Patent Owner contends that “[u]nder current policies, the Board would never have instituted review of the ’892 Patent.” Req., 4. Even if true (which Petitioner does not concede), the Director institution process and “settled expectations” precedent were not applicable to this proceeding at the time of the Board’s institution decision. The Office issued its Interim Processes for PTAB Workload Management memo, which identified “settled expectations of the parties, such as the length of time the claims have been in force” as a relevant discretionary consideration, on March 26, 2025. Workload Memo², 1-2. In that memo, the Office made clear that “the processes described herein will be implemented in IPR ... proceedings where the deadline for the patent owner to file a preliminary response has not yet passed.” *Id.* at 3. Here, the POPR was filed on

² <https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf>

February 18, 2025. *See* Paper 6. Thus, the interim process set out in the Workload Memo is inapplicable to this proceeding.

Patent Owner also contends this “Director Review request is the first opportunity for Patent Owner to fully present its settled expectations argument.” Req., 6. Not so. The appropriate time to raise any issues related to institution—including Patent Owner’s argument that “settled expectations” should have been considered—was in a Director Review request of the institution decision. Indeed, Patent Owner *did* address *iRhythm* and other discretionary considerations from the Workload Memo in its June 18, 2025 request for Director Review of the institution decision. *See* Paper 11, at 4-9. Recognizing the deadline for filing its Director Review request had passed,³ Patent Owner argued there was good cause for an extension of the deadline because of recently issued discretionary denial decisions, including *iRhythm*, “for the Director to extend the current efficiency-based discretion standard to this matter.” *Id.* at 1. Patent Owner’s request was denied as untimely, and the Director found no good cause to warrant consideration of the

³ The Workload Management memo issued well before Patent Owner’s May 28, 2025, deadline to file a Director Review request of the institution decision. There is no reason Patent Owner could not have filed a timely request to raise the “settled expectations” issue.

untimely request. EX3100; *see also Savant Techs. LLC v. Feit Electric Co., Inc.*, IPR2024-01357, EX3101 (Nov. 19, 2025 email denying patent owner’s request for a good cause extension of Director Review request deadline where the request was premised on a change in PTAB precedent subsequent to the institution decision).

Regardless, despite Patent Owner’s assertion that “the Board would never have instituted review,” Req., 4, if the Petition had been considered under the current guidance, the age of the patent and consideration of a patent owner’s settled expectations *does not* create any bright line rule for discretionary denial. *Dabico Airport Sols., Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 at 3 (Stewart June 18, 2025) (informative) (“there is no bright-line rule on when expectations become settled”); *see also, e.g., Volkswagen Grp. of America, Inc. v. Longhorn Automotive Grp. LLC*, IPR2025-01064, Paper 9 at 2-3 (Stewart Oct. 10, 2025) (referring a 13-year-old patent for merits consideration despite patent owner’s settled expectations). Instead, the Director’s exercise of discretion is based on a holistic assessment of all evidence and arguments presented. Patent Owner did not present any discretionary arguments before institution (*see generally* POPR), and it is too late to do so now.⁴ Indeed, any consideration of appropriate use of

⁴ Patent Owner also points to evidence regarding the iCharts website, Req., 5-6, which allegedly embodies the claimed invention, in supporting its “settled

Board resources is moot as the resources have already been expended and the trial is complete.

Patent Owner also contends that a “District Court is a better forum for adjudicating patent validity requiring a fact intensive determination of priority.” Req., 2. In this regard, Patent Owner raises its alleged inability to submit metadata, the Board’s alleged unwillingness to review Patent Owner’s evidence, and that Petitioner based its grounds on the QlikView Manuals instead of the product itself.⁵ Req., 10, 13, 14-15. But, as explained below, Patent Owner simply did not

expectations” arguments. But the Board could not have overlooked this evidence at institution because it was not part of the record. Indeed, some of the cited evidence is *still* not of record here; rather, Patent Owner cites to the district court docket in its Director Review request. Therefore, this evidence could not have been the basis of erroneous findings or conclusions at institution. And the panel already considered Mr. Duncker’s testimony (EX2200) during trial, finding it unpersuasive because it was not sufficiently corroborated.

⁵ According to Patent Owner, reliance on the manuals and not the product resulted in an incorrect interpretation of QlikView’s teachings. Req., 15. But the Board’s decision simply credited Petitioner’s expert over Patent Owner’s on the relevant points. FWD, 73 (citing EX1003, ¶¶346–47; EX1072 ¶¶54–56).

follow the Board’s rules and guidance in presenting its evidence. And even still, here, the Board *did* consider Patent Owner’s evidence to the extent it could discern the arguments. *See* FWD, 53, 57.

B. Even if Patent Owner’s merits arguments were to succeed, the result of the Final Written Decision does not change—all challenged claims remain unpatentable.

The Board determined the challenged claims were unpatentable based on two distinct sets of grounds, based primarily on either Becerra or QlikView Manuals.⁶ FWD, 101. Beyond its “settled expectations” discussion, Patent Owner’s remaining arguments in its Director Review request are all directed to the QlikView grounds.⁷ *See* Req., 7-15. Thus, even if the Director were to agree with Patent Owner’s arguments (he should not), all challenged claims would remain unpatentable under the Becerra set of grounds. Therefore, it would be a waste of Board resources to grant Director Review here.

C. Patent Owner’s arguments on the merits also fail.

1. The Board did not apply inconsistent claim constructions.

Patent Owner contends that the Board’s FWD interpreted claim terms

⁶ The QlikView Manuals ground did not include dependent claim 4.

⁷ Patent Owner’s arguments related to its conception, reduction to practice, and diligence evidence are only relevant to the QlikView grounds because Becerra is prior art under 35 U.S.C. § 102(b), Pet., 6, and cannot be antedated.

inconsistently when analyzing the prior art as compared to when evaluating Patent Owner's conception evidence. Req., 7-9.⁸ Not so.

For example, Patent Owner argues that the Board “swung 180 degrees” from its analysis of Becerra's preexisting components when it analyzed Patent Owner's conception evidence, stating that “chart types are not the same as chart templates....” Req., 7-8 (citing FWD, 58). The Board's interpretation, however, was consistent across these analyses. As the Board explained, Becerra's “components are in form of a preset template *with certain formatting settings*.” FWD, 22 (emphasis added). In contrast, Patent Owner's conception evidence merely mentioned “chart types” with no disclosure of “storing various formatting settings in form of a template.” *Id.* at 59. The Board did not apply different interpretations of “chart template” in making these findings.

Moreover, different standards apply when analyzing obviousness as compared to analyzing sufficient support for prior conception. “Conception must

⁸ Tellingly, Patent Owner does not advocate for any of the allegedly inconsistent constructions. This is likely because they recognize that none of the alleged inconsistent constructions, even if adopted, would result in Patent Owner winning on all grounds of unpatentability. Nonetheless, as discussed, the Board's analysis is *not* internally inconsistent.

include every feature or limitation of the claimed invention.” *REG Synthetic Fuels, LLC v. Neste Oil Oyj*, 841 F.3d 954, 962 (Fed. Cir. 2016). Indeed, “[f]or conception, [the courts] look not to whether one skilled in the art could have thought of the invention, but whether the alleged inventors actually had in their minds the required definite and permanent idea.” *Burroughs Wellcome Co. v. Barr Lab’ys, Inc.*, 40 F.3d 1223, 1232 (Fed. Cir. 1994). Likewise, “[e]ntitlement to a filing date [such as the provisional application here] ***does not extend to subject matter which is not disclosed, but would be obvious over what is expressly disclosed.*** It extends only to that which is disclosed.” *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1571-72 (Fed. Cir. 1997) (emphasis added).

The Board did not inconsistently interpret the claims. Rather, the Board simply recognized that different standards apply when analyzing obviousness as compared to analyzing sufficient support for prior conception and applied the correct standards accordingly. *See* Tr., 21:19-22:10 (discussing distinction between requirement for written description versus requirement for showing obviousness), 54:3-10 (similar).

2. The Board correctly determined that Patent Owner did not meet its burden of production on the antedating issue.

Patent Owner’s arguments for antedating the QlikView product manuals relied alternatively on (1) alleged support in the provisional application and (2) prior conception and diligence. The Board correctly found that Patent Owner

had the burden of production on this issue. FWD, 51; *Medtronic, Inc. v. Teleflex Innovations S.À.R.L.*, 68 F.4th 1298, 1303 (Fed. Cir. 2023) (citing *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378-79 (Fed. Cir. 2015)). The primary basis for the Board's finding that the antedating arguments were not successful was Patent Owner's failure to present its arguments and evidence with sufficient particularity. Patent Owner simply did not meet its burden. This is reason alone to not upset the Board's decision.

First, the panel determined that Patent Owner's claim charts showing alleged written description support in the provisional application "are bare-bones and fail to provide meaningful explanation as to how the cited portions of the '728 provisional support the various claim limitations," and citations to Dr. Miller's declaration amounted to an improper incorporating by reference. FWD, 53; *see* POR, 52-55. And regarding Patent Owner's evidence for prior conception and reduction to practice, the panel similarly determined that Patent Owner "offers a claim chart..., but provides little explanation of how each of th[e cited] documents show conception of the claimed invention." FWD, 57; *see* POR, 57-74.

The Board's rules are clear. A patent owner's response must comply with the Board's rules and regulations, which require "not incorporating material by reference pursuant to 37 C.F.R. § 42.6(a)(3) and the inclusion of 'a detailed explanation of the significance of the evidence including material facts' pursuant to

37 C.F.R. § 42.22.” *Parus Holdings, Inc. v. Google LLC*, 70 F.4th 1365, 1371

(Fed. Cir. 2023). Here, Patent Owner did not comply with these regulations, instead leaving it to the Board to sift through a voluminous record without any explanation of the evidence. The Board correctly declined to do so. FWD, 53, 57; *see Parus*, 70 F.4th at 1372 (“The burden of production cannot be met without some combination of citing the relevant record evidence with specificity and explaining the significance of the produced material in briefs.”).

Patent Owner contends that addressing the “large number of grounds” presented in the Petition “crowded out the Patent Owner’s defense of prior conception, reduction to practice, and diligence.” Req., 13. But Petitioner and Patent Owner were subject to the same word count limits in the Petition and Patent Owner Response, respectively. 37 C.F.R. §§ 42.24(a)(1)(i), (b)(2). Further, Board rules allow for a party to file a motion to waive the word count. 37 C.F.R. § 42.24(a)(2). But Patent Owner did not file any such motion here. Patent Owner, thus, waived its ability to now raise the issue of allegedly insufficient page limits after the Board has issued its Final Written Decision.

Patent Owner also argues that the “Board had no problem sifting through a combined 272 pages” of Petitioner’s expert declarations. Req., 14. But Patent Owner ignores that unlike its own briefs, the Petition includes *extensive explanation* of the asserted grounds, citing to Dr. Schmandt’s declaration in

support. *See, e.g.*, Pet., 10-57 (Bacerra grounds), 58-93 (QlikView grounds). Patent Owner, on the other hand, cited voluminous evidence and provided *no meaningful explanation* of the submitted evidence or for the basis of its conclusions. Indeed, Patent Owner's claim charts either include bare citations to pages of the provisional or simply cut-and-pasted images from various emails and other documents with *no* accompanying explanation. POR, 52-55, 57-74. The Board did not treat Patent Owner's unexplained evidence unfairly. Rather, Patent Owner simply did not provide the detailed explanation thereof that is required by the Board's rules.

This is sufficient reason to support the Board's determination that Patent Owner had not met its burden. *See Parus*, 70 F.4th at 1371 ("The burden of production cannot be met simply by throwing mountains of evidence at the Board without explanation or identification of the relevant portions of that evidence."); *Gen. Access Sols., Ltd. v. Sprint Spectrum L.P.*, 811 F. App'x 654, 658–59 (Fed. Cir. 2020) (affirming the Board's decision that conclusory assertions in the POR insufficient to meet the Patent Owner's burden of establishing prior conception). For this reason alone, Patent Owner's Director Review request should be denied.

3. The Board did not improperly refuse to consider Patent Owner's conception evidence.

As just explained, the Board did not even need to reach the merits of Patent Owner's evidence regarding conception, because it was not presented in

accordance with the Board's rules and procedures. Thus, Patent Owner's challenge to the sufficiency of the Board's treatment of the specific evidence does not warrant Director Review. However, Patent Owner's challenges here are flawed on the merits as well.

Patent Owner contends that "[t]he Board refused to consider evidence that would have been admissible in any District Court of the United States—emails with their attachments and metadata preserved." Req., 9-10. According to Patent Owner, it submitted "hard copies of emails indicating the date they were sent, identification of attachments with file names, and screenshots of the associated metadata were presented as Exhibits." *Id.* at 10. Patent Owner contends that "[h]ad the Board not ignored the last page of EX2007, it would have seen the corroborating metadata." *Id.* at 12. But *no actual metadata* was submitted as evidence in this proceeding.

Instead, only screenshots pasted onto the PDF exhibits and Mr. Duncker's testimony *about* the alleged metadata was provided. *See, e.g.*, EX2007, 31; EX2200, ¶37. As Petitioner pointed out during the oral hearing, "[w]hat was provided is not metadata. It is an image that was pasted onto a PDF presentation that was provided by the inventor, and the inventor himself pasted that date." Tr., 25:1-3; *see also* EX2200, ¶37 (Mr. Duncker testifying, "For any documents I rely on in this declaration that were not attached to an email, I have included a

screenshot of the metadata associated with the file which evidences the document's existence during the relevant timeframe.”).

Indeed, as the Board correctly found, the only corroboration about any of the dates, etc., was Mr. Duncker's testimony. FWD, 60-61 (“[W]ithout Mr. Duncker's testimony, we cannot independently discern the dates of the various documents that Patent Owner relies on...”). Given the lack of corroboration, it was not improper for the Board to give this evidence less weight. *Apator Miitors ApS v. Kamstrup A/S*, 887 F.3d 1293, 1293–96 (Fed. Cir. 2018)). This result was a direct consequence of the evidence Patent Owner chose to submit. *See* Tr., 25:21-23 (“They could have gotten other testimony [to corroborate the inventor's], they could have gotten independent evidence. None of that exists here”).

Patent Owner complains that it could not submit metadata due to limitations in the USPTO procedures to accept only “paper submissions.” *See* Req., 13. First, it is incorrect that the USPTO only accepts paper submissions. *See* P-TACTs FAQs (https://www.uspto.gov/sites/default/files/documents/p_tacts_faqs_20250428.pdf), 9 (noting exhibit formats may include “e.g., pdf, video/mp4, video/x-m4v, etc.”); EX1049 (video exhibit submitted in this proceeding). And specific to Patent Owner's arguments here, it *is* possible to properly submit metadata at the PTAB. *See, e.g., ATI Techs. ULC v. Iancu*, 920 F.3d 1362 (Fed. Cir. 2019) (considering metadata evidence submitted by Patent Owner during the PTAB proceeding, and a

corroborating witness to authenticate the metadata, in determining whether there was a sufficient showing of diligence). Patent Owner simply chose not to do so. If Patent Owner had questions about *how* to submit such evidence or the proper procedure therefor, Patent Owner should have sought guidance from the panel during the proceeding. Patent Owner did not.

Patent Owner also contends the Board faulted Patent Owner for “providing *too much* detail of corroboration.” Req., 10 (emphasis original). But, as explained above, Patent Owner did not follow Board procedure or rules in submitting this evidence. Instead, this evidence was improperly incorporated by reference and insufficiently explained in Patent Owner’s briefing. Tellingly, rather than citing its briefing, Patent Owner points to 57 pages of Mr. Duncker’s declaration as providing the alleged explanation about its corroboration evidence. *Id.* (citing EX2200, ¶15 (at pgs. 8-64)). Indeed, the POR itself cites only a subset of evidence cited in the declaration and lacks *any* explanation thereof. *See* POR, 57-74.

Thus, contrary to Patent Owner’s contentions otherwise, the Board properly considered all evidence before it. Director Review is not warranted.

III. CONCLUSION

For at least the reasons above, Director Review of the Board’s Final Written Decision is not warranted and Patent Owner’s request should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **AUTHORIZED RESPONSE TO
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