

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TABLEAU SOFTWARE, LLC
Petitioner

v.

ICHARTS LLC
Patent Owner

Case IPR2024-01388
U.S. Patent No. 9,712,595

**PETITIONER'S REQUEST FOR DIRECTOR REVIEW
OF INSTITUTION DECISION**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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Pursuant to 37 C.F.R. § 42.75(c), Petitioner Tableau Software, LLC

(“Petitioner”) hereby respectfully requests Director Review of the Board’s denial of institution of *inter partes* review under 35 U.S.C. § 314(a) (Paper 8, “DI”). This request is timely filed within 30 days of the mailing of the DI on May 14, 2025, and is accompanied by the required fee. 37 C.F.R. §§ 42.15(f), 42.71(d), 42.75(c).

I. INTRODUCTION

The Board’s decision to deny institution should be reversed for three reasons. **First**, the detailed, well-reasoned dissent highlights that the Petition sufficiently demonstrates a reasonable likelihood of prevailing with respect to at least claim 1 of the ’595 patent. The dissent also correctly determined that the alleged deficiencies in the Petition are at worst “factual issue[s] best resolved during trial.” DI, 52. As such, the dissent raises important issues of law and policy for how the Board should handle pre-institution factual disputes, and how such disputes should be weighed against the reasonable likelihood of prevailing standard. This is particularly true when the factual disputes raised by Patent Owner are supported by only “conclusory” expert testimony, as was found here. DI, 12. **Second**, the Majority made erroneous findings of fact and law with respect to its interpretation of Rostoker. **Third**, the Majority overlooked substantial evidence showing how QlikView displays its interactive charts on the claimed “*second website*.” Since the Petition included two sets of grounds, the first relying on

Rostoker, and the second relying on QlikView, the Director should reverse the non-institution decision if it agrees with arguments for either set of grounds.

Therefore, Director Review is necessary here not only to rectify the Majority’s errors, but also to allow for “an adequate evidentiary basis” to be developed during trial before rendering decisions on the particular facts in dispute here—facts that the dissent not only agreed should be “resolved during trial,” but expressly resolved in favor of Petitioner at the institution stage. DI, 52; *In re NuVasive, Inc.*, 842 F.3d 1376, 1382 (Fed. Cir. 2016) (cleaned up).

II. BACKGROUND

The ’595 patent is directed to generating interactive charts. *See* EX1001, Abstract. The interactive charts may be generated in an online portal that allows users to upload data, select a chart type, and create chart templates. *See id.*, 5:20-26, 9:3-9, 15:15-26. Users can then publish the interactive charts on a second website. *See id.*, 2:57-67, 3:5-6. Claim 1 of the ’595 patent requires, *inter alia*:

a processor, wherein the processor executes instructions stored in the memory, causing the processor to: ...

generate an interactive chart including the chart data and the chart template; and

a network interface that, in response to generation of the interactive chart, transmits the interactive chart to a second website for display without the execution of the instructions stored in the memory to generate the user interface of the first website, wherein the second

website receives an input from a second user and updates the interactive chart after the second website receives the input.

EX1001, Claim 1.

The Petition's obviousness grounds rely on either Rostoker or QlikView as the primary reference. Pet., 10. Rostoker discloses modifiable applications and components for business applications. *See id.* QlikView discloses a system for creating and publishing interactive charts. *Id.*, 68-69, 79-80.

III. STANDARDS FOR DIRECTOR REVIEW

Director Review of a Board decision on institution is warranted when the decision presents important issues of law or policy, erroneous findings of material fact, or erroneous conclusions of law. Director Review Process¹, § 2.B. Decisions of the Board under Director Review are reviewed *de novo*. *Id.*, § 5.A.ii.c.

IV. ARGUMENT

A. The dissent, which highlights that the Petition sufficiently demonstrated a reasonable likelihood of prevailing with respect to at least claim 1 of the '595 patent, warrants Director Review.

This case is unusual in that it is a rare instance where there is a dissenting opinion at the institution stage. As is the case here, a dissent at the institution stage generally means one or more factual disputes exist, which at least one trier of fact has found either weighs in favor of Petitioner or should only be resolved after a full

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

evidentiary hearing has taken place. The Federal Circuit has recognized the importance of the Board developing a full record before rendering a decision on patentability. Indeed, the Federal Circuit has held that, in evaluating obviousness, the Board has a duty to “make the necessary findings and have an adequate evidentiary basis for its findings.” *NuVasive*, 842 F.3d at 1382 (cleaned up).

The dissent here states that “there is a reasonable likelihood that Petitioner would prevail with respect to at least one of the claims challenged in the Petition,” and that the dissenting judge “would institute an *inter partes* review.” DI, 56. The dissent also found that the alleged deficiencies in the Petition are at worst “factual issue[s] best resolved during trial.” DI, 52, 56. The dissent then methodically steps through each factual dispute with respect to the teachings of Rostoker and Jou, correctly resolving each dispute in favor of Petitioner. Thus, even if the Majority did not find facts that were reasonably in dispute between the parties, there were clearly facts that the Majority and the dissent disagreed over.

By weighing every single one of these factual disputes—including disputes raised by Patent Owner, which the Majority itself found to be supported by mere “conclusory” expert testimony (DI, 12)—in favor of Patent Owner, the Majority ran afoul of the Federal Circuit’s guidance, preventing the development of an adequate evidentiary basis for determining patentability. *NuVasive*, 842 F.3d at 1382. The dissent correctly highlights these errors, and as such highlights the need

for Director Review. Indeed, a PTAB standard operating procedure states that a judge's dissent is "impactful to the Director in deciding, for example, whether to review a decision post-issuance." PTAB SOP 4, (Oct. 4, 2023). Consistent with this standard operating procedure, Director Review has been used on many prior occasions to resolve disagreements between the dissent and the majority of a panel.

In *Duration Media LCC v. Rich Media Club LLC*, the dissent disagreed with the Majority's finding of unpatentability based on the disclosure of the Petitioner's cited reference. IPR2023-00953, Paper 74, Dissenting Op. 2 (P.T.A.B. Aug. 19, 2024). Upon review, the Director agreed with the dissent, noting that Patent Owner's arguments failed to undermine the reference's clear disclosure of the claimed element. *Id.*, Paper 78, 9. Similarly, in *PLR Worldwide Sales v. Flip Phone Games, Inc.*, the dissent disagreed with the Majority's adopted claim construction, and the Director Review Decision vacated and remanded based on the arguments raised in the dissent. IPR2024-00133, Paper 10, Dissenting Op. 1-7 (P.T.A.B. Aug. 22, 2024); *id.*, Paper 12, 7; *see also Videndum Production Solutions, Inc. v. Rotolight Limited*, IPR2023-01218, Paper 12, 5-6 (P.T.A.B. Apr. 19, 2024) (Director Review decision vacating the Board's Decision denying institution in agreement with the dissenting judge). The facts are similar here. The dissent also found that Patent Owner's arguments failed to undermine Rostoker's clear disclosure of the claimed "*interactive chart*" and "*second website*." DI, 50-56.

The well-reasoned dissent here, supported by evidence of record, not only highlights that the Petition sufficiently demonstrates a reasonable likelihood of prevailing with respect to at least claim 1 of the '595 patent. It also highlights that the alleged deficiencies in the Petition identified by the Majority are at worst “factual issue[s] best resolved during trial.” DI, 52. As such, the dissent raises important issues of law and policy at least with respect to how pre-institution factual disputes should be handled by the Board in future proceedings.

For at least these reasons, the Director should grant this request for Director Review and reverse the Board’s denial of institution.

B. The Majority erred in finding that the Rostoker grounds do not establish a reasonable likelihood of success.

The Majority erred with respect to both the “*interactive chart*” and “*second website*” elements of the independent claims. If the Director agrees the Board erred for both of these elements, it should reverse the Board’s denial of institution.

1. The Majority erred in its analysis of the “*interactive chart*” element.

The Majority made three errors analyzing the “*interactive chart*” element. It erred in its narrow construction. Then it erred by finding that Rostoker’s charts are not interactive, despite having the same interactive features as the '595 patent. If these errors were not enough, the Board also erred in its finding that a POSA would not have modified Rostoker to incorporate additional interactive features.

a. The Majority erred as a matter of law by improperly construing “*interactive chart*.”

The Majority improperly excluded features such as hiding scroll-buttons and “toggling between a chart and a table” (e.g., a data hide feature) from the scope of the claims. DI, 12, 19. These features are explicitly disclosed in the ’595 patent as interactive features. *See, e.g.*, EX1001, claim 5 (“interactive features include ... a data hide feature.”). This implicit construction—one that not only imparts a negative limitation but also excludes exemplary embodiments—constitutes legal error because neither party provided a construction. While it is generally understood that it is improper to construe a claim term at a point during trial that does not provide the parties an opportunity to respond, this should also hold true here where neither party proposed or addressed the Majority’s construction. Pet., 3; POPR, 36; *See Qualcomm Inc. v. Intel Corp.*, 6 F.4th 1256, 1265 (Fed. Cir. 2021). And, the Majority admits that both experts provide conflicting testimony over the meaning of certain interactive features such as “selectable,” “scroll buttons,” and “data animations.” DI, 12. These conflicts should again be resolved in favor of the petitioner, as the dissent determined, such that an adequate evidentiary basis can be developed during trial. DI, 52; *Nuvasive*, 842 F.3d at 1382; 37 C.F.R. § 42.108(c).

b. The Majority erred in finding that Rostoker does not disclose an “*interactive chart*” despite having several interactive features listed in the ’595 patent.

The ’595 patent lists interactive chart features including “a zoom feature, a

data mouse-over pop-up window, a data hide/share feature, an audio playback feature, a drill-down feature, a data gliding feature and the like.” EX1001, 9:28-31. The petition provides at least four examples of Rostoker’s interactive chart features: (1) buttons for scrolling the chart and animations; (2) drop-down lists for changing the plotted data; (3) click-on-cell triggers for manipulating displayed data; and (4) buttons for switching between a table and chart views. Pet., 32-37.

Rostoker’s interactive chart features are substantially similar to those in the ’595 patent. For example, Rostoker’s click-on-cell trigger manipulates displayed data allowing the user to “drill down,” which is indistinguishable from the “drill down feature” in the ’595 patent. *Id.*, 34-35. Similarly, Rostoker’s switching between a table view and a chart view allows the user to interactively show and hide the chart view, similar to the ’595 patent’s “data hide/share feature.” *Id.*, 36.

As the dissent found, the Majority overlooked Rostoker’s disclosure by only considering Rostoker’s interactions occurring during chart configuration. DI, 51-52. The Petition cites Rostoker’s Figure 57 as an example of what can be generated by the chart configuration stage. Pet., 33-34. The Majority faults Figure 57 for allegedly failing to show interaction because, although Figure 57 has a parameter drop-down control, the displayed chart does not depict values corresponding to the parameters. DI, 13-14, 51-52. But, as recognized in the dissent, the drop-down controls “would serve little purpose” unless changing the drop-down list selection

also changed the chart data. *Id.*, 52; *see also* Pet., 33-34 (citing EX1003, ¶¶92-96, 190-91). Furthermore, that Figure 57 does not show all possible interactions is irrelevant—it is merely an example of a possible generated chart. *See id.*, 51. This narrow reading is a material factual error warranting reversal as it ignores Rostoker’s clear disclosure of interactive charts and what a skilled artisan would understand reading Rostoker—that the generated charts would be interactive.

c. The Majority erred by finding that the Petition lacked sufficient motivation to combine Rostoker and Jou.

The Petition asserts that claims 1, 2, 4–8, 10–14, and 16–18 would have been obvious over Rostoker and Jou because Jou discloses additional “*interactive*” features. *See* Pet., 56. Jou discloses “an interactive system for visualizing business data” using a “variety of ... charts, such as line, bar, surface, pie, swatch, and map charts[.]” Pet., 56-57 (citing EX1007, ¶¶14, 36). Like the ’595 patent, Jou’s visualizations support data hide, drill-down and zoom features. *See id.*, 57-58 (citing EX1007, ¶¶38-41, 44, 49). The Majority found no motivation to combine Rostoker and Jou, alleging that Petitioner “does not provide evidence of a reason why a skilled artisan would have” incorporated Jou’s interactive features into Rostoker’s published charts. DI, 35-36. The Board’s finding is an erroneous finding of material fact. *Palo Alto Networks, Inc. v. Centripetal Networks, LLC*, 122 F.4th 1378, 1384 (Fed. Cir. 2024) (“Whether a skilled artisan would have been motivated to combine references is a question of fact.”) (cleaned up).

The Majority first erred in determining that Petitioner’s expert “testimony that a skilled artisan ‘would have been motivated to incorporate Jou’s additional ‘interactive’ features into Rostoker’s system to enable users to better visualize and explore business data,’ is not supported by his citations to Jou.” DI, 35 (citing EX1003, ¶259). As noted in the petition, Rostoker is concerned with business application development, and a skilled artisan would have sought additional ways to “better visualize and explore business data.” Pet., 58 (citing, EX1003 ¶259). Similarly, Jou expressly states that “[t]he vast amounts of warehoused or otherwise collected business data would be useless without software tools for its analysis,” and, therefore, “tools for visualizing business data are of particular importance.” Pet., 58 (citing EX1007, ¶¶8-9); *see also* EX1003, ¶259. Petitioner’s expert thus concludes that “Jou’s data filtering, drill-down, and zoom features improve a user’s ability to parse and visualize a large amount of business data, supporting Rostoker’s goal of providing ‘[r]eal-time dashboards.’” Pet., 58-59 (citing EX1003, ¶259). From these prior-art disclosures, there can be no reasonable dispute that Jou’s interactive features improve data visualization.

The Majority also erred in finding no motivation to combine because, allegedly, “Rostoker already teaches that a user could interact with a chart, via a graphical user interface in a web browser, while configuring the chart.” DI, 35. That Rostoker discloses interactive features when *configuring* charts, however, is

irrelevant to whether a skilled artisan would have included interactive features in Rostoker’s *published* charts. As noted above, Rostoker discloses developing business applications with “[r]eal time dashboards,” and Jou’s interactive features allow users to better visualize “vast amounts of complex information” through “data exploration.” Pet., 58; EX1003, ¶259.

Thus, even if Rostoker’s interactions were limited to chart configuration, the Petition explains why a skilled artisan would have modified Rostoker’s published charts to include Jou’s interactive features—to “improve the user’s ability to parse and visualize a large amount of business data.” Pet., 58-59. That is more than sufficient to establish a motivation to combine. *See Intel Corp. v. PACT XPP Schweiz AG*, 61 F.4th 1373, 1380 (Fed. Cir. 2023) (It is “not necessary to show that a combination is the *best* option, only that it be a *suitable* option.”) (emphasis added). The Majority’s finding is therefore erroneous.

2. The Majority erred in finding that Rostoker does not disclose the claimed “*second website*.”

As recognized by the dissent, the Majority’s interpretation of Rostoker with respect to the “*second website*” is inconsistent with Rostoker’s teachings and is therefore a reversible error. DI, 54. Rostoker discloses the “*second website*” because: (1) a business interacts with a content provider’s website (e.g., the “*first website*”) to obtain content; and (2) deploys that content on its local network at the “*second website*.” *See id.*, 55 (citing EX1005, ¶¶18, 27, 29, 56).

Rostoker discloses a content provider and a business communicating via a network. Pet., 15-16. The content provider stores applications and reusable components “that can easily be modified or integrated into different business analyst and end user tools.” *Id.*, 18. The applications and components can be adapted into an application suiting the business’s needs. *Id.*, 18-19. The application is published to the business’s enterprise network. *Id.*, 38. In the Majority’s view, Rostoker fails to disclose the “*second website*” because Rostoker does not show developing the application “on one website and deploying it on another.” DI, 26. In support of this assertion, the Majority points to Rostoker’s figures that show the application in development and in deployment at the same URL. *Id.*

The dissent notes this is “inconsistent with how Rostoker’s vendor-business interaction works” because the business obtains the content from the content provider and deploys it on its local network. DI, 54-55; *see also* Pet., 38-39. That Rostoker’s figures list the same URL for development and deployment is merely an example and, therefore, not limiting as the Majority alleges. As highlighted by the dissent, Rostoker discloses this element because “a vendor’s storefront [is] accessible via the internet ..., a business that communicates with that storefront ..., and ... content provided to the business from the vendor is located on the ‘Local Intranet’ and displayed in Internet Explorer.” DI, 55 (citing Pet., 16, 39). The Majority’s finding here is yet another material error.

In combination with its other errors in Section IV.B.1, the Director should reverse the Board’s decision denying institution.

C. The Board erred in its factual findings regarding QlikView.

Even if the Director determines that the Board did not commit reversible error for the Rostoker grounds, the Director should grant Director Review because the Board also erred in its findings for the QlikView grounds (Grounds 9 and 10). The Board found that “QlikView does not teach generating a chart on a first website and transmitting to and displaying the chart on a second website different from the first.” DI, 46. The parties do not dispute that QlikView generates a chart on a first website. POPR, 64-78. The Board, however, determined that QlikView fails to transmit and display the chart on “*a second website.*” DI, 37-46.

The Board erred in its finding that the QlikView charts are not transmitted and displayed on a second website different from the first. As the Petition explained, “[d]epending on the client, the respective “*network interface*” “*transmits the interactive chart to a second website for display.*” Pet., 80. Petitioner cited, among other things, the QlixX client, which publishes charts on websites. Pet., 80 (citing EX1009, 9, 123-24, 143-47). The Board overlooked this evidence, which shows how QlikX is an “[o]bject-based QlikView OCX for integration into other products or *into web sites.*” EX1008, 1320 (emphasis added); *see also* Pet., 80-81. Petitioner also cited HTML code for how a web developer

would use connector code to publish QlikView charts into different websites. Pet., 82-83 (citing EX1009, 130, 135-36, 148-49). The Board did not address QlikX or this HTML code in its decision.

The Board also erred in its agreement with Patent Owner that “web pages viewable by the QlikView object clients are built on the QlikView Server, reside on the QlikView server, and run on the QlikView server.” *See* DI, 44. The Petition cited the interface for publishing QlikView charts. Pet., 78 (citing EX1009, 134; EX1008, 807). The interface shows that Qlikview “generate[s] html pages for displaying the current document on QlikView Server” *but also* that “[t]he generated pages will be saved in a location of your choice in separate folders for each client type, ready for publication *on your web server*.” EX1009, 134 (emphasis added). Publishing a chart on “*your web server*” shows that the charts are published to external servers as well. “This gives the web designer the freedom of placing single objects in arbitrary places *on a web site* and integrating them with text and other HTML code.” EX1009, 7-8 (emphasis added); *see also* Pet., 82-83.

The Board also erred in its finding that the QlikView Manual examples do not display a chart on “*a second website*.” For example, the QlikView Manuals disclose an interactive chart published at: “[http://www.qliktech.com/vinguiden\[,\]](http://www.qliktech.com/vinguiden[,])” under a different domain than the first website used to generate the chart, which used the “<http://localhost>” domain. Pet., 85 (citing EX1009, 133); *see also* Pet., 71-

72. Petitioner also cited EX1009, 149 (Pet., 80), which shows another example of a chart on a second website (“<http://extra.qliktech.ideon.se/qlikx/MyTest.htm>.”). The Board also overlooked other examples, including variations of a Wine Selector Tool shown in Exhibits 1024-1027, which Petitioner cited to show how QlikView was well known. Pet., 7. These examples show real-world QlikView objects published on a website (e.g., <http://www.qliktech.com/vinguiden>) different than the website used to generate the chart. *See* EX1024-EX1027.

In sum, the Board erred in its factual finding about QlikView’s ability to display interactive charts on a second website. The Board must consider “the entirety of the record,” so the Director should allow the parties to develop a record for trial. *Aqua Prods., Inc. v. Matal*, 872 F.3d 1290, 1325 (Fed. Cir. 2017).

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Director grant this request for Director Review and reverse the Board’s institution decision.

Respectfully submitted,

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

I certify that the above-captioned **PETITIONER TABLEAU SOFTWARE, LLC'S REQUEST FOR DIRECTOR REVIEW OF INSTITUTION DECISION** was served in its entirety on June 13, 2025, upon the following parties via electronic mail:

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