UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TABLEAU SOFTWARE, LLC
Petitioner

v.

ICHARTS LLC
Patent Owner

Case IPR2024-01389
U.S. Patent No. 8,520,000

PETITIONER'S REQUEST FOR DIRECTOR REVIEW OF INSTITUTION DECISION

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

TABLE OF CONTENTS

I. INTRODUCTION 1
II. BACKGROUND 2
III. STANDARDS FOR DIRECTOR REVIEW 3
IV. ARGUMENT 3
A. The dissent, which highlights that the Petition sufficiently demonstrated a reasonable likelihood of prevailing with respect to at least claim 1 of the '000 patent, warrants Director Review 3
B. The Majority erred in finding that the Rostoker/Strong grounds do not establish a reasonable likelihood of success. 6
1. The Majority erred in its analysis of the "*interactive chart*" element. 6
a. The Majority erred as a matter of law by improperly construing "*interactive chart*." 6
b. The Majority erred in finding that Rostoker does not disclose an "*interactive chart*" despite having several interactive features listed in the '000 patent. 7
c. The Board erred by finding that the Petition lacked sufficient motivation to combine Rostoker and Jou. 9
2. The Majority erred by conflating motivation to combine and analogous art with respect to Rostoker and Strong. 11
3. The Majority erred by finding that Rostoker does not disclose the claimed "*second website*." 12
C. The Board erred in its factual findings regarding QlikView. 13
V. CONCLUSION 15

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 9, "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 '000 patent. The dissent also correctly determined that the alleged deficiencies in the Petition are at worst "factual issue[s] best resolved during trial." DI, 50. 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, 13. **Second**, the Majority made erroneous findings of fact and law with respect to its interpretation of Rostoker and Strong. **Third**, the Majority overlooked 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/Strong, 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, 50; *In re NuVasive, Inc.*, 842 F.3d 1376, 1382 (Fed. Cir. 2016) (cleaned up).

II. BACKGROUND

The '000 patent is directed to generating interactive charts. *See* EX1001, Abstract. The interactive charts may be generated on an online portal where users customize interactive chart features and embed the charts on other websites. *See id.* Claim 1 of the '000 patent requires, *inter alia*:

> receiving a selection, on a first website, of at least one interactive chart from a plurality of interactive charts; and
>
> displaying, in response to the selection the at least one interactive chart embedded in a chart box on a second website, wherein the chart box is a web widget …

The Petition's obviousness grounds rely on either Rostoker or QlikView as the primary reference. Pet., 14. Rostoker discloses a compilation of modifiable applications and components for business applications. *See* Pet., 14. QlikView

discloses a system for creating and publishing interactive charts. *Id.*, 73-76.

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 Process[1], § 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 '000 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 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

[1] https://www.uspto.gov/patents/ptab/decisions/director-review-process.

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, 57. The dissent also found that the alleged deficiencies in the Petition are at worst "factual issue[s] best resolved during trial." DI, 50. The dissent then methodically steps through each factual dispute with respect to the teachings of Rostoker, 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, 13)—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 SOP, 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, 49-54.

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 '000 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, 50. 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/Strong 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 claim, as well as the motivation to combine for Rostoker and Strong. If the Director agrees the Board erred for these elements and the motivation to combine, 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 '000 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, 13, 20. These features are explicitly disclosed in the '000 patent as

interactive features. *See, e.g.*, EX1001, 9:13-14 ("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 interactive features such as "selectable," "scroll buttons," and "data animations." DI, 13. These conflicts should again be resolved in favor of the petitioner, as the dissent determined, so that an adequate evidentiary basis can be developed during trial. DI, 51; *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 '000 patent.

The '000 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, 9:13-16. 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 from table to chart views. Pet., 27-31.

Rostoker's interactive chart features are substantially similar to those in the '000 patent. 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 '000 patent. *Id.*, 29-30. 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 '000 patent's "data hide/share feature." *Id.*, 31.

As the dissent found, the Majority overlooked Rostoker's disclosure by only considering Rostoker's interactions occurring during chart configuration. DI, 50. The Petition cites Rostoker's Figure 57 as an example of what can be generated by the chart configuration stage. Pet., 28-29. 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, 14-15, 50-51. 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.*, 50; *see also* Pet., 28-29 (citing EX1003, ¶¶110-14, 182-83). Furthermore, that Figure 57 does not show all possible interactions is irrelevant—it is merely an example of a generated chart. *See id.*, 50. 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 Board erred by finding that the Petition lacked sufficient motivation to combine Rostoker and Jou.

The Petition asserts that claims 1-4 would have been obvious over Rostoker, Strong, and Jou because Jou also discloses the claimed interactive features. Pet., 61. Jou discloses "visualizing business data" using a "variety of … charts, such as line, bar, surface, pie, swatch … charts[.]" *Id.*, 61 (citing EX1007, ¶¶10, 14). Like the '000 patent, Jou's visualizations support data hide, drill-down and zoom features. *See id.*, 62-63 (citing EX1007, ¶¶38-41, 44, 49). The Majority found no motivation to combine Rostoker and Jou, alleging Petitioner lacks evidence that a skilled artisan would have incorporated Jou's interactive features into Rostoker's published charts. *See* DI, 33-34. 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 POSA "would have been motivated to combine references is a question of fact.") (cleaned up).

The Majority erred in determining that Petitioner's expert's testimony on the combination of Rostoker and Jou is unsupported by the citations to Jou. *See* DI, 34 (citing EX1003, ¶253). Rostoker is concerned with business application development and a skilled artisan would have sought additional ways to "better visualize and explore business data." Pet., 64 (citing EX1005, ¶4; EX1003, ¶253).

Similarly, Jou states that "[t]he vast amounts of … collected business data would be useless without software tools for its analysis," and, therefore, "tools for visualizing business data are of particular importance." *Id.*, 63-64 (citing EX1007, ¶¶8-9; EX1003, ¶253). 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 real-time dashboards. *Id.*, 62 (citing EX1003, ¶253). Thus, 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 teaches user interaction during chart configuration. *See* DI, 33-34. That Rostoker's discloses interactive features when *configuring* charts 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 visualization of "vast amounts of complex information" through "data exploration." Pet., 63-64; EX1003, ¶253.

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., 64. 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 by conflating motivation to combine and analogous art with respect to Rostoker and Strong.

The Majority found that a skilled artisan would not modify Rostoker with Strong to automatically publish an application via drag and drop because: (1) Rostoker does not disclose synchronizing applications; and (2) Rostoker and Strong are concerned with different object types. *See id.*, 30. As noted in the dissent, this finding fails to consider the full scope of analogous art. *See id.*, 55.

A prior art reference under § 103 must be analogous. *Circuit Check Inc. v. QXQ Inc.*, 795 F.3d 1331, 1335 (Fed. Cir. 2015) Analogous prior art exists where: (1) the art is from the same field of endeavor regardless of the problem; or (2) the reference is in a different field of endeavor, but is reasonably pertinent to the particular problem confronted by the inventor. *Sanofi-Aventis Deutschland Gmbh v. Mylan Pharms. Inc.*, 66 F.4th 1373, 1377 (Fed. Cir. 2023).

The dissent notes, "Patent Owner essentially argues under the field-of-endeavor test for analogous prior art…. [b]ut … Strong is at least reasonably pertinent to a particular problem with which the inventor is involved: synchronization." DI, 55. Automatically refreshing and synchronizing data across

charts is a problem. *Id.*, 55-56. As the dissent found: "Applying Strong's techniques to Rostoker's application publishing process would enable applications to be automatically published and deployed" via drag and drop. *See id.*, 56 (citing Pet., 55). The dissent correctly noted, "[a]t this stage, the weight of the evidence indicates that the analogous-art issue is best answered during trial." DI, 56 (*citing Sanofi-Aventis* ("'A petitioner is not required to anticipate and raise analogous art arguments in its petition; instead a petitioner can use its reply to respond to' analogous art arguments raised by Patent Owner.")).The Majority's finding with respect to Rostoker and Strong is yet another material error.

3. The Majority erred by finding that Rostoker does not disclose the claimed "*second website*."

As noted in 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, 51. Rostoker discloses the "*second website*" because: (1) a business obtains content from a content provider's website (e.g., the "*first website*"); and (2) the business deploys that content on its local network at the "*second website*." *See, e.g.*, EX1005, ¶¶18, 27, 29, 56.

Rostoker discloses a content provider sending modifiable applications and components to a business for publication on the business's network. Pet., 14-15, 19-20, 37, 41. In the Majority's view, Rostoker fails to disclose the "*second website*" because it does not show application development on one website and

deployment on another. DI, 24. The Majority points to Rostoker's figures showing the application in development and deployment at the same URL. *Id.*, 24-25.

The dissent notes this is "inconsistent with how Rostoker's vendor-business interaction works" because the business obtains the content provider content and deploys it on its local network. *Id.*, 53; *see also* Pet., 37. That Rostoker's figures list the same URL is merely an example and not limiting as the Majority alleges. The Majority's finding here is yet another material error.

In combination with the other errors in Sections IV.B.1 and IV.B.2, 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 ground (Ground 4).

The Board found that "QlikView Manuals do not teach selecting a chart on a first website and displaying the chart on a second website different from the first." DI, 46. The parties do not dispute that QlikView enables a user to select a chart on a first website. POPR, 63-82. 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 displayed on a second website different from the first. As the Petition explained, "[i]n response

to the selection of an interactive chart (see [1.A]), QlikView displays the chart embedded in a chart box on a second website." Pet., 75. Petitioner cited, among other things, the QlixX client, which publishes charts on websites. Pet., 75-76 (citing EX1009, 9, 123, 144). 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., 75-76. Petitioner also cited HTML code for how a developer would use connector code to publish QlikView charts into different websites. Pet., 77-78 (citing EX1009, 130, 135-36, 146-49. The Board did not address QlikX or this HTML code in its decision.

The Board also erred in its agreement with Patent Owner that "the QlikView Manuals are for interacting with the QlikView Server and for viewing documents that reside on the QlikView Server." *See* DI, 44. The Petition cited the interface for publishing QlikView charts. Pet., 75 (citing EX1009, 134, 157; 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., 77-78.

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[,]" under a different domain than the first website used to generate the chart, which used the "http://localhost" domain. Pet., 76 (citing EX1009, 133); *see also* Pet., 74. Petitioner also cited EX1009, 149 (Pet., 77), 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 EX1024-EX1027, which Petitioner cited to show how QlikView was well known. Pet., 11. 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 trial record. *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 decision in the DI.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX PLLC

/Ryan C. Richardson, Reg. No. 67,254/

Ryan C. Richardson
Registration No. 67,254
Counsel for Petitioner Tableau Software, LLC

Date: June 13, 2025

1101 K Street, NW, 10th Floor
Washington, DC 20005
(202) 371-2600

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:

Lester J. Vincent (Lead Counsel) Lester.Vincent@wbd-us.com
Fabio E. Marino (Back-up Counsel) Fabio.Marino@wbd-us.com
Steve M. Levitan (Back-up Counsel) Steve.Levitan@wbd-us.com
Christian E. Mammen (Back-up Counsel) Chris.Mammen@wbd-us.com
Carrie Richey (Back-up Counsel) Carrie.Richey@wbd-us.com
iChartsWBDService@wbd-us.com
WOMBLE BOND DICKINSON (US) LLP

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX PLLC

/Ryan C. Richardson, Reg. No. 67,254/

Ryan C. Richardson
Registration No. 67,254
Counsel for Petitioner Tableau Software, LLC

Date: June 13, 2025

1101 K Street, NW, 10th Floor
Washington, DC 20005
(202) 371-2600

24911742