

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TABLEAU SOFTWARE, LLC

Petitioner,

v.

iCHARTS LLC,

Patent Owner.

Case No. IPR2024-01389

U.S. Patent No. 8,520,000

AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST

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I. INTRODUCTION

Patent Owner iCharts LLC (“Patent Owner”) respectfully requests that the Director deny the Request by Petitioner Tableau Software, LLC (“Petitioner”) for Director Review of the Decision on Institution (Paper 9, “DI”) denying institution of an *inter partes* review of U.S. Patent No. 8,520,000 (’000 patent).

II. ARGUMENTS

Petitioner has not met the burden of showing that any of the four grounds for Director Review apply here. Reversing the Decision on Institution and moving forward with a trial would be improper and a waste of the Board’s resources.

A. The Dissent Does Not Warrant Director Review

Petitioner relies heavily on the fact that there was a dissenting opinion in the Institution Decision. But decisions of the Board are not always unanimous, and Petitioner is misguided in suggesting reversal of the institution decision because of a disagreement among the judges in the panel concerning the facts or the evidence presented. *See AOL Inc. and Cloudera, Inc. v. Coho Licensing LLC*, IPR2014-00771, Paper No. 12, p. 3 (P.T.A.B. March 24, 2015) (unpersuasive for Petitioner to suggest expansion of panel merely because of disagreement among judges in panel). Using a dissent as a springboard to reverse the DI would be a bad precedent as a matter of law and policy, giving dissenting opinions undue power to reverse majority opinions, thereby undermining the entire decision-making process. In any event, the

Dissent does not demonstrate a reasonable likelihood that Petitioner would prevail and is misguided in concluding that there is a factual issue best resolved at trial.

The Majority decision is well reasoned and does not contain error. Walking through each of the conclusions of the Dissent, one can find corresponding well-reasoned and fully supported conclusions by the Majority that are not erroneous.

Petitioner highlights the Dissent's disagreement with the Majority's view that the chart depicted in Figure 57 of Rostoker does not appear to have either Period or Organization as parameters that might be changed, the Dissent stating that "this is a factual issue best resolved at trial." DI, 50. Petitioner and the Dissent are mistaken, however, because the Majority notes, among other things, that Figure 57 shows the new or modified application after execution and that Rostoker does not describe the function of the "Period" or "Organization" menus. DI, 15. The Majority followed the pertinent test under 35 U.S.C. § 314(a) as whether there was a reasonable likelihood that the petitioner would prevail and correctly concluded that "Petitioner's evidence as to Figure 57 is insufficient to show a reasonable likelihood of prevailing." DI, 15. Petitioner's arguments and evidence fell short for what is required under Section 314(a).

It strains credulity for Petitioner to suggest that Petitioner's misguided failed argument regarding Figure 57 presents important issues of law and policy with respect to how pre-institution factual disputes should be handled by the Board in

future proceedings. Rostoker simply does not support Petitioner's argument and Petitioner fell short under the reasonable likelihood test.

The Majority was not persuaded by the Dissent, and neither should the Director.

B. The Majority Did Not Commit Error Regarding Rostoker/Strong

Petitioner improperly blames its failure to show a reasonable likelihood of success based on Rostoker on the Majority.

Petitioner's argument regarding claim construction is off base. Petitioner construed the terms of the claims according to their ordinary and customary meanings as understood by a person of ordinary skill in the art. Petition, p.6. Regarding scroll buttons and toggling, the Majority did not improperly construe "interactive chart" or do implicit claim construction. A static chart is not an interactive chart. Paper 7, p. 41. The Majority stated that "Petitioner invites us to speculate as to the behavior of features that are depicted in Figure 53 but otherwise not described in any meaningful detail by Rostoker," concluding that this is insufficient to show a reasonable likelihood of prevailing. DI, 13. The Majority stated that "Petitioner has not shown sufficiently that Figures 71-74 show the claimed interactivity." DI, 20.

Petitioner's allegation regarding conflicting testimony is misinformed. The Majority referred to the testimony as "conclusory," not "conflicting." DI, 13. This

left the Majority to “speculate as to the behavior of features that are depicted in Figure 53 but otherwise are not described in any meaningful detail by Rostoker,” DI, 13, which falls short of Petitioner’s burden at this stage. The Majority concluded that this is insufficient to show a reasonable likelihood of prevailing. DI, 13.

Petitioner is likewise off base regarding allegations of interactive features. The Majority was correct in not being persuaded that Petitioner has shown sufficiently that Rostoker and Strong teach or suggest claim limitation [1A]. DI, 20.

The Majority did not commit error in stating that “we are not persuaded that Petitioner is likely to show that a skilled artisan would have incorporated Jou’s interactive features into the system of Rostoker-Strong to make Rostoker’s published charts interactive. DI, 34. The Majority correctly noted that the Petitioner did not explain persuasively why a skilled artisan, per the teachings of Jou, would have made Rostoker’s published charts interactive. DI, 34. This was a failure by Petitioner, not an erroneous finding of material fact.

With respect to the claim limitation regarding dragging and dropping, the Dissent is misguided in concluding that the weight of evidence indicates an analogous art issue best answered during trial. The Majority was correct in not being persuaded that Petitioner has shown sufficiently that a skilled artisan would have modified Rostoker per the teachings of Strong to arrive at claim limitation [1F]. DI, 31.

The Majority set forth a correct, in-depth analysis as to why Petitioner failed in arguing that Rostoker discloses the “second website” limitation. DI, 20-27. The Majority found Rostoker’s teachings insufficient. E.g., DI 21-22 (“Petitioner’s citations do not show that application 135 is deployed to, stored at, or served by a server at business 108.”). Petitioner’s attempt to backfill with expert testimony, DI 21-24, was not supported by the evidence relied upon in Rostoker. DI 24-26. Finally, Petitioner’s mere design choice argument lacked evidence of a finite number of predictable choices. DI 25-26.

C. The Board Did Not Err in its Findings Regarding QlikView

The Majority did not overlook evidence or commit error. The Majority thoroughly reviewed the QlikView Manuals (DI, 37-47), concluding in sum at page 46 that Petitioner did not demonstrate a reasonable likelihood of success.

III. CONCLUSION

For these reasons, Patent Owner respectfully requests that the Director not grant review. The Institution Decision should not be reversed.

Dated: June 24, 2025

Respectfully submitted,

/Lester J. Vincent/
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Lead Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned certifies that on June 24, 2025, a true and correct copy of the foregoing was served on Counsel for Petitioner via filing through the P-TACTS System, as well as by delivering a copy via electronic mail to the following:

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