

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAP AMERICA, INC.,
Petitioner,

v.

CYANDIA, INC.,
Patent Owner.

Case IPR2024-01433
U.S. Patent No. 8,751,948

**PATENT OWNER'S PRELIMINARY RESPONSE
UNDER 37 C.F.R. § 42.107**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF CYANDIA AND THE '948 PATENT	3
A.	Cyandia.....	3
B.	The '948 Patent	4
1.	The Familial Relationships Between the '948 Patent and Its Family Members	4
2.	The Disclosures of the '948 Patent and its Family Members.....	4
C.	The Relevant Prosecution History of the '948 Patent.....	8
III.	THE BOARD SHOULD DENY INSTITUTION UNDER 35 U.S.C. § 314(A).....	9
A.	<i>Fintiv</i> Factor 1: There is Little to no Likelihood that a Stay Would be Granted in District Court	9
B.	<i>Fintiv</i> Factor 2: The District Court’s Scheduled Trial Date is Roughly Six Months Before the Expected Date of Any Final Written Decision.....	10
C.	<i>Fintiv</i> Factor 3: Significant Investment in the Parallel Litigation Will Have Occurred by the Time the Board’s Institution Decision is Due	11
D.	<i>Fintiv</i> Factor 4: There is Substantial Overlap between the IPR Proceeding and the Parallel Litigation	12
E.	<i>Fintiv</i> Factor 5: Petitioner is the Defendant in the Parallel Proceeding	13

F.	<i>Fintiv</i> Factor 6: The Petition is Without Merit and SAP has Abused the Process.....	13
IV.	LEVEL OF ORDINARY SKILL IN THE ART	14
V.	CLAIM CONSTRUCTION	14
A.	“To Provide [an] Alert on [an] External Device” (Independent Claims 1, 35, and 36)	14
B.	“Information”	17
VI.	THE BOARD SHOULD DENY INSTITUTION BECAUSE THE PCT PUBLICATION IS NOT PRIOR ART.....	20
A.	The 2009 Parent Provides Written Description Support For the Term “Provide [An] Alert”	21
1.	The 2009 Parent Discloses Providing an Alert on an External Device.....	22
2.	Petitioner Misapplies Federal Circuit Precedent	25
B.	The 2009 Parent Provides Written Description Support For the “Information” Terms	31
C.	The 2009 Parent Provides Written Description Support for Elements [1.10] F) (“Determining a Notification Method”) and [1.11] G) (“Generating Notification Data”)	32
1.	Element [1.10] F) (“Determining a Notification Method”).....	32
2.	Element [1.11] G) (“Generating Notification Data”)	37
D.	The 2009 Parent Provides Written Description Support For “the at Least One External Device” (Elements [1.10] F, [1.11] G), and [1.12] H)	39
1.	“At Least One or More External Devices” Means One or More Devices, Not Each Device.....	40

2. “Session Data” Indicates That “the at Least One External Device” Provided the Alert Is/Are the User’s Active Device(s) 42

E. All Other Limitations in the Challenged Claims Find Written Description Support in the 2009 Parent 45

VII. THE CHALLENGED CLAIMS ARE PATENTABLE OVER THE COMBINATION OF THE PCT PUBLICATION AND AUSTIN-LANE.....49

VIII. CONCLUSION.....51

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>3Shape A/S v. Align Tech., Inc.</i> , No. IPR2021-01120, Paper 15 (P.T.A.B. Jan. 11, 2022)	27, 28
<i>Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH</i> , No. IPR2019-01469, Paper 6 (P.T.A.B. Feb. 13, 2020).....	47
<i>Agilent Techs., Inc. v. Bio-Rad Labs. Inc.</i> , No. IPR2019-00266, Paper 10 (P.T.A.B. Oct. 23, 2019)	26
<i>Ajinomoto Co. v. Int’l Trade Comm’n</i> , 932 F.3d 1342 (Fed. Cir. 2019)	26
<i>Apple Inc. v. Fintiv, Inc.</i> , No. IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020)	passim
<i>Apple, Inc. v. Seven Networks, LLC</i> , No. IPR2020-00425, Paper 10 (P.T.A.B. Sept. 1, 2020).....	47
<i>Bicon, Inc. v. Straumann Co.</i> , 441 F.3d 945 (Fed. Cir. 2006)	41
<i>Bos. Sci. Corp. v. Johnson & Johnson</i> , 647 F.3d 1353 (Fed. Cir. 2011)	23, 26
<i>Cordis Corp. v. Medtronic Ave, Inc.</i> , 339 F.3d 1352 (Fed. Cir. 2003)	25, 29
<i>D Three Enters., LLC v. SunModo Corp.</i> , 890 F.3d 1042 (Fed. Cir. 2018)	30
<i>eClinicalWorks, LLC v. Decapolis LLC</i> , No. IPR2022-00229, Paper 10 (P.T.A.B. Apr. 13, 2022)	11
<i>Hologic, Inc. v. Smith & Nephew, Inc.</i> , 884 F.3d 1357 (Fed. Cir. 2018)	22, 26, 27

<i>Immersion Sys. LLC v. Midas Green Techs., LLC</i> , No. IPR2021-01176, Paper 16 (P.T.A.B. Jan. 6, 2022)	11
<i>LizardTech, Inc. v. Earth Res. Mapping, Inc.</i> , 424 F.3d 1336 (Fed. Cir. 2005)	26
<i>Netlist, Inc. v. Micron Tech., Inc.</i> , No. 2:22-cv-00294-JRG, Dkt. 72 (E.D. Tex. Mar. 12, 2024)	9
<i>Netlist, Inc. v. Samsung Elecs. Co.</i> , No. 2:22-cv-00293-JRG, Dkt. 180 (E.D. Tex. Oct. 17, 2023)	9
<i>Netlist, Inc. v. Samsung Elecs. Co.</i> , No. 2:22-cv-00293-JRG, Dkt. 689 (E.D. Tex. Mar. 11, 2024)	10
<i>Nissan N. Am. v. Diamond Coating Techs., LLC</i> , No. IPR2014-01546, Paper 49 (P.T.A.B. Apr. 20, 2016)	15
<i>NXP USA, Inc. v. Impinj, Inc.</i> , No. IPR2021-01556, Paper 10 (P.T.A.B. Apr. 21, 2022)	10
<i>Pandrol USA, LP v. Airboss Ry. Prods., Inc.</i> , 424 F.3d 1161 (Fed. Cir. 2005)	23
<i>PNC Bank, N.A. v. United Servs. Auto. Ass'n</i> , No. IPR2021-01071, Paper 21 (P.T.A.B. Jan. 20, 2022)	27
<i>PowerOasis, Inc., PowerOasis Networks, LLC v. T-Mobile USA, Inc.</i> , No. CIV. 05-CV-42-PB, 2006 WL 753206 (D.N.H. Mar. 22, 2006).....	29, 30
<i>PowerOasis, Inc. v. T-Mobile USA, Inc.</i> , 522 F.3d 1299 (Fed. Cir. 2008)	28, 29, 37
<i>Rexnord Corp. v. Laitram Corp.</i> , 274 F.3d 1336 (Fed. Cir. 2001)	25
<i>Samsung Display Co. v. Pictvia Displays Int'l Ltd.</i> , No. IPR2024-00855, Paper 12 (P.T.A.B. Nov. 19, 2024).....	10
<i>Samsung Elecs. Co. v. Empire Tech. Dev. LLC</i> , No. IPR2024-00896, Paper 15 (P.T.A.B. Dec. 13, 2024)	12

SuperGuide Corp. v. DirectTV Enters., Inc.,
358 F.3d 870 (Fed. Cir. 2004) 15, 33

Tech. Licensing Corp. v. Videotek, Inc.,
545 F.3d 1316 (Fed. Cir. 2008) 45

ULF Bamberg v. Dalvey,
815 F.3d 793 (Fed. Cir. 2016) 16

Yeda Rsch. & Dev. Co. v. Abbott GmbH & Co. KG,
837 F.3d 1341 (Fed. Cir. 2016) 24, 38

Statutes

35 U.S.C. § 112 22

35 U.S.C. § 314(a) 9, 13

Other Authorities

37 C.F.R. § 42.22(a)(2) 50

37 C.F.R. § 42.104(b)(4).....50

PATENT OWNER'S EXHIBIT LIST

Exhibit	Description
2001	Petition for <i>Inter Partes</i> Review of U.S. Patent No. 8,751,948, <i>SAP America, Inc. v. Cyandia, Inc.</i> , No. IPR2024-01432, Paper 1 (P.T.A.B. Sept. 20, 2024)
2002	Microsoft Computer Dictionary, Pages 23, 271, 475 (5th Ed. 2002)
2003	A. Sahami, et al., <i>Rich Tactile Output on Mobile Devices</i> , Aml 2008, 210-21 (2008)
2004	I. Oakley, et al., <i>Did you feel something? Distracter tasks and the recognition of vibrotactile cues</i> , <i>Interacting with Computers</i> 20, 354–363 (2008)
2005	T. S. Ueng, et al., <i>SMS ALERT SYSTEM AT NSRRC</i> , IEEE Particle Accelerator Conference (PAC) (2007)
2006	Microsoft Learn webpage – “Application Gateway TCP/TLS proxy overview (Preview),” available at https://learn.microsoft.com/en-us/azure/application-gateway/tcp-tls-proxy-overview , dated Sept. 6, 2024
2007	IBM Dictionary of Computing, Pages 615-616 (10th Ed. 1993)
2008	IBM webpage, “Session data” available at https://www.ibm.com/docs/en/informix-servers/14.10?topic=memory-session-data , dated March 15, 2023
2009	Declaration of James Hannah in Support of Patent Owner's Preliminary Response
2010	Order, <i>Netlist, Inc. v. Micron Technology, Inc., et al.</i> , Case No. 2:22-cv-00294-JRG, Dkt. No. 72 (E.D. Tex. Mar. 12, 2024)

Exhibit	Description
2011	Order, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Semiconductor Inc.</i> , Case No. 2:22-cv-00293-JRG, Dkt. No. 180 (E.D. Tex. Oct. 17, 2023)
2012	Order, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Semiconductor Inc.</i> , Case No. 2:22-cv-00293-JRG, Dkt. No. 689 (E.D. Tex. Mar. 11, 2024)
2013	Excerpt from U.S. District Court – National Judicial Caseload Profile for the Eastern District of Texas, available at https://www.uscourts.gov/sites/default/files/2024-12/fcms_na_distprofile0930.2024.pdf
2014	USPTO's June 21, 2022 Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation
2015	Docket Control Order, <i>Cyandia, Inc. v. SAP America, Inc. and SAP SE</i> , Case No. 2:24-cv-00096-JRG, Dkt. No. 32 (E.D. Tex. June 17, 2024)

I. INTRODUCTION

The Board should deny the Petition¹ because the PCT publication used as the primary reference for its only obviousness ground does not qualify as prior art. The '948 Patent properly claims priority to U.S. Patent Application No. 12/465,331 (Ex. 1106, the "2009 parent"), filed May 2009, which provides written description support for all Challenged Claims. This priority benefit disqualifies the PCT publication as prior art. See Paper 1 ("Pet.") at 32. Given the lack of compelling merits, the fact that trial is scheduled to conclude in the co-pending litigation 21.9 months before a Final Written Decision is due in this case, and Petitioner's failure to supply a *Sotera*-style stipulation, Cyandia respectfully requests that the Board decline to institute trial pursuant to the *Fintiv* framework.

Petitioner's written description challenge is based on the faulty premise that the 2009 parent does not disclose determining a notification method for alerting one or more user device(s). In fact, the 2009 parent discloses determining which of the user's devices are active and alerts that move with the user as they go from device to device or location to location. Ignoring this plain disclosure, Petitioner makes the

¹ The Petition ground relies on the PCT publication (Ex. 1104) and Austin-Lane (Ex. 1105) in challenging claims 1-7, 10-11, 13, 18-19, 23, 29, and 35-36 (the "Challenged Claims") of U.S. Patent No. 8,751,948 (the "'948 Patent").

legally untenable argument that the terms “provide [an] alert” and “information” mean something different in the 2009 parent than what was meant in the '948 Patent. Petitioner is wrong because each term is used consistently with its plain and ordinary meaning, which did not change in the two years between the two applications.

Petitioner also incorrectly argues that “determining a notification method” is not supported by the 2009 parent because it does not disclose selecting the “best” notification method, as disclosed in the '948 Patent. However, Petitioner self-servingly reads this particular embodiment into the claim term for purposes of its written description challenge while applying the correct construction of the term (*i.e.* determining a “delivery mechanism”) in its obviousness analysis. Pet. at 53.

Even if the PCT publication is determined to be prior art, the '948 Patent is patentable over the PCT-Austin-Lane combination because it does not disclose “determining a notification method” under Petitioner’s “best” notification method construction. Because Petitioner takes inconsistent claim interpretation positions, it does not account for this requirement in its obviousness analysis. Rather, Petitioner’s evidence and explanation for Austin-Lane is predicated on the broader interpretation of a “delivery mechanism.” *See id.* Simply put, Petitioner loses under either interpretation, because either the 2009 parent discloses the notification elements under the broader interpretation for which Petitioner concedes written

description support, or Austin-Lane does not disclose the narrower “best” notification method interpretation.

II. OVERVIEW OF CYANDIA AND THE '948 PATENT

A. Cyandia

Cyandia was founded on the idea of helping users manage and display information coming from an increasing number of different applications. Rather than force the user to chase down relevant information, the inventors conceived of a platform built on the premise that important information should be curated and served directly to the user. Their solution involved a novel system architecture that improved the management and utilization of the users' computers and also of the servers hosting applications and users' secure information.

After investing significant time and resources into research and development, Cyandia pioneered using an architecture that included a matrix of channels that provides a “cockpit” type view of the information important to the particular user that gives intelligent insights into a variety of different applications relevant to the user. These channels can be authorized to display secure information tailored to that particular user without needing them to open up individual applications. Cyandia worked on a suite of technologies related to this concept, including the '948 Patent at issue here.

B. The '948 Patent

1. The Familial Relationships Between the '948 Patent and Its Family Members

The '948 Patent is a continuation-in-part (“CIP”) of the 2009 parent, which was filed on May 13, 2009, and claims priority to a provisional application filed in May 2008 (Ex. 1108, the “2008 provisional”). See '948 Patent at Cover; Ex. 1106 at ¶ [0001]. The PCT publication likewise claims priority to the 2008 provisional and shares the same disclosure as the 2009 parent. See Ex. 1104 at ¶ [0001]; Pet. at 32 (asserting that the PCT publication is identical to the 2009 parent, “containing the same drawings and specification.”). The disclosure of the 2009 parent provides written description support for all Challenged Claims and, therefore, entitles the '948 Patent to a May 2009 effective filing date.

2. The Disclosures of the '948 Patent and its Family Members

The '948 Patent describes instantiating a channel grid framework, which is an interactive matrix of channels that enable a user to receive and interact with secure user-centric information, and providing alerts to the user's device(s) upon detected changes to secure user-centric information. '948 Patent at Abstract. The '948 Patent (and the 2009 parent) disclose (1) examples of alerts used to notify a user of changes and (2) delivery mechanisms for providing the alert to the user's device(s). Detailed examples of alerts are present in the applications to which the '948 Patent claims priority:

The assignment of information priority, ***event alerts*** or triggers, and complex actions that can result from the user's interaction with a channel may be built upon and exploited by developers.

Ex. 1106 at ¶ [0023] (emphasis added); *see also id.* at ¶ [0032], Claim 9.

If an established condition is met, the channel alert server 211 may notify the identity management server 208 to confirm the subscriber of the event, determine the active devices of the subscriber, and then pass through the web services gateway 207 and the channel grid framework 201 ***to provide a visual or auditory alert in the channel 202.***

Id. at ¶ [0039] (emphasis added).

The 2009 parent also disclose determining a notification method (delivery mechanism),² which includes determining which user device(s) to send the alert to, how to send the alert, and how to present the alert:

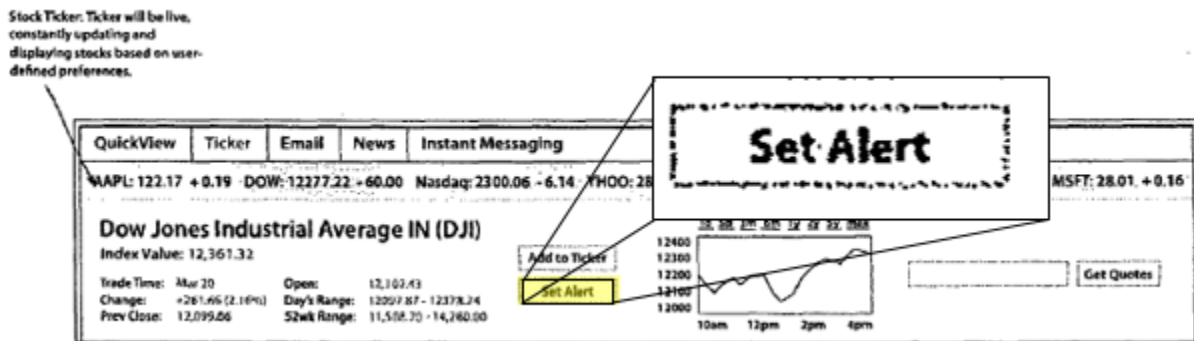
If an established condition is met, the channel alert server 211 may notify the identity management server 208 to confirm the subscriber of the event, ***determine the active devices of the subscriber, and then pass through the web services gateway 207 and the channel grid framework 201 to provide a visual or auditory alert in the channel 202.*** Likewise, the alert may trigger additional actions affecting the channel 202 and the underlying computer application. For example, a

² In Petitioner's obviousness analysis, Petitioner interprets "notification method" to mean "delivery mechanism." Pet. at 53.

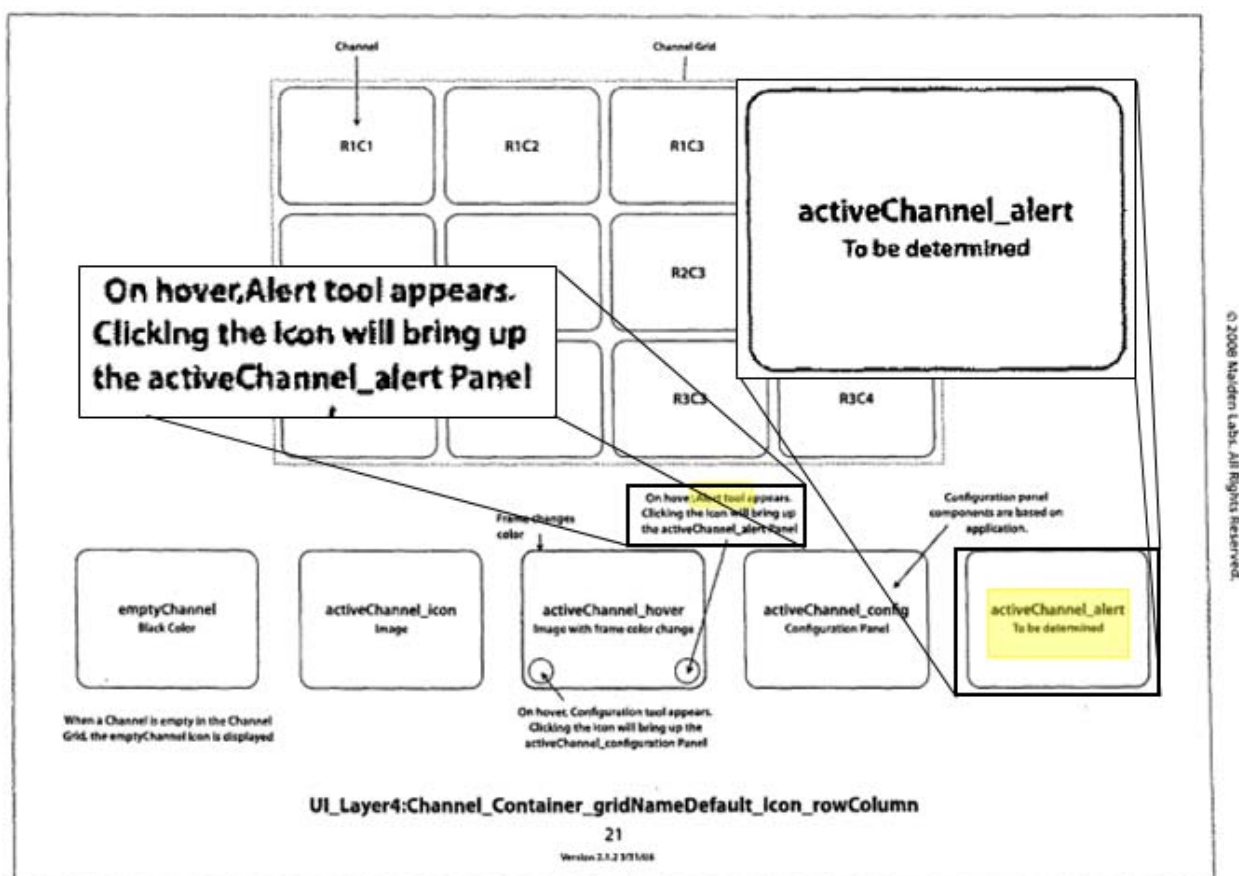
channel may be established to monitor an alarm condition of a business or residence. If a condition at the business or residence triggers an alarm, an additional alert action such as notifying a law enforcement agency or a protective services group may be triggered. **The alert can appear as defined on other platforms such as a mobile device, a television (set top box), a Blu-ray player, or other devices.**

Ex. 1106 at ¶ [0039] (emphasis added); Ex. 1104 at ¶ [0039] (same). Therefore—as disclosed in the 2008 provisional—[a]lerts can be configured to take with you – from device to device, location to location.” 2008 provisional at 25, 29. The 2009 parent further describes how to determine which device(s) should receive the alert. Ex. 1106 at ¶ [0021] (“Information may be delivered to a user based on the user’s identity as established by the system when the user’s session is established . . . [and] [b]ecause the user is known and authenticated, preferences and rights to certain information types can be defined and managed for the user.”).

The 2008 provisional includes additional descriptions of alerts, including several figures illustrating exemplary embodiments for sending and displaying alerts. For example, the 2008 provisional states that the system has the “[a]bility to monitor select data and send alerts to send email, SMS, RSS, or kick off and application event/process/workflow.” 2008 provisional at 23.



Id. at 45 (annotated).



Id. at 50 (annotated); *see also id.* at 12 (“These alerts can also be made to appear, through a programming interface, through other media presentation devices such as digital high definition television or audio signals.”).

As shown, the alert examples and the specific implementation for determining delivery mechanisms were fully disclosed in the 2009 parent.

C. The Relevant Prosecution History of the '948 Patent

During prosecution of the '948 Patent, the Examiner determined that the application was entitled to claim priority at least to the 2009 parent.³ See Ex. 1102 at 272-73 (the “claimed invention gets priority date of 05/13/2009 as claimed feature is disclosed in” the 2009 parent). Nevertheless, the Examiner rejected the pending claims as allegedly being anticipated by Flynt et al. U.S. Patent Application Publication No. 2007/0082707 or obvious over Flynt in view of Jones *et al.* U.S. Patent Application Publication No. 2008/0256643. *Id.* at 273-86.

In response to the Office Action, the Applicant amended the pending claims, introducing **Elements [1.10]** and **[1.11]** and amending **Element [1.12]**. See *id.* at 304-06. For disclosure support, Petitioner identified several passages from the '948 Patent application as well as “various other passages.” *Id.* at 316 (emphasis added). Accordingly, the Applicant expressly stated that support is not limited to just the subject matter of the '948 Patent application, as the 2009 parent provides “various

³ Cyandia reserves the right to show entitlement to the 2008 provisional, but the Board need not reach that question to find written description for the Challenged Claims in the 2009 parent.

other passages” that support these elements, as discussed in great detail below. Indeed, the Examiner, having priority on their mind and aware of the 2009 parent’s disclosure, seemed to agree as they did not issue another office action identifying priority or written description as issue(s).

III. THE BOARD SHOULD DENY INSTITUTION UNDER 35 U.S.C. § 314(A)

The Board should exercise its discretion to deny institution under 35 U.S.C. § 314(a) and *Apple Inc. v. Fintiv, Inc.*, No. IPR2020-00019, Paper 11 (P.T.A.B. Mar. 20, 2020) (precedential) (“*Fintiv*”) because the *Fintiv* factors overwhelmingly support denying institution. Moreover, the Board “retains discretion to deny institution for proceedings where abuse has been demonstrated.” Ex. 2014 at 4. The Board should exercise its discretion to deny institution.

A. *Fintiv* Factor 1: There is Little to no Likelihood that a Stay Would be Granted in District Court

Fintiv Factor 1 weighs in favor of discretionary denial because no motion to stay the case is pending, and Petitioner has presented no evidence that Judge Gilstrap would grant a stay if a trial is instituted. In fact, Judge Gilstrap frequently denies stays in such cases. Ex. 2010, *Netlist, Inc. v. Micron Tech., Inc.*, No. 2:22-cv-00294-JRG, Dkt. 72 (E.D. Tex. Mar. 12, 2024) (denying motion to stay pending instituted IPRs); Ex. 2011, *Netlist, Inc. v. Samsung Elecs. Co.*, No. 2:22-cv-00293-JRG (“*Netlist-Samsung*”), Dkt. 180 (E.D. Tex. Oct. 17, 2023) (denying motion to stay

pending instituted IPRs); Ex. 2012, *Netlist-Samsung*, Dkt. 689 (E.D. Tex. Mar. 11, 2024) (same).

B. *Fintiv* Factor 2: The District Court's Scheduled Trial Date is Roughly Six Months Before the Expected Date of Any Final Written Decision

Fintiv Factor 2 weighs in favor of discretionary denial because trial is scheduled to begin in the co-pending litigation on October 6, 2025, six months before a final written decision is due in the case. Ex. 2015 at 1. The median time to trial in the Eastern District of Texas, where the parallel proceeding is pending, is 21.9 months. Ex. 2013. According to that metric, the parties can expect trial to begin on December 12, 2025, which is roughly four months before a Final Written Decision would be expected in this case. Accordingly, the Board should exercise its discretion to deny institution in order to avoid duplication of efforts and “potentially conflicting outcomes.” Ex. 2014 (June 21, 2022, PTAB Interim Procedure for Discretionary Denials) at 5.

The Board routinely exercises its discretion to deny institution even when the period between the scheduled trial date and the projected deadline for a final written decision is far less than the four- or six-month period in this case. *See Samsung Display Co. v. Pictvia Displays Int'l Ltd.*, No. IPR2024-00855, Paper 12 at 2, 8-9 (P.T.A.B. Nov. 19, 2024); *see also, e.g., NXP USA, Inc. v. Impinj, Inc.*, No. IPR2021-01556, Paper 10 at 7-8 (P.T.A.B. Apr. 21, 2022) (two months between the scheduled

trial and the deadline to reach a final written decision weighed in favor of discretionary denial); *eClinicalWorks, LLC v. Decapolis LLC*, No. IPR2022-00229, Paper 10 at 9 (P.T.A.B. Apr. 13, 2022) (one to two months between the scheduled jury trial and the deadline to reach a final decision weighed in favor of denial); *Immersion Sys. LLC v. Midas Green Techs., LLC*, No. IPR2021-01176, Paper 16 at 12-13 (P.T.A.B. Jan. 6, 2022) (three months between the scheduled trial date and the deadline to reach a final decision weighed in favor of exercising discretionary denial).

Given the trial schedule, it does not make sense to have the Board address patentability when it will have already been addressed at the District Court trial, particularly given the overlap of issues and the possibility of conflicting outcomes. Therefore, *Fintiv* factor 2 weighs in favor of the Board exercising its discretion to deny institution.

C. *Fintiv* Factor 3: Significant Investment in the Parallel Litigation Will Have Occurred by the Time the Board's Institution Decision is Due

The parties have already expended a significant amount of investment in the parallel litigation, having served infringement and invalidity contentions and claim construction terms. By the projected institution date, the parties would have already expended significant time in discovery and will have also filed their joint claim construction statement and have completed claim construction hearing. See Ex.

2015 at 3 (Scheduling Order). In nearly identical circumstances, the Board recently found Factor 3 to be neutral. *Samsung Elecs. Co. v. Empire Tech. Dev. LLC*, No. IPR2024-00896, Paper 15 at 13-14 (P.T.A.B. Dec. 13, 2024).

D. *Fintiv* Factor 4: There is Substantial Overlap between the IPR Proceeding and the Parallel Litigation

Fintiv factor 4 weighs in favor of discretionary denial because “some of the claims challenged in the petition are also at issue in district court,” and the “petition includes the same or substantially the same claims, grounds, arguments, and evidence” as included in the parallel District Court litigation. *Fintiv* at 12-13. Here, Petitioner challenges every claim of the '285 Patent asserted in the parallel District Court litigation. Ex. 2009, Hannah Decl., ¶¶ 2-3. The Petition also “includes the same or substantially the same claims, grounds, arguments, and evidence” because there is substantial overlap between the primary references and arguments asserted in both forums. *Fintiv* at 12-13.

In the parallel litigation, Petitioner has asserted the PCT Publication and Austin-Lane as alleged prior art references to the '948 Patent. Ex. 2009, Hannah Decl., ¶¶ 2-3. Furthermore, Petitioner has not offered a *Sotera*-style stipulation in order to avoid the duplication of work and potential for inconsistent outcomes. In view of the foregoing, *Fintiv* Factor 4 weighs strongly in favor of the Board exercising its discretion to deny institution.

E. *Fintiv* Factor 5: Petitioner is the Defendant in the Parallel Proceeding

Fintiv factor 5 weighs in favor of exercising discretionary denial because the parties are the same in both proceedings. *Fintiv* at 13-14.

F. *Fintiv* Factor 6: The Petition is Without Merit and SAP has Abused the Process

Fintiv factor 6 weighs in favor of discretionary denial because Petitioner fails to present a likelihood of success, much less “compelling evidence of unpatentability.” Ex. 2014 (June 21, 2022 PTAB Interim Procedure for Discretionary Denials) at 4-5, 9. Because the PCT Publication is not prior art (as demonstrated below, see § VI, *infra*), Petitioner’s only ground for alleging unpatentability is disqualified, as such, the Board “has the authority . . . to exercise discretion to deny institution.” Ex. 2014 at 4.

In view of the foregoing, *Fintiv* Factor 6 weighs in favor of the Board exercising its discretion to deny institution.

* * * *

Each of the *Fintiv* factors is neutral or weighs in favor of denying institution, some strongly so. Cyandia respectfully requests, therefore, that the Board deny institution pursuant to 35 U.S.C. § 314(a).

IV. LEVEL OF ORDINARY SKILL IN THE ART

A person of ordinary skill in the art (“POSITA”) as of May 2008 or May 2009 would have had a Bachelor’s degree in electrical engineering, computer science, or the like, and/or four or more years of experience in server-based applications. Additional experience may make up for a lack of education and vice versa.

V. CLAIM CONSTRUCTION

A. “To Provide [an] Alert on [an] External Device” (Independent Claims 1, 35, and 36)

The term “to provide [an] alert on [an] external device” should be given its plain and ordinary meaning: *presenting an alert notification*. There is no ambiguity in this language, and the meaning of the term “alert” was well-understood by POSITA and laypersons alike in 2009. Ex. 2002 at 23. Indeed, the types of external device alerts envisioned in the 2009 parent include such “visual or auditory alert[s]” and extend to any and all alerts definable on other platforms. Ex. 1106 at ¶ [0039] (“The alert can appear as defined on other platforms such as a mobile device, a television (set top box), a Blu-ray player, or other devices.”).

The description in the 2009 parent is consistent with that of the ’948 Patent, which describes generic “alerts,” without limitation. *See, e.g.*, ’948 Patent at 2:42-44 (“[A]ctionable and/or non-actionable **alerts** may be generated (e.g., in response to one or more triggers) on one or more authenticated user devices and/or other

devices.”) (emphasis added); 5:32-36 (“[B]elow are more detailed descriptions of various concepts related to, and embodiments of, inventive methods, apparatus and systems for providing and monitoring secure information via multiple authorized channels and generating **alerts** relating to same.”) (emphases added); *id.* at 15:14-19 (“Example of types of alerts that may be generated by eventing and alerting subsystem 452 may include, but are not limited to, visual alerts, auditory alerts, tactile alerts, email messages, SMS text messages, activation of at least one channel of a plurality of channels, and notifications to a law enforcement agency.”).

Petitioner's suggestion that this term should be construed to require specific types of alerts is contrary to the law and rests on the fallacy that the meaning of this term was changed between the filing dates of the 2009 parent and the '948 Patent. Pet. at 17 (arguing that this term requires “*present[ing] a **tactile**, auditory, or visual notification.*”) (emphasis added). However, it is well-settled that “a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.” *SuperGuide Corp. v. DirectTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004); *see also Nissan N. Am. v. Diamond Coating Techs., LLC*, No. IPR2014-01546, Paper 49 at 12 (P.T.A.B. Apr. 20, 2016) (declining to adopt a construction that lists examples from the specification). Therefore, the ordinary meaning of “provide [an] alert” is *presenting an alert*

notification, which *encompasses* the alert types identified by Petitioner, but does not *require* any particular one.

Petitioner argues that *ULF Bamberg v. Dalvey*, 815 F.3d 793, 797 (Fed. Cir. 2016) supports its effort to construe this term “by specifying example(s) of what it encompasses within its scope,” but *ULF Bamberg* is inapposite. Pet. at 18. The *ULF Bamberg* Court did not construe the term “white layer” by specifying examples of what the white layer could be, it construed the term according to the specification’s definition of the term and what the specification disclosed to be “within its scope.” *ULF Bamberg*, 815 F.3d at 796-97 (determining that the term “white layer” was defined in the specification and encompassed materials with melting points above and below 220°C). In other words, the Federal Circuit merely ensured that the term was construed consistent with the intrinsic record. *Id.*

In this case, the term “provide [an] alert on at least one external device” has a plain and ordinary meaning, and it encompasses “visual alerts, auditory alerts, tactile alerts, email messages, SMS text messages, [and] activation of at least one channel” ’948 Patent at 15:14-19. Consistent with this disclosure, the 2009 parent similarly disclosed providing alerts on external devices, including any type of alert that may be “defined on other platforms such as a mobile device, a television (set top box), a Blu-ray player, or other devices.” Ex. 1106 at ¶ [0039]. Those types of

alerts were well-known to a POSITA in 2009, as established in detail below. See § VI.A.1, *infra* (citing Exs. 2003, 2004, 2005).

For at least the foregoing reasons, Cyandia respectfully requests that the Board accord the term “provide [an] alert” its plain and ordinary meaning and reject Petitioner’s attempt to define the term according to a list of exemplary alerts.

B. “Information”

The term “information” need not be construed because it is a generic term that is well known and generally understood in the ’948 Patent and the computer field context to mean *digital data*. Ex. 2002 at 271. Nowhere does the ’948 Patent or the 2009 parent redefine this generic and universally-understood term away from plain and ordinary meaning. This can be seen even in the abstract, which uses the term “information” to refer to multiple different types of information:

Display of and access to secure ***user-centric information*** via the construct of a channel grid framework serving as a desktop on a user device. Multiple authorized channels through which the user receives and/or interacts with respective portions of the secure ***user-centric information*** are implemented based on information access rights and/or security protocols respectively associated with the channels. ***Channel information*** is monitored to determine one or more events, conditions, logical workflows, ***discrete information values or signal data***, based on one or more threshold conditions or parameters relating to the ***channel information***. Actionable and/or nonactionable alerts may be generated on one or more authenticated user devices and/or other

devices. ***Information relating to determination of one or more events, conditions, logical workflows, discrete information values or signal data*** may be transmitted to various devices and/or stored for archival purposes.

'948 Patent at Abstract (emphasis added). As shown, the term "information" needs to be given its broad ordinary meaning in the art as "digital data" to encompass the different examples provided in the specification.

Petitioner's arguments in support of its construction of "information" are unpersuasive for the same reasons that its arguments for "providing [an] alert" were unpersuasive. Namely, the term is used broadly to refer to digital data as used in the context of each claim term with the word "information." Instead of acknowledging this, Petitioner offers the construction of "*tactile, auditory, or visual information*" to serve its written description challenge. Pet. at 17 (construing "information" to include at least "*tactile, auditory, or visual information.*"). This construction is flawed because it does not take into consideration how the term is variously used in the specification, as shown above, nor how it is used in the claims. Specifically, Petitioner ignores that "information" is not a standalone claim term. Instead, information is used in different ways in the specification and claims, such as with "user-centric information," "channel information" and "discrete information." Petitioner makes no effort to show how its construction of information could be applied to these specific uses of the term.

Further illustrating the inappropriateness of Petitioner's proposed construction is that Petitioner does not even follow it and interprets the terms differently for the purpose of its obviousness analysis. In particular, when mapping the PCT publication to the terms with the word "information," Petitioner interprets each term based on how it used, and lists them as follows:

- ***user-centric information***: ("information relevant to the user" such as "streaming video, audio, voice-over-IP communication, environmental monitoring information, financial services information ... email, address book information, instant messaging information ... pictures, video," etc.).
- ***channel information***: "streaming video, audio, voice-over-IP communication, environmental monitoring information, financial services information ... email, address book information, instant messaging information ... pictures, video," etc.).
- ***discrete information***: "threshold conditions with definitive values."

Pet. at 43-44, 49, 52 (citing Ex. 1104 at ¶¶ [0022], [0039]). Accordingly, Petitioner interprets each term differently and based on the disclosure found in the 2009 parent, with no specific information examples listed in those interpretations.

The only support that Petitioner identifies is that the '948 Patent states that "[t]he invention is not limited to presenting information to users 116 in a visual

fashion only. Other ways (not shown) of conveying information to the user 116 may be, for example, audible indicators (i.e., sound), and/or tactile indicators (e.g., vibration).” Pet. at 17; ’948 Patent at 9:39-43. However, these examples do not change the meaning of information. In fact, these do not even relate to the information itself but to how the information can be presented to the user. Accordingly, this passage does not support Petitioner’s construction.

The interpretation of each claim term in whole and in view of the 948 Patent’s family member signifies that Petitioner’s interpretation of the individual word “information” solely for its written description challenge should be rejected. Even if Petitioner’s interpretation were to be adopted (which it should not), the information examples listed by Petitioner are encompassed by the term, not required, for the same reasons discussed above for “provide [an] alert.”

VI. THE BOARD SHOULD DENY INSTITUTION BECAUSE THE PCT PUBLICATION IS NOT PRIOR ART

The Board should deny institution because the ’948 Patent is entitled to claim priority to at least the 2009 parent, thereby disqualifying the PCT publication as prior art and Petitioner’s only obviousness ground. Petitioner’s written description challenge is premised on legal and factual flaws, including, *inter alia*: (1) requiring disclosure of every possible alert embodiment which runs contrary to Federal Circuit precedent; (2) an incorrect interpretation of “determining a notification method” that Petitioner does not even apply in its obviousness analysis (Element [1.10]); (3)

requiring express disclosure of “notification data” despite it being inherently disclosed (Element [1.11]); and (4) misconstruing “the at least one external device” provided the alert while also failing to understand that the alert is provided to the user’s *active* device(s) as indicated by “session data” (Elements [1.10]-[1.12]).⁴

For these reasons, and those that follow, the 2009 parent more than reasonably conveys to a POSITA that the inventors had possession of the claimed invention by at least the 2009 parent’s filing date.

A. The 2009 Parent Provides Written Description Support For the Term “Provide [An] Alert”

The 2009 parent plainly discloses providing an alert on an external device. Ex. 1106 at ¶ [0023] (“[O]ne action that may be implemented is to provide a notification to the user.”); *id.* at ¶ [0039] (“If an established condition is met, the channel alert server 211 may notify the identity management server 208 to confirm the subscriber of the event, determine the active devices of the subscriber, and then pass through the web services gateway 207 and the channel grid framework 201 to provide a visual or auditory alert in the channel 202.”). Indeed, the specification

⁴ Independent Claims 35 and 36 are substantially identical to Independent Claim 1. *See* Pet. at 65. Accordingly, written description arguments for Claim 1 apply equally to Claims 35 and 36.

encompasses within its scope *all* alerts that were definable on external devices at the time of the invention, including tactile alerts. *Id.* at ¶ [0039] (“**The alert can appear as defined on other platforms** such as a mobile device, a television (set top box), a Blu-ray player, or other devices.”); *id.* at ¶ [0023] (“The assignment of information priority, **event alerts** or triggers, and complex actions”) (emphases added).

Petitioner's argument that the '948 Patent lacks written description for this term—allegedly because the '948 Patent lists more *examples* of well-known alerts than the 2009 parent listed—ignores basic principles of written description law, including the need to evaluate the written description from the viewpoint of a POSITA, and misapplies Federal Circuit precedent. It is well-settled that a specification need not spell out in detail that which is well-known in the art, and tactile alerts were well-known types of alerts in 2009. Moreover, 35 U.S.C. § 112 does not require the specification to list every conceivable example of a generic term. *See Hologic, Inc. v. Smith & Nephew, Inc.*, 884 F.3d 1357, 1362 (Fed. Cir. 2018) (finding written description support for a “light guide” because the ancestral application disclosed “fibre optics bundle” which was a type of “light guide” and that “various types of light guides were well-known in the art”).

1. The 2009 Parent Discloses Providing an Alert on an External Device

The 2009 parent discloses a channel alert server that provides an alert on an external device:

The **channel alert server 211** may be a hardware device or software application that may continually monitor application and information activities defined by a channel. By way of non-limiting example, **a user or developer may define threshold conditions with definitive values** assigned to events, conditions, logical workflows, discrete information values or signal data. **If an established condition is met**, the channel alert server 211 may notify the identity management server 208 to confirm the subscriber of the event, determine the active devices of the subscriber, and then pass through the web services gateway 207 and the channel grid framework 201 to **provide a visual or auditory alert in the channel 202**.

Ex. 1106 at ¶ [0039] (emphasis added) (“The alert can appear as defined on other platforms such as a mobile device, a television (set top box), a Blu-ray player, or other devices.”); *see also id.* at ¶¶ [0023], [0032].

It is black letter law that written description must be evaluated from “the viewpoint of one of skill in the art” and, because of this, an inventor may “rely on information that is ‘well-known in the art’ for purposes of meeting the written description requirement.” *Pandrol USA, LP v. Airboss Ry. Prods., Inc.*, 424 F.3d 1161, 1165 (Fed. Cir. 2005); *Bos. Sci. Corp. v. Johnson & Johnson*, 647 F.3d 1353, 1366 (Fed. Cir. 2011). Petitioner and its expert plainly admit in the petition that tactile alerts were well-known at the time of the invention. Ex. 1103 at ¶ 47 (“POSITAs in 2009 were familiar with visual, auditory, and tactile information”), ¶ 48 (“The most common sensory modality of information conveyed to a user

using . . . mobile smart phones[] in 2009 was visual information, with auditory information second, and tactile information a distant third.”).

Additional evidence submitted with this Preliminary Response confirms that tactile alerts (*e.g.*, vibrations) were widely used by mobile phones at this time. See Ex. 2003 at Abstract; Ex. 2004 at 354 (listing a number of articles describing the use of tactile alerts in mobile applications); Ex. 2005 at 401 (“When the recipient’s mobile phone receives the SMS message, he is notified by his mobile phone with a sound or vibrating.”). Accordingly, the 2009 parent provides written description support for the Challenged Claims because tactile alerts were well-known in the art in 2009.

Furthermore, because tactile alerts were essential features of mobile phones in 2009, the 2009 parent’s express disclosure of alerts “defined on other platforms such as a mobile device” (Ex. 1106 at ¶ [0039]) provides inherent disclosure of tactile alerts. *Yeda Rsch. & Dev. Co. v. Abbott GmbH & Co. KG*, 837 F.3d 1341, 1345 (Fed. Cir. 2016) (“Under the doctrine of inherent disclosure, when a specification describes an invention that has certain undisclosed yet inherent properties, that specification serves as adequate written description to support a subsequent patent application that explicitly recites the invention’s inherent properties.”).

Therefore, the Challenged Claims enjoy written description support in the 2009 parent even under Petitioner's improper construction of the term (which *requires* tactile, auditory, or visual notifications).

2. Petitioner Misapplies Federal Circuit Precedent

As established above, the plain and ordinary meaning of “provide [an] alert” is to present an alert notification, which can encompass, but does not require, the alert examples identified by Petitioner. *See* § V.A, *supra*. Under written description case law, the 2009 parent fulfills the written description requirement despite the scope of “provide [an] alert” being broader than the alert embodiments encompassed therein. *See* Ex. 1106 at ¶¶ [0023], [0039] (disclosing visual and auditory alert examples).

The Federal Circuit precedent does not demand that a specification disclose every feature or variant that can possibly be encompassed by the claim. *Cordis Corp. v. Medtronic Ave, Inc.*, 339 F.3d 1352, 1365 (Fed. Cir. 2003) (explaining that the inventor need not describe “every conceivable and possible future embodiment of his invention” and may instead recite “a broadly claimed invention without describing all species that [the] claim encompasses.”); *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1344 (Fed. Cir. 2001) (same). Written description is, therefore, not lacking “simply because the embodiments of the specification do not contain examples explicitly covering the full scope of the claim language.”

LizardTech, Inc. v. Earth Res. Mapping, Inc., 424 F.3d 1336, 1345 (Fed. Cir. 2005).

“That is because the patent specification is written for a person of skill in the art, and such a person comes to the patent with the knowledge of what has come before.” *Id.* Here, POSITAs come to the 2009 parent with knowledge of various alert types, including tactile alerts. See § VI.A.1, *supra*.

Accordingly, the 2009 parent provides written description support this term because there is no requirement that a specification list every conceivable example of an alert. See *Ajinomoto Co. v. Int’l Trade Comm’n*, 932 F.3d 1342, 1359 (Fed. Cir. 2019) (finding written description support for “more potent promoter” because the patent disclosed four examples and “the genus of more potent promoters was already well explored in the relevant art”) (citing *Bos. Sci. Corp.*, 647 F.3d at 1366); *Agilent Techs., Inc. v. Bio-Rad Labs. Inc.*, No. IPR2019-00266, Paper 10 at 4-5 (P.T.A.B. Oct. 23, 2019) (denying the petitioner’s request for rehearing because there was written description support for the generic “heater” where it was undisputed that broader category of heaters was well-known in the art and that the application disclosed a particular type, a “lid heater”).

The Federal Circuit’s decision in *Hologic, Inc. v. Smith & Nephew, Inc.*, is also instructive. In *Hologic*, the examiner found that the specification did not support the claimed invention’s surgical device with a “light guide” because it only disclosed a particular type of light guide, fibre optic bundles. 884 F.3d at 1361-62.

The Board reversed and the Federal Circuit affirmed. *Id.* The Federal Circuit reasoned that because “‘fibre optics bundle’ is a type of light guide” and that the broader genre of “various types of light guides were well-known in the art,” the disclosure supported the generic “light guide.” *Id.* at 1362. Likewise, there is no dispute here that the disclosed “visual or auditory alerts” are types of alerts and that the broader genre of alerts, including tactile alerts, was well-known in art. *See* Ex. 1106 at ¶ [0039]; *see also id.* at ¶¶ [0023], [0032]; Ex. 1103 at ¶¶ 47-48. Thus, applying *Hologic*, the 2009 parent supports the generic “providing [an] alert” claim term.

The Board has repeatedly found written description support where the scope of the claim is broader than the specific example embodiments disclosed in the parent document. *PNC Bank, N.A. v. United Servs. Auto. Ass’n*, No. IPR2021-01071, Paper 21 at 17 (P.T.A.B. Jan. 20, 2022) (finding that the petitioner’s contention that an application lacks written description support for a claim “*merely because* the scope of the claim includes a configuration that is not expressly described in that document reflects a misunderstanding of the law—a claim *can* be broader than the embodiments disclosed”); *see also 3Shape A/S v. Align Tech., Inc.*, No. IPR2021-01120, Paper 15 at 20 (P.T.A.B. Jan. 11, 2022) (“Ancestral Applications can provide written description support for the challenged claims

without specifically disclosing an embodiment” where the Challenged Claims encompass, “without requiring” the embodiment).

In the *3Shape* decision, the Board found that the “independent claims encompass using unfiltered white light to illuminate an intraoral structure, not that the independent claims *require* using white light to illuminate an intraoral structure.” *3Shape A/S*, Paper 15 at 15 (emphasis added). The Board, therefore, concluded that because the claims “encompass[ed], without requiring” its use, the ancestral application “provide[d] written description support for the challenged claims without specifically disclosing an embodiment illuminating an intraoral structure with white light.” *Id.* at 20 (citing *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1306 (Fed. Cir. 2008)). Accordingly, because the term “provide [an] alert” encompasses, without requiring, a tactile alert, the 2009 parent provides support even though only auditory and visual notification examples are disclosed. *Id.*; see also § V.A, *supra*.

Given the foregoing, Petitioner's reliance on *PowerOasis* is inapt for multiple reasons, including that (1) it involved construction of the claim as a whole, unlike here, which involves simply a claim term and what it can encompass; and (2) the parent document did not disclose an embodiment required by the claim, unlike here a tactile alert is not required. See Pet. at 26-27. In *PowerOasis*, the district court found that the claimed “customer interface” could be an interface that “is located on

the customer's laptop" or located "on the vending machine." *PowerOasis, Inc., PowerOasis Networks, LLC v. T-Mobile USA, Inc.*, No. CIV. 05-CV-42-PB, 2006 WL 753206, at *7-8 (D.N.H. Mar. 22, 2006) ("*PowerOasis I*"). Because the former embodiment was only disclosed in the child application, and the patentee urged a construction that explicitly included that embodiment, the Federal Circuit determined that the child could not claim priority to the parent. *PowerOasis, Inc.*, 522 F.3d at 1310-11 (affirming the "broader construction" and finding that the parent document did not disclose a customer's laptop embodiment).

Accordingly, in *PowerOasis*, the child application introduced an entirely new embodiment not found in the parent application. Here, on the other hand, the Challenged Claims only claim what was disclosed in the 2009 parent, *i.e.*, providing an alert on an external device. There is no allegation that the claimed alerts would be provided in another *location* (like in *PowerOasis*); the child '948 Patent merely listed additional examples of alerts that were well known in 2009 and inherent in the 2009 parent's disclosure. See § VI.A.1, *supra*. That is no cause for finding a written description defect. *Cordis Corp.*, 339 F.3d at 1365 (explaining that the inventor need not describe "every conceivable and possible future embodiment of his invention" and may instead recite "a broadly claimed invention without describing all species that [the] claim encompasses.").

Additionally, in *PowerOasis I*, the district court's broad construction of "customer interface" *required* an interface located on the vending machine or customer's laptop (*PowerOasis I*, at *7-8), whereas here, there is no requirement of a tactile alert in the claim. To the contrary, "provide [an] alert," encompasses, without requiring, this particular alert type.

Petitioner's reliance on *D Three Enters., LLC v. SunModo Corp.*, 890 F.3d 1042 (Fed. Cir. 2018), is inapt for similar reasons. Pet. at 21. In *D Three Enterprises*, because the first set of claims required "**any** attachment bracket[]," the Federal Circuit found that "washerless assemblies using attachments other than the attachment bracket 1700 . . . [were] not adequately disclosed' in the parent application because it did not "contemplate[] the use of other types of attachments." 890 F.3d at 1050 (emphasis added). Similarly, because the second set of claims required a washer placed at a specific location below or above the flashing, the parent document's disclosure of only a washer placed above did not support the claim. *Id.* at 1052. This rationale is not applicable here, where providing an alert on an external device worked the same way in 2009 as when the '948 Patent was filed.

PowerOasis and *D Three Enterprises* are also inapposite because they did not involve a generic claim term with the parent application disclosing particular examples, as is the case here. That is, even if "provide [an] alert" was construed to

require at least “tactile, auditory, or visual notifications,” as Petitioner proposes, the 2009 parent still provides support for the broader genre. *See* § VI.A1, *supra*.

For at least the foregoing reasons, Cyandia respectfully submits that the Challenged Claims enjoy written description support in the 2009 parent.

B. The 2009 Parent Provides Written Description Support For the “Information” Terms

The 2009 parent provides written description support for “user-centric information,” “channel information,” and “discrete information,” as Petitioner’s obviousness analysis confirms by citing to the disclosure found in the 2009 parent for interpretation. *See* Pet. at 43-44 (citing Ex. 1104 at ¶ [0022] (“user-centric information”), 49 (citing Ex. 1104 at ¶ [0022] (“channel information”), 52 (citing Ex. 1104 at ¶ [0039] (“discrete information”); *see also* Ex. 1106 at ¶¶ [0022], [0039].

To the extent that the Board should construe only “information” as purposed by Petitioner, then the 2009 parent provides support for the same reasons discussed above. *See* § VI.A, *supra*. That is, the term “information” was used generically throughout the 2009 parent and there is no support for the conclusion that the meaning of the term changed between 2009 and the filing date of the ’948 Patent.

C. The 2009 Parent Provides Written Description Support for Elements [1.10] F) (“Determining a Notification Method”) and [1.11] G) (“Generating Notification Data”)

1. Element [1.10] F) (“Determining a Notification Method”)

The 2009 parent discloses “determining a notification method” and “generating notification data” because it includes detailed examples of alerts and determining the notification method for providing the alert. For example, the 2009 parent discloses a channel alert server that confirms the subscriber and determines which of the subscriber’s devices are active before causing an alert to be presented in the appropriate channel on the appropriate device(s):

If an established condition is met, the channel alert server 211 may notify the identity management server 208 to confirm the subscriber of the event, ***determine the active devices of the subscriber, and then pass through the web services gateway 207 and the channel grid framework 201 to provide a visual or auditory alert in the channel 202.***

Ex. 1106 at ¶ [0039] (emphasis added).

The ***assignment*** of information priority, ***event alerts*** or triggers, and complex actions that can result from the user's interaction with a channel may be built upon and exploited by Developers.

Id. at ¶ [0023] (emphasis added); *see also id.* at Claim 9. Indeed, the 2008 provisional confirms that alerts will be sent to the correct notification method

because “[a]lerts can be configured to take with you—from device to device, location to location.” 2008 provisional at 25, 29.

Petitioner's written description challenge asks that the Board apply an unduly narrow interpretation of “determining a notification method,” which reads in a requirement that the system determine the **best** notification method.⁵ See Pet. at 27-28 (arguing that the 2009 parent does not disclose the “*best* alert notification method” embodiment) (emphasis added). In making this argument, Petitioner reads into the term a requirement that the system determine the “best” notification method despite the Challenged Claims using broader language. See *SuperGuide Corp.*, 358 F.3d at 875 (“[A] particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment.”).

Notably, in its obviousness analysis, Petitioner does not apply the same construction, recognizing instead that the term “determining a notification method” requires no more than determining a “delivery mechanism.” Pet. at 53. Thus, when

⁵ Petitioner does not apply this unduly narrow construction when arguing that it is disclosed by the PCT application in combination with Austin-Lane. See Pet. at 53. Accordingly, to the extent that the Board determines that the Challenged Claims require determining the “best” notification method, Petitioner has not established that its obviousness combination reaches the claims.

contending that Austin-Lane discloses determining a “delivery mechanism,” it points to Austin-Lane’s disclosure of determining *which devices* to send the alert to, *the protocols* used to send the alert, and *how alerts are presented*:

(1) the user device(s) to send the notification to (e.g., phone, PDA, notebook computer, desktop computer) (*e.g.*, EX1105, [0005], [0029], [0032], [0046], [0061], FIG. 1).

(2) the communication protocol to use to send the notification, i.e., how to send the notification (e.g., SMTP (for email), SMS (for texts), HTTP (for web browsers)) (*e.g.*, EX1105, [0004], [0033], [0048]); and

(3) the type of alert to provide, i.e., how to present the notification, (e.g., text, an icon, a pop-up window, a video, an email, an audible or tactile alarm) (*e.g.*, EX1105, [0039], [0046], [0079])).

Pet. at 53.

The 2009 parent includes these very disclosures:

(1) the user device(s) to send the notification to (e.g., phone, PDA, notebook, computer, desktop computer). Ex. 1106 at ¶ [0039] (describing determining the active devices to send the alert to); *see also* ¶¶ [0020], [0023], [0027], [0033];

(2) the communication protocol to use to send the notification, i.e., how to send the notification (e.g., SMTP, SMS, HTTP). *Id.* at ¶¶ [0026],

[0031], [0039] (describing a web services gateway that the alert is passed through⁶); and

(3) the type of alert to provide, i.e., how to present the notification. *Id.* at ¶¶ [0023], [0039] (describing alert types and how the alert appears on the user's devices).

See also § II.B.2, *supra* (establishing that the 2009 parent and 2008 provisional provide support for determining a delivery mechanism). Accordingly, if Austin-Lane's disclosure meets this limitation, so does the disclosure of the 2009 parent.

Petitioner even acknowledges that the PCT publication—and thereby the 2009 parent—describes a determining a delivery mechanism:

[T]he PCT publication's system ***already*** includes a channel alert server that ***determines the active devices of the user and delivers an alert to the user's device(s)***

* * * *

the PCT publication ***discloses setting the same type of alert*** (stock alert) and ***presenting it in the same way*** (visually) as Austin-Lane.

Pet. at 54 (citing Ex. 1104 at ¶¶ [0023], [0039]) (emphasis added); Ex. 1106 at ¶¶ [0023], [0039].

⁶ Passing the alert through a gateway requires protocols such as HTTP. See Ex. 2006.

Petitioner's obviousness arguments contradict its contention that the 2009 parent "does not describe how to determine a notification method or how to use 'session data' in a manner required by the claim." Pet. at 27-28. The 2009 parent not only discloses determining a notification method (which Petitioner identifies as a delivery mechanism) but also describes how "session data" is used in the determination. For instance, as disclosed in paragraph 39, session data is used to "**determine the active devices** of the subscriber" such that the alerts are provided to the active device(s), *e.g.*, through a web services gateway. See Ex. 1106 at ¶ [0039] (emphasis added); *see also* Ex. 1104 at ¶ [0039] (same). Petitioner confirms that "session data" is used in this way by the Challenged Claims. Pet. at 51 (describing "session data" as meaning "data indicating whether and which of the **user's device(s) is/are active**") (citing paragraph 39), 54 (explaining that "a channel alert server [] **determines the active devices** of the user and delivers an alert to the user's device(s)") (quoting paragraph 39) (emphasis added).

Accordingly, when applying the correct construction, the 2009 parent discloses determining a notification method for alerts because it discloses determining a delivery mechanism for the alerts, including *which devices* to send the alert to, the *protocols* to send the alert, and *how to present* the alerts. The Board should, therefore, reject Petitioner's attempt to manufacture a written description deficiency contingent on the adoption of an overly narrow construction of this term,

which it declined even to apply in its obviousness analysis. Pet. at 53; *PowerOasis*, 522 F. 3d at 1310 (rejecting the party's argument that it "is entitled to a broad claim construction for purposes of infringement and a different narrower claim construction for purposes of validity.").

The 2009 parent, therefore, provides written description support for "determining a notification method."

2. Element [1.11] G) ("Generating Notification Data")

The 2009 parent discloses "generating notification data" because it includes details on how to set and present the alert on the user device, which inherently requires notification data. Moreover, by at least 2009, POSITAs were familiar with notification data and how it is transmitted to and used by the user device.

As a preliminary matter, Petitioner's challenge for "generating notification data" relies on substantially the same reasoning advanced in its Element [1.10] challenge, confirming that the same disclosures in the 2009 parent also provide support for this element. See Pet. at 28-29 (relying on the "best" notification method embodiment for its "generating notification data" written description challenge).

Further, "notification data" is, at the very least, inherently disclosed in the 2009 parent. Petitioner acknowledges that the PCT publication—and therefore the 2009 parent—discloses setting and presenting the alert on the device:

“a channel alert server that determines the active devices of the user and delivers an alert to the user’s device(s) . . . [and] discloses **setting the same type of alert** (stock alert) and **presenting it** in the same way (visually).

Pet. at 54 (emphasis added) (citing Ex. 1104 at ¶¶ [0023], [0039], Claim 9); *see also* Ex. 1106 at ¶¶ [0023], [0039]. Accordingly, in order for the alert to be presented on the user’s device as disclosed, there inherently exists notification data responsible for “caus[ing] the alert to be displayed.” Pet. at 41, 55 (interpreting “notification data” as “data transmitted to the user’s device that is responsible for causing the alert to be displayed on the user’s device” because “it ‘provide[s] the notification to the user’”).

This data is, therefore, a necessary and inherent aspect of the 2009 parent because it is what causes the alert to be displayed on the user’s device. *Id.* at 29, 41. “Under the doctrine of inherent disclosure, when a specification describes an invention that has certain undisclosed yet inherent properties, that specification serves as adequate written description to support a subsequent patent application that explicitly recites the invention’s inherent properties.” *Yeda Rsch. & Dev. Co.*, 837 F.3d at 1345.

Additionally, Petitioner confirms that a POSITA was aware of notification data and how it is transmitted between devices. 1432 Petition at 4 (“[A] POSITA would have been **familiar** with communication protocols and markup languages

commonly used for ***transmitting information (including notification data)*** between a server and a user's device(s).") (emphasis added). This shows that based on the detailed disclosure of alerts and how they are generated and presented to a user, that generating notification data was disclosed, as this is the mechanism for causing the alert to be displayed. See Pet. at 41-42.

In view of the foregoing, "generating notification data" according to the "notification method" (delivery mechanism) is supported by the 2009 parent.

D. The 2009 Parent Provides Written Description Support For "the at Least One External Device" (Elements [1.10] F, [1.11] G), and [1.12] H)

The 2009 parent plainly discloses providing an alert on *one or more* of the user's external devices. See Ex. 1106 at ¶ [0039] ("If an established condition is met, the channel alert server 211 may notify the identity management server 208 to ***confirm the subscriber*** of the event, ***determine the active devices*** of the subscriber, and then pass through the web services gateway 207 and the channel grid framework 201 to ***provide a visual or auditory alert*** in the channel 202."). Petitioner's written description challenge of "the at least one external device" is in error because it inserts an unclaimed requirement that *each* of the user's external devices must provide the alert. Even under Petitioner's incorrect construction of the claim, the 2009 parent discloses evaluating "session data" to determine which of the user's external devices are active and should provide the alert.

1. “At Least One or More External Devices” Means One or More Devices, Not Each Device

The Board should reject Petitioner's argument that the 2009 parent fails to disclose “provid[ing] at least one alert on the at least one external device” because it is based entirely on a misinterpretation of the plain language of the claims. Specifically, although Petitioner contends that the claims require providing an alert on *each* of “the at least one external device,” the claims actually require “provid[ing] *at least one alert on the at least one external device* based on the current state of the at least one external device indicated by the session data”:

D) receiving session data indicating a current state of at least one external device of the user

* * * *

F) determining a notification method by which to provide ***at least one alert*** on the ***at least one external device*** based on the current state of the at least one external device indicated by the session data;

'948 Patent at Claim 1 (emphasis added).

There is not a one-to-one correspondence between the “at least one alert” and the “at least one external device,” as Petitioner's argument demands. Pet. at 29-30. Instead, the plain language of the claims contemplates determining a notification method for providing: (1) one alert on the user's only external device, (2) multiple alerts on the user's only external device, (3) one alert on a subset of the user's

multiple external devices, (4) multiple alerts each device of a subset of the user's external devices, (5) one alert on each of the user's external devices, and (6) multiple alerts on each of the user's external devices. Petitioner's failure to analyze the "provide at least one alert" language argument led it to rewrite the plain language of the claims to encompass only the fifth scenario. The Board should, therefore, reject Petitioner's argument because it is inconsistent with the plain language of the claims.

Petitioner's argument also improperly removes patentable weight from the phrase: "based on the current state of the at least one external device indicated by the session data." '948 Patent at Claim 1; *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) ("[C]laims are interpreted with an eye toward giving effect to all terms in the claim."). As claimed, and as explained in the 2009 parent, the system collects session data that indicates whether one or more of a user's devices are active and causes alerts to be presented on the active devices. '948 Patent, Claim 1; Ex. 1106 at ¶ [0039]. If Petitioner's reading of the Challenged Claim were correct, one or more alerts would have to be provided on *each* of the user's external devices *regardless* of the session data, thereby rendering that limitation superfluous.

If the claim is read as written, however, then the language "based on the current state of the at least one external device" makes perfect sense: notification methods are determined for one or more of the user's external devices, depending on the session data. For example, if a user has five external devices and session data

indicates that three of them are active, then notification methods can be determined for the three active devices. '948 Patent, Claim 1. That is precisely what is disclosed in the 2009 parent. Ex. 1106 at ¶ [0039] (“If an established condition is met, the channel alert server 211 may notify the identity management server 208 to confirm the subscriber of the event, determine the active devices of the subscriber, and then pass through the web services gateway 207 and the channel grid framework 201 to provide a visual or auditory alert in the channel 202.”).

For at least the foregoing reasons, the 2009 parent provides written description support for providing an alert on the at least one external device.

2. “Session Data” Indicates That “the at Least One External Device” Provided the Alert Is/Are the User’s Active Device(s)

There is another reason the 2009 parent discloses this limitation: Session data only exists for the user’s active device(s), so “the at least one external device” recited in the Challenged Claims refers to the subset of the user’s external devices that are active. As discussed above, the 2009 parent discusses providing alerts to active devices. See § VI.D.1, *supra*. The 2009 parent further describes that session data is generated for these active devices because “[i]nformation may be delivered to a user based on the user’s identity as established by the system when the user’s session is established . . . [and] [b]ecause the user is known and authenticated, preferences and

rights to certain information types can be defined and managed for the user.” Ex. 1106 at ¶ [0021].

Accordingly, Petitioner's argument further misinterprets the claims by assuming that “session data” can be received for a user's *inactive* device(s). Pet. at 29-30 (concluding that “the ‘at least one external device of the user’ . . . must require that the alert be provided to *each* external device *for which session data* is received. This includes any *external devices* . . . *not currently in use*.”) (emphasis added). But session data does not indicate inactive devices because session data only exists for *active devices*, *i.e.*, those with an active session. Indeed, Petitioner elsewhere correctly interprets “session data” as indicating only *active devices* for which it admits written description support. *See, e.g., id.* at 51-52.

Consistent with Petitioner's admission, the 2009 parent and the '948 Patent describe “session data” as data indicating the user's active device(s). *See* Ex. 1106 at ¶ [0039] (“active devices of the subscriber”); '948 Patent at 21:1-2, 23:28-29 (data indicating active sessions of the user's device(s)). This conclusion is consistent with several dictionary definitions. Ex. 2007 at 616 (session data: “Data about a session”); *id.* at 615 (Session: (1) “all the activities which take place during the establishment, maintenance, and release of a connection.” (3) “The period of time during which a user of a terminal can communicate with an interactive system”); *see also* Ex. 2002 at 475 (Session:” “The time during which a program is running.

In the most interactive programs, a session is the time during which the program accepts input and processes information.”); Ex. 2008 (“When a client application requests a connection to the database server, the database server begins a *session* with the client and creates a data structure for the session in shared memory.”). Accordingly, if session data exists and is received for a particular external device, that device is active.

This interpretation of the Challenged Claims is fully consistent with, and disclosed in, Paragraph 39 of the 2009 parent, which discloses determining which devices are active and providing alerts on those devices:

If an established condition is met, the channel alert server 211 may notify the identity management server 208 to confirm the subscriber of the event, **determine the active devices of the subscriber, and then pass through the web services gateway 207** and the channel grid framework 201 to **provide a visual or auditory alert** in the channel 202 The ***alert can appear as defined on other platforms such as a mobile device, a television (set top box), a Blu-ray player, or other devices.***

Ex. 1106 at ¶ [0039] (emphasis added); *see also id.* at Claim 9.

Petitioner acknowledges this as the correct interpretation in its obviousness analysis. *See* Pet. at 51 (acknowledging the proper reading of “at least one external device” as “the user’s device(s) [that] is/are active” as indicated by “session data”). There, Petitioner relies on paragraph 39 to argue that the PCT publication’s disclosed system “receives the session data indicating a current state of the at least one external

device of the user (i.e., data indicating whether and which of the *user's device(s) is/are active*)” . . . to “determine the *active devices of the subscriber*” to send the alert to. See Pet. at 51-52 (citing Ex. 1104 at ¶ [0039]) (emphases added); see also Ex. 1106 at ¶ [0039] (same). Through this reliance, Petitioner admits that (1) “session data” indicates “active device(s) of the subscriber,” which provide the alert, and (2) the 2009 parent provides written description support for “the at least one external device” because the user’s active device(s) are determined and provide the alert.

* * *

In view of the foregoing, the 2009 parent provides written description support for “the at least one external device” (in Elements [1.10]-[1.12]).

E. All Other Limitations in the Challenged Claims Find Written Description Support in the 2009 Parent

While Petitioner’s written description challenge only identifies the above limitations—which are supported by the 2009 parent—all other challenged limitations are likewise supported by the parent document for at least the following reasons. See *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1327 (Fed. Cir. 2008) (finding that the patent owner is required to show “why the written description in the earlier application supports the claim . . . that means producing sufficient evidence and argument to show that an ancestor to the [challenged patent], with a

filing date prior to the [date of the challenged patent], contains a written description that supports all the limitations of [the challenged claims]”).

First, during examination of the '948 patent application, the Examiner accorded the 2009 parent priority date to several limitations made before amendments, which the Board should defer to.⁷ Particularly, in its priority date findings, the Examiner determined that the pre-amendment limitations were disclosed in the 2009 parent. *See* Ex. 1102 at 272-73 (“[T]he claimed invention gets priority date of 05/13/2009 as claimed feature is disclosed in application”).

Accordingly, the issue of written description for the pre-amendment limitations has been considered by the Office, and Petitioner does not allege any error, let alone material error, made by the examiner in its priority finding. *See* Pet.

⁷ The limitations include Element [1.1], Element [1.2], Element [1.3], Element [1.4], Element [1.5] A) (also recited in Independent Claims 35 and 36), Claims 2-7, 10-11, 13, 18-19, 23, and 29 (collectively, the “pre-amendment limitations”). *See* Ex. 1102 at 75-85. After the priority finding, the Applicant amended the independent claims to include Steps B), C), F) and G) while amending Steps E), H) and Claim 3. *See id.* at 304-315, 338-50; *see also* Pet. at 13-14 (listing the amendments made after the examiner's priority finding).

at 2-4 (alleging only that amendments made after the examiner's priority finding lack written description support, asserting no error in the examiner's priority finding for the pre-amendment limitations). Therefore, for the pre-amendment limitations, the Board should defer to the examiner's evaluation of the 2009 parent and their findings of written description support. *C.f. Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, No. IPR2019-01469, Paper 6 at 8-9 (P.T.A.B. Feb. 13, 2020) (precedential) (indicating that if the petitioner fails to make a showing of material error, the Board should "defer to previous Office evaluations of the evidence of record"); *Apple, Inc. v. Seven Networks, LLC*, No. IPR2020-00425, Paper 10 at 14-15 (P.T.A.B. Sept. 1, 2020) (exercising discretion to deny institution in part because "the [e]xaminer reviewed the great-grandparent's specification for support prior to entering the [e]xaminer's amendment.").

Second, the limitations amended after the examiner's priority date finding—*i.e.* the limitations not identified in Petitioner's written description challenge—are also supported by the 2009 parent as the table below shows:

Claim Limitations/Claim	2009 Parent Support
Step B) establishing a user profile to identify user preferences, platform identities, and service support instructions that determine how the secure user-centric information behaves on the at least one user platform.	Ex. 1106 at ¶ [0034]

Claim Limitations/Claim	2009 Parent Support
Step C) receiving configuration data indicating one or more user preferences regarding alerts transmitted via the first channel based on the user profile.	<i>Id.</i> at ¶¶ [0023], [0039]
Step D) receiving session data indicating a current state of at least one external device of the user.	<i>Id.</i> at ¶ [0039]
Step E) monitoring at least the first channel information so as to determine one or more events, conditions, logical workflows, discrete information values or signal data, based on at least one threshold condition or parameter relating to the first channel information and determined based on the user preferences indicated by the configuration data; and if the one or more events, conditions, logical workflows, discrete information values or signal data is/are determined in E).	<i>Id.</i> at ¶ [0039], Claim 9
3. The apparatus of claim 1, wherein if the one or more events, conditions, logical workflows, discrete information values or signal data is/are determined in E), the at least one processor controls the at least one memory so as to store trigger information relating to the one or more determined events, conditions, logical workflows, discrete information values or signal data.	<i>Id.</i> at ¶ [0039]

Third, Petitioner's obviousness analysis also affirms written description support because Petitioner relies on the PCT publication's disclosure for these

limitations—which is “***substantively identical to the May 2009 parent application, containing the same drawings and specification.***” Pet. at 32 (emphasis added); see also *id.* at 43 (Element [1.1] (relying on the PCT publication's disclosure), 44 (Element [1.2] (same)), 45 (Element [1.3] (same)), 45-46 (Element [1.4] (same)), 47-49 (Element [1.5] A) (same)), 49-50 (Element [1.6] B) (same)), 50 (Element [1.7] C) (same)), 50-52 (Element [1.8] D) (same)), 52-53 (Element [1.9] E) (same)), 58 (Claim 2 (same)), 58-59 (Claim 3 (same)), 59-60 (Claim 4 (same)), 60 (Claim 5 (same)), 60-61 (Claim 6 (same)), 61 (Claim 7 (same)), 61-62 (Claim 10 (same)), 62 (Claim 11 (same)), 62-63 (Claim 13 (same)), 63 (Claim 18 (same)), 64 (Claim 19 (same)), 64 (Claim 23 (same)), 64-65 (Claim 29 (same))).

* * *

In view of the foregoing, Cyandia has met its burden of production to present argument and evidence showing that the 2009 parent provides written description support for each limitation of the Challenged Claims. Therefore, the '948 Patent is entitled to the filing date of the 2009 parent. Cyandia respectfully requests that the Board deny the Petition because the PCT publication is not prior art under pre-AIA § 102(b). See *id.* at 32.

VII. THE CHALLENGED CLAIMS ARE PATENTABLE OVER THE COMBINATION OF THE PCT PUBLICATION AND AUSTIN-LANE

Should the Board find the PCT publication to be prior art in view of Petitioner's unduly narrow interpretation of the term “determining a notification

method,” Petitioner’s combination does not disclose the claimed invention or render it obvious because Petitioner fails to show how Austin-Lane discloses determining the **best** notification method. *See id.* at 27-28; § VI.C.1, *supra* (discussing Petitioner’s **best** notification method interpretation).

A petition must show how the construed claim is unpatentable by specifying where the element is found in the prior art and providing a detailed explanation of the evidence. *See* 37 C.F.R. §§ 42.104(b)(4), 42.22(a)(2). In its obviousness analysis, Petitioner merely provides how Austin-Lane discloses determining a “delivery mechanism,” without any explanation on how this is (or could be) the “best” mechanism. *See* Pet. at 53. Petitioner, therefore, fails to provide any identification with a detailed explanation of where determining the **best** notification method is found in Austin-Lane.

Nor could have Petitioner done so. Petitioner’s “best” notification method interpretation reads the “functions and operations” of the ’948 Patent’s notification manager, configuration server, and session manager into the claims. *Id.* at 27-28. Petitioner does not show, however, where such corresponding functions and operations are disclosed in Austin-Lane. *Id.* Instead, Austin-Lane’s system simply includes a message delivery service that determines a delivery mechanism for sending an electronic message, with no indication that this is the “best” mechanism for delivery. *See* Ex. 1105 at ¶¶ [0021]-[0024], FIG. 1.

For at least the foregoing reasons, Petitioner's PCT publication-Austin-Lane combination does not teach "determining a notification method" if the "best" notification method was required.

VIII. CONCLUSION

For at least the foregoing reasons, the Board should deny institution.

Respectfully submitted,

Dated: January 9, 2025

/James Hannah/

James Hannah (Reg. No. 56,369)
Kristopher Kastens (Reg. No. 57,517)
Jenna Fuller (Reg. No. 74,212)
Kramer Levin Naftalis & Frankel LLP
333 Twin Dolphin Drive, Suite 700
Redwood Shores, CA 94065
Telephone: (650) 752-1700
Facsimile: (650) 752-1800
jhannah@kramerlevin.com
kkastens@kramerlevin.com
jfuller@kramerlevin.com

Jeffrey H. Price (Reg. No. 69,141)
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
Telephone: (212) 715-7502
Facsimile: (212) 715-8302
jprice@kramerlevin.com

Attorneys for Patent Owner
Cyandia, Inc.

CERTIFICATE OF COMPLIANCE WITH 37 C.F.R. § 42.24

The undersigned hereby certifies that the portions of the above-captioned **PATENT OWNER'S PRELIMINARY RESPONSE** specified in 37 C.F.R. § 42.24 has 11,286 words in compliance with the 14,000 word limit set forth in 37 C.F.R. § 42.24(b)(1). This word count was prepared using the Microsoft Word word-processing system used to prepare this paper.

Dated: January 9, 2025

/James Hannah/

James Hannah (Reg. No. 56,369)

Kristopher Kastens (Reg. No. 57,517)

Jenna Fuller (Reg. No. 74,212)

Kramer Levin Naftalis & Frankel LLP

333 Twin Dolphin Drive, Suite 700

Redwood Shores, CA 94065

Telephone: (650) 752-1700

Facsimile: (650) 752-1800

jhannah@kramerlevin.com

kkastens@kramerlevin.com

jfuller@kramerlevin.com

Jeffrey H. Price (Reg. No. 69,141)

Kramer Levin Naftalis & Frankel LLP

1177 Avenue of the Americas

New York, NY 10036

Telephone: (212) 715-7502

Facsimile: (212) 715-8302

jprice@kramerlevin.com

Attorneys for Patent Owner

Cyandia, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies, in accordance with 37 C.F.R. § 42.6(e), and pursuant to agreement by the parties that filing with the Board through the P-TACTS constitutes electronic service if Patent Owner send an email notifying Petitioner of the filing, service was made on the Petitioner as detailed below.

<i>Date of service</i>	January 9, 2025
<i>Manner of service</i>	Electronic Filing with the Board (roy.chamcharas@klarquist.com; andrew.mason@klarquist.com; todd.siegel@klarquist.com; samuel.thacker@klarquist.com; SAP_Cyandia_IPRs@klarquist.com)
<i>Documents served</i>	PATENT OWNER'S PRELIMINARY RESPONSE
<i>Persons Served</i>	KLARQUIST SPARKMAN, LLP, Roy Chamcharas, Andrew M. Mason, Todd M. Siegel, Samuel B. Thacker

/James Hannah/
James Hannah
Registration No. 56,369
Lead Counsel for Patent Owner