

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC and
LENOVO (UNITED STATES) INC.,
Petitioners,

v.

ERICSSON AB,
Patent Owner.

Case IPR2025-00003
Patent No. 9,313,178

**PATENT OWNER'S PRELIMINARY SUR-REPLY
[CORRECTED]**

EXHIBIT LIST

Exhibit No.	Description
2001	Declaration of Kayvan B. Noroozi in Support of Motion for Admission <i>Pro Hac Vice</i>
2002	“Check.” Cambridge Dictionary, Cambridge University Press, (https://dictionary.cambridge.org/us/dictionary/english/check), accessed Jan. 16, 2025
2003	“Detect.” Cambridge Dictionary, Cambridge University Press, (https://dictionary.cambridge.org/us/dictionary/english/detect#google_vignette), accessed Jan. 16, 2025
2004	U.S. Pat. No. 10,136,452, titled “Enhanced PRACH for standalone contention based communications including unlicensed spectrum”

Petitioner's Preliminary Reply rests on a series of incorrect assumptions, assertions, and premises. Each is addressed and refuted in turn below.

I. Petitioner's arguments attempt to ignore and side-step the plain and ordinary meaning of "detecting" as used in the challenged claims

Like the Petition, the Preliminary Reply attempts to equate "detecting" as recited in the challenged claims with merely "checking." Paper 10 at 1. Petitioner contends that the '178 Patent teaches that the recited "detecting" is met by "**checking** to see if a new key should be applied," including during "normal period-based expiration." Paper 10 at 1-2 (citing Ex. 1001, 9:47-49 and 11:2-7). That is incorrect. The patent's teaching at 11:2-7 never states that checking the expiration of a current key to see if a new key should be applied constitutes or equates to "detecting." *See* Ex. 1001, 11:2-7. The term "detecting" is not used at 11:2-7 at all. Instead, the '178 Patent teaches exactly the contrary, stating that "the client 110 **checks** to see . . . if a content encryption key change request for a future segment **was detected** in step 308." *Id.*, 11:38-41 (emphasis added). The '178 patent's specification thus uses the terms "checking" and "detecting" distinctly—a content encryption key change **request** must be "**detected**," and the client 110 "**checks** to see" if that **detection** occurred. *Id.* The step of **checking** if a key change request "**was detected**" cannot itself constitute the **detecting**—the detection, if any, would have already occurred, and hence the use of the past tense. By contrast, the

'178 Patent teaches that in the case of normal period-based expiration, all that is required is a **check** of the expiration time, and there is no **detection**. Ex. 1001, 11:38-41 ("In step 316, the client 110 **checks** to see if the current content encryption key is going to **expire** in the near future") (emphasis added). The '178 Patent's specification thus refutes Petitioner's assertion that the patent equates "checking" with "detecting." Paper 9 at 9-22 (providing a detailed discussion); *Apple Inc. v. Omni MedSci, Inc.*, 2024 U.S. App. LEXIS 15066, *12 (Fed. Cir. June 21, 2024) (rejecting Apple's argument that the specification equated "identify" with "detect," and instead enforcing "the usual presumption that those **different terms have different meanings.**") (emphasis added).

Petitioner does not address Patent Owner's specification analysis, and instead attempts to shoo it away by calling it "attorney argument." Paper 10 at 2. That is incorrect; it is intrinsic evidence. Petitioner's reliance on *extrinsic* evidence from its expert, Paper 10 at 1-2, is thus also unavailing. *Network Commerce, Inc. v. Microsoft Corp.*, 422 F.3d 1353, 1361 (Fed. Cir. 2005) ("[E]xpert testimony at odds with the intrinsic evidence must be disregarded.")).

Petitioner contends that Patent Owner's arguments rely on "cherry-picking words" from a "random" dictionary definition of "detect." Paper 10 at 2, 4. Not so. After a detailed discussion of the specification, the Preliminary Response cited to

dictionary definitions as “*further support*[]” that “check” and “detect” have distinct *plain and ordinary* meanings, which is entirely appropriate. Paper 9 at 16. And the Cambridge Dictionary is far from “random”—the Federal Circuit itself has relied on it to identify the plain and ordinary meaning of disputed terms. *MeadWestVaco Corp. v. Rexam Beauty & Closures, Inc.*, 731 F.3d 1258, 1267 (Fed. Cir. 2013) (affirming that Cambridge Dictionary provided plain and ordinary meaning of “transparency” as recited in disputed claims).

Petitioner next argues that the Preliminary Response contradicts Patent Owner’s infringement arguments before the ITC. Paper 10 at 3. As a threshold matter, Petitioner’s contention is irrelevant: there can be no judicial estoppel since Patent Owner did not ultimately prevail before the ITC. *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001). Regardless, there is no inconsistency. Patent Owner’s infringement position as to “detecting” relied on headers providing a new key ID—“a signal notifying . . . a key rotation boundary.” Ex. 1033 at 54. Patent Owner did not rely on checking for timer expiration to meet “detecting.” The Preliminary Response is thus entirely consistent with Patent Owner’s infringement positions before the ITC. Paper 9 at 13-14, 17 (discussing headers).

Petitioner’s reliance on Patent Owner’s alleged *silence* before the ITC is even further afield. Paper 10 at 3. Patent Owner’s litigation choices before the ITC

neither affect its right to demonstrate that Peterka does not meet the “detecting” requirement in this proceeding, nor diminish the strength of its evidence.

Petitioner next argues that the claims and specification do not “narrow” or “redefine” “detecting” to require discovery or analysis of information that is partly hidden or not clear. Paper 10 at 3-4. But Petitioner has it backwards. Claim terms must be given their plain and ordinary meaning absent lexicography or disavowal. *Hill-Rom Servs. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014). The Cambridge Dictionary evidences the plain and ordinary meaning of “detect” in a manner consistent with the specification’s teachings—not a narrower or redefined meaning. Paper 9 at 16-17. And the Cambridge Dictionary confirms that “check” has a different plain and ordinary meaning than “detect,” consistent with the “usual presumption” that “different terms have different meanings.” *Apple*, 2024 U.S. App. LEXIS 15066, *12. It is Petitioner that seeks to redefine “detect” as synonymous with “check.” But Petitioner has not met the “**exacting**” standard of showing that the patentee “clearly set forth a definition of the disputed claim term **other than its plain and ordinary meaning**,” and “clearly express[ed] an intent to **redefine** the term.” *Hill-Rom*, 755 F.3d at 1371 (emphasis added).

Finally, Petitioner’s reliance on the Board’s prior Institution Decision in IPR2022-00618 is self-contradictory. Paper 10 at 4. Petitioner itself contends that

the Board should not follow its prior Institution Decision in other respects. Paper 10 at 5. The Board should decide institution on the record before it in *this* proceeding.

II. Peterka's key change signal explicitly transitions clients to a key that clients *already have*, not one the client has *requested*, as the claims require

Peterka explicitly teaches that its key change signal moves clients to a key “with which they have been provided,” Ex. 1005 116, *i.e.*, a key that has “been distributed to the client.” Ex. 1005 117. Peterka's key change signal embodiment thus cannot meet the claims, which require that the client *request* a new key—as the Board previously found. Paper 9 at 22-24; IPR2022-00618, Paper 11 at 22 n.6.

Petitioner cannot and does not grapple with that evidence. Instead, it argues that Patent Owner has “abandoned” its arguments by not pursuing them at the ITC. Paper 10 at 5. But Petitioner cites no case law for its “abandonment” assertion, or for its implied conclusion of a waiver or forfeiture in this proceeding. There is none. Petitioner merely seeks to misdirect from the relevant evidence it cannot address. Petitioner's reliance on Peterka's paragraph 121 fails for the same reason: it does not address or change the fact that Peterka's key change signal transitions clients to a key that has been *pushed* down to clients, rather than a key that clients have requested, as claimed. *Compare* Paper 10 at 5 *with* Paper 9 at 22-25.

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PATENT OWNER'S PRELIMINARY SUR-REPLY
Respectfully submitted,

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Date: February 13, 2025

CERTIFICATION OF SERVICE

The undersigned hereby certifies that the foregoing **PATENT OWNER'S PRELIMINARY SUR-REPLY** was served electronically via e-mail on February 13, 2025, on the following counsel of record for Petitioner:

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