

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

ERICSSON AB,
Patent Owner.

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

**PETITIONER'S AUTHORIZED RESPONSE TO
PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW**

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PO's Request for Director Review (Paper 44, "Req.") asks the Director to second-guess a well-reasoned Final Written Decision by recharacterizing factual findings as legal error. The Board committed no error, much less a clear, reversible error that would warrant Director intervention. The Request should be denied.

I. INTRODUCTION

The Board's FWD properly found all challenged claims and all proposed amended claims unpatentable based on the totality of the evidence, including Peterka's teachings. PO's Request twists the record and fundamentally misrepresents the Board's analysis and factual findings, all of which are supported by substantial evidence. The Request is meritless.

PO's central arguments that the Board improperly shifted the burden of proof and "flipp[ed] the law on its head" (Req., 2) rings hollow. The Board *did not* find unpatentability because PO failed to prove nonobviousness; even a superficial review of the record demonstrates that these accusations are contrived.

For example, PO faults the Board's oral hearing questions, which merely sought an understanding of the evidentiary basis for PO's nonsensical "free preview" arguments. The Petition (Paper 3, "Pet.") showed Peterka (EX-1005) teaches a client requesting playback of a pay-by-time (PBT) program, including when that program has a free preview period. Pet., 18-22 (citing, e.g., EX-1005, [0080]-[0082], [0091]-[0092], [0141]-[0143], FIG. 7B). PO replied with the strained argument that Peterka

somehow instead teaches the ability to playback such a program *without the client ever requesting the program* in the first place. Paper 34 (“Sur-Reply”), 7 (“Peterka provides CK0 and CK1 in Figure 7B to clients without request...”); *see also* Paper 25 (“POR”), 14-17. The Board is not “burden flipping” when it seeks a reasoned basis for party argument that seeks to rewrite the disclosure of a prior art reference.

PO also faults the Board’s citations to Peterka without considering their context. Req., 12 (faulting “the Board’s findings based on” EX-1005, [0059], [0081], [0093], [0144]-[0145]); Paper 43 (“FWD”), 36. In proper context, the Board’s citations confirm that a request for access to a PBT program in Peterka is a *media playback request* including when the program includes a free preview (as the Petition argued). The Board properly relied on those passages as substantial evidentiary support in rejecting PO’s nonsensical argument about Peterka’s purported ability to playback a program with a free preview period without any client request. *E.g.*, EX-1005, [0059] (user is “allowed” to watch “free preview” “*while*¹ his credentials are being validated,” i.e., after requesting playback and submitting credentials), [0093] (client “tune[s] to the content,” i.e., requests playback, to get free preview), [0081] (client offered to “choose to select the [PBT] option if offered”), [0144]-[0145] (client “offer[ed]” PBT option for “selection”). And the Board concluded this analysis by making clear these passages were cited to show

¹ Emphasis added unless otherwise specified.

that PO’s alternative reading of Peterka had no support: “Apparently [PO] assumes that a free preview simply occurs due to some unknown agency without any client request—we see no support in Peterka for that speculation.” FWD, 36-37.² As can be appreciated, comparing PO’s unsupported misreading of Peterka to a laundry list of contrary record evidence that describes what the Petition mapped to *is exactly what the Board is supposed to do* to ensure that *Petitioner met its burden*.

This is not the first time the Peterka reference has been held to invalidate claims of the ’178 patent. The ITC likewise found claims 16-17 invalid based on Peterka under a clear and convincing evidentiary standard and according the patent a presumption of validity. EX-1036, 5, 54-59; EX-1043.³ It is hardly surprising that the PTAB arrived at the same conclusion in these proceedings and then further concluded that claims 1–8, 10, 12, 14, and 18–20 are also unpatentable. Like the ITC before it, the Board correctly found that Peterka expressly disclosed sending multiple content keys in response to a client-initiated media playback request as claimed. Pet.,

² See also *id.*, 36 (“Moreover, Patent Owner has no basis for asserting the ECMs that are sent during the free preview period are not sent in response to a request.”). PO partially quotes this language, omitting “Moreover,” and fails to mention or rebut the FWD’s preceding reasoning and analysis of Peterka Fig. 7B. Req., 2, 9.

³ PO did not appeal the ITC decision.

19-22, 23-25, 27-28; FWD, 35-37. Director Review should be denied.

II. THE INSTITUTED PETERKA GROUND

Independent claims 1 and 16 of the '178 patent (EX-1001) recite content encryption keys (CEKs) for decryption of secured content. The recited CEKs are acquired at two stages: (1) in response to a media playback request, when playback is first being initiated (limitations [1A]-[1B]), and (2) during continued playback in response to ongoing requests issued to a license server (limitation [1E]). To meet these features, the Petition relied on Peterka's disclosure of a system in which a client (1) acquires secure content (e.g. a program that includes a "free preview") using "a pay-by-time purchase mechanism," and (2) acquires content keys to decrypt that content during playback using "a 'pull' key distribution method where clients monitor key expiration times to request new keys before they expire." Pet., 18. Petitioner explained how such a system rendered obvious most of the Challenged Claims, including independent claims 1 and 16. Pet., 19-37, 48-50. The Board credited this ground in arriving at its unpatentability determination. FWD, 35-36.

III. LIMITATION [1A]'S MEDIA PLAYBACK REQUEST AS MAPPED

Petitioner showed that limitation [1A]'s "initiating a media playback request" requirement is met when Peterka's client requests access to media content, e.g., to an ongoing pay-by-time show/event. Pet. 19-20 (citing, e.g., EX-1005, [0080]-[0082], [0091]-[0092], [0141]-[0143]; EX-1001, 2:15-21, 9:49-52).

[1A] *initiating a media playback request and receiving a playback request response;*

[1B] *parsing content information from the playback request response, the content information including content encryption keys...*

Among Peterka's supporting disclosures were **express** descriptions of client-initiated "requests **for a program**" (EX-1005, [0091]-[0092]), "client...**request[s]**" for "**program content**" (*id.*, [0141]-[0143]), and client-initiated key "**negotiat[ions]**" resulting in the **receipt of multicast content** (*id.*, [0080]-[0082]).

Petitioner also showed that [1A]'s "receiving a playback request response" requirement is met because "Peterka teaches distributing multiple keys (e.g., current and next) to a client when it negotiates access to media content." Pet., 20-22. Among Peterka's supporting disclosures were (1) Peterka's express description of a "key management approach" where clients are given keys to both the current and next segments of media to mitigate server load at segment boundaries (EX-1005, [0080]) and (2) an illustrated example (*id.*, FIG. 7B) corroborating that this key management approach—sending multiple keys to a client in response to a client's content access request—was applicable and **desirable** in scenarios where many such requests from many clients were expected at segment boundaries. EX-1003, ¶¶77-79. Relying on Peterka's description of individual keys being sent in an entitlement message (ECM or EMM)—EX-1005, [0104]-[0106]—the Petition explained that the ECMs/EMMs **sent in response to a particular media playback request by the client collectively**

constitute a “playback request response” received by the client, as recited in [1A].

Pet., 22; EX-1003, ¶¶80-81.

This Petition mapping was credited in the FWD. FWD, 35-36. Notably, while Peterka’s system provides ECMs/EMMs that include keys upon a client’s initiation of a media playback request for a program with a free preview, [1A] does not require the playback request itself to explicitly request any keys. The Board understood that, explaining at the start of its discussion on this [1A] issue (FWD, 35-36) that the ’178 patent itself operates exactly as the Petition mapping of Peterka relative to claim elements [1A] and [1B]. That is, [1A]’s initial request for playback provides keys even though [1A] does not require a specific request for keys.

IV. THE FWD’S ANALYSIS OF [1A]’S MEDIA PLAYBACK REQUEST AND ITS CITATIONS TO PETERKA WERE PROPER

The Board’s analysis found the Petition’s mapping of [1A] corresponded to the very same media playback request mechanism disclosed in ’178 patent.

In particular, Petitioner relies on the pay-by-time purchasing option, in which two encryption keys — CK₀ and CK₁ — ***are provided during a free preview period***, then followed by a sequence of pay segments with each successive individually assigned key obtained under the pull method before the current key expires. ***This tracks the disclosed embodiment of the ’178 patent***, in which the ***initial request for playback provides the current content encryption key and the next future content encryption key***, followed by successive requests for subsequent keys before key rotation boundaries occur.

FWD, 35-36 (internal citations omitted). Given this context, this FWD discussion continued on to explain how Peterka also provided its keys CK₀ and CK₁ responsive

to a media playback request:

Patent Owner mischaracterizes Figure 7A and 7B of Peterka, asserting that the CK₀ and CK₁ keys shown in the figures are provisioned in advance, ***rather than sent as a result of a media playback request.*** However, as Petitioner asserts, and as Figure 7B explicitly shows, CK₀ and CK₁ are sent via ECM messages ***during the free preview period,*** not at some prior “provisioning” time. (It is irrelevant that the FPK and GK keys are provisioned in advance—those keys are simply used in the ECMs to encrypt CK₀ and CK₁, respectively.) Moreover, Patent Owner has no basis for asserting that the ECMs that are sent during the free preview period are not sent in response to a request. Peterka explains that ***the pay-by-time option and free preview period are “offered,” and that such offers then allow a client to “make a decision” or “selection.”*** Ex. 1005 ¶¶ 59, 81, 93, 144–145. Such decisions or selections are not limited to deciding or selecting to purchase content, they also reasonably ***encompass deciding or selecting to accept a free preview period.***

FWD, 36 (internal citations omitted).

As the Board explained, the Petition relied upon Peterka’s disclosures regarding its PBT purchase mechanism, including for a program with a free preview, in order to meet the claimed media playback request in [1A]. FWD, 35-36. To specifically rebut PO’s argument that the free preview is not “requested,” the Board explained that the free preview *is* requested because it is “‘offered’ and that such offers then allow a client to ‘make a decision’ or ‘selection.’” FWD, 36. “Such decisions or selections are not limited to deciding or selecting to purchase content, they also ***reasonably encompass deciding or selecting to accept a free preview period.***” *Id.* This rebuttal cited to Peterka disclosures demonstrating that accessing media (using its PBT purchase mechanism, as the Petition argued), even for

programs with a free preview, was initiated in response to a request for playback. EX-1005, [0059] (user is “allowed” to watch “free preview” “*while* his credentials are being validated,” i.e., after requesting playback and submitting credentials), [0093] (client “tune[s] to the content,” i.e., requests playback, to get free preview), [0081] (user offered to “choose to select the [PBT] option if offered”), [0144]-[0145] (client “offer[ed]” PBT option for “selection”); FWD, 36 (citing Peterka). All of these paragraphs (except for [0145]⁴) were expressly cited in the Petition as part of its Ground 1 Peterka mapping. *E.g.*, Pet., 10-11, 19-20, 30, 32, 47. And all except for [0144]-[0145] were cited in the POR as part of PO’s argument that Peterka’s client receive keys without any playback request. POR, 14-22, 26-27; FWD, 24.

As the Petition explained and as was credited by the Board (FWD, 35-36), the claim encompasses precisely what is taught in Peterka: a client that initiates a media playback request (including in free preview scenarios), receives multiple content keys in response, and then pulls additional content keys from a license server during playback. Pet., 19-22, 23-25, 27-28, 34-36.

V. PO’S REQUEST IS BASELESS IN PROPER CONTEXT

As noted above, Patent Owner repeatedly confuses the proper scope of [1A]. Limitation [1A] does not require requesting specific keys (e.g., CK0 and CK1):

Patent Owner demonstrated, however, that neither Figure 7B nor any other aspect of Peterka teaches *any* client request for content key CK0

⁴ EX-1005, [0145] discusses the PBT structure the Petition relied on. FWD, 35-36.

or CK1, much less a single request that yields *both* keys in response, as the claims require.

Req., 6 (emphasis in original). As the record makes clear, the claims as construed do not require an explicit request for specific keys, only a request to playback media, just like the '178 patent disclosure. FWD, 36 (citing Fig. 3, 3:47-50).

A. The Oral Hearing Questions Asked PO to Identify Support for its Counter-Arguments in View of Peterka's Disclosures of Media Playback Requests for Programs that Include Free Previews

PO alleges that because the Board asked PO for evidence supporting its positions regarding Peterka's teachings, the Board placed the burden of proving patentability on it at the oral hearing. This argument is nonsensical: the entire purpose of an oral hearing is for parties *to explain and defend their argued positions*. See Consolidated Trial Practice Guide ("CTPG"), § II.M ("Each party to a proceeding will be afforded an opportunity *to present their case...*").

Moreover, PO distorts the oral hearing record. Starting at page 6 of its Request, PO complains about ordinary exchanges with the panel during oral argument. For example, PO argues that "[t]he Board challenged *Patent Owner* to explain how Peterka could provide the free preview content key, CK0, *without* a request." Req., 6. (emphasis in original). But the Board did not construe the claim to require a request for a specific key (e.g., CK0), let alone ask the PO to prove that Peterka met such a requirement. Instead, as discussed *supra* § IV, this exchange was about PO's position that a client could somehow access a program with a free

preview *absent a media playback request*:

J. BEAMER: If you go back to 7B.

MR. NOROOZI: Yes.

J. BEAMER: Can you show that? So you've got in that free preview period.

MR. NOROOZI: Yes.

J. BEAMER: You have two ECM messages, one for the key one, key 0, and the other for key 1.

MR. NOROOZI: Yes.

J. BEAMER: *I understand you'd be saying that those messages are sent without the user requesting them*, but how could they be sent without some sort of indication that the user *wants to start looking at the free preview*? I mean, there has to be some, you know, cause-and-effect relationship there.

Paper 42 ("Tr.") at 44:8-20. Thus, the panel acknowledged PO's argument, and then prompted its counsel—given the Petition's showing, in its mapping to [1A], that Peterka provides multiple content keys to clients that initiate a media playback request for a program during a free preview (Pet., 20-21; FWD, 35-36)—to identify contrary evidence supporting PO's position that a PBT client in Peterka could somehow access a such a program *without* "initiating a media playback request" at all. PO's response was that a client "interaction that allows you to then see the free preview" is somehow not a client request unless it is for purchased content (Tr. at 44:21-26), shortly followed by an attempt to introduce new argument regarding an

embodiment of Peterka that PO never before discussed (Tr. at 45:15-25).⁵

Plainly, the panel's inquiry about PO's evidentiary support for its own argument was an appropriate invitation to PO to "present" its "case" (CTPG, § II.M); otherwise every oral hearing would constitute "burden flipping." And consideration of PO's argument led the Board to decide *against* the PO on this point, with citations to paragraphs in Peterka confirming that free previews for PBT programs (relied on in the Petition) are provided at client request. *Supra* § IV. PO's failure to explain or present countervailing evidence from its trial papers rebutting Peterka's disclosures to the contrary is not surprising given the FWD's explanation that Peterka's PBT mechanism structure tracked the very same operation of the '178 patent. *Supra* § IV.

Patent Owner also cites Tr. at 46:8-9 where Judge Beamer was still developing his understanding of PO's strained argument about "media playback requests" with reference to well-understood concepts of media playback. Req., 7. PO now accuses the Board of "us[ing] its own personal experience with current systems to argue for

⁵ PO tries to present this argument now, after FWD, complete with a new annotated image. Req., 7-8. This argument was never raised before and is waived. Moreover, PO's belated, unsupported interpretation of a Peterka embodiment that the Petition did not rely upon (and which the parties did not discuss in briefing) cannot upset the Petition's actual Peterka mapping, which the FWD credited. *Supra* §§ III-IV.

obviousness—a clear violation of the rule against hindsight bias.” *Id.*, 9. Again, PO is criticizing a *hearing* in which the parties are supposed to discuss technical points relative to the record, not a FWD where the Board somehow relied upon personal experience as final record evidence of unpatentability. The Request then repeats its rejected arguments and reargues them (*id.*, 7-9), treating the transcript again as if it were the FWD, which it plainly is not.

B. Patent Owner Ignores and Distorts the Complete FWD Record

PO *finally* turns to the actual FWD record, arguing that the Board “shifted the burden of proof to Patent Owner” when it stated “Patent Owner has no basis for asserting that the ECMs that are sent during the free preview period are *not* sent in response to a request.” Req., 9 (emphasis in original). PO treats this plucked sentence as if it were the entire FWD holding, which it is not. Context for the sentence is again reproduced below.

Patent Owner mischaracterizes Figure 7A and 7B of Peterka, asserting that the CK₀ and CK₁ keys shown in the figures are provisioned in advance, rather than sent as a result of a media playback request. However, as *Petitioner asserts, and as Figure 7B explicitly shows, CK₀ and CK₁ are sent via ECM messages during the free preview period, not at some prior “provisioning” time. (It is irrelevant that the FPK and GK keys are provisioned in advance— those keys are simply used in the ECMs to encrypt CK₀ and CK₁, respectively.)* Moreover, Patent Owner has no basis for asserting that the ECMs that are sent during the free preview period are not sent in response to a request. *Peterka explains that the pay-by-time option and free preview period are “offered,” and that such offers then allow a client to “make a decision” or “selection.” Ex. 1005 ¶¶ 59, 81, 93, 144–145.* Such decisions or selections are not limited to deciding or selecting to

purchase content, they also reasonably encompass deciding or selecting to accept a free preview period.

FWD, 36 (internal citations omitted). As shown in the bolded text above, PO's plucked sentence is bracketed by overwhelming Peterka evidence that disproves PO's arguments. The Board first explained that PO's provisioning argument was disproven by Fig. 7B's **explicit teachings** because it shows that CK0 and CK1 are transmitted in ECMs ***and not provisioned before the free preview period***. Then the FWD moved to PO's second argument that content keys for a free preview are not sent in response to a media playback request. The FWD pointed out that PO offered no contrary evidence establishing that the ECMs—messages in FIG. 7B ***that are shown being transmitted during the free preview period***—are somehow provisioned before the free preview period and before a media playback request that meets [1A]. Then the Board offered additional ***pinpoint citations to Peterka*** that confirmed that the ECMs with content keys for a free preview were in fact provided in response to a playback request, citing [0059], [0081], [0093], [0144], and [0145].

Contrary to PO's arguments that “the Board reasoned that Peterka's ***silence*** on the key disputed element is evidence in favor of unpatentability” (Req., 10, emphasis in original), the Board clearly did no such thing, relying on ample evidence from Peterka that PO's reading of Peterka is wrong. And PO's complaint that the “Board could not identify ***any actual evidence***” (*id.*) of a specific request for key CK0 is, as explained *supra* § V (pages 8-9), irrelevant to [1A] as properly construed,

because [1A] requires a “media playback request,” not a request for specific keys.

Patent Owner also provides a handwaving discussion of the FWD’s citations to Peterka (FWD, 36), arguing that these paragraphs were never relied upon in the Petition for the proposition that “CK0 is provided in response to a client request.” Req., 12. This is irrelevant, because [1A] requires no explicit request for a key. Moreover, the Petition *did* rely on [0081] to argue that CK0 is provided in response to a media playback request. Pet., 19-22; EX-1003, ¶¶75-81. Further, the Petition’s ground and mapping for [1A] undeniably relies on Peterka’s PBT structure including for programs with free previews (Pet., 19-22), which these paragraphs reference. *Supra* § IV. While PO suggests the Board found unpatentability based on arguments and evidence not in the Petition (Req., 12), this ignores that all but one of these paragraphs *were* cited in the Petition as part of the Peterka mapping (*e.g.*, Pet., 10-11, 19-20, 30, 32, 47) and fails to explain how Peterka’s descriptions of the *same* structure the Petition relied upon could be a “new argument” or “new evidence.”

As to these paragraphs’ content, PO offers little meaningful rebuttal. For example, with reference to EX-1005, [0081], [0144], and [0145], PO argues that they “do not discuss or mention the free preview at all.” Req., 13. This misses the point. These paragraphs describe PBT. PO admitted that the free preview is used in Peterka’s PBT structure. POR, 14. PO does not show, because it cannot, that these paragraphs support PBT somehow being initiated *without* a playback request.

As to EX-1005, [0059], PO argues that it “supports the conclusion that a free preview is provided *without* client request, stating that the free preview is ‘used to attract users to content,’ and is provided ‘while [the client’s] credentials are being validated.’” Req., 13. This again misses the point. This paragraph makes clear that a free preview is provided *after* a request for a specific program has been submitted, “*while*” the client’s credentials for the selected program are being validated.

Patent Owner likewise misses the point of EX-1005, [0093], which makes clear that a free preview may first be provided in response to “clients *that tune to* the content”—yet another example of a media playback request.

Finally, PO disagrees with the Board’s citation to EX-1005, [0080], arguing that “the Board’s decision concludes—without any explanation—that Peterka’s teaching that ‘each [client] is given keys to the current as well as the next segment’ means both CK0 and CK1 are ‘sent in response to a single request,’” and then *incorrectly* says that the FWD “contradicts itself” “in the very next sentence” by concluding the opposite. Req., 13-14. The FWD does no such thing. FWD, 37. The Board explained the import of this paragraph when read together with Figure 7B. PO’s mischaracterization and disagreement with this carefully-reasoned finding regarding what Peterka discloses is not a proper ground for Director Review. Because PO’s Request is based entirely on misunderstanding the purpose of oral hearing, and mischaracterizing the FWD record, it should be denied.

Respectfully submitted,

Date: April 30, 2026

/Turhan Sarwar/

Turhan F. Sarwar, admitted *pro hac vice*
WOLF, GREENFIELD & SACKS, P.C.

CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6 (e)(4)

I certify that on April 30, 2026, a copy of the foregoing document, including any exhibits filed therewith, is being served via electronic mail, as previously consented to by Patent Owner, upon the following:

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