

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC., AMAZON WEB SERVICES, INC., AND
AMAZON.COM SERVICES LLC,
Petitioner,

v.

B.S.D. CROWN, LTD.,
Patent Owner.

Case IPR2025-00057
U.S. Patent No. 8,934,887

**PATENT OWNER'S AUTHORIZED RESPONSE TO
PETITIONER'S REQUEST FOR DIRECTOR REVIEW¹**

¹ This Response was authorized by the Board via email. *See* Ex. 3001.

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The Board made no error in declining to institute *inter partes* review on the merits. The claim limitation at issue states “at least one of the display, the audio and the hardware (HW) action.” The Petition erred by viewing that limitation only in the disjunctive, implicitly interpreting “at least one of ... and” to be the same as “or,” and therefore only requiring a display action, an audio action, *or* a hardware action. The Board considered Petitioner’s positions but disagreed, and did not err.

Further, Petitioner’s request faults the Board for limiting the available claim construction briefing, but this overlooks three critical aspects of the record. First, the Petitioner had full opportunity, and the obligation under 37 C.F.R. § 42.104(b)(3), to address claim construction in its Petition. Second, the Board granted Petitioner’s request to present additional briefing. Third, Petitioner’s pre-institution reply briefing did address claim construction, and the Board fully considered those arguments. Only now, following denial, does Petitioner cry foul. The Request presents no error, abuse of discretion, or reason warranting a redo.

I. THE BOARD’S DECISION ON THE MERITS WAS THOROUGH

The Board’s detailed analysis of the “at least one of the display, the audio, and the hardware (HW) action” recitation can be found on pages 11-18 of the DI. The Board began its analysis by noting the parties’ competing constructions in the parallel district court proceeding. DI, 12-13. The Board then noted that the Petition “does not propose construction of any term, except stating that ‘the plain

and ordinary meanings of the claim terms' should apply," and also acknowledged Patent Owner's position, following *SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 885–86 (Fed. Cir. 2004) and *Medgraph, Inc. v. Medtronic, Inc.*, 843 F.3d 942, 949–50 (Fed. Cir. 2016). DI, 13 (citing Pet., 5, Prelim. Resp., 8).

In reaching its construction, the Board addressed and considered the claim construction argument found in Petitioner's Preliminary Reply. DI., 14 (citing Prelim. Reply 5). The Board was "mindful that the conjunctive construction of *SuperGuide* is not a *per se* rule" and that it was "cognizant that numerous courts and tribunals (including PTAB) have declined to follow the Federal Circuit's *SuperGuide* construction of 'at least one of' when the patent's claims, specification, or prosecution history necessitate a broader meaning." DI, 14-16. The Board then considered Patent Owner's arguments concerning the language of the claims and specification. DI, 16-17 (citing POPR, 9-10). The Board discussed the antecedence in claims 1 and 20. DI, 16-17. Turning to the specification, the Board found support in Fig. 2 of the '887 patent and that hardware (HW) actions in the '887 patent are described as separate and distinct from video/audio actions. DI, 17-18. As a result, the Board agreed with Patent Owner's proposed construction.

The Request fails to demonstrate any error with the Board's construction or its process. The Board ***did address*** the claim construction argument presented in Petitioner's Preliminary Reply. And the Board's criticism that Petitioner's claim

construction position lacked “any explanation” (DI, 14) applies to both the Preliminary Reply and the Petition, which relied only on “ordinary meaning.” This does not mean that the Board erred in its construction.

Also, the Request does not discuss the antecedence of claims 1 and 20 (or the context of claim 11). Instead, it presents a new argument concerning “eleven embodiments” of the ’887 patent (Req., 2-4), ending with a contention that “in not a single embodiment does the server send—and the mobile device reproduce—a video/display, audio, **and** a HW action by a HW component.” Req., 3-4 (emphasis in original). But as the Board correctly recognized, the ’887 patent uses “and” repeatedly, and does set out that hardware (HW) actions in the ’887 patent are described as separate and distinct from video/audio actions. DI, 17-18. In any event, a Request for Director review is not the place for a new claim construction argument that was plainly foreseeable and should have been in the Petition.

II. THE BOARD DID NOT DENY PETITIONER AN OPPORTUNITY TO PRESENT CLAIM CONSTRUCTION ARGUMENT IN ITS PRELIMINARY REPLY

The Board fully considered Petitioner’s argument that Patent Owner’s construction was “overly narrow” and that *SuperGuide* should not be treated as a *per se* rule. DI, 14-16. It is a mystery, then, why the Request would contend that the Board’s claim construction included procedural error. Petitioner requested “authorization to file a preliminary reply to address Patent Owner’s arguments

regarding (1) *Fintiv* (Patent Owner's Preliminary Response (Paper 10) at 26- 38) and (2) claim construction of 'at least one of the display, audio and a hardware (HW) action' (*id.* at 8-11)." Ex. 1040, 2. The Board responded, "[t]he panel has authorized additional *Fintiv* briefing because of the rescission of the Vidal memorandum on February 28, 2025. In particular, the Petitioner is authorized to file a 5-page preliminary reply to be due on April 7, 2025." *Id.*, 1.

Petitioner included merits-based arguments in its Preliminary Reply, and nearly all of page 5 is directed to claim construction, including *SuperGuide* and whether it sets forth a *per se* rule of construction. Prelim. Reply, 4-5. Petitioner apparently reserved some arguments for post-institution, stating that "after institution, Petitioner will address how PO's construction of this limitation is incorrect." Prelim. Reply, 5. But Petitioner's decision to push additional claim construction argument down the road does not establish an abuse of discretion by the Board, and should not be rewarded with Director Review. Finally, Petitioner filed a full, 5-page Preliminary Reply, and was responsible for deciding how to allocate its arguments among those pages. That Petitioner now regrets holding other arguments in reserve for "after institution" does not warrant Director Review.

III. CONCLUSION

Petitioner fails to establish any basis for Director Review. The Request should be denied.

IPR2025-00057 PO's Authorized Response to Director Review Request

Dated: July 7, 2025

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CERTIFICATE OF SERVICE

Petitioner has consented to e-mail service in this proceeding. Pursuant to 37 C.F.R. §42.6, the undersigned certifies that on this date, a copy of the foregoing document was served by email upon the following counsel at the below email addresses:

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