

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.

IPR2025-00057

U.S. Patent No. 8,934,887 B2

PETITIONERS' REQUEST FOR DIRECTOR REVIEW

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EXHIBIT LIST

Exhibit	Reference
1001	U.S. Patent No. 8,934,887 (“’887 Patent” or “’887Pat.”)
1002	File History of the ’887 Patent (“’887FH”)
1003	Declaration of Dr. Paul Martin (“Martin”)
1004	Dr. Paul Martin CV
1005	Korean Patent Application Publication No. 10-2012-0046807 (“Yoon”)
1006	U.S. Patent No. 9,424,052 (“Overton”)
1007	U.S. Patent Application Publication No. 2009/0305790 A1 (“Lu”)
1008	M. Lubonski, V. Gay and A. Simmonds, “An adaptation architecture to improve QoS of multimedia services for enterprise remote desktop protocols,” Next Generation Internet Networks, 2005, Rome, Italy, 2005, pp. 149-156 (“Lubonski”)
1009	Richardson, Iain E., The H.264 Advanced Video Compression Standard (2nd ed.), 2010, Wiley Publishing (“Richardson”)
1010	U.S. Patent Application Publication No. 2006/0098619 A1 (“Nix”)
1011	Declaration of June Ann Munford
1012	Complaint, <i>BSD Crown, Ltd. f/k/a Emblaze, Ltd. v. Amazon.com Inc.</i> , NDCA-3-24-cv-03503
1013	Plaintiff’s Infringement Contentions in <i>BSD Crown, Ltd. f/k/a Emblaze, Ltd. v. Amazon.com Inc.</i> , NDCA-3-24-cv-03503
1014	Excerpts from Federal Court Management Statistics, June 2024
1015	U.S. Patent Application Publication No. 2001/0052012 A1 (“Rinne”)
1016	M. A. Talaat, M. A. Koutb, H. M. Kelash and R. H. Aboelez, “Content-aware adaptive video streaming system,” 2005 International Conference on Information and Communication Technology, Cairo, 2005, pp. 265-276 (“Talaat”)
1017	A Few More Reasons Why RDP is Insecure. https://thehack-ernews.com/2023/07/a-few-more-reasons-why-rdp-is-insecure.html

Exhibit	Reference
1018	Understanding the Remote Desktop Protocol (RDP). https://learn.microsoft.com/en-us/troubleshoot/windows-server/remote/understanding-remote-desktop-protocol
1019	Remote Desktop Services overview in Windows Server. https://learn.microsoft.com/en-us/windows-server/remote/remote-desktop-services/remote-desktop-services-overview
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1021	Remote takeover: How RealVNC conquered the world. https://www.cam.ac.uk/research/features/remote-takeover-how-realvnc-conquered-the-world
1022	Download VNC Server by RealVNC. https://www.realvnc.com/en/connect/download/vnc/
1023	Download VNC Viewer by RealVNC. https://www.realvnc.com/en/connect/download/viewer/
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1025	R. J. Creasy. The Origin of the VM/370 Time-Sharing System. IBM Journal of Research and Development, 25(5):483-490, September 1981. https://pages.cs.wisc.edu/~stjones/proj/vm_reading/ibmrd2505M.pdf
1026	VMware Celebrates Seven Years of Continual Innovation and Execution. https://news.broadcom.com/releases/7year
1027	[Xen-devel] [ANNOUNCE] Xen high-performance x86 virtualization. https://sourceforge.net/p/xen/mailman/message/5533663/
1028	News (older entries). https://www.virtualbox.org/wiki/News_pre_4_3
1029	Ten years of KVM. https://lwn.net/Articles/705160/
1030	Hyper-V Made Available. https://adtmag.com/articles/2008/06/26/hyperv-made-available.aspx
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1032	Microsoft launches Windows Azure. https://news.microsoft.com/announcement/microsoft-launches-windows-azure/
1033	Reflecting on our ten year App Engine journey. https://cloud.google.com/blog/products/gcp/reflecting-on-our-ten-year-app-engine-journey/
1034	Guide to Security for Full Virtualization Technologies. https://doi.org/10.6028/NIST.SP.800-125
1035	Review: OnLive -- The What, Why and Who of Gaming in the Cloud. https://www.wired.com/2011/06/review-onlive-the-what-why-and-who-of-gaming-in-the-cloud/
1036	Gaikai is Live! https://dperry.com/2011/02/06/gaikai_is_live/
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1038	Kumar, Karthik, and Yung-Hsiang Lu. Cloud computing for mobile users: Can offloading computation save energy?. Computer 43, no. 4 (2010): 51-56. https://www.cs.purdue.edu/homes/bb/cs590/handouts/computer.pdf
1039	Dinh, H.T., Lee, C., Niyato, D. and Wang, P. (2013), A survey of mobile cloud computing: architecture, applications, and approaches. Wirel. Commun. Mob. Comput., 13: 1587-1611. https://doi.org/10.1002/wcm.1203
1040	Email from Board authorizing Petitioner's Reply
1041	Amazon's <i>Sotera</i> stipulation
1042	DocketNavigator stay statistics for Judge Donato in NDCA
1043	CAP Co., Ltd. v. McAfee, Inc. Powered by TCPDF (www.tcpdf.org) 3-14-cv-05068 (CAND), 4/11/2017, docket entry 81
1044	DocketNavigator time to milestones statistics for Judge Donato in NDCA
1045	District Court Docket as of April 3, 2025

Exhibit	Reference
1046	Order Continuing Claim Construction Hearing to October 23, 2025, <i>BSD Crown, Ltd. f/k/a Emblaze, Ltd. v. Amazon.com Inc.</i> , Dkt. 69, NDCA-3-24-cv-03503
1047	Plaintiff's Opening Claim Construction Brief, <i>BSD Crown, Ltd. f/k/a Emblaze, Ltd. v. Amazon.com Inc.</i> , Dkt. 55, NDCA-3-24-cv-03503
1048	Defendants' Responsive Claim Construction Brief, <i>BSD Crown, Ltd. f/k/a Emblaze, Ltd. v. Amazon.com Inc.</i> , Dkt. 58, NDCA-3-24-cv-03503
1049	Plaintiff's Reply Claim Construction Brief, <i>BSD Crown, Ltd. f/k/a Emblaze, Ltd. v. Amazon.com Inc.</i> , Dkt. 63, NDCA-3-24-cv-03503
1051	Order Staying Case, <i>BSD Crown, Ltd. f/k/a Emblaze, Ltd. v. Amazon.com Inc.</i> , Dkt. 93, NDCA-3-24-cv-03503

I. INTRODUCTION

Pursuant to 37 C.F.R. §42.71(d), Petitioner requests Director Review of the Board’s institution denial on remand (Paper 24). This is a unique situation presenting extenuating circumstances that warrant a **second** Director Review. Acting Director Stewart previously granted Review, vacating the first institution denial because “the Board appears to have misapprehended Figure 2 of the challenged patent” in construing “at least one of the display, the audio, and the hardware (HW) action” as conjunctive. Paper 16, 2. In the latest institution denial, the Board blatantly contradicts the Acting Director’s finding and doubles down on the same erroneous, already-rejected findings of fact. The Board compounds its error by misapplying/ignoring precedent, just as it did previously. Because the Board’s decision is premised entirely on an erroneous claim construction, the Director should reverse the decision, construe “at least one of” as disjunctive, and institute the IPR.

II. LEGAL STANDARD

The Director may review and reverse incorrect Board decisions that involve an abuse of discretion, erroneous findings of fact, or erroneous conclusions of law. *United States v. Arthrex, Inc.*, 594 U.S. 1, 25 (2021); *see also* Revised Interim Director Review Process §2.B; *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016).

III. BACKGROUND

A. The ’887 Patent (EX-1001)

The '887 Patent generally relates to systems/methods for a mobile device to interface with a user while the processing, storage, and network interface are handled remotely by a server. The patent describes eleven embodiments in which a mobile device gathers input data and sends it to a server for processing, after which the server sends display and/or audio user interface information to the mobile device:

Figure	Corresponding Description
Fig. 2	4:43-5:47, 4:64-65 (“server 12 processes the input information to produce a display and/or audio output”), 5:8-9, 5:24-28, 5:41-43
Fig. 3	5:48-6:21, 6:15-21 (“pass in real time...display graphics motions...perform voice calling or send SMS”)
Fig. 4	6:22-8:4, 6:63-66, 6:66-7:3 (The mobile device 10 produces the display, speaker audio and/or a HW action...)¹, 7:57-62
Fig. 5	8:4-9:17, 8:37-43 (“If the mobile OS on the server 12 receives input information to draw a circle on the display...[it] emulates the resulting display and send user interface information for reproducing the resulting display...”, 8:47-53, 8:54-64
Fig. 6	9:18-11:11, 9:29-32 (“For example, audio data is sent from the server...in a first stream separate and different from a second stream in which video data is sent.”), 10:43-44, 10:56-58
Fig. 7	11:12-33, 11:29-33 (“The mobile device 10 decodes the processed audio/video data...and displays the results and reproduces the audio.”)
Fig. 8	11:34-62, 11:57-62 (“The first and second mobile devices 10 receive the processed audio/video streams...”)
Fig. 9	11:63-12:11, 12:8-11 (“The mobile device 10 decodes audio data sent from the server 12.”)
Fig. 10	12:12-33, 12:22-26 (“The server 12...separates the web page display into video, image, text and audio streams and sends the web page to the mobile device.”)
Fig. 11	12:34-48, 12:39-44 (“The server 12...sends user interface information including display data and audio data to the mobile device 10”);

¹ All emphasis added unless otherwise stated.

Figure	Corresponding Description
Fig. 12	12:49-62, 12:53-59 (“server 12...sends user interface information including display data and/or audio data...to the mobile device 10.”)

Of these eleven, eight (Figs. 3, 5-8, 10-12) send both video/display² and audio data from the server for reproduction at the mobile device, one (Fig. 9) sends only audio data, one (Fig. 4) discloses the mobile device “produc[ing] the display, speaker audio and/or a HW [hardware] action” (*id.*, 6:66-7:3), and one (Fig. 2) sends video/display and audio to the mobile device for “producing a display, audio, and other feedback” (*id.*, 5:35-38) without explaining what constitutes “other feedback.” **No embodiment states that the server sends “a video/display, audio, and a HW action” to the mobile device for reproduction.**

B. Prosecution History

During prosecution, the Examiner rejected the pending claims based on prior art that sends either video alone or video and audio to a mobile device for reproduction. EX1002, 129-64. The Examiner never interpreted the ’887 claims to require that display, audio, *and* HW action be sent to the mobile device, nor did the Applicant ever argue the claims require all three. *Id.*, 191-201. Further, the disputed limitation contrasts with a claim Applicant did *not* pursue during prosecution that

² Petitioner groups “text and/or notification data” with “video/display data” because the ’887 Patent provides no indication that this data is used in any other way.

included the same list but omitted “at least one of”— a claim that would have been conjunctive. *See id.*, 49-50 (pending claim 14 reciting “producing, by the mobile device, a display, audio and a HW action...”), 121 (not electing claim 14).

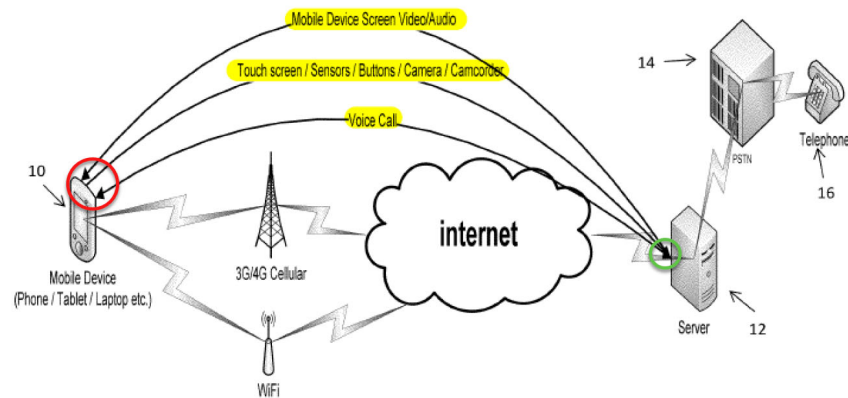
C. The First Institution Denial (“DI-1,” Paper 13)

The Board’s first institution denial agreed with PO that limitation 1[c] is conjunctive. DI-1, 18. The Board reasoned that “if ‘input information is required to produce three (3) separate and distinct components...then the ‘user interface information’ for use in reproducing at the mobile device is, likewise, required to include the three (3) separate and distinct components.” *Id.*, 16-17. Notably, the Board relied upon ’887 Figure 2 for support because it shows a mobile device sending three types of input information to the server. *Id.* The Board then rejected all eight of Petitioner’s invalidity grounds for failing to disclose limitation 1[c] under a conjunctive construction. *Id.*, 18-34.

D. The Order Granting Director Review (“ODR,” Paper 16)

Petitioner requested Director Review (Paper 14) of DI-1 because the Board’s claim construction relied on a misreading of ’887 Figure 2, excluded nearly all embodiments, was contrary to the claim language, and ignored the prosecution history. Paper 14, 9–14. Acting Director Stewart granted Review and remanded “with instructions to allow additional briefing on the claim construction issue and to construe the disputed claim term.” ODR, 3. Importantly, the Acting Director agreed

“the Board appears to have misapprehended Figure 2” (below, annotated), which “shows the mobile device receiving only audio data and video data [circled in red], not audio data, video data, and an HW action, as the Board found.” *Id.*, 2.



EX1001, Fig. 2.

E. The Second Institution Denial (“DI-2,” Paper 24)

After the parties submitted claim construction remand briefing (Papers 19, 20), the Board issued a second institution denial. Again, the Board’s decision is based on a conjunctive construction for “at least one of [A] the display, [B] the audio and [C] the hardware (HW) action” in limitation 1[c].

The Board begins by disputing the Acting Director’s finding in the ODR—according to the Board, it “did not misapprehend Figure 2 of the challenged patent.” DI-2, 3 n.1 (finding once again that Figure 2 shows “remote server 12...sends the ‘user interface information’ to mobile device 10 to reproduce at mobile device 10 ‘at least one of [A] the display, [B] the audio and [C] the HW action’ by the HW component of mobile device 10”), 25-26 (citing Figure 2 to support “the conjunctive

construction”). **Notably, the Board never addresses the very thing the Acting Director pointed out in the ODR that the Board misapprehended:** the arrows in Figure 2 clearly show mobile device 10 sending [A], [B], and [C] to server 12 (circled in green above) but only [A] and [B] being sent back to mobile device 10 (circled in red above).

The Board additionally makes several erroneous legal and factual findings in reaching its conjunctive construction, including:

- The Board notes Petitioner’s point that a conjunctive construction excludes nearly all, if not all, eleven specification embodiments, but the Board does not substantively address any of those embodiments. DI-2, 27-28. Nor does the Board mention the Federal Circuit guidance that a construction that excludes a preferred embodiment “is rarely, if ever, correct and would require highly persuasive evidentiary support.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996). The Board merely repeats PO’s argument that “it is wrong to insert an ‘or’ into the claims where no ‘or’ was used or intended.” DI-2, 28.
- The Board relies on *SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870 (Fed. Cir. 2004) for “a rebuttable presumption that the plain and ordinary meaning of the term ‘at least one of [A], [B], and [C]’ as conjunctive,” (DI-24, 15) yet the Board applies an impermissibly high standard to rebut that presumption, and the Board further either dismisses as “inapposite” or does not

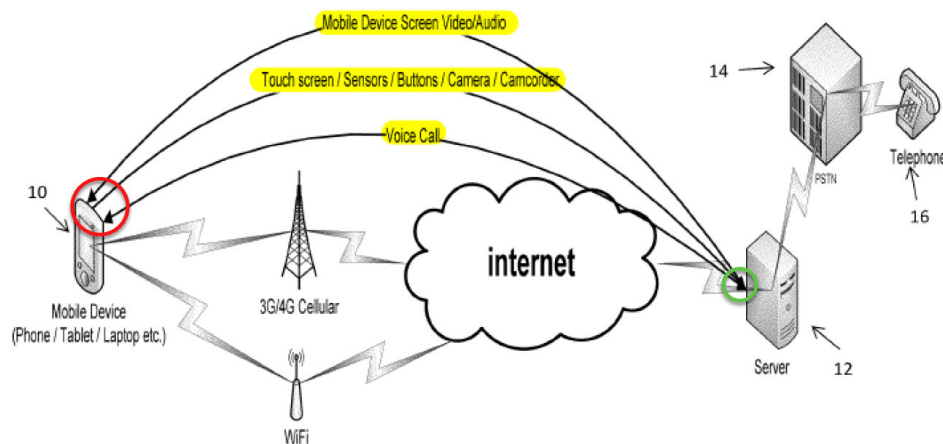
engage with its own repeated rulings that “*SuperGuide* [is] inapplicable when the listed items following ‘at least one of’ are not categories containing many possible values.” *Taiwan Semiconductor Mfg. Co. v. Godo Kaisha IP Bridge 1*, IPR2017-01862, Paper 9, 9-10 (Feb. 6, 2018) (“*TSMC*”); *Apple Inc. v. CPC Pat. Techs. PTY, Ltd.*, IPR2022-00601, Paper 31, 29 (Sept. 27, 2023) (“*CPC*”).

- The Board notes Petitioner’s argument that neither the Examiner nor the Applicant treated the disputed claim term as conjunctive during prosecution (DI-2, 29), but the Board does not substantively discuss the prosecution history or address Petitioner’s cited case law. Paper 19, 10 (citing *TSMC*, 11-12).

IV. ARGUMENT

A. The Board Ignored The Acting Director’s Guidance And Once Again Misapprehended Figure 2

In DI-1, the Board relied on ’887 Figure 2 (reproduced below, annotated) for a conjunctive construction because it shows a mobile device sending three “separate and distinct components” of input information to the server. DI-1, 17.



EX1001, Fig. 2.

The Board specifically pointed to the three components of information from the mobile device to the server—[1] mobile device video/audio, [2] touch screen/sensors/buttons/camera/camcorder, and [3] voice call—indicated by the arrow circled in green. But the Board ignored that the server sends only *two* components of information—[1] mobile device video/audio and [2] voice call—back to the mobile device (circled in red). The server does *not* send “touch screen/sensors/buttons/camera/camcorder” information (which the Board equated to “a hardware (HW) action by a HW component of the mobile device”). The Acting Director agreed “the Board appears to have misapprehended Figure 2 of the challenged patent” because “Figure 2 shows the mobile device receiving only audio data and video data, not audio data, video data, and an HW action, as the Board found.” ODR, 2. Importantly, as the Acting Director further noted, “[t]he Board relied in part on this finding to determine that the Federal Circuit’s decision in [*SuperGuide*] controlled the claim construction in this case.” *Id.* (footnote omitted). Accordingly, the Acting Director granted review and remanded with clear guidance.

Remarkably, however, the Board disregards the guidance from the Acting Director and asserts that “[t]he Board did not misapprehend Figure 2 of the challenged patent....” DI-2, 3 n.1. The Board then once again focuses on what mobile device 10 sends to server 12 (circled in green above) and further misstates what server 12 sends—and, critically, what it does **not** send—back to mobile device

10 (circled in red above) in Figure 2. *Id.* (citing EX-1001, 4:53–63). But contrary to the Board’s characterization, the phrase “at least one of [A] the display, [B] the audio and [C] the HW action” does not appear in the cited passage from the ’887 patent (EX1001, 4:53–63) or anywhere else in the patent’s description of Figure 2. Rather, the patent explains that in Figure 2, “mobile device 10 produces [A] a display and/or [B] audio output based on the data sent by the server 12” (EX-1001, 5:35-43). It never mentions sending [C] a HW action to the mobile device. The patent’s description thus matches the *two* arrows in Figure 2 that extend from server 12 to mobile device 10 (circled in red above)—supporting a *disjunctive* construction.

The Board further doubles down on its error by subsequently repeating almost verbatim in DI-2 the same description of Figure 2 that appeared in DI-1. *Compare* DI-1, 4-5, *with* DI-2, 5-6. The Board apparently copied text from DI-1—the same text the Acting Director reviewed and rejected—into DI-2 without even attempting to address what is clear from even a cursory review of Figure 2 and what the Acting Director expressly observed: “Figure 2 shows the mobile device receiving only audio data and video data, not audio data, video data, and an HW action.” ODR, 2. The Board’s repeated mistake appears at the beginning of DI-2 (in the “Introduction” and “Background” sections), permeates and taints the entire claim-construction analysis, and should be rejected once again.

B. The Board’s Construction Once Again Impermissibly Excludes Embodiments without Explanation

As noted above (§III.A above), the '887 patent discloses eleven embodiments, and none of them requires the server to send “a video/display, audio, and a HW action” to the mobile device. On the contrary, in ten of the eleven embodiments, the server sends either [A] display *and* [B] audio or *only* [B] audio to the mobile device—those ten embodiments never even mention sending [C] a hardware action to the mobile device. And the sole embodiment that does mention [C] a hardware action does so using “and/or,” which encompasses a disjunctive construction. Thus, the Board’s conjunctive construction, at best, excludes ten of the eleven embodiments in the patent and, at worst, excludes all of them. Neither PO nor the Board disputes this. Instead, the Board attempts to sidestep the issue by responding that “it is wrong to insert an ‘or’ into the claims where no ‘or’ was used or intended.” DI-2, 28 (quoting PO’s Remand Br. (Paper 20), 9). But that is non-responsive to this issue. The Federal Circuit established long ago that a construction that excludes a preferred embodiment—let alone (nearly) all embodiments—“is rarely, if ever, correct and would require highly persuasive evidentiary support.” *Vitronics Corp.*, 90 F.3d at 1583. The Board does not cite this case or any related precedent, nor does the Board analyze even a single embodiment to provide the “highly persuasive evidentiary support” for the Board’s conjunctive construction.

Similarly unhelpful is the Board’s discussion of *other* aspects of the embodiments unrelated to the disputed claim term. For example, the Board cites

passages relating to Figures 2-4 to assert that “input information (e.g., a touch screen, buttons, sensors, a camera, Bluetooth, etc.) is received at mobile device 10, via its input components (e.g., a touch screen, buttons, sensors, a camera, Bluetooth, etc.).” DI-2, 25-26 (citing EX-1001, 4:53-63, 5:3-12, 5:29-38, 6:66-7:3). But that has nothing to do with whether **the server sends** [A] a display, [B] audio, and [C] a HW action **to the mobile device** after processing—the focus of limitation 1[c]. As another example, the Board cites passages relating to Figures 4-6 to show “the specification of the ’887 patent describes hardware (HW) actions as separate and distinct from video/audio actions.” *Id.*, 26-27 (citing EX-1001, 6:66-7:3, 8:54-64, 10:56-64). That also does not address the disputed issue from limitation 1[c]. At bottom, the Board does not point to any embodiment requiring a conjunctive construction. *See, e.g., Rex Med., L.P. v. Intuitive Surgical, Inc.*, No. CV 19-005 (MN), 2020 WL 2128795, at *7 (D. Del. May 5, 2020) (“It is not uncommon for courts to interpret the disputed phrase in the disjunctive when such an interpretation is necessary to accommodate the specification and preferred embodiments.”); *Inventio AG v. ThyssenKrupp Elevator Am. Corp.*, No. CV 08-874-RGA, 2014 WL 129799, at *3 (D. Del. Jan. 14, 2014) (construing “at least one of...and” as disjunctive where “every embodiment in the specification [is disjunctive].”).

C. The Board’s Incorrect Application of *SuperGuide*

The cornerstone of the Board’s decisions in DI-1 and DI-2 is its reliance on

SuperGuide, which established “a *rebuttable* presumption that the plain and ordinary meaning of the term ‘at least one of [A], [B], and [C]’ [is] conjunctive.”³ DI-2, 15. The Board has twice adopted that presumption here; in fact, much of the Board’s discussion of *SuperGuide* from DI-1 is repeated in DI-2. *Compare* DI-1, 13-16, with DI-2, 15-20. But in both cases, the Board makes the same errors. **First**, the Board relies on erroneous factual findings—e.g., misreading Figure 2 as discussed above (§IV.A)—to, as the Acting Director put it, “determine that the Federal Circuit’s decision in [*SuperGuide*] controlled the claim construction in this case” (ODR, 2).

Second, the Board applies an impermissibly high standard to rebut the *SuperGuide* presumption. In particular, the Board asserts that the antecedent basis for the disputed term is “to produce ‘[A] a display, [B] audio and [C] a hardware (HW) action’” in limitation 1[a]; and because 1[a] is conjunctive, the Board applies the same conjunctive construction throughout the claim—even though the Patentee

³ The Board quotes an incomplete passage from Petitioner’s remand brief and wrongly asserts that “Petitioner’s characterization of the Federal Circuit’s decision in *SuperGuide Corp.* is incorrect.” DI-2, 15 (quoting statement about “one or more” while omitting further discussion of “at least one...and”). Although inapposite to the substantive issues here, this mischaracterization is another example of the Board’s failure to provide careful, well-reasoned analysis.

deliberately used *different* phrasing in 1[c] (“at least one of...and”). DI-2, 22-23. The Board inexplicably does not address this important difference but concludes “if the Applicant intended the term ‘at least [A] a display, [B] audio and [C] a hardware (HW) action by a HW component’ to mean A, B, or C, Applicant should have used ‘OR.’” DI-2, 23. In other words, rather than analyze the actual claim language in the context of the intrinsic record to determine whether the *SuperGuide* presumption applies, the Board instead imposes a requirement that the patentee use particular, explicit phrasing. Tellingly, the Board cites no authority for such an impermissibly high standard to overcome the *SuperGuide* presumption. *E.g.*, *Altera Corp. v. PACT XPP Techs.*, AG, No. 14-CV-02868-JD, 2015 WL 4999952, at *4 (N.D. Cal. Aug. 21, 2015) (“*SuperGuide* itself suggested that intrinsic evidence could override its default rule”); *cf.*, *Everstar Merch. Co. v. Willis Elec. Co.*, No. 2023-1686, 2025 WL 1501940, at *3 (Fed. Cir. May 27, 2025) (reversing the Board for failure to cite precedent for the increased burden placed on Petitioner).

Third, the Board dismisses its own prior rulings that “*SuperGuide* [is] inapplicable when the listed items following ‘at least one of’ are not categories containing many possible values”—indicating the relevant inquiry is “whether the items that follow ‘at least one of’...are categories that may have multiple values (such as in *SuperGuide*) or individual parameters having only one value.” *TSMC*, 9-10; *CPC*, 29. The Board not only fails to apply this analysis in DI-2, but it rejects

the analysis wholesale without explanation. *See* DI-2, 23 (“[W]hether the term ‘at least one of [A] the display, [B] the audio, and [C] the hardware action’ should be construed as conjunctive set forth by *SuperGuide* depends upon whether that term is consistent with the claim language, the specification and the prosecution history, and not whether that term indicates values vs. parameters recited in TSMC.”). Although the Board does not discuss *CPC* at all, it labels *TSMC* as “inapposite” (DI-2, 17), despite that case presenting many similar facts to this one. For example, the Board in *TSMC* found the specification’s disclosure of embodiments with fewer than all items in an “at least one of...and” list supported a disjunctive construction. *TSMC*, 10-11. Yet the Board here reaches the opposite conclusion despite nearly every ’887 embodiment indisputably sending fewer than all three of [A] video, [B] audio, and [C] a HW action to the mobile device. §III.A. As another example, the Board in *TSMC* found the prosecution history supported a disjunctive construction where the Examiner had rejected claims based on art that disclosed fewer than all items in an “at least one of...and” limitation. *TSMC*, 11-12. The same thing happened here (§III.B), yet the Board ignores it. The Board’s failure to address a highly relevant case and apply relevant analysis in its claim construction is yet another error.

D. The Board Once Again Fails to Address the Prosecution History

As noted above in §III.B, neither the Examiner nor the Applicant ever indicated during prosecution that “at least one of...” in limitation 1[c] was

conjunctive. On the contrary, the Examiner rejected the claim as obvious based on prior art that disclosed sending either [A] video alone or [A] video and [B] audio to a mobile device (EX1002, 129-64), indicating that the Examiner understood the limitation to be *disjunctive*. The Board neither disputes this nor addresses it. Instead, the Board merely responds—without citation or support—that “Petitioner’s reliance on a prosecution history that states ‘and/or’ does not weigh in favor of a disjunctive construction” (DI-2, 29), contrary to *TSMC* as discussed above.

The Board further fails to address that the Applicant chose *not* to pursue a separate claim that included the same [A], [B], and [C] list *without* “at least one of”—a claim that was clearly conjunctive (*supra* §III.B)—further indicating that limitation 1[c], by comparison, should be disjunctive. *See AstraZeneca AB v. Mylan Pharms. Inc.*, 19 F.4th 1325, 1335 (Fed. Cir. 2021) (claims cancelled during prosecution are relevant to claim construction).

V. CONCLUSION

The Board thus erred by disputing and disregarding clear guidance from the Acting Director on remand and by repeatedly ignoring or mischaracterizing key intrinsic disclosures. Because the Board’s institution decision was based entirely on an erroneous claim construction, the Director should reverse it, construe the “at least one of” term as disjunctive, and institute the IPR.

Respectfully submitted,

Dated: November 12, 2025

By: / Jessica C. Kaiser /
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Lead Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on November 12, 2025, a copy of **PETITIONER’S REQUEST FOR DIRECTOR REVIEW** was served upon the below-listed counsel by electronic mail:

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Dated: November 12, 2025

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