

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 SECOND REQUEST FOR DIRECTOR REVIEW¹**

¹ This Response was authorized by the Director via email. *See* Ex. 3101.

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PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	<i>B.S.D. Crown, Ltd. v. Amazon.com, Inc.</i> , Plaintiff's Preliminary Claim Constructions, Case No. 3:24-CV-03503-JD (N.D. Cal. Jan. 10, 2025)
2002	<i>B.S.D. Crown, Ltd. v. Amazon.com, Inc.</i> , Defendants' Preliminary Claim Constructions, Case No. 3:24-CV-03503-JD (N.D. Cal. Jan. 10, 2025)
2003	Comparison of Districts Within the Ninth Circuit — 12-Month Period Ending December 31, 2024 (available at https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_distcomparison1231.2024.pdf)
2004	Patent Owner's Power of Attorney
2005	<i>B.S.D. Crown, Ltd. v. Amazon.com, Inc.</i> , Defendants' Invalidity Contentions, Case No. 3:24-CV-03503-JD (N.D. Cal. Dec. 9, 2024)
2006	<i>B.S.D. Crown, Ltd. v. Amazon.com, Inc.</i> , Case No. 3:24-CV-03503-JD, Scheduling Order
2007	<i>B.S.D. Crown, Ltd. v. Amazon.com, Inc.</i> , The Parties' Amended Joint Claim Construction And Prehearing Statement, Case No. 3:24-CV-03503-JD (N.D. Cal. Apr. 4, 2025)

TABLE OF ABBREVIATIONS

Name	Paper (in reverse chronological order)	Abbreviation
Petitioner Amazon's Second Request for Director Review of Institution Denial	25	2 nd Director Request
Decision on Remand Following Director Review, Denying Institution of <i>Inter Partes</i> Review	24	Second DI
Petitioners' Waiver to File Reply Remand Brief on Claim Construction	21	Waiver
Patent Owner's Responsive Remand Brief on Claim Construction	20	PO Resp.
Petitioner's Opening Remand Claim Construction Brief	19	Pet. Open. Br.
Order Granting Director Review, Vacating the Decision Denying Institution, and Remanding to the Board for Further Proceedings	16	Remand Order
Petitioner Amazon's First Request for Director Review of Institution Denial	14	1 st Director Request
Decision Denying Institution of <i>Inter Partes</i> Review	13	First DI
Petitioners' Reply to Patent Owner's Preliminary Response	11	Reply to POPR
Patent Owner's Preliminary Response	10	POPR
Petition	4	Pet.

Petitioner Amazon's Second Request for Director Review follows a second Board Institution Denial Decision issued on October 21, 2025 (Paper 24) ("Second DI"). For the second time in this proceeding, Petitioner asks the Director to overrule the Board's claim construction analysis of the "at least one of ... and" term recited in the challenged claims. In the Second DI, the Board properly considered all arguments and all evidence, and—for the second time in this proceeding—reached the correct outcome that this term should be construed to require a conjunctive construction. In its Second Request for Director Review ("2nd Director Request"), Petitioner asserts that the Board has again failed to properly interpret this claimed phrase in the disjunctive. But Petitioner's 2nd Director Request suffers from multiple deficiencies.

First, Petitioner incorrectly behaves as though the Director's Remand Order (Paper 16) included an instruction from the Director to the Board to reach a contrary claim construction relative to the First DI, when in fact the Director expressly acknowledged that "there may be sufficient basis for the Board's claim construction and reliance on *SuperGuide*" Remand Order, 3. Rather than instructing the Board on how to decide this claim construction question, the Director commented that "it is the better course to allow the Board to decide that issue in the first instance." *Id.* That the Board conducted a fulsome analysis and reached the same construction is not indicative of an error by the Board.

Second, Petitioner focuses overwhelmingly on the directions of the arrows in the '887 patent's Figure 2 in an effort to perpetuate the fallacy that the Board once again misinterpreted Figure 2 and reached an incorrect construction based on those arrows in Figure 2 alone. Petitioner does not acknowledge—much less rebut—that the Board's construction is thorough, well-reasoned, and supported by the prosecution history, the specification, and the claims. Indeed, Petitioner's 2nd Director Request emphasizes the instances that Petitioner believes can support its disjunctive interpretation, without even addressing the sufficiency of evidence that is required to rebut the presumed plain & ordinary, *i.e.*, conjunctive, construction under *SuperGuide*. The Board fully considered the evidence both for and against the conjunctive construction, and did not err in its balance of the evidence or in its conclusion.

Third, Petitioner fails to meaningfully address or dispute that the Board's conjunctive construction is necessarily correct for claim 11, which expressly requires the conjunctive construction, and by extension the construction is also correct for the other independent claims that use the same “at least one of .., and” language. In its Remand briefing, Petitioner initially argued that independent claim 11's use of “each different type of data” supported a disjunctive construction. Pet. Open. Br., 5-6. Patent Owner responded by explaining that claim 11 supported—and actually required—a conjunctive construction. PO

Resp., 3-5. While the Board permitted Petitioner an opportunity to reply to these arguments, Petitioner elected ***not*** to provide a reply to Patent Owner's argument and instead ***waived its authorized remand reply***. Paper 21. In the Second DI, the Board agreed with Patent Owner, finding Petitioner's argument "illogical when independent claim 11 requires 'a plurality of different types of data and the server sends each different types of data . . . in a separate data stream.'" Second DI, 24-25. Petitioner's 2nd Director Request ***does not dispute the Board's findings regarding claim 11***, and fails to recognize that these findings alone are sufficient to support the Board's construction. Indeed, because Petitioner never took the position below that claim 11 should somehow be interpreted differently from the remaining independent claims, the Board's unchallenged finding on claim 11 is dispositive and confirms that the conjunctive construction applies to every claim.

Fourth, as already indicated in the preceding paragraph, Petitioner had an opportunity to submit a reply claim construction brief on remand, but expressly waived that reply. *See* Petitioners' Waiver to File Reply ("Waiver") (Paper 21), 1. Petitioner cannot now complain that the Board erred where Petitioner allowed Patent Owner's remand claim construction arguments to go unchallenged.

For each of these reasons, and as explained in more detail below, Petitioner's 2nd Director Request fails to establish any error warranting Director relief, and should be denied.

I. The History of Petitioner's Claim Construction Theories

The IPR petition professed to apply “plain and ordinary meanings of the claim terms” (Pet., 5), but Petitioner failed to show how the prior art references could satisfy the limitation “at least one of [A] the display, [B] the audio, and [C] the hardware action” under a conjunctive reading. Instead, Petitioner applied a disjunctive construction, as none of its grounds even addressed how the required “hardware action” element was satisfied in the asserted references. The result was a fundamental gap in Petitioner's invalidity case.

Patent Owner highlighted this problem in its Preliminary Response by invoking Petitioner's own admission concerning “plain and ordinary meaning” and the principles of *SuperGuide* to demonstrate that under a conjunctive construction of “at least one of ... and,” the petition's challenges were insufficient. *See, e.g.*, POPR, 2, 8-11. In response, Petitioner sought (and was granted) Board authorization to file a supplemental paper addressing *Fintiv* and claim construction issues raised in the Preliminary Response. In that supplemental paper, Petitioner presented additional arguments for a disjunctive reading of the disputed term. Petitioners' Reply to Patent Owner's Preliminary Response (“Reply to POPR”) (Paper 11), 5.

The Board's initial Decision Denying Institution (Paper 13, May 29, 2025, “First DI”) agreed with Patent Owner's conjunctive construction (*id.*, 14-18) and

rejected all of Petitioner's grounds for not meeting that conjunctive requirement. In particular, the Board found that Petitioner failed to establish a hardware action along with a display and audio, and therefore Petitioner had not demonstrated a reasonable likelihood of prevailing on any challenged claim under the proper reading of limitation 1[c]. *Id.*, 34.

Petitioner requested Director review on procedural and merits grounds. Procedurally, Petitioner argued (incorrectly) that it had no opportunity to address the disputed term in the pre-institution phase. Paper 14 at 8-9 (1st Director Request). On its merits argument, Petitioner argued that Fig. 2 of the '887 patent overcomes the plain and ordinary meaning of the disputed "at least one ... and" term. 1st Director Request, 8-10. The Director granted that review, stating:

Petitioner is correct that the Board appears to have misapprehended Figure 2 of the challenged patent. DR Request 9–10. As Petitioner points out, 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. See Decision 17; DR Request 9–10. The Board relied in part on this finding to determine that the Federal Circuit's decision in *SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 885–86 (Fed. Cir. 2004) controlled the claim construction in this case. See Decision 17. Although there may be sufficient basis for the Board's claim construction and reliance on

SuperGuide, because other portions of the Specification the Board identifies do not rebut the presumption that the patentee intended the plain and ordinary meaning of “at least one of . . . and,” it is the better course to allow the Board to decide that issue in the first instance. The Board shall allow the parties limited briefing to address this claim construction issue on remand.

Remand Order, 1-2.

On remand, the Board authorized Petitioner to file opening and reply briefs, and authorized Patent Owner to file responsive and sur-reply briefs. Conduct of the Proceeding, 2-3 (Paper 18). But after Patent Owner filed its responsive brief, and despite previously complaining to the Director that Petitioner had insufficient opportunity to brief claim construction, ***Petitioner waived its right to file a reply brief.*** See Petitioner's Waiver to File Reply (“Waiver”) (Paper 21), 1 (“after reviewing Patent Owner's brief, Petitioner does not believe a Reply is necessary. Petitioner therefore hereby notifies the Board that Petitioner waives its right to a Reply, and claim construction briefing on remand from Director Review is now complete.”).

The Board then issued its unanimous second decision on institution, reaffirming that Petitioner had not overcome the plain and ordinary meaning of the

“at least one of ... and” recitation.² Second DI, 20. As noted below, in so doing, the Board resolved the Director’s concern and addressed Figure 2 of the ’887 patent balanced with the “other portions of the Specification” to determine if the presumption against the ordinary meaning was rebutted. Second DI, 3 n.1, 5-7, 24, 25-28. The Board carefully considered each argument presented in Petitioner’s Opening Remand Claim Construction Brief (“Pet. Open. Br.”) (Paper 19), and concluded that the presumption against ordinary meaning was not rebutted by Petitioner. Further, the Board confirmed again that the Petition failed to establish any reasonable likelihood of success on the merits, and denied the Petition. Second DI, 46 (“we determine that Petitioner does not establish a reasonable likelihood of prevailing based on the merits of its challenges ...”).

II. The Board Addressed Each of Petitioner’s Remand Arguments

A. Petitioner’s Arguments Concerning the Claims of the ’887 Patent Were Fully Considered

On remand, Petitioner first asserted that the claim language of the ’887 patent supported a disjunctive construction. Pet. Open. Br., 3-6. Relying on *CPC* and *TSMC*, Petitioner attempted to distinguish *SuperGuide* by arguing that the recitations of “display, audio, and HW action” were parameters and not categories.

² In other words, the Board again applied the “plain and ordinary” construction of the claim terms, which is what Petitioner argued for in the first place. Pet., 5.

Pet. Open. Br., 3. Patent Owner responded that the recitations were actually categories and provided specific examples of how the specification supported that characterization. Patent Owner's Responsive Remand Brief on Claim Construction ("PO Resp.") (Paper 20), 8-9. Petitioner elected not to provide a reply to Patent Owner's argument, and *expressly waived its authorized reply*. Waiver, 1. When deciding this issue, the Board did not place much weight on whether the recitations were parameters or categories and, instead, indicated that it focused on the "claim language, the specification and the prosecution history." Second DI, 23.

Second, Petitioner argued that the antecedent basis found in a negative limitation in the claims 1 and 20 of the '887 patent supported a disjunctive construction because it showed Patent Owner "clearly knew how to recite a conjunctive list." Pet. Open. Br., 4. Patent Owner responded that the claims 1 and 20 were entirely consistent in setting forth conjunctive lists. PO Resp., 3-4. Petitioner waived its authorized reply. Waiver, 1. When deciding this issue, the Board agreed with Petitioner that Patent Owner knew how to recite a conjunctive list but rejected Petitioner's interpretation of the negative limitation in claims 1 and 20 as disjunctive, finding instead that each recitation was consistent with use of a conjunctive list. Second DI, 23-24.

Finally, Petitioner argued that independent claim 11's use of "each different type of data" supported a disjunctive construction. Pet. Open. Br., 5-6. Patent Owner explained how Petitioner's argument instead supported a conjunctive construction. PO Resp., 3-5. Again, Petitioner chose not to reply to Patent Owner's argument. Waiver, 1. The Board agreed with Patent Owner, finding that Petitioner's argument is "illogical when independent claim 11 requires 'a plurality of different types of data and the server sends each different types of data . . . in a separate data stream.'" Second DI, 24-25. Further, this finding is not challenged in Petitioner's 2nd Director Request, and Petitioner's concession on this finding is dispositive here, as discussed separately in Section II.B below.

B. Petitioner Does Not Challenge the Board's Correct Finding On Claim 11, and This Concession Ensures that No Director Review is Warranted

Importantly, Petitioner's Second Request for Director Review *does not dispute the Board's findings directed to how claim 11 requires a conjunctive construction*. Further, Petitioner has never argued that claim 11 somehow requires a different construction for the same claim term from the other independent claims. Thus, Petitioner's concession that claim 11's construction is correct is dispositive in this case, and controls the outcome here. No Director review is warranted because Petitioner tacitly agrees that the Board's construction—and reasoning behind that construction—is correct for claim 11, and Petitioner has waived any

argument that claims 1, 20, or 28 could be disjunctive while claim 11 is conjunctive.

C. Petitioner's Arguments Concerning the Specification of the '887 Patent

In remand briefing, Petitioner pointed to certain embodiments of the '887 patent in an attempt to show that embodiments existed that did not include each of a display, audio, and hardware action. While making that argument, Petitioner admitted that Figure 2—the very embodiment that Petitioner now argues the Board erroneously interpreted to show feedback other than display and audio—included “other feedback” that was not display or audio feedback. Pet. Open. Br., 7 (“one (Fig. 2) sends video/display and audio to the mobile device for ‘producing a display, audio, and other feedback’ ([’887 patent], 5:35-38) without explaining what constitutes ‘other feedback.’”). The Board did not err when interpreting the “other feedback” to be the hardware action, which is described in the '887 patent specification. Second DI, 24-26.

Nevertheless, as Patent Owner pointed out, numerous other instances in the specification of the '887 patent also support a constructive construction. PO Resp., 5-7. And while Petitioner seeks to pillory the Board concerning the '887 patent's specification, Petitioner ignores that the Board *agreed with Petitioner* on the issue of whether the specification discloses some embodiments that do not require each of a display, audio, and hardware action. Indeed, some embodiments in the '887

patent can be interpreted in that manner. But that single issue does not control the *SuperGuide* issues, as Patent Owner pointed out in its Responsive Brief on Remand, citing *SuperGuide* and *SIMO Holdings Inc. v. Hong Kong UCloudlink Network Tech. Ltd.*, 983 F.3d 1367, 1379-80 (Fed. Cir. 2021). PO Resp., 7. Petitioner elected not to provide a reply to Patent Owner's argument. Waiver, 1. After considering all arguments, the Board agreed with Patent Owner. Second DI, 28.

D. Petitioner's Arguments Concerning the Prosecution History of the '887 Patent

In remand briefing, Petitioner also attempted to rely on the prosecution history of the '887 patent, and tried to argue that a "failure to advocate for a conjunctive construction" during prosecution supported a disjunctive construction based on Petitioner's interpretation of a single Office Action, "application claims," and a statement in the prosecution history. Pet. Open. Br., 4, 10. Patent Owner then pointed out in response that Petitioner failed to cite to any actual *patent* claims that could give rise to a presumption that this disputed term employs a disjunctive meaning, and that the statement in the prosecution could not outweigh the language of the claims. PO Resp., 10 (citing *Bd. of Regents of the Univ. of Tex.*

Sys. v. BENQ Am. Corp., 533 F.3d 1362, 1371 (Fed. Cir. 2008)).³ Petitioner elected not to provide a reply to Patent Owner's argument. Waiver, 1. The Board considered but was not convinced by Petitioner's attempt to link arguments presented on then-pending application claims to the as-issued claims. Second DI, 29.

III. Petitioner Fails to Establish Any Basis for Director Review of the Board's Decision

The Director Review process allows the Director to address matters involving “(a) abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.”

Petitioner's Second Request for Director Review implicates none of these issues.

Having obtained a successful result with its first Director Review, Petitioner now files another Director Review request. Not only did the Board follow the Director's guidance on remand from the first Director Review, the Board also provided a balanced decision addressing all evidence, including the drawings and the specification of the '887 patent, the claims, and the prosecution history.

In so doing, the Board followed the Director's instruction to the letter by addressing Figure 2 of the '887 patent balanced with the “other portions of the

³ This point is further highlighted in view of Petitioner's decision not to challenge the conjunctive construction reached for claim 11. *See* Section II.B, *supra*.

Specification” to determine if the presumption against the ordinary meaning was rebutted. Second DI, 3 n.1, 5-7, 24, 25-28. Rather than view the specification in an entirely one-sided manner in favor of Patent Owner and against Petitioner, as Petitioner’s 2nd Director Request would suggest, the Board expressly noted that “the specification provides multiple embodiments of input information used to produce different types of output information.” *See* Second DI, 28.

Indeed, Petitioner leans heavily on the presence of one single-headed arrow in Fig. 2 to suggest that the invention contemplates that only video and audio, and not a hardware action, is sent to a mobile device. However, as the Board recognized, the specification describes Fig. 2 and explains that “the server 12 processes the input information received from the mobile device 10 and produces user interface information including information for producing a display, audio *and other feedback*.” ’887 patent, 5:35-38 (emphasis added); *see also* Second DI, 6-7 (including citation to 5:29–43), 24 (citing ’887 patent, 4:53–63, 5:29–43, 6:58–60, 6:63–7:3, 7:63–65). Petitioner’s Opening Brief on Remand *admitted* that Fig. 2 does teach this “other feedback.” Pet. Open. Br., 7. This reference to “other feedback” in the ’887 patent’s discussion of Fig. 2, along with the Board’s other citations to the specification in reaching the conjunctive construction, shows that the Board looked to all of the disclosures in the ’887 patent to understand the invention and this “other feedback.” Thus, exactly as mandated in Director’s

remand, the Board looked to the visual depiction of Fig. 2 and also to other disclosures in the specification that illuminate the true meaning of the disclosure.

Yet, Petitioner urges a finding of error in the Board's decision. But it is Petitioner's Second Request for Director Review that ignores findings the Board made that support Patent Owner's position. In particular, the Board made an explicit finding affirming Patent Owner's position that claim 11 confirms a conjunctive construction. *See* Second DI, 24-25. Petitioner fails to show any error in this finding, and since Petitioner has never advanced an argument that the "at least one of ... and" term could be construed differently for claims 1, 11, 20, and 28, this finding alone is sufficient to support the Board's conjunctive construction and Petitioner's failure to rebut *SuperGuide*.

Petitioner also complains that the Board "dismisses its own prior rulings." 2nd Director Request, 13-14. But the Board did no such thing. Rather, the Board took note of Petitioner's citations to *TSMC* and *CPC* and found them inapposite. Second DI, 17-19. Moreover, Patent Owner's responsive brief (to which Petitioner did not reply) addressed Petitioner's cases in detail (PO Resp., 8-9), so Petitioner's suggestion that the Board ignored some argument Petitioner never elected to make is unwarranted.

Finally, Petitioner seeks to reverse the presumption of *SuperGuide* by complaining that "neither the Examiner nor the Applicant ever indicated during

prosecution that ‘at least one of...’ in limitation 1[c] was conjunctive.” 2nd Director Request, 14-15. But the burden was on Petitioner to show that the presumption should be rebutted. Petitioner’s cursory analysis, citing to a single office action (EX1002, 129-64), without any analysis of what was said in that Office Action or the art applied in that Office Action, fails to rebut the presumption.

Finally, Petitioner *newly* advances a prosecution history argument about cancelled application claims based on *AstraZeneca AB v. Mylan Pharms. Inc.*, 19 F.4th 1325, 1335 (Fed. Cir. 2021), arguing that claims cancelled during prosecution are relevant to claim construction. But the facts of *AstraZeneca* do not reflect a universal rule that would compel a disjunctive construction, and in any event it is too late for new arguments to the Board as Petitioner strategically elected to forgo a reply to Patent Owner’s prosecution history arguments. Petitioner fails to establish any basis for Director Review.

IV. CONCLUSION

Having waived its right to fully brief the claim construction issues on which Petitioner now seeks Director Review, Petitioner’s complaints about the Board’s construction and associated merits denial ring hollow. Petitioner fails to establish any basis for its Second Director Review. The Request should be denied.

IPR2025-00057 PO's Authorized Response to 2nd Director Review Request

Dated: November 20, 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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