

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

DH INTERNATIONAL LTD.,
Patent Owner

PTAB Case No. IPR2025-00172

Patent No. 9,022,294

**REQUEST FOR DIRECTOR REVIEW UNDER 37 C.F.R. § 42.75
OF A FINAL WRITTEN DECISION**

May 18, 2026

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TABLE OF EXHIBITS

Exhibit	Title
1001	U.S. Patent No. 9,022,294 to Gaillard <i>et al.</i> (“’294 Patent”)
1002	U.S. App. No. 10/552,912 (issued as U.S. 7,628,333) (“Parent Application”)
1003	Prosecution History of U.S. Patent No. 9,022,294 (“’294 Prosecution History”)
1004	Declaration of Michael Buehrer (“ <i>Buehrer</i> ”)
1005	Japanese Patent No. 2003110751 to Suga (“ <i>Suga</i> ”)
1006	International Patent Application Publication No. WO 2001/22662 to Gorsuch (“ <i>Gorsuch</i> ”)
1007	U.S. Patent No. 8,792,454 to Taniuchi <i>et al.</i> (“ <i>Taniuchi</i> ”)
1008	U.S. Patent No. 8,165,559 to Klesper <i>et al.</i> (“ <i>Klesper</i> ”)
1009	Nokia Corporation, Nokia 6136 User Guide, 9252766 Issue 2, Copyright 2007 (“ <i>Nokia 6136</i> ”)
1010	U.S. Patent Publication No. 2007/0277120 to Wilson <i>et al.</i> (“ <i>Wilson</i> ”)
1011	Feng Zhang, Vertical Handoff Between 3G Networks and WLANS, Copyright 2005 (“ <i>Zhang</i> ”)
1012	Al Sacco, The Eight Hottest Smartphones of 2008, computerworld.com, https://www.computerworld.com/article/1367892/the-eighthottest-smartphones-of-2008.html (“ <i>Sacco</i> ”)
1013	U.S. Patent No. 7,660,854 to Sorotzkin (“ <i>Sorotzkin</i> ”)
1014	U.S. Patent No. 6,671,718 to Meister <i>et al.</i> (“ <i>Meister</i> ”)

1015	<i>Pending litigation Stipulation (not listed in Declaration)</i>
1016	Nokia N93 User Guide (“Nokia N93”)
1017	JAPANESE Patent No. 2003110751 (Suga) with English Translation
1018	Redline Comparison of Patent Owner’s Preliminary Response and Patent Owner's Response.
1019	Deposition Transcript of Safwan Zaheer of November 21, 2025
1020	Joint Claim construction Case 2:20-cv-00342
1021	Supplemental Declaration of Dr. Buehrer
1022	Excerpt McGraw-Hill Illustrated Telecom Dictionary (2000)
2001	Declaration of Safwan Zaheer (“Zaheer”)
2002	Prosecution History of U.S. Application No. 10/552,912, U.S. Patent No. 7,628,333 (’333 Patent)
2003	Litigation Tolling Agreement
2004	Safwan Zaheer CV

Pursuant to 37 CFR § 42.75, Patent Owner DH International Ltd. (“PO”) submits this Request for Director Review of the Board’s Final Written Decision (“FWD”) under 35 U.S.C. § 318(a), finding claims 1-20 of U.S. Patent No. 9,022,294 (the “’294 Patent”) unpatentable in Grounds I. The Board committed legal errors by instituting the IPR based on a foreign reference (*Suga*, Exh. 1005) without a proper affidavit, and that Petitioner met their burden and that each claim element was established by the combined teachings of the *Suga* reference when combined with the *Gorsuch* reference under 35 U.S.C. § 103.

I. LEGAL STANDARD FOR DIRECTOR REVIEW

“Requests for Director Review of the Board’s final decision under 35 U.S.C. § 318 ... shall be limited to decisions presenting (a) an abuse of discretion or ... (b) erroneous conclusions of law.” See *USPTO website*, *Director Review process USPTO*, 2(B). An abuse of discretion is found if a decision: (1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact finding; or (4) involves a record that contains no evidence on which the Board could rationally base its decision. *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1367 (Fed. Cir. 2016). Petitioner bears the burden of proving unpatentability by a preponderance of the evidence in an IPR. 35 U.S.C. § 316(e) (The statute requires a preponderance of the evidence for instituted IPRs).

II. ARGUMENT

The IPR contains only one Ground in the IPR, which is a combination of the *Suga* reference and the *Grouch* Reference under 35 U.S.C. § 103, and covers claims 1-20 of the '294 Patent.

A. **Petitioner Failed to Prove the asserted activation cue functions as an activation as required by the definition of activation cue adopted by the Board.**

The term “activation cue” was construed in the FWD as:

[W]e construe the claimed “*activation cue*” as a data communication received by the cellular phone from an external source **and recognized by the cellular phone as an activation cue** that causes the data conveyance switching element to be assigned its first (activated) state.

FWD, 20 (*bold added*). In the “Illustrative Claim” of the FWD, the “activation cue” is received and a second state is assigned upon its reception:

[1(f)] a data conveyance switching element operatively linked to said electronic circuit, said switching element being assigned a first state upon an activation cue having been received by said cue receiver, and being assigned a second state when no activation cue was received by said cue receiver; and

FWD, 8. When the switching element is in the second state, a second data conveyance operation WILL BE INITIATED through the instrumentality of said data transceiver:

[1(h)(ii)] if said switching element is in said second state, a second data conveyance operation **will be initiated** through the instrumentality of said second data transceiver for sending data from said electronic circuit to the second external data exchange **device over said second communication link.**

FWD, 8 (emphasis added). The Board’s adopted claim interpretations required an “activation cue” to function as an activation cue. For an “activation cue” to function as an activation cue, it must switch state and cause the second data conveyance operation to initiate data conveyance over the second communication link.

1. **The Board properly constructed the “activation cue” to require switching state and cause the second data conveyance operation to initiate data conveyance over the second communication link.**

The Board indicated that the ’294 Patent (exhibit 1001) described the “activation cue:”

The claim language and specification define and describe an “activation cue” in functional terms: a data communication from an external source is received by the cell phone and recognized as an activation cue if it causes the switching element to be assigned its first (activated) state. Ex. 1001, 9:28–31, 9:42–46, 10:14–16, 13:55–60, 14:53–59, 15:4–6, 19:20–26.

FWD, 17. The Board went on to find that:

The activation cue is “recognized” as such when a received data transmission from an external source assigns the switching element in the cell phone to a first (activated) state **to allow a cell phone user to initiate a first data exchange.** Activating the switching element allows a first data conveyance operation to be initiated with a first external data exchange device over a first communication link when a user selectively triggers an invariable activation command by operating the cell phone. Ex. 1001, 9:24–27 (“recognized . . . as an activation cue”), 10:14–16 (“switching element . . . switches to its activated state”), 10:37–39 (“an invariable activation command”), 19:20–38 (claim 1).

FWD, 18 (*Bold added*). The switching element must allow the initiation of the first data exchange over a communication link (as a link must be established to exchange data).

The Board then ignored its finding in the FWD and improperly used a beacon signal to indicate a non-existent communication link.

2. The Board improperly applied the setup command of *Gorsuch* as acting as an activation command.

The Board found that *Gorsuch* described:

To switch between the W-LAN and CDMA transceivers and connections, the mobile communication device includes a W-LAN detection circuit. *Id.* at Abstract, 4:31–5:1, 13:14–22, 14:10–14, 16:1–10, Fig. 6.

FWD, 31. The finding has no relation to when a beacon signal is received and a state is changed, as connections are already established. A W-LAN detection circuit is taught by *Gorsuch*. The error the Board committed is when it found that:

If the W-LAN detection **circuit receives a beacon frame**, the mobile communication device is switched to a W-LAN communication path. *Id.* at Abstract, 16:6–8 (“switches 211A and 211B are switched to the position shown to utilize the W-LAN protocol converter 230 and transceiver 240”), Fig. 6. If no beacon frame is received, the device is set to a long range cellular CDMA communication path. *Id.*, Abstract, 16:3-5 (“If no W-LAN base station is detected, switches 211A and 211B are controlled by the detection circuit 201 such

that the CDMA protocol converter 130 is switched in along with the CDMA transceiver 140”), Fig. 6.

FWD, 31-32. The received “beacon frame” does not indicate that a communication path is available. It is only that a device is in range to receive a beacon frame. **It is impossible for the state to be switched and communication initiated over a communication link, as no communication link has been established with the W-LAN¹.** Only a beacon signal has been received.

The Board went on and indicated that:

Petitioner contends that Suga in combination with Gorsuch discloses Limitation [1(e)] because:

the proposed combination incorporates Gorsuch’s W-LAN detection circuit 201 (“cue receiver”) into Suga’s cellular phone information, Suga’s MPU 40 (“electronic circuit”) can choose the proper transceiver for a data communication (e.g., an email transmission).

Pet. 44–45 (citing Ex. 1004 ¶¶ 92–93; Ex. 1005, Fig. 2; Ex.

1006 Abstract, 4:31-5:1, 13:14-22, 14:10-14, 16:1-12, Fig.

6). The Petition illustrates the proposed combination, with

¹ A cellular beacon signal is used as an activation cue in this IPR, but in a related IPR2024-01322, a Bluetooth beacon signal is similarly used.

“Gorsuch’s W-LAN detection circuit 201 inserted in parallel to Suga’s W-LAN transceiver circuitry and connected to MPU 40,” in Suga annotated Figure 2.

FWD, 50-51. The Board then went on to find that:

For the reasons given above, we determine the Petition establishes by a preponderance of the evidence that a POSITA would have had sufficient reason to incorporate Gorsuch’s W-LAN detection circuit (a “cue receiver”) for receiving a beacon signal (“activation cue”) from the W-LAN access point (“a source external to said cell phone”) into Suga’s cell phone circuitry with a reasonable expectation of success. Therefore, we determine the Petition establishes by a preponderance of the evidence that Suga Gorsuch discloses Limitation [1(e)].

FWD, 53-34. The Board is relying on the Beacon signal as the “activation cue”, but there is no evidence in the IPR that a communication link for data transfer has been established when a Beacon signal is received. **The claims require that a data transfer be initiated when the state changes upon receipt of “the activation cue.”**

This error is further highlighted in the FWD when the Board cited to Petitioner’s expert:

We agree with Dr. Buehrer that “[i]n a first state where a beacon is detected, the MPU will perform communication through the W-LAN line by routing the data through the wireless LAN controller 31 and antenna 32” as illustrated above. Ex. 1004 ¶ 102.

FWD, 58, and:

We are persuaded by the cited arguments and evidence in the Petition, including Dr. Buehrer’s testimony regarding the two states of the Suga-Gorsuch switching element for conveying data over one of the two communication links—W-LAN or wireless phone network—depending on whether or not a beacon signal has been detected.

The Board did not establish that, at the time a Beacon signal is received, the communication link for data transfer has been successfully established and data transfer can be initiated. This is because in the cellular system, the Beacon signal only indicates that a device may be in range to establish a communication link, not that a link exists.

A beacon signal cannot function as an “activation cue,” as data transfer cannot be initiated when the state changes upon reception, as required by the claims of the

'294 Patent. The Board committed a legal error by failing to properly apply the facts to the construed claim term “activation cue.”

B. The Board Improperly Considered the Foreign Reference *Sagu* as Prior Art when it was Submitted Without a Proper Affidavit.

Patent Owner filed a POPR on April 15, 2025, and raised the issue of the affidavit being unacceptable because: (1) The signer did not attest to their personal knowledge, but only “to the best of my knowledge.” POPR p. 6. (2) The affidavit failed to include the “I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct” language. There was also no indication that the signer had any skill with reading or writing Japanese. As the affidavit was defective and failed to meet the requirements of 37 C.F.R. § 42.63, the *Suga* reference should not have been accorded status as valid prior art, and the single-ground IPR should not have been instituted.

The Board, in footnote 6 of its Decision Granting Institution, noted:

Patent Owner correctly notes the Japanese-to-English translation certification in Ex. 1005 at page 20 is non-compliant. Prelim. Resp. 3–4 (citing 37 C.F.R. § 42.63). Petitioner shall have 10 business days from the date of this Decision to file a translation “affidavit” or sworn declaration pursuant to 37 C.F.R. §§ 1.68, 42.63(b). *See Hengdian Group DMEGC Magn. Co. v. Hitachi Metals, Ltd.*, IPR2017-01312, Paper 14, 2 (PTAB Jan. 3, 2018) (“order[ing] Petitioner to file satisfactory

affidavits attesting to the accuracy of the translation within ten business days of the Decision”).

DTI, p.18. Petitioner filed another affidavit and reference (Exhibit 1017), which is new matter because nothing in the record indicates that the filing is in response to the Board’s order or that the documents of Exhibit 1017 were to replace Exhibit 1005. The fact that the translation with a valid affidavit, Exhibit 1017, is signed by a different person and does not reference Exhibit 1005 further supports that Exhibit 1005, relied on by the Board in its Institution Decision, was improperly relied upon, unsubstantiated prior art.

The Board has the authority under 37 CFR § 42.5(3) to accept a late-filed affidavit. *See* 37 CFR § 42.5(3) (“A late action will be excused on a showing of good cause or upon a Board decision that consideration on the merits would be in the interest of justice”). In IPR2024-00172, the Petitioner did not file a corrected affidavit for Exhibit 1005 within the ten (10) day period as ordered by the Board. The filing of Exhibit 1017 did not refer to the Board’s order or Exhibit 1005. Further, given the current facts, the Board's extension of the date for filing a corrected foreign reference affidavit after the IPR had been instituted, while relying on the foreign reference, was improper when the issue was raised in the POPR.

The Petitioner should have corrected the faulty Affidavit before institution. The Petitioner had notice of the faulty affidavit for Exhibit 1005 once Patent Owner

raised the issue in the POPR. Further, the Board should have requested that the Petitioner correct the Affidavit before institution and ensured that the only ground in the IPR was properly asserted at the time of institution.

The Board and Petitioner rely on the *Hengdian* IPR for support for their actions. First, nothing indicates that the *Hengdian* IPR decision is a precedential or informative decision by the Patent Trial and Appeal Board. Second, the issue in the *Hengdian* IPR was not the person who signed the certificate having no personal knowledge, as in the current IPR, but the specific language used in the affidavit. *See Hengdian Group DMEGC Magn. Co. v. Hitachi Metals, Ltd.*, IPR2017-01312, DI, Paper 7, p. 6. In *Hengdian*, the translator certificate (i.e., affidavit) was signed by “Toyu Yazaki” and stated, “I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.” IPR2017-01312, Ex. 1006, p1. The Board has some assurance from Toyu Yazaki that the originally filed translation was accurate and that, if called to testify, Yazaki would testify to the same. Most importantly, Toyu Yazaki signed the corrected translation certificate. *Hengdian Group DMEGC Magn. Co. v. Hitachi Metals, Ltd.*, IPR2017-01312, Ex. 1027, at 1 (PTAB Jan. 3, 2018). Unlike *Hengdian*, the issue that was before the Board in this IPR was that the *Suga* reference included a certificate signed by someone who could not testify that it was an accurate translation. The “corrected” certificate was signed

by a different person and submitted after the IPR was instituted².

The differences between *Hengdian* and this IPR are:

	IPR2017-01312 <i>Hengdian</i>	IPR2025-00172 <i>Apple</i>
Foreign Reference:	63-33505 Japanese Patent	2003-110751 Japanese Patent (<i>Suga</i>)
Original Translation Certificate:	Ex. 1006	Ex. 1005
Is the original translation certificate compliant with the required language for the affidavit?	NO	NO
Original Translation Certificate Signer:	Toyu Yazaki	Andrew Raia
Indication of personal knowledge of the accuracy of translation?	YES	NO
Corrected Translation Certificate:	Ex. 1027	Ex. 1017
Corrected Translation Certificate Signer:	Toyu Yazaki	Frank McGee
Affidavits signed by the same person?	YES	NO

The Patent Owner has been biased in this proceeding by having to use word and page count to address these issues in the Patent Owner's POPR, Reply, objections, and motion to exclude.

² P.O. Motion to Exclude.

The Board further showed error by shifting the burden from the Petitioner to the Patent Owner. In the FWD, the Board stated what the Patent Owner did not challenge, rather than what Petitioner established. *See* FWD, 79 and Footnote 13. The Board even cites the Petitioner’s statements during oral argument to support its improper burden shifting. *See* Id. Attorney statements during oral arguments are not evidence, and neither are the slides presented during oral argument. Attorney argument is not evidence. *See, e.g., Gemtron Corp. v. Saint-Gobain Corp.*, 572 F.3d 1371, 1380 (Fed. Cir. 2009) (“[U]nsworn attorney argument ... is not evidence and cannot rebut ... other admitted evidence.”); *see also* Manual of Patent Examining Procedure § 2145 (9th ed. Nov. 2015) (“Attorney argument is not evidence unless it is an admission, in which case, an examiner may use the admission in making a rejection.”).

The IPR was improperly instituted, relying on an improper reference, as no indication of the validity of the translation was in the record at the time of institution, and this IPR must be vacated.

C. The Board adopted an erroneous meaning of “close proximity”

No evidence in the Petition supports the Board’s decision that close proximity is closer than “a range to receive.” *See* FWD, 25. The Board committed legal error by invalidating claims 1-20 when the Petitioner failed to identify where in *Suga* and

Gorsuch “a close proximity” and “a range” are both described or “close proximity” is described as being closer or within “a range.”

Furthermore, for dependent claims 8 and 16, the Board stated that “` the claims define “close proximity” of the two devices in functional terms within a range to receive the activation cue to initiate the wireless data exchange’ –not by limiting the physical distance between the devices.” FWD, 25-26. The claim does not recite the close proximity of the two devices. Rather, the Board’s interpretation ignores the claim language that “the cellular phone is conveyed toward a close proximity.” The Board’s interpretation is wrong because nothing in the patent supports a cellular phone within a range to receive an activation cue has to be moving...i.e., cellular phone conveyed toward a close proximity. This is an improper interpretation that the Board has explicitly adopted by treating claims 8 and 16 as being in close proximity within “a range.” *See* FWD, 24-25. Even with functional language, the plain meaning of "close proximity" is a distance, as supported by the claim that it requires movement towards an object.

The Board committed a legal error by adopting an unsupported definition of “close proximity” that required movement of the cellular phone within a range to receive the activation cue, rather than the clear meaning that the range is less than close proximity.

In conclusion, the Board has committed an error by failing to apply their claim construction to the facts properly, instituting an IPR based on a foreign reference with no assurance of the accuracy of the translation, improperly shifting the burden to show the accuracy and similarity of the two translations, and improperly construing the claim term close proximity. The Petitioner has failed to establish evidence to support the invalidation of claims 1-20, and such finding must be reversed.

May 18, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies the service of Patent Owner DH International Ltd. served Patent Owner's Request for Director Review of the Final Written Decision on the counsel of record for Petitioner Apple Inc. by filing this document through the P-TACTS, as well as delivering a copy via electronic mail to the following:

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Date: May 18, 2026

By: /s/ *Robert Hart*
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CERTIFICATE OF COMPLIANCE

This Petition complies with the type-volume limitations as mandated in 37 C.F.R. § 42.24(a), totaling 15 pages.

Dated: March 6, 2026

By: /s/ *Robert Hart*
Robert Hart