

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESLA, INC.,

Petitioner,

v.

INTELLECTUAL VENTURES II, LLC,

Patent Owner

Case No. IPR2025-00217
U.S. Patent No. 10,952,153

PATENT OWNER'S SUR-REPLY

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PATENT OWNER’S EXHIBIT LIST

EX2001	Petitioner’s Answer to Complaint and Counterclaim, dated June 20, 2024, in <i>Intellectual Ventures II LLC v. Tesla, Inc.</i> , C.A. 1:24-cv-00884-ADA (W.D. Tex.)
EX2002	Docket from District Court Litigation, <i>Intellectual Ventures II LLC v. Tesla, Inc.</i> , C.A. 1:24-cv-00884-ADA (W.D. Tex.)
EX2003	Scheduling Order from District Court Litigation, <i>Intellectual Ventures II LLC v. Tesla, Inc.</i> , C.A. 1:24-cv-00884-ADA (W.D. Tex.)
EX2004	Defendant’s Second Supplemental Preliminary Invalidity Contentions, dated January 9, 2025, in District Court Litigation, <i>Intellectual Ventures II LLC v. Tesla, Inc.</i> , C.A. 1:24-cv-00884-ADA (W.D. Tex.)
EX2005	Declaration of Gary Lomp
EX2006	Resume of Gary Lomp
EX2007	Notice of Allowance in U.S. Patent Appln. Serial No. 10/917,968
EX2008	IPR2018-01773 DECISION Instituting <i>Inter Partes</i> Review
EX2009	IPR2018-01773 ORDER <i>Granting</i> Joint Motion to Terminate
EX2010	<i>de Jager, F. (February 1952). "Delta modulation, a method of PCM transmission using the 1-unit code" (PDF) Philips Research Reports. 7: 442–466. Archived (PDF) from the original on 2024-05-18.</i>
EX2011	<i>Data Sheet Motorola part MC3417</i>
EX2012	<i>Data Sheet Motorola Part MC3418</i>
EX2013	<i>3GPP TS 25.224 V5.9.0 (2005-12)</i>
EX2014	<i>3GPP TS 25.211 V3.10.0 (2002-03)</i>
EX2015	<i>3GPP TS 25.331 V3.10.0 (2002-03)</i>
EX2016	Declaration of Gary Lomp

I. “TPC Command Accumulation” and the “Indication...Enabled” Limitation

A. The Institution Decision left “TPC command accumulation” for trial, and Petitioner cannot resolve that dispute by relabeling the limitation as “summing magnitudes per command.”

The Board held that the parties’ dispute over “TPC command accumulation” “turns on claim construction.” ID, 8. The Board further contrasted Petitioner’s institution-stage position (reading “accumulation” as “updating transmission power for each received TPC command”) with Patent Owner’s position (requiring only that TPC commands “cumulatively affect transmission power”), and explained that the Specification “appears” to support Patent Owner’s broader understanding. ID, 8. Because the Board did not need to resolve the issue at institution, it expressly directed that “[t]he parties should address the proper construction for ‘TPC command accumulation’ in the instituted trial.” ID, 9.

In Reply, Petitioner attempts to collapse that live construction question by adopting the Board’s “cumulative effect” phrasing while simultaneously importing a narrowing gloss: Petitioner asserts the “correct construction” is “summing [the] magnitude of each TPC command adjustment to cumulatively affect transmission power.” Reply, 8. Petitioner then uses that gloss to argue that Baker’s PCA=2 “disables” accumulation because the UE “compares” groups of five, rather than “sum[s] the magnitude of the TPC command adjustments.” Reply, 9.

Petitioner’s Reply illustrates that it is rewriting the claim limitation. The claims require the UE to “receive, from a network device, an indication that TPC command accumulation is enabled.” POR, 18; ID, 4. In contrast, Petitioner frames the dispute as an arithmetic rule, asserting that “TPC command accumulation” means the “magnitude of each TPC command adjustment is summed to cumulatively affect transmission power.” Reply, 3–6. Petitioner then treats that new formulation as dispositive, arguing PCA equals 2 “disables” accumulation because the UE “compares” the last five commands rather than “sum[s] the magnitude of the TPC command adjustments.” Reply, 9–10.

That move does not satisfy the limitation that Petitioner must prove. Whether a particular implementation is described as “comparing” or “summing,” Petitioner still must identify a disclosure in Baker where the UE receives, from the network device, an indication that accumulation is enabled. POR, 36–37; EX2016, ¶101. Neither the “magnitude-summing” gloss nor the PCA equals 2 “comparison” narrative identify any mechanism in Baker that signals enablement as such, or any enable or disable control state communicated from the network to the UE. EX2016, ¶101. Instead, Petitioner’s analysis simply re-labels Baker’s grouped decision rule as “disablement,” and then treats that relabeling as if it were the claimed “indication.” Reply, 9–10; EX1072, ¶¶28–34.

Petitioner’s effort to collapse “TPC command value” into “adjustment magnitude” further confirms the problem. Dr. Lomp’s unrebutted testimony is that adjustment magnitude is “affected by” step size but “not equal to it,” and that “the value in each TPC command is not the same as the adjustment magnitude in all cases.” EX1071, 39:20–33. Petitioner’s “sum the magnitude” framing therefore does not track the claim language, and it does not supply the missing network-received enablement indication required by the challenged claims. POR, 18; EX2016, ¶101.

That reframing exceeds what the Board actually held. The Board did not adopt Petitioner’s “summed magnitudes per command” test; it recognized competing understandings supported (to different extents) by the intrinsic record and left the matter for trial. ID, 8–9. Petitioner, therefore, cannot convert an unresolved construction dispute into a dispositive merits premise by redefining “accumulation” to mean only per-command arithmetic summation of “adjustment magnitudes,” and then treating that redefinition as the benchmark for whether Baker provides “an indication that...TPC command accumulation is enabled.” Reply, 8–10.

The Reply’s “magnitude-summing” gloss is also inconsistent with the technical distinction reflected in the trial record. Dr. Lomp’s unrebutted testimony is that the relationship between a step size and an adjustment magnitude is not identity; “they’re not the same thing,” and “the value in each TPC command is not the same as the adjustment magnitude in all cases.” EX1071, 39:13–22. That

testimony directly undermines Petitioner’s attempt to collapse the claim limitation into “summing magnitudes” as the exclusive form of accumulation. Reply, 8–9.

B. Even under Petitioner’s “cumulative effect” framing, Baker’s PCA does not satisfy the claim requirement to “receive...an indication that...TPC command accumulation is enabled.”

Petitioner’s Reply rests on a binary characterization: PCA=1 purportedly means accumulation is enabled, while PCA=2 purportedly means accumulation is disabled because the UE “compares” groups of five instead of “summing” per-command effects. Reply, 9–10. But that characterization is a semantic relabeling, not a disclosure that “accumulation” is ever turned off in the sense relevant to the claim language.

Patent Owner’s record evidence is that Baker’s PCA parameter changes how TPC inputs are processed over time, not whether the UE’s transmit power is determined with reference to accumulated prior TPC information. Dr. Lomp explains that when PCA=2, “TPC commands are still being integrated, albeit over a longer time interval,” and “[t]he adjustment to the UE’s transmit power is simply deferred, not disabled.” EX2016, ¶ 99. Dr. Lomp’s declaration further explains that Baker contains “no teaching...that accumulation can be turned off or that the accumulator can be reset,” and that “the UE’s transmit power is always updated based on a function of one or more prior TPC commands—i.e., accumulation is always implied to be ‘enabled.’” EX2016, ¶ 100. That is the core point Petitioner

never answers: PCA=2 is, at most, a different update cadence and decision rule; it is not “disablement” of accumulation.

The POR makes the same point with claim-specific consequences. The POR explains that the Petition’s “PCA=2 disables accumulation” theory improperly treats “transmission power is unchanged” as if it were disabling accumulation, when it simply corresponds to a zero adjustment (i.e., $\Delta\text{TPC}=0$ is effectively applied) and does not imply state suspension, reset, or loss of accumulated history. POR, 36–37. The POR further explains why true “disablement” would be a qualitatively different control-state transition, typically involving freezing or resetting internal state and reinitializing when accumulation resumes, and that neither Baker nor Andersson discloses any such enable/disable mechanism. POR, 36–37.

The technical record corroborates that “disablement” is not disclosed. Dr. Lomp explains that a “disabled accumulator would involve suspending integration and potentially resetting or freezing the internal state,” and that “[n]either scenario is described or even suggested in Baker.” EX2016, ¶ 100. That testimony is not a quibble about terminology; it goes to whether Baker can meet the claim’s “indication” limitation at all.

C. Baker also fails the claim’s “indication” requirement because it does not teach a network-side enablement indication received by the UE.

Even if Petitioner could characterize PCA as “related to” accumulation, Petitioner must still prove the claim language: the UE must “receive, from a network device, an indication that...TPC command accumulation is enabled.” (Petitioner’s asserted reading of this limitation is the subject of the construction dispute identified in the Institution Decision.) ID, 8–9. Petitioner conflates structure with instruction. A ‘slot format’ is merely the ‘envelope’ in which data is carried; it is not the ‘letter’ that instructs the UE to change its behavior. The claim requires an indication—a specific command signal—that toggles the accumulation mode.

Dr. Lomp squarely addresses this requirement and explains that Baker “does not contemplate sending a network-side indication to the UE that accumulation is enabled,” includes “no disclosure of a signaling mechanism for such an enable/disable control,” and contains no behavior “predicated on enabling or disabling accumulation.” EX2016, ¶ 101. That testimony is fatal to Petitioner’s Reply position because Petitioner’s “PCA controls whether accumulation is enabled” theory presupposes an enable/disable concept that Baker does not disclose, and then attempts to treat that presupposition as if it were the claimed “indication” itself. Reply, 9–10; EX2016, ¶¶ 100–101.

D. Petitioner’s fallback (“even if [it is] always enabled, still meets the limitation”) does not cure the absence of any enablement indication.

Petitioner’s Reply suggests that even if Baker’s TPC command accumulation is “always enabled,” Baker still meets the limitation because PCA=1 and PCA=2 would both be “an indication that TPC command accumulation is enabled,” and the claim purportedly “does not require” an indication that accumulation is disabled. Reply, 12 n.3. The problem with this argument is that the claim makes clear that the “indication” is sent from the network to UE, and the Petition’s interpretation of the “indication” to the UE that “accumulation is enabled” renders the recited purpose of the claimed “indication” (to indicate that “accumulation is enabled”) a nullity from the perspective of the UE. It is like arguing that when a driver on the road depresses the accelerator pedal to speed up to pass a slower car, the “indication” sent from the accelerator pedal to the engine is an indication to the engine that the engine is on. That is not the way a POSITA would read the claim language. Nor is it consistent with Federal Circuit authority that every claim term must be construed in a way that adds meaning to the claim.

At a minimum, the challenged claims require a system that contemplates instances where accumulation needs to affirmatively be enabled (for whatever reason) by the UE, where such is accomplished by transmitting an indication to enable accumulation from the network to UE. In a system like Baker where accumulation is always enabled, sending an indication to enable accumulation is

meaningless. The record evidence is that Baker does not disclose any enable/disable control and does not disclose any network-side signaling mechanism by which the UE receives an enablement indication at all. EX2016, ¶ 101. Petitioner’s fallback therefore concedes the core problem: if accumulation is “always implied” to the UE and never toggled, then the PCA is not an “indication” to the UE that “accumulation is enabled” but rather a parameter governing how the UE performs accumulation over time. EX2016, ¶ 100; Reply, 12 n.3.

Petitioner reads the claimed “indication” to the UE that “accumulation is enabled” so broadly that it reads on the conventional systems described in the Background of the ‘153 Patent. For example, the Background of the ‘153 Patent disclosed a conventional UE that operates by accumulating power control commands that “instruct the UE to increase or decrease its transmitted power by a predetermined step dB amount.” EX1001, 2:42-44. Under Petitioner’s reading of the claim language, each power control command sent by the network to that conventional UE “indicates” that “accumulation is enabled.” However, claims should not be read so broadly as to encompass a prior art structure set forth in the specification. See, e.g., *SciMed Life Sys. v. Advanced Cardiovascular Sys.*, 242 F.3d 1337 (Fed. Cir. 2001), citing, *Tronzo v. Biomet, Inc.*, 156 F.3d 1154, 1159. 47 U.S.P.Q.2D (BNA) 1829, 1833 (Fed. Cir. 1998); *Ekchian v. Home Depot, Inc.*, 104 F.3d 1299, 1304, 41 U.S.P.Q.2D (BNA) 1364, 1368 (Fed. Cir. 1997).

Finally, the Board expressly directed that the parties address the proper construction for “TPC command accumulation” during trial. ID, 9. Petitioner’s fallback is an effort to bypass that instruction by relegating the claimed “indication” that “accumulation is enabled” limitation as satisfied regardless of whether, from the perspective of the UE, Baker discloses meaningful enablement signaling. Reply, 12 n.3. That approach is inconsistent with the Board’s instructions in the Institution Decision. EX2016, ¶¶ 100–101; POR, 36–37.

E. Dr. Kotzin’s new declaration does not cure the Petition’s failure of proof on the “indication” that “accumulation is enabled” limitation, and it underscores that Petitioner’s “enable or disable” story is a litigation construct rather than a teaching of Baker.

Dr. Kotzin’s new declaration (EX1072) is Petitioner’s attempt to retrofit Baker’s PCA parameter into the claim requirement to “receive, from a network device, an indication that TPC command accumulation is enabled.” In doing so, Dr. Kotzin’s new declaration introduces a new analytical frame that (1) conflates “accumulation” with a particular arithmetic implementation, namely summing magnitudes per command, (2) treats Baker’s PCA=2 as “accumulation disabled” solely because the UE applies a different decision rule, and (3) then argues that even if accumulation is always enabled, any PCA indication satisfies the claim because the claims do not require an indication that accumulation is disabled. EX1072, ¶¶20–26, 28–37; Reply, 2–6, 9–11. None of these arguments supplies the missing claim required “indication” teaching. Each highlights the same core defect: attempting to

read any of the relied on disclosures from Baker onto the claims relegates the recited purpose of the claimed “indication” (to indicate that “accumulation is enabled”) a nullity from the perspective of the UE. EX2016, ¶101.

1. The interpretive gloss in Dr. Kotzin’s new declaration does not track the Board’s institution framing.

The Board declined to adopt a final construction and identified that the parties’ dispute “turns on claim construction,” contrasting Petitioner’s “update power for each received TPC command” view with Patent Owner’s broader view requiring only that TPC commands cumulatively affect transmit power. ID, 8. The Board further stated that the Specification “appears” to support Patent Owner’s broader understanding and directed the parties to address the proper construction during trial. ID, 8–9.

Dr. Kotzin’s new declaration attempts to recast the institution discussion as if the Board had endorsed a single definitive meaning equating accumulation with summing magnitudes per command, and then treats that meaning as dispositive. EX1072, ¶¶20–26; Reply, 2–6. But the Institution Decision did not decide that question. Petitioner’s reliance on Dr. Kotzin’s new declaration as a substitute for claim construction therefore does not satisfy Petitioner’s burden at trial. ID, 8–9.

2. Dr. Kotzin’s new analysis of Baker is a semantic relabeling of a timing or decision rule as “disablement,” and conflicts with the record.

Dr. Kotzin’s new declaration asserts that under PCA=2, Baker “does not sum” received commands and therefore accumulation is not enabled, emphasizing that five “1” commands produce only a single plus 1 dB increment rather than five increments. EX1072, ¶¶28–29; Reply, 9–10. That argument proves, at most, that Baker PCA=2 uses a grouped decision rule, meaning a different update cadence and triggering condition. It does not prove that Baker discloses disabling accumulation.

The POR explains that Baker’s “transmission power is unchanged” case corresponds to a zero adjustment being applied, not disabling accumulation. It also explains that disabling accumulation is a qualitatively different control state transition that would implicate resetting or initializing stored state, consistent with the ‘153 patent’s discussion of the power control process beginning at the initial frame number K. POR, 36–37.

Dr. Lomp makes the same point and directly addresses Petitioner’s “disabled” label. Specifically, Dr. Lomp explains that PCA=2 is accumulation over a longer window, not its absence, and the adjustment is deferred, not disabled. EX2016, ¶¶99–103. Dr. Lomp further explains that Baker contains no teaching that accumulation can be turned off or that an accumulator can be reset, and that the UE’s transmit power is always updated based on a function of one or more prior TPC

commands, meaning accumulation is always enabled. EX2016, ¶¶100–101. Dr. Kotzin’s new declaration does not rebut this analysis with any disclosure in Baker showing suspend, reset, or freeze of Baker’s ongoing accumulation state. EX1072, ¶¶28–34.

3. Dr. Kotzin’s new integrator theory does not establish the claimed “indication.”

Dr. Kotzin’s new declaration argues that PCA=2 uses a five-bit buffer for comparison purposes and that this buffer is not an “integrator,” citing Dr. Lomp’s deposition definition of an integrator as new value equals old value plus the increment. EX1072, ¶¶31–33; EX1071, 40:2–13, 41:4–18. Even if that were accepted, it does not bridge the gap Petitioner must bridge.

Petitioner’s focus on whether Baker stores prior TPC information in a five-bit buffer rather than a single-value register is beside the point. The claim turns on whether the UE receives, from a network device, an indication that TPC command accumulation is enabled. The claim language does not require that, when accumulation is enabled, the UE must accumulate information from every bit of power control information sent from the network to the UE. That is a gloss added by Dr. Kotzin that is not supported by the claim language. Put another way, the accumulation referred to in the claims is satisfied when the UE’s transmission power is cumulatively based on prior transmission power control commands, but does not

require that the UE's transmission power is cumulatively based on every single prior transmission power control bit provided to the UE from the network.

Consider a person saving for a down payment on a house who sets out to accumulate money by depositing half of every paycheck in the bank, but finds that is too difficult and transitions to accumulating money by depositing half of every other paycheck in the bank. In the latter case, the person is still accumulating money even though he is not doing so from every paycheck. But application of Dr. Kotzin's reasoning would dictate the nonsensical result that the person stopped accumulating funds as soon they transitioned to saving every other paycheck. Dr. Kotzin's tortured reasoning flows directly from his inability to point to any disclosure in Baker of an indication sent from the network to the UE to enable or disable TPC command accumulation. Regardless of whether prior TPC information is stored in a buffer, a register, or any other data structure, Dr. Kotzin is unable to find any operational mode in Baker other than one where the UE's transmission power is cumulatively based on prior transmission power control commands.

The claim requires receiving from a network device an indication that accumulation is enabled. Dr. Lomp explains that Baker does not contemplate sending an indication from the network to the UE that accumulation is enabled, does not disclose any mechanism for enabling or disabling TPC command accumulation, and contains no behavior predicated on enabling or disabling accumulation. EX2016,

¶101. Dr. Kotzin's new declaration does not identify any contrary disclosure. EX1072, ¶¶31–34.

4. Dr. Kotzin's new declaration fallback concedes the core problem and then attempts to avoid it by rewriting the limitation.

Dr. Kotzin's new declaration asserts that even if accumulation is always enabled in Baker for PCA=1 and PCA=2, Baker still satisfies the limitation because the claims only require receiving an indication that accumulation is enabled and do not require receiving an indication that accumulation is disabled. EX1072, ¶¶35–37; Reply, 12 n.3. While the claims do not expressly require that the network send the UE an indication that accumulation is disabled, that does not give Dr. Kotzin cover to read the claim limitation that the network send the UE an "indication" that "accumulation is enabled" in a manner that renders the limitation meaningless.

For example, while the claims do not require that the network send the UE an indication that accumulation is disabled, the claims clearly require a system where, in at least some instances, accumulation needs to be affirmatively enabled (for whatever reason) by transmitting the claimed "indication" that "accumulation is enabled" from the network to UE. In a system like Baker where accumulation is always enabled, sending an indication to enable accumulation is meaningless. In Baker, accumulation is not affirmatively turned on/off -- rather, it is always on. Rather than providing the claimed "indication" that "accumulation is enabled," the

UE in Baker knows *a priori* that “accumulation is enabled” and the PCA merely conveys to the UE the manner in which such accumulation should be performed. EX2016, ¶101. The record evidence remains that Baker does not disclose any enablement indication or any network side mechanism that toggles accumulation as such. Petitioner’s fallback collapses the claimed “indication” into surplusage.

II. “On a Single Physical Channel” and Motivation to Combine (Andersson–Khan; Zeira–Khan)

A. The proper construction is claim-directed: “on a single physical channel” requires co-carriage on the same physical-channel instance addressed to the UE for the relevant uplink transmission.

Patent Owner’s construction flows directly from the claim language and the asserted invention’s signaling objective. The claims are not satisfied by showing that “scheduling information” exists somewhere in the system and “power control information” exists somewhere else, even if both are transmitted in the same time interval. The limitation requires that the UE receives both categories of information “on a single physical channel,” which means e.g., a particular physical channel such as one defined by specific code and time resources. POR, 24. Dr. Lomp explains the same point: “on a single physical channel” refers to the same physical-channel instance for the relevant uplink transmission, not merely communications occurring “in the same system” across different channelization resources or different time slots. EX2016, ¶49.

That construction is also consistent with the way Petitioner has framed the issue from the outset. Petitioner relies on Andersson’s dedicated physical control channel (DPCCH) as the “single physical channel” and then proposes to modify that same channel—by importing Khan—to include scheduling information. ID, 9. Once Petitioner takes that position, it bears the burden to prove that a POSITA would have been motivated to use a single physical channel to carry both categories of information specified by carrying the claim language. Petitioner cannot satisfy that burden by abstractly asserting that the DPCCH has unused capacity (“other bits”) that “could” carry something else. Reply, 21; ID, 9–11.

B. Petitioner’s “other bits” narrative is not a motivation to carry both categories of information on the same physical channel; it is a hindsight “you can always add bits” theory that evades the single physical channel requirements.

In Reply, Petitioner characterizes Patent Owner’s incompatibility arguments as a “bodily incorporation” strawman and insists “no redesign is needed” because the combination “merely contemplates” using Andersson’s “other bits” in the DPCCH “for an uplink signaling grant.” Reply, 21. But the claim dispute is not whether a control channel has any spare bits in the abstract. The claim requires that the UE receives both scheduling information and power control information on a single physical channel in a manner that actually performs the claimed function—namely, providing the UE with the parameters necessary “to transmit, to the network

device, an uplink signal based on the received scheduling information and the multi-level TPC command,” through the same physical-channel. POR, 24.

Petitioner’s “other bits” theory does not establish those requirements. At most, it asserts the possibility of placing a new information type into a pre-existing control-channel field without showing that the resulting structure would still be the same physical-channel instance and would convey the grant/scheduling semantics the claim requires. ID, 9–11 (summarizing Petitioner’s reliance on Andersson’s DPCCH for the claimed “single physical channel” and Petitioner’s assertion that skilled artisans would modify the DPCCH to include scheduling information). That gap is especially important because Petitioner’s theory depends on importing Khan’s scheduling/grant technique, yet Khan’s own disclosure ties the grant/TPC delivery mechanism to shared-channel multiplexing structures that do not map onto Andersson’s dedicated, fixed-format DPCCH. POR, 25.

C. The dedicated-versus-shared channel mismatch remains probative on the “single physical channel” limitation, and the Institution Decision confirms this is the right technical fault line.

The Board recognized Patent Owner’s contention that Petitioner is attempting to splice Khan’s shared-channel grant/TPC approach into Andersson’s dedicated DPCCH, and that this mismatch is central to the “single physical channel” dispute. ID, 9–11. The Board did not deny institution on that basis. Still, it did so under an institution-stage record and on an institution-stage standard, concluding only that it

did not “agree” the record showed the approaches “couldn’t or wouldn’t be combined” as Petitioner asserts. ID, 10. That institution-stage posture does not relieve Petitioner of its trial burden to prove that the combination actually teaches or suggests the specific claimed co-carriage on a single physical-channel instance, particularly where Khan techniques apply to shared-channel multiplexing constraints that do not exist in Andersson’s dedicated control channel. ID, 10; POR, 25.

Dr. Lomp’s declaration explains why the mismatch is not superficial. Shared-channel structures require additional multiplexing methods and addressing mechanisms precisely because multiple UEs can demodulate shared channels; dedicated channels are instead allocated so only the intended UE receives the channel, and the dedicated channel is a continuous fixed-format stream rather than a slot-carved shared medium. EX2016, ¶¶115–117. Those architectural distinctions are directly relevant to whether Petitioner can satisfy the “single physical channel” co-carriage requirement without changing the nature of the channel itself, which is exactly what Petitioner’s “other bits” narrative attempts to sidestep.

D. The Reply’s “technology family” rebuttal and new literature do not cure Petitioner’s failure of proof, because the dispute is about whether a POSITA would have combined disparate channel structures to achieve the claimed co-carriage—not whether both systems can be described under a broad “CDMA” umbrella.

Petitioner devotes substantial space in the Reply to arguing that Patent Owner “mischaracterizes” Andersson as limited to WCDMA/UMTS and Khan as limited to CDMA2000 HRPD, and it cites new exhibits to argue that both are “CDMA” systems and their techniques are broadly applicable. Reply, 20–22; Reply, 25–26. That framing misses the point. Patent Owner’s “single physical channel” argument does not turn on labels. It turns on whether the prior art teaches receiving scheduling information and power control information on the same physical-channel instance addressed to the UE for the relevant uplink transmission. POR, 24; EX2016, ¶49.

Even Petitioner’s new literature reinforces that the relevant differences are structural. For example, Petitioner cites a comparative study of CDMA2000 and W-CDMA, but that study itself identifies “channel and frame structures” and “logical and physical channels” as meaningful axes of comparison between the technologies. EX1070, 2. Those are precisely the dimensions that matter for the “single physical channel” limitation. Petitioner’s reliance on a broad “CDMA technique” umbrella therefore does not supply the missing teaching of claim-required co-carriage, and it does not transform Khan’s shared-channel, slot-based multiplexing disclosure into a teaching that Andersson’s dedicated DPCCH carries both scheduling/grant and

multi-level TPC information on the same physical-channel instance addressed to the UE. POR, 24–25; EX2016, ¶¶115–117.

In short, the Reply’s “other bits” and “CDMA umbrella” arguments do not meet Petitioner’s burden on the “single physical channel” limitation. Under the proper construction, Petitioner must prove a concrete disclosure or suggestion of co-carriage on the same physical-channel instance to the UE, and the trial record shows that Petitioner’s combination depends on importing shared-channel slot multiplexing concepts that are not taught as compatible with Andersson’s dedicated, fixed-format DPCCH without redesign that the prior art does not motivate in a claim-directed way.

III. Petitioner Still Fails To Prove The Claimed “Receiving, From A Network Device, An Indication That TPC Command Accumulation Is Enabled” Under The Zeira Grounds (Grounds 3 and 4)

The challenged claims require that the user equipment (“UE”) receive, from a network device, an indication that transmit power control (“TPC”) command accumulation is enabled. (POR, 18; ID, 4). Petitioner’s Reply attempts to convert the Institution Decision’s preliminary discussion of Zeira into a merits ruling, arguing that Zeira’s weighting factor α is itself the claimed network-originated “indication,” and further asserting it is “uncontested” that Zeira in view of Baker satisfies the “from a network device” requirement. (Reply, 20–24). The record does not support that position.

A. Zeira’s “operator may desire” passage is not a disclosure that the UE “receives, from a network device,” any “indication”

Petitioner’s Reply relies on Zeira’s statement that “the network operator may desire to use solely open-loop or solely closed-loop power control,” and that the operator may use solely closed-loop by setting α to zero, to argue that α is received “from a network device” in the form of “an indication that transmit power control (TPC) command accumulation is enabled. (Reply, 22–23; POR, 52–53; EX2016, ¶¶134, 138–140).

That leap is not supported by record evidence. An operator’s preference to use solely closed-loop by setting α to zero could be preprogrammed into a phone (UE) at the time the device is first provided to the user. There is no requirement in Zeira that an “indication” that $\alpha=0$ be transmitted to the UE from the same network device that transmits the scheduling information and multi-level TPC command information as specified in the claim language. Nor is there any requirement in Zeira that an “indication” that $\alpha=0$ be received by the UE from the same receiver that also receives the scheduling information and multi-level TPC command information from the network device, as required by the claim language. Dr. Lomp explains that Zeira’s cited passage describes an operator preference but “does not explain any mechanism by which that choice would be conveyed to the UE,” and that “nothing in Zeira identifies the UE as receiving an instruction from the Node-B to force α to zero.” (EX2016, ¶138). The claim requires an indication received by the UE from a

network device. (POR, 18; ID, 4). A high-level statement about operator preference, without disclosed signaling to the UE, does not satisfy that claim language. (EX2016, ¶¶138–140; POR, 52–53).

B. Zeira treats α as UE-side weighting logic tied to the quality of the pathloss estimate, not as a network-sent “enable accumulation” signal

Petitioner’s Reply acknowledges that Zeira teaches that the UE may sometimes calculate α , but attempts to sidestep that disclosure by emphasizing the “operator may desire” language. (Reply, 23). However, even if Zeira allows an operator to conceptualize a configuration, Petitioner still must prove that the UE receives an indication from the same network device that transmits the scheduling information and multi-level TPC command information, and that the same receiver in the UE that receives the scheduling information and multi-level TPC command information from the network also receives the “indication” that $\alpha=0$ from the network device. Such details are neither expressly nor inherently disclosed in Zeira.

Patent Owner’s evidence addresses this directly. Dr. Lomp explains that Zeira’s combined equation includes a closed-loop term $\mathbf{G(n)}$ and a weighted open-loop term $\alpha\mathbf{L}$, where α functions as a dynamic weighting factor tied to the quality of the pathloss estimate and is “typically determined by” the transmitting device (the UE). (EX2016, ¶¶131–133, 138). He further explains that Zeira’s discussion of setting α to zero is not a disclosure of network signaling to the UE; it is, at most, a

conceptual configuration choice, and Zeira provides no disclosure of implementing such a network-controlled α policy. (EX2016, ¶¶138–140).

On this record, Petitioner’s attempt to re-label α as the claim-required “indication ... from a network device” fails for a basic reason: Zeira does not disclose the UE **receiving** such an indication from the network device as the claims require. Baker does not cure Zeira’s defect, and it is not “uncontested” that Zeira in view of Baker satisfies the “from a network device” limitation.

The Reply asserts that it is “uncontested” Zeira in view of Baker renders obvious “receiving, from a network device, an indication that [TPC] command accumulation is enabled.” (Reply, 24). That assertion is incorrect. Patent Owner has consistently maintained that Petitioner has failed to identify the network-originated “indication” that “accumulation is enabled” in Zeira, and Patent Owner has also disputed Petitioner’s repurposing of Baker’s PCA parameter as an “enable/disable accumulation” flag. (POR, 50–54; EX2016, ¶¶141–144).

In the Baker discussion, the Reply leans heavily on deposition testimony about what an “integrator” is, quoting Dr. Lomp’s testimony that an integrator’s “most fundamental implementation” is “new value equals old value plus new data.” (Reply, 11; EX1071, 40:2–13; 41:4–9). But even accepting that description for purposes of Petitioner’s “integrator” strawman, it does not supply what the Zeira grounds still require: a disclosure that the UE receives, from the network device, an

“indication” that accumulation is enabled. (POR, 18; POR, 51–53; EX2016, ¶¶138–144).

Nor can Petitioner establish “uncontested” status by quoting isolated deposition concessions on unrelated issues, such as Dr. Lomp’s acknowledgment that Andersson’s system “may be ... CDMA or wideband CDMA” is a “fair interpretation” that the context includes both. (Reply, 16; EX1071, 52:15–20; 53:5–8). That testimony concerns Andersson’s stated context, not whether Zeira or Baker discloses a **network-received “enable accumulation” indication** required by the challenged claims.

C. Petitioner’s Zeira theory improperly substitutes “configurability” for the claim-required “indication received from a network device”

Petitioner’s Zeira theory ultimately depends on substituting a purported design-time “configuration” (the equation could be arranged to emphasize one term) for the claim-required event (the UE receives from the network device an indication that accumulation is enabled). (Reply, 20–24; ID, 13). Weighting a term to zero is not logically equivalent to enabling or disabling closed-loop accumulation, and Zeira’s closed-loop term $G(n)$ remains present and active in the disclosed combined-control equation. (EX2016, ¶¶135–137).

Patent Owner’s expert testimony explains why that substitution is technically and doctrinally unsound: in Zeira, the closed-loop accumulation term **$G(n)$** is always present and active; “weighting L by zero” is conceptually distinct from “enabling

accumulation”; and Zeira provides no disclosure of any network mechanism to signal such a choice to the UE. (EX2016, ¶¶135–140). For these reasons, Petitioner has not carried its burden to prove the claim-required network-received “indication” limitation under Grounds 3 and 4.

IV. Conclusion

Petitioner’s Reply and new evidence do not cure the defects identified in the POR. Because Petitioner has not carried its burden on the instituted grounds, the Board should reject Petitioner’s arguments and confirm the patentability of claims 1–5, 10–15, and 20.

Respectfully submitted,

Dated: January 26, 2026

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), I certify that this Patent Owner's Sur-reply complies with the type-volume limits of 37 C.F.R. § 42.24(b)(1) because it contains 5,518 words, excluding the parts of this Patent Owner's Sur-Reply that are exempted by 37 C.F.R. § 42.24(a), according to the word processing system used to prepare this Patent Owner's Sur-Reply.

Respectfully submitted,

Dated: January 26, 2026

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a copy of the foregoing **PATENT OWNER'S SUR-REPLY** was served via email (as consented to by counsel) on January 26, 2026 to lead and backup counsel of record for Petitioners as follows:

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