

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PRECISION CANCER TECHNOLOGIES INC.

Petitioner

v.

ONCOUSTICS INC.

Patent Owner

Patent No. 11,602,330

Inter Partes Review No. IPR2025-00242

PATENT OWNER'S AUTHORIZED RESPONSE TO DIRECTOR
REVIEW REQUEST

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<i>Xerox Corp. v. Bytemark, Inc.</i> , IPR2022-00624, Paper 9 (PTAB Aug. 24, 2022)	3

LISTING OF EXHIBITS

Exhibit No.	Description
2001	Sanabria et al., “Comparative Study of Raw Ultrasound Data Representations in Deep Learning to Classify Hepatic Steatosis” (Ultrasound Med Biol., Oct 2022; 48(10):2060-2078, https://doi.org/10.1016/j.ultrasmedbio.2022.05.031)

Pursuant to authorization from the Board (Ex. 3100), Oncoustics Inc. (“Patent Owner”) submits this Response to Petitioner’s Request for Director Review (Paper 9, “Request”) of the Board’s Decision Denying Institution (Paper 7, “Decision”).

I. INTRODUCTION

Petitioner’s Request for Director Review is meritless and should be denied. The Board correctly found that Petitioner failed to meet its burden to show that the primary reference for each ground, Hope-Simpson, discloses a “single static set” of raw RF ultrasound data “forming a single frame” as required in each challenged claim. The Request fails to engage with the Board’s reasoning for denying institution and does not show any erroneous fact finding, legal error, or an abuse of discretion. The Request also wrongly suggests that the Board was obligated to institute an IPR simply because Petitioner submitted an expert declaration and because the parties disputed what Hope-Simpson discloses.

II. THE REQUEST DOES NOT DEMONSTRATE AN ERRONEOUS FACT FINDING OR ABUSE OF DISCRETION¹

The Request starts by noting that the Board construed the phrase “process the single static set of raw RF ultrasound data” to “exclude processing a time series of single frames of RF data.” Paper 9 at 5 (citing Paper 7 at 10). Petitioner appears to

¹ While both section headers in the Request claim the Board “abused its discretion,” Petitioner does not identify any abuse of discretion. Paper 9 at 9-10.

dispute this construction by claiming that “this is not the whole story” and that “[t]he claims require more.” Paper 9 at 5. Specifically, Petitioner argues that “the claims do not preclude acquiring multiple frames of RF data over a period of time—what they preclude is processing multiple frames together.” *Id.* To the extent Petitioner is challenging the Board’s construction, Petitioner ignores the Board’s discussion of the prosecution history and identifies no error in the Board’s reliance on it in arriving at its construction. *See* Paper 7 at 8-11. Nor does Petitioner acknowledge its own failure to propose claim constructions for the terms “single static set” or “forming a single frame” in the Petition. *See* Paper 2 at 10-12.

Petitioner next argues that Hope-Simpson meets the Board’s construction because “Hope-Simpson of course processes its frames individually, and not as a ‘time series.’” Paper 9 at 6. But Petitioner ignores the substance of the Decision. Petitioner does not dispute the Board’s findings (1) that the Petition relied on Moradi “as an example of an ultrasound transducer that acquires raw RF data in ‘discrete static frames of data’—like a camera”; (2) that “Moradi is similar to the Uniyal reference distinguished during prosecution in that they both describe ultrasound systems that acquire a series of frames of RF data taken consecutively over a period of time”; and (3) that the Petition “contend[s] that Hope-Simpson’s transducer outputs data in the same way as, for example, Moradi.” Paper 7 at 14-15. These unchallenged findings were sufficient to deny institution.

The Request also improperly (and tellingly) advances new arguments regarding Hope-Simpson that were not presented in the Petition. For example, Petitioner argues “Hope-Simpson refers to taking signals processed from its raw data and feeding them into a ‘B-mode processor’” and analogizes this to the ‘330 Patent. Paper 9 at 6 (citing Ex. 1005, ¶ 40). However, the Petition contains no reference to a “B-model processor” or any citation to paragraph 40 of Hope-Simpson.

Petitioner also argues that Dr. Papanicolau’s testimony was “not *ipsa dixit*” because he provided “simple explanations of basic concepts that experts routinely provide.” Paper 9 at 6-7. But Petitioner again fails to engage with the substance of the Decision. The Board noted that Petitioner’s only support for its conclusory assertion that Hope-Simpson’s localized datasets are equivalent to the claimed subject matter was Dr. Papanicolau’s testimony. Paper 7 at 15 (citing Paper 6, 22). The Board properly discounted that testimony because it “lacks both technical reasoning and evidentiary support; it simply mirrors the statement in the Petition.” *Id.* at 15-16 (citing *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 (PTAB Aug. 24, 2022)). The Request does not show any error in this finding.

Finally, Petitioner argues Patent Owner’s contentions regarding Hope-Simpson amounted to “speculation” and should have been rejected. *See* Paper 9 at 6-9. Once again, Petitioner ignores the substance of the Decision. There is only one instance in the Board’s analysis where it references an argument from Patent Owner;

namely, that “Hope-Simpson does not disclose the format of the ‘RF signals’ that are processed by the neural network” for the FIG. 7 embodiment, “let alone whether that the ‘RF signals’ are a single static set that forms a single frame.” Paper 7 at 16 (quoting Paper 6 at 19). Petitioner does not specifically address this argument or the corresponding findings in the Decision. *See* Paper 9 at 6-9.

III. THE REQUEST DOES NOT DEMONSTRATE A LEGAL ERROR OR ABUSE OF DISCRETION

Petitioner argues that the Decision “applied an erroneous burden of proof on Petitioner—to not just predict, but affirmative [sic] and conclusively disprove in the Petition all possible technologically incorrect arguments that Patent Owner could raise.” Paper 9 at 9. That is incorrect. The Decision applied the correct standard for institution and found that Petitioner did not meet it. Paper 7 at 2 (quoting 35 U.S.C. § 314(a) and applying the “reasonable likelihood” standard). Petitioner’s cited cases are inapposite because they relate to whether a petitioner’s post-institution reply was properly responsive to the patent owner’s response. Paper 9 at 9 (citing *Costco Wholesale Corp. v. Robert Bosch, LLC*, IPR2016-00039, Paper 69 (PTAB Mar. 30, 2017) and *Mylan Pharmas., Inc. v. Sanofi-Aventis Deutschland GmbH*, IPR2019-00122, Paper 83 (PTAB May 29, 2020)). Petitioner could have sought authorization to file a reply to the Preliminary Response but chose not to.

Petitioner suggests that the Board was obligated to institute an IPR because “Petitioner provided evidence, including an expert declaration” and because the

parties' dispute about what Hope-Simpson discloses "should be resolved after a fully developed record at trial—not at the institution stage." Paper 9 at 10. These arguments are meritless. Institution is not warranted simply because a petition is accompanied by an expert declaration or because a patent owner disputes the petition's contentions. If that were the standard for institution, then seemingly every petition would be instituted. That is not the law. *See, e.g., Unified Patents Inc. v. Flectere LLC*, IPR2019-00479, Paper 9 (PTAB Jul. 2, 2019) (denying institution where petition was supported by expert declaration and patent owner waived its preliminary response).

IV. CONCLUSION

For at least the foregoing reasons, the Director should deny Petitioner's Request for Review of the Decision Denying Institution.²

² Even if Petitioner were correct, it would be inappropriate to reverse and institute an IPR, as Petitioner requests, because Patent Owner presented additional arguments that the Decision did not need to address. *See, e.g.,* Paper 6 at 9-20.

U.S. Patent No. 11,602,330
IPR2025-00242

Authorized Response to Director Review Request

Respectfully submitted,

Dated: July 8, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Authorized Response to Director Review Request** was served on July 8, 2025, via email:

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