

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION,
Petitioner,

v.

PROXENSE, LLC
Patent Owner

U.S. Patent No. 8,219,129
IPR Case No.: 2025-00328

PATENT OWNER PRELIMINARY RESPONSE

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EXHIBIT LIST

No.	Exhibit Description
2001	U.S. Patent No. 9,265,043
2002	Docket Navigator Judge Profile for Judge Alan D. Albright
2003	Scheduling Order for Proxense, LLC v. Intel Corp., 6:24-cv-00283, pending in the United States District Court for the Western District of Texas
2004	Judge Albright’s Frequently Asked Questions (“FAQ”), available at https://www.txwd.uscourts.gov/for-attorneys/judge-albright-courtroom-faq/
2005	Intel’s Preliminary Invalidity Contentions
2006	April 25, 2025, email exchange between Petitioner and Patent Owner in <i>Proxense, LLC v. Inet Corporation</i> , No. 6:24-cv-00283-ADA
2007	Intel’s Proposed Claim Construction Order in <i>Proxense, LLC v. Inet Corporation</i> , No. 6:24-cv-00283-ADA
2008	Definition of QoS PCMag, https://www.pcmag.com/encyclopedia/term/qos

I. INTRODUCTION

Pursuant to 35 U.S.C. § 313 and 37 C.F.R. § 42.107, Patent Owner Proxense LLC (“Proxense”) submits the following Preliminary Response to the Petition for *Inter Partes* Review of claims 1, 2, 5-7, 12, 13, 15, 16, and 18 of U.S. Patent No. 8,219,129 (“the ’129 Patent”) filed by Petitioner Intel Corporation (“Petitioner” or “Intel”).

Petitioner asserts in these proceedings, and in concurrent proceedings before the District Court, a claim construction containing a negative limitation that is ignored in each of the asserted grounds of invalidity. *See* Ex. 2007; Paper 2, 5-7. Petitioner and Patent Owner agree that this is the construction adopted by the District Court. Ex. 2006. Accordingly, the Petition advances grounds of invalidity inconsistent with both these proceedings and the District Court proceedings. Failing to reconcile the proposed and **undisputed** claim construction with the grounds of invalidity, Petitioner has not established a reasonable likelihood of success.

II. RELATED MATTERS UNDER 37 CFR § 42.8(b)(2)

The patent at issue is currently being asserted against Petitioner in *Proxense v. Intel. Corp.*, No. 6:24-cv-00283 (W.D. Tex. May 23, 2024) (“*Proxense v. Intel*”). A *Markman* hearing was held, and the Court issued a claim construction from the bench. *See* Ex. 2006 and 2007. Pursuant to Rule 42.100(b), Patent Owner requests the Board consider and adopt the District Court’s construction. The District Court

has construed the challenged claims *contrary to* the specific grounds asserted in the Petition. Accordingly, it is unlikely that Petitioner could credibly pursue the specific grounds asserted in the Petition and thus *inter partes* review should not be instituted.

III. CLAIM CONSTRUCTION

A. 37 C.F.R. § 42.100(b) Statement

Terms appearing within the claims of the '129 Patent have been construed by the District Court in *Proxense v. Intel*. See Ex. 2006 and 2007. Neither party disputes the constructions provided by the District Court¹. In these proceedings, Petitioner presents a claim construction of “*class is associated with one or more of the client device and a user of the client device*” identical to the construction provided by the District Court. For purposes of consistency between these proceedings and those before the District Court, and pursuant to Rule 42.100(b), Patent Owner requests the Board consider and adopt the District Court’s construction.

B. “class associated with one or more of the [] client device and [a/the] user of the [] client device” (all challenged claims)

Here, as before the District Court, Petitioner asserts a claim construction containing a negative limitation that is ignored in the asserted grounds of invalidity, as well as failing to relate a device’s state to its class. Claim 1, from which challenged claims 2 and 5-7 depend, recites:

¹ For the purposes of ensuring consistency between these proceedings and those before the District Court, and without waiving any rights to appeal, Patent Owner does not dispute the constructions provided in Ex. 2007.

assigning a first specific time slot for a first client device...
assigning a second specific time slot for a second client device...
wherein the *first class* is associated with one or more of *the first client device and a user of the first client device*, and the *second class* is associated with one or more of *the second client device and a user of the second client device*.

'129 Patent, Claim 1 (emphasis added).

Claim 12, from which challenged claims 13 and 15 depend, recites:

a portable client device for wirelessly communicating data with a reader device when the client device is located in communication proximity of the reader device, the client device storing *a bit field identifying a specific time slot*, the specific time slot *set according to a class* associated with one or more *of the portable client device and the user of the portable client device*.

'129 Patent, Claim 12 (emphasis added).

Claim 16, from which challenged claim 18 depends, recites:

a portable client device configured to wirelessly receive the synchronization information, the received synchronization information comprising *information assigning a specific time slot* during which the client device can receive data from the network device, *the time slot being determined according to* a priority level data associated with *a class, the class associated* with the one or more of *the portable client device and the user of the portable client device*.

'129 Patent, Claim 16 (emphasis added).

For each of the challenged independent claims, Petitioner asserts a claim construction containing a negative limitation excluding data items from a “class” that is “*associated with on one more of the first portable client device and user of the first portable client device*” – i.e., “**not data items or network characteristics.**” Paper 2, 5-6 (emphasis in original); Ex. 2007, 1. Petitioner and Patent Owner agree that this is the construction adopted by the District Court. Ex. 2006 (“We agree with the constructions as you have laid them out in your proposed order and we can all operate on that understanding going forward without any submissions to the Court.”). Accordingly, there is no dispute that determining, setting, or otherwise assigning a time slot is based on device class ***and not*** the data to be transmitted. But contrary to this accepted construction, the asserted grounds of invalidity ignore class and propose such a determination based on the data to be transmitted.

IV. RESPONSE TO GROUNDS FOR INVALIDITY RAISED

A. Ground 1: The Asserted Ground Is Inconsistent with the Undisputed Claim Construction

Petitioner asserts a claim construction containing a negative limitation that is ignored in the first asserted grounds of invalidity, as well as failing to relate a device’s state to its class. Claim 16, from which challenged claim 18 depend, recites:

a portable client device configured to wirelessly receive the synchronization information, the received synchronization information comprising ***information assigning a specific time slot*** during which the client device can receive data from the network device, ***the time slot***

being determined according to a priority level data associated with *a class, the class associated* with the one or more of *the portable client device and the user of the portable client device*.

'129 Patent, Claim 16 (emphasis added). Petitioner asserts a claim construction containing a negative limitation excluding data items from a “class” that is “associated with on ore more of the first portable client device and user of the first portable client device” – i.e., “**not data items or network characteristics.**” Paper 2, 5-6 (emphasis in original); Ex. 2007, 1. Petitioner and Patent Owner agree this is the construction adopted by the District Court. Ex. 2006 (“We agree with the constructions as you have laid them out in your proposed order and we can all operate on that understanding going forward without any submissions to the Court.”). Accordingly, there is no dispute that determining, setting, or otherwise assigning a time slot is based on device class *and not* the data to be transmitted. The asserted grounds of invalidity ignore class.

Petitioner asserts that Quality of Sever (QoS) assigns time slots based on device class. Paper 2, 29-33. Yet, neither the Petition nor Petitioner’s expert ever defines QoS.

(3) (Quality Of Service) A defined measure of performance in a communications network. For example, *to ensure that real-time voice and video are delivered without annoying blips*, a traffic contract is negotiated between the customer and network provider that guarantees

a minimum bandwidth along with the maximum delay in milliseconds that can be tolerated.

Because dedicated channels are set up between parties, the plain old telephone system (POTS) delivered the highest QoS for years. However, when data are broken into packets that travel through routers in a LAN or WAN, *QoS mechanisms are used to give higher priority to real-time data, such as voice over IP (VoIP), than to non-real-time data, such as file downloads*. Another option in packet switching is to overbuild the network, ensuring that it will accommodate all traffic fed to it. See packet switching.

ATM was one of the first packet technologies to build in modes of service. Today, almost everything is built around IP, and there are a variety of methods that provide QoS in IP networks (see 802.11e, TOS, RSVP, Diffserv and MPLS).”

Ex. 2008, 2 (emphasis added).

“QoS mechanisms are used to give higher priority to real-time data, such as voice over IP (VoIP), than to non-real-time data, such as file downloads.” *Id.* Accordingly, QoS gives priority based on data items – *i.e.*, voice, video, etc. QoS assigning priority based on data items is also reflected in the Table from Gilb cited in the Petition.

Table 8–5: IEEE Std 802.1D traffic types

User priority	Traffic type	Used for	Comments
0 (default)	Best effort (BE)	Asynchronous	Default level
1	Background (BK)	Asynchronous	–
2	–	Spare	Currently not assigned
3	Excellent effort (EE)	Isochronous	For valued customers
4	Controlled load (CL)	Isochronous	Traffic will have to conform to some higher protocol layer admission control
5	Video (VI)	Isochronous	< 100 ms delay and jitter
6	Voice (VO)	Isochronous	< 10 ms delay and jitter
7	Network control (NC)	–	–

Paper 2, 30; *citing* Ex. 1005, 19-20. As shown in the table, voice and video data items receive the highest priority. Accordingly, as is accepted in the art and acknowledged by Petitioner, QoS assigns transmission priority based on data items. Thus, Petitioner’s asserted grounds of invalidity contradict Petitioner’s asserted and undisputed claim construction.

Petitioner attempts to distract from this contradiction by asserting QoS is consistent with some supposed interpretation of Patent Owner. Paper 2, 33 (“The QoS category (a ‘*class*’ under PO’s interpretation) is associated with a QoS priority level (the ‘*priority level data*’)—*e.g.*, QoS level 6 is highest priority and QoS level 0 (“best effort”) is associated with the lowest priority... Thus, under PO’s

interpretation, ‘the time slot’ assigned to a source/destination ‘[is] *determined according to a priority level associated with a class*’”) (emphasis in original). But even if that is true, it is irrelevant. The Court adopted the claim construction proposed by Petitioner, and Patent Owner is obliged to accept that claim construction. If the Board disregards the claim construction advanced by Petitioner in support of institution, then these proceedings would be in contradiction with the current proceedings before the District Court. Thus, the undisputed claim construction advanced by Petitioner in the District Court action should and must control.

Petitioner’s reliance on power management status allocations fares no better. As Petitioner acknowledges, power management modes refer to the status of a device. Paper 2, at 26 (“*A DEV, when changing its PM status*, informs the PNC of its PM mode through the PM Mode Change command.”) (emphasis added); citing Ex. 1005, 110-111. But Petitioner has not explained how a device’s *status* is dependent upon or otherwise indicative of its class—because it cannot be done. For instance, the status of a TV may be off or on. Likewise, the status of a refrigerator may be off or on. Because the TV and the refrigerator share the same status – *e.g.*, both are on – does not make a TV the same class of device as a refrigerator. Thus, even though both may be on and connected to a network, they are not automatically the same class of device.

Instead of addressing this logical inconsistency, Petitioner again points to a supposed interpretation from Patent owner. Paper 2, 28 (“The PM mode reflects the DEV PM mode and is therefore “*associated with the client device*” under PO’s interpretation.”) (emphasis in original). Again, even if that is true, it is irrelevant. The Court adopted the claim construction proposed by Petitioner and Patent Owner is obliged to accept that claim construction. If the Board disregards the claim construction advanced by Petitioner in support of institution, then these proceedings would be in contradiction with the current proceedings before the District Court. Thus, the undisputed claim construction advanced by Petitioner in the District Court action should and must control.

Petitioner re-asserts the same arguments regarding QoS and power management status for independent claim 1. *See* Paper 2, 43-45, 47. Again, Petitioner fails to reconcile the grounds with the proposed and undisputed claim construction.

By failing to reconcile the proposed and undisputed claim construction with the grounds of invalidity, Petitioner has not established a reasonable likelihood of success.

B. Ground 2: The Asserted Ground Is Inconsistent with the Undisputed Claim Construction

Petitioner re-asserts the same arguments regarding QoS and power management status for independent claim 12, from which claims 13 and 15 depend.

See Paper 2, 63. Again, Petitioner fails to reconcile the grounds with the proposed and undisputed claim construction.

By failing to reconcile the proposed and undisputed claim construction with the grounds of invalidity, Petitioner has not established a reasonable likelihood of success.

C. Ground 3: The Asserted Ground Is Inconsistent with the Undisputed Claim Construction

Petitioner asserts a claim construction containing a negative limitation that is ignored in the second asserted ground of invalidity. Claim 1, from which challenged claims 2 and 5-7 depend, recites:

assigning a first specific time slot for a first client device...
assigning a second specific time slot for a second client device...
wherein the *first class* is associated with one or more of *the first client device and a user of the first client device*, and the *second class* is associated with one or more of *the second client device and a user of the second client device*.

'129 Patent, Claim 1 (emphasis added).

Claim 16, from which challenged claim 18 depends, recites:

a portable client device configured to wirelessly receive the synchronization information, the received synchronization information comprising *information assigning a specific time slot* during which the client device can receive data from the network device, *the time slot being determined according to* a priority level data associated with *a*

class, the class associated with the one or more of the portable client device and the user of the portable client device.

'129 Patent, Claim 16 (emphasis added).

For each of the challenged independent claims, Petitioner asserts a claim construction containing a negative limitation excluding data items from a “class” that is “*associated with on ore more of the first portable client device and user of the first portable client device*” – *i.e.*, “**not data items or network characteristics.**” Paper 2, 5-6 (emphasis in original); Ex. 2007, 1. Petitioner and Patent Owner agree that this is the construction adopted by the District Court. Ex. 2006 (“We agree with the constructions as you have laid them out in your proposed order and we can all operate on that understanding going forward without any submissions to the Court.”). Accordingly, there is no dispute that determining, setting, or otherwise assigning a time slot is *not* based on the data to be transmitted. But, contrary to this accepted construction, the asserted ground of invalidity proposes such a determination based on the data to be transmitted.

Petitioner asserts Ward (International Publication No. WO 02/067009; Ex. 1007) discloses assigning time slots based on a class of user. Paper 2, 72-74. While subscribers do receive transmissions, the time slot of the transmission received by the subscribers is determined based on the data to be transmitted. Thus, Ward

teaches time slots are assigned *based on data items*, which Petitioner asserts are excluded from the claims.

Specifically, Ward teaches a method of interrupting scheduled transmissions based on the receipt of higher priority data to transmit – such as “a request from a transponder corresponding to the actual switch 38 by user 18... [so that] the user 18 can operate the room lighting with a minimum or imperceptible latency.” Ex. 1007, 10. Accordingly, Ward teaches a system that operates such that “when data payloads of complete packets have been scheduled for transmission in a succeeding time slots, receipt of an *external stimulus can cause a packet to be formed and transmitted substantially immediately*, for example in the next time slot, so as to provide a low latency response to such stimulus.” Ex. 1007, 12. The external stimulus can be a command, such as turning on the lights, or information about share prices.

A particular example of such a communication system is a which delivers *share price information* from a base station to pagers owned by subscribers over an asynchronous time division multiplex radio channel. Each pager has a unique address and each time slot contains the address of a pager and *the current share price information* for the associated subscriber

....

It is possible to offer a premium service, which may not be available for everyone but which may be made available to nervous small-scale traders who wish to take advantage of *a stock-crash feature* and for

which they pay a small additional fee. Thus, *if the value of a stock in an investor's portfolio falls to less than, for example, half of what they paid for it, the schedule allocates the next available time slot to that investor* so that they may be informed of a market catastrophe with minimal latency, thus allowing the investor to sell immediately.

Ex. 1007, 12-13 (emphasis added). Thus, in addition to commands to turn on the lights, the Ward method allocates timeslot based on market information – such as crashes. That is when market information is received, the schedule is interrupted and the information is transmitted to allow for immediate action. Whether it is a command to turn on the lights or market information, the schedule is interrupted based on higher priority data to be transmitted. Consequently, Ward teaches a method in which timeslots for transmission are assigned based on data items. But Petitioner proposes a claim construction with a negative limitation specifically excluding data items. Petitioner's asserted grounds of invalidity, therefore, are contradictory to Petitioner's asserted claim construction.

Petitioner attempts to avoid the contradiction by noting subscriptions levels. Paper 2, 73; citing Ex. 1007, 12. But Ward discloses that “[d]ay traders can pay a higher subscription so as to be informed more often of their current share prices.” Ex. 1007, 12. That is, the higher priority data received will be disproportionately allocated amongst subscribers – having more updates regarding certain stocks over others. But again, it is receipt of the stock update information – *i.e.*, data item – that

interrupts the schedule. Furthermore, Petitioner has not cited to any portion of Ward disclosing that any specific time is reserved for any specific subscription tier. Rather, Petitioner asserts to a conclusory statement from its expert that assumes timeslots are assigned. Paper 2, 73-74; citing Ex 1003, 254. In fact, Petitioner’s expert fails to recite any portion of Ward that discloses “the respective ‘specific time slots’ that users in each class are assigned to are ‘set according to’ an algorithm that depends on the users’ higher subscription or lower subscription levels (i.e., “*class*”).” Ex. 1003, 256. The portion of Ward cited to discloses no such algorithm. Ex. 1003, 256; citing Ex. 1007, 12-13. Accordingly, Petitioner has offered no evidence that reconciles Ward’s data item-based interruptions with Petitioner’s proposed claim construction that *data items are excluded – i.e., “not data items or network characteristics.”*

By failing to reconcile the proposed and undisputed claim construction with the grounds of invalidity, Petitioner has not established a reasonable likelihood of success.

D. Grounds 4-6: The Asserted Ground Is Inconsistent with the Undisputed Claim Construction

Petitioner asserts a claim construction containing a negative limitation that is ignored again in the fourth, fifth, and sixth asserted grounds of invalidity.

Petitioner relies on the same rationales presented in Grounds 3. *See* Paper 2, 85 (“Accordingly, for reasons above and in §VIII.A-B, the Gilb-802.15.3-Ward Brawn

combination renders obvious claims 1, 16, and 18 under Petitioner’s construction of “synchronization information” and the “class associated with [device/user]” term.”); and 86 (“For the reasons in §VII.A, a POSITA would be motivated to combine Cai’s MAC with the DEV of Gilb-802.15.3-Ward (Ground 5) and the DEV of Gilb 802.15.3-Ward-Brawn (Ground 6).”). Petitioner’s asserted grounds of invalidity, as detailed above, are contradictory to Petitioner’s asserted and undisputed claim construction. Furthermore, the District Court adopted the claim construction proposed by Petitioner. If the Board disregards the claim construction advanced by Petitioner in support of institution, then these proceedings would be in contradiction with the current proceedings before the District Court. Thus, the undisputed claim construction advanced by Petitioner should and must control, which is contradictory to the asserted grounds of invalidity.

Petitioner fought for and won a particular claim construction of the “class” term. Petitioner and Patent Owner are now bound to that construction by the District Court. Petitioner cannot justify its failure to map the asserted grounds to that construction by pointing to a different construction that was allegedly advanced by Patent Owner earlier. Failing to reconcile the proposed and undisputed claim construction with the grounds of invalidity, Petitioner has not established a reasonable likelihood of success.

V. CONCLUSION

The Petition fails to demonstrate a reasonable likelihood that the Petitioner will prevail as to any of the challenged claims on any of the asserted grounds. Accordingly, institution of *inter partes* review of the 129 Patent based on the asserted grounds should be denied.

Dated: April 30, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that Patent Owner Preliminary Response was served on April 30, 2025 by e-mailing copies the e-mail addresses provided in Petitioner's Petition.

Dated: April 30, 2025

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

Under the provisions of 37 C.F.R. § 42.24, the undersigned hereby certifies that word count for the foregoing Patent Owner's Preliminary Response (excluding the table of contents, certificate of service, word count, or listing of exhibits) total 3,402 words, which is less than the 14,000 words allowed under 37 C.F.R. § 42.24(b)(1).

Dated: April 30, 2025

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