

IPR2025-00436
Patent 10,313,024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAMBRIDGE INDUSTRIES USA, INC.,

Petitioner

v.

APPLIED OPTOELECTRONICS, INC.,

Patent Owner

Case: IPR2025-00436

U.S. Patent No. 10,313,024

**PETITIONER'S REQUEST FOR REHEARING
OF THE BOARD'S NON-INSTITUTION DECISION
UNDER 37 C.F.R. § 42.71(d)**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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Alexandria, Virginia 22313-1450

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TABLE OF EXHIBITS

Exhibit	Short Name	Description
Ex. 1001	'024 Patent	U.S. Patent No. 10,313,024
Ex. 1002	'024 Patent File History	File History of U.S. Patent No. 10,313,024
Ex. 1003	Kirk Declaration	Expert Declaration of Dr. Andrew G. Kirk
Ex. 1004	Kirk CV	<i>Curriculum Vitae</i> of Dr. Andrew G. Kirk
Ex. 1005	Scheduling Order	Doc. No. 30, Scheduling Order, <i>Applied Optoelectronics, Inc. v. Cambridge Industries USA, Inc.</i> , No. 3:24-cv-01010-JD (N.D. Cal.)
Ex. 1006	Mizobuchi	U.S. Patent No. 9,568,694
Ex. 1007	Akashi	U.S. Patent App. Pub. No. 2014/0140665 A1
Ex. 1008	Hartzell	U.S. Patent App. Pub. No. 2005/0175350 A1
Ex. 1009	Claim Construction Statement	Joint Claim Construction Pre-hearing Statement, Dkt. 34, December 16, 2024, in <i>Applied Optoelectronics, Inc. v. Cambridge Industries USA, Inc.</i> , No. 3:24-cv-01010-JD (N.D. Cal.)
Ex. 1010	Excerpt from Infringement Claim Charts	Excerpt from Patent Owner's L.R. 3-1 & 3-2 Disclosures, June 6, 2024, in <i>Applied Optoelectronics, Inc. v. Cambridge Industries USA, Inc.</i> , No. 3:24-cv-01010-JD (N.D. Cal.)
Ex. 1011	Pisano Declaration	Declaration of Nicola A. Pisano collecting exemplary Stay Orders entered by Judge Haywood Gilliam and Data Showing Success Rates for Motion to Stay
Ex. 1012	Interim Process FAQs	FAQs for Interim Processes for PTAB Workload Management
Ex. 1013	Further Excerpt from Infringement Claim Charts	Further Excerpt from Patent Owner's L.R. 3-1 & 3-2 Disclosures, June 6, 2024, in <i>Applied Optoelectronics, Inc. v. Cambridge Industries USA, Inc.</i> , No. 3:24-cv01010-JD (N.D. Cal.)
Ex. 1014	Supplemental Kirk Declaration	Supplemental Declaration of Dr. Kirk

I. INTRODUCTION

Cambridge Industries USA Inc. (“Petitioner”) requests rehearing of the Board’s non-institution Decision in IPR2025-00436 for U.S. Patent No. 10,313,024 (the “’024 patent”), Paper 12 (“Decision”), which is based on a misapprehension by the Board of both the prior art and the claimed invention. Moreover, the Board’s adoption of Patent Owner’s revised definition of “light engine driving circuit” without permitting Petitioner to respond to that new construction violated Petitioner’s due process rights.

The Petition adopted the *Patent Owner’s* construction of claim term “light engine driving circuit,” as reflected in the parties’ parallel proceedings. In response to Patent Owner’s brief in support of discretionary denial, Petitioner filed Ex. 1013, in which Patent Owner identified *metallic traces* on the PCBs of Petitioner’s accused products as corresponding to the claimed “light engine driving circuit.” Patent Owner’s Preliminary Response further disavowed its litigation-induced claim construction, arguing that under a “plain and ordinary meaning,” the “light engine driving circuit” consisted of a single component in Mizobuchi. The Board unquestioningly adopted Patent Owner’s new construction. Moreover, the Board refused to permit Petitioner to file a reply to address that issue and did not consider the evidence identified in Petitioner’s request for leave to file a reply to the Patent Owner Preliminary Response. The Board’s refusal accord Petitioner an opportunity to be

heard on the meaning of “light engine driving circuit” violated Petitioner’s due process rights.

The Board also seized upon an errant annotation in the Petition to a figure in Akashi as justifying the Board’s disregard of the text of the Petition, the disclosure of Akashi, and the knowledge of skill in the art. Despite best efforts to ensure accuracy, errors do sometimes occur. How else could one interpret the Board’s statement in the Decision at 2, which states: “***Based on our review of the record, we conclude that Petitioner is reasonably likely to prevail with respect to at least one challenged claim***”? The Board should accord at least as much leeway for an errant annotation that conflicts with the text of the Petition as the Board exercises for itself.

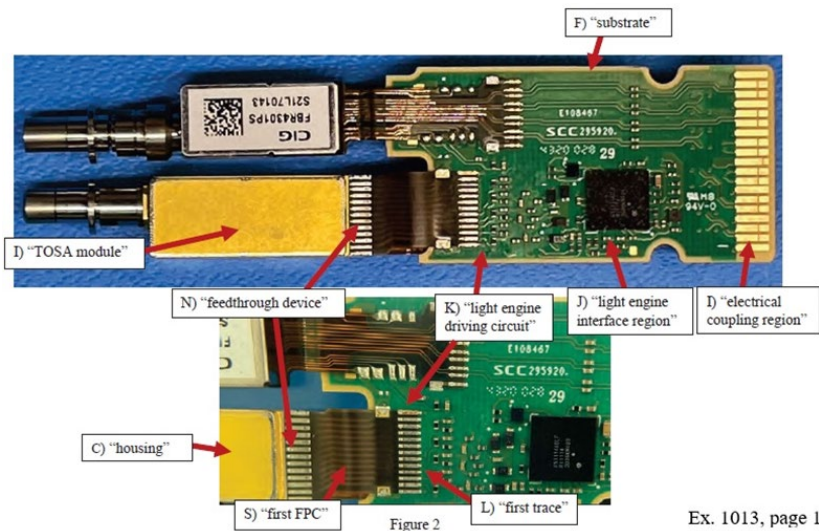
The Board’s failure to consider Patent Owner’s construction of the term “light engine driving circuit” in the parallel proceedings, as demonstrated by Exs. 1010 and 1013, resulted in its erroneous denial of the institution. Petitioner respectfully requests reconsideration and issuance of a revised institution decision that is based on an accurate understanding of the prior art, the proposed grounds, and the relevant law.

II. SUMMARY OF THE BOARD’S ERRORS

- 1. The Board Did Not Address or Consider Patent Owner’s Shifting Sands Claim Construction of the “Light Engine Driving Circuit” and Denied Petitioner’s Request to Respond to that New Issue.***

The Decision fails to address or *even recognize* that Patent Owner offered a fundamentally different claim construction of “light engine driving circuit” in its Patent Owner’s Preliminary Response than in the parallel proceedings. Instead, the Board unquestioningly accepted the disingenuous arguments set forth in Patent Owner’s response.

Specifically, in the parallel district court proceeding, Patent Owner construes the phrase “light engine driving circuit” to consist of conductive traces and components on the substrate that communicate RF and power signals among the substrate, light engine interface region, feedthrough device, and light engine. *See* Ex. 1010 at 11 (identifying externally-modulated laser “EML” driver); Ex. 1013 at 10-11 (identifying circuit traces). Examples of Patent Owner’s district court construction are shown as element “K” of Patent Owner’s representative claims charts in Exhibit 1013, reproduced below:



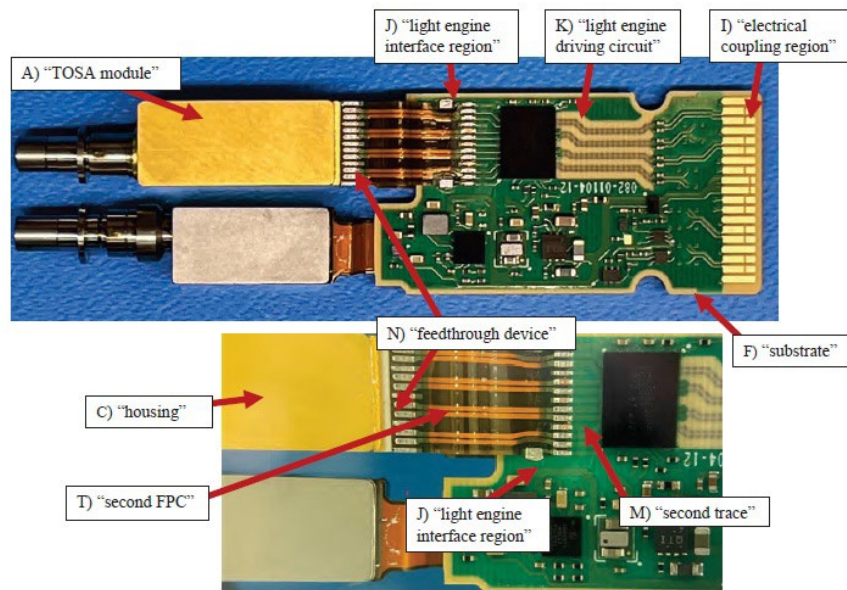


Figure 3

Ex. 1013, page 11

Consistent with 37 C.F.R. § 42.100(b), the Petition adopted for purposes of this IPR the **Patent Owner's** construction of "light engine driving circuit" from the parallel proceedings. *See* 37 C.F.R. § 42.100(b) (a patent claim is construed in the same manner used "in a civil action under 35 U.S.C. § 282(b)"). In those parallel proceedings, Patent Owner did not dispute the meaning of this term and Petitioner had no reason to suspect that Patent Owner would treat this term as the proverbial "nose of wax" in these proceedings. *See Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1351 (Fed. Cir. 2001) ("A patent may not, like a 'nose of wax,' be twisted one way to avoid anticipation and another to find infringement.") (internal quotations omitted). Yet in its Response, Patent Owner did exactly that. *Cf. Sun Pharma. Indst. Inc. v. Nivagen Pharma., Inc.*, IPR2025-00893, Paper 18 at 2-3 (P.T.A.B. Sep. 19, 2025)(In the context of discretionary review, the Board disapproved of a party offering

different claim construction positions in PTAB and parallel proceedings absent a sufficient explanation.) Despite construing the “light engine driving circuit” as comprising multiple conductive traces and electronic components in the parallel proceedings, Patent Owner in Paper 8 narrowed its construction to *a single component*. Paper 8, pp 18-20.

The Decision fails to address or even acknowledge Patent Owner’s sleight-of-hand in revamping its prior “litigation” construction of “light engine driving circuit.” Nor did the Board consider the evidence rebutting Patent Owner’s re-imagined interpretation of the “light driving engine circuit” specifically pointed out in Petitioner’s request for authorization to file a reply. In so doing, the Board committed legal error by violating Petitioner’s due process right in failing to allow Petitioner the opportunity to address this new issue.

2. *The Decision’s Description of the Mizobuchi Reference Demonstrates a Misapprehension of the Technology at Issue and Is Clear Error.*

As set forth in each of the independent claims, the ’024 patent requires a “light engine driving circuit ... to drive the hermetically-sealed light engine.” *See* Ex. 1001 at 9:59-62 (claim 1), 10:64-67 (claim 12), 12:7-10 (claim 15). The ’024 patent further explains that the light engines are the transmitter optical subassemblies (TOSAs) and receiver optical subassemblies (ROSAs). *Id.* at 4:45-48. The Decision’s discussion

regarding the light engine of Mizobuchi reflects a profound misunderstanding of those components and is in clear error.

The Petition explains that in Mizobuchi the “light engine driving circuit, located on the substrate, provides RF and power signals to drive the hermetically sealed light engine to output one or more channel wavelengths,” and cites to Ex. 1006, FIGS. 2, 3A, 3:57-64, 12:27-41. Specifically quoting from that portion of the cited material, Mizobuchi teaches:

*Although it is not illustrated, the first circuit board 2 includes a clock data recovery (CDR) circuit, a power supply circuit, a **microcontroller**, and so forth. The CDR shapes waveforms of the electrical signals output from the transmitter and receiver integrated optical sub-assembly 1, and **the microcontroller controls the entirety of the optical module 100 including the transmitter and receiver integrated optical sub-assembly 1.***

(Ex. 1006 at 3:57-64, emphasis added.) Thus, among other things, this passage teaches that the microcontroller “controls the entirety of the optical module” including the TOSA and ROSA.

Despite the foregoing express teaching, the Decision states that Petitioner’s analysis “fails to provide any persuasive evidence,” instead agreeing with Patent Owner that “Mizobuchi’s CDR circuit and power supply circuits, which are disposed on circuit board 2 are not part of a ‘light engine driving circuit.’” Decision at 6-7. Petitioner **did not** assert that the CDR circuit or the power supply circuit controlled “the entirety of the optical module 100,” only that those components – along with the

other components including the microcontroller identified in the above passage – performed that function. It was clear error for the Board to seize upon Patent Owner’s misrepresentation of the content of the Petition and ignore Mizobuchi’s express teachings regarding the function of the microcontroller.

Compounding its error, the Decision then adopted Patent Owner’s falsehood that “Mizobuchi’s driver integrated circuit 14 is more properly identified as the claimed ‘light engine driving circuit.’” Decision at 7. But as the Decision itself expressly recognizes, driver integrated circuit 14 merely drives laser diodes 10, which are only a subset of the TOSA and ROSA (*which are controlled by the microcontroller*). *Id.* The annotated Fig. 3A from page 18 of the Petition is instructive:

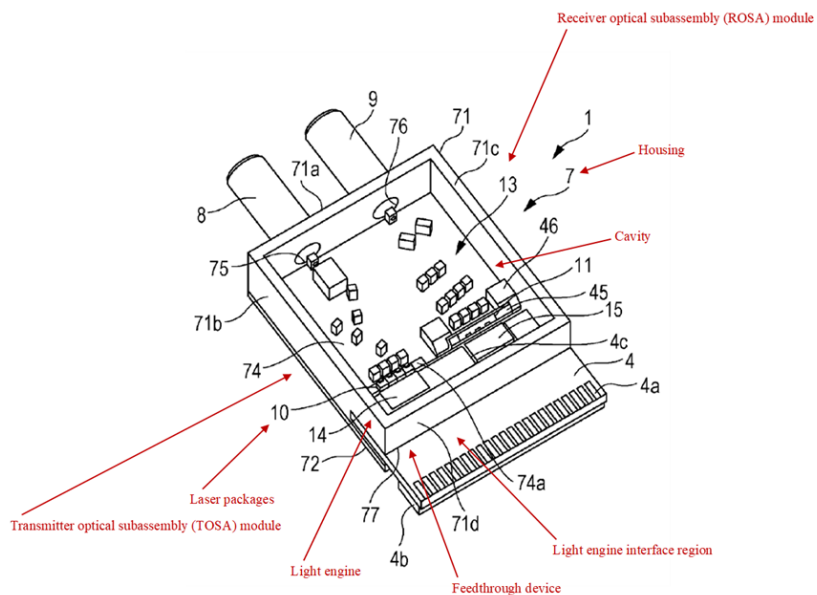


FIG. 3A (Mizobuchi)

The Board's manifest confusion over the teachings of the '024 patent and Mizobuchi produced a clearly erroneous result.

3. *The Board Erred by Ignoring Evidence of Akashi's Disclosure of a Light Engine Driving Circuit.*

The Decision, likewise, at Patent Owner's suggestion, erroneously concluded "that Petitioner wholly fails to identify any structure in Akashi that constitutes the claimed 'light engine driving circuit.'" Decision at 8. The Board was once again led astray by Patent Owner's unsupported machinations and pure attorney argument. The Petition cites to Dr. Kirk, who explained what a POSITA would have understood to be disclosed in Akashi about the claim limitation in light of that POSITA's knowledge. See Petition at 15-16, 30. Specifically, a POSITA in the field of circuit design would have understood that Akashi necessarily includes the components required to effectuate the purposes of the optical module, regardless of whether specific electrical components are depicted in the figures. Patent Owner provided no evidentiary basis to disagree with Dr. Kirk's assessment. Yet, the Decision's statement to the contrary ignores the only evidence of record explaining how one of ordinary skill in the art would have understood Akashi. The failure to address the evidence constitutes error as a matter of law.

As set forth in the Petition, one of ordinary skill in the art would have understood that the claimed "light engine driving circuit" in Akashi is located on substrate 107, in

the same manner that Patent Owner identified in its infringement claim charts in the parallel proceeding. *See* Ex. 1007 at FIG. 1, ¶¶ [0026]-[0027], Ex. 1003, ¶ 124; *cf.* Paper No. 8 at 21 to Paper No. 2 at 30. Specifically, Akashi discloses: “The first substrate 107 is a circuit board on which four transmitter optical sub-assemblies (TOSA) 104 that are each an optical module for transmission and one receiver optical sub-assembly (ROSA) 110 that is an optical module for reception are placed.” Ex. 1007 at ¶ [0026]. In view of that disclosure, Dr. Kirk explained that “a POSITA would have understood that Akashi discloses a light engine driving circuit disposed on the substrate 107 that provides a RF signal and a power signal to drive the hermetically sealed light engine to output one or more channel wavelengths.” Ex. 1003 at ¶ 124. Otherwise, the optical module described in Ex. 1007 simply would not work.

Patent Owner did not challenge Dr. Kirk’s explanation regarding the knowledge or understanding of one of ordinary skill in the art. *See* Paper 8 at 20-21. Nor did Patent Owner offer any contrary explanation as to how one of ordinary skill in the art would have understand how the TOSA and ROSA – which are located on substrate 107 (“a circuit board” per Ex. 1007 at ¶ [0026]) – would operate ***absent*** a light engine driving circuit. *See id.* Instead, Patent Owner simply asserted that the light engine driving circuit is not shown in Figure 1 of Akashi. *See id.* (asserting that Petitioner

identified “an empty portion of first circuit board 107” in Figure 1). The Board unquestioningly accepted that illogic, which, if true, would render Akashi inoperable.

The Board, in denying the Petition, stated that Petitioner failed to identify any structure in Akashi constituting the “light engine driving circuit” and asserted that “the cited evidence also fails to *expressly* describe any ‘light engine driving circuit’ or where any such circuit is mounted in Akashi.” Decision at 8-9 (emphasis added). By focusing on the express disclosure and ignoring the undisputed evidence of what a POSITA would have understood from Akashi, the Board erred as a matter of law.

4. The Board Ignored the Evidence Cited in the Petition Regarding the “Light Engine Interface Region” in Favor of an Errant Annotation.

Regarding the “light engine interface region for electrically coupling with the hermetically-sealed light engine,” the Petition states “the light engine interface region is configured to *electrically couple* with the hermetically sealed light engine via the second circuit board.” Paper 2 at 30 (citing to Dr. Kirk’s expert declaration, Ex. 1003 at ¶ 123). The annotated figure accompanying that text, however, included an errant annotation arrow, which mistakenly points to an optical coupling rather than to the electrical coupling. Inexplicably, the Board seized upon the errant annotation and ignored the textual support and expert evidence demonstrates how Akashi meets this claim limitation. Decision at 9-11.

The errant arrow in the annotated figure and its intended position are shown in the following figure, with the proper location indicated with a hashed arrow:

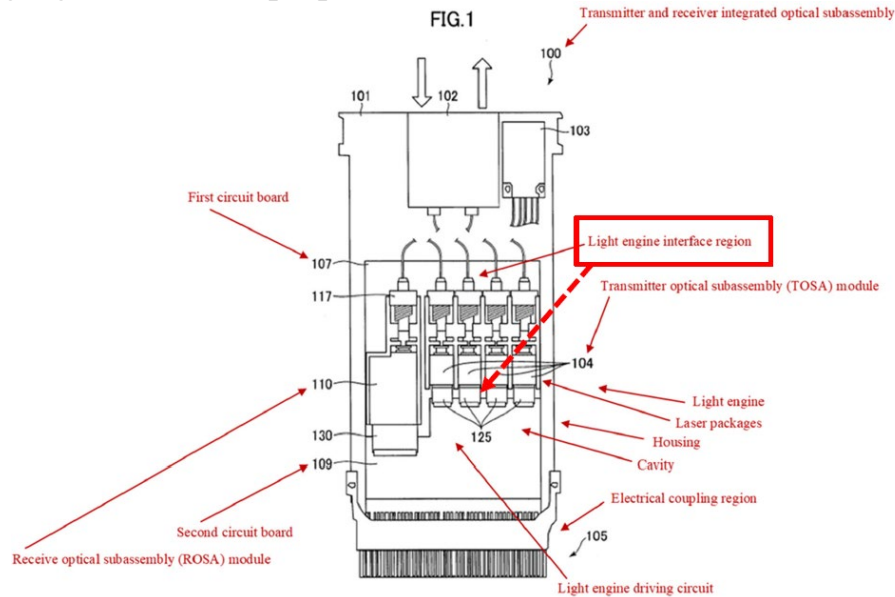


FIG. 1 (Akashi)

It was legal error for the Board to disregard uncontested evidence of anticipation in favor of an obvious scrivener's error.

III. STANDARD OF REVIEW

The Board reviews a non-institution decision for an abuse of discretion. 37 C.F.R. § 42.71(c). “An abuse of discretion occurs when a decision is based on an erroneous interpretation of law or clearly erroneous factfinding, or if that ‘decision represents an unreasonable judgment in weighing relevant factors.’” *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000). Misapprehending or overlooking a significant fact or argument is an abuse of discretion. *See Merial Ltd. v. Virbac*, IPR2014-01279, Paper 18 at 7, 8, 14 (P.T.A.B. Apr. 15, 2015).

IV. ARGUMENT

1. The Board’s Refusal to Provide Petitioner an Opportunity to Address Patent Owner’s Newly-Raised Claim Construction Issues Was Legal Error.

The Board erred by failing to provide Petitioner an opportunity to respond to the claim construction dispute Patent Owner raised in regard to the term “light engine driving circuit.” As set forth by the Federal Circuit, “[f]or IPRs, ‘the APA imposes particular requirements on the PTO. The agency ... must provide ‘all interested parties opportunity for the submission and consideration of facts [and] arguments . . . [and] hearing and decision on notice,’ ... and must allow ‘a party . . . to submit rebuttal evidence . . . as may be required for a full and true disclosure of the facts.’” *Qualcomm Inc. v. Intel Corp.*, 6 F.4th 1256, 1262 (Fed. Cir. 2021) (quoting *Dell Inc. v. Acceleron, LLC*, 818 F.3d 1293, 1301 (Fed. Cir. 2016)).

Here, the Petition relied upon Patent Owner’s claim construction as applied in the parallel proceedings. As such, there was no need for the Petitioner to address that term until Patent Owner raised the issue in Paper 12: “it is unreasonable to expect parties to ‘have briefed or argued, in the alternative, hypothetical constructions not asserted by their opponent.’” *See id.* at 1263. And failing to provide Petitioner with an opportunity to respond to Patent Owner’s redefinition of the “light engine driving circuit,” the Board violated Petitioner’s due process rights. *See id.* at 1262-63.

2. The Board's Analysis of Mizobuchi's Light Engine Driving Circuit Was Fatally Flawed.

The Decision reflects the Board's lack of appreciation of the teachings of Mizobuchi and a misunderstanding of integrated circuits and photonics modules. In regard to the light engine driving circuit, the Petition identified Mizobuchi's teachings that the microcontroller "controls the entirety of the optical module" including the TOSA and ROSA. Paper 2 at 12, 19. Yet the Decision ignored that teaching. *Compare* Ex. 1006 at 3:57-64 with Decision at 6-7. Instead, the Decision inexplicably focuses on the purported inability of "Mizobuchi's CDR circuit and power supply circuits" to be "part of a 'light engine driving circuit.'" Decision at 6-7. It was clear error for the Board to ignore Mizobuchi's teachings regarding the microcontroller, and its decision to deny the Petition is clearly erroneous.

Having failed to consider Mizobuchi's teachings regarding the microcontroller, the Decision further concludes that the "light engine driving circuit" in Mizobuchi is not the component that "controls the entirety of the optical module" including the TOSA and ROSA, but is instead it is driver integrated circuit 14, which only drives laser diodes 10 (a subset of the TOSA and ROSA). The Board's reasoning in adopting Patent Owner's misrepresentation of the reference, instead of reading Mizobuchi itself, ignores the understanding of a POSITA, and reveals a profound

confusion about the teachings of the '024 patent and Mizobuchi. The Board's decision is insupportable and clearly erroneous.

3. The Board's Analysis of Akashi's Light Engine Driving Circuit Fails to Acknowledge a POSITA's Knowledge.

The Decision further failed to consider the knowledge of a POSITA and the *unrebutted* evidence of how a POSITA would have understood how, in light of a POSITA's knowledge, that Akashi anticipates the challenged claims. *See* Ex. 1007 at FIG. 1, ¶¶ [0026]-[0027], Ex. 1003, ¶ 124 (explaining why a POSITA would have understood that the claimed "light engine driving circuit" in Akashi is located on substrate 107). Specifically, the Decision failed to acknowledge, much less rebut, Dr. Kirk's testimony that "a POSITA would have understood that Akashi discloses a light engine driving circuit disposed on the substrate 107 that provides a RF signal and a power signal to drive the hermetically sealed light engine to output one or more channel wavelengths." *Compare* Ex. 1003 at ¶ 124 *with* Decision at 8-9.

Rather than acknowledge the evidence of a POSITA's knowledge, the Board faulted the Petition for not "expressly" identifying disclosure of the light engine driving circuit. Decision at 8-9. The Board's failure to consider Akashi in light of the knowledge of a POSITA was erroneous.¹ *See Arthrocare Corp. v. Smith & Nephew*,

¹ The Board prematurely rejected Dr. Kirk's expert evidence about what a person of skill in the art would have understood from Akashi. Under the PTAB's July 31, 2025,

Inc., 406 F.3d 1365, 1373-74 (Fed. Cir. 2005) (“[E]ven if a piece of prior art does not expressly disclose a limitation, it anticipates if a person of ordinary skill in the art would understand the prior art to disclose the limitation and could combine the prior art description with his own knowledge to make the claimed invention.”).

4. The Board’s Erred by Disregarding Evidence of Anticipation and Focusing on an Errant Annotation.

As noted above, the *text* of the Petition identifies that “the light engine interface region is configured to electrically couple with the hermetically sealed light engine via the second circuit board.” Paper 2 at 30, citing to Dr. Kirk’s expert declaration, Ex. 1003 at ¶ 123. Nonetheless, the Decision seized upon an errant annotation to reject the Petition. Decision at 9-11. The Board’s unreasonable focus on the annotation while disregarding uncontested evidence of anticipation was clear error. Further, the Petitioner is entitled to at least as much leeway for an errant arrow as the Board accords to itself for misstating its conclusion in the Decision.

V. CONCLUSION

For the reasons set forth above, the Board’s non-institution of IPR2025-00436 was an abuse of discretion. Petitioner requests that IPR2025-00436 be instituted.

memorandum (“Enforcement and Non-Waiver of 37 C.F.R. § 42.104(B)(4) and Permissible Uses of General Knowledge in Inter Partes Reviews.”), its refusal to accept such evidence applies only to IPR petitions filed after September 1, 2025.

IPR2025-00436
Patent 10,313,024

Date: September 25, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e), 42.105, the undersigned hereby certifies that true and correct copies of the above-captioned PETITIONER'S REQUEST FOR REHEARING OF THE BOARD'S NON-INSTITUTION DECISION UNDER 37 C.F.R. § 42.71(d) will be served in its entirety on September 26, 2025, upon the Patent Owner at the correspondence address of record for the subject patent as listed on the USPTO's Patent Center via Priority Mail Express®:

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Date: September 25, 2025

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