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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,

Petitioner,

v.

SANDPIPER CDN LLC,

Patent Owner.

IPR2025-00860

Patent No. 10,924,573 B2

TELEPHONE STATUS CONFERENCE

Tuesday, August 4, 2026

2:30 p.m.

Before JEFFREY S. SMITH, SHEILA F. McSHANE, and

MICHAEL T. CYGAN, Administrative Patent Judges.

STENOGRAPHICALLY REPORTED BY:

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2:30 p.m.

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Status conference call held via telephone

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before Deanna J. Dean, a Registered Diplomate

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Reporter, Certified Realtime Reporter, and

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licensed court reporter of the state of New

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Hampshire.

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1 JUDGE McSHANE: Good afternoon. This is
2 Judge McShane. Can everybody hear me?

3 ATTORNEY TUCKER: Yes, we can hear you.

4 JUDGE McSHANE: Thank you.

5 All right. This is Judge McShane, and
6 Judges Cygan and Smith are also on the line.
7 We're going to discuss an issue that arose in
8 IPR2025-00860.

9 Who do we have on the line for Petitioner?

10 ATTORNEY TUCKER: Thank you, Your Honor.

11 This is Dan Tucker from Finnegan on behalf
12 of Petitioner, and with me on the line is also
13 Kara Specht, also from Finnegan.

14 JUDGE McSHANE: Thank you.

15 And who do we have from the line from
16 Patent Owner?

17 ATTORNEY KELLY: This is Kristina Caggiano
18 Kelly from Sterne Kessler for Patent Owner
19 SandPiper, and I am joined by my colleague,
20 Jason Eisenberg.

21 JUDGE McSHANE: Thank you.

22 Did anyone arrange a court reporter, by
23 any chance?

24 ATTORNEY TUCKER: We did, Your Honor.

25 THE STENOGRAPHER: I'm here. I'm sorry.

1 My name is Deanna Dean. I'm from Henderson.

2 Can you guys hear me?

3 JUDGE McSHANE: I can.

4 THE STENOGRAPHER: Oh, good. Okay.

5 JUDGE McSHANE: Thank you.

6 We thank the parties for joining this
7 call. We recognize there was a little bit of
8 short notice for it, but thank you for
9 attending.

10 I'm going to do a very brief review here
11 of what the issues are. We're here on issues
12 raised in a July 15th email. Petitioner seeks
13 to file a letter concerning the withdrawal of an
14 indefiniteness assertion -- again, it's Claim 3
15 of the patent -- in a related district court
16 case.

17 Patent Owner opposes the request, stating
18 that Petitioner should not be allowed to benefit
19 of taking inconsistent positions after Patent
20 Owner has expended resources on the issue, and
21 Petitioner has engaged in gamesmanship.

22 So -- also, I'm just going to back up a
23 little bit.

24 For whomever arranged the court reporter,
25 if you could -- if you could agree to filing the

1 transcript of this on the docket when it becomes
2 available, we'd appreciate it.

3 Can you do so?

4 ATTORNEY TUCKER: We will, Your Honor.
5 This is counsel for Petitioner, and we will do
6 so.

7 JUDGE McSHANE: Okay. Thank you.

8 Okay. So we're going to hear from you all
9 in a moment, but let us say this: I am going to
10 try to speak slowly because there's some issues
11 embedded in here that you should have notice of.

12 The issue of the effect of taking
13 inconsistent claim construction positions
14 between an IPR and a district court is one that
15 is dealt with at the institution phase in the
16 context of discretionary denials as breach of
17 37 CFR 42.104(b)(3).

18 Now, issues directed to discretionary
19 denials are addressed exclusively by the
20 director. This is addressed in a March 25,
21 2025, memorandum on Interim Processes for PTAB
22 Workload Management, and more specifically in
23 the October 17, 2025, memorandum on Director
24 Institution of AIA Trial Proceedings.

25 I will also direct you to IPR2025-01072,

1 which is the Light & Wonder cases, and if you
2 look at Papers 25 and 30 -- and Paper 30 is
3 precedential -- there we found that the panel,
4 the board panel, lacked the authority to address
5 discretionary issues.

6 So our view is that, because the issue of
7 the alleged inconsistent issues between the
8 district court and an IPR is one that is
9 addressed as an institution issue, we do not
10 have the authority to address it. So the panel
11 will -- in the final decision. So the panel
12 will not be addressing Patent Owner's related
13 arguments on Claim 3 as we read it.

14 So we're going to ask the parties the
15 following question: Is there another reason for
16 the filing or briefing that would be addressable
17 by the panel?

18 So I'm going to start with Petitioner
19 since it's their request. And, Petitioner, if
20 you could address specifically, you know, to
21 include whether you seek -- still seek to file
22 the letter.

23 ATTORNEY TUCKER: Thank you, Your Honor.

24 This is Dan Tucker on behalf of
25 Petitioner, and I appreciate the board's

1 guidance on that.

2 I think, you know, we did seek to file the
3 letter primarily in response obviously to the
4 argument that was in the surreply, but also just
5 generally out of our duty to keep the board
6 apprised of the developments in the underlying
7 litigation. And so, you know, we've sent the
8 letter to Sandpiper's counsel, or Google's
9 counsel sent a letter to Sandpiper's counsel.
10 That letter, you know, we think should be part
11 of the proceedings, but understand that if the
12 board is not going to decide the issue, then it
13 would not be relevant to the board's final
14 decision. We agree with that.

15 JUDGE McSHANE: And, Patent Owner, let's
16 hear from you. And if you would address
17 specifically do you oppose the filing, and also,
18 as I noted, address whether there's another
19 reason for briefing that, you know, may include
20 whether there is gamesmanship on the
21 Petitioner's part.

22 So, Patent Owner?

23 ATTORNEY KELLY: Yes. Thank you.

24 So I think our primary reason for opposing
25 it is that it, you know, purports to cure the

1 deficiency that we have raised in our briefing
2 surrounding the inconsistent positions. And
3 Your Honor's point is well-taken that it is not
4 something that the board in its final written
5 decision would necessarily address, but I think
6 the director has on more than one occasion
7 terminated a proceeding even after institution
8 as a result of taking inconsistent positions and
9 also no attempting to cure that after the fact
10 for a tactical advantage.

11 So our opposition to the filing is, in
12 part, to preserve our objection in the event it
13 needs to be raised in the form of a director
14 review petition instead of something that the
15 board can address in a final written decision.
16 That, you know, may be procedurally what we do,
17 but I think our opposition is for that purpose.

18 JUDGE McSHANE: Okay. So if -- let me ask
19 you this. So if Petitioner -- Petitioner, at
20 least at the moment, and I'll go back to
21 Petitioner, is that they don't -- they don't
22 need to file the letter. Okay?

23 So if they don't need to file the letter,
24 then let's say there's no opposition. Is that
25 correct? Is my statement correct, Patent Owner?

1 ATTORNEY KELLY: I believe so. If there
2 is no letter being filed at all, then there
3 would be nothing for us to oppose, and I think
4 our position on the inconsistencies between the
5 two different proceedings would already be
6 preserved in our briefing.

7 But, you know, to the extent Petitioner is
8 seeking to cure that deficiency through this
9 letter, then we want our objection to be
10 preserved for the record.

11 JUDGE McSHANE: Okay. Thank you.

12 All right. So let me -- and, Patent
13 Owner, do you have anything else to say at the
14 moment?

15 ATTORNEY KELLY: I don't think so.

16 JUDGE McSHANE: Okay. So let me turn back
17 to Petitioner.

18 So, Petitioner, is it still your position
19 that you do not need to file the letter and
20 you're withdrawing your request?

21 ATTORNEY TUCKER: If the board is not
22 going to rule on Patent Owner's argument that it
23 should be terminated, then, you know, I don't
24 think the letter is necessary. The letter was
25 still sent. The letter and those facts

1 surrounding the letter, including Google's
2 unequivocal withdrawal of the indefiniteness
3 position that was not contingent upon it, for
4 example, being entered into this proceeding, is
5 still there and is still, I think, part of this
6 transcript, part of -- will be part of the
7 record.

8 So I guess if the board is not going to
9 decide the issue, it would not be necessary.
10 But we would obviously want the opportunity to
11 raise this, should Patent Owner do what Patent
12 Owner's counsel said it was going to do, and
13 file some other paper before the board and
14 before the director.

15 JUDGE McSHANE: Right. So just to confirm
16 one more time, I'll do one more pass here.

17 So it seems that Petitioner sees no reason
18 file the letter, based on our guidance, and it
19 seems that it would -- Petitioner not -- you
20 know, saying they will not need to file the
21 letter, that Patent Owner sees no reason to file
22 an opposition.

23 So that's my understanding of where we
24 are. And if Petitioner could confirm that and
25 Patent Owner can confirm that -- and a simple

1 "yes" or "no" will do -- I would appreciate it.

2 So, Petitioner?

3 ATTORNEY TUCKER: Sorry, Your Honor.

4 Yes. Yes. Confirmed for Petitioner.

5 JUDGE McSHANE: Okay.

6 And Patent Owner?

7 ATTORNEY KELLY: Yes.

8 JUDGE McSHANE: Well, how about that. We
9 made an issue go away, didn't we. So that's got
10 to be a first.

11 So, with that, let me just -- if you would
12 just hold one minute, please.

13 (Pause in proceedings.)

14 JUDGE McSHANE: Okay. So, with that, if
15 Petitioner and Patent Owner wouldn't mind, if
16 they could just send an email indicating that
17 the request is withdrawn and the request for
18 opposition briefing is withdrawn, we would
19 appreciate that. And we'll enter that into the
20 record, and we'll have the transcript in the
21 record, too, as well.

22 Is that okay with Petitioner?

23 ATTORNEY TUCKER: Yes, Your Honor, that
24 is.

25 JUDGE McSHANE: And Patent Owner?

1 ATTORNEY KELLY: Yes.

2 JUDGE McSHANE: Okay.

3 Thank you very much. We appreciate your
4 time, and we probably will be seeing some of you
5 at a hearing this -- on Thursday. So we look
6 forward to seeing you.

7 And with that, we are adjourned. Thank
8 you.

9 ATTORNEY TUCKER: Thank you.

10 (Matter concluded at 2:43 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, Deanna J. Dean, Registered Diplomate
3 Reporter, Certified Realtime Reporter, and New
4 Hampshire licensed court reporter, the officer
5 before whom the proceedings were taken, do hereby
6 certify that the foregoing transcript is a true and
7 accurate record of these proceedings; that said
8 proceedings were taken in Stenotype note by me on
9 Tuesday, August 4, 2026, commencing at 2:30 p.m.
10 and ending at 2:45 p.m.

11 I further certify that present on behalf of
12 Party Google LLC was Daniel C. Tucker of Finnegan,
13 Henderson, Farabow, Garrett & Dunner LLP and on
14 behalf of Party Sandpiper CDN LLC was Kristina
15 Caggiano Kelly of Sterne, Kessler, Goldstein & Fox
16 PLLC.

17 I further certify that I am not related to, nor
18 associated with any of the parties or their
19 attorneys, nor do I have any disqualifying
20 interest, personal or financial, in the actions
21 within.

22 Dated this 5th day of August, 2026, at Hillsborough
23 County in the State of New Hampshire.

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