

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZESTY.AI, INC.

Petitioner,

v.

AON RE, INC.

Patent Owner.

Case No. IPR2025-01360

U.S. Patent No. 11,030,491

**PATENT OWNER'S REPLY IN SUPPORT OF ITS REQUEST FOR
DISCRETIONARY DENIAL**

In an attempt to excuse its inaction after being notified of its infringement, Petitioner argues (at 3) that the “the parties executed a renewal of their partnership in 2021, suggesting the matter was ***resolved***.”¹ While Petitioner fails to include this alleged “renewal” with its brief, Petitioner refers to a “Marketing Agreement” that included a clause titled “[REDACTED],” [REDACTED]

Thus, the Agreement expressly provides [REDACTED].

Petitioner's claim to the contrary is simply untrue. If anything, the Agreement highlights Petitioner's knowledge of PO's patents and persistent inaction over the course of five years. To that end, Petitioner admits (at 12-13) that it waited to file its Petition until after it lost its § 101 challenge. If Petitioner were truly interested in

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Petitioner’s next excuse is (at 4) that when PO again placed Petitioner on notice of its infringement in 2023, “it was under the guise of a ‘business proposal’—not a licensing discussion.” That too is untrue. In fact, PO’s 2023 letter expressly stated: “Zesty may be interested in a **license** to the Aon Patents” and referred to the parties’ prior discussions concerning Petitioner’s infringement. Ex. 2012 at 1.

In response, when **Petitioner** attempted to focus on a business proposal, PO’s counsel reiterated that the “[REDACTED]”; that “[REDACTED]”; and that “[REDACTED]” Ex. 2007 at 6. PO’s counsel then stated “[REDACTED]” *Id.* Contrary to Petitioner’s representation (at 4), the dispute has always been about Petitioner needing a license.

Despite that, Petitioner ultimately declined to share any prior art with PO, suggesting to any reasonable observer that Petitioner was simply bluffing. Petitioner's pattern of inaction and refusal to share any real information concerning

its defenses provided PO with settled expectations and distinguishes this proceeding from others where the Director declined to find settled expectations. Indeed, Petitioner's CEO claimed that he offered "[REDACTED]" [REDACTED] [REDACTED], "undermining Petitioner's claim (at 4) that it never "suggest[ed] that the patents were valid or had any value to Zesty." Ex. 2007 at 6.

II. The Examiner thoroughly considered the prior art and did not err.

Desperate to find *some* reason to avoid discretionary denial, Petitioner searches in vain for examiner error, first arguing (at 9-10) that "*none of the patents* across the four IPR proceedings received a *single* rejection based on prior art." (original emphasis). But that is wrong as explained in PO's three other briefs. Indeed, the Examiner considered more than a dozen pages of IDS and a detailed International Search Report. Ex. 1002 at 141-143, 147-159. The Examiner also referenced the reasons for allowance for the '029 patent (*id.* at 198) in which yet *another* examiner distinguished the claims from the "closest prior art." See 1358, Paper 19 at 3. Thus, two separate Examiners reviewed PO's patents and allowed the claims.

Moreover, Petitioner's argument misleadingly suggests that the Examiner considered no art at all, which is belied by the Examiner's 892 forms. Ex. 1002 at 135, 200. In one form, the Examiner cites Michini, which is titled "Unmanned aerial vehicle rooftop inspection system" and states: "Optionally, the cloud system 120 is

in communication with a classifier information 128 database [] that can store information describing ***one or more visual classifiers*** (e.g., information utilized by ***one or more machine learning models***, such as support vector machines, k-means clustering, neural networks, and so on) . . . This correctly classified information can be used to update the ***one or more visual classifiers***.” Ex. 2025, ¶86; *see also id.* ¶145. The Examiner’s consideration of this art highlights the Petition’s failure to address § 325(d) despite art substantially similar to its characterization of Gross.

Next, Petitioner criticizes (at 10) the Examiner’s search strategy complaining that the examiner “first probes machine learning and classification in general, uncovering approximately 65,000 results.” Petitioner’s complaint that the Examiner first returned ***too many*** machine learning results betrays the weakness in its position. Petitioner then quibbles with the Examiner’s narrowing search terms. For example, Petitioner claims the Examiner used “*no search terms* relating to property characteristic classification[.]” But the Examiner used the following on-point search: “((class\$6 or classificat\$5) and (((machine or deep) near2 learn\$4) or train\$4) and **feature and property** and imag\$4 and algorithm and **character\$6**).” Ex. 1002 at 211. Petitioner’s resort to parsing the Examiner’s search terms shows the Examiner did a thorough job; otherwise, Petitioner would have identified an actual error.

III. Petitioner cannot rewrite its Petition to avoid denial.

Petitioner claims (at 14) that it relies on “explicit disclosure” of Gross for the

“another machine learning algorithm.” But the Petition states (at 29) the opposite: “Gross does not *explicitly disclose* that its conditions of property conditions are classified via *another* machine learning analysis algorithm than that used to identify attributes.” (original emphasis). Petitioner then tries to rewrite its Petition to rely on the text it misleadingly omitted with its ellipsis. Even if the Director were to permit this, Gross’s “combined score” simply combines scores from algorithms trained to identify the same information. Otherwise, Petitioner would not have admitted that Gross does *not* disclose a different classifier for characteristic condition.

IV. The Petition did not explain Petitioner’s differing constructions.

Petitioner admits (at 17-18) that it used different constructions of the word “feature” across its four Petitions. Forsyth’s testimony that the ’491 patent allegedly uses the word “feature” to mean different things does not address the claims of *the other patents*. The Petition should have explained the different constructions among the four IPRs. Petitioner’s decision to do so now highlights the dearth of analysis in the Petition. The Director should decline to consider Petitioner’s belated argument.

V. Petitioner still has not explained its disparate obviousness theories.

PO’s discretionary brief noted (at 16) that Petitioner’s disparate theories for whether Gross alone or Gross + Jafri disclosed “feature extraction” risks inconsistent results. Petitioner’s claim construction analysis—which was not in the Petition—does not squarely address this. And any attempt to do so in sur-reply is too late.

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Respectfully submitted,

GARDELLA ALCIATI P.A.

By: /Alexis L. Ritzer/

Greg H. Gardella (Reg. No. 46,045)

Email: ggardella@ga-iplaw.com

Michael J. Stimson (Reg. No. 45,429)

Email: mstimson@ga-iplaw.com

Alexis L. Ritzer (Reg. No. 78,453)

Email: aritzer@ga-iplaw.com

80 M Street SE, 1st Floor

Washington, D.C. 20003

Phone: 703-556-9600

Fax: 703-740-4541

Attorneys for Patent Owner

Aon Re, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document, along with any supporting document(s), was served in its entirety by filing through the Patent Trial and Appeal Case Tracking System (P-TACTS) as well as providing a courtesy copy via e-mail to the following attorneys of record for the Petitioner listed below:

Lead Counsel: Daniel S. Block
dblock-PTAB@sternekessler.com

Back-up Counsel: Jennifer Meyer Chagnon
Justin D. Wang
jchagnon-PTAB@sternekessler.com
jwang-PTAB@sternekessler.com
PTAB@sternekessler.com

Dated: November 17, 2025

By: /Alexis L. Ritzer/
Name: Alexis L. Ritzer
GARDELLA ALCIATI P.A.