

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

GUANGZHO EKO TRADING DEVELOPMENT CO., LTD.,
Petitioner,
v.
NINE STARS GROUP (U.S.A.) INC.,
Patent Owner.

Case No. IPR2025-01369
U.S. Patent No. 10,928,796

**PATENT OWNER'S PRELIMINARY RESPONSE TO
PETITION FOR *INTER PARTES* REVIEW
OF UNITED STATES PATENT NO. 10,928,796
PURSUANT TO 35 U.S.C. § 313, 37 C.F.R. § 42.107**

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LISTING OF EXHIBITS

Exhibit	Description
2001	Zheng Chinese patent CN 105425665 B
2002	Zheng Chinese patent CN 105425665 B English translation

I. Introduction

Patent Owner Nine Stars Group (U.S.A.) Inc. ("Nine Stars" or "Patent Owner") submits this Preliminary Response to demonstrate that the Petition for Inter Partes Review ("Petition" or "Pet.") filed by Guangzho EKO Trading Development Co., Ltd. ("EKO" or "Petitioner") should be denied. The Petition fails to meet the threshold requirements for institution for multiple reasons:

First, Petitioner has failed to establish that Zheng and/or Wang qualifies as prior art under 35 U.S.C. § 102(a)(1). Critical questions remain regarding Zheng's and Wang's public availability.

Second, Petitioner has not demonstrated a reasonable likelihood of prevailing on any ground of unpatentability. The Petition's grounds fail because Zheng teaches away from the '796 claims, is not sufficiently enabled to render the '796 claims obvious, does not disclose key claim limitations and fails to provide a motivation or rational underpinning to alter Zheng to arrive at the '796 claimed invention, employs impermissible hindsight reasoning and conclusory assertions without adequate evidentiary support, and fails to take into account secondary considerations.

For these reasons, the Board should exercise its discretion to deny institution.

II. The Petition Fails To Establish That Zheng and Wang Are Prior Art

The Petition fails to establish that Zheng qualifies as prior art. Petitioner bears the burden of proving that Zheng is available as prior art by a preponderance of the evidence. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1379 (Fed. Cir. 2015).

A. Legal Standard for Prior Art

AIA § 102(a) defines prior art for the purposes of novelty under AIA § 102 and obviousness under AIA § 103. To qualify as prior art under 35 U.S.C. § 102(a)(1), Zheng and Wang must have been "patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention." 35 U.S.C. § 102(a)(1).

The effective filing date is critical. The '796 patent:

- Was filed July 17, 2017
- Claims foreign priority to April 7, 2017

Ex. 1001, cover.

For Zheng and Wang to be prior art, each must have been "available to the public" **before April 7, 2017.**

B. Zheng's and Wang's Status as a "Printed Publication" Is Not Established

Petitioner asserts that Zheng "published" on March 23, 2016 (Pet. at 13).

Petitioner asserts that Wang "published" on July 30, 2014. (Pet. at 19).

However, the evidence provided is insufficient to establish that either Zheng or Wang was "available to the public" as a printed publication.

1. Publication Date Versus Public Availability

Under Federal Circuit precedent, a reference is only a "printed publication" if it was "sufficiently accessible to the public interested in the art" before the critical date. *In re Hall*, 781 F.2d 897, 899 (Fed. Cir. 1986). The date appearing on a document does not conclusively establish public availability. *See Medtronic, Inc. v. Barry*, 891 F.3d 1368, 1380-81 (Fed. Cir. 2018).

For foreign patent documents, the burden is on the petitioner to establish:

- That the document was actually published on the stated date
- That the document was publicly accessible as of that date
- The circumstances of public availability

Blue Calypso, LLC v. Groupon, Inc., 815 F.3d 1331, 1348-49 (Fed. Cir. 2016).

2. Insufficient Evidence of Public Availability

Here, Petitioner has provided:

- A copy of the Zheng Chinese document (Ex 1003)
- A certified translation of the Zheng Chinese document (Ex 1004)
- A copy of the Wang Chinese document (Ex. 1009)
- A certified translation of the Wang Chinese document (Ex. 1010)

What Petitioner has NOT provided:

- Evidence that Chinese utility or utility model patents are systematically published and made publicly accessible.
- Evidence of the Chinese Patent Office's publication procedures as of July 2014 or March 2016.
- Evidence that either Zheng or Wang was actually indexed, catalogued, or made available in a searchable database.
- Evidence that persons interested in the art could actually access either Wang as of July 2014 or Zheng as of March 2016.
- Expert testimony regarding Chinese patent publication practices

Chinese utility and utility models follow a different examination process than U.S. patents. Without evidence establishing the public availability of Chinese utility models as of July 2014 and utilities as of March 2016, Petitioner has not met its burden.

The Board has held that a petitioner must provide "evidence that establishes public availability" and "cannot rely on the date printed on the face of the document alone." *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 19-20 (PTAB Dec. 20, 2019).

Petitioner has failed to provide such evidence, and thus the Petition should be denied.

III. The Petition Fails to Demonstrate a Reasonable Likelihood of Prevailing

Even if Zheng or Wang were available as prior art (which Patent Owner disputes), Petitioner has failed to demonstrate a reasonable likelihood of prevailing on either ground of unpatentability. To meet its burden, Petitioner must show, by a preponderance of evidence, that at least one claim is unpatentable. 35 U.S.C. § 314(a); *Cuozzo Speed Technologies v. Commerce for Intellectual Property*, 579 U.S. 261, 136 S. Ct. 2131, 2144 (2016).

A. Ground 1: Zheng Does Not Render Obvious the Claims

1. Legal Standard for Obviousness

To establish obviousness, a petitioner must demonstrate that a POSITA would have had reason to combine or modify prior art teachings to arrive at the claimed invention. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Conclusory statements are insufficient; there must be "articulated reasoning with some rational underpinning." *Id.*

The Federal Circuit has repeatedly emphasized that bare invocations of "common sense" or "ordinary skill" do not satisfy this requirement without specific evidentiary support. *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1361-62 (Fed. Cir. 2016).

Moreover, the analysis must avoid hindsight reconstruction. The question is not whether the claimed invention would have been obvious in light of the teaching of the prior art and the claimed invention itself, but whether it would have been

obvious in light of the prior art alone. *In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971).

2. Zheng Teaches Away From the '796 Patent

The objective of the '796 patent is singular- to save power consumption. As stated in the Background Section of the '796 patent, the batteries of conventional induction trash cans only last days to a few weeks. The '796 patent is completely directed to and focused on saving power, so that the batteries will last longer. This is evident in the Title and in every section of the '796 patent, including the Field of the Invention, Summary of the Invention, Detailed Description and even the preamble of every claim.

As recited in the claims, in the standby state, the '796 patent emits one IR pulse per cycle to minimize power. If no reflection is detected after the single IR pulse transmission, then the microcontroller cuts off power to the IR sensor and the microcontroller enters a sleep state. A watchdog timer is used to wake up the microcontroller from the sleep state after a preset time into the working state and power the IR sensor again and cause it to emit a single IR pulse and repeat the process. Only if a reflection output signal is received from the IR sensor will the microcontroller remain in a working state and a driving circuit causes a motor to rotate the lid open and then closed. However, the microcontroller will immediately enter the sleep state and the IR sensor will be powered off after the lid is closed to repeat the process.

Every step of the process of the ‘796 patent is with an eye to save power during operation of an induction trash can. Such will result in prolonged battery life.

On the other hand, Zheng is directed to a smart induction trash can that is designed to improve detection reliability and avoid false detections and interference, such as from transparent bags, ambient light or a remote object, and misoperation of the trash can (*see, e.g.* para 72 Zheng). Zheng accomplishes this by utilizing multiple (upwards of five) control modules and detection units and causing the IR transmitter tube to transmit multiple IR transmissions and the IR receiving tube to detect multiple times over five preset times for each cycle.

As described in the Specification and illustrated in Fig 1 of Zheng, in step S101 (first preset time of 200 ms), the controller causes the infrared transmitting tube to emit a first pulse waveform which includes a first preset quantity of 20 contiguous sub-waveforms with a preset first frequency (*Id.*, paras 50-52). In step S102 (third preset time) the state of the infrared receiving tube is detected and it is determined whether the infrared receiving tube effectively acts (detects a reflection or signal) (*Id.*, paras 53 and 54). During this step S102, the output levels of the IR receiving tube may be detected (fourth preset time), such as if the levels are high or low and the sequence of these high and low readings determined (*Id.*, paras 55-57). If the IR receiving tube effectively acts, so as to detect a reflected signal, in step S103, the controller causes the IR transmitting tube to transmit and IR signal

of a second pulse waveform once and continuously every second preset time (25 ms) for a total of 20 times over the course of a fifth preset time (500 ms) (*Id.*, paras 58-60). In step S104, if at least a predetermined number (at least 5) reflections of the second pulse waveforms from the second transmission are detected by the IR receiving tube, the controller causes a motor to start to act and open the lid (*Id.*, paras 61 and 62).

From the foregoing, it is clear that Zheng's primary objective is to ensure reliable detection of reflected transmitted IR signals to avoid false positive readings and opening the lid unnecessarily. This objective is further reinforced when viewing the claims of the resulting issued patent of Zheng (Ex. 2002) which were amended to become patentable. Such added limitations in the independent claims include:

“detecting the output level of the infrared receiving tube for consecutive four times every fourth preset time when the infrared emitting tube begins to emit the infrared signal of the first pulse waveform once; and

determining that the infrared receiving tube functions properly if the output levels of the infrared receiving tube are high level, low level, low level and high level respectively.”

Notably, there is no mention of the dormancy mode or turning off the infrared receiving tube in the claims of Zheng. Zheng does not mention anywhere that the infrared transmitting tube is turned off. Thus, it is clear that Zheng and the

‘796 patent have very different operational directives. The apparatus and method of Zheng is designed to ensure reliability of the detection of reflected transmitted signals and avoid false detections and interferences from ambient or remote light or objects so as to not misoperate and open the lid when in fact there is no user attempting to place trash in the trash can. Of course, the characteristics and number of the infrared transmissions by the infrared transmitting tube, the multiple detections of the same by the infrared receiving tube and resulting determinations by the microcontroller to ensure such accurate readings result in increased power consumption, not a savings in power compared to conventional induction trash cans. Any power saving feature is secondary to ensuring reliable detection to avoid misoperation. In fact, the existence of any energy saving and its effect as compared to conventional induction trash cans is uncertain. Zheng is not directed to a power saving methodology for an induction trash can and thus it teaches away from the ‘796 patent. Teaching away from the claimed invention supports non-obviousness. *See, W.L. Gore & Associates v. Garlock, Inc.* 721 F.2d 1540, 1550 (Fed Cir. 1983). As such, Zheng does not render the ‘796 patent obvious and the Petition should be denied.

3. Zheng Is Not Sufficiently Enabled

To render a claim obvious, the prior art, taken as a whole, must enable a skilled artisan to make and use the claimed invention. *In re Kumar*, 418 F.3d 1361, 1368 (Fed. Cir. 2005). In the absence of other such supporting evidence, to enable

a skilled artisan to make the claimed invention, a standalone §103 reference must enable the portions of its disclosure being relied upon. *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 297 (Fed. Cir. 1985).

Zheng is not sufficiently enabled to render the claims of the ‘796 patent obvious. Petitioner asserts that Zheng teaches a working mode, a standby mode and a sleep mode. However, Zheng does not sufficiently describe three modes, as claimed in the ‘796 patent. The only inference to a sleep mode by Zheng is a single instance of mentioning an optional “dormancy mode” in paragraph 113 (Ex 1004), which reads:

“Optionally, according to the smart environmentally-friendly trash bin provided in another embodiment of the present invention, the microcontroller unit automatically enters a dormancy mode when the infrared transmitting tube and the infrared receiving tube do not work, thereby saving more power.”

While Zheng mentions in this paragraph that the microcontroller can enter a dormancy mode, there is no description of exactly what the dormancy mode is, the circumstances of how the microcontroller enters dormancy mode or any description of when the dormancy mode of the microcontroller takes place, other than “when the infrared transmitting tube and infrared receiving tube ‘do not work’”. There is no other mention of the dormancy mode in the Specification or the drawings. Unfortunately, Zheng only mentions the phrase

“do not work” once, namely, in paragraph 113.

Zheng states that optionally “the infrared receiving tube is controlled to be periodically turned on, and is turned off after being turned on for a period of time, instead of being turned on all the time” (Id., para 66]. Once again, however, it is not clear when the infrared receiving tube is periodically turned on and turned off. It is also not clear whether when the infrared receiving tube is periodically turned off whether that constitutes “do not work” in relation to the dormancy mode of the microcontroller.

Furthermore, there is no description in Zheng of the infrared transmitting tube being powered or turned on or off. Thus, it is unclear when the microcontroller would be in a dormancy mode if this only occurs when both the infrared transmitting tube and the infrared receiving tube are “not working”.

Zheng not only lacks in written description, it does not provide any circuit board design illustrating how its modules would be implemented or MCU firmware logic. Nor does Zheng provide supporting detailed illustrations of its apparatus or methodology.

The Federal Circuit has held if an obviousness case is based on a non-self-enabled reference, and no other prior art reference or evidence would have enabled a skilled artisan to make the claimed invention, then the invention cannot be said to have been obvious. *Raytheon Technologies Corporation v. General Electric Company*, No. 20-1755 (Fed. Cir. Apr. 16, 2021).

In this case, only Zheng is being used by Petitioner in Ground 1 in asserting that claims 1-12 are obvious. However, Zheng does not provide sufficient illustration or description to enable a skilled artisan to make the claimed invention of the '796 patent. Thus, the claimed invention of the '796 patent cannot be said to be obvious by Zheng and the Petition should be denied.

4. The Petition Employs Impermissible Hindsight and Relies on Conclusory Assertions

Throughout Petitioner's Petition and accompanying expert declaration, Petitioner relies on obviousness analysis primarily consisting of bare assertions, mischaracterizations and analysis that has a goal of making Zheng read on the claimed invention of the '796 patent rather than being based on the teachings of Zheng itself.

a. "Sleep State"

In the Petition (Pet. at 18), the Petitioner provides a vertical flowchart depicting what the Petitioner asserts is the step-wise flow of the process of Zheng. Petitioner color codes this wholly created flow chart and also improperly color codes Fig 2 of the '796 patent (Pet. at 32) in an attempt to illustrate that the operation of Zheng and the '796 patent are similar to one another.

However, Zheng has no such flowchart. Moreover, as noted above, it is unclear in Zheng exactly when the infrared receiving tube is powered off and when the microcontroller enters a dormancy mode. Zheng does not teach the infrared transmitting tube being powered off. Thus, Petitioner uses impermissible hindsight

using the claimed invention to create its own flowchart and two vague and ambiguous references within Zheng in an attempt to make Zheng appear to be similar in process, particularly with respect to the claimed “sleep mode” of the ‘796 patent. However, the literal teachings of Zheng do not support such a flowchart or the conclusory assumptions and assertions that Petitioner has made with respect to the order and timing of any “sleep mode” of Zheng.

b. “Infrared Sensor”

Similarly, the Petition (Pet. at 25), provides an illustration of a unitary infrared sensor with the assertion or implication that Zheng teaches of such an infrared sensor. The Petitioner then refers to an “infrared sensor” in its arguments relating to when such an infrared sensor may be powered and turned off. However, Zheng does not provide any illustration or diagram of an infrared sensor, but instead always refers to the infrared transmitting tube and the infrared receiving tube as separate components in its description. Zheng’s infrared transmitting tube and the infrared receiving tube operate independently, and Zheng only specifically teaches of the infrared receiving tube being powered off as an optional step. There is no disclosure in Zheng of the infrared transmitting tube being powered off.

As the Petition employs impermissible hindsight reconstruction of Zheng and makes conclusory assertions in attempting to render the claimed invention obvious, the Petition should be denied.

5. Zheng Fails to Teach All of the Claim Limitations

Zheng fails to teach many of the recitations of the claims of the ‘796 patent.

For example, claim 1 recites “setting a microcontroller into a sleep state if no reflection output signal is received from the active infrared sensor” Zheng provides no such teaching. Instead, Zheng merely states that the microcontroller may optionally in another embodiment “enter a dormancy mode when the infrared transmitting tube and the infrared receiving tube do not work” (Zheng para 113, Emphasis Added).

Claim 1 further recites “wherein in the sleep state, the microcontroller cuts off a power of the active infrared sensor”. Zheng merely states that optionally “the infrared receiving tube is controlled to be periodically turned on and is turned off after being turned on for a period of time, instead of being turned on all of the time” (Id. Para 66). There is no teaching in Zheng that this occurs when the microcontroller is in the dormancy mode. Also, there is no teaching that the infrared transmitting tube is powered off.

Claim 1 also recites “delaying for a few seconds after the motor has driven the lid open” and “setting the microcontroller into the sleep state after the lid is closed”. Zheng provides no teaching as to either of these recitations.

Claim 1 additionally recites “after a preset time, via a watchdog timer, waking up the microcontroller from the sleep state to the working state, so as to

have the microcontroller reenter the working state and repeat the above steps under the standby state”. Petitioner admits that its standalone, singular reference, Zheng, used to assert that Claim 1 is obvious does not teach of a watchdog timer. Petitioner asserts that it would have been obvious for Zheng to use a watchdog timer, but provides no motivation for Zheng to do so. In fact, the use of a watchdog timer is not inherent in Zheng and would require redesigning Zheng’s firmware and timing control. Instead, Zheng relies on periodic transmission intervals without any watchdog functionality. There is no articulated motivation for modifying Zheng. The only motivation for Zheng to have a watchdog timer is derived from the teaching of the ‘796 claimed invention itself and not Zheng or the referenced patents.

As Zheng fails to teach many of the limitations of the claims, and there are no compelling articulated motivations for modifying Zheng, the Petition should be denied.

6. The Petition Ignores Secondary Considerations

Finally, the Petition completely ignores secondary considerations of non-obviousness. Patent Owner is prepared to present evidence of:

a. Commercial Success

Products embodying the '796 patent have achieved significant commercial success in the marketplace. This success is directly tied to the claimed power saving features, resulting in extending battery life, achieving an excellent power

saving effect, reducing the use cost for the users, and decreasing pollution caused by used batteries.

b. Long-Felt Need

Prior to the '796 patent, the industry struggled with induction trash can designs that suffered from requiring batteries to be replaced often, resulting in increased cost and inconvenience to users as well as increased pollution.

The '796 patent's solution of the claimed power saving methodology addresses this long-felt need.

c. Industry Praise

The '796 patent's design has received recognition and praise from industry participants, including product reviews, awards, and commentary highlighting the innovative power saving methodology.

d. Copying

Petitioner itself has copied the patented design, as evidenced by the parallel litigation. This copying is strong evidence of non-obviousness. *See Volvo Penta of the Americas, LLC v. Brunswick Corp.*, 81 F.4th 1202, 1212-13 (Fed. Cir. 2023).

e. Legal Significance

While secondary considerations are not dispositive, they are "objective evidence" that must be considered in the obviousness analysis. *Graham v. John*

Deere Co., 383 U.S. 1, 17-18 (1966). The complete absence of any discussion of secondary considerations in the Petition is a serious deficiency.

The Board has noted that failure to address secondary considerations "may weigh against finding a reasonable likelihood of success." *See Volvo Penta*, 81 F.4th at 1213.

IV. Conclusion

For all the reasons set forth above, the Board should deny institution of inter partes review:

1. Zheng and Wang are not prior art because:

- Insufficient evidence of public availability as a printed publication.

2. Zheng does not render the claims obvious because:

- Zheng is directed to a different problem and teaches away from the claimed invention;
- Zheng is vague and ambiguous and not sufficiently enabled with respect to any sleep state;
- the Petition relies on conclusory assertions without evidentiary support and employs impermissible hindsight reasoning;
- Zheng fails to teach all of the claim limitations and the Petition fails to articulate any motivation to modify Zheng; and
- the Petition completely ignores secondary considerations.

Any one of these grounds is sufficient to deny institution. Collectively, they present a compelling case for denial.

Patent Owner respectfully requests that the Board exercise its discretion to deny institution of inter partes review of claims 1-12 of U.S. Patent No. 10,928,796.

Dated: November 20, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITS

This Patent Owner Preliminary Response (the “POPR”) consists of 3,804 words, excluding table of contents, table of authorities, certificate of service, this certificate, or table of exhibits. The POPR complies with the type-volume limitation of 14,000 words as mandated in 37 C.F.R. § 42.24. In preparing this certificate, counsel has relied on the word count of the word-processing system used to prepare the paper (Microsoft Word).

Date: November 20, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following documents were served by electronic service, by consent between the parties, on the date below:

**PATENT OWNER'S PRELIMINARY RESPONSE TO PETITION FOR *INTER PARTES* REVIEW OF UNITED STATES PATENT NO. 10,822,165
PURSUANT TO 35 U.S.C. § 313, 37 C.F.R. § 42.107
and
EXHIBITS 2001 and 2002**

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