

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN AIRLINES, INC. AND SOUTHWEST AIRLINES CO.,

Petitioners

v.

INTELLECTUAL VENTURES II LLC,

Patent Owner.

Inter Partes Review No. IPR2025-01509

U.S. Patent No. 11,032,000

Issue Date: June 8, 2021

Title: COMMUNICATIONS IN A WIRELESS NETWORK

**PETITIONERS' SUR-REPLY BRIEF IN OPPOSITION TO PATENT
OWNER'S REQUEST FOR DISCRETIONARY DENIAL**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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EXHIBIT LIST

Exhibit No.	Description
1001	U.S. Patent No. 11,032,000 (the “’000 Patent”)
1002	File History for U.S. Patent No. 11,032,000 (U.S. Patent Appl. No. 16/682,854)
1003	Declaration of Dr. van der Weide
1004	Curriculum Vitae of Dr. van der Weide
1005	U.S. Patent No. 8,417,248 (“Papaskellariou”)
1006	US Patent Application Publication No. 2007/0058595 (“Classon”)
1007	US Patent No. 7,817,605 (“Liu”)
1008	US Patent Application Publication No. 2008/0045260 (“Muharemovic”)
1009	Claim Chart for ’000 Patent, <i>Intellectual Ventures I LLC et al. v. American Airlines, Inc.</i> , No. 4:24-cv-980-ALM (E.D. Tex. Nov. 2, 2024) (Exhibit 13) (’000 claim chart)
1010	<i>Toyota Motor Corp. et al. v. Intellectual Ventures II LLC</i> , IPR2022-01130, Paper 1 (P.T.A.B. Jun. 13, 2022) (the “’356 Petition”)
1011	<i>Toyota Motor Corp. et al. v. Intellectual Ventures II LLC</i> , IPR2022-01130, Paper 10 (P.T.A.B. Oct. 5, 2022) (the “’356 POPR”)
1012	<i>Toyota Motor Corp. et al. v. Intellectual Ventures II LLC</i> , IPR2022-01130, Paper 26 (P.T.A.B. Apr. 7, 2023) (the “’356 POR”)
1013	<i>Toyota Motor Corp. et al. v. Intellectual Ventures II LLC</i> , IPR2022-01130, Paper 13 (P.T.A.B. Dec. 12, 2022) (the “’356 Institution”)
1014	<i>Toyota Motor Corp. et al. v. Intellectual Ventures II LLC</i> , IPR2022-01130, Paper 41 (P.T.A.B. Dec. 4, 2023) (the “’356 FWD”)
1015	“LTE – The UMTS Long Term Evolution: From Theory to Practice” by Sesia, Toufik, and Baker, published by Wiley in 2009.
1016	US Patent No. 7,668,564 (“Onggosanusi”)
1017	<i>Intellectual Ventures I LLC et al. v. American Airlines, Inc.</i> , No. 4:24-cv-980 (E.D. Tex.) [Dkt. 76] – Amended Complaint
1018	<i>Intellectual Ventures I LLC et al. v. Southwest Airlines Co.</i> , No. 7:24-cv-277 (W.D. Tex.) [Dkt. 1] – Complaint
1019	<i>Intellectual Ventures I LLC et al. v. American Airlines, Inc.</i> , No. 25-cv-576 (E.D. Tex.) [Dkt.1] – Complaint
1020	Intentionally not used
1021	Approved report of 3GPP TSG RAN WG1 #46
1022	Approved report of 3GPP TSG RAN WG1 #45
1023	Approved report of 3GPP TSG RAN WG1 #44

Exhibit No.	Description
1024	Approved report of 3GPP TSG RAN WG1 #43
1025	Approved report of 3GPP TSG RAN WG1 #42bis
1026	Intentionally not used
1027	Intentionally not used
1028	Intentionally not used
1029	Declaration of Paul Howard dated March 29, 2014
1030	Declaration of Kenneth Scott
1031	Claim Chart for '000 Patent from Intellectual Ventures' Infringement Contentions against American Airlines
1032	Defendant American Airlines' Supplemental Disclosure of Proposed Terms and Claim Elements for Construction
1033	American Litigation Scheduling Order
1034	American Airlines 4-2 Claim Construction Disclosures

I. THERE IS STILL NO RISK OF INCONSISTENT CLAIM CONSTRUCTION POSITIONS BETWEEN PROCEEDINGS.

Patent Owner argues that Petitioner Southwest's stipulation in Petitioner's Response Brief does not "remove the risk of inconsistent claim positions," because the stipulation does not "preclude Southwest from taking any other claim construction position in the district court that it desires." Reply at 1 (quotes omitted).

Critically, Patent Owner **does not contend** that any of Petitioner Southwest's current claim construction positions in the district court proceeding are inconsistent with the Petition. Reply at 1-3. Instead, Patent Owner attempts to twist Petitioner Southwest's stipulation into an "express" reservation of rights to raise inconsistent arguments in the future. This fact alone confirms that discretionary denial is not warranted on this basis because, as Patent Owner admits, "a Petitioner is not strictly prohibited from advancing inconsistent positions." Paper 7 ("DD Brief") at 7.

Indeed, the central requirement in recent PTAB practice is only that "a petitioner must explain any inconsistent claim construction positions." *Caption Health v. Univ. of British Columbia*, IPR2025-01422, Paper 15 at 3 (Director Dec. 18, 2025) (citing *Revvo Tech., Inc. v. Cerebrum Sensor Tech., Inc.*, IPR2025-00632, Paper 20 (Director Nov. 3, 2025) (precedential)). Here, there is nothing for Petitioner Southwest to explain, because *it offers no inconsistent claim construction positions*, and Patent Owner does not contend otherwise.

Turning to American's stipulation, Patent Owner attempts to argue that

Petitioner American's stipulation is "literally meaningless" because Petitioner American chooses to pursue indefiniteness arguments that are consistent with the Petition. Reply at 2. "Even more disturbing" for Patent Owner is the fact that Petitioner American pursues claim construction arguments in its district court proceeding that are not mentioned in the Petition. Reply at 2.

Again, Patent Owner cites nothing to support its argument that the mere pursuit of indefiniteness or claim construction arguments in district court warrants discretionary denial. Patent Owner never identifies any law that requires a petitioner to stipulate to "take consistent claim constructions across both forums." Reply at 3. Moreover, Patent Owner does not explain how American's claim construction arguments are inconsistent with the Petition. Patent Owner summarily labels American's claim construction positions as inconsistent without any analysis.

Regardless, Petitioner American's claim construction arguments are consistent with the Petition. With respect to the three claim terms Patent Owner complains of (relating to "a processor," "a receiver," and "a transmitter"), Petitioner American simply argues that a single example of each respective type of device must be capable of performing the actions associated with that device. Ex. 1034 at 6. These constructions are consistent with the Petition. *E.g.*, Petition at 31 (citing a figure with only a single processor, receiver, and transmitter); *id.* at 33-34 (same); *id.* at 61-62 (same).

Patent Owner’s mischaracterization of Petitioners’ stipulations is based on nothing more than its own speculation that inconsistent arguments could arise in the future. This speculation does not justify discretionary denial—the Petition should be instituted.

II. PETITIONER AMERICAN’S INDEFINITENESS POSITIONS ARE CONSISTENT WITH THE PETITION.

Patent Owner faults Petitioner American for allegedly failing to explain “why the holding in *IPXL* renders American’s indefiniteness positions not inconsistent with the Petition’s arguments.” Reply at 3 (quotes removed).

Petitioners did not fail to explain why *IPXL* indefiniteness is consistent with the Petition’s arguments. As explained in Petitioners’ Response to Patent Owner’s discretionary denial brief, indefiniteness under *IPXL* holds that a claim is invalid as indefinite when it “recites both a system and the method for using that system.” *IPXL Holdings, LLC v. Amazon.com, Inc.*, 430 F.3d 1377, 1384 (Fed. Cir. 2005). *IPXL* indefiniteness is distinct from the contention that a patent is indefinite because a person of ordinary skill in the art would not be able to determine the meaning and scope of a specific claimed limitation with reasonable certainty. It is this generic form of indefiniteness, not *IPXL* indefiniteness, that the Director has previously found to be inconsistent with the argument that claims should be given their plain and ordinary meaning. *E.g., Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18 at 2 (Director November 5, 2025) (informative). Alleging the ’000

Patent as indefinite under *IPXL* is not inconsistent with the Petition because *IPXL* indefiniteness is tied to a structural defect with the claims, not a claim construction ambiguity argument that would be at odds with a construction of plain and ordinary meaning.

Nevertheless, Patent Owner argues that the Petition falls short of a standard supposedly set forth by the Federal Circuit in *Samsung Elecs. Am. v. Priusa Eng'g Corp.*, 948 F.3d 1342 (Fed. Cir. 2020). Reply at 4. Patent Owner misreads *Samsung*—there is no “exception” defined therein for IPR petitions in the context of *IPXL* indefiniteness. Reply at 4. There is likewise no requirement in *Samsung*’s holding that the Petition “explain how each challenged claim is obvious regardless of whether it is treated as being directed to an apparatus or method.” *Id.* Rather, the *Samsung* Court held that “[e]ven though the validity of the challenged claims may be subject to question for *IPXL*-type indefiniteness,” that would “not necessarily preclude the Board from addressing the patentability of the claims on section 102 and 103 grounds.” *Id.* at 1355. In other words, *Samsung confirms* that questions of *IPXL* indefiniteness **are not inconsistent** with Board review of the obviousness of a patent. *Samsung* supports Petitioners, not Patent Owner.

* * *

Patent Owner’s concluding accusation of “double-talk” is baseless. As established above: there is no risk of inconsistency with respect to Petitioner’s claim

construction arguments between the district court proceedings and the Petition, and Patent Owner's complaints regarding Petitioners' stipulations are based on unsupported speculation and questionable legal theory, not facts.

III. CONCLUSION

For the reasons above, Petitioners respectfully ask the Director to institute the Petition.

Dated: January 20, 2026

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. Sections 42.6, that a complete copy of the attached **PETITIONERS' SUR-REPLY BRIEF IN OPPOSITION TO PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL**, including exhibit (**No. 1034**), are being served upon Patent Owner by servicing Patent Owner's counsel listed below:

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