

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner

v.

SANDPIPER CDN, LLC,
Patent Owner

Case IPR2026-00180
U.S. Patent No. 10,701,173

PATENT OWNER'S PRELIMINARY SURREPLY

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PATENT OWNER’S EXHIBIT LIST

Exhibit No.	Description
2001	First Amended Docket Control Order, <i>Sandpiper CDN, LLC v. Microsoft Corporation</i> , Case No. 2:25-cv-00664-JRG-RSP (E.D. Tex.), October 17, 2025
2002	Exhibit E101 to Microsoft’s Invalidity Contentions (Subject Matter Ineligibility Contentions for U.S. Patent No. 9,762,692), <i>Sandpiper CDN, LLC v. Microsoft Corporation</i> , Case No. 2:25-cv-00664-JRG-RSP (E.D. Tex.), December 5, 2025
2003	“Enforcement and Non-Waiver of 37 C.F.R. § 42.104(b)(4) and Permissible Uses of General Knowledge in <i>Inter Partes</i> Reviews,” United States Patent and Trademark Memorandum, July 31, 2025
2004	Success Rate of Motions to Stay Pending <i>Inter Partes</i> Review before Judge Rodney Gilstrap, Docket Navigator Report generated February 4, 2026
2005	Complaint for Patent Infringement, <i>Sandpiper CDN, LLC v. Microsoft Corporation</i> , Case No. 2:25-cv-00664-JRG-RSP (E.D. Tex.), June 26, 2025
2006	Microsoft’s Invalidity Contentions, <i>Sandpiper CDN, LLC v. Microsoft Corporation</i> , Case No. 2:25-cv-00664-JRG-RSP (E.D. Tex.), December 5, 2025
2007	U.S. Patent Publication No. 2006/0095532 (“pub-O’Rourke”)
2008	Declaration of Samuel H. Russ, Ph.D.
2009	<i>Curriculum Vitae</i> of Samuel H. Russ, Ph.D
2010	“CDN Stands For Content Delivery Network: History and Evolution,” <i>BlazingCDN</i> , accessed at https://blog.blazingcdn.com/en-us/cdn-stands-for-content-delivery-network-history-and-evolution (last accessed August 1, 2025)
2011	“What is a CDN (Content Delivery Network)?” <i>Amazon Web Services</i> , accessed at https://aws.amazon.com/what-is/cdn/ (last accessed August 1, 2025)
2012	Basu, S., et al., “Adaptive TTL-Based Caching for Content Delivery,” <i>IEEE/ACM Transactions on Networking</i> , 99:1-15 (April 2018)

Exhibit No.	Description
2013	“Connect – Most Innovative New Products Award Winners Announced,” Connect NewsLetter, October 26, 1999, available at https://library.ucsd.edu/dc/object/bb60436752/_1.pdf (last accessed March 1, 2026)
2014	“Sandpiper Named ‘Best of the Best’ at Networld + Interop 99 Las Vegas,” PRNewswire, May 12, 1999, available at https://ubmchannelnews.mediaroom.com/index.php?s=29573&item=85841 (last accessed March 1, 2026)
2015	Entrepreneur of the Year, June 19, 2000
2016	“Sandpiper Networks’ Footprint Takes Aim at Internet Traffic,” Wall Street Journal Interactive Edition, June 17, 1999, available at https://url.us.m.mimecastprotect.com/s/wTVWCxklA1iDQQWjSYi2Syt1OK?domain=wsj.com (last accessed March 3, 2026)
2017	“Web-Page Distribution System Could Unclog Internet Traffic Jams,” The New York Times, April 26, 1999, available at https://archive.nytimes.com/www.nytimes.com/library/tech/99/04/biztech/articles/26sand.html (last accessed March 3, 2026)
2018	“Sandpiper Puts Its Footprint in Marketplace,” Los Angeles Times, September 28, 1998, available at https://www.latimes.com/archives/la-xpm-1998-sep-28-fi-27201-story.html
2019	Infringement Contentions, <i>Sandpiper CDN, LLC v. Microsoft Corp.</i> , Case No. 2:25-cv-00664 (E.D. Tex. Sept. 16, 2025)
2020	Petitioner’s Request for Preliminary Reply Email

Rather than identifying an unforeseeable position needing clarification or correction, Petitioner's Preliminary Reply ("PPR") simply runs down five main arguments from the POPR and states its disagreement. That is not an appropriate use of the Board's time. Regardless, Petitioner's surface-level rebuttals cannot remedy the deficiencies in the Petition.

Four of the five arguments in the PPR challenge PO's "implicit" claim constructions as being too narrow and unclear. PPR, 1-3. Neither characterization is fair. The POPR takes clear and well-supported positions on the plain meanings of various terms in the context of the claims as a whole and the specification. *See* POPR, 27-29 (explaining the ordering and conditionality of "when" and "then, after"), 31-34 (distinguishing the claimed order and operations from the prior art), 36 (distinguishing cache policies from TTL values and freshness checks).

That claim terms must be properly interpreted in context does not necessarily mean they need to be expressly construed. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019). Even without express construction, the words of the claim always have meaning. *Id.* at 1371. To the extent Petitioner disputes those meanings here, the PPR fails to identify (1) what it alleges PO's "implicit" constructions to be, (2) why PO's constructions lack support or clarity, and (3) what the allegedly correct constructions are. PPR, 1-3. The PPR thus fails to clarify the dispute or support institution.

Petitioner’s attempt to recast every argument that a limitation is missing from the prior art as an “implicit construction” also misapprehends the nonobviousness analysis. For example, Petitioner observes that determining a cache policy “comprises determining a time period for expiration” to argue that Middleton’s TTL value is *itself* a cache policy. PPR, 1. But equating “determining . . . [a] cache policy” with the separately recited “determining a time period for expiration” reads the cache policy determination *out of the claim entirely*. That is improper. It is not unforeseeable that PO would give meaning to all claim terms and point out how the prior art fails to disclose them.

Petitioner similarly disagrees with PO’s distinctions among identifying, applying, and determining a policy so Petitioner can purport to find those limitations in O’Rourke’s block 504 (sometimes conflating block 510). PPR, 1-2. But the PPR does not provide any disclosure or reasoning that either block selects or ascertains which policy governs the content at that point. Other than to say that it interprets the EPO to have *reordered* the functions of these components in examining a related application, the PPR does not clarify why its *collapse* of those concepts is correct and PO’s distinction is wrong. PPR, 2.

Indeed, the claims require more than chronological ordering; they require that the determination of a cache policy occur after—and be conditioned upon—a determination that the content is cached locally. POPR, 27-29 (“when . . . then”).

The PPR offers no counter-analysis of claim scope, despite Petitioner's assertion that O'Rourke's steps 504 and 505 do not depend on each other. *See* Pet, 12. That concession in the Petition forecloses the claimed conditional relationship. *See* POPR, 27-29. Petitioner's reordering of O'Rourke (even if accepted) thus fails to supply the required dependency between the two determinations. The PPR does nothing to explain away this deficiency. Its nominal disagreement and high-level reiteration of the arguments in the Petition, PPR at 2, adds nothing to the record.

Finally, Petitioner states in conclusory fashion that the Petition arguments have no "gaps" and that its expert may explain what the prior art teaches to a skilled artisan. PPR, 3. But a single declaratory sentence fails to meaningfully engage with the gaps that the POPR identifies, specifically: reordering steps, repurposing components, and inferring undisclosed functionalities. *See* POPR, 37-38. The PPR does not substantiate why a POSITA would interpret the prior art to teach limitations that the references simply do not teach. Such vague and conclusory statements are unhelpful and the Board should give them no weight.

The PPR merely states Petitioner's disagreement with each of PO's substantive arguments and reiterates the conclusions in the Petition. It does nothing to "clarify the record" regarding any disputes. *Contra* EX2020. The Board should deny institution on the merits for the reasons explained in the POPR and PO's expert declaration.

Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PATENT OWNER'S PRELIMINARY SURREPLY** was served in its entirety on May 15, 2026, upon the following parties via electronic mail:

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