**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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YEALINK (USA) NETWORK TECHNOLOGY CO., LTD., AND YEALINK NETWORK TECHNOLOGY CO., LTD.,

Petitioners,

v.

BARCO N.V.

Patent Owner.

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CASE: IPR2025-00598

U.S. PATENT NO. 11,966,347

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**PATENT OWNER'S DISCRETIONARY DENIAL BRIEF**

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| Exhibit | Description |
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| Ex. 2001 | U.S. Publication No. 2015/0121466 (“Brands”) |

# I. INTRODUCTION

Pursuant to Acting Director Stewart's March 26, 2025, Memorandum Titled "Interim Processes for PTAB Workload Management" (the "PTAB Workload Management Memo"), Patent Owner Barco N.V. respectfully requests that the Director exercise discretion and deny the institution of *inter partes* review of U.S. Patent No. 11,966,347 (the "'347 Patent").

The PTAB Workload Management Memo identified several "relevant considerations" that may be considered toward the "aim to improve PTAB efficiency, maintain PTAB capacity to conduct AIA proceedings, reduce pendency in *ex parte* appeals, and promote consistent application of discretionary considerations in the institution of AIA proceedings." In discretionary denial papers, parties are permitted to address all relevant considerations including "[t]he strength of the unpatentability challenge;" and "[a]ny other considerations bearing on the Director's discretion." PTAB Workload Management Memo, 2-3.

The '347 Patent is directed towards a "method and system for making functional devices available to participants of meetings[.]" Ex. 1001, Title. The Petition argues that the '347 Patent is obvious based on the following grounds:

**<u>Ground 1:</u>** *Beel* (U.S. Publication No. 2015/0169477) (Ex. 1005) in view of *Dinka* (U.S. Patent No. 8,369,498) (Ex. 1006), AAPA, and *Christison* (U.S. Patent No. 7,761,627) (Ex. 1011).

**Ground 2:** *Kaplan* (U.S. Publication No. 2010/0295994) (Ex. 1008) in view of *Van De Laar* (U.S. Publication No. 2016/0014172) (Ex. 1007), AAPA, and *Christison* (U.S. Patent No. 7,761,627) (Ex. 1011).

Petition, 3.

Both Grounds 1 and 2 are fundamentally flawed. First, the Petition inappropriately relies on alleged applicant admitted prior art (AAPA) as a basis for each ground, which is inappropriate in an IPR Proceeding. Second, the Petition relies on references which were cited and relied on by the examiner during prosecution. Accordingly, discretionary denial is warranted.

## II. BOTH GROUNDS SHOULD BE DENIED FOR RELYING ON APPLICANT ADMITTED PRIOR ART

Denial is proper because Petitioners rely on inapplicable applicant admitted prior art (AAPA) as a basis for its challenge. 35 U.S.C. § 311(b) provides: "a petitioner in an inter partes review may request to cancel as unpatentable 1 or more claims of a patent only on a ground that could be raised under section 102 or 103 and ***only on the basis of prior art consisting of patents or printed publications***." (emphasis added). "Under the plain meaning of § 311(b), the question is whether a petitioner has used AAPA as the basis or part of the basis, of a ground[.]" *Qualcomm Inc. v. Apple Inc.*, No. 2023-1208, 2023-1209, 2025 WL 1174161 at *8 (Fed. Cir. Apr. 23, 2025). The Petition in the present action relies on AAPA as a basis of each ground.

In the Petition's section titled "Precise Relief Requested" the Petition identifies AAPA in combination with patents and printed publications relied on for both Ground 1 and Ground 2:

> **V. PRECISE RELIEF REQUESTED**
>
> **Ground 1**: Claims 1-31, are obvious over Beel in view of Dinka, AAPA, and optionally Christison, under pre-AIA 35 U.S.C. § 103(a).
>
> **Ground 2**: Claims 1-31 are obvious over Kaplan in view of Van de Laar, AAPA, and optionally Christison, under pre-AIA 35 U.S.C. § 103(a).

Petition, 3 (emphasis added).

This constitutes "express statements by [Petitioners] that AAPA was part of the basis" of each ground, in violation of §311(b). *Qualcomm*, 2025 WL 1174161, at *9. This reliance mirrors exactly what the Federal Circuit found to be improper in the *Qualcomm* case:

| Ground | '674 Patent Claims | Basis for Rejection |
|---|---|---|
| **Ground 1** | **1, 2, 5-7** | §103: Steinacker in view of Doyle and Park |
| **Ground 2a** | **1, 2, 5, and 6,** | §103: Applicants Admitted Prior Art (AAPA) in view of Majcherczak |
| **Ground 2b** | **7** | §103: AAPA in view of Majcherczak and Matthews |

J.A. 205.

*Id.* at *6 (emphasis added). The Federal Circuit found that "the statements from the

tables in Apple's petitions clearly designate AAPA as included in the basis of Ground 2. In other words, these are express statements by Apple that AAPA was part of the basis of Ground 2—a violation of § 311(b)." *Id.* at *21.

This Petition fails for the same reason. The Petition clearly contends the cited AAPA is required, while other cited art (e.g., Christison may be "optional"):

**A. Claims 1-31 Are Obvious Over Beel in view of Dinka, AAPA, and Optionally Christison**

Petition at 16, 42.

Further, the Petition includes a section on "Applicant Admitted Prior Art ("AAPA")" in its "Overview of the Prior Art." Petition, 16. Here, the Petition identifies alleged admissions of the '347 Patent relating to web conferencing tools, endpoints, and drivers. *Id*. These "admissions" are relied on throughout the Petition's challenges. The Petition impermissibly relies on citations to alleged AAPA throughout its Grounds, including to attempt to establish a motivation to combine the references in Ground 1 and Ground 2 and to allege obviousness of multiple limitations of the challenged claims of the '347 Patent. *See e.g.*, Petition, 17, 21, 25 (citing IX.A.2.f.), 26, 27 (citing IX.A.2.k), 35 (citing IX.A.2.f.), 38 (citing IX.A.2.f.), 39 (citing IX.A.2.k), 41 (citing IX.A.2.f.) 42 (citing IX.A.2.k), 43, 54, 55 (citing IX.B.2.k), 68 (citing IX.B.2.k), 71 (citing IX.B.2.k).

As the Petition explicitly identifies AAPA as a basis for both proposed

grounds, Ground 1 and Ground 2, and relies on AAPA throughout both grounds, discretionary denial is warranted for failure to comply with 35 U.S.C. § 311(b).

## III. BOTH GROUNDS SHOULD BE DENIED FOR RELYING ON PREVIOUSLY PRESENTED REFERENCES

In addition, the Petition should be denied as seeking to improperly reexamine the '347 Patent based on art and arguments previously presented during examination. 35 U.S.C. § 325(d) provides, "the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office." When considering whether to institute, the PTAB follows a two part framework to determine if discretionary denial is warranted which requires determining: (1) whether the same or substantially the same prior art or argument previously was presented to the Office; and (2) if the first part is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims. *See Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential). To help apply this framework, the Board utilizes the *Becton, Dickinson* factors. *Id.*, 9. These factors are:

a) the similarities and material differences between the asserted art and the prior art involved during examination;

b) the cumulative nature of the asserted art and the prior art evaluated

during examination;

c) the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection;

d) the extent of the overlap between the arguments made during examination and the manner in which Petitioners rely on the prior art or Patent Owner distinguishes the prior art;

e) whether Petitioners have pointed out sufficiently how the Examiner erred in its evaluation of the asserted prior art; and

f) the extent to which additional evidence and facts presented in the Petition warrant reconsideration of the prior art or arguments.

*Becton, Dickinson & Co. v. B. Braun Melsungen*, IPR2017-01586, Paper 8 at 17-18 (PTAB Dec. 15, 2017) (precedential).

### A. The ’347 Patent Prosecution History

The ’347 Patent was filed as App. No. 17/742,116 on May 11, 2022, as a continuation of U.S. Patent App. 16/771,068. Ex. 1004, 85. On May 9, 2023, App. No. 17,742,116 was rejected under 35 U.S.C. § 103 based on *Brands* (U.S. Pub. No. 2015/0121466) (Ex. 2001) in view of *Christison* (U.S. Patent No. 7,761,627 ) (Ex. 1011). Ex. 1004, 424, 427-428. The Examiner argued that *Brands* disclosed all limitations of then-pending claim 1 except that it did “not specifically disclose at least one fixed or configurable endpoint of the function device [] exposed on the first

peripheral device[,]" and instead relies on *Christison* to allege that limitation. Ex. 1004, 429-430. In addition to rejecting other dependent claims, the examiner also rejected 4, 5, 10, 11, 19, and 20 based on *Brands* in view of *Christison* in further view of *Beel*. Ex. 1004, 431. In response, Applicant amended Claim 1 to recite additional limitations included in then pending claim 12, which included allowable subject matter. Ex. 1004, 512. After the amendment, the examiner issued a notice of allowance on September 27, 2023. Ex. 1004, 553.

### B. *Beel* and *Christison* Were Presented to the Office During Examination and Formed a Basis of Rejection.

*Beel* was relied on to reject multiple dependent claims of the '347 Patent during prosecution. Ex. 1004, 512. "Challenging the claims using the same prior art that was previously presented on an IDS is sufficient to satisfy the first part of the *Advanced Bionics* framework." *Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 4 (PTAB May 19, 2025) (precedential).

While the Petition also includes *Dinka* and AAPA in its articulation of the basis for Ground 1 (Petition, 3), that should not distract from the fact that *Beel* is the primary reference of the challenge. As noted *Supra* Section II, AAPA is not subject matter than can be considered for any Ground in this proceeding. *Dinka* is only cited to ***twice*** for all of claim 1, and only with respect to elements k and m as identified by the Petition. Petition, 26-27, 28-29. These two elements, k and m, were considered by the examiner using *Brands*, and specifically use of a portable

application capturing video data and sharing it with pre-installed generic drivers. Ex. 1004, 429 (citing Ex. 2001, ¶138). This is the same theory presented in the Petition, which uses *Dinka* as teaching a video engine that encodes video signals obtained from a webcam connected to a computer. Petition, 27 (citing Ex. 1006, 9:40-45).

The Petition's only other reference to *Dinka* is with respect to encoding and decoding with respect to video signals. Petition, 29 (citing Ex. 1006, 9:45-48). During prosecution, the examiner already relied on *Brands'* disclosure of interpretation/encoding. Ex. 1004, 430 (citing Ex. 2001, ¶122). In fact, the examiner noted that claim 12 was distinguishable over "Brands in that Brands, while disclosing the base node 36 being connected to a display device 44 or over a network to other devices within a meeting room (Fig. la), does not specifically disclose receiving second processed data, decoding/enhancing said data, and forwarding it to a function device through a serial connection." Ex. 1004, 433.

The Petition's argument seeking to distinguish its use of *Beel* from the examiner's use is unpersuasive. Instead of identifying how the examiner erred with respect to *Beel*, the Petition provides inconsistent theories of examiner error. For example, the Petition states that "the Examiner erred in not appreciating the disclosure in Beel regarding [(1)] ***the base unit receives and decodes/enhances*** second processed data to ***forward to a functional device***, which renders the claims

of the '347 patent obvious[,]" and "the Examiner overlooked that Beel discloses [(2)] the ***base unit making the functional device available*** to a ***plurality of peripheral devices by processing electronic signals of the functional device***[.]" Petition, 74. However, at the same time the Petition argues that the Office failed to consider a combination of *Beel* and *Dinka*, when "Dinka includes materially different disclosure addressing what the Examiner found Beel lacked: the base unit [(1)] ***receiving and decoding/enhancing processed data and forwarding it to the functional device*** connected through a serial connection, and [(2)] the ***base unit exposing the functional device to a plurality of peripheral devices***" Petition, 73. In arguing both positions, the Petition fails to establish whether or how (1) the examiner erred with its ***interpretation*** of *Beel* or (2) the *Beel-Dinka* challenge is not substantially the same argument previously presented.

Moreover, and perhaps even more egregiously, *Beel* is cumulative of *Brands*. The similarities between the references are clear. *Compare, e.g.,* Ex. 1005, ¶¶2-24, 27-35 Figs. 1-10; Ex. 2001, ¶¶2-23, 25-33 Figs. 1-10. Both references share an objective of providing electronic tools for meetings, providing connection to communications network, and displaying media content. Ex. 1005, Title, ¶39; Ex. 2001, Title, ¶35. Indeed, the Petition and examiner cite to substantially similar elements described in both *Beel* and *Brands* and in substantially the same way. For example, consider the following disclosures in both references:

- A computer (Ex. 2001, ¶118; Ex. 1005, ¶117);
- A display, whiteboard, camera, microphone (Ex. 2001, ¶120; Ex. 1005, ¶119);
- a portable application/client application (Ex. 2001, ¶128; Ex. 1005, ¶127);
- a connection unit peripheral device (Ex. 2001, ¶126; Ex. 1005, ¶125);
- a USB interface (Ex. 2001, ¶140; Ex. 1005, ¶139);
- a transmitter and receiver (Ex. 2001, ¶¶129-130; Ex. 1005, ¶¶128-129);
- a human interface device, mass storage device, and audio device (Ex. 2001, ¶40; Ex. 1005, ¶¶320-323); and
- wireless media/video displaying (Ex. 2001, ¶¶118-120; Ex. 1005, ¶¶117-119).

Further, during prosecution, *Brands* was relied on for all elements of then pending claim 1 besides the "at least one fixed or configurable endpoint of the functional device [that] is exposed on the first peripheral device" in which the examiner cited to *Christison*. Ex. 1004, 249-230. Notably, the Petition again relies almost exclusively on *Beel* for all limitations and attempts to supplement *Beel* with *Christison* for the same "fixed or configurable endpoint" limitation. Petition, 21-23.

Likewise, the Petition relies on the same disclosure relating to the same limitation as the examiner during prosecution with respect to *Christison*. *Compare*

Petition, 22-23 (citing Ex. 1011, 6:32-37; 6:66-7:5; 7:25-35); Ex. 1004, 430 (citing Ex. 1011, 6:13-7:35). The Petition also provides no argument for how the Examiner erred with respect to *Christison*.

### C. *Van de Laar* And *Kaplan* Are Cumulative Of Art Presented to the Office During Examination

While *Van de Laar* and *Kaplan* were not considered by the examiner during prosecution, their respective teachings that are used in the Petition are cumulative of *Brands* that was considered. In this regard, the Board should exercise discretion and similarly deny the Petition's challenge using *Van De Laar* in view of *Kaplan,* AAPA, and *Christison.* Much like with Ground 1, the Petition relies on substantially the same elements as cited to in *Brands* during prosecution. For example, both *Brands* and *Van de Laar* or *Kaplan* reference:

- A computer (Ex. 2001, ¶118; Ex. 1007, ¶73);
- A display, whiteboard, camera, microphone (Ex. 2001, ¶120; Ex. 1007, ¶¶73-74);
- a portable application/local application (Ex. 2001, ¶128; Ex. 1007, ¶53);
- a connection unit/"dockee" communication unit (Ex. 2001, ¶126; Ex. 1007, ¶76);
- a USB interface (Ex. 2001, ¶140; Ex. 1008, ¶17);
- a transmitter and receiver (Ex. 2001, ¶¶129-130; Ex. 1007, ¶75; Ex.

1008, ¶45);

- a human interface device, mass storage device, and audio device (Ex. 2001, ¶40; Ex. 1005, ¶¶320-323);
- wireless media/video displaying (Ex. 2001, ¶¶118-120; Ex. 1007, ¶¶80, 92); and
- video data processing (Ex. 2001, ¶122; Ex. 1007, ¶59).

Like with Ground 1, Ground 2 also relies on the same disclosure in *Christison* relating to the same limitation as the examiner during prosecution. *Compare* Petition, 49-50 (citing Ex. 1011, 6:66-7:5); Ex. 1004, 430 (citing Ex. 1011, 6:13-7:35).

As the Petition's Ground 1 and Ground 2 (1) rely on already considered and previously evaluated art (2) without material difference to arguments presented during examination and (3) failed to adequately explain how the examiner erred, the *Becton, Dickinson* factors heavily favor denial.

## IV. CONCLUSION

Patent Owner requests that the director exercise discretion and deny institution of the Petition.

Dated: June 9, 2025

Respectfully submitted,

By: /Erik Halverson/

Erik Halverson
Reg. No. 73,552
K&L GATES LLP
4 Embarcadero Center, Suite 1200
San Francisco, CA 94111
erik.halverson@klgates.com
T: (415) 882-8238
F: (415) 882-8220

*Counsel for Patent Owner*

**Certification of Word Count Under 37 C.F.R. § 42.24(d)**

The undersigned hereby certifies that the foregoing contains 2,486 words according to the word count of the word-processing software used to prepare the foregoing.

By: /Erik Halverson/
Erik Halverson
Reg. No. 73,552
**K&L GATES LLP**
4 Embarcadero Center, Suite 1200
San Francisco, CA 94111
erik.halverson@klgates.com
T: (415) 882-8238
F: (415) 882-8220

**CERTIFICATE OF SERVICE**

I hereby certify that on June 9, 2025, a true and correct copy of the foregoing was caused to be served on the following counsel of record for Petitioners by electronic mail at the following addresses:

Stephen Yang
stephen.yang@dentons.com
Kevin R. Greenleaf
kevin.greenleaf@dentons.com
Timothy C. Bickham
timothy.bickham@dentons.com
Forrest Gothia
forrest.gothia@dentons.com
Dentons US LLP
233 South Wacker Drive,
Suite 5800
Chicago, IL 60606
Tel: (212) 398-4890
Fax: (212) 768-6800
Email: ipt.docketchi@dentons.com

By: /Erik Halverson/
Erik Halverson
Reg. No. 73,552