

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

WILUS INSTITUTE OF STANDARDS AND TECHNOLOGY INC.,
Patent Owner

Case IPR2025-00934
U.S. Patent No. 11,159,210

AUTHORIZED RESPONSE TO DIRECTOR REVIEW REQUEST

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I. Introduction

Patent Owner's Request for Director Review ("the Request") of both the Decision Referring Petitions to the Board ("the Referral Decision") (Paper 11) and the Decision Granting Institution of *Inter Partes* Review ("the Institution Decision") (Paper 12) fail to establish any abuse of discretion, important issues of law or policy, erroneous findings of material fact, or erroneous conclusions of law and should thus be denied. Director Review Process, Section 2.B, *available at* <https://www.uspto.gov/patents/ptab/decisions/director-review-process>.

Regarding discretionary denial factors, Patent Owner has not shown that the Acting Chief Administrative Patent Judge's decision to refer the Petition to the Board was made in error. It is undisputed that the '210 Patent is one among twelve patents spanning eight different families that Patent Owner has asserted against Petitioner. The '210 Patent is thus involved in a complex and diverse district court proceeding. The Request also fails to refute the Acting Chief Administrative Patent Judge's finding that the examiner committed material error during examination of the '210 Patent, or that reliance on that material error to refer the Petition to the Board was itself in error. Indeed, contrary to Patent Owner's arguments, a petitioner that establishes such an error is not required to leverage the error in its invalidity grounds.

Patent Owner’s attempt to leverage preliminary claim construction submissions in the district court proceeding to reverse institution should be dismissed because Petitioner is not taking any inconsistent positions in both proceedings. Petitioner instead maintains that all the terms should be interpreted according to the plain and ordinary meaning standard. Patent Owner’s challenge regarding public accessibility of the 802.11ax_D1.0 (“D1.0”) reference is immaterial, at least because the challenge is not directed to the ground on which the Board determined trial should be instituted. Finally, Patent Owner’s Bharadwaj-based arguments rely on differences of opinions on Bharadwaj’s teachings, which is best resolved during an IPR proceeding and does not warrant Director Review or denial of institution.

II. Discretionary Denial Considerations Favored Referral

A. The Challenged Patents are involved in a complex and diverse litigation proceeding

Patent Owner’s argument that “the IPRs Samsung has brought against Wilus do not present [a] ‘diverse range of subject matter’” is flawed for several reasons.

As a preliminary matter, Patent Owner’s framing of “the IPRs Samsung has brought against Wilus” mischaracterizes the Acting Director’s analysis in *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9 at 2-3 (Jun. 13, 2025) and in *Shenzhen Tuozhu Tech. Co., Ltd. v. Stratasys, Inc.*, IPR2025-00438, Paper 10 (Jul. 17, 2025). Rather than focusing on the IPR challenge, the Acting Director in *Tesla* cited the “***complex and diverse litigation proceeding.***” *Tesla*, 2-3 (emphasis added).

Similarly, the Acting Director cited the “large number and vast scope of the patents asserted in the *district court litigation*” as “weigh[ing] against discretionary denial, as the Board is better suited to review a large number of patents involving diverse subject matter.” *Shenzhen*, 3 (emphasis added) (citing *Tesla*, 2-3). Patent Owner’s challenge is additionally limited only to whether the patents-at-issue are diverse. Notably, Patent Owner does not challenge the complexity of addressing *twelve* patents in district court litigation.

Nonetheless, as explained in Petitioner’s Opposition to Patent Owner’s Request for Discretionary Denial, the patents in the co-pending litigation involve a diverse range of subject matter, where “the ’210 patent is but one of twelve patents spanning eight different families that Wilus has asserted against Samsung in District Court.” Paper 10, 6-7. This is no different than the scenarios in *Tesla* and in *Shenzhen*. Namely, the patents-in-suit in *Tesla* involved “eleven patents spanning nine different families that involve a diverse range of subject matter.” *Tesla*, 3. Similarly, the patents-in-suit in *Shenzhen* involved “nine different patents spanning six families that involve a diverse range of subject matter.” *Shenzhen*, 3.

Patent Owner’s attempts to distinguish the present case from *Tesla* and from *Shenzhen* are unavailing. For instance, with respect to *Shenzhen*, while all patents were generally directed to 3D printing, they cover diverse aspects of that technology.

Shenzhen, Paper 9 at 7-9 (Jul. 9, 2025). Similarly, here, while all patents-in-suit relate generally to wireless technologies, they, too, cover diverse aspects of wireless technologies, ranging, for example, from “enhanced distributed channel access prioritization” to “legacy and modern device coexistence via physical layer frame designs” to “signaling user-specific fields and spatial stream configurations in multi-user MIMO transmissions” as in the case of the ’210 Patent. Paper 10, 7-8. Patent Owner’s characterization of the technology claimed in each of the patents in the pending litigation as simply relating to “features of the 802.11ax standard that improve efficiency and performance of wireless communications in congested spectrum” is an overgeneralization. *See* Request, 3-4.

Patent Owner’s argument that the relatedness of the subject matter can be seen from the overlapping prior art (“including the various versions of the 802.11 standards that are relied upon as purported prior art”) is incorrect. First, petitions for only three of the 12 patents-in-suit include grounds that rely on IEEE 802.11 standards as prior art. Patent Owner’s argument further ignores the diverse aspects of wireless technology covered in the various IEEE 802.11 standards documents, including the physical (PHY) layer responsible for the actual transmission of data, and the medium access control (MAC) layer that controls access to a shared wireless medium and handles functions such as authentication and frame control. Patent Owner further

alleges that “[t]he fact that all eight of these patents are alleged to be rendered obvious by versions of the 802.11ax standard or patents that are directed to improvements that very same standard refutes any argument that the situation here is comparable to those in *Tesla* or *Shenzhen*.” Request, 4-5. However, since all of the patents-in-suit relate, *generally*, to wireless standards, it is not surprising that the wireless standards themselves—and patents similarly directed to aspects of those standards—would form the basis for invalidity grounds. But again, Patent Owner conveniently ignores the complicated nature of wireless technology—indeed the D1.0 standard alone is over 450 pages.

Finally, Patent Owner alleges in its Request that the discretionary denial factors were “decided in error, based upon misleading representations by Samsung that Wilus was not afforded an opportunity to rebut.” Request, 2. Notably, however, Wilus made no such request of the Director to rebut any alleged “misleading representations,” despite the guidance on the bifurcated process at the time permitting parties to request additional briefing on discretionary issues. FAQs for Interim Process for PTAB Workload Management, Question 17 (“A patent owner who wants to request a reply should send an email request, with a copy to counsel for all parties, to `Director_Discretionary_Decision@USPTO.gov`.”), *available at* <https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management>.

Indeed, Patent Owner could have been afforded such an opportunity to rebut any of

Petitioner's arguments in a timely manner pre-institution if it had simply asked to do so. It did not.

B. The Referral Decision properly found the Examiner had committed material error with respect to 802.11ax_D0.5 (“D0.5”)

Patent Owner's arguments concerning material error appear to demand that, if the Referral Decision determines that the Examiner materially erred during prosecution and relies on that error in deciding to refer, a petitioner is somehow required to use the prior art reference upon which the Examiner's error is based. *See* Request, 5 (“rather than seek to correct the examiner's purported error by asking the Board to reconsider the art that the examiner purportedly overlooked, Samsung seeks to use the purported errors concerning D0.5 as an excuse to instead present an obviousness theory based upon the later D1.0”). But no such requirement exists. Indeed, the Director has routinely referred petitions to the Board where the alleged Examiner error did not also serve as a basis for one of the invalidity grounds presented in the respective petition. *E.g.*, IPR2025-00847, *Compare* Paper 1, 1 (Apr. 17, 2025), *with* Paper 11, 3-4 (Sept. 3, 2025); IPR2025-01064, Paper 9, 2 (Oct. 10, 2025) (examiner error based on the Office issuing claim 1 with incorrect language); IPR2025-00697, Paper 9, 2-3 (Aug. 14, 2025) (examiner error based on “maintaining the same prior art discussed in the ancestor application during the prosecution of the child applications, even though the child applications are directed to different technologies”).

Nonetheless, Patent Owner's apparent contention that there is some material

difference between D0.5 and D1.0 amounting to an erroneous finding in the Referral Decision is not supported by the evidence. *See* Request, 5 (“But the prior art relied upon in the petition is a different draft standard, 802.11ax_D1.0.”). Indeed, Patent Owner identifies no material teaching that the Petition relies upon from D1.0 that is not also disclosed in D0.5. Pet., 15-16. The Petition instead explains that “802.11ax_D1.0 describes all of the features of the HE MU-PPDU described above [with respect to D0.5], and included other refinements that placed the draft in a condition for consideration by the working group in a letter ballot.” *Id.*, 16; *see also* EX1003, ¶¶65-79. Patent Owner’s attempt to distinguish D0.5 from D1.0 are not compelling.

III. Patent Owner’s Arguments Concerning *Revvo* and *Tesla-340*¹ Are Moot Because Petitioner’s Claim Construction Positions Are Not Inconsistent

As an initial matter, Patent Owner appears to have disregarded the Director’s November 17, 2025 email by raising arguments in the Request concerning *Revvo* and *Tesla-340*. The Director’s email explicitly stated that “Patent Owner’s request for authorization to address the Director’s decision in *Revvo v. Cerebrum* and *Tesla*

¹ IPR2025-00340.

*v. Intellectual Ventures II ... is **denied**.*”² EX3100 (“denied”).

Nonetheless, to the extent that the Director is inclined to address the issue, Petitioner respectfully notes that any such arguments are moot. The district court litigation and PTAB records are clear. Petitioner contends in both forums that no constructions are necessary—consistent with Patent Owner’s position. Patent Owner’s allegations that Petitioner offered inconsistent claim construction positions in the IPR and at the district court were based only on Samsung’s *preliminary* identification of potential terms for claim construction in the district court in an email from August 27, 2025. Paper 9, 6-8 (citing Ex. 2017, 1) and the parties’ Joint Claim Construction Statement (Sept. 25, 2025). On November 18, 2025, in its Responsive Claim Construction Brief, Samsung offered its updated claim construction positions, dropping all terms alleged to be indefinite in the district court proceeding. As such, Petitioner applies the plain and ordinary meaning standard to all terms in both the IPR and the parallel district court case. Petitioner does not assert indefiniteness for any term and no inconsistency exists.

² Patent Owner alleges that the Board “overlooked” the issue of claim construction in its Institution Decision. Request, 6. However, the decisions in both *Revvo* and *Tesla-340* issued after the Board’s Institution Decision, so there could be no error where those cases did not exist at the time of institution.

Notably, in *Revvo Technologies, Inc. v. Cerebrum Sensor Technologies, Inc.*, the Director stated that “[t]he Board’s claim construction rules are designed to ensure that the Board correctly construes claims and to minimize inconsistency in claim construction between forums.” IPR2025-00632, Paper 20 at 4-5 (PTAB Nov. 3, 2025) (precedential); *see also Tesla, Inc. v. Intellectual Ventures II LLC* (“*Tesla-340*”), IPR2025-00340, Paper 18 at 4-5 (PTAB Nov. 5, 2025) (informative). By dropping the ’210 Patent term previously identified as indefinite, Petitioner has eliminated any risk of “inconsistency in claim construction between the forums” and thus “further[s] ... the Office’s goal of ‘providing greater predictability and certainty in the patent system.’” *See Revvo* at 4; *Tesla-340* at 4 (quoting *Revvo* at 4-5). The Director’s decisions in *Revvo* and *Tesla-340* are simply not relevant here because Petitioner’s claim construction positions in both proceedings are not inconsistent and do not include indefiniteness for any claim terms.

More, to the extent Patent Owner alleges that it was prejudiced by allotting pages of its Opening Claim Construction Brief in district court to addressing indefiniteness of a single term in the ’210 Patent is also unfounded. Patent Owner was afforded an ample thirty pages to address claim construction in its Opening Brief. Samsung has granted seven additional pages to Patent Owner for its Reply Brief. Patent Owner now has seventeen pages for its Reply Brief—*i.e.*, four pages more than Samsung’s Responsive Brief—to address just two disputed terms across the

asserted patents. Patent Owner has not been prejudiced and cannot credibly contend otherwise. Samsung has merely narrowed issues in the district court proceeding—an eventual requirement in nearly all multi-patent district court actions.

Finally, to the extent Patent Owner faults Samsung for exploring preliminary indefiniteness positions, Patent Owner still has not established any inconsistency with these positions. Samsung’s early identification of potentially indefinite terms was made while Samsung was investigating the outer bounds of the claims in the context of the infringement case before Samsung ultimately determined not to pursue indefiniteness positions. *Tesla-340*, Paper 18 at 3-4.

IV. Patent Owner’s Public Accessibility Challenge of 802.01ax_D1.0 Does Not Warrant Denial

Patent Owner’s arguments concerning public accessibility of D1.0 as necessitating Director Review are flawed for at least three reasons.

First, the Petition presents two grounds of invalidity: Ground 1, which relies on D1.0, and Ground 2, which does not. Pet., 1. Significantly, the Institution Decision instituted on the strength of Ground 2, finding that “the combination of Bhadrwaj and Sun teaches or suggests all the limitations of claim 1 notwithstanding Patent Owner’s arguments.” ID, 33-34. As such, any alleged shortcomings relating to Ground 1 do not warrant Director Review where institution was not based on Ground 1.

Second, as to Patent Owner’s specific challenge concerning the public accessibility of D1.0, Petitioner notes that the Petition devoted over 2.5 pages to the issue of public accessibility (Pet., 17-19), and Dr. Hansen’s supporting declaration offered more than 62 paragraphs in support of the issue (EX1026, ¶¶17-78). In particular, the Petition demonstrates a reasonable likelihood that D1.0, applied in Grounds 1A-1B (only), qualifies as a printed publication. Pet., 17-19; EX1026, ¶¶17-78. Patent Owner alleges that “the Board failed to consider whether Samsung has demonstrated that 802.11ax_D1.0 was actually or potentially accessible by an interested person *outside* of the IEEE Working Group or the broader IEEE 802 organization.” Request, 10 (emphasis in original). But Patent Owner’s critiques fall short as they fail to acknowledge uncontroverted evidence that D1.0 was actually disseminated to at least 371 IEEE members for voting before the Critical Date (EX1026, ¶61), that hundreds of other IEEE members had access to D1.0 before the Critical Date (*id.*, ¶61), that IEEE policy permitted members to “reproduce [D1.0] for purposes of international standardization consideration” (*id.*, ¶72), and that D1.0’s copyright notice states it was “made available for a wide variety of both public and private uses” (*id.*, ¶72). Moreover, Dr. Hansen’s testimony, uncontroverted by record evidence, indicates that “[t]here was, in practice, little expectation of confidentiality for draft standard amendments or other documents posted to the member area, and in my experience, *voting members knew and expected that such documents would be*

shared with non-voting members for a variety of reasons.” *Id.*, ¶63 (emphasis added). Any evidence that Patent Owner now cites as allegedly contradicting Dr. Hansen’s position (*see, e.g.*, Request, 11-2 n.1-2) is not of record and thus, not only improper, but also, could not form the basis of any alleged erroneous finding by the Board since such alleged support was newly presented in Patent Owner’s Request.

Patent Owner’s reliance on *Samsung Elecs. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1372 (Fed. Circ. 2019) is immaterial as, contrary to Patent Owner’s allegation, Petitioner and Dr. Hansen clearly demonstrated that parties other than those who created it (e.g., non-802.11 Working Group members of IEEE) could find and access D1.0. Pet., 18; EX1026, ¶¶71-77. And while the Petition addressed how any interested person could have readily joined the ranks of IEEE voting members, the law is clear that even a limited distribution can suffice to establish a printed publication. *GoPro, Inc. v. Contour IP Holding LLC*, 908 F.3d 690, 695 (Fed. Cir. 2018).

Finally, Patent Owner’s arguments concerning Bharadwaj undermine its public accessibility challenge. Namely, Patent Owner’s Preliminary Response alleges that “portions of Bharadwaj relied upon by the Petition exactly match the portion of 802.11ax_D1.0 mapped by the Petition for Grounds 1A and 1B (*see* Pet. at 70-71)—that is, Qualcomm potentially prepared and filed the patent Bharadwaj patent application in the wake of the December 1, 2016 circulation of the 802.11ax_D1.0 draft within the IEEE Working Group.” POPR, 16-17; *see also* Request, 15. However,

Patent Owner's arguments beg the question how the Bharadwaj reference could include portions that "exactly match [] portions of 802.11ax_D1.0" absent public access to and availability of D1.0 or related standards documents.

V. Patent Owner's Allegations Regarding Bharadwaj's Teachings Do Not Offer a Basis for Director Review

Patent Owner's arguments concerning Bharadwaj as an alleged basis for Director Review are without merit. Patent Owner argues that "the Board erred in finding that Bharadwaj teaches feature [1.5] and [1.7]," alleging that "Bharadwaj does not disclose or teach a PPDU packet that is flagged for full MU-MIMO where it is for only a 'single user.'" Request, 13. Notably, however, Patent Owner fails to identify any actual error, abuse of discretion, or important issue of law or policy. Rather, Patent Owner expresses disagreement with the Board's initial findings—precisely the type of disagreement meant for further briefing and development during an IPR trial.

VI. Conclusion

Patent Owner's Request for Director Review of the Referral Decision and the Institution Decision should be denied. The Director should permit the instituted IPR in this proceeding to proceed.

Respectfully submitted,

Dated 11/25/2025

/Nicholas W. Stephens/

W. Karl Renner, Reg. No. 41,265
Jeremy J. Monaldo, Reg. No. 58,680
Nicholas Stephens, Reg. No. 74,320
Rishi Gupta, Reg. No. 64,768
Fish & Richardson P.C.
60 South Sixth Street, Suite 3200
Minneapolis, MN 55402
T: 202-783-5070
F: 877-769-7945

Attorneys for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4) and 42.205(b), the undersigned certifies that on November 25, 2025, a complete and entire copy of this Authorized Response to Director Review Request was provided by email to the Patent Owner by serving the correspondence email address of record as follows:

Reza Mirzaie
Neil A. Rubin
Philip X. Wang
Linjun Xu
RUSS, AUGUST & KABAT
12424 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90025

Email: rak_wilus@raklaw.com
rmirzaie@raklaw.com
nrubin@raklaw.com
pwang@raklaw.com
lxu@raklaw.com

 /Diana Bradley/
Diana Bradley
Fish & Richardson P.C.
60 South Sixth Street, Suite 3200
Minneapolis, MN 55402
bradley@fr.com