

2023 PTAB Case Highlights

BY JENNIFER MEYER CHAGNON

Precedential Decisions

***Penumbra, Inc. v. RapidPulse, Inc.*, IPR2021-01466, Paper 34 (March 10, 2023) (designated: November 15, 2023) (regarding prior art status under AIA § 102)**

The Director designated as precedential a final written decision holding that, for AIA patents, an analysis under *Dynamic Drinkware v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) is not required for determining whether a reference patent is prior art. This holding brings AIA proceedings in line with Office policy as set forth in the MPEP. The decision explains that "AIA § 102 draws a distinction between *actually being entitled* to a right of priority to, or the benefit of, a prior-filed application according to the definition of 'effective filing date' of a claimed invention in AIA 35 U.S.C. § 100(i)(1)(B), and merely being *entitled to claim* a right of priority to, or the benefit of, a prior-filed application for prior-art purposes according to the use of 'effectively filed' in AIA 35 U.S.C. § 102(d)." The decision then points to "MPEP § 2154.01(b) [which] explicitly states, as a result of the distinction discussed above, in application of the AIA version of § 102, 'the question of whether a patent or published application is *actually entitled to priority* or benefit with respect to any of its *claims* is *not at issue* in determining the date the patent or published application was *effectively filed* for prior art purposes.'" Therefore, for prior art determinations under AIA § 102, "a reference patent document need only meet the 'ministerial requirements' of §§ 119 and 120, and the provisional or other earlier application(s) to which the reference patent document claims a right of priority must 'describe[] the subject matter' relied upon in the reference patent document as prior art. 35 U.S.C. § 102(d)(2)."

***CommScope Techs. LLC v. Dali Wireless, Inc.*, IPR2022-01242, Paper 23 (February 27, 2023) (*sua sponte* Director Review decision regarding *Fintiv*)**

The Director vacated and remanded the Board panel's Institution Decision. The underlying panel decision instituted review, declining to exercise discretion under *Fintiv*, upon finding that the compelling merits standard was met. The panel did not analyze *Fintiv* factors 1-5, and for the compelling merits determination merely pointed to the analysis under the institution standard. The Director vacated this decision and remanded for the panel to apply the following principles: (1) the Board should "only consider compelling merits if they first determined that *Fintiv* factors 1-5 favored a discretionary denial"; (2) "Merely pointing to its analysis under the lower institution standard is insufficient to demonstrate that the Petition presents a compelling unpatentability challenge"; and (3) the "Board must provide reasoning sufficient to allow the parties to challenge [a compel-

ling merits] finding and sufficient to allow for review of the Board's decision."

***Nested Bean, Inc. v. Big Beings Pty Ltd.*, IPR2020-01234, Paper 42 (February 24, 2023) (Director Review decision regarding multiple dependent claims)**

In response to Patent Owner's request for Director Review, the Director granted rehearing and modified the Board panel's Final Written Decision. The underlying panel decision addressed the patentability of multiple-dependent claims, i.e., dependent claims which refer back in the alternative to more than one preceding claim. In this case, claims 3-16 each depend from claim 1 or claim 2. The panel determined Petitioner *had not* shown claim 1 is unpatentable, but determined Petitioner *had* shown that claim 2 is unpatentable. As to the multiple dependent claims, the panel found that *both* versions of claims 3-16 were shown to be unpatentable (i.e., as depending from claim 1 and as depending from claim 2), based on the finding that claim 2 was unpatentable. The Patent Owner requested rehearing, arguing that the Board erred in finding claims 3-16 as depending from claim 1 were shown to be unpatentable. The Director granted rehearing and held that "the plain language of 35 U.S.C. § 112, fifth paragraph, requires that the patentability of a multiple dependent claim is considered separately as to each of its alternatively referenced claims." The Director then modified the panel's Final Written Decision consistent with this determination.

***Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 (August 24, 2022) (designated: February 10, 2023, on *sua sponte* Director Review (Paper 12)) (regarding weight accorded to conclusory expert testimony)**

In response to Petitioner's rehearing request to the Precedential Opinion Panel, the Director affirmed the Board panel's decision denying institution and designated it as precedential. In considering Petitioner's evidence, the panel (in Paper 9) noted that the proffered declaration testimony "merely repeats, *verbatim*, the conclusory assertion for which it is offered to support." The panel continued, noting that the declarant "does not cite to any additional supporting evidence or provide any technical reasoning to support his statement. Thus, the cited declaration testimony is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight." In affirming the panel decision (in Paper 12), the Director observed that the "declaration does not provide any technical detail, explanation, or statements supporting why the expert determines that the feature in question was required or would have been obvious based on the

prior art disclosure. . . . Instead, the declaration copies, word-for-word, Petitioner’s conclusory assertions.”

***Apple Inc. v. Zipit Wireless, Inc.*, IPR2021-01124 et al., Paper 14 (December 21, 2022) (designated: January 4, 2023) (sua sponte Director Review decision regarding adverse judgment)**

The Director vacated and remanded the Board panel’s decision granting adverse judgment. In the underlying panel decision, the Board entered an adverse judgement, based on (1) the Patent Owner not filing a Patent Owner Response, and (2) the Patent Owner’s counsel’s statement during a combined Oral Hearing that, “[i]f the Board determines that [Petitioner] have met their burden of proof with respect to those claims [Patent Owner] hasn’t filed any opposition.” The Director vacated the decision, holding that Patent Owner’s statements were not “an unequivocal abandonment of the contest” and were “contingent on the Board determining that Petitioner met its burden of proving by a preponderance of the evidence that the challenged claims are unpatentable.” The Director thus remanded for further proceedings.

Non-Precedential Director Review Decisions¹

Discretion under § 325(d)

***Keysight Technologies, Inc. v. Centripetal Networks, Inc.*, IPR2022-01421, Paper 14 (August 24, 2023) (sua sponte Director Review decision regarding § 325(d) discretion)**

In response to Petitioner’s rehearing request to the Precedential Opinion Panel, the Director vacated and remanded the Board panel’s decision denying institution. In the underlying panel decision, the Board exercised its discretion under 35 U.S.C. § 325(d) and denied institution. During prosecution of the challenged patent, a Final Written Decision for a related patent, relying on the same asserted references, was cited on an Information Disclosure Statement. Petitioner argued that this IDS disclosure did not meet *Advanced Bionics* step 1, which asks whether the same or substantially the same art or arguments were previously presented to the Office. The Petitioner thus did not present specific allegations of error under *Advanced Bionics* step 2. The Board panel disagreed. It determined that the IDS reference was sufficient to meet step 1, and because Petitioner had not alleged error under step 2, it denied institution. The Director vacated the decision, first confirming that, “[u]nder current policy, . . . the first part of the *Advanced Bionics* framework is met” when art was previously presented to the Office on an Information Disclosure Statement. She indicated “the first part of the *Advanced Bionics* framework does not require that an Examiner provide a discussion, analysis, or other findings on the applicability of the relevant

material contained in an IDS.” As to the second part of the *Advanced Bionics* framework, the Director determined that overlap between claim limitations in the two patents, and the reasons for allowance, “suggests the Office erred by overlooking the significance of the [prior] FWD as it pertains to the patentability of the [challenged] claims.” She thus vacated the decision and remanded to the panel with instructions to evaluate the merits of the Petition.

***Wolfspeed Inc., v. The Trustees of Purdue University*, IPR2022-00761, Paper 13 (March 30, 2023) (sua sponte Director Review decision regarding § 325(d) discretion)**

In response to Petitioner’s rehearing request to the Precedential Opinion Panel, the Director vacated and remanded the Board panel’s decision denying institution. In the underlying panel decision, the Board exercised discretion under § 325(d), finding that the Petition presented substantially the same art as that presented in an earlier IPR proceeding, and that Petitioner did not identify any material error in the prior decision. The Director vacated the decision, determining that the panel “erred in finding that the prior art asserted in this proceeding is substantially the same prior art asserted in [the] previous proceeding.” Rather, she determined that “a material difference exists” between the art asserted in the two proceedings. In particular, the Director noted that the earlier cited art “includes certain disclosures” not found in the later cited art “that were found to be highly relevant with assessing the obviousness grounds presented” in the earlier Petition. And that disclosure, the Director noted, “was the basis for the Board’s denial” in the earlier proceeding “because it undercut the Petition’s basis for combining” the references. The art cited in the later proceeding did not contain the same undercutting disclosure, and the panel “did not address this material difference in the references” in its determination that they were substantially the same under § 325(d). The Director thus remanded for further proceedings.

***Google LLC v. Valtrus Innovations Ltd.*, IPR2022-01197, Paper 12 (March 29, 2023) (sua sponte Director Review decision regarding § 325(d) discretion)**

In response to Petitioner’s rehearing request to the Precedential Opinion Panel, the Director vacated the relevant portion of the institution decision, and remanded for further proceedings. In the underlying panel decision, the Board denied institution, in-part exercising its discretion under § 325(d). In particular, the panel found that (1) the Office considered the substance of Petitioner’s asserted U.S. patent reference because the European counterpart had been cited in an Information Disclosure Statement, and (2) Petitioner had not shown material error by the Office in its consideration of the European counterpart. Prior to institution, Petitioner requested a reply on the § 325(d) issue, but

the panel determined Petitioner had not demonstrated good cause. The Director held that the “Board erred by denying Petitioner’s request to file a reply,” and “determine[d] that it was not reasonably foreseeable for Petitioner to anticipate a § 325(d) argument with respect to the asserted [US patent] reference, based on the inclusion of [the EP counterpart] on an IDS considered during prosecution.” She noted, in particular, that “it was not reasonably foreseeable for Petitioner to have anticipated this connection [between the references] since the references themselves do not point to each other.” She vacated the relevant portion of the institution decision, authorized a reply and sur-reply on the § 325(d) issue, and remanded for further proceedings.

***Boehringer Ingelheim Animal Health USA Inc. v. Kansas State University Research Foundation*, PGR2022-00021, Paper 11 (February 24, 2023) (sua sponte Director Review decision regarding § 325(d) discretion)**

The Director vacated and remanded the Board panel’s decision denying institution. In the underlying panel decision, the Board exercised its discretion under § 325(d), “finding that the Petitioner’s enablement challenge constituted, under *Advanced Bionics*, the same or substantially the same arguments previously presented to the Office on written description.” The Director “conclud[ed] that the mere finding of adequate written description by an examiner can never on its own and without more constitute ‘the same or substantially the same arguments’ under *Advanced Bionics* as a challenge for lack of enablement.” An actual analysis of the arguments is required. The Director thus vacated the Board panel’s decision, and remanded with instructions to “issue a decision providing its rationale (affirmative or negative) regarding whether § 325(d) applies to Ground 2 (enablement) based upon the written description arguments presented during original prosecution.”

Discretion under § 314(a) / *Fintiv*

***ResMed Corp. v. Cleveland Medical Devices Inc.*, IPR2023-00565, Paper 15 (November 16, 2023) (Director Review decision regarding *Fintiv*)**

In response to Petitioner’s request for Director Review, the Director vacated and remanded the Board panel’s decision denying institution. In the underlying panel decision, the Board exercised its discretion under 35 U.S.C. § 314(a) and *Fintiv* and denied institution. In considering *Fintiv* Factor 2 (proximity of the court’s trial date), the Board panel relied, in part, on a finding regarding time-to-trial statistics in a vacated decision (*Vector Flow, Inc. v. HID Global Corp.*, IPR2023-00353, Paper 8). The Director found that “the Board should not have relied on that [vacated] decision as support for its analysis.” She also authorized additional briefing on the § 314(a) issues on remand.

***Vector Flow, Inc. v. HID Global Corporation*, IPR2023-00353, Paper 11 (August 10, 2023) (Director Review decision regarding *Fintiv*)**

In response to Petitioner’s Request for Director Review, the Director vacated and remanded the Board panel’s decision denying institution, while also granting additional pre-institution briefing. In the underlying panel decision, the Board exercised its discretion under 35 U.S.C. § 314(a) and *Fintiv* and denied institution, based on the advanced stage of the parallel litigation. Before institution, Petitioner requested, and was denied, the opportunity to file a pre-institution Reply. The panel determined Petitioner should have addressed the *Fintiv* issue in the Petition but had done so in only cursory fashion. The Director “determine[d] that there was good cause to authorize Petitioner’s request to file a reply.” She pointed to “the change in status of the parallel district court proceeding that occurred between the Petition and the Preliminary Response” and “the fact that Patent Owner submitted new evidence on time-to-trial statistics for both the district court and the presiding judge” as reasons supporting a finding of good cause. She also noted that Patent Owner raised assignor estoppel arguments in the District Court, after the Petition was filed, which could eliminate the overlap. The Director thus vacated the decision denying institution, authorized additional briefing by both parties, and remanded for further proceedings.

***Volvo Penta of the Americas, LLC v. Brunswick Corporation*, IPR2022-01366 et al., Paper 15 (May 2, 2023) (sua sponte Director Review decision regarding *Fintiv* and 35 U.S.C. § 311(b))**

In response to Petitioner’s rehearing request to the Precedential Opinion Panel, the Director vacated and remanded the Board panel’s decision denying institution. In the underlying panel decision, the Board “determine[d] that [it] lack[ed] authority [under § 311] to institute *inter partes* review of challenged claim 1, as it already has been determined to be invalid under 35 U.S.C. § 101 in a federal district court action,” and further exercised discretion under § 314(a) as to all challenged claims “so as to avoid potential conflict, inefficiency, and gamesmanship.” First, the Director vacated the Board’s analysis of § 311(b), finding that because claim 1 is “subject to further judicial review and ... not finally adjudicated,” it “remains in force” and, therefore, the Board does not lack statutory authority under § 311(b) to institute an *inter partes* review as to claim 1. Second, the Director vacated the Board’s analysis under § 314(a). She found that because claim 1 “remain[s] subject to further judicial review during the appeal of the district court’s invalidity determination,” a *Fintiv* analysis should be conducted on remand, consistent with instructions in the June 2022 Guidance Memo and the precedential deci-

sions in *CommScope Techs. LLC v. Dali Wireless, Inc.*, IPR2022-01242, Paper 23 (P.T.A.B. Feb. 27, 2023) and *OpenSky Indus., LLC v. VLSI Tech. LLC*, IPR2021-01064, Paper 102, 49–50 (P.T.A.B. Oct. 4, 2022).

***AviaGames, Inc. v. Skillz Platform, Inc.*, IPR2022-00530, Paper 14 (March 2, 2023) (sua sponte Director Review decision regarding *Fintiv*)**

The Director vacated and remanded the Board panel's decision denying institution. In the underlying panel decision, the Board exercised its discretion under § 314(a) and *Fintiv* because a district court had determined the challenged claims were invalid under § 101. The Director vacated and remanded to the Board panel for a compelling-merits determination consistent with the June 2022 *Fintiv* Memo. She instructed that if the Board panel “finds that the record prior to institution presents compelling merits, the Board will institute *inter partes* review of the challenged claims.” The decision also instructs that, if the Board panel institutes, and the district court's § 101 determination of invalidity is affirmed in a final, non-appealable judgment by the Federal Circuit, the proceeding shall be terminated.

Sanctions

***Spectrum Solutions LLC v. Longhorn Vaccines & Diagnostics, LLC*, IPR2021-00847 et al, Paper 126 (June 12, 2023); Paper 133 (October 27, 2023) (Director initiated sua sponte review regarding sanctions/adverse judgement. No decision has yet issued)**

In the underlying decisions (FWD (Papers 112 (sealed), 114 (public); Sanctions Order (Papers 111 (sealed), 113 (public)), the Board panel (1) determined certain challenged claims were unpatentable based on the merits of the asserted grounds, and (2) entered adverse judgement against Patent Owner as to all challenged claims and all proposed substitute claims in its Motion to Amend. As to the adverse judgement, the Board panel found that “Patent Owner ... failed to meet its duty of candor and fair dealing in its actions before the Board... Patent Owner conducted, and relied on, biological testing in an attempt to distinguish the asserted . . . reference . . . , but selectively and improperly withheld material results that were inconsistent with its arguments.” Shortly after the Board panel issued its decision, the Director initiated *sua sponte* Director Review (Paper 126). More recently (Paper 133), the Director limited her review to the Board's Sanctions order. She also authorized briefing, both from the parties and *amici curiae*, on three specific issues and questions related to the appropriate response to a finding that a party has withheld relevant factual evidence: (1) which USPTO regulations are implicated; (2) is adverse judgement an appropriate sanction; and (3) what other sanctions are appropriate?

***OpenSky Industries, LLC v. VLSI Technology LLC*, IPR2021-01064**

Paper 138 (June 27, 2023) (Director Review decision regarding sanctions): In response to the parties' briefing to address whether an award of attorney fees was an appropriate sanction against VLSI, the Director did not award attorney fees. The Director found that VLSI's distortion of the record and misleading statements did not rise to the level of sanctionable conduct under Rule 42.11, nor did its careless presentation of case law “in a manner susceptible to multiple interpretations.” She, however, “strongly admonish[ed] VLSI and warn[ed] it to use substantially greater caution in its arguments and citations to case law before [her] or the Board.”

Paper 127 (February 3, 2023) (Director Review decision regarding sanctions): The Director awarded to VLSI, as a sanction against OpenSky, “reasonable fees incurred in this proceeding in raising issues of misconduct by OpenSky before the Board, and the Director review process in its entirety,” and authorized VLSI to file a Motion for Fees. In the same Order, the Director restored OpenSky as a petitioner to the proceeding, and authorized OpenSky to file an Opposition to VLSI's Motion.

***Patent Quality Assurance, LLC v. VLSI Technology LLC*, IPR2021-01229**

Paper 131 (August 3, 2023) (Director Review decision regarding sanctions): The Director determined that PQA's failure to comply with mandated discovery ordered by the Director, and its failure to sufficiently answer interrogatories, “rises to the level of sanctionable conduct.” She also indicated that she is “contemplating imposing an attorney-fee order or an admonishment as a sanction,” and ordered the parties to brief the issue.

Paper 106 (January 18, 2023), and Paper 108 (January 27, 2023) (Director Review decisions regarding sanctions): On rehearing of prior sanctions decision, the Director authorized additional briefing to PQA, “out of an abundance of caution,” to show cause why sanctions should not be imposed (Paper 106). She stayed the underlying proceeding, instructing the Board not to issue a Final Written Decision until the resolution of the pending rehearing request. In a further order (Paper 108), the Director restored PQA as a party to the proceeding. The order clarifies that “[w]hile it may choose not to show cause, . . . PQA cannot avoid possible sanctions through continued non-participation.” She also lifted the stay of the underlying proceeding.

Applicant Admitted Prior Art

***SolarEdge Technologies Ltd. v. SMA Solar Technology AG*, IPR2020-00021, Paper 34 (June 8, 2023) (*sua sponte* Director Review decision regarding Applicant Admitted Prior Art)**

In response to Patent Owner's rehearing request to the Precedential Opinion Panel, the Director modified-in-part the Board panel's Rehearing Decision of the Final Written Decision. First, the Director confirmed that the underlying panel decision's finding that Petitioner's obviousness ground based on Applicant Admitted Prior Art (AAPA) in combination with other prior art patents was not improper (Paper 31) and was consistent with the Office's 2022 Updated AAPA Guidance Memo. Second, the Director determined that Patent Owner had not forfeited an argument related to an issue that the Board panel had raised *sua sponte* at the oral hearing, and made related determinations in the original Final Written Decision, namely whether the alleged AAPA was "known." But, considering the evidence of record, including the challenged patent's reference to the AAPA as "prior art," the Director determined there was insufficient evidence to support Patent Owner's contention that the AAPA was not "known" in the art. Patent Owner's expert's "speculation about the AAPA [was] insufficient to contradict other evidence in the record."

Written Description

***Neurocrine Biosciences, Inc. v. Spruce Biosciences, Inc.*, PGR2021-00088, Paper 16 (August 4, 2023) (& PGR2022-00025) (*sua sponte* Director Review decision regarding written description)**

In response to Petitioner's rehearing request to the Precedential Opinion Panel, the Director vacated and remanded the Board panel's decision denying institution. In the underlying decision, the Board considered Petitioner's anticipation ground, which was based in part on inherency, and a written description challenge. Upon review of the inherent anticipation ground, the Director found that a prior art disclosure of a method of treatment administering a single species anticipates the broader genus claim of treating the condition by administering any member of the genus, so long as the remaining limitations are disclosed expressly or inherently. She further found that the Board panel erred in failing to consider a non-prior art study as evidence of the inherent properties of the primary reference's disclosure - here, that following disclosed method of treatment with the disclosed species would necessarily result in the claimed reduction of certain hormone levels. As to the written description ground, the Director found that "the [challenged] patent claims recite methods of treating a condition by administering a broad genus of

compounds. Description of a single compound in the genus or knowledge generally of the genus' members, without more, is insufficient to demonstrate possession of such broad method claims." Rather, the Director explained, "[t]he specification must provide some way to distinguish effective from ineffective compounds among those encompassed by the broad genus of compounds so claimed."

Real Parties in Interest

***Unified Patents, LLC v. MemoryWeb, LLC* IPR2021-01413, Paper 74 (confidential) (May 16, 2023), Paper 76 (public) (May 22, 2023) (Director Review decision regarding real parties in interest (RPI))**

In response to Petitioner's request for Director Review, the Director vacated the Board panel's RPI Order (Paper 56 (confidential)) and related discussion in the Final Written Decision (Paper 58 (confidential); Paper 67 (public)). In the underlying panel decision, the Board issued an Order identifying Apple and Samsung as RPIs to the proceeding, and holding that "[d]etermining whether Apple or Samsung are RPIs in this case is a necessary precursor to determining whether they would be estopped in [] subsequent proceeding[s]." Discussing the precedential *SharkNinja* decision, and noting that no time bar under 35 U.S.C. § 315(b) or any estoppel under 35 U.S.C. § 315(e) might apply to this proceeding, the Director disagreed with the panel that an RPI determination was necessary. Instead, she found that, although "[t]he Board can and should make a determination of the real parties in interest or privity in any proceeding in which that determination may impact the underlying proceeding," "[t]he Board should not have determined whether Apple and Samsung are RPIs in this proceeding given that determination was not necessary to resolve the proceeding."

***Samsung Electronics Co., Ltd. v. Netlist, Inc.*, IPR2022-00615, Paper 40 (February 3, 2023) (*sua sponte* Director Review decision regarding additional discovery and RPI issues)**

The Director previously initiated Director Review (Paper 38) in response to the Patent Owner's rehearing request to the Precedential Opinion Panel, and she stayed the proceeding. In this decision (Paper 40), she granted-in-part the Patent Owner's motion for additional discovery related to real party-in-interest issues, and in particular, the issue of whether Google is an RPI or privy of Petitioner. She also lifted the stay for the limited purpose of discovery and remanded it to the Board panel to determine whether the Petition is time-barred under 35 U.S.C. § 315(b), based on Google's possible status as an RPI/privy.

Orders delegating Director Review to a Delegated Rehearing Panel

SynAffix B.V. v. Hangzhou DAC Biotech Co., Ltd., IPR2022-01531, Paper 19 (November 16, 2023)

In the underlying panel decision, the Board panel denied institution, finding Petitioner had not shown a reasonable likelihood of success on its asserted grounds. The decision turned, at least in part, on a claim construction issue related to prosecution history disclaimer, raised *sua sponte* by the panel. Petitioner requested Director Review on the following issues: (1) Important issue of law and policy – in light of USPTO initiatives to improve quality of pharmaceutical patents, “the Decision should be reviewed and vacated based on the misapprehension and fundamental errors contained in its assessment of the claimed chemical formulas, patent examples and prosecution history”; and (2) Abuse of Discretion – “[w]hether the Board abused its discretion when identifying an alleged prosecution history disclaimer that is not only unsupported but expressly contradicted by the record evidence.” The Delegated Rehearing Panel authorized Patent Owner to file a responsive brief (Paper 21). The Delegated Rehearing Panel decision is pending.

DK Crown Holdings Inc. v. Diogenes Limited, IPR2023-00268, Paper 11 (November 7, 2023)

In the underlying panel decision, a split Board panel denied institution, finding Petitioner had not shown a reasonable likelihood of success on its asserted grounds. The decision turned, at least in part, on a claim construction issue raised *sua sponte* by the panel. The dissenting judge disagreed with the majority’s claim construction. Petitioner requested Director Review on the following Abuse of Discretion issues: (1) “[w]hether the Majority abused its discretion when it improperly imported claim limitations to overcome the prior art”; (2) “[w]hether the Majority abused its discretion when, to avoid grappling with the import of a dependent claim, it construed the claims as being limited to ‘live’ wagering games, when doing so would render dependent claim 3 (which was also challenged) broader than its parent claim or, in the alternative, would read out as superfluous the express recitation of ‘live’ in dependent claim 3”; and (3) “[w]hether the Majority abused its discretion when it found that the prior art required ‘waiting’ or ‘pausing’ for a user’s input, when the prior art discloses no such ‘waiting’ or ‘pausing’ and expressly disclosed that the ‘typical’ operation would not wait or pause at all.” The Delegated Rehearing Panel decision is pending.

1. Only the Director Review decisions that include substantive discussion are listed here.