

IPR Workshop: IPR Nuts and Bolts

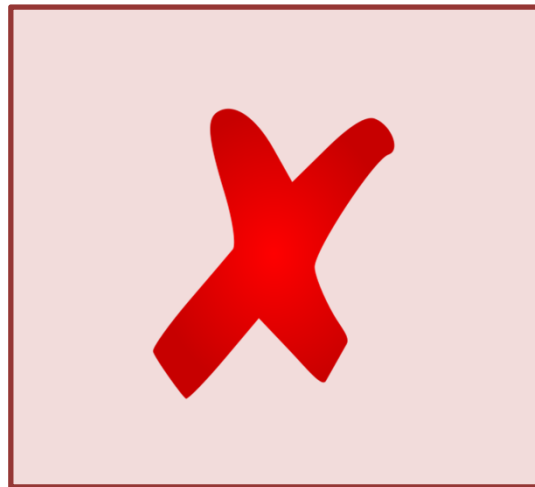
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May 12, 2016

haynesboone

OVERVIEW

- Best Practices and Pitfalls to Avoid



QUALIFY PRIOR ART REFERENCES



Best Practices

- US patents
- US published applications
- Foreign patents & publications
 - May need certified copy
- Magazines and books with evidence of publication



More Difficult

- IEEE documents
- Draft standards
- Conference handouts
- “Limited” Publications
- Internet articles
- Provisional applications

ESTABLISHING DATE OF PUBLICATION



- The Board's evidentiary rules provide issues for:
 - Authenticity, and
 - Hearsay
- Burden is on Petitioner to prove date of publication
- Be careful when relying on non-patent literature, such as:
 1. IEEE documents
 2. Draft standards
 3. Conference handouts
 4. Books/articles with limited publication
 5. Internet articles
- Also be careful when relying on:
 6. Provisional applications

1. IEEE DOCUMENT - EXCLUDED



- The Board has excluded an IEEE article as not-authenticated
- **NOTE:** IEEE documents often include the date of a conference, but that does not mean that is the date the document was published, if published at all

In its Petition, TRW offered Exhibit 1105 as an article published October 5–8, 1999, in *Intelligent Transportation Systems*. Pet. 2 n.4. Magna timely objected for, among other things, lack of authentication. TRW did not serve any supplemental evidence that Exhibit 1105 is what TRW claims it is. And, in opposing the Motion to Exclude, TRW has not directed us to evidence probative of Exhibit 1105 being an article published October 5–8, 1999, in *Intelligent Transportation Systems* or persuaded us that Exhibit 1105 is self-authenticating for that which TRW generally claims it to be: “an IEEE publication from an IEEE periodical.” Opp. 4.

IPR2014-01348, paper 25, p. 12

2. DRAFT STANDARDS – INSTITUTION DENIED



- “Public accessibility is a key question in determining whether a document is a printed publication and is determined on a case-by-case basis. *Suffolk Techs., LLC v. AOL Inc.* 752 F.3d 1358, 1364 (Fed. Cir. 2014).
- The Board has rejected some petitions that cite draft standards
- For example, this IPR was rejected for using IETF drafts:

We agree with Patent Owner (Prelim. Resp. 10–11) that Petitioner’s lack of evidence supporting its contention that Rosenberg was accessible publicly to those interested in the art is fatal to its Petition. Petitioner fails to present sufficient argument, declaration testimony, or evidence that indicates that Rosenberg, an Internet-Draft, which was “valid” for only a limited time and was deemed inappropriate for citation (Ex. 1008, 1), was accessible to the interested public. *See* Pet. 10–11. Indeed, the Petition is silent on the manner in which Rosenberg was purportedly “published as an Internet-Draft in June 1999.” *Id.* (emphasis added).

IPR 2014-00871, Decision (Dec. 19, 2014)

DRAFT STANDARDS – INSTITUTION DENIED

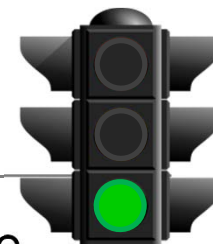
WRONG
WAY
GO BACK

- This IPR was also rejected for using a Draft Standard:

See Pet. 12-13. Petitioner asserts that Draft Standard “was completed on May 20, 1996, and was available to *anyone who wanted to view it* on May 23, 1996.” Pet. 12 (citing Ex. 1004 ¶¶ 4, 5, 10, and 12) (emphasis added).

Notably *absent*, however, from the Petition and Mr. O’Hara’s declaration are any *assertions or evidence in support of the availability of Draft Standard to individuals other than members of the 802.11 Working Group* and those who already knew about Draft Standard or the July 8–12 meeting of the 802.11 Working Group. We do not find sufficient argument or evidence to indicate that the July 8–12 meeting of the 802.11 Working Group (or any other 802.11 Working Group meeting) was advertised or otherwise announced to the public. Nor do we find sufficient argument or evidence that any individual who was not already a member of, or otherwise aware of, the 802.11 Working Group would have known about Draft Standard such that he or she would have known to request a copy or ask to be added to an email list for access to the document.

DRAFT STANDARDS – INSTITUTION GRANTED



- But petitions relying on draft standards have been recently granted, too
- For example, the Board instituted IPR relying on this draft standard:

- The Board's Decision on Institution did not discuss this reference's draft status

- Unclear whether this statement (absent in the previous case) was significant

Network Working Group
INTERNET DRAFT
<draft-ietf-mpis-framework-02.txt>

R. Callon
Ascend Communications
P. Doolan
Ennovate Networks
N. Feldman
IBM Corp.
A. Fredette
Bay Networks
G. Swallow
Cisco Systems
A. Viswanathan
IBM Corp.
November 21, 1997
Expires May 21, 1998

A Framework for Multiprotocol Label Switching

Status of this Memo

This document is an Internet-Draft. Internet-Drafts are working documents of the Internet Engineering Task Force (IETF), its areas, and its working groups. Note that other groups may also distribute working documents as Internet-Drafts.

Internet-Drafts are draft documents valid for a maximum of six months and may be updated, replaced, or obsoleted by other documents at any time. It is inappropriate to use Internet-Drafts as reference material or to cite them other than as "work in progress."

To learn the current status of any Internet-Draft, please check the 'id-abstracts.txt' listing contained in the Internet-Drafts Shadow Directories on ds.internic.net (US East Coast), nic.nordu.net (Europe), ftp.isi.edu (US West Coast), or munnari.oz.au (Pacific Rim). Distribution of this memo is unlimited.

3. CONFERENCE HANDOUTS

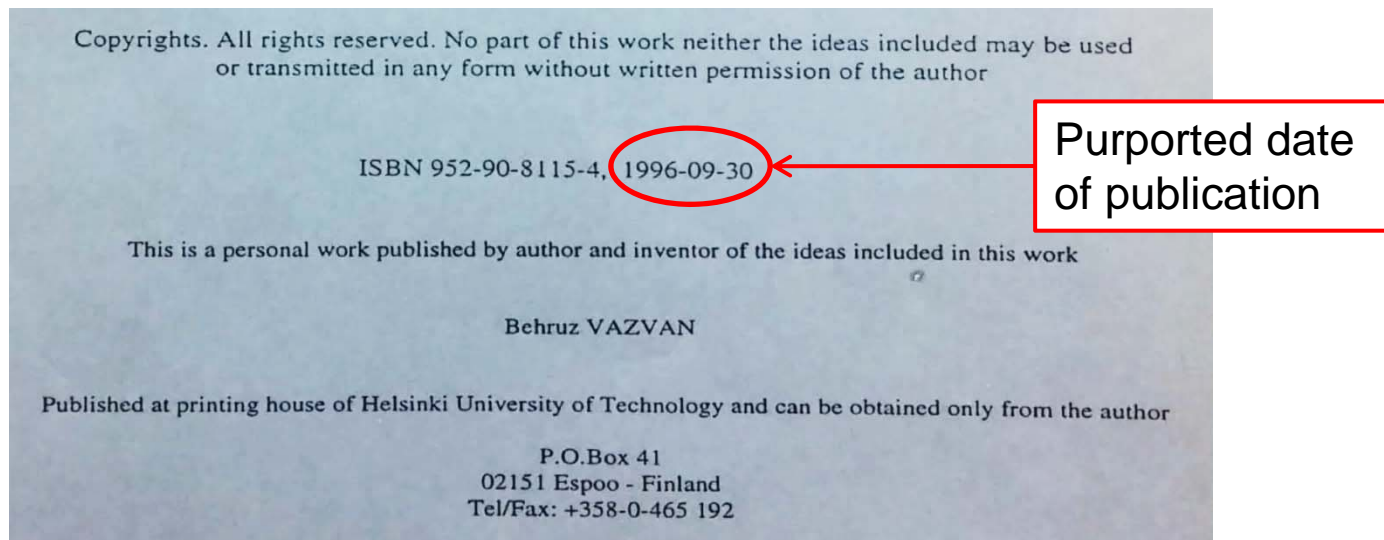


- Conference paper with accompanying declaration by the author was insufficient to authenticate because the paper itself did not bear indicia normally associated with papers from the conference. IPR2015-00060, Paper 18
- Conference paper with a declaration from a librarian supported by a library acquisition record was sufficient to authenticate. *Id.*
- Dissemination of as few as six copies of a reference has been held by the Federal Circuit to constitute a printed publication. *Massachusetts Institute of Technology v. AB Fortia*, 774 F.2d 1104, 1109 (Fed. Cir. 1985) (reference was publicly accessible when disseminated without restriction to six persons at a conference attended by those skilled in the art); see also *Cooper Cameron Corp. v. Kvaerner Oilfield Prods., Inc.*, 291 F.3d 1317, 1323-24 (Fed. Cir. 2002) (dissemination of reports to three members and six participants of a joint venture showed public accessibility)

4. LIMITED PUBLICATION



- Other kinds of non-patent literature are also subject to “publication” scrutiny
- “Vazvan” reference was a self-published book shelved in a Finnish library:



- Target patent's priority date: December 23, 1997
- Petition was denied for failing to establish a publication date for Vazvan
- Rehearing was also denied (in effect, no opportunity to cure or supplement)



5. INTERNET ARTICLES

- Articles found on the Internet need to be authenticated
- Without any additional evidence, they will likely be excluded
- We have had success using the Wayback Machine (www.archive.org)



- **NOTE:** While you can easily get a declaration from someone at the Wayback Machine, the declarants are often reluctant to agree to a deposition

6. PROVISIONAL IS NOT §102(e)



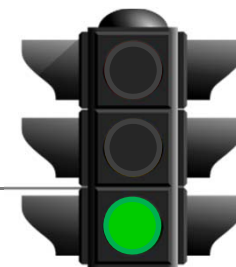
- The Board denied an IPR that presented a provisional application as prior art:

Every proposed ground of unpatentability advanced by Petitioner relies on Lo I.¹ *Id.* Petitioner contends that Lo I “is a provisional U.S. patent application that is prior art to the ’415 patent under §§ 102(e)/103(a) as of its filing date for all it discloses.” *Id.* at 2 (citing *Ex parte Yamaguchi*, 88 USPQ2d 1606, 1612–1614 (BPAI 2008)).²

* * *

In sum, because Lo I is neither a patent nor an application for patent published under 35 U.S.C. § 122(b), we conclude that Lo I does not qualify under 35 U.S.C. § 102(e) as prior art to the claims of the ’415 patent. Every ground of unpatentability advanced by Petitioner in the Petition under consideration herein relies on Lo I. Pet. 5-6. We are not persuaded, therefore, that Petitioner has shown a reasonable likelihood of prevailing on any of its challenges to the ’415 patent under consideration herein.

... BUT CAN BE USED WITH ISSUED PATENT



- Cite the prior-art patent claims and the provisional

We ultimately agree with National Graphics, however, that the Board's decision was supported by substantial evidence because Dynamic failed to compare *the claims* of the Raymond patent to the disclosure in the Raymond provisional application. A reference patent is only entitled to claim the benefit of the filing date of its provisional application if the disclosure of the provisional application provides support for the claims in the reference patent in compliance with § 112, ¶ 1. *In re Wertheim*, 646 F.2d 527, 537 (CCPA 1981).² As Dynamic acknowledges, it provided charts to the Board comparing the claims of the '196 patent to the disclosure of the Raymond patent and claim 1 of the '196 patent to the disclosure of the Raymond provisional application. *See, e.g.*, Appellant's Br. at 22. Nowhere, however, does Dynamic demonstrate support in the Raymond provisional application for *the claims of the Raymond patent*. That was Dynamic's burden. A provisional application's effectiveness as prior art depends on its written description support for the claims of the issued patent of which it was a provisional. Dynamic did not make that showing.

SHOWING EVERY LIMITATION



Best Practices

- Small blocks of claim text
- Direct quotations from prior art
- Detailed citations to prior art
- Annotated figures that look good in color and B&W



Pitfalls

- Long passages of claim text analyzed as a block
- Few direct quotations from the prior art
- Stand-alone citations to the expert declaration (i.e., not coupled with a citation to a prior art reference)

SHOWING EVERY LIMITATION

- Petition must identify where every limitation is found in prior art
... and arranged as in the claim
- Expert Declaration may provide further details
...but the Petition needs enough detail to stand on its own
- An (annotated) picture is worth a thousand words

EVERY SINGLE LIMITATION



- Analysis must explicitly address every limitation
... including relationships between the limitations

Example claim
targeted in IPR

*24. A method comprising:
providing a computer module, the module comprising
a central processing unit,
a connection program,
...*

- The Board denied institution over the analysis of these limitations:

In other words, Petitioner only argues specifically that Horst inherently discloses a connection program, not that Horst inherently discloses a connection program in the computer module. Therefore, on this record, Petitioner does *not* demonstrate a reasonable likelihood of prevailing in showing that Horst anticipates claims 24, 29, 31, 32, 34, and 35.

(NOT) SHOWING EVERY LIMITATION

WRONG
WAY
GO BACK

Multiple limitations analyzed as a group...

- c) a processing device coupled to the first controller, wherein the
d) processing device is configured to:
- maintain a map to allocate storage space on the remote storage devices to devices connected to the first transport medium by associating representations of the devices connected to the first transport medium with representations of storage space on the remote storage devices,
 - wherein each representation of a device connected to the first transport medium is associated with one or more representations of storage space on the remote storage devices;
 - control access from the devices connected to the first transport medium to the storage space on the remote storage devices in accordance with the map; and
 - allow access from devices connected to the first transport medium to the remote storage devices using native low level block protocol.

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SHOWING EVERY LIMITATION

- Break the claim text into small pieces for analysis:

Ex. 1003, Fig. 1 (annotated):

[1.1] a backup controller that provides protection switching in the event of a link failure associated with an intermediate routing node that delivers explicitly routed data packets from a source to a destination in a computer network via a plurality of links

The broadest reasonable interpretation of the term "backup controller" is "hardware or software that provides protection switching in the event of a link failure of a routing node that delivers data packets to a computer network via a plurality of links." Ex. 1007 at ¶ 77. Swallow discloses a backup controller because it teaches that intermediate node 104, which provides such protection switching, can be implemented as hardware (e.g., a computer) or software (e.g., a computer program product). Ex. 1007 at p. 42 [1.1]; Ex. 1007 at ¶ 38-41, ¶ 19-21. As

discussed below, intermediate node 104 provides protection switching in the event of a link failure of a routing node that delivers data packets to a computer network via a plurality of links.

- that provides protection switching in the event of a link failure associated with an intermediate routing node.

Swallow discloses this limitation because it teaches that intermediate node 104 creates a bypass tunnel 128, which "may be used to transfer data for the primary tunnel 126 for example, if there is a link failure between intermediate node A 104 and intermediate node B 106." Ex. 1007 at p. 42-43 [1.1]; Ex. 1003 at ¶ 29-37. When the link from node A to node B fails, "intermediate node A 104 redirects data packets for the primary tunnel 126 (FIG. 1) through the bypass tunnel 128 (FIG. 1) to intermediate node C 108 (FIG. 1)." Ex. 1003 at ¶ 30-32; Ex. 1007 at p. 42-43 [1.1].

Thus, Swallow's intermediate node A 104 provides protection switching in the event of a link failure on link 114. Ex. 1007 at p. 42-43 [1.1]. Link 114 is associated with intermediate node A, because link 114 connects intermediate node A to intermediate node B. Ex. 1003 at Fig. 1.

Figure 1 of Swallow, reproduced below, shows network 100 including intermediate node 104, primary tunnel 126, and bypass tunnel 128.

Ex. 1007 at p. 43-44 [1.1]; Ex. 1003, Fig. 1 (annotated):

In Figure 9, Swallow further discloses "the steps performed by intermediate node A 104 to route data packets for the primary tunnel 126 along the bypass tunnel 128." Ex. 1007 at p. 44-45 [1.1]; Ex. 1003 at ¶ 63-67. In step 908, "intermediate node A 104 redirects data packets for the primary tunnel 126 (FIG. 1) through the bypass tunnel 128 (FIG. 1) to intermediate node C 108 (FIG. 1)." Ex. 1003 at ¶ 30-32.

Figure 9 showing the steps performed by intermediate router 104 is reproduced below:

Analysis includes numerous pinpoint citations to the prior art

[1.1] a backup controller that provides protection switching in the event of a link failure associated with an intermediate routing node that delivers explicitly routed data packets from a source to a destination in a computer network via a plurality of links

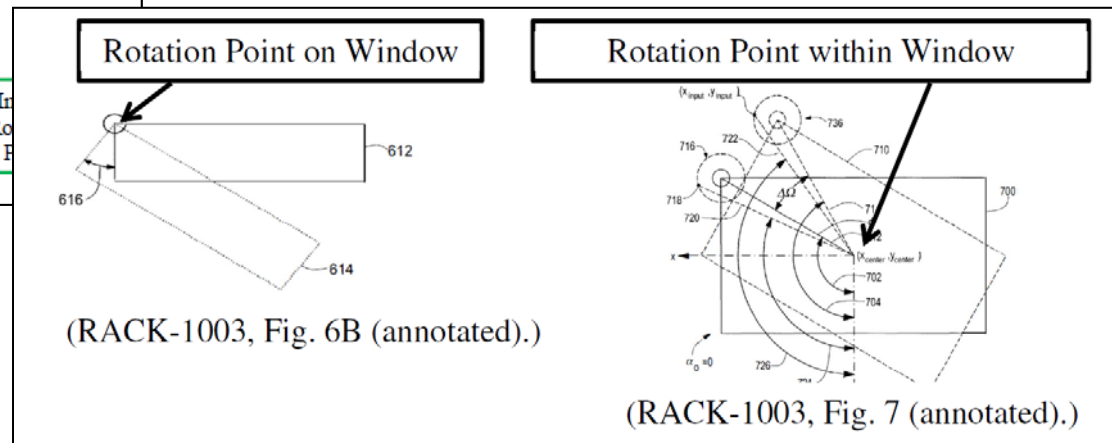
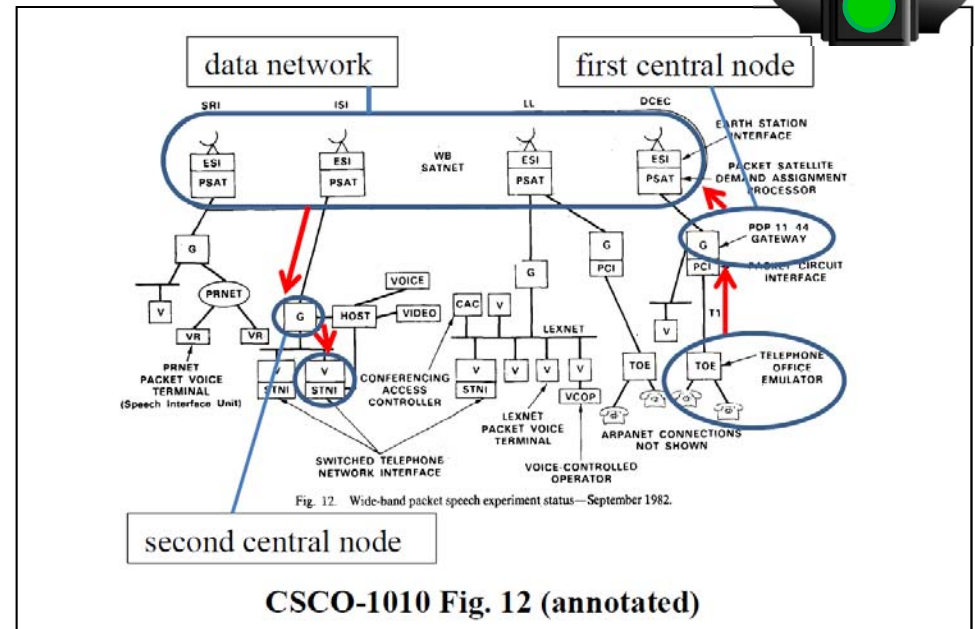
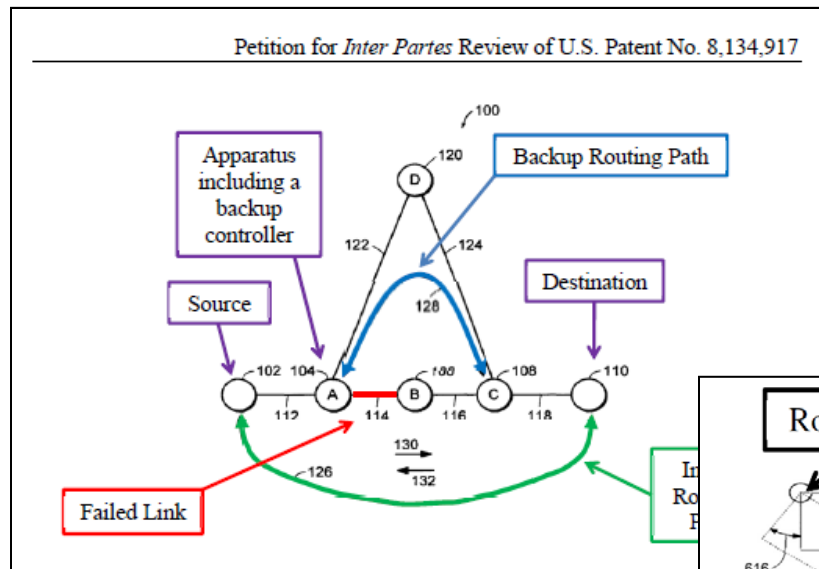
FIG. 7

FIG. 7, below, shows the steps for forwarding an explicitly routed data packet.

USING ANNOTATED FIGURES



- Annotations show limitations are arranged as in the claim
- Also useful at oral hearing



CONVINCING REASONS TO COMBINE



Best Practices

- Explicit teachings to combine
- Evidence that skilled practitioners were making similar combinations
- Market factors that would lead to making the combination



Pitfalls

- Merely parroting KSR
- Ignoring engineering challenges in the combination

PERSUASIVE REASONS TO COMBINE



- Express “teaching, suggestion, or motivation” is not formally required
 - But it’s still a good goal to reach for
- Consider
 - Detail, detail, detail
 - Address contextual & structural differences between references
 - Address market factors (better, faster, stronger...) that would have motivated the combination
 - Explain why POSITA would have recognized a deficiency or opportunity for improvement in the primary reference
 - Explain why POSITA would have been led to the secondary reference

COMBINABILITY & CONTEXT – A DENIED IPR



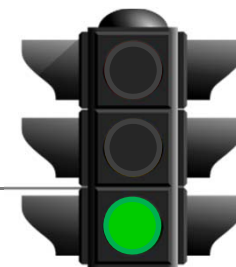
- Targeted claim requires LED output of at least **5 lm**

1. A luminaire comprising a housing with a light emission window, at least one lighting module in said housing for illuminating an object outside said housing, the lighting module comprising a set of lighting units, each of said lighting units comprising at least one LED chip and an optical system configured to illuminate portions of the object during operation, *each said LED chip supplying a luminous flux of at least 5 lm during operation.*

- Primary reference used LEDs (with a DC operation)
- Secondary reference taught LEDs having 2 modes of operation:
 - DC operation, with an output of 4 lm
 - Quasi-DC operation, with an output of up to 11.5 lm
- Board denied the IPR for failing to show why POSITA, in combining references, would have selected quasi-DC operation when combining

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EVIDENCE TO SUPPORT OBVIOUSNESS



- “Extra” references can show POSITAs contemplated proposed combination
- Example:
 1. Primary reference: Voice-over-packet system using ST protocol
 2. Secondary reference: ST-II protocol specification
 3. Tertiary reference, offered solely to support obviousness of combining #1 and #2, shows engineers were migrating from ST to ST-II:

MULTIMEDIA CONFERENCING

We have enhanced the SPARCstation implementation of our real-time Packet Video Program (PVP) from the older ST protocol to ST-II (RFC 1190), and tested it by transmitting packet video across DARTnet between ISI and BBN. PVP uses the socket API provided by BBN's kernel implementation of ST-II. Upcoming will be performance tests of the ST kernel under a mixed load of packet audio and video plus IP.

CLAIM CONSTRUCTION



Best Practices

- Focus on usage of terms in specification
- Construe all means-plus-function limitations
- Analyze claims as construed
- Where possible, propose relatively narrow constructions



Pitfalls

- Constructions that don't cite to the specification
- Constructions that don't cite to the expert declarant
- Unconstrued means-plus-function limitations
- Claim analysis that requires a certain claim construction

CLAIM CONSTRUCTIONS

- “Broadest reasonable interpretation” applies
- Analyze the claims for resiliency, knowing that the Board frequently makes its own independent findings
- The Board’s (informal) evidentiary preferences:
 1. Specification
 2. Dictionaries (technical or general purpose)
 3. District court *Markman* orders
 4. Expert opinions
- A resilient claim construction will lead to institution of an IPR, even if the Board does not agree with the construction
 - Usually this means proposing a narrow interpretation

REDUNDANT GROUNDS



Best Practices

- Choose your best art and focus on presenting it well
- Tie alternative rejections to different claim constructions



Pitfalls

- Kitchen sink
- "...in view of X, Y, or Z"
- § 102 and "backup" § 103 rejections

REDUNDANT GROUNDS OF REJECTION

- Treatment of redundant grounds of rejection varies significantly by panel
 - Some judges will grant multiple proposed rejections
 - Others dismiss any redundant ground
- Redundant grounds also make it difficult to fully analyze the claims within page limits
 - Detailed analysis of one ground is better than superficial treatment of many grounds
- For redundant grounds, the Board expects a detailed explanation of why one rejection is better (not just different) than the other
 - Even then, the Board may still deny alternative grounds

“KITCHEN SINK” IS THE WRONG APPROACH

WRONG
WAY
GO BACK

- 127 proposed grounds of invalidity, all of which were denied
- Board: **“Petition in this case presents underdeveloped arguments.”**

Pet. 16-17.¹⁰ An excerpt from the Petition’s claim chart is set forth below, with elements of claim 1 appearing in the left column and the corresponding portion where the limitation allegedly is disclosed in Sullivan appearing in the right column:

Claim 1	Anticipated by Sullivan (Ex. 1002)
creating a specimen that simulates the component undergoing non-destructive examination with a selected flaw;	“These laboratory measurements may consist of scans of the flawed tubes” (p. 9).
generating nondestructive examination data at a laboratory site, remote from the field site, from the specimen of the component undergoing non[]destructive examination;	“Laboratory methods have been developed that can induce real fatigue cracks and SCC [stress corrosion cracks] in SG [steam generator] tubes” (p.4).

Neither the textual argument, nor the claim chart, explains adequately where each element of claim 1 is found in the reference, much less how these elements are arranged as in the claim. For example, the Petition does

TYING MULTIPLE GROUNDS TO ALTERNATIVE CLAIM CONSTRUCTIONS



- Relating multiple prior art grounds to claim construction can lead to institution of multiple grounds (and was successful here):

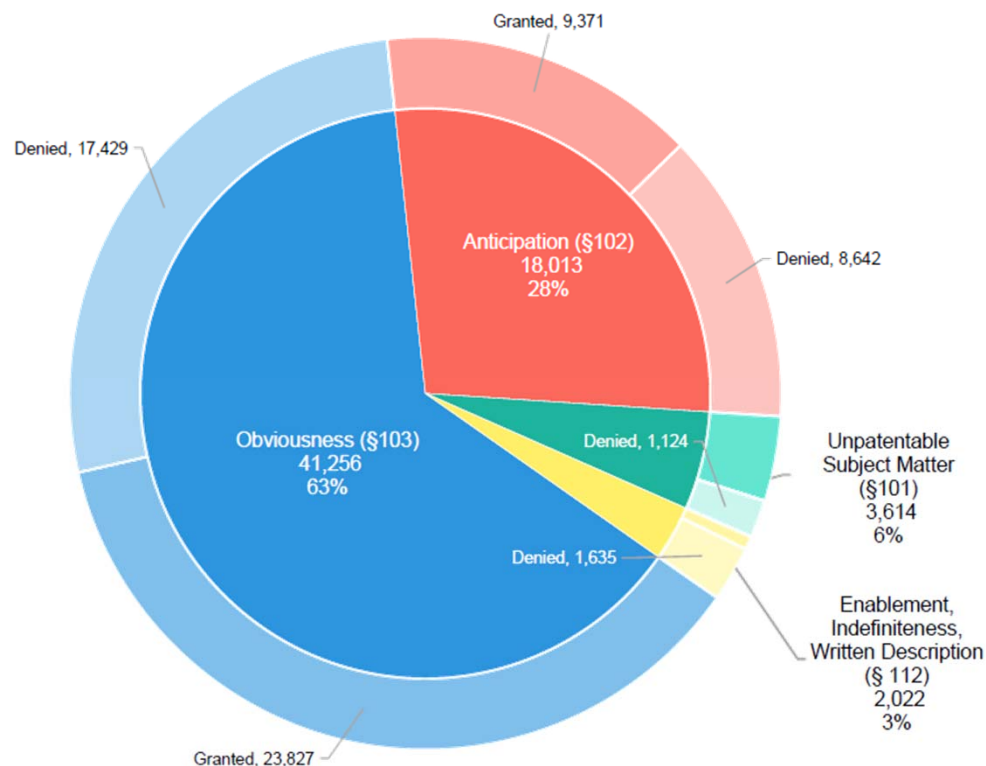
D. Multiple Independent Challenges are Not Cumulative or Duplicative

Challenge #1 addresses all of claims 1-14. Challenges #2-4 as a group also address all of claims 1-14, but Challenges #2-4 are not cumulative or duplicative of Challenge #1. The distinct Challenges provide fundamentally different teachings to meet certain claim limitations, including for example the limitation of “tokenizing said questionnaire; thereby producing a plurality of tokens representing said questionnaire” (portion [1.2]). As noted above, the meaning of “tokenizing” in the specification includes both *assigning* tokens to a questionnaire



ANTICIPATION OR OBVIOUSNESS

- Most challenges are based on obviousness (63%) instead of anticipation (28%)
 - 58% of obviousness challenges are successful
 - 52% of anticipation challenges are successful



INHERENCY



Best Practices

- Strong obviousness grounds
- Secondary references that explicitly show a potentially inherent limitation



Pitfalls

- Anticipation ground that relies on faulty inherency logic
- Implied inherency arguments:
 - “...must be...”
 - “...necessarily...”
 - “...is understood to...”

“INHERENCY” VS. OBVIOUSNESS

- Board applies a strict standard for anticipation
 - Every limitation literally disclosed and arranged as in the claim
- Implicit or explicit reliance on inherency is usually fatal
 - If the “inherent” limitation could be absent (even if it would reflect ludicrously poor engineering)... then it isn’t inherent
- **Generally better to present a strong obviousness position**

INHERENCY IS STRICTLY APPLIED



- Inherency requires more than simply being common, usual, or normal
- Here, the Board denied institution where the petitioner relied on a plastic material as being “commonly known ... as a flexible material”:

BD argues that Moorehead “inherently discloses that the catheter is flexible because it can be made from several materials, including polytetrafluorethylene (PTFE), which is commonly known as a flexible material in the medical community.”

* * *

Dr. Vesely’s statement that “[p]olytetrafluorethylene (PTFE) is commonly known in the medical community as a flexible material,” is not specific enough. Ex. 1004 (Vesely Decl.) ¶ 36).

* * *

While Dr. Vesely states that PTFE is “commonly known in the medical community as flexible material,” he does not state that PTFE is necessarily or always used in flexible form in the medical community.

ORAL HEARING



Best Practices

- Concise, stand-alone Presentation materials
- Oral advocacy - Being responsive
- Mindful of the record



Pitfalls

- Overly-long presentations
- Confusing presentations without explanations
- Not being responsive at the hearing

PATENT OFFICE HEARING ROOMS



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THE ORAL HEARING

- Three-judge panel
 - Usually at least 1 judge is remote (attending via teleconference)
- Because Petitioner has burden of persuasion, speaking order is:
 - Petitioner argument
 - Patent Owner response
 - Petitioner rebuttal
- With a Motion to Amend, Patent Owner will speak last
- Generally 30-40 minutes per side
 - Petitioner reserves a portion of allotted time for rebuttal

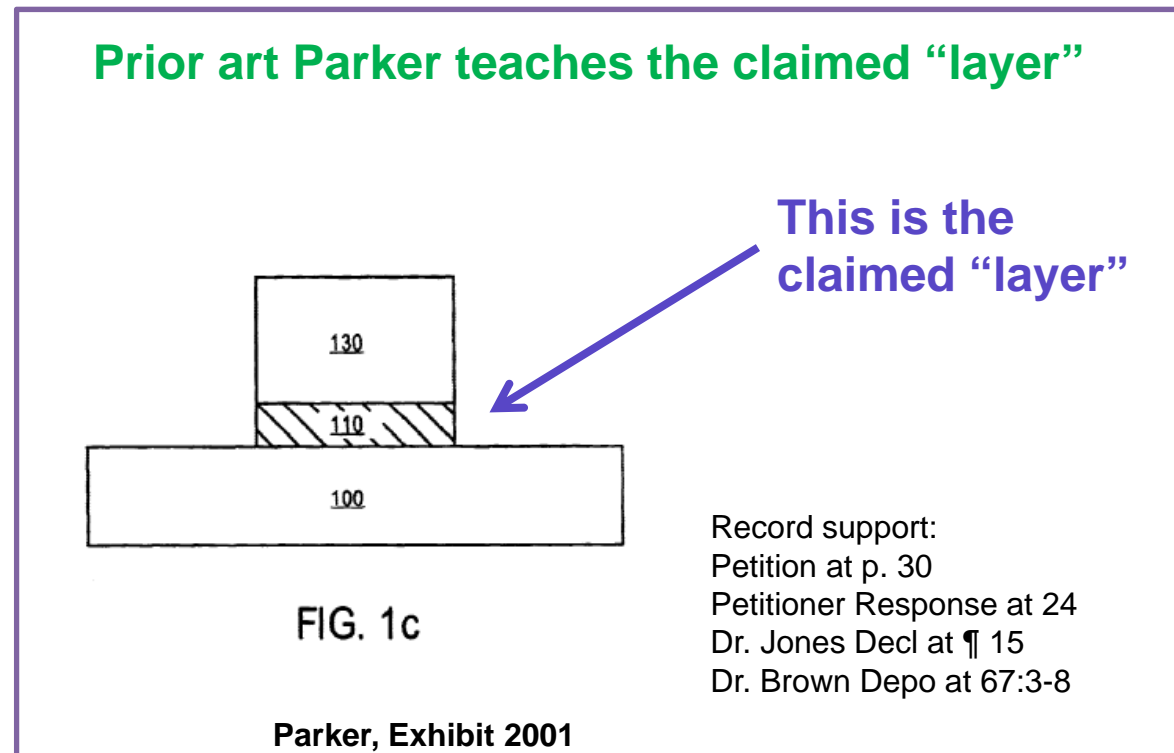
PRESENTATIONS

- Two roles:
 - Presentation aid during argument
 - Concise summary of critical evidence for judges' conference
- Good demonstratives:
 - Short & focused roadmap to the evidence
 - Nothing outside the record (no new arguments/evidence)
 - No hyperbole
- Remote judges cannot see presentation screen
 - Referring to slides by number allows remote judge to follow along
 - Also makes transcript more intelligible

PRESENTATIONS



- PTAB judges often review the presentations before the oral hearing
 - Each slide needs to be stand-alone, or self explanatory
 - Presentations can be too busy, or have too many slides

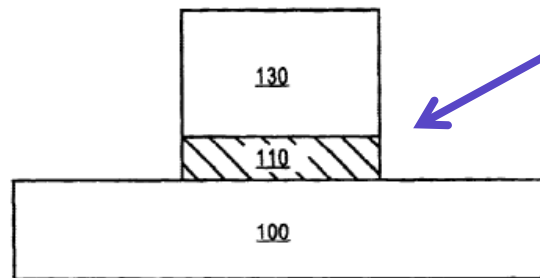


PRESENTATIONS



- The record is key – show record support on your slides
 - Use drawings/figures from the record
 - No new arguments, figures, or evidence at the oral hearing!

Prior art Parker teaches the claimed “layer”



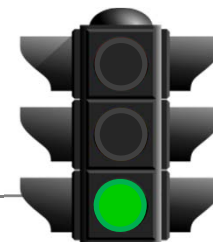
**This is the
claimed “layer”**

FIG. 1c

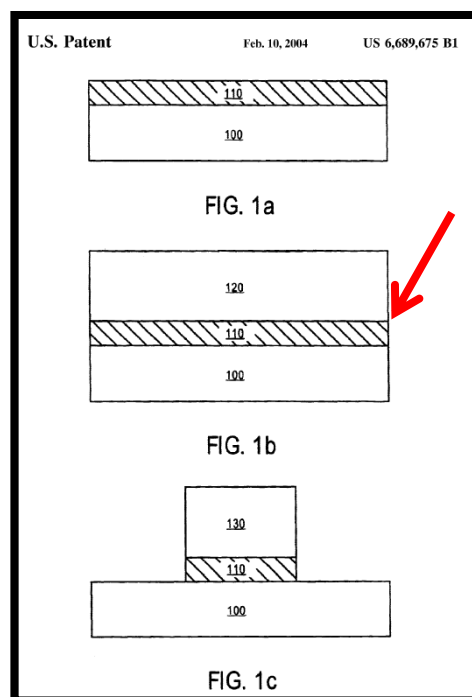
Parker, Exhibit 2001

Record support:
Petition at p. 30
Petitioner Response at 24
Dr. Jones Decl at ¶ 15
Dr. Brown Depo at 67:3-8

PRESENTATIONS



- In response to questions or opponent arguments, have the full record ready to present
 - You can always talk to the record, just remember to properly cite
 - Consider having the ability to highlight/annotate (or have portions of the record pre-annotated and ready to present)

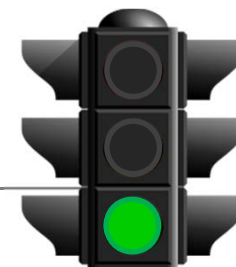


Speaker: “I have displayed Fig. 1b from the Parker patent, Exhibit 2001 at page 2, and highlighted dielectric layer 110”

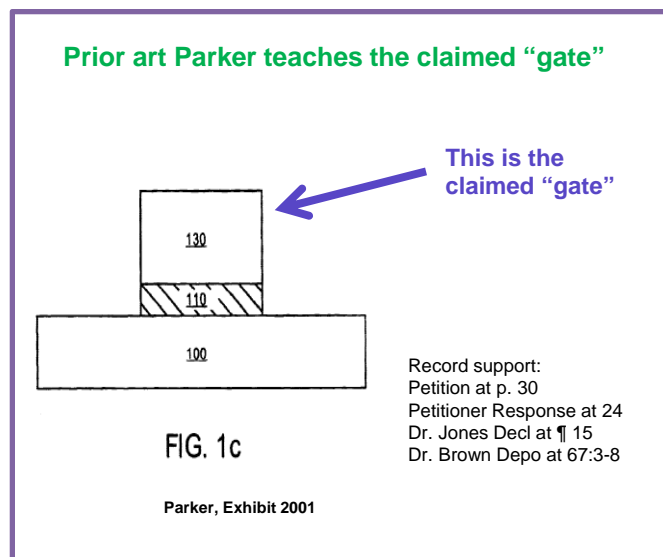
ORAL ADVOCACY TIPS

- Judges will know the record and expect advocates to know it, too
 - Best for speaker to have been involved in the case throughout
 - Lawyers who “helicopter in” for oral hearing often falter
- Answer Questions
 - Give direct answers
 - Do not delay (“I’ll speak to that in a moment”) or evade
- Common Questions
 - “Where is that in your brief?”
 - “Is that issue dispositive?”
 - “If we were to decide against you on this issue, do you have any other arguments?”

ORAL ADVOCACY



- Cite the record in your answers
 - ... and the citation becomes of record in the hearing transcript



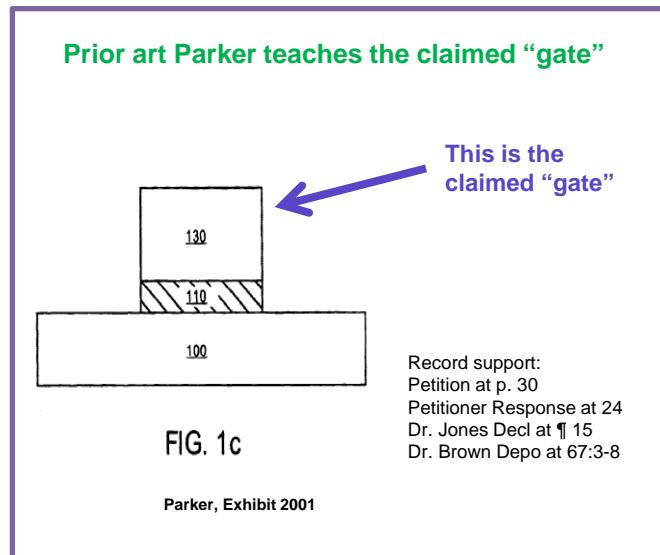
Question: "Where is the claimed gate?"

Answer: "As set forth in the petition beginning at page 32, Smith teaches the claimed gate with reference to Fig. 1c."

ORAL ADVOCACY



- Be careful of admissions. A final decision will often rely on admissions made during oral argument



Question: “Where was this gate shown in the petition?”

Answer #1: “We did not show it in the petition.”

Answer #2: “We referred to Figs. 1-6 in the petition, which includes Fig. 1c.”

HAYNES AND BOONE: #1 IN IPR INSTITUTION RATE

By Scott Graham, Law.com Senior Writer

Published: Mar 6, 2015

Firms Claim Bragging Rights in New Field of Patent Litigation

SAN FRANCISCO — If there really is a [death squad for patents](#), it may not be found at the Patent Trial and Appeal Board. A more likely location is the Plano, Texas, office of David O'Dell, chairman of Haynes and Boone's patent trials practice group.

Haynes and Boone has persuaded the PTAB to institute inter partes review in 72 cases—the most for any law firm according to an analysis of [Lex Machina's new PTAB database](#). Haynes has been turned away without a trial only three times. Even in light of the PTAB's willingness to launch IPR proceedings, Haynes and Boone's 96 percent success rate is exceptionally high.

"I think we have a good sense of what the board wants to see," said O'Dell, whose name is on more than 50 of those 72 petitions.

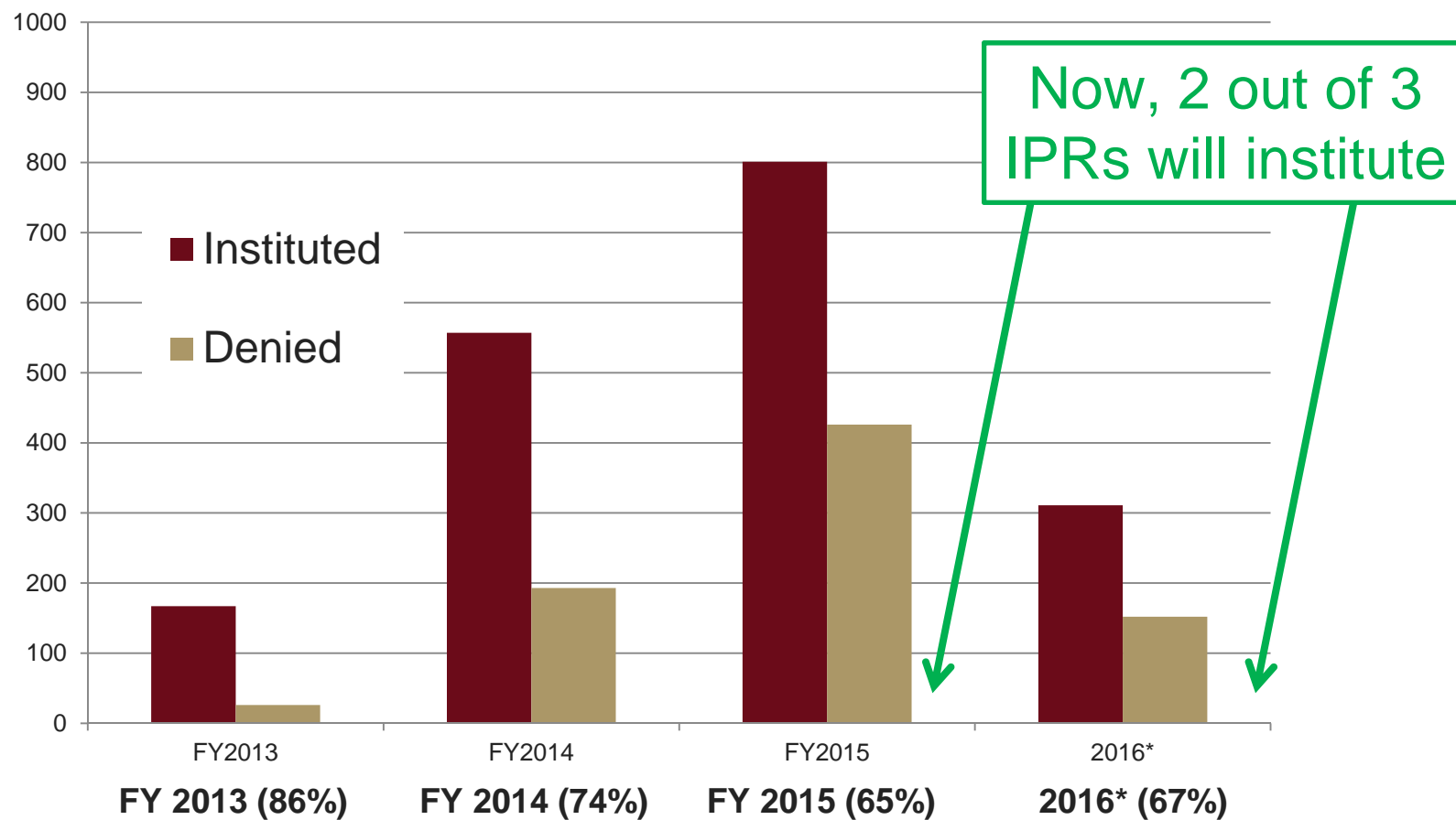
Three other firms—Foley & Lardner; Wilmer Cutler Pickering Hale and Dorr; and Finnegan, Henderson, Farabow, Garrett & Dunner—appear similarly dialed in. All three firms' IPR petitions have met with p

FIRM	TOTAL CASES TO INSTITUTION DECISION
Sterne Kessler	161
Fish	132
Finnegan	114
Haynes	93
Oblon	89
Wilmer	79

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IPR INSTITUTION RATES



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