

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SONY CORPORATION,  
Petitioner,  
v.

COLLABO INNOVATIONS, INC.,  
Patent Owner.

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Case IPR2017-00958 (Patent 7,023,034 B2)  
Case IPR2017-00960 (Patent 7,023,034 B2)<sup>1</sup>

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Before DAVID C. McKONE, GREGG I. ANDERSON, and  
JENNIFER MEYER CHAGNON, *Administrative Patent Judges*.

ANDERSON, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceedings  
37 C.F.R. § 42.5

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<sup>1</sup> The parties are not authorized to use this caption. The parties should use the caption appropriate to the specific case.

IPR2017-00958 (Patent 7,023,034 B2)

IPR2017-00960 (Patent 7,023,034 B2)

Pursuant to 37 C.F.R. § 42.70, oral argument in IPR2017-00958 (“’958 IPR”) and IPR2017-00960 (“’960 IPR”), captioned above, occurred on May 9, 2018. In our Decision on Institution (“Inst. Dec.,” Paper 8<sup>2</sup>), we construed the term “reflecting walls” as “structures having approximately vertical surfaces that reflect light.” Inst. Dec. 12. In its Responses (“PO Resp.,” Paper 19), Collabo Innovations, Inc. (“Patent Owner”) argued that “[f]or the purposes of this proceeding only, Patent Owner applies the Board’s construction for its analysis, but reserves the right to seek alternative constructions in other proceedings and matters.” PO Resp. 22. Notwithstanding this representation, Patent Owner characterized the construction of “reflecting walls” as “overly broad” in its Response. *See, e.g.*, PO Resp. 30. Patent Owner did not specify why the construction was “overly broad” nor did it provide an alternative construction for “reflecting walls.”

During oral argument, Patent Owner continued to take the position asserted in its Response. However, in response to Sony Corporation’s (“Petitioner”) argument and further questioning from the panel, Patent Owner answered affirmatively that it would like an opportunity to brief a construction of “reflecting walls” after the hearing. Petitioner objected. For reasons set out below, Patent Owner’s request is denied.<sup>3</sup>

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<sup>2</sup> As relevant to this Order, the two cases have the identical issues and citations are to the ’958 IPR.

<sup>3</sup> At the hearing we stated that an order would not issue if authorization for further briefing was denied. However, an order is deemed necessary for purposes of the making the record clear.

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Petitioner's Reply ("Pet. Reply," Paper 22) argued that there was an inconsistency between applying our construction "for purposes of this proceeding only" and contending that construction was overly broad. Pet. Reply 11–12 (citing PO Resp. 30). Petitioner's Reply was filed after the Response. Also after the Response was filed, the deposition of Patent Owner's expert, Dr. Afromowitz (Ex. 1020) was taken. Importantly, Dr. Afromowitz's testimony was based on the Panel's preliminary construction of "reflecting walls." Specifically, Dr. Afromowitz testified that the construction of "reflecting walls" from the Institution Decision did not require that a minimum amount of light be reflected. Ex. 1002, 131:2–22; *see also* Pet. Reply 24–25 (arguing Dr. Afromowitz "acknowledged the nature of the construction"). Only after the events subsequent to its Response does Patent Owner seek additional briefing and potentially supporting evidence.

Patent Owner had ample opportunity to argue for an alternative construction of "reflecting walls" in its Response. It did not do so. Nor did Patent Owner contact the Panel prior to the oral argument to request authorization for additional claim construction briefing. As noted above, Patent Owner has already accepted our preliminary construction for purposes of the proceedings. The statements made in the Response are clear and the addition of an "overly broad" argument that does not specify what is overly broad does not provide sufficient reason to authorize additional briefing. Additionally, we are not persuaded that more briefing would further focus the issues in dispute.

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## ORDER

Accordingly, it is

ORDERED that the Patent Owner is not authorized to file a brief concerning the construction of “reflecting walls;” and

FURTHER ORDERED that a copy of this Order will be filed in each of the '958 and '960 IPRs.

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### PATENT OWNER:

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