

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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**APPLE INC.**

**Petitioner**

**v.**

**IMMERVISION, INC.**

**Patent Owner**

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**Case IPR2023-00471**

**Patent No. 6,844,990**

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**PATENT OWNER'S REQUEST FOR REHEARING**  
**UNDER 37 C.F.R. §§ 42.71(c)-(d)**

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## I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.71(d), Patent Owner respectfully requests rehearing of the Board’s July 11, 2023 Decision Granting Institution of *Inter Partes* Review (“Decision”) relating to U.S. Patent No. 6,844,990 (“the ‘990 patent”). The Decision misapprehended the quantity and quality of expert testimony in declining to exercise discretion under 35 U.S.C. § 325(d) despite the Petition being based on an exact reference combination from a prior reexamination.

The Decision recognized that the Petitioner’s expert’s (Dr. David Kessler) testimony constitutes the only evidence of record as to whether the reexamination Examiner erred when interpreting Shiota’s paragraph [0023]. But the Decision misapprehended how much Dr. Kessler provided in his declaration about whether Shiota teaches the specific element at issue. Specifically, the Decision attributes eight paragraphs from the declaration as supporting a supposed “detailed explanation and interpretation of Shiota from the vantage point of the skilled artisan.” In reality, only paragraph 205 addresses whether Shiota teaches the relevant claim element, and that paragraph includes nothing more than a rehash of the reference’s language and a conclusory assertion it meets the claim. When this

evidence is assigned proper weight under *Xerox*<sup>1</sup> (*i.e.*, little to none), Petitioner has nothing left to satisfy its burden for demonstrating Examiner error. For at least this reason, Patent Owner respectfully requests the Board grant rehearing of the Decision and decline institution of this proceeding.

## II. REHEARING STANDARD OF REVIEW

When reconsidering a decision on institution, the Board reviews the decision for an abuse of discretion. 37 C.F.R. § 42.71(c). An abuse of discretion may be found where the decision is based on an erroneous legal interpretation, a factual finding is unsupported by substantial evidence, or there is an unreasonable judgment in weighing relevant factors. *See e.g., Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005). The party requesting rehearing has the burden to show the relevant decision should be modified. 37 C.F.R. §§ 42.71(d). The party must specifically identify all matters that the Board is believed to have misapprehended or overlooked, and where each matter was previously addressed in the record. *Id.*

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<sup>1</sup> *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 (PTAB Aug. 24, 2022) (precedential).

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