

## **Neulion, Inc. v. Filippo Costanzo, Saverio Roncolini, and Antonio Rossi: Decision Denying Institution IPR**

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*Takeaway: A petition that treats a collection of relied-upon documents as a single prior art reference should proffer evidence related to the content of each document and the alleged relationship between each of the documents.*

In its [Decision](#), the Board denied institution of an inter partes review of the '236 patent, in particular based upon the disclosure of several documents Petitioner alleged to have been a single prior art reference.

Petitioner argued that a collection of 19 documents, all related to the “RealSystem G2 of RealNetworks, Inc.,” constituted a single prior art references for purposes of anticipation and obviousness. The Board noted that each document related to one or more features in the RealSystem G2 product line. The documents had different titles, dates of publication, and in some cases, were attributable to different sources. Accordingly, the Board found that Petitioner had not proffered sufficient evidence, not “describing sufficiently the content of each document, or the alleged relationship between each of the documents,” to establish that the RealSystem G2 collection of documents constituted a single prior art reference. In addition, the Board noted Petitioner’s reference to the public use or sale of the RealSystem product, itself, but held that Petitioner had not proffered sufficient evidence or arguments to demonstrate that the product would qualify as a single prior art reference.

With respect to anticipation, because Petitioner relied upon the RealSystem G2 documents, which were found to not constitute a single prior art reference, the Board denied institution. In addition, the Board found that even if the documents could be considered a single reference, they would still not qualify as prior art. In this regard, the '236 patent claimed priority to a provisional application filed on July 15, 2000. However, a number of the exhibits within the RealSystem G2 documents identified their copyright dates as either 1998-2000, 2001, or 2000. Thus, Patent Owner argued, and the Board agreed, that Petitioner had not established that the documents in the RealSystem G2 reference were published prior to the priority date, and therefore, did not qualify as prior art.

With respect to obviousness, the Board denied institution based on the same reasoning discussed above with respect to the RealSystem G2 reference. In addition, the Board noted that Petitioner had included multiple grounds of obviousness grouped together in one asserted ground. In addition, the

Board found that Petitioner had addressed the obviousness grounds in only a perfunctory manner, not clearly identifying where claim limitations are found in the prior art or adequately explaining why the features of the references would have been combined. As the Board noted, a petition must include a “full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence and where each element of each challenged claim is found in the prior art patents or printed publications relied upon and the relevance of the evidence to the challenge raised.” (internal quotation omitted). The Board found that Petitioner had not met its burden to demonstrate a reasonable likelihood that it would prevail with respect to its asserted obviousness grounds.

**Neulion, Inc. v. Filippo Costanzo, Saverio Roncolini, and Antonio Rossi, IPR2014-00526**

Paper 23: Decision Denying Institution of Inter Partes Review

Dated: September 3, 2014

Patent: 8,156,236 B2

Before: Trenton A. Ward, Beverly M. Bunting, and Jennifer M. Meyer

Written by: Bunting

Related Proceeding: Cascades Streaming Technologies, LLC v. Big Ten Network, LLC, Civil Action No. 13-1455 (N.D. Ill.)

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