



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
**United States Patent and Trademark Office**  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/513,121	10/13/2014	Adarsh Krishnan RAMASUBRAMONIAN	1414-710US01/140221U1	7986
15150	7590	03/02/2020	EXAMINER	
Shumaker & Sieffert, P. A. 1625 Radio Drive, Suite 100 Woodbury, MN 55125			NOH, JAE NAM	
			ART UNIT	PAPER NUMBER
			2481	
			NOTIFICATION DATE	DELIVERY MODE
			03/02/2020	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ocpat\_uspto@qualcomm.com  
pairdocketing@ssiqlaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* ADARSH KRISHNAN RAMASUBRAMONIAN,  
YE-KUI WANG, and YING CHEN

---

Appeal 2019-000789  
Application 14/513,121  
Technology Center 2400

---

Before JASON V. MORGAN, MICHAEL J. STRAUSS, and  
MICHAEL M. BARRY, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant<sup>1</sup> requests rehearing of our Decision entered December 27, 2019. In the Decision, we affirmed the Examiner’s rejection of claims 1–3, 5–7, 9–19, and 21–28. Appellant files this request pursuant to 37 C.F.R. §§ 41.52(a)(1), 41.52(a)(2) (“Appellant may present a new argument based upon a recent relevant decision of either the Board or a Federal Court”).

In particular, Appellant’s request “is based on the Federal Circuit’s recent decision in” *Samsung Elecs. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363 (Fed. Cir. 2019) (“*Infobridge IP*”), *vacating and remanding Samsung*

---

<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party-in-interest as QUALCOMM Incorporated. Appeal Br. 3.

*Elecs. Co., Ltd. v. Infobridge Pte. Ltd.*, No. IPR2017-00099, 2018 WL 1940480 (PTAB 2018) (“*Infobridge I*”). Req. Reh’g 2.

*Infobridge II* was issued after the time period for filing a Reply Brief had elapsed. 37 C.F.R. § 41.41(a) (Appellant could file only a single Reply Brief within two months of the Examiner’s Answer, filed Sept. 7, 2018). *Infobridge II* premised its holding on case law available at the time at least some of the briefs were filed. *E.g.*, *SRI Int’l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186 (Fed. Cir. 2008); *In re Cronyn*, 890 F.2d 1158, 1161 (Fed. Cir. 1989). Nonetheless, *Infobridge II* provides new analysis particularly relevant to whether references developed by the Joint Collaborative Team on Video Coding (JCT-VC) are prior art. *See Infobridge II*, 929 F.3d 1370–73. Here, the disputed reference is a working draft from the JCT-VC. *See* Req. Reh’g 2; Dec. 3. Therefore, we deem *Infobridge II* both recent and relevant, and thus we will consider Appellant’s Request for Rehearing under pursuant to 37 C.F.R. § 41.52(a)(2).

We have considered Appellant’s new arguments but, as detailed below, we find them unpersuasive. Therefore, Appellant’s Request for Rehearing is DENIED.

## DISCUSSION

In affirming the Examiner’s obviousness rejection of the claims, we agreed with the Examiner that the combination of Byeongdoo Choi et al., *MV-HEVC/SHVC HLS: Reference picture marking and picture removal*, Doc. Nos. JCTVC-N0128, JCT3V-E0110, Joint Collaborative Teams on Video Coding (14th meeting) and 3D Video Coding Extensions (5th meeting) of ITU-T SG 16 WP 3 and ISO/IEC JTC I/SC 29/WG 11, Vienna, Austria (2013) (“JCTVC-N0128”) and Hannuksela (US 2015/0078456 A1;

published Mar. 19, 2015) teaches or suggests the disputed recitations of representative claim 1. Dec. 3, 7.

Appellant does not show error in our analysis. Rather, Appellant, for the first time, now argues that “in view of the holdings in [*Infobridge II*] . . . JCTVC-N0128 is not available for use as prior art in a rejection against Appellant’s claims under 35 U.S.C. § 103 as JCTVC-N0128 was not publicly available prior to Appellant’s priority date.” Req. Reh’g 2. Specifically, Appellant argues that *Infobridge II* held that another JCT-VC reference, JCTVC-F803, “was not available as prior art because . . . the mere presence of JCTVC-F803 on the JCT-VC Website . . . did not establish sufficient public availability . . . to qualify as prior art.” *Id.* Thus, Appellant contends “the mere presence of JCTVC-N0128 on the JCT-VC website does not establish sufficient public availability of JCTVC-N0128” to qualify as prior art. *Id.* at 3.

Appellant’s arguments are unpersuasive because the Federal Circuit did not hold that JCT-VC documents are not prior art *per se*. Rather, the Federal Circuit merely agreed that the evidence of record in *Infobridge I* provided substantial evidence supporting the Board’s conclusion that a person of ordinary skill in the art, even after exercising reasonable diligence, would not have been able to find JCTV-F803 on JCT-VC and MPEG websites. *Infobridge II*, 929 F.3d at 1373 (citing *Infobridge I*, 2018 WL 1940480 at \*7–9). Even this facet of the decision was not dispositive as to whether the JCT-VC reference was prior art; the Federal Circuit vacated the Board’s conclusion that the reference was not publicly accessible and remanded the case so that the Board could consider additional evidence of record after applying the correct legal standard. *Id.* at 1374–75.

Furthermore, there was a substantial body of evidence on record, weighed, and considered, before *Infobridge II* was decided. *See, e.g., id.* at 1370–71; *Infobridge I*, 2018 WL 1940480 at \*5–9. Here, in contrast, Appellant failed to challenge whether JCTVC-N0128 qualifies as prior art despite numerous Examiner rejections relying on the reference. *See* Non-Final Act. 4 (July 5, 2016); Final Act. 5 (Jan. 5, 2017); Non-Final Act. 6 (Apr. 21, 2017); Final Act. 7 (Nov. 13, 2017). Consequently, Appellant also failed to introduce evidence showing error in the Examiner’s use of JCTVC-N0128 as prior art.

We also note that although the July 6, 2015, Information Disclosure Statement inclusion of JCTVC-N0128 does not, by itself, show that JCTVC-N0128 was prior art (Req. Reh’g 3–4; 37 C.F.R. § 1.97(h) (2015)), Appellant failed to contend for over *three years* that JCTVC-N0128 had not been publicly available at the time of Appellant’s priority date. Thus, the Examiner’s repeated reliance on JCTVC-N0128 as prior art was reasonable and was not based solely on the Information Disclosure Statement.

Because *Infobridge II* does not hold that JCTVC references are not prior art *per se*, because there is no evidence of record showing that JCTVC-N0128 fails to qualify as prior art, and because the Examiner’s reliance in the Final Rejection on JCTVC-N0128 as prior art was reasonable, we conclude that Examiner did not err in relying on JCTVC-N0128 as prior art, and thus we decline to make any modifications to the Decision.

Appellant’s Request for Rehearing is DENIED.

SUMMARY

Outcome of Decision on Request for Rehearing:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>References</b>	<b>Denied</b>	<b>Granted</b>
1-3, 5-7, 9-19, 21-28	103	Choi, Hannuksela	1-3, 5-7, 9-19, 21-28	

Final Outcome of Appeal after Rehearing:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>References</b>	<b>Affirmed</b>	<b>Reversed</b>
1-3, 5-7, 9-19, 21-28	103	Choi, Hannuksela	1-3, 5-7, 9-19, 21-28	

DENIED