"maintaining a dictionary" term of independent claim 1. [Realtime Data, LLC, DBA IXO v. Andrei Iancu, Intervenor, 2018-1154 (Fed. Cir. 1/10/2019).]

AC Technologies S.A. v. Amazon.com, 2018-1433 (Fed. Cir. 1/9/2019).

This is decision on an appeal from PTAB IPR2015-01802. The PTAB found all claims invalid. AC appealed. The Federal Circuit affirmed.

Legal issue: Due process, considering, on rehearing, a ground raised in the petition.

The Federal Circuit concluded that the PTAB was required to consider, on rehearing, a ground in the petition it overlooked in the final written decision. Because the PTAB then provided AC notice and an opportunity to be heard, the PTAB did not violate due process.

> AC argues that the Board erred procedurally when it invalidated claims 2, 4, and 6 based on a ground that it did not institute in its institution decision. *** If the Board institutes an IPR, it must issue a final written decision addressing all claims challenged by the petitioner. *** And, we have held, if the Board institutes an IPR, it must similarly address all grounds of unpatentability raised by the petitioner. *See Adidas AG v. Nike, Inc.*, 894 F.3d 1256, 1258 (Fed. Cir. 2018) (remanding noninstituted grounds for review); *BioDelivery Scis. Int'l, Inc. v. Aquestive Therapeutics, Inc.*, 898 F.3d 1205, 1208 (Fed. Cir. 2018) ("Post-*SAS* cases have held that it is appropriate to remand to the PTAB to consider non-instituted claims as well as non-instituted grounds."). This precedent forecloses AC's argument that the Board exceeded its statutory authority when it reconsidered its final written decision and addressed non-instituted Ground 3. Indeed, it would have violated the statutory scheme had the Board not done so. *See PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) ("Equal treatment of claims and grounds for institution purposes has pervasive support in *SAS*."). Contrary to AC's arguments, see Appellant's Br. 49–53, neither § 314(b)'s timing requirements nor § 314(d)'s limits on appealability alter the Board's statutory obligation to rule on all claims and grounds presented in the petition. *See SAS*, 138 S. Ct. at 1356 (explaining that an IPR must "proceed[] '[i]n accordance with' or 'in conformance to' the petition" (second alteration in original) (quoting Pursuant, Oxford English Dictionary(3d ed. 2007), http://www.oed.com/view/Entry/155073)). [AC Technologies S.A. v. Amazon.com, 2018-1433 (Fed. Cir. 1/9/2019).]

> We recognize that *SAS* did not displace the Board's responsibility to comply with due process. We have explained that due process dictates that parties before the Board must receive adequate notice of the issues the Board will decide as well as an opportunity to be heard on those issues. *See Genzyme Therapeutic Prods. Ltd. P'ship v. Biomarin Pharm. Inc.*, 825 F.3d 1360, 1367–68 (Fed. Cir. 2016). No due process violation occurred here. As AC admits, after the Board decided to accept Amazon's rehearing request and consider Ground 3, it permitted AC to take discovery and submit additional briefing and evidence on that ground.