

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DOMINO'S PIZZA, LLC, HILTON RESORTS CORPORATION,
HILTON WORLDWIDE, INC., HILTON INTERNATIONAL CO., MOBO
SYSTEMS, INC., PIZZA HUT OF AMERICA, INC., PIZZA HUT, INC.,
and USABLENET, INC.,
Petitioner,

v.

AMERANTH, INC.,
Patent Owner.

Case CBM2015-00080¹
Patent No. 6,384,850 B1

Before MEREDITH C. PETRAVICK, RICHARD E. RICE, and
STACEY G. WHITE, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
Covered Business Method Patent Review
35 U.S.C. § 328(a) and 37 C.F.R. § 42.73

¹ CBM2015-00096 has been consolidated with this proceeding.

I. INTRODUCTION

A number of entities including Apple, Inc. (“collectively, Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting review under the transitional program for covered business method patents of claims 12–16 (“the challenged claims”) of U.S. Patent No. 6,384,850 B1 (Ex. 1001, “the ’850 patent”). On September 1, 2015, pursuant to 35 U.S.C. § 324, we instituted this trial as to claims 12–16 on one ground of unpatentability — claims 12–16 being unpatentable under 35 U.S.C. § 103 over DeLorme¹. Paper 13, 30 (“Dec. to Inst.”). We did not institute as to any of the other grounds proposed in the Petition. *Id.*

Ameranth, Inc. (“Patent Owner”) filed a Corrected Patent Owner’s Response (Paper 21, “PO Resp.”) and Petitioner filed a Reply (Paper 24, “Pet. Reply”). Patent Owner filed a Sur-Reply. Paper 30, (“PO Sur-Reply”).

An oral hearing in this proceeding was held on May 10, 2016. A transcript of the hearing is included in the record. Paper 43, (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is issued pursuant to 35 U.S.C. § 328(a) and 37 C.F.R. § 42.73.

For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that claims 12–16 of the ’850 patent are unpatentable.

A. *The ’850 Patent*

The ’850 patent is titled “Information Management and Synchronous Communications System with Menu Generation” and issued on May 7,

¹ U.S. Patent No. 5,948,040 (issued Sept. 7, 1999) (Ex. 1024).

2002, based on Application No. 09/400,413, filed on September 21, 1999. Ex. 1001, (54), (45), (21), (22). There are two aspects to the system: menu generation and synchronous communication. *See, e.g., id.* at col. 3, ll. 15–23. The first aspect includes a “desktop software application that enables the rapid creation and building of a menu.” *Id.* at col. 3, ll. 15–17. Claims 1–11, which are not challenged in this proceeding, are directed to this first aspect.

Claims 12–16, which are challenged in this proceeding, are directed to the second aspect of the system, synchronous communication. *See id.* at col. 2, ll. 56–62, col. 3, ll. 1–5, col. 10, ll. 57–59. The ’850 patent discloses a synchronous communication system, which includes a computer workstation, a central database, multiple wireless handheld devices, a web server, and a web page. *Id.* at col. 3, ll. 59–63, col. 6, l. 14. The synchronous communication system, for example, can be used in the restaurant menu ordering context. A menu database can be updated on a desktop PC can be synched with the menu databases on the wireless handheld device, web server, and web page by downloading the new menu database. *Id.* at col. 8, ll. 45–62; *see also* col. 2, ll. 16–28, col. 9, l. 66–col. 10, l. 1. The menu can then be used to place orders from the wireless handheld devices or through the internet. *Id.* at col. 12, ll. 1–4.

In another aspect, a communications control module provides a single point of entry for all hospitality applications, on the central database, wireless handheld devices, web server and web pages, to communicate with one another. *Id.* at col. 9, ll. 21–27, col. 11, ll. 24–30.

This communications module is a layer that sits on top of any communication protocol and acts as an interface between hospitality applications and the communication protocol. . . .

The single point of entry works to keep all wireless handheld devices and linked [w]eb sites in synch with the backoffice server (central database) so that the different components are in equilibrium at any given time and an overall consistency is achieved.

Id. at col. 11, ll. 27–36.

For example, a reservation made online would be automatically communicated to the backoffice server and then synchronized with all the wireless handheld devices wirelessly. Similarly, changes made on any of the wireless handheld devices would be reflected instantaneously on the backoffice server, [w]eb pages and the other handheld devices.

Id. at col. 2, ll. 26–32; *see also id.* at col. 11, ll. 36–42.

In a further aspect, third parties, such as point-of-sale companies, affinity program companies, and internet content providers, can integrate fully with the system through an application program interface. *Id.* at col. 2, ll. 12–15, col. 11, ll. 15–19.

B. Illustrative Claim

Claim 12 of the '850 patent is the only independent claim challenged and is illustrative of the claims at issue. Claim 12 reads as follows:

12. An information management and synchronous communications system for use with wireless handheld computing devices and the internet comprising:
- a. a central database containing hospitality applications and data,
 - b. at least one wireless handheld computing device on which hospitality applications and data are stored,
 - c. at least one [w]eb server on which hospitality applications and data are stored,

- d. at least one [w]eb page on which hospitality applications and data are stored,
- e. an application program interface, and
- f. a communications control module,

wherein applications and data are synchronized between the central [database], at least one wireless handheld computing device, at least one [w]eb server and at least one [w]eb page; wherein the application program interface enables integration of outside applications with the hospitality applications and wherein the communications control module is an interface between the hospitality applications and any other communications protocol.

C. Related Proceedings

Both Petitioner and Patent Owner identify numerous related ongoing district court proceedings. Pet. 2–4; Paper 7, 5–6. The '850 patent is related to U.S. Patent No. 6,871,325 B1, U.S. Patent No. 6,982,733 B1, and U.S. Patent No. 8,146,077 B2. These patents were or are the subject of the following covered business method patent reviews:

U.S. Patent No.	Previous CBM Reviews	Pending CBM Reviews
6,384,850 B1	CBM2014-00015	CBM2015-00091 CBM2015-00096
6,871,325 B1	CBM2014-00016	CBM2015-00082 CBM2015-00097 CBM2015-00099
6,982,733 B1	CBM2014-00013	
8,146,077 B2	CBM2014-00014 CBM2015-00081 CBM2015-00095	

In case CBM2014-00015, a Final Written Decision, determining claims 1–11 to be unpatentable, was issued on March 20, 2015 and is on appeal to the U.S. Court of Appeals for the Federal Circuit.

D. Patent Owner's Incorporated by Reference of Standing Arguments

Patent Owner attempts to incorporate certain arguments made in its Preliminary Response (Paper 9) into the Patent Owner's Response. PO Resp. 1 n.2 ("Patent Owner incorporates herein its Preliminary Response arguments regarding standing and preserves its right to appeal the Board's determination thereof."). Our Rules prohibit incorporating arguments by reference. 37 C.F.R. § 42.6(a)(3) states: "[a]rguments must not be incorporated by reference from one document into another document." Incorporation by reference circumvents our Rule limiting the pages in the Patent Owner response to 80 pages. *See* 37 C.F.R. § 42.24(b)(2).²

Further, the Patent Owner's Response provides no citations or otherwise clearly indicates what argument in the Preliminary Response Patent Owner is attempting to incorporate by reference. *See* PO Resp. 1 n.2. The Preliminary Response includes no arguments under a heading concerning "standing" or labeled otherwise. The only mention of standing is in footnote 1 of the Preliminary Response, which states: "Petitioner's standing argument merely references CBM2014-00016, and is thus insufficient. PO submits that Petitioner was required to provide, in the Petition, the basis for standing." *Id.* As explained in our Institution Decision, we determined that the Petition sufficiently established that the '850 patent was eligible for covered business method patent review and that Patent Owner's arguments in footnote 1 of the Preliminary Response were unpersuasive. *See* Paper 13, 11–14.

² Rule 42.24(b)(2) was amended, effective May 2, 2016. The Corrected Patent Owner's Response, however, was filed February 1, 2016, prior to that date and, thus, we refer to the prior version of 37 C.F.R. § 42.24(b)(2).

Inasmuch as Patent Owner may be attempting to incorporate material from other portions of the Preliminary Response, such as the Introduction section, Patent Owner should not expect the Board to search the record and piece together the arguments and evidence necessary to support a standing argument not made in the Patent Owner's Response. *Cf. DeSilva v. DiLeonardi*, 181 F.3d 865, 866–67 (7th Cir. 1999) (“A brief must make all arguments accessible to the judges, rather than ask them to play archeologist with the record.”); *Ernst Haas Studio, Inc. v. Palm Press, Inc.*, 164 F.3d 110, 111–12 (2d Cir. 1999) (“Appellant's Brief is at best an invitation to the court to scour the record, research any legal theory that comes to mind, and serve generally as an advocate for appellant. We decline the invitation.”).

Arguments that are not developed and presented in the Patent Owner Response, itself, are not entitled to consideration. *See* Paper 14, 3. (cautioning Patent Owner “that any arguments for patentability not raised and fully briefed in the response will be deemed waived.”).

II. ANALYSIS

A. Claim Construction

The Board interprets claims of unexpired patents using the broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.300(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation approach).

Under the broadest reasonable construction standard, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re*

Translogic Tech., Inc., 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definition for a claim term must be set forth with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). In the absence of such a definition, limitations are not to be read from the specification into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

i. “wireless handheld computing device”

The challenged claims require “at least one wireless handheld computing device.” Ex. 1001, claims 12–16. Patent Owner proposes that the term be construed as “a wireless computing device that is sized to be held in one’s hand.” PO Resp. 4 (citing Ex. 1032, 24 (district court construing order the term); Ex. 2019 ¶ 27 (Declaration of Dr. Alfred Weaver). Patent Owner also argues “sized to be held in one’s hand” requires that the wireless handheld computing device is sized to be held in a single hand and precludes wireless computing devices that are held in two hands. See PO Resp. 27–28 (“the [wireless communication unit] in DeLorme is a ‘two hand’ portable device and is not sized as a wireless handheld device as properly construed”); *id.* at 28 n.14 (arguing that a device that needed a GPS at the time could not be held in a single hand).

Petitioner does not provide an explicit construction of the term “wireless handheld computing device,” but argues that the term does not require that the device to be held in a single hand or preclude the device from being held in both hands. Pet. Reply 6.

To resolve the issues of patentability of the claims over DeLorme, it is not necessary for us to determine whether the broadest reasonable

construction of “wireless handheld computing device” requires that the device be held in a single hand or allows for the device to be held in two hands. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (stating that “only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy”). Regardless, DeLorme explicitly discloses that its wireless communication unit (“WCU”) 907 is handheld. Ex. 1024, col. 72, l. 1 (“WCU 907, typically hand-held 906”), col. 72, l. 31 (“handheld devices equipped with GPS 908”); *see also id.* at col. 7, l. 34, col. 16, ll. 40–49 (further describing wireless “handheld” device). Further, DeLorme discloses that WCU 907 could be a personal digital assistant (“PDA”) and describes PDAs as “handheld” wireless devices. *Id.* at col. 71, l. 61–col. 72, l. 2, col. 75, ll. 33–45; *see* Ex. 1076, 53:12–25 (testimony of Dr. Weaver indicating that a PDA or smartphone is a wireless hand-held computing device). The ’850 patent describes PDAs as an example of a wireless handheld device. Ex. 1001, col. 1, ll. 62–63, col. 13, l. 50. Given this, we determine that it is not necessary for us to determine whether the broadest reasonable construction of “wireless handheld computing device” requires that the device be held in a single hand or allows for the device to be held in two hands.

ii. “hospitality applications”

The challenged claims require “hospitality applications,” which are contained in the central database, and are stored on the wireless handheld computing device, Web server, and Webpage. Ex. 1001, claim 12. In the Institution Decision, we construed this term to mean “applications used to perform services or tasks in the hospitality industry.” Dec. to Inst. 9. Patent

Owner agrees with this construction. PO Resp. 6–9. Petitioner does not contest this construction in its Reply.

Petitioner proposes that “applications” be construed to mean “sequences of instructions that can be executed on a computer that are designed to help people perform a specific task.” Pet. 22. To support its proposed construction, Petitioner cites to the Microsoft Computer Dictionary, 4th ed., which defines “application” as “a program designed to assist in the performance of a specific task” and “program” as “[a] sequence of instructions that can be executed by a computer.” Ex. 1034, 4, 10.

Patent Owner does not propose an explicit construction of “applications” but does state that “[i]t is clear from the specification, consistent with the ordinary meaning as would be understood by a POSA, that an application is a software program, not data.” PO Resp. 32 n.15. This is consistent with Petitioner’s proposed construction, which is based in-part on the definition of application, as a program.

Given the above, we determine that the broadest reasonable interpretation, in light of the specification of the ’850 patent, of “hospitality applications” is a sequences of instructions that can be executed on a computer (i.e., a program) that are designed to assist in the performance of a specific task in the hospitality industry.

iii. “synchronized”

The challenged claims require that “applications and data are synchronized between the central data base, at least one wireless handheld computing device, at least one Web server and at least one Web page.” Ex. 1001, claim 12. In the Institution Decision, we construed synchronized to

mean “made, or configured to make, consistent.” Dec. to Inst. 8–9. Patent Owner agrees with this construction. PO Resp. 6. Petitioner does not contest this construction in its Reply.

Absent from this construction is any temporal limitation that requires the devices to be consistent at all times. The absence of a temporal limitation is consistent with the specification of the ’850 patent which describes the use of “batch processing that can be done periodically throughout the day to keep multiple sites in synch with the central database.” Ex. 1001, col. 2, ll. 17–19; *see also* Tr. 53:17–23.

iv. “application program interface” that “enables integration of outside applications with the hospitality applications”

The challenged claims require an “application program interface” that “enables integration of outside applications with the hospitality applications.” Petitioner proposes that application program interface (“API”) should be construed to be “a set of routines used by an application program to direct the performance of procedures by the computer’s operating system or to communicate with another application program.” Pet. 22 (citing Ex. 1034, 5 (Microsoft Computer Dictionary, 4th ed., definition of application program interface)).

Patent Owner proposes that the API is not a generic interface but an API that enable integration of outside applications with the hospitality applications. PO Resp. 7. Patent Owner proposes that “integration” should be construed to mean “combining of different activities, programs, or hardware components into a functional unit.” *Id.* (citing Dec. to Inst. 11). Patent Owner also argues that integrating requires “integrating the different applications from **within** the applications themselves.” PO Resp. 40.

Given the above, we determine that the broadest reasonable interpretation, in light of the specification of the '850 patent, of an API that enables integration of outside applications with the hospitality applications is a set of routines used by an application program that enables the combining of the outside applications with the hospitality applications into a functional unit by allow them to communicate with each other. We are not persuaded that integrating requires integrating the different applications from *within* the applications themselves. Such a limitation is not consistent with the '850 patent, which does not disclose integrating different applications from *within* the applications themselves.

- v. *“communications control module” that “is an interface between the hospitality applications and any other communications protocol”*

The challenged claims require “a communications control module . . . wherein the communications control module is an interface between the hospitality applications and any other communications protocol.” Ex. 1001, claim 12.

Petitioner proposes that “communications control module” be construed as “a device used as an intermediary in transferring communications to and from the host computer to which it is connected.” Pet. 22 (citing Ex. 1034, 7 (Microsoft Computer Dictionary, 4th ed., definition of communications controller); Ex. 1002 ¶¶ 76–78).

Patent Owner proposes that “communications control module” should be construed as “a layer that sits on top of any communication protocol and acts as an interface between hospitality applications and the communication protocol.” PO Resp. 5–6 (quoting Ex. 1001, col. 4, ll. 9–13). Patent Owner argues that this is the correct construction because it is how the

communications control module is described in the '850 patent and how a district court construed the limitation in a related proceeding. PO Resp. 5–6 (citing Ex. 1033, 13).

Patent Owner also argues that “communication control module” should be construed in conjunction with the wherein clause “wherein the communications control module is an interface between the hospitality applications and any other communications protocol” to require “a server side software layer that provides an interface between the hospitality applications and communication protocols and which monitors and routes communications between different devices while concurrently using different protocols.” PO Resp. 10–11 (citing Ex. 1001, col. 4, ll. 9–13; Ex. 1003, 13; Ex. 2019 ¶¶ 31, 39–42). Patent Owner again argues that this is the correct construction because it is how the communications control module is described in the '850 patent. PO Resp. 10–11.

Petitioner responds that Patent Owner’s construction is not required by the language of the claims and improperly imports elements from the specification of the '850 patent into the claims. Pet. Reply 18.

As an initial matter, we are not persuaded by Patent Owner that we should wholesale adopt the construction of “communications control module” from a previous district court infringement action. The standard for claim construction in a district court infringement action is different than the standard applied by the Board. *See In re Morris*, 127 F.3d 1048, 1053–54 (Fed. Cir. 1997). In covered business method patent review proceedings, the Board applies the broadest reasonable construction consistent with the specification. 37 C.F.R. § 42.300(b).

We determine that the broadest reasonable construction, in light of the specification of the '850 patent, of “a communications control module . . . wherein the communications control module is an interface between the hospitality applications and any other communications protocol” is a device used as an intermediary in transferring communications to and from the host computer to which it is connected, wherein the device is an interface between the hospitality applications and any other communications protocol. This construction is consistent with the plain language of claim 12, which requires the communication control module to be an interface between the hospitality applications and any other communications protocol. This construction is also consistent with the description of the communication control module in the specification of the '850 patent, as a “control program [that] monitors and routes all communications [as] to the appropriate devices” in the '850 patent and as “a single point of entry for all hospitality application to communicate with one another wirelessly or over the Web.” Ex. 1001, col. 9, ll. 21–22, col. 11, ll. 24–27.

This construction, unlike Patent Owner’s proposed construction, does not import extraneous features from the Specification of the '850 patent into the claims. Although the specification of the '850 patent describes additional features of the communication control module, such as it is “a layer that sits on top of any communication protocol.” The plain language of claim 12, does not require the claimed communication control module to have such features. If a feature is not necessary to give meaning to what the inventor means by a claim term, it would be “extraneous,” and should not be read into the claim. *Renishaw PLC v. Marposs Societa’ per Azioni*, 158

F.3d 1243, 1249 (Fed. Cir. 1998); *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1433 (Fed. Cir. 1988).

We, thus, determine that the broadest reasonable construction, in light of the specification of the '850 patent, of “a communications control module . . . wherein the communications control module is an interface between the hospitality applications and any other communications protocol” is a device used as an intermediary in transferring communications to and from the host computer to which it is connected, wherein the device is an interface between the hospitality applications and any other communications protocol.

vi. other terms

Petitioner and Patent Owner propose constructions for various other claim terms. *See* Pet. 21–24; PO Resp. 4–8. These claim terms, however, need no explicit construction. *See Vivid Techs., Inc.*, 200 F.3d at 803.

B. Unpatentability Over DeLorme

Under 35 U.S.C. § 103, a claim is unpatentable if:

the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.

The ultimate determination of obviousness under § 103 is a question of law based on underlying factual findings. *In re Baxter Int'l, Inc.*, 678 F.3d 1357, 1362 (Fed. Cir. 2012) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966)). These underlying factual considerations consist of: (1) the “level of ordinary skill in the pertinent art,” (2) the “scope and content of the prior art,” (3) the “differences between the prior art and the

claims at issue,” and (4) “secondary considerations” of non-obviousness such as “commercial success, long-felt but unsolved needs, failure of others, etc.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007) (quoting *Graham*, 338 U.S. at 17–18).

Petitioner contends that claims 12–16 are unpatentable under 35 U.S.C. § 103 over DeLorme. Pet. 50–62. To support its contention, Petitioner provides explanations as to how the prior art meets each claim element. *Id.* Petitioner also cites the Declaration of Dr. Don Turnbull for support. See Ex. 1002 ¶¶ 180–237. Taking into account Patent Owner’s argument and evidence (PO Resp. 1–4, 12–80; PO Sur-Reply 1–5), for the reasons discussed below, we determine that Petitioner has shown by a preponderance of the evidence that claims 12–16 are unpatentable under 35 U.S.C. § 103 over DeLorme.

i. Overview of DeLorme

DeLorme is titled “Travel Reservation Information and Planning System,” and issued on September 7, 1999, from an application filed on February 6, 1997. Ex. 1024, (54), (45), (22).

DeLorme discloses a computerized travel reservation information and planning system (“TRIPS”) which generates travel plan information in the form of a “map ticket,” in response to inquiries from consumers. *Id.* at Abstract. Figure 2 of DeLorme is reproduced below.

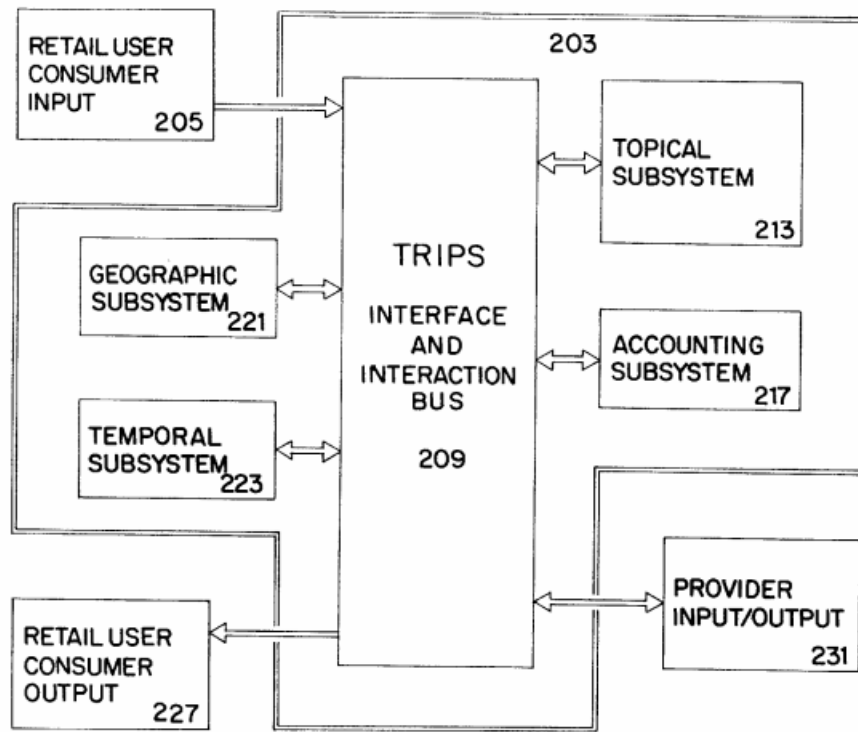


FIG 2

Figure 2, reproduced above, is a block diagram of TRIPS. *Id.* at col. 12, ll. 62–65. The Interface and Interaction Bus at block 209 processes consumer inquiries for planning travel. *Id.* at col. 3, ll. 15–41. The system receives inquiries from consumers, as illustrated by block 205, for travel related data (*id.* at col. 30, l. 66–col. 31, l. 14) and outputs, as illustrated by block 227, digital displays, such as the preferred “map ticket,” or electronic communications containing such data, such as reservations and/or tickets for accommodations or events (*id.* at col. 31, ll. 42–58; Fig. 1B). TRIPS includes subsystems (e.g., topical subsystem 213) that have geographical, topical, temporal, and accounting data, organized in a relational database, which is managed by software. *Id.* at col. 17, ll. 7–13, col. 32, ll. 1–7; col. 30, ll. 58–65. TRIPS also includes provider input/output 231 for third-party providers of travel information and services. *Id.* at col. 31, ll. 42–51.

DeLorme discloses multiple embodiments of TRIPS. In one embodiment, a user makes travel plans using TRIPS software on a desktop PC, which is connected to the Internet to provide access to updated TRIPS information and functions and communication with third-party providers. *Id.* at col. 13, ll. 48–52. Once installed, the TRIPS software interacts with online TRIPS services, and TRIPS map data, functions, and topical travel information can be updated and online reservations and ticket buys can be made. *Id.* at col. 14, ll. 9–42; *see also* col. 10, ll. 10–18, col. 10, ll. 22–32.

Alternatively, all TRIPS functions, data and services can be provided entirely online (i.e., without significant standalone software components)—for example, from a central TRIPS service bureau, (or by means of a TRIPS Internet World Wide Web Site). Such purely online TRIPS embodiments can be implemented utilizing recent advances in distributed applications, “agents” or online “applets” developed in Java, or equivalent computer languages—plus other state-of-the-art software enhancements for online or Internet usage.

Id. at col. 14, ll. 43–52.

DeLorme discloses that TRIPS can also work with hardware other than a desktop PC, such as “network work stations; . . . terminals linked to a central server, . . . or handheld personal digital assistant (PDA) portable computer devices typically equipped with a wireless communications and/or user location, e.g., Global Positioning System (GPS) capabilities.” *Id.* at col. 14, l. 66–col. 15, l. 5; *see also id.* at col. 7, ll. 30–35, col. 16, ll. 41–49, col. 75, ll. 38–45 (describing other compact portable devices).

DeLorme discloses a “portable TRIPS embodiments” which can be used with the desktop PC setups. *Id.* at col. 71, ll. 61–962, col. 72, ll. 20–23. In this embodiment, a TRIPS user can make advanced travel plans and arrangements on a desktop PC and then transfer advanced travel plans to

TRIPS goods and server providers and wireless communication units (“WCU”) to use the advance travel plan on a trip. *Id.* at col. 72, ll. 44–61.; *see also id.* at col. 12, ll. 10–16, col. 15, ll. 40–46, col. 16, ll. 37–55, col. 18, ll. 35–42, col. 72, ll. 26–36. The travel plans includes not only maps and travel information, but also tickets, reservations and other special offers for goods/services. *Id.* at col. 7, ll. 30–32; col. 17, ll. 18–36; *see also* Fig. 1B-3 (depicting advanced travel plans, which include a reservation confirmation for a restaurant).

The advanced travel plans on the WCU can be used for “in the field operations” such “as text/audio directions; GPS waypoint guidance; claiming, confirmation and/or verification of discount offers; selected user notes on scheduled events of interest (EOIs); even sounding an alarm . . . and various other timely, topical, locations and transactional travel information chores.” *Id.* at col. 16, ll. 49–55. The WCU can also be used for making reservations on the go, which then “can be memorized in the TRIPS user’s WCU 907 and/or transferred to, or put ‘on file’ with, the TRIPS online service Provider 904.” *Id.* at col. 72, ll. 55–61.

ii. Independent Claim 12

1. “[a]n information management and synchronous communications system for use with wireless handheld computing devices and the internet”

Petitioner contends that DeLorme’s TRIPS discloses an information management and synchronous communication system for use with wireless handheld computing devices and the internet. Pet. 50–52 (citing Ex. 1002 ¶¶ 184–187). Patent Owner does not specifically dispute this contention.

After review of Petitioner’s evidence and analysis, we are persuaded by that evidence and analysis that TRIPS is an information management and

synchronous communications system for use with wireless handheld computing devices and the internet. *See* Pet. 50–52. We, thus, determine that DeLorme discloses an information management and synchronous communications system for use with wireless handheld computing devices and the internet.

2. “*a central database containing hospitality applications and data*”

Petitioner contends that TRIPS’s relational databases for storing hospitality data and the software for managing the data meets the claimed central database containing hospitality applications and data. Pet. 50–52 (citing Ex. 1002 ¶¶ 184–187). Patent Owner does not specifically dispute this contention, but does in another context argues that TRIPS is not a hospitality application (PO Resp. 40–41).

After review of Petitioner’s evidence and analysis, we are persuaded by that evidence and analysis that TRIPS’s relational databases and software meets the claimed central database containing hospitality applications and data. *See* Pet. 50–52. As discussed above, the broadest reasonable construction of “hospitality application” is a sequence of instructions that can be executed on a computer (i.e., a program) that are designed to help people perform a specific task in the hospitality industry. DeLorme discloses, for example, that TRIPS processes user’s inquiries through a set of operations or sequences of functions that retrieve travel information, including reservations, from relational databases in TRIPS Subsystems. Ex. 1024, col. 17, ll. 7–13. This retrieval of travel information is a specific task in the hospitality industry.

We are persuaded by Petitioner’s evidence and analysis that the claimed central database containing hospitality applications and data, when hospitality application is given its broadest reasonable construction, is met by TRIPS’s relational databases for storing hospitality data and the software for managing the data. We, thus, determine that DeLorme discloses an application program interface that enable integration of outside applications with the hospitality applications.

3. *“at least one wireless handheld computing device on which hospitality applications and data are stored”*

Petitioner contends that WCU 907 of the portable TRIPS embodiment meets the claimed wireless handheld computing device on which hospitality applications and data are stored. Pet. 51, 53, Pet. Reply 6–10.

Patent Owner disagrees. PO Resp. 27–40. In addition to arguing that the WCU 907 is not handheld (*id.* at 27–28, n.14), Patent Owner argues that the WCU does not store an application and data used to perform services or tasks in the hospitality industry. *Id.* Patent Owner’s alleges that a hospitality application must do more than exchange and store hospitality data from a server. *Id.* According to Patent Owner, hospitality applications and data must be locally resident (*see id.* at 28–30) and the applications must “perform local operations via application software resident on the device itself” (*id.* at 31).

We are persuaded by Petitioner’s evidence and analysis that WCU 907 meets this claim element. *See* Pet. 51, 53, Pet. Reply 6–10. First, as discussed above, WCU 907 is a wireless handheld computing device. *See* Pet. Reply 6.

Second, giving “hospitality application” is given its broadest reasonable construction, WCU 907 has a hospitality applications stored thereon. As discussed above, the broadest reasonable construction of “hospitality application” is a sequence of instructions that can be executed on a computer (i.e., a program) that are designed to help people perform a specific task in the hospitality industry. DeLorme discloses that WCU is programmed to transmit data to and receive data back from a server. Ex. 1024, col. 72, ll. 13–19. As Patent Owner states, “the WCU is ‘programmed’ to transmit **data** to the server side and to receive **data** back from the server side (Exh. 1024 75:59 et seq.) . . . the server ‘communicates with’ pre-programmed software on the WCU.” (PO Resp. 18 (citing Ex. 1024, col.75, ll. 59–65)) and an “application is a software program” (*id.* at 32 n.15). *See also* Pet. Reply 7. Further, DeLorme discloses that the WCU is programmed to perform other tasks, such as voice recognition of user inputs (Ex. 1024, col. 76, ll. 46–59) and processing data from a GPS receiver (*id.* at col. 75, ll. 46–59). DeLorme, thus, discloses a wireless handheld computing device on which hospitality applications are stored.

Third, WCU 907 has a hospitality data stored thereon. DeLorme discloses that a TRIPS user can make travel plans and arrangements on a desktop TRIPS setup, as depicted in Fig. 1A, and then transfer the output to TRIPS providers 904 “and/or . . . memory at 912 of an appropriate WCU 907.” *Id.* at col. 72, ll. 44–61.; *see also id.* at col. 18, ll. 35–42, col. 72, ll. 26–36, (also disclosing that TRIPS output can be electronically transferred to WCU 907). The updated travel information is “committed to memory at [TIPS providers] 904 or [WCU] 907.” *Id.* DeLorme, thus, discloses a wireless handheld computing device on which hospitality data are stored.

Patent Owner arguments that WCU 907 does not meet this claim element is not commensurate with the scope of the claim. When given its broadest reasonable interpretation this claim element does not require that the WCU 907 stores a hospitality application that does more than exchange data with a server nor does it require that the hospitality application and data be locally resident. Pet. Reply 7.

We are persuaded by Petitioner’s evidence and analysis that WCU 907 meets the claimed wireless handheld computing device on which hospitality applications and data are stored. We, thus, determine that DeLorme discloses a wireless handheld computing device on which hospitality applications and data are stored.³

4. *“at least one Web server on which hospitality applications and data are stored” and “at least one Web page on which hospitality applications and data are stored.”*

Petitioner contends that TRIPS includes a Web server on which hospitality applications and data are stored and a Web page on which hospitality applications and data are stored. Pet. 53–54 (citing Ex. 1002 ¶¶ 194–199). Patent Owner does not specifically dispute this contention.

After review of Petitioner’s evidence and analysis, we are persuaded that TRIPS includes a Web server on which hospitality applications and data are stored and a Web page on which hospitality applications and data are stored.

³ Patent Owner also makes arguments directed “internet-only” embodiment DeLorme, which would include java applets installed on the WCU. PO Resp. 32–40; see Pet. Reply 8–11. We do not reach these arguments because as explained in analysis WCU 907 of the portable TRIPS embodiment meets the claimed limitation.

DeLorme discloses an embodiment in which all TRIPS function, data and service can be provided entirely online through, for example, a TRIPS Internet World Wide Web Site. Ex. 1024, col. 14, ll. 43–47; *see also id.* at col. 51, ll. 13–22 (describing an Internet TRIPS). The '850 patent, itself, discloses that the World Wide Web was an existing and known client-server system, that distributes Hypertext Mark-up Language (“HTML”) documents for viewing in browsers on client computers. Ex. 1001, col. 12, ll. 4–61. DeLorme further discloses that online TRIPS embodiments can use distributed applications, agents, or online applets developed in Java. *Id.* at col. 14, ll. 47–52.

We are persuaded by Petitioner’s evidence and analysis that the online TRIPS embodiment disclose a Web server on which hospitality applications and data are stored and a Web page on which hospitality applications and data are stored. We, thus, determine that DeLorme discloses a Web server on which hospitality applications and data are stored and a Web page on which hospitality applications and data are stored.

5. “an application program interface” and “wherein the application program interface enables integration of outside applications with the hospitality applications”

Petitioner contends that TRIPS’s Provider Input/Output 231 meets the claimed API that enable integration of outside applications with the hospitality applications. Pet. 54–55, 57; Pet. Reply 14–15. According to Petitioner, TRIPS uses Provider Input/Output 231 to communicate and exchange data with outside applications. Pet. Reply 15.

Patent Owner disagrees. PO Resp. 40–42. First, Patent Owner argues that this claim element requires that the outside applications be integrated

with the hospitality application “by integrating the different applications from **within** the applications themselves” and Provider Input/Output 231 does not integrate from within the applications themselves. *Id.* at 40 (emphasis original). Second, Patent Owner argues that TRIPS is not a hospitality application and, thus, there is not hospitality application to interface with the third-party providers. *Id.* at 40–41. According to Patent Owner, the claim element also preclude the third-party provider applications from being hospitality applications. *Id.* at 41–42.

We are persuaded by Petitioner’s evidence and analysis that the claimed API when it is given the broadest reasonable construction, is met by Provider Input/Output 231. As discussed above, the broadest reasonable construction of “an application program interface . . . wherein the application program interface enables integration of outside applications with the hospitality applications” is a set of routines used by an application program that enables the combining of the outside applications with the hospitality applications into a functional unit by allow them to communicate with each other. DeLorme discloses that “TRIPS 203 further offers/brokers Provider Input/Output 231 to and from third-party providers of travel information and services—optimally in real time online.” Ex. 1024, col. 31, ll. 42–44; *see also* Ex. 1024, col. 63, ll. 61–67 (further disclosing that TRIPS provides and brokers tickets, reservations, and other goods and services from third-party providers, using the Accounting Subsystem). DeLorme, thus, discloses an application program that enables the combining of the outside applications with the hospitality applications into a functional unit by allowing them to communicate with each other.

Patent Owner's argument that Provider Input/Output 231 does not meet this claim element is not commensurate with the scope of the claim. First, the claim does not require an API that integrates the applications from within applications. See Pet. Reply 14. Indeed, the '850 patent does not describe such an application program interface. Second, claim 12 does not preclude the outside applications from also being hospitality applications. See Pet. Reply 14–15. Finally, as discussed above with regards to the other claim elements, we have determined that TRIPS is a hospitality application.

We are persuaded by Petitioner's evidence and analysis that the claimed API, when it is given the broadest reasonable construction, is met by DeLorme's Interface and Interaction Bus 209. We, thus, determine that DeLorme discloses an API that enable integration of outside applications with the hospitality applications.

6. *“a communications control module” and “wherein the communications control module is an interface between the hospitality applications and any other communication protocol”*

Petitioner contends that the TRIPS's Interface and Interaction Bus 209 meets the claimed a communications control module that is an interface between the hospitality applications and any other communication protocol, except that DeLorme does not explicitly disclose that the communications control module is an interface between the hospitality applications and any other communication protocol. Pet. 50–51, 55–56 (citing Ex. 1002 ¶¶ 203–209). Petitioner argues, however, that a person of ordinary skill in the art would understand that because the Interface and Interaction Bus 209 is an interface between the retail consumer users and the various subsystems that comprise TRIPS and because the retail consumer users use different types of

devices, which would use different communication protocols, it would have been obvious to a person of ordinary skill to configure the Interface and Interaction Bus 209 to be an interface for different communication protocols. *See* Pet. 55–56, Pet. Reply 16–17.

Patent Owner argues that DeLorme’s Interface and Interaction Bus 209 does not meet the claimed communications control module, when that term is construed according to Patent Owner’s proposed construction, because it is

(1) not a server-side software layer, (2) does not provide an interface between hospitality applications and communication protocols (3) does not monitor and route communications to different devices while concurrently using different protocols and (4) is not “a software layer that []sits on top of a communications protocol and acts as an interface between hospitality applications and the communications protocol” as stated by the specification.

PO Resp. 43–44.

We are persuaded by Petitioner’s evidence and analysis that the claimed communication control module, when it is given the broadest reasonable construction, would have been obvious in view of DeLorme’s Interface and Interaction Bus 209. As discussed above, the broadest reasonable construction of “a communications control module . . . wherein the communications control module is an interface between the hospitality applications and any other communications protocol” is a device used as an intermediary in transferring communications to and from the host computer to which it is connected, wherein the device is an interface between the hospitality applications and any other communications protocol. DeLorme describes the Interface and Interaction Bus 209 as a device that gives retail

users access to TRIPS Subsystem (Ex. 1024, col. 13, ll. 15–41) and depicts it as an interface between retail users 205 and third-party providers at 231 and TRIPS Subsystems 213, 217, 221, and 223 (*id.* at Fig. 9). DeLorme also describes that Main Menu 413 and Interaction Bus 414, which corresponds to the Interface and Interaction Bus 209, as coordinating the responses to alternate input means embedded in specialized TRIPS field or in-vehicle embodiments. Ex. 1024, col. 37, ll. 54–65. DeLorme, thus, discloses an intermediary in transferring communications to and from the host computer to which it is connected.

DeLorme does not explicitly disclose that the Interface and Interaction Bus 209 is an interface between different communication protocols. DeLorme, however, does describe the Interface and Interaction Bus 209 interfacing with different devices. *See, e.g.*, Ex. 1024, col. 14, l. 66–col. 15, l. 14 (describing different alternative end-user hardware platforms). The different devices would use different communication protocols. *See id.* at col. 37, ll. 54–56, (describing simplified input or remote queries), col. 14, l. 66–col. 15, l. 13 (describing internet based access); PO Resp. 9 (“third party systems such as POS system devices “clearly which operate with different protocols”); Ex. 1076, 176:17–177:12 (testimony of Dr. Weaver indicating that different devices operate with different protocols). In order for Interface and Interaction Bus 209 to interface with devices using different communication protocols, Interface and Interaction Bus 209 would be configured to interface with different communication protocols or it would be obvious for it to be configured as such, because it is advantageous for TRIPS to interface with different devices. *See* Ex. 1002 ¶ 209.

Patent Owner's argument that DeLorme's Interface and Interaction Bus 209 fails to meet this claim element is based upon its proposed construction (*see* PO Resp. 43–44), which we did not adopt. For example, Patent Owner' argues that Interface and Interaction Bus 209 is not a software layer that sits on top of a communication protocol. *Id.* This argument is not persuasive because it is not commensurate with the scope of claim 12, when given its broadest reasonable construction. *See* Pet. Reply 17–18.

We are persuaded by Petitioner's evidence and analysis that the claimed communication control module, when it is given the broadest reasonable construction, would have been obvious in view of DeLorme's Interface and Interaction Bus 209. We, thus, determine that DeLorme's TRIPS system teaches the claimed communications control module that is an interface between the hospitality applications and any other communications protocol.

7. “wherein applications and data are synchronized between the central [database], at least one wireless handheld computing device, at least one Web server and at least one Web page”

Petitioner contends that TRIPS teaches that applications and data are synchronized between the central database, at least one wireless handheld computing device, at least one Web server, and at least one Web page. Pet. 56–57; Pet. Reply 1–13. According to Petitioner, the claim does not preclude synchronizing application by synchronizing the data used by those application and TRIPS discloses synchronizing the data used by those applications. Pet. Reply 1–13.

Patent Owner disagrees. PO Resp. 13–17. According to Patent Owner, DeLorme does not teach synchronizing applications between a wireless handheld computing device or any other device. *Id.* at 13. Patent Owner states that “[t]here is no teaching or suggestion in DeLorme of making **applications** consistent between a wireless handheld computing device and any of the other components of this limitation.” *Id.* According to Patent Owner, this claim element requires more than data synchronization, — it requires “communication of application software code between the TRIPS host and WCU.” *Id.* at 14–19.

We are persuaded by the Petitioner that the claim element does not preclude synchronizing application by synchronizing the data used by those application and TRIPS discloses synchronizing the data used by those applications. *See* Pet. 56–57; Pet. Reply 1–6; Ex. 1002 ¶ 83. DeLorme contains numerous disclosures of transmitting updated data and function to various devices, including to WCU 907. For example, DeLorme discloses that a TRIPS user can communicate and transfer data with other TRIPS systems, users, service provides, external databases, a central communication bureau, or other online services. Ex. 1024, col. 10, ll. 19–33; *see also id.* at col. 10, ll. 47–58 (disclosing that TRIPS output can be downloaded to a PDA or GPS, an accommodations provider, other TRIPS users), col. 14, ll. 24–26 (a user can “download updated TRIPS map data, *functions* and timely, topical travel information” (emphasis added)), col. 15, ll. 40–46, col. 16, ll. 5–11 (“TRIPS output also includes the online transmission of the user’s reservation requests, ticket purchases . . . directly to third-party providers”), col. 16, ll. 40–59 (“the TRIPS user can transfer all or part of the output from a TRIPS travel planning session into a PDA . . .

[or] other compatible, small and highly portable computer devices”), col. 18, ll. 25–32, col. 31, ll. 53–56, col. 73, ll. 46–52, col. 72, ll. 12–17, col. 74, ll. 45–50. In particular, DeLorme discloses that TRIPS travel plans, including “map ticket” outputs, can be partly or entirely transferred from a desktop PC to the memory of the WCU 907 and to third-party providers to facilitate later inquiries en route (*id.* at col. 72, ll. 20–37) and also transferred to the relevant TRIPS provider to be put “on file” for further assistance during the actual trip (*id.* at col. 72, ll. 50–67). DeLorme, thus, discloses that applications and data are synchronized between the central database, at least one wireless handheld computing device, at least one Web server, and at least one Web page. *See* Ex. 1002 ¶¶ 210–212.

Patent Owner argument that DeLorme does not disclose synchronizing *applications* between a wireless handheld computing device or any other device, because DeLorme does not disclose communication of application software code between the TRIPS host and WCU is not commensurate with the scope of the claim. The claim element does not require that the WCU’s hospitality application be synchronized by the transmission of application software code. *See* Ex. 1002 ¶ 83. Indeed, the specification of the ’850 patent does not disclose such. As Patent Owner, itself, point out, the ’850 patent discloses an example of synchronizing applications by transmitting an updated menu to the wireless handheld device. PO Resp. 18. The ’850 patent describe the updated menu as “menu database” and describes the transmitting as downloading the database to the wireless handheld device and Web page. Ex. 1001, col. 8, ll. 45–59, col. 8, l. 66–col. 10, l. 1. This description of transmitting an updated menu database to a wireless handheld computing device is akin to DeLorme’s

description of transmission of TRIPS advances travel planning information to the WCU 907.

We are persuaded by Petitioner's evidence and analysis that DeLorme, thus, discloses that applications and data are synchronized between the central database, at least one wireless handheld computing device, at least one Web server, and at least one Web page.

8. Conclusion as to Obviousness of Claim 12

We determine that Petitioner has shown by a preponderance of the evidence that claim 12 is unpatentable under 35 U.S.C. § 103. In making our determination and as discussed below, we considered Patent Owner's arguments and evidence of secondary indicia of non-obviousness, but are not persuaded by such that claim 12 is patentable over DeLorme.

iii. Claim 13

Claim 13 depends from claim 12 and additionally requires that the communications control module provides a single point of entry for all hospitality applications and wherein the single point of entry allows the synchronization of at least one wireless handheld computing device and at least one Web page with the central database so that at least one handheld device, at least one Web page and central database are consistent.

Ex. 1001, col. 16, ll. 23–30.

Petitioner contends that the Interface and Interaction Bus 209 is a single point of entry for all hospitality applications. Pet. 59–60 (citing Ex. 1002 ¶ 221); Pet. Reply 19–20.

Patent Owner argues that the Interface and Interaction Bus 209 is not a single point of entry for all hospitality applications for many of the same

reasons as discussed above with regards to the communication control module claim element. PO Resp. 46–48

For the same reasons as discussed above with regards to the communication control module claim element, we are persuaded by the Petitioner that DeLorme’s Interface and Interaction Bus 209 is a single point of entry or a center of communication for all hospitality applications. *See* Pet. 59–60; Pet. Reply 19–20; *see also* Ex. 1024, col. 31, ll. 15–41, col. 37, ll. 54–67, Figs. 2, 4 (disclosing and depicting that the Interface and Interaction Bus 209 coordinating communication between devices of the TRIPS system).

We determine that Petitioner has shown by a preponderance of the evidence that claim 13 is unpatentable under 35 U.S.C. § 103. In making our determination and as discussed below, we considered Patent Owner’s arguments and evidence of secondary indicia of non-obviousness, but are not persuaded by such that claim 13 patentable over DeLorme.

iv. Claims 14 and 15

Claim 14 depends from claim 13 and additionally requires that “wherein information entered on at least one Web page and transmitted over the internet is automatically communicated to the central database and at least one wireless handheld computing device.” Ex. 1001, col. 16, ll. 31–36. Claim 15 also depends from claim 13 and additionally requires that “information entered on at least one wireless handheld computing device is automatically communicated to the central database and at least one Web page.” *Id.* at col. 16, ll. 37–41.

Petitioner contends that because the TRIPS database maintains all travel itinerary information, information entered on a TRIPS webpage on a user's PC would automatically be entered into the TRIPS database and would automatically be reflected in future downloads of that itinerary, including downloads to a wireless handheld device and vice versa. Pet. 60–61 (citing Ex. 1002 ¶¶ 227, 232); Pet. Reply 18–19, 20–21.

Patent Owner argues that automatic communication requires that the communication be entirely without human action. *See* PO Resp. 8, 49. According to Patent owner, any future downloading would require human action and thus the communication is not automatic. *Id.* at 50.

We are persuaded by Petitioner that TRIPS meets these claim elements. *See* Pet. 60–61, 18–19, 20–21. As explained by Petitioner's declarant Dr. Turnbull, providing updated information to TRIPS's database from a wireless handheld device or web page, which may then be reflected in future downloads of that information to a wireless handheld device or web page meets these claim elements. *See* Ex. 1002 ¶¶ 224–227. We agree with Petitioner that “even though DeLorme may download an itinerary to a WCU and/or a desktop PC in response to user action, that user action enables the updated itinerary to be sent without any explicit request for an update by the user (i.e., in an automated way).” Pet. Reply 20–21.

Patent Owner's argument that the automatic communication requires that the communication be entirely without human action is unreasonable in light of the '850 patent's specification. The '850 patent discloses an “automated download procedure,” which transfers a menu database to the wireless handheld device by a user clicking on a “File>Download Database”

or a “Download Database icon” (Ex. 1001, col. 8, ll. 51–55; col. 9, l. 67–col. 10, l. 1.).

We determine that Petitioner has shown by a preponderance of the evidence that claims 14 and 15 are unpatentable under 35 U.S.C. § 103. In making our determination and as discussed below, we considered Patent Owner’s arguments and evidence of secondary indicia of non-obviousness, but are not persuaded by such that claims 14 and 15 are patentable over DeLorme.

v. Claim 16

Claim 16 depends from claim 12 and additionally requires that “the applications and data are synchronized by digital data transmission between the central database, at least one wireless handheld computing device, at least one Web server and at least one Web page.” Ex. 1001, col. 16, ll. 42–47.

Petitioner argues that the communication between the TRIPS central database, the wireless computing handheld device, and the Web server and the Web page are inherently digital or obviousness. Pet. 61–62 (citing Ex. 1002 ¶¶ 233–237; Ex. 1024 (col. 72, ll. 7–15)). Patent Owner makes no argument specifically directed to the additional limitation required by claim 16. See PO Resp. 46–50 (arguing that the dependent claims contain additional elements distinguish them from the prior art, but not addressing the additional elements of dependent claim 16).

After review of Petitioner’s evidence and analysis, we are persuaded by that evidence and analysis that TRIPS’s applications and data are synchronized by digital data transmission between the central database, at

least one wireless handheld computing device, at least one Web server and at least one Web page. *See* Pet. 61–62. DeLorme’s contains numerous disclosures that the TRIPS output is in a digital form and that the device in TRIPS are digital devices. *See, e.g.*, Ex. 1024, col. 7, l. 66–col. 8, l. 3, col. 12, ll. 9–13, col. 24, ll. 61–66.

We determine that Petitioner has shown by a preponderance of the evidence that claim 16 is unpatentable under 35 U.S.C. § 103. In making our determination and as discussed below, we considered Patent Owner’s arguments and evidence of secondary indicia of non-obviousness, but are not persuaded by such that claim 16 is patentable over DeLorme.

vi. Patent Owner’s Secondary Consideration Arguments

Patent Owner contends that objective factors including praise, awards, commercial success, copying, failure of others, and licensing confirm the non-obviousness of all challenged claims of the ’850 patent. PO Resp. 50–80; PO Sur-Reply 1–5. We have fully considered Patent Owner’s arguments and evidence concerning objective indicia of non-obviousness, but are not persuaded that they outweigh the Petitioner’s showing of obviousness.

1. Nexus

Factual inquiries for an obviousness determination include secondary considerations based on evaluation and crediting of objective evidence of nonobviousness. *Graham*, 383 U.S. at 17–18. To be relevant, evidence of nonobviousness must be commensurate in scope with the claimed invention. *In re Kao*, 639 F.3d 1057, 1068 (Fed. Cir. 2011). Thus, to be accorded substantial weight, there must be a nexus between the merits of the claimed

invention and the evidence of secondary considerations. *In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995). “Nexus” is a legally and factually sufficient connection between the objective evidence and the claimed invention, such that the objective evidence should be considered in determining nonobviousness. *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir. 1988).

Patent Owner contends that the invention of claims 12–16 are coextensive with its 21st Century Restaurant™ (“21CR”) system and, thus, a nexus is established between the merits of the claimed invention and its evidence of praise, awards, commercial success, copying, failure of others, and licensing. PO Resp. 53–63 (citing *Teva Pharm., Inc. v. Sandoz, Inc.*, 723 F.3d 1363, 1372 (Fed. Cir. 2013) (“There is a ‘presumption of a nexus’ when a product is ‘coextensive’ with a patent claim.”). Patent Owner argues that Figures 1 and 6 of the ’850 patent, as original filed in the patent application, an annotated brochure of the 21CR system (“the 21CR Product Brochure”), and other articles and evidence establish that its 21CR system is coextensive with the invention of claims 12–16. PO Resp. 53–63.

Petitioner disagrees that the invention of claims 12–16 are coextensive with the 21CR system, because claims 12–16 have no elements directed to the menu wizard. Pet. Reply 21–23. According to Petitioner, the inventor of the ’850 patent testifies that it was the menu wizard that was the “break-through.” *Id.* at 21 (quoting Ex. 1012, 541).

We are not persuaded that the 21CR system is coextensive with the invention of claims 12–16. As pointed out above, there are two aspects to the system disclosed by the ’850 patent: menu generation and synchronous communication. See Ex. 1001, col. 3, ll. 15–23. The first aspect includes a

“desktop software application that enables the rapid creation and building of a menu” (*id.* at col. 3, ll. 15–17) (i.e., a menu wizard) and is claimed in claims 1–11, which are not challenged in this proceeding. Claims 12–16, which are challenged in this proceeding, are directed to the second aspect of the system, synchronous communication and is devoid of elements directed to the menu wizard. *See id.* at col. 2, ll. 56–62; col. 3, ll. 1–5; col. 10, ll. 57–59.

Figure 6, as originally filed, depicts an alleged screen shot of a communications control window of the 21CR system and Figure 1, as originally filed, depicts a screen shot of the menu wizard the system. Ex. 1010, 55, 60; *see also* Ex. 1001, col. 4, l. 31–35, col. 4, ll. 49–51, col. 6, ll. 9–21, col. 9, ll. 29–40. Patent Owner alleges that the screen shots are of a live or operational 21CR system (PO Res. 54), but does not provide any evidence of such. Further, contrary to Patent Owner’s argument that the 21CR system is coextensive with the invention of claims 12–16, originally filed Figure 1 depicts the menu wizard. Claims 12–16 are devoid of elements directed to the menu wizard. Figures 1 and 6, thus, do persuasively demonstrated that the 21CR system is coextensive with the invention of claims 12–16.

The 21CR Product Brochure contains annotations that purport to show that the 21CR system is coextensive with the invention of claims 12–16. Ex. 2024, 4–5. Based upon the annotated 21CR Product Brochure, Dr. Weaver testifies that there is a nexus between the merits of claims 12–16 (i.e., “synchronization, integration and consistency”) and the 21CR system. *See* Ex. 2019 ¶¶ 102–105. The annotations, however, were not made by Dr. Weaver but by Patent Owner’s counsel (Pet. Reply 22–23) and Dr. Weaver’s

testimony indicates that he relied upon the annotations. *See* Ex. 2019 ¶ 105 (“The annotated brochure further shows the correspondence of 21CR to elements of specific challenged claims.”). The annotations are merely attorney argument unsupported by evidence and, thus, not persuasive. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997) (stating that attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value).

Patent Owner argues that “Dr. Weaver reviewed all of Ameranth’s ‘annotations’ and confirmed them to be accurate and correct, again a normal review activity of an expert.” PO Sur-Reply 3. To the contrary, Dr. Weaver’s cross-examination testimony indicates that he relied upon representations from Patent Owner’s counsel that the ’850 patent were based on the 21CR product and didn’t perform any independent investigation.

Q. Okay. So is it fair to say that, as far as your analysis goes, you relied on representations from counsel that the ’850 and ’325 patents were based on the 21CR products and you didn’t perform an independent investigation as to whether that’s correct?

A. Correct.

Ex. 1076, 219:11–20; *see also id.* at 216:3–219:10, 229:2–8. The 21CR Product Brochure and Dr. Weaver’s testimony, thus, does not persuasively demonstrate that the 21CR system is coextensive with the invention of claims 12–16.

Further, as discussed in detail below, other evidence provided by the Patent Owner suggests that the 21CR system is not coextensive with the invention of claims 12–16. For example, Patent Owner states that HostAlert, for which it won an award, is “a subset of the 21st Century Restaurant™ system/technology, inclusive of waitlisting, table management

and reservations, but not including food and drink ordering.” PO Resp. 69 (citing Ex. 2027). This indicates that the 21CR system includes features than additional to those of the challenged claims, such as matching a waiting party in a database to a newly available table in a restaurant, based on party size and longest wait-time or adding a customer to a sister restaurants waiting list. *See* Ex. 2027, 6.

In addition to arguing that the 21CR system is coextensive with the claims 12–16, Patent Owner argues that the evidence of secondary considerations has a nexus with the “synchronization, integration, and consistency” features of claims 12–16, which are required by the wherein clause of claim 12. *See* PO Sur-Reply 1; Ex. 2019 ¶ 102. In the analysis below, we address whether the evidence of secondary considerations has a sufficient a nexus with the merits of the claimed invention.

2. *Licensing*

Licenses taken under the patent in suit may constitute evidence of non-obviousness; however, only little weight can be attributed to such evidence if the patentee does not demonstrate “a nexus between the merits of the invention and the licenses of record.” *GPAC Inc.*, 57 F.3d at 1580 (citations omitted).

Patent Owner contends that the patents in the ’850 family have been licensed by 44⁴ companies, “the majority of these licenses occurring outside of litigation.” PO Resp. 63–64; PO Sur-Reply 4–5. To support its contention, Patent Owner provides its press releases, including its own,

⁴ In its Sur-Reply, Patent Owner asserts 46 licenses of the patents of the ’850 family. PO Sur-Reply 4.

announcing the licenses (Exs. 2003, 2025) and an amendment to a license with Agilysys, Inc. (Ex. 2025, 10–12). Patent Owner argues that that its press releases were jointly issued (PO Resp. 64) and that “[t]he majority of these licenses occurred outside of litigation” (*id.*).

Petitioner argues that the press releases do not show a nexus between the merits of the invention, do not state whether the ’850 patent itself or the challenged claims were licensed, or whether litigation had been threatened. Pet. Reply 24.

We are persuaded by Petitioner that the press releases and the amendment to a license with Agilysys, Inc. does not sufficiently establish a nexus between the license and the merits of invention of claims 12–16. For example, the press release in Exhibit 2003 states in the first paragraph that Patent Owner “has entered into a strategic patent license agreement with PAR Technology Corporation” and disparately discusses at least four of Patent Owner’s patents, this doesn’t not sufficiently indicate whether the license is for the ’850 patent or the challenged claims. Ex. 2003, 2. Further, although Patent Owner states that most of the licenses occurred outside of litigation, Patent Owner provides no evidence to show that the PAR Technology Corporation license or any of the other licenses occurred outside of litigation. Indeed, licensee Agilysys, Inc. is listed as a defendant in a related matter on Patent Owner’s mandatory notices. Paper 7, 3. Without such evidence that the licenses occurred outside of litigation, Patent Owner’s argument is merely attorney argument and entitled to little weight. *Geisler*, 116 F.3d at 1470.

We are not persuaded that the evidence sufficiently establishes a nexus between the licensing and the merits of the claimed invention. We,

thus, give little weight to Patent Owner's argument that evidence of licensing overcomes Petitioner's showing of obviousness.

3. *Commercial Success*

Patent Owner argues that evidence of "substantial, widespread commercial success" demonstrates the non-obviousness of the claims 12–16. PO Resp. 65–68; *see also id.* at 55–57. Patent Owner argues that "the measures of the claimed invention's commercial success are the partnerships and/or licenses of its products and co-existent intellectual property, as a result of its May 1999 launch at the NRA [(National Restaurant Association)] show." *Id.* at 66.

Petitioner argues that Patent Owner's evidence is insufficient to establish a nexus between the alleged copying and the merits of the claimed invention. Pet. Reply 21–23.

We are not persuaded that the evidence sufficiently establishes the alleged commercial success or that a nexus exists between the alleged commercial success and the merits of the claimed invention. For example, Patent Owner cites to the entirety of Exhibit 2026 to show that "[t]he 2004 and 2006 HT POS market reports and rankings show that Ameranth licensed 21CR to most of these leading POS companies, and achieved overwhelming market share." PO Resp. 66–67. Exhibit 2026 is two Hospitality Technology magazines ranking food service point-of-sale systems. The magazines do not show sufficiently that Patent Owner licensed its 21CR system to most of the leading point-of-sale companies or that Patent Owner achieved overwhelming market share. The magazines do not mention the 21CR system.

Patent Owner relies upon deposition testimony of Mr. John Harker to show commercial success, including “the incredible market reception that the 21CR system received at the May 1999 NRA show.” PO Resp. 55–57 (citing Ex. 2022). For example, Mr. Harker testifies that tens of thousands walked by Ameranth’s booth and hundreds stopped. Ex. 2022, 175:11–176:16. However, this does not sufficiently establish that the 21CR product captured a significant market share as a result of the May 1999 NRA show, commercial success of the 21CR product, or that merits of the challenged claims was the cause of the commercial success.

We are not persuaded that the evidence sufficiently establishes the alleged commercial success or that a nexus exists between the alleged commercial success and the merits of the claimed invention. We, thus, give little weight to Patent Owner’s argument that evidence of commercial success overcomes Petitioner’s showing of obviousness.

4. Awards/Industry Praise

Industry praise for an invention may provide evidence of non-obviousness where the industry praise is linked to the claimed invention. *See Geo. M. Martin Co. v. Alliance Mach. Sys. Int’l. LLC*, 618 F.3d 1294, 1305 (Fed. Cir. 2010); *Asyst Techs., Inc. v. Emtrak, Inc.*, 544 F.3d 1310, 1316 (Fed. Cir. 2008).

First, according to Patent Owner, it was awarded four awards for its 21CR system and that these awards demonstrate the non-obviousness of the claims 12–16. PO Resp. 68–70; see PO Sur-Reply 4. Petitioner responds that the evidence concerning awards “lacks the requisite nexus because the

reasons for the awards are either non-specific . . . or for non-claimed features.” Pet. Reply 24.

The first award is the Innovation of the Year from the European Hospitality Solutions Technology Show in 1999. PO Resp. 68. Patent Owner asserts that the award was for its 21CR system but provides no other information concerning the award in its Petition. *Id.* (citing Ex. 1012, 634–646⁵). Pages 635–636 of Exhibit 1012 is Patent Owner’s own press release concerning the award. The press release indicates that the award was for its UltraPad™2700 and alleges that the UltraPad™2700 is the wireless handheld computer of a number of Patent Owner’s systems, including its 21CR system. Ex. 1012, 635–636. The press release, however, fails to show, sufficiently, a nexus between the award for the UltraPad™2700 and the merits of the invention of the challenged claim. It does not sufficiently describe how the UltraPad™2700 is integrated or synchronized with the 21CR system or that the award for how the UltraPad™2700 is integrated or synced with the 21CR system.

The second award is the Moby Award from Mobile Insights and the third award is the 2001 Computerworld Honors Program and Collection. PO Resp. 69 (citing Ex. 1012, 680–681, 694–695). Pages 680–681 is Patent Owner’s own press release concerning the Moby Award and pages 695 is a letter concerning the 2001 Computerworld Honors Program and Collection (“the Computerworld Honor”). According to the press release and letter, Patent Owner received these awards for the deployment of the 21CR system at the Improv Comedy Club in Dallas. Ex. 1012, 681, 695. The press

⁵ Although Patent Owner cites to pages 634–646 of Exhibit 1012, pages 634, 637–646 contain no mention of the Innovation of the Year award.

releases state that the Moby Award “specifically recognizes the wireless handheld computer ticket authorization and seating assignment application” (*id.* at 681), and the letter states that the honor was for a “case study” of the Ameranth Wireless’s Improv Comedy Club Solution but does not specifically mention any feature of the solution. The press release and letter fails to show, sufficiently, a nexus between the Moby Award and the Computerworld Honor and the merits of the invention of the challenged claim. A ticket authorization and seating assignment application is not a feature of the invention of the challenged claims.

With regards to the third award, the Patent Owner argues:

Noteworthy in this award was the express confirmation that the innovations, reflected in the challenged claims as illustrated above, were not available from any other company. Thus the award was not based upon technology available from others. This award also shows that Tom Castillo, owner of the Improv, based his selection of Ameranth on the actual 21CR System demonstrated to him, at the May 1999 NRA show, thus confirming nexus of this award to that product/technology as it existed and was publicly shown/demonstrated **in May 1999**.

PO Resp. 69. The letter, however, contains no indication that the alleged innovations, reflected in the challenged claims, were not available from any other company or any mention of Tom Castillo or the basis of his selection.

The fourth award is a Microsoft Retail Application Developer (R.A.D.) Award for Patent Owner’s HostAlert system. *See id.*; Ex. 2027, 6. Patent Owner alleges that HostAlert is “a subset of the 21st Century Restaurant™ system/technology, inclusive of waitlisting, table management and reservations, but not including food and drink ordering.” *Id.* (citing Ex. 2027). Patent Owner, however, provides no evidence to support its assertion that HostAlert is a subset of its 21CR system or that the subset includes the

features of the challenged claims. To the contrary, the article relied upon by Patent Owner indicates that HostAlert includes additional features than those of the challenged claims, such as matching a waiting party in a database to a newly available table in a restaurant, based on party size and longest wait-time or adding a customer to a sister restaurants waiting list. Ex. 2027, 6.

Second, Patent Owner argues that overwhelming industry praise for the 21CR system is evidence of non-obviousness. PO Resp. 70–72. Patent Owner states that “[t]he hospitality market press and numerous nationally renowned publications including the Wall Street Journal, Time Magazine and Harvard Business review have praised [the 21CR system].” *Id.* at 70. Patent Owner, however, does not provide a citation to any Wall Street Journal, Time Magazine, or Harvard Business Review article in the record. Patent Owner, further, argues that for the Computerworld Honor, Microsoft founder Bill Gates personally nominated Ameranth with the praise that “Ameranth is one of the leading pioneers of the information age for the betterment of mankind.” PO Resp. 71 (citing Ex. 1012, 694–695). Page 694–695 of Exhibit 1012, however, contains no mention of Bill Gates or the alleged quotation. We cannot consider evidence not adequately cited to in the record⁶ or not provide in the record. Without such evidence, Patent Owner’s argument is merely attorney argument and entitled to little weight.

Patent Owner also argues that Marriott’s vice-president Steve Glen, Harvard Business School Press, and other evidence praises the 21CR system. PO Resp. 71–72 (e.g., quoting Ex. 1012, 646–48 (“the Marriot Letter”), Ex. 2028, 35 (“the Harvard Book”). This evidence is not

⁶ Exhibit 1012 contains 1154 pages. It is not readily apparent that the article is contained elsewhere in Exhibit 1012.

persuasive. For example, the Marriott Letter and the Harvard Book praise features of the 21CR system that are not features of the challenged claims, such as “laser bar-code scanning of customer frequency cards,” “wait-list management functions” (Ex. 1012, 647) and “payment processing” (Ex. 2028, 35).

Patent Owner also argues that alleged praise from its licensees in its own press releases demonstrate that the invention is nonobvious. PO Resp. 64–65. For the same reasons discussed above, Patent Owner has not sufficiently demonstrated a nexus between the praise in the press releases the merits of the claimed invention.

Patent Owner has not sufficiently shown that the four awards and the alleged industry praise are linked to the merits of the claimed invention. We, thus, give little weight to Patent Owner’s argument that evidence of awards and industry praise overcomes Petitioner’s showing of obviousness.

5. Copying

“[C]opying by a competitor may be a relevant consideration in the secondary factor analysis.” *Iron Grip Barbell Co., Inc. v. USA Sports, Inc.*, 392 F.3d 1317, 1325 (Fed. Cir. 2004) (citing *Vandenberg v. Dairy Equip. Co.*, 740 F.2d 1560, 1567 (Fed. Cir. 1984). “[A] nexus between the copying and the novel aspects of the claimed invention must exist for evidence of copying to be given significant weight in an obviousness analysis.” *Wm. Wrigley Jr. Co. v. Cadbury Adams USA LLC*, 683 F.3d 1356, 1364 (Fed. Cir. 2012) (internal quotation omitted).

Patent Owner alleges that multiple entities have copied it 21CR system and this copying is evidence of nonobviousness. PO Resp. 72–78;

see also PO Sur-Reply 5. To support its allegation Patent Owner points to numerous statements from competitors and the testimony of Dr. Weaver. *Id.*

Petitioner argues that Patent Owner’s evidence is insufficient to establish a nexus between the alleged copying and the merits of the claimed invention. Pet. Reply 24–25.

We are not persuaded that the evidence sufficiently establishes the alleged copying or that a nexus exists between the alleged copying and the merits of the claimed invention. Patent Owner cites to statements made by employees of competitors, who allegedly had knowledge of the 21CR system, and articles to show copying. PO Resp. 72–78 (citing, for example, Ex. 2009). This evidence, however, fails to establish copying or a nexus between the alleged copies and the merits of the claimed invention. For example, Patent Owner cites articles that discuss Starbucks’ “mobile order and pay” system (Ex. 2009) and “ordering ahead and new payment features” (Ex. 2008). The articles, however, do not sufficiently describes Starbucks’ mobile order and pay system as having the claimed synchronization, integration, and consistency features required by the wherein clause of claim 12 (i.e., the claimed communication control module and application program interface).

Further, Patent Owner relies upon the testimony of Dr. Weaver to show the Starbucks’ system and certain pizza chains copied the relevant “synchronization, integration, and consistency” features of the challenged claims. Ex. 2019 ¶¶ 131, 135. We do not find Dr. Weaver’s testimony to be persuasive or helpful. Dr. Weaver testifies that his opinion is based upon the evidence cited by Patent Owner and Starbucks’ own materials on its “Mobile Order & Pay” system (*id.* ¶ 131) and his “review of their systems including

their mobile apps” (*id.* ¶ 135). As discussed in the paragraph above, the evidence cited by Patent Owner does not sufficiently describe Starbucks’ mobile order and pay system or the pizza chain’s systems to establish that these systems are copies of the 21CR system. Further, Dr. Weaver’s testimony that he reviewed Starbucks’ and the pizza chain’s systems is conclusory with little or no elaboration on those systems. *See* 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”); *see also Rohm and Haas Co. v. Brotech Corp.*, 127 F.3d 1089, 1092 (Fed. Cir. 1997) (nothing requires a fact finder to credit the inadequately explained testimony of an expert).

We are not persuaded that the evidence sufficiently establishes the alleged copying or that a nexus exists between the alleged copying and the merits of the claimed invention. We, thus, give little weight to Patent Owner’s argument that evidence of copying overcomes Petitioner’s showing of obviousness.

6. *Failure of Others*

Patent Owner must show that any evidence of long-felt need “demonstrates both that a demand existed for the patented invention, and that others tried but failed to satisfy that demand.” *In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litig.*, 676 F.3d 1063, 1082 (Fed. Cir. 2012).

Patent Owner argues that many companies tried but failed to achieve synchronization and integration with point-of-sale systems and other third party systems and this failure by others is evidence of nonobviousness. PO

Resp. 72–80. To support its allegation, Patent Owner points to numerous statements from employees of other companies and the testimony of Dr. Weaver. *Id.*

Petitioner argues that the evidence is insufficient to establish that others tried but failed and to establish a nexus between the alleged copying and the merits of the claimed invention. Pet. Reply 25.

We are not persuaded that the evidence sufficiently establishes the alleged long-felt need and failure of others or that a nexus exists between the alleged long-felt need and failure of others and the merits of the claimed invention. Petitioner cites to numerous exhibits as allegedly showing the failure of others. PO Resp. 72–78. For example, Exhibit 2001 is an email from a Food.com employee discussing a license agreement with Patent Owner and specifying the product and services it requires. This, however, does not sufficiently show that Food.com tried but failed to satisfy a demand for the patented invention. In addition, Patent Owner states that “Food.com admitted it needed Ameranth’s technology in its public release on July 16, 1999” (PO Resp. 78) but provides no citation to such a release in the record. We cannot consider evidence not adequately cited to in the record or not provide in the record. *DeSilva*, 181 F.3d at 866–67 (“A brief must make all arguments accessible to the judges, rather than ask them to play archeologist with the record.”) Without such evidence, Patent Owner’s argument is merely attorney argument and entitled to little weight.

We are not persuaded that the evidence sufficiently establishes the alleged failure of others or that a nexus exists between the alleged copying and the merits of the claimed invention. We, thus, give little weight to

Patent Owner's argument that evidence of failure of others overcomes
Petitioner's showing of obviousness.

7. Conclusion as to Secondary Considerations

Patent Owner's evidence fails to demonstrate a sufficient nexus between the claimed invention and any of the alleged secondary considerations. Patent Owner also fails to sufficiently demonstrate commercial success, licensing, copying, and long-felt-but-unmet need for the claimed invention. We, thus, determine that the proffered evidence of objective indicia of non-obviousness is insufficient to outweigh the evidence of obviousness in this case.

III. MOTIONS TO EXCLUDE

Both Petitioner and Patent Owner filed motions to exclude evidence. Patent Owner moves to exclude certain paragraphs of Exhibit 1070 and the entirety of Exhibits 1071, 1072, 1073, 1078, 1079, 1080, 1081, and 1082. Paper 33. We do not rely on these exhibits in reaching our Decision and, thus, dismiss Patent Owner's motion to exclude these exhibits as moot.

Petitioner moves to exclude the entirety of Exhibits 2021, 2023, 2025, 2027, 2030–2051, and 2053–2056 and with the annotated portions of Exhibit 2024. Paper 31. We also dismiss Petitioner's motion to exclude these exhibits. Petitioner's motion to exclude theses exhibits are moot because we have found this evidence insufficient regardless of their admissibility.

IV. CONCLUSION

We conclude Petitioner has proven, by a preponderance of the evidence, that claims 12–16 of the '850 patent are unpatentable under 35 U.S.C. § 103 over DeLorme.

Patent Owner's Motion to Exclude Evidence is dismissed; and
Petitioner's Motion to Exclude Evidence is dismissed.

This is a final written decision of the Board under 35 U.S.C. § 328(a). Parties to the proceeding seeking judicial review of this decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

V. ORDER

Accordingly, it is hereby:

ORDERED that claims 12–16 of U.S. Patent No. 6,384,850 B1 are *unpatentable*;

FURTHER ORDERED that Patent Owner's Motion to Exclude Evidence is *dismissed*; and

FURTHER ORDERED that Petitioner's Motion to Exclude Evidence is *dismissed*.

CBM2015-00080
Patent 6,384,850 B1

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