

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORACLE CORPORATION, NETAPP INC., and
DOT HILL SYSTEMS CORPORATION,
Petitioners,

v.

CROSSROADS SYSTEMS, INC.,
Patent Owner.

Case IPR2014-01197¹
Patent 6,425,035 B2

Before NEIL T. POWELL, KRISTINA M. KALAN, J. JOHN LEE, and
KEVIN W. CHERRY, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

We have jurisdiction to hear this *inter partes* review under 35 U.S.C. § 6(c). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed below, we determine that

¹ Case IPR2015-00822 has been joined with this proceeding.

claims 1, 2, 4–6, 11, 12, and 14 of U.S. Patent No. 6,425,035 B2 (Ex. 1001, “the ’035 patent”) have not been shown to be unpatentable.

A. *Procedural History*

Oracle Corporation, NetApp Inc., and Huawei Technologies Co., Ltd. (“Petitioners”) filed a Petition (Paper 1, “Pet.”), requesting institution of an *inter partes* review of claims 1–14 of the ’035 patent. Patent Owner Crossroads Systems, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 12, “Prelim. Resp.”). In a Decision to Institute (Paper 13, “Dec. to Inst.”) issued January 29, 2015, we instituted an *inter partes* review of claims 1, 2, 4–6, 11, 12, and 14 on the following grounds of unpatentability:

1. Claims 1, 2, 4, 11, 12, and 14 under 35 U.S.C. § 103(a) for obviousness over Bergsten² and Hirai³; and
2. Claims 5 and 6 under 35 U.S.C. § 103(a) for obviousness over Bergsten, Hirai, and Smith⁴.

After institution of trial, Patent Owner filed a Patent Owner Response (Paper 30, “PO Resp.”) and Petitioners filed a Reply (Paper 43, “Pet. Reply”). On September 17, 2015, we granted Dot Hill Systems Corporation’s motion for joinder and joined IPR2015-00822 to this proceeding. Case IPR2015-00822, Paper 18. On October 8, 2015, we

² U.S. Pat. No. 6,073,209, iss. June 6, 2000 (Ex. 1007).

³ Japanese Patent Application Publication No. Hei 5[1993]-181609, pub. July 23, 1993 (Ex. 1008).

⁴ Judith A. Smith & Meryem Primmer, *Tachyon: A Gigabit Fibre Channel Protocol Chip*, HEWLETT-PACKARD J. 1–17 (Oct. 1996) (Ex. 1005).

granted a joint motion to terminate Petitioner Huawei Technologies Co. Ltd. Paper 68. Oral hearing was held on October 30, 2015.⁵

Petitioners submitted the Declaration of Jeffrey S. Chase, Ph.D., dated July 23, 2014, Ex. 1010, in support of its Petition.

Patent Owner submitted the Declaration of Dr. John Levy, Ph.D., dated May 26, 2015, Ex. 2053. Patent Owner also submitted other affidavits in support of its contentions of secondary considerations of non-obviousness. See Ex. 2043; Ex. 2049.

Petitioners filed a Motion to Exclude (Paper 59) and Reply in support of the Motion to Exclude (Paper 69). Patent Owner filed an opposition to Petitioners' Motion to Exclude (Paper 64).

Patent Owner also filed a Motion to Exclude (Paper 61) and Reply in support of their Motion to Exclude (Paper 70). Petitioners filed an opposition to Patent Owner's Motion to Exclude (Paper 65).

B. Related Proceedings

The '035 patent is the subject of multiple district court proceedings. Pet. 2–3; Exs. 1026, 1034, 1035, and 1036; Paper 10, 2.

The '035 patent is also involved in Cases IPR2014-01226 and IPR2015-00825. The '035 patent belongs to a family of patents that are the subject of multiple *inter partes* review petitions including IPR2014-01207, IPR2014-01209, IPR2014-01463, IPR2014-01544, IPR2015-00852, and IPR2015-00854.

⁵ A transcript of the oral hearing ("Tr.") is included in the record as Paper 76.

II. DISCUSSION

A. The '035 Patent

The '035 patent relates to a storage router and method for providing virtual local storage on remote Small Computer System Interface (“SCSI”) storage devices to Fiber Channel (“FC”) devices. Ex. 1001, 1:16–19. SCSI is a storage transport medium that provides for a “relatively small number of devices to be attached over relatively short distances.” *Id.* at 1:23–26. FC is a high speed serial interconnect that provides “capability to attach a large number of high speed devices to a common storage transport medium over large distances.” *Id.* at 1:29–32. Computing devices can access local storage through native low level, block protocols and can access storage on a remote network server through network interconnects. *Id.* at 1:37–49. To access the storage on the remote network server, the computing device must translate its file system protocols into network protocols, and the remote network server must translate network protocols to low level requests. *Id.* at 1:51–60. A storage router can interconnect the SCSI storage transport medium and the FC high speed serial interconnect to provide devices on either medium access to devices on the other medium so that no network server is involved. *Id.* at 3:30–40.

Figure 4 of the '035 patent is reproduced below:

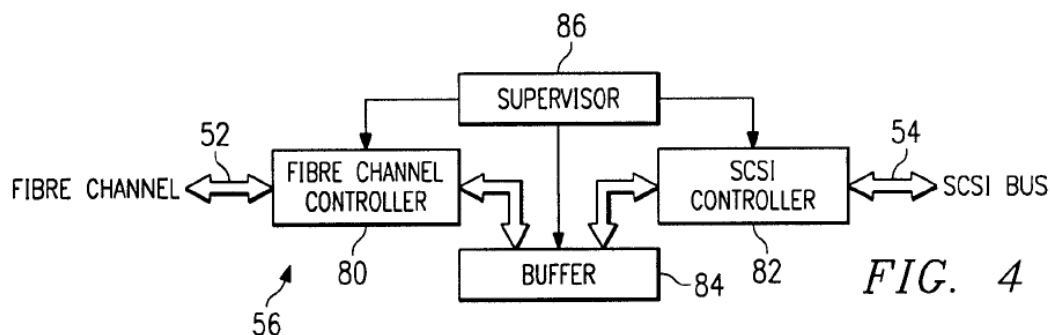


Figure 4 is a block diagram of an embodiment of a storage router. *Id.* at 2:59–60, 5:6–7. Storage router 56 can comprise FC controller 80 that interfaces with FC 52 and SCSI controller 82 that interfaces with SCSI bus 54. Buffer 84 connects to FC controller 80 and SCSI controller 82 and provides memory work space. *Id.* at 5:7–9. Supervisor unit 86 connects to FC controller 80, SCSI controller 82, and buffer 84. *Id.* at 5:10–12. Supervisor unit 86 controls operation of storage router 56 and handles mapping and security access for requests between FC 52 and SCSI bus 54. *Id.* at 5:12–17.

Claims 1 and 11 are the independent claims at issue in this trial, and claim 1 is reproduced below:

1. A storage router for providing virtual local storage on remote storage devices to devices, comprising:
 - a buffer providing memory work space for the storage router;
 - a first controller operable to connect to and interface with a first transport medium;
 - a second controller operable to connect to and interface with a second transport medium; and
 - a supervisor unit coupled to the first controller, the second controller and the buffer, the supervisor unit operable to map between devices connected to the first transport medium and the storage devices, to implement access controls for storage space on the storage devices and to process data in the buffer to interface between the first controller and the second controller to allow access from devices connected to the first transport medium to the storage devices using native low level, block protocols.

Id. at 9:13–31.

B. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Tech., LLC*, 793 F.3d 1268, 1278–79 (Fed. Cir. 2015). Only those terms which are in controversy need be construed, and only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

In our Decision to Institute, we determined that no claim terms required construction. Based on our review of the complete record, we maintain our determination that no constructions are necessary.

*C. Obviousness of Claims 1, 2, 4, 11, 12, and 14 over Bergsten and Hirai
Bergsten*

Bergsten is titled “Data Storage Controller Providing Multiple Hosts with Access to Multiple Storage Subsystems,” and describes a storage controller that allows multiple host computer systems at different locations to access any of multiple copies of stored data. Ex. 1007, 3:1–4. The storage controller emulates a local storage array for the host computer system that it services and emulates a host computer system for the local storage array that it accesses. *Id.* at 3:14–17. The host computer systems access stored data using virtual device addresses, which are mapped to real device addresses by the storage controller. *Id.* at 3:17–19. Figure 1 of Bergsten is reproduced below.

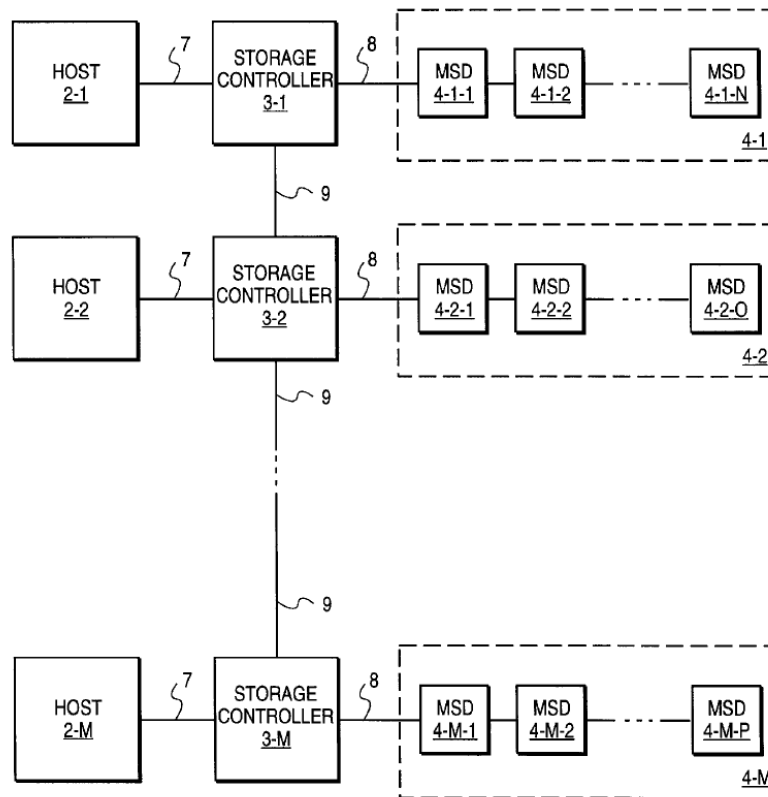


FIG. 1

Figure 1 of Bergsten is a block diagram illustrating a computing system in which a number of Bergsten's storage controllers provide a number of host computer systems with access to a number of storage arrays. *Id.* at 3:20–23. Figure 1 shows a computing system with M storage controllers, 3-1 through 3-M; M host computers, 2-1 through 2-M, which are coupled to storage controllers 3-1 through 3-M, respectively; and M storage arrays 4-1 through 4-M, which are coupled to storage controllers 3-1 through 3-M respectively. *Id.* at 3:23–28. Each of the storage arrays includes a number of mass storage devices (“MSDs”). *Id.* at 3:28–34. Storage controllers 3-1 through 3-M function cooperatively to provide any of host computer systems 2-1 through 2-M with access to any of storage arrays 4-2 through 4-M. *Id.* at

4:7–9. Storage controller 3-1 is coupled directly to host computer system 2-1 using data communication path 7 and to local data storage array 4-1 via another communication path 8. *Id.* at 4:13–17. Data communication paths 7 and 8 may conform to a variety of protocols, including SCSI, serial SCSI, Fiber Channel, or ESCON. *Id.* at 4:19–28.

A local host computer accesses data by transmitting a (virtual) host address to its local storage controller. *Id.* at 6:10–11. The host address is then mapped to a real address representing a location on one or more physical MSDs. *Id.* at 6:11–14. The mapping is completely transparent to all of the host computers. *Id.* at 6:14–16. A single host address may map to multiple physical addresses, which may be distributed among multiple MSDs, and such MSDs may further be located in different storage arrays. *Id.* at 6:16–21. The storage controller maintains and uses a tree structure to map the host interface ID and block number to a logical device. *Id.* at 9:21–24; Fig. 8.

Hirai

Hirai is a Japanese published patent application titled “Personal Computer System.” Ex. 1008, at [54]. Hirai describes a personal computer system that allows the sharing of multiple magnetic disk devices by multiple personal computers. *Id.* at Abstract. The multiple disks are considered as one virtual magnetic disk device with a partition control table that manages and specifies the access right of the personal computers connected to the sharing device for each partition of the memory region of the virtual magnetic disk device. *Id.* ¶¶ 5, 11, 12. The access right to a partition includes R (read), W (write), C (create), D (delete), and X (execute). *Id.* ¶ 12. Figure 2 of Hirai is reproduced below.

Partition	Computer name	Access right
Partition 1	Personal computer 1	RWCX
	Personal computer 2	RWCX
	Personal computer 3	RWCX
Partition 2	Personal computer 1	RW
	Personal computer 3	R
Partition 3	Personal computer 1	R
	Personal computer 2	R
Partition n	.	.
	.	.
	.	.
	.	.

(R: Readable, W: Writable, C: Creatable, X: Executable)

Figure 2

Figure 2 shows an example of a partition control table. For example, Personal computer 1 can read, write create, and execute with a partition 1, read and write with a partition 2, and read with a partition 3. *Id.* ¶ 13. The system can prevent illegal access from a personal computer that is not authorized. *Id.*

Analysis

Petitioners argue that Bergsten discloses a storage router having all the limitations of the independent claims except for access controls. Pet. 49–52 (citing Ex. 1007 3:14–19, 4:25–28, 5:65–6:1, 6:24–26, 7:24–31, 8:62–9:8, and 10:23–29). Petitioners rely on Hirai for disclosing denial of unauthorized commands from a particular host device based upon a virtual address. *Id.* at 51 (citing Ex. 1008 ¶ 13). Petitioners submit that “[i]n the combined system, *Hirai*’s access controls are incorporated into *Bergsten*’s storage controllers.” Pet. 47. Petitioners contend that “[t]o the extent that Patent Owner attempts to argue that *Bergsten* may lack explicit and nuanced

detail regarding the implementation of access controls and the ramifications of write-protecting data . . . the access control map described in *Hirai* is detailed with a high degree of particularity.” *Id.* Petitioners explain that in the combined system, “[t]he storage controller . . . maps the host address within the message to a logical storage location and verifies that the access type (which is requested within the storage command) matches the access controls specified for the host device for particular storage location.” *Id.* (citing Ex. 1010 ¶¶ 147–51). Petitioners reason that “[a]n artisan skilled in network storage during the relevant timeframe would combine the *Bergsten* and *Hirai* teachings to provide additional levels of granularity to the access controls of the *Bergsten* system based on the mapping-based access controls of *Hirai*.” *Id.*

Patent Owner disputes whether *Bergsten* or *Hirai*, either alone or in combination, teach or suggest certain limitations of claim 1, including that the supervisor unit be operable to: “to allow access from devices connected to the first transport medium to the storage devices using native low level, block protocols.” PO Resp. 15–39. Patent Owner disputes similar limitations also found in independent claim 11. *Id.* at 40. Patent Owner raises additional arguments regarding the sufficiency of Petitioners’ obviousness analysis based on reasonable expectation of success, Petitioners’ asserted motivation to combine, and objective indicia. *See id.* at 41–52.

We note that the claims require use of native low-level block protocol to effect communication between the controllers. Ex. 1001, 9:13–10:63. The specification emphasizes the importance of native low-level block protocols (“NLLBP”): “storage access involves native low level block

protocols and does not involve the overhead of high level protocols and file systems required by network servers.” *Id.* at 5:1–5. In particular, Patent Owner submits, and Dr. Levy testifies, that Hirai does not “allow access . . . using native low-level block protocol [NLLBP]” because Hirai uses only high level file system access rights. PO Resp. 16–17 (citing Ex. 2053 ¶¶ 59, 89, and 93). Patent Owner contends that Petitioners must impermissibly pick and choose from Hirai’s teachings regarding access rights, ignoring the teaching of Hirai as a whole, to combine it with Bergsten. *Id.* at 17. Patent Owner argues that the combination of Hirai’s file system access controls with the open access system of Bergsten results in “allowing access . . .” in the same manner as the prior art “network servers,” which was the problem identified by the inventors of the ’035 patent. *Id.*

We are persuaded by Patent Owner’s arguments that Petitioners and their Declarant, Dr. Chase, fail to account for the prior art as a whole and improperly pick and choose from the references in their reasoning to support their contention that the proposed combination of Bergsten and Hirai renders the claims obvious. To begin with, the Petition appears to implicitly assume, without any explanation, that Hirai’s access controls are NLLBP controls, but never provides any explanation for this assumption. Pet. 44–47. Even in their reply, Petitioners do not attempt to show that Hirai is directed to NLLBP access controls, but instead only argue that Hirai does not disclose high level controls. Pet. Reply 5. The only evidence Petitioners provide to support their contentions is the testimony of Dr. Chase. We are not persuaded by Petitioners’ contention and Dr. Chase’s testimony that Hirai is directed to block-level access controls. See Pet. Reply 5; Ex. 1010 ¶¶ 144–46.

As Patent Owner explains, looking at all of the access rights described in Hirai, the evidence suggests that these are high-level access controls rather than low level block permissions. Ex. 2053 ¶¶ 88–99. We find that the evidence supports Patent Owner’s contentions that all of the permissions described in Hirai are consistent with file system permissions, not block level permissions. *See id.* ¶¶ 89– 91; Ex. 2048, 28– 29 (describing permissions used in Network File System); Ex. 2057, at [15] (discussing UNIX file permissions); Ex. 2055 308:25–310:7 (explaining that read, write, create, and execute are standard file system permissions). We also agree with Patent Owner that, based on the record currently before us, a person of ordinary skill would not understand Hirai to disclose block level access controls. Ex. 2053 ¶ 92. Such a reading is most consistent with all of the disclosure of Hirai and unlike Dr. Chase’s reading, does not ignore or discount some of the permissions. *Id.* ¶ 97 (discussing Dr. Chase’s cross-examination testimony regarding the “create” permission).

In their Reply, Petitioners raise two principal arguments. Pet. Reply 5–6. First, Petitioners argue that Hirai does not teach that the access controls are at the network file system level. *Id.* at 5. Petitioners contend that the “create” and “delete” commands ignore the fact that an administrator could use the “create” and “delete” commands to control the formation and removal of partitions. *Id.* (citing Ex. 1008 ¶¶ 12–13). However, the portions of Hirai cited to support these statements merely establish that the disk is divided into partitions. Ex. 1008 ¶¶ 12–13. Petitioners cite to no evidence that would establish that the administrator in Hirai would create or delete partitions after they are established. Indeed, it is directly inconsistent with Dr. Chase’s testimony under cross-examination that “since the partition

already exists, create permission can't refer to a permission to create the partition. So it must mean something else." Ex. 2055, 322:22–323:4. Petitioners contend that "'execute' would be nonsensical in a remotely located storage NFS-level solution" and that "*Hirai's* sharing device 3 would have no way of enforcing an execute permission because the remote device would of course execute the files locally, without the intervention or cooperation of the sharing device 3." Pet. Reply 5. Even if it were appropriate to ignore portions of the references, there is no evidence cited to support Petitioner's allegation that "execute" is nonsensical. See *In re Wesslau*, 353 F.2d 238, 241 (CCPA 1965) ("It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art."). Thus, we do not find it persuasive. Moreover, Petitioners fail to explain how this establishes that *Hirai's* access controls must, therefore, be block level. Thus, we do not find this argument overcomes Patent Owner's significant evidence to the contrary.

Second, Petitioners argue that Patent Owner's argument is irrelevant because Petitioners rely on the combination of *Bergsten* and *Hirai* to teach "access controls," and that Patent Owner's arguments are only an attack on the references individually, which is insufficient. Pet. Reply 5–6 (citing *In re Keller*, 643 F.2d 413, 426 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986)). Petitioners argue that "[t]he Petition explains that, to the extent *Bergsten* fails to describe the privileges associated with write-protecting data, *Hirai's* access control may be incorporated into *Bergsten's* storage controller (which operates at the block level, not the file

level).” *Id.* (citing Pet. 47). The Petition notes that Bergsten allows write-protection of certain blocks, but then vaguely asserts that

[t]o the extent that Patent Owner attempts to argue that *Bergsten* may lack explicit and nuanced detail regarding the implementation of access controls and the ramifications of write-protecting data upon a single storage controller of a daisy-chained storage controller network, the access control map described in *Hirai* is detailed with a high degree of particularity.

Pet. 47. We are not persuaded that this presents the combination that Petitioners now argue, in which the access controls are obtained from Bergsten rather than *Hirai*, in sufficient detail. Indeed, that is not how we recognized the combination at institution. *See* Dec. to Inst. 10. Even assuming that this new variation on the combination was presented, we do not find this argument persuasive because, even assuming that Petitioners are relying on Bergsten and *Hirai* to teach this element, the question of whether *Hirai* discloses high level or low level protocols is not irrelevant—it is relevant to assessing the adequacy of the rationale for combining and modifying Bergsten and *Hirai* in the manner Petitioners proposed.

Dr. Chase testifies in his declaration that “[i]n the combined system [of Bergsten and *Hirai*], the partition control table of *Hirai* would be merged with the map of Bergsten to implement access controls to particular data sections. The access controls would be based upon logical addressing.” Ex. 1010 ¶ 150. Dr. Chase also testifies that “[t]he effort to merge the access rights allocations into the mapping tree (or table) of Bergsten would be a straightforward exercise for one of skill in the art at the time of the invention.” *Id.* ¶ 151. However, on cross examination, when asked about the “create” permissions that undeniably do not apply at the block level, Dr. Chase testified that “this is immaterial to me because I understand them to

be an illustration of how this table might be used to represent various access rights and certainly read and write access are applicable in the scenario that we're concerned with and in the combination that we've used Hirai for."

Ex. 2055, 325:23–326:13. Dr. Chase continued that "as I said, the interpretation of create permission is immaterial to me because read and write permission are clearly applicable in the combination." *Id.* at 325:6–327:13. Dr. Chase testified similarly with respect to the "execute" permission. *Id.* at 327:24–328:25.

This type of reasoning—where relevant parts of the reference are disregarded for the proposed combination without sufficient explanation of why a person of ordinary skill would do so—is precisely the type of hindsight reasoning that must be rejected. "Care must be taken to avoid hindsight reconstruction by using 'the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit.'" *Grain Processing Corp. v. Am.–Maize Prods. Co.*, 840 F.2d 902, 907 (Fed. Cir. 1988) (quoting *Orthopedic Equip. Co. v. United States*, 702 F.2d 1005, 1012 (Fed. Cir. 1983)). We have been asked without sufficient justification to carve out and perhaps modify the access controls disclosed in Hirai and combine them with Bergsten to hold that the addition of a certain type of access controls to Bergsten would have been obvious. But "[t]his type of piecemeal analysis is precisely the kind of hindsight that the Board must not engage in." *In re NTP, Inc.*, 654 F.3d 1279, 1299 (Fed. Cir. 2011). Petitioners have not explained why a person of ordinary skill, without the claims in front of them, would have been motivated to take the access control table of Hirai and merge it with the alleged map of Bergsten in the manner that they have

proposed. The only thing that Petitioners suggest is that a person of ordinary skill could have done it, but that is not the test of obviousness. *See Belden, Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073 (Fed. Cir. 2015) (“obviousness concerns whether a skilled artisan not only *could have made but would have been motivated to make* the combinations or modifications of prior art to arrive at the claimed invention” (emphases in original)).

Petitioners’ analysis of claims 1, 2, 4, 11, 12, and 14, all rely on the same principles. Accordingly, we find that Petitioners have failed to show by a preponderance of the evidence that claims 1, 2, 4, 11, 12, and 14 are obvious over the combination of Bergsten and Hirai.

D. Obviousness of Claims 5 and 6 over Bergsten, Hirai, and Smith

Petitioners’ proposed combination of Bergsten, Hirai, and Smith relies on the same reasoning we found insufficient above with respect to the combination of Bergsten and Hirai. *See* Pet. 56–58. Petitioners do not contend that Smith cures the deficiencies in the combination that we identified above. *See id.* Accordingly, we determine that Petitioners have also failed to show by a preponderance of the evidence that claims 5 and 6 are obvious over Bergsten, Hirai, and Smith.

III. PETITIONERS’ MOTION TO EXCLUDE

We have reviewed Petitioners’ Motion to Exclude (Paper 59), Patent Owner’s Opposition to the Motion (Paper 64), and Petitioners’ Reply in support of the Motion (Paper 69). Petitioners move to exclude Exhibits 2035, 2036, 2044, 2045, and 2050. Because our decision does not rely on any of the challenged exhibits, we *dismiss* Petitioners’ Motion to Exclude Evidence as *moot*.

IV. PATENT OWNER'S MOTION TO EXCLUDE

We have reviewed Patent Owner's Motion to Exclude (Paper 61), Petitioners' Opposition to the Motion (Paper 65), and Patent Owner's Reply in Support of the Motion (Paper 70). Patent Owner moves to exclude certain cross examination testimony of Dr. Levy and Exhibits 1009, 1224, 1225, and 1226. Paper 61. We did not rely on either the testimony to which Patent Owner objects or any of the exhibits identified in Patent Owner's motion. Patent Owner also seeks to exclude Exhibit 1008 as having an improper certificate of translation. However, even considering this exhibit, we find for Patent Owner. Accordingly, for these reasons, we *dismiss* Patent Owner's Motion to Exclude as *moot*.

V. PATENT OWNER'S MOTION TO SEAL

Patent Owner filed several exhibits (Exhibits 2044, 2045, and 2052) under seal, along with a Motion to Seal (Paper 28) and a protective order (Paper 29). We previously granted Patent Owner's motion for entry of the default protective order. Paper 53. Patent Owner's Motion to Seal is unopposed and is *granted*.

There is an expectation that information will be made public where the information is identified in a final written decision, and that confidential information that is subject to a protective order ordinarily becomes public 45 days after final judgment in a trial, unless a motion to expunge is granted. 37 C.F.R. § 42.56; Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012). In rendering this Final Written Decision, it was not necessary to identify, nor discuss in detail, any confidential information.

However, a party who is dissatisfied with this Final Written Decision may appeal the Decision pursuant to 35 U.S.C. § 141(c), and has 63 days after the date of this Decision to file a notice of appeal. 37 C.F.R. § 90.3(a). Thus, it remains necessary to maintain the record, as is, until resolution of an appeal, if any.

In view of the foregoing, the confidential documents filed in the instant proceeding will remain under seal, at least until the time period for filing a notice of appeal has expired or, if an appeal is taken, the appeal process has concluded. The record for the instant proceeding will be preserved in its entirety, and the confidential documents will not be expunged or made public, pending appeal. Notwithstanding 37 C.F.R. § 42.56 and the Office Patent Trial Practice Guide, neither a motion to expunge confidential documents nor a motion to maintain these documents under seal is necessary or authorized at this time. *See* 37 C.F.R. § 42.5(b).

Petitioners filed a number of documents (Exhibits 1217, 1218, 1219, 1221, 1222, and 1223) under seal without filing a corresponding motion to seal those documents. *See* 37 C.F.R. § 42.14. If a motion to seal those documents is not filed within 20 days of this decision, those documents will be made public.

VI. CONCLUSION

For the reasons expressed above, we determine that Petitioners have *not* shown by a preponderance of the evidence that:

(1) Bergsten and Hirai renders claims 1, 2, 4, 11, 12, and 14 of the '035 patent unpatentable as obvious; and

(2) Bergsten, Hirai, and Smith renders claims 5 and 6 of the '035 patent unpatentable as obvious.

VII. ORDER

For the reasons given, it is:

ORDERED that claims 1, 2, 4–6, 11, 12, and 14 of the '035 patent have *not* been shown to be *unpatentable*;

FURTHER ORDERED that Petitioners' Motion to Exclude is *dismissed as moot*;

FURTHER ORDERED that Patent Owner's Motion to Exclude is *dismissed as moot*;

FURTHER ORDERED that Patent Owner's Motion to Seal Exhibits 2044, 2045, and 2052 is *granted*;

FURTHER ORDERED that Exhibits 1217–1219 and 1221–1223 are to be unsealed within 20 days of this Final Written Decision, unless a motion to seal those exhibits is filed; and

FURTHER ORDERED that because this is a Final Written Decision, parties to the proceeding seeking judicial review of the Decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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