

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS INC.,  
Petitioner,

v.

OLIVISTAR, LLC,  
Patent Owner.

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Case IPR2015-01216  
Patent 7,606,843 B2

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Before JAMESON LEE, BARBARA A. PARVIS, and SCOTT C. MOORE,  
*Administrative Patent Judges.*

MOORE, *Administrative Patent Judge.*

DECISION  
Denying Institution of *Inter Partes* Review  
37 C.F.R. § 42.108

## I. INTRODUCTION

Petitioner filed a Petition to institute an *inter partes* review of claims 1–8, 11–14, 16–23, 29–32, 37, 47, and 48 (Paper 2; “Pet.”) of U.S. Patent No. 7,606,843 B2 (Ex. 1001; “the ’843 Patent”). Patent Owner filed a Preliminary Response (Paper 12; “Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

On this record and for the reasons discussed below, we do not institute an *inter parties* of any claim of the ’843 Patent. The Petition is *denied*.

## II. BACKGROUND

### A. *Related Proceedings*

Patent Owner has filed 21 separate lawsuits alleging infringement of the ’843 Patent. Pet. 59; Paper 6, 2–4. As of the date Patent Owner filed its Preliminary Response, 19 of these lawsuits were still pending. Paper 6, 2–4.

### B. *The ’843 Patent*

The ’843 Patent is titled “System and Method for Customizing the Storage and Management of Device Data in a Networked Environment.” Ex. 1001, Title. The disclosed invention relates to customizing the storage of data according to device data attributes. *Id.* at 1:18–20.

The Specification of the ’843 Patent explains that many entities generate large amounts of computer data, including data that can be processed and discarded, and data that needs to be maintained for a number of possible uses (“archival” data). Ex. 1001, 1:25–33. Accordingly, these

entities seek out storage solutions that are appropriate considering the type and amount of data being archived. *Id.* However, traditional file management systems have several disadvantages, including an “inability to differentiate between different data types” and an inability to “provide a manner to customize data storage based upon device data attributes” (i.e., attributes of the device that generated the data). *Id.* at 1:59–64. Thus, according to the Specification, “there is a need for a system and method for managing the storage and archival of device data, including multi-media data, according to device data attributes.” *Id.* at 2:19–21.

The ’843 Patent discloses a system and method that are intended to address this need. *See* Ex. 1001, 2:25–26. One disclosed embodiment is a system that includes monitoring devices that generate “monitoring device data characterized by one or more data archival attributes.” *Id.* at 2:52–56. The system also includes a monitoring device processor that obtains an “archival profile corresponding to the one or more data archival attributes and for processing the monitoring device data according to the archival profile.” *Id.* at 2:56–60. The system further includes at least one data repository for storing the monitoring device data “according to the archival profile.” *Id.* at 2:60–62.

### *C. Challenged Claims*

Challenged claims 1, 29, 31, and 47 are independent. Ex. 1001, 13:10–32, 14:61–15:17, 15:20–47, 16:35–61. Each of challenged claims 2–8, 11–14, and 16–23 depends either directly or indirectly from claim 1. *Id.* at 13:34–55, 13:63–14:12, 14:16–44. Challenged claim 30 depends from claim 29. *Id.* at 15:18–20. Challenged claims 32 and 37 depend from claim

31. *Id.* at 15:48–50, 15:64–66. Challenged claim 48 depends from claim 47.  
*Id.* at 16:62–64.

Independent claim 1 is illustrative and is reproduced below.

1. In a system including monitoring devices generating monitoring device data, an archive server processing the archival of monitoring device data and a client computer, a method of selectively archiving monitoring device data based on an archival profile, the method comprising:

obtaining incoming monitoring device data, wherein the incoming monitoring device data is characterized by one or more archival attributes;

obtaining an archival profile for selectively archiving the incoming monitoring device data;

determining whether the archival profile is associated with one or more archival attributes of the incoming monitoring device data;

if the archival profile is associated with one or more archival attributes:

processing the incoming monitoring device data having one or more archival attributes that match the archived profile into a compressed format; and

selectively storing the incoming monitoring device data in the compressed format on a storage medium;

wherein the archival attribute from which the archival profile selectively stores incoming monitoring device data is one selected from the group of file type, monitoring device identifier, and monitoring device type that collected the incoming monitoring device data.

Ex. 1001, 13:10–33.

*D. References and Materials Relied Upon*

Petitioner relies on the following references and materials in support of the asserted grounds of unpatentability:

| <b>References and Materials</b>                                                                                                   | <b>Exhibit No.</b> |
|-----------------------------------------------------------------------------------------------------------------------------------|--------------------|
| U.S. 2003/00225599 (Pub. Feb. 6, 2003) (“Monroe”)                                                                                 | 1003               |
| US 6,708,292 (filed Aug. 18, 2000; iss. Mar. 16, 2004) (“Mangasarian”)                                                            | 1004               |
| US 6,975,617 (filed Mar. 23, 2001; iss. Dec. 13, 2005) (“Walker”)                                                                 | 1005               |
| Declaration of Zaydoon Jawadi In Support of Petition for <i>Inter Partes</i> Review of U.S. Patent No. 7,606,843 (“Jawadi Decl.”) | 1006               |

*E. Asserted Grounds of Unpatentability*

| <b>Challenged Claims</b>                         | <b>Statutory Basis</b>        | <b>Reference(s)</b>    |
|--------------------------------------------------|-------------------------------|------------------------|
| 1–8, 11–14, 16–23, 29–32, 47, 48                 | 35 U.S.C. 102(e) <sup>1</sup> | Monroe                 |
| 1–3, 8, 12–14, 16, 17, 21, 22, 29–32, 37, 47, 48 | 35 U.S.C. § 103               | Mangasarian and Walker |

Pet. 6.

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<sup>1</sup> The Leahy-Smith America Invents Act (“AIA”), Pub. L. 112-29, included revisions to 35 U.S.C. § 102 that became effective on March 16, 2013. Because the ’843 Patent issued from an application that was filed before March 16, 2013, we will refer to the pre-AIA version of 35 U.S.C. § 102.

### III. ANALYSIS

#### A. Claim Construction

##### 1. Claim Construction Standard

Consistent with the statute and the legislative history of the AIA, we interpret claims of an unexpired patent using the broadest reasonable interpretation in light of the specification of the patent. 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Techs. LLC*, 793 F.3d 1268, 1278 (Fed. Cir. 2015) (“Congress implicitly approved the broadest reasonable interpretation standard in enacting the AIA”). In general, claim terms are given their ordinary and customary meaning, as would be understood by a person of ordinary skill in the art in the context of the specification. *See In re Translogic Tech. Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). An applicant may choose, however, to provide a definition of the term in the specification 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).

##### 2. “archival attribute” and “archival profile”

Petitioner proposes that “archival attribute” be construed as “information included in or characteristics of the data received from the monitoring device.” Pet. 6–7. Petitioner proposes that “archival profile” be construed as “a specified set of data characteristics.” *Id.* at 7–8. Patent Owner contends that Petitioner’s constructions are overly broad, *inter alia*, because they read the word “archival” out of both claim terms. Prelim.

Resp. 4, 6. Patent Owner contends that that the claim language is sufficiently clear, and that these terms need not be construed. *See id.*

We agree with Patent Owner’s position that Petitioner’s constructions are overbroad. The challenged claims all relate to the archival of monitoring device data either by an archive server (i.e., a computer), or according to according to computer-executable instructions. *See* Ex. 1001, 13:10–33, 14:61–15:17, 15:20–47, 16:35–61. In the context of computers and computer systems, the term “archival” ordinarily and customarily refers to long-term, persistent storage of computer data.<sup>2</sup> In contrast, the term “buffer” ordinarily and customarily refers to memory that temporarily holds information, for example, to account for differences in data flow rates between computer components.<sup>3</sup> Similarly, random access memory (“RAM”) is non-persistent memory that temporarily stores data while that

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<sup>2</sup> *See* Ex. 3001 (definition from *Academic Press Dictionary of Science and Technology*, defining “archival storage” as “[s]torage media, such as off-line magnetic tapes or disks, used for long-term storage of data seldom accessed, such as transaction history or backup copies of working programs”); Ex. 3002 (definition from *Webster’s New World Computer Dictionary*, defining “archive” as “an infrequently used but comprehensive collection of data”).

<sup>3</sup> *See* Ex. 3003 (definition from *Webster’s New World Computer Dictionary*, defining “buffer” as “a unit of memory given the task of holding information temporarily, especially while waiting for slower components to catch up”); Ex. 3004 (definition from *Academic Press Dictionary of Science and Technology*, defining “buffer” as “[a]n intermediate storage area used to compensate for differences in rates of data flow when information is being transmitted from one computer device to another”).

data is being processed.<sup>4</sup> Thus, the plain and ordinary meaning of “archival” does not encompass the storage of data in buffer memory or RAM.

This interpretation of “archival” is consistent with the Specification. In particular, the Specification indicates that “archival” data is data that “needs to be maintained for a number of possible uses,” and does not include data that “can be generated, processed, and discarded after its intended purpose.” *Id.* at 1:28–30. The Specification also provides several examples of “archival” storage, all of which are types of long-term, persistent storage. *See id.* at 1:34–44 (indicating that archived data may be stored in “storage devices, such as magnetic media and optical media that are directly attached to a computing device generating the data to be archived,” “special-purpose file management server-computing devices [that] function as a storage destination for a number of computing devices,” and “multiple file management servers functioning[] as a storage location for a number of networked computing devices.”).

Independent claims 1, 29, 31, and 47 all require “selectively storing” monitoring device data “if the archival profile is associated with one or more archival attributes.” Ex. 1001, 13:23–28, 15:35, 40–47, 16:54–59. For the reasons set forth above, based on the current record, and for purposes of this

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<sup>4</sup> *See, e.g.*, Ex. 3005 (definition from *Webster’s New World Computer Dictionary*, defining “random access memory” as “[t]he computer’s primary working memory . . . . In RAM, the CPU can write and read data. Most programs set aside a portion of RAM as a temporary workspace for data so that one can modify (rewrite) as needed until the data is ready for printing or storage on secondary storage media, such as a hard or floppy disk. RAM does not retain its contents when the power to the computer is switched off.”).

Decision, we are persuaded that the claim term “archival attribute” does not encompass an attribute relating to the storage of data in buffer memory or RAM, and that the claim term “archival profile” does not encompass a profile relating to the storage of data in buffer memory or RAM. No further construction of these claim terms is necessary at this time. *See Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)) (“[C]laim terms need only be construed ‘to the extent necessary to resolve the controversy.’”).

### B. *Asserted Grounds of Unpatentability*

#### 1. Overview

Petitioner argues that challenged claims 1–8, 11–14, 16–23, 29–32, 47, and 48 are unpatentable under 35 U.S.C. § 102(e) because they are anticipated by Monroe. Pet. 6. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987) (citation omitted). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990). “[U]nless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed, and thus, cannot anticipate under 35 U.S.C. § 102.” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008); *see also In re Arkley*, 455 F.2d 586 (CCPA 1972).

Petitioner also argues that challenged claims 1–3, 8, 12–14, 16, 17, 21, 22, 29–32, 37, 47, and 48 are unpatentable under 35 U.S.C. § 103 over Mangasarian and Walker. Pet. 6. A patent claim is unpatentable under 35 U.S.C. § 103 if the differences between the claimed subject matter 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 to which such subject matter pertains.” The question of obviousness under 35 U.S.C. § 103 is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art;<sup>5</sup> and (4) objective evidence of nonobviousness, i.e., secondary considerations.<sup>6</sup> *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

2. Anticipation of Claims 1–8, 11–14, 16–23, 29–32, 47, and 48 by Monroe

a. Overview of Monroe

Monroe relates to the collection, sending, archiving, and retrieving of event data (e.g., video data or event data). Ex. 1003 ¶ 2. Monroe describes a network-based situational awareness system that consists of intelligent sensors, servers, and monitor stations interconnected by wired and wireless network connections. *Id.* ¶ 25. “[R]aw sensor data such as images, video,

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<sup>5</sup> For purposes of this Decision, we consider the cited references to be representative of the level of ordinary skill in the art. See *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

<sup>6</sup> The current record does not contain any evidence of secondary considerations.

audio, temperature, contact closure and the like” is “collected, analyzed, archived, and distributed.” *Id.*

b. Analysis

Independent Claims 1 and 29

Claims 1 and 29 require “incoming monitoring device data” that is “characterized by one or more archival attributes.” Ex. 1001, 13:15–17, 14:65–67. Claims 1 and 29 also require “determining whether the archival profile is associated with one or more archival attributes of the incoming monitoring data,” and if so, “processing the incoming monitoring device data . . . into a compressed format” and “selectively storing the incoming monitoring device data . . . on a storage medium.” *Id.* at 13:20–29, 15:3–12. Claims 1 and 29 further require that the “archival attribute from which the archival profile selectively stores incoming monitoring device data is one selected from the group of file type, monitoring device identifier, and monitoring device type that collected the incoming monitoring device data.” *Id.* at 13:29–33, 15:13–17. Thus, the “one or more archival attributes” recited in the “determining” step of claims 1 and 29 must be “selected from the group of file type, monitoring device identifier, and monitoring device type that collected the incoming monitoring device data.”

Petitioner alleges that the “determining” step of claims 1 and 29 is disclosed by descriptions in Monroe of using “the amount of motion or change in an image from frame-to-frame” in order to decide whether the image data is archived. Pet. 13 (citing Ex. 1003 ¶¶ 27, 31–37, claim 32, Fig. 2). Petitioner also cites to descriptions in Monroe of the use of “acoustic (gunshot or explosion) detection, temperature detection, etc.” data to

determine whether image data is archived. Pet. 14 (citing Ex. 1003 ¶ 42). Petitioner, however, does not point to any disclosure in Monroe of “determining [whether an] archival profile is associated archival attributes,” wherein the archival attributes are “selected from the group of file type, monitoring device identifier, and monitoring device type that collected the incoming monitoring device data.” See Pet. 13–14.

In its discussion of the final element of claims 1 and 29, Petitioner argues the monitoring device data of Monroe may be associated with archival attributes such as a “camera identifier” or other “unique identifying data.” See Pet. 15–16 (citing Ex. 1003 ¶ 27, cl. 13). Petitioner, however, does not argue that Monroe discloses “determining whether the archival profile is associated with” a “camera identifier” or “other unique identifying data.” See Pet. 15–16.

For the foregoing reasons, the Petition does not persuasively demonstrate that Monroe discloses “all of the limitations” of claims 1 and 29 “arranged or combined in the same way as recited in the claim[s].” See *Net MoneyIN*, 545 F.3d 15 1371. Thus, Petitioner has not shown a reasonable likelihood that it would prevail on its anticipation challenge to claims 1 and 29.<sup>7</sup>

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<sup>7</sup> Petitioner also submitted a 221-page claim chart as an exhibit to a declaration. See Ex. 1006, 46–266. However, the “practice of citing [a] Declaration to support conclusory statements that are not otherwise supported in the Petition . . . amounts to incorporation by reference.” *Cisco Systems, Inc. v. C-Cation Techs., LLC*, Case IPR2014-00454, Paper 12, at 9 (PTAB Aug. 29, 2014) (informative). Such incorporation by reference is improper. 37 C.F.R. § 42.6(a)(3) (“Arguments must not be incorporated by reference from one document into another document.”); see also *DeSilva v.*

Dependent Claims 2–8, 11–14, 16–23, and 30

Each of claims 2–8, 11–14, 16–23, and 30, depends from claim 1 or claim 29, and thus incorporates all limitations of claim 1 or claim 29. Petitioner’s challenges to claims 2–8, 11–14, 16–23, and 30 suffer from the same deficiencies discussed above with respect to claims 1 and 29. Thus, Petitioner has not shown a reasonable likelihood that it would prevail on its anticipation challenge to claims 2–8, 11–14, 16–23, and 30.

Independent Claims 31 and 47

The Petition does not include a claim element by claim element analysis of independent claims 31 and 47. Petitioner briefly addresses the first, second, and third steps of claim 31 (*see* Pet. 29–30), but does not include a separate analysis of the remaining steps of claim 31 (*see id.* at 33–34). Instead, Petitioner asserts that the remaining steps of claim 31 are “similar in many respects” to steps of claim 1 (*id.* at 31), and then incorporates by reference the arguments that it made with respect to the allegedly similar limitations of claim 1 (*see id.* at 30).

Our rules do not prohibit incorporation by reference of arguments set forth elsewhere in the same document (*see* 37 C.F.R. § 42.6(a)(3)); however, a petition for *inter partes* review must still contain “a statement of the precise relief requested for each claim challenged” that identifies, *inter alia*,

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*DiLeonardi*, 181 F.3d 865, 866–67 (7th Cir. 1999) (Incorporation by reference “amounts to a self-help increase in the length of the [] brief . . . . A brief must make all arguments accessible to the judges, rather than ask them to play archeologist with the record.”). Accordingly, we do not consider arguments that Petitioner did not set forth in the Petition itself.

“where each element of the claim is found in the prior art patents or printed publications relied upon” (37 C.F.R. § 42.101(b) (emphasis added)). Even considering the presentations in the context of claim 1, we do not see that the Petition contains an adequate explanation of where each element of claims 31 and 47 is found in the cited references.

For example, claim 31 recites “processing the incoming monitoring device data having one or more archival attributes that match the archival profile into a compressed format according to the archival profile.” Ex. 1001, 15:42–45 (emphasis added). Petitioner concedes that claim 1 does not recite the limitation of processing incoming monitoring data into a compressed format “according to the archival profile.” Pet. 30. Petitioner also never contends in its argument regarding claim 1 that Monroe discloses processing monitoring data into a compressed format “according to the archival profile.” *See id.* at 14–15. Yet, Petitioner’s argument that Monroe discloses the “processing” step of claim 31 consists solely of a statement that this step “is similar to [the processing step] of claim 1.” *See id.* at 30. Petitioner does not address the “according to the profile” limitation of claim 31. *See id.*

Petitioner does not separately argue claim 47, but instead asserts that claim 47 is “identical to claim 31, except for the requirement that instructions to perform the method are included in a computer-readable medium.” Pet. 30–31 (citation omitted). Accordingly, Petitioner’s arguments with respect to claim 47 are deficient for the same reason.

In view of Petitioner’s failure to explain, adequately, where each element of claims 31 and 47 is found in the cited references, the Petition

does not show a reasonable likelihood that the petitioner would prevail on its anticipation challenge to claims 31 and 47.

Dependent Claims 32, 37, and 48

Claims 32 and 37 depend from claim 31, and thus incorporate all limitations of claim 31. Claim 48 depends from claim 47, and thus incorporates all limitations of claim 47. Petitioner's challenges to claims 32, 37, and 48 suffer from the same deficiencies discussed above with respect to claims 31 and 47. Thus, Petitioner has not shown a reasonable likelihood that it would prevail on its anticipation challenge to claims 32, 37, and 48.

3. Obviousness of Claims 1–3, 8, 12–14, 16, 17, 21, 22, 29–32, 37, 47, and 48 over Mangasarian and Walker

a. Overview of Mangasarian

Mangasarian discloses a system and method for gathering data packets on a network, capturing at least some of the packets in a data buffer, classifying the captured data, and analyzing the stored data. Ex. 1004, 2:28–37. Figure 1 of Mangasarian is reproduced below.

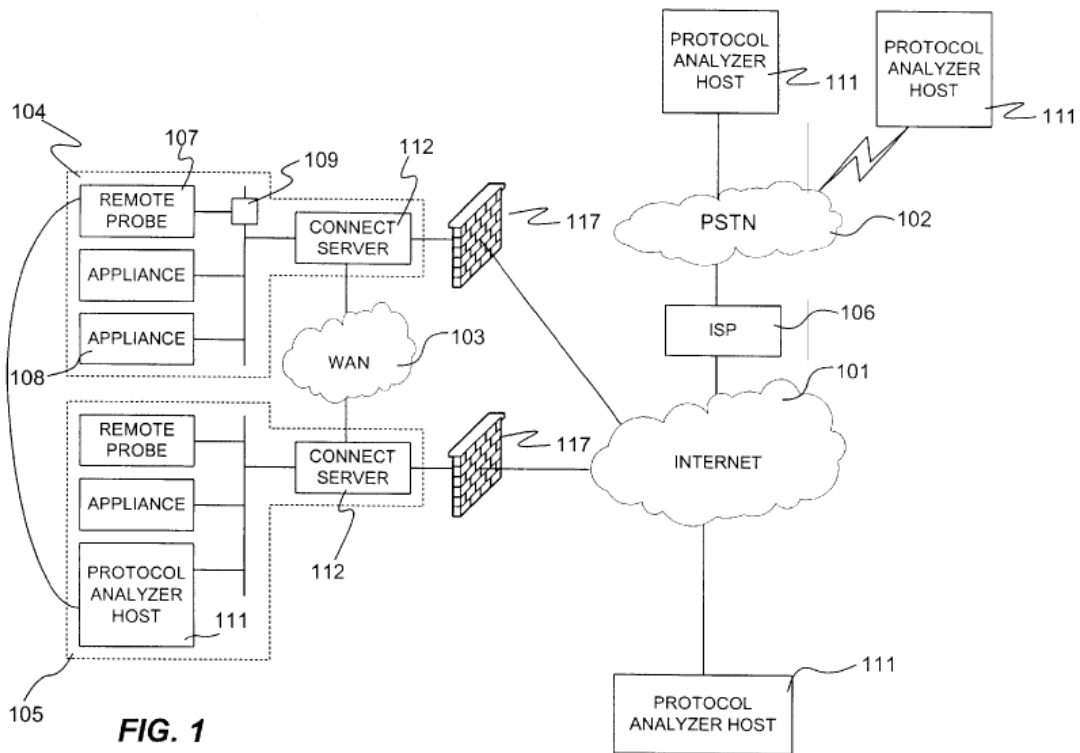


Figure 1 shows a distributed protocol analysis system according that includes a variety of interconnecting components, including Internet 101, public switched telephone network (“PSTN”) 102, wide area network (“WAN”) 103, and local area networks (“LANs”) 104 and 105. *Id.* at 3:28–44. LANs 104 and 105 include network appliances 108 (e.g., computers, printers, file servers, or mass storage) and remote probes 107. *Id.* at 3:51–54, 4:37–38. Remote probes 107 are configured to monitor network traffic and capture all or selected portions of the monitored traffic. *Id.* at 4:45–49. Each remote probe 107 includes network interfaces 201 and 202 (not shown). *Id.* at 5:6–9. Protocol analyzers 111—which can be part, and/or separate from, LANs 104 and 105—program remote probes 107, and retrieve all or selected portions of the traffic captured by remote probes 107. *Id.* at 4:50–65.

b. Overview of Walker

Walker describes a network monitoring system that comprises a network router with built-in monitoring data gathering. Ex. 1005, 3:25–27. The network router includes channels through which data pass in packets. *Id.* at 3:27–28. The network router also includes channel cards that process the data that passes through the channels within the router. *See id.* at 5:20–23. The network router additionally includes a header copier that generates copies of the data headers of data packets, and a packet generator that forms monitoring data packets from the copied headers. *Id.* at 3:28–35. The packet generator “may also add a unique identification number to the monitoring data packet to identify the channel of the router . . . from which the header copies included in the monitoring data packet were read.” *Id.* at 7:35–38.

c. Analysis

Independent Claims 1 and 29

Petitioner argues that the disclosure of Mangasarian can be read in two different ways, and refers to these alternative interpretations as the “First Perspective” and “Second Perspective.” Pet. 33.

In the First Perspective, Petitioner alleges that network interface card 202 of Mangasarian is a “monitoring device” of the type required by claims 1 and 29, and that remote probe 107 and protocol analyzer/host 111 are collectively an “archive server” of the type required by the claims. Pet. 33. Petitioner also alleges that the network data packets of Mangasarian correspond to the “monitoring device data” of the claims (*see id.* at 35), that the class code information for data packets corresponds to the “archival

attributes” of the claims (*id.* at 36), and that the filter and classification routines of Mangasarian correspond to the “archival profiles” of the claims (*id.* at 37). Petitioner alleges that remote probe 107 (i.e., the archive server) uses the class code information (i.e., archival attributes) and the filter and classification routines (i.e., the archival profile) to selectively store information in “packet buffer 208.” *Id.* at 38.

As discussed above, however, we construe “archival attributes” and “archival profiles” to not include attributes and profiles that relate to the storage of data in buffer memory. The Petition also does not provide any persuasive evidence or argument that one of ordinary skill would consider storage of information in packet buffer 208 of Mangasarian to be “archival” storage. Thus, viewing Mangasarian through the lens of Petitioner’s First Perspective, we are not persuaded that the reference teaches an “archival attribute” or “archival profile.”

In the Second Perspective, Petitioner alleges that remote probe 107 is a “monitoring device,” and that protocol analyzer/host 111 connected to the host network interface is an “archive server.” *Id.* at 33–34. Petitioner also alleges that the network data packets of Mangasarian correspond to the “monitoring device data” of the claims (*see id.* at 39), that the class code information for data packets corresponds to the “archival attributes” of the claims (*id.* at 40), and that the filter, classification, and upload routines of Mangasarian correspond to the “archival profiles” of the claims (*id.*). Petitioner alleges that host 111 (i.e., the archive server) uses the class code information (i.e., archival attributes) and upload routines (i.e., the archival profile) to “enable intelligent selection of portions of packet buffer to be downloaded” to host 111. Pet. 40 (citing Ex. 1004, 6:3–5). Petitioner also

asserts that host 111 “includes sufficient memory and mass storage to store and manipulate the portions of packet buffer 208 that are downloaded for analysis.” Pet. 40 (citing Ex. 1004, 6:15–26, 4:61–65).

But Mangasarian makes clear that the filter, classification, and upload routines are software that executes on remote probe 108. *See* Ex. 1004, 5:5, 5:16–33, 5:66–6:13, Fig. 2. Petitioner has not pointed to any description in Mangasarian of filter, classification, and upload routines that control how or where host 111 stores data. *See* Pet. 40. Petitioner merely alleges that the “upload routines” of Mangasarian cause network data packets to be uploaded to host 111. The uploading of data to host 111 may cause data to be stored in the “working memory (e.g., random access memory or ‘RAM’)” of the host. *See* Ex. 1004 at 2:17–19, 6:23–31. Petitioner, however, does not allege that this uploading would cause data to be stored in the separate “mass storage” of host 111. Thus, viewing Mangasarian through the lens of Petitioner’s Second Perspective, we are not persuaded that the reference teaches an “archival attribute” or “archival profile.”

In addition, Petitioner concedes that under either Perspective, Mangasarian does not disclose “the archival attribute being one of file type, monitoring device identifier, or monitoring device type.” Pet. 41. Petitioner instead relies on Walker with respect to this claim limitation. *See* Pet. 41. In particular, Petitioner argues that Walker’s description of a packet generator that may “add a unique identification number to the monitoring data packet to identify the channel of the router . . . from which the header copies included in the monitoring data packet were read” constitutes a disclosure of an archival attribute comprising a monitoring device identifier. *See id.* at 43–44 (citation omitted).

Petitioner sets forth the following rationale for combining the unique identifier of Walker into the system and method of Mangasarian:

A person of ordinary skill in the art would have been motivated to combine Walker's monitoring device identifier attribute with Mangasarian's disclosure of the use of such attributes in conjunction with an archival profile to selective store data because both references are directed to monitoring data on a network and storing such monitoring data for later analysis. (Decl. ¶ 97). A person of ordinary skill in the art would recognize that Walker describes an additional attribute of the monitoring data (i.e., the monitoring device at which the monitoring data was collected), and would have found it obvious to combine such teachings with the teachings of Mangasarian to selectively collect and archive data based on this specific attribute of the data. (Decl. ¶ 98).

Pet. 44.

We are not persuaded that Petitioner has “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). For example, Petitioner does not provide a persuasive explanation of why a skilled artisan would have found it obvious to modify the system and method of Mangasarian to include unique data channel identifiers of the type described in Walker. Petitioner’s argument that “both references are directed to monitoring data on a network and storing such monitoring data for later analysis” (Pet. 44, citation omitted) does not explain why it would have been obvious to make the specific modification that Petitioner proposes. The fact that two references both describe monitoring data on a network and storing such data does not, without more, demonstrate that specific combinations of teachings from these references would have been obvious. Petitioner also has not provided a persuasive explanation of why a skilled artisan would

have found it obvious to use unique data channel identifiers of the type described in Walker as an archival attribute that determines whether the data of Mangasarian is selectively stored. Petitioner's assertion that a "person of ordinary skill in the art would recognize that Walker describes an additional attribute of the monitoring data . . . and would have found it obvious to combine such teachings with the teachings of Mangasarian to selectively collect and archive data based on this specific attribute of the data" (Pet. 44, citation omitted) is conclusory in nature, and is not supported by persuasive evidence or argument.<sup>8</sup>

For the foregoing reasons, Petitioner has not shown a reasonable likelihood that it would prevail on its obviousness challenge to claims 1 and 29.

Dependent Claims 2, 3, 8, 12–14, 16, 17, 21, 22, 29, and 30

Each of claims 2, 3, 8, 12–14, 16, 17, 21, 22, 29, and 30, depends from claim 1 or claim 29, and thus incorporates all limitations of claim 1 or claim 29. Petitioner's challenges to claims 2, 3, 8, 12–14, 16, 17, 21, 22, 29, and 30 suffer from the same deficiencies discussed above with respect to claims 1 and 29. Thus, Petitioner has not shown a reasonable likelihood that it would prevail on its obviousness challenge to claims 2, 3, 8, 12–14, 16, 17, 21, 22, 29, and 30.

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<sup>8</sup> Petitioner cites to Paragraphs 97 and 98 of the Jawadi Declaration, but these paragraphs are also conclusory in nature and do not provide any adequate rationale for why a skilled artisan would have found it obvious to modify Mangasarian in the specific manner Petitioner proposes.

Independent Claims 31 and 47

Claims 31 and 47 also require “archival attributes” and “archival profiles.” Petitioner’s arguments concerning these limitations as they appear in claims 31 and 47 are substantively the same as Petitioner’s arguments concerning these limitations as they appear in claims 1 and 29. *See* Pet. 53–58. Thus, Petitioner’s challenges to claims 31 and 47 suffer from the same deficiencies discussed above with respect to claims 1 and 29. Therefore, Petitioner has not shown a reasonable likelihood that it would prevail on its obviousness challenge to claims 31 and 47.

Dependent Claims 32, 37, and 48

Claims 32 and 37 depend from claim 31, and thus incorporate all limitations of claim 31. Claim 48 depends from claim 47, and thus incorporates all limitations of claim 47. Petitioner’s challenges to claims 32, 37, and 48 suffer from the same deficiencies discussed above with respect to claims 31 and 47. Thus, Petitioner has not shown a reasonable likelihood that it would prevail on its obviousness challenge to claims 32, 37, and 48.

IV. ORDER

Accordingly, it is

ORDERED that the Petition is *denied*, and no *inter partes* review is instituted on any challenged claim of the ’843 Patent.

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