

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HOSPITALITY CORE SERVICES LLC,
Petitioner,

v.

NOMADIX, INC.,
Patent Owner.

Case IPR2016-00052
Patent 6,636,894 C1

Before HOWARD B. BLANKENSHIP, GLENN J. PERRY, and
TREVOR M. JEFFERSON, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

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

I. BACKGROUND

Petitioner Hospitality Core Services LLC requests an *inter partes* review of claims 1–11 of U.S. Patent No. 6,636,894 C1 (Ex. 1001, “the ’894 patent”) under 35 U.S.C. §§ 311–319.¹ Paper 2 (“Petition” or “Pet.”). Patent Owner Nomadix, Inc. has filed a preliminary response. Paper 6 (“Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 314. Section 314(a) provides that an *inter partes* review may not be instituted unless “the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

For the reasons that follow, we do not institute an *inter partes* review of claims 1–11 of the ’894 patent.

A. Related Proceedings

Petitioner reports that the ’894 patent is involved in *Nomadix, Inc. v. Hospitality Core Services LLC, d/b/a Blueprint RF*, No. 2:14-cv-08256-DDP (VBKx) (C.D. Cal.). Pet. 3. The patent is also the subject of past reexamination proceedings in (ex parte) Reexamination 09/007,220 and (*inter partes*) Reexamination 95/110,831. *Id.*

¹ We refer to Exhibit 1001, which is a copy of U.S. Patent No. 6,636,894 B1, as originally issued, for the text of the ’894 patent. We note that the designation “C1,” in U.S. Patent No. 6,636,894 C1, refers to the issuance of an Ex Parte Reexamination Certificate on March 28, 2006. *See* Exhibit 1015. The text of the subject patent was unchanged in reexamination.

B. The '894 Patent

The '894 patent relates to systems and methods whereby users have transparent computer access from a home network to a destination network, where the users can access the destination network without altering the home network settings. Ex. 1001, at (57).

Figure 1 of the '894 patent is reproduced below.

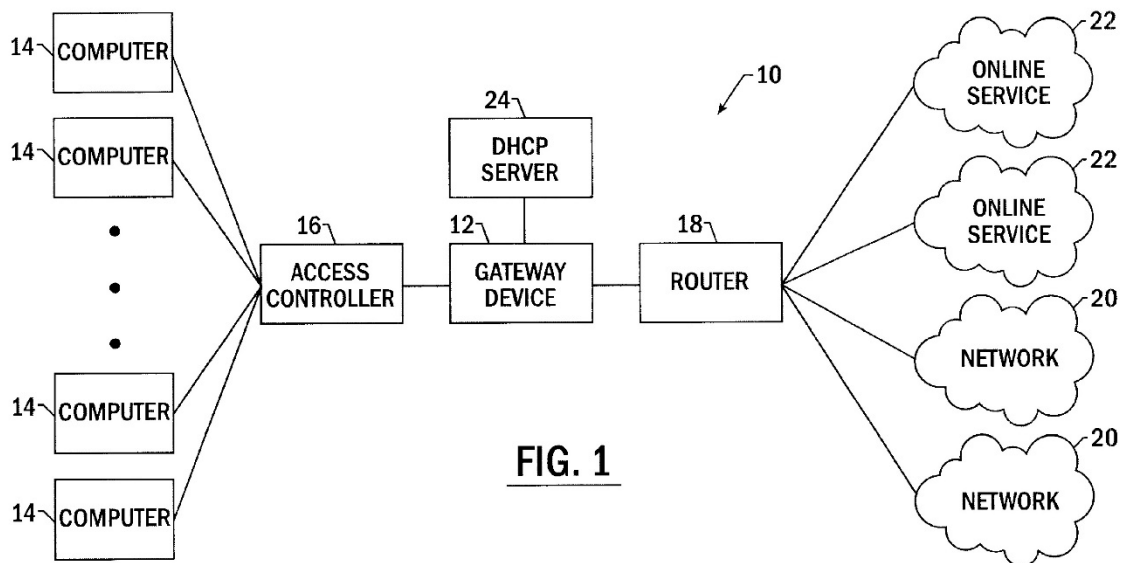


Figure 1 depicts a block diagram of a computer system that includes a gateway device for automatically configuring one or more computers to communicate with other networks via the device. *Id.* at col. 5, ll. 58–62. Computer system 10 includes gateway device 12 and plurality of computers 14 that access a local computer network in order to gain access to networks 20 or other online services 22. *Id.* at col. 6, ll. 9–13. The computer system employs dynamic host configuration (DHCP) server 10, which may assign an IP address to an individual computer of plurality of computers 14 when the computer logs onto the computer network through communication with gateway device 12. *Id.* at col. 7, ll. 14–22.

Gateway device 12 performs a packet translation process that is transparent to both computers 14 and the network. *Id.* at col. 7, ll. 25–47. Implementing the gateway device as an interface between the user and the computer network or other online service eliminates the need to re-configure the user's computer upon accessing subsequent networks as well as the need to load special configuration software on the computer to support the reconfiguration. *Id.* at col. 7, ll. 47–53. The user's computer may also be redirected to a portal page that contains information specific to the user accessing the network. *Id.* at col. 8, ll. 20–33. The redirection may be performed by an AAA [Authentication, Authorization and Accounting] server in communication with the gateway device, where the AAA server intercepts the request from the user for access to the destination network and redirects the user to a portal page. *Id.* at col. 5, ll. 22–30. The AAA server may be located entirely within the gateway device. *Id.* at col. 5, ll. 31–32.

C. Illustrative Claim

Claims 1 and 6 are independent. Claim 1, reproduced below, is illustrative.

1. A method for redirecting an original destination address access request to a redirected destination address, the method comprising the steps of:

receiving, at a gateway device, all original destination address access requests originating from a computer;

determining, at the gateway device, which of the original destination address requests require redirection; storing the original destination address if redirection is required;

modifying, at the gateway device, the original destination address access request and communicating the modified request to a redirection server if redirection is required;

responding, at the redirection server, to the modified request with a browser redirect message that reassigns the modified request to an administrator-specified, redirected destination address;

intercepting, at the gateway device, the browser redirect message and modifying it with the stored original destination address; and

sending the modified browser redirect message to the computer, which automatically redirects the computer to the redirected destination address.

D. Asserted Prior Art

Applegate et al. (“Applegate”) (Ex. 1017)	US 6,321,336 B1	Nov. 20, 2001
Slemmer (Ex. 1030) ²	US 6,226,677 C1	May 1, 2001
Coss et al. (“Coss”) (Ex. 1033)	US 6,170,012 B1	Jan. 2, 2001
Colby et al. (“Colby”) (Ex. 1034)	US 6,006,264	Dec. 21, 1999
Birrell et al. (“Birrell”) (Ex. 1032)	US 5,805,803	Sep. 8, 1998

² Exhibit 1030 is the patent’s reexamination certificate. Petitioner also relies on Slemmer’s original patent (Ex. 1007) and its Provisional Application No. 60/109,878, filed November 25, 1998 (Ex. 1027). *See* Ex. 1007, at (60).

IPOINT™ INTERNET ACCESS SYSTEM, CONNECTION METHODS AND CONCEPTS FOR IPOINT™ V2.X WHITE PAPER (Nov. 1998) (“IPOINT V2x”). (Exhibit 1038)

IPOINT™ INTERNET ACCESS SYSTEM, IPOINT CENTRAL OFFICE SOLUTION WHITE PAPER (Nov. 1998) (“IPOINT CO”). (Exhibit 1039)

NETWORK WORKING GROUP REQUEST FOR COMMENTS: 2068, HYPERTEXT TRANSFER PROTOCOL – HTTP/1.1, 1, 3, 52–55 (Jan. 1997) (“RFC 2068”). (Ex. 1026)

Jos Vos et al., *Linux firewall facilities for kernel-level packet screening*, Nov. 18, 1996 (“Vos”). (Exhibit 1023)

E. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability under 35 U.S.C. §§ 102(e) and 103(a) against claims 1–11 (Pet. 4–5):

Reference(s)	Basis	Claims
Applegate	§ 102(e)	1, 2, 4–11
Applegate and RFC 2068	§ 103(a)	1, 2, 4–11
Applegate, Slemmer, and Birrell	§ 103(a)	1–11
Applegate, Coss, and Colby	§ 103(a)	1–11
Ex. 1038–1039 (“IPOINT”) ³	§ 103(a)	1, 5–11
IPOINT, Slemmer, and Coss	§ 103(a)	1–11
Slemmer, Vos, and Applegate	§ 103(a)	1–11

³ Although the Petition at page 4 lists Exhibits 1038–1044 as “IPOINT,” Exhibits 1040–1044 are not applied against the claims. *See, e.g.*, Pet. 34–37.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, the Board construes claim terms in an unexpired patent using 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 Techs., LLC*, 793 F.3d 1268, 1278–79 (Fed. Cir. 2015), *cert. granted sub nom. Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 890 (mem.) (2016). There is a presumption that a claim term carries its ordinary and customary meaning. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). The “ordinary and customary meaning” is that which the term would have to a person of ordinary skill in the art in question. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Only those terms which are in controversy need to 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).

B. Prior Art Status of IPORT CO

Patent Owner in its Preliminary Response contests that IPORT CO and IPORT V2x are prior art “printed publications” in accordance with 35 U.S.C. §§ 102 and 311(b). We look to the underlying facts to make a legal determination as to whether a document is a printed publication. *Suffolk Techs., LLC v. AOL Inc.*, 752 F.3d 1358, 1364 (Fed. Cir. 2014). The determination of whether a document is a “printed publication” under 35 U.S.C. § 102(b) involves a case-by-case inquiry into the facts and

circumstances surrounding its disclosure to members of the public. *In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004). Public accessibility is a key question in determining whether a document is a printed publication and is determined on a case-by-case basis. *Suffolk Techs.*, 752 F.3d at 1364. To qualify as a printed publication, a document “must have been sufficiently accessible to the public interested in the art.” *In re Lister*, 583 F.3d 1307, 1311 (Fed. Cir. 2009).

According to Petitioner, the Declaration by Mr. Keith Olsen (Ex. 1020) “authenticates the publication and content” of a number of documents that includes IPORT CO. Pet. 19. Mr. Olsen testifies that he served as the lead software programmer for ATCOM, Inc. from 1996 through the sale of the company in 2000. Ex. 1020 ¶ 1. ATCOM developed and released the IPORT system. *Id.* ¶¶ 3, 4. According to Mr. Olsen, Exhibit 1039 is a “true and accurate copy” of a “white paper” titled “IPORT Central Office Solution” dated November 1998. *Id.* ¶ 48. Also according to Mr. Olsen, IPORT CO was “created for marketing purposes, published and distributed to potential customers as part of an aggressive and successful marketing campaign for the IPORT ‘server only’ systems.” *Id.* ¶ 49. According to Mr. Olsen, a World Wide Web Uniform Resource Locator (hyperlink) on the third page of IPORT CO indicates that IPORT CO was published on the company’s web site. *Id.* ¶ 50. Mr. Olsen testifies further:

Due to the high level of customer interest and the fast pace of product development, the company published the white papers on its website as soon as they were available. The specific versions of the white papers dated November 1998 were therefore published on the IPORT website in November of 1998 and distributed to a number of major hotel chains we were actively working with at the time including Hilton, Hyatt,

Wingate Inns, and many other existing and prospective customers.

Id. ¶ 51.

IPORT CO contains the month and year “November 1998” on the face of the document, and at page 3 an apparent copyright notice without a specified year or date. Ex. 1039, 1, 3. The front page, at the lower right, contains the notation “CONFIDENTIAL” and underneath that notation “SEC00732.” *Id.* at 1. Each page, in fact, contains a similar “CONFIDENTIAL” notation, numbered sequentially to “SEC00753.” *Id.* at 22. Neither the Petition nor Mr. Olsen indicates why this “true and accurate copy” (Ex. 1020 ¶ 48) of the white paper would have been published on the company’s web site despite being “CONFIDENTIAL.”

Moreover, Mr. Olsen does not indicate why, in his service as the lead software programmer (*id.* ¶ 1) with the “role of software development,” which included “working on all aspects of IPORT system including the development, implementation, and documentation” relating to the IPORT system (*id.* ¶ 3), he was privy to when, or whether, particular documents were placed on the company’s website. Further, although Mr. Olsen submits that documents including IPORT CO were “distributed to a number of major hotel chains” and “many other existing and prospective customers” (*id.* ¶ 51) — with no clear indication of *when* — the Declaration does not allege, let alone show, that distribution to those entities means that the document “must have been sufficiently accessible to the public interested in the art.” *Lister*, 583 F.3d at 1311. “A given reference is ‘publicly accessible’ upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in

the subject matter or art exercising reasonable diligence, can locate it.” *SRI Int’l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008) (quoting *Bruckelmyer v. Ground Heaters, Inc.*, 445 F.3d 1374, 1378 (Fed. Cir. 2006)). Further, although Mr. Olsen testifies (Ex. 1020 ¶ 50) that information “describing IPORT” was “published on [ATCOM’s] website,” the testimony does not indicate how one of ordinary skill in the art, exercising reasonable diligence, could locate the document in question — IPORT CO. *See SRI Int’l*, 511 F.3d at 1186.

There is, in addition, a critical element of timing. As noted *infra*, the Office found that the independent claims of the ’894 patent are entitled to the provisional application’s filing date of December 8, 1998. Petitioner does not challenge that effective filing date for any of the claims. *See, e.g.*, Pet. 26 (“[t]he IPORT documentation published between July and November 1998 . . . is prior art under pre-AIA 35 U.S.C. § 102(a)” — as opposed to § 102(b), if no effect were given to the filing date of the provisional application); *id.* at 28–29 (alleging no more than that language in claims 2 and 3 has “no literal support” in the provisional application).⁴ Mr. Olsen testifies that items “describing IPORT” were published on the company’s website “as soon as they were available.” Ex. 1020 ¶¶ 50, 51. Apparently, from that presumption Mr. Olsen concludes that IPORT CO was “therefore published on the IPORT website in November of 1998. . . .” *Id.* ¶ 51. There is no clear indication as to why “as soon as they were available” means that a document dated November 1998 was “published” prior to the first few

⁴ Petitioner has provided, apparently, only a small excerpt from Provisional Application No. 60/111,497. Ex. 1002.

days of the next month or, in this case, prior to the critical date of December 8, 1998.

In view of the foregoing, we conclude that, on this record, Petitioner has failed to meet its burden of at least a preliminary showing that IPORT CO is a printed publication as contemplated by 35 U.S.C. §§ 102 and 311(b). We need not reach the inquiry as to whether IPORT V2x qualifies as prior art because both of the asserted “IPORT” grounds rely on IPORT CO.

C. Asserted Grounds That Rely on IPORT CO

Two of Petitioner’s seven asserted grounds of unpatentability rely on IPORT CO. *See* Pet. 5, 34–36. Because Petitioner has not made a satisfactory threshold showing that IPORT CO is a printed publication, the Petition fails to demonstrate a reasonable likelihood of prevailing, on the grounds that include IPORT CO, that the challenged claims are obvious over the prior art.

D. Prior Reexamination Proceedings

As noted *supra*, the ’894 patent has been the subject of two reexamination proceedings. In an ex parte reexamination, claims 1–4 and 9 were rejected for anticipation by US Patent 6,182,139 (“Brendel”) and claims 1–11 were rejected for anticipation by US Patent 6,052,725 (“McCann”). Ex. 1012, 4–13. The Examiner noted that although the requester alleged that the ’894 patent was not entitled to the December 8, 1998 filing date of its provisional application, the Examiner did not consider that challenge to priority because no intervening references were applied in the grounds of rejection. *Id.* at 4. According to an interview summary, the

Examiner agreed with Patent Owner's counsel that the Brendel reference failed to teach a "redirection server" and the McCann reference failed to anticipate the "gateway device." Ex. 1014, 1. An ex parte reexamination certificate issued on March 28, 2006, confirming the patentability of claims 1–11. Ex. 1015, 1, 3.

The USPTO denied a later request (by Hewlett-Packard Co.) for *inter partes* reexamination of the patent. In that proceeding, the claim for priority to the filing date of the provisional application was again challenged (at least as to independent claims 1 and 6), but the Examiner determined that the patent was entitled to the earlier filing date of the provisional application. Ex. 1016, 7–9.

The requester asserted a proposed ground of rejection of claims 1 and 6–11 as being anticipated by Applegate (Ex. 1017). *Id.* at 8–9. The proposed ground was denied by the Examiner, with the following explanation:

The reference to Applegate does not disclose 'responding at the redirection server, to the modified request with a browser redirect message' as set forth in claim 1. In the claim chart for this proposed rejection (exhibit CC-E at page 11), requester points to col. 5, lines 21-45 of Applegate which is describing activity occurring at the 'NDIS Shim', 'IP layer' and 'FTP Proxy'. However, the 'NDIS Shim', 'IP layer' and 'FTP proxy' are part of the application level gateway 354 (FIG 5), not the server 352. Since the claim requires this activity occur at the server, not the gateway, the teachings of Applegate do not anticipate this claim limitation.

Id. at 11–12 (emphases deleted). The Examiner found that, for similar reasons, Applegate did not anticipate independent claim 6. *Id.* at 12. A

proposed rejection of claim 5 as being obvious over Applegate and additional evidence was also found lacking. *Id.* at 13.

In addition to the reasons for not adopting the proposed rejection over Applegate, several other rejections were not adopted because applied references were not prior art in view of the December 8, 1998 effective filing date of the '894 patent. *See id.* at 13–15. The Examiner determined that none of the proposed grounds of rejection had a reasonable likelihood of prevailing; the request for *inter partes* reexamination was denied. *Id.* at 15.

A petition to overturn the Examiner's denial of the *inter partes* reexamination request challenged, *inter alia*, the determinations that the '894 patent is entitled to the benefit of the provisional application and that the request failed to establish a reasonable likelihood of prevailing in the proposed rejections over Applegate. Ex. 1018, 4. The Director of the Central Reexamination Unit (CRU) denied the petition. *Id.* at 14. The decision on petition pointed out disclosure in the provisional application that was found to support the limitations of claims 1 and 6. *Id.* at 10–11.

With respect to the reasons why Applegate was found not to anticipate the claims, the petition decision explained:

Petitioner is correct that [the limitation of “responding at the redirection server, to the modified request with a browser redirect message”] covers embodiments wherein the redirection server is contained within the gateway device; however, that is not the reason that Applegate fails to disclose each and every limitation of claims 1 and 6. The reason advanced by the examiner in the Determination is that Applegate fails to disclose a redirection server.

Claims 1 and 6 clearly claim *a redirection server that is a piece of hardware that can be configured as a stand-alone unit or an add-in module for a gateway device* (see Fig. 2 of the provisional and column 7, lines 22-24). *The redirection server*

disclosed by and claimed in the '894 patent is not software. Since, as admitted by petitioner, the only element disclosed by Applegate that performs redirection is software, Applegate cannot meet the limitation of a redirection server.

Id. at 13 (emphasis added).

Subsequent to the decision on petition that denied *inter partes* reexamination, Patent Owner filed a paper styled as “Comments” on the petition decision. Ex. 1019. Although Patent Owner agreed that denial of the reexamination request was proper (*id.* at 1), Patent Owner disagreed that the claimed “redirection server” required more than software. Patent Owner alleged that the '894 patent disclosed software embodiments that provided the gateway's functionality. *Id.* at 2. Patent Owner pointed out that the patent states “[t]he redirection is accomplished by a Home Page Redirect (HPR) performed by the gateway device, a AAA server, or by a portal page redirect unit located internal to or external to the gateway device.” *Id.* (quoting Ex. 1001, col. 9, ll. 5–8).

E. Asserted Grounds That Rely on Applegate

In deciding whether to institute an *inter partes* review, previous challenges in the USPTO against a patent may be considered:

In determining whether to institute or order a proceeding under . . . chapter 31, the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.

35 U.S.C. § 325(d) (titled “MULTIPLE PROCEEDINGS”). Further, in construing our authority to institute *inter partes* review under 37 C.F.R. § 42.108, we are mindful of the guidance provided in § 42.1(b): “[37 C.F.R.

§ 42] shall be construed to secure the just, speedy, and inexpensive resolution of every proceeding.”

Petitioner’s remaining asserted grounds of unpatentability, five of seven asserted grounds, rely on Applegate, alone or in combination with other references. *See* Pet. 4–5, 29–34, 36. Yet, Applegate received full consideration in view of the subject matter claimed in the ’894 patent in the denial of *inter partes* reexamination. The Central Reexamination Unit determined that a redirection server, as claimed, comprises hardware, and the only element disclosed by Applegate that performs redirection is software. *See supra* § II.D. We find nothing in this record that might demonstrate error in the CRU’s determinations. For example, as alleged by Patent Owner in its “Comments” to the CRU Director’s denial of the *inter partes* reexamination, the ’894 patent discloses that “[t]he redirection is accomplished by a Home Page Redirect (HPR) performed by the gateway device, a AAA server, or by a portal page redirect unit located internal to or external to the gateway device.” Ex. 1001, col. 9, ll. 5–8. The claims, however, do not set forth a redirection “device” or “unit” but a redirection “server.” The indicated Specification portion of the ’894 patent describes an AAA “server” that may perform the redirection, which may be distinguished from a pure software embodiment performing the function, even if the server is located within the gateway device.⁵ *See, e.g.*, Ex. 1001, col. 7, ll. 22–24

⁵ We observe that, in the District Court action involving the ’894 patent, the Court construed “redirection server” only to the extent that “redirection” was determined to be not limited to stack address translation using packet address modification. Ex. 1051, 2, 10–11.

(“The DHCP service can be provided by *an external DHCP server 24* or it can be provided by *an internal DHCP server located within the gateway device.*” (emphasis added)).

The Petition relies in part on Patent Owner’s “Comments” on the reexamination decision as broadening the term “redirection server.” Pet. 23. “Since Nomadix clearly advanced a broader construction of ‘redirection server’ than set forth by the USPTO in the prior reexamination proceedings, it should be held to the construction in this proceeding.” *Id.* Petitioner asserts that “redirection server” should be construed as “[h]ardware or software external or internal to the gateway device.” Pet. 21. Petitioner’s basis for the construction is Patent Owner’s Comments subsequent to the CRU’s reexamination decision and the ’894 patent at column 6, lines 32 through 36 and column 9, lines 5 through 8. *Id.* The indicated text at column 6, however, addresses the “gateway device” rather than a “redirection server.”⁶ The indicated text at column 9 describes structures including the AAA server, as we have previously discussed. We are not persuaded that the CRU’s interpretation of “redirection server” as claimed is erroneous or should be discarded.

Petitioner submits, seemingly as an aside, that “[e]ven if the term ‘redirection server’ is construed as in the prior reexamination proceedings” (Pet. 58), Birrell — which is “not shown on the claim chart” (*id.* at 25) — discloses a “redirection server” as a separate hardware circuit or computer system (*id.* at 33, 59). Petitioner’s reasoning in support of why one of

⁶ Although the redirection server may be located “within” the gateway device (e.g., claim 9), the server and the device are distinct — e.g., base claim 6, “a redirection server in communication with the gateway device.”

ordinary skill in the art would have combined the teachings of the references, however, is lacking in a factual basis for such combination. According to Petitioner, “IPOINT and Birrell describe the redirection server configured as a separate hardware circuit, and Coss and Colby describe systems using packet address modification for packet redirection, which could likewise be combined with Applegate and [Slemmer] to arrive at the system claimed in the [’]894 patent.” Pet. 59 (citing Ex 1020 ¶ 39 (similar allegations)).

The question of obviousness 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 ordinary skill in the art; and (4) objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). As our reviewing court instructs:

Although the obviousness analysis should “take account of the inferences and creative steps that a person of ordinary skill in the art would employ,” the Supreme Court emphasized that this evidentiary flexibility does not relax the requirement that, “[t]o facilitate review, this analysis should be made explicit.” *Id.* [*KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007)] (citing [*In re*] *Kahn*, 441 F.3d [977, 988 (Fed. Cir. 2006)] (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”)).

Perfect Web Techs., Inc. v. InfoUSA, Inc., 587 F.3d 1324, 1330 (Fed. Cir. 2009). Petitioner’s challenge of the claims over Applegate, Slemmer, and Birrell (Pet. 4 (Ground 3), 32–33, 58–59) provides mere conclusory statements in support of the legal conclusion of obviousness. Petitioner

offers no convincing rationale, in light of the teachings of the prior art, with respect to why one of ordinary skill in the art would have chosen to combine the elements of the asserted art in a way “to arrive at the system claimed in the [’]894 patent.” Pet. 59.

In view of the foregoing and further in view of our discretion under 35 U.S.C. § 325(d), we decline to institute *inter partes* review on the asserted grounds that require the Applegate reference, which was previously presented to the Office.

III. CONCLUSION

The Petition fails to demonstrate a reasonable likelihood of prevailing on the asserted grounds that the challenged claims are unpatentable over the evidence that includes IPORT CO, and we decline to institute *inter partes* review, pursuant to our discretion under 35 U.S.C. § 325(d), on the remaining asserted grounds that rely on Applegate.

IV. ORDER

It is

ORDERED that the petition is denied as to all challenged claims and no trial is instituted.

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