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Paper 12
Entered: August 16, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.,
Petitioner,

v.

WILLIAM GRECIA,
Patent Owner.

Case IPR2016-00600
Patent 8,533,860 B1

Before GLENN J. PERRY, RAMA G. ELLURU, and
MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

WORMMEESTER, *Administrative Patent Judge*.

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

Unified Patents Inc. ("Petitioner") filed a Corrected Petition (Paper 7, "Pet.") requesting *inter partes* review of claims 1–30 of U.S. Patent No. 8,533,860 B1 (Ex. 1001, "the '860 patent"). William Grecia ("Patent Owner") filed a Preliminary Response (Paper 10, "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." For the reasons that follow, we have decided not to institute an *inter partes* review.

I. BACKGROUND

A. The '860 Patent

The '860 patent is titled "Personalized Digital Media Access System–PDMAS Part II." Ex. 1001, at [54]. The '860 patent describes a digital rights management system that manages access rights across a plurality of devices via digital media personalization to protect digital media subject to illegal copying. *Id.* at 1:19–26; 4:47–48.

The system includes a first receipt module, an authentication module, a connection module, a request module, a second receipt module, and a branding module. *See id.* at Fig. 1. The first receipt module receives a branding request from a user's (content acquirer's) device. *Id.* at 5:45–47. The branding request is a read and write request of metadata of the digital media and includes a membership verification token corresponding to the digital media. *Id.* at 5:47–50. The authentication module authenticates the membership verification token. *Id.* at 5:56–57. The connection module establishes communication with the user's device. *Id.* at 5:58–60. The

request module requests an electronic identification reference from the user's device. *Id.* at 6:4–6. The second receipt module receives the electronic identification reference. *Id.* at 6:6–8. The branding module brands metadata of the digital media by writing the membership verification token and the electronic identification into the metadata. *Id.* at 6:8–11.

Figure 3, which is reproduced below, illustrates this process.

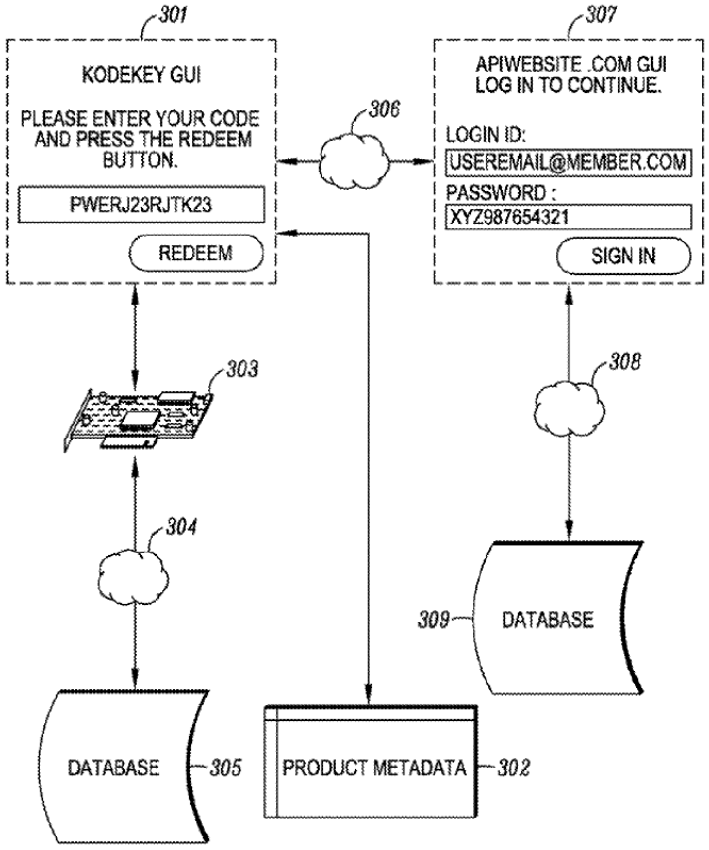


FIG. 3

In particular, Figure 3 is a flow chart of the process of digital media personalization. *Id.* at 4:23–25. A user posts a branding request via Kodekey GUI 301, which prompts the user to enter a token and press the redeem button. *Id.* at 6:65–67, 7:1–3. Product metadata 302 is associated with the digital media to be acquired. *Id.* at 7:3–4. The Kodekey GUI is

connected to token database 305. The user is then redirected to APIwebsite.com GUI 307, which prompts the user to enter a login id and password to access the digital media from database 309. *Id.* at 7:10–11, 14–17. The APIwebsite.com GUI interfaces to a web service membership, where the user's electronic identification is collected and sent back to the Kodekey GUI. *Id.* at 7:10–14. The database containing the digital media is connected to the web service membership. *Id.* at 7:17–19.

B. Illustrative Claim

Petitioner challenges claims 1–30 of the '860 patent. Claims 1, 9, 11, and 21 are independent. Claim 1 is illustrative of the claims under challenge:

> 1. A method for authorizing access to digital content using a cloud system, the cloud system comprising connected modules in operation as one or more of a cloud computing or a cloud storage in connection with devices and users, wherein the digital content is at least one of encrypted or not encrypted, the method facilitating access rights between a plurality of data processing devices, the method comprising:
>
> receiving a digital content access request from at least one communications console of the plurality of data processing devices, the access request being a read or write request of metadata of the digital content, wherein the read or write request of metadata is performed in connection with a combination of at least one device and the cloud system, the request comprising a verification token provided by a first user corresponding to the digital content, wherein the verification token is one or more of a password, e-mail address, payment system, credit card, authorize ready device, rights token, or one or more redeemable instruments of trade;
>
> authenticating the verification token;

establishing a connection with the at least one communications console, wherein the communications console is a combination of a graphic user interface (GUI) and an Application Programmable Interface (API) wherein the API is related to a verified web service, the web service capable of facilitating a two way data exchange session to complete a verification process wherein the data exchange session comprises at least one identification reference;

requesting the at least one identification reference from the at least one communications console, wherein the identification reference comprises one or more of a verified web service account identifier, letter, number, rights token, e-mail, password, access time, serial number, address, manufacturer identification, checksum, operating system version, browser version, credential, cookie, or key;

receiving the at least one identification reference from the at least one communications console; and

writing at least one of the verification token or the identification reference into the metadata.

C. Asserted Grounds of Unpatentability

Petitioner challenges claims 1–30 of the '860 patent on the following grounds.[1] Pet. 4, 15–59.

[1] In summarizing its asserted grounds on page 4 of the Petition, Petitioner requests cancellation of claims 1–30 as unpatentable under 35 U.S.C § 103 based on "[t]wo main references," but states on page 15 of the Petition that the same references "anticipate and/or render obvious the claimed subject matter." Given the substance of Petitioner's arguments, we address claims 1–30 under 35 U.S.C. §§ 102 and 103.

Reference(s)	Basis	Claims Challenged
DeMello[2]	§ 102	1–30
DeMello and "the admitted prior art"	§ 103	1–20
Pestoni[3]	§ 102	1–30
Pestoni and "the admitted prior art"	§ 103	1–20
DeMello and Wiser[4]	§ 103	21–30
Pestoni and Wiser	§ 103	21–30
DeMello, Wiser, and Cooper[5]	§ 103	17 and 30

In support of its arguments, Petitioner proffers the declaration of Ravi S. Cherukuri (Ex. 1010). *See id.*

D. Claim Construction

We construe claims in an unexpired patent by applying the broadest reasonable interpretation in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278 (Fed. Cir. 2015) ("We conclude that Congress implicitly approved the broadest reasonable interpretation standard in enacting the AIA."), *aff'd sub nom. Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131 (2016). Under this standard, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). A "claim term will not receive its ordinary meaning if the patentee acted as his own lexicographer,"

[2] DeMello, U.S. Patent No. 6,891,953 B1, issued May 10, 2005 (Ex. 1006).
[3] Pestoni, U.S. Publ'n No. US 2008/0313264 A1, published Dec. 18, 2008 (Ex. 1007).
[4] Wiser, U.S. Patent No. 6,385,596 B1, issued May 7, 2002 (Ex. 1008).
[5] Cooper, U.S. Publ'n No. US 2009/0037388 A1, published Feb. 5, 2009 (Ex. 1009).

however, and clearly set forth a definition of the claim term in the specification. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002).

Petitioner provides proposed interpretations for various limitations of the claims. *See* Pet. 12–14. Patent Owner does not respond, except for asserting that "[t]he Petition and the Declaration have different constructions of 'verified web service.'" Prelim. Resp. 5. For purposes of this Decision, we conclude that no term requires interpretation at this time to resolve a controversy in this proceeding. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) ("only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy").

II. DISCUSSION

A. Anticipation by DeMello

Petitioner argues that DeMello anticipates claims 1–30 of the '860 patent. *See* Pet. 15–28, 49–58. For the reasons explained below, we are not persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing on its asserted ground.

1. DeMello

DeMello describes a digital rights management system that distributes and protects rights in content, such as electronic books (eBooks). Ex. 1006, at [57], 4:43–45. As shown in Figure 4, which is reproduced below, the system includes a retail site, a fulfillment site, and an activation site.

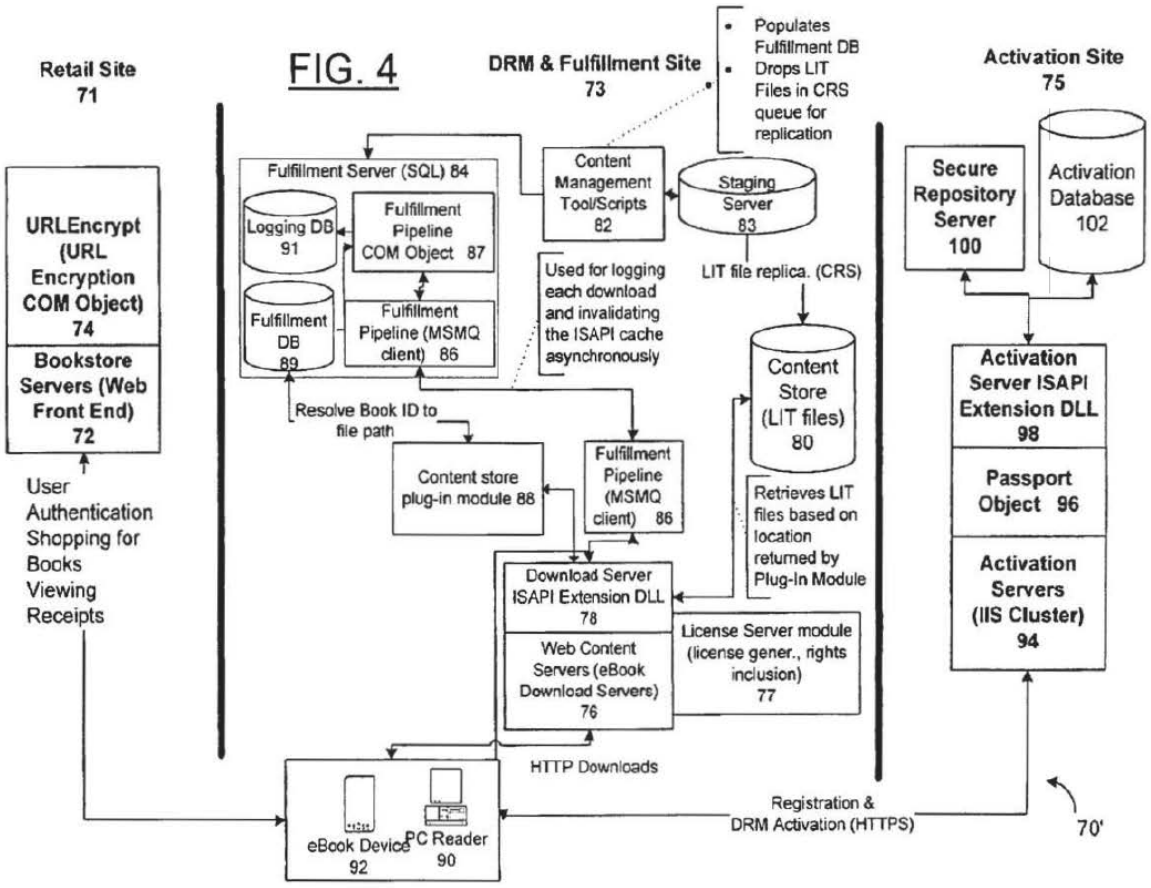


Figure 4 is a block diagram of one embodiment of the digital rights management system. *Id.* at 4:19–21. The retail site sells eBooks to consumers, the fulfillment site provides the sold eBooks to the consumers, and the activation site enables consumer reading devices to use eBooks with enhanced levels of copy protection (e.g., eBooks requiring licenses). *Id.* at [57], 6:10–16, 21:36–37.

In order to access an eBook, a consumer begins by choosing a title from the retail site and paying for the title. *Id.* at 26:1–4. The retail site then issues a receipt page with a link for downloading the title. *Id.* at 26:4–7. When the consumer clicks on the link, a download server at the fulfillment site adds the consumer's name to the title metadata. *Id.* at 26:15–23, Fig. 4. The title is then downloaded to the consumer's device, and the eBook is

opened to its cover page with the rightful owner's name appearing under the author's name. *Id.* at 26:35–36, 27:45–46.

2. Analysis

Independent claims 1, 9, 11, and 21 recite a request comprising a verification token corresponding to digital content. For this limitation, Petitioner identifies the communication between a bookstore server 72 and a user as a "request." Pet. 20. Petitioner further argues that "*DeMello* teaches 'user authentication' and establishing a membership relationship with a retailer (left of Figure 4), which inherently would include providing a token, such as a retailer password and/or email (e.g., Amazon log-on credentials)." Pet. 18; *see also id.* at 16 ("authentication credentials (e.g., Amazon.com log-on credentials), which is a verification token"), 20 ("**establish their membership relationship with the retailer** [verification token]").

Based on the record presented, we are unpersuaded by this argument. As Patent Owner points out, the "claims require a verification token 'corresponding to the digital content.'" Prelim. Resp. 29. Petitioner does not provide persuasive explanation as to how a *retailer* password or e-mail corresponds to *digital content*. In fact, Petitioner does not appear to address this recited feature at all. *See* 35 U.S.C. §312(a)(3) (a petition must identify, "with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim"); 37 C.F.R. § 42.104(b) (a petition must identify "[h]ow the construed claim is unpatentable under the statutory grounds identified" and "where each element of the claim is found in the prior art," and must explain the "relevance of the evidence to the challenge

raised"); 37 C.F.R. § 42.22(a)(2) (a petition must include a "full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence"). As Petitioner does not identify specifically how a retailer password or e-mail in DeMello corresponds to digital content, we are not persuaded that Petitioner has made a sufficient showing that DeMello discloses the recited verification token.

Petitioner further argues that "[o]ther embodiments" in DeMello describe various options that satisfy the recited "verification token," as "set forth in the Cherukuri Declaration (EX1010) at Ex. C, such as the BookID." Pet. 19 (emphasis omitted). We are unpersuaded by this argument as well. First, we note that Mr. Cherukuri does not discuss the BookID in Exhibit C of his declaration, and Petitioner provides no further citation or sufficient explanation as to how the BookID satisfies the recited "verification token." We also note that DeMello describes the BookID as being "used by download server 76 to locate the proper LIT file via content store plug-in module 88 (which looks-up the BookID in fulfillment database 84)." Ex. 1006, 16:5–8. As discussed above, however, Petitioner identifies the user's communication with the bookstore server 72 (not the download server 76) as the "request" comprising the "verification token." *See In re Arkley*, 455 F.2d 586, 587 (CCPA 1972) ("The [prior art] reference must clearly and unequivocally disclose the claimed [invention] or direct those skilled in the art to the [invention] without *any* need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference."); *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369–70 (Fed. Cir. 2008) ("the prior art reference—in order to anticipate under 35 U.S.C. § 102—must not only disclose all elements of the

claim within the four corners of the document, but must also disclose those elements 'arranged as in the claim.'").

Second, while Mr. Cherukuri discusses other alternatives in DeMello as satisfying the recited "verification token" (*see* Ex. 1010, at Ex. C (claim element 1[B])), Petitioner's reliance on such discussion is an improper incorporation by reference of arguments asserted in a declaration, which we will not consider here. *See* 37 C.F.R. § 42.6(a)(3) ("Arguments must not be incorporated by reference from one document into another document.").

Finally, Petitioner argues that the following items in DeMello also satisfy the recited "verification token": "the username and other credentials," the purchaser credit card, the purchaser name, and the PASSPORT ID. Pet. 20, 27. Again, Petitioner does not explain persuasively how any of these items corresponds to digital content.

In view of the foregoing, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that DeMello anticipates independent claims 1, 9, 11, and 21. *See also* Pet. 42 (referring to analysis of claim 1 for claim 9), 44–45 (referring to analysis of claim 1 for claim 11), 52–53 (referring to analyses of claims 1 and 11 for claim 21). Claims 2–8, 10, 12–20, and 22–30 depend from claims 1, 9, 11, or 21. Accordingly, we also determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that DeMello anticipates these dependent claims.

B. Obviousness over DeMello and the Admitted Prior Art

Petitioner argues that claims 1–20 of the '860 patent would have been obvious over DeMello and "the admitted prior art." *See* Pet. 15–28. For the

reasons explained below, we are not persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing on its asserted ground.

Independent claim 1 recites limitations including: a first "receiving" step, which Petitioner designates as element [B]; an "authenticating" step, which Petitioner designates as element [C]; an "establishing" step, which Petitioner designates as element [D]; and a "writing" step, which Petitioner designates as element [G]. *See* Pet. 17–24, 26–28. Independent claims 9 and 11 recite similar limitations. According to Petitioner, Patent Owner admits that elements [B], [C], and [G], as well as the "GUI" of element [D] are a part of the prior art. Pet. 18 (citing Ex. 1005, at 14), 21–22 (citing Ex. 1003, 10:41–51), 26–27 (citing Ex. 1005, at 13). As support, Petitioner relies on statements made in Patent Owner's Preliminary Response in IPR2015-0422, which also involves the '860 patent, as well as the specification of U.S. Patent No. 8,887,308, which is related to the '860 patent. *See id.*

It is not sufficient, however, for Petitioner to demonstrate that each of the claim elements is known. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Petitioner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

In that regard, with respect to element [B], Petitioner argues:

> *DeMello* teaches "user authentication" and establishing a membership relationship with a retailer (left of Figure 4), which inherently would include providing a token, such as a retailer password and/or email (e.g., Amazon log-on credentials). User authentication and establishing a membership are obvious in view of the admitted prior art. The admitted prior art steps are described in the parent '555 Patent as verifying membership for

> site to buy content, and *DeMello* recites establishing such a membership relationship. It would be obvious to use the verification token of the admitted prior art to establish a membership relationship.

Pet. 18–19. Petitioner does not, however, explain sufficiently *why* one of ordinary skill in the art would have considered combining DeMello and any other patent or printed publication to arrive at the claimed invention. For example, Petitioner does not explain persuasively why one of ordinary skill in the art would have considered "us[ing] the verification token of the admitted prior art to establish a membership relationship" in DeMello, when DeMello already teaches "establishing a membership relationship with a retailer." *See id.*

With respect to elements [C] and [G], Petitioner does not appear to proffer any reason for combining DeMello and the admitted prior art. *See* Pet. 20–21, 26–28.

Finally, with respect to element [D], Petitioner merely asserts that "it is obvious that the browser of the reader mentioned in *DeMello* includes a GUI, since browsers provide a GUI." *Id.*at 23. Again, Petitioner does not explain sufficiently *why* one of ordinary skill in the art would have considered combining DeMello and any other patent or printed publication to arrive at the claimed invention.

Based on the record presented, we are not persuaded that Petitioner has provided adequately articulated reasoning with some rational underpinning to support the legal conclusion of obviousness with respect to elements [B], [C], [D], and [G]. *See Kahn*, 441 F.3d at 988. Accordingly, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that claims 1, 9, and 11 would have been obvious over

DeMello and the admitted prior art. *See also* Pet. 42 (referring to analysis of claim 1 for claim 9), 44–45 (referring to analysis of claim 1 for claim 11). Claims 2–8, 10, and 12–20 depend from claims 1, 9, or 11. We therefore also determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that these dependent claims would have been obvious over DeMello and the admitted prior art.

C. Anticipation by Pestoni

Petitioner argues that Pestoni anticipates claims 1–30 of the '860 patent. *See* Pet. 15, 28–58. For the reasons explained below, we are not persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing on its asserted ground.

1. Pestoni

Pestoni describes a system with domain management for digital media. Ex. 1007, at [57]. As shown in Figure 1, which is reproduced below, the system includes a domain administrator, a content provider, and a license server.

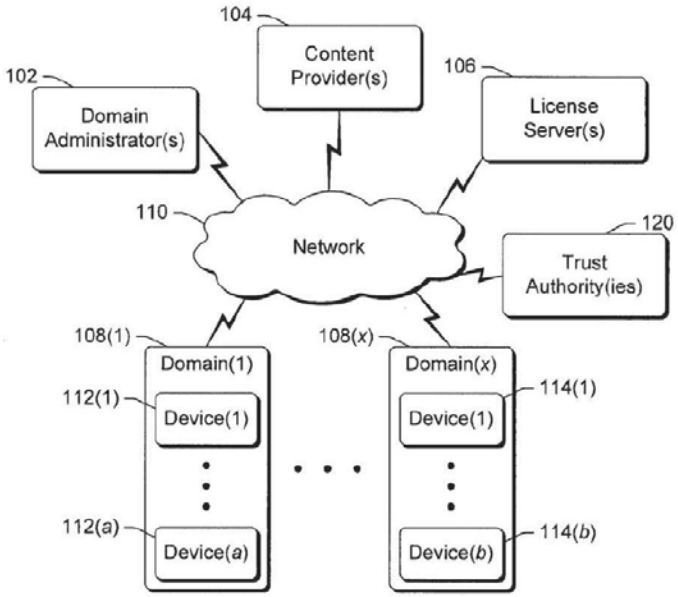


Fig. 1

Figure 1 illustrates one embodiment of a system that employs domain management for digital media. *Id.* ¶ 6. Media playback device 112 or 114 may obtain content from content provider 104 by submitting a content request to the content provider. *Id.* ¶ 67. In order to access and play back the content, the device must have a domain membership license from domain administrator 102 and a content license from license server 106. *Id.* ¶ 17.

To obtain a domain membership license, the device submits a join-domain request to the domain administrator. *Id.* ¶ 38. The request includes parameters to identify the device, such as a device certificate, user credentials, and a device description. *Id.* ¶ 39. If the domain administrator approves the request, the device becomes a member of the domain and receives a domain membership license. *Id.* ¶¶ 38, 44.

To obtain a content license, the device submits a content license request to the license server. *Id.* ¶¶ 69, 72. The request includes parameters, such as a key ID, a domain ID, and a domain certificate, to identify both the content for which the license is being requested and the domain of which the device is a member. *Id.* ¶ 72. In response to the request, the license server validates the domain certificate, and, if successful, approves the request. *Id.* ¶¶ 75, 79. Once the request is approved, the license server generates a content license, binds the license to the domain identified in the request, and provides the device with the license. *Id.* ¶¶ 79–80, 82, 84.

2. Analysis

As an initial matter, we note that Petitioner argues that the asserted references "anticipate and/or render obvious the claimed subject matter, and are corroborated by the opinion in the Cherukuri Declaration." Pet. 15. Petitioner does not set forth its entire anticipation analysis in the Petition, however, relying instead on Mr. Cherukuri's declaration testimony to set forth portions of the analysis. For example, claim 1 recites a "GUI" and an "API . . . related to a verified web service." Without addressing in the Petition whether Pestoni discloses these claim elements, Petitioner directs us to Mr. Cherukuri's declaration testimony regarding the same claim elements. *Id.* at 31 (citing Ex. 1010 ¶ 80, Exhibit D). That testimony includes a statement that "it is inherent that a user would use a GUI," as well as a statement that "it is inherent that the device uses the API . . . [and] that the API is related to a web service." Ex. 1010 ¶ 80, Exhibit D. Such reliance on Mr. Cherukuri's declaration testimony is an improper incorporation by

reference of arguments asserted in a declaration. *See* 37 C.F.R. § 42.6(a)(3). Petitioner's asserted ground fails for this reason.

Even if the testimony had been fully described in the Petition, the anticipation argument with respect to Pestoni would still fail. As discussed above, claims 1, 9, 11, and 21 recite a request comprising a verification token corresponding to digital content. For this limitation, Petitioner points to Pestoni's disclosure of a content request and a join-domain request. Pet. 30 (citing Ex. 1007 ¶¶ 44, 67). Petitioner also directs us to where Pestoni discloses that "content can be obtained . . . concurrently with joining a domain." *Id.* (citing Ex. ¶ 67). Petitioner appears to identify the content request and join-domain request together as the recited "request." *See* Pet. 30 ("[d]evice 202 **communicates** with content provider 104 **to obtain** pieces of protected **content** [content access request]" and "[d]omain request approval module 224 . . . **receives join-domain request 220**."). Petitioner further identifies the user credentials included in Pestoni's join-domain request as the recited "verification token." *Id.* (citing Ex. 1007 ¶¶ 39, 41). As Petitioner highlights, the user credentials may include a user id and password. *Id.* at 29–30 ("**user credentials** can take any of a variety of different forms, such as a **user id and password**").

Based on the record presented, we are unpersuaded by Petitioner's argument. As discussed above, Patent Owner points out that the "claims require a verification token 'corresponding to the digital content.'" Prelim. Resp. 29. We note that Pestoni discloses that the user id and password are "credentials that identify the user." Ex. 1007 ¶ 41. In light of this disclosure, Petitioner does not provide persuasive explanation as to how a *user* id or password corresponds to *digital content*. In fact, Petitioner does

not appear to address this recited feature at all. *See* 35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104(b); 37 C.F.R. § 42.22(a)(2). As Petitioner does not identify specifically how a user id or password in Pestoni corresponds to digital content, we are not persuaded that Petitioner has made a sufficient showing that Pestoni discloses the recited verification token.

Referring to "[o]ther embodiments" in Pestoni, Petitioner further argues that the "'verification token' is also shown by . . . a digital certificate and other parameters in *Pestoni*, . . . as set forth in the Cherukuri Declaration (EX1010) at Ex. D, Element G." Pet. 35 (emphasis omitted).

On this record, we are unpersuaded by Petitioner's argument in this regard. Although the digital certificate in Pestoni is also an example of user credentials included in the join-domain request, we note that the digital certificate "attest[s] to the *user's* identity and [is] digitally signed by a *trust authority*." Ex. 1007 ¶ 41 (emphasis added). As with the user id and password discussed above, Petitioner does not explain persuasively how the digital certificate corresponds to *digital content*.

Moreover, while Mr. Cherukuri may discuss other alternatives in Pestoni as satisfying the recited "verification token," Petitioner's reliance on such discussion is an improper incorporation by reference of arguments asserted in a declaration, which we will not consider here. *See* 37 C.F.R. § 42.6(a)(3).

In view of the foregoing, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that Pestoni anticipates independent claims 1, 9, 11, and 21. *See also* Pet. 42 (referring to analysis of claim 1 for claim 9), 44–45 (referring to analysis of claim 1 for claim 11), 52–53 (referring to analyses of claims 1 and 11 for claim 21).

Claims 2–8, 10, 12–20, and 22–30 depend from claims 1, 9, 11, or 21. Accordingly, we also determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that Pestoni anticipates these dependent claims.

D. Obviousness over Pestoni and the Admitted Prior Art

Petitioner argues that claims 1–20 of the '860 patent would have been obvious over Pestoni and "the admitted prior art." *See* Pet. 15, 28–48. For the reasons explained below, we are not persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing on its asserted ground.

As discussed above, independent claim 1 recites several limitations, which Petitioner designates as elements [B], [C], [D], and [G]. Independent claims 9 and 11 recite similar limitations. According to Petitioner, Patent Owner admits that elements [B], [C], and [G], as well as the "GUI" of element [D] are a part of the prior art. *Id.* at 29 (citing Ex. 1005, at 6), 30, 32, 34. As support, Petitioner relies on statements made in Patent Owner's Preliminary Response in IPR2015-0422, which also involves the '860 patent. *See id*; *see also id.* at 18 (citing Ex. 1005, at 14).

Again, it is not sufficient for Petitioner to demonstrate that each of the claim elements is known. *See KSR*, 550 U.S. at 418. Petitioner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Kahn*, 441 F.3d at 988. In that regard, Petitioner does not appear to proffer any reason for combining Pestoni and any other patent or printed publication to arrive at the claimed invention. *See* Pet. 29–32, 34–35. Accordingly, on this record, we are not persuaded that Petitioner has provided adequately articulated reasoning with

some rational underpinning to support the legal conclusion of obviousness. *See Kahn*, 441 F.3d at 988.

In view of the foregoing, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that claims 1, 9, and 11 would have been obvious based on the combination of Pestoni and the admitted prior art. *See also* Pet. 42 (referring to analysis of claim 1 for claim 9), 44–45 (referring to analysis of claim 1 for claim 11). Claims 2–8, 10, and 12–20 depend from claims 1, 9, or 11. Accordingly, we also determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that these dependent claims would have been obvious based on the combination of Pestoni and the admitted prior art.

E. Obviousness over DeMello and Wiser or over Pestoni and Wiser

Petitioner argues that claims 21–30 of the '860 patent would have been obvious over DeMello and Wiser or over Pestoni and Wiser. *See* Pet. 48–58. Claim 21 recites a "request comprising a verification token corresponding to the digital content." For the reasons discussed *supra*, Petitioner's arguments and evidence regarding claim 21 do not remedy the deficiencies discussed above with respect to claims 1, 9, 11, and 21. *See id.* at 52–53 (referring to analyses of claims 1 and 11 for claim 21). Accordingly, on this record, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on its assertion that claim 21 would have been obvious over DeMello and Wiser or over Pestoni and Wiser. As claims 22–30 depend from claim 21, we also determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on its

assertion that these dependent claims would have been obvious over DeMello and Wiser or over Pestoni and Wiser.

F. Obviousness over DeMello, Wiser, and Cooper

Petitioner argues that claims 17 and 30 of the '860 patent would have been obvious over DeMello, Wiser, and Cooper. Pet. 58–59. Claims 17 and 30 depend from claims 11 and 21, respectively. Petitioner's arguments and evidence regarding claims 17 and 30 do not remedy the deficiencies discussed above with respect to claims 11 and 21. *See id.* On this record, and for the reasons discussed *supra*, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on its assertion that claims 17 and 30 would have been obvious over DeMello, Wiser, and Cooper.

G. 35 U.S.C. § 315(b)

Patent Owner proffers arguments asserting that the Petition is time-barred under 35 U.S.C. § 315(b) because "[Patent Owner] filed and served a complaint alleging that Google infringed the '860 patent" and "Google, an original founding member of [Petitioner] and continuing customer of [Petitioner] (Ex. 2005), is a privy of [Petitioner]." Prelim. Resp. 41–42.

Because the information presented in the Petition does not demonstrate a reasonable likelihood that Petitioner would prevail with respect to at least one of the challenged claims, we need not address Patent Owner's assertions that the Petition is time-barred under 35 U.S.C. § 315(b) based on privity.

III. CONCLUSION

For the foregoing reasons, we are not persuaded that Petitioner has demonstrated a reasonable likelihood that it would prevail with respect to any of the challenged claims of the '860 patent.

IV. ORDER

For the reasons given, it is

ORDERED that the Petition is *denied* as to all challenged claims, and no trial is instituted.

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