

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ROCKWELL AUTOMATION, INC., ROCKWELL AUTOMATION
TECHNOLOGIES, INC.,
Petitioners,

v.

AUTOMATION MIDDLEWARE SOLUTIONS, INC.,
Patent Owner.

Case IPR2017-00048
Patent 6,516,236 B1

Before THOMAS L. GIANNETTI, JENNIFER S. BISK, and
GREGG I. ANDERSON, *Administrative Patent Judges*.

ANDERSON, *Administrative Patent Judge*.

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

I. INTRODUCTION

Rockwell Automation, Inc. and Rockwell Automation Technologies, Inc. (“Petitioner”) filed a Petition (Paper 2 (“Pet.”)) pursuant to 35 U.S.C. §§ 311–19 to institute an *inter partes* review of claims 1–3 (“the challenged claims”) of U.S. Patent No. 6,516,236 (Ex. 1001 (“the ’236 patent”)). Pet. 2. Automation Middleware Solutions, Inc. (“Patent Owner”¹) filed a Preliminary Response (Paper 11 (“Prelim. Resp.”)).

We have authority under 35 U.S.C. § 314(a), which requires demonstration of a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim. See 37 C.F.R. § 42.4(a). We are not persuaded there is a reasonable likelihood that Petitioner would prevail in showing that at least one of the challenged claims is unpatentable and decline to institute an *inter partes* review of the challenged claims.

A. *Related Proceedings*

Petitioner advises us that the ’236 Patent was the subject of a previous *inter partes* review, *ABB Inc. v. Roy-G-Biv Corporation*, IPR2013-00062 (PTAB) (“the ’062 IPR”). Pet. 3. ABB was the petitioner in the ’062 IPR, Petitioner here was not a party to the ’062 IPR, and the ’236 patent was subsequently assigned to Patent Owner. *Id.* The Board entered a Final Written Decision in the ’062 IPR on April 11, 2014. ’062 IPR, Paper 84. The Board determined that ABB failed to prove the claims were unpatentable. *Id.* at 27–28.

Patent Owner advises us that the ’236 patent was the subject of an *inter partes* reexamination, Control No. 95/000396, in which all claims were

¹ Wi-LAN Technologies Inc. and Wi-LAN, Inc. are also identified by Patent Owner as real parties-in-interest. Paper 8, 2.

confirmed. Prelim. Resp. 21 (citing Ex. 2013²). In addition, Patent Owner identifies several pending civil actions in the Eastern District of Texas in which the '236 patent is being asserted. Paper 8, 2.

B. The '236 Patent (Ex. 1001)

The '236 patent relates generally to a system that facilitates the creation of hardware-independent motion control software. Ex. 1001, col. 1, ll. 13–16. In particular, the patent describes a high-level motion control application programming interface (“API”) correlated with driver functions associated with controlling a mechanical system that generates movement based on a control signal. *See generally id.* at col. 1, ll. 5–49. The object of the invention is to isolate the application programmer from the complexity of hardware devices, which often have a manufacturer-specific motion control command language and functionality that is highly hardware-dependent. *See generally id.* at col. 3, ll. 24–42. At the same time, the API allows the programmer to access base motion operations of the hardware device. *Id.*

As described in the '236 patent, the prior art includes a number of low-level software programs for directly programming individual motion control devices, or for aiding in the development of systems containing a number of motion control devices. Ex. 1001, col. 1, l. 55–col. 2, l. 34. While providing complete control over the hardware, these low-level programs are highly hardware-dependent. *Id.* The '236 patent discusses an existing software model, referred to as “WOSA,” that isolates application programmers from the complexities of programming to different service

² Action Closing Prosecution and Information Disclosure Statement, Reexamination Control No. 95/000,396.

providers through an application programming interface layer that is hardware-independent. *Id.* at col. 2, ll. 55–67. However, the patent states, “[t]he WOSA model has no relation to motion control devices.” *Id.* at col. 2, ll. 66–67.

In describing the invention, the ’236 patent discloses a programming interface consisting of “component functions” containing code that relates to driver functions, which in turn are associated with, or contain code for, implementing the motion steps on a given motion control device. *Id.* at col. 3, ll. 56–66. The component functions support both core driver functions—those functions that must be supported by all software drivers—and extended driver functions—those functions that may, or may not be, supported by a particular software driver. *Id.* at col. 4, ll. 3–13. When feasible, component functions can emulate extended driver functions not supported by a particular device by using a combination of core driver functions. *Id.* at col. 4, ll. 25–44.

“Core driver functions are associated with primitive operations, while extended driver functions are associated with non-primitive operations.” Ex. 1001, col. 7, ll. 43–46. “Primitive operations are operations that are necessary for motion control and cannot be simulated using a combination of other motion control operations.” *Id.* at col. 7, ll. 29–32. “Non-primitive operations are motion control operations that do not meet the definition of a [sic] primitive operations.” *Id.* at col. 7, ll. 34–36.

C. Illustrative Claim

Of the challenged claims, claim 1 is the only independent claim. Claims 2–3 depend directly or indirectly from claim 1. Claim 1 follows:

1. A system for generating a sequence of control commands for controlling a selected motion control device selected from a group of supported motion control devices, comprising:

a set of motion control operations, where each motion control operation is either a primitive operation the implementation of which is required to operate motion control devices and cannot be simulated using other motion control operations or a non-primitive operation that does not meet the definition of a primitive operation;

a core set of core driver functions, where each core driver function is associated with one of the primitive operations;
an extended set of extended driver functions, where each extended driver function is associated with one of the non-primitive operations;

a set of component functions;

component code associated with each of the component functions, where the component code associates at least some of the component functions with at least some of the driver functions;

a set of software drivers, where

each software driver is associated with one motion control device in the group of supported motion control devices,

each software driver comprises driver code for implementing the motion control operations associated with at least some of the driver functions, and

one of the software drivers in the set of software drivers is a selected software driver, where the selected software driver is the software driver associated with the selected motion control device;

an application program comprising a series of component functions, where the application program defines the steps for operating motion control devices in a desired manner; and

a motion control component for generating the sequence of control commands for controlling the selected motion control device based on the component functions of the application program, the component code associated with the component functions, and the driver code associated with the selected software driver.

Ex. 1001, col. 48, l. 11–col. 49, l. 11.

D. References

Petitioner relies on the following references:

1. Cashin, J., “WOSA – Windows Open Services Architecture,” Computer Tech. Research Corp. (Ex. 1008, “Cashin”)
2. “ODBC 2.0 Programmer’s Reference and SDK Guide,” Microsoft Press, 1994 (Ex. 1020, excerpts parts 1–4, “ODBC”).
3. Allen-Bradley, “GML Programmer’s Workshop User Manual,” Software Version 3.4 (Ex. 1021, “GML”).
4. “Compumotor Motion Toolbox User Guide,” Version 1.0, (Ex. 1023, “Motion Toolbox”).

The Petition also relies on the Declaration of William Rizzi (Ex. 1002, “Rizzi Declaration” or “Rizzi Decl.”) as support for the various contentions.

E. Grounds Asserted

Petitioner challenges claims 1–3 as obvious under 35 U.S.C. § 103(a) over the following combinations of references:

1. Cashin, ODBC, and GML; and
2. Cashin, ODBC, and Motion Toolbox.

II. ANALYSIS

A. Preliminary Matter

Patent Owner urges us to exercise our discretion and deny the petition under 35 U.S.C. § 325(d). Prelim. Resp. 18–35. Patent Owner argues that Petitioner presented “the same or substantially the same art or arguments addressed during prior PTO proceedings” involving the ’236 patent. *Id.* at 18–19. Patent Owner provides charts comparing the prior art arguments made in the Petition with similar arguments in the ’062 IPR. *Id.* at 27–28.

Patent Owner’s argument is compelling. However, we choose not to exercise our discretion here and instead address the Petition on its merits.

B. Claim Construction

Petitioner asserts that the ’236 patent has expired. Pet. 10–11. Patent Owner agrees. Prelim. Resp. 18. For the purposes of this Decision, therefore, we proceed on the basis that the patent has expired. For expired patents, we apply the claim construction standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005); see *In re Rambus, Inc.*, 694 F.3d 42, 46 (Fed. Cir. 2012).

Furthermore, only terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy. See *Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011); *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

For the purposes of this Decision, we need construe only the term “primitive operation.” For “primitive operation,” Petitioner applies the following construction, which it says Patent Owner proposed: “motion control operations that cannot be simulated using a combination of other

motion control operations.” Pet. 14 (citing Ex. 1006,³ 14; 15; 17; 31; 38; Ex. 1002 ¶48). This is consistent with the specification (*see* I.B. above) and the District Court’s preliminary claim construction. Ex. 2016,⁴ 2. We, therefore, agree with this construction and, therefore, adopt it for this Decision.

C. Overview of Prior Art

1. Cashin/WOSA (Ex. 1008)

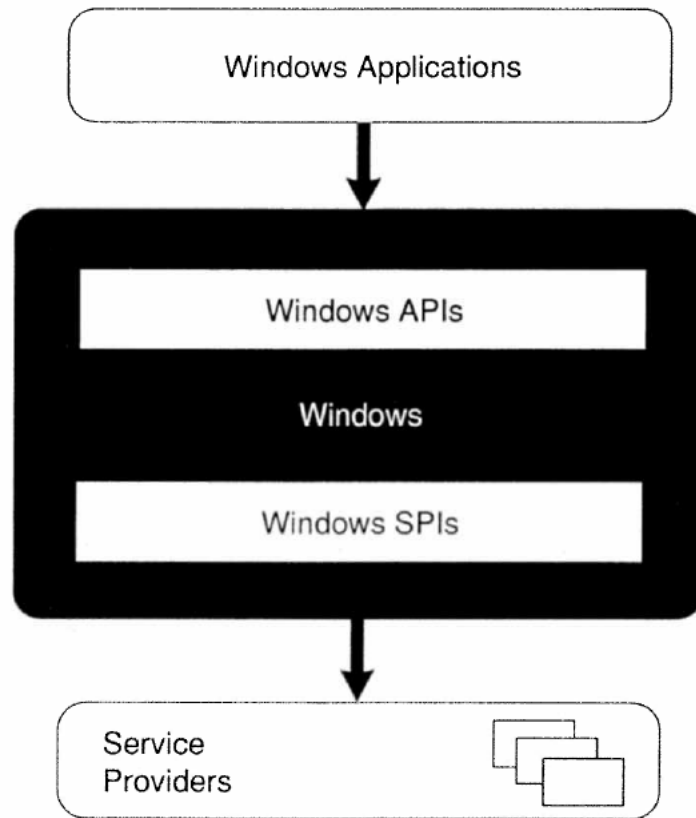
Cashin is a textbook describing Windows Open Services Architecture (WOSA). Ex. 1008, 9. According to Cashin: “The great attraction of WOSA to Windows software developers is that standardization of the interface to multiple software services enables their product to reach a wider audience.” *Id.*

This is illustrated by Figure 3.1 of Cashin, reproduced at page 27 of the Petition:

³ Plaintiff’s P.R. 4-2 Disclosures in *Automation Middleware Solutions, Inc. v. Invensys Systems, Inc. et al.*, Case No. 2:15-cv-00898-RWS (E.D. Tex.) (“District Court”).

⁴ Preliminary Claim Constructions in the District Court.

Figure 3.1 Major Elements of WOSA



Ex. 1008, 58. Figure 3.1 of Cashin depicts major elements of the WOSA model. *Id.* at 57. Using WOSA, user applications invoke specific APIs (application program interfaces) appropriate to the functional service being sought. The service providers are accessed through SPIs (service provider interfaces) provided for specific functions. If a functional service is replaced or modified, the SPIs are modified but the user applications remain stable and users may be unaware of changes to the functional services. *Id.*

WOSA is discussed in the '236 patent specification. See I.B. above.

2. *ODBC (Ex. 1020)*

According to the ODBC reference, “[t]he Open Database Connectivity (ODBC) interface allows applications to access data in database management systems (DBMS) using Structured Query Language (SQL) as a standard for accessing data.” Ex. 1020, 20. This interface is intended to promote “interoperability”, i.e., “a single application can access different database management systems.” *Id.*

Petitioner describes ODBC as a “specific application[]” of WOSA’s architecture, and points out that ODBC is described in Cashin. Pet. 28. According to Petitioner, “ODBC acts as an interface between applications and targeted database sources and applications call functions from the ODBC API to access the targeted database sources.” *Id.* at 29.

3. *GML (Exs. 1021, 1022) and Motion Toolbox (Ex. 1023)*

The references are similar in several ways, and are relied on by Petitioner as alternatives in combination with Cashin and ODBC.

Petitioner describes GML as “a graphical programming language developed by Allen-Bradley for use with a variety of motion controllers.” Pet. 30 (citing Ex. 1021, 1–3, 11–12). According to Petitioner, “GML was designed so that a single motion control programming interface could be used to generate motion control programs for a number of different motion controllers.” *Id.* As Petitioner further explains:

Allen-Bradley provided a design program called GML Programmer’s Workshop with which users could create, run, and debug GML programs. (*Id.*, 1-4; Ex. 1022, 1-4.) Once installed, users could graphically build a motion control program using the provided set of GML graphical “blocks.” (Ex. 1021, 13-20.) The user would build the program by adding these GML blocks from the “block palette” or “library” to a GML “diagram.” (*Id.*) The

blocks could be connected to other blocks to create an order of operation along with inputs and outputs from the blocks. (*Id.*)
Id. at 30–31.

Petitioner describes Motion Toolbox as a software add-on for a process control programming system named LabVIEW.⁵ Pet. 34. As further explained by Petitioner: “LabVIEW was a system with a variety of functions and subroutines (called Virtual Instruments or VIs) with which engineers could build programs.” *Id.* (citing Ex. 1024, 1-1–1-2). Further, according to Petitioner, “Motion Toolbox was a collection of LabVIEW VIs that programmers could use in their LabVIEW programs to carry out motion operations on different motion controllers from the 6000 series of Compumotor motion controllers[.]” *Id.*

D. Legal Standard for Obviousness

A patent claim is invalid as obvious “if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103(a).

The ultimate determination of obviousness is a question of law, but that determination is based on underlying factual findings The underlying factual findings include (1) the scope and content of the prior art, (2) differences between the prior art and the claims at issue, (3) the level of ordinary skill in the pertinent art, and (4) the presence of secondary considerations of nonobviousness such as commercial success, long felt but unsolved needs, failure of others, and unexpected results.

⁵ National Instruments Corporation, *LabVIEW for Windows User Manual* (August 1993 Edition).

In re Nuvasive, Inc., 842 F.3d 1376, 1381 (Fed. Cir. 2016)(citations and internal quotation marks omitted).

“To satisfy its burden of proving obviousness, a petitioner cannot employ mere conclusory statements. The petitioner must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016). Furthermore, in assessing the prior art, the Board must consider whether a person of ordinary skill would have been motivated to combine the prior art to achieve the claimed invention.

Nuvasive, 842 F.3d at 1381. As stated in *Personal Web Technologies, LLC v. Apple, Inc.*, 848 F.3d 987 (Fed. Cir. 2017):

The Supreme Court in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 127 S.Ct. 1727, 167 L.Ed.2d 705 (2007), explained that, “because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known,” “it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.”

Id. at 991–92 (citation omitted).

E. Motivation to Combine Cashin and ODBC with the “Motion Control References”

Petitioner addresses the motivation to combine Cashin and ODBC with what it terms the “motion control references” (GML and Motion Toolbox) at pages 35–38 of the Petition. Petitioner’s argument proceeds in two stages. Petitioner first asserts that a person of ordinary skill would have combined WOSA, described in Cashin, with ODBC. Pet. 35–38. According to Petitioner:

Cashin expressly refers to and describes ODBC as an architecture that embodies WOSA, and the ODBC Programmer's Guide is a text that explains the ODBC interface in greater detail than Cashin. Therefore, Cashin and the ODBC Programmer's Guide are closely related and the ODBC Programmer's Guide merely expands on the ODBC description contained in Cashin.

Pet. 36. Petitioner then argues: "It would have been obvious to combine Cashin and ODBC Programmer's Guide with GML or Motion Toolbox by applying the WOSA design approach to the motion control programming technologies described in GML or Motion Toolbox." *Id.* at 36–37 (footnote omitted). According to Petitioner, there is "ample evidence . . . showing companies in the motion control space improving their motion control products by making them less proprietary and more hardware independent." *Id.* at 37.

Patent Owner challenges this rationale for combining the references. Prelim. Resp. 35–40. Patent Owner asserts that a person of ordinary skill would not have combined ODBC and the motion control technology references (i.e., GML and Motion Toolbox) because they are "unrelated technologies." *Id.* at 35. Because ODBC is a database component of WOSA, Patent Owner asserts there is no "technical reason" to look to ODBC to improve on motion control technology. *Id.* at 36. As an additional argument, Patent Owner asserts that even if a person of ordinary skill would have been motivated to combine motion control technology with a WOSA implementation, it is "very unlikely such a person would choose ODBC." *Id.* at 40. Patent Owner states: "ODBC does not provide for any level of hardware interaction." *Id.*

While Petitioner presents a credible rationale for combining WOSA and ODBC, we are not persuaded by Petitioner's showing that a person of ordinary skill would have looked to WOSA and ODBC for use in a motion control application. According to Petitioner, there is "ample evidence" that companies in "the motion control space" desired to improve their products "by making them less proprietary and more hardware independent." Pet. 37. We are not convinced, however, that this helps Petitioner establish that a person of ordinary skill would look to Cashin or ODBC as a solution. As the '236, patent specification points out, "[t]he WOSA model has no relation to motion control devices." *Id.* at col. 2, ll. 66–67. Petitioner, thus, provides no persuasive evidence that a person of ordinary skill "would have appreciated the applicability to motion control of the well-known hardware-independent benefits of the WOSA software design." Pet. 37.

Petitioner argues that the inventors of the '236 patent "merely combined known technologies in a predictable way." Pet. 23–26. Petitioner asserts the commercial embodiment of the '236 patent (XMC) is based on WOSA. *Id.* at 24. We are not persuaded by this argument because it is contrary to the principle that an inventor's own work may not be considered prior art in the absence of a statutory basis. *Riverwood Intern. Corp. v. R.A. Jones & Co., Inc.*, 324 F.3d 1346, 1355 (Fed. Cir. 2003).

In sum, we are not convinced that Petitioner has presented a sufficient rationale, apart from hindsight, demonstrating that a person of ordinary skill would have combined Cashin/WOSA and ODBC with either of the motion control references.

F. Obviousness Based on Cashin, ODBC, and GML

Petitioner contends that claims 1–3 would have been obvious over the combination of Cashin, ODBC, and GML. Pet. 38–66.⁶ Petitioner’s obviousness analysis relies on GML (and Motion Toolbox) to meet the limitations identified as by Petitioner as elements [1b], [1c], [1f], [1j] of claim 1. Pet. 57–65; 68–72. Patent Owner challenges GML (and Motion Toolbox, as well) as failing to meet these “motion control limitations” of the challenged patent claims. Prelim. Resp. 41–51.

Patent Owner argues both GML and Motion Toolbox are “software development environment programs used to develop motion control programs.” Prelim. Resp. 41. Thus, neither provides for interfaces to other programs, and neither “directly interacts with individual hardware components.” *Id.* More specifically, Patent Owner characterizes GML as a programming language. *Id.* at 41. Patent Owner points to language in the Petition and in the accompanying Rizzi Declaration to the effect that, at best, GML “could be used to generate motion control programs.” *Id.* (citing Rizzi Decl. ¶ 86) (emphasis omitted). We agree that this argument and testimony are insufficient to meet Petitioner’s burden of demonstrating that there is a reasonable likelihood of prevailing on this challenge. Specifically, we agree that merely showing that a reference “could” meet the elements of a claim is insufficient. Mere speculation is not a substitute for substantial evidence. *Lucent Technologies, Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1327 (Fed. Cir. 2009); *also see Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073 (Fed. Cir.

⁶ The claim charts accompanying the Petition (Exs. 1028, 1029) violate our rule against incorporation by reference. 37 C.F.R. § 42.6(a)(3). Nevertheless, we have considered them in our analysis.

2015) (“obviousness concerns whether a skilled artisan not only *could have made* but *would have been motivated to make* the combinations or modifications of prior art to arrive at the claimed invention”).

Patent Owner also challenges Petitioner’s showing that certain specific claim elements are met by the references. Prelim. Resp. 46–52. Specifically, Patent Owner contends that Petitioner fails to demonstrate that GML teaches the “primitive operations” called for in claims 1–3. *Id.* We agree. For this proceeding, we construed this term as “motion control operations that cannot be simulated using a combination of other motion control operations.” See II.B above. Petitioner argues the ’236 patents describes the “GET POSITION” and “MOVE RELATIVE” operations as examples of “primitive operations.” Pet. 57. (citing Ex. 1001, col. 6, ll. 61–63. Petitioner then cites the GML “Move Axis” command as “exemplary” of a primitive operation. Pet. 57–58; Rizzi Decl. ¶¶ 145–46. We agree with Patent Owner that this evidence is insufficient to show that GML discloses primitive operations. The Rizzi Declaration lacks any support for the conclusions reached. Prelim. Resp. 47–48. Petitioner’s assertion is, therefore, not backed up by persuasive evidence. No analysis of the “Move Axis” command, demonstrating that it cannot be “simulated” by other operations in combination, is presented. Without any supporting evidence, Petitioner concludes that “GML includes many further examples of ‘primitive operations’”. Pet. 57. Petitioner’s statement is at best speculative. Petitioner, therefore, does not meet the standard set forth by the authorities requiring “specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d at 1380.

Moreover, the evidence of record introduced by Patent Owner contradicts Petitioner's identification of Move Axis as a primitive operation. For example, the Allen-Bradley patent on GML submitted by Patent Owner (Ex. 2017) suggests that Move Axis is implemented through a combination of other instructions. Prelim. Resp. 49–50. We conclude that Petitioner has not sufficiently shown that GML teaches primitive operations.

In addition to “primitive operations,” claim 1 also calls for “component functions,” “non-primitive operations,” “core driver functions,” and “extended driver functions.” Petitioner relies on Cashin and ODBC to meet these limitations. Pet. 39–49, 55–57; Rizzi Decl. ¶¶ 103–112. Patent Owner responds that Petitioner relies solely on their expert to meet these limitations. Prelim. Resp. 52–57. We agree with Patent Owner that the testimony of Petitioner's expert, Mr. Rizzi, is insufficient to support a finding that the limitations are shown in the references. Mr. Rizzi's testimony merely echoes the argument in the Petition. Neither the Petition nor the Rizzi Declaration identifies, with sufficient particularity, where the claimed elements are described in Cashin or ODBC, providing instead generalized descriptions and citations to multiple pages in the references.

For example, with respect to “a set of component functions” Petitioner cites to WOSA's API and then ODBC for confirmation that “API is a common application interface that can be used to access database resources from a number of different database providers.” Pet. 60 (citing Ex. 1020, 3–15; Rizzi Decl. ¶ 150). This and other citations to the references do not show how the reference teaches the limitation in question. Moreover, on this issue, the Petition and the Rizzi Declaration are all but identical. *Compare* Pet. 60–62 with Rizzi Declaration ¶¶ 149–152.

Our rules require more specificity than Petitioner had provided: “The petition must specify where each element of the claim is found in the prior art patents or printed publications relied upon.” 37 C.F.R. § 42.104(b)(4). We conclude that Petitioner has not sufficiently shown that Cashin meets the limitations recited above.

For the foregoing reasons, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on this challenge to claims 1–3 based on the combination of Cashin, ODBC, and GML.

G. Obviousness Based on Cashin, ODBC, and Motion Toolbox

Petitioner’s second ground of challenge substitutes Motion Toolbox for GML in the combination with Cashin and ODBC. Pet. 67–73. Thus, much of the previous analysis applies to this ground. Like GML, Motion Toolbox is a development tool, which “could” be used to build programs. Prelim. Resp. 44–45 (citing Rizzi Decl. ¶ 93). Thus, this ground suffers from the same insufficiencies as the challenge based on GML. Prelim. Resp. 44–46.

As is discussed generally above, Petitioner’s demonstration of a motivation to combine these references is not persuasive. As Patent Owner points out, Motion Toolbox was designed as an extension of LabVIEW. Prelim. Resp. 45. According to Petitioner’s expert, “LabVIEW was a system with a variety of functions and subroutines . . . with which engineers could build programs.” Rizzi Decl. ¶ 93. Petitioner does not explain persuasively why a person of ordinary skill would have combined programs developed using LabVIEW with WOSA and ODBC. As Patent Owner points out, Petitioner’s argument does not account for the differences in the

platforms, much less the fact that Motion Toolbox itself is not a motion control application but rather a development tool. Prelim. Resp. 46.

Nor are we persuaded that Petitioner has demonstrated persuasively that Motion Toolbox provides a description of primitive operations. Pet. 68–69. While Petitioner provides some “specific examples” of primitive operations in Motion Toolbox, there is no accompanying explanation or analysis. Petitioner’s one citation is to the Rizzi Declaration, which reproduces the list from the petition and, without further analysis, states: “These are ‘primitive operations’ under AMS’s proposed construction.” Rizzi Decl. ¶ 160. We give this unsupported testimony little weight. See 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”).

In addition, for the same reasons discussed with respect to the GML challenge, Petitioner fails to demonstrate persuasively that the other limitations are met by these references. See above.

For the foregoing reasons, we determine Petitioner has failed to demonstrate a reasonable likelihood of prevailing on this challenge based on Cashin, ODBC, and Motion Toolbox.

III. ORDER

It is, therefore,

ORDERED that the Petition is denied and no *inter partes* review is instituted.

IPR2017-00048
Patent 6,516,236 B1

PETITIONER:

Jeffrey N. Costakos
Nikhil Pradhan
FOLEY & LARDNER LLP
jcostakos@foley.com
npradhan@foley.com

PATENT OWNER:

Douglas R. Wilson
Terry A. Saud
Justin B. Kimble
dwilson@hpcllp.com
tsaad@bcpc-law.com
jkimble-ipr@bcpc-law.com