

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

YAMAHA GOLF CAR COMPANY,
Petitioner,

v.

CLUB CAR, LLC,
Patent Owner.

Case IPR2017-02143
Patent 7,480,569 B2

Before JOSIAH C. COCKS, CARL M. DEFRANCO, and
ROBERT L. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

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

I. INTRODUCTION

Yamaha Golf Car Company (“Petitioner”) filed a Petition pursuant to 35 U.S.C. §§ 311–19 to institute an *inter partes* review of claims 1–20 of U.S. Patent No 7,480,569 B2, issued on January 20, 2009 (Ex. 1002, “the ’569 patent”). Paper 1 (“Pet.”). Club Car, LLC (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”). Pursuant to our request (Paper 12) the parties each filed a supplemental claim construction brief. *See* Paper 13 (Patent Owner’s brief), Paper 15 (Petitioner’s brief).

Pursuant to 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a) we issued an Initial Decision (“Dec.”) on April 4, 2018, determining “that Petitioner has not established a reasonable likelihood of prevailing on its assertion that any of claims 1–20 of the ’569 patent are unpatentable.” Paper 17, Dec. 30.

On May 4, 2018, Petitioner filed a request for rehearing of our Initial Decision pursuant to 37 C.F.R. § 42.71(d). Paper 19.

On June 26, 2018, we granted Petitioner’s Request for Rehearing (Paper 19). Paper 21 (“Rehearing Dec.”). In the Rehearing Decision, we reasoned that we overlooked material fact disputes with respect to a key prior art reference and competing witness testimony, which at the institution stage should have been viewed in a light most favorable to Petitioner rather than Patent Owner. Rehearing Dec. 4 (citing 37 C.F.R. 42.108(c)). We determined that considering the competing expert testimony in a light most favorable to Petitioner, that “Petitioner sets forth a reasonable likelihood that claim 1 is anticipated by the ’053 Unexamined Application.” *Id.* at 7. Based on the Supreme Court’s decision in *SAS Inst. Inc. v. Iancu*, 138 S.Ct. 1348, 1359–60 (2018), and the Office’s Guidance on the Impact of *SAS* on AIA Trial Proceedings, which states that “if the PTAB institutes a trial, the PTAB

will institute on all challenges raised in the petition”

(<https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/trials/guidance-impact-sas-aia-trial>), we instituted review based on all grounds and claims as set forth in the Petition. Rehearing Dec. 7–8.

After institution of trial, Patent Owner filed a Patent Owner Response (Paper 32, “PO Resp.”), to which Petitioner replied (Paper 44, “Pet. Reply”). Patent Owner also filed a Sur-Reply (Paper 49, “PO Sur-Reply”).

Patent Owner filed a Motion to Exclude evidence (Paper 51), to which Petitioner opposed (Paper 57), which Patent Owner replied (Paper 58).

Petitioner filed a Motion to Exclude evidence (Paper 52), to which Patent Owner opposed (Paper 56), to which Petitioner replied (Paper 59).

Patent Owner filed a Notice of Improper Reply Arguments (Paper 54), to which we allowed Petitioner to file a Response (Paper 67).

Oral argument was conducted on February 14, 2019, and the transcript of the hearing has been entered as Paper 70 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 318(a). After considering the evidence and arguments of both parties, and for the reasons set forth below, we determine that Petitioner has not shown, by a preponderance of the evidence, that claims 1–11 and 13–20 of the ’569 patent are unpatentable. We deny Patent Owner’s Motion to Exclude as moot. We grant-in-part and deny-in-part Petitioner’s Motion to Exclude for the reasons set forth below.

On April 27, 2018, Patent Owner, Club Car, filed a statutory disclaimer with the Patent Office under 35 U.S.C. § 253 for claim 12 of the ’569 patent. *See* IPR2017-02144, Paper 22, Exhibits A and B (included as part of Paper 22). Because claim 12 of the ’569 patent has been disclaimed

pursuant to § 253 and 37 C.F.R. § 1.321(a), we do not consider it as part of this final decision.

II. BACKGROUND

A. The '569 patent (Ex. 1002)

The '569 patent is titled “Method and System for Golf Cart Control.” Ex. 1002, [54]. The '569 patent claims priority from U.S. Provisional Application No. 60/440,894 (“the '894 Provisional”), filed January 17, 2003. *Id.* at [60], 1:6–9.

As stated in the '569 patent, “[t]he present invention relates in general to the field of vehicle control, and more particularly to a method and system for control of a golf cart based on location of the golf cart.” *Id.* at 1:20–22. The system and method use a golf cart’s GPS position on a golf course for monitoring the location of and controlling golf carts “to preempt or otherwise reduce damage from golf cart movement” in certain at-risk portions of a golf course. *Id.* at 2:3–5.

As described in the '569 patent, “[g]olf course owners generally make a substantial financial investment in a golf course in order to develop and maintain the appearance and quality of play.” *Id.* at 1:25–27. In a relatively short period of time, “a thoughtless golfer can create considerable damage to sensitive golfing areas, such as greens, simply by driving a golf cart in the wrong place, such as locations having wet turf that . . . [are] particularly susceptible to damage.” *Id.* at 1:43–47. “Inattentive and even malicious golf cart drivers can cause even greater amounts of damage and also present a safety hazard by driving too fast or recklessly near other golfers or natural hazards.” *Id.* at 1:47–51. Based on these problems faced in the art, the '569 details that “a need has arisen for a method and system which applies a golf

cart's GPS position on a golf course to preempt or otherwise reduce damage from golf cart movement.” *Id.* at 2:3–5. Another stated objective is to define areas of a golf course where golf carts have limited access and movement is restricted. *Id.* at 2:5–9.

The '569 patent solves the problems identified in the prior art by, among other things, incorporating a controller that “automatically imposes restrictions on a golf cart’s movement . . . if the golf cart is positioned to enter a limited access area.” *Id.* at 2:54–59. As depicted in Figure 1 below, a golf cart control system is used to implement these concepts.

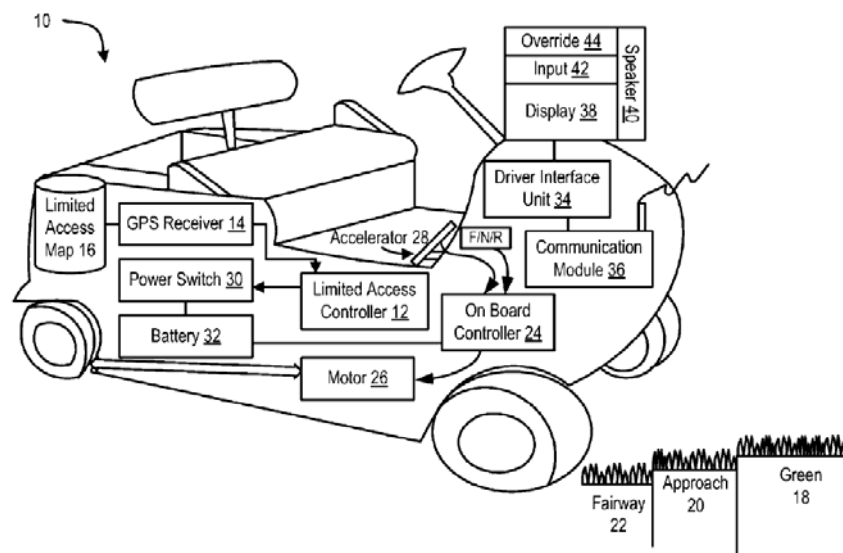


Figure 1

Figure 1 of the '569 patent above, “depicts a functional block diagram of a golf cart having a limited access controller.” *Id.* at 3:36–37. Movement of golf cart 10 is restricted “in response to driver inputs,” “if the movement violates a limited access area of the golf course.” *Id.* at 4:4–7. “A limited access controller 12 determines limited access area violations by comparing golf cart position determined from a GPS receiver 14 with limited access

areas defined in a limited access map 16.” *Id.* at 4:7–11. In one embodiment, when golf cart 10 approaches “a predetermined distance of green 18, limited access controller 12 reduces the maximum available speed of golf cart 10 and notifies the driver with a message and/or audible alert if the projected path of golf cart 10 will traverse green 18 or approach 20.” *Id.* at 4:49–53. Further, “[i]f the GPS position of golf cart 10 enters into approach 20, the available speeds of golf cart 10 are restricted, such as to selections like reverse gear that will result in a velocity vector out of the approach without crossing into green 18.” *Id.* at 4:56–60.

B. Illustrative Claim

Claims 1 and 2, reproduced below, are illustrative of the claims at issue:

1. A system for control of a golf cart on a golf course, the golf cart having a motor for moving the golf cart, the system comprising:
 - a GPS receiver operable to determine the golf cart position on the golf course;
 - a map defining restrictions associated with predetermined areas of the golf course; and
 - a controller interfaced with the GPS receiver and the map, the controller operable to apply predetermined control over the motor if the golf cart has a predetermined position relative to the predetermined areas of the golf course.
2. The system of claim 1 wherein the predetermined control comprises an override of a driver input to the motor.

Ex. 1002, 7:59–8:5.

C. Related Proceedings

Petitioner and Patent Owner identify a related litigation in the Southern District of Georgia involving the ’569 patent: *Club Car, LLC v.*

Yamaha Golf-Car Company, Case No. 1:17-cv-00034. Pet. 1; Paper 4, 1. Patent Owner also identifies a related petition (IPR2017-02144) challenging claims of the '569 patent and two additional petitions (IPR2017-02141 and IPR2017-2142) challenging claims of related U.S. Patent No. 7,239,965 B2 (“the '965 patent”). Paper 4, 1. The patent at issue in this proceeding, the '569 patent, issued from a continuation of the application for the '965 patent and shares an almost identical specification.

D. Real Party-in-Interest

Petitioner certifies that the real party-in-interest for this Petition is Yamaha Golf Car Company. Pet. 1. Patent Owner certifies that Club Car, LLC is the real party-in-interest. Paper 4, 1.

E. References

Petitioner relies on the following references:

U.S. Patent No. 5,711,388, issued January 27, 1998 (Ex. 1008, “the '388 patent”);

U.S. Patent Publication No. 2006/0052918 A1, filed March 18, 2003,¹ published March 9, 2006 (Ex. 1006, “the '918 Publication”);

Japanese Unexamined Patent Application Publication No. H9-128053 B2, filed November 1, 1995, published May 16, 1997 (Ex. 1009, Ex. 1003 (Petitioner’s translation), Ex. 2001 (Patent Owner’s translation), “the '053 Application”);

¹ Petitioner contends the '918 Publication is entitled to priority to an earlier filed provisional application. Pet. 15–21. Specifically, Petitioner alleges that the '918 Publication is entitled to priority to U.S. Provisional Application No. 60/365,339 (the “'339 Provisional”), which was filed on March 18, 2002. Based on the final record before us, we accept Petitioner’s contentions for purposes of this proceeding. *See id.*

Japanese Unexamined Patent Application Publication No. H9-75496, filed September 11, 1995, published March 25, 1997 (Ex. 1011, Ex. 1005 (Petitioner’s translation), “the ’496 Unexamined Application”).

Japanese Unexamined Patent Application Publication No. H11-316605, filed April 11, 1994, published November 16, 1999 (Ex. 1010, Ex. 1004 (Petitioner’s translation), “the ’605 Unexamined Application”).

F. Grounds Asserted

Petitioner challenges the patentability of claims 1–20 of the ’569 patent on the following grounds (Pet. 3–4):

References	Basis	Claims Challenged
’053 Application	§ 102(a)	1–3 and 6–9
’053 Application	§ 103(a)	4 and 8–10
’053 Application and ’918 Publication	§ 103(a)	1–4 and 6–10
’053 Application, ’918 Publication, ’496 Unexamined Application, and ’605 Unexamined Application	§ 103(a)	5, 11, and 12 ²
’388 Patent	§ 102(a)	13 and 14
’388 Patent	§ 103(a)	15
’388 Patent and ’918 Publication	§ 103(a)	13–15
’388 Patent, ’918 Publication, ’053 Unexamined Application, and ’496 Unexamined Application	§ 103(a)	17–20
’388 Patent, ’918 Publication, ’053 Unexamined Application, and ’605 Unexamined Application	§ 103(a)	16

² Petitioner’s chart (Pet. 3) lists claim 20 for this ground, but Petitioner’s later analysis is directed to claim 12 and not claim 20. *See* Pet. 39, 43. Regardless, claim 12 has been disclaimed as discussed in detail above. Thus, our final decision does not address claim 12.

Petitioner also relies on the Declarations of Kevin C. Breen (Exs. 1001, 1047). Patent Owner relies on the Declaration of Henry DeLozier (Ex. 2013) as well as the Declaration of Scott Andrews (Ex. 2015). The parties rely on other evidence and exhibits as addressed in the analysis below.

To show the '918 Publication qualifies as prior art, Petitioner relies on a priority date—March 18, 2002—of an earlier provisional application for the '918 Publication, U.S. Provisional Application No. 60/365,339 (“the '339 Provisional”). Pet. 14–21. Patent Owner does not dispute that the '918 Publication is entitled to that earlier date. As such, we consider the '918 Publication to be prior art to the challenged claims for purposes of this proceeding.³

We also note that Petitioner continues to fault Patent Owner for something it did in the institution phase—Patent Owner relied on improperly certified translations of the '053 Publication. *See* Pet. Reply 7–10, 24 n.16. While the parties’ competing translations were a point of contention in the course of institution, they are no longer an issue now. Patent Owner concedes in its Response that, for purposes of this proceeding, it “will rely on Petitioner’s translation of the '053 Application.” PO Resp. 14; Tr. 63:17–64:6 (Patent Owner confirming that “[d]uring the trial . . . Petitioner’s translation is fine”). As such, we consider only the certified translation of the '053 Publication offered into evidence by Petitioner and marked as Exhibit 1003. The two uncertified translations offered by Patent Owner—

³ We note that Petitioner does not make this same contention in the companion 2144 IPR, relying instead on the '918 Publication’s filing date of March 18, 2003, as the effective date for determining its prior art status.

Exhibits 2001 and 2003—will be disregarded. Tr. 64:5–9 (Patent Owner conceding that “there’s no prejudice” if the Board were to “exclude” the uncertified translations).

III. ANALYSIS

A petition must show how the construed claims are unpatentable under the statutory ground it identifies. 37 C.F.R. § 42.104(b)(4). Petitioner bears the burden of proving unpatentability of the challenged claims, and the burden of persuasion never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). To prevail, Petitioner must establish the facts supporting its challenge by a preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d).

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016).⁴

Petitioner proposes the construction of two limitations — “golf cart” and “driver.” Pet. 4–6; Pet. Reply 4–17. Patent Owner focuses its analysis

⁴ The claim construction standard to be employed in an *inter partes* review recently has changed. *See Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board*, 83 Fed. Reg. 51,340 (Nov. 13, 2018) (to be codified at 37 C.F.R. pt. 42). That new standard, however, applies only to proceedings in which the petition is filed on or after November 13, 2018. This Petition was filed on September 26, 2017. Under the standard in effect at that time, “[a] claim in an unexpired patent . . . shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.” 37 C.F.R. § 42.100(b).

on these same two limitations. PO Resp. 4–12; PO Sur-Reply 6–14. Based on the final record before us, only the terms “golf cart” and “driver” need to be construed expressly as set forth below.

1. “*golf cart*”

The parties dispute the proper interpretation of the term “golf cart,” and as discussed below, their dispute centers on whether the claim term encompasses a rideable cart that carries a player and other passengers, as Club Car contends, or more broadly includes a riderless cart, such as a “caddy cart,” that carries only a player’s golf bag, as Petitioner argues. The reason for the dispute is because Petitioner relies on prior art disclosing pull type carts without a driver. Patent Owner contends that such a “cart caddie” does not disclose a “golf cart” and “driver” as those terms are used in the ’569 patent. *See* PO Resp. 4–12. In our Institution Decision, after entertaining supplemental briefing, we construed the term “golf cart” to mean *a motorized cart for carrying golfers or other passengers over a golf course*. Having considered the parties’ latest contentions, addressing both intrinsic and extrinsic evidence, we maintain our initial construction of the term “golf cart” as a golf cart that carries golfers and other passengers, in other words, a rideable cart.

Petitioner contends that the broadest reasonable construction of the term “golf cart” is “a motorized, wheeled vehicle intended for use on a golf course.” Pet. 4–5. According to Petitioner, the specification uses the term “golf cart” to refer not only to a vehicle used by a player, “but also to refer to any motorized wheeled vehicle that is intended to be operated on the course—manned or unmanned—including, for example, beverage carts and mowers.” *Id.* at 5 (citing Ex. 1002, 7:5–21). Petitioner notes the purpose of

the invention “is to ‘preempt or otherwise reduce damage from golf cart movement,’” thus, the specification must be referring to any motorized, wheeled vehicle intended for use on a golf course because any such vehicle could do harm. *Id.* at 6 (quoting Ex. 1002, 2:4–5).

Resolution of the meaning of “golf cart” is important because, in asserting its anticipation and obviousness challenges, Petitioner relies on a broad definition of “golf cart” that means “any motorized, wheeled vehicle intended for use on a golf course.” Pet. 5–6. The term “golf cart,” according to Petitioner, “is not limited to a riding cart,” but encompasses any cart “that can carry either a passenger *or* equipment, *or both*.” Pet. Reply 2. In Petitioner’s view, the specification of the ’569 patent uses the term “to refer to any motorized wheeled vehicle that is intended to be operated on the course—manned or unmanned—including, for example, beverage carts and mowers.” Pet. 5 (citing Ex. 1002, 7:5–21). Petitioner further notes that the purpose of the invention described in the ’569 patent specification is to “preempt or otherwise reduce damage from golf cart movement,” which it asserts could be caused by “any motorized, wheeled vehicle,” regardless of whether or not it includes a driver or other rider. *Id.* at 5–6 (citing Ex. 1002, 2:4–5); *see also* Pet. Reply 15–17 (citing Ex. 1002, 7:49–54).

Patent Owner responds that the intrinsic record—the claim language and the specification of the ’569 patent—supports a construction of “golf cart” that requires “a cart with a driver.” PO Resp. 6 (emphasis omitted); *see also* PO Sur-Reply 8 (“[E]ach type of ‘golf cart’ described in the ’569 [p]atent *is a cart with a driver*.”) (citing Ex. 2013 ¶¶ 34–42; Ex. 2015 ¶¶ 61–63). Patent Owner points to the additional limitations of “‘driver interface unit’ and the ability to ‘override’ a ‘driver input’ (or ‘limit’ performance of

‘driver commands’),” found in dependent claims and asserts, in that context, the “golf cart” must be a rideable cart that carries golfers or other passengers. PO Resp. 5 (quoting Ex. 1002, claims. 2–5, 13). In further support, Patent Owner notes the ’569 patent’s objective of controlling a golf cart to address “damage caused by ‘[i]nnatentive and even malicious golf cart drivers,”” which, it asserts, can only mean “*manned golf cart operation.*” *Id.* at 6; PO Sur-Reply 8. In addition, Patent Owner contends that the only type of “golf cart” contemplated by the ’569 patent “*is a cart with a driver*” and, in support, points to the specification’s reference to marshal carts, player carts, utility carts, beverage carts, handicap carts, and mowers. *Id.* at 6 (citing Ex. 1002, 7:8–21). According to Patent Owner, those carts are all “manned vehicles controlled by an operator who rides in the vehicle.” *Id.* at 6–7 (citing Ex. 2013 ¶¶ 34–42; Ex. 2015 ¶¶ 61–63; Ex. 2016, 62:4–67:25).

Patent Owner also relies on extrinsic evidence in the form of expert testimony and various federal and state regulations to contrast the industry’s definition of the terms “golf car” and “golf cart” as vehicles that “convey a person or persons and equipment to play the game of golf” and “are heavier and typically capable of much higher speeds,” with the industry’s understanding of the term “caddie carts,” which “do not carry golfers” and “are lighter and operate at slower speeds,” and, thus, “many of the environmental and safety concerns relevant to ‘golf carts’ are not present.” *Id.* at 9–11 (citing Ex. 2007, 2; Ex. 2009, 7; Ex. 2013 ¶¶ 19–24, 32, 33; Ex. 2015 ¶ 65; Ex. 2016, 47:2–20, 69:16–70:4).

As we previously determined at the institution stage, the intrinsic evidence supports a construction of the term “golf cart” that means *a motorized cart for carrying golfers or other passengers over a golf course.*

Dec. 11. First, we note that the claim language itself focuses on limiting the ability of a “driver” to move the cart. For example, dependent claim 2 recites “an override of a *driver* input to the motor.” That the “driver input” needs to be overridden or otherwise restricted presumes that the golf cart is being driven by a person who has independent control of the cart and is susceptible to driving in an unruly manner, in other words, an onboard driver of the cart. This is especially true given the lack of any indication in the claims of remote or autonomous operation of the cart. Numerous other dependent claims include similar references to a driver of the cart, for example, “override of driver input” (claim 3), “driver interface unit” (claim 4), “limits the performance of driver commands” (claim 14), and “driver command” (claim 17).

That the “golf cart” as claimed is construed to be a rideable cart with a driver onboard is further supported by the specification of the ’569 patent. At the outset, the specification explains a need “for control of a golf cart” due to the “substantial financial investment” that golf course owner’s make in the appearance of the golf course and the purchase of “golf carts for golfers *to drive*.” Ex. 1002, 1:20–38 (emphasis added). Golf carts place a risk on the owner’s investment because thoughtless golfers have the potential to damage sensitive areas “*by driving a golf cart* in the wrong place, such as locations having wet turf that is particularly susceptible to damage.” *Id.* at 1:43–47. “Inattentive and even malicious *golf cart drivers*,” the specification states, “also present a safety hazard by *driving too fast or recklessly* near other golfers or natural hazards, such as cliffs, water, steep inclines or sharp turns.” *Id.* at 1:47–51. Those types of actions are logically attributable to a driver of the cart. A riderless cart, on the other hand, being

much lighter in weight and slower in speed, does not raise those same groundskeeping and safety concerns, as even Petitioner's expert acknowledges. *See, e.g.*, Ex. 2016, 46:24–47:20 (confirming a rideable cart is “a lot heavier” than a caddy cart), 49:13–22 (testifying that a caddy cart has a “smaller” footprint than a rideable cart), 69:16–70:4 (testifying that the “speed” of a caddy cart is “walking pace; so you’re talking at most five miles an hour”).

Indeed, the only depiction of a golf cart in the '569 patent is figure 1, which shows a rideable cart equipped with a steering wheel, an accelerator pedal, and a seat for a driver and passenger. Ex. 1002, Fig. 1. As described, the golf cart moves “in response to driver inputs,” which include, for example, “throttle settings input through an accelerator pedal.” *Id.* at 4:4–7, 5:11–19. Furthermore, the specification refers to a “driver” for the cart in describing the limited access areas where the cart cannot be driven: “areas in which *driving a golf cart* causes damage to the golf course grounds, and areas in which *driving a golf cart* presents a danger to *the driver* or others, such as sharp turns, steep hills and crowded parking areas.” *Id.* at 4:14–19 (emphases added). Those descriptions, along with the only depiction of a golf cart in the '569 patent, suggest a golf cart that is under the control of an onboard driver capable of steering and accelerating the cart in a manner that risks harm to the course, himself, and others.

Moreover, while not conclusive, the fact that the specification is silent as to any remote operation or other autonomous control for the cart would indicate that the claimed “golf cart” is not directed to a riderless cart, such as a “caddy” cart. Indeed, the only golf carts exemplified in the '569 patent are

rideable carts that carry a driver. For instance, the specification describes the claimed invention in terms of the following types of carts:

Alerts of a limited access area violation are provided to the marshal and pro shop *based on the type of golf cart* that is violating the limited access area In alternative limited access areas, different types of defined areas, such as greens and driving ranges, may have different selections for *different types of golf carts*. For instance, the *marshal and utility carts* may be permitted to cross the driving range whereas other types of carts, such as *player or beverage carts*, are limited from such movement for safety reasons. As another example, *a handicap vehicle* and *a mower* are allowed on a green while all other types of vehicles are prohibited.

Ex. 1002, 7:8–21 (emphasis added). Both parties’ experts confirm that each of the above-described golf carts is a “ridable cart” that “conveys a person or persons.” *See* Ex. 2016, 62:4–65:22, 67:21–25 (Petitioner’s expert confirming as much); Ex. 2013 ¶¶ 34–42, Ex. 2015 ¶¶ 61–63 (Patent Owner’s experts confirming as much). Indeed, Petitioner’s expert acknowledges “there is no mention of a caddy cart” in the ’569 patent, which he defines as “a vehicle that only carries clubs” and “is not a rideable golf cart.” Ex. 2016, 76:6–8, 144:8–12.

Nonetheless, Petitioner argues at length that the term “golf cart” is a genus for two species of carts, namely, a “golf car” that carries a person and a “riderless cart,” such as a “caddie cart,” that carries only a golf bag. Pet. Reply 11–17. Petitioner contrasts the purportedly generic use of the term “golf *cart*” in the ’569 patent to the purportedly more specific term “golf *car*” in the provisional application to which the ’569 patent claims priority, and contends that “if the Patent’s inventors had wanted to restrict ‘golf cart’ to only a riding cart (i.e., a golf car), they knew how to do so.” *Id.* at 15

(emphasis omitted). In other words, Petitioner would have us believe that the change from “golf car” to “golf cart” between the provisional application and the actual application proves the inventors’ intent to capture both species of carts—rideable and riderless—within the scope of the claimed invention. But what Petitioner overlooks is that the ’569 patent itself uses the terms “golf cart” and “golf car” interchangeably. In particular, Figures 3 and 4 of the ’569 patent use the terms “golf cart” and “golf car” without ever drawing any distinction between two. Ex. 1002, Figs. 3, 4. Figure 3 even uses both terms interchangeably in the same screen alert. *Id.* at Fig. 3 (“your cart has been slowed . . . [y]our car will continue to slow”). Thus, we are not persuaded by Petitioner’s argument that the inventors intended one term to be more specific than the other. And because the ’569 patent uses the terms interchangeably and uses them in the specific context of a cart that carries a driver, as already discussed, we are not persuaded by Petitioner’s argument that the term “golf cart” would have been understood to be a generic term encompassing more than just a rideable cart.

The extrinsic evidence cited by both parties, while helpful, does not persuade us to deviate from the meaning of “golf cart” as derived from the intrinsic record. Petitioner cites several patents and brochures that use the term “golf cart” to describe a riderless cart that carries a golf bag (Pet. Reply 10–11) and use the term “golf car” to describe a rideable cart (*id.* at 13–14). We note, however, that the National Highway Traffic Safety Administration (NHTSA) uses those terms interchangeably to mean “passenger-carrying vehicles,” or as defined in the glossary, a vehicle meant “to carry one or more people.” Ex. 2007, 1, 1 n.1, 2. Indeed, the NHTSA notes that “states from California to Florida” use the term “golf cart” (*id.* at 1) and gives an

example of a regulation from California that defines “golf cart” as “a motor vehicle . . . designed to carry golf equipment and not more than two persons, including the driver.” *See, e.g., id.* at 1, 3 n.5; *see also* Ex. 2009, 7. *See Mars, Inc. v. H.J. Heinz Co., L.P.*, 377 F.3d 1369, 1374, n.3 (Fed. Cir. 2004) (“[R]egulations issued by regulatory agencies can be helpful to a claim construction analysis if they are probative of an industry-specific meaning for a disputed claim term.”); *AquaTex Indus., Inc. v. Techniche Sols.*, 419 F.3d 1374, 1381 (Fed. Cir. 2005) (relying on a U.S. Customs Service regulation, as well as a USITC ruling classifying “fiberfill” as synthetic or polyester fill material). Although we give this extrinsic evidence less weight than the intrinsic evidence, the regulations cited above show an industry understanding of the term “golf cart” that supports Patent Owner’s proposed interpretation.

Thus, both the intrinsic and extrinsic record support a construction that limits the meaning of “golf cart,” particularly in the context of the ’569 patent, to *a motorized, rideable cart for carrying golfers or other passengers over a golf course*. As such, we are not persuaded by Petitioner’s argument that a skilled artisan would have understood the term “golf cart” to refer to both a rideable cart and a riderless cart.

2. “driver” – Claims 2, 3, 4, 17, 18, and 20

Intertwined with our construction of “golf cart” is the meaning of “driver” as also recited in claims 2, 3, 4, 17, 18, and 20. Petitioner contends the term “driver” is “an individual who inputs movement-related commands to a golf cart.” Pet. 6 (citing Ex. 1002, 4:4–7). Patent Owner, in turn, proposes that it means “a person that rides in or on a motor vehicle while controlling its direction and speed.” PO Resp. 11–12. In our Institution

Decision, we observed that, “under a broad but reasonable interpretation,” the term “driver” as used in the context of the ’569 patent does not contemplate a “remote operator.” Dec. 12. We maintain that view and further clarify that the claimed “driver” is onboard the cart.

As discussed above with respect to the claimed “golf cart,” the specification of the ’569 patent provides no suggestion of a remote operator for the golf cart, or, for that matter, that the driver is ever not physically present in the cart. Indeed, Petitioner’s own expert confirms that the ’569 patent does not describe a riderless cart:

Q [Counsel] There is no example anywhere in the ’965 patent⁵ specifically disclosing an unmanned or unriden vehicle; right?

A [Petr’s Expert] Not in those terms, no . . .

* * *

Q [Counsel] And there is no mention of a caddy cart; right?

A [Petr’s Expert] Not by those words, no.

Ex. 2016, 66:11–18, 76:6–8; *see also id.* at 62:4–65:22, 67:21–25. That testimony is consistent with the ’569 patent’s description of “driver inputs” for the cart as encompassing “throttle settings input through an accelerator pedal.” Ex. 1002, 5:13–14. And the ’569 patent’s repeated references to a “driver” of the cart provide further evidence that the driver being described is onboard the cart. *See, e.g., id.* at Abstract (“inputs by the golf cart’s driver to the golf cart’s motor”), 1:47–48 (“malicious golf cart drivers”), 1:59–60 (“inform a golf cart driver”), 2:33 (“overriding driver accelerator commands”), 2:68 (“driver duties”), 3:63–64 (“help to prevent injury to

⁵ The ’965 patent generally shares the same specification as the ’569 patent.

golfers and golf cart drivers”), 4:17–18 (“driving a golf cart presents a danger to the driver or others”), 4:56 (“the speed selected by the driver”).

Given this evidence, we are not persuaded by Petitioner’s position that a “driver” of the golf cart is a person who merely inputs commands to the cart. Rather, reading the ’569 patent as a whole, we see the driver as a person who controls the functions of steering, acceleration, and braking while onboard the cart. Thus, consistent with the specification, we construe the term “driver” to mean “a person onboard the cart who commands the cart’s speed and direction.”

B. Principles of Law

1. Anticipation

To establish anticipation, each and every element in a claim, arranged as recited in the claim, must be found in a single prior art reference. *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008). “To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently.” *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

2. Obviousness

A claim is unpatentable under § 103(a) 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 said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). 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 skill in

the art; and (4) where in evidence, so-called secondary considerations.⁶ *See Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966).

C. Claims 1–3 and 6–9 as Anticipated by the '053 Application and claims 4 and 8–10 as Obvious over the '053 Application

Petitioner contends claims 1–3 and 6–9 are unpatentable, under 35 U.S.C. § 102, as anticipated by the '053 Application. Pet. 24–34. Petitioner also contends that claims 4 and 8–10 would have been unpatentable, under 35 U.S.C. § 103, based on the '053 Application. Having now considered the evidence in the complete record established during trial, we are not persuaded that Petitioner has demonstrated by a preponderance of the evidence that these claims would have been obvious or anticipated based on the '053 Application. We begin our analysis with a brief overview of the '053 Application and then address the parties' contentions in our discussion. Our analysis first focuses on independent claims 1 and 6, from which all other challenged claims depend. Later, we discuss claims 2, 3, and 4.

1. '053 Application (Ex. 1003)

The '053 Unexamined Application is directed to an unmanned electric transport vehicle that allows remote operation. Ex. 1003, (54), (57).⁷ The '053 Application describes a “golf cart” for “enabling play wherein [a] caddy or golfer *places a golf bag* in [the cart] to move about the golf course.” Ex. 1003 ¶ 2 (emphasis added).

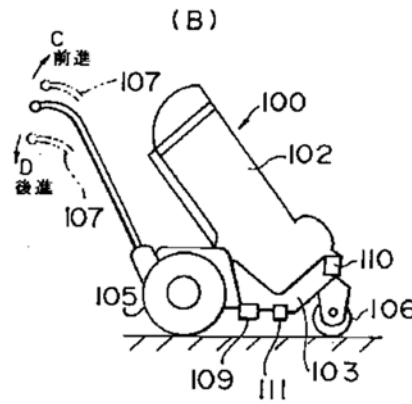
As described, the golf cart includes two modes of operation: “a function for unmanned travel following a guidance line” and “a function for

⁶ Neither party has offered evidence of secondary considerations during this proceeding.

⁷ The translated text refers to the Abstract as [37], but this appears to be an error. *See* Ex. 1009, [57].

traveling away from the guidance line through manual operation.” *Id.* ¶ 1; *see also id.* ¶¶ 6, 34 (describing same). For the unmanned travel mode, “a prescribed path [is] provided for the golf cart to travel through the golf course” by means of “a guidance line [] installed in the path so that the golf cart travels following the guidance line.” *Id.* ¶ 2. The golf cart will run along this guidance line at a “prescribed speed that has been set in advance” and may be prohibited from further movement when it “detects a Stop command function, which is provided at a prescribed location along the guidance line.” *Id.* ¶ 19. The golf cart follows the guidance line “using a guide sensor that is installed toward the bottom of the front side of the golf cart.” *Id.* ¶ 12.

Notably, the ’053 Application also provides that, “*in moving the golf bag to a location that is convenient for the play by the golfer, having the golf cart travel only following the guidance line that has been formed in advance is inconvenient.*” *Id.* ¶ 2 (emphasis added). In these circumstances, the golf cart may be “operated through manual operation.” *Id.* To that end, the golf cart includes a “grip lever,” which the ’053 Application describes as the type “disclosed in Japanese Unexamined Patent Application [No.] H6-288588” (“the ’588 Application”), as depicted below. *Id.* ¶ 3.



As described in the '053 Application, the grip lever has a “manned/unmanned switching switch,” which, when switched to manned mode, permits the golf cart “to travel away from the guidance line to an arbitrary location through a rotational operation on the grip lever.” *Id.* To move the cart manually, the golfer rotates the lever “to the left or right” to steer the cart “in a left-turning or right-turning direction” or presses the lever “to the front or back” to “control of speed of travel in the forward or reverse direction.” *Id.* To stop the cart, the golfer simply “returns” the grip lever “to the neutral position.” *Id.* ¶ 20.

2. Discussion – The “Golf Cart” Limitation

Each of independent claims 1 and 6 require a “golf cart.” As discussed above, we construe the claimed “golf cart” in the context of the '569 patent as limited to “a motorized, rideable cart for carrying golfers or other passengers over a golf course.” During the hearing, Petitioner conceded that the '053 Application does not explicitly disclose a golf cart as we have construed that term. Tr. 28 (“[Judge Cocks]: . . . If we conclude that golf cart requires the carrying of a golfer or other passengers, is that shown in the '053 prior art? [Petitioner’s Counsel]: Our position is that it’s not expressly, explicitly shown in that there’s no preferred embodiment that shows a riding cart.”).

Nonetheless, Petitioner maintains that the '053 Application teaches a rideable cart because the terms “golf cart” and “electric vehicle” as used in the '053 Application infer a meaning that encompasses both a riderless cart and a rideable cart. Pet. 24–25 (citing Ex. 1003 ¶¶ 1, 2); Pet. Reply 23 (Ex. 1047 ¶¶ 102–107); *see also* Tr. 30. In support, Petitioner points to the '569 patent’s disclosure of those same terms and contends the '053

Application's use of those terms is no different. Pet. Reply 25–26. In essence, Petitioner would have us believe that the '053 Application's use of the terms “golf cart” and “electric vehicle” *alone* is conclusive of anticipation, and any closer scrutiny of the '053 Application—such as to “focus on the preferred embodiment” or “minute details”—would be improper. *See id.* Further, Petitioner contends that because the '053 Application captures the '569 patent's “point of novelty,” anticipation must be confirmed. *Id.* at 26.

Patent Owner responds that our construction of “golf cart” as a rideable cart is controlling, and that the '053 Application discloses “an entirely different vehicle, with functionality that does not read on the challenged claims.” PO Resp. 22–23. According to Patent Owner, “only one type of vehicle—a ‘caddie cart’” is described in the '053 Application. PO Sur-Reply 16–17. And because a caddie cart is riderless, Patent Owner contends a skilled artisan would not have understood the '053 Application to disclose a “golf cart” as that term is used in the '569 patent, which requires a rideable cart. PO Resp. 23–24; Sur-Reply 16–18.

We find Patent Owner's position to be the more persuasive one. Petitioner overemphasizes the '053 Application's use of the terms “golf cart” and “electric vehicle.” Nowhere does the '053 Application support the disclosure of a rideable cart. Rather, it describes a golf cart that, when read in the context of the reference as a whole, is a riderless cart, or more specifically, a “caddie cart.” This is evidenced by the fact that the '053 Application incorporates by reference a caddie cart, as discussed above, in which the only mechanism for actually operating the cart is a “grip lever,” which Petitioner's own expert acknowledges is not something found in a

rideable cart. *See* Ex. 2016, 94:16–95:11 (conceding “there is no such thing as a rideable golf cart, in [his] experience or in 2003, that has a grip lever”); *see also* 54:5–12 (essentially same testimony).

Further evidence that the ’053 Application contemplates only a riderless caddie cart is its description of the golf cart as “*moving the golf bag* to a location that is convenient for the play by the golfer.” Ex. 1003 ¶ 2. Nowhere does it describe the cart as moving a golfer or caddy. Even Petitioner’s expert agrees that, while the ’053 Application “does describe a caddy cart,” it “does not describe putting the person in the seat.” Ex. 2016, 92:18–93:1; 88:11–15. And to the extent Petitioner’s expert qualifies that testimony by saying that the ’053 Application doesn’t exclude the possibility of a riding cart and doesn’t preclude putting a person in the seat, that qualification is irrelevant to our analysis of anticipation, which depends on what a reference actually discloses, not what possibilities it could have disclosed. Petitioner’s assertion is that each of independent claims 1 and 6 is anticipated by the ’053 Application – Petitioner has not put forth an obviousness ground for these claims based on the ’053 Application.

Moreover, the fact that the ’053 Application describes the “unmanned travel” mode for the cart in terms of “following a guidance line” (Ex. 1003 ¶ 1) or “traveling in a straight line” (*id.* ¶ 21) further persuades us that the only golf cart contemplated is a riderless one. That is because Petitioner’s expert confirms that providing a guidance line for a golf cart is not typical of a rideable cart:

Q [Counsel] You don’t have any examples of a rideable golf cart that would follow a line of some kind buried in the ground?

A [Petr’s Expert] A rideable cart?

Q [Counsel] Yes.

A [Petr's Expert] That would follow a guideline, no.

Q [Counsel] They would all let the driver of the rideable golf cart decide where to turn or drive the cart; right?

A [Petr's Expert] In general, yes.

Ex. 2016, 55:2–13; *see also id.* ¶ 93:14–17 (again confirming that Mr. Breen had never heard of a rideable cart following a guidance line)

Despite strong indicators from the '053 Application that the disclosed golf cart is a riderless, caddy cart, Petitioner nonetheless contends that a rideable cart is inherently taught by paragraph 43 of the '053 Application. Pet. Reply 23 (citing Ex. 1047 ¶¶ 102–107). Paragraph 43 provides that “there may be appropriate modifications corresponding to the method of use for the applicable electric vehicle, the conditions in the environment, and the applications, usage, structures, functions controlling functions, driving mechanisms, driving functions, and various other conditions.” Ex. 1003 ¶ 43. That boilerplate language, however, is of no help to Petitioner. While Petitioner relies on its expert's testimony that the use of the term “an electric vehicle” in paragraph 43 shows that the disclosed golf cart “is not limited to a non-riding cart,” we find this testimony unpersuasive, for it fails to specify what modifications might be made, how they would be made, and perhaps most important, why a skilled artisan would have made them. *See* Ex. 1047 ¶ 107. These modifications necessary to arrive at the claimed invention further remove the analysis from one of anticipation. And in focusing on paragraph 43, Petitioner's expert overlooks paragraph 12 of the '053 Application, which makes clear that the “electric vehicle” to which the “guided travel” method is being applied is the “grip lever” caddy cart disclosed in the '588 Application that is described earlier in the reference.

See Ex. 1003 ¶ 12 (stating that, with respect to *all* embodiments, “[t]his golf cart is an electric vehicle that is able to perform so-called guided travel, . . . along with enabling traveling or stopping through operation of a grip lever, as disclosed in the aforementioned [‘588] Application.”) (emphasis added).

In the end, we are not persuaded that the ’053 Application’s disclosure of a “golf cart” and an “electric vehicle” infers anything more than a riderless caddy cart operated manually through a “grip lever” or automatically via a “guidance line.” Because, as properly construed, the claimed “golf cart” is a rideable cart that carries a golfer, and because that limitation is found in each of claims 1 and 6, we determine that Petitioner has not demonstrated by a preponderance of the evidence that these claims are anticipated by the ’053 Application. Likewise, claims 2, 3, which depend from claim 1, and claims 7–9, which depend from claim 6, are not anticipated by the ’053 Application.

When presenting its obviousness challenge to claims 4 and 8–10, Petitioner does not separately contend that claims 1 and 6 are obvious over the ’053 Application, but instead relies on its anticipation analysis of claims 1 and 6. *See* Pet. 35–37. Accordingly, Petitioner has not shown by a preponderance of the evidence that claims 4 (depending from claim 1) and claims 8–10 (depending from claim 6) would have been unpatentable based on the ’053 Application.

3. Discussion – The “Override a Driver Input” Limitation

Claims 2 and 3 require “the system of claim 1 wherein the predetermined control comprises an override of a driver input to the motor.” Ex. 1002, 8:4–7. Petitioner also relies on the ’053 Application for disclosing the “override” limitation of claims 2 and 3. *See* Pet. 28–30. The issue of

whether the “override” limitation of claims 2 and 3 is disclosed by the ’053 Application is distinct from our analysis of whether the “golf cart” limitation is disclosed and also not dependent upon our interpretation of “golf cart.”

In its Petition, Petitioner relies on the “unmanned” mode of operation of the ’053 Application as purportedly disclosing each limitation of claims 1, 2, and 3. Petitioner contends “[t]he ’053 Unexamined Application’s CPU 32 is operable to apply a predetermined control comprising overriding a driver input to the motor.” Pet. 28. According to Petitioner, “in unmanned operation mode, the CPU 32 will stop the cart if a limited access violation is detected.” *Id.* See also *id.* at 29 (relying on “activating unmanned operation mode requires the driver to input a command to a motor through the handle lever 21”). In further support, Petitioner points to an “unmanned operating mode” for the cart in the ’053 Application in which a controller (or “CPU”) activates “a warning function . . . that a travel-prohibited region exists in the direction of straight travel.” *Id.* at 28 (citing Ex. 1003 ¶ 34). The ’053 Application then states “[g]iven this, travel is stopped or prohibited.” Ex. 1003 ¶ 34.

But this passage from the ’053 Application does not describe *how* the cart’s travel is stopped or prohibited once the warning is given. To the extent Petitioner surmises “*the CPU []* will stop the cart or inhibit selection of unmanned operation mode,” we note that Petitioner provides no support for this conclusion, aside from referencing the same vague passage from which it draws the unsupported conclusion in the first instance, i.e., paragraph 34, and another equally vague description in paragraph 10 of the ’053 Application, which merely states that “selection of the unmanned

operating mode is disabled” without explaining *how* it is disabled. *See* Pet. 27–28 (citing Ex. 1001 ¶¶ 10, 34) (emphasis added).

That is not to say that the ’053 Application lacks explanation of how the cart’s travel in a straight line is stopped or disabled when the cart is in the unmanned operating mode. What Petitioner overlooks is the ’053 Application’s express disclosure that, “in the unmanned operating mode,” travel of the cart in a straight line “is stopped *when the grip lever [] is manually returned* back from the locked state to the neutral state.” Ex. 1003 ¶ 13 (emphasis added). Elsewhere the ’053 Application likewise describes the operation of the grip lever—“When the grip lever [] returns to the neutral position, this is interpreted as a Stop command [], and the golf cart is stopped.” *Id.* ¶ 20. In other words, to stop the cart, the operator must manually deactivate the cart’s prescribed state of traveling in a straight line.

An operator of the cart manually deactivating the unmanned operating mode to stop the cart is the antithesis of the claimed invention in which the controller automatically overrides or restricts the driver input. And, because the cart in the ’053 Application is already in an *unmanned* operating mode, there is no “*driver* input” in need of “override” as called for by claims 2 and 3. Thus, we are not persuaded that the ’053 Application disclosure of manually deactivating or disabling the unmanned operating mode to stop the cart anticipates the limitation of “the predetermined control comprises an override of a driver input to the motor,” as required by claims 2 and 3.

Ex. 1002, 8:4–7.⁸

⁸ In its Reply, Petitioner relies on an entirely different operating mode in the ’053 Application—“the ‘manned’ mode of operation”—in an effort to meet the “override” and “restricting” limitations of the challenged claims. Pet.

Alternatively, Petitioner argues that the '053 Application's disclosure of a golfer selecting a destination on an LCD display "inherently teaches" the ability of "overriding a driver command." Pet. 29–30 (citing Ex. 1003 ¶ 37). We disagree. The ability to select a travel destination on an LCD display is not the same as the ability to "override" or "restrict" a previous command to travel to a certain destination. As argued by Patent Owner, "[t]he selection of a point on a map is just that—a selection to travel to a point on the map, *not to take a particular route to that point.*" PO Resp. 34 (citing Ex. 2015 ¶¶ 150–152). Nowhere does the '053 Application say that the selected point on the display will be disregarded if it is within a prohibited area. Thus, we are not persuaded by Petitioner's argument that the '053 Application inherently teaches the ability to "override" a driver input.

Reply 3, 23–24. In its Petition, however, Petitioner deliberately chose *not* to rely on the '053 Application's manned operating mode in arguing those particular limitations. See Pet. 28–29 (referencing repeatedly "unmanned mode operation" and showing ellipsis ". . ." where "manual traveling mode" would have been discussed in paragraph 34 of the '053 Application). Petitioner cannot switch positions midstream and raise an entirely new argument in its reply that reasonably could have been made in the petition. See *Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 775 (Fed. Cir. 2018) ("Blizzard, as petitioner, had an opportunity to present this argument in its petition, but chose not to."). A reply may only respond to arguments raised in the corresponding patent owner response. See 37 C.F.R. § 42.23(b). Indeed, in its patent owner response, Club Car carefully notes that the '053 Application's manned operating mode is "*not relied upon by Petitioner.*" PO Resp. 28. Because Petitioner's assertion in its reply of the '053 Application's manned operating mode constitutes new argument outside the scope of a proper reply, we decline to consider it.

In sum, we determine that Petitioner fails to demonstrate by a preponderance of the evidence that the '053 Application discloses the “override” limitation of claims 2 and 3. For this additional reason, Petitioner again fails to demonstrate by a preponderance of the evidence that dependent claims 2 and 3 are anticipated by the '053 Application.

D. Obviousness of Claims 1–4 and 6–10 Over the '053 Application and the '918 Publication; Obviousness of Claims 5 and 11 Over the '053 Application, the '918 Publication, the '496 Unexamined Application, and the '605 Unexamined Application

Petitioner challenges the patentability of 1–4 and 6–10 of the '569 patent under 35 U.S.C. § 103 as obvious based on the '053 Application and the '918 Publication. Pet. 38–39. For claims 5 and 11, Petitioner also relies on the combination of the '053 Application and the '918 Publication along with other references. *Id.* at 39–43. Dependent claim 5 depends from claim 4 (requiring a “driver interface unit”), which in turn depends from claim 1. Ex. 1002, 8:9–16. Claim 11 depends from claim 10, which depends from claim 6. *Id.* at 8:44–51. For the reasons set forth above and below, Petitioner’s explanations and evidence do not establish by a preponderance of the evidence that claims 1–5 and 6–11 would have been unpatentable pursuant to these grounds. We begin our analysis with a brief overview of the '918 Publication and then discuss the parties’ contentions.

1. '918 Publication (Ex. 1006)

The '918 Publication discloses a “control and diagnostics system and method for vehicles.” Ex. 1006, (54), (57). The “remote diagnostic system” disclosed in the '918 Publication features a “base station,” which is associated “with a transceiver and a remote unit installed in a vehicle.” *Id.*, (57). The “remote unit” transmits “diagnostic data” about the vehicle to the

“base station,” which may include the vehicle’s current location on a virtual map. *Id.* The concepts disclosed in the ’918 Publication may be applied to “a battery powered golf cart.” *Id.* ¶ 22. Diagnostic information gathered from the cart (and transmitted to a base station) may include information concerning “battery voltage” and “battery state of charge,” as well as the location of the cart on a virtual course map. *Id.* ¶¶ 29, 58, 59.

2. Discussion

As discussed above, we determine that the ’053 Application does not disclose a “golf cart” as required by claims 1 and 6 pursuant to a broad but reasonable interpretation of that term according to the specification. Likewise, the ’053 Application does not disclose the “override” limitation of claims 2 and 3. We presume that, in seeking to combine the ’053 Application and the ’918 Publication, Petitioner would address these deficiencies. It does not. Accordingly, because of the deficiencies addressed above in the ’053 Application, which Petitioner does not cure in any other combination of references, claims 1 and 6 would not have been unpatentable based on these challenges that rely on the ’053 Application.

Petitioner’s obviousness analysis also fails for another reason for each of these grounds. The entirety of Petitioner’s obviousness analysis based on the ’053 Application and the ’918 Publication for claims 1–4 and 6–10 is set forth below.

For the reasons above and for the additional element-by-element explanations below, Claims 1-4 and 6-10 of the ‘569 Patent would have been obvious over the ‘053 Unexamined Application in view of the ‘918 Publication.

1. Motivation to Combine

The ‘053 Unexamined Application and the ‘918 Publication are both directed to golf course management and, in

particular, the management and operation of golf carts. Ex. Y1003, Abstract; *cf.* Ex. Y1006, ¶¶8-10, 22. Moreover, both disclose electric golf carts equipped with displays. Ex. Y1003, ¶1 (electric golf cart), ¶37. Thus, a person of ordinary skill in the art would have been motivated to consider the ‘053 Unexamined Application alongside the ‘918 Publication. *See* Ex. Y1001, ¶483.

2. Claims 1-4, 6-10

As shown above in Sections VI.A and VI.B, *supra*, each of these claims is either anticipated by (1-3, and 6-9), and/or obvious in view of (4 and 8-10), ‘053 Unexamined Application.

However, in the event the Board disagrees that these claims are anticipated, each of these claims would have been obvious to one of ordinary skill in the art in view of the disclosures of the ‘053 Unexamined Application and the ‘918 Publication. *See* Ex. Y1001, ¶¶485-488.

Pet. 38–39.

For claims 5 and 11 (claim 12 has been disclaimed), Petitioner also relies on the combination of the ‘053 Application and the ‘918 Publication, along with other references, and states that the references are directed to the management and operation of golf carts. *Id.* at 39. The only other reason given by Petitioner for combining the ‘053 and the ‘918 Publication for this combination is that the ‘918 Publication discloses that the golf carts are in communication with a remote base station via wireless communications means. *Id.* at 40.

Petitioner’s obviousness analysis is facially deficient and ultimately conclusory. The most significant deficiency is that the Petition does not address what particular features of the ‘918 Publication would have been combined with the ‘053 Unexamined Application, or vice versa, for any combination. Granted, Petitioner notes that both references are “directed to

the management and operation of golf carts” and “disclose electric golf carts equipped with displays for presenting information about the course.” Pet. 38. But simply noting that two references are in the same field of technology says nothing about what one reference lacks that the other reference teaches to fill the gap. Petitioner fails to provide any rationale as to how, or why, references should be combined to render the claimed invention obvious. *See Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1368 (Fed. Cir. 2012) (“We must still be careful not to allow hindsight reconstruction of references to reach the claimed invention without any explanation as to how or why the references would be combined to produce the claimed invention.” (internal citation omitted)). And Petitioner’s conclusion that there would have been motivation “to consider” one reference “alongside” the other reference does not equate to specifying *how or why* a skilled artisan would have undertaken the combination once the references were alongside one another.

More specifically, just because both references speak of “golf carts” does not mean their teachings would have been combinable. Indeed, as discussed above, we have already found that the ’053 Application discloses a riderless cart. And our review of the ’918 Publication indicates it teaches a passenger-carrying cart. Ex. 1006, Figs. 6, 7. Even assuming Petitioner acknowledged this difference, which it does not, Petitioner’s obviousness analysis is lacking in several other key respects, for example, there is no mention of the level of skill in the art or the specific mode from the ’053 Application that presumably would have been incorporated into the golf cart of the ’918 Publication. Nor is there any mention of why a skilled artisan would have modified the GPS monitoring capability of the golf cart in the

'918 Publication with whatever mode was chosen from the '053 Application. Nor does Petitioner explain where the '918 Publication teaches the function of overriding driver input that we have already found is lacking in the '053 Application for claims 2 and 3.

Recognizing the deficiencies in the petition with its obviousness challenges, Petitioner attempts to cure them by submitting new argument and evidence in its Reply. *See* Pet. Reply 27–28. Petitioner's analysis in the Reply consists of a single paragraph, as reproduced below.

A further corroboration of the obviousness of the challenged claims, in view of Mr. Andrews' admissions at his deposition, is presented in the Reply Breen Declaration and will not be repeated here due to word-count limitation. [*See* Breen ¶¶ 144-174 and the claim charts attached thereto].

Pet. Reply 28.

Like the original analysis in its petition, Petitioner's latest analysis falls far short of what is required to prove obviousness. First, we note that Petitioner relies on new expert testimony as "further corroboration of the obviousness of the challenged claims." Reply 28 (citing Ex. 1047 ¶¶ 144–174). From our review, that new testimony amounts to over forty (40) paragraphs addressing key factors that were missing from Petitioner's original analysis, including level of skill in the art (Ex. 1047 ¶¶ 148–149), state of the art (*id.* ¶¶ 83–99, 146–154), and motivation to combine (*id.* ¶¶ 155–173). In other words, rather than mere "corroboration," Petitioner attempts to craft a new obviousness challenge by piggybacking on the one in the petition that was clearly wanting before. This is the third instance in which Petitioner raises new argument and evidence in its reply that reasonably should have been addressed in its petition. And, by incorporating

by reference in the reply substantial new expert testimony, Petitioner fails to explain its significance. Pet. Reply 28 (citing Ex. 1047 ¶¶ 144–174).

We decline to consider citations to the record unaccompanied by any explanation, especially given the string citation here to some thirty (30) odd paragraphs of new expert testimony. A petition must contain a “full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence” 37 C.F.R.

§ 42.22(a)(2). Plus, testimony from an expert declaration cannot be incorporated by reference into the petition without some explanation of its relevance. *Id.* § 42.6(a)(3). Accordingly, we will not undertake to fathom an obviousness challenge that is lacking in merit from both a procedural and substantive standpoint.

Petitioner also attempts, in its reply, to summon a motivation to combine from the deposition testimony of Patent Owner’s expert. Pet. Reply 27 (citing Ex. 1039, 27:8–20, 29:25–30:3). But the testimony on which Petitioner relies simply concerns the expert’s recollection of an automotive manufacturer’s research work on a “test car.” *See* Tr. 21:14–22:3, 75:10–76:7. That research work, however, is neither in the record nor shown to have been publicly known by ordinary artisans. Even if it were, Petitioner fails to explain, with any particularity, how or why the purported knowledge of this research work would have provided a reason to combine the asserted references.

In the end, given the wholly inadequate and conclusory nature of Petitioner’s obviousness challenges, in both the petition and the reply, we determine that Petitioner fails to demonstrate by a preponderance of the

evidence that claims 1–11 would have been obvious over any of the asserted combinations relying on the '053 Application and the '918 Publication.

E. Grounds Involving the '388 Patent

In total, Petitioner asserts five unique grounds based on the '388 Patent. Pet. 4. Petitioner contends claims 13 and 14 are unpatentable, under 35 U.S.C. § 102, as anticipated by the '388 patent. *Id.* at 43–49. Petitioner also contends that claim 15 would have been unpatentable, under 35 U.S.C. § 103, based on the '388 Patent.

Petitioner alleges that claims 13–20 would have been unpatentable, under 35 U.S.C. § 103, based on the '388 patent in combination with one other reference for claims 13–15, three other references for claims 17–20, and three other references for claim 16. *See* Pet. 50, 51, 58. Each of these proposed combinations for claims 13–20 require at least the '388 patent in combination with the '918 Publication.

Each of claims 14–20 depend directly, or indirectly, from claim 13, and thus require the claim 13 limitation of:

a controller associated with each golf cart and interfaced with the position determining device and map, *the controller operable to limit the performance of driver commands to move an associated golf cart* based at least in part on a position of the associated golf cart relative to a limited access area.

Ex. 1002, 8:57–63 (emphasis added). In each of the grounds based on the '388 patent, Petitioner relied only on the '388 patent as disclosing this limitation. Considering the arguments presented in the Petition, and in the Patent Owner's Preliminary Response, we originally denied institution of these grounds because Petitioner failed to establish that the '388 patent disclosed the "limit the performance of driver commands" limitation. Dec.

26–30.

Patent Owner’s Response, as discussed below, reaffirms our initial determination and presents additional expert analysis. *See* PO Resp. 46–58; Ex. 2015 ¶¶ 214–218, 222–223. Patent Owner also presented persuasive cross examination testimony of Petitioner’s expert that further reaffirms our initial determination as discussed more below. *See* Ex. 2016, 162:15–24, 154:18–161:17; PO Resp. 48.

Petitioner chose not to address any of the grounds based on the ’388 patent in its Reply briefing. Tr. 103:8–13, 85:14–19. Regardless of our initial decision finding Petitioner’s grounds on the ’388 patent unpersuasive, we consider the final record before us, including Patent Owner’s Response and evidence cited. Based on this final record, we maintain our initial position as to the grounds based on the ’388 patent. Patent Owner strengthened its position from the initial determination with additional expert testimony and citation to cross examination, but Petitioner has offered no rebuttal.

For the reasons set forth below, we are not persuaded that Petitioner’s explanations and evidence establish by a preponderance of the evidence that claims 13–20 would have been unpatentable based on the ’388 patent either alone or in combination with other references as set forth in the Petition. We begin our analysis with an overview of the ’388 patent and then address the parties’ dispositive contentions in our discussion.

1. ’388 Patent (Ex. 1008)

The ’388 patent is directed to “[a]n autonomous personal service robotic apparatus, such as a robotic golf caddy, including a drive assembly for movement of the robotic caddy,” as well as an operations program for

controlling movement and navigation. Ex. 1008, (54), (57). The “robotic golf caddy” is depicted in Figure 1 of the ’388 patent, excerpted below.

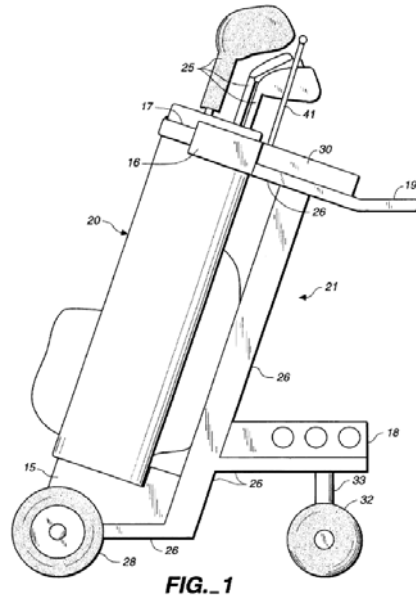


Figure 1 of the ’388 patent above is a schematic side elevation view of an autonomous robotic walking golf caddy. *Id.* at 3:16–19. The invention of the ’388 patent may be applied to other motorized, wheeled vehicles intended for use on a golf course, such as “a riding golf car.” *Id.* at 3:41–49.

The “robotic golf caddy” has a “position determination apparatus,” which may use differential GPS to orient the golf caddy “with respect to mapped major boundaries and elements.” *Id.* at 4:36–41, 2:43–49. The operation of the “robotic golf caddy” disclosed in the ’388 patent is “unattended movement” or computer-assisted autonomous navigation based on “stored rules of navigation and the combination of mapped data and sensed data.” *Id.* at 2:31–34, 2:49–54. The “robotic golf caddy” is “programmed to follow [a] golfer between the tee and the green at a predetermined and/or selected distance behind the golfer.” *Id.* at 7:9–12. In one embodiment, the “robotic golf caddy” is designed to service two golfers.

Id. at 9:3–6. Each golfer carries a “beacon or transmitter” that allows a golfer to “summon” the caddy to herself (switch 1) or “release” the caddy (switch 2) such that it may be “summoned” by the golfer’s playing partner. *Id.* at 8:66–9:6.

When the “robotic caddy cart” is being “summoned” or automatically following a golfer, the caddy operates under certain navigational rules or logic. *See id.* at 7:4–31. These navigational rules may include prohibiting the robotic device from entering certain areas, or tracking a golfer at a minimum distance. For instance, “[w]hen [a] golfer stops, the robotic caddy will also stop.” *Id.* at 7:12–13. “When [a] golfer goes into a hazard such as a sandtrap . . . the robotic caddy can wait at the edge of the hazard until the golfer returns to the fairway.” *Id.* at 7:13–16, 10:27–32. Similarly, “when [a] golfer goes onto the green, the robotic caddy can move to a holding position proximate [to] the next tee.” *Id.* at 7:16–18.

Along with the autonomous mode described above, the ’388 patent also contemplates that “a manual controller 87 can be provided at handle 19 . . . to enable override of the powered automatic navigation of the robotic device.” *Id.* at 8:8–11. In this mode, a user “still obtains power-assisted” operation of the caddy, but the user actively steers the caddy via the “handle,” which senses “pulling, pushing and right and left hand pressure for steering.” *Id.* at 8:11–18. “Thus, when the golfer decides to pull the robotic assembly 21 . . . controller 87 allows the automatic navigation functions to be overridden and yet the golfer still obtains power-assisted operation from drive assembly 27.” *Id.*

2. Discussion

Claims 14–20 each depend directly, or indirectly, from independent claim 13. Claim 13 requires, in pertinent part,

a controller associated with each golf cart and interfaced with the position determining device and map, *the controller operable to limit the performance of driver commands to move an associated golf cart* based at least in part on a position of the associated golf cart relative to a limited access area.

Ex. 1002, 8:57–63 (emphasis added). Patent Owner contends that the '388 patent does not disclose, or teach, this limitation. As explained below, we agree.

Petitioner contends “the controller operable to limit the performance of driver commands to move an associated golf cart” limitation is disclosed by the '388 patent. Specifically, in its anticipation analysis based on the '388 patent, Petitioner argues:

The controller (*i.e.*, CPU 22) is operable to limited performance of driver commands to move a cart into a limited access area based in part on the GPS position of the cart. For example, the invention of the '388 Patent includes a remote carried by the golfer that can be used to “summon” the cart, whereby the cart will navigate to the position of the golfer. *Id.*, 8:66-9:2 (“[T]ransmitter 45 . . . [has] two command switches 91 and 92 which allow the golfer to call or summon the robotic device...”). When the system detects that the golfer is in a limited access area, such as a sandtrap, the cart will not perform a “summon” command to enter the sandtrap. *Id.* 10:27-32 (“If the golfer should hit his ball into a hazard, which is in a zone identified so that the robotic caddy cannot enter, the robotic caddy will follow the golfer to the edge of the zone where the golfer entered and parked. *The golfer* will then have to leave the hazard and select a club and *will not be able to summon the robotic caddy into the hazard.*”) (emphasis added).

Pet. 47–48.

In each of Petitioner’s obviousness challenges based on the ’388 patent, Petitioner relies on this same anticipation analysis of base claim 13 to teach the limitation of “the controller operable to limit the performance of driver commands to move an associated golf cart.” Ex. 1002, 8:59–61; PO Resp. 49–50. Petitioner does not cite, or rely upon, any additional reference to teach this claim 13 limitation. *See* Pet. 50–59, *see also id.* at 55 (“The ’388 patent further discloses stopping the cart and overriding a driver command to ‘summon’ the cart into the limited access area.”). As explained below, Petitioner has not sufficiently shown on the final record before us that a person of ordinary skill in the art would understand the ’388 patent’s “summon” command to teach “the controller operable to limit the performance of driver commands” limitation.

In addressing this limitation, Patent Owner counters that “[t]he ’388 Patent does not disclose the ability to ‘limit’ a driver command ‘to move an associated golf cart based . . . on a position of the associated golf cart relative to a limited access area,’ as required by all challenged claims.” PO Resp. 46. Patent Owner argues that “the ‘robotic golf caddy’ of the ’388 Patent can go anywhere under manual control, which is never overridden.” *Id.*; Tr. 89:14–90:5. We find Club Car’s position persuasive, for, indeed, the ’388 patent provides “that ‘a manual controller can be provided [on the caddy’s] handle . . . to override the powered automatic navigation of the robotic device,’ allowing the ‘robotic golf caddy cart’ to be operated anywhere under manual control.” PO Resp. 46–47 (quoting Ex. 1008, 8:8–16) (emphasis omitted).

According to Patent Owner, “Petitioner’s anticipation argument is thus based entirely upon functionality that occurs when the ‘robotic golf

caddy’ is operating autonomously (either in a follow or ‘summon’ mode).” *Id.* at 47. Patent Owner first contends that using a “beacon or transmitter” to “summon” the caddie, and then the caddie subsequently avoiding a hazard, does not disclose the ability to “limit” driver commands because “[e]ntering ‘summon’ mode is not the same as entering a ‘driver command’ to accelerate, brake, or steer the vehicle.” *Id.* Patent Owner contends that summoning an autonomous vehicle is not the same as driving a vehicle. *Id.* at 47–48. When the caddie is operating in the automatic follow or “summon” mode, the “robotic golf caddy” operates under particular navigational restrictions, but it does not receive driver commands to move in any particular manner. *Id.* According to Mr. Andrews, “merely defining the destination does not generate any control actions” and “[t]he user input is to travel to a particular point (i.e., a destination), *not to take a particular route to that point*, and the system then pilots itself to that point by generating movement inputs on its own.” Ex. 2015 ¶¶ 150, 195. Patent Owner thus contends the summon feature of the ’388 patent is not a “drive” command. PO Resp. 47–48; *see also* Tr. 90:6–17.

Patent Owner relies on the distinction made in the ’388 patent “between ‘summoning’ an autonomous vehicle and ‘driving’ a vehicle.” *Id.* at 48. Patent Owner argues that “[t]he ’388 Patent contemplates an automatic follow or ‘summon’ mode, as well as a manual operation mode,” and “[i]n the manual operation mode, a golf cart user actively steers the caddy via the ‘handle,’ which senses ‘pulling, pushing and right and left hand pressure.’” *Id.* (quoting Ex. 1008, 7:4–31, 8:8–18). Patent Owner persuasively argues that nothing in the ’388 patent “suggest[s] that the navigational restrictions that occur in the automatic follow or ‘summon’

mode also occur in ‘manual’ mode.” *Id.* Patent Owner then relies on the admission of Mr. Breen, Petitioner’s expert, that the ’388 patent does not describe overriding *manual* operation:

Q: I’m asking you, in the manual mode that is described in Column 8, line 8, as we discussed, Column 9, line 61, as we discussed, or anywhere in the patent, there is no description of manual operation being overridden in any circumstance, is there?

A: No, there is not.

Ex. 2016, 162:18–24; PO Resp. 48.

Patent Owner next addresses operation in the “summon” command mode of operation for the ’388 patent. Patent Owner argues that “even if issuing a ‘summon’ command could be considered a drive command to move a cart in a limited access area, this command is not actually limited or restricted” as required by claim 13. PO Resp. 48–49 (citing Ex. 2015 ¶ 217). Because the “[t]he ‘summon’ command is not a command to drive right up to the golfer,” the summon command cannot be overridden because the caddie will always “come as close as is allowable under the parameters of the caddie’s programming.” *Id.* at 49; *see also* Ex. 2015 ¶ 196. Thus, according to Patent Owner, “[t]he ‘summon’ command is not overridden, it is instead performed completely.” PO Resp. 49.

Having now considered the evidence in the complete record established during trial, we are persuaded that, based on this record, Petitioner has not demonstrated by a preponderance of the evidence that the claims would have been unpatentable based on the ’388 patent. Based on the final record, Petitioner has not shown by a preponderance of the evidence that the ’388 patent discloses, or teaches, the controller operable to

limit the performance of driver commands to move an associated golf cart limitation. To the contrary, we find Patent Owner's contentions more persuasive.

In manual mode, we are convinced that the drive operation of the cart, or driver commands, cannot be overridden. Ex. 1008, 7:4–31, 8:8–18; Ex. 2016, 162:15–24; PO Resp. 48.

In the summon mode, pressing a button to summon the caddie of the '388 patent triggers an autonomous mode but no specific driving commands are provided to the caddie by the golfer. *See* Ex. 2015 ¶ 195 (“As the robotic caddy cart is operating autonomously at that point, the user does not input these movement commands.”). We agree that the summon command could not be considered a driver command because “merely defining the destination does not generate any control actions.” *Id.* ¶ 160. Likewise, a summon command to follow a golfer would not be a driver command because the golfer has no direct control over the route taken, the speed of the caddie, or whether or not a caddie could drive into a restricted area — the caddie's system pilots itself to a point near the golfer by generating movement inputs on its own. The system detects that the golfer is in a limited access area and the golfer will not be able to summon the caddie into that area. This restriction is not a driver command being limited because the summon command simply activates internal logic to move the caddie near the golfer, not a driver command to move into a restricted area. Indeed, when operating in autonomous mode, the caddie can never enter such restricted areas. We thus agree with Patent Owner that the summon command cannot be overridden or limited in the '388 patent because the

caddie will always come as close as is allowable under the parameters of the caddie's programming.

Petitioner has not shown by a preponderance of the evidence that any of the claims challenged would have been unpatentable based on the '388 patent.

3. Obviousness of Claims 13–15 Over the '388 Patent and the '918 Publication; Obviousness of Claims 17–20 Over the '388 Patent, the '918 Publication, the '053 Unexamined Application, and the '496 Unexamined Application; Obviousness of claim 16 Over the '388 Patent, the '918 Publication, the '053 Unexamined Application, and the '605 Unexamined Application

Each of claims 14–20 depends directly, or indirectly, from claim 13. In each of the combinations set forth above, Petitioner relies on its prior anticipation analysis of claim 13 based on the '388 patent. In particular, Petitioner relies on the '388 patent to teach the limitation of “the controller operable to limit the performance of driver commands to move an associated golf cart.” Ex. 1002, 8:59–61. Petitioner does not cite, or rely upon, any additional reference to teach this claim 13 limitation. *See* Pet. 50–59, *see also id.* at 55 (“The '388 Patent further discloses stopping the cart and overriding a driver command to ‘summon’ the cart into the limited access area.”). As set forth above, Petitioner has not sufficiently shown on final record that a person of ordinary skill in the art would understand the '388 patent's summon command to teach “the controller operable to limit the performance of driver commands” limitation. For this reason alone Petitioner's challenges to claims 13–20 based on the '388 patent fails.⁹

⁹ In addition, we agree with Patent Owner's assertion that “Petitioner's rationale for combining the '388 Patent with the '918 Publication . . . is insufficient.” PO Resp. 52. Petitioner fails to provide any rationale as to

Having now considered the evidence in the complete record established during trial, Petitioner has not demonstrated by a preponderance of the evidence that claims 13–15 would have been obvious based on the ’388 patent and the ’918 Publication, that claims 17–20 would have been obvious based on the ’388 patent, the ’918 Publication, the ’053 Unexamined Application, and the ’496 Unexamined Application, that claim 16 would have been obvious based on the ’388 patent, the ’918 Publication, the ’053 Unexamined Application, and the ’605 Unexamined Application.

IV. MOTIONS TO EXCLUDE

A. Petitioner’s Motion to Exclude (Paper 52)

Petitioner seeks to exclude certain Patent Owner evidence pursuant to Rule 408, Rules 402–403, and Rules 801–802. *See* Paper 52, Pet. Mot. Exclude, i. We grant-in-part Petitioner’s Motion to Exclude as set forth below.

1. Exhibits 2001 and 2003 (Uncertified Translations)

At the outset of this proceeding, we warned Patent Owner that it could not rely on translations of foreign prior art exhibits that were not properly

how, or why, the ’388 patent and the ’918 Publication should be combined to render the claimed invention obvious. Petitioner’s cursory analysis regarding the proposed combination of the ’388 Patent and the ’918 Publication includes the same unsupported conclusion that a person of ordinary skill in the art “would have been motivated to consider the ’388 [Patent] alongside the ’918 Publication” because (1) both references are “directed to golf course management and, in particular, the management and operation of golf carts,” and (2) both references “disclose electric golf carts equipped with displays that wirelessly transmit and receive information to and from a remote base station.” Pet. 50–51.

certified. Paper 21, 6, n.5. We again warned Patent Owner to “correct this deficiency” but Patent Owner did not provide a proper certification for Exhibits 2001 and 2003 during trial. Patent Owner also refused to allow the translator of Exhibit 2001 to be deposed.

Further, Patent Owner admits that it no longer relies on the translations of Exhibits 2001 and 2003, and that it would not face any prejudice if we were to exclude these exhibits. Tr. 63:15–64:10 (“To be clear, we haven’t tried to rely on it We went on Petitioner’s translation.”). Accordingly, based on our prior notice to Patent Owner, and Patent Owner’s statements during oral argument, we grant Petitioner’s motion to exclude as to Exhibits 2001 and 2003.

Petitioner also asks that “[t]he Board should refuse to consider Patent Owner’s ongoing reliance-in-fact on those exhibits, including by refusing to consider arguments in which it falsely attributes a quotation for ‘caddie cart’ to the ‘053.” Paper 52, 13. This argument in itself does not seek to exclude any particular piece of evidence, but instead is geared toward unspecific testimony of Patent Owner’s experts. We are mindful of our ruling to exclude Exhibits 2001 and 2003 from the proceeding and we have weighed only the remaining evidence and argument properly before us. Seeking to exclude “reliance,” however, is not a proper motion to exclude any particular piece of evidence. To the extent Patent Owner’s Response, or Mr. Andrews and Mr. DeLozier, have offered claim construction opinions that are based on the uncertified translations, we have given that testimony no weight. For example, Mr. Andrews states that he believes the uncertified translation’s use of “‘caddie cart’ as being more accurate.” Ex. 2015 ¶ 80. We note, however, that the bulk of Mr. Andrews’ testimony is based on a review of

the '053 Application as a whole, and not any specific wording of a translation. *See id.* (“I believe ‘caddie cart’ is the appropriate usage, especially given the reference’s statements that the disclosed system is intended to work with the ‘electric transport vehicle’ of the type disclosed in” the '588 Application.”). In fact, Mr. Andrews states that his testimony is based on Petitioner’s translation – “I will cite to disclosures in Petitioner’s translation of the '053 Application (Y1003).” *Id.* ¶ 81; *see also id.* ¶¶ 81–98. Accordingly, we deny Petitioner’s motion to exclude this “reliance.”

2. Exhibit 2015 (Andrews) and Exhibit 2013 (DeLozier) Declarations

Petitioner seeks to exclude “aspects of Patent Owner’s expert Scott Andrews’ opinions” pursuant to Rule 702. Paper 52, 13. Petitioner argues that “Mr. Andrews’ testimony is tainted by his reliance on the flawed and uncertified translations of Exhibits 2003 and 2001.” *Id.* Petitioner contends that Mr. Andrew’s should not be permitted to opine as to the “distinction between a ‘golf cart’ and a ‘caddie cart,’” because his testimony improperly relies on the discredited translations of Exhibits 2001 and 2003. *Id.*

Petitioner similarly seeks to exclude Mr. DeLozier’s testimony arguing that he has no technical background and should not be allowed to offer testimony related to claim construction as to the meanings of “golf cart.” *Id.* at 15. Petitioner alleges that DeLozier’s “attempt to testify that the distinction between a ‘caddie cart’ and ‘golf cart’ would have been known in the industry as of January 2003 is not based on any facts or data and must be excluded.” *Id.*

Patent Owner responds that Petitioner fails to identify a single substantive deficiency with Andrews’ background or experience in the relevant art that supports exclusion of testimony. Paper 56, 7. Patent Owner

argues that “[a] motion to exclude is not the proper vehicle to challenge the sufficiency of evidence to prove a particular fact.” *Id.* (citing our Trial Practice Guide).

We have addressed the Petitioner’s contentions with respect to the translation issue above. Accordingly, we again deny Petitioner’s motion to exclude. We agree with Patent Owner that Petitioner’s motion to exclude challenges the weight that should be provided to Mr. Andrews’ and Mr. DeLozier’s testimony, but Petitioner has not persuasively established any reason why their testimony should be excluded. Indeed, Petitioner’s dispute is centered on arguing the merits of the underlying testimony and why Mr. Andrews must be wrong. Likewise, Mr. DeLozier’s experiences qualify him as an expert and Petitioner has not presented a persuasive basis to exclude his testimony concerning terminology in the golf industry.

For these reasons, Petitioner’s motion to exclude is granted-in-part and denied-in-part.

B. Patent Owner’s Motion to Exclude (Paper 51)

The entirety of Patent Owner’s motion is set forth below.

The basis for the Motion to Exclude is based upon objections filed and served by the Patent Owner on December 21, 2018. (Paper 46.) “Irrelevant evidence is not admissible.” FRE 402. At no time in this proceeding did Petitioner rely on these exhibits or identify with any particularity how these exhibits are relevant to the proceeding’s issues. Accordingly, Exhibits 1030, 1045, and 1046 are inadmissible under FRE 402, and should be excluded from the records of this proceeding.

Paper 51, 1.

Our determinations do not rely upon Exhibits 1030, 1045, and 1046, therefore, Patent Owner's motion to exclude these exhibits is denied as moot.

V. CONCLUSION

For the foregoing reasons, we determine that Petitioner has not shown by a preponderance of the evidence that any of claims 1–11, 13–20 of the '569 patent are unpatentable. Claim 12 of the '569 patent was disclaimed by Patent Owner.

VI. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, on the record before us, Petitioner has not shown by a preponderance of the evidence that claims 1–11 and 13–20 of the '569 patent are unpatentable;

FURTHER ORDERED that Petitioner's Motion to Exclude (Paper 52) is GRANTED-IN-PART, and DENIED-IN-PART;

FURTHER ORDERED that Patent Owner's Motion to Exclude (Paper 51) is DENIED; and,

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

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Patent 7,480,569 B2

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