

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LENOVO (UNITED STATES) INC.,
Petitioner,

v.

LITL LLC,
Patent Owner.

IPR2021-00681
Patent 8,289,688 B2

Before KRISTINA M. KALAN, CHRISTOPHER M. KAISER,
and BRIAN D. RANGE, *Administrative Patent Judges*.

KAISER, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

INTRODUCTION

A. Background

Lenovo (United States) Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–9 and 11–32 of U.S. Patent No. 8,289,688 B2 (Ex. 1001, “the ’688 patent”). LiTL LLC, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 7 (“Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a) (2020). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

After considering the Petition, the Preliminary Response, and the evidence of record, we determine that Petitioner has not demonstrated a reasonable likelihood that it would prevail with respect to at least one challenged claim. Accordingly, we do not institute an *inter partes* review of any challenged claim on any asserted ground.

B. Related Matters

The parties identify *LiTL LLC v. Lenovo (United States), Inc.*, Case No. 1:20-cv-00689 (D. Del.), as a matter related to the present proceeding. Pet. 1; Paper 6, 1. Patent Owner also notes that there are several related *inter partes* review proceedings: IPR2021-00786, IPR2021-00800, IPR2021-00821, and IPR2021-00822. Paper 6, 1.

C. The Asserted Grounds of Unpatentability

Petitioner contends that claims 1–9 and 11–32¹ of the '688 patent are unpatentable based on the following grounds (Pet. 37–113):²

Claim(s) Challenged	35 U.S.C. §³	References/Basis
1–7, 19, 29–32	103	Shimura, ⁴ Hisano ⁵
12, 13, 24, 26	103	Shimura, Tsuji ⁶
8, 9, 14–16, 20, 23, 25	103	Shimura, Hisano, Tsuji
17, 18, 21, 22, 27, 28	103	Shimura, Hisano, Shigeo ⁷
11	103	Shimura, Hisano, Shigeo, Choi ⁸

D. The '688 Patent

The '688 patent, titled “Portable Computer with Multiple Display Configurations,” issued on October 16, 2012. Ex. 1001, codes (45), (54). The patent relates to a “portable computer that is configurable between a plurality of display modes.” *Id.* at code (57). According to the '688 patent,

¹ Patent Owner has disclaimed claim 29. Ex. 2009, 1.

² Petitioner also relies on a declaration from Jean Renard Ward. Ex. 1010.

³ The earliest priority date claimed by the '688 patent is April 1, 2008. Ex. 1001, codes (22), (60). Thus, the application leading to the '688 patent has an effective filing date before March 16, 2013, so patentability is governed by the versions of 35 U.S.C. §§ 102 and 103 that were in force before they were amended by the Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112–29, 125 Stat. 284 (2011).

⁴ JP 1994-242853 A, published September 2, 1994 (Ex. 1003) (certified English translation provided as Ex. 1004).

⁵ US 2006/0034042 A1, published Feb. 16, 2006 (Ex. 1005).

⁶ US 2005/0062715 A1, published Mar. 24, 2005 (Ex. 1006).

⁷ JP 1996-179851 A, published July 12, 1996 (Ex. 1007) (certified English translation provided as Ex. 1008).

⁸ US 6,918,159 B2, issued July 19, 2005 (Ex. 1009).

“[c]onventional portable computers most commonly have a ‘clam-shell’ configuration, with a base including the keyboard, various ports, connectors and/or inputs . . . and a display component pivotably coupled to the base by a hinge.” *Id.* at 1:21–27. Conventional computers sometimes “operat[e] in ‘tablet mode,’” and the ’688 patent also describes existing computers that were “capable of operating either as a normal laptop computer receiving user input via a keyboard (‘laptop mode’), or as a tablet computer receiving user input via a touch screen.” *Id.* at 1:32–41. In this latter case, “the display component of the computer is attached to the base of the computer by hinges that allow the display to be tilted relative to the base (for laptop mode), and to be rotated and folded against the base to configure the computer into tablet mode.” *Id.* at 1:41–46.

The ’688 patent builds on these configurations, describing “a portable computer” that “is configurable between various modes, including a closed mode, a laptop mode, an easel mode, a flat mode, and a frame mode.” *Id.* at 2:19–22. Each of these modes is depicted in a figure of the ’688 patent. *Id.* at 4:40–5:39. Figure 1, reproduced below, shows the laptop mode.

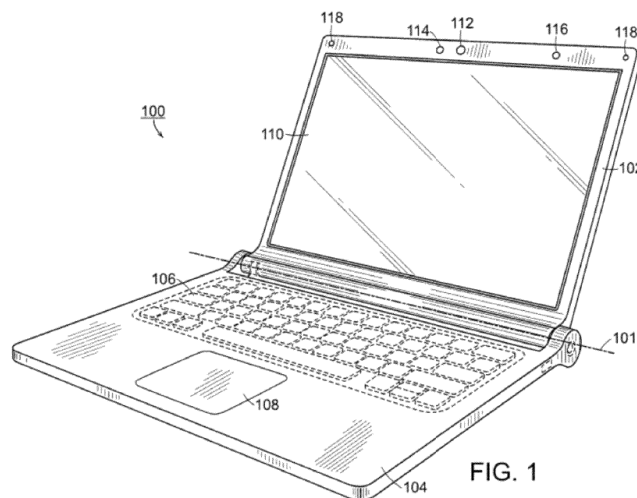


Figure 1 depicts the portable computer of the '688 patent in laptop mode.
Id. at 6:24–27. Display component 102 is “inclined at a viewing angle from the base 104.” *Id.* at 6:27–28.

Figure 2, reproduced below, shows the closed mode.

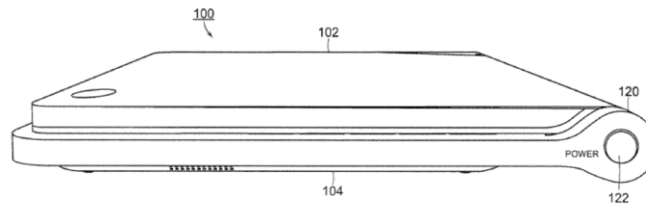


FIG. 2

Figure 2 depicts the portable computer of the '688 patent in closed mode.
Id. at 6:63–64. The angle between display component 102 and base 104 is zero, and “the display screen is disposed ‘face down’ against the keyboard of the base 104.” *Id.* at 6:65–7:1.

Figure 4, reproduced below, shows the easel mode.

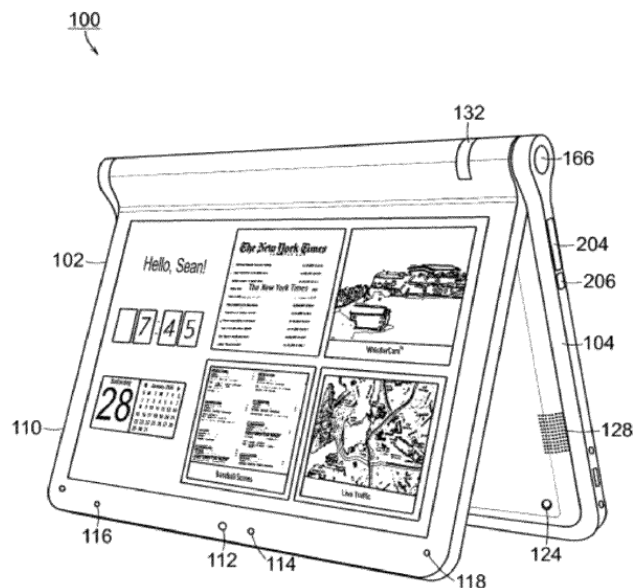


FIG. 4

Figure 4 depicts the portable computer of the '688 patent in the easel mode. *Id.* at 7:48–49. “[B]ase 104 and the display component 102 form an inverted ‘V’ shape with the bottom of the base and the back of the display component fac[ing one] another.” *Id.* at 7:49–57.

Figure 26, reproduced below, shows the frame mode.

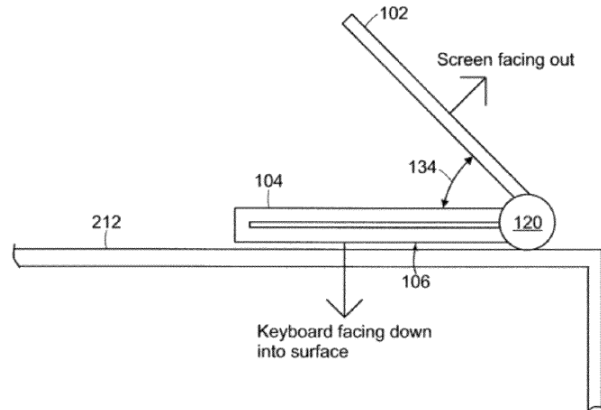


FIG. 26

Figure 26 depicts the portable computer of the '688 patent in the frame mode. *Id.* at 16:1–3. In this mode, display component 102 and base 104 are separated by a similar angle 134 as in the easel mode, but “the portable computer is placed on a surface 212 with the keyboard 106 ‘face down’ . . . and the display 110 facing upward,” rather than being placed in the “inverted ‘V’” of the easel mode. *Id.* at 16:3–13.

Figure 27, reproduced below, shows the flat mode.

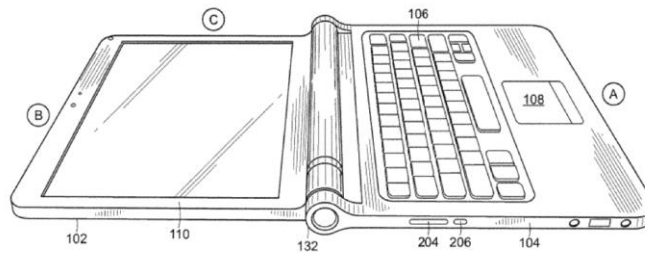


FIG. 27

Figure 27 depicts the portable computer of the '688 patent in the flat mode. *Id.* at 16:18–20. Display component 102 and base 104 are “rotated (or opened) to approximately 180 degrees with respect to” one another, “such that the base component and display component lay flat on a surface, with the keyboard 106 and display screen 110 exposed.” *Id.* at 16:20–24.

In some of these display modes, the '688 patent describes rotating the information displayed on display screen 110 “such that the information appears ‘right-way-up,’ even though the display screen is upside-down compared to when the portable computer is in the laptop mode.” *Id.* at 8:7–12. The portable computer may “include[] an orientation (or mode) sensor that is configured to detect whether the portable computer is in the laptop mode or the easel mode, and to adjust the display accordingly.” *Id.* at 8:17–20. In addition, in some modes, the portable computer of the '688 patent may be configured to permit a user to rotate the information displayed manually by 90 or 180 degrees. *Id.* at 16:27–50.

E. Illustrative Claim

Claims 1–9 and 11–32 of the '688 patent are challenged. Claims 1, 11, 12, 17, 19, and 29 are independent, and claim 1 is illustrative; it recites:

1. A portable computer configurable between a plurality of display modes including a closed mode, a laptop mode and an easel mode, the portable computer comprising:
 - a single display component including a display screen;
 - a base including a keyboard;
 - a hinge assembly at least partially housed within the base and the display component configured to pivotably couple the display component to the base, wherein the hinge assembly defines a single

longitudinal axis running along an interface between the display component and the base, and wherein the display component and the base are rotatable about the single longitudinal axis;

wherein, in the closed mode, the display screen is disposed substantially against the base;

wherein rotating either the single display component or the base by an operator about the single longitudinal axis up to approximately 180 degrees from the closed mode configures the portable computer into the laptop mode, wherein in the laptop mode the single display component is oriented towards the operator and the keyboard is oriented to receive input from the operator;

wherein rotating either the single display component or the base by the operator about the single longitudinal axis beyond approximately 180 degrees from the closed mode configures the portable computer into the easel mode; and

wherein in the easel mode the single display component is oriented facing the operator with the keyboard oriented away from the operator.

Ex. 1001, 17:10–38.

ANALYSIS

A. Procedural Defects

A petition for *inter partes* review must “identif[y], in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3). According to 37 C.F.R. § 42.104(b)(4), a petition for *inter partes* review “must identify how the construed claim is unpatentable under the statutory grounds on which the petitioner challenges the claims, and must specify where each element of the

claim is found in the prior art patents or printed publications relied upon.” Rule 42.104(b)(5) adds that the Petition must “identify[] specific portions of the evidence that support the challenge.” Similarly, Rule 42.22(a)(2) states that each petition must include “[a] full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence including material facts, and the governing law, rules, and precedent.” The Patent Trial Practice Guide suggests that “parties should avoid submitting a repository of all the information that a judge could possibly consider, and instead focus on concise, well-organized, easy-to-follow arguments supported by readily identifiable evidence of record.” Patent Trial and Appeal Board Consolidated Trial Practice Guide, available at <https://www.uspto.gov/TrialPracticeGuideConsolidated> (Nov. 14, 2019), at 39. Patent Owner argues that the Petition fails to comply with each of these requirements with respect to each of the asserted grounds. Prelim. Resp. 8–15. For the reasons discussed below, we agree with Patent Owner’s argument.

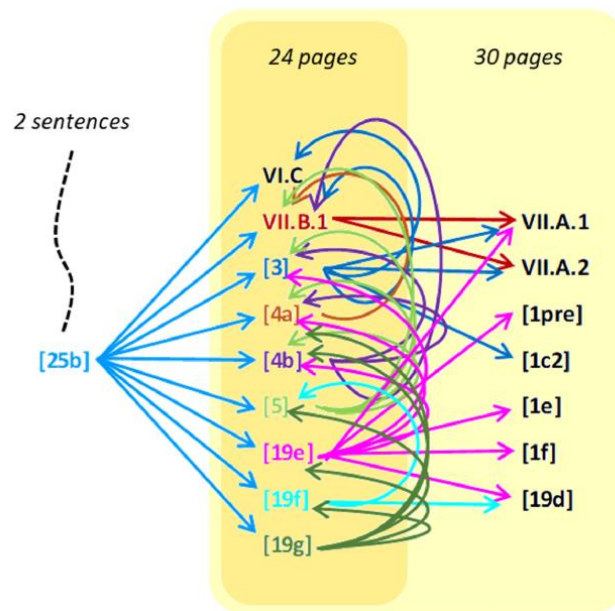
1. The Structure of the Petition Creates a Lack of Clarity

The Petition’s lack of clarity begins with the labyrinthine way Petitioner chooses to present its unpatentability arguments. A brief description of the structure of the Petition will illustrate this problem. The Petition’s unpatentability analysis begins with a synopsis of each reference, describing what Petitioner contends the references relied upon in the Petition generally disclose. Pet. 17–37 (§§ VII.A.1–VII.A.5). These sections paraphrase the disclosure of the references, and they include figures that add annotations to the figures of the references, as well as some citations to the Ward Declaration. *Id.*

Next, each of the Petition's five asserted grounds begins with a section describing a hypothetical computer that a person of ordinary skill in the art allegedly would have arrived at by combining the teachings of the references asserted in that particular ground. *Id.* at 37–49, 66–69, 76–87, 92–95, 100–105 (§§ VII.B.1, VII.C.1, VII.D.1, VII.E.1, VII.F.1); *see also* Ex. 1013 (describing the hypothetical computers of each asserted ground).⁹ These sections rely heavily on the Ward Declaration, cite to multiple portions of the references in question, and contain further characterizations of the disclosure of the references, including figures with added annotations. Pet. 37–49, 66–69, 76–87, 92–95, 100–105. They also refer back to earlier sections of the Petition. *Id.*

Finally, each asserted ground in the Petition presents a list of the limitations of the challenged claims with some discussion of how the prior art in question teaches or suggests those limitations. *Id.* at 49–66, 69–76, 87–91, 95–100, 105–113 (§§ VII.B.2–VII.B.13, VII.C.2–VII.C.5, VII.D.2–VII.D.9, VII.E.2–VII.E.7, VII.F.2). For support, these sections refer extensively back to, and rely extensively upon, the previously discussed sections of the Petition. *Id.* Patent Owner demonstrates this nested form of argument in graphical form for one portion of the Petition in the figure reproduced below.

⁹ To the extent Petitioner intends to rely on the content of Exhibit 1013 for a clear description of the hypothetical computers it uses in its arguments, that constitutes incorporation by reference in violation of 37 C.F.R. § 42.6(a)(3).



Prelim. Resp. 10. In the figure reproduced above, Patent Owner summarizes Petitioner's argument for limitation [25b] of claim 25 of the '688 patent. *Id.* Specifically, the figure shows that the "2 sentences" of argument in the "[25b]" portion of the Petition refer back to nine sections of the Petition covering "24 pages" and that those nine sections refer back to one another, as well as to an additional seven sections of the Petition spanning an additional six pages. *Id.* Patent Owner's figure accurately represents the structure of Petitioner's argument. *See* Pet. 91 (citing Pet. 14–16, 37–49 (citing Pet. 17–26), 56–59 (citing Pet. 17–26, 54), 59 (citing Pet. 37–49), 59–60 (citing Pet. 37–49, 56–59), 60 (citing Pet. 37–49, 56–60), 61–63 (citing Pet. 17–26, 49–51, 55–61)).

Thus, Petitioner's unpatentability analysis relies on the description of a set of hypothetical computers relying, in part, on Petitioner's descriptions and characterizations of the teachings of the prior art. The result of all these layers of analysis is that the final unpatentability analysis is two or three levels removed from the actual disclosure of the references. Petitioner's

approach completely blurs the line between the actual teachings of each asserted reference, Petitioner’s modifications to those teachings, and Petitioner’s characterizations of those teachings.

A good example of the nested nature of the cross-references in the Petition can be seen in the analysis of limitation [13a]. In alleging that “Shimura discloses [13a]” and “[t]he Shimura-Hisano combination¹⁰ discloses the function and corresponding structure for the means-plus-function limitation in [13a],” the Petition cites to several earlier sections. Pet. 75 (citing Pet. §§ VI.C, VII.A.1, VII.B.4, VII.B.5.a, VII.B.5.b). These earlier sections cover pages 14–22 and 56–60 of the Petition, a span of fourteen pages. In addition, some of the cited sections themselves cite other portions of the Petition. *Id.* at 56–59 (§ VII.B.4, citing Pet. §§ VI.C, VII.A.1, VII.B.1, VII.B.2.a, VII.B.2.e), 59 (§ VII.B.5.a, citing Pet. § VII.B.1), 59–60 (§ VII.B.5.b, citing Pet. §§ VII.B.1, VII.B.4, VII.B.5.a). All told, the material cited on page 75 of the Petition, together with the material cited in that cited material, covers eight sections of the Petition spanning thirty pages, none of which expressly discusses the language of limitation [13a] or how the prior art teaches or suggests that language. This approach of forcing the reader to follow a web of nested cross-references to find Petitioner’s arguments improperly shifts the burden of deciphering Petitioner’s arguments onto Patent Owner and the Board. *See Apple Inc. v. ContentGuard Holdings, Inc.*, IPR2015-00442, Paper 9 at 5–10 (PTAB July 13, 2015).

¹⁰ Although Petitioner challenges claim 13 on the basis of the combination of Shimura and Tsuji, Petitioner argues here that a different combination of references, Shimura and Hisano, teaches or suggests limitation [13a].

2. *The Ward Declaration Contributes to the Petition's Lack of Clarity*

As in *ContentGuard*, the problem of nested citations here is not limited to the Petition. The Ward Declaration also makes use of the same type of internal cross-references. For example, in arguing that the prior art teaches or suggests limitation [13a], the Petition cites to paragraph 253 of the Ward Declaration. Pet. 75 (citing Ex. 1010 ¶ 253). That paragraph, however, cites to nine additional paragraphs and three additional sections of the declaration for support. Ex. 1010 ¶ 253 (citing Ex. 1010 ¶¶ 116, 124, 127–133, §§ VIII.A.4, VIII.A.5.a, VIII.A.5.b). Together, the cited material spans twenty paragraphs of the Ward Declaration. *See id.* ¶¶ 116, 124, 127–133, 188–198. Similar citations from the declaration to other large portions of the declaration plague Ward's discussion of many of the challenged claims. *See, e.g.*, Ex. 1010 ¶¶ 188–193 (discussing claim 3 and citing Ex. 1010 ¶¶ 111, 112, 124, 150–169, 170, 171, 178), 297–299 (discussing limitation [25b] and citing Ex. 1010 ¶¶ 123, 124, 150–169, 188–200, 207–215).

In most cases, the material the Petition cites in the Ward Declaration, together with the other portions of the declaration cited therein, is far more extensive than any argument present in the Petition. *See, e.g.*, Pet. 56–59 (four pages of argument regarding claim 3, relying on testimony appearing on twenty-three pages of Ward Declaration), 75 (four lines of argument regarding limitation [13a], relying on testimony appearing on seventeen pages of Ward Declaration), 91 (six lines of argument regarding limitation [25b], relying on testimony appearing on twenty-six pages of Ward Declaration). This incorporation by reference also contributes to the deficiency of the Petition. *See* 37 C.F.R. § 42.6(a)(3).

3. *The Petition's Analysis of the Challenged Claims is Largely Conclusory*

As noted above, the Petition's discussion of nearly every limitation relies upon earlier portions of the Petition (usually in a nested fashion) to identify the evidence that allegedly supports Petitioner's unpatentability arguments. *See, e.g., id.* at 56–59 (citing Pet. §§ VI.C, VII.A.1, VII.B.1, VII.B.2.a, VII.B.2.e), 75 (citing Pet. §§ VI.C, VII.A.1, VII.B.4, VII.B.5.a, VII.B.5.b), 91 (citing Pet. §§ VI.C, VII.B.1, VII.B.4, VII.B.5.a, VII.B.5.b, VII.B.6, VII.B.9.e–VII.B.9.h). Some of these sections also contain text explaining Petitioner's argument that the prior art teaches or suggests the limitation in question, along with citations directly to the relevant prior art. *See, e.g., id.* at 56–59 (citing Ex. 1004 ¶ 12, Fig. 1). Most of these sections, however, do not contain this type of argument, opting instead for conclusory statements that a particular reference or the hypothetical combination of references discloses the limitation in question, referring the reader to earlier portions of the Petition for any relevant argument. *See, e.g., id.* at 75, 91. This latter type of argument is particularly problematic because it shifts an even greater portion of the burden of deciphering Petitioner's arguments onto Patent Owner and the Board. For these limitations, Petitioner provides no argument at all, requiring Patent Owner or the Board to sift through multiple lengthy sections of the Petition even to determine what argument Petitioner intends to make. And this type of argument appears more often than not in the Petition; the great majority of the limitations discussed are discussed only in this fashion. *See* Pet. 54–56, 59–61, 63–65, 69–70, 75, 89–91, 95–100, 105, 111–112 (discussing limitations [1c2], [1c3], [1e], [1g], [2], [4b], [5]–[7], [19pre]–[19d], [19g], [29pre], [29b]–[29f], [30], [31], [12pre]–[12e], [13a], [13b], [24], [9a], [9b], [14a], [14b], [15a], [15b], [16a],

[16b], [20], [23], [25a], [25b], [17pre]–[17j], [18a]–[18c], [22], [27a], [28], [11pre]–[11b], [11d]). Moreover, this particular type of deficient argument affects multiple limitations of each of the independent claims of the '688 patent, as well as limitations of many of the dependent claims. *Id.*

4. *The Petition's Incorporation of Exhibit 1012 by Reference Exacerbates the Lack of Clarity*

The Petition's deficient analysis is further exacerbated by Petitioner's drafting of the Petition in such a way as to make it incomprehensible unless we ignore our rule against incorporation by reference. The arguments in the Petition rely extensively on abbreviations for the limitations of the '688 patent's claims, such as [1pre], [1c2], and [17f]. Pet. 37–113. There is no way to understand many of Petitioner's arguments without an understanding of the meaning of these abbreviations. *See, e.g., id.* at 54 (arguing that “[t]he Shimura-Hisano combination discloses [1c2] and renders it obvious,” without defining what “[1c2]” means). Despite the reader's need to understand these abbreviations, the Petition does not define them. *Id.* at 1–113. Instead, Petitioner directs us to Exhibit 1012 for the definitions of these abbreviations. *Id.* at 11 (“EX-1012 is a claim listing that enumerates each claim element.”). But “[a]rguments must not be incorporated by reference from one document into another document.” 37 C.F.R. § 42.6(a)(3). This additional layer of obfuscation, in violation of Rule 42.6(a)(3), takes the Petition even further away from the clarity required by Rules 42.22(a) and 42.104(b).

5. *Some of the Petition's Arguments Can Be Understood but Lack Sufficient Explanation in Support*

In addition to the problems discussed above, some arguments in the Petition can be understood but lack sufficient explanation in support. For example, Petitioner offers a construction of the term “display orientation module,” which it contends is a means-plus-function term that has a different function in each claim in which it appears (and in some cases, different functions in different limitations of the same claim). Pet. 14–16. Despite these differing functions, Petitioner’s arguments that the prior art teaches or suggests the function of this term in claims 4, 5, 11, 13, 14, 16, 19, and 25 all rely exclusively on citation back to Petitioner’s argument for claim 3 (which, according to Petitioner, recites a different function). *Id.* at 60–63, 75, 89–91, 111–112 (citing Pet. §§ VII.B.4). The Petition does not contain any explanation of why the teaching of one function also teaches a different function, leaving the Petition deficient with respect to claims 4, 5, 11, 13, 14, 16, 19, and 25.

6. *Conclusion*

As explained above, the Petition provides deficient arguments that fail to explain Petitioner’s positions fully. Where the Petition provides some explanation, it does so only through a web of internal cross-references that require the reader to engage in extensive analysis just to decipher what is being argued, much less evaluate the merits of that argument. Although it might be possible for us to wade through this voluminous information and separate the teachings of the references, the Ward testimony, Petitioner’s characterizations of the evidence, and Petitioner’s arguments, that is not our role. Instead, Petitioner is required to “specify where each element of the

claim is found in the prior art patents or printed publications relied upon” and to both “identify[] specific portions of the evidence that support the challenge” and explain “the relevance of [that] evidence to the challenge raised.” 37 C.F.R. § 42.104(b)(4)–(5); *see also id.* § 42.22(a)(2) (petitions “must include . . . [a] full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence”).

Petitioner has not complied with our rules. To hold otherwise would require us to “play archaeologist with the record,” which we decline to do. *DeSilva v. DiLeonardi*, 181 F.3d 865, 866–67 (7th Cir. 1999),

Based on all these deficiencies, the Petition fails to specify sufficiently where the limitations of the challenged claims of the ’688 patent are taught or suggested by any of the asserted references. It also fails to provide a sufficiently detailed explanation of the significance of the citations to the asserted references and the Ward Declaration. These failures violate the requirements of 35 U.S.C. § 312(a)(3), 37 C.F.R. § 42.22(a)(2), and 37 C.F.R. § 42.104(b)(4)–(5). Because these requirements must be met to show that “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition” under 35 U.S.C. § 314(a), we determine that Petitioner has not made such a showing.

B. Remaining Arguments

Petitioner presents arguments for the construction of some claim terms, and Patent Owner disagrees with some of those arguments. Pet. 11–17; Prelim. Resp. 18–24. Petitioner and Patent Owner also present arguments on the merits of each of Petitioner’s five asserted grounds of unpatentability. Pet. 37–113; Prelim. Resp. 37–80. Finally, Patent Owner

argues that Petitioner circumvented the word-count limit applicable to the Petition by moving some material into exhibits and by improperly formatting its citations. Prelim. Resp. 17–18. Because we determine that the Petition does not satisfy the requirements of 35 U.S.C. § 312(a)(3), 37 C.F.R. § 42.22(a)(2), and 37 C.F.R. § 42.104(b)(4)–(5), we need not evaluate these arguments.

CONCLUSION

Upon consideration of the Petition, the Preliminary Response, and the evidence presented, we determine that Petitioner has not shown a reasonable likelihood that it will prevail in showing that at least one of the challenged claims is unpatentable. Accordingly, we do not institute an *inter partes* review of any challenged claim based on any ground asserted in the Petition.

ORDER

It is hereby

ORDERED that, pursuant to 35 U.S.C. § 314, the Petition is denied, and no *inter partes* review is instituted.

IPR2021-00681
Patent 8,289,688 B2

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