

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KINAXIS INC. AND KINAXIS CORP.,
Petitioner,

v.

BLUE YONDER GROUP, INC.,
Patent Owner.

IPR2021-01247
Patent 7,574,383 B1

Before NATHAN A. ENGELS, PAUL J. KORNICZKY, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

ENGELS, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314, 37 C.F.R. § 42.4

I. INTRODUCTION

Kinaxis Inc. and Kinaxis Corp. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting *inter partes* review of claims 1–30 of U.S. Patent No. 7,574,383 B1 (Ex. 1001, “the ’383 patent”). Patent Owner Blue Yonder Group, Inc. filed a Preliminary Response. Paper 7 (“Prelim. Resp.”).

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the Petition and any response thereto shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Upon consideration of the Petition and the evidence of record, we determine Petitioner has demonstrated a reasonable likelihood of prevailing in establishing unpatentability of at least one claim of the ’383 patent. Accordingly, we institute *inter partes* review.

A. Real Parties in Interest

Petitioner identifies Kinaxis Inc. and Kinaxis Corp. as the real parties-in-interest. Pet. 76. Patent Owner identifies Blue Yonder Group, Inc., Panasonic Corporation, and Panasonic Corporation of North America as the real parties-in-interest. Paper 14, 1.

B. Related Matters

The parties state that the ’383 patent is the subject of *Blue Yonder Group, Inc. v. Kinaxis Inc.*, No. 3:20-cv-03636 (N.D. Tex.). Pet. 76; Paper 14, 1.

C. The ’383 Patent

Titled “System and Method for Providing Distributed Inventory Management,” the ’383 patent describes a distributed inventory management system (“DIMS”) for managing the inventory of one or more participants in a value chain. Ex. 1001, 2:61–63, code (54). According to the ’383 patent,

DIMS couples inventory data resources of different participants in the value chain with one or more planning and/or executing engines that use the inventory data to plan and execute inventory-related business decisions.

Ex. 1001, 2:63–67. The '383 patent states that a value chain may include participants such as suppliers of components used to manufacture products, sellers that manufacture products such as an original equipment manufacturer (“OEM”), buyers that buy products from sellers, as well as intermediaries such as logistics providers, contract sellers, or distributors. Ex. 1001, 2:67–3:11.

D. Illustrative Claims

The Petition challenges claims 1–30 of the '383 patent. Claims 1 and 17 are independent claims. Claim 1, reproduced below with bracketed labels added corresponding to the numbering in the Petition, is illustrative of the claimed invention.

1. A distributed inventory management system, the system comprising one or more components collectively operable to:

[1a-1] receive information regarding a plurality of distributed participants in one or more tiers of a value chain,

[1a-2] wherein each tier of the one or more tiers of the value chain comprise a different replenishment process associated with one or more of the plurality of distributed participants, and

[1a-3] [receive]¹ information regarding one or more items in the one or more tiers of the value chain;

[1b] model relationships between at least two of the plurality of distributed participants in the different tiers of the one or more tiers of the value chain based on the received information;

¹ Claim elements [1a-2] and [1a-3] are part of element [1a-1]; this editing is added for readability.

[1c] model the one or more items based on the received information;

[1d] receive inventory data from one or more of the plurality of distributed participants relating to the one or more items;

[1e] process the inventory data based on the models of the relationships and the items to generate inventory information related to one or more of the distributed participants; and

[1f] communicate the generated inventory information to one or more of the plurality of distributed participants in a different tier of the value chain, the inventory information including at least inventory data of participants other than those participants to which the inventory information is communicated.

E. Alleged Grounds of Unpatentability

Petitioner asserts that claims 1–25 would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–8, 10, 11, 14–24, 26, 27	103 ²	Perry ³
1–30	103	Perry, Bellini ⁴
1–11, 15–27	103	Perry, Harmony ⁵
12–14, 28–30	103	Perry, Harmony, Bellini

II. ANALYSIS

A. Discretionary Denial of Institution Under 35 U.S.C. § 325(d)

Arguing that the Board should exercise its discretion to deny a petition under 35 U.S.C. § 325(d), Patent Owner contends that Perry, which

² Based on the April 10, 2002 filing date of the '383 patent, the pre-AIA version of § 103(a) applies.

³ U.S. Patent No. 6,947,903 B1, filed April 7, 2000, issued September 20, 2005 (Ex. 1004).

⁴ U.S. Patent No. 5,974,395, issued October 26, 1999 (Ex. 1005).

⁵ WO 2000/42553, published July 20, 2000 (Ex. 1006).

was not before the Examiner during prosecution, is substantially the same as Peterson,⁶ which the Examiner did consider during prosecution. Prelim. Resp. 19–26. Notably, in describing the '383 patent's prosecution history, Patent Owner notes that the Examiner allowed the challenged claims over Peterson after an amendment that added limitation [1a–2], following multiple rejections over years of prosecution. Prelim. Resp. 9–13.

Patent Owner's arguments that Perry is cumulative of the prior art before the Examiner are inconsistent with its further arguments that Perry fails to satisfy not only limitation [1a–2], but also elements of the preamble [1pre], limitation [1a–1], limitation [1b], limitation [1c], and limitation [1e]—almost all of claim 1. Further, as evidenced by our analysis below, Petitioner has sufficiently shown that Perry teaches or at least reasonably suggests limitation [1a–2]. As such, on this record, Perry is not substantially the same as Peterson and we are not apprised of sufficient overlap between Perry and Peterson to warrant discretionary denial under 35 U.S.C. § 325(d).

B. Discretionary Denial of Institution Under 35 U.S.C. § 314(a)

Patent Owner asserts that we should exercise our discretion under 35 U.S.C. § 314(a) to deny institution even though the statutory deadline for a final determination in this proceeding would fall before the projected trial date in the parties' district-court litigation. Prelim. Resp. 32–37 (citing *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, at 5–6 (PTAB Mar. 20, 2020)). Notwithstanding that timing, Patent Owner contends all six *Fintiv* factors favor discretionary denial or are neutral (Prelim. Resp. 32–37), while Petitioner contends all six *Fintiv* factors weigh against discretionary denial (Pet. 73–76).

⁶ U.S. Patent No. 6,324,522 B2; filed Sept. 15, 1998, issued Nov. 27, 2001.

The statutory deadline for a final determination in this proceeding would fall in January 2023, before the district court’s projected trial setting of March 6, 2023 (Ex. 1024, 2), and we determine the second and fifth *Fintiv* factors weigh against discretionary denial. *See Huawei Tech. Co. v. WSOU Inv., LLC*, IPR2021-00225, Paper 11 at 14 (P.T.A.B. June 14, 2021) (explaining that the fifth factor “favors denial if trial precedes the Board’s Final Written Decision and favors institution if the opposite is true” (internal quotation marks omitted)). Based on the evidence of record, the parties’ and district court’s investments in the district-court litigation are typical of litigation in the early stages, and we determine the third *Fintiv* factor is neutral. Regarding the fourth factor, Petitioner’s limited stipulation that it will not assert the same grounds in the district court as those asserted here weighs slightly against discretionary denial. Finally, the sixth factor is neutral, as demonstrated by the analysis below. *Compare* Pet. 76 (arguing the strength of Petitioner’s obviousness arguments are “self-evident and strongly favor[] institution”), *with* Prelim. Resp. 65–66 (arguing the merits of the Petition are “incredibly weak”).

On this record, we are not appraised of sufficient facts and circumstances that would lead us to discretionary denial under § 314(a).

C. Level of Ordinary Skill in the Art

In determining the level of skill in the art, we consider the type of problems encountered in the art, the prior art solutions to those problems, the rapidity with which innovations are made, the sophistication of the technology, and the educational level of active workers in the field. *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986); *Orthopedic Equip. Co. v. United States*, 702 F.2d 1005, 1011 (Fed. Cir. 1983).

Petitioner contends a person of ordinary skill in the art at the time of the invention would have had “at least a Bachelor’s degree in an academic area emphasizing operations or supply chain management, or a similar discipline, and at least five years of experience in the field working with supply chains.” Pet. 6 (citing Ex. 1003 ¶¶ 18–19). Patent Owner “accepts” Petitioner’s suggestion for the purposes of its Preliminary Response. Prelim. Resp. 14.

D. Claim Construction

We construe claims using the principles set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–17 (Fed. Cir. 2005) (en banc) and related cases. 37 C.F.R. § 42.100(b) (2020). Under that precedent, the words of a claim are generally given their “ordinary and customary meaning,” which is the meaning the term would have to a person of ordinary skill at the time of the invention, in the context of the entire patent including the specification. *Phillips*, 415 F.3d at 1312–13.

Petitioner states that no express constructions are necessary for institution (Pet. 7), and Patent Owner “accepts” that position (Prelim. Resp. 14). To the extent that the parties’ arguments relating to unpatentability reflect differences in claim interpretations, we address those arguments in the analysis below, but we encourage the parties to address such issues as matters of claim construction.

E. Summary of Prior Art References

1. Perry

Titled “Method and System for Monitoring a Supply-Chain,” Perry describes extracting and monitoring supply-chain data from different participants in a supply chain. Ex. 1004, codes (54), (57). Among other things, Perry states that a typical manufacturing supply chain includes an

OEM, contract manufacturers that supply components of products to the OEM, distributors or vendors that supply parts to the contract manufacturers. Ex. 1004, 1:15–25.

Perry states that each OEM, contract manufacturer, and vendor in a supply chain typically maintains its only private database to track and control inventory, place orders, receive orders, enterprise resource planning, and materials requirements planning with data typically maintained in incompatible formats in legacy databases. Ex. 1004, 1:33–39. Perry states that its invention installs a data transfer engine at each participants’ site while leaving the participants’ legacy systems intact. Ex. 1004, 1:61–64. According to Perry, the data transfer engines monitor collects data at each site and formats the data into a common format acceptable at a data collection site, preferably at a distributor or an OEM. Ex. 1004, 1:64–2:6.

F. Ground 1: Perry

The Petition includes a limitation-by-limitation comparison of Perry to claims 1–8, 10, 11, 15–24, 26, and 27, citing the Declaration of Dr. Robert Handfield (Ex. 1003) as supporting evidence. Pet. 12–50. Patent Owner contends Petitioner has not established that Perry discloses or renders obvious each limitation of the challenged claims. With focus on claim 1, we address the parties’ arguments and evidence below.

1. Claim 1

[Ipre] “A distributed inventory management system, the system comprising one or more components collectively operable to:”

Although neither party expressly addresses whether the preamble of claim 1 is limiting, both parties address elements in the preamble. Petitioner cites Perry as disclosing a supply chain that includes an original equipment

manager, contract manufacturers, one or more distributors, and vendors.

Pet. 12. According to Petitioner, Perry teaches that those participants work in concert so that equipment ordered from an OEM can be built and delivered. Pet. 12. Petitioner contends Perry's disclosures of data transfer engines and center hub constitute components that cooperatively extract, organize, and publish inventory data are consistent with the recited inventory management system. Pet. 13.

Patent Owner contends Perry "does not disclose or suggest a ***DIMS*** that includes multiple '***components*** or modules that perform various inventor management or related functions.'" Prelim. Resp. 33 (quoting Ex. 1001, 5:32–33) (emphasis added by Patent Owner). Further, Patent Owner argues the cited portions of Perry do not disclose or suggest components that model participant relationships or items in the value chain, support all of the functions of an enterprise inventory management system, or provide business analytics services, which Patent Owner suggests are functions of the recited "components." Prelim. Resp. 34 (citing Ex. 1001, 6:51–53, 7:28–34, 7:53–64). Patent Owner also argues the cited "components" in Perry act independently and thus do not constitute components of a distributed system acting "collectively." Prelim. Resp. 34–36 (citing Ex. 1001, 2:63–67, 6:51–53, Fig. 2).

At this stage, we find Petitioner's showings sufficient for the purposes of institution. Consistent with Petitioner's citations of Perry (Pet. 12–13), the '383 patent states, for example, that "[i]n general, DIMS 20 brokers pertinent data between participants 30 and engines 50 to propagate inventory planning and execution information between participants" (Ex. 1001, 3:32–34). Similarly, the '383 patent broadly describes "components," stating that "DIMS 20 includes several components or modules that perform various

inventory management or related functions” (Ex. 1001, 5:31–33), listing as one example an integration module 60 that “allows information to be communicated between DIMS 20 and/or engines 50 to information system 32 or other systems associated with participants” (Ex. 1001, 5:55–60).

At this stage, Patent Owner’s arguments seem to imply certain claim constructions by selectively comparing portions of the ’383 patent to the cited portions of Perry, but Patent Owner’s arguments essentially amount to unsupported attorney argument. Although we decline to address in the first instance whether the preamble elements are limiting, the parties are encouraged to address that issue and/or the meaning and scope of these elements in future briefing. At this stage, however, we find Petitioner’s showings sufficient for the purposes of institution.

[1a-1] “receive information regarding a plurality of distributed participants in one or more tiers of a value chain,”

Petitioner contends Perry teaches this limitation with its teachings of a center hub that receives data extracted by data transfer engines installed at participant sites. Pet. 14–15. Among other things, Petitioner contends Perry teaches or suggests a multi-tiered architecture comprising contract manufacturers that supply the OEM with assemblies and vendors that supply the contract manufacturers with parts. Pet. 17.

Patent Owner argues Perry fails to disclose or suggest “the requirement that a value chain has a ***plurality of distributed participants in one or more tiers***.” Prelim. Resp. 36. According to Patent Owner, Perry “discloses extracting data from ‘independent supply chain sites’, but it says nothing about the core of the ’383 Patent’s disclosure—a management system connecting a ***plurality of distributed participants*** in different ***tiers*** of a value chain.” Prelim. Resp. 37.

First, we note that Patent Owner’s suggestion that this limitation requires “different tiers” seems inconsistent with the claim’s recitation of “one or more tiers.” We also note that Patent Owner’s arguments appear inconsistent with Patent Owner’s statement that Perry “discloses a system of extracting inventory data from various supply chain sites, formatting the data in a common format and republishing it at various sites.” Prelim. Resp. 21 (arguing Perry is cumulative of Peterson). Further, at this stage, we find Petitioner makes a sufficient showing for this limitation with its arguments and evidence that Perry teaches or suggests tiers of suppliers in a value chain that supply parts and components up the value chain to an OEM.

[1a-2] wherein each tier of the one or more tiers of the value chain comprise a different replenishment process associated with one or more of the plurality of distributed participants, and”

Petitioner contends Perry satisfies this limitation with its teachings of a tiered system that includes an OEM, contract manufacturers supplying the OEM, and distributors and vendors that supply the contract manufacturers. Pet. 18–19. Among other things, Petitioner contends “the Tier 1 replenishment process is directly responsive to customer demand—i.e., customer sales orders are converted to OEM purchase orders—the Tier 2 replenishment process functions to maintain specified stock levels based on demand forecasts multiple steps removed from the root customer demand.” Pet. 19.

Patent Owner contends Perry “neither says nor suggests anything about integrating tiers, each embodying differing replenishment processes.” Prelim. Resp. 38. According to Patent Owner, “[o]ne of the essential contributions” of the ’383 patent “is managing inventory information of participants in different tiers of a value chain ‘wherein each tier of the one or

more tiers of the value chain comprise *a different replenishment process* associated with one or more of the plurality of distributed participants.”

Prelim. Resp. 37 (quoting claim 1 with emphasis supplied by Patent Owner).

First, the claim’s use of “one or more tiers” seems to include only one tier, and “one or more participants” seems to include only one participant. In contrast, Patent Owner’s arguments imply that this claim element requires multiple tiers, multiple participants, and multiple different replenishment processes. The parties are encouraged to more directly address the scope of this claim element in future briefing, bearing in mind that the positions asserted in the Petition shape this proceeding.

As cited by Petitioner, Perry teaches OEM, contract manufacturers, and distributors or vendors in a supply chain, and Perry plainly teaches different supply and inventory considerations for each similar to those discussed in the ’383 patent. *See* Pet. 18–19 (citing Ex. 1004, 1:21–25, 4:47–51, 4:54–60); Ex. 1001, 4:13–33. To the extent the parties disagree regarding the scope and meaning of “replenishment process,” the parties are encouraged to address the term more directly as a matter of claim interpretation. On the current record, we determine Petitioner has satisfied this claim element for purposes of institution.

[1a-3] [receive] information regarding one or more items in the one or more tiers of the value chain;

Petitioner contends Perry satisfies this limitation with its teachings of a center hub that receives part information extracted from each participant in the supply chain. Pet. 21 (citing Ex. 1004, 5:9–13, 6:29–54, 7:10–45, 8:49–9:3, Fig. 5A). Patent Owner repeats its argument that Perry fails to teach one or more tiers of a value chain but does not otherwise substantively address Petitioner’s showing for this limitation. Prelim. Resp. 41.

For the same reasons discussed above, we determine Petitioner makes a sufficient showing for this limitation for purposes of institution.

[1b] model relationships between at least two of the plurality of distributed participants in the different tiers of the one or more tiers of the value chain based on the received information;”

Petitioner contends Perry satisfies this limitation with its teachings of various user-interface screens generated by center hub 16A which visually depict different aspects of the participants’ business relationships. Pet. 23. According to Petitioner, Perry’s modeling is consistent with the ’383 patent, which Petitioner contends describes relationship modeling as a “physical map that lays out the various participants 30 with which DIMS 20 is to interact, as well as their locations, roles, business roles, and/or any other appropriate parameters.” Pet. 23 (quoting Ex. 1001, 6:59–62).

Describing a “relationship modeling module 64,” the ’383 patent states that the relationship modeling module specifies “parameters associated with the inter- and intra-enterprise participants 30 in the value chain.” Ex. 1001, 6:51–53. Further, “[p]articipants 30 that may be modeled include the various divisions of an enterprise and their locations (including location hierarchies) within the enterprise, as well as the customers and the suppliers that the enterprise interacts with.” Ex. 1001, 6:55–58. “In essence this is the physical map that lays out the various participants 30 with which DIMS 20 is to interact, as well as their locations, roles, business rules, and/or any other appropriate parameters.” Ex. 1001, 6:59–62.

Patent Owner does not address the “relationship modeling module” described in the ’383 patent. Instead, Patent Owner appears to refer generally to “the modeling components,” citing column 7, lines 18–24, which describes a “distributed inventory modeling module 70.” Prelim.

Resp. 42 (citing Ex. 1001, 7:18–24). But Patent Owner does not explain how that passage or the other passages of the '383 patent cited by Patent Owner relate to the claim elements. *See* Prelim. Resp. 42 (citing Ex. 1001, 7:18–24, 8:43–46, 8:56–9:26). Further, with conclusory statements, Patent Owner contends Perry merely mentions modeling of trends and has nothing to do with modeling relationships in a value chain. Prelim. Resp. 42.

Although Patent Owner bears no burden of proof, Patent Owner's arguments appear to advance an implicit claim interpretation without addressing seemingly relevant language relating to the "relationship modeling module." Petitioner at least cites the '383 patent's discussion of the relationship modeling module in its analysis of Perry, and at this stage, we determine Petitioner's showing is sufficient for the purposes of institution. We encourage the parties to more directly address this limitation as an issue of claim interpretation in future briefing.

[1c] model the one or more items based on the received information;

Petitioner contends Perry satisfies this limitation with its user interface that includes part information such as participants' part numbers. Pet. 25–26 (citing Ex. 1004, 9:11–19:4, Figs. 5A–5C). Petitioner argues Perry's item modeling is in accord with the '383 patent's description of item modeling as "used to specify the items relevant in the value chain, their descriptions, the locations at which the items are active, the item hierarchy, the unit of measure (UOM) of teach item . . . and/or any other suitable parameters relating to the items." Pet. 26 (quoting Ex. 1001, 6:64–7:2).

The portion of the '383 patent cited by Petitioner describes "[i]tem modeling module 66." Ex. 1001, 6:64–7:2. Without specifically addressing Petitioner's contentions or the "item modeling module" of the '383 patent,

Patent Owner argues DIMS “can use models to implement intelligent agents,” and Patent Owner makes conclusory statements that the “list of data” in Perry’s Figure 5A would not be capable of implementing intelligent agents. Prelim. Resp. 45 (citing Ex. 1001, 6:62–63). It is not clear at this stage if Patent Owner intends these arguments to be implicit claim interpretations, but we discern nothing in the claims that would require implementing intelligent agents.

Based on the current record, we determine Petitioner has sufficiently shown that Perry satisfies this limitation for the purposes of institution.

[1d] receive inventory data from one or more of the plurality of distributed participants relating to the one or more items;

Petitioner contends Perry’s central hub receives inventory data extracted from data transfer engines at participant sites. Pet. 27 (citing Ex. 1004, 3:1–6, 5:17–24, 9:41–45). Patent Owner does not address or rebut Petitioner’s showing for this limitation.

Based on the current record, we determine Petitioner has sufficiently shown that Perry satisfies this limitation for the purposes of institution.

[1e] process the inventory data based on the models of the relationships and the items to generate inventory information related to one or more of the distributed participants; and

Petitioner contends Perry satisfies this limitation with its teachings that its central hub receives and analyzes inventory data by sorting and aggregating the data based on the modeled participant relationships and the modeled items. Pet. 27 (citing Ex. 1004, 2:23–30, 10:53–11:5, 12:12–28). Among other things, Petitioner contends Perry teaches mapping OEMs, contract manufacturers, and vendors relevant to particular products, mapping part numbers between participants, and aggregating and sorting inventory in

the supply chain based on those mappings. Pet. 27–28 (citing Ex. 1003 ¶ 85).

Patent Owner argues that because Perry does not teach modeling, it cannot satisfy this limitation. Prelim. Resp. 45. Patent Owner also argues Petitioner fails to show that Perry renders obvious “*process[ing] inventory data* based on the models . . . *to generate inventory information* relating to the one or more of the distributed participants.” Prelim. Resp. 45–46. According to Patent Owner, when the DIMS of the ’383 patent processes data to generate information, it does something more than reformatting and recommunicating raw data, such as converting the information into an appropriate format for processing. Prelim. Resp. 46. Further, regarding the Perry’s visual depiction of received inventory data in Figure 11C, Patent Owner contends displaying the same received data in a different view such as a graph “does not suggest any processing or generation of new data, let alone processing or generation based on models.” Prelim. Resp. 48.

On the current record, we find Petitioner has sufficiently shown that Perry teaches this limitation for the purposes of institution. To the extent the parties’ arguments reflect differences in claim interpretation, we encourage the parties to more directly address this limitation as an issue of claim interpretation.

[1f] communicate the generated inventory information to one or more of the plurality of distributed participants in a different tier of the value chain, the inventory information including at least inventory data of participants other than those participants to which the inventory information is communicated.

Petitioner contends Perry satisfies this limitation with its teachings that its center hub communicates inventory information including inventory

data to its distributed participants with user-interface screens or by e-mail with analysis reports. Pet. 29–30 (citing Ex. 1004, 3:35–39, 6:14–54, 7:38–45, 10:59–11:3, 17:10–17, 18:12–20, Figs. 9, 10). Addressing this limitation, Patent Owner again argues Petitioner fails to show how Perry renders obvious a system involving a plurality of distributed participants in one or more tiers. Prelim. Resp. 29.

Based on the current record, we determine Petitioner has sufficiently show that Perry satisfies this limitation for the purposes of institution.

2. Conclusion Regarding Claim 1

Based on the current record, we determine Petitioner has made a sufficient showing for each element of claim 1 for the purposes of institution. Accordingly, Petitioner has established that it is likely to prevail in showing that claim 1 is unpatentable in view of Perry. We encourage the parties to more directly address matters of claim interpretation.

3. Conclusion Regarding Ground 1

Relying on much of the same and related teachings in Perry, Petitioner presents element-by-element comparisons of Perry to each of claims 2–8, 10, 11, 15–24, 26, and 27. Patent Owner does not separately address Petitioner’s showing for those claims beyond the arguments addressed above with respect to claim 1. *See* Prelim. Resp. 49.

Based on the current record, we determine Petitioner has sufficiently shown that Perry satisfies each of claims 2–8, 10, 11, 15–24, 26, and 27.

G. Grounds 2–4: Perry Combined with Bellini and Harmony

Petitioner presents a claim-by-claim, element-by-element comparison of claims 1–30 to Perry in combination with Bellini (Ground 2) or Harmony (Ground 3) or both Bellini and Harmony (Ground 4). Petitioner argues combining the references “would have produced an exceedingly predictable

result” when (i) combining Bellini’s supply chain planning engine with “existing software componentry of Perry’s center hub 16A to enhance the services provided to Perry’s supply/value chain participants” (Pet. 53 (citing Ex. 1003 ¶ 123)) or (ii) employing Harmony’s data marts in Perry’s center hub to support Perry’s user-interface screens (Pet. 66 (citing Ex. 1003 ¶ 159)). Further, Petitioner cites a series of rationales for combining the references, largely offering conclusory language that mirrors the language of *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418, 421 (2007). Pet. 53–56.

It is not clear from Petitioner’s arguments, though, whether, and if so how, a person of ordinary skill—a person having a “Bachelor’s degree in an academic area emphasizing operations or supply chain management, or a similar discipline” and five years of experience in the field working with supply chains—would have integrated a new supply chain planning engine into the “existing software componentry” of Perry. *See* Pet. 53. As noted by Patent Owner (Prelim. Resp. 53), computer coding and software programming appear well beyond Petitioner’s proposed level of ordinary skill, and Petitioner relies on largely conclusory arguments to suggest that a person of ordinary skill would have combined the references to arrive at the challenged claims. *See* Ex. 1004, 2:7–12 (stating that Perry’s system requires some custom programming).

On the current record, we determine Petitioner has not sufficiently shown that a person of ordinary skill would have combined the references in the manners proposed in grounds 2–4.

III. CONCLUSION

For the reasons set forth above, we determine that Petitioner has demonstrated a reasonable likelihood that it will prevail with respect to at

least one claim of the '383 patent. Accordingly, we institute an *inter partes* review as to all challenged claims.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that pursuant to 35 U.S.C. § 314(a), an *inter partes* review is instituted as to claims 1–30 of the '383 patent on all grounds asserted in the Petition.

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is given of the institution of a trial, which commences on the entry date of this Decision.

IPR2021-01247
Patent 7,574,383 B1

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