

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ZILLOW GROUP, INC. and ZILLOW, INC.,
Petitioner,

v.

INTERNATIONAL BUSINESS MACHINES CORP,
Patent Owner.

IPR2021-01311
Patent 7,543,234 B2

Before KEN B. BARRETT, KEVIN W. CHERRY, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

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

I. INTRODUCTION

Zillow Group, Inc. and Zillow, Inc. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting institution of *inter partes* review of claims 1, 3–7, 9–13, and 15–18 of U.S. Patent No. 7,543,234 B2 (Ex. 1001, “the ’234 patent”). International Business Machines Corporation (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”).

Pursuant to 35 U.S.C. § 314(a), an *inter partes* review may be instituted only if “the information presented in the petition . . . and any [preliminary] response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

For the reasons given below, on this record Petitioner has not established a reasonable likelihood that it would prevail in showing the unpatentability of at least one of claims 1, 3–7, 9–13, and 15–18 of the ’234 patent. Accordingly, we deny institution of *inter partes* review of the ’234 patent.

II. BACKGROUND

A. *Real Parties in Interest*

Petitioner identifies itself, Zillow Group, Inc. and Zillow, Inc., as real-parties-in-interest. Pet. 1. Patent Owner indicates International Business Machines Corporation is the real party in interest. Paper 3, 1.

B. *Related Proceedings*

The parties identify the following pending litigation involving the patent at issue: *International Business Machines Corp. v. Zillow Grp. et. al.*, Case No. 2:20-cv-01130-TSZ (W.D. Wash.). Pet. 1–2; Paper 3, at 2.

Patent Owner also identifies the following litigation involving the '234 patent: *International Business Machines Corp. v. Rakuten, Inc. et. al.*, Case No. 1:21-cv-00461-LPS (D. Del.). Paper 3, 1.

Petitioner also identifies two pending petitions for *inter partes* review that arise from patents issued in the District Court litigation: IPR2020-01655 (Patent US 7,076,433) and IPR2020-01656 (Patent US 8,315,904). Pet. 2.

C. The '234 Patent (Ex. 1001)

The '234 patent is titled “Stacking Portlets in Portal Pages.” Ex. 1001, code (54). The '234 patent issued from Application Serial No. 11/173,041, filed on July 1, 2005. *Id.* at codes (21), (22).

The '234 patent relates to customizing graphical user interface (GUI) portal pages. *Id.* at 1:6–9. The patent describes that a “portal displays information aggregated from different sources,” and the “information is customized for a specific user and is dynamically updated.” *Id.* at 1:11–13. “A user may customize a portal by specifying the user’s preferences so that each time the user accesses the portal, the portal checks the user’s preferences and displays the information that the user wants in the form in which the user wants the information to be displayed.” *Id.* at 1:15–19.

According to the '234 patent, a portal is comprised of a plurality of portlets, where each portlet accesses hardware and software to gather data and offers information, of a specific content type and markup, to the portal page for display. *Id.* at 1:43–46; 2:62–67. When a user requests additional information to be displayed on the portal page “the portlet(s) associated with that information are added to the portal.” *Id.* at 3:1–3. However, this “may result in many portlets being crowded into the portal page, which may result

in a cluttered portal that makes it difficult for the user to view all the portlets clearly.” *Id.* at 3:3–6. The ’234 patent describes techniques for “organizing the portlets as the number of portlets displayed increases to prevent the portal from becoming crowded.” *Id.* at 3:7–10.

One method employed is to “stack” portlets. “Portlets that access the same resources or same type of resources are considered stackable and may be stacked based on the user’s preferences.” *Id.* at 4:63–65.

The rules for when to stack may be based on how many characteristics the portlets have in common. Two or more portlets are stackable if they have sufficient elements in common, where sufficient is predefined by a user. When two or more portlets are determined to be stackable, the user may be asked whether the user wishes to stack the portlets or the portal may automatically stack the portlets based on rules pre-defined by the user.

Id. at 5:23–30. Figure 5, reproduced below, is a block diagram of a portal with stacked portlets.

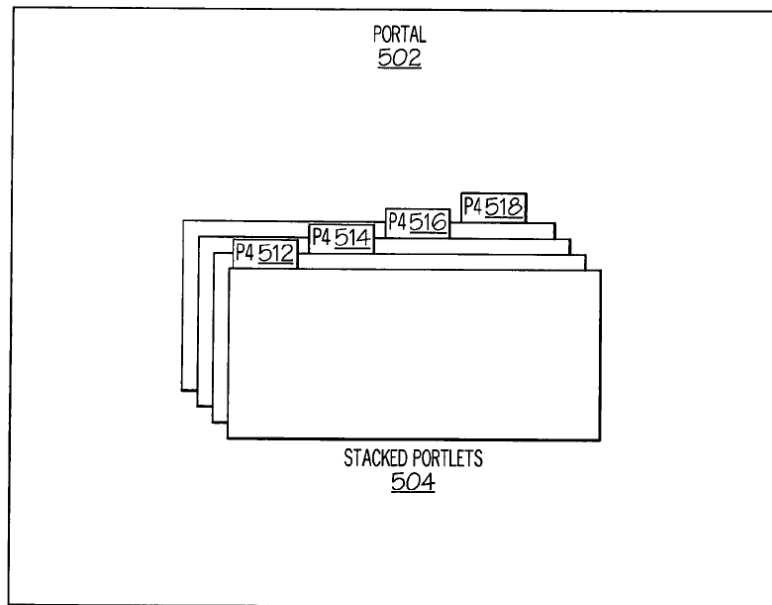


Figure 5 shows portal 502 and stacked portlets 504, which includes portlets 512, 514, 516, and 518. *Id.* at 6:1–2.

In the example, of Figure 5, portlets 512, 514, 516, and 518 have been determined to be stackable, because they access common resources or because they display common content or markup. *Id.* at 6:5–8. By stacking portlets, “portlet clutter” is reduced. *Id.* at 6:9–11.

The patent also describes an example where the technique may be used to present a portal as a stack of portlets, so that one given portlet is presented on top of the stack at a given time, especially for devices with “limited screen real estate,” such as smartphones. *Id.* at 6:28–33. A portal could, for example, take a large number of portlets, and present more than one portlet, with a control presented for selecting another set of portlets not currently presented. *Id.* at 6:34–37.

The ’234 patent describes the process for stacking portlets, as follows:

Operation begins when a portal page generator receives a request to generate a portal page including a plurality of portlets in block 702. The software and hardware resources each portlet accesses is determined in block 704. The content and markup of the information each portlet displays is determined in block 706. The user’s profile/preferences are obtained in block 708. The user’s profile/preferences may be obtained, for example, by loading the user’s profile or asking the user. A commonality in a subset of portlets is identified in block 710, and, based on the commonality, which portlets are stackable. Based on which portlets have been identified as stackable, the portal is generated with one or more subsets of portlets stacked in block 712. Finally, the portal page is returned in block 714, and operation ends.

Id. at 7:15–28.

D. Illustrative Claim

Claims 1, 7, and 13 are independent claims. Claim 1, reproduced below, with Petitioner’s labels added, is representative of the subject matter before us:

1. [Preamble] A method of generating a portal page, wherein the portal page includes a plurality of includes a plurality of portlets, the method comprising:

[1[a]] determining whether a subset of portlets is stackable;
and

[1[b]] responsive to the subset of portlets being stackable, identifying two or more stacks of portlets that are stackable, and generating the portal page such that the two or more stacks of portlets are generated as a stack of stacks, wherein the stack of stacks presents a first stack of portlets and a control for selecting a second stack of portlets from within the two or more stacks of portlets that is not currently presented.

Ex. 1001, 8:16–28; Pet. 32–38.

E. The Asserted Grounds of Unpatentability

Petitioner asserts that claims 1, 3–7, 9–13, and 15–18 would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1, 3–7, 9–13, 15–18	102(b)	Chowdhry ¹
1, 3–7, 9–13, 15–18	103(a)	MacLaurin ² , Masselle ³

Pet. 1. Petitioner supports its Petition with a Declaration by Dr. Craig S. Rosenberg. Ex. 1011.

F. Level of Ordinary Skill

Petitioner contends that a person having ordinary skill in the art “would have possessed at least a bachelor’s degree in software engineering, computer science, or computer engineering, human factors, or the equivalent, with at least two years of experience in the design and implementation of graphical user interfaces,” and “would have had a

¹ US 2003/0167315 A1, published Sept. 4, 2003 (Ex. 1008).

² US 2005/0210416 A1, published Sept. 22, 2005 (Ex. 1009).

³ US 2006/0041846 A1, published Feb. 23, 2006 (Ex. 1010).

working knowledge about how to create and implement useful software programs, including familiarity with graphical user interface design and a working knowledge about how to create customizable portals or webpages for the display of information.” Pet. 12 (citing Ex. 1011 ¶ 36).

Patent Owner does not address the level of skill of the ordinary artisan. *See generally* Prelim. Resp.

For purposes of this Decision, we adopt Petitioner’s proposed level of ordinary skill, as it appears to be consistent with the level of skill, and choice of language, reflected by the specification and in the asserted prior art references. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art itself can reflect the appropriate level of ordinary skill in the art).

G. Claim Construction

Petitioner proposes construction for four variations of the term stack that appear in the claims: “stacks,” “stack of stacks,” “stacking,” and “stackable.” Pet. 13–23. Patent Owner contends only the term “stackable” requires construction. Prelim. Resp. 26. However, only terms that are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017). For purposes of this decision, we determine that no construction is necessary because Petitioner has failed to meet its burden under its own constructions.

III. DISCUSSION

A. Overview of the Prior Art

1. Chowdhry (Ex. 1008)

Chowdhry is entitled “Fast Creation of Custom Internet Portals Using Thin Clients.” Ex. 1008, code (54). Chowdhry “relates to the creation of internet or enterprise portals using web-enabled objects or portlets.” *Id.* ¶ 1. Chowdhry explains that portals are “web pages which include a plurality of modules or portlets,” which include “content that can be received from a different web site source.” *Id.* ¶ 101.

Chowdhry describes the introduction of “portals . . . that present, on a single screen, information from several different sites,” but notes the cost and complexity of using portals. *Id.* ¶¶ 3, 4. One development that has helped is the availability of “software packages . . . which permit a user to select modules of information, or ‘portlets,’ from a preexisting library of such portlets for display on a customized portal site,” though their availability and use is limited. *Id.* ¶ 4.

Chowdhry describes a “portlet wizard” for creating portlets. *Id.* ¶ 83. Users can “have great freedom as to the placing of these portlets within their portal pages. The user interface permits retrieval of portlets from a repository that can be pre-built for users, and from which users can drag-and-drop portlets into the portal pages they are building.” *Id.* ¶ 87. Chowdhry’s system, one example of which is illustrated in Figure 3, “allows modules to be created by the end user (see buttons 528 and 532), rather than only ahead of time by administrators (see button 530); it allows all modules be placed freely anywhere in the web page by the end user and to be layered

to optimize the use of page real-estate.” *Id.* ¶ 103. Figure 3 is reproduced below.

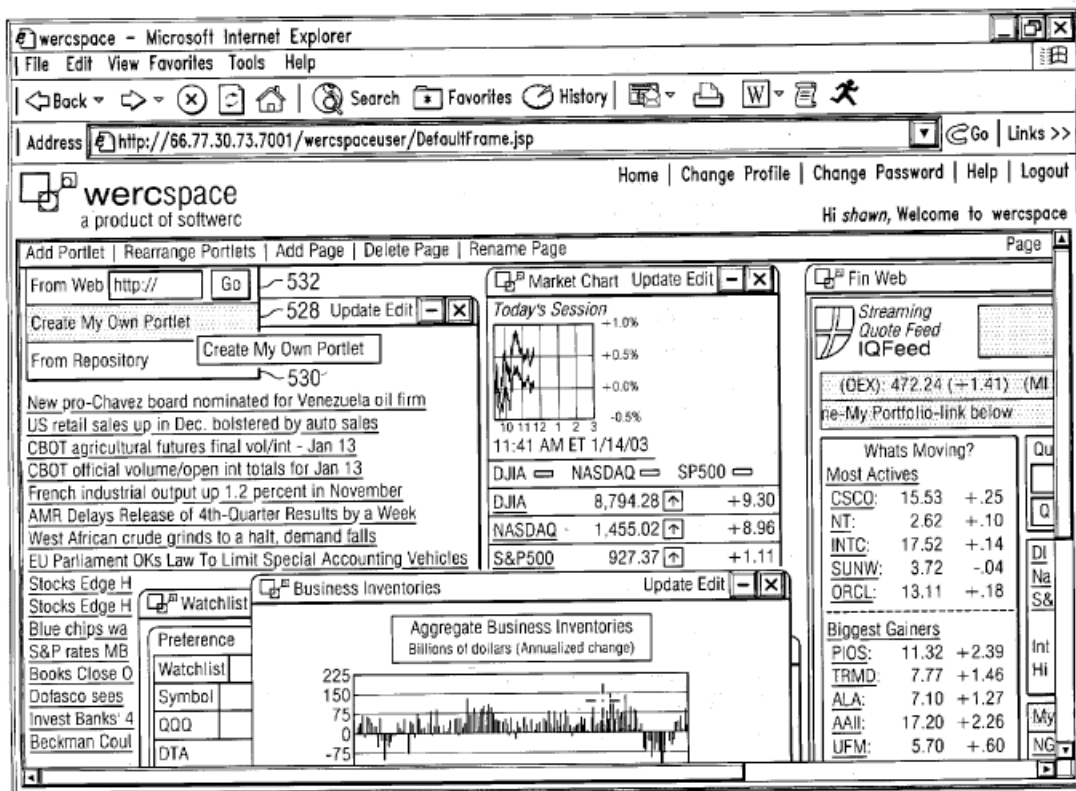


Figure 3, reproduced above, “illustrates a portal created according to the invention.”

Users are provided with more control over the content displayed in a portlet or module and the location of the modules within the page.” *Id.*

“[U]sers (not just portal administrators) can drag . . . to move a portlet anywhere in the page they'd like, including overlapping the panes.” *Id.*

¶ 238. The user can also “add pages” to a portal. *Id.* ¶ 261.

Chowdhry also depicts overlapping portlets in Figure 41, which is reproduced below.

FIG. 41

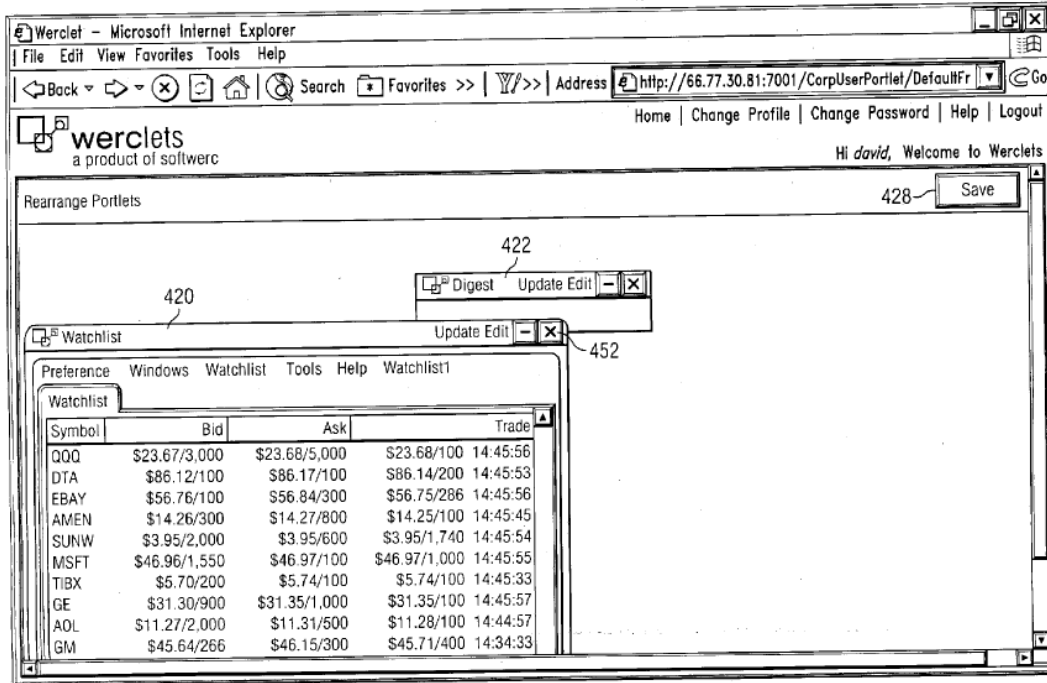


Figure 41 of Chowdhry illustrates the operation of the “Rearrange Portlets programming module.” *Id.* ¶ 54.

2. MacLaurin (Ex. 1009)

MacLaurin is titled “Interactive Preview of Group Contents Via Axial Controller.” Ex. 1009, code (54). MacLaurin “relates to a system and method to facilitate rendering of a collection of display items such as a collection of document sheets appearing under a singular display icon or object.” *Id.* ¶ 19. Users select an item, and “can scroll through pages or items in a stack of items, whereby transitional displays can be provided during scrolling operations.” *Id.* MacLaurin illustrates this in Figure 1, reproduced below.

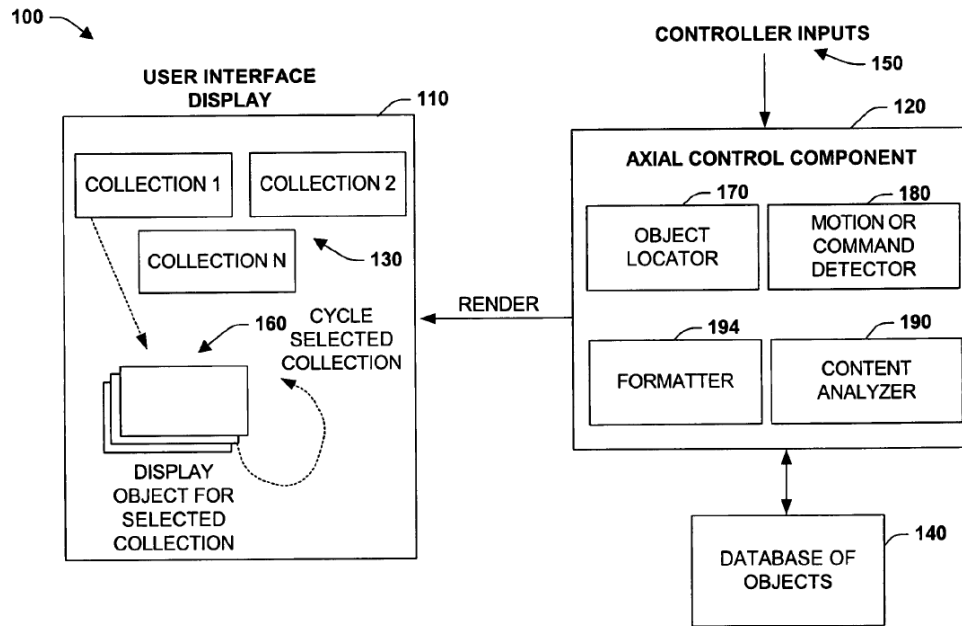


FIG. 1

Figure 1 of MacLaurin is a schematic block diagram illustrating axial control system 100. *Id.* ¶¶ 10, 21.

The system uses “an axial control component 120 (ACC) for rendering and previewing display objects as one or more collections of items 130.” *Id.* ¶ 21. MacLaurin illustrates this in Figure 2, which is reproduced below.

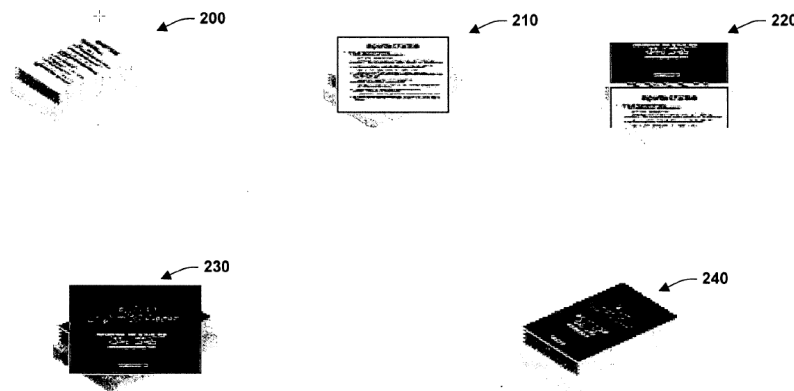


FIG. 2

Figure 2 of MacLaurin is a diagram illustrating an exemplary control and reducing sequence for collection previews.

Items are displayed in a stack, and the system permits scanning through the stack to see items within the stack as preview images, as shown in Figure 2:

At 200, a stack of items is illustrated (e.g., PowerPoint or Word documents). During a mouse over state at 210, the top document preview appears. At 230, transitional animation is displayed as the user moves a mouse wheel down (or other type control such as a voice command). After a completed transition at 240, a new preview is shown. If other axial controls are detected, subsequent items in the stack are then displayed.

Id. ¶ 27.

3. *Masselle (Ex. 1010)*

Masselle is titled “Method of Window Management for a Windowing System.” Ex. 1010, code (54). Masselle “relates to the organization of windows presented in a cascade arrangement during subsequent user interactions.” *Id.* ¶ 1.

In the method of Masselle, “[w]indows are initially displayed in a cascade stack,” where the window may be a portlet that is part of a web portal. *Id.* ¶ 15. A user selects and interacts with a window, which is displayed “in a preferred display state,” such as maximized. *Id.* When the user wishes to interact with a different window in the stack, the original window is returned to the stack. *Id.* Figure 1 of Masselle is reproduced below.

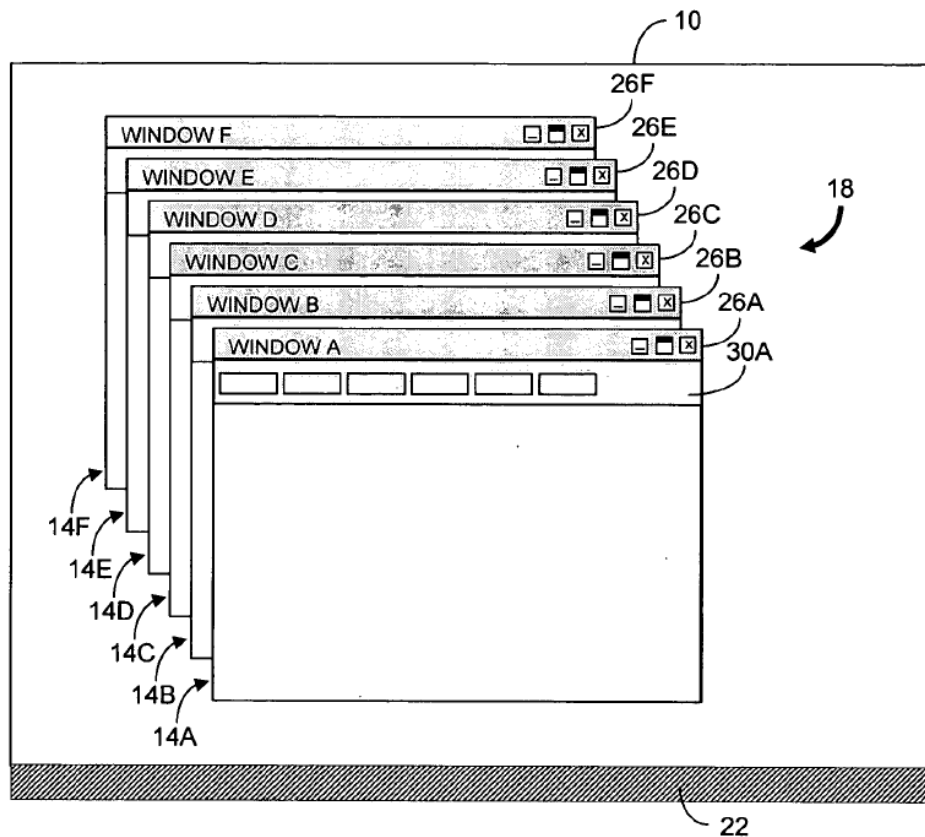


FIG. 1

Figure 1 of Masselle illustrates a display of windows arranged in a cascade stack. *Id.* ¶ 9.

B. Alleged Anticipation by Chowdhry (Ground 1)

Petitioner contends that Chowdhry anticipates claims 1, 3–7, 9–13, and 15–18. Pet. 32–57. Petitioner maps the teachings of Chowdhry to the limitations of the claims 1 and 3–6. *Id.* at 32–54. Petitioner also provides an analysis of claims 7, 9–13, and 15–18. *Id.* at 54–57.

1. Claim 1

Limitation 1[a] recites the method step of “determining whether a subset of portlets is stackable.” Ex. 1001, 8:16, 19. Petitioner contends that Chowdhry discloses limitation 1[a], which Petitioner contends “require[s]

the ability to determine whether portlets on a portal page are stackable, or capable of being arranged in a stack.” Pet. 34 (citing Ex. 1011 ¶ 85).

Petitioner articulates two theories for how Chowdhry discloses this limitation.

First, Petitioner notes that Chowdhry states that “[t]he ‘user interface of the present invention’ allows portlets on a portal page to be ‘move[d] . . . anywhere,’ including ‘overlapping the panes.’” *Id.* (citing Ex. 1008 ¶ 238) (second two alterations in original). Petitioner submits that

This “feature is significant in that it changes a portal from being like a newspaper in format,” where pictures and articles are laid out side by side on a two-dimensional plane without any overlap, “to being more like the user’s Microsoft WINDOWS® desktop,” where windows enjoy the ability to overlap or stack.

Id. (citing Ex. 1008 ¶ 238). Petitioner asserts that “Chowdhry ‘permits the creation of portlets, which are modules of an internal portal. The inventors have adopted the mark WERCLETS™ to identify portlets created by the system of the invention. Once created, portlets can be put together into a web page.’” *Id.* (citing Ex. 1008 ¶ 112). Petitioner argues that Chowdhry describes that “[t]he portlets ‘can [be] freely position[ed] at any location within the browser window, ... [and] can [be] tile[d] on top of or underneath other portlets[.] There are no restrictions on siting of the portlet within the portal.’” *Id.* (citing Ex. 1008 ¶ 6) (all alterations except the first in original). Petitioner contends that based on these disclosures “[a] POSA would understand this disclosure to mean that a determination may be made as to whether certain portlets are capable of being stacked or overlapped.” *Id.* (citing Ex. 1011 ¶ 86).

As to this first theory, we agree with Patent Owner that Petitioner has failed to adequately explain how the ability to drag and drop portlets would

describe to a person of ordinary skill “determining whether a subset of portlets is stackable.” Prelim. Resp. 30–34. We also agree with Patent Owner that Petitioner’s effort to fill this gap in Chowdhry by arguing that a person of ordinary skill in the art “would understand this disclosure to mean that a determination may be made as to whether certain portlets are capable of being stacked or overlapped” is unavailing. As Patent Owner explains, the only support for this conclusory assertion is the testimony of Dr. Rosenberg, which simply repeats the same conclusory assertion without any further explanation or evidence to support it. *Id.* at 34. Thus, we find Dr. Rosenberg’s testimony, without more explanation, insufficient to support Petitioner’s conclusion here.

Second, Petitioner points to Figure 41 of Chowdhry as showing portlets stacked or layered. *See* Pet. 35 (citing Ex. 1008, Fig. 41). Petitioner argues that “Chowdhry explains, ‘[r]earranging portlets is accomplished by having fields in the portlets database for the vertical and horizontal positions of the portlet as well as the ‘ZIndex’, which is a measure of layering that we have created.’” *Id.* (citing Ex. 1008 ¶ 239). Petitioner also submits Chowdhry discloses that “the invention ‘uses IFRAMES to capture the vertical, horizontal and layered placement of the portlet . . . to provide a browser page that allows full positional control over portlets in the page.’” *Id.* at 35–36 (citing Ex. 1008 ¶ 239). Petitioner contends that “[i]n this way, the capability of portlets, created as part of Chowdhry’s WERCLETS system, ‘to be layered . . . optimize[s] the use of page real-estate.’” *Id.* at 36 (Ex. 1008 ¶ 103).

Petitioner argues that Chowdhry discloses that both the system and its users may determine whether certain portlets are stackable:

The present invention permits the creation of portlets, which are modules of an internet portal. The inventors have adopted the mark WERCLETSTM to identify portlets created by the system of the invention. Once created, ***portlets can be put together into a web page using third party portal software*** by creating a portlet and then generating a URL to access it through the invention, ***or portlets can be stored in a repository for users of the user interface to create their own portal.***

Id. at 36 (quoting Ex. 1008 ¶ 112).

Petitioner contends, based on this disclosure, that “Chowdhry contemplates third-party software may put various portlets together on a page, leaving their arrangement—such as whether they should be stacked—to the software system.” *Id.* (citing Ex. 1008 ¶ 112; Ex. 1011 ¶ 90).

Petitioner argues that for the portlets being stored in a repository for users’ future access and use, “a POSA would understand the WERCLETS system to catalog any stored portlets so that a user may search for their characteristics and attributes.” *Id.* (citing Ex. 1011 ¶ 90; Ex. 1008, Fig. 18).

Petitioner contends that “the system would have the capability of categorizing these portlets as ‘news related,’ ‘entertainment,’ or ‘market ticker/financial.’” *Id.* (citing Ex. 1011 ¶ 90). Petitioner submits that “[a] POSA would understand that a system that is capable of keeping track of and storing portlets with different characteristics is necessarily able to make a determination as to whether a subset of certain portlets are stackable.” *Id.* at 36–37 (citing Ex. 1011 ¶ 90).

We agree with Patent Owner that Petitioner’s assertions underlying this second theory for how Chowdhry accounts for this limitation are unsupported by the cited portions of Chowdhry. Prelim. Resp. 36–37. As Patent Owner explains, Petitioner has not identified where Chowdhry discloses a catalog or search functionality for searching for stored portlets.

Id. at 36. As best as we can ascertain from Petitioner’s and Dr. Rosenberg’s conclusory testimony, this appears to be speculation by Petitioner as to how Chowdhry could operate. *See* Ex. 1011 ¶¶ 89–92. The only support cited by Petitioner and Dr. Rosenberg is Figure 18 of Chowdhry, which is reproduced below.

FIG. 18

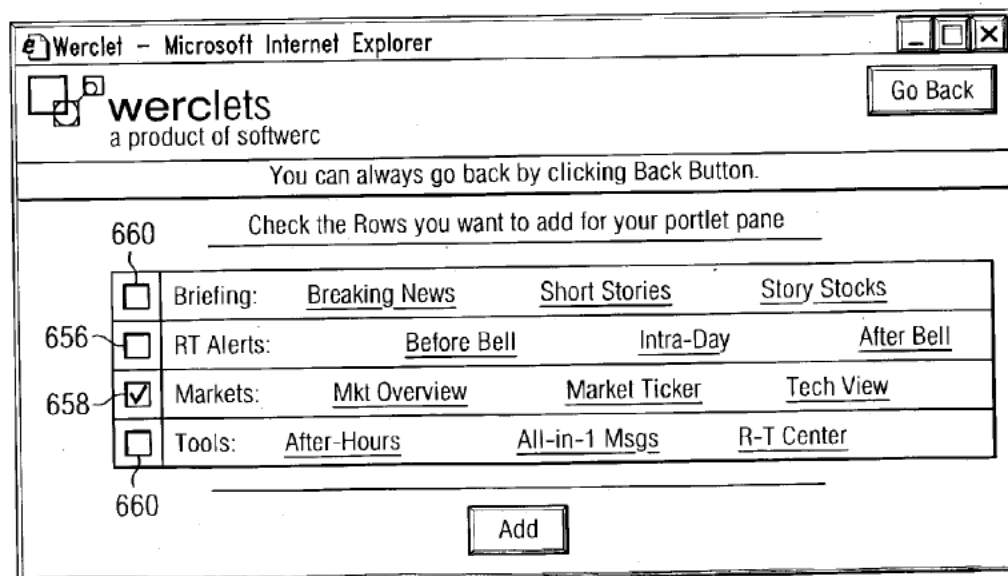


Figure 18 of Chowdhry, which is “an add pane sequence diagram showing events where data from a given URL could not be retrieved.” Ex. 1008 ¶ 32.

We agree with Patent Owner that the Petition’s reliance on Figure 18 of Chowdhry is also misplaced because Figure 18 merely illustrates an example screen from the “Add Portlet” module—showing customization options for a single portlet—not a repository catalog or search functionality that Petitioner contends. Prelim. Resp. 36–37. At the very least, it is not clear how Figure 18 supports Petitioner’s contentions, and Petitioner has failed to provide adequate explanation to convince us that Petitioner’s interpretation is correct. In addition, Petitioner’s explanation and citations

also fail to convince us that Chowdhry describes categorizing portlets as Petitioner contends.

At bottom, Petitioner's contentions and Dr. Rosenberg's testimony, which merely repeats verbatim what is in the Petition, suffer from the problem that they simply assert a series of conclusions without providing adequate reasoning supported by Chowdhry or other evidence as to how Chowdhry actually describes what Petitioner contends. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). To establish anticipation, "all of the elements and limitations of the claim must be shown in a single prior reference, arranged as in the claim." *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). As best as we can discern, Petitioner's allegations do not appear to be based on the express or inherent disclosures of Chowdhry, but on how a person of ordinary skill could have extended what is actually disclosed to reach the claimed invention. *See* Pet. 34–37; Ex. 1011 ¶¶ 86–92. Petitioner has the burden of proof, and in this case, Petitioner's and Dr. Rosenberg's skeletal explanation fails to persuade us that Petitioner's interpretation of what Chowdhry discloses even has a reasonable likelihood of being correct.

As such, we find that Petitioner has failed to provide adequate support for its contention that Chowdhry describes "determining whether a subset of portlets is stackable," as required by limitation 1[a].

Accordingly, we find that Petitioner has failed to demonstrate a reasonable likelihood of success in showing the claim 1 was anticipated by Chowdhry.

2. *Claim 3–6*

Claims 3–6 all depend from claim 1. Petitioner relies on the analysis discussed above with respect to claim 1 in its analysis of claims 3–6. Because we found that analysis lacking, we further find that Petitioner has failed to show a reasonable likelihood of succeeding in showing that Chowdhry anticipates claims 3–6.

3. *Claims 7, 9–13, and 15–18*

Petitioner further contends that “[t]he ’234 patent has three types of claims: six method claims (1-6), six apparatus claims (7-12), and six computer program product claims (13-18). Other than the difference in claim type, each group of six claims has no appreciable differences in substance and scope.” Pet. 54. Independent claims 7 and 13 include limitations of “determines whether the subset of portlets is stackable,” and “determining whether a subset of portlets is stackable.” Ex. 1001, 8:53–9:3, 9:27–10:4. For these limitations, Petitioner relies on the same analysis considered above with respect to limitation 1[a] of claim 1. Pet. 54. For the reasons discussed above with respect to limitation 1[a] of claim 1, we determine that Petitioner has failed to show a reasonable likelihood of prevailing in showing Chowdhry anticipates claims 7, 9–13, and 15–18.

4. *Conclusion as to Anticipation by Chowdhry*

For the reasons provided above, we determine that Petitioner has failed to show a reasonable likelihood of success in showing that Chowdhry anticipates claims 1, 3–7, 9–13, and 15–18.

C. Alleged Obviousness over MacLaurin and Masselle (Ground 2)

1. Claim 1

For limitation 1[a]—“determining whether a subset of portlets is stackable”—Petitioner contends that MacLaurin and Masselle disclose stacking. Pet. 62–63 (citing Ex. 1009 ¶¶ 8, 27, Fig. 2; Ex. 1010 ¶ 16, Fig. 1). Petitioner also notes that MacLaurin has the ability to preview the stack and Masselle teaches the ability for a user to set a preference to routinely provide continuous cascade mode behavior. *Id.* (citing Ex. 1009 ¶ 27; Ex. 1010 ¶ 16). Petitioner concludes that “either combined or singularly, MacLaurin and Masselle disclose that their systems are able to determine whether a subset of portlets is capable of being arranged in a stack.” *Id.* at 64 (citing Ex. 1011 ¶ 145).

Limitation 1[b] recites—

responsive to the subset of portlets being stackable, identifying two or more stacks of portlets that are stackable, and generating the portal page such that the two or more stacks of portlets are generated as a stack of stacks, wherein the stack of stacks presents a first stack of portlets and a control for selecting a second stack of portlets from within the two or more stacks of portlets that is not currently presented.

Ex. 1001, 8:20–27.

Petitioner contends that a person of ordinary skill “would understand Figure 1 of MacLaurin to depict a stack of collections 1, 2, and N.” *Id.* (Ex. 1011 ¶ 146). “To the extent collections 1, 2, N each comprises stacked portlets, then the below illustrates a stack of stacks. *Id.* (citing Ex. 1011 ¶ 146). Petitioner argues that “[a]ccording to Figure 2, as a user scrolls through the stack of stacks at 200, a ‘first stack of portlets’ is displayed at 210, and after each transition, a new preview 230 (e.g. a new stack of stacks)

is shown.” *Id.* at 65 (citing Ex. 1011 ¶ 147). Petitioner asserts that “[t]he ‘control’ for selecting a second stack of portlets from within the two or more stacks of portlets that is not currently presented is the preview, transitional elements at 220 and 230 as the user moves a mouse wheel down (or other type control such as a voice command).” *Id.* (citing Ex. 1011 ¶ 147; Ex. 1009 ¶¶ 19, 27). Petitioner contends that “[a]s the transition is complete, a new or second stack of portlets is shown as the top display at 240.” *Id.* (citing Ex. 1011 ¶ 147).

Patent Owner argues that Petitioner has failed to adequately account for limitations 1[a] and 1[b] in the combination. Prelim. Resp. 48–62.

Even assuming that Petitioner has adequately accounted for limitation 1[a], we agree with Patent Owner that Petitioner has failed to adequately show that combination accounts for limitation 1[b]. To begin with, we agree with Patent Owner that Petitioner has failed to provide adequate explanation how the alleged “identifying” of limitation 1[b] is performed “responsive to the subset of portlets being stackable.” *Id.* at 56–57. There is no adequate explanation in either Petition or in the cited portions of Dr. Rosenberg’s declaration, which merely repeats verbatim what is stated in the Petition.

We also agree with Patent Owner that Petitioner has failed to adequately explain how the combination teaches “identifying two or more stacks of portlets that are stackable, and generating the portal page such that the two or more stacks of portlets are generated as a stack of stacks.” *Id.* at 57–58. As Patent Owner persuasively explains, the cited portion of MacLaurin “only ever discusses the functionality of a single display item collection, and contains no mention at all of performing any action involving more than one display item collection at a time.” *Id.* at 58. As Patent Owner

further explains, “Figure 1 of MacLaurin depicts a *single* selected collection of display items at 160, not a ‘stack of collections.’” *Id.* at 60. Here, Petitioner’s explanation is simply insufficient, and Dr. Rosenberg’s testimony far too cursory for us to be able to piece together exactly what supports Petitioner’s contentions and why these contentions are correct. As we explained above, the cited testimony simply repeats the same contentions as in the Petition and provides no additional reasoning or explanation, so we give it little weight. *See* Ex. 1011 ¶¶ 146, 147.

As for Masselle, although it is not cited for this limitation, we agree with Patent Owner that Masselle merely discloses that all currently open windows can be arranged in a single stack, not “identifying two or more stacks of portlets that are stackable and generating the portal page such that the two or more stacks of portlets are generated as a stack of stacks.” *Id.* (citing Ex. 1010 ¶ 1).

Accordingly, we agree with Patent Owner that Petitioner has failed to adequately account for limitation 1[b], and has failed to show a reasonable likelihood of prevailing on its contention that claim 1 would have been obvious over the combination of MacLaurin and Masselle.

2. *Claims 3–6*

Claims 3–6 all depend from claim 1. Petitioner relies on the analysis discussed above with respect to claim 1 in its analysis of claims 3–6. Because we found that analysis lacking, we further find that Petitioner has failed to show a reasonable likelihood of succeeding in showing that MacLaurin and Masselle renders claims 3–6 unpatentable as obvious.

3. *Claims 7, 9–13, and 15–18*

Petitioner further contends that

As discussed above in the previous section, the '234 patent has three types of claims: six method claims (1-6), six apparatus claims (7-12), and six computer program product claims (13-18). Other than the difference in claim type, each group of six claims has no appreciable differences in substance and scope.

Pet. 71. Independent claims 7 and 13 include limitations of “determines whether the subset of portlets is stackable,” and “determining whether a subset of portlets is stackable.” For these limitations, Petitioner relies on the same analysis considered above with respect to limitation 1[a] of claim 1.

Pet. 72. For the reasons discussed above with respect to limitation 1[a] of claim 1, we determine that Petitioner has failed to show a reasonable likelihood of prevailing in showing that the combination of MacLaurin and Masselle renders obvious claims 7, 9–13, and 15–18.

4. Conclusion as to Obviousness over MacLaurin and Masselle

For the reasons provided above, we determine that Petitioner has failed to show a reasonable likelihood of success in showing that MacLaurin and Masselle would have rendered claims 1, 3–7, 9–13, and 15–18 unpatentable as obvious.

IV. CONCLUSION

For the reasons discussed above, we conclude Petitioner has not shown a reasonable likelihood of prevailing with respect to at least one claim.

V. ORDER

In consideration of the foregoing, it is hereby:

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

IPR2021-01311
Patent 7,543,234 B2

FOR PETITIONER:

Shawn Blackburn
SUSMAN GODFREY LLP
sblackburn@susmangodfrey.com

FOR PATENT OWNER:

Christopher O'Brien
Theodoros Konstantakopoulos
Yung-Hoon Ha
DESMARAIS LLP
cobrien@desmaraisllp.com
tkonstantakopoulos@desmaraisllp.com
yha@desmaraisllp.com