

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BANK OF AMERICA, N.A.,
Petitioner,

v.

NANT HOLDINGS IP, LLC,
Patent Owner.

IPR2021-01333
Patent 7,899,252 B2

Before JAMESON LEE, ROBERT J. WEINSCHENK, and
ELIZABETH M. ROESEL, *Administrative Patent Judges*.

WEINSCHENK, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. *Background and Summary*

Bank of America, N.A. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting an *inter partes* review of claims 18, 26, 27, 29, and 31 (“the challenged claims”) of U.S. Patent No. 7,899,252 B2 (Ex. 1001, “the ’252 patent”). Nant Holdings IP, LLC (“Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”) to the Petition.

An *inter partes* review may not be instituted unless “the information presented in the petition . . . and any 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.” 35 U.S.C. § 314(a) (2018). Further, a decision to institute may not institute on fewer than all claims challenged in the petition. 37 C.F.R. § 42.108(a) (2021). Based on the arguments and evidence of record, Petitioner demonstrates a reasonable likelihood of prevailing in showing that at least one of the challenged claims of the ’252 patent is unpatentable. Accordingly, we institute an *inter partes* review as to the challenged claims of the ’252 patent on all the grounds of unpatentability in the Petition.

B. *Real Parties in Interest*

Petitioner identifies itself and Bank of America Corporation as the real parties in interest. Pet. 63. Patent Owner identifies itself as the only real party in interest. Paper 3, 2.

C. *Related Matters*

The parties indicate that the ’252 patent is the subject of the following district court case: *NantWorks, LLC v. Bank of America Corporation*,

No. 2:20-cv-07872 (C.D. Cal.) (“District Court Litigation”). Pet. 63–64; Paper 3, 2.

D. The ’252 Patent

The ’252 patent relates to “digital imaging.” Ex. 1001, 1:26. Specifically, the ’252 patent states that a portable imaging device captures an image of an object and transmits information regarding the image to a distal server. *Id.* at 4:30–35. At least one of the portable device and the server derives a search term from at least one of the image and the transmitted information. *Id.* at 4:35–38. At least one of the portable device and the server submit the search term to a search engine. *Id.* at 4:38–41. The search engine uses the search term to produce a results set and transmits at least a portion of the results set to the portable device. *Id.* at 4:41–44.

E. Illustrative Claim

Of the challenged claims, claim 18 is independent. Claim 18 is reproduced below.

18. A method for retrieving information from image processing, the method comprising:

providing a mobile device having a camera the mobile device configured to capture an image and configured to transmit data relating to the image an image processing platform;

configuring the image processing platform to receive the data relating to the image and to conduct image processing, including:

operating on the data relating to the image to determine if the image contains one or more recognizable symbols; and

decoding the recognizable symbols to extract symbol information by analyzing the recognizable symbols according to type;

providing access to a distal server configured to use a database to identify pertinent information associated with the recognizable symbols based on the symbol information; and

allowing the mobile device to receive the pertinent information over a network.

Ex. 1001, 19:6–26.

F. Evidence

Petitioner submits the following evidence:

Evidence	Exhibit No.
Declaration of Jeffrey J. Rodriguez, Ph.D. (“Rodriguez Declaration”)	1003
Ogasawara, US 6,512,919 B2, issued Jan. 28, 2003 (“Ogasawara”)	1005
Bolle, US 5,546,475, issued Aug. 13, 1996 (“Bolle”)	1006
Cusmariu, US 6,519,362 B1, issued Feb. 11, 2003 (“Cusmariu”)	1030

G. Asserted Grounds

Petitioner asserts that the challenged claims are unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
18, 26, 27	102	Ogasawara
29	103	Ogasawara, Cusmariu
31	103	Ogasawara, Bolle

II. ANALYSIS

A. 35 U.S.C. § 314(a)

Patent Owner argues that we should exercise our discretion under 35 U.S.C. § 314(a) to deny the Petition. Prelim. Resp. 7–19. Section 314(a) states that

[t]he Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any

response filed under section 313 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.

Under § 314(a), we have discretion to deny institution of an *inter partes* review. *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2140 (2016). We consider several factors when determining whether to deny institution under § 314(a) based on a parallel district court proceeding, specifically

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. proximity of the court's trial date to the Board's projected statutory deadline for a final written decision;
3. investment in the parallel proceeding by the court and the parties;
4. overlap between issues raised in the petition and in the parallel proceeding;
5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. other circumstances that impact the Board's exercise of discretion, including the merits.

Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11 at 5–6 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”).

1. *Factor 1 – Whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted*

Under the first *Fintiv* factor, we consider “whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted.” *Id.* at 6. Petitioner argues that it “intends to move for a stay [of the District Court Litigation] after this proceeding is instituted.” Pet. 60. Petitioner also argues that because the District Court “has been amenable to stay[ing] cases pending IPR where there is complete overlap of asserted claims,” “it is likely a stay will be granted on institution.” *Id.* at 61. Thus, according to

Petitioner, the first factor favors institution. *Id.* Patent Owner argues that “Petitioner has not requested or moved for a stay” of the District Court Litigation, and the District Court “has not indicated whether [it] would grant a stay.” Prelim. Resp. 15. Thus, Patent Owner contends that the first factor is neutral. *Id.*

We decline to speculate based on the record in this case whether the District Court would grant a stay of the District Court Litigation. Neither party identifies any statements by the District Court or other evidence that specifically addresses a stay of the District Court Litigation. See Pet. 60–61; Prelim. Resp. 15. And “[a] judge determines whether to grant a stay based on the facts of each specific case as presented in the briefs by the parties.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 12 (PTAB May 13, 2020) (informative) (“*Fintiv II*”). “We decline to infer, based on actions taken in different cases with different facts, how the District Court would rule should a stay be requested by the parties in the parallel case here.” *Id.* As a result, we determine that the first *Fintiv* factor is neutral.

2. *Factor 2 – Proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision*

Under the second *Fintiv* factor, we consider the “proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision.” *Fintiv*, Paper 11 at 6. Petitioner argues that “no trial date has been set” in the District Court Litigation, and, thus, the second factor favors institution. Pet. 59–60. Patent Owner argues that based on the District Court’s “typical practice,” “a trial date could be set at least a few months prior to the Board’s statutory deadline for a final written decision.”

Prelim. Resp. 15–16. Thus, according to Patent Owner, the second factor favors denying institution. *Id.*

After the parties completed briefing on the *Fintiv* factors, the District Court scheduled trial in the District Court Litigation for April 25, 2023. Ex. 1044, 2. Thus, the trial date in the District Court Litigation is about two months *after* the projected statutory deadline for a final written decision in this case. *Id.* As a result, we determine that the second *Fintiv* factor weighs against discretionary denial of institution.

3. *Factor 3 – Investment in the parallel proceeding by the court and the parties*

Under the third *Fintiv* factor, we consider the “investment in the parallel proceeding by the court and the parties.” *Fintiv*, Paper 11 at 6. Petitioner argues that the District Court has “not issued any substantive opinions regarding the scope or validity” of the challenged claims, and “only written discovery has been taken.” Pet. 59. Petitioner also argues that the timing of the Petition “is reasonable” because it was “filed about four months after invalidity contentions were served, about three months after Patent Owner elected its 48 asserted claims, and about a month before the claim construction hearing.” *Id.* at 59–60. Thus, according to Petitioner, the third factor favors institution. *Id.* at 60.

Patent Owner argues that the District Court issued a claim construction order, and the parties “engaged in 11 months of discovery, producing over one hundred thousand pages of documents and hundreds of pages of discovery responses.” Prelim. Resp. 11. Patent Owner argues that “[b]y the time of the Board’s institution decision, depositions will have taken place and discovery will have largely been completed.” *Id.* Patent

Owner also contends that Petitioner “has not exercised diligence” because “Petitioner waited over 11 months after service of the complaint [in the District Court Litigation] to file” the Petition. *Id.* at 11–12. According to Patent Owner, the Petition “largely tracks the invalidity charts Petitioner served nearly four months” earlier, and, thus, there is “no reasonable justification for the delay.” *Id.* Thus, Patent Owner asserts that the third factor favors denying institution. *Id.* at 10.

The evidence of record indicates that the District Court and the parties invested minimal resources in the District Court Litigation as to issues of unpatentability involving the ’252 patent. Petitioner served its preliminary invalidity contentions, and the District Court issued a claim construction order. Ex. 1012; Ex. 2006. But the District Court did not construe any terms in the ’252 patent. *See* Ex. 2006, 21–22. And the evidence of record indicates that fact discovery is ongoing, expert discovery has not begun, and the deadline for dispositive motions is not until November 2022. Ex. 1043, 4–5; Ex. 1044, 1. Further, Petitioner exercised reasonable diligence in filing the Petition about four months after serving its preliminary invalidity contentions and about three months after receiving Patent Owner’s preliminary election of asserted claims in the District Court Litigation. Ex. 1012, 113; Ex. 1017, 5. Thus, we determine that the third *Fintiv* factor weighs against discretionary denial of institution.

4. *Factor 4 – Overlap between issues raised in the petition and in the parallel proceeding*

Under the fourth *Fintiv* factor, we consider the “overlap between issues raised in the petition and in the parallel proceeding.” *Fintiv*, Paper 11 at 6. Petitioner argues that the Petition includes “materially different

grounds, arguments, and/or evidence than those presented” in the District Court Litigation. Pet. 59. Further, Petitioner states that if we institute an *inter partes* review in this case, Petitioner “will not pursue the grounds listed in the Petition, ‘or . . . any other ground involving the Ogasawara, Bolle, and Cusmariu references, *alone* under 35 U.S.C. § 102, *or in combination with any other reference* under 35 U.S.C. § 103”” in the District Court Litigation. Pet. 57–58. As a result, Petitioner contends that the fourth factor “heavily” favors institution. *Id.* at 59.

Patent Owner argues that “Petitioner’s stipulation would only remove two reference[s] out of the 31 anticipatory and obviousness references that Petitioner has asserted” in the District Court Litigation. Prelim. Resp. 13. Thus, according to Patent Owner, “the elimination of Ogasawara and Bolle from the parallel litigation will not streamline the issue of invalidity in the District Court.” *Id.* Further, Patent Owner contends that “many of the 31 references Petitioner has reserved the right to assert [in the District Court Litigation] will involve litigating issues that overlap with those raised” in the Petition. *Id.* In particular, Patent Owner argues that Petitioner “provided an invalidity chart quoting teachings from [U.S. Patent No. 6,947,571 (‘Rhoads’)] that are similar to the teachings from Ogasawara cited in the [P]etition.” *Id.* Thus, Patent Owner contends that the fourth factor “is at best neutral.” *Id.* at 15.

The Petition challenges claims 18, 26, 27, 29 and 31, and relies on Ogasawara, Bolle, and Cusmariu. Pet. 6–7. Petitioner’s invalidity contentions in the District Court Litigation address the same claims and rely on Ogasawara and Bolle. Ex. 1012, 58. Nonetheless, Petitioner stipulates that it will not pursue the grounds asserted in the Petition or any other

ground involving Ogasawara, Bolle, and Cusmariu in the District Court Litigation. Ex. 1011, 2–3. Petitioner’s stipulation is broader than the stipulation in *Sand Revolution II, LLC v. Continental Intermodal Grp. – Trucking LLC*, IPR2019-01393, Paper 24 at 12 (PTAB June 16, 2020) (informative), because Petitioner’s stipulation includes any grounds involving Ogasawara, Bolle, and Cusmariu, not just the grounds asserted in the Petition. Thus, we determine that the fourth *Fintiv* factor weighs against discretionary denial of institution.

5. *Factor 5 – Whether the petitioner and the defendant in the parallel proceeding are the same party*

Under the fifth *Fintiv* factor, we consider “whether the petitioner and the defendant in the parallel proceeding are the same party.” *Fintiv*, Paper 11 at 6. Here, Petitioner is the defendant in the District Court Litigation. Pet. 61; Prelim. Resp. 16. But, as we discussed for the second factor, the trial date in the District Court Litigation is about two months *after* the projected statutory deadline for a final written decision in this case. Under these circumstances, we determine that fifth *Fintiv* factor weighs against discretionary denial of institution.

6. *Factor 6 – Other circumstances that impact the Board’s exercise of discretion, including the merits*

Under the sixth *Fintiv* factor, we consider “other circumstances that impact the Board’s exercise of discretion, including the merits.” *Fintiv*, Paper 11 at 6. Petitioner argues that the sixth factor favors institution because the Petition “amply show[s] how the claims are invalid in view of Ogasawara alone or in combination with Cumariu or Bolle.” Pet. 61. Petitioner also argues that an *inter partes* review could “focus ‘in depth’ on only the ’252 patent,” and, thus, would be less complex than the District

Court Litigation that involves “eight patents.” *Id.* at 62–63. Patent Owner argues that the sixth factor favors denial because “there is at least one flaw with Petitioner’s anticipation case based on Ogasawara.” Prelim. Resp. 17. And, according to Patent Owner, because “the ’252 patent has already expired and has only ever been asserted against one party, *i.e.*[,] Petitioner,” “consideration of this petition is . . . not worth the Board’s limited resources.” *Id.* at 18.

As discussed below, on this record and at this stage of the proceeding, Petitioner presents a strong case that the challenged claims are unpatentable. *See Fintiv*, Paper 11 at 14–15 (“[I]f the merits of a ground raised in the petition seem particularly strong on the preliminary record, this fact has favored institution.”). For example, Petitioner’s evidence shows that Ogasawara discloses “operating on the data relating to the image to determine if the image contains one or more recognizable symbols,” which is the only limitation that Patent Owner disputes at this stage of the proceeding. *See* Section II.D.1. Further, we are not persuaded that an *inter partes* review would be an inefficient use of resources simply because the ’252 patent is expired, especially given that Patent Owner currently asserts the ’252 patent against Petitioner in the District Court Litigation. Thus, we determine that the sixth *Fintiv* factor weighs against discretionary denial of institution.

7. Summary

Based on our holistic view of the *Fintiv* factors, we decline to exercise our discretion under § 314(a) to deny the Petition.

B. Level of Ordinary Skill in the Art

Petitioner argues that a person of ordinary skill in the art would have had a “Bachelor of Science in Electrical Engineering, Computer Science, Computer Engineering, or equivalent, and one to two years of experience working with image processing, image recognition, or a related field.” Pet. 17 (citing Ex. 1003 ¶ 43). Petitioner’s description of the level of ordinary skill in the art is supported by the testimony of Petitioner’s declarant, Dr. Jeffrey Rodriguez. Ex. 1003 ¶ 43. Patent Owner does not propose a description of the level of ordinary skill in the art or dispute Petitioner’s description. We adopt Petitioner’s description for purposes of this Decision.

C. Claim Construction

In an *inter partes* review proceeding, a claim of a patent is construed using the same standard used in a civil action under 35 U.S.C. § 282(b), including construing the claim in accordance with the ordinary and customary meaning of the claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. 37 C.F.R. § 42.100(b). Neither party proposes an express construction for any claim terms. Pet. 18. We determine that no claim terms require express construction for purposes of this Decision.

D. Anticipation of Claims 18, 26, and 27 by Ogasawara

Petitioner argues that claims 18, 26, and 27 are anticipated by Ogasawara. Pet. 19–29. For the reasons discussed below, Petitioner demonstrates a reasonable likelihood of prevailing in showing that claims 18, 26, and 27 are anticipated by Ogasawara.

1. *Claim 18*

Claim 18 recites “[a] method for retrieving information from image processing.” Ex. 1001, 19:6–7. Petitioner presents evidence that Ogasawara discloses “an electronic shopping system [that] utilizes a program downloadable wireless video phone as a purpose-type dedicated terminal which enables a shopper to capture, recognize and decode captured images.” Pet. 19 (citing Ex. 1005, code (57), 1:16–21, 20:55–58). At this stage of the proceeding, Petitioner shows sufficiently that Ogasawara discloses the preamble of claim 18.¹

Claim 18 recites “providing a mobile device having a camera the mobile device configured to capture an image and configured to transmit data relating to the image an image processing platform.” Ex. 1001, 19:8–11. Petitioner presents evidence that Ogasawara discloses that “videographic image data is received by the system’s digital camera . . . and provided to the system’s microprocessor . . . where the received videographic information is processed by an application program previously downloaded to the wireless videophone and stored as a loaded program.” Pet. 21 (citing Ex. 1005, 19:46–51). At this stage of the proceeding, Petitioner shows sufficiently that Ogasawara discloses this limitation of claim 18.

Claim 18 recites “configuring the image processing platform to receive the data relating to the image and to conduct image processing.” Ex. 1001, 19:12–14. As discussed above, Petitioner presents evidence that,

¹ Because Petitioner presents evidence that the prior art discloses the recitations in the preamble of claim 18, at this stage of the proceeding, we need not decide whether the preamble is limiting.

in Ogasawara, “videographic image data is received by the system’s digital camera . . . and provided to the system’s microprocessor . . . where the received videographic information is processed by an application program previously downloaded to the wireless videophone and stored as a loaded . . . program.” Pet. 22–23 (citing Ex. 1005, 19:46–51). At this stage of the proceeding, Petitioner shows sufficiently that Ogasawara discloses this limitation of claim 18.

Claim 18 recites “operating on the data relating to the image to determine if the image contains one or more recognizable symbols.” Ex. 1001, 19:15–17. Petitioner presents evidence that Ogasawara’s program includes character and pattern recognition routines to determine if the image contains any recognizable symbols. Pet. 23–24 (citing Ex. 1005, 18:11–58, 20:41–67).

Patent Owner argues that “Petitioner does not cite to anything in Ogasawara that operates on the image in order to determine if the image contains recognizable symbols like a barcode.” Prelim. Resp. 21. On this record, we disagree. Ogasawara discloses a “purchase transaction program” that includes “*character recognition and/or pattern recognition*, as well as bar code decode, software.” Ex. 1005, 18:15–22 (emphasis added). Ogasawara also discloses that various “codes, indicia, text, icons, and the like may be scanned and *recognized* by modern character and pattern recognition application routines.” *Id.* at 20:55–58. Thus, at this stage of the proceeding, Petitioner shows sufficiently that Ogasawara discloses a program for recognizing symbols like a barcode.

Patent Owner argues that “determining if an image contains recognizable symbols is plainly different than performing recognition on

said symbols.” Prelim. Resp. 21–22. In particular, Patent Owner argues that “the ’252 patent discloses that its system ‘detect[s], recognize[s], and decode[s] symbols.’” *Id.* at 22. According to Patent Owner, “[t]he detection/discrimination step could, for example, be less computationally intensive than the recognition and decoding steps.” *Id.*

On this record, we disagree with Patent Owner’s argument. As discussed above, claim 18 recites “operating on the data relating to the image to determine if the image contains one or more *recognizable* symbols.” Ex. 1001, 19:15–17 (emphasis added). Patent Owner appears to interpret this limitation as excluding symbol recognition. Prelim. Resp. 21–22 (“different than performing recognition”). But Patent Owner does not explain how an image processing platform can determine if an image contains a *recognizable* symbol without performing any symbol recognition. *See id.* For example, Patent Owner does not explain how an image processing platform can determine if an image contains a barcode without recognizing the barcode. *See id.* Thus, on this record, we do not adopt Patent Owner’s interpretation.

Patent Owner also argues that Ogasawara’s program does not “determine *if* the image contains recognizable symbols” because “it is the user which informs the system whether or not the image contains recognizable symbols such as a barcode.” Prelim. Resp. 20. Patent Owner contends that “Ogasawara discloses a ‘pre-defined bar code read key,’ . . . which when ‘depressed,’ causes the purchase transaction program to ‘capture[] the bar code image taken by the digital camera.’” *Id.* at 20–21 (citing Ex. 1005, 21:12–20).

On this record, we disagree with Patent Owner's argument.

Ogasawara's bar code read key is an optional feature. Ex. 1005, 21:9–13 (“a particular function key, *such as* a pre-defined bar code read key” (emphasis added)). Ogasawara more broadly discloses the following:

If character and/or pattern recognition software was downloaded to the system as part of the program, *the customer need only inform the system that the image is ready for processing by pressing a pre-defined key on the system's keyboard*. Those skilled in the art will appreciate that *various other codes, indicia, text, icons, and the like may be scanned and recognized* by modern character and pattern recognition application routines.

Id. at 20:51–58. In other words, Ogasawara discloses that a user only needs to inform the program that an image is ready for proceeding, and then the program recognizes any symbols in the image. *Id.* Thus, Ogasawara does not require a user to inform the program that the image contains a recognizable symbol. *See id.*; *see also id.* at 22:59–63 (“[T]he system of the present invention allows bar code and/or alpha-numeric information to be captured . . . by merely placing the information within the visual image field of the system's digital camera.”). Moreover, Ogasawara's disclosure of a user pressing a pre-defined key is similar to numerous examples in the '252 patent in which a user “points and clicks” to capture an image of a target object. Ex. 1001, 16:15–17:26.

Claim 18 recites “decoding the recognizable symbols to extract symbol information by analyzing the recognizable symbols according to type.” Ex. 1001, 19:18–20. Petitioner presents evidence that Ogasawara's program decodes a bar code or other icon into an appropriate item identifier. Pet. 24–25 (citing Ex. 1005, code (57), 18:23–37, 20:55–58, 21:15–20). At

this stage of the proceeding, Petitioner shows sufficiently that Ogasawara discloses this limitation of claim 18.

Claim 18 recites “providing access to a distal server configured to use a database to identify pertinent information associated with the recognizable symbols based on the symbol information.” Ex. 1001, 19:21–24. Petitioner presents evidence that Ogasawara discloses providing the symbol information to a “server” that “searches a database and obtains a description and price for the item.” Pet. 25–26 (citing Ex. 1005, 6:45–49, 21:24–34). At this stage of the proceeding, Petitioner shows sufficiently that Ogasawara discloses this limitation of claim 18.

Claim 18 recites “allowing the mobile device to receive the pertinent information over a network.” Ex. 1001, 19:25–26. Petitioner presents evidence that Ogasawara discloses sending the pertinent information to “the customer’s wireless videophone through its telephone function.” Pet. 26–27 (citing Ex. 1005, 21:26–34). At this stage of the proceeding, Petitioner shows sufficiently that Ogasawara discloses this limitation of claim 18.

2. Claims 26 and 27

Claims 26 and 27 depend, directly or indirectly, from claim 18. Petitioner presents evidence that Ogasawara discloses the limitations of claims 26 and 27. Pet. 28–29. Other than the arguments discussed above, at this stage of the proceeding, Patent Owner does not raise any arguments relating to claims 26 and 27. On this record, Petitioner shows sufficiently that Ogasawara discloses the limitations of claims 26 and 27.

3. *Summary*

For the foregoing reasons, Petitioner demonstrates a reasonable likelihood of prevailing in showing that claims 18, 26, and 27 are anticipated by Ogasawara.

E. Obviousness of Claim 29 over Ogasawara and Cusmariu

Petitioner argues that claim 29 would have been obvious over Ogasawara and Cusmariu. Pet. 30–38. Petitioner identifies evidence indicating that the Ogasawara and Cusmariu combination teaches the limitations of claim 29, and that a person of ordinary skill in the art would have had reason to combine these references. *Id.* Other than the arguments discussed above, at this stage of the proceeding, Patent Owner does not raise any arguments relating to this asserted ground. Prelim. Resp. 22–23. On this record, Petitioner demonstrates a reasonable likelihood of prevailing in showing that claim 29 would have been obvious over Ogasawara and Cusmariu.

F. Obviousness of Claim 31 over Ogasawara and Bolle

Petitioner argues that claim 31 would have been obvious over Ogasawara and Bolle. Pet. 38–56. Petitioner identifies evidence indicating that the Ogasawara and Bolle combination teaches the limitations of claim 31, and that a person of ordinary skill in the art would have had reason to combine these references. *Id.* Other than the arguments discussed above, at this stage of the proceeding, Patent Owner does not raise any arguments relating to this asserted ground. Prelim. Resp. 22–23. On this record, Petitioner demonstrates a reasonable likelihood of prevailing in showing that claim 31 would have been obvious over Ogasawara and Bolle.

III. CONCLUSION

Petitioner demonstrates a reasonable likelihood of prevailing in showing the unpatentability of at least one of the challenged claims of the '252 patent. At this stage of the proceeding, we have not made a final determination with respect to the patentability of any of the challenged claims.

IV. ORDER

It is hereby

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of claims 18, 26, 27, 29, and 31 of the '252 patent is instituted with respect to all grounds of unpatentability set forth in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), *inter partes* review of the '252 patent shall commence on the entry date of this Order, and notice is hereby given of the institution of a trial.

IPR2021-01333
Patent 7,899,252 B2

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