

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STAYLINKED CORPORATION,
Petitioner,

v.

IVANTI, INC.,
Patent Owner.

IPR2021-01366
Patent 9,648,083 B2

Before GEORGIANNA W. BRADEN, SHARON FENICK, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

FENICK, *Administrative Patent Judge*.

DECISION

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

I. INTRODUCTION

StayLinked Corporation (“Petitioner”) filed a Petition for an *inter partes* review (Paper 2) challenging claims 1–13, 15, and 16 of U.S. Patent No. 9,648,083 B2 (Ex. 1001) (“the ’083 patent”). Ivanti, Inc. (“Patent Owner”) filed a Preliminary Response (Paper 9, “Prelim. Resp.”). We authorized additional briefing. Paper 12 (“Order”). Pursuant to this

authorization, Petitioner filed a Preliminary Reply (Paper 13) (“Prelim. Reply”) and Patent Owner filed a Preliminary Sur-reply (Paper 16) (“Prelim. Sur-reply”).

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2021). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless the Director determines . . . 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 that follow, we institute an *inter partes* review as to the challenged claims of the ’083 patent.

II. BACKGROUND

A. *Real Parties in Interest*

Petitioner identifies only itself as a real party in interest. Pet. 72. Patent Owner identifies Ivanti, Inc. as the owner of the ’083 patent, and notes that Ivanti, Inc. is wholly owned by Ivanti Software, Inc., which is wholly owned by Ivanti Intermediate Holdings, LLC, which in turn is wholly owned by Icon Software Holdings, Inc. Paper 4 (Patent Owner’s Mandatory Notices), 2.

B. *Related Matters*

Each of Petitioner and Patent Owner has identified *Ivanti, Inc. v. StayLinked Corporation*, No. 2019-cv-00075, pending in the United States District Court for the District of Utah (“the related litigation”) as a related matter. Pet. 73; Paper 4 (Patent Owner’s Mandatory Notices), 2.

Petitioner previously filed a Petition for *inter partes* review of the ’083 patent, IPR2021-00022, which was dismissed prior to institution upon

request of Petitioner. *See StayLinked Corp. v. Ivanti, Inc.*, IPR2021-00022, Paper 1 (petition filed Oct. 5, 2020); *StayLinked Corp. v. Ivanti, Inc.*, IPR2021-00022, Paper 10 (PTAB Feb. 4, 2021); Pet. 70–71, 73; Prelim. Resp. 6–7.

C. The '083 Patent

The '083 patent relates to telnet, a protocol for connections between two or more computers that provides “a fairly general, bi-directional” and traditionally text-only connection, in which each end of the session “is assumed to originate and terminate at an imaginary ‘Network Virtual Terminal’ [NVT]” so that neither the server nor the user/client needs to track the characteristics of the participant terminals. Ex. 1001, 1:27–30, 1:41–62. After connection, each end may negotiate options in order to provide additional services over and above those available within a minimal NVT. *Id.* at 1:51–52, 1:63–2:6. “A telnet connection (or session) typically is a Transmission Control Protocol (TCP) connection carrying data with interspersed telnet control information.” *Id.* at 1:47–49. The '083 patent describes that a telnet session may be customized with a script in order to help program applications, automate repetitive tasks, and provide contextually relevant customization. *Id.* at 2:12–47.

Some terminal emulation types define fields in which a user can submit information to the host. *Id.* at 2:48–50. Each field is defined independently, with a location on the screen, length, and flags to specify the type of data expected to be provided. *Id.* at 2:50–53. When field information is supplied to the host, the location is also supplied so the host can use this information to determine which field contained the data. *Id.* at 2:53–55. Fields may also be identified by assigning them unique numbers or text strings, referred to as “data identifiers.” *Id.* at 2:58–60. The '083 patent

describes that data identifiers are traditionally specified by the server and sent to the client over the terminal emulation session, but that the '083 patent describes providing the functionality on telnet clients. *Id.* at 2:64–3:10.

The '083 patent describes an embodiment in which a server hosts various software applications, including a telnet host application and databases including inventory information and other information about customers and distributors. *Id.* at 4:33–41. The server communicates wirelessly with a plurality of telnet clients, which are barcode scanners with optical scanning modules, input buttons, a display, and a headphone jack to support headphones with a microphone. *Id.* at 4:42–52, Fig. 2.

Each of the telnet clients runs a script, which, for example, allows the telnet client to scan different types of barcodes, using data identifiers. *Id.* at 5:16–35. Using the script, the telnet client receives data from the server, and detects displayable text including input fields to be displayed on the screen of the telnet client. *Id.* at 5:35–45, Fig. 3. The script on the telnet client analyzes the displayable text and adds a data identifier to a displayable field. *Id.* at 5:45–57, Fig. 3.

Then, the telnet client receives input, either from the barcode scanner or otherwise, for example through the input buttons. *Id.* at 5:60–64, Fig. 4 (element 72). A script processes the input data, by parsing the input data, and adding or removing characters. *Id.* at 5:64–6:1, Fig. 4 (element 74). For example, the script may add the current date or geographic location to scanned barcodes. *Id.* at 6:1–6:7. The script then forms messages for the server, by inserting the processed data into fields identified by data identifiers. *Id.* at 6:8–13, Fig. 4, (element 76). For example, if the script determines that a scanned barcode is of a certain type, the barcode may be

inserted into a field identified by a corresponding data identifier. *Id.* at 6:12–17.

Voice commands and a text-to-speech component may be used in order to issue commands or actions or to allow data to be input or modified before passing it to a server. *Id.* at 5:6–15, 7:16–50.

D. Illustrative Claim

Of the challenged claims, claims 1 and 8 are independent. Claim 1 is illustrative and reproduced below with bracketed notations inserted for reference, corresponding to notations used in the Petition.

1. A method implemented by a client, the method comprising:
 - [1.a] the client establishing a virtual terminal protocol session with a server, wherein the virtual terminal protocol session is a telnet session;
 - [1.b] the client receiving data from the server during the telnet session, [1.c] wherein the client is running one or more scripts;
 - [1.d] the client detecting, in the data received from the server during the telnet session, displayable text data comprising one or more input fields;
 - [1.e] the client identifying the one or more input fields from the data received from the server during the telnet session;
 - [1.f] the client associating one or more data identifiers with a particular input field from among the one or more input fields;
 - [1.g] the client receiving input data;
 - [1.h] the client processing the input data, wherein the processing comprises parsing the input data and at least one of:
 - [1.i] adding a character to the input data; and
 - removing a portion from the input data; and

[1.j] the client associating the processed input data with the particular input field based on the one or more data identifiers associated with the particular input field.

E. Prior Art and Asserted Grounds

Petitioner asserts the following grounds of unpatentability:

Claim(s) Challenged	35 U.S.C. §¹	Reference(s)/Basis
1–3, 8–13	103	Wavelink Scripting Guide ² , Teklogix ³
4–7, 13, 15, 16	103	Wavelink Scripting Guide, Teklogix, McNair ⁴
1–3, 8–13	103	Wavelink Scripting Guide, Field Data ID ⁵
4–7, 13, 15, 16	103	Wavelink Scripting Guide, Field Data ID, McNair

In addition, Petitioner submits the Declaration of Bryan S. Morse, Ph.D. (Ex. 1002).

¹ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. § 103 for applications filed on or after March 16, 2013. Petitioner uses August 16, 2007, as the “earliest possible priority date,” and applies the pre-AIA version of 35 U.S.C. § 103. Pet. 15–17; Ex. 1002 ¶ 17; Ex. 1001, code (60), 1:5–9. Patent Owner does not comment on whether this is correct. For the purpose of institution, we apply the pre-AIA version of 35 U.S.C. § 103. Our analysis and determination remain the same under either the pre- or post-AIA versions of 35 U.S.C. § 103.

² WAVELINK CORP., WAVELINK TELNETCE CLIENT SCRIPTING REFERENCE GUIDE (dated July 29, 2005) (Ex. 1004).

³ “9150 Wireless Gateway User Manual,” dated August 24, 2002 (Ex. 1005).

⁴ McNair, U.S. Patent Application 2005/0010418 A1, pub. Jan. 13, 2005 (Ex. 1006).

⁵ WAVELINK CORP., FIELD DATA ID FEATURE (dated Jan. 5, 2007) (Ex. 1033).

III. DISCRETION TO DENY INSTITUTION

A. 35 U.S.C. § 314(a)

Patent Owner argues that we should exercise discretion under 35 U.S.C. § 314(a) not to institute in light of the related litigation. Prelim. Resp. 2–30. For the reasons that follow, we decline to exercise our discretion to deny the Petition on that basis.

The Board has discretion not to institute trial. *See* 35 U.S.C. § 314(a) (authorizing, but not requiring, institution of a trial under particular circumstances); *cf. Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (“[T]he agency’s decision to deny a petition is a matter committed to the Patent Office’s discretion.”); *Harmonic Inc. v. Avid Tech, Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (explaining that under § 314(a), “the PTO is permitted, but never compelled, to institute an [*inter partes* review] proceeding”).

Our precedential and informative decisions make clear that the Board may exercise discretion not to institute an *inter partes* review in light of the advanced state of ongoing, parallel litigation. *See NHK Spring Co. v. Intriplex Techs., Inc.*, IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018) (precedential) (“*NHK Spring*”); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”); *see also Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 (PTAB May 13, 2020) (informative) (denying institution in light of an ongoing, parallel district court proceeding) (“*Fintiv II*”); *Sand Revolution II, LLC v. Cont’l Intermodal Grp. – Trucking LLC*, IPR2019-01393, Paper 24 (PTAB June 16, 2020) (informative) (“*Sand Revolution*”) (applying *Fintiv* factors in light of ongoing, parallel district court litigation and instituting trial).

In *NHK Spring*, the Board considered the advanced state of a parallel district court proceeding as a factor favoring denial of institution of an *inter partes* review. *NHK Spring*, Paper 8 at 19–20. The Board later identified a non-exclusive list of factors to consider when applying *NHK Spring* to determine if we should exercise discretion to not institute a trial in light of a parallel proceeding’s advanced state. *Fintiv*, Paper 11 at 5–6. In determining whether to exercise discretion to deny institution under 35 U.S.C. § 314(a), we consider these factors set forth in *Fintiv*. *Fintiv*, Paper 11 at 9.

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

Fintiv indicated that, in previous Board decisions, the existence of a district court stay pending Board resolution of an *inter partes* review has weighed strongly against discretionary denial, while a denial of such a stay request sometimes weighs in favor of discretionary denial. *Fintiv*, Paper 11 at 6–8.

Patent Owner argues in its Preliminary Response that it is unlikely that a stay will be granted, due to the timing of the related litigation and the Local Rules of Patent Practice (“LPR”) for the District of Utah. Prelim. Resp. 14–15 (citing Ex. 2011, 17 (LPR3.5)). However, as noted by Petitioner, subsequent to the filing of the Preliminary Response, the District Court specifically suspended the temporal limitations of this rule. Prelim. Reply 2 (citing Ex. 1038 (order entered Dec. 10, 2021 in the related litigation), 2). Patent Owner additionally argues that the District Court would be unlikely to grant a stay, because the parties and District Court have invested substantially in the related litigation during the three years it has

been pending, and because the related litigation involves other issues, e.g., trade-secret misappropriation. Prelim. Resp. 16–17.

Petitioner contends that a stay would likely be granted if we institute. Prelim. Reply 1–2. Petitioner argues that the magistrate judge “made clear” while suspending the temporal requirement of LPR3.5 that the stay would be granted. *Id.* at 2 (citing Ex. 1039 (transcript of Dec. 8, 2021, motion hearing in related litigation), 13:22–14:5, 14:13–16). In response, Patent Owner argues that this comment related to an *unopposed* request for a stay, and represented that Patent Owner would, in fact, oppose such a request. Prelim. Sur-reply 2; Ex. 1039, 13:10–16 (“If [the IPR is instituted], feel free to file that motion and I’m pretty sure no one is going to oppose it.”)).

Given the circumstances of this case, while we understand that a motion to stay would be permitted by the District Court, we decline to speculate as to whether the court would grant such a motion. *See Sand Revolution*, Paper 24 at 7 (“In the absence of specific evidence, we will not attempt to predict how the district court in the related district court litigation will proceed because the court may determine whether or not to stay any individual case, including the related one, based on a variety of circumstances and facts beyond our control and to which the Board is not privy.”). Therefore, we determine that this factor does not weigh for or against exercising discretion to deny institution.

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

The parties agree that no trial date has yet been set. Prelim. Resp. 17; Prelim. Reply 3; Prelim. Sur-reply 3 n.1; Ex. 2008, 5 (current scheduling order in the related litigation stating that “[p]arties can generally expect that

trial will be set during the quarter of the year that comes *after* the 5th month following the dispositive motion deadline”).

Patent Owner argues, based on the scheduling order and certain assumptions regarding the timing of the *Markman* hearing and *Markman* order, that the trial will take place during a three-month span from January 5, 2023 to April 5, 2023. Prelim. Resp. 19–20; Prelim. Sur-reply 2–3 & n.1. Petitioner argues that, based on Patent Owner’s assumptions (which Petitioner questions), the “quarter of the year” referred to would be the second quarter of 2023, and thus after a potential final written decision. Prelim. Reply 2–3.

Patent Owner additionally argues that Petitioner has manipulated the district court schedule to avoid a discretionary denial and has used discovery in that case and that we should weigh this factor neutrally, “rather than reward [Petitioner]’s deliberate hobbling” of the prior scheduling order “which clearly would have favored discretionary denial.” Prelim. Resp. 20. We address these and similar arguments *infra* in our discussion of the sixth *Fintiv* factor.

No trial date has been set, and even under the Patent Owner’s analysis, a trial would be in close proximity to and possibly after the expected date for our final decision. Furthermore, given that no *Markman* hearing has been scheduled, it does not appear likely that it will be held on March 11, 2022, as Petitioner estimates. Prelim. Resp. 19. It appears likely that any scheduled trial date would be after the expected date for our final decision.

For these reasons, this factor weighs against exercising discretion to deny institution. *See Sand Revolution*, Paper 24 at 8–10 (finding this factor to marginally weigh against discretion where there was no certain trial date

and the currently scheduled trial date was in relatively close proximity to the expected final decision).

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

If, at the time of the institution decision, the district court has issued substantive orders related to the challenged patent, such as a claim construction order, this fact may weigh in favor of denial. *See Fintiv*, Paper 11 at 9–10. On the other hand, if the district court has not issued such orders, this fact may weigh against discretionary denial. *Id.* at 10. Moreover, in evaluating this factor, “[i]f the evidence shows that the petitioner filed the petition expeditiously, such as promptly after becoming aware of the claims being asserted, this fact has weighed against exercising the authority to deny institution under *NHK*.” *Id.* at 11 (footnote omitted).

Petitioner argues that the investment by the District Court does not include substantive consideration of any invalidity arguments. Prelim. Reply 3. While Petitioner concedes that claim construction briefing will have concluded before our statutory deadline for this institution decision, it notes that expert reports “are months away.” *Id.* at 3–4.

Patent Owner contends that the related litigation’s docket “reflect[s] a massive level of district court investment.” Prelim. Resp. 21. While Patent Owner agrees that no substantive claim construction orders have been issued by the court, Patent Owner asserts that the court “has undeniably invested energy and resources into learning about the patented technology, the issues in the case, and the parties’ respective contentions.” *Id.* at 21–22.

Patent Owner additionally argues that the parties have made significant investments in extensive discovery and motions practice, and in preparing claim construction briefing and fact discovery. *Id.* at 21–22. Patent Owner additionally asserts that the timing of the Petition, which it

notes was filed almost two years after the receipt of a draft patent infringement complaint, weighs in favor of denial, as “[i]t is evident that [Petitioner] was intent on wringing every single bit of information from the district court proceeding before committing to filing the petition in this case.” *Id.* at 23–24.

We take special note, additionally, of the comments by the Magistrate Judge in the related litigation regarding the effort already expended by that court. *See, e.g.*, Ex. 1038, 6 n.24 (noting that the court has spent more than 19 hours in hearings); Ex. 1039 7:9–17, 7:21–25.

With respect to whether the filing of the present Petition was expeditious, Petitioner and Patent Owner both discuss the prior petition, filed October 5, 2020 and subsequently dismissed on February 4, 2021, before any institution decision, upon a request by Petitioner. Pet. 70–71; Prelim. Resp. 6–7, 13, 23–24; Prelim. Reply 4; Prelim. Sur-reply 5; *see* Ex. 2006 (*StayLinked Corp. v. Ivanti, Inc.*, IPR2021-00022, Paper 1 (petition filed Oct. 5, 2020)); *StayLinked Corp. v. Ivanti, Inc.*, IPR2021-00022, Paper 9 (motion to dismiss filed Jan. 28, 2021); Ex. 1034 (*StayLinked Corp. v. Ivanti, Inc.*, IPR2021-00022, Paper 10 (PTAB Feb. 4, 2021) (dismissing the petition)). The District Court described the IPR2021-00022 proceeding, particularly Petitioner’s request to dismiss that proceeding before institution, as involving Petitioner’s “decision to get off the metaphorical PTAB train in January 2021, and hop aboard the civil discovery train to obtain more information to bolster” this Petition. Ex. 1038, 13–14 & n.44; *see also* Ex. 1039, 5:25–7:6.

Patent Owner contends that the instant Petition was filed on the last allowable day according to 35 U.S.C. § 315(b). Prelim. Resp. 24. Petitioner responds, arguing that the timing of its filing was due to the Patent Owner’s

denial that Wavelink Scripting Guide, used in each ground of the Petition, was publicly accessible and thus available as the basis for *inter partes* review. Prelim. Reply 4–5. Patent Owner, for its part, contends that Petitioner waited to file the present Petition in order to “wring[] every single bit of information from the district court proceeding before committing to filing the petition in this case.” Prelim. Resp. 23–24.

The parties have prepared and filed certain documents related to validity and claim construction, and the District Court has had to expend time relating to scheduling and other subsidiary matters related to those filings, though the District Court has not yet scheduled or held a *Markman* hearing or issued a substantive order relating to these issues. *See, e.g.*, Exs. 2016, 2017, and 2023 (filings relating to validity and claim construction); Ex. 2008; Ex. 1046 (docket in related litigation as of February 2, 2022). Additionally, we agree that, while Petitioner filed within the one-year period of 35 U.S.C. § 315(b) and presents arguments regarding its delay, Petitioner does not clearly show diligence in filing.

In considering these facts and arguments, especially given the District Court’s investment in the related litigation, we find that this factor weighs in favor of exercising our discretion to deny institution.

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

“[I]f the petition includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding, this fact has favored denial.” *Fintiv*, Paper 11 at 12. “Conversely, if the petition includes materially different grounds, arguments, and/or evidence than those presented in the district court, this fact has tended to weigh against exercising discretion to deny institution under *NHK*.” *Id.* at 12–13.

Petitioner argues that seven claims of the '083 patent are challenged in the Petition that are not asserted in the related litigation. Pet. 72. Patent Owner, however, argues that there is no material difference between the invalidity issues: that three of the four prior art references used in the grounds of the Petition are asserted by Petitioner in the related litigation, and that all claims asserted in the related litigation are challenged in the Petition. Prelim. Resp. 24–25 (citing Ex. 2013; Ex. 2017; Ex. 2018). Patent Owner asserts that the fourth of the prior art references is redundant and that the claim scope of the challenged claims is the same as the eight claims asserted in the related litigation, with the number asserted in the related litigation limited by the local rules before the district court. *Id.* at 25–27.

Petitioner additionally has submitted a stipulation that, in substance, conforms with the stipulation discussed in *Sotera Wireless*. Ex. 1045; *Sotera, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 19 (PTAB December 1, 2020) (precedential)). Patent Owner argues that this stipulation is not effective as it is an email to counsel rather than having been entered in the district court record in the related litigation. Prelim. Sur-reply 4–5. Additionally, Patent Owner argues that, were the district court to construe the claims more narrowly than we do, Patent Owner unfairly would be subject to a narrower claim construction for validity than for infringement, allowing Petitioner to skirt the rule that patent claims are construed the same way for validity as for infringement. *Id.* at 5 (citing *Abbott Labs. v. Sandoz, Inc.*, 566 F.3d 1282, 1317 (Fed. Cir. 2009)).

We do not find Patent Owner's arguments regarding the form of the stipulation to be persuasive. *See Sand Revolution*, Paper 24 at 12 (discussing weight given to an email stipulation). Additionally, we note that the claim construction standard we apply is the same as the standard that will

be applied in the related litigation. *See infra* § IV.C. As we institute, Patent Owner will have an opportunity to make arguments regarding the plain meaning interpretation proposed by Petitioner. For these reasons and given the breadth of Petitioner’s stipulation not to pursue any prior art-based invalidity arguments before the district court, we find that this factor weighs strongly against denial of institution of trial.

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

Patent Owner and Petitioner agree the same parties to the related litigation are before us here. Prelim. Resp. 29; Prelim. Reply 5; Prelim. Sur-reply 5.

Because no trial date is set in the related litigation, it appears that, if common invalidity issues regarding the ’083 patent are in fact raised, such issues would be resolved in this proceeding first. This factor weighs against discretionary denial.

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

Additional factors we can consider include the merits.

For example, if the merits of a ground raised in the petition seem particularly strong on the preliminary record, this fact has favored institution. In such cases, the institution of a trial may serve the interest of overall system efficiency and integrity because it allows the proceeding to continue in the event that the parallel proceeding settles or fails to resolve the patentability question presented in the PTAB proceeding.

Fintiv, Paper 11 at 14–15 (footnotes omitted).

As we explain below, we find Petitioner has made a strong showing with respect to the unpatentability of the challenged claims over Wavelink Scripting Guide and Teklogix. As described below, this showing with

respect to this combination discloses each element of the method of the independent claims, and we agree that Petitioner has made a strong showing of unpatentability that at least shows a reasonable likelihood of proving the unpatentability of those claims at trial. While Patent Owner presents certain arguments regarding the merits, as discussed below, these arguments do not address the teachings of Teklogix with respect to limitation 1.d, and Patent Owner makes arguments not commensurate in scope with the claims.

Patent Owner also argues that we should consider Petitioner’s “deliberate election to proceed with district court discovery to bolster a second IPR petition after abandoning a first petition,” which it asserts is “conduct that should not be encouraged.” Prelim. Sur-reply 5. While we agree that these circumstances are unusual and merit consideration, we note that the District Court determined that they do not show misbehavior. *See* Ex. 1038, 14 (“By observing that StayLinked appears to be seeking to improve its procedural posture before the PTAB, the court is not suggesting that StayLinked has misbehaved. Indeed, the court recognizes that counsel for both sides are simply doing their best to avail themselves of the forum and procedures that will best serve their clients. After all, this is what counsel are being paid to do.”); Ex. 1039, 19:1–6, 24:1–8. Petitioner sought discovery with respect to Wavelink Scripting Guide, which is used in all grounds of this Petition; however, it has not been alleged before us that discovery was improper in any way, and Wavelink Scripting Guide is also relevant in the related litigation. *See* Ex. 2013; Ex. 2018; Ex. 2023. Petitioner ran risks related to filing this Petition when it did – that “continuing to ride the civil train at its current velocity would jeopardize its ability to leap over to the PTAB train,” as the District Court wrote. Ex. 1038, 14. We considered, in our discussion of prior factors, the related

litigation and its effect on our consideration of those factors. We are not persuaded that, in this case, Petitioner’s delay has been shown to be improper and, on this record, it does not weigh materially in favor of discretionary denial of the Petition under *Fintiv*.

Accordingly, we find that this sixth factor favors not exercising discretion to deny institution. *See Sand Revolution*, Paper 24 at 13 (“We determine, on this preliminary record, that Petitioner has set forth a reasonably strong case for the obviousness of most challenged claims. Thus, this factor weighs in favor of not exercising discretion to deny institution under 35 U.S.C. § 314(a).”).

Determination Under § 314(a)

We consider the above factors and take “a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review.” *Fintiv*, Paper 11 at 6. After considering the factors outlined in the precedential order in *Fintiv*, we decline to exercise our discretion to deny institution under § 314(a).

B. 35 U.S.C. § 325(d)

Patent Owner argues that we should exercise our discretion to deny institution under 35 U.S.C. § 325(d). Prelim. Resp. 48–55. Petitioner argues that we should not exercise such discretion. Pet. 48, 49, 70. For the reasons that follow, we decline to exercise our discretion to deny the Petition on that basis.

1. Legal Standards

Section 325(d) provides that the Director may elect not to institute a proceeding if the challenge to the patent is based on matters previously presented to the Office. Section 325(d) states, in pertinent part,

In determining whether to institute or order a proceeding under this chapter, chapter 30, or chapter 31, the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.

35 U.S.C. § 325(d).

In deciding whether to exercise discretion to deny institution under § 325(d), we use a two-part framework, determining first “whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office,” and second, “if either condition of first part of the framework is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of [the] challenged claims.” *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6, at 8 (PTAB Feb. 13, 2020) (precedential) (“*Advanced Bionics*”). To use this framework, we consider the factors set forth in *Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8, at 17–18 (Dec. 15, 2017) (precedential as to § III.C.5, first paragraph) (“*Becton, Dickinson*”). Specifically, we apply *Becton, Dickinson* factors (a), (b), and (d) to determine whether the same or substantially the same art or arguments previously were presented to the Office, and we apply *Becton, Dickinson* factors (c), (e), and (f) to determine whether Petitioner has demonstrated a material error by the Office. *Advanced Bionics*, 10. We consider the relevant *Becton, Dickinson* factors below as part of the *Advanced Bionics* framework.

2. *Advanced Bionics Part One: Whether the Same or Substantially the Same Prior Art or Arguments Previously Were Presented to the Office*

In the first part of the *Advanced Bionics* framework, we determine whether the same or substantially the same prior art or arguments presented here previously were presented to the Office. We do so by examining three of the *Becton, Dickinson* factors: “(a) the similarities and material differences between the asserted art and the prior art involved during examination; (b) the cumulative nature of the asserted art and the prior art evaluated during examination”; and “(d) the extent of the overlap between the arguments made during examination and the manner in which Petitioner relies on the prior art or Patent Owner distinguishes the prior art.” *Becton, Dickinson*, 17–18; *see Advanced Bionics*, 10.

Wavelink Scripting Guide is used in all challenges to the claims in this Petition. Pet. 16–17, 32–70. In each case, Wavelink Scripting Guide is used in combination with at least one other reference: (1) Teklogix, (2) Teklogix and McNair, (3) Field Data ID, and (4) Field Data ID and McNair. *Id.*

Wavelink Scripting Guide was included in an IDS filed by the applicant during the prosecution of the patent application resulting in the ’083 patent, applied by the Examiner and discussed by the applicant during prosecution, and discussed by the Examiner in the Notice of Allowance for that patent application. Ex. 1018, 386 (IDS), 126–30 (Office Action of Feb. 26, 2016), 111–12 (discussion in Amendment and Remarks filed by applicant on May 26, 2016), 99–101 (rejection in Office Action of June 15, 2016), 91–93 (discussion in Amendment and Remarks filed by applicant on Sept. 14, 2016), 60 (discussion by Examiner in Notice of Allowance); Pet. 13–14; Prelim. Resp. 1, 49. The other prior art references used in

combination with Wavelink Scripting Guide were not before the Examiner; however, Patent Owner argues that these references are cumulative of art that was before the Examiner. Prelim. Resp. 50–53. Patent Owner argues that Teklogix and Field Data ID are cumulative of Adema,⁶ which was cited and discussed in the Notice of Allowance, and therefore that substantially the same art and arguments at issue here were previously before the Examiner. *Id.* at 50–52; Ex. 1018, 60, 64.

a) Teklogix

(1) Patent Owner’s Contentions Regarding Adema and Teklogix

Patent Owner argues that Teklogix is cumulative of Adema. Adema describes the difficulties associated with getting data from nonstandard input/output and inputting that data into specific fields in an HTML/XML web page. Ex. 2024 ¶ 4 (cited at Prelim. Resp. 50). Adema solves this problem using applets. *Id.*

Patent Owner quotes Adema’s disclosure that an applet running on the client receives data from a standalone application and puts that data into appropriate fields of a form displayed by a browser. Prelim. Resp. 50–51 (quoting Ex. 2024 ¶ 24). Adema discloses that the server can configure the applet with “instructions which, when executed, identify particular forms and fields in the forms that should receive data from particular non-standard input devices, and this configuring information can be used by the applet . . . after the browser . . . has rendered the web page from the data sent by the server.” Ex. 2024 ¶ 25 (cited at Prelim. Resp. 51). Patent Owner contends that “[t]his teaching is precisely the basis for which StayLinked relies on

⁶ Adema et al., U.S. Patent Application No. 2005/0021886, pub. Jan. 27, 2005 (Ex. 2024).

Teklogix and Field Data ID in the Petition.” *Id.* at 51. Patent Owner additionally argues that “the examiner already considered substantially the same combinations posited by StayLinked here.” *Id.* at 51–52.

(2) *Summary of Teklogix*

Teklogix is a user manual relating to a wireless gateway product. Ex. 1005,⁷ Cover, 3–5; Ex. 1002 ¶ 65. The product can operate to facilitate communications between terminals and a host when acting as a mini-controller. Ex. 1005, 6, 60, 126, 140–42, 149; Ex. 1002 ¶¶ 66–67. When operating in this way, the product provides configuration options, including options that allow communication with hosts to be effected using a telnet protocol. Ex. 1005, 141–42, 149, 152–53, 157; Ex. 1002 ¶ 67. Communications with a terminal use TESS (Teklogix Screen Subsystem) data streams and commands. Ex. 1005, 142, 149, 148, 175; Ex. 1002 ¶ 67.

Teklogix discloses how host screens are converted to TESS, and provides parameters that can govern this conversion. Ex. 1005, 158–59; Ex. 1002 ¶¶ 67–68. One such parameter is the AIAG parameter, which “provides auto-locate and fill for input coming from bar code readers.” Ex. 1005, 159, 164–66; Ex. 1002 ¶¶ 68–70. “When bar code data is entered at a terminal, the terminal searches for ‘AIAG’ fields on the current page that can accept the bar code data.” Ex. 1005, 164; Ex. 1002 ¶¶ 68, 70. An ASCII character is used to identify an input field as an AIAG field, a mode is set, and a prefix or “match field” is set which must be matched by data received from a bar code reader in order to have that data automatically filled into the input field. Ex. 1005, 164–68; Ex. 1002 ¶¶ 68–70.

⁷ While Exhibit 1005, Teklogix, has internal page numbers inserted, the parties use the original page numbers of the document, and we follow this convention.

(3) *Becton, Dickinson Factors (a) and (b) –
Wavelink Scripting Guide and Teklogix*

Petitioner uses Teklogix, in combination with Wavelink Scripting Guide, to show that the combination teaches or suggests limitations 1.e, 1.f, 1.h, and 1.j of claim 1, and uses the combination similarly with respect to independent claim 8. Pet. 38 (relating to limitation 1.e), 37–43 (1.f), 48 (1.h), 49–52 (1.j), 56–58 (claim 8). Petitioner argues, generally, that Teklogix is not cumulative. *Id.* at 27.

Patent Owner contends that “Adema provides a detailed description of a manner in which data is input from an optical scanner into corresponding fields on an HTML/XML page, and that the applet can be configured by the server to identify into which fields the data from the optical scanner should go.” Prelim. Resp. 51. Patent Owner argues that “[t]his teaching is precisely the basis for which StayLinked relies on Teklogix and Field Data ID in the Petition.” *Id.* Patent Owner additionally argues that “the examiner already considered substantially the same combinations posited by StayLinked here.” *Id.* at 51–52.

In considering the similarities and differences between the asserted art (a combination of Wavelink Scripting Guide and Teklogix) and the prior art involved during examination (Wavelink Scripting Guide and Adema), we find that Teklogix’s disclosure regarding AIAG fields appears to be substantially different from Adema’s applet, with respect to the disclosures relevant to the limitations for which Petitioner relies upon Teklogix. While, as discussed above, Patent Owner argues that Adema teaches the identification of fields in forms that should receive data from non-standard input devices, and the use of this configuring application by a server-configured applet, on the present record Teklogix’s disclosure of the AIAG

parameter and the use of a prefix which is matched to incoming data appears substantially different from and not cumulative of the disclosures in Adema. Additionally, the Examiner never specifically considered a combination of Wavelink Scripting Guide and Adema. Thus, with respect to *Becton*, *Dickinson* factors (a) and (b), we determine that the combinations including Wavelink Scripting Guide and Teklogix are materially different from and not cumulative of the prior art evaluated during examination.

b) Field Data ID

(1) Summary of Field Data ID

Field Data ID is a document from Wavelink Corporation explaining a way to create a script, which refers to Wavelink Scripting Guide. Ex. 1033, 1, 3; Ex. 1002 ¶ 75. The document describes using a script to select a portion of the screen as a field, and assign a unique ID, such as a letter, to that field. Ex. 1033, 1–2; Ex. 1002 ¶ 75. Through scripting, “[a]ny time a barcode beginning with that ID is scanned, the information is automatically populated in the corresponding field.” Ex. 1033, 1; Ex. 1002 ¶ 75.

Additionally, the script can add a prefix to the scanned data. Ex. 1033, 1

(2) Becton, Dickinson Factors (a) and (b) – Field Data ID

Petitioner uses Field Data ID, in combination with Wavelink Scripting Guide, to show that the combination teaches or suggests limitations 1.f and 1.j, and uses the combination similarly with respect to independent claim 8. Pet. 44–47 (relating to limitation 1.f), 52–54 (1.j), 56–58 (claim 8).

Petitioner argues, generally, that Field Data ID is not cumulative. *Id.* at 44.

Patent Owner argues that Field Data ID is similar to or cumulative of Adema, because it relies on a server/host to associate a data identifier with an input field. Prelim. Resp. 51. However, Patent Owner does not explain, and we do not discern, how Field Data ID relies on a server/host to perform

this association. On the present record, Adema's teachings regarding an applet do not describe a data identifier associated with an input field as recited in limitations 1.f and 1.j of claim 1. Additionally, the Examiner never specifically considered a combination of Wavelink Scripting Guide and Adema. With respect to *Becton, Dickinson* factors (a) and (b), we determine that the combinations including Wavelink Scripting Guide and Field Data ID are materially different from and not cumulative of the prior art evaluated during examination.

c) Becton, Dickinson Factor (d)

In evaluating this factor, we examine “the extent of the overlap between the arguments made during examination and the manner in which Petitioner relies on the prior art or Patent Owner distinguishes the prior art.” *Becton, Dickinson*, 17–18; *see Advanced Bionics*, 10.

While, as discussed above, we do not agree that the combinations asserted in the Petition are substantially similar to or cumulative of the art considered by the Examiner, we note a contradiction between the statements of the Examiner during prosecution regarding Wavelink Scripting Guide and the manner in which Petitioner relies on that reference.

During prosecution, after initially rejecting certain claims based on Wavelink Scripting Guide and subsequently considering patentability arguments relating to Wavelink Scripting Guide, the Examiner found, in the Notice of Allowance, that Wavelink Scripting Guide “does not disclose a script for parsing and modifying user input and fails to disclose associated processed user input with an input field.” Ex. 1018, 60. This statement appears to correspond with the subject matter of the recitations of limitations 1.h (“processing the input data, wherein the processing comprises parsing the input data”), 1.i (processing additionally comprises “at least one of:

adding a character to the input data; and removing a portion from the input data”), and 1.j (“the client associating the processed input data with the particular input field based on the one or more data identifiers associated with the particular input field”), which were added to claim 1 by an authorized Examiner’s amendment at the time of allowance. *Id.* at 54–62.

Our summary of Wavelink Scripting Guide is found below, in Section IV.D.1. Petitioner relies on Wavelink Scripting Guide or on the combination of Wavelink Scripting Guide and Teklogix for limitation 1.h. Pet. 47–48. For limitation 1.i, Petitioner relies on Wavelink Scripting Guide. *Id.* at 48–49. Lastly, for teaching the recitations of limitation 1.j, Petitioner relies on the teachings of Teklogix or on Field Data ID, in combination with Wavelink Scripting Guide. *Id.* at 49–54.

With respect to limitation 1.j, the additional use of Teklogix and Field Data ID, which we have determined are not cumulative of art before the Examiner, leads us to determine that arguments regarding this limitation were not previously before the Office. However, while the record is not clear regarding whether the statement about Wavelink Scripting Guide in the Notice of Allowance reflects specific arguments presented to the Office, the Examiner’s statement in the Notice of Allowance appears to be directly contradicted by assertions in the Petition relating to limitations 1.h and 1.i of claim 1 (and similar limitations in claim 8).

Therefore, we determine that, in this instance, with respect to the teachings of Wavelink Scripting Guide and the recitations of limitations 1.h and 1.i, we should proceed to the second step of *Advanced Bionics* and examine whether Petitioner has demonstrated a material error by the Office, with respect to the subject matter of these limitations.

3. *Advanced Bionics Part Two: Whether Petitioner Has Demonstrated a Material Error by the Office*

In the second part of the *Advanced Bionics* framework, we examine whether Petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims. We do so by examining three of the *Becton, Dickinson* factors: “(c) the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection”; “(e) whether Petitioner has pointed out sufficiently how the Examiner erred in its evaluation of the asserted prior art; and (f) the extent to which additional evidence and facts presented in the Petition warrant reconsideration of the prior art or arguments.” *Becton, Dickinson*, 17–18; *see Advanced Bionics*, 10–11.

Factor (c) focuses on the record developed by the Office in previously reviewing the art or arguments, and where, as here, “the alleged error is a disagreement with a specific finding of record by the Office,” we look to determine whether the Petitioner’s showing of Office error overcomes that specific finding. *Advanced Bionics*, 10–11.

With respect to limitation 1.h, Petitioner asserts that Wavelink Scripting Guide describes scripting actions for obtaining input data (“scan data”) and parsing input data by obtaining the scan type and the number of characters in the scanned string. Pet. 47 (citing Ex. 1004, 12, 71, 76; Ex. 1002 ¶ 136). Petitioner additionally argues that this was not substantively addressed and the Examiner erred in not recognizing this teaching in Wavelink Scripting Guide. *Id.* at 47–48. Patent Owner argues that Petitioner does not present explanation or analysis regarding Examiner error. Prelim. Resp. 54.

Wavelink Scripting Guide describes barcode scanning and processing via scripting, including by getting scan type for a scanned string and determining the length of the string. Ex. 1004,⁸ 11–12, 71, 76. Petitioner presents citations, analysis, and testimony regarding this teaching. Without reaching a final decision regarding these teachings of Wavelink Scripting Guide, on the present record we agree that this specific citation within Wavelink Scripting Guide and the testimony regarding it sufficiently points out material Examiner error in the conclusion with respect to the subject matter of limitation 1.h of claim 1.

With respect to limitation 1.j, Petitioner points out that Wavelink Scripting Guide provides a sample script that allows the insertion of a string into a scanned barcode. Pet. 48–49 (citing Ex. 1004, 12; Ex. 1002 ¶¶ 138–140). Petitioner additionally argues that this was not substantively addressed during Examination and the Examiner erred in not recognizing this teaching in Wavelink Scripting Guide. *Id.* at 49. Patent Owner argues that Petitioner does not present explanation or analysis regarding Examiner error. Prelim. Resp. 54.

Wavelink Scripting Guide provides a sample script showing how a string (such as “XXYY” in the example provided) can be inserted into a specific spot within a scanned string. Ex. 1004, 11–12. Petitioner presents citations, analysis, and testimony regarding this teaching. Without reaching a final decision regarding these teachings of Wavelink Scripting Guide, on the present record we agree that this specific citation within Wavelink Scripting Guide and the testimony regarding it sufficiently points out

⁸ For Exhibit 1004, we cite to the page numbers appearing in the publication rather than the page numbers applied to the exhibit.

material Examiner error in the conclusion with respect to the subject matter of limitation 1.i of claim 1.

In each case, specific citations were made by Petitioner to portions of Wavelink Scripting Guide that were not discussed by the Examiner in the prosecution history, and Petitioner relies on additional evidence in the form of the declaration of Dr. Morse. Accordingly, we find that *Becton, Dickinson* factors (e) and (f) weigh in favor of a finding that Petitioner has shown material error by the Office.

Based on the foregoing we conclude that Petitioner has demonstrated that the Examiner erred in a material manner with respect to the art and argument that were previously before the Office.

4. Conclusion

For the reasons discussed above, we determine that, to the extent described above, “the same or substantially the same art [asserted here] previously was presented to the Office,” but we determine that Petitioner “has demonstrated that the Office erred in a manner material to the patentability of challenged claims.” *Advanced Bionics*, at 8. Accordingly, we do not exercise discretion under § 325(d) to deny institution.

IV. OBVIOUSNESS ANALYSIS

A. Legal Standards

“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic*, 815 F.3d at 1363 (citing 35 U.S.C. § 312(a)(3) (requiring [*inter partes*] review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)). This burden never shifts to Patent Owner. *See Dynamic Drinkware, LLC v.*

Nat'l Graphics, Inc., 800 F.3d 1375, 1378 (Fed. Cir. 2015) (citing *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1326–27 (Fed. Cir. 2008)) (discussing the burden of proof in *inter partes* review). Furthermore, Petitioner must explain with particularity how the prior art would have rendered the challenged claims unpatentable. 35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104 (“The petition must specify where each element of the claim is found in the prior art patents or printed publications relied upon.”).

A claim is unpatentable under 35 U.S.C. § 103 if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) objective evidence of nonobviousness, i.e., secondary considerations.⁹ *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

In the Petition, Petitioner contends that a person of ordinary skill in the art would be a person with a bachelor's degree in electrical engineering, computer engineering, computer science, or a related field and at least 2 years of experience in *the field of client-side programming*, or “a person with equivalent education, work, or experience in this field.” Pet. 15

⁹ Neither the Petition nor the Preliminary Response presents evidence on the fourth *Graham* factor. We therefore do not consider that factor in this decision.

(emphasis added) (citing Ex. 1002 ¶¶ 22–23). Petitioner ostensibly relies on Dr. Morse’s declaration, however Dr. Morse describes the field relevant for post-education experience or equivalent education, work, or experience as “*the field of terminal emulation or client-server applications.*” Ex. 1002 ¶ 22 (emphasis added).

Patent Owner does not comment on the level of ordinary skill.

For purposes of this Decision on Institution, we adopt Dr. Morse’s proposed level of ordinary skill in the art. This level of skill comports with the teachings of the ’083 patent and the asserted prior art. Our decision would not be different if we adopted the level of skill described in the Petition.

C. Claim Construction

In an *inter partes* review, claims are construed using the same claim construction standard that would be used to construe the claims in a civil action under 35 U.S.C. § 282(b), including construing the claims in accordance with the ordinary and customary meaning of such claims 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). We apply the claim construction standard as set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc).

Claim terms are generally given their ordinary and customary meaning as would be understood by one with ordinary skill in the art in the context of the specification, the prosecution history, other claims, and even extrinsic evidence including expert and inventor testimony, dictionaries, and learned treatises, although extrinsic evidence is less significant than the intrinsic record. *Phillips*, 415 F.3d at 1312–17. Usually, the specification is

dispositive, and it is the single best guide to the meaning of a disputed term. *Id.* at 1315.

Only those terms that are in controversy need be construed, and 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) (citing *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

Petitioner asserts that no specific claim terms require express construction in this proceeding. Pet. 16. Patent Owner notes that each side has proposed claim constructions in the related litigation, but does not propose that any claim term be construed. Prelim. Resp. 11–13 (citing Exs. 2015–2019); Ex. 2032; Ex. 1047. In the related litigation, the parties appear to (1) agree on the proper construction of two claim terms and (2) dispute the proper construction of four others. Ex. 2032, 2; Ex. 1047,¹⁰ 7–16. After considering the parties’ positions and the record at this time, for the purposes of institution, we determine no claim construction is required. *See Nidec Motor Corp.*, 868 F.3d at 1017.

D. Claims 1–3 and 8–13
Obviousness over Wavelink Scripting Guide and Teklogix

Petitioner argues that claims 1–3 and 8–13 are obvious over a combination of Wavelink Scripting Guide and Teklogix.¹¹ Pet. 32–43, 47–52, 54–64. Patent Owner presents arguments relating to these contentions. Prelim. Resp. 36–47. For the reasons discussed below, we determine that

¹⁰ For Exhibit 1047, we cite to the page numbers appearing in the publication rather than the page numbers applied to the exhibit.

¹¹ Teklogix was summarized in Section III.B.2.a.(2) of this decision.

Petitioner has shown a reasonable likelihood that the Petitioner would prevail with respect to these claims.

1. Wavelink Scripting Guide

Wavelink Scripting Guide is a reference guide that provides a user with information about creating and executing scripts to automate processes using Wavelink TelnetCE Client. Ex. 1004, cover, 1–2; Ex. 1002 ¶ 60. Scripts can be created manually with Script Editor or captured using Script Capture. Ex. 1004, 2–3, 7–22, 37–55; Ex. 1002 ¶¶ 61–62. These scripts can then be executed, and this execution can be activated by a number of possible events, including a barcode scan. Ex. 1004, 33–35; Ex. 1002 ¶ 61.

One example provided is a script activated upon scanning of a barcode, in which the initial scan data and a number indicating a scan type are obtained via a string variable and a number variable. Ex. 1004, 11–12, 35, 79–81; Ex. 1002 ¶ 64. The example script obtains a scanned barcode and inserts a string (“XXYY”) into that scanned barcode after the first six characters (if the barcode is at least six characters long). Ex. 1004, 12; Ex. 1002 ¶ 64.

Another script example in Wavelink Scripting Guide is a script that verifies that a screen is a desired screen, sets the cursor position, enters certain strings in certain positions, waits for a second desired screen, enters an additional string, and provides a message. Ex. 1004, 37; *see id.* at 61–78 (explaining scripting actions); Ex. 1002 ¶ 63.

In the examples of the use of Script Capture, Figure 3-13 is provided, which is reproduced immediately below.

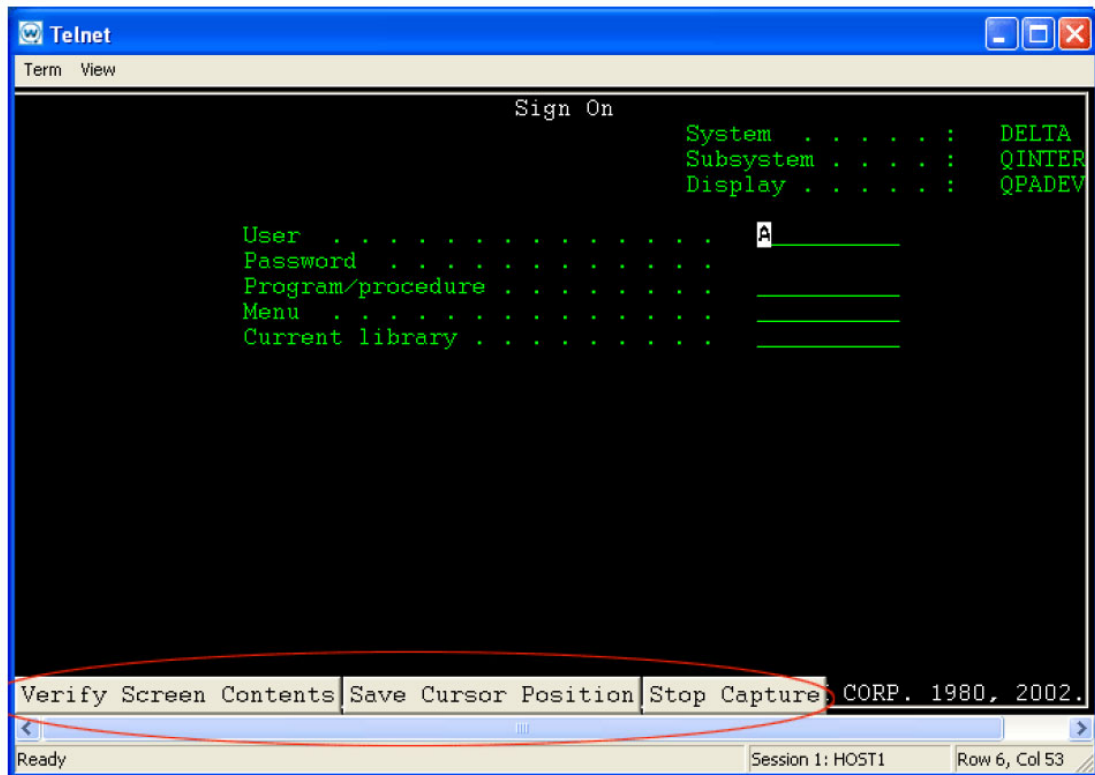


Figure 3-13. *Verify Screen Contents and Save Cursor Position Buttons*

Figure 3-13 shows a Verify Screen Contents button used during script capture. Ex. 1004, 21–22; Ex. 1002 ¶ 62. While creating a script this button is used to add command(s) verify that the screen shown during execution of the script matches the emulated screen shown during script capture before proceeding with further scripted actions. Ex. 1004, 19–22.

Other script examples are also provided in Wavelink Scripting Guide. *Id.* at 13–14, 29–30, 57–60.

2. Claim 1

Petitioner argues that claim 1 is obvious over Wavelink Scripting Guide and Teklogix. Pet. 32–43, 47–52. Patent Owner presents arguments relating to these contentions. Prelim. Resp. 36–47.

*a) Preamble of Claim 1 –
“A method implemented by a client, the method comprising”*

Without arguing that the preamble is limiting, Petitioner contends that Wavelink Scripting Guide discloses the subject matter of the preamble in the Script Editor that allows a user to create and execute scripts to automate processes on the client. Pet. 32 (citing Ex. 1004, 2; Ex. 1002 ¶¶ 78–79). Patent Owner does not dispute this contention.

Without determining whether or not the preamble is limiting, we determine that, on this record and for the purposes of institution, Petitioner has sufficiently shown that Wavelink Scripting Guide discloses the subject matter of the preamble of claim 1.

b) Limitation (1.a) – “the client establishing a virtual terminal protocol session with a server, wherein the virtual terminal protocol session is a telnet session”

Petitioner argues that Wavelink Scripting Guide discloses limitation 1.a of claim 1 in the disclosure of a client running scripts when connected to a host. Pet. 32–33 (citing Ex. 1004, 3, 22; Ex. 1002 ¶ 80). Petitioner contends that the telnet host described in Wavelink Scripting Guide teaches the server, and that the client is described as being connected to the host in a session. *Id.* Patent Owner does not dispute this contention.

For the reasons advanced by Petitioner, we agree that Wavelink Scripting Guide discloses a telnet host in a session with a client. We determine that, on this record and for the purposes of institution, Petitioner has sufficiently shown that Wavelink Scripting Guide teaches the subject matter of limitation 1.a of claim 1.

c) Limitations (1.b) and (1.c) – “the client receiving data from the server during the telnet session, wherein the client is running one or more scripts”

Petitioner argues that Wavelink Scripting Guide discloses limitation 1.b of claim 1 in the disclosure of changes in the emulation screen resulting from updates from the telnet host. Pet. 33 (citing Ex. 1004, 13; Ex. 1002 ¶ 81). Petitioner additionally argues that this must be done while the client is running one or more scripts (as recited in limitation 1.c) because of the structure of the claim, and that this is disclosed in Wavelink Scripting Guide’s disclosure of an example script that waits to receive a screen update and makes a determination regarding the contents of the screen update. *Id.* (citing Ex. 1004, 37; Ex. 1002 ¶ 82). Petitioner further argues that Wavelink Scripting Guide describes the client running an active script during an emulation session, teaching limitation 1.c. *Id.* at 33–34 (citing Ex. 1004, 3, 37; Ex. 1002 ¶ 83).

Petitioner argues that the scripts must cause the client to perform the method steps recited in the balance of the claim, and that it shows how the prior art teaches or suggests this in the rest of its arguments. *Id.* at 34. Patent Owner “takes no position as to that interpretation,” but for the purposes of its Preliminary Response does not dispute it. Prelim. Resp. 40.

After considering the arguments and citations presented by Petitioner, we determine that, on this record and for the purposes of institution, Petitioner has sufficiently shown that Wavelink Scripting Guide teaches the subject matter of limitations 1.b and 1.c of claim 1.

d) Limitation (1.d) – “the client detecting, in the data received from the server during the telnet session, displayable text data comprising one or more input fields”

(1) Petitioner’s Contentions

Petitioner argues that Wavelink Scripting Guide discloses limitation 1.d of claim 1. Pet. 35–36. Petitioner argues that Wavelink Scripting Guide shows displayable text data in the text shown in Figure 3-13, including the text “Sign On” and “User” and underlined spaces that comprise one or more input fields. *Id.* (citing Ex. 1004, 22; Ex. 1002 ¶¶ 85–91). Petitioner cites an exemplary script in Wavelink Scripting Guide that recognizes this screen and setting a cursor position on it using a script. *Id.* at 36 (citing Ex. 1004, 37).

Additionally, Petitioner argues that Wavelink Scripting Guide describes the client detecting one or more input fields in a screen in the display of input fields and a cursor in an input field. *Id.* at 35–36 & n.6 (citing Ex. 1002 ¶ 92). Petitioner cites Dr. Morse’s testimony that limitation 1.d of claim 1 describes functionality would have been commonly known in the field of terminal emulation. Ex. 1002 ¶ 92.

(2) Patent Owner’s Preliminary Response

Patent Owner argues that Petitioner’s showing with respect to the client detecting displayable data comprising one or more input fields is deficient. Prelim. Resp. 38–44. Patent Owner asserts that while Wavelink Scripting Guide describes how to create scripts, it does not provide any guidance for creating a script that provides this functionality. *Id.* at 40 (“[Wavelink Scripting Guide] doesn’t teach how to use the commands in the specific sequence required by the ’083 patent. It is akin to a music book that teaches various chords; it is left to the user to use the chords to create actual

music.”). Patent Owner notes that the example including Figure 3-13 is not used in the same context as the example script on page 37 of Wavelink Scripting Guide, as it relates to the Script Capture functionality rather than the Script Editor functionality. *Id.* at 42–43.

With respect to the Script Capture example (Ex. 1004, 19–22), Patent Owner argues, “[i]t is one thing for a user to observe a screen and detect an input field; it is quite another thing for a client, via a script, to detect an input field as recognized by the ’083 patent.” Prelim. Resp. 43. With respect to the Script Editor example (Ex. 1004, 37–55), Patent Owner argues that this example is of a script “for verifying that a *script starts on the correct screen*, and not for detecting an input field.” Prelim. Resp. 43 (citing Ex. 1004, 38). Patent Owner argues that the approach in this example, which determines which screen is being displayed “demonstrates an approach that is entirely different from the invention of the ’083 patent,” because if the screen layout changes, the script would not be able to detect an input field at all. *Id.* at 43–44.

Patent Owner additionally argues that the Field Data ID reference, used in other grounds of the Petition, shows that Wavelink Scripting Guide does not disclose a client running a script that detects and identifies an input field from data received. Prelim. Resp. 46–47. This is because, according to Patent Owner, the Field Data ID reference describes identification of an input field by a user. *Id.* (citing Ex. 1033, 1–2).

Patent Owner additionally argues that the Petition’s position that the ability to detect input fields in data received from a server would have been known to be a part of a terminal emulator is conclusory and not supported by evidence, except for a citation to the ’083 patent’s specification, which

Patent Owner does not agree supports the Patent Owner's conclusion.
Prelim. Resp. 41–42 n.20.

(3) Analysis

On the present record and at this point in the proceeding, we find that Petitioner has made a sufficient showing regarding the client detecting, in data received from the server, displayable text data comprising one or more input fields, as recited in limitation 1.d. While we agree with Patent Owner that Wavelink Scripting Guide is intended to teach the use of the scripting functionality, and not specifically to describe client functionality or any specific script, this does not contravene Petitioner's assertions as to what it does, in fact, teach. A prior art reference may be relied upon for all that it fairly teaches or suggests. *See In re Young*, 927 F.2d , 591 (Fed. Cir. 1991). The disclosure referenced by Petitioner – the example scripts, the emulation screen, and the incidental disclosures – are available, then, for their teachings or suggestions, even if the purpose of Wavelink Scripting Guide was not related to the subject matter of these examples or incidental disclosures. Additionally, Petitioner's arguments regarding whether Wavelink Scripting Guide describes a different approach than that described in the specification of the '083 patent are inapposite to the extent that they do not address the teachings of the prior art and the recitations of the challenged patent.

Patent Owner argues that the tool creates a script that merely verifies that a script starts at the correct field and only mimics the user's actions performed in detecting input fields, and thus neither client nor script actually detects the input field. Prelim. Resp. 42–44. However, while Patent Owner argues that “[i]f the screen layout changes, the script created with the Script Capture option is unable to detect an input field at all (because it is reliant on

visual inspection by a user in the first instance),” there is an implicit recognition in this argument that if the screen layout does not change, the script does detect the input field, based on the instructions in the script, which in turn was based on the visual inspection by the user. Prelim. Resp. 43–44. Petitioner provides the testimony of Dr. Morse that the script not only verifies the correct screen, but also sets the cursor to two input fields and inputs data into those fields. Ex. 1002 ¶¶ 86–91, 94–95 (cited at Pet. 35–37).

We disagree with Patent Owner’s argument regarding Field Data ID’s showing regarding Wavelink Scripting Guide. While the Field Data ID reference teaches a user initially identifying data fields, this is done while capturing a script using the Field Data ID feature, which, in the context of Wavelink Scripting Guide, would be used at a client during a session with a host. Ex. 1033, 1–3; *see* Pet. 46–47; Ex. 1002 ¶ 129.

We agree with Patent Owner that Petitioner’s assertion that “[a]n ability to detect fields in data received from a server would have been a basic feature of modern terminal emulators” is conclusory. *See* Pet. 36 n.6; Prelim. Resp. 41–42 n.20. However, for the reasons discussed above, on the present record, Petitioner adequately shows for the purposes of institution that Wavelink Scripting Guide teaches limitation 1.d, in its teaching of a client detecting a screen with input fields and setting a cursor position on the screen at an input field using a script. Pet. 35–36; Ex. 1002 ¶¶ 86–91.

e) Limitation (1.e) – “the client identifying the one or more input fields from the data received from the server during the telnet session”

(1) Petitioner’s Contentions

Petitioner argues that Wavelink Scripting Guide teaches limitation 1.e in its depiction of input fields on the screen depicted in Figure 3-13 as

distinct from other data displayed on the screen and in its depiction of the cursor being placed in an input field. Pet. 36 (citing Ex. 1004, 22; Ex. 1002 ¶ 94). Petitioner argues that the example script in Wavelink Scripting Guide that verifies that the current screen is the desired screen and sets the cursor position to the input fields to enter input data teaches or suggests the identification of input fields from the data received from the server. *Id.* at 36–37 (citing Ex. 1004, 37, 45–46; Ex. 1002 ¶ 95).

Additionally, Petitioner argues Wavelink Scripting Guide in combination with Teklogix teaches or suggests this limitation, in Teklogix’s teaching of the identification of an AIAG field based on an AIAG Field Identifier. Pet. 37 (citing Ex. 1005, 165–166; Ex. 1002 ¶ 96). Petitioner references the next section of its Petition, in which it argues that limitation 1.f of claim 1 is obvious in view of the combination of Wavelink Scripting Guide with Teklogix’s teachings regarding an AIAG Field Identifier and AIAG Prefix. Pet. 39–42 (citing Ex. 1002 ¶¶ 106–108, 110–116, 118). In that section, Petitioner argues that the two references are from the same field of art, with numerous technical similarities. Pet. 40 (citing Ex. 1004, 3, 9, 11–13, 22, 27, 37, 45–49, 64; Ex. 1005 6, 141–142, 149, 158, 164, 179–184; Ex. 1002 ¶ 108). Petitioner further argues that one of ordinary skill in the art could have implemented handling of a received AIAG field with an AIAG Field Identifier on a Wavelink TelnetCE Client, and would have been motivated to improve on the functionality of the client by using the AIAG automatic matching of barcode data to make data entry easier and reduce errors. *Id.* at 40–41 (citing Ex. 1002 ¶¶ 110, 115, 116).

(2) Patent Owner’s Preliminary Response

Patent Owner argues that Wavelink Scripting Guide does not teach limitation 1.e, because the example scripts only detect the presence of text

on the screen data received from the host, and not an input field, and the scripts reflect only a stored version of a user's maneuvering to a displayed input field. Prelim. Resp. 44–45. Patent Owner's argument regarding Field Data ID, discussed and addressed above, also applies to this limitation. *Id.* at 46–47.

With respect to the Petitioner's arguments relating to the combination of Wavelink Scripting Guide and Teklogix, Patent Owner argues that no analysis is presented aside from that made with respect to limitation 1.f, asserting that "there is nothing offered by the Teklogix reference that would suggest limitation [1.e]." *Id.* at 45–46. Patent Owner additionally argues that no "reason or rationale" for the combination is asserted. *Id.* at 45–46 n.21.

(3) Analysis

As discussed above with respect to limitation 1.d, Petitioner's citation of the example scripts of Wavelink Scripting Guide and supporting testimony show that a client running such scripts would act to detect displayable text comprising input fields and to identify input fields from the data. While we understand Patent Owner's contentions that this identification is based on the screen presented and a user's prior identification of the location of input fields on the screen, we agree with Petitioner that it has shown, on the present record and for the purposes of institution, that a client running the script would detect and identify input fields sufficiently to enter data into those input fields, and therefore, upon the present record and for the purpose of institution, Petitioner has sufficiently shown that Wavelink Scripting Guide teaches the subject matter of limitation 1.e of claim 1.

Additionally, Petitioner sufficiently shows, as summarized above, that a combination of Wavelink Scripting Guide and Teklogix teaches or suggests the use of AIAG data sent with screen data to detect and identify input fields, and has set forth a motivation to combine. Patent Owner's arguments regarding this combination ignore the arguments and evidence set forth with respect to limitation 1.f, which we find sufficiently show the proposed combination and the motivation, supporting the argument made with respect to limitation 1.e. Therefore, upon the present record and for the purpose of institution, Petitioner has sufficiently shown that the combination of Wavelink Scripting Guide and Teklogix teaches the subject matter of limitation 1.e of claim 1.

f) Limitation (1.f) – “the client associating one or more data identifiers with a particular input field from among the one or more input fields”

Petitioner argues that this limitation is taught or suggested by the combination of Wavelink Scripting Guide and Teklogix. Pet. 37–43. Petitioner argues that it would have been obvious to use scripting, as taught in Wavelink Scripting Guide, to implement Teklogix's AIAG parameter on a client terminal. Pet. 39–42 (citing Ex. 1004, 1–2, 8, 15; Ex. 1002 ¶¶ 110–113, 116). Petitioner argues that, because the Wavelink TelnetCE Client used scripts to perform terminal-emulation functions, one of ordinary skill in the art would have used a script to associate an AIAG Field Identifier or a received AIAG Prefix with a particular input field. *Id.* at 41–42 (citing Ex. 1002 ¶ 110).

Alternatively, Petitioner argues that even if no AIAG Prefix were supplied by a host, one of ordinary skill would have been motivated to insert an AIAG Prefix into an input field by means of client-side scripting, in order to identify a field for barcode input and add an AIAG Prefix to an input

field, thus enabling automatic input of barcode scanning as described in Teklogix. Pet. 42–43 (citing Ex. 1002 ¶¶ 119–121).

Patent Owner does not dispute this contention.

For the reasons advanced by Petitioner, we agree that the combination of Wavelink Scripting Guide and Teklogix teaches or suggests the client running such a script associating an AIAG Field Identifier or AIAG Prefix with an input field. We determine that, on this record and for the purposes of institution, Petitioner has sufficiently shown that the combination of Wavelink Scripting Guide and Teklogix teaches the subject matter of limitation 1.f of claim 1.

g) Limitation (1.g) – “the client receiving input data”

Petitioner argues that this limitation is taught or suggested by Wavelink Scripting Guide. Pet. 47. Petitioner cites Wavelink Scripting Guide’s description of activating a script with a barcode scan to get input data as teaching this limitation. *Id.* (citing Ex. 1004, 35; Ex. 1002 ¶ 135).

Patent Owner does not dispute this contention.

For the reasons advanced by Petitioner, we agree that, on this record and for the purposes of institution, Petitioner has sufficiently shown that Wavelink Scripting Guide teaches the subject matter of limitation 1.g of claim 1.

h) Limitations (1.h) and (1.i)– “ the client processing the input data, wherein the processing comprises parsing the input data and at least one of: adding a character to the input data; and removing a portion from the input data”

Petitioner argues that these limitations are taught or suggested by Wavelink Scripting Guide. Pet. 47–49. Petitioner argues that parsing input data is taught in Wavelink Scripting Guide’s description of scripting actions for parsing input data, such as the actions “Get_Scan_Type_Name” and

“String_Length” that return the name of the scan type and the number of characters in the string. *Id.* at 47 (citing Ex. 1004, 12, 71, 76; Ex. 1002 ¶ 136). Petitioner argues that adding characters to the input data is taught in the sample script that inserts a string after the first six characters of a scanned barcode. *Id.* at 48–49 (citing Ex. 1004, 12, 72; Ex. 1002 ¶¶ 138–140).

Petitioner additionally argues that limitation 1.h is taught by the combination of Wavelink Scripting Guide and Teklogix. Pet. 48. Petitioner argues that Teklogix describes matching a barcode scan to an AIAG Prefix associated with an AIAG field. *Id.* at 48, 49–52 (citing Ex. 1004, 37; Ex. 1005, 162, 164; 1002 ¶¶ 137, 141–147).

Patent Owner does not dispute this contention.

For the reasons advanced by Petitioner and discussed below with respect to limitation 1.j of claim 1, we agree that, on this record and for the purposes of institution, Petitioner has sufficiently shown that Wavelink Scripting Guide teaches the subject matter of limitations 1.h and 1.i of claim 1, and that Petitioner has sufficiently shown that the combination of Wavelink Scripting Guide and Teklogix teaches the subject matter of limitation 1.h of claim 1.

- i) Limitation (1.j) – “the client associating the processed input data with the particular input field based on the one or more data identifiers associated with the particular input field”*

Petitioner argues that limitation 1.j of claim 1 is obvious over the combination of Wavelink Scripting Guide and Teklogix. Pet. 49–52. Petitioner argues that Teklogix describes that, when a bar code is scanned, the terminal searches for AIAG fields on the current page to accept the bar code data. Pet. 49 (citing Ex. 1005, 164, 166; Ex. 1002 ¶ 141). However,

Petitioner notes, Teklogix does not disclose scripts to perform this association, but it would have been obvious to one of ordinary skill in the art to use scripts at the client to perform this functionality. *Id.* at 49–50 (citing Ex. 1002 ¶ 141). Petitioner argues that this would have been performed using known methods to achieve predictable results, and would have been performed in order to provide the Teklogix auto-locate-and-fill feature. *Id.* at 50–52 (citing Ex. 1002 ¶¶ 142–144, 146–147). The result, according to Petitioner, of this combination would be to produce a script to compare barcode data (processed input data) with an AIAG Prefix (data identifier) included in an input field to determine whether the scanned barcode data should be inserted into that input field. *Id.* at 51 (citing Ex. 1002 ¶ 144).

Patent Owner does not dispute this contention.

For the reasons advanced by Petitioner, we agree that, on this record and for the purposes of institution, Petitioner has sufficiently shown that the combination of Wavelink Scripting Guide and Teklogix teaches the subject matter of limitation 1.j of claim 1.

j) Conclusion – Claim 1

For these reasons, on the present record, Petitioner has shown a reasonable likelihood that it will prevail in showing claim 1 to be obvious over Wavelink Scripting Guide and Teklogix.

3. Claims 2, 3, and 8–13

Claim 8 is independent, and is argued on substantially the same basis as claim 1. Pet. 56–58 (citing Ex. 1002 ¶¶ 168–172, 177–180). Claims 2, 3, and 9–13 depend (directly or via intervening dependent claims) from claim 1 or claim 8. Petitioner provides an element-by-element analysis asserting obviousness of these dependent claims in light of the teachings of Wavelink

Scripting Guide and Teklogix. *Id.* at 54–56, 58–64 (including citations to Ex. 1002 ¶¶ 156–158, 182–183, 185–187, 191, 193–194).

Patent Owner presents no arguments specifically with respect to the additional limitations of these claims. For the reasons given by Petitioner and those discussed above, we determine that Petitioner has demonstrated a reasonable likelihood of prevailing on this challenge to claims 2, 3, and 8–13.

E. Claims 4–7, 13, 15, and 16

Obviousness over Wavelink Scripting Guide, Teklogix, and McNair

Claims 4–7, 13, 15, and 16 depend (directly or via intervening dependent claims) from claim 1 or claim 8. Petitioner provides an element-by-element analysis asserting obviousness of these dependent claims in light of the combined teachings of Wavelink Scripting Guide, Teklogix, and McNair, along with an argument for the combination. *Id.* at 64–70 (including citations to Ex. 1006 ¶¶ 5, 22, 35, 37, 63–65, 73, 76–77, 80, Fig. 3; Ex. 1002 ¶¶ 198–207).

Patent Owner presents no arguments specifically with respect to the additional limitations of these claims. For the reasons given by Petitioner and those discussed above, we determine that Petitioner has demonstrated a reasonable likelihood of prevailing on this challenge to claims 4–7, 13, 15, and 16.

F. Claims 1–3 and 8–13
Obviousness over Wavelink Scripting Guide and Field Data ID

1. Claim 1

Petitioner presents an argument relating to the obviousness of claim 1 over the combination of Wavelink Scripting Guide and Field Data ID¹² in parallel with arguments regarding Wavelink Scripting Guide and Teklogix. Pet. 32–54. The differences are with respect to limitations 1.e, 1.f, 1.h, and 1.j of claim 1.

With respect to limitations 1.e and 1.h, because Teklogix is not included in this combination, the Petition’s discussion of the limitations as obvious over Wavelink Scripting Guide is necessarily relied on, as opposed to its alternate reliance on Wavelink Scripting Guide in combination with Teklogix. As detailed above in Section IV.D.2.d and IV.D.h, we have found Petitioner’s arguments with respect to the teachings of Wavelink Scripting Guide and limitations 1.e and 1.h sufficient on the present record and for the purposes of institution.

With respect to limitation 1.g (“the client associating one or more data identifiers with a particular input field from among the one or more input fields”), Petitioner argues that Field Data ID’s teaching of using scripting to assign a unique ID to each field on the screen, teaches this limitation. Pet. 44–45 (citing Ex. 1005, 1–3; Ex. 1002 ¶¶ 123–124, 126). Petitioner further argues that one of ordinary skill of the art would have found it obvious to combine this teaching with the teachings of Wavelink Scripting Guide regarding the use of scripting on the telnet client. *Id.* at 45–47 (citing Ex. 1002 ¶¶ 123–134).

¹² Wavelink Scripting Guide was summarized in Section IV.D.1 and Field Data ID in Section III.B.2.b.(1).

In this ground, Petitioner argues that limitation 1.j (“the client associating the processed input data with the particular input field based on the one or more data identifiers associated with the particular input field”) is obvious over Wavelink Scripting Guide in view of Field Data ID. Pet. 52–54. Petitioner argues that Field Data ID describes a feature in which a unique ID is assigned to each field on the screen, so that when a bar code beginning with that ID is scanned, the information is populated in the corresponding field. *Id.* at 52–53 (citing Ex. 1003, 1). Petitioner argues that one of ordinary skill would have implemented this feature using scripting as taught by Wavelink Scripting Guide. *Id.* at 53–54 (citing Ex. 1002 ¶¶ 149–153).

Patent Owner does not further dispute these contentions.

For the reasons advanced by Petitioner, we agree that, on this record and for the purposes of institution, Petitioner has sufficiently shown there is a reasonable likelihood it will prevail in showing claim 1 obvious over the combination of Wavelink Scripting Guide and Field Data ID.

2. Claims 2, 3, and 8–13

Claim 8 is argued on substantially the same basis as claim 1. Pet. 56–58 (citing Ex. 1002 ¶¶ 173, 181). Petitioner provides an element-by-element analysis asserting obviousness of claims 2, 3, and 9–13 in light of the teachings of Wavelink Scripting Guide and Field Data ID. *Id.* at 55–56, 58–59, 61–64 (including citations to Ex. 1002 ¶¶ 159–160, 182, 184, 188–190, 192–194).

Patent Owner presents no arguments specifically with respect to the additional limitations of these claims. For the reasons given by Petitioner and those discussed above, we determine that Petitioner has demonstrated a

reasonable likelihood of prevailing on this challenge to claims 2, 3, and 8–13.

*G. Claims 4–7, 13, 15, and 16
Obviousness Over Wavelink Scripting Guide, Field Data ID, and
McNair*

Petitioner provides an element-by-element analysis asserting obviousness of claims 4–7, 13, 15, and 16 in light of the combined teachings of Wavelink Scripting Guide, Field Data ID, and McNair, along with an argument for the combination. *Id.* at 64–70 (including citations to Ex. 1006 ¶¶ 5, 22, 35, 37, 63–65, 73, 76, 77, 80, Fig. 3; Ex. 1002 ¶¶ 198–207).

Patent Owner presents no arguments specifically with respect to the additional limitations of these claims. For the reasons given by Petitioner and those discussed above, we determine that Petitioner has demonstrated a reasonable likelihood of prevailing on this challenge to claims 4–7, 13, 15, and 16.

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that *inter partes* review is *instituted* with respect to all challenged claims and all grounds of unpatentability raised in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(a), *inter partes* review of the '083 patent is hereby instituted commencing on the entry date of this Order, and pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial.

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