

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EPIC GAMES, INC.,
Petitioner,

v.

INGENIOSHARE, LLC,
Patent Owner.

IPR2022-00295
Patent 10,492,038 B2

Before JONI Y. CHANG, PATRICK M. BOUCHER, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

AMUNDSON, *Administrative Patent Judge*.

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

I. INTRODUCTION

Epic Games, Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 7–12, 22–24, and 33–67 in U.S. Patent No. 10,492,038 B2 (Exhibit 1001, “the ’038 patent”) under 35 U.S.C. §§ 311–319. Paper 1 (“Pet.”). IngenioShare, LLC (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”).

Under 37 C.F.R. § 42.4(a), we have authority to determine whether to institute an *inter partes* review. We may institute an *inter partes* review only if “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.” 35 U.S.C. § 314(a) (2018). The “reasonable likelihood” standard is “a higher standard than mere notice pleading” but “lower than the ‘preponderance’ standard to prevail in a final written decision.” *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (precedential).

Based on the current record and for the reasons explained below, Petitioner has shown that there is a reasonable likelihood that it would prevail with respect to at least one of the challenged claims. Thus, we institute an *inter partes* review of claims 7–12, 22–24, and 33–67 in the ’038 patent on all challenges included in the Petition.

II. BACKGROUND

A. Real Parties in Interest

Petitioner identifies itself as the real party in interest. Pet. 2. Patent Owner identifies itself as the real party in interest. Paper 6, 2. The parties do not raise any issue about real parties in interest.

B. Related Matters

Petitioner and Patent Owner identify the following civil action where Patent Owner has asserted the '038 patent and other patents against Petitioner: *IngenioShare, LLC v. Epic Games, Inc.*, No. 6:21-cv-00663-ADA (W.D. Tex. filed June 25, 2021) (“the Texas case”). Pet. 2; Prelim. Resp. 2; Paper 6, 2.

Patent Owner identifies the following Board proceedings as related matters:

- *Epic Games, Inc. v. IngenioShare, LLC*, IPR2022-00202 (U.S. Patent No. 10,142,810 B2);
- *Epic Games, Inc. v. IngenioShare, LLC*, IPR2022-00291 (U.S. Patent No. 10,708,727 B2);
- *Epic Games, Inc. v. IngenioShare, LLC*, IPR2022-00294 (U.S. Patent No. 10,492,038 B2); and
- *Epic Games, Inc. v. IngenioShare, LLC*, IPR2022-00297 (U.S. Patent No. 8,744,407 B2).

Paper 6, 2–3.

C. The '038 Patent (Exhibit 1001)

The '038 patent, titled “Method and Apparatus to Manage Messaging Providing Different Communication Modes Depending on One Identifier and Not Requiring to Disclose Contact Information,” issued on November 26, 2019, from an application filed on September 14, 2017. Ex. 1001, codes (22), (45), (54). The patent identifies that application as the last in a series of continuation and continuation-in-part applications that started with an application filed on December 7, 2004. *Id.* at 1:10–41, code (63).

The '038 patent explains that an individual may (1) employ numerous modes of communication, such as desk phone, cell phone, email, and instant messaging, and (2) “have more than one phone number and multiple electronic mail addresses.” Ex. 1001, 1:59–64. The patent states that “there is still a need to help manage the numerous modes of communication.” *Id.* at 2:1–3. The patent discloses “systems and methods to manage electronic communications.” *Id.* at code (57); *see id.* at 3:52–5:63.

For example, the '038 patent discloses a communications apparatus that:

- (1) “provides different communication modes to a first user, with messages eligible to be received by a second user based on any of the modes, depending on an identifier associated with the second user”;
- (2) “receives an indication from the first user to select a communication mode for a message for the second user”; and
- (3) “receive[s] contact information associated with the second user to allow the second user to participate, with the contact information not provided to the first user even when the message is received by the second user, and with the contact information being distinct from the identifier.”

Ex. 1001, code (57).

The '038 patent explains that a “user receives the message through a handheld device, such as a cellular phone,” or the “message is electronically conveyed” to the user “based on Internet protocol through a website.”

Ex. 1001, 2:54–57. If the “message is electronically conveyed” to the user through a “central network server, such as a web server based on Internet protocol,” a “portal or gateway” may “provide general Internet access.” *Id.*

at 7:9–15. For instance, the portal or gateway may “allow[] the user to receive communications from numerous sources through different modes.”
Id. at 4:22–24.

Figure 7 in the '038 patent (reproduced below) depicts steps in a process for responding to an incoming call:

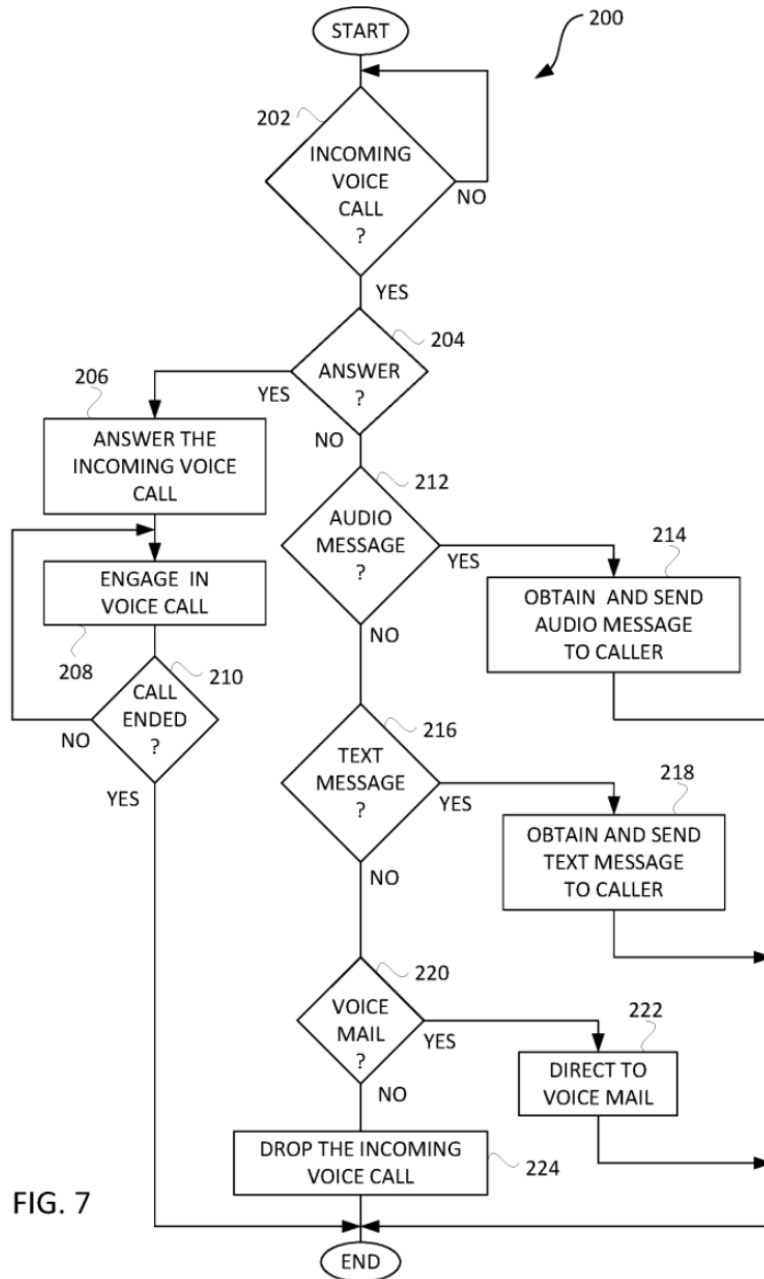


Figure 7 “is a flow diagram of a personal call response process 200” performed “by an electronic device, such as a mobile communication device (e.g., mobile telephone).” Ex. 1001, 9:22–26, Fig. 7; *see id.* at 3:29–30. The personal call response process permits a user to, among other things, answer an incoming call, respond to a caller with an audio message, and respond to a caller with a text message. *Id.* at 9:26–10:5, Fig. 7.

Figure 8 in the '038 patent (reproduced below) depicts steps in a process for responding to a caller with an audio message:

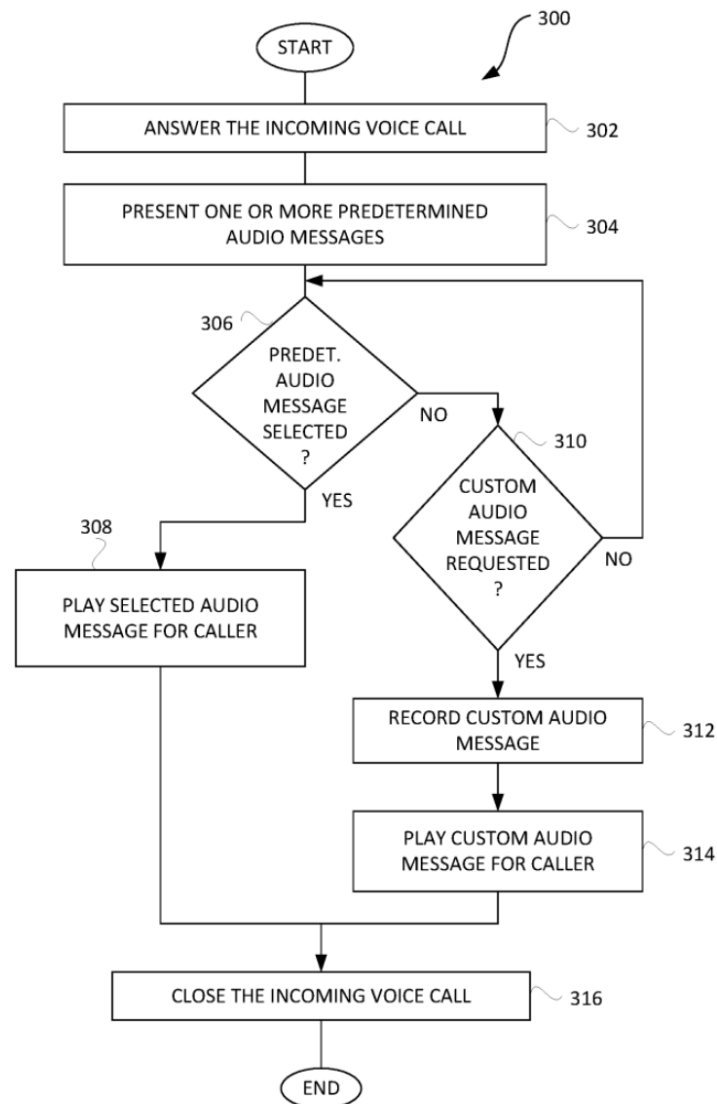


FIG. 8

Figure 8 “is a flow diagram of an audio message response process 300” suitable for the processing performed by block 214 in Figure 7. Ex. 1001, 10:34–38, Fig. 8; *see id.* at 3:31–32. The audio message response process permits a user to respond to a caller with a predetermined audio message or a custom audio message. *Id.* at 10:39–11:41, Fig. 8. A “mobile communication device (e.g., mobile telephone)” may perform the audio message response process. *Id.* at 10:42–45.

Figure 9 in the '038 patent (reproduced below) depicts steps in a process for responding to a caller with a text message:

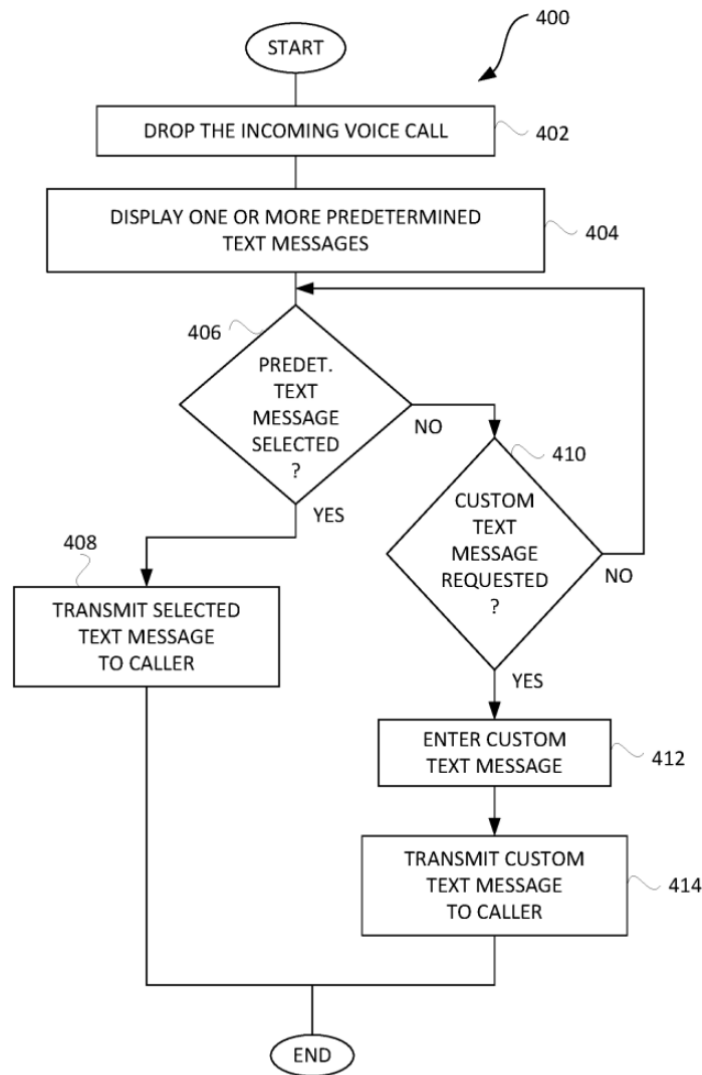


FIG. 9

Figure 9 “is a flow diagram of a text message response process 400” suitable for the processing performed by block 218 in Figure 7. Ex. 1001, 12:9–12, Fig. 9; *see id.* at 3:33–34. The text message response process permits a user to respond to a caller with a predetermined text message or a custom text message. *Id.* at 12:13–45, Fig. 9. A “mobile communication device” may perform the text message response process. *Id.* at 12:18–21.

Figure 10 in the '038 patent (reproduced below) depicts steps in a process for responding to an incoming call:

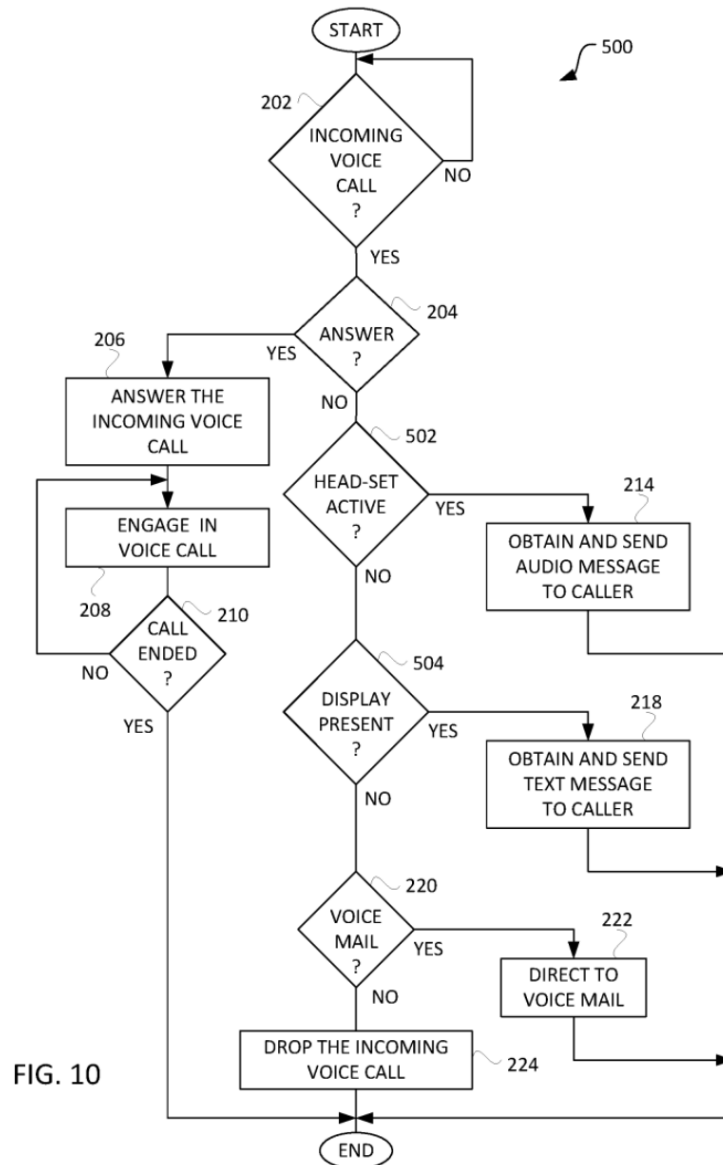


Figure 10 “is a flow diagram of an automated call response process 500.” Ex. 1001, 13:17–18, Fig. 10; *see id.* at 3:35–36. Figure 10’s process “is substantially similar in many ways to” Figure 7’s process. *Id.* at 13:19–21. But Figure 10’s process “operates to reduce user input at the mobile communication device by making use of stored data pertaining to its hardware components, configuration or preferences.” *Id.* at 13:21–25.

Figure 11 in the '038 patent (reproduced below) depicts steps in a process for message presentation to a user:

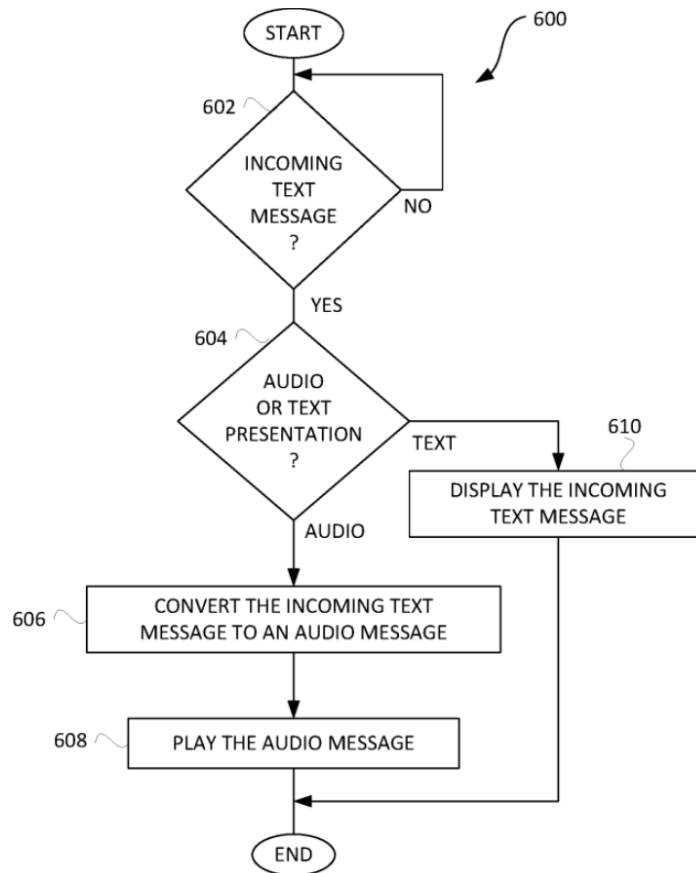


FIG. 11

Figure 11 “is a flow diagram of a message presentation process 600” performed “by an electronic device, such as a mobile communication device.” Ex. 1001, 15:12–15, Fig. 11; *see id.* at 3:37–38. The message presentation process permits a user to receive a text message and play the text message as an audio message. *Id.* at 15:16–16:2, Fig. 11. For example, “the audio message can be output to a speaker of the mobile communication device or a headset used therewith.” *Id.* at 15:59–61.

D. The Challenged Claims

Petitioner challenges independent computer-readable-medium claim 7, claims 8–12, 22–24, and 33–37 that depend directly or indirectly from claim 7, independent method claim 38, claims 39–45 that depend directly or indirectly from claim 38, independent computer-readable-medium claim 46, and claims 47–67 that depend directly from claim 46. Pet. 6, 33–86. Claims 7 and 46 exemplify the challenged claims and read as follows (with numbers added for reference purposes)¹:

7. [7.0] A non-transitory computer readable medium including at least executable computer program code stored therein for managing electronic communications of a plurality of users using at least a network-based portal at least based on Internet protocol, with different communication modes allowed, depending on each of the plurality of users having an identifier for use with the different communication modes, with the corresponding identifier being set via the network-based portal, and without requiring the plurality of users to disclose their contact information to each other, said computer readable medium comprising:

[7.1] computer program code for providing a plurality of communication modes to a first user to allow the first user to use one of the plurality of communication modes as a selected communication mode for a first message from the first user to a second user via an electronic device associated with the second user, with the first user being identified at least depending on a prior registration process by the first user regarding the use of the network-based portal,

[7.2] wherein the plurality of communication modes include at least text communication using a personal computer, voice communication using a personal computer, text communication using a mobile phone, voice communication

¹ We use the same numbers that Petitioner uses to identify the claim limitations. *See* Ex. 1032 (claim listing).

using a mobile phone, and communication with at least an image, and

[7.3] wherein messages are eligible to be received by the electronic device associated with the second user based on any of the plurality of communication modes, all depending on an identifier associated with the second user being set by the second user via the network-based portal, at least in view of the network-based portal based on the Internet protocol;

[7.4] computer program code for permitting the second user to block the first user from using at least the selected communication mode to reach the second user via the network-based portal;

[7.5] computer program code for enabling, via the network-based portal, the first message to be received by the second user via the electronic device associated with the second user, using the selected communication mode, depending on the identifier associated with the second user, in view of the second user not blocking the first user from using the selected communication mode to reach the second user, via the network-based portal;

[7.6] computer program code for determining availability of the second user; and

[7.7] computer program code for receiving, from the second user, contact information associated with the second user to allow the second user to participate and at least receive messages via the network-based portal,

[7.8] wherein even when the first message is received by the second user via the electronic device associated with the second user depending on the identifier associated with the second user, the contact information associated with the second user is not provided via the network-based portal to the first user via an electronic device associated with the first user, and

[7.9] wherein the identifier associated with the second user is distinct from the contact information associated with the second user.

46. [46.0] A non-transitory computer readable medium including at least executable computer program code stored therein that facilitates electronic communication of a plurality of users using at least a network-based portal at least based on Internet protocol, with a plurality of modes of communication available for the plurality of users to communicate, with each of the plurality of users having an identifier for use with the plurality of modes of communication, and without requiring the plurality of users to disclose their contact information to each other, the computer readable medium comprising:

[46.1] computer program code for providing a plurality of modes of communication to a first user to allow the first user to use one of the plurality of modes of communication as a selected mode of communication for a first message to be sent from the first user to a second user, based on an identifier associated with the first user previously set by the first user via the network-based portal,

[46.2] wherein the plurality of modes of communication supported by the network-based portal include at least text communication using a personal computer, voice communication using a personal computer, text communication using a mobile phone voice communication using a mobile phone, and communication with at least an image, and

[46.3] wherein messages are eligible to be received electronically by the second user via the network-based portal, based on any of the plurality of modes of communication, all depending on an identifier associated with the second user previously set by the second user via the network-based portal, which allows the second user to efficiently maintain the second user's communication using the plurality of modes of communication;

[46.4] computer program code for permitting the second user to block the first user from using at least the selected mode of communication to communicate with the second user via the network-based portal, based on the identifier associated with the first user;

[46.5] computer program code for enabling the first message to be electronically provided to the second user, using the selected mode of communication, depending on the identifier associated with the second user, in view of the second user not blocking the first user from using the selected mode of communication to communicate with the second user, via the network-based portal;

[46.6] computer program code for determining availability of the second user related to receiving messages; and

[46.7] computer program code for receiving, from the second user, contact information associated with the second user to allow the second user to participate and at least receive messages via the network-based portal,

[46.8] wherein even when the first message is received by the second user via the selected mode of communication, the contact information associated with the second user is not provided via the network-based portal to the first user, and contact information associated with the first user is not provided via the network-based portal to the second user, so as to provide an option to the second user to keep the contact information associated with the second user confidential from the first user, and to provide an option to the first user to keep the contact information associated with the first user confidential from the second user, and

[46.9] wherein the identifier associated with the second user is distinct from the contact information associated with the second user, and the identifier associated with the first user is distinct from the contact information associated with the first user.

Ex. 1001, 21:50–22:43, 27:37–28:39.

E. The Asserted References

For its challenges, Petitioner relies on the following references:

Name	Reference	Exhibit
Loveland	US 7,287,056 B2, issued Oct. 23, 2007 (based on an application filed Sept. 28, 2001)	1008
Takahashi	US 2002/0183114 A1, published Dec. 5, 2002 (based on an application filed May 29, 2002)	1009
Tanigawa	US 2004/0001480 A1, published Jan. 1, 2004 (based on an application filed Aug. 30, 2002)	1010
Hullfish	US 7,428,580 B2, issued Sept. 23, 2008 (based on an application filed Nov. 26, 2003)	1011

Pet. 6. Petitioner asserts that Loveland, Takahashi, and Tanigawa qualify as prior art under § 102(a) and § 102(b) and that Hullfish qualifies as prior art under § 102(e). *Id.* at 4–5; *see* 35 U.S.C. § 102(a), (b), (e) (2006).²

At this stage of the proceeding, Patent Owner does not dispute that each reference qualifies as prior art. *See, e.g.*, Prelim. Resp. 12–16.

F. The Asserted Challenges to Patentability

Petitioner asserts the following challenges to patentability:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
7, 10–12, 22–24, 33–36, 38–41, 46, 49, 51–53, 55, 57, 58, 64–66	103(a)	Tanigawa, Hullfish
8, 9, 43, 44, 47, 48, 50, 54	103(a)	Tanigawa, Hullfish, Loveland

² The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284 (2011), amended 35 U.S.C. § 102 and § 103 effective March 16, 2013. Because the effective filing date of the challenged claims predates the AIA’s amendments to § 102 and § 103, this decision refers to the pre-AIA versions of § 102 and § 103.

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
37, 42, 56, 59–63, 67	103(a)	Tanigawa, Hullfish, Takahashi
45	103(a)	Tanigawa, Hullfish, Loveland, Takahashi

Pet. 6, 33–86.

G. Testimonial Evidence

To support its challenges, Petitioner relies on the declaration of Kevin C. Almeroth, Ph.D. (Exhibit 1003, “Almeroth Decl.”). Dr. Almeroth states, “I have been retained as an expert witness on behalf of Epic Games, Inc. (‘Epic Games’ or ‘Petitioner’) to offer technical opinions in connection with” the ’038 patent. Ex. 1003 ¶ 1.

III. DISCRETIONARY DENIAL

A. Parallel Proceeding

Under § 314(a), the Director possesses “broad discretion” in deciding whether to institute an *inter partes* review. *See* 35 U.S.C. § 314(a); *Saint Regis Mohawk Tribe v. Mylan Pharm. Inc.*, 896 F.3d 1322, 1327 (Fed. Cir. 2018). The Board decides whether to institute an *inter partes* review on the Director’s behalf. 37 C.F.R. § 42.4(a) (2021).

Citing *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”), Patent Owner argues that we should exercise our discretion under § 314(a) to deny institution in light of the Texas case where Patent Owner has asserted the ’038 patent and other patents against Petitioner. *See* Prelim. Resp. 7–12; *supra* § II.B.

On March 18, 2022, the district court in the Texas case granted Petitioner’s motion to dismiss for improper venue, thus ending that case. Ex. 3001, 9.

On March 31, 2022, we issued an Order authorizing Petitioner to file a Preliminary Reply addressing discretionary denial under § 314(a) and authorizing Patent Owner to file a Preliminary Sur-reply responding to the Preliminary Reply. Paper 9, 3.

On April 7, 2022, Petitioner filed a Preliminary Reply addressing discretionary denial under § 314(a). Paper 10 (“Prelim. Reply”). Patent Owner did not file a Preliminary Sur-reply.

In the Preliminary Reply, Petitioner argues that the district court’s dismissal of the Texas case “moots Patent Owner’s arguments based on *Fintiv*.” Prelim. Reply 1. Petitioner also argues that “there is no basis for a discretionary denial under § 314(a)” based on *Fintiv* because “there is no longer any parallel proceeding.” *Id.*

We agree with Petitioner that “there is no basis for a discretionary denial under § 314(a)” based on *Fintiv* because “there is no longer any parallel proceeding.” *See* Prelim. Reply 1; Ex. 3001, 9. Hence, we decline to exercise our discretion under § 314(a) to deny institution due to a parallel proceeding.

B. Multiple Petitions

Petitioner filed another petition challenging claims 7–12, 22–24, and 33–67 of the ’038 patent, i.e., in IPR2022-00294. *See Epic Games, Inc. v. IngenioShare, LLC*, IPR2022-00294, Paper 1 at 6, 33–83 (PTAB Dec. 7, 2021); *supra* § II.B. Petitioner explains that the challenges in this proceeding rest on Tanigawa in combination with Hullfish “as primary

references” and that the challenges in the 00294 proceeding rest on Diacakis³ “as a primary reference.” Paper 3, 1.

Petitioner contends that the Board should institute a trial in both proceedings for the following reasons:

- (i) “the length and large number (44) of challenged claims”;
- (ii) “given common issues across the Petitions, the burden to consider all Petitions is not substantially greater than considering just one”; and
- (iii) “Petitioner has filed . . . petitions for inter partes review of two patents in the same family as the ’038 Patent (U.S. Patent Nos. 10,142,810 and 10,708,727), and those petitions similarly present grounds based on Diacakis and on Tanigawa in combination with Hullfish.”

Paper 3, 1; *see supra* § II.B.

Petitioner also contends that the “combination of Tanigawa and Hullfish is not cumulative over Diacakis.” Paper 3, 3. Specifically, Petitioner asserts that “Diacakis is directed to a commun[ic]ations system with a ‘presence and availability management system,’ used to detect when a user is available to communicate and to notify another of the user’s availability information.” *Id.* According to Petitioner, “Diacakis teaches that users can block others (thereby preventing them from communicating with them) across specific modes of communication by defining ‘access levels’ to give different people different levels of access at different times.” *Id.* Petitioner asserts that “Tanigawa (as modified by Hullfish) teaches a server directed towards a communications system specifically facilitating

³ U.S. Patent Application Publication US 2002/0116461 A1 to Diacakis et al., titled “Presence and Availability Management System,” filed on February 5, 2002, and published on August 22, 2002 (“Diacakis”).

transitions between text chat and voice chat in both a group setting and a one-on-one setting.” *Id.* Petitioner also asserts that in the Tanigawa-Hullfish combination “users can block others—not through defined access levels, as in Diacakis—by identifying a user to be blocked by a ‘pre-determined telephone number,’ a process that prevents the blocked user from further communicating with the blocking user.” *Id.*

Patent Owner does not argue that we should exercise our discretion under § 314(a) to deny institution due to multiple petitions. *See, e.g.,* Prelim. Resp. 7–12.

Under the circumstances here, two petitions challenging claims in the ’038 patent will not place a substantial and unnecessary burden on the Board or Patent Owner. In IPR2022-00202, the Board will consider challenges to related U.S. Patent No. 10,142,810 B2 based on Diacakis and alternatively the Tanigawa-Hullfish combination. *See Epic Games, Inc. v. IngenioShare, LLC*, IPR2022-00202, Paper 9 (PTAB May 23, 2022) (granting institution of *inter partes* review); *supra* § II.B. In IPR2022-00291, the Board will similarly consider challenges to related U.S. Patent No. 10,708,727 B2 based on Diacakis and alternatively the Tanigawa-Hullfish combination. *See Epic Games, Inc. v. IngenioShare, LLC*, IPR2022-00291, Paper 10 (PTAB May 24, 2022) (granting institution of *inter partes* review); *supra* § II.B. Thus, in other proceedings the Board will consider and become familiar with Diacakis, Tanigawa, and Hullfish and the relevance of those references to claims in related patents.

Additionally, Patent Owner has asserted a large number of claims in the ’038 patent against Petitioner in the Texas case, and Petitioner challenges a large number of claims in the ’038 patent. *See* Pet. 33–83;

Ex. 1012, 1–2. The PTAB Consolidated Trial Practice Guide (“CTPG”) notes that “more than one petition may be necessary” when “the patent owner has asserted a large number of claims in litigation.” CTPG 59.⁴

Moreover, for the reasons stated by Petitioner, there are material differences between Diacakis and the Tanigawa-Hullfish combination. *See* Paper 3, 3.

Hence, we decline to exercise our discretion under § 314(a) to deny institution due to multiple petitions. *See Weber, Inc. v. Provisur Techs., Inc.*, IPR2019-01465, Paper 10 at 10–11 (PTAB Feb. 20, 2020) (declining to exercise discretion under § 314(a) to deny institution because “material differences exist between the challenges in the two petitions and both petitions present meritorious challenges”).

IV. PATENTABILITY ANALYSIS

A. Legal Principles: Obviousness

A patent may not be obtained “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.” 35 U.S.C. § 103(a) (2006). An obviousness analysis involves underlying factual inquiries including (1) the scope and content of the prior art; (2) differences between the claimed invention and the prior art; (3) the level of ordinary skill in the art; and (4) where in evidence, objective indicia of nonobviousness, such as commercial success, long-felt but unsolved needs,

⁴ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

and failure of others.⁵ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18, 35–36 (1966); *Apple Inc. v. Samsung Elecs. Co.*, 839 F.3d 1034, 1047–48 (Fed. Cir. 2016) (en banc). When evaluating a combination of references, an obviousness analysis should address “whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

We analyze the obviousness issues according to these principles.

B. Level of Ordinary Skill in the Art

Factors pertinent to determining the level of ordinary skill in the art include (1) the educational level of the inventor; (2) the type of problems encountered in the art; (3) prior-art solutions to those problems; (4) the rapidity with which innovations are made; (5) the sophistication of the technology; and (6) the educational level of workers active in the field. *Envtl. Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696–97 (Fed. Cir. 1983). Not all factors may exist in every case, and one or more of these or other factors may predominate in a particular case. *Id.* These factors are not exhaustive, but merely a guide to determining the level of ordinary skill in the art. *Daiichi Sankyo Co. v. Apotex, Inc.*, 501 F.3d 1254, 1256 (Fed. Cir. 2007). Moreover, the prior art itself may reflect an appropriate skill level. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

Petitioner asserts that a person of ordinary skill in the art “would have had a Bachelor’s degree in Computer Science, or an equivalent field, and three to five years of experience working with Internet communication systems.” Pet. 25. Petitioner also asserts that “[a]dditional education might

⁵ The record does not include evidence concerning objective indicia of nonobviousness.

compensate for less experience, and vice-versa.” *Id.* Dr. Almeroth’s testimony supports Petitioner’s assertions. *See* Ex. 1003 ¶¶ 92–97.

At this stage of the proceeding, Patent Owner does not address the educational level or work experience of a person of ordinary skill in the art. *See, e.g.*, Prelim. Resp. 1–7, 12–16.

Based on the current record and for purposes of institution, we accept Petitioner’s description of an ordinarily skilled artisan as consistent with the ’038 patent and the asserted prior art.

C. Claim Construction

1. GENERALLY

We construe claim terms “using the same claim construction standard” that district courts use to construe claim terms in civil actions under 35 U.S.C. § 282(b). *See* 37 C.F.R. § 42.100(b). Under that standard, claim terms “are given their ordinary and customary meaning, which is the meaning the term would have to a person of ordinary skill in the art at the time of the invention.” *Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc.*, 904 F.3d 965, 971 (Fed. Cir. 2018) (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc)). The meaning of claim terms may be determined by “look[ing] principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17).

Petitioner “does not believe that any terms need to be construed to assess the arguments presented” in the Petition and does not propose a construction for any claim language. Pet. 26.

Patent Owner does not propose a construction for any claim language. *See* Prelim. Resp. 4–5, 12–13.

2. “NETWORK-BASED PORTAL”

Each challenged independent claim requires a “network-based portal.” Ex. 1001, 21:50–22:43, 26:1–57, 27:37–28:39. Although Patent Owner does not propose a construction for a “network-based portal,” Patent Owner proposes restrictions on that term. *See* Prelim. Resp. 1–2, 4–5, 12–14. In particular, Patent Owner contends that a “network-based portal” resides only “at the server-side of a network” and excludes “client-side functionality.” *Id.* at 1–2, 4, 13–14. According to Patent Owner, the ’038 patent’s specification “universally indicates that the network-based portal is at the server-side.” *Id.* at 1. Patent Owner identifies places where the specification describes a “portal” as separate from a “mobile telephone” and a “person’s wireless device.” *Id.* at 4–5, 13–14 (citing Ex. 1001, 6:33–34, 6:53–54, 7:9–17, 16:17–19, code (57)). Further, Patent Owner asserts that the specification “certainly does not support the interpretation that a user interface at a client constitutes a network-based portal.” *Id.* at 14.

Based on the current record, we disagree with Patent Owner that a “network-based portal” resides only “at the server-side of a network” and excludes “client-side functionality.” *See* Prelim. Resp. 1–2, 4, 13–14. The ’038 patent’s specification discloses embodiments where claimed functionality resides in a “mobile phone,” i.e., a client-side device. *See* Ex. 1001, 3:29–38, 9:22–10:19, 10:34–13:43, 15:12–16:2, Figs. 7–11.

As an example, Figures 7 through 11 depict steps in processes that include:

- providing a first user with a voice communication mode and a text communication mode, e.g., as recited in limitations [7.1] and [7.2];
- enabling a second user to receive a voice message or a text message using a selected communication mode in view of the second user not blocking the first user, e.g., as recited in limitations [7.4] and [7.5]; and
- allowing the second user to receive messages through an electronic device associated with the second user, e.g., as recited in limitation [7.8].

Ex. 1001, 9:22–10:5, 10:34–14:57, 15:12–16:2, Figs. 7–11; *see id.* at 3:29–38, 10:6–19. The specification explains that a “mobile communication device,” e.g., a “mobile telephone” or a “mobile phone,” may perform the steps depicted in Figures 7 through 11. *Id.* at 9:22–26, 10:34–45, 12:9–21, 13:16–25, 14:23–28, 14:52–53, 15:14–15, 15:59–61, 18:4–5.

Because the '038 patent's specification discloses embodiments where claimed functionality resides in a “mobile telephone,” i.e., a client-side device, construing “network-based portal” to exclude “client-side functionality,” such as mobile-phone functionality, would exclude preferred embodiments from claim scope. *See* Ex. 1001, 3:29–38, 9:22–10:19, 10:34–13:43, 14:52–53, 15:12–16:2, 18:4–5, Figs. 7–11. A construction excluding a preferred embodiment is “rarely, if ever correct.” *PPC Broadband, Inc. v. Corning Optical Commc'ns RF, LLC*, 815 F.3d 747, 755 (Fed. Cir. 2016). Consistent with a broader rather than a narrower interpretation, the '038 patent's specification explains that “the invention extends beyond these limited embodiments” described in the specification. Ex. 1001, 8:29–34; *see id.* at 3:43–47, 20:4–7.

We invite the parties to provide additional briefing in the Response, Reply, and Sur-reply about the meaning of “network-based portal” in the ’038 patent’s claims.

3. OTHER TERMS

Based on the current record, we determine that no other claim terms require explicit constructions to decide whether Petitioner satisfies the “reasonable likelihood” standard for instituting trial. “[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.” *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999); see *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017).

D. Alleged Obviousness over Tanigawa and Hullfish: Claims 7, 10–12, 22–24, 33–36, 38–41, 46, 49, 51–53, 55, 57, 58, and 64–66

Petitioner contends that claims 7, 10–12, 22–24, 33–36, 38–41, 46, 49, 51–53, 55, 57, 58, and 64–66 are unpatentable under § 103(a) as obvious over Tanigawa and Hullfish. See Pet. 6, 33–73. Below, we provide overviews of Tanigawa and Hullfish, and then we consider the obviousness issues. As explained below, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa and Hullfish teach the subject matter of claims 7, 10–12, 22–24, 33–36, 38–41, 46, 49, 51–53, 55, 57, 58, and 64–66.

1. OVERVIEW OF TANIGAWA (EXHIBIT 1010)

Tanigawa is a U.S. patent application publication titled “Communication System and Communication Method,” filed on August 30, 2002, and published on January 1, 2004. Ex. 1010, codes (22), (43), (54). Tanigawa states that the invention relates to “a communication technology

such as Instant Messaging (IM)” and endeavors to “achieve group chat using multimedia.” *Id.* ¶¶ 1, 8. The invention implements text chat, voice chat, and video chat by employing various servers to handle various tasks. *Id.* ¶¶ 9–13, 221, code (57).

Tanigawa’s Figure 1 (reproduced below) depicts a communication system that implements text chat, voice chat, and video chat by employing various servers to handle various tasks:

FIG.1

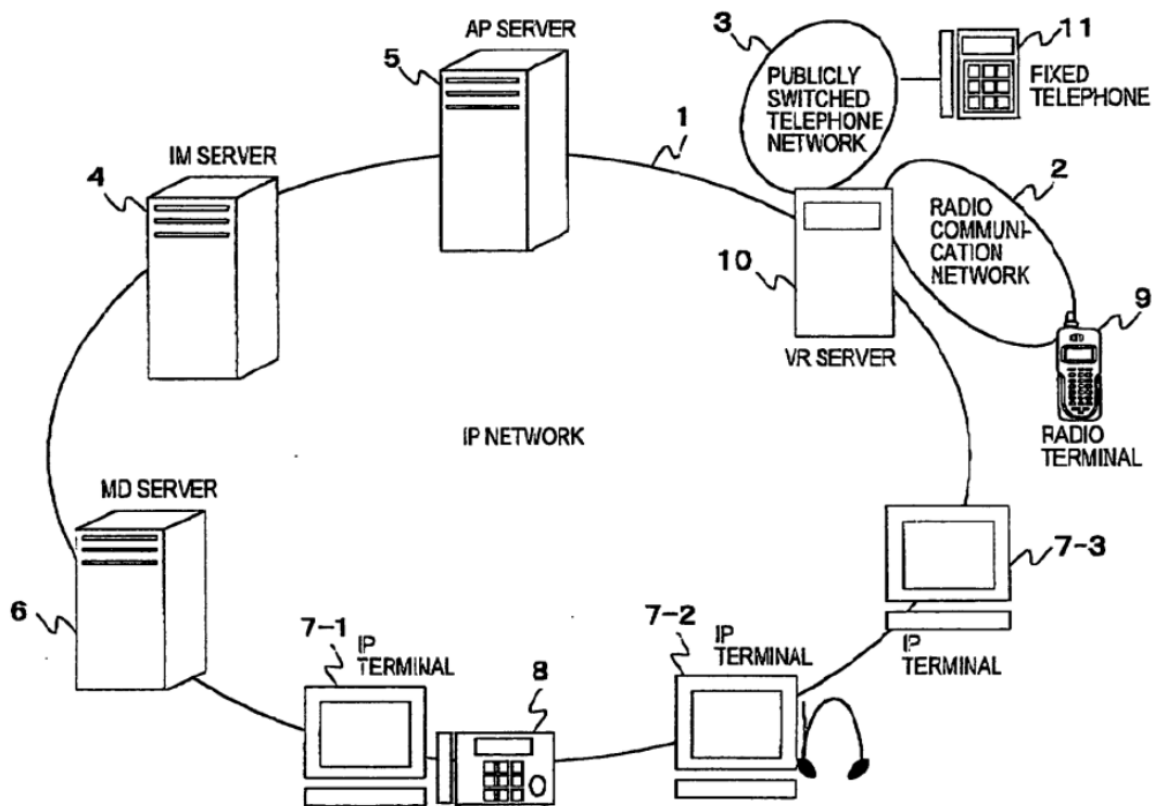


Figure 1 illustrates “an IM-Voice over Internet Protocol (VoIP) interconnecting system” including IP network 1, IM server 4, AP server 5, MD server 6, IP terminal 7-1, IP terminal 7-2, IP terminal 7-3, VoIP telephone 8, and VR server 10. Ex. 1010 ¶¶ 14, 34–36, Fig. 1; *see id.* ¶ 221.

Tanigawa describes each server's role as follows:

- (1) IM server 4 “manages presence information of an IM client”;
- (2) AP server 5 “manages connection for a voice chat using VoIP”;
- (3) MD server 6 “implements multi-party voice speech by mixing voice data”; and
- (4) VR server 10 “performs voice relay among” IP network 1, radio communication network (RCN) 2, and publicly switched telephone network (PSTN) 3.

Ex. 1010 ¶¶ 35–36, 214, code (57). Further, VR server 10 communicates with radio terminal 9 (e.g., a mobile telephone) via RCN 2 and with fixed telephone 11 via PSTN 3. *Id.* ¶ 35, Fig. 1.

Tanigawa describes an IM client as “application software.” Ex. 1010 ¶ 3. An IM client resides in each of IP terminal 7-1, IP terminal 7-2, IP terminal 7-3, VoIP telephone 8, radio terminal 9, and fixed telephone 11. *Id.* ¶¶ 35, 54.

IM server 4 contains a presence information management table. Ex. 1010 ¶ 49, Fig. 3. Tanigawa's Figure 3 (reproduced below) depicts an example presence information management table:

FIG.3

431 ACCOUNT NAMES	432 CLIENT ADDRESSES	433 CLIENT NICKNAMES	434 AUTHENTICATION KEYS	435 PRESENCE	436 USABLE MEDIA	437 CONFERENCE ADDRESSES	438 CONFERENCE NICKNAMES	439 BUDDY LIST
Client A	***,***,***,***	taro	***	text/voice	text/voice	***,***,***/ ***,***,***	room1	A,B,C,D,E,F,G...
Client B	***,***,***,***	jiro	***	off	text/voice	***,***,***		A,B,C,D,E,F,G...
Client C	***,***,***,***	ichiro	***	idle	text	***,***,***		A,B,C,D,E,F,G...
Client D	***,***,***,***	hanako	***	text	text	***,***,***	room1	A,B,C,D,E,F,G...
Client E	***,***,***,***	hanako	***	voice	voice	***,***,***	room1	A,B,C,D,E,F,G...
Client F	***,***,***,***	yoshi	***	text	text	***,***,***	room1	A,B,C,D,E,F,G...
Client G	***,***,***,***	yoshi	***	voice	voice	***,***,***	room1	A,B,C,D,E,F,G...
...	...	...	...	...	...	...	...	...

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Figure 3 illustrates “an example of a presence information management table” comprising multiple records (rows) with the following fields in each record (row):

- (1) “a field 431 for registering an account name of a user of an IM client”;
- (2) “a field 432 for registering an address of the IM client”;
- (3) “a field 433 for registering a nickname of the user of the IM client”;
- (4) “a field 434 for registering an authentication key for using the IM-VoIP interconnecting system”;
- (5) “a field 435 for registering presence information of the IM client”;
- (6) “a field 436 for registering a medium (text chat and voice chat), which can be used by IM client for a chat”;

- (7) “a field 437 for registering an address (IP address or DNS and a port number) of a conference room in which the IM client participates”;
- (8) “a field 438 for registering a nickname of the conference room”; and
- (9) “a field 439 for registering account names of the other IM clients with whom the IM client can chat.”

Id. ¶¶ 16, 49–50, Fig. 3. For instance, field 433 includes the following nicknames in various records: Taro, Jiro, Ichiro, Hanako, and Yoshi. *Id.* ¶ 116, Fig. 3.

Tanigawa discloses examples where (a) the user nicknamed Taro registers IP terminal 7-2 as an account named client A, (b) the user nicknamed Hanako registers (i) IP terminal 7-1 as an account named client D and (ii) VoIP telephone 8 as an account named client E, and (c) the user nicknamed Yoshi registers (i) IP terminal 7-3 as an account named client F and (ii) radio terminal 9 as an account named client G. Ex. 1010 ¶¶ 115–116, 177–179, 193–194, 207–209, Figs. 3, 10–11, 15–19.

After registering with the system, a user may communicate with one or more other users by text chat, voice chat, and video chat. Ex. 1010 ¶¶ 11–12, 23–24, 28–29, 36, 221, code (57), Figs. 10–11, 15–16. Moreover, a user may engage in a one-to-one chat or a multi-party chat. *Id.* ¶¶ 8, 115–164, 176–212, 216–218, Figs. 10–12, 15–19.

Tanigawa's Figure 12 (reproduced below) depicts a user interface for an IM client in an IP terminal:

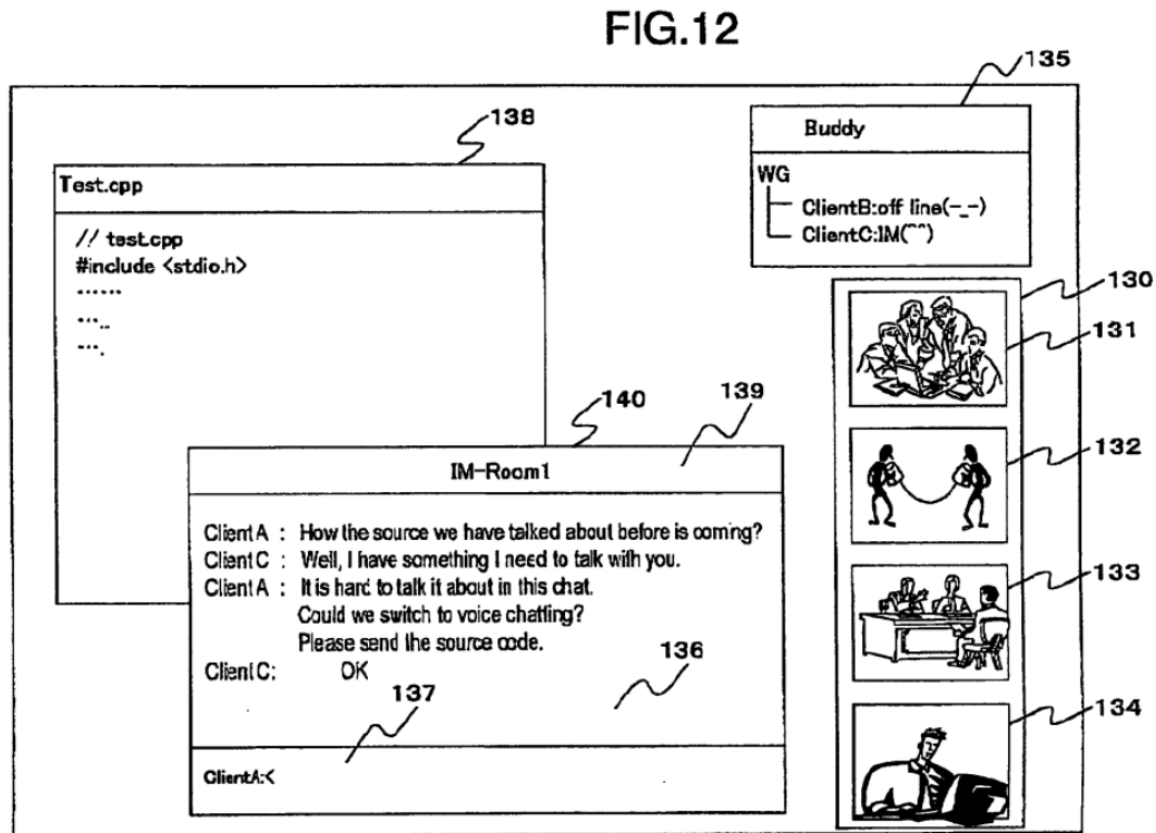


Figure 12 illustrates a user interface for an IM client having various display areas and a main menu bar. Ex. 1010 ¶¶ 25, 162, Fig. 12.

As Figure 12 shows, main menu bar 130 includes the following icons:

- (1) “an icon 131 indicating an operation relating to presence information”;
- (2) “an icon 132 indicating voice chatting in one-to-one (Peer-to-Peer)”;
- (3) “an icon 133 indicating voice chatting in multi-party communication”; and
- (4) “an icon 134 indicating text chatting.”

Ex. 1010 ¶ 163, Fig. 12.

As Figure 12 also shows, the user interface may display the following information:

- (1) a buddy list in display area 135;
- (2) the content of a text chat in display area 136;
- (3) a text message in display area 137; and
- (4) the content of a file transferred by a buddy in display area 138.

Ex. 1010 ¶¶ 164–166, Fig. 12.

2. OVERVIEW OF HULLFISH (EXHIBIT 1011)

Hullfish is a U.S. patent titled “Electronic Message Forwarding,” filed on November 26, 2003, and issued on September 23, 2008. Ex. 1011, codes (22), (45), (54). Hullfish states that the invention relates to “the delivery of an electronic message addressed to a telephone number.” *Id.* at 1:8–10. In particular, the invention provides systems and methods “for forwarding electronic messages addressed to telephone numbers as instant messages for the instant message identifiers associated with the corresponding telephone numbers.” *Id.* at 3:35–39.

Hullfish's Figure 2 (reproduced below) depicts a system for forwarding a Short Message Services (SMS) text message to a destination device:

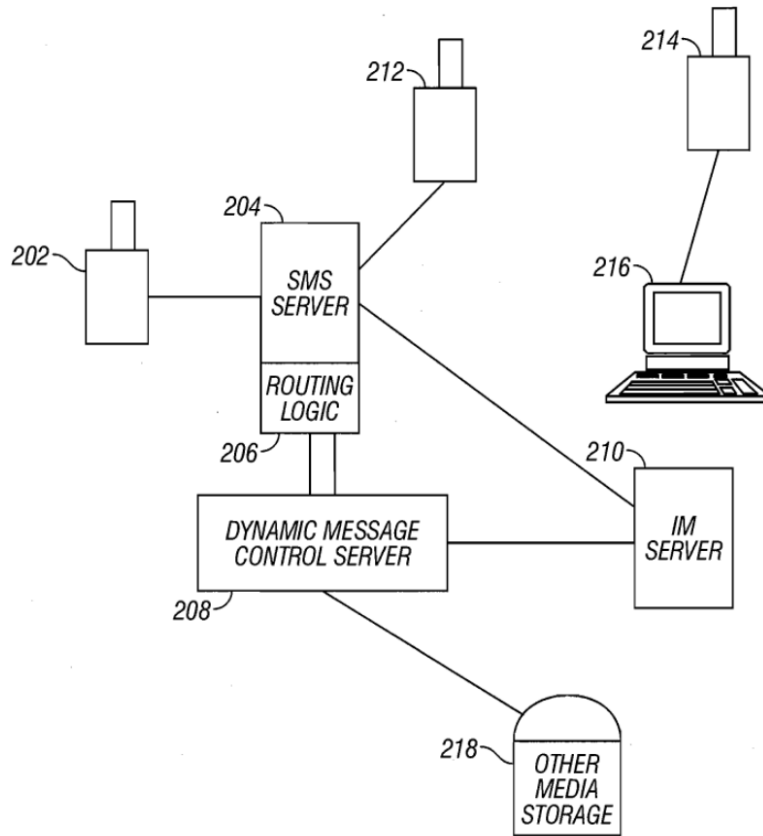


FIG. 2

Figure 2 illustrates a system including “an SMS text message originator 202, an SMS server 204 that includes a routing logic 206, a dynamic message control server 208, an IM server 210, and one or more destination devices 212, 214, 216.” Ex. 1011, 3:9–11, 4:30–40, Fig. 2.

The SMS text message originator 202 “generates an SMS text message addressed to a telephone number of the recipient mobile devices 212, 214 or an email address of a desktop computer 216.” Ex. 1011, 4:42–45. “[T]he SMS server 204 receives the SMS text message” and “then forwards it to the dynamic message control server 208.” *Id.* at 4:52–54.

“The dynamic message control server 208 makes decisions with regard to various actions that can be taken with the SMS text message, such as whether to forward the SMS message as an instant message, or whether or not to forward the SMS message in its original content.” *Id.* at 4:55–59.

If “the dynamic message control server 208 decides that the SMS message should be forwarded as an instant message, the dynamic message control server 208 forwards the SMS message to the IM server 210 to be transmitted further as an instant message” to “one or more instant message receivers 214, 216.” Ex. 1011, 4:61–67. If “the dynamic message control server 208 decides that the SMS message should be forwarded as an SMS message through the SMS server 204, the routing logic 206 then forwards the SMS message to the mobile phone number with the addressed telephone number.” *Id.* at 5:5–9.

Hullfish discloses a privacy feature for blocking “messages originating from a specified telephone number to the telephone number of a user, or the instant message identifier associated with that user’s telephone number.” Ex. 1011, 8:59–61, 8:64–65, 9:34–38. Specifically, if User A “wants to stop receiving messages from User B,” User A “may send a text message containing User B’s telephone number” to “a pre-determined telephone number that is available to all SMS forwarding subscribers who want to use the privacy feature” and thereby “discontinue receiving SMS text messages from User B’s telephone number.” *Id.* at 8:63–9:4.

Hullfish's Figure 5 (reproduced below) depicts steps in a method for implementing a privacy feature for blocking messages:

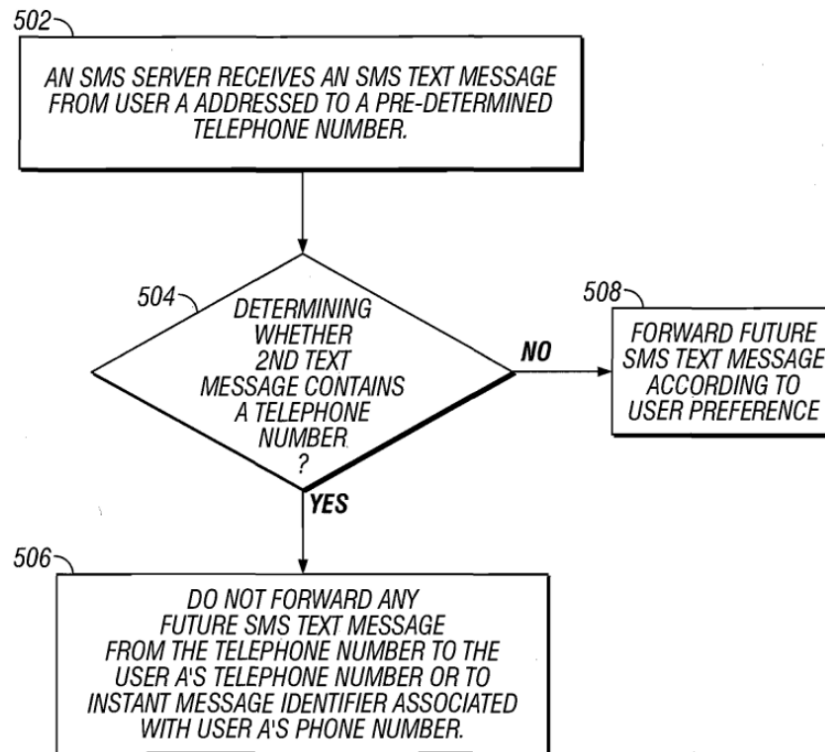


FIG. 5

Figure 5 illustrates steps 502 through 508 in “a method of discontinuing receiving SMS text messages from an undesired source.” Ex. 1011, 8:59–61, 8:64–65, Fig. 5; *see id.* at 3:18–20.

As Figure 5 shows, “an SMS server receives an SMS text message originated from User A addressed to a pre-determined telephone number 502.” Ex. 1011, 9:5–7, Fig. 5. Then, the SMS server “determine[s] whether the SMS text message originated from User A contains a telephone number 504, e.g. User B’s telephone number.” *Id.* at 9:7–9, Fig. 5. If the SMS server “determine[s] that the SMS text message originated from User A contains User B’s telephone number, any future SMS text message

from User B's telephone number to User A's telephone number, will not be forwarded to the User A's telephone number or the instant message identifier associated with User A's telephone number 506," thus blocking User B. *Id.* at 9:9–16, Fig. 5. If, however, the SMS server "determine[s] that the SMS text message originated from User A does not contain User B's telephone number 504, the SMS text message is forwarded according to user preference 508." *Id.* at 9:30–33, Fig. 5.

Additionally, Hullfish discloses that a user may condition message delivery based on times and dates. Ex. 1011, 11:38–45, Fig. 7; *see id.* at 7:25–27, 13:40–42, 14:63–65, 16:44–46. For example, a user may specify "a pre-determined rule stating that within a certain time period, e.g. 12:00 am–6:00 am, and/or within a date range, e.g. Dec. 25, 2003–Jan. 1, 2004, messages would not be forwarded either to the instant message receiver and/or the mobile device." *Id.* at 11:40–45.

3. INDEPENDENT CLAIM 7

(a) Preamble [7.0]

Claim 7's preamble recites as follows:

[a] non-transitory computer readable medium including at least executable computer program code stored therein for managing electronic communications of a plurality of users using at least a network-based portal at least based on Internet protocol, with different communication modes allowed, depending on each of the plurality of users having an identifier for use with the different communication modes, with the corresponding identifier being set via the network-based portal, and without requiring the plurality of users to disclose their contact information to each other.

Ex. 1001, 21:50–59.

Petitioner contends that Tanigawa teaches claim 7’s preamble for five related reasons. *See* Pet. 37–43. First, Petitioner asserts that Tanigawa discloses that a “program for configuring” IM server 4 “may be directly loaded from a storage medium (not shown) such as a CD-ROM” or alternatively “may be stored in the external memory device 43 and then may be loaded to the memory 42.” *Id.* at 37 (quoting Ex. 1010 ¶ 40). According to Petitioner, an ordinarily skilled artisan “would have understood that Tanigawa’s apparatus contains storage devices coupled to the IM server 4 with executable instructions (*i.e.*, a predetermined program).” *Id.* (citing Ex. 1003 ¶¶ 395–396; Ex. 1010 ¶¶ 57, 68, 90, 104).

Second, Petitioner asserts that Tanigawa discloses a “communication system and communication method” where servers facilitate text chatting and voice chatting among client devices. Pet. 37 (citing Ex. 1010 ¶ 36, codes (54), (57)). According to Petitioner, “Tanigawa’s communications system is based on the Internet protocol (*i.e.*, ‘IP Network’)” and includes IP terminals as client devices. *Id.* at 37–38 (citing Ex. 1010 ¶¶ 3, 9, 14, 34–35, 40–41, 57, 103–104, Fig. 1). Petitioner asserts that an IP terminal includes “a user interface that connects clients to a network” and functions as a “network-based portal.” *Id.* at 38–39 (citing Ex. 1003 ¶¶ 397–398; Ex. 1010 ¶ 162, Fig. 12).

Third, Petitioner asserts that Tanigawa discloses “allowing different communication modes” such that “users may engage in ‘text chat,’ ‘voice chat,’ ‘chatting using images,’ and ‘video chatting.’” Pet. 39 (citing Ex. 1010 ¶¶ 36, 221).

Fourth, Petitioner asserts that Tanigawa discloses that IM server 4 uses a “presence information management table” to “manage presence

information” among client devices. Pet. 39–40 (citing Ex. 1010 ¶¶ 40, 49). According to Petitioner, (1) a user provides a nickname when registering to use the system, (2) the presence information management table contains the nicknames, and (3) “these nicknames are identifiers (for both first and second users) that are previously registered to client devices participating in” text, voice, or video chat. *Id.* at 40 (citing Ex. 1003 ¶¶ 399–402; Ex. 1010 ¶¶ 50, 65, 85, 116, 119, 126, 129–136, 141–143, Fig. 3). Petitioner asserts that “even where a user has multiple client devices, these devices are all identified by the same nickname.” *Id.* at 41 (citing Ex. 1003 ¶¶ 399–402; Ex. 1010, Figs. 3, 10).

To support its assertions, Petitioner provides the highlighted version of Tanigawa’s Figure 3 reproduced below (Pet. 41):

FIG.3

431 ACCOUNT NAMES	432 CLIENT ADDRESSES	433 CLIENT NICKNAMES	434 AUTHENTICATION KEYS	435 PRESENCE	436 USABLE MEDIA	437 CONFERENCE ADDRESSES	438 CONFERENCE NICKNAMES	439 BUDDY LIST	440
Client A	0000, 0000, 0000, 0000	taro	0000	text/voice	text/voice	0000, 0000, 0000/ 0000, 0000, 0000	room1	A,B,C,D,E,F,G...	
Client B	0000, 0000, 0000, 0000	jiro	0000	off	text/voice	0000, 0000, 0000		A,B,C,D,E,F,G...	
Client C	0000, 0000, 0000, 0000	ichiro	0000	idle	text	0000, 0000, 0000		A,B,C,D,E,F,G...	
Client D	0000, 0000, 0000, 0000	hanako	0000	text	text	0000, 0000, 0000	room1	A,B,C,D,E,F,G...	
Client E	0000, 0000, 0000, 0000	hanako	0000	voice	voice	0000, 0000, 0000	room1	A,B,C,D,E,F,G...	
Client F	0000, 0000, 0000, 0000	yoshi	0000	text	text	0000, 0000, 0000	room1	A,B,C,D,E,F,G...	
Client G	0000(0000), 0000, 0000, 0000	yoshi	0000	voice	voice	0000, 0000, 0000	room1	A,B,C,D,E,F,G...	
...	...	...	...	...	...	...	...	...	

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Figure 3 illustrates “an example of a presence information management table.” Ex. 1010 ¶¶ 16, 49, Fig. 3. The above highlighted version of

Figure 3 has yellow highlighting in field 433 for the user nicknamed Hanako, yellow highlighting in field 431 for Hanako's two electronic devices identified as client D and client E, yellow highlighting in field 433 for the user nicknamed Yoshi, and yellow highlighting in field 431 for Yoshi's two electronic devices identified as client F and client G. *See* Pet. 41; Ex. 1003 ¶ 401.

Fifth, Petitioner asserts that Tanigawa discloses that “when a first user invites a second user to chat, the second user's contact information is not shown to the first user” and that the first user instead receives “only pieces” of information about the second user, such as a nickname and presence information. Pet. 42 (citing Ex. 1010 ¶¶ 124, 130, 134, 144). According to Petitioner, contact information “is provided only to the IM server—not to the users themselves.” *Id.* (citing Ex. 1010 ¶¶ 135, 137).

To support its assertions, Petitioner provides the highlighted version of Tanigawa's Figure 12 reproduced below (Pet. 43):

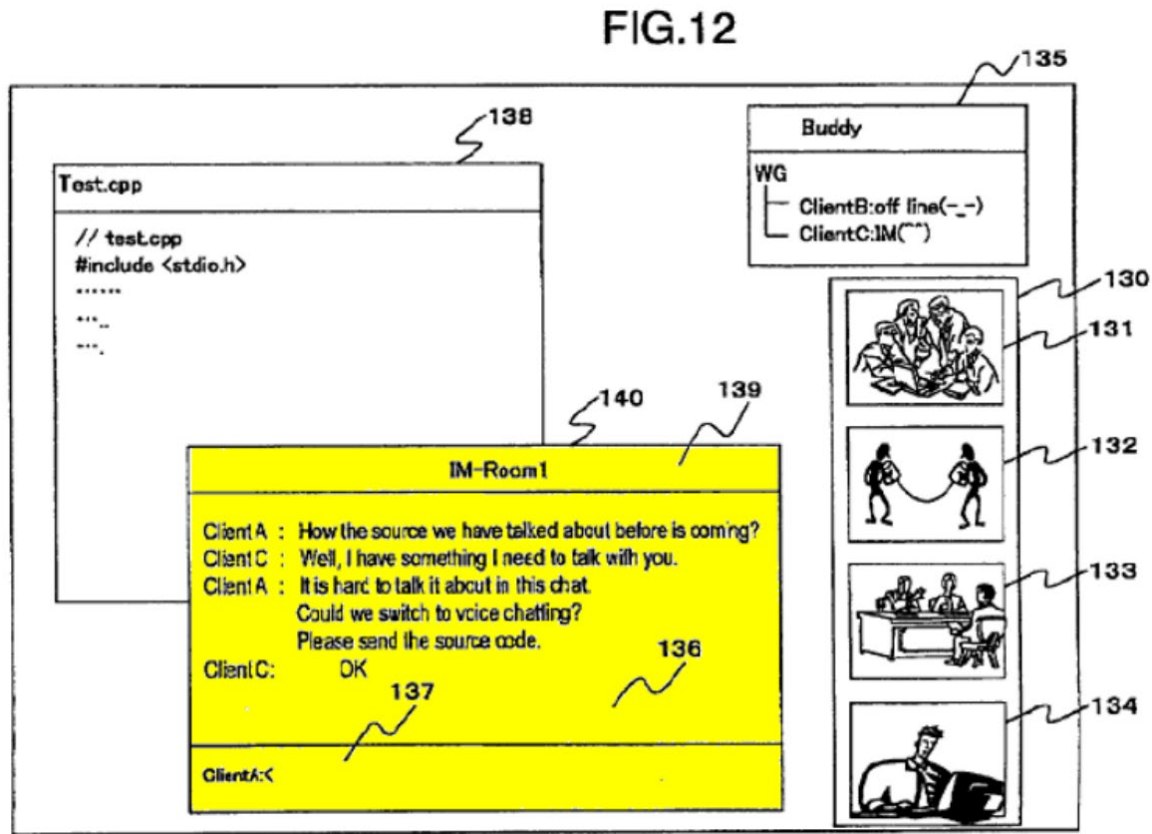


Figure 12 illustrates a user interface for an IM client having various display areas and a main menu bar. Ex. 1010 ¶¶ 25, 162, Fig. 12. The above highlighted version of Figure 12 has yellow highlighting over the display area for text chatting identified by reference numeral 140. *See* Pet. 43; Ex. 1003 ¶ 405; Ex. 1010 ¶ 166. The highlighted display area for text chatting does not provide contact information for the chat participants. *See* Pet. 42–43; Ex. 1003 ¶ 405.

Patent Owner disputes that Tanigawa discloses a “network-based portal” according to claim 7’s preamble. *See* Prelim. Resp. 1–2, 13–16. Specifically, Patent Owner asserts that a “network-based portal” resides only “at the server-side of a network” and that Petitioner identifies no server-side

portal in Tanigawa. *Id.* at 1–2, 4, 13–16. At this stage of the proceeding, Patent Owner does not dispute that Tanigawa discloses the other aspects of claim 7’s preamble. *Id.* at 14–16.

Generally, a preamble does not limit a claim. *Allen Eng’g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1346 (Fed. Cir. 2002). We need not decide whether claim 7’s preamble limits the claim because, based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth’s testimony, Petitioner establishes sufficiently for purposes of institution that Tanigawa teaches claim 7’s preamble. *See* Pet. 33–39; Ex. 1003 ¶¶ 109–111, 395–405.

For instance, Tanigawa’s Figure 1 illustrates “an IM-Voice over Internet Protocol (VoIP) interconnecting system” including IP network 1, IM server 4, AP server 5, MD server 6, IP terminal 7-1, IP terminal 7-2, IP terminal 7-3, VoIP telephone 8, and VR server 10. Ex. 1010 ¶¶ 34–36, Fig. 1; *see* Ex. 1003 ¶¶ 109, 395. Tanigawa explains that an IM client is “application software” and that each IP terminal contains an IM client. Ex. 1010 ¶¶ 3, 35; *see* Ex. 1003 ¶ 424.

In Tanigawa’s communications system, each IP terminal includes a user interface for the IM client. Ex. 1010 ¶¶ 25, 162, Fig. 12; *see* Ex. 1003 ¶¶ 110, 398. The user interface enables a user to communicate with others via IP network 1, radio communication network (RCN) 2, and publicly switched telephone network (PSTN) 3. Ex. 1010 ¶¶ 35–36, 162–166; *see* Ex. 1003 ¶¶ 110, 397–398. With the user interface, a user may initiate any of the following: (1) a one-to-one text chat; (2) a one-to-one voice chat; (3) a multi-party text chat; and (4) a multi-party voice chat. Ex. 1010 ¶¶ 8, 115–164, 176–212, 216–218, Figs. 10–12, 15–19; *see* Ex. 1003 ¶¶ 110, 398.

Hence, based on the current record, Petitioner establishes sufficiently for purposes of institution that Tanigawa's user interface for an IM client residing in an IP terminal functions as a "network-based portal."

For the reasons discussed above, we disagree with Patent Owner's assertion that a "network-based portal" resides only "at the server-side of a network." *See* Prelim. Resp. 1–2, 4, 13–14; *supra* § IV.C.2.

(b) Limitation [7.1]

Claim 7 recites as follows:

computer program code for providing a plurality of communication modes to a first user to allow the first user to use one of the plurality of communication modes as a selected communication mode for a first message from the first user to a second user via an electronic device associated with the second user, with the first user being identified at least depending on a prior registration process by the first user regarding the use of the network-based portal.

Ex. 1001, 21:61–22:2.

Petitioner contends that Tanigawa teaches this limitation for four related reasons. *See* Pet. 43–46. First, Petitioner asserts that Tanigawa discloses users communicating with one another "on a one-to-one or multi-party basis using client devices." *Id.* at 43–44 (citing Ex. 1010 ¶¶ 116, 179, 194, Fig. 3).

Second, Petitioner asserts that Tanigawa discloses a plurality of communication modes for users to communicate with one another, including "text chat," "voice chat," "chatting using images," and "video chatting." Pet. 44 (citing Ex. 1010 ¶¶ 36, 221).

Third, Petitioner asserts that Tanigawa discloses that a "message from the first user to a second user is via an electronic device associated with the

second user,” such as an IP terminal, a radio terminal (mobile telephone), or a fixed (stationary) telephone. Pet. 45 (citing Ex. 1010 ¶¶ 35, 68, 157, Fig. 1).

Fourth, Petitioner asserts that Tanigawa discloses that a user provides a nickname when registering to use the system and that “these nicknames are identifiers (for both first and second users) that are previously registered to client devices participating in” text, voice, or video chat. Pet. 46 (citing Ex. 1003 ¶¶ 409–410; Ex. 1010 ¶¶ 50, 65, 85, 116, 119, 126, 129–136, 141–143, Fig. 3).

Patent Owner disputes that Tanigawa discloses a “network-based portal” according to limitation [7.1], i.e., because a “network-based portal” resides only “at the server-side of a network” and Petitioner identifies no server-side portal in Tanigawa. *See* Prelim. Resp. 1–2, 4, 13–16. At this stage of the proceeding, Patent Owner does not dispute that Tanigawa discloses the other aspects of limitation [7.1]. *Id.* at 14–16.

Based on the current record, Petitioner establishes sufficiently for purposes of institution that Tanigawa teaches limitation [7.1]. *See* Pet. 39–42; Ex. 1003 ¶¶ 109, 395–410. Specifically, Tanigawa discloses “an IM-Voice over Internet Protocol (VoIP) interconnecting system” including IP network 1, IM server 4, AP server 5, MD server 6, IP terminal 7-1, IP terminal 7-2, IP terminal 7-3, VoIP telephone 8, and VR server 10. Ex. 1010 ¶¶ 14, 34–36, Fig. 1; *see* Ex. 1003 ¶¶ 109, 397.

IM server 4 “manages presence information of an IM client”; AP server 5 “manages connection for a voice chat using VoIP”; and MD server 6 “implements multi-party voice speech by mixing voice data.” Ex. 1010 ¶¶ 35–36, 214, code (57); *see* Ex. 1003 ¶ 109. Further, VR

server 10 “performs voice relay among” IP network 1, RCN 2, and PSTN 3. Ex. 1010 ¶ 35; *see* Ex. 1003 ¶ 109. VR server 10 communicates with radio terminal 9 (e.g., a mobile telephone) via RCN 2 and with fixed telephone 11 via PSTN 3. Ex. 1010 ¶ 35, Fig. 1; *see* Ex. 1003 ¶¶ 109, 397. An IM client resides in each of IP terminal 7-1, IP terminal 7-2, IP terminal 7-3, VoIP telephone 8, radio terminal 9, and fixed telephone 11. Ex. 1010 ¶¶ 35, 54; *see* Ex. 1003 ¶ 424.

IM server 4 contains a presence information management table. Ex. 1010 ¶ 49, Fig. 3; *see* Ex. 1003 ¶¶ 111, 400, 406. The example presence information management table depicted in Tanigawa’s Figure 3 includes the following fields in each record (row):

- (1) “a field 431 for registering an account name of a user of an IM client”;
- (2) “a field 432 for registering an address of the IM client”;
- (3) “a field 433 for registering a nickname of the user of the IM client”;
- (4) “a field 434 for registering an authentication key for using the IM-VoIP interconnecting system”;
- (5) “a field 435 for registering presence information of the IM client”;
- (6) “a field 436 for registering a medium (text chat and voice chat), which can be used by IM client for a chat”;
- (7) “a field 437 for registering an address (IP address or DNS and a port number) of a conference room in which the IM client participates”;
- (8) “a field 438 for registering a nickname of the conference room”; and
- (9) “a field 439 for registering account names of the other IM clients with whom the IM client can chat.”

Ex. 1010 ¶ 50, Fig. 3; *see* Ex. 1003 ¶¶ 111, 400, 406. For instance, field 433 includes the following nicknames in various records: Taro, Jiro, Ichiro, Hanako, and Yoshi. Ex. 1010 ¶ 116, Fig. 3; *see* Ex. 1003 ¶¶ 399, 406.

Tanigawa discloses examples where (a) the user nicknamed Taro registers IP terminal 7-2 as an account named client A, (b) the user nicknamed Hanako registers (i) IP terminal 7-1 as an account named client D and (ii) VoIP telephone 8 as an account named client E, and (c) the user nicknamed Yoshi registers (i) IP terminal 7-3 as an account named client F and (ii) radio terminal 9 as an account named client G. Ex. 1010 ¶¶ 115–116, 177–179, 193–194, 207–209, Figs. 3, 10–11, 15–19; *see* Ex. 1003 ¶¶ 399, 406, 409.

After registering with the system, a user may communicate with one or more other users by text chat, voice chat, and video chat. Ex. 1010 ¶¶ 11–12, 23–24, 28–29, 36, 221, code (57), Figs. 10–11, 15–16; *see* Ex. 1003 ¶¶ 110, 397, 407. Moreover, a user may engage in a one-to-one chat or a multi-party chat. Ex. 1010 ¶¶ 8, 115–164, 176–212, 216–218, Figs. 10–12, 15–19; *see* Ex. 1003 ¶¶ 110, 406. Thus, a user may select from among a plurality of communication modes when sending a message to an electronic device associated with another user.

For the reasons discussed above, we disagree with Patent Owner’s assertion that a “network-based portal” resides only “at the server-side of a network.” *See* Prelim. Resp. 1–2, 4, 13–14; *supra* § IV.C.2.

(c) Limitation [7.2]

Claim 7 recites “wherein the plurality of communication modes include at least text communication using a personal computer, voice communication using a personal computer, text communication using

a mobile phone, voice communication using a mobile phone, and communication with at least an image.” Ex. 1001, 22:3–8.

Petitioner contends that Tanigawa teaches this limitation because Tanigawa discloses text chatting and voice chatting and that “text or voice communication can be performed using a variety of client terminal devices, including personal computers (with or without telephones), fixed telephones, and mobile telephones.” Pet. 47–48 (citing Ex. 1003 ¶¶ 411–412; Ex. 1010 ¶¶ 5–9, 36, 50–52, 114–163, 176–220, Figs. 1, 12).

Patent Owner makes no arguments specific to limitation [7.2]. *See, e.g.*, Prelim. Resp. 1–2, 12–16. Nonetheless, Petitioner bears the burden to demonstrate unpatentability. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

Based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth’s testimony, Petitioner establishes sufficiently for purposes of institution that Tanigawa teaches limitation [7.2]. *See* Pet. 47–48; Ex. 1003 ¶¶ 411–412.

(d) Limitation [7.3]

Claim 7 recites as follows:

wherein messages are eligible to be received by the electronic device associated with the second user based on any of the plurality of communication modes, all depending on an identifier associated with the second user being set by the second user via the network-based portal, at least in view of the network-based portal based on the Internet protocol.

Ex. 1001, 22:9–15.

Petitioner contends that Tanigawa teaches this limitation for the reasons that Tanigawa teaches claim 7’s preamble and limitation [7.1]. Pet. 48–49.

Patent Owner disputes that Tanigawa discloses a “network-based portal” according to limitation [7.3], i.e., because a “network-based portal” resides only “at the server-side of a network” and Petitioner identifies no server-side portal in Tanigawa. *See* Prelim. Resp. 1–2, 4, 13–16. At this stage of the proceeding, Patent Owner does not dispute that Tanigawa discloses the other aspects of limitation [7.3]. *Id.* at 14–16.

Based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth’s testimony, Petitioner establishes sufficiently for purposes of institution that Tanigawa teaches limitation [7.3]. *See* Pet. 37–46, 48–49; Ex. 1003 ¶¶ 395–410, 413–415; *supra* §§ IV.D.3(a)–(b).

For the reasons discussed above, we disagree with Patent Owner’s assertion that a “network-based portal” resides only “at the server-side of a network.” *See* Prelim. Resp. 1–2, 4, 13–14; *supra* § IV.C.2.

(e) Limitation [7.4]

Claim 7 recites “computer program code for permitting the second user to block the first user from using at least the selected communication mode to reach the second user via the network-based portal.” Ex. 1001, 22:16–19.

Petitioner contends that the combined disclosures in Tanigawa and Hullfish teach this limitation. *See* Pet. 38–39, 49–50. Specifically, Petitioner asserts that Tanigawa discloses a “network-based portal” and that Hullfish discloses “a ‘privacy feature’ comprising ‘a method of discontinuing receiving . . . messages from an undesired source.’” *Id.* at 38–39, 49 (alteration by Petitioner) (quoting Ex. 1011, 8:64–65). According to Petitioner, Hullfish discloses that “when ‘User A [i.e., second user] wants

to stop receiving messages from User B [i.e., first user],” User A “sends a text message to a ‘predetermined telephone number’ containing” User B’s telephone number, and “any ‘future . . . message from User B to User A will be blocked.” *Id.* at 49 (alterations by Petitioner) (emphases omitted) (quoting Ex. 1011, 8:63–64, 9:15–16, 9:41–42).

Patent Owner disputes that Tanigawa discloses a “network-based portal” according to limitation [7.4], i.e., because a “network-based portal” resides only “at the server-side of a network” and Petitioner identifies no server-side portal in Tanigawa. *See* Prelim. Resp. 1–2, 4, 13–16. At this stage of the proceeding, Patent Owner does not dispute that Tanigawa and Hullfish disclose the other aspects of limitation [7.4]. *Id.* at 14–16.

Based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth’s testimony, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa and Hullfish teach limitation [7.4]. *See* Pet. 38–39, 49–50; Ex. 1003 ¶¶ 398, 416–417.

For the reasons discussed above, we disagree with Patent Owner’s assertion that a “network-based portal” resides only “at the server-side of a network.” *See* Prelim. Resp. 1–2, 4, 13–14; *supra* § IV.C.2.

(f) Limitation [7.5]

Claim 7 recites as follows:

computer program code for enabling, via the network-based portal, the first message to be received by the second user via the electronic device associated with the second user, using the selected communication mode, depending on the identifier associated with the second user, in view of the second user not blocking the first user from using the selected communication mode to reach the second user, via the network-based portal.

Ex. 1001, 22:20–27.

Petitioner contends that the combined disclosures in Tanigawa and Hullfish teach this limitation for the reasons that the combined disclosures teach limitations [7.3] and [7.4]. *See* Pet. 50–51. Further, Petitioner asserts that Hullfish discloses that a user “registers a screen name representing her identity in an IM service system, e.g. JaneSmith1.” *Id.* at 51 (emphasis omitted) (quoting Ex. 1011, 6:12–13). Petitioner also asserts that “a message from the first user is enabled to be received based on the second user’s screen name (the claimed ‘one identifier’)” when “the first user is not blocked” by the second user. *Id.* (citing Ex. 1011, 8:59–9:42, 10:1–8, Fig. 5).

Patent Owner disputes that Tanigawa discloses a “network-based portal” according to limitation [7.5], i.e., because a “network-based portal” resides only “at the server-side of a network” and Petitioner identifies no server-side portal in Tanigawa. *See* Prelim. Resp. 1–2, 4, 13–16. At this stage of the proceeding, Patent Owner does not dispute that Tanigawa and Hullfish disclose the other aspects of limitation [7.5]. *Id.* at 14–16.

Based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth’s testimony, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa and Hullfish teach limitation [7.5]. *See* Pet. 38–39, 50–51; Ex. 1003 ¶¶ 398, 418–421; *supra* §§ IV.D.3(d)–(e).

For the reasons discussed above, we disagree with Patent Owner’s assertion that a “network-based portal” resides only “at the server-side of a network.” *See* Prelim. Resp. 1–2, 4, 13–14; *supra* § IV.C.2.

(g) Limitation [7.6]

Claim 7 recites “computer program code for determining availability of the second user.” Ex. 1001, 22:28–29.

Petitioner contends that Tanigawa teaches this limitation because Tanigawa discloses that IM server 4 “causes ‘presence information’ to be created, such as ‘information indicating the user can chat: “available” and information indicating that the user is busy and cannot chat.’” Pet. 52 (quoting Ex. 1010 ¶ 120). Petitioner also contends that IM server 4 contains a presence information management table with each user’s availability information. *Id.* at 52–53 (citing Ex. 1003 ¶¶ 422–423; Ex. 1010 ¶¶ 49–54, 120–125, 164, Fig. 3).

Patent Owner makes no arguments specific to limitation [7.6]. *See, e.g.*, Prelim. Resp. 1–2, 12–16.

Based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth’s testimony, Petitioner establishes sufficiently for purposes of institution that Tanigawa teaches limitation [7.6]. *See* Pet. 52–53; Ex. 1003 ¶¶ 422–423.

(h) Limitation [7.7]

Claim 7 recites “computer program code for receiving, from the second user, contact information associated with the second user to allow the second user to participate and at least receive messages via the network-based portal.” Ex. 1001, 22:30–33.

Petitioner contends that Tanigawa teaches this limitation because Tanigawa discloses that “telephone users must register a telephone number, which is ‘required for an IM client to participate in IM.’” Pet. 53 (emphasis omitted) (quoting Ex. 1010 ¶ 84). Petitioner also contends that an ordinarily

skilled artisan would have known in 2000 that the Internet Engineering Task Force (IETF) recommended “a common base format” for instant messages as well as “standard forms of addresses or contact means” for media other than instant messages, such as “telephone numbers or email addresses.” *Id.* at 54 (citing Ex. 1003 ¶¶ 424–427).

Patent Owner disputes that Tanigawa discloses a “network-based portal” according to limitation [7.7], i.e., because a “network-based portal” resides only “at the server-side of a network” and Petitioner identifies no server-side portal in Tanigawa. *See* Prelim. Resp. 1–2, 4, 13–16. At this stage of the proceeding, Patent Owner does not dispute that Tanigawa discloses the other aspects of limitation [7.7]. *Id.* at 14–16.

Based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth’s testimony, Petitioner establishes sufficiently for purposes of institution that Tanigawa teaches limitation [7.7]. *See* Pet. 53–54; Ex. 1003 ¶¶ 424–427.

For the reasons discussed above, we disagree with Patent Owner’s assertion that a “network-based portal” resides only “at the server-side of a network.” *See* Prelim. Resp. 1–2, 4, 13–14; *supra* § IV.C.2.

(i) Limitation [7.8]

Claim 7 recites as follows:

wherein even when the first message is received by the second user via the electronic device associated with the second user depending on the identifier associated with the second user, the contact information associated with the second user is not provided via the network-based portal to the first user via an electronic device associated with the first user.

Ex. 1001, 22:34–40.

Petitioner contends that Tanigawa teaches this limitation because Tanigawa discloses that “when a first user invites a second user to chat, the second user’s contact information is not shown to the first user” and that the first user instead receives “only pieces” of information about the second user, such as a nickname and presence information. Pet. 54 (citing Ex. 1010 ¶¶ 124, 130, 134, 144). Petitioner also contends that contact information “is provided only to the IM server—not to the users themselves.” *Id.* (citing Ex. 1010 ¶¶ 135, 137).

To support its contentions, Petitioner provides the highlighted version of Tanigawa’s Figure 12 reproduced below (Pet. 55):

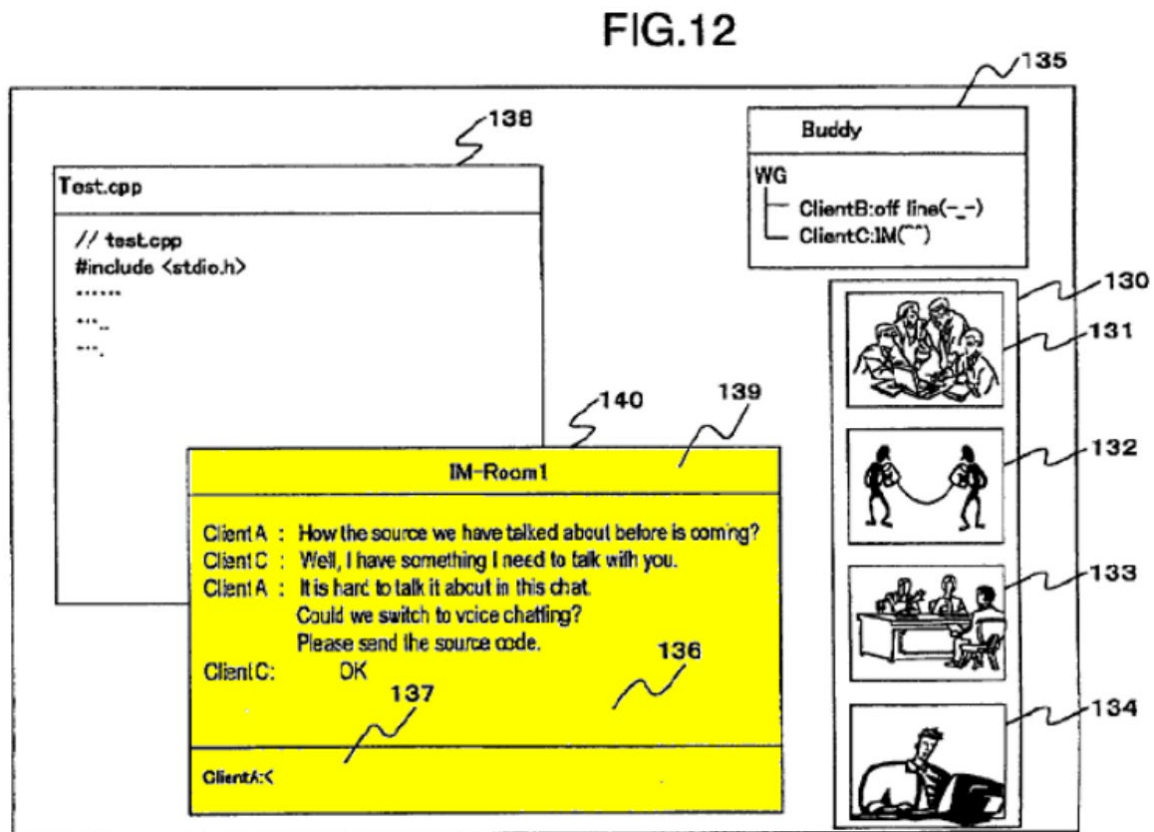


Figure 12 illustrates a user interface for an IM client having various display areas and a main menu bar. Ex. 1010 ¶¶ 25, 162, Fig. 12. The above highlighted version of Figure 12 has yellow highlighting over the display

area for text chatting identified by reference numeral 140. *See* Pet. 55; Ex. 1003 ¶ 430; Ex. 1010 ¶ 166. The highlighted display area for text chatting does not provide contact information for the chat participants. *See* Pet. 55; Ex. 1003 ¶ 430.

Patent Owner disputes that Tanigawa discloses a “network-based portal” according to limitation [7.8], i.e., because a “network-based portal” resides only “at the server-side of a network” and Petitioner identifies no server-side portal in Tanigawa. *See* Prelim. Resp. 1–2, 4, 13–16. At this stage of the proceeding, Patent Owner does not dispute that Tanigawa discloses the other aspects of limitation [7.8]. *Id.* at 14–16.

Based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth’s testimony, Petitioner establishes sufficiently for purposes of institution that Tanigawa teaches limitation [7.8]. *See* Pet. 54–55; Ex. 1003 ¶¶ 404–405, 428–430; *supra* § IV.D.3(a).

For the reasons discussed above, we disagree with Patent Owner’s assertion that a “network-based portal” resides only “at the server-side of a network.” *See* Prelim. Resp. 1–2, 4, 13–14; *supra* § IV.C.2.

(j) Limitation [7.9]

Claim 7 recites “wherein the identifier associated with the second user is distinct from the contact information associated with the second user.” Ex. 1001, 22:41–43.

Petitioner contends that Tanigawa teaches this limitation because Tanigawa discloses that a user has a nickname or screen name that (1) is distinct from the user’s telephone number and email address and (2) serves as an “indicator.” Pet. 55–56 (citing Ex. 1003 ¶ 431).

Patent Owner makes no arguments specific to limitation [7.9]. *See, e.g.,* Prelim. Resp. 1–2, 12–16.

Based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth’s testimony, Petitioner establishes sufficiently for purposes of institution that Tanigawa teaches limitation [7.9]. *See* Pet. 55–56; Ex. 1003 ¶¶ 395–410, 431; *supra* §§ IV.D.3(a)–(b).

(k) Alleged Reasons for Combining the Teachings of the References

Petitioner identifies reasons that would have prompted an ordinarily skilled artisan to combine Hullfish’s blocking features with Tanigawa’s communications system. *See* Pet. 33–36, 49–50. Further, Petitioner asserts that an ordinarily skilled artisan “would have had a reasonable expectation of success in combining Hullfish’s blocking features with Tanigawa’s communications system.” *Id.* at 36. Dr. Almeroth’s testimony supports Petitioner’s positions. *See* Ex. 1003 ¶¶ 178–185, 394, 420.

For instance, Dr. Almeroth testifies that an ordinarily skilled artisan would have been motivated to combine Hullfish’s blocking features with Tanigawa’s communications system for several reasons. Ex. 1003 ¶¶ 179–184, 420. According to Dr. Almeroth, combining the teachings of the references in the way Petitioner proposes would have improved Tanigawa’s communications system by:

- (1) giving a user “greater control” over who can reach the user;
- (2) allowing a user to avoid “conversations with annoying, abusive, or unpleasant” people;
- (3) providing “a method of parental control to allow parents to supervise a minor’s use” of the system; and

- (4) permitting a user “to block messages at certain times, including while they are asleep, while they are busy, or while they are traveling.”

Id. ¶¶ 179–181, 183–184, 420.

Patent Owner makes no arguments against combining the teachings of Tanigawa and Hullfish. *See, e.g.*, Prelim. 1–2, 12–16.

Based on the current record, Petitioner establishes sufficiently for purposes of institution that an ordinarily skilled artisan would have had reasons, e.g., as articulated by Dr. Almeroth, to combine the teachings of Tanigawa and Hullfish in the way Petitioner proposes. *See* Ex. 1003 ¶¶ 178–184, 394, 420. Petitioner also establishes sufficiently for purposes of institution that an ordinarily skilled artisan would have had a reasonable expectation of success in combining the teachings of Tanigawa and Hullfish. *Id.* ¶ 185.

(l) Conclusion About Obviousness/Nonobviousness for Claim 7

As discussed above, Petitioner’s analysis addresses how the combined disclosures in Tanigawa and Hullfish teach each limitation in claim 7. *See supra* §§ IV.D.3(b)–(j). Additionally, Petitioner provides a reason with rational underpinning as to why an ordinarily skilled artisan would have been motivated to combine Hullfish’s blocking features with Tanigawa’s communications system and would have had a reasonable expectation of success. *See supra* § IV.E.3(k). Thus, based on the current record, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa and Hullfish teach claim 7’s subject matter. Hence, Petitioner demonstrates a reasonable likelihood of prevailing in proving claim 7 unpatentable under § 103(a) as obvious over Tanigawa and Hullfish.

4. INDEPENDENT CLAIMS 38 AND 46 AND DEPENDENT CLAIMS
10–12, 22–24, 33–36, 39–41, 49, 51–53, 55, 57, 58, AND 64–66

Independent claims 38 and 46 recite subject matter similar to claim 7. *Compare* Ex. 1001, 21:50–22:43, *with id.* at 26:1–57, *and id.* at 27:37–28:39. We recognize that the challenged independent claims differ at least somewhat in scope. As an example, limitation [46.1] requires “an identifier associated with the first user previously set by the first user via the network-based portal,” while limitations [7.1] and [38.1] lack a similar requirement. *Id.* at 21:61–22:2, 26:10–18, 27:48–55. As another example, limitations [7.2] and [46.2] each require “a personal computer” and “a mobile phone,” while limitation [38.2] requires only “a mobile phone.” *Id.* at 22:3–8, 26:19–22, 27:56–62. At this stage of the proceeding, however, Patent Owner does not advance patentability arguments based on differences in claim scope. *See, e.g.,* Prelim. Resp. 1–2, 12–16.

Claims 10–12, 22–24, and 33–36 depend directly or indirectly from claim 7. Ex. 1001, 22:56–23:4, 24:5–22, 25:14–61. Claims 39–41 depend directly or indirectly from claim 38. *Id.* at 26:58–27:14. Claims 49, 51–53, 55, 57, 58, and 64–66 depend directly or indirectly from claim 46. *Id.* at 28:53–29:3, 29:7–48, 29:52–57, 29:64–30:11, 30:47–31:3.

For claims 10–12, 22–24, 33–36, 38–41, 46, 49, 51–53, 55, 57, 58, and 64–66, Petitioner provides a detailed analysis supported by Dr. Almeroth’s testimony about how the combined disclosures in Tanigawa and Hullfish teach all the limitations in the claims. *See* Pet. 56–73; Ex. 1003 ¶¶ 432–511.

Patent Owner disputes that Tanigawa discloses a “network-based portal” according to independent claims 38 and 46 and certain dependent

claims, i.e., because a “network-based portal” resides only “at the server-side of a network” and Petitioner identifies no server-side portal in Tanigawa. *See* Prelim. Resp. 1–2, 4, 13–16. At this stage of the proceeding, Patent Owner does not dispute that Tanigawa and Hullfish disclose the other aspects of claims 10–12, 22–24, 33–36, 38–41, 46, 49, 51–53, 55, 57, 58, and 64–66. *Id.* at 14–16.

Based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth’s testimony, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa and Hullfish teach the subject matter of claims 10–12, 22–24, 33–36, 38–41, 46, 49, 51–53, 55, 57, 58, and 64–66. *See* Pet. 56–73; Ex. 1003 ¶¶ 432–511.

For the reasons discussed above, we disagree with Patent Owner’s assertion that a “network-based portal” resides only “at the server-side of a network.” *See* Prelim. Resp. 1–2, 4, 13–14; *supra* § IV.C.2.

E. Alleged Obviousness over Tanigawa, Hullfish, and Loveland: Claims 8, 9, 43, 44, 47, 48, 50, and 54

Petitioner contends that claims 8, 9, 43, 44, 47, 48, 50, and 54 are unpatentable under § 103(a) as obvious over Tanigawa, Hullfish, and Loveland. *See* Pet. 6, 74–78. Above, we provided overviews of Tanigawa and Hullfish. *See supra* §§ IV.D.1–IV.D.2. Below, we provide an overview of Loveland, and then we consider the obviousness issues. As explained below, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa, Hullfish, and Loveland teach the subject matter of claims 8, 9, 43, 44, 47, 48, 50, and 54.

1. OVERVIEW OF LOVELAND (EXHIBIT 1008)

Loveland is a U.S. patent titled “Dispatching Notification to a Device Based on the Current Context of a User with the Device,” filed on September 28, 2001, and issued on October 23, 2007. Ex. 1008, codes (22), (45), (54). Loveland states that the invention “relates to methods, systems and computer program products for notifying a user of an event via voice notifications or other notification methods depending on the user’s dynamic circumstances.” *Id.* at 1:8–11; *see id.* at 1:61–64, 3:4–7. As an example, Loveland explains that an urgent notification sent by text message to a user driving a car may distract the user, whereas a “notification spoken to the user via a voice notification” may be “far more appropriate.” *Id.* at 1:65–2:11.

Loveland’s Figure 2 (reproduced below) depicts an example environment for a method for notifying a user of an event in a context-sensitive manner that takes into consideration the user’s current state:

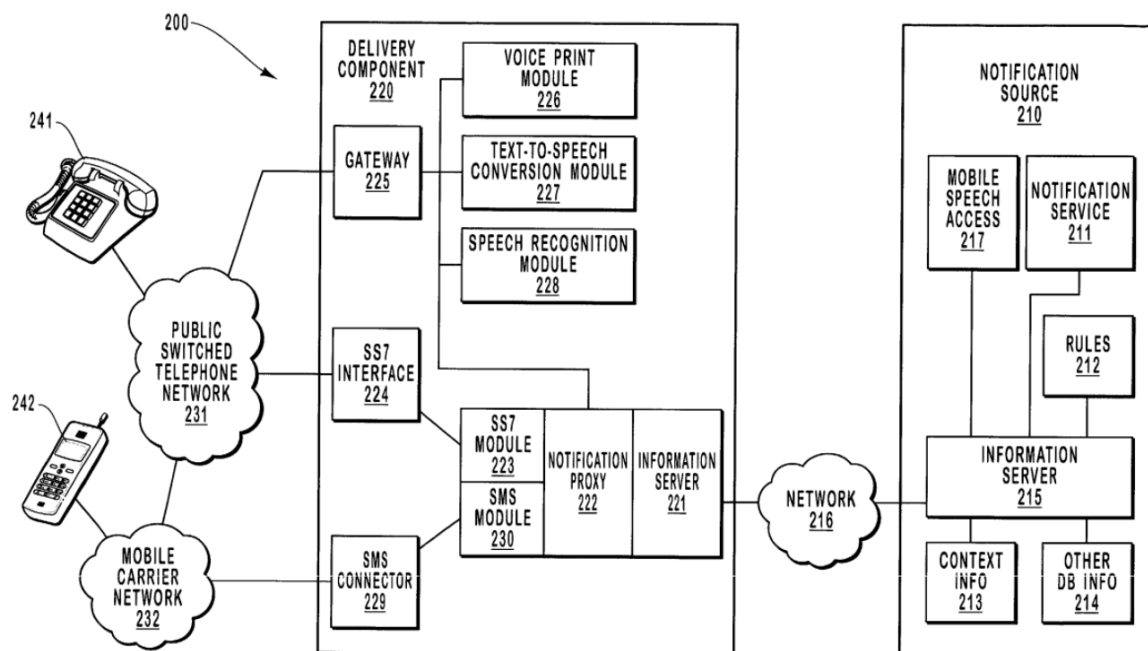


FIG. 2

Figure 2 illustrates example environment 200 including the following:

- (1) “several devices that are capable of receiving notifications such as telephonic devices 241 and 242”;
- (2) “a notification source 210 that generates the notification either in response to having directly detected an event, or in response to having indirectly detected an event via another notification that may be received by the notification source 210”; and
- (3) “a delivery component 220 that delivers the notification using the correct notification method to the user of the corresponding telephonic device 241 or 242.”

Ex. 1008, 2:63–64, 5:25–26, 5:32–43, Fig. 2.

Loveland’s Figure 3 (reproduced below) depicts steps in a method for notifying a user of an event in a context-sensitive manner that takes into consideration the user’s current state:

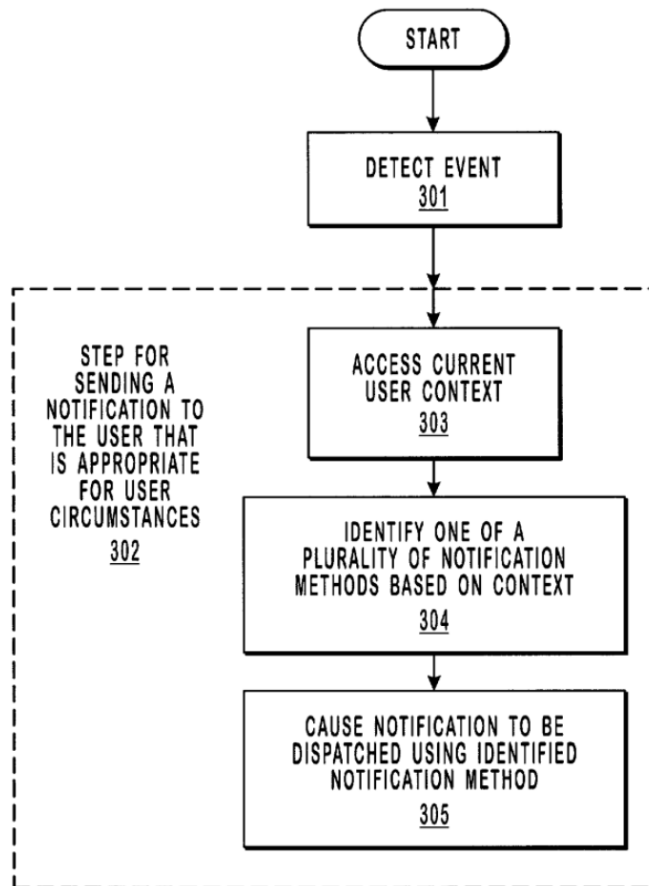


FIG. 3

Figure 3 “illustrates a flowchart of a method for notifying a user of an event” in a context-sensitive manner that takes into consideration the user’s current state. Ex. 1008, 2:65–67, 5:26–28, Fig. 3. The method “may be performed by the notification source 210” shown in Figure 2. *Id.* at 6:24–25.

In step 301, a notification service “detect[s] an event to which a user has previously subscribed,” e.g., “that a new e-mail from an important individual has been received in the user’s in-box” or “that a stock price has

reached a predetermined value.” Ex. 1008, 6:27–34, Fig. 3. In step 302, the notification service “send[s] a notification to the user that is appropriate for the user’s circumstances.” *Id.* at 6:36–38, Fig. 3.

To determine whether a notification is appropriate for the user’s circumstances, in step 303 the notification service “access[es] a current context of the user.” Ex. 1008, 6:40–42, Fig. 3. “The current context may include, for example, whether or not the user’s telephone is on, busy, in hands-free mode, out of range, in meeting mode or the like for each of the user’s telephones.” *Id.* at 6:44–47.

Then, in step 304 the notification service “identif[ies] one of a plurality of possible notification methods to use in order to dispatch the notification based on the current context of the user,” e.g., by accessing rules that “relate the current user circumstances with how and whether notification should occur given the current circumstances.” Ex. 1008, 6:51–59, Fig. 3. The rules may “define which telephonic devices to notify given the current time, and what notification methods to use if the current device is on or off, in hands-free mode or not, and busy or not.” *Id.* at 6:60–64. For instance, “the user may specify that if an e-mail is received from a certain important person, that a voice notification interrupt the current conversation even if the user is currently on the telephone.” *Id.* at 2:28–31; *see id.* at 6:64–7:3.

Next, in step 305 the notification service “cause[s] the notification to be dispatched to the user using the identified notification method.” Ex. 1008, 7:4–6, Fig. 3.

2. DIFFERENCES BETWEEN THE CLAIMED INVENTION AND THE PRIOR ART

Claims 8 and 9 read as follows:

8. A non-transitory computer readable medium as recited in claim 7, wherein said computer readable medium comprises computer program code for:

receiving an urgency indication from the first user to the second user via the electronic device associated with the first user; and

enabling an urgent notification to be generated to notify the second user at least in view of receiving the urgency indication.

9. A non-transitory computer readable medium as recited in claim 8, wherein the urgent notification is enabled to be generated at least in an audio manner.

Ex. 1001, 22:44–55. Claims 43, 44, 47, 48, 50, and 54 include limitations similar to the limitations in claims 8 and 9. *Id.* at 27:20–27, 28:40–52, 29:4–6, 29:49–51.

Petitioner contends that Loveland teaches claim 8’s limitations because Loveland discloses a notification service that (1) “determines the appropriate notification method to notify the recipient of receipt of the message” and (2) “generate[s] an urgent notification,” e.g., if the sender “is an important person trying to communicate with” the recipient. Pet. 76–77 (citing Ex. 1008, 2:13–33, 6:30–7:3). Petitioner contends that Loveland teaches claim 9’s limitation because Loveland discloses that “the user may state that she wants to be notified by audible voice message if she receives an e-mail from a certain individual.” *Id.* at 77 (emphasis omitted) (quoting Ex. 1008, 6:64–67). Petitioner contends that Loveland teaches the

limitations in claims 43, 44, 47, 48, 50, and 54 for the reasons that Loveland teaches the limitations in claims 8 and 9. *Id.* at 77–78.

Patent Owner disputes that Tanigawa discloses a “network-based portal” according to claim 47, i.e., because a “network-based portal” resides only “at the server-side of a network” and Petitioner identifies no server-side portal in Tanigawa. *See* Prelim. Resp. 1–2, 4, 13–16. At this stage of the proceeding, Patent Owner does not dispute that Tanigawa, Hullfish, and Loveland disclose the other aspects of claims 8, 9, 43, 44, 47, 48, 50, and 54. *Id.* at 14–16.

Based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth’s testimony, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa, Hullfish, and Loveland teach all the limitations in claims 8, 9, 43, 44, 47, 48, 50, and 54. *See* Pet. 76–78; Ex. 1003 ¶¶ 513–528.

For the reasons discussed above, we disagree with Patent Owner’s assertion that a “network-based portal” resides only “at the server-side of a network.” *See* Prelim. Resp. 1–2, 4, 13–14; *supra* § IV.C.2.

3. ALLEGED REASONS FOR COMBINING THE TEACHINGS OF THE REFERENCES

Petitioner identifies reasons that would have prompted an ordinarily skilled artisan to combine Loveland’s urgent-message-notification features with Tanigawa’s communications system (as modified by Hullfish). *See* Pet. 74–76. Further, Petitioner asserts that an ordinarily skilled artisan “would have had a reasonable expectation of success in combining” Loveland’s features with Tanigawa’s system. *Id.* at 76. Dr. Almeroth’s testimony supports Petitioner’s positions. *See* Ex. 1003 ¶¶ 218–224, 512.

For instance, Dr. Almeroth testifies that an ordinarily skilled artisan would have been motivated to combine Loveland’s urgent-message-notification features with Tanigawa’s communications system to improve Tanigawa’s system by (1) “prevent[ing] inadvertent blocking of important communications” and (2) “provid[ing] users more control over blocked communications.” Ex. 1003 ¶¶ 219–220. Dr. Almeroth explains that with the teachings of Loveland and Hullfish “users of Tanigawa’s system would be better equipped to receive notifications of urgent messages from important individuals and to block unwanted communications.” *Id.* ¶ 222.

Patent Owner makes no arguments against combining the teachings of Tanigawa, Hullfish, and Loveland. *See, e.g.*, Prelim. Resp. 1–2, 12–16.

Based on the current record, Petitioner establishes sufficiently for purposes of institution that an ordinarily skilled artisan would have had reasons, e.g., as articulated by Dr. Almeroth, to combine the teachings of Tanigawa, Hullfish, and Loveland in the way Petitioner proposes. *See* Ex. 1003 ¶¶ 218–223. Petitioner also establishes sufficiently for purposes of institution that an ordinarily skilled artisan would have had a reasonable expectation of success in combining the teachings of Tanigawa, Hullfish, and Loveland. *Id.* ¶ 224.

4. CONCLUSION ABOUT OBVIOUSNESS/NONOBVIOUSNESS

As discussed above, Petitioner’s analysis addresses how the combined disclosures in Tanigawa, Hullfish, and Loveland teach all the limitations in claims 8, 9, 43, 44, 47, 48, 50, and 54. *See supra* § IV.E.2. Additionally, Petitioner provides a reason with rational underpinning as to why an ordinarily skilled artisan would have been motivated to combine Loveland’s urgent-message-notification features with Tanigawa’s communications

system (as modified by Hullfish) and would have had a reasonable expectation of success. *See supra* § IV.E.3. Thus, based on the current record, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa, Hullfish, and Loveland teach the subject matter of claims 8, 9, 43, 44, 47, 48, 50, and 54. Hence, Petitioner demonstrates a reasonable likelihood of prevailing in proving these claims unpatentable under § 103(a) as obvious over Tanigawa, Hullfish, and Loveland.

*F. Alleged Obviousness over Tanigawa, Hullfish,
and Takahashi: Claims 37, 42, 56, 59–63, and 67*

Petitioner contends that claims 37, 42, 56, 59–63, and 67 are unpatentable under § 103(a) as obvious over Tanigawa, Hullfish, and Takahashi. *See* Pet. 6, 79–85. Above, we provided overviews of Tanigawa and Hullfish. *See supra* §§ IV.D.1–IV.D.2. Below, we provide an overview of Takahashi, and then we consider the obviousness issues. As explained below, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa, Hullfish, and Takahashi teach the subject matter of claims 37, 42, 56, 59–63, and 67.

1. OVERVIEW OF TAKAHASHI (EXHIBIT 1009)

Takahashi is a U.S. patent application publication titled “Server Device for Net Game, Net Game Management Method, Net Game Management Program and Recording Medium Which Stores Net Game Management Program,” filed on May 29, 2002, and published on December 5, 2002. Ex. 1009, codes (22), (43), (54). Takahashi states that the invention “relates to a server device” for network games “communicably connected to a plurality of terminal devices used by users via a network for

managing a game played in a game space by the users using the terminal devices.” *Id.* ¶ 2; *see id.* ¶¶ 8–9.

Takahashi describes the invention using a baseball game as an illustrative network game. Ex. 1009 ¶¶ 27, 72–76, 82–83, 109. Takahashi explains that by limiting messages among users to a plurality of predetermined messages, “an exchange of unfavorable messages, such as slander, can be prevented, and the baseball game can progress smoothly.” *Id.* ¶ 76; *see id.* ¶¶ 138–139. A server stores the plurality of predetermined messages. *Id.* ¶¶ 62, 70, 80, 87, code (57).

Takahashi’s Figure 7 (reproduced below) depicts an example set of predetermined messages:

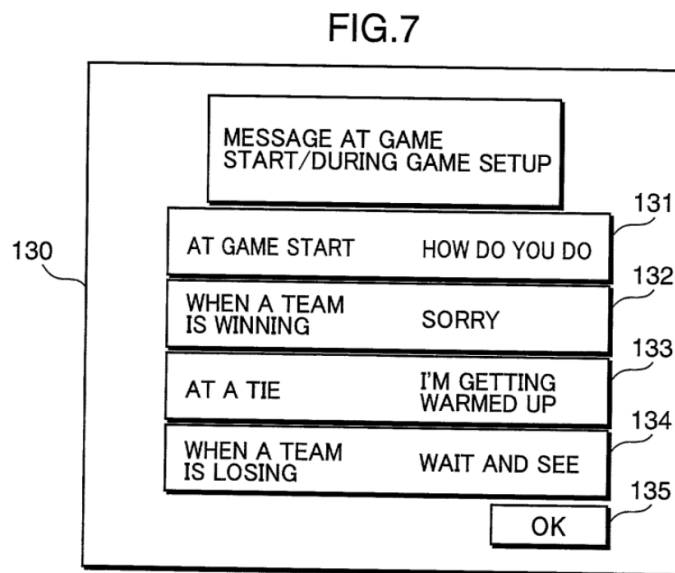


Figure 7 illustrates “an example of the messages at game start/during game setup screen.” Ex. 1009 ¶ 72, Fig. 7; *see id.* ¶ 19. During game setup, a user may select various predetermined messages for a server to send automatically to another user at predetermined times during game play. *Id.* ¶¶ 72–80; *see id.* ¶¶ 8–9, 38–39, 61, 136–138.

As an example, a user may select any of the following messages for automatic transmission at game start: “How do you do” (shown in Figure 7), “Hi,” “Take it easy please,” “I’m a beginner,” or “Good evening.” Ex. 1009 ¶¶ 72, 74–75, Fig. 7. As another example, a user may select any of the following messages for automatic transmission when a tie occurs: “I’m getting warmed up” (shown in Figure 7), “I’m just getting serious,” “Revenge,” “You are strong,” or “Take it easy will you.” *Id.* ¶¶ 72, 75, Fig. 7.

Takahashi’s Figure 8 (reproduced below) depicts another example set of predetermined messages:

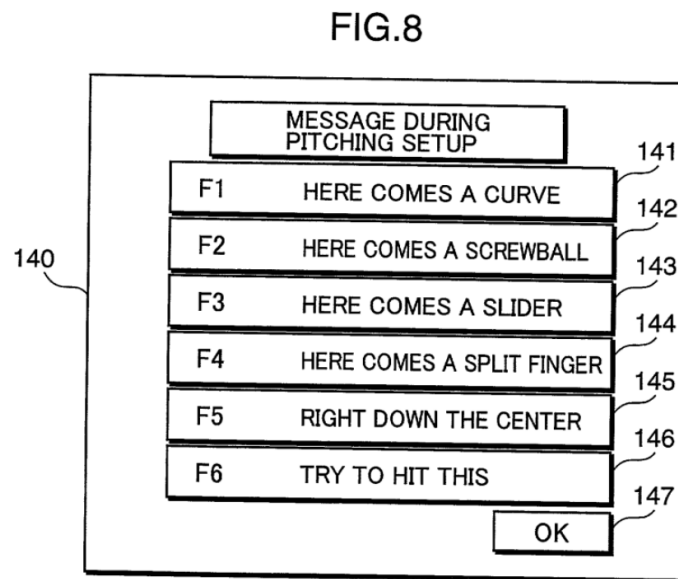


Figure 8 illustrates “an example of the messages during pitching setup screen.” Ex. 1009 ¶ 82, Fig. 8; *see id.* ¶ 20. During game setup, a user may select various predetermined messages the user may desire to send to another user at various points during game play, e.g., when pitching to the batting side. *Id.* ¶¶ 81–87; *see id.* ¶ 60. Then, during game play, a user may send a particular predetermined message by pressing an assigned function key, e.g., one of the function keys F1 through F6. *Id.* ¶¶ 82–83; *see id.*

¶¶ 38–39. In the Figure 8 example set of predetermined messages, a user may send the message “Here comes a curve” by pressing the F1 function key or send the message “Here comes a screwball” by pressing the F2 function key. *Id.* ¶¶ 82–83, Fig. 8.

2. DIFFERENCES BETWEEN THE CLAIMED INVENTION AND THE PRIOR ART

Claim 37 depends from claim 36 and specifies that “said computer readable medium comprises computer program code to enable the second user to select a predetermined message to send to the first user, the predetermined message being selected from a set of predetermined messages provided to the second user.” Ex. 1001, 25:62–67. Claims 42, 56, 59, and 67 include limitations similar to claim 37’s limitations. *Id.* at 27:15–19, 29:58–63, 30:12–18, 31:4–10. Claims 60, 61, 62, and 63 depend directly or indirectly from claim 59 and include limitations similar to the limitations in claims 64, 65, 36, and 66, respectively. *Id.* at 30:19–31:3.

Petitioner contends that Takahashi teaches claim 37’s limitations because Takahashi discloses that “a user preselects predetermined messages” and a server stores the predetermined messages “in the user’s message storing section.” Pet. 82 (citing Ex. 1009 ¶¶ 59, 74, 137, Figs. 7–8). Petitioner asserts that a user may assign function keys (e.g., F1, F2, etc.) to the predetermined messages. *Id.* (citing Ex. 1009 ¶ 60). Petitioner also asserts the server presents a predetermined message at a predetermined time during game play or “when the user operates a function key corresponding to” a predetermined message. *Id.* (citing Ex. 1009 ¶¶ 59–60, 62, 70–71, 77, 136–139, Fig. 6).

Petitioner contends that Takahashi teaches the limitations in claims 42, 56, 59, and 67 for the reasons that Takahashi teaches claim 37's limitations. Pet. 83–85. Petitioner contends that Tanigawa teaches the limitations in claims 60, 61, 62, and 63 for the reasons that Tanigawa teaches the limitations in claims 64, 65, 36, and 66, respectively. *Id.* at 84–85.

Patent Owner disputes that Tanigawa discloses a “network-based portal” according to claim 63, i.e., because a “network-based portal” resides only “at the server-side of a network” and Petitioner identifies no server-side portal in Tanigawa. *See* Prelim. Resp. 1–2, 4, 13–16. At this stage of the proceeding, Patent Owner does not dispute that Tanigawa, Hullfish, and Takahashi disclose the other aspects of claims 37, 42, 56, 59–63, and 67. *Id.* at 14–16.

Based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth's testimony, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa, Hullfish, and Takahashi teach all the limitations in claims 37, 42, 56, 59–63, and 67. *See* Pet. 82–85; Ex. 1003 ¶¶ 530–547.

For the reasons discussed above, we disagree with Patent Owner's assertion that a “network-based portal” resides only “at the server-side of a network.” *See* Prelim. Resp. 1–2, 4, 13–14; *supra* § IV.C.2.

3. ALLEGED REASONS FOR COMBINING THE TEACHINGS OF THE REFERENCES

Petitioner identifies reasons that would have prompted an ordinarily skilled artisan to combine Takahashi's predetermined-messaging features with Tanigawa's communications system (as modified by Hullfish). *See*

Pet. 79–81. Further, Petitioner asserts that an ordinarily skilled artisan “would have had a reasonable expectation of success in combining” Takahashi’s features with Tanigawa’s system. *Id.* at 81. Dr. Almeroth’s testimony supports Petitioner’s positions. *See* Ex. 1003 ¶¶ 231–238, 529.

For instance, Dr. Almeroth testifies that an ordinarily skilled artisan would have been motivated to combine Takahashi’s predetermined-messaging features with Tanigawa’s communications system to improve Tanigawa’s system by (1) “minimiz[ing] disruptions while communicating with other users” and (2) “prevent[ing] unwanted communications.” Ex. 1003 ¶¶ 232–236. Dr. Almeroth explains that with the teachings of Takahashi and Hullfish “users of Tanigawa’s system would be better equipped to limit or block unwanted communications, with the predictable result of improving their online chatting experience.” *Id.* ¶ 236.

Patent Owner makes no arguments against combining the teachings of Tanigawa, Hullfish, and Takahashi. *See, e.g.*, Prelim. Resp. 1–2, 12–16.

Based on the current record, Petitioner establishes sufficiently for purposes of institution that an ordinarily skilled artisan would have had reasons, e.g., as articulated by Dr. Almeroth, to combine the teachings of Tanigawa, Hullfish, and Takahashi in the way Petitioner proposes. *See* Ex. 1003 ¶¶ 231–237. Petitioner also establishes sufficiently for purposes of institution that an ordinarily skilled artisan would have had a reasonable expectation of success in combining the teachings of Tanigawa, Hullfish, and Takahashi. *Id.* ¶ 238.

4. CONCLUSION ABOUT OBVIOUSNESS/NONOBVIOUSNESS

As discussed above, Petitioner’s analysis addresses how the combined disclosures in Tanigawa, Hullfish, and Takahashi teach all the limitations in

claims 37, 42, 56, 59–63, and 67. *See supra* § IV.F.2. Additionally, Petitioner provides a reason with rational underpinning as to why an ordinarily skilled artisan would have been motivated to combine Takahashi’s predetermined-messaging features with Tanigawa’s communications system (as modified by Hullfish) and would have had a reasonable expectation of success. *See supra* § IV.F.3. Thus, based on the current record, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa, Hullfish, and Takahashi teach the subject matter of claims 37, 42, 56, 59–63, and 67. Hence, Petitioner demonstrates a reasonable likelihood of prevailing in proving these claims unpatentable under § 103(a) as obvious over Tanigawa, Hullfish, and Takahashi.

*G. Alleged Obviousness over Tanigawa,
Hullfish, Loveland, and Takahashi: Claim 45*

Petitioner contends that claim 45 is unpatentable under § 103(a) as obvious over Tanigawa, Hullfish, Loveland, and Takahashi. *See* Pet. 6, 85–86. Above, we provided overviews of Tanigawa, Hullfish, Loveland, and Takahashi. *See supra* §§ IV.D.1–IV.D.2, IV.E.1, IV.F.1. Below, we consider the obviousness issues. As explained below, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa, Hullfish, Loveland, and Takahashi teach claim 45’s subject matter.

1. DIFFERENCES BETWEEN THE CLAIMED
INVENTION AND THE PRIOR ART

Claim 45 reads as follows (with formatting added for clarity):

45. A computer-implemented method as recited in claim 41 comprising

enabling the second user to select a predetermined message to send to the first user, the predetermined message being selected from a set of predetermined messages provided to the second user,

wherein an urgency indication is received from the second user to the first user via the electronic device associated with the second user to generate an urgent notification to notify the first user.

Ex. 1001, 27:28–36.

Petitioner contends that Takahashi teaches claim 45’s “enabling” limitation for the reasons that Takahashi teaches claim 37’s limitations. Pet. 82–83, 86. Petitioner contends that Loveland teaches claim 45’s “wherein” clause for the reasons that Loveland teaches claim 8’s limitations. *Id.* at 76–77, 86.

Patent Owner makes no arguments specific to claim 45. *See, e.g.*, Prelim. Resp. 1–2, 12–16.

Based on the current record and for the reasons advanced by Petitioner and supported by Dr. Almeroth’s testimony, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa, Hullfish, Loveland, and Takahashi teach claim 45’s limitations. *See* Pet. 76–77, 82–83, 86; Ex. 1003 ¶¶ 513–514, 530–531, 548–551.

2. ALLEGED REASONS FOR COMBINING THE TEACHINGS OF THE REFERENCES

For the reasons discussed above for the challenge based on Tanigawa, Hullfish, and Loveland, Petitioner asserts that an ordinarily skilled artisan would have been motivated to combine Loveland’s urgent-message-notification features with Tanigawa’s communications system. Pet. 86; *see supra* § IV.E.3. For the reasons discussed above for the challenge based on

Tanigawa, Hullfish, and Takahashi, Petitioner asserts that an ordinarily skilled artisan would have been motivated to combine Takahashi's predetermined-messaging features with Tanigawa's communications system. Pet. 86; *see supra* § IV.F.3.

Patent Owner makes no arguments against combining the teachings of Tanigawa, Hullfish, Loveland, and Takahashi. *See, e.g.*, Prelim. Resp. 1–2, 12–16.

Based on the current record, Petitioner establishes sufficiently for purposes of institution that an ordinarily skilled artisan would have had reasons, e.g., as articulated by Dr. Almeroth, to combine the teachings of Tanigawa, Hullfish, Loveland, and Takahashi in the way Petitioner proposes. *See* Ex. 1003 ¶¶ 178–185, 218–224, 231–238, 394, 420, 512, 529; *supra* §§ IV.D.3(k), IV.E.3, IV.F.3.

3. CONCLUSION ABOUT OBVIOUSNESS/NONOBVIOUSNESS

As discussed above, Petitioner's analysis addresses how the combined disclosures in Tanigawa, Hullfish, Loveland, and Takahashi teach claim 45's limitations. *See supra* §§ IV.E.2, IV.F.2, IV.G.1. Additionally, Petitioner provides a reason with rational underpinning as to why an ordinarily skilled artisan would have been motivated to combine the teachings of Tanigawa, Hullfish, Loveland, and Takahashi in the way Petitioner proposes. *See supra* §§ IV.E.3, IV.F.3, IV.G.2. Thus, based on the current record, Petitioner establishes sufficiently for purposes of institution that the combined disclosures in Tanigawa, Hullfish, Loveland, and Takahashi teach claim 45's subject matter. Hence, Petitioner demonstrates a reasonable likelihood of prevailing in proving claim 45 unpatentable under § 103(a) as obvious over Tanigawa, Hullfish, Loveland, and Takahashi.

V. CONCLUSION

Based on the arguments and evidence presented in the Petition, the Preliminary Response, and the Preliminary Reply along with the accompanying exhibits, we determine that there is a reasonable likelihood Petitioner would prevail with respect to at least one claim challenged in the Petition. Hence, we institute an *inter partes* review of all challenged claims on all challenges included in the Petition. *See SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1355 (2018) (noting that the language of 35 U.S.C. § 314(b) “indicates a binary choice—either institute review or don’t”); *see also PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (interpreting the statute as requiring “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition”). Additionally, we decline to exercise our discretion under § 314(a) to deny institution.

At this preliminary stage, we have not made a final determination about the patentability of any challenged claim, the construction of any claim term, phrase, or limitation, or any other legal or factual issue.

VI. ORDER

Accordingly, it is

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of claims 7–12, 22–24, and 33–67 in the ’038 patent is instituted on all challenges included in the Petition; and

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

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