

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MAPLEBEAR INC. D/B/A INSTACART  
Petitioner,

v.

CONSUMERON, LLC,  
Patent Owner.

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IPR2022-01359  
Patent 9,202,191 B2

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Before CARL M. DEFRANCO JR., ROBERT L. KINDER, and  
MICHAEL A. VALEK, *Administrative Patent Judges*.

VALEK, *Administrative Patent Judge*.

JUDGMENT  
Final Written Decision  
Determining All Challenged Claims Unpatentable  
35 U.S.C. § 318(a)

## I. INTRODUCTION

Maplebear Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”), seeking *inter partes* review of claims 1, 3, 4, and 6–15 of U.S. Patent No. 9,202,191 B2 (Ex. 1001, “the ’191 patent”). We instituted trial on all of the grounds in the Petition. Paper 9, 36 (“Dec.”).

Consumeron, LLC (“Patent Owner”) subsequently filed its Response to the Petition (Paper 19, “Resp.”), Petitioner filed its Reply (Paper 24, “Reply”) and Patent Owner filed its Sur-reply (Paper 29, “Sur-reply.”). We held a hearing on January 11, 2024, and a transcript is of record. Paper 34 (“Tr.”).

After considering the parties’ arguments and evidence, we find that Petitioner has shown by a preponderance of the evidence that the challenged claims of the ’191 patent are unpatentable. *See* 35 U.S.C. § 316(e). Our reasoning is explained below.

## II. BACKGROUND

### A. *Real Parties in Interest*

The parties identify themselves as the only real parties-in-interest. Pet. 76; Paper 3, 1.

### B. *Related Matters*

The parties identify *Consumeron, LLC v. Maplebear Inc. d/b/a Instacart*, No. 1:21-cv-01147 (D. Del.), referred to herein as “the Delaware litigation,” as a related matter involving the ’191 patent. Pet. 76; Paper 3, 1.

Although not identified in the parties’ notices, the following proceedings involve the same parties and challenge patents related to the ’191 patent: IPR2022-01356, IPR2022-01357, IPR2022-01358, and IPR2023-00865.

### *C. The '191 Patent*

The '191 patent issued on December 1, 2015, and claims priority to a series of applications, the earliest of which was filed on August 26, 2009. Ex. 1001, codes (45), (60).

The '191 patent describes “[a] system and method for remote acquisition and delivery of goods” that includes a server in communication with customer computers or devices and a mobile delivery system also referred to as a mobile delivery agent system (“MDAS”). Ex. 1001, Abstr., 1:66–2:8. Figure 1 of the '191 patent, reproduced below, “is a schematic diagram of the remote acquisition and delivery system of the present invention.” *Id.* at 2:44–45.

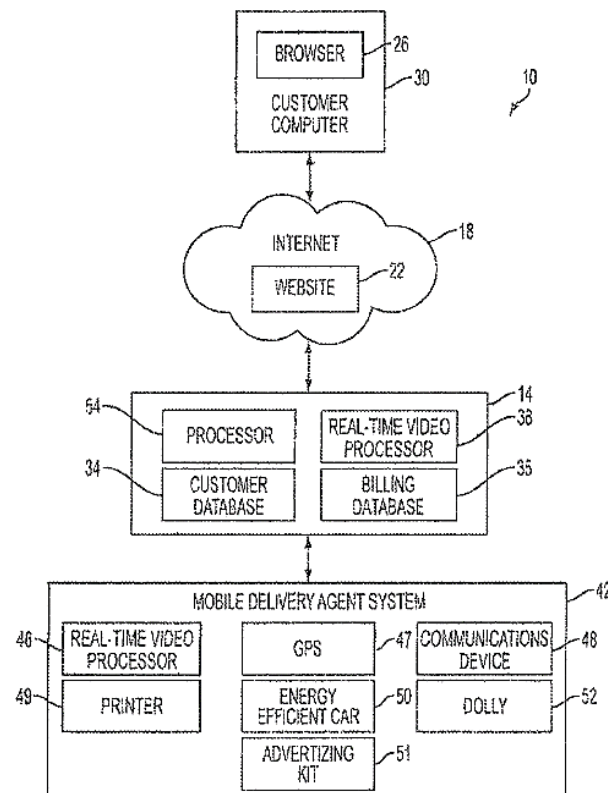


FIG. 1

Figure 1 depicts a customer computer 30 accessing a service provider's server 14 over the Internet. *Id.* at 2:56–60. Server 14 communicates with a plurality of mobile delivery agent systems such as MDAS 42 in Figure 1. *Id.* at 3:12–17. MDAS 42 includes a real-time video processor 46, global positioning system (GPS) 47, and a communications device 48. *Id.*

The Specification explains that a customer may contact the service provider through the system depicted in Figure 1 and receive information regarding delivery agents in the vicinity of a store where they would like to purchase a product. Ex. 1001, 4:24–37. After the delivery agent is selected, “a customer shopping or acquisition request and profile is sent to the delivery agent . . . and a communications link is established between the customer and the selected delivery agent . . . such as through a telephone or internet connection” using communications device 48 in MDAS 42. *Id.* at 5:20–25. The delivery agent then travels to the store, finds the desired product, and “the customer has the option of inspecting the product in real-time.” *Id.* at 6:34–56. “If the customer chooses to inspect the product, the customer will communicate instructions to the delivery agent . . . and the delivery agent will utilize real-time video device 46 to transmit real-time data to customer computer 30.” *Id.* at 6:56–59. The customer then “approves or rejects acquisition of the inspected product.” *Id.* at 6:66–67. If the product is approved, “the delivery agent will purchase or otherwise acquire the product on behalf of the customer” and deliver the product based on the customer's delivery instructions. *Id.* at 7:8–15.

According to the Specification,

Real-time video device 46 is preferably utilized throughout the transaction to show the location of the delivery agent as the agent is driving to a desired purchase location, to show the

product at the purchase location, and to verify delivery of the product to the customer at the designated delivery location. Preferably, video footage is stored on server 14 and can be accessed for delivery agent evaluation, for liability and public safety purposes, for delivery agent history or dispute resolution purposes, for example.

Ex. 1001, 8:5–13.

#### *D. Challenged Claims*

The Petition challenges claims 1, 3, 4, and 6–15. Claim 1 is illustrative and reproduced below with the same bracketed annotations the Petition includes to identify particular limitations.

1. [1.0] A system for remote acquisition and delivery of one or more goods based on an acquisition request from a customer through an interactive interface for processing the acquisition request comprising:

[1.1] a customer computer having a user interface;

[1.2] at least one server in communication with a wide area network;

[1.3.a] a plurality of mobile delivery agent systems in communication with the at least one server, [1.3.b] each of the plurality of delivery agent systems being configured for use with a respective purchasing and delivery agent for a shopping event and including:

[1.4.a] a real-time video device configured to send one or more images in real-time to the customer from the respective agent, [1.4.b] wherein the real-time video device is configured to enable the customer to be provided with progress information via real-time imaging of the one or more images from the respective agent through the customer computer during performance of the acquisition request, including viewing the one or more goods from a pick-up site for the one or more goods;

[1.5] a communications device configured to establish direct communication between the customer and the respective agent to enable the customer to provide a communicated

approval for the agent to immediately purchase the one or more goods viewed by the customer in connection with completing the acquisition request:

[1.6] a global positioning system configured to provide location data to the at least one server; and

[1.7.a] a selectable widget for a website configured to retrieve data submitted by at least one of the mobile delivery agent systems to the at least one server [1.7.b] and generate a view of the one or more goods at the pick-up site associated with a third party vendor together with at least the data submitted to the at least one server by the mobile delivery agent system.

Ex. 1001, 9:44–10:13.

Independent claims 11 and 14 are directed to a system with elements similar to those in claim 1, but with some elements recited in means-plus-function form. Claim 14 is reproduced below with the same bracketed annotations used in the Petition.

14. [14.0] A system for remote acquisition and delivery of one or more goods based on an acquisition request from a customer through an interactive interface for processing the acquisition request comprising:

[14.1] a customer computer having a user interface and configured to establish a local communication link between the customer and a mobile agent for purposes of the acquisition request;

[14.2] a mobile agent system configured for use by the mobile agent for a shopping event established based on the acquisition request, said mobile agent system including:

[14.3.a] means for sending one or more images in real-time to the customer from the mobile agent through the local communication link and providing the customer with progress information via real-time imaging of the one or more images from the mobile agent to the customer computer during performance of the acquisition request, [14.3.b] including viewing the one or more goods from a pick-up site for the one or more goods during the shopping event;

[14.4] communication means, establishing direct communication between the customer and the mobile agent, for communicating approval by the customer to the mobile agent in connection with completing the acquisition request;

[14.5] a global positioning system configured to provide location data through the local communication link; and

[14.6.a] a selectable widget for a vendor website configured to retrieve data submitted by at least one of the mobile delivery agent systems through the local communication link [14.6.b] and generate a view of the one or more goods at the pick-up site associated with a third party vendor together with at least the data submitted through the local communication link by the mobile delivery agent system.

Ex. 1001, 11:27–12:25.

*E. Asserted Grounds of Unpatentability*

Petitioner asserts the following grounds of unpatentability:

| <b>Claim(s) Challenged</b> | <b>35 U.S.C. §<sup>1</sup></b> | <b>Reference(s)/Basis</b>                                  |
|----------------------------|--------------------------------|------------------------------------------------------------|
| 1, 3, 4, 6–10, 14, 15      | 103(a)                         | Park, <sup>2</sup> Kim, <sup>3</sup> Williams <sup>4</sup> |
| 11–13                      | 103(a)                         | Park, Kim, Williams, Hileman <sup>5</sup>                  |

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<sup>1</sup> The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), included revisions to 35 U.S.C. § 103 that became effective after the filing of the applications to which the ’191 patent claims priority. Therefore, we apply the pre-AIA version of § 103.

<sup>2</sup> WO 01/11523 A1, published Feb. 15, 2001 (Ex. 1005) (“Park”).

<sup>3</sup> KR2003-0085802, published Nov. 7, 2003 (Ex. 1007). The Petition relies on a certified translation of this Korean language reference (Ex. 1006). In the institution decision, we noted what appeared to be a typographical error in the translated version of Kim’s Figure 2 and authorized Petitioner to file a corrected version of that figure. Dec. 36–37. Petitioner filed the corrected, certified translation of Kim’s Figure 2 as Ex. 1038. Herein, we refer to the certified translations in Exhibits 1006 and 1038 as “Kim.”

<sup>4</sup> WO 2008/052013 A2, published May 2, 2008 (Ex. 1008) (“Williams”).

<sup>5</sup> US 2003/0040944 A1, published Feb. 27, 2003 (Ex. 1009) (“Hileman”).

In support of these grounds, Petitioner relies on declarations from Dr. Henry Houh submitted with the Petition (Ex. 1003) and Reply (Ex. 1044). Patent Owner relies on the declaration of Dr. Michael Mitzenmacher (Ex. 2016).

### III. ANALYSIS OF THE ASSERTED GROUNDS

#### *A. Legal Standards*

Under the pre-AIA version of § 103(a), a claim is unpatentable for obviousness if, to one of ordinary skill in the pertinent art, “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.” 35 U.S.C. § 103(a) (2006); *see also KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) when in evidence, objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

#### *B. Level of Ordinary Skill in the Art*

Petitioner contends a person of ordinary skill in the art (“POSITA”) in August 2009 (the earliest alleged priority date) would have been someone knowledgeable and familiar with the electronic commerce arts that are pertinent to the ’191 patent. That person would have a bachelor’s degree in electrical engineering, computer engineering, computer science, or equivalent training, and approximately two years of experience working in the field of electronic commerce. Lack of work experience can be remedied by additional education, and vice versa.

Pet. 13 (citing Ex. 1003 ¶ 24).

Patent Owner offers a similar description, asserting that a POSITA “is someone with a background in electrical engineering, computer science or the like” and that either experience or training can make up for a lack of the other. Resp. 9–10 (citing Ex. 2016 ¶¶ 17–20).

We adopt Petitioner’s definition of the level of ordinary skill in the art. This definition is supported by the record (Ex. 1003 ¶ 24) and consistent with the disclosure in the ’191 patent and the references cited in the Petition. Patent Owner’s definition is “not materially different” from Petitioner’s definition. *See* Ex. 2016 ¶ 20 (Dr. Mitzenmacher acknowledging such). Thus, our analysis and findings would be the same under either sides’ proposal.

### *C. Claim Construction*

In an *inter partes* review, claim terms “shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. [§] 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. § 42.100(b).

*i. “mobile delivery agent system” and “mobile agent system”*<sup>6</sup>

The parties agree that “mobile delivery agent system” or MDAS is a “coined term” with no established meaning in the art. Pet. 14; Paper 6, 20.

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<sup>6</sup> Claim 14 refers to a “mobile agent system” in element 14.2 and a “mobile delivery agent system” in element 14.6. The parties appear to agree that these refer to the same thing and that the construction should be the same for both terms. *See* Pet. 14; Paper 6, 20 (proposing same construction for “mobile delivery agent system” and “mobile agent system”).

In the institution decision, we agreed with and applied the same MDAS construction adopted by the district court in the Delaware litigation. Dec. 13–15. That is, a “mobile delivery agent system” or “mobile agent system” is “a mobile system that includes at least a device to capture video or still images and a device set up to communicate with a remote server.” Ex. 1034, 1. To the extent there was any substantive disagreement with this preliminary construction, we invited the parties to present their alternative positions at trial. *See* Dec. 15.

Neither party has done so. *See* Resp. 13 (applying same MDAS construction); Reply 1–5 (addressing other claim construction issues, but not raising any issue with the MDAS construction). Accordingly, we apply the same construction of “mobile delivery agent system” and “mobile agent system” here.

*ii. “real-time”*

In the institution decision, we agreed with and applied the same construction adopted by the district court in the Delaware litigation. Dec. 14–15. That is, that “real-time” has its ordinary meaning, which in this context is “data that is passed along as it is gathered.” Ex. 1034, 2. Notably, this is the same construction Patent Owner advocated for in the Delaware litigation. *See* Ex. 1035, 4. Nevertheless, Patent Owner now seeks to add to that construction, urging that the district court “accepted” that the term “does not include any ‘intentional delay’ in the transmission.” Resp. 14 (citing Ex. 1035, 22, 26); *see also* Sur-reply 16–17 (essentially same).

Although the district court considered “intentional delay” in the course of construing “real time,” it did not include the additional language Patent Owner proposes in its construction. *See* Ex. 1035, 2. Moreover, the

district court stated it “sees no reason that a ‘real-time’ transmission of data could not both involve no inherent delay *and permit a system that requires multiple ‘clicks’ to operate.*” *Id.* at 25 (emphasis added). In addition, the district court quoted from a technical dictionary, which provided:

The basic definition of real-time data is that it is data that is not kept or stored, but is passed along to the end user as quickly as it is gathered. It is important to note that real-time data does not mean that the data gets to the user instantly. There may be any number of bottlenecks related to the data collection infrastructure, the bandwidth between various parties, or even just the slowness of the end user’s computer. Real-time data does not promise data within a certain number of microseconds. It just means that the data is not designed to be kept back from its eventual use as it is collected.

*Id.* at 26 (citing “Technopedia”).

In other words, the district court contemplated that real-time data includes data that is transmitted as it is gathered *despite some inherent delay* in transmitting and accessing the data, such as bottlenecks in the infrastructure, slowness of the user’s computer, or “multiple clicks” by the user. We agree with the district court’s reasoning and reject Patent Owner’s attempt to alter our construction of “real-time” to exclude so-called “intentional delay.” Thus, consistent with the district court and our institution decision, we maintain that “real-time” transmission means “data that is passed along as it is gathered.”

*iii. “acquisition request”*

The parties dispute the meaning of “acquisition request.” *See* Resp. 10–12; Reply 1–4; Sur-reply 2–6.

Patent Owner contends “acquisition request” should be construed to mean “a request for an agent to shop for goods on a customer’s behalf.” Resp. 10.

Petitioner, on the other hand, argues: “[n]either intrinsic nor extrinsic evidence . . . requires the agent to ‘shop’ or make a purchase.” Reply 1. According to Petitioner, “the agent must simply acquire goods, consistent with the claim’s plain language” and “[i]t would be improper to narrowly require shopping when [Patent Owner] elected to broadly claim *all* types of ‘acquisition request[s].” *Id.* at 1–2.

We agree with Petitioner. Contrary to Patent Owner’s assertions, the Specification does not exclusively equate an “acquisition request” with a shopping or purchase request. *See* Resp. 10–12. Rather, the Specification repeatedly uses the phrasing “purchase or otherwise acquire” to indicate that a delivery agent may acquire goods by means other than purchasing or shopping. *See, e.g.*, Ex. 1001, 5:4–6 (“[T]he user specifies the exact location from which the selected delivery agent is to purchase or otherwise acquire the product, such as a retail store location.”); *id.* at 7:24–26 (“If the product is approved at 120, the delivery agent will purchase or otherwise acquire the product on behalf of the customer at 121 and deliver the product.”); *id.* at 2:15–18 (“[T]he user provides the service provider with information regarding the type of product desired and the shopping or acquisition location from which the user desires to purchase or otherwise obtain the product.”).

Patent Owner’s argument that the Specification uses the “word ‘or’ to refer to things that are synonymous to each other” is not persuasive. *See* Resp. 10; Sur-reply 4 (citing *Epic Games, Inc. v. Ingeniosh, LLC*, IPR2022-

00202, Paper 29, 18–19 (PTAB May 19, 2023)). As noted above, the Specification uses the phrasing “purchase or *otherwise* acquire.” Ex. 1001, 5:4–6, 7:24–26 (emphasis added); *see also id* at 2:15–18 (similar). By including the adverb “otherwise,” the Specification makes clear that purchase and acquire are not used synonymously, but rather that acquiring is broader and encompasses other ways of obtaining a product. *See* Ex. 1039, 1 (“otherwise” means “in a different way or manner”).

Indeed, the Specification unequivocally describes instances in which the agent acquires a product without purchasing or shopping for it. For instance, the Specification explains that the customer may “pre-purchase[]” goods that the delivery agent subsequently acquires by “pick-up”:

[a]lternatively, the customer has the option of *paying the retailer or seller directly*, in which case the customer will only be billed for the pick-up and delivery services provided. . . . If *pre-purchased* by the customer, the delivery agent obtains a receipt showing proof of *pre-payment* by the customer.

Ex. 1001, 7:50–58 (emphases added).

Patent Owner attempts to distinguish this description, urging that it is an alternative embodiment that “does not expand the meaning of the term ‘acquisition request’ beyond its ordinary meaning.” Sur-reply 4–5. But that argument is premised on an incorrect assumption that the ordinary meaning is limited to purchasing or shopping. There is nothing in the intrinsic record here that suggests the term “acquisition request” excludes the Specification’s “pre-purchase” embodiments.<sup>7</sup> To the contrary, as noted above, the

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<sup>7</sup> Patent Owner’s argument that the pre-purchase embodiment “is inconsistent with, and renders superfluous, other claim language” is unpersuasive. Sur-reply 4 (referring to claim 1). Element 1.5 recites a “communications device” that enables “the customer to provide a

Specification repeatedly states the agent may “otherwise acquire” goods without purchasing them thus indicating that an acquisition request can be fulfilled *without* needing to shop on the customer’s behalf. *See* Ex. 1001, 5:4–6, 7:24–26.

The extrinsic evidence also favors Petitioner’s position. Like the description in the Specification, the dictionary definitions of “acquire” Petitioner cites contemplate acquiring by means other than purchasing or shopping. *See* Ex. 1042, 1 (“If you acquire something, you buy or obtain it for yourself, or someone gives it to you.”); Ex. 1043, 1 (“acquire” means “to come into possession or control of often by unspecified means”).

In contrast, the narrower definition Patent Owner cites is not persuasive. *See* Ex. 2018, 1. First, Patent Owner’s definition comes from an unrelated statute, 16 U.S.C. § 620, and provides the meaning Congress intended within the context of that statute.<sup>8</sup> *Id.* Patent Owner has not explained why that definition should apply outside that context, much less demonstrated that it reflects the ordinary meaning to a POSITA here.

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communicated approval for the agent to immediately purchase” the goods “viewed by the customer in connection with completing the acquisition request.” At most, this means claim 1 recites additional language requiring the agent to purchase the goods. It does not suggest that the term “acquisition request” is itself so limited. Indeed, precedent holds the opposite is true. *See Nystrom v. TREX Co., Inc.*, 424 F.3d 1135, 1143 (Fed. Cir. 2005) (explaining that the fact that another claim recites a “wood decking board” suggests the term “board” is not itself limited to one made from wood or cut from a log because “[w]hen different words or phrases are used in separate claims, a difference in meaning is presumed”).

<sup>8</sup> Title 16 of the United States code relates to conservation of natural resources and § 620 specifically to forest conservation. *See* 16 U.S.C. § 620(b)(1) (stating that the purpose of section 620 is “to promote the conservation of forest resources”).

Second, as explained above, the Specification expressly contemplates means of acquiring a product such as picking up a pre-purchased product that do not require the agent to shop for it. To the extent Patent Owner’s extrinsic definition conflicts with the broader description in the intrinsic record, we do not credit it. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc) (explaining that judges are free to consult extrinsic sources for definitions “so long as th[at] definition does not contradict any definition found in or ascertained by reading of the patent documents”) (internal quotations omitted).

For these reasons, we agree with Petitioner that the term “acquisition request” has its ordinary meaning, which encompasses but is not limited to purchasing or shopping and includes other means of acquiring a product. Accordingly, we construe “acquisition request” to include not only a request for an agent to shop for and purchase goods for delivery to a customer, but also to encompass a request for a delivery agent to simply pick up or obtain goods that have been pre-purchased by the customer.

*iv. means-plus-function terms*

There are four means-plus-function terms in the challenged claims: two in claim 11 and two in claim 14. *See* Pet. 15–18; Paper 6, 23–30 (agreeing these terms should be construed according to 35 U.S.C. § 112 ¶ 6).

In the institution decision, we observed that the district court in the Delaware litigation had provided the following constructions for these terms.

| Claim Term                                                                                                                                                                             | Delaware court’s construction                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| “communication means for <i>processing the acquisition request from the customer and establishing direct communication between the customer and the selected delivery agent during</i> | <b>Function:</b> emphasized text<br><br><b>Structure:</b> server 14, communications device 48, and a customer device capable of |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>both the acquisition and delivery of the one or more goods to the customer” (claim 11)</i>                                                                                                                                                                                                                                                                                                                                                                     | establishing communication with the delivery agent                                                                                                                                   |
| <i>“communication means, establishing direct communication between the customer and the mobile agent, for communicating approval by the customer to the mobile agent in connection with completing the acquisition request” (claim 14)</i>                                                                                                                                                                                                                        | <b>Function:</b> emphasized text<br><br><b>Structure:</b> real-time video device 46, communications device 48, and customer computer 30                                              |
| <i>“real-time video means for sending at least one image to the customer through the communication means and transmitting real-time data to the display for the customer to view the one or more goods and the respective agent’s progress during performance of the acquisition request” (claim 11)</i>                                                                                                                                                          | <b>Function:</b> emphasized text<br><br><b>Structure:</b> server 14, real-time video device 46, communications device 48, and customer computer 30                                   |
| <i>“means for sending one or more images in real-time to the customer from the mobile agent through the local communication link and providing the customer with progress information via real-time imaging of the one or more images from the mobile agent to the customer computer during performance of the acquisition request, including viewing the one or more goods from a pick-up site for the one or more goods during a shopping event” (claim 14)</i> | <b>Function:</b> emphasized text<br><br><b>Structure:</b> real-time video device 46, communications device 48, and a communication link capable of connecting the customer and agent |

Dec. 16–17 (citing Ex. 1034, 2). For ease of reference, we refer to the first two terms above as the “communication means” terms and the second two as the “real-time means” terms.

Patent Owner asserts that the district court’s constructions for the communication means and real-time means terms should be applied in this proceeding. *See* Resp. 13–14 (applying “adopted constructions”). Petitioner

agrees with the identified functions for each of these terms, but proposes slight differences in some of the corresponding structures. *See* Pet. 15–18. Neither side suggests these differences affect any of their arguments at trial or the patentability challenges in the Petition. *See generally* Resp.; Reply.

For purposes of this decision, we apply the district court’s constructions for the communication means and real-time means terms. In some instances, those constructions may include additional structure that is not directly tied to the identified function. For example, customer computer 30 would not seem to be part of the “real-time video means for sending at least one image to the customer” as recited in claim 11. However, we need not resolve such issues to render this decision because, as explained below, the cited references teach or suggest the corresponding structure under both the parties’ and the district court’s constructions.

No further claim construction is necessary for this decision.

#### *D. References Relied Upon*

##### *i. Park*

Park is a publication of a PCT application filed August 4, 2000, and published February 15, 2001. Ex. 1005, codes (22), (43). Petitioner asserts, and Patent Owner does not dispute, that Park qualifies as prior art under 35 U.S.C. § 102(b). Pet. 17.

Park discloses a system and method for real-time ordering and delivery of locally available products. Ex. 1005, code (54). Park teaches that customers in predefined geographical regions can access its system over the Internet using a website to order products, including perishable food items, that will then be delivered within a specified delivery window. *Id.* at Abstr., 1:11–16. According to Park, this is “a real-time network-based order and

delivery system that will allow customers to interactively view, in real-time, the progress of his order, from reception and compilation to delivery through the route taken by the delivery agent.” *Id.* at 4:27–32.

Figure 1 of Park is a system block diagram and reproduced below.

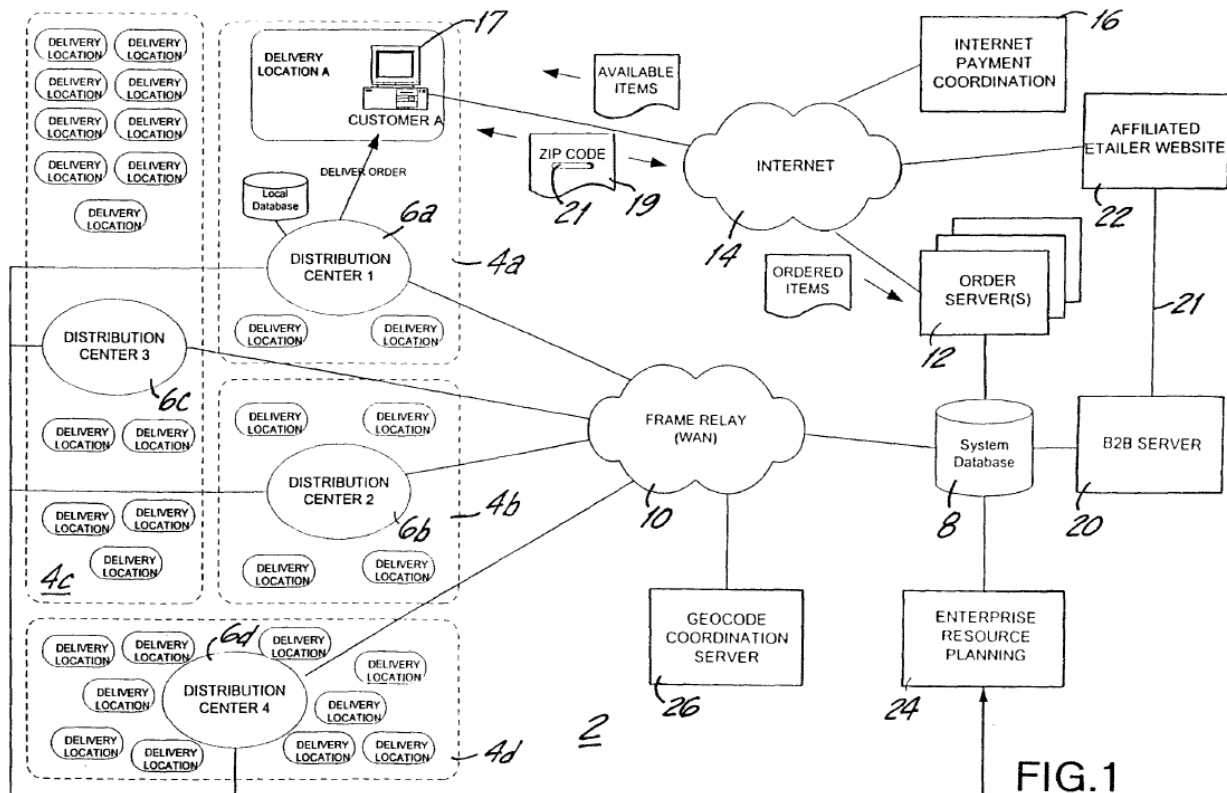


Figure 1 of Park shows a customer at delivery location A using their computer (17) to connect through the Internet (14) to order server(s) (12) to view information about products available through a distribution center associated with the customer's zip code. *Id.* at 14:26–15:10, 20:14–21:2. Park teaches that the customer may place an order for their desired product and pay “with a checkout methodology.” *Id.* at 3:13–19, 14:16–24.

The order is then sent to an order dispatching system at a distribution center (e.g., Distribution Center 1 in Figure 1) associated with the customer's zip code. Ex. 1005, 15:21–24. Figure 2 of Park is reproduced

below and “illustrates the process flow at each distribution center for fulfilling and delivering the items ordered.” *Id.* at 16:9–11.

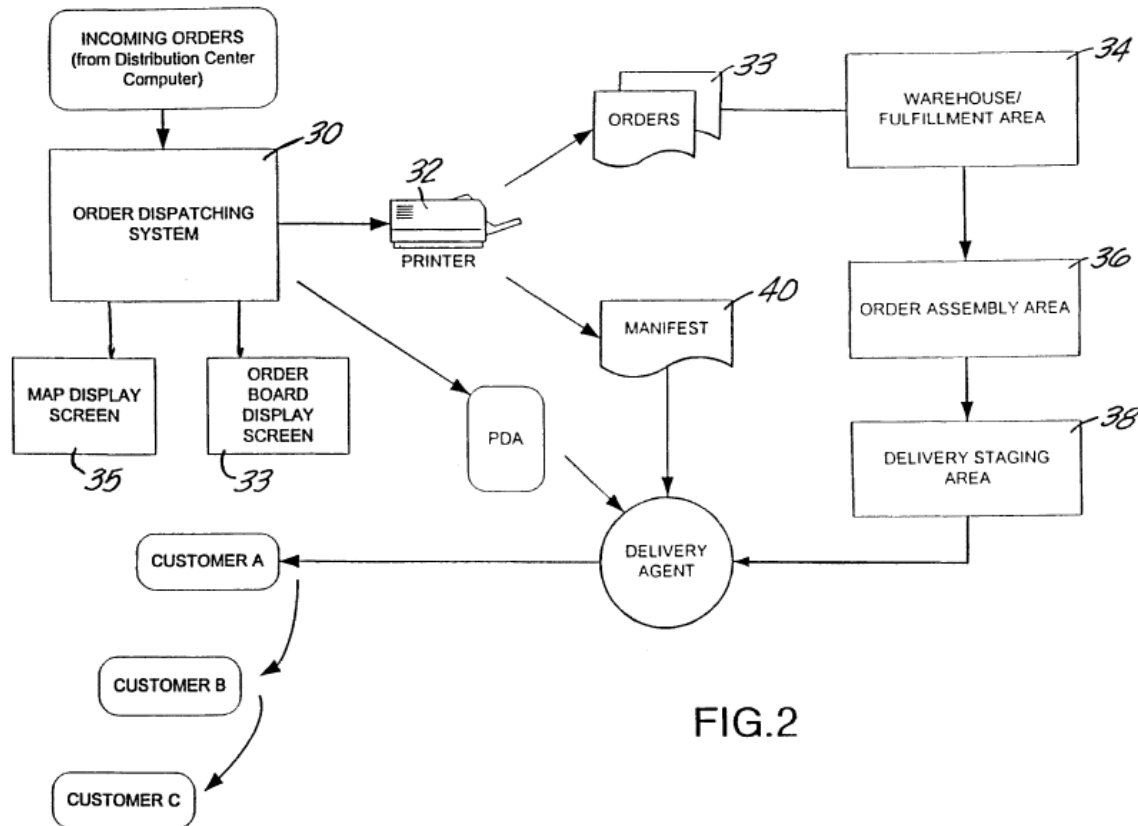


FIG.2

As shown in Figure 2 of Park, incoming orders are received by order dispatching system (30). An order ticket (33) is printed and used to assemble the order for delivery by a delivery agent. *See id.* 16:11–31.

Park teaches that the system can use GPS to examine delivery agents’ current position and “generate[] an optimal set of routes for the agents to follow” that “may be transmitted to [the] handheld or mobile computing devices of the agents mapping out the route to be taken” to deliver particular orders. Ex. 1005, 29:6–30:8. The agent’s mobile computing device allows them “to receive delivery information and new routing instructions” from the dispatching system. *Id.* at 47:4–9. The mobile computing device may also “have input means to provide comments related to the delivery . . .

transmitting means to provide real-time status to the delivery and ordering system, and position means such as a global position indicator system for determining the physical location of the agent with respect to the route.”

*Id.* at 47:16–23.

Park explains that information regarding the agent’s location “may be provided to the customer” such that the customer can “view the current location of their delivery and . . . see the progress made on a map provided by the web server.” Ex. 1005, 47:32–48:3. In addition, Park teaches that “[t]he delivery agent in the field will be provided with a mobile digital camera which will be capable of transmitting digital video through a third party network back to the web server,” which “will then present the video over the Internet.” *Id.* at 48:12–16. Park further teaches that this equipment is “used to provide online customers with a ‘first person’ view of the delivery of their order” via a “live video feed” from the agent’s mobile digital camera. *Id.* at 48:10–12, 48:19–20; *see also id.* at 49:9–11 (explaining that the video “would be paused” during actual delivery of the order to preserve customer privacy). According to Park, “[t]his information, combined with online information regarding the progress of the rider . . . would provide the most advanced order tracking information available today.” *Id.* at 49:13–17.

*ii. Kim*

Kim is a Korean patent application bearing a November 7, 2003 publication date. Ex. 1006, (code 43). Petitioner asserts, and Patent Owner does not dispute, that Kim qualifies as prior art under 35 U.S.C. § 102(b). Pet. 17.

Kim explains that websites display images and videos of products for customers to order and have delivered. Ex. 1006, 2. “However, when purchasing products from such websites, customers often end up receiving products which are not identical to the products ordered as they made the purchases simply based on the images or videos presented by the websites.” *Id.*

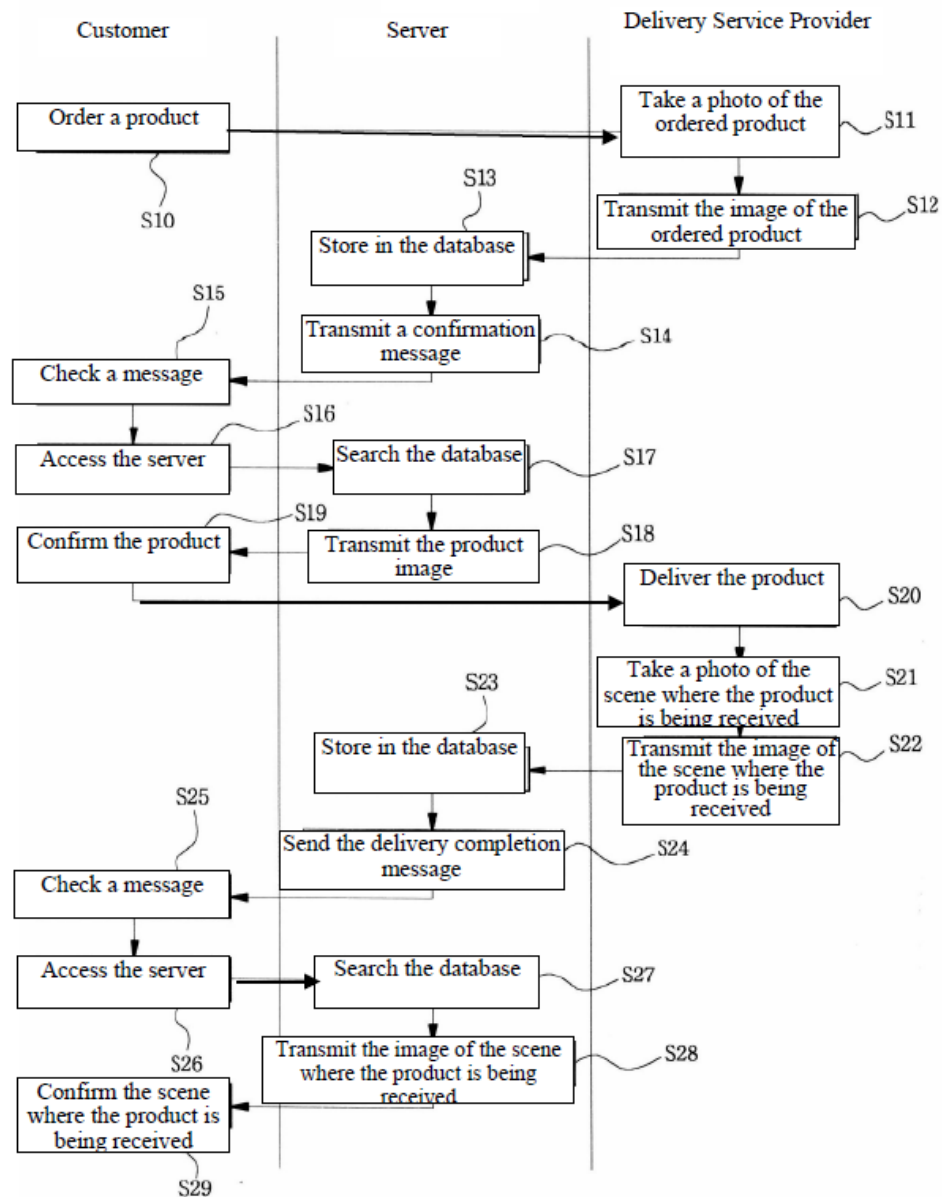
To address this problem, Kim discloses a system and method “designed to confirm product delivery through images by utilizing a mobile communication terminal equipped with a digital camera.” Ex. 1006, Abstr. Kim teaches that

[u]pon receiving an order of a product from a customer . . . a delivery service provider uses his/her mobile communication terminal equipped with a digital camera to capture an image of the product ordered by the customer and transmits it to a server. Subsequently, the server transmits a confirmation message to the customer to inform that the order has been received and then transmits the image of the ordered product to the customer who has checked the message so that the customer can confirm whether the product ordered is identical to the product being delivered.

*Id.* According to Kim, the system and method utilize the digital camera to take the images and “send the images to the customer real-time so that the product ordered or a scene in which the product is being received can be confirmed.” *Id.* at 2.

Figure 2 of Kim, reproduced below, is a flowchart illustrating an embodiment of Kim’s method. Ex. 1038.

FIG. 2



As depicted in Figure 2 of Kim, a customer orders a product (S10) prompting the delivery service provider to take a photo of the ordered product (S11) “by using his/her own mobile communication terminal . . . equipped with a digital camera.” Ex. 1006, 4. That image is transmitted to a server, stored in a database (S13), and the server then transmits a confirmation message to the customer (S14). *Id.* “Subsequently the customer

checks the message on the received order (S15) which arrived at his/her own mobile communication terminal . . . and accesses (S16) the server . . . to confirm the image or video of the ordered product by using his/her own mobile communication terminal.” *Id.* This causes the image or video to be transmitted to the customer’s mobile communication terminal (SS17 and S18), which “displays the image or video received as such (S19) to confirm the product.” *Id.* “Thereafter, the delivery service provider delivers the product (S20) ordered and confirmed by the customer.” *Id.*

*iii. Williams*

Williams is a publication of a PCT application filed August 4, 2000, and published May 2, 2008. Ex. 1008, codes (22), (43). Petitioner asserts, and Patent Owner does not dispute, that Williams qualifies as prior art under 35 U.S.C. § 102(b). Pet. 19.

Williams discloses methods for rendering an embeddable widget that is rendered by a server to “dynamically display[] multimedia content” and allow user action on a website. Ex. 1008, Abstr., 3:2–6, 3:17. Williams explains that “[c]onventional widgets are generally embeddable, portable applications that often run without access to a user’s file system.” *Id.* at 2:17–18. According to Williams,

Although electronic commerce and social transactions are possible via the World Wide Web, there are drawbacks. Many social and electronic commerce transactions involve many-to-many relationships. Such relationships are not well supported by current electronic commerce and social media platforms. In addition, the ability of tools, such as widgets, to reflect individual users' tastes may be limited. Consequently, users' ability to

engage in social, commercial, and other transactions including sharing of multimedia content may be limited.

*Id.* at 2:25–31. Williams explains that its widgets are intended to address these needs and “facilitate[e] commercial transactions via the Internet.” *Id.* at 2:32–33.

*iv. Hileman*

Hileman is a United States patent application published on February 27, 2003. Ex. 1009, code (43). Petitioner asserts, and Patent Owner does not dispute, that Hileman qualifies as prior art under 35 U.S.C. § 102(b). Pet. 17.

Hileman discloses an on-demand transportation system that includes a server in communication with a user and a vehicle. Ex. 1009, Abstr. “The user provides the server with transportation request information, and requests transportation options from the server.” *Id.* Hileman teaches that the server evaluates the transportation request and “determines transportation options, including available routes of travel (times, paths, etc.) and the charges associated with the various available routes of travel.” *Id.* According to Hileman, the server then notifies the user of the options and associated costs and, after the “user selects one of the transportation options,” books the requested transportation. *Id.*

*E. Ground 1: obviousness over Park, Kim, and Williams*

Petitioner contends claims 1, 3, 4, 6–10, 14, and 15 would have been obvious over Park, Kim, and Williams. *See* Pet. 17–51. As explained below, Petitioner has shown by a preponderance of the evidence that these claims would have been obvious over the asserted combination of these references.

*i. Claim 1*

Petitioner asserts that Park teaches or suggests many of the elements of claim 1 (*see id.* at 30–46.), but acknowledges that Park “is silent as to allowing a customer to confirm the product before delivery” by obtaining an image of the product from and communicating instructions to the delivery agent’s mobile computing device. *Id.* at 24. That functionality relates to claim elements 1.4a, 1.4.b, and 1.5. For those elements, Petitioner relies on Kim’s teaching that “a delivery service provider uses his/her mobile communication terminal equipped with a digital camera to capture an image of the product ordered by the customer,” “send the images to the customer,” and receive confirmation back via a direct communication between the customer and the delivery service provider. *Id.* at 36–42 (quoting and citing Ex. 1006, Abstr., 3; Ex. 1038, Fig. 2 (S19)). For the widget recited in elements 1.7.a and 1.7.b, Petitioner relies on Williams’s teachings “that it is well known to use widgets to retrieve and present information over the Internet.” Pet. 44–46. More specifically, Petitioner contends that “Williams teaches a widget that retrieves and ‘displays multimedia content’ such as the image/video and status information taught by Park and Kim.” *Id.* at 46.

Petitioner contends a POSITA would have been motivated to combine these references and would have had a reasonable expectation of success in doing so. Pet. 22–30. More specifically, Petitioner contends a POSITA would have been “motivated to incorporate Kim’s customer confirmation technique into Park because doing so would address a well-known problem in the art,” i.e., “customers ordering products over the Internet often receive goods that are not identical to the products ordered.” *Id.* at 20. According to Petitioner, “Kim teaches that the customer places an order of a product **to a**

**delivery service provider** rather than placing the order with the seller, so it would have been obvious that the delivery service provider makes the purchase and does not do so until the customer confirms the image.” *Id.* at 41–42 (Ex. 1003 ¶ 123; Ex. 1006, 3, 5; Ex. 1014, 2, Ex. 1022, 3) (internal quotations omitted). Petitioner further urges that a POSITA would have had a reasonable expectation of success in making the combination given the “close overlap” between the references as well as the fact “that Kim’s technique requires a mobile communication terminal with a digital camera, which are components Park’s delivery agents already carry.” *Id.* at 25–27, 29–30.

Petitioner argues that a POSITA would have been “motivated to incorporate Williams’ technique of presenting multimedia content in a widget into the combination of Park and Kim because doing so would have achieved the known benefits of using widgets, for example, by providing a simple, easily deployable functional item that may be accessed through a web browser in a relatively small area of display.” Pet. 27–28 (citing Ex. 1003 ¶¶ 73–74; Ex. 1019 ¶¶ 159–160; Ex. 1020, 1:21–25). More specifically, Petitioner points to Park’s teaching of providing a live video feed to the customer, urging that a POSITA would have been motivated to incorporate “Williams’ teaching of presenting web content in a widget” so as to accomplish “the predicable result of a web page (e.g., Park’s shopping web page) having integrated therein a widget that shows the current view of a customer’s delivery with video and map information concurrently with other shopping information.” *Id.* at 28–29 (citing Ex. 1003 ¶¶ 76–78; Ex. 1005, 47:25–48:20). According to Petitioner, a POSITA would have had a reasonable expectation of success in making this combination because by

the time of the '191 patent, the use of widgets was “popular” for such purposes. *Id.* at 29–30 (citing Ex. 1003 ¶¶ 79–80).

Petitioner’s arguments and evidence are persuasive to show that claim 1 would have been obvious over the combination of Park, Kim, and Williams. Park teaches a system that a customer accesses through an interactive interface on a website to place an order for desired goods (element 1.0). Ex. 1005, Abstr., 3:10–19 (describing system accessed through “customer-friendly user interface”). That order is an “acquisition request,” which as depicted in Park Figure 1 is transmitted from the customer’s computer 17 through the Internet 14 and received by an order server 12 (elements 1.1 and 1.2). *Id.* at Fig. 1, 14:26–29, 19:27–30 (customer computer is “capable of generating order input and transmitting that order to the order server 12” using “Internet communications”); *see also* Ex. 1003 ¶ 90 (Internet is a wide area network). In addition, Figure 1 depicts order server 12 in communication with distribution centers through a frame relay wide area network (WAN) 10 (element 1.2). *Id.* at Fig. 1, 14:21–24; *see also* Ex. 1003 ¶ 91. The received order is input into an order dispatching system 30 at a distribution center.<sup>9</sup> *Id.* at Fig. 2, 15:26–30, 16:9–14.

The order dispatching system generates a manifest and a delivery route for the order, which is communicated to a selected one of a plurality of mobile computing devices, i.e., “mobile delivery agent systems” as recited in element 1.3.a, each one of which is operated by an agent. Ex. 1005, Fig. 2

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<sup>9</sup> Both order server 12 and order dispatching system 30 constitute “at least one server in communication with a wide area network” as recited in element 1.2. Ex. 1003 ¶¶ 88–94. Thus, Park’s order server and dispatching system both individually and collectively read on element 1.2. *Id.*

(“PDA” of “Delivery Agent”), 30:6–8 (route determined and transmitted to agent’s device), 47:1–6 (“wireless mobile computing devices” carried by “agents so that they may remain in constant communication” with dispatchers “to receive delivery information and new routing instructions”). The agent’s MDAS includes a global positioning system configured to provide location data back to the server (element 1.6), which allows the agent’s location to be tracked so that system can select the appropriate agent to travel to a distribution center or other location to obtain the goods ordered by the customer. *See id.* at 45:14–46:21 (agents may receive “new deliveries and routing instructions at any location”); 47:12–48:3 (MDAS has a “global position indicator system” configured to provide “real-time tracking” of the agent). In addition, Kim describes a “delivery service provider” who communicates with a customer using a mobile communication terminal, i.e., a MDAS,<sup>10</sup> and acts on their behalf to acquire goods from a “seller” the customer might otherwise visit in person. Ex. 1006, Abstr., 2–3. Thus, the combination of Park and Kim teaches or suggests a MDAS configured for use with a “purchasing and delivery agent for a shopping event” (element 1.3.b), whether that event occurs virtually through an online order fulfilled from a distribution center or by the agent travelling to a seller location. Ex. 1003 ¶ 105.

In addition, both Park and Kim teach a MDAS having a camera, i.e., “a real-time video device” configured to send images in real-time to the

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<sup>10</sup> The delivery agent devices in both Park and Kim meet the MDAS construction because they include at least: (1) a device to capture video or still images; and (2) a device set up to communicate with a remote server. *See supra* § III.C.i.

customer (element 1.4.a). Ex. 1005, 48:10–25 (“delivery agent in the field” has “a mobile digital camera” capable of providing “live video feed” to the customer); Ex. 1006, 2 (“delivery service provider’s mobile communication terminal equipped with a digital camera” to transmit “images in real time to the customer”). Moreover, Park teaches that its agents use their device to send the customer “progress information via real-time imaging,” as recited in element 1.4.b. Ex. 1005, 4:28–32 (system allows “customers to interactively view, in real-time, the progress of his order, from reception and compilation to delivery through the route taken by the delivery agent”). Although Park does not specifically state that this includes viewing the goods at the pick-up site, Kim does. It teaches that the agent uses this device to send an “image or video of the ordered product” at the seller’s location prior to delivery. Ex. 1006, 3–4. Accordingly, the combination of Park and Kim teaches or suggests element 1.4.b. Ex. 1003 ¶¶ 112–118.

Petitioner has also shown that the combination of Park and Kim teaches or suggests element 1.5. *See* Pet. 39–42. Both Park and Kim disclose a MDAS with a communication device that is configured to communicate with the customer computer over the Internet, e.g., by sending data to the customer through a web server. *See, e.g.*, Ex. 1005, Fig. 1, 3:13–19, 48:10–21; Ex. 1006, Abstr., 3–4. This is the same type of “communications link” between the customer and delivery agent described in the ’191 patent. Ex. 1001, 5:23–25. In addition, Kim teaches that the communications device in its MDAS can also communicate with the customer without sending data through the server. *See* Ex. 1038, Fig. 2 (arrow between S19 and S20). Kim teaches that after viewing the product, the customer uses this direct communication link to send a message to the delivery service provider to

“confirm the product.” *Id.*; *see also* Ex. 1006, Abstr., 3–4 (description of “Step 5” and S19).

We credit Dr. Houh’s testimony that a POSITA would have understood this confirmation to be an “approval for the agent to immediately purchase the one or more goods viewed by the customer,” as recited in element 1.5. Ex. 1003 ¶ 123. Indeed, Dr. Houh credibly explains that:

Kim teaches that the ‘customer places an order of a product **to a delivery service provider**’ rather than placing the order with the seller, so it would have been obvious that the delivery service provider makes the purchase and does not do so until the customer confirms the image. Otherwise, the efficiencies gained by requiring customer confirmation would be negated—for example, where the delivery agent would have to purchase and then return the good if the customer did not approve the transmitted image of the good.

*Id.* (quoting Ex. 1006, 3, 5). In addition to his expert testimony, Dr. Houh cites references evidencing that particularly for perishable items, such as groceries, “customers prefer to inspect before purchase.” *Id.* (quoting Ex. 1014, 2; Ex. 1022, 3). Since Park’s system is designed to allow for the order and delivery of “perishable items” (*see, e.g.*, Ex. 1005, 1:11–16, 4:18–24, 25:29–32), these references further support that it would have been obvious to modify Park with Kim such that the agent immediately purchases the goods after the customer has viewed goods and communicated back to the agent that they want them. For these reasons, we credit Dr. Houh’s testimony that asserted combination teaches or suggests element 1.5.<sup>11</sup> *See* Ex. 1003 ¶¶ 119–124.

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<sup>11</sup> Because we find that the combination of Park and Kim teaches a purchasing and delivery agent who “immediately purchase[s] the one or more goods viewed by the customer” as recited in element 1.5, we need not

Petitioner has also articulated a sufficient rationale for combining these elements of Park and Kim. *See* Pet. 22–25 (citing exhibits). Kim identifies a problem with purchasing a product from a website, i.e., that the product delivered to the customer may not match the images or videos of that product on the website. Ex. 1006, 2. Kim teaches this problem can be overcome by having the delivery service provider operate a MDAS to transmit an image of the actual product in real time to the customer so that after receiving the image the customer can send instructions back to the delivery service provider confirming that is the product they delivered. *Id.* We credit Dr. Houh’s testimony that, based on these teachings, a POSITA would have been motivated to incorporate those same steps into Park’s system and methodology to “enhance the reliability of the delivery,” “increase customer satisfaction,” and “save[] resources” by preventing the delivery of goods that, upon viewing, the customer might reject. Ex. 1003 ¶¶ 62–67.

Moreover, a POSITA would have had a reasonable expectation of success in combining these teachings because Park’s system was already configured to send live video and images to the customer’s computer. Ex. 1003 ¶ 69. Indeed, while Park primarily discusses transmission of video and images of the delivery process to the customer, it expressly teaches that its objective is to “allow customers to interactively view, in real-time, the progress of his order, *from reception to compilation to delivery* though the route taken by the delivery agent.” Ex. 1005, 4:26–32 (emphasis added).

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reach Petitioner’s backup argument that this “clause . . . is a non-limiting statement of intended purpose.” *See* Reply 15–17; Tr. 29:12–30:6 (Petitioner acknowledging this is a “backup position”).

Incorporating Kim’s teachings regarding elements 1.3–1.5 would further this objective, allowing the customer to interactively view images of the actual products compiled for delivery and, if acceptable, send approval for the delivery agent to purchase and deliver those goods. *See* Ex. 1003 ¶ 68 (explaining that the combination allows Park’s system to perform the same intended functionality “in a more reliable way”).

Petitioner has also shown that a “selectable widget” configured as recited in elements 1.7.a and 1.7.b would have been obvious over the combination of Williams with Park and Kim. In relevant part, Williams teaches widgets that receive user input (i.e., they are “selectable” as recited in element 1.7.a) and are used to dynamically display multimedia content on a website by retrieving data from a data source. Ex. 1008, 3:1–22, 5:33–6:4, 7:29–33, 31:29–30. We credit Dr. Houh’s testimony that it would have been obvious to utilize such widgets “to display Park’s web content to customers, including the video from Park’s agent and, at the same time, the positional information of the agent” because “[t]his would provide the customer with the ability to see all relevant information about their delivery on one web page.” Ex. 1003 ¶ 130. This would include the live video view transmitted by the agent’s MDAS showing the goods at the pick-up site in the Park-Kim combination (element 1.7.b). *Id.* ¶¶ 133–136. Moreover, widgets were a popular tool for providing video through websites and a POSITA would have known that they offered a number of technical benefits. *See id.* ¶¶ 73–81.

Accordingly, Petitioner has shown that it would have been obvious to combine Park, Kim, and Williams, and that the asserted combination teaches or suggests all of the limitations of claim 1. Patent Owner’s arguments to the contrary (*see* Resp. 24–61) are unavailing, as explained below.

First, Patent Owner contends that Park does not teach an “acquisition request” or “acquiring” goods as recited in the challenged claims. Resp. 24–27. According to Patent Owner, “[i]n Park’s system . . . a customer shops and purchases goods online via a merchant’s website” and “[t]he order is then ‘pushed’ to a warehouse fulfillment center” to collect the purchased goods. *Id.* at 26. Patent Owner contends “[t]his order is not an ‘acquisition request’ because the goods have already been purchased by the customer.” *Id.* at 27.

This argument is unavailing because it is premised on an incorrect construction of “acquisition request.” *See supra* § III.C.iii. As explained above, the ordinary meaning of acquire encompasses obtaining a product by picking it up for delivery and the Specification makes clear that the agent may “purchase *or otherwise* acquire” products for the customer. Ex. 1001, 5:4–6, 7:24–26, 7:50–58; Ex. 1042, 1; Ex. 1043, 1; Ex. 1044 ¶¶ 14–25. Accordingly, Park’s teaching of a delivery agent who picks up goods ordered by a customer on a website reads on these limitations.

Patent Owner offers a related argument specific to the “purchasing and delivery agent” and “immediately purchase” language in claim 1.<sup>12</sup> *See* Resp. 27–33. According to Patent Owner, Park does not teach these elements because the goods are already purchased by the time the delivery agent arrives to pick them up for delivery. *Id.* at 28–29. Patent Owner argues that Kim does not suggest otherwise because its “‘delivery service provider’

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<sup>12</sup> Independent claims 11 and 14 do not recite this language. Thus, Patent Owner limits this argument to claim 1 and its dependents. *See* Resp. 27 (stating the argument applies to “Independent Claim 1,” whereas Patent Owner’s argument regarding the acquisition request limitations applies to “All Challenged Claims”).

is an entity that sells goods via its own website and arranges for the delivery of ordered goods to the customer,” rather than “an ‘agent’ who would *purchase goods* from a merchant.” *Id.* at 30–32.

These arguments are also unavailing. As explained above, it would have been obvious to modify Park with Kim’s teachings such that the goods viewed by the customer may be immediately purchased by an agent upon receiving approval from the customer on their MDAS. This finding is premised on Dr. Houh’s testimony as well as other evidence regarding customers’ preference to inspect products before purchasing them, which we credit. Ex. 1003 ¶¶ 62–70, 119–124; Ex. 1014, 2; Ex. 1022, 3; Ex. 1044 ¶ 71.

Patent Owner’s attempt to distinguish Kim by urging that its delivery service provider is actually the seller, rather than a “purchasing and delivery agent” as recited in claim 1, is unpersuasive. *See* Resp. 20–23, 30–31. Kim draws a distinction between a “seller” and a “delivery service provider.” Ex. 1006, 2–3; Ex. 1044 ¶¶ 35–39. As background, Kim explains that “a customer purchases a product either by visiting a seller in person or by ordering the product . . . without visiting the seller in person . . . whereby the seller has the ordered product delivered to the customer.” *Id.* at 2. But when describing the operation of its invention, Kim refers exclusively to a “delivery service provider” and not a “seller” or merchant. *Id.* at 3. It is this “delivery service provider” who obtains the image of the product on their MDAS, transmits it to the customer, and receives approval back from the customer to purchase the product. *Id.*; *see also* Ex. 1038, Fig. 2. There is nothing in Kim that suggests the delivery service provider must be the same entity that actually sells the ordered product. *See* Ex. 2017, 167:11–170:17

(Dr. Houh testifying credibly on cross-examination that a POSITA would understand Kim’s delivery service provider could provide delivery from multiple different stores and is not limited to the seller). Indeed, the term “delivery service provider” itself suggests an entity that provides delivery services as opposed to the merchant who sells goods. Accordingly, even if Kim did not expressly describe the seller and delivery service provider as separate entities, it reasonably suggests a delivery agent distinct from the seller who travels to the seller’s location to shop on a customer’s behalf, sends them images of goods they have requested, and immediately purchases those goods upon receiving confirmation from the customer to do so. *See KSR*, 550 U.S. at 421 (“A person of ordinary skill is also a person of ordinary creativity, not an automaton.”). For these reasons, the restrictive interpretation of Kim advanced by Patent Owner and Dr. Mitzenmacher (Ex. 2016 ¶¶ 50–56, 64–69) is not credible.

Patent Owner’s argument that the combination of Park and Kim does not teach or suggest a MDAS configured to send images in “real-time” is also unavailing. *See* Resp. 33–40. Park teaches that its MDAS includes a camera that transmits video from the delivery agent to the customer over Internet. Ex. 1005, 48:12–16. According to Patent Owner, such video does not meet the construction of “real-time” because that data is sent through a web server, which introduces “intentional delay.” Resp. 35–36. We disagree for several reasons.

First, Park teaches that the agent’s camera is configured to “provide every customer with a *live video feed* of the delivery of their order.” Ex. 1005, 48:19–20 (emphasis added). We credit Dr. Houh’s testimony that it would have been obvious to use the same live video feed in Park to provide

a view of the product for the customer to confirm. *See* Ex. 1003 ¶¶ 112–118. Such live video is “data that is passed along as it is gathered” and thus meets the construction of “real-time.” Ex. 1044 ¶ 48; *see also supra* § III.C.ii.

Second, both Park and Kim expressly teach that images and video are communicated in “real-time” from the devices operated by their agents to the customer. Ex. 1005, 4:18–32; Ex. 1006, 2. Patent Owner’s argument that a POSITA would have nonetheless understood that these communications do not, in fact, occur in “real-time” is premised on that same term having a different meaning within the context of the ’191 patent than it does in Park and Kim. We see no reason to adopt such an interpretation here, much less split hairs as Patent Owner’s argument invites. Indeed, Patent Owner argued in the Delaware court, and continues to argue here, that “real-time” as used in the ’191 patent has its plain and ordinary meaning in the art. Ex. 1035, 25; *see* Resp. 16 (continuing to assert that “real-time” has its “plain and ordinary meaning” without reconciling the fact that Park and Kim use the same term to describe the operation of their devices).

Third, even assuming that the initial presentation of Park’s live video feed could be delayed because, as Patent Owner asserts, the customer must first “choose to access by making a separate request to the server” (Resp. 35), once that request has been made there is no delay. Ex. 1044 ¶ 51. We credit Dr. Houh’s testimony that “**even if** the first video frame has ‘intentional delay, because of the initial request’ to establish the feed “none of the subsequent frames have any ‘intentional delay’ and instead, those frames are passed along as they are gathered without any further action needed by the customer.” *Id.* Accordingly, the mere fact that the customer must make a request to see the video does not prevent it from being

presented in “real-time” as recited in Patent Owner’s claims. Indeed, the preferred embodiment in Figure 3 of the Specification works the same way. There, as in Park and Kim, the product image from the agent’s MDAS is transmitted to the customer after the customer makes a request to see it. Ex. 1001, 6:53–59 (“If the customer chooses to inspect the product, the customer will communicate instructions to the delivery agent at **118**, and the delivery agent will utilize real-time video device **46** to transmit real-time data to customer computer **30**.”). Thus, a POSITA would have understood that any delay associated with the customer making a request to inspect the product does not prevent the data from being sent in “real-time.”

Fourth, the description in the Specification confirms Park’s teaching that live video data can be sent through a web server in real-time. As Petitioner points out, Figure 1 in the Specification “illustrates server 14 with ‘real-time video processor 38’ sitting in the communication path between MDAS 42 and customer computer 30.” Reply 22 (citing Ex. 1001, Fig. 1, 2:54–3:53). In addition, the Specification states that video footage from the “real-time video device 46” in MDAS 42 is “preferably . . . stored on server **14**.” Ex. 1001, 8:5–13. Thus, Park’s teachings align with how video data is shared between the MDAS and the customer’s computer in the ’191 patent’s preferred embodiments. Patent Owner seeks to avoid the import of its own Specification, urging that it “is not a claimed embodiment of the ’191 Patent” because the “[t]he ’191 Patent requires images to be sent in real-time.” *See* Resp. 34. But that argument is circular and premised on Patent Owner’s interpretation of “real-time” to exclude its own preferred embodiments. Such an interpretation is not credible.

In addition to its real-time arguments, Patent Owner asserts that the combination of Park and Kim does not teach or suggest “direct communication” between the customer and agent as recited in claim 1. *See* Resp. 40–45. Again, we disagree for several reasons.

First, the Specification does not explain what is and what would not be a “direct communication.” The term itself appears only in the claim language. What the Specification does describe is that after the agent is selected and the acquisition request received, “a communications link is established between the customer and the selected delivery agent . . . such as *through a telephone or internet connection.*” Ex. 1001, 5:20–25 (emphasis added). By way of example, Patent Owner asserts that “sending an email to someone” is a direct communication over an internet connection, whereas uploading data to a server is not. Resp. 42.

Both Park and Kim teach that their MDAS devices are configured to communicate by phone and through the Internet, i.e., the same communication links described in the Specification. Ex. 1005, 46:15–18 (delivery agents communicate using cellphones and wireless email devices), 47:11–12 (delivery agent may be contacted by cell phone), 48:10–21 (live video transmitted to customer over the Internet); Ex. 1006, Abstr. (delivery service provider receives order from customer “via phone, fax, online, etc.”), 4 (mobile communication terminals can be a PDA that uses “wireless data communication” and may also include a cell phone); Ex. 1044 ¶¶ 68–69. Thus, both Park and Kim teach a MDAS having a communications device that is at least reasonably capable of establishing direct communication between the agent and the customer. Since all of the challenged claims are directed to an apparatus, such capability is sufficient to show that the recited

functionality would have been obvious. *See ParkerVision, Inc. v. Qualcomm Inc.*, 903 F.3d 1354, 1361 (Fed. Cir. 2018) (explaining that a prior art reference “may anticipate or render obvious an apparatus claim—depending on the claim language—if the reference discloses an apparatus that is reasonably capable of operating so as to meet the claim limitations, even if it does not meet the claim limitations in all modes of operation”).<sup>13</sup>

Second, Patent Owner’s argument that “direct communication” excludes communications between the agent and customer that pass through a server are unavailing. *See* Resp. 40–44. Patent Owner relies on Dr. Mitzenmacher’s testimony to argue that “direct communication” in the context of the ’191 patent is “the exchange of data between two endpoints,” i.e., the customer and agent, and that this excludes communications that pass through a server as in Park and Kim. *See id.* (citing Ex. 2016 ¶¶ 28–34). That testimony, however, conflicts with Patent Owner’s own example of an

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<sup>13</sup> Patent Owner attempts to distinguish *ParkerVision*, urging that “precedent distinguishes between claims that recite ‘configuration’ from those that recite mere ‘capability.’” Sur-reply 8 (citing cases). While claim 1 recites a device “configured to establish direct communication,” that language does not place any structural limitation on that device beyond the capability to carry out the function. *Cf. Ball Aerosol & Specialty Container, Inc. v. Limited Brands, Inc.*, 555 F.3d 984, 994–95 (Fed. Cir. 2009) (claim reciting a “particular configuration in which the protrusions must be ‘resting upon’ the cover” was not infringed by merely showing that an accused product was reasonably capable of being placed in that configuration). Accordingly, the language in claim 1 here more closely aligns with the claim language at issue in *ParkerVision* and the other cases holding that the claimed apparatus must merely be “reasonably capable” of carrying out the recited function. *See ParkerVision*, 903 F.3d at 1362 (citing *Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1217 (Fed. Cir. 2014); *Finjan, Inc. v. Secure Computing Corp.*, 626 F.3d 1197, 1204 (Fed. Cir. 2010)).

email as a direct communication that occurs over the Internet. As Dr. Houh credibly explains, an email sent from a delivery agent to a customer would be sent from the agent's device to the agent's email server and then to the customer's email server and finally to the customer's computer. Ex. 1044 ¶ 67. As such, Patent Owner's "email example . . . is similar to how Patent Owner and Dr. Mitzenmacher characterize" the communications between the customer and agent in Park and Kim. *Id.* Accordingly, Patent Owner's own example further confirms that Park's live video feed is a direct communication, notwithstanding that it passes through a server enroute to its endpoint at the customer's computer.

Third, even if the challenged claims did require communication between the customer computer and MDAS that did not pass through a server, Figure 2 of Kim illustrates exactly such communication. Ex. 1038, Fig. 2 (arrow from customer at S19 to delivery service provider at S20 to confirm the product for purchase and delivery). Patent Owner suggests that because the arrow from S19 to S20 in Figure 2 extends from the customer to the delivery service provider, Kim's teachings are limited to a direct communication link established by the customer as opposed to the communications device in the MDAS. *Sur-reply* 10 (urging that in Kim "the customer establishes communication with the delivery service provider, not the other way around"). But the claim language does not draw such a fine distinction. The arrow between S19 and S20 in Figure 2 shows that the Kim's communications device is "configured to establish direct communication between the customer and the respective agent to enable the customer to provide a communicated approval," as element 1.5 recites, because that arrow is the "communicated approval" sent through a direct

link between the agent and customer. It could not logically occur unless the communications device in the agent's MDAS was configured to establish direct communication with the customer. Accordingly, we agree with Petitioner that it would have been obvious for a POSITA exercising ordinary creativity to apply such teachings in the asserted combination of references. *See* Ex. 1003 ¶ 123; Ex. 1044 ¶ 69 (Dr. Houh testifying that “when Kim’s direct communication teachings are applied to Park, it would have been obvious for Park’s agent communication device to establish direct communication with a customer, e.g., via the device’s email or telephone capabilities.”).

Patent Owner also raises several challenges to Petitioner’s reasoning for combining Park and Kim. *See* Resp. 46–54. As an initial matter, Patent Owner argues that Petitioner’s rationale for the combination is flawed because Kim’s “delivery service provider” is actually the seller from which the products are ordered. *See id.* at 47–48. As explained above, we do not agree with that overly restrictive interpretation of Kim and instead find that Kim teaches or reasonably suggests a delivery agent operating a MDAS to provide a real-time view of a product to the customer and receive approval back from the customer to immediately purchase that product.

Patent Owner further contends that “modifying Park’s warehouse-based delivery model as suggested in the Petition would impermissibly alter Park’s principle of operation as viewed through the lens of its contribution to the art.” Resp. 48. According to Patent Owner, Kim’s teaching of an agent that obtains an image of the product could not be factored into Park’s system because Park’s goods are already packaged by the time the delivery agent picks them up. *Id.* at 48–51. Patent Owner asserts that the additional time

required to unpackage the goods, transmit an image, await customer confirmation, and then repackage the goods for delivery would alter Park's inventive concept by destroying its basic objective of one-hour delivery. *Id.* at 51–54.

Again, we disagree with Patent Owner. As Petitioner points out, Park's system and method is not limited to one-hour delivery. *See* Reply 26–27. To the contrary, Park teaches that items can be “delivered within the hour *or* within a customer specified delivery window” exceeding an hour. Ex. 1005, Abstr. (emphasis added), 20: 9–12 (describing “processing orders for deferred delivery (i.e. those not required to be delivered in the next hour)”); *see also* Ex. 1044 ¶ 30. Moreover, while Park does place an emphasis on delivery time, it explains that the goal of such is to promote customer satisfaction. *See* Ex. 1005, 30: 16–18 (increasing “dispatch efficiency and customer satisfaction”), 34:5–7 (resequencing delivery “to ensure 100% customer satisfaction”). In this regard, the rationale Petitioner articulates for combining the references dovetails with Park's objective of improving customer satisfaction by ensuring that the product to be delivered is acceptable to the customer. *See* Ex. 1044 ¶ 76 (“[A] POSITA would have understood that a customer ordering goods would care little if an unacceptable product was delivered quickly.”).

Patent Owner's arguments also overstate the impact the combination would have on Park's delivery time. Much of Patent Owner's argument and Dr. Mitzenmacher's testimony interpreting Park is premised on the “e-Dreams film”<sup>14</sup> and other exhibits relating to the “Kozmo.com system,”

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<sup>14</sup> According to Patent Owner, the e-Dreams film is a “documentary film (2002), available at <<https://www.youtube.com/watch?v=j847rYNo2G0>>.”

which Patent Owner argues is the system disclosed in Park. *See* Resp. 15–19, 58–61; Sur-reply 23–24; Ex. 2016 ¶¶ 47, 87–89 (citing Exs. 2023–2029). At most, these materials reflect a commercial implementation of some aspects of Park’s system and do not limit the teachings in Park itself, nor do they evidence how a POSITA would have approached the combination of Park and Kim in the Petition.

Patent Owner’s argument that Park’s delivery agent would have to unpackage “meticulously packaged” goods, wait for confirmation, and then repack them is not supported by the actual teachings in Park. *See* Resp. 49 (citing Ex. 2016 ¶ 84). Park teaches that products at the distribution center are placed into “bags suitable for being carried by a delivery agent to the customer’s delivery location.” Ex. 1005, 16:24–28; Ex. 1044 ¶ 33. It is well within the exercise of a POSITA’s ordinary creativity to combine the references, such that Park’s delivery agent would take a picture of the product, either in the bag, or by removing and then putting it back in the bag while waiting for customer confirmation, or even modifying the packaging process to facilitate delivery agent taking a picture before putting the products into the bag. Ex. 1044 ¶¶ 78–79. Although this would add some time to the process, we credit Dr. Houh’s testimony that the delay would be relatively small and offset by other benefits, e.g., enhanced reliability and customer satisfaction, or mitigated by providing the confirmation as an “option” to the customer along with an advisory message that such

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Resp. 18–19. Although Patent Owner’s briefing includes what appear to be screenshots from that video, the video itself was not filed as an exhibit. *See, e.g., id.* at 19, 50. Accordingly, the e-Dreams film is not record evidence, but, even if it were, our findings would remain the same.

confirmation “may add time to his or her order.” Ex. 1003 ¶¶ 67–69; *see also* Ex. 1044 ¶¶ 76–91 (replying to Dr. Mitzenmacher’s testimony). In contrast, Dr. Mitzenmacher’s competing testimony is less credible because it overemphasizes Park’s focus on one-hour delivery, while largely ignoring the benefits a POSITA would have understood the combination of Park and Kim to provide. *See* Ex. 2016 ¶¶ 84–105.

Finally, Patent Owner’s arguments that “Petitioner fails to square Park’s warehouse-based model with Kim’s technique to show *how* the specific modification would even work” or “*would be* factored into Park’s intelligent routing algorithm” are unavailing. *See* Resp. 54–61. Patent Owner’s arguments do not reflect the proper inquiry because they focus on features of Park that are not required by the challenged claims. *Axonics, Inc. v. Medtronic Inc.*, 73 F.4th 950, 957 (Fed. Cir. 2023) (“The inquiry is not whether a relevant artisan would combine a first reference’s feature with a second reference’s feature to meet the requirements of the first reference that are not requirements of the claims at issue.”). Put differently, the test is not whether Kim’s product confirmation technique may be “bodily incorporated” into Park’s system, but rather whether a POSITA would have been motivated to combine the teachings to achieve the claimed invention, recognizing that some ordinary creativity might be required to carry out that combination. *See Facebook Inc. v. Windy City Innovations LLC*, 973 F.3d 1321, 1343 (Fed. Cir. 2020). As explained above, Petitioner’s showing is sufficient to demonstrate such and includes credible testimony from Dr. Houh explaining how a POSITA would implement the proposed combination to arrive at the method in the challenged claims. *See* Ex. 1003 ¶¶ 62–70.

For these reasons, Petitioner has demonstrated by a preponderance of the evidence that claim 1 would have been obvious over Park, Kim, and Williams.

*ii. Claim 3*

Claim 3 depends from claim 1 and additionally recites “wherein the at least one server includes a customer database for storing customer information.” Ex. 1001, 10:17–19. For this limitation, Petitioner relies on Park’s teaching relating to its system storing a customer profile. Pet. 39 (citing Ex. 1005, 22:7–10; Ex. 1003 ¶¶ 137–139).

Patent Owner does not dispute Petitioner’s showing for claim 3 separately from its arguments for claim 1.<sup>15</sup>

Petitioner’s showing is sufficient to establish that claim 3 would have been obvious over Park, Kim, and Williams. Park teaches that “when the customer is read to order the items selected [on the website], the customer profile information is read from local storage, or alternatively from a centralized customer profile database.” Ex. 1005, 22:7–10. Based on this disclosure, a POSITA would have understood that Park’s order server includes a locally-stored customer database that stores customer profile information. Ex. 1003 ¶ 138. Accordingly, Petitioner has shown that the articulated combination of references teaches or suggests all of the limitations of claim 3.

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<sup>15</sup> To the extent Patent Owner’s arguments for claim 1 also apply to the other challenged claims, those arguments are unavailing for the same reasons explained above. *See supra* § III.E.i.

*iii. Claims 4, 7, and 9*

Claims 4, 7, and 9 each depend from claim 1. Claim 4 additionally recites that the server “includes a processor adapted to select one of the plurality of agents for the acquisition request based, at least in part, on current location information of each of the respective agents relative to the pick-up site at the time the acquisition request is entered.” Ex. 1001, 10:20–25. Claim 7 similarly recites that the server includes a processor and that the processor is adapted to select one of the plurality of agents “based, at least in part, on the location of each delivery agent relative to the delivery site and present the server selection to the customer.” *Id.* at 10:35–41. Claim 9 recites that the system further comprises “a global positioning system in communication with the at least one server, with the global positioning system providing location information to the customer of the relative agent.” *Id.* at 10:48–51. For these limitations, Petitioner relies on Park’s teachings relating to the selection of agents based on location information. Pet. 46–50, 52–54 (citing Ex. 1005, 7:4–7, 12:22–29, 17:7–11, 24:3–10, 25:6–15, 26:26–28, 28:25–29:14, 31:21–30, 32:19–21, 33:13–20, 34:9–35:3, 47:12–48:12); Ex. 1003 ¶¶ 140–145, 149–157, 164–170).

Patent Owner does not dispute Petitioner’s showing for claims 4, 7, and 9 separately from its arguments for claim 1.

Petitioner’s showing is sufficient to establish that each of these claims would have been obvious over Park, Kim, and Williams. In Park’s system, the customer’s order includes the address for the delivery (i.e., the “acquisition request specifies a delivery site” as recited in claim 7). Ex. 1005, 24:3–10. Park teaches that a dispatcher operating “the order dispatching system and reviews currently executing deliveries to identify

how best to service the newly received orders.” Ex. 1005, 25:6–9. This includes “determining which delivery agent out of a pool of available delivery agents will be assigned to deliver the item delivery orders” and calculating “the optimal route for delivery.” *Id.* at 5:1–6, 12:22–29. Park teaches that the delivery route calculation considers, *inter alia*, the availability of each agent, the delivery agent’s current location, the distance from the dispatch location where the goods will be picked up (“pick-up site” as recited in claim 4), and the delivery zone (“delivery site” as recited in claim 7). *See id.* at 28:25–29:14, 32:10–25, 33:14–20, 34:9–35:3.

As explained above, Park’s order dispatching system reads on the “at least one server” recited in claim 1. *Supra* § III.E.i. A POSITA would have recognized that it includes a processor adapted to make delivery agent selections based at least in part the information above. Ex. 1003 ¶¶ 141–145, 149–157. After the selection is made, Park’s system presents it to the customer, e.g., by providing the customer with the current position of the agent selected to deliver their order and a “‘first person’ view of the delivery of their order” from the selected agent’s video device. Ex. 1003 ¶ 156; Ex. 1005, 47:25–48:12. Accordingly, Petitioner has shown that the articulated combination of references teaches or suggests all of the limitations of claims 4 and 7.

Regarding claim 9, Park teaches that the agent’s MDAS includes “a global position indicator system for determining the physical location of the agent,” e.g., “a GPS-enabled mobile computing device,” and that “the agent carries a transmitter that relays positional information to the server system.” Ex. 1005, 47:16–32. Moreover, Park teaches that this information is provided to the customer. *Id.* at 47:32–48:3; *see also id.* at 7:4–7

(“Customers of the system are allowed to see the routes of the delivery agent and to view the current location of their order.”). Accordingly, Petitioner has shown that the articulated combination of references teaches or suggests all of the limitations of claim 9.

*iv. Claim 6*

Claim 6 depends from claim 1 and additionally recites “wherein the at least one server is adapted to receive the acquisition request from the customer over the wide area network.” Ex. 1001, 10:32–34. For this limitation, Petitioner relies on Park’s teaching that its system receives orders over the Internet. Pet. 48 (citing Ex. 1005, Abstr., 14:26–29, 19:23–28; Ex. 1003 ¶¶ 146–148).

Patent Owner does not dispute Petitioner’s showing for claim 6 separately from its arguments for claim 1.

Petitioner’s showing is sufficient to establish that claim 6 would have been obvious over Park, Kim, and Williams. Park teaches that its system receives orders over the Internet, which is a “wide area network” as recited in claim 6. Ex. 1005, Abstr., 14:26–29; Ex. 1003 ¶¶ 146–148. Accordingly, Petitioner has shown that the articulated combination of references teaches or suggests all of the limitations of claim 6.

*v. Claim 8*

Claim 8 depends from claim 1 and additionally recites that the server has “a processor adapted to select one of the plurality of agents to complete the acquisition request based, at least in part, on location information of the respective agents relative to the shopping event at the time the acquisition request is entered and the availability status of the respective agent.” Ex. 1001, 10:42–47. Similar to its showing for claims 4, 7 and 9, Petitioner

relies on Park’s teachings relating to the selection of agents based on location information for these limitations. *See* Pet. 44–46 (citing Ex. 1005, 12:22–29, 17:7–11, 25:6–15, 26:26–28, 29:7–14, 31:21–30, 32:11–25; Ex. 1003 ¶¶ 158–163).

Patent Owner separately disputes Petitioner’s showing for claim 8. Resp. 62. According to Patent Owner, “Petitioner relies exclusively on Park’s disclosure of an order dispatch system that directs what orders should be given to which agents.” *Id.* Patent Owner contends “this is not a system that, upon an acquisition request, directs an agent to shop on behalf of a customer and acquire the requested goods.” *Id.*

We disagree with Patent Owner and find that Petitioner’s showing is sufficient to establish that claim 8 would have been obvious over Park, Kim, and Williams. As explained above, the term acquisition request does not require an agent that shops on the customer’s behalf. *Supra* § III.C.iii. Even if it did, Petitioner has shown for claim 1 that the combination of Park and Kim teaches a MDAS operated by a purchasing and acquisition agent for a shopping event that upon receiving approval from the customer immediately purchases the goods in the acquisition request. *Supra* § III.E.i. Moreover, as explained above for claims 4 and 7, Park teaches the selection of an agent based, at least in part, on location information and agent availability. *Supra* § III.E.iii. Accordingly, Petitioner has shown that the articulated combination of references teaches or suggests all of the limitations of claim 8. Patent Owner cannot overcome this showing by arguing that Park individually would not render the system of claim 8 obvious. *See Soft Gel Techs., Inc. v. Jarrow Formulas, Inc.*, 864 F.3d 1334, 1341 (Fed. Cir. 2017) (attacking a

reference individually does not show non-obviousness where petitioner's ground is premised on the combination of references).

*vi. Claim 10*

Claim 10 depends from claim 1 and additionally recites “wherein the customer computer having the user interface is configured to display the respect agent’s location and real-time images.” Ex. 1001, 10:52–54. For these limitations, Petitioner relies on Park’s teaching that the customer can view the progress of their order in “real-time” and view a “live video feed” of the delivery. Pet. 54–55 (citing Ex. 1003 ¶¶ 171–173; Ex. 1005, 47:25–48:25).

Patent Owner does not dispute Petitioner’s showing for claim 10 separately from its arguments for claim 1.

Petitioner’s showing is sufficient to establish that claim 10 would have been obvious over Park, Kim, and Williams. Park teaches a system that allows the customer to “interactively view, in real-time, the progress of his order, from reception and compilation to delivery” and receive a “live video feed” from their respective agent. Ex. 1005, 4:26–32, 47:25–48:25. As explained above, it would have been obvious to present the agent’s location and video information to the customer through the user interface on their computer, e.g., using a selectable widget on a website as taught in Williams. *See supra* § III.E.i. Accordingly, Petitioner has shown that the articulated combination of references teaches or suggests all of the limitations of claim 10.

*vii. Claim 14*

For claim 14, Petitioner relies on largely the same showing it did for claim 1. *See* Pet. 55–59.

Patent Owner does not dispute Petitioner’s showing for claim 14 separately from its arguments for claim 1.

Petitioner’s showing is sufficient to establish that claim 14 would have been obvious over Park, Kim, and Williams. As explained above for the similar limitations in claim 1, Park teaches a system for remote acquisition and delivery of goods based on an order (i.e., “acquisition request”) submitted by a customer computer and a MDAS (i.e., “mobile agent system” configured for use by a delivery agent (“mobile agent”) for a shopping event based on that order (elements 14.0, 14.1, and 14.2). *Supra* § III.E.i (showing for elements 1.0, 1.1, and 1.3.a–b). Regarding the recitation of “a user interface configured to establish a local communication link between the customer and mobile agent” in element 14.1, the Specification teaches that a “communications link” may be “established between the customer and selected delivery agent . . . through a . . . internet connection.” Ex. 1001, 5:23–25.<sup>16</sup> Park teaches that the customer’s computer is configured to establish an internet connection (*see, e.g.*, Ex. 1001, Fig. 1) and that a link between the agent and customer is established, e.g., “when the agent’s device streams ‘a live video feed of the delivery’ to the client computer via a web server.” Ex. 1003 ¶¶ 176–177 (quoting Ex. 1005, 48:10–20). Moreover, Kim teaches a direct communication link between the customer’s and agent’s devices. *Id.* ¶ 178 (referring to Ex. 1038, Fig. 2 (arrow between S19 and S20)). We credit Dr. Houh’s testimony that a POSITA would have understood these disclosures to teach or suggest the

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<sup>16</sup> The Specification does not use the term “local communication link,” but Petitioner asserts, and Patent Owner does not specifically dispute, that it would include a link though an Internet connection. Pet. 55 n. 5.

“user interface configured to establish a local communication link” recited in element 14.1. *See* Ex. 1003 ¶¶ 176–178.

The “means for sending one or more images” in element 14.3.a–b and the “communications means” in element 14.4 are similar to the “real-time video device” and “communications device” in elements 1.4.a–b and 1.5 respectively. For the “means for sending one or more images” in element 14.3.a–b, Petitioner has shown that the combination of references teaches or suggests corresponding structure (i.e., a camera in the agent’s MDAS that sends a live video feed to the customer’s computer over the Internet) that performs the identified function. *See supra* § III.E.i. (showing for element 1.4.a–b and related findings regarding “real-time”). For the communications means in element 14.4, Petitioner has shown that the combination of references teaches or suggests corresponding structure (i.e., MDAS and customer computer) that performs the identified function. *See supra* § III.E.i. (showing for element 1.5 and related findings regarding “direct communication”).

Petitioner relies on the same showing for elements 14.5 and 14.6.a–b as for elements 1.6 and 1.7.a–b. *See* Pet. 58–59. That showing, as well as Petitioner’s rationale for combining Park, Kim, and Williams, is persuasive for the same reasons explained above. *Supra* § III.E.i. Accordingly, Petitioner has shown that the articulated combination of references teaches or suggests all of the limitations of claim 14. *See* Ex. 1003 ¶¶ 174–187.

*viii. Claim 15*

Claim 15 depends from claim 14 and additionally recites that the computer interface “is configured to display the generated view including the respective delivery agent’s progress during performance of the

acquisition request, including viewing data from the mobile agent at the pick-up site, data from the shopping event, and travel data from the mobile agent during travel to a designated delivery site.” Ex. 1001, 12:25–31. For these limitations, Petitioner relies on Park’s and Kim’s teachings relating to providing progress and viewing data from the agent’s MDAS. *See* Pet. 59–60 (citing Ex. 1003 ¶¶ 188–195; Ex. 1005, 3:13–19, 4:27–32, 47:25–48:25; Ex. 1006, 3).

Patent Owner does not dispute Petitioner’s showing for claim 15 separately from its arguments for claim 1.

Petitioner’s showing is sufficient to establish that claim 15 would have been obvious over Park, Kim, and Williams. As noted above, Park teaches a user interface configured to allow the customer to “interactively view, in real-time, the progress of his order, from reception and compilation to delivery,” including by receiving a “live video feed” from the agent’s device. Ex. 1005, 4:27–32, 47:25–48:25. As explained above, when combined with Kim, a POSITA would have understood that this would include video of both the product to be purchased (“data from the shopping event”) and the video and other data relating to the delivery (“data from the mobile agent at the pick-up site” and “during travel to the designated delivery site” as recited in claim 15). *See* Ex. 1003 ¶¶ 188–195. Accordingly, Petitioner has shown that the articulated combination of references teaches or suggests all of the limitations of claim 15.

*F. Ground 2: obviousness over Park, Kim, Williams, and Hileman*

Petitioner contends claims 11–13 would have been obvious over the combination of Park, Kim, and Williams in Ground 1 with further modification in view of Hileman. *See* Pet. 60–17. As explained below,

Petitioner has shown by a preponderance of the evidence that these claims would have been obvious over the asserted combination of these references.

The Petition articulates reasoning for combining Hileman with the combination in Ground 1. Pet. 61–65. More specifically, Petitioner argues that it would have been obvious “to apply Hileman’s teachings of the ability to select a delivery agent, and delivery agent availability, to the Park, Kim, and Williams combination—for example, to further Park’s goals of providing advanced order tracking information and customer interactivity.” *Id.* at 61 (citing Ex. 1003 ¶ 197, Ex. 1005, 49:13–17) (internal quotations omitted). According to Petitioner, a POSITA would have been motivated to incorporate Hileman’s teachings “because doing so would have provided additional information and flexibility to the customer” and “allowed the system of Park to serve a larger number of customers” by providing “delivery options that vary in price” and “price estimates before completing a transaction.” *Id.* at 62 (citing Ex. 1003 ¶ 177–179). Petitioner also cites evidence supporting that a POSITA would have had a reasonable expectation of success in making this combination. *Id.* at 54–55 (citing Ex. 1003 ¶ 199).

Patent Owner does not specifically respond to Petitioner’s reasoning for combining Hileman with Park, Kim, and Williams. *See generally* Resp.

We find Petitioner’s argument and evidence above credible to show that it would have been obvious to combine the identified features in Hileman with the combination of Park and Kim in Ground 1. Below, we address the application of those references’ teachings to each of the limitations recited in claims 11–13.

*i. Claim 11*

Claim 11 is reproduced below with the same bracketed annotations used in the Petition.

11. [11.0] A system for remote acquisition and delivery of one or more goods based on an acquisition request from a customer through an interactive interface for processing the acquisition request comprising:

[11.1] a plurality of mobile delivery agent systems configured with at least a global positioning system providing location information to at least one server;

[11.2.a] a selectable widget for a third party vendor website configured to retrieve data submitted by the plurality of mobile delivery agent systems to the at least one server and [11.2.b] to generate a view of a pick-up site associated with the third party vendor together with at least the data submitted to the at least one server by the plurality of mobile delivery agent systems including current locations of the mobile delivery agent systems;

[11.3] a display for displaying to the customer at least the generated view;

[11.4] an input configured to receive the acquisition request and a selection made by the customer of one of the plurality of delivery agent systems representing delivery agents;

[11.5] communication means for processing the acquisition request from the customer and establishing direct communication between the customer and the selected delivery agent during both the acquisition and delivery of the one or more goods to the customer;

[11.6] a real-time video means for sending at least one image to the customer through the communication means and transmitting real-time data to the display for the customer to view the one or more goods and the respective agent's progress during performance of the acquisition request.

Ex. 1001, 10:55–11:18. For these limitations, Petitioner relies on largely the same showing it did for claim 1 with Hileman’s teachings considered to address the selection of a delivery agent in element 11.4. *See* Pet. 65–70.

Patent Owner does not dispute Petitioner’s showing for claim 11 separately from its arguments for claim 1.

Petitioner’s showing is sufficient to establish that claim 11 would have been obvious over Park, Kim, Williams, and Hileman. As explained above for the similar limitations in claim 1, Park teaches a system for remote acquisition and delivery of goods with an interactive interface through which a customer can submit an acquisition request and a plurality of MDAS each configured with a global positioning system that provides location information to a server (elements 11.0 and 11.1). *Supra* § III.E.i (showing for elements 1.0, 1.1, 1.3.a–b, and 1.6). Moreover, the combination of Park and Kim teaches or suggests the agent using their MDAS to transmit a live video feed of the entire order, including a view of the product at the pick-up site (e.g., a third party vendor’s store). *Id.* For the “selectable widget” recited in elements 11.2.a–b, Petitioner relies on its same showing for the widget in elements 1.7.a–b. Pet. 65. That showing, as well as Petitioner’s rationale for combining Park, Kim, and Williams, is persuasive for the same reasons explained above. *Supra* § III.E.i. It would have been obvious to use such a widget on Park’s website to retrieve MDAS data from the server, e.g., Park’s live video feed and agent location information, and generate a view of such for the customer (elements 11.2.a–b). *See* Ex. 1003 ¶¶ 127–136, 206–207. Moreover, Park teaches that the customer’s computer includes a display for presenting this view to the customer (element 11.3). Ex. 1003 ¶ 209; Ex. 1005, 19:19–21.

Regarding element 11.4, Hileman teaches a system configured to receive a selection of a transportation option from the customer along with their request. Ex. 1009, Abstr., ¶¶ 28, 45. Based on these teachings, it would have been obvious incorporate Hileman’s teachings to allow the customer to include a selection of a delivery agent (e.g., to choose between Park’s agents providing different delivery speeds or transportation types) with their acquisition request (element 11.4). Ex. 1003 ¶¶ 210–214 (citing related teachings in Park).

The “real-time video means” in element 11.6 and “communication means” in element 11.5 are similar to the “real-time video device” and “communications device” in elements 1.4.a–b and 1.5 respectively. For the “real-time video means” in element 11.6, Petitioner has shown that the combination of references teaches or suggests corresponding structure (i.e., a camera in the agent’s MDAS that sends a live video feed to the customer’s computer over the Internet) that performs the identified function. *See supra* § III.E.i. (showing for element 1.4.a–b and related findings regarding “real-time”). For the communications means in element 11.5, Petitioner has shown that the combination of references teaches or suggests corresponding structure (i.e., MDAS and customer computer) that performs the identified function. *See supra* § III.E.i. (showing for element 1.5 and related findings regarding “direct communication”). Accordingly, Petitioner has shown that the articulated combination of references teaches or suggests all of the limitations of claim 11. *See* Ex. 1003 ¶¶ 204–222.

*ii. Claim 12*

Claim 12 depends from claim 11 and additionally recites “wherein the real-time video means displays the agent’s view of the one or more goods.”

Ex. 1001, 11:19–20. For this limitation, Petitioner relies on the combination of Park’s and Kim’s teachings in claim 1. Pet. 70–71(citing Ex. 1003 ¶¶ 223–224; Ex. 1005, 48:10–20; Ex. 1006, Abstr).

Patent Owner does not dispute Petitioner’s showing for claim 12 separately from its arguments for claim 1.

Petitioner’s showing is sufficient to establish that claim 12 would have been obvious over Park, Kim, Williams, and Hileman. As explained above, Kim teaches providing the agent’s view of the product to the customer and it would have been obvious to provide this view to the customer using Park’s live video feed. *Supra* § III.E.i; *see also* Ex. 1003 ¶¶ 223–224. Accordingly, Petitioner has shown that the articulated combination of references teaches or suggests all of the limitations of claim 12.

*iii. Claim 13*

Claim 13 depends from claim 11 and additionally recites that the “display is configured to present the location of the agent during performance of the acquisition request, including viewing data from the agent at a shopping and pick-up site, data from a shopping event, and travel data from the agent during travel to a designated delivery site.” Ex. 1001, 11:21–26. Petitioner relies on its showing for claim 15. Pet. 71.

Patent Owner does not dispute Petitioner’s showing for claim 13 separately from its arguments for claim 1.

Petitioner’s showing is sufficient to establish that claim 13 would have been obvious over Park, Kim, Williams, and Hileman. As explained above for the similar limitations recited in claim 15, the combination of references also teaches or suggests a display configured as recited in

claim 13. *Supra* § III.E.viii. Accordingly, Petitioner has shown that the articulated combination of references teaches or suggests all of the limitations of claim 13.

#### IV. CONCLUSION<sup>17</sup>

Petitioner has shown, by a preponderance of the evidence, that claims 1, 3, 4, and 6–15 of the '191 patent are unpatentable.

| <b>Claims</b>          | <b>35 U.S.C. §</b> | <b>Reference(s)/<br/>Basis</b> | <b>Claims<br/>Shown<br/>Unpatentable</b> | <b>Claims<br/>Not shown<br/>Unpatentable</b> |
|------------------------|--------------------|--------------------------------|------------------------------------------|----------------------------------------------|
| 1, 3, 4, 6–10, 14, 15  | 103(a)             | Park, Kim, Williams            | 1, 3, 4, 6–10, 14, 15                    |                                              |
| 11–13                  | 103(a)             | Park, Kim, Williams, Hileman   | 11–13                                    |                                              |
| <b>Overall Outcome</b> |                    |                                | 1, 3, 4, 6–15                            |                                              |

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<sup>17</sup> Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this Decision, we draw Patent Owner's attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. §§ 42.8(a)(3), 42.8(b)(2).

V. ORDER

Accordingly, it is:

ORDERED that Petitioner has shown that claims 1, 3, 4, and 6–15 of U.S. Patent 9,202,191 B2 are unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to this proceeding seeking judicial review of our Decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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Patent 9,202,191 B2

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