

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LEXMARK INTERNATIONAL, INC.,
Petitioner,

v.

FLEXIWORLD TECHNOLOGIES, INC.,
Patent Owner.

IPR2023-00845
Patent 7,609,402 B2

Before TERRENCE W. McMILLIN, CHRISTOPHER L. OGDEN, and
BRENT M. DOUGAL, *Administrative Patent Judges*.

OGDEN, *Administrative Patent Judge*.

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

I. INTRODUCTION

Petitioner Lexmark International, Inc. (“Lexmark”) filed a Petition (Paper 2, “Pet.”) under 35 U.S.C. §§ 311–319 requesting *inter partes* review of claims 1–21 and 23–37 of U.S. Patent No. 7,609,402 B2 (Ex. 1001, “the ’402 patent”). Patent Owner Flexiworld Technologies, Inc. (“Flexiworld”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”).¹

Under the authority delegated to us by the Director under 37 C.F.R. § 42.4(a), we may only institute an *inter partes* review when “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *see also* 37 C.F.R. § 42.108(c) (2023). Applying that standard, we do not institute an *inter partes* review, for the reasons explained below.

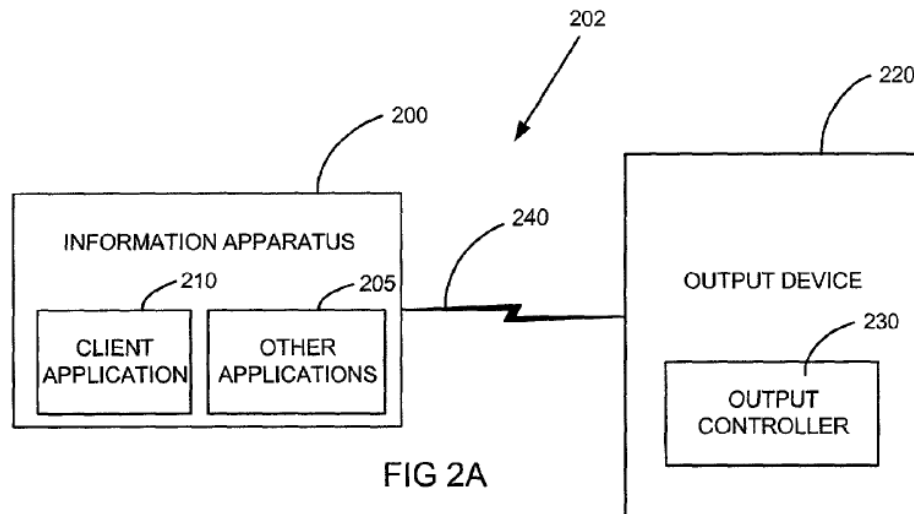
II. BACKGROUND

A. THE ’402 PATENT (EX. 1001)

The ’402 patent describes a method for “providing universal output in which an information apparatus can pervasively output content to an output device without the need to install a dedicated device[-]dependent driver or applications for each output device.” Ex. 1001, 1:14–18.

¹ The parties identify themselves as the real parties in interest, and this is not contested on the preliminary record. *See* Pet. 2; Paper 4, 2.

Figure 2A, reproduced below, is a “block diagram[] illustrating components of an operating environment that can implement” this universal data output method:



Ex. 1001, 12:49–51. Figure 2A, above, shows information apparatus 200 and output device 220 in communication with each other over short-range communication interface 240 using Bluetooth or IEEE 802.11 protocol. *Id.* at 12:51–53, 13:23–32. Information apparatus 200 can be either mobile or stationary. *Id.* at 1:26–29. Output device 220 can, for example, be a printer. *Id.* at 1:36–49.

Information apparatus 200 includes client application 210, which has a “communication manager” that “helps communicate with output device 220 and manages service requests and the discovery process” for locating and identifying any potential output devices 220 in the vicinity of information apparatus 200. Ex. 1001, 30:38–42. As part of this discovery process, “the information apparatus may learn about the capability, compatibility, identification, and service provided by the output device.” *Id.* at 9:31–33, 44–46. For example, the communication manager may obtain all or part of an “output device profile[] from each discovered output device

220.” *Id.* at 31:28–31. This may include “device identity, service charge, subscription, service feature, device capability, [and] operating instructions.” *Id.* at 31:31–34. This information allows a user to “select one or more output devices 220 based on information provided, if any, to take the output job.” *Id.* at 31:37–39.

B. CHALLENGED CLAIMS AND GROUNDS

Representative claim 13 is as follows:

13. A method of mobile wireless data output from an information apparatus with access to at least part of a content to a wireless output device by short range wireless communication, wherein the information apparatus includes at least one wireless communication unit and is a distinct device from the output device, the method comprising:

- 13[a] opening a wireless communication channel;
- 13[b] discovering wirelessly one or more wireless devices that are available for wireless connection;
- 13[c] receiving over the wireless communication channel an attribute corresponding to each discovered wireless device, the attribute including one or more of a name, a device type, a device address, and an indication of a supported output device profile;
- 13[d] selecting a wireless output device from among the one or more discovered wireless devices based at least in part on the received attribute;
- 13[e] obtaining a security key at the information apparatus, the security key enabling wireless data transfer to the selected output device;

- 13[f] sending a security code related at least partly to the security key over the wireless communication channel and requesting the selected wireless output device to open a wireless connection channel for data transfer;
- 13[g] receiving over the wireless communication channel a response related to an authentication; and
- 13[h] if the received response is positive,
- 13[i] establishing a wireless connection channel between the information apparatus and the selected wireless output device,
- 13[j] conforming, at the information apparatus, at least part of the content into an output data encoded with at least one format, the conforming relating at least in part to the attribute received over the wireless communication channel, and
- 13[k] transferring the output data from the information apparatus to the selected output device over said wireless connection channel for rendering,
- 13[l] receiving at the selected output device the output data,
- 13[m] performing at the selected output device at least one decoding operations on said output data, and
- 13[n] converting the output data into an output engine data acceptable for rendering by an output engine included in the selected output device.

Ex. 1001, 44:1–44 (Lexmark’s reference numbers added); *accord* Pet. 84–85 (claim listing).

Lexmark argues four grounds for *inter partes* review, as summarized in the following table:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
13–21, 33–37	103(a) ²	Yamaguchi, ³ Kammer, ⁴ Moore ⁵
21	103(a)	Yamaguchi, Kammer, Moore, Davis ⁶
1–7, 9–21, 23–37	103(a)	Yamaguchi, Kammer, Kemp ⁷
8	103(a)	Yamaguchi, Kammer, Kemp, Behlok ⁸

Pet. 4.

C. DECLARATORY TESTIMONY

Lexmark submits a declaration by Dr. Majid Rabbani. Ex. 1003.
Flexiworld does not submit rebuttal testimony.

D. RELATED PROCEEDINGS

As related matters, the parties identify the following district court proceedings: *Flexiworld Techs., Inc. v. Lexmark Int’l, Inc.*, No. 22-cv-00097 (E.D. Ky. filed Apr. 14, 2022); *Flexiworld Techs., Inc. v. Lexmark Int’l, Inc.*, No. 22-cv-00098 (E.D. Ky. filed Apr. 15, 2022); *Flexiworld Techs., Inc. v.*

² 35 U.S.C. § 103(a) (2006), *amended by Leahy–Smith America Invents Act*, Pub. L. No. 112-29 § 103, sec. (n)(1), 125 Stat. 284, 287, 293 (2011) (effective Mar. 16, 2013). The 2006 version of § 103 applies because the ’402 patent issued from an application filed on January 18, 2002, which is before the effective date of the AIA amendments. *See* Ex. 1001, code (22).

³ Yamaguchi, US 7,355,732 B2 (issued Apr. 8, 2008) (Ex. 1006).

⁴ Kammer et al., US 6,950,645 B1 (issued Sept. 27, 2005) (Ex. 1007).

⁵ Moore, US 6,952,831 B1 (issued Oct. 4, 2005) (Ex. 1008).

⁶ Davis et al., WO 97/39553 (published Oct. 23, 1997) (Ex. 1016).

⁷ Kemp et al., US 2002/0078160 A1 (published June 20, 2002) (Ex. 1009).

⁸ Behlok, US 6,469,805 B1 (issued Oct. 22, 2002) (Ex. 1015).

Epson Am., Inc., No. 21-cv-00807 (C.D. Cal. filed Apr. 29, 2021) (terminated Feb. 1, 2022); *Flexiworld Techs., Inc. v. Brother Indus. (USA), Inc.*, No. 22-cv-02237 (W.D. Tenn. filed Apr. 15, 2022) (terminated Mar. 13, 2023); *Flexiworld Techs., Inc. v. Hisense Co.*, No. 22-cv-00227 (E.D. Tex. filed June 24, 2022), *transferred*, 22-cv-04338 (N.D. Ga. filed Oct. 31, 2022) (terminated Apr. 7, 2023). Pet. 2; Paper 4, 2.

III. GROUNDS OF THE PETITION

For the reasons below, we determine that Lexmark has not demonstrated a reasonable likelihood that it would prevail in showing that at least one of claims 1–21 or 23–37 of the ’402 patent is unpatentable under any of the grounds of the Petition.

A. LEVEL OF ORDINARY SKILL IN THE ART

The level of ordinary skill in the pertinent art at the time of the invention is a factor in how we construe patent claims. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). It is also one of the factors we consider when determining whether a patent claim is obvious over the prior art. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

To assess the level of ordinary skill, we construct a hypothetical “person of ordinary skill in the art,” from whose vantage point we assess obviousness and claim interpretation. *See In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998). This legal construct “presumes that all prior art references in the field of the invention are available to this hypothetical skilled artisan.” *Id.* (citing *In re Carlson*, 983 F.2d 1032, 1038 (Fed. Cir. 1993)).

Relying on Dr. Rabbani’s testimony, Lexmark argues that a person of ordinary skill in the art “would have had at least a B.S. in computer science, computer engineering, or electrical engineering (or equivalent experience) and at least two years of practical experience with printer technologies.” Pet. 18 (citing Ex. 1003 ¶¶ 48–53). Flexiworld does not contest this articulation. *See generally* Prelim. Resp.

Because Lexmark’s articulation of the level of ordinary skill is presently uncontested, supported by testimonial evidence, and appears consistent with the types of problems and solutions in the ’402 patent, we adopt it for this decision.

B. CLAIM CONSTRUCTION

In an *inter partes* review, we construe a patent claim “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).” 37 C.F.R. § 42.100(b) (2023). This generally includes “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.” *Id.* The ordinary and customary meaning of a claim term “is its meaning to the ordinary artisan after reading the entire patent,” and “as of the effective filing date of the patent application.” *Phillips*, 415 F.3d at 1313, 1321.

Lexmark argues that it “does not believe construction of any term is necessary to resolve the invalidity challenges set forth in th[e] Petition.” Pet. 18 (citing Ex. 1003 ¶¶ 46–47). Flexiworld “agrees that construction of claim terms is not necessary at this time.” Prelim. Resp. 9.

At this stage, we have not identified any claim terms that clearly depart from their ordinary and customary meanings, and our decision to deny institution does not require us to construe any terms explicitly. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))). Accordingly, we address the claim limitations below in the context of the prior art.

C. OBVIOUSNESS BASED ON YAMAGUCHI, KAMMER, AND MOORE,
WITH OR WITHOUT DAVIS (CLAIMS 13–21 AND 33–37)

A claim is unpatentable under § 103(a) if the differences between the claimed subject matter and the prior art are “such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). When a ground in a petition is based on a combination of references, we consider “whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *Id.* at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

We base our obviousness inquiry on factual considerations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) any objective indicia of obviousness or non-obviousness that may be in evidence. *See Graham*, 383 U.S. at 17–18.

Considering these factors,⁹ we determine that Lexmark has not shown a reasonable likelihood that independent claims 13 or 33 are unpatentable as obvious over Yamaguchi, Kammer, and Moore.¹⁰ We begin our analysis with a brief overview of the prior art.

1. *Yamaguchi*

Yamaguchi describes “[a] method and system for printing electronic document information from a wireless device.” Ex. 1006, code (57). The components of the system are depicted below in Figure 1:

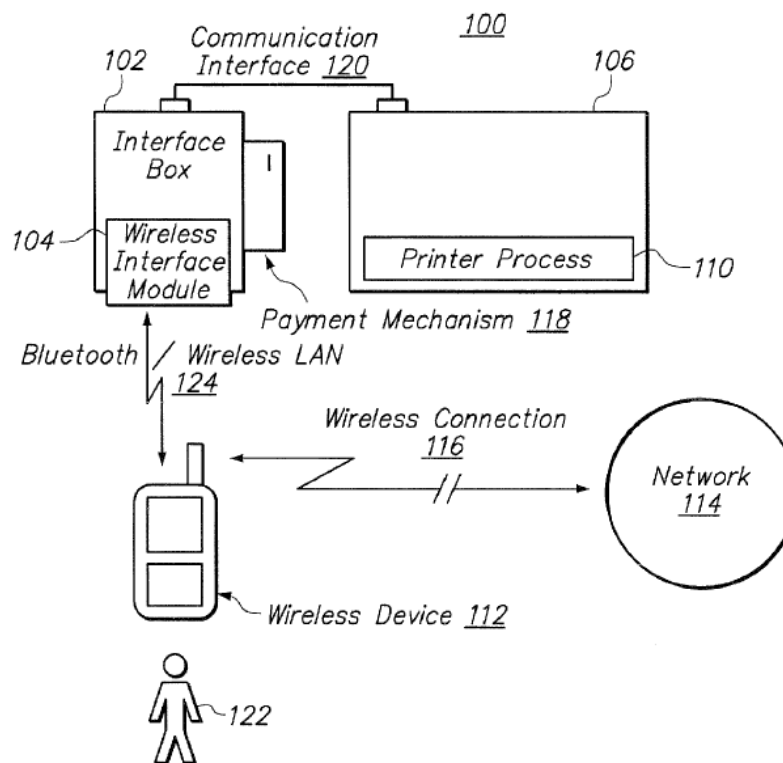


FIG. 1

⁹ Because neither party argues that there are objective indicia of obviousness or non-obviousness, this does not factor into our decision.

¹⁰ As the Petition only relies on Davis for aspects of claim 21 (*see* Pet. 46–49), it is not relevant for this part of the analysis.

Figure 1, above, depicts printing system 100 that “includes an interface box 102, a printing device 106, and a communication interface 120” connecting the two. Ex. 1006, 3:3–7. Interface box 102 includes wireless interface module 104, which connects to wireless device 112 over a wireless connection (124) such as Bluetooth. *See id.* at 3:60–4:9.

The process of establishing a connection between interface box 102 and wireless device 112 is depicted below in Figure 5:

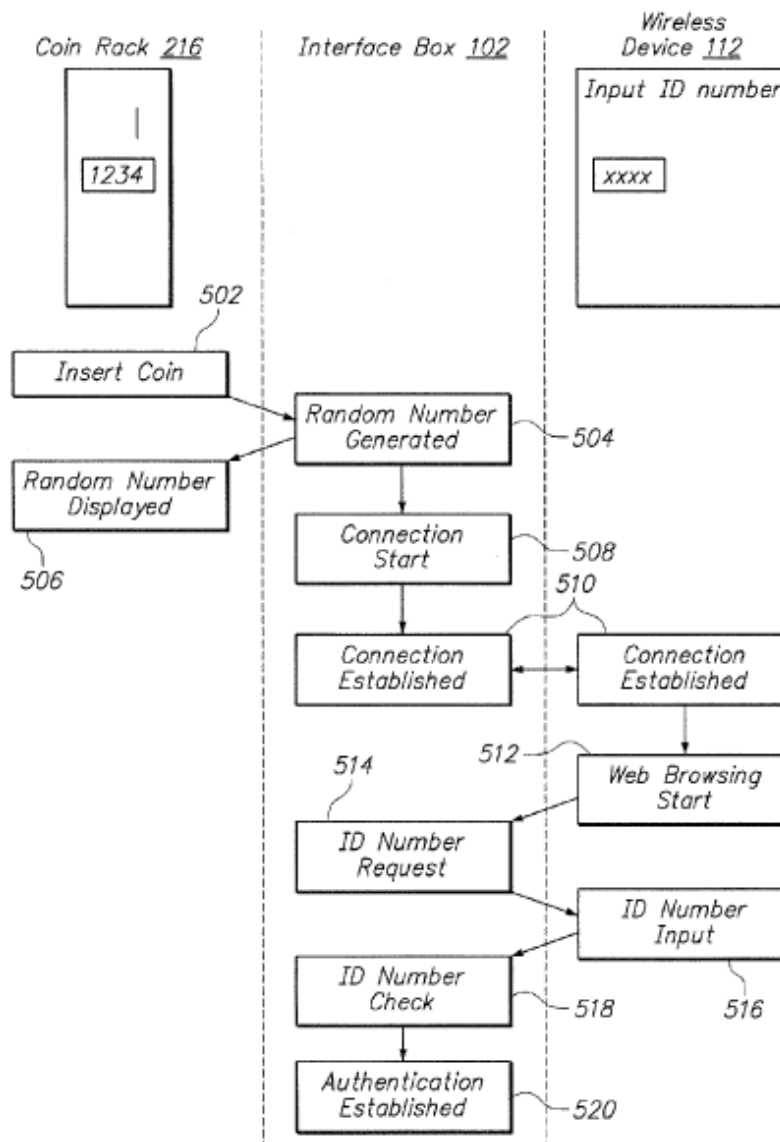


FIG. 5

Figure 5, above, “illustrates an example of the steps that may be performed by a user to establish a wireless connection between the interface box 102 and a wireless device 112.” Ex. 1006, 7:7–10. This process also includes a payment system, and the process begins (step 502) when “a user inserts money into the coin rack 216 to initiate the process of obtaining a printed version (hard copy) of an electronic document.” *Id.* at 7:13–15. Interface box 102 then generates (step 504) “a random number that is used to authenticate the user for establishing the wireless connection,” which “is displayed to the user, for example on . . . an LED circuit that is associated with the coin rack 216.” *Id.* at 7:16–20. Then, in steps 508 and 510, “a connection is established between interface box 102 and wireless device 112,” and then there is a process to authenticate the user (steps 512, 514, 516, 518, and 520). *Id.* at 7:21–49.

2. *Kammer*

Kammer describes “[a] method and system for managing when a responder device (a device having a transceiver for wireless communication) is operating in a discoverable mode in a wireless network of devices, such as a Bluetooth network.” Ex. 1007, code (57). As part of discussing the background art, Kammer discusses the conventional steps, in the Bluetooth protocol, for discovering and connecting with other Bluetooth-enabled devices. *Id.* at 1:15–2:58.

3. *Moore*

Moore describes “[a] method of creating a peripheral driver for a particular peripheral by learning the peripheral options and the commands for those options from the peripheral itself.” Ex. 1008, code (57). The

peripheral options and commands are stored in the form of a “Generic Printer Description (GPD)” file, which the peripheral device may transmit to a user device. *See id.* at 2:61–64. The GPD file “can contain information such as the type and name of the device, together with functions the device supports, attributes of those functions, and the commands necessary to use those functions.” *Id.* at 2:64–67. The user device uses this specific information about the peripheral to construct a “universal peripheral driver” that may be used to, for example, print a document on a printer. *See id.* at 3:5–9.

4. *Independent Claims 13 and 33*

Claim 13 recites a series of steps to, among other things, establish and authenticate a wireless connection between an “information apparatus” and a selected output device discovered in its vicinity, and to encode and transmit digital content to the output device. *See Ex. 1001*, 44:1–44.

In particular, as part of the steps for establishing a connection between the information apparatus and a discovered wireless output device, limitation 13[c] recites “receiving over the wireless communication channel *an attribute* corresponding to each discovered wireless device, the attribute including one or more of a name, a device type, a device address, and an indication of a supported output device profile.” *Id.* at 44:10–14 (emphasis added). Limitation 13[d] then recites “selecting a wireless output device from among the one or more discovered wireless devices based at least in part on *the received attribute*.” *Id.* at 44:15–17 (emphasis added). In other words, limitations 13[c] and [d] require receiving an “attribute” from each discovered wireless output device and using that attribute as part of selecting one particular output device from among the options.

Later in the claimed method, limitation 13[j] recites “conforming, at the information apparatus, at least part of the content into an output data encoded with at least one format, the conforming *relating at least in part to the attribute* received over the wireless communication channel.” Ex. 1001, 44:32–36 (emphasis added).

Claim 33 includes limitations 33[c], [d], and [j] which are substantially equivalent to limitations 13[c], [d], and [j], respectively. *See* Ex. 1001, 45:15–25, 48:8–12.

For limitations 13[c] and 33[c], Lexmark argues that the recited “attribute” may be found in Kammer’s description of a Bluetooth connection to a printer, and the attribute is either a device address or a “user-friendly name” provided as part of the Bluetooth connection process. Pet. 26–27 (citing Ex. 1007, 1:42–2:3, 2:11–18, 2:23–26, 2:29–58, Fig. 1; Ex. 1003 ¶ 131). Lexmark contends that the user-friendly name could “be used to identify each printer’s location and features, allowing the user to make a selection of one over the other.” Pet. 27 (quoting Ex. 1007, 2:29–34).

In an alternative argument for limitations 13[c] and 33[c], Lexmark argues that the recited “attribute” corresponds to the content of Moore’s Generic Printer Description (GPD) file, which includes “‘information such as the *type and name of the device*’ to convey capabilities of the printer.” Pet. 28 (quoting Ex. 1008, 2:59–3:4) (citing Ex. 1008, Fig. 4; Ex. 1003 ¶ 133).

For limitations 13[d] and 33[d], Lexmark relies exclusively on Kammer (not Moore), arguing that “a user of Yamaguchi’s wireless device wanting to print a document . . . would select the desired printer based on the received attribute, such as the user-friendly name, as described in Kammer.”

Pet. 29 (citing Ex. 1006, 2:55–66, 3:55–4:6; Ex. 1007, 1:61–2:11, 2:34–58, Fig. 1; Ex. 1003 ¶ 134).

For limitations 13[j] and 33[j], Lexmark relies on the combination of Yamaguchi and Moore (without reference to teachings of Kammer). *See* Pet. 34–38. According to Lexmark, Yamaguchi teaches formatting digital content for a specific printer, “but [i]s not explicit about a format [being] *related to an attribute of the printer*.” Pet. 35 (citing Ex. 1003 ¶¶ 145–148). Thus, Lexmark relies on Moore for that teaching, arguing that a person of ordinary skill in the art would have had reason to use Moore’s GPD file as the basis for a universal printer driver that can format digital output for the selected printer. *See* Pet. 35–38 (citing Ex. 1006, 1:59–42; Ex. 1008, 2:37–54, 5:14–17, 5:34–40, 6:3–18, 6:43–56, Fig. 4; Ex. 1003 ¶¶ 151–153).

In response, Flexiworld argues that “[n]either the Petition nor Petitioner’s expert allege that what they contend is the ‘attribute’ in elements 13[c]/33[c] is at all involved in the ‘conforming’ step of elements 13[j]/33[j], despite the clear antecedent basis requiring Petitioner to do so.” Prelim Resp. 21. According to Flexiworld, Lexmark relies on the device address or “user-friendly name” as the recited “attribute” for limitations 13[c] and 33[c], but relies on Moore’s GPD file as the “attribute” for limitations 13[j] and 33[j]. *Id.* at 21–22.

We agree with Flexiworld. Limitations 13[j] and 33[j] refer to “*the* attribute” with a definite article, meaning the particular attribute received in limitation 13[c] or 33[c] and used as the basis for selecting an output device in limitation 13[d] or 33[d]. *See* Ex. 1001, 44:10–17, 44:32–36, 45:15–25, 48:8–12. While Lexmark relies on Moore’s GPD for the “attribute” in limitations 13[j] and 33[j], Lexmark only relies on Kammer’s “user-friendly

name” as the attribute in limitations 13[d] and 33[d]. Nor does Lexmark explain (1) how Moore’s GPD would be part of the step of selecting an output device in limitation 13[d] or 33[d], or (2) how Kammer’s user-friendly name would be involved in conforming the content in limitation 13[j] or 33[j].

Thus, for the first two grounds of the Petition, we determine that Lexmark has not provided sufficient reasoning to support the legal conclusion that claims 13 or 33 would have been obvious at the time of the claimed invention. *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016); 35 U.S.C. § 322(a)(3).

5. *Dependent Claims 14–21 and 34–37*

Dependent claims 14–21 and 34–37 inherit the limitations described above in claims 13 and 33. Lexmark’s other arguments, including the additional reliance on Davis for claim 21 in the second ground (Pet. 46–49), do not remedy the above deficiencies in Lexmark’s argument. *See* Pet. 19–49.

D. OBVIOUSNESS BASED ON YAMAGUCHI, KAMMER, AND KEMP, WITH OR WITHOUT BEHLOK (CLAIMS 1–21 AND 23–37)

1. *Independent Claims 1, 9, 13, 23, and 33*

Lexmark’s third and fourth grounds include independent claims 13 and 33, as in the first two grounds, as well as independent claims 1, 9, and 23. Pet. 4.

As relevant to our analysis here, independent claims 1, 9, and 23 recite limitations substantially similar to limitations 13[c], [d], and [j] or 33[c], [d], and [j] discussed above. *Compare* Ex. 1001, 44:10–17, 44:32–36,

45:15–25, 48:8–12, *with id.* at 42:4–10, 42:13–17, 43:19–24, 43:29–35, 45:4–56, 45:59–63. As with claims 13 and 33, claims 1, 9, and 23 recite a step of generating output to send to the selected output device based at least in part on the particular received attribute (“said attribute”) that was used to select the output device. *See id.* at 42:13–17, 43:29–35, 45:59–63.

Rather than relying on Moore as in the first two grounds, the third and fourth grounds rely on Kemp, which describes a system for “[p]rinting over the Internet by a print driver,” using “a printing definition language, and packaging the rendered print data with a protocol for transmission over the Internet.” Ex. 1009, code (57). Kemp uses a “neutral printer definition language (NPD),” which is converted into the particular definition language of the selected printer. Ex. 1009 ¶ 68.

For the limitations corresponding to 13[c]–[d], Lexmark relies on the same arguments as in the first ground (except, of course, that Lexmark does not rely on Moore). *See* Pet. 53 (limitations 1[d]–[e] and 23[d]–[e]), 64–65 (limitations 9[c]–[d]), 67 (limitations 13[c]–[d] and 33[c]–[d]). Thus, as with the first two grounds, Lexmark only specifically relies on Kammer’s “user-friendly name” as the attribute used in selecting a wireless output device. *See supra* Section III.C.4; *see also* Pet. 64 (arguing that in the Yamaguchi–Kammer–Kemp combination, the selection is based on a user-friendly name “such as HP C Laserjet 4500-HP”).

Lexmark concedes that Yamaguchi does not expressly disclose the limitations corresponding to 13[j]. Pet. 54. However, Lexmark contends that a person of ordinary skill in the art would have augmented “Yamaguchi’s wireless device . . . to include Kemp’s NPD rendering capability,” so that “[t]he wireless device would communicate with printer(s) via Bluetooth (per

Yamaguchi–Kammer), to receive attributes/information from the printer(s), and to encapsulate and send the NPDL-rendered data to be processed and printed at the printer.” Pet. 56 (citing Ex. 1003 ¶ 216).

According to Lexmark, this process of encapsulating the NPDL-rendered data for transport would have been “based on the printer’s address (attribute) received as part of Bluetooth discovery.” Pet. 56 (citing Ex. 1001, 9:47–53; Ex. 1009 ¶ 39, claim 39; Ex. 1003 ¶ 217).

Flexiworld responds that Lexmark’s argument relying on Kemp suffers from the same problem as its argument relying on Moore and that, in addition, Kemp’s teaching to encapsulate the output data for transport is not about “generating” or “conforming” the formatted output data, as recited in the claims, but about *transmitting* the already-generated output data over the internet. *See* Prelim. Resp. 25–26.

We agree with Flexiworld that Lexmark’s argument suffers from the same problem as its argument relying on Moore. The only “attribute” Lexmark relies on for the 13[d]-related “selecting” limitations is the “user-friendly name,” but Lexmark relies only on the printer’s device address (e.g., IP address) for the 13[j]-related limitations. *See* Pet. 55–56.

Although Lexmark mentions the device address as an “attribute” in the context of the 13[c]-related limitations (*see* Pet. 27), Lexmark does not mention the device address in its argument for the 13[d]-related limitations, or explain how or why it would have been obvious to use a device address (which, unlike Kammer’s “user-friendly name,” is probably not user friendly) as part of selecting an output device (*see* Pet. 29). Nor do we find, in any of the prior art references, an example of using a device address as a way of selecting from among discovered output devices. Indeed, Kammer

teaches that “the user generally will not be able to tell which printer to connect with based on the numerical address.” Ex. 1007, 2:29–31.

Thus, we determine that Lexmark has not provided sufficient reasoning that would support the legal conclusion that any of the independent claims would have been obvious at the time of the claimed invention. *Magnum Oil Tools*, 829 F.3d at 1380; 35 U.S.C. § 322(a)(3).

2. *Dependent Claims 2–7, 10–12, 14–21, 24–32, and 34–37*

Dependent claims 2–7, 10–12, 14–21, 24–32, and 34–37 inherit the limitations described above in their respective parent claims. Lexmark’s other arguments, including the additional reliance on Behlok for claim 8 in the fourth ground (Pet. 74–76), do not remedy the above deficiencies in Lexmark’s argument. *See* Pet. 49–76.

IV. CONCLUSION

For the reasons above, Lexmark has not shown that there is a reasonable likelihood it would prevail in showing that at least one challenged claim of the ’402 patent is unpatentable. Therefore, we deny the Petition.¹¹

¹¹ Lexmark argues that there are “additional considerations” favoring institution beyond the merits of the Petition, including alleged gamesmanship by Flexiworld during prosecution of the ’402 patent. Pet. 77–78. Because Lexmark has not shown that it is reasonably likely to prevail on the merits, these considerations are moot. *See* 35 U.S.C. § 314(a).

V. ORDER

It is

ORDERED that the Petition is *denied*, and no trial is instituted.

IPR2023-00845
Patent 7,609,402 B2

For PETITIONER:

Babak Tehranchi
Amy Simpson
Fareid Asphahani
PERKINS COIE LLP
tehranchi-ptab@perkinscoie.com
simpson-ptab@perkinscoie.com
asphahani-ptab@perkinscoie.com

For PATENT OWNER:

Charles Austin Ginnings
Brent Bumgardner
NELSON BUMGARDNER CONROY P.C.
austin@nelbum.com
brent@nelbum.com