

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MAPLEBEAR INC. D/B/A INSTACART,
Petitioner,

v.

CONSUMERON, LLC,
Patent Owner.

Case IPR2023-00865
U.S. Patent No. 11,238,465

PATENT OWNER'S PRELIMINARY RESPONSE

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE INVENTION	3
A.	The '465 Patent	3
B.	Prosecution History	6
III.	THE BOARD SHOULD DENY INSTITUTION BECAUSE THE ASSERTED REFERENCES ARE NOT PRIOR ART	7
A.	The Specification Discloses “Failing to Locate an Identified Product” and “Determining That the Identified Product is Not Available”	10
B.	The Specification Discloses “Obtaining and Sending to the Customer the Information Determined From the Bar Code or QR Code Including at Least One Image of the Replacement Product”	17
C.	Petitioner Improperly Challenges the Patentability of the '465 Patent Under 35 U.S.C. § 112	21
IV.	OVERVIEW OF THE TECHNICAL FIELD AND THE ASSERTED REFERENCES	24
A.	Traditional Internet Shopping	24
B.	The Carr Reference	26
C.	The Lauka Reference.....	29
D.	Level of Ordinary Skill in the Art.....	29
V.	CLAIM CONSTRUCTION	30
A.	“Acquisition Request” (All Challenged Claims)	30
B.	Other Constructions Applied In This IPR.....	32

VI.	THE CHALLENGED CLAIMS ARE PATENTABLE	33
A.	Carr Does Not Teach or Suggest the Claimed “Acquisition Request” (All Challenged Claims).....	34
B.	Carr Does Not Teach or Suggest the “Upon Receiving the Approval of the Purchase From the Customer Acquiring the Replacement Product, Via the Agent” Limitation (All Challenged Claims)	37
VII.	CONCLUSION.....	40

TABLE OF AUTHORITIES

	Page(s)
<i>Ariad Pharms., Inc. v. Eli Lilly & Co.</i> , 598 F.3d 1336 (Fed. Cir. 2010) (en banc)	8
<i>Chicago Bd. Options Exch., Inc. v. Int’l Sec. Exch., LLC</i> , 677 F.3d 1361 (Fed. Cir. 2012)	36
<i>Cuozzo Speed Techs., LLC v. Lee</i> , 136 S. Ct. 2131 (2016).....	22
<i>Enzo Biochem, Inc. v. Gen–Probe Inc.</i> , 323 F.3d 956 (Fed. Cir. 2002)	8
<i>Epic Games, Inc. v. Ingenioshare, LLC</i> , IPR2022-00202, Paper 29 (P.T.A.B. May 19, 2023)	30
<i>Jet, Inc. v. Sewage Aeration Sys.</i> , 223 F.3d 1360 (Fed.Cir.2000)	23
<i>Maplebear Inc. D/B/A Instacart v. Consumeron LLC</i> , IPR2022-01357, Paper 19 (P.T.A.B. May 26, 2023)	29
<i>Maplebear Inc.</i> , IPR2022-01357, Paper 9.....	32
<i>Pozen Inc. v. Par Pharm., Inc.</i> , 696 F. 3d 1151 (Fed. Cir. 2012)	12
<i>Samsung Elecs. Am., Inc. v. Prisua Eng’g Corp.</i> , 948 F.3d 1342 (Fed. Cir. 2020)	23
<i>Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.</i> , 200 F.3d 795 (Fed. Cir. 1999)	32
Federal Statutes	
35 U.S.C. § 112	<i>passim</i>
35 U.S.C. § 112(a)	7

Patent Owner’s Preliminary Response
IPR2023-00865 (U.S. Patent No. 11,238,465)

35 U.S.C. § 120	7
35 U.S.C. § 311(b)	20, 21, 22, 23
35 U.S.C. § 319	21

PATENT OWNER'S EXHIBIT LIST

Exhibit	Description
2001	Screenshots from “Webvan Distribution Center” video obtained at https://www.youtube.com/watch?v=os66TTScS1o
2002	Walmart Online Order, https://www.walmart.com/cp/3893115
2003	Prosecution History of U.S. Patent No. 10,628,835
2004	LII/Legal Information Institute Definition of “Acquire”
2005	Collins English Dictionary Definition of “Transaction”
2006	Cambridge English Dictionary Definition of “Transaction”
2007	Substitution for Store Pickup and Delivery Items – Walmart.com

I. INTRODUCTION

The Board should deny institution of *inter partes* review¹ because the references cited against the claims are not prior art. The '465 Patent has an effective filing date of at least October 11, 2011, several years earlier than the prior art dates of Carr (Ex. 1005, filed Nov. 20, 2014) and Lauka (Ex. 1006, filed Jun. 24, 2016), which are essential to each ground raised in the Petition. *See* Paper 2 (“Pet.”) at 29. Petitioner’s argument that the '465 Patent is not entitled to that priority date—allegedly because its parent application (sharing the same specification) does not provide written description support for an agent “failing to locate an identified product of the set of one or more goods” and “determining the information from the bar or QR code, wherein the information includes at least one image of the replacement product”—is meritless because both limitations are disclosed in the originally-filed specification.

The '465 Patent is directed to a revolutionary system for providing real-time feedback to an agent as they shop on behalf of a customer. Prior to the '465 Patent, online shoppers often received goods that did not meet their expectations. '465

¹ Maplebear Inc. d/b/a Instacart (“Petitioner”) petitioned for *inter partes* review (IPR) of U.S. Patent No. 11,238,465 (Ex. 1001, the “'465 Patent”), challenging claims 1-19 (“the Challenged Claims”).

Patent at 1:50-59. For example, without any opportunity for the customer to provide feedback during the shopping session, customers often received the “wrong product.” *Id.* at 1:65-2:1. The possibility that an agent would fail to locate the customer's desired product was, therefore, one of the key motivating factors for the invention, which describes how the customer can terminate the transaction or request that the agent find a replacement product in such circumstances.

Petitioner's argument that there is no written description support for “determining the information from the bar or QR code, wherein the information includes at least one image of the replacement product” is also meritless. The '465 Patent explicitly discloses scanning a bar code or QR code to obtain product data, including images of the product, and sending that product data to the customer so that they can make an informed shopping decision. Petitioner's suggestion that the product data obtained by scanning these codes does not include images of the product directly contradicts the specification.

The Board should also deny the Petition because Petitioner's proposed combination of Carr (Ex. 1005) and Lauka (Ex. 1006) fails to teach or suggest the claimed “acquisition request,” which is “a request for an agent to shop for goods on a customer's behalf.” For this limitation, Petitioner relies exclusively on Carr's disclosure of a customer order as being an “acquisition request.” *See* Pet. at 38-39. However, a customer order is a transaction completed between a customer and a

seller (*e.g.*, Walmart), it is not a request for an agent to shop for and purchase goods on behalf of the customer. Thus, the Carr-Lauka combination fails to teach or suggest the claimed “acquisition request.” Given this failure, Petitioner’s Carr-Lauka combination also fails to teach or suggest “upon receiving the approval of the purchase from the customer acquiring the replacement product, via the agent.” Instead, order assemblers (the alleged “agents”) simply place the ordered and already purchased goods in bins.

For at least these reasons and the additional reasons explained below, Consumeron respectfully requests that the Board deny institution.

II. OVERVIEW OF THE INVENTION

A. The '465 Patent

The traditional Internet-shopping model, involves a customer visiting a merchant’s website, adding goods to a shopping cart, and purchasing the goods via the website’s checkout page. The merchant processes the payment, fulfills the order, and delivers the goods to the customer using its own employees or by contracting with a delivery service like UPS® or FedEx®. '465 Patent at 1:35-42.

The inventors of the '465 Patent identified several key problems with this traditional Internet-shopping model. For example, many customers at the time of the invention were opposed to Internet shopping because goods advertised on a merchant’s website often did not accurately depict the goods shipped to the

customer. *Id.* at 1:50-59. Shipping goods across the country from a warehouse to a customer is also more expensive and environmentally costly than purchasing goods from a local store. *Id.* at 1:39-44. This traditional model also did not allow “for an individual to receive real-time feedback on the goods to be purchased” to ensure that the agent did not identify and deliver the wrong product. *Id.* at 1:62-65.

The inventors solved these problems with their novel MDAS-based infrastructure, whereby a customer initiates an “acquisition request” for an agent to shop on behalf of the customer at a shopping location and provide “real-time feedback” of goods for customer inspection and approval for purchase via the agent. *See id.* at 7:31-8:4. In contrast to the traditional online shopping model, where the customer herself shops for and completes the transaction for goods directly with the seller, who receives, processes, fulfills, and then arranges for delivery of the order, the Challenged Claims require that the *agent* shop for and purchase products on the customer’s behalf. *See id.* at 2:7-14, 7:31-67, Fig. 3 (step 121); § V.A, *infra* (the term “acquisition request” is a request for an agent to shop for goods on a customer’s behalf). As described with respect to Figure 3, for example, an “acquisition request” is sent to the delivery agent (step 110), the delivery agent travels to the store location (step 113), locates a product (steps 116-117), and, if the customer approves the product, the delivery agent purchases the product (step 120). *Id.* at 7:13-65, Fig. 3.

If the inspected product is not the product the customer wanted, he or she can reject the product after inspection (steps 117-119). '465 Patent at 7:34-63 (describing scenarios where the customer rejects the identified product and requests additional shopping for a similar or satisfactory product). The customer may also request that the agent provide information about substitute products at the current shopping location or elsewhere, "in search of a satisfactory product." *Id.* at 7:56-63. What is important is that the customer receives enough information to make an informed purchase about the product the agent ultimately purchases on the customer's behalf:

[T]here is seen to be a need in the art for a remote acquisition and delivery system which provides a customer with detailed information needed to make an informed purchase or acquisition.

Id. at 2:7-11 (emphasis added).

"[I]f the agent cannot complete the transaction *for any reason*" and "*at any time*," the customer can either cancel the transaction or request an inspection of a similar product and approve the purchase of that product via the agent. *See id.* 8:18-24 (disclosing that the agent may be unable to complete the transaction for any reason and at any time during the service period), 7:60-63 (disclosing that if additional shopping is requested "the delivery agent will move to other similar products or may travel to another location in search of a satisfactory product"), 7:31-

35 (disclosing that the agent transmits real-time data to the customer for inspection and approval for purchase via the agent).

During the acquisition process, the agent can also scans a bar code or QR code to “identify[] and communicat[e] information about the product of concern” to the customer:

The customer is allowed to interact with the delivery agent to inspect the product remotely using the digital image capture device and the communication device. For instance, digital pictures or video can be taken and used to communicate the product to the customer. On the other hand, bar codes, QR (Quick Response) codes, image recognition or near field communication can be used in identifying and communicating information about the product of concern.

Id. at 2:46-54; *see also id.* at 7:50-54 (“The product data can be collected by scanning a bar code associated with the product, or perhaps a QR code.”). The specification provides that “[i]nformation regarding the product” includes “pictures, bar codes, QR codes, video, instructions, recipes, specifications, ingredients, where manufactures, etc.” *Id.* at 9:65-10:2.

B. Prosecution History

The '465 Patent application claims priority to an application filed on August 26, 2009, and was examined under pre-AIA law. *See* '465 Patent at (63); Ex. 1002 at 28, 74. During prosecution, the applicant amended the then-pending claims to specify that “the information determined from the bar or QR code includes at least

one image of the identified product.” Ex. 1002 at 56, 60. Notably, when the amendment was entered, the applicant discussed the amendment in view of the specification, particularly pointing out that the added claim language achieves the goal of the invention:

This goal is specifically achieved by obtaining a bar or QR code of the identified product . . .[and] that the information determined from the bar or QR code includes at least one image of the identified product.

Id. at 63-64.

To place the '465 Patent application into a condition for allowance, Examiner Shui (who was well-acquainted with the specification, having examined family member applications during which several 35 U.S.C. § 112(a) rejections were made) proposed an examiner amendment adding the limitations of “upon failing to locate an identified product of the set of one or more goods” electronically transmitting information of “a replacement” product and “upon receiving approval of the purchase from the customer, acquiring the replacement product via the agent.” *Id.* at 28-30; *see also, generally*, Ex. 2003 at 57-60 (Examiner Shui examining the parent application and rejecting the then-pending claims under § 112(a)).

III. THE BOARD SHOULD DENY INSTITUTION BECAUSE THE ASSERTED REFERENCES ARE NOT PRIOR ART

Under 35 U.S.C. § 120, there are four requirements for claims to obtain the benefit of an earlier filing date of a previously filed application: (1) the invention in

the application must be disclosed in the original application pursuant to 35 U.S.C. § 112; (2) the application must be filed while the previously filed application is still pending; (3) there must be a common inventor between both applications; and (4) there must be a specific reference to the earlier filed benefit of the filing date of the first application and if it contains or is amended to application.

The Challenged Claims enjoy priority to the parent application because “the disclosure . . . relied upon reasonably conveys to those skilled in the art in the art that the inventor[s] had possession of the claimed subject matter as of the filing date.” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc); *see also Enzo Biochem, Inc. v. Gen-Probe Inc.*, 323 F.3d 956, 968 (Fed. Cir. 2002) (expressing that the standard for satisfying the written description requirement is whether the disclosure “allow[s] one skilled in the art to visualize or recognize the identity of the subject matter purportedly described.”) (citation omitted). The parent application provides more than adequate support for the Challenged Claims, and allows one skilled in the art to recognize that the inventors had possession of the following claim elements:

- **Element [1.3] / [14.3]:** “failing to locate an identified product of the set of one or more goods / “determining that the identified product is not available” (collectively, hereinafter “failing to locate an identified product” limitation); and

- **Element [1.4] / [14.5-14.6]:** “determining the information from the bar or QR code, wherein the information includes at least one image of the replacement product” / “electronically transmitting information to the customer...including: obtaining a bar code [or] QR code of a replacement product for the identified product . . . sending to the customer the information determined from the bar code or QR code . . . wherein the information includes at least one image of the replacement product” (collectively, hereinafter “obtaining and sending to the customer the information determined from the bar code or QR code including at least one image of the replacement product” limitation).

'465 Patent at Claims 1 and 14.

The references relied upon in the Petition have prior art filing dates ranging from July 20, 2012 (Dearing, Ex. 1010) to December 11, 2019 (Yee, Ex. 1007). *See* Pet. at 29-30. None of these references are prior art because the '465 Patent is entitled to a priority date of at least October 11, 2011, the filing date of the parent U.S. Patent Appl. No. 13/270,848 (“the parent application,” Ex. 1011), which is

substantively identical to the '465 Patent.² See '465 Patent at (63) (establishing that the '465 patent is a continuation of the parent application filed on October 11, 2011.³

A. The Specification Discloses “Failing to Locate an Identified Product” and “Determining That the Identified Product is Not Available”

The specification provides overwhelming support for an agent “failing to locate an identified product” and “determining that the identified product is not available.” Indeed, this is one of the main points of the claimed invention. In particular, the specification recognized that customers were opposed to internet shopping because online product images were sometimes “inadequate to accurately depict the item” and customers often received the “wrong product.” '465 Patent at 1:54-2:1.

² All citations in this Preliminary Response are to the '465 Patent rather than the parent application.

³ It is sufficient, for purposes of this case, to establish priority dating back to October 11, 2011. Patent Owner explicitly reserves the right to establish priority back to the earliest application in the priority chain, U.S. Provisional Patent Application Ser. No. 61/237,128, or earlier conception and reduction to practice, to the extent it becomes necessary in the case or another.

To solve this problem, the specification describes a system that allows a customer to remotely inspect a product, through images or video, to ensure the desired product is located and delivered. One use-case of the system is provided below:

Next, the customer either **approves or rejects acquisition of the inspected product**. If the product is rejected, the customer has the choice of **inspecting another product** or terminating the service. Once the service is terminated, fees for the services provided are calculated as will be discussed in more detail below. If the customer requests further shopping, the delivery agent will **move to other similar products or may travel to another location in search of a satisfactory product**. Of course, the customer may choose to terminate the acquisition services at any time, as indicated at 119. 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 7:55-63 (emphasis added).

Accordingly, the specification details an example in which an agent allows the customer to inspect a product while the agent is at the store. *Id.* at 7:31-54. If the agent fails to locate a product that is satisfactory to the customer, the customer rejects it, and the agent gives the customer the choice to inspect another similar product. *Id.* at 7:56-63. Similarly, the product desired by the customer may be unavailable because the online description of the desired item did not “accurately

depict” the item being sold. *Id.* at 1:54-55. This is precisely what the claims recite, namely “failing to locate an identified product,” or “determining that the identified product is not available,” and sending information about a replacement product to the customer.

There are a number of situations in which the Federal Circuit has found written description support in cases that have much less disclosure. For example, in *Pozen Inc. v. Par Pharm., Inc.*, 696 F. 3d 1151 (Fed. Cir. 2012), the Federal Circuit determined that the disclosure of different pharmaceutical dosage forms provided written description for claim elements, including a “finished pharmaceutical container” and the “container further containing or comprising labeling directing the use of said package in the treatment of migraine.” *Id.* at 1166. The Court reasoned that “a [p]erson of ordinary skill in the art would know that medications are not simply handed out to patients. Rather, pharmaceutical products, like the claimed tablets, are routinely administered in containers or packages.” *Id.*

Similarly, one need not be a person of ordinary skill in the art to appreciate that shopping trips are not always successful. Sometimes products are out of stock. Sometimes the shopper grabs the wrong product. Sometimes the color is not quite right. Each of these everyday occurrences describes an instance where the desired product is not located or unavailable, and the purpose of the '465 Patent is to rectify such problems before the agent delivers an unsatisfactory product. '465 Patent at

1:65-2:1; 2:7-11 (“Based on at least these reasons, there is seen to be a need in the art for a remote acquisition and delivery system which provides a customer with detailed information needed to make an informed purchase or acquisition”).

Petitioner's argument that the specification “does not contemplate scenarios in which the products are unavailable or contemplate what actions to take in such an event” is wrong for several reasons. Pet. at 18. The embodiment discussed above, for example, details an example in which the desired product is not available and which provides a step-by-step instruction on how an agent can obtain a replacement product.

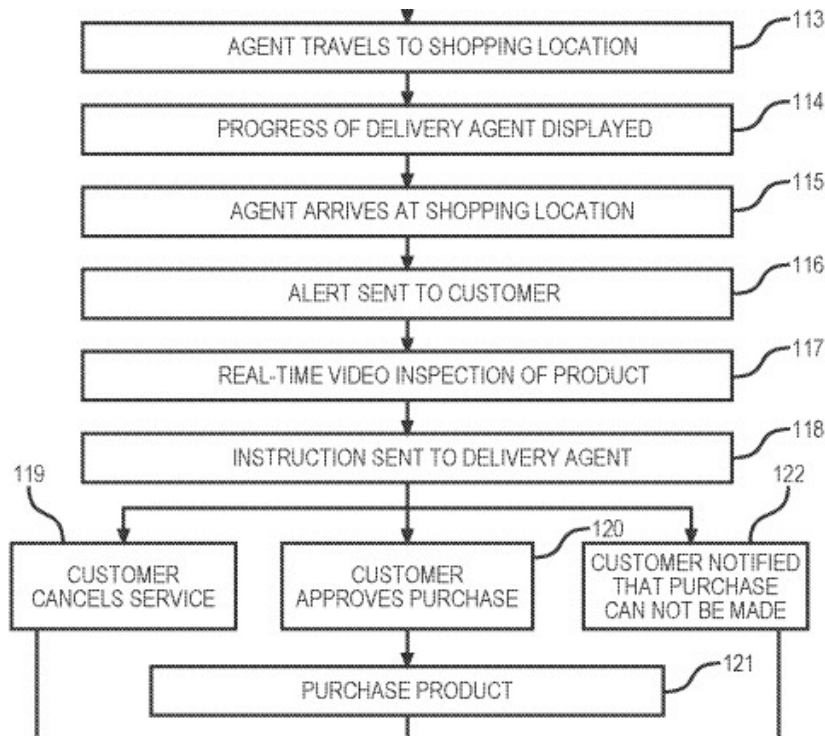
Petitioner's argument also fails because it is based on the untenable assumption that the agent always locates the correct product. *See id.* at 19 (“The disclosure thus makes clear that the underlying premise to Figure 3, and the application as a whole, is that the product ordered⁴ by the customer **can be located and is available for inspection** (step 117).”). If this were the case, there would be no point in giving the customer the ability to inspect the product. Petitioner ignores that the goal of the '465 Patent is to provide “a remote acquisition and delivery system which provides a customer with detailed information needed to make an informed purchase or acquisition” and that prior to the '465 Patent, customers often

⁴ An acquisition request is not an “order.” *See* § V.A, *infra*.

received the “wrong product.” ’465 Patent at 1:65:2-1, 2:7-10. When an agent identifies the “wrong product” he has not located the desired product. When the description of a desired product does not “accurately depict” the actual product, the desired product is “unavailable.” *Id.* at 1:50-59. Petitioner’s argument also ignores the common-sense fact that sometimes a desired product will be out of stock.

Petitioner’s argument also misreads the specification. *See* Pet. at 18 (arguing that the agent “finds the desired product to be acquired” at step 113 and that this “desired product” is the same as the product that the customer inspects at step 117). Pet. at 18. The specification actually says that, *after* step 116, the agent “enters the shopping location and identifies the product of interest” (not “the desired product to be acquired”). ’465 Patent at 7:31-33. Then, the customer has the opportunity to inspect “the product” (not “the desired product to be acquired”). *Id.* at 7:34-35. And finally, when a customer rejects the “inspected product” it is plainly not “the desired product to be acquired.” *Id.* at 7:55-56.

Petitioner’s assertion that the agent “finds the desired product to be acquired” at step 113 also conflicts with the rest of the embodiment, which discloses that agent does not even arrive at the shopping location until step 115:



'465 Patent at Fig. 3. Accordingly, the statement that “[o]nce a store location is selected, the selected agent travels to the store location as indicated at step 113, and finds the desired product to be acquired” does not mean “that the underlying premise to Figure 3, and the application as a whole, is that the product ordered by the customer **can be located and is available for inspection** (step 117).” Pet. at 19.

To the contrary, the underlying premise of the Patent is that the customer should be permitted to inspect the identified product in real-time to avoid delivery of the “wrong product,” which “creates the potential for a confrontation or, at the very least, a dissatisfied purchaser who has now also lost significant time in acquiring the desired product.” '465 Patent at 1:65-2:1. This is why the

specification proceeds to disclose the steps that the agent should take when the customer is not satisfied with the inspected product and rejects it. *See id.* 7:55-8:21.

Petitioner's myopic focus on the details of a single embodiment overlooks that the inventors sought to ensure that the customer has the opportunity to inspect and reject a wrongly identified product. *Compare* '465 Patent at 1:65-2:1 *with* Pet. at 19 (alleging that the premise of "Figure 3, and the application as a whole, is that the product ordered by the customer **can be located** and **is available for inspection.**"); *see also* Pet. at 18 (alleging that the specification "assumes that products ordered by the customer are available."). When an agent identifies the wrong product, as plainly contemplated in the specification, he or she has failed to locate the product identified and desired by the customer. Petitioner's reading of the Figure 3, which assumes that the desired product *will* be found, is entirely inconsistent with the basic premise of the invention and the specific details of that embodiment.

For at least the foregoing reasons, the specification provides written description support for the "failing to locate an identified product" and "determining that the identified product is not available" limitations.

B. The Specification Discloses “Obtaining and Sending to the Customer the Information Determined From the Bar Code or QR Code Including at Least One Image of the Replacement Product”

The specification also discloses “obtaining and sending to the customer the information determined from the bar code or QR code including at least one image of the replacement product.”

The specification discloses that “bar codes, QR (Quick Response) codes, image recognition or near field communication can be used in **identifying and communicating information** about the product of concern.” ’465 Patent at 2:51-54 (emphasis added); *see also id.* at 7:50-52 (“On the other hand, the **product data** can be collected by scanning a bar code associated with the product”) (emphasis added), 10:40-41 (disclosing that bar codes and QR data “enable[e] a host of **information related to the product** to be presented”) (emphasis added). The specification also discloses that “information regarding the product” includes “**pictures**, bar codes, QR codes, video, [and] instructions.” *Id.* at 9:66-10:2. Accordingly, the specification discloses scanning bar codes and QR codes to provide information about the product, including product images, to the customer.

Petitioner acknowledges some of these disclosures but maintains that “the ’848 application does not contemplate the use of a bar or QR code to retrieve image information from the bar or QR code.” Pet. at 24. The basis for Petitioner’s argument appears to be that “the ’848 application lists ‘pictures, bar codes, QR

codes” as alternative types of product data” and that “there is no disclosure bridging the two concepts, *i.e.* no disclosure that contemplates using a bar/QR code to obtain an image, and sending that obtained image information to the user.” *Id.* at 24-25. But that is exactly what the specification discloses, *i.e.* scanning a bar code to collect product data (*id.* at 7:50-52) that includes “pictures” or “images” of the product (*id.* at 9:65-10:2) and presenting “information related to the product” to the customer (*id.* at 2:49-54, 10:29-37). There is, therefore, no basis for Petitioner’s attempt to exclude pictures and images from the product data collected by scanning a bar code or QR code.

Petitioner affirmatively admits that the specification discloses that *product data* can be obtained from scanning bar/QR codes and that *data transmission* includes the bar/QR codes data:

[T]he ’848 application generally describes that product data can be collected by scanning a bar code associated with the product, or perhaps a QR code [and that] various forms for data transmission and communication are discloses including still images . . . streaming video . . . bar code data and QR data.

Pet. at 24. Based on these affirmative admissions alone, the specification provides adequate written description support for obtaining and sending product data (including images) based on bar/QR codes.

Petitioner also suggests that the “at least one image of the replacement product” cannot be a static image stored in a database because the ’465 Patent describes such images as “inadequate.” Pet. at 25. But the claims do not require that the image be a “live” image taken in the store, they require determining information about a product, including at least one image of the product, from a bar code or QR code. Just because static images do not always “accurately depict” the actual product, that does not mean that static images would be useless to a customer attempting to make an informed purchase about a replacement product. ’465 Patent at 1:54-55. In fact, the ’465 Patent teaches the opposite. *Id.* at 9:65-10:2.

Moreover, contrary to Petitioner’s suggestion, the specification describes how sending product images determined based on bar/QR codes achieves the goals of the invention. ’465 Patent at 10:29-37 (“Certainly bar code and QR data may be preferable due to associated accuracies, the ability to readily conduct simultaneous price comparisons for the product via internet searching or links, and enabling a host of information related to the product to be presented, e.g., nutritional or health information, product ratings and the like.”). Similarly, during prosecution of the ’133 application, the applicant amended the then-pending claims to specify that the “information determined from the bar or QR codes include at least one image of the identified product” to highlight this solution:

To overcome these problems, the current invention requires that information on an identified product for the set of one or more goods be transmitted to the customer using a digital image capture device of an agent. *This goal is specifically achieved* by obtaining a bar or QR code of the identified product of a first set of one or more goods; determining the information from the bar or QR code; and sending the information for the customer to approve the purchase of the particular product based on the information determined from the bar or QR code. Claim 1 has been amended to specify that the information determined from the *bar or QR code includes at least one image of the identified product*.

Ex. 1002 at 63-64 (emphasis added); *see also* § II.B, *supra*.

For at least the foregoing reasons, the specification provides written description support for the “obtaining and sending to the customer the information determined from the bar or QR codes including at least one image of the replacement product” limitation.

* * *

There is no basis to institute review because none of the cited references are prior art to the '465 Patent, which has an effective filing date of at least October 11, 2011.

C. Petitioner Improperly Challenges the Patentability of the '465 Patent Under 35 U.S.C. § 112

The Petition should also be rejected under 35 U.S.C. § 311(b) because Petitioner raises a written description challenge under 35 U.S.C. § 112, which violates the AIA. Specifically, Petitioner's purported ground of unpatentability is predicated on a determination that the Challenged Claims are not entitled to its priority date its specification—and no specification in the priority chain—allegedly does not provide written description support for the Challenged Claims.

Critically, this is not a situation where Petitioner is asking the Board to determine the priority date because of an allegation that the claims are directed to new matter introduced in a continuation-in-part. Thus, Petitioner's request for a "priority" determination is nothing more than a back-door, prohibited written description challenge. Allowing a petitioner to evade the requirements of Section 311(b) by setting forth a written description attack under the guise of a "priority" determination contravenes the statute and intent of Congress in limiting IPRs to only challenges based on Sections 102 and 103.

This sort of "priority" challenge—a mere cloak for a written description attack—is not statutorily cognizable because Petitioner requests the Board to determine substantive Section 112 arguments that Congress did not authorize the Board to perform. It certainly does not follow that the Board may exceed its

statutorily limited authority and cancel a claim under Section 112 whenever a petitioner cloaks its Section 112 attack under a “priority” determination:

[N]or does our interpretation enable the agency to act outside its statutory limits by, for example, canceling a patent claim for “indefiniteness under § 112” in inter partes review. Such “shenanigans” may be properly reviewable in the context of § 319 and under the Administrative Procedure Act, which enables reviewing courts to “set aside agency action” that is “contrary to constitutional right,” “in excess of statutory jurisdiction,” or “arbitrary [and] capricious.”

See Cuozzo Speed Techs., LLC v. Lee, 136 S. Ct. 2131, 2141-42 (2016) (citations omitted).

Moreover, even if the *Board* declines to invalidate a claim for lacking written description support, the prohibition against raising grounds under § 112 governs the *Petitioner's* action, not the *Board's*. *Id.*; *see* 35 U.S.C. § 311(b) (limiting the grounds that a petitioner may raise to those “that could be raised under section 102 or 103”). Consequently, if the AIA does not permit the *Board* to engage in such shenanigans, surely a *Petitioner* who raises a run-of-the-mill written description argument in order manufacture a ground under 102 or 103 in defiance of 35 U.S.C. § 311(b) is just as guilty.

Allowing a petitioner to raise a written description challenge cloaked as a 102/103 challenge in such circumstances also perversely strips jurisdiction over § 112 grounds from the district court and gives it to the Board, despite the clear language of 35 U.S.C. § 311(b) to the contrary. Consider, for example, a Petitioner who raises a hybrid written description/priority claim issue and convinces the Board to institute trial in view of intervening art. If the Board ultimately rules in favor of the patent owner and finds written description support in the priority document, the petitioner would be collaterally estopped from raising a written description challenge in district court because the parties would have already litigated the issue, and the issue would have been necessary to the ultimate decision finding the claims not unpatentable. *See, e.g., Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1366 (Fed. Cir. 2000) (issue preclusion requires four conditions: "(1) identity of the issues in a prior proceeding; (2) the issues were actually litigated; (3) the determination of the issues was necessary to the resulting judgment; and, (4) the party defending against preclusion had a full and fair opportunity to litigate the issues" (citations omitted)).

The proper course of action for the Board to follow when presented with this type written description challenge is to decline to institute the IPR. *Cf. Samsung Elecs. Am., Inc. v. Prisia Eng'g Corp.*, 948 F.3d 1342, 1353 (Fed. Cir. 2020) ("Congress viewed a challenge based on indefiniteness to be distinct from a challenge based on sections 102 and 103. As such, the proper course for the Board

to follow, if it cannot ascertain the scope of a claim with reasonable certainty for purposes of assessing patentability, is to decline to institute the IPR....”). For at least the foregoing reasons, the Board should decline to institute the IPR because Petitioner’s back-door effort to challenge validity under Section 112 violates 35 U.S.C. § 311(b).

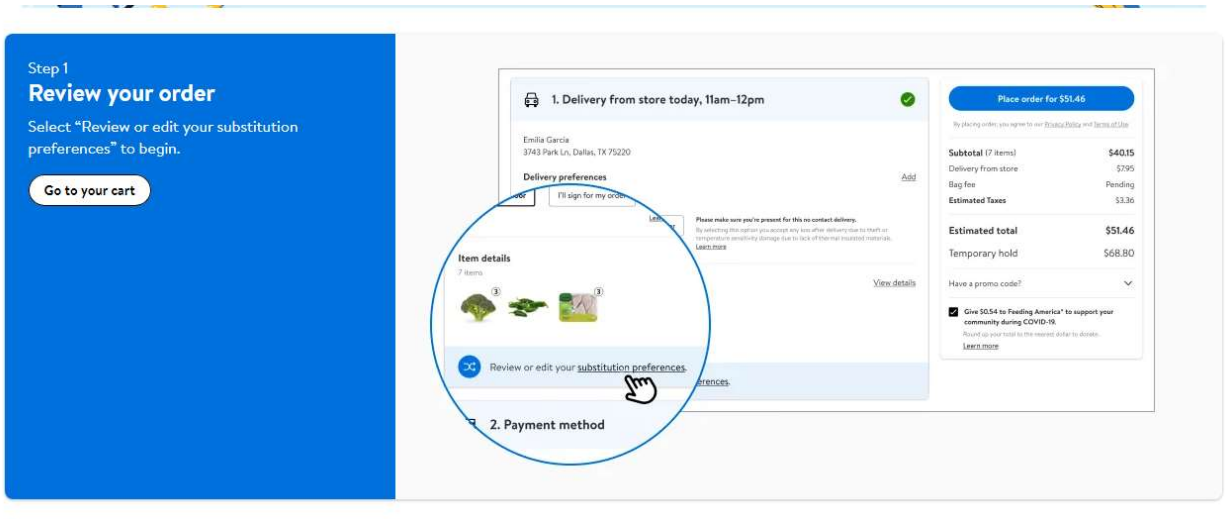
IV. OVERVIEW OF THE TECHNICAL FIELD AND THE ASSERTED REFERENCES

A. Traditional Internet Shopping

Before Consumeron’s invention, online shopping was limited to a basic process where customers could buy goods through a seller’s website, and then have them delivered. A company like Webvan, for example, would display still images of products on its website, and customers could place an order and pay for them using the ubiquitous checkout methodology:



Ex. 2001 at 0:25-0:34 (screenshots from “Webvan Distribution Center” video obtained at <https://www.youtube.com/watch?v=os66TTScS1o>). In fact, Walmart (which is the listed applicant of Carr (*see* Carr at cover)) employs the same checkout methodology, as shown below:



Ex. 2002 at 1; *see also* Carr at ¶ 48 (disclosing that a customer places an order and “purchase[s] the items in a virtual shopping environment.”); *see also* § IV.B, *infra* (disclosing Carr’s traditional approach).

Under this traditional approach, a customer places an order via the seller’s website, and the seller’s web server processes the order and payment. In this way, a customer shops for and purchases goods directly from a seller via the seller’s website with order assemblers simply collecting and placing in packages the purchased goods for delivery.

B. The Carr Reference

Carr was published on May 26, 2016, close to seven years *after* the '465 Patent's effective filing date of at least October 11, 2011.⁵

Carr describes the traditional checkout shopping model as a customer places an order and “purchase[s] the items in a virtual shopping environment” with a fulfillment system that assembles the customer's order. Carr at ¶ 48; *see also id.* at ¶ 91. Specifically, with reference to figure 1 reproduced below, Carr discloses that a customer visits the store website (*i.e.* the first server or order server 24) where they place an order and purchases the goods in the virtual shopping environment, where, in turn, the customer order is sent to the store 20/fulfillment center 12 where assemblers collect the purchased goods.

⁵ As established in § III, *supra*, Carr does not qualify as prior art.

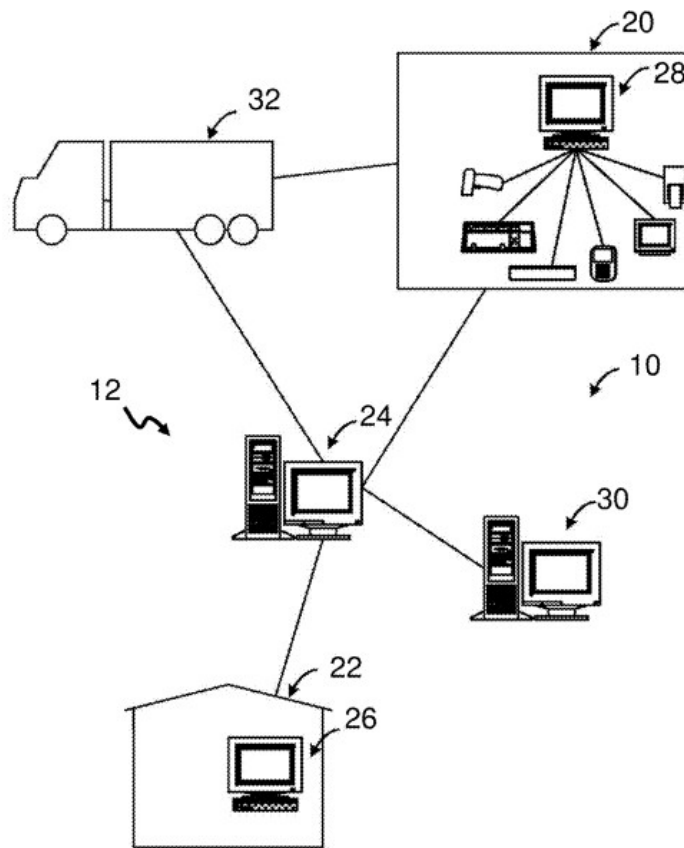


FIG. 1

Id. at Fig. 1; *see also id.* at ¶¶ 76, 83-85, 89, 91. In the event that an ordered item cannot be located, a revised customer order is established based on a customer selecting a substitute item from a substitute items list via the website. *Id.* at ¶¶ 98, 101.

In fact, Carr's virtual shopping environment is specifically directed to Walmart's website allowing a customer to shop for and purchase goods via the

webpage. Carr at (71) (listing the applicant as Wal-Mart Stores, Inc.), ¶ 51 (explaining that “[a] customer purchasing items from the store 20 for delivery . . . will typically view an internet webpage or access an application or app corresponding to the store . . . the customer may have an account with the store and may sign into the system”); Ex. 2002 (depicting Walmart’s webpage that allows a customer to select and purchase herself order substitutions). Just as with traditional shopping methodologies, the customer places an order and purchases the products (ordered or substituted) via Walmart’s virtual shopping environment. See Carr at ¶¶ 47-48, 51.

After the customer purchases the goods and the customer order is received by the store/ fulfillment center 12 (*e.g.*, Walmart), assemblers simply gather and place the goods in bins for pick up. See, *e.g.*, *id.* at ¶ 74 (“The assemblers gather the goods and place the goods in a bin or bins such that the order can be provided to or adjacent to the customer's motor vehicle”), ¶ 110 (“Once a chosen alternative good is sent back to the assembler, the assembler retrieves the substitute good and places the substitute good in the bin.”). Accordingly, unlike Carr’s virtual shopping environment in which the customer places and purchases an order via the seller’s website, the claimed MAS interacts with the customer to send product information for inspection and approval for *the purchase of the product* in response to receiving

an acquisition request for an agent to shop for and purchase the product on the customer's behalf.

C. The Lauka Reference

Lauka became publicly available upon its issuance on March 17, 2020, over 10 years *after* the '465 Patent's effective filing date of at least October 11, 2011.⁶ Petitioner relies on Lauka only for its alleged disclosure of using an order picker's smartphone as an imaging device and/or bar code scanner. *See* Pet. at 31 (citing Lauka at 3:11-18, 3:29-4:19).

D. Level of Ordinary Skill in the Art

In IPR2022-01357 (the "'1357 IPR") challenging related U.S. Patent No 10,628,835 (the "'835 Patent," Ex. 1025), Consumeron proposed the following definition for a person of ordinary skill in the art ("POSITA") as of August 2009, as "someone with a background in electrical engineering, computer science or the like. However, industry experience can make up for a lack of technical training, and more education can make up for a lack of industry experience." *Maplebear Inc. D/B/A Instacart v. Consumeron LLC*, IPR2022-01357, Paper 19 at 9 (P.T.A.B. May 26, 2023). For the purpose of this preliminary proceeding, Consumeron adopts this definition of a POSITA.

⁶ As established in § III, *supra*, Lauka does not qualify as prior art.

V. CLAIM CONSTRUCTION

A. “Acquisition Request” (All Challenged Claims)

The proper construction of “acquisition request” is “a request for an agent to shop for goods on a customer’s behalf.” *See* Ex. 2004 (defining “acquisition” as the “act of acquiring” meaning “to come into possession of . . . through sale, trade, exchange, or other transaction.”). The specification consistently equates an “acquisition request” with a “shopping request” and uses the term in this manner to describe an agent who is requested to shop for the requested goods on behalf of a customer:

As shown in FIG. 3, once the desired delivery agent is selected at steps 108 or 109, a customer *shopping or acquisition request* and profile is sent to the delivery agent at step 110.

’465 Patent at 5:63-66 (emphasis added); *see also id.* at Fig. 3. The specification’s phrase of “shopping or acquisition request” refers to a request for the delivery agent to shop on the customer’s behalf. *See Epic Games, Inc. v. Ingenioshare, LLC*, IPR2022-00202, Paper 29 at 18-19 (P.T.A.B. May 19, 2023) (finding that the specification’s phrase “portal or gateway” uses the word “or” to refer to things that are synonymous to each other).

Other passages from the specification confirm that the acquisition request triggers an agent to shop on a customer’s behalf:

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 based on the delivery options specified in the customer's profile, or amended delivery instructions provided by the customer at *the beginning of a particular shopping request or at some time during a particular shopping request.*

'465 Patent at 7:65-8:4 (emphasis added).

If the *customer requests further shopping*, the delivery agent will move to other similar products or may travel to another location in search of a satisfactory product.

Id. at 7:60-63 (emphasis added).

Once a purchase or *acquisition* is approved, the delivery agent *acquires* the product on behalf of the customer and delivers the product to a designated delivery location.

Id. at 2:54-57 (emphasis added).

This interpretation of the term “acquisition request” is also consistent with the extrinsic evidence. The term “acquire” means “to come into possession of, whether directly or indirectly, through sale, trade, exchange, or other transaction.” Ex. 2004. “Transaction” is commonly defined as an “act of buying or selling something.” Ex. 2005; Ex. 2006 (defining “transaction” as “when someone buys or sells something”). Each of these definitions confirms that an agent who “acquires” goods is shopping for and purchasing goods on behalf of a customer.

Because Carr's customers shop for themselves and interact directly with the seller's (Walmart's) website to place an order and complete the transaction as explained below, there is no "acquisition request" transmitted to an "agent" to shop for and acquire the products upon receiving approval to purchase the products, as the Challenged Claims require. *See* § VI, *infra*; '465 Patent at Claim 1, 14 ("receiving . . . a first acquisition request from a customer" and "upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent.").

In view of the foregoing, the plain meaning of the term "acquisition request" is "a request for an agent to shop for goods on a customer's behalf."

B. Other Constructions Applied In This IPR

In the '1357 IPR, the Board adopted the District Court's construction for the term MAS as set forth below.

Term	Construction
MAS	"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"

Maplebear Inc., IPR2022-01357, Paper 9 at 4-5. The disputes in these proceedings do not turn on this construction, and thus the construction is not necessary. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) ("only those terms need be construed that are in controversy, and only to the extent

necessary to resolve the controversy”) (citation omitted). Nevertheless, for the purpose of this proceeding, Consumeron applies the Board’s adopted construction for MAS.

VI. THE CHALLENGED CLAIMS ARE PATENTABLE ⁷

The Challenged Claims are patentable over Petitioner’s proposed Carr-Lauka combination because the combination fails to teach or suggest at least:

- “an acquisition request”; and
- “upon receiving the approval of the purchase from the customer acquiring the replacement product, via the agent” limitation.

’465 Patent at Claims 1, 14.

More specifically, the Challenged Claims require receiving an “acquisition request” for a “set of one or more goods” for which an agent sends images of products to the customer and “upon receiving approval of the purchase from the

⁷ In all five grounds, the Petition relies on a proposed Carr-Lauka combination set forth in Ground 1 challenging Independent Claims 1 and 14, with Grounds 2-5 challenging the dependent claims based on the Carr-Lauka combination of Ground 1. *See* Pet. at 29. Accordingly, the reasons why the Challenged Claims are patentable over the Carr-Lauka combination of Ground 1 apply equally to all Petition grounds. *Id.*

customer, acquir[es] the replacement product.” *See* ’465 Patent Claims 1, 14 (the independent claims reciting a “first acquisition request” and sending to the customer product images and “upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent”); *see* § V.A, *supra*. Carr, which Petitioner relies solely on for these limitations (*see* Pet. at 38, 43-44), does not contemplate an acquisition request in which the agent shops for and purchases products upon receiving customer approval because its virtual shopping environment employs the conventional online ordering and checkout techniques in which assemblers simply receive customer orders and collect the purchased goods (ordered or substituted) in bins. *See* §§ IV.A-IV.B, *supra*.

A. Carr Does Not Teach or Suggest the Claims “Acquisition Request” (All Challenged Claims)

Carr’s disclosure of a customer shopping and placing a customer order for goods is not an “acquisition request” because there is no request for an agent to shop for and purchase the goods on behalf of the customer. *See* Pet. at 38 (alleging Carr’s disclosure of a customer order equates to the claimed “acquisition request”).

An “acquisition request” is “a request for an agent to shop for goods on a customer’s behalf.” *See* § V.A, *supra*. These requests originate with the customer and are transmitted to an agent, who then proceeds to the shopping location in order to “shop for goods on the customer’s behalf.” *Id.* There is no sense in which a

customer's placed online order, which is a transaction completed between a seller (Walmart) and the customer, involves an agent shopping for and completing the transaction on behalf of the customer.

In Carr's virtual shopping environment, like in other traditional Internet shopping systems (*see* § IV.B, *supra*), a customer shops and purchases goods online via a seller's (Walmart's) website. *See* Carr at ¶ 48 (describing that "the first server 24 may provide an internet webpage to allow a customer to select items . . . and purchase the items in a virtual shopping environment"), ¶ 51 (describing that "[a] customer purchasing items from the store 20 . . . will typically view an internet webpage or access an application or app corresponding to the store."), ¶ 118 (describing that the processing device executes the web application and handles the purchase transaction). The customer's placed order is then sent to the store/order fulfillment system where assemblers retrieve and place in bins the customer's purchased goods. *See id.* at ¶¶ 53, 54, 74. A similar process applies for substituted goods, with the only addition being that the order fulfillment system modifies the customer order to include the substituted good. *See id.* at ¶ 101; *see also id.* at ¶¶ 98, 110.

The online customer order in Carr, like in other traditional Internet shopping models, represents the transaction necessary to transfer possession of the goods from the seller to the customer. *See* Carr at ¶ 48 (disclosing that the customer places an

order and purchases items via the virtual shopping environment), ¶ 118 (disclosing that the processing device handles the purchase transaction with a customer). This order is not an “acquisition request” that can be fulfilled by Carr’s assemblers because the transaction is complete between the customer and the seller’s (Walmart’s) virtual shopping environment with the assemblers simply placing in bins the purchased items.

Further, the specification explains that “there are many potential problems associated with ordering goods over the internet” and “when various goods are transported from one or more warehouses” to customers numerous inefficiencies are realized. ’465 Patent at 1:38-39. To solve these problems, the ’465 Patent discloses an MAS which enables an agent to “receive the request for purchase or acquisition from the system,” proceed to the shopping location, and “acquire[] the product on behalf of the customer.” *Id.* at 2:39-56. As such, it would be in error for the ’465 Patent to be interpreted to cover Carr because the intrinsic record demonstrates that it is distinguishing itself from such traditional online ordering and checkout techniques. *Chicago Bd. Options Exch., Inc. v. Int’l Sec. Exch., LLC*, 677 F.3d 1361, 1372 (Fed. Cir. 2012) (where a patent repeatedly notes the “inadequacies” and “deficiencies” of a traditional methodology and proposes a remedy for the perceived deficiencies, it “reasonably may be viewed as a disavowal of that subject matter from the scope of the Patent’s claims.”).

Indeed, the online order in Carr, like in other traditional Internet shopping models, is no more than an offer for and payment of the goods over the seller's website, as discussed above. This order is not an "acquisition request" because the goods have already been purchased by the customer. *See* § V.A, *supra*. Given the foregoing, Carr's disclosure of "receiving a customer order" (*see* Pet. at 38 (citing Carr at ¶ 9)) does not teach or suggest the claimed "acquisition request" for a "set of one or more goods."

B. Carr Does Not Teach or Suggest the "Upon Receiving the Approval of the Purchase From the Customer Acquiring the Replacement Product, Via the Agent" Limitation (All Challenged Claims)

Dovetailing with the foregoing, Carr also does not teach or suggest "upon receiving the approval of the purchase from the customer acquiring the particular product, via the agent" (the "receiving approval of the purchase and acquiring" limitation). '465 Patent at Claims 1, 14. The Independent Claims recite, *inter alia*:

sending the information for the *customer to approve the purchase of the replacement product . . . [and]*
upon receiving approval of the purchase from the customer, acquiring the replacement product, via the agent

'465 Patent at Claims 1, 14 (emphasis added). When read in the context of the surrounding claim language, a customer approves the purchase to which the agent receives the approval and purchases the replacement good on behalf of the customer,

as confirmed by the construction of “acquisition request.” *See* § V.A, *supra* (establishing that an agent who “acquires” goods is shopping for and purchasing goods on behalf of a customer).

Petitioner alleges that Carr’s teaching of “allow[ing] the customer to select one of the substitute goods” and upon receiving the customer’s selection the “assembler includes the alternative good in the customer order” satisfies the “receiving approval of the purchase and acquiring” limitation. Pet. at 43-44 (citing Carr at ¶¶ 99, 101) (citations omitted). It does not because Carr does not teach in any way that an assembler receives the approval and purchases the substituted good on behalf of the customer, as the Challenged Claims require.

That Carr teaches a customer selecting substitute goods is correct insofar that the customer herself also purchases the substituted goods. In Carr’s virtual shopping environment, upon customer selection, a revised customer order is established and the customer is charged the price of the substituted good. *See* Carr at ¶¶ 98, 99 101, 110; *see also* Ex. 2007 (explaining that a customer can accept the substituted item and is charged the price of the substituted item via an authorization hold which is the amount that covers replacements). Thus, just as with purchased ordered goods, the assembler simply “retrieves the substitute good and places the substitute good in the bin.” Carr at ¶ 110; *see also id.* at ¶ 66 (“In general, the items or goods within the order may be placed in one or more bins.”) ¶ 74 (“The assemblers gather the

goods and place the goods in a bin or bins such that the order can be provided to or adjacent to the customer's motor vehicle.”).

Moreover, Carr's teaching of “an assembler include[ing] an alternative good in a customer order” (*id.* at ¶ 101) does not comport with the plain meaning of the term “acquire” and the explicit distinction drawn in the specification between an agent “acquiring” goods on behalf of the customer and the traditional customer order. *See* § VI.A, *supra* (drawing the distinguish between the claimed invention in which an agent purchases goods on behalf of a customer and the traditional Internet shopping in which a customer places a customer order and purchases the goods via a seller's website); Ex. 2004 (the term “acquire” means “to come into possession of, whether directly or indirectly, through sale, trade, exchange, or other transaction.”). That the assembler includes the substituted good in the revised order does not entail the assembler receiving customer approval to *purchase the substituted good* and complete the purchase transaction on behalf of the customer. To the contrary, the seller's website interacts with the customer to complete the purchase of goods (ordered or substituted) as the processing device 90 “handles the purchase transaction with a customer,” (Carr at ¶ 118) with the revised customer order simply modifying the purchase transaction between the two. *See, e.g., id.* at ¶¶ 48, 51, 118.

Accordingly, because the customer herself completes the purchase via the seller's website, the assembler *does not* receive an “approval of the purchase” and

“acquir[e] the replacement product,” *i.e.* complete the transaction for the goods on the customer's behalf. Carr, therefore, does not satisfy the “receiving approval of the purchase and acquiring” limitation.

VII. CONCLUSION

For all of these reasons, Consumeron respectfully requests that the Board deny institution.

Dated: August 24, 2023

/James Hannah/

James Hannah (Reg. No. 56,369)

Jenna Fuller (Reg. No. 74,212)

Kramer Levin Naftalis & Frankel LLP

333 Twin Dolphin Drive, Suite 700,

Redwood Shores, CA 94065

Telephone: (650) 752-1700

Facsimile: (650) 752-1800

jhannah@kramerlevin.com

jfuller@kramerlevin.com

Jeffrey H. Price (Reg. No. 69,141)

Kramer Levin Naftalis & Frankel LLP

1177 Avenue of the Americas

New York, NY 10036

Telephone: (212) 715-7502

Facsimile: (212) 715-8302

jprice@kramerlevin.com

*Attorneys for Patent Owner
Consumeron, LLC*

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the portions of the foregoing **PATENT OWNER'S PRELIMINARY RESPONSE** specified in 37 C.F.R. §42.24 has 8,421 words in compliance with the 14,000-word limit set forth in 37 C.F.R. §42.24(b)(1). This word count was prepared using Microsoft Word word-processing system used to prepare this paper.

Dated: August 24, 2023

/James Hannah/

James Hannah (Reg. No. 56,369)

Jenna Fuller (Reg. No. 74,212)

Kramer Levin Naftalis & Frankel LLP

333 Twin Dolphin Drive, Suite 700,

Redwood Shores, CA 94065

Telephone: (650) 752-1700

Facsimile: (650) 752-1800

jhannah@kramerlevin.com

jfuller@kramerlevin.com

Jeffrey H. Price (Reg. No. 69,141)

Kramer Levin Naftalis & Frankel LLP

1177 Avenue of the Americas

New York, NY 10036

Telephone: (212) 715-7502

Facsimile: (212) 715-8302

jprice@kramerlevin.com

CERTIFICATE OF SERVICE

Date of service August 24, 2023

Manner of service Electronic Mail
(raghav.bajaj.ipr@haynesboone.com;
scott.jarratt.ipr@haynesboone.com;
angela.oliver.ipr@haynesboone.com;
lyric.stephenson.ipr@haynesboone.com)

Documents served PATENT OWNER'S PRELIMINARY RESPONSE

Persons Served HAYNES AND BOONE, LLP
Raghav Bajaj
Scott T. Jarratt
Angela M. Oliver
Destiny L. Stephenson

/James Hannah/
Lead Counsel for Patent Owner