

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Walt Disney Parks and Resorts U.S., Inc.,
Petitioner,

v.

Agile Journeys LLC,
Patent Owner.

Case No. IPR2024-00029
Patent 7,212,983

**PETITIONER'S REPLY TO
PATENT OWNER'S RESPONSE**

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PETITIONER’S EXHIBIT LIST

Exhibit No.	Description
1001	U.S. Patent No. 7,212,983 (“’983”)
1002	Original File History for the ’983 Patent
1003	Declaration of Dr. Henry Houh
1004	Curriculum Vitae of Dr. Henry Houh
1005	WIPO Patent Publication No. 1997/18534 (“ Sim ”)
1006	U.S. Patent No. 6,938,066 (“ Doi ”)
1007	U.S. Patent No. 5,978,770 (“ Waytena ”)
1008	U.S. Patent No. 5,758,257 (“ Herz ”)
1009	Deposition Transcript of Dr. Gonsalves

I. Introduction

Patent Owner's Response ("POR") interprets the claims contrary to the '983, misconstrues terms and reads in limitations not in the claims to try to avoid the prior art. Further, Patent Owner ("PO") takes an unduly narrow view of the references and what each teaches, trying to establish a distinction with the alleged invention when there is none. When the claims and references are properly considered, it is clear the challenged claims are unpatentable.

First, PO alleges that in the relied upon references, including Sim, Doi, and Waytena, the user must make *manual* selections of attractions. But, the Petition is unambiguous that in Sim¹ in view of Doi², Waytena³ alone, and Waytena in view of Herz⁴, it is the software, not the user, that does the attraction selection. For example, Doi's navigation planner selects attractions for a party where there is a match in at least age (Doi, 9:63-10:33), Waytena's software generates "list of attractions that match the particular preferences" of the patron's group (Waytena, 14:13-24), and

¹ Sim is EX1005.

² Doi is EX1006.

³ Waytena is EX1007.

⁴ Herz is EX1008.

Herz's software selects "video programs or other data which most closely match the customer's objective preferences." (Herz, 4:16-31.) Whether the user later confirms attractions the software selected or makes an official reservation is irrelevant; the software has already selected matching attractions and presented them as a potential itinerary. That is all that is required by the claims and is consistent with the '983's definitions and descriptions of what constitutes an "itinerary."

Second, PO urges "substantially matches" somehow excludes an exact match, but is unable to point to anything in the patent or the record for support. Consistent with the Board's Institution Decision, the claims "do not recite how the match is determined" and there is "no specific definition of what would be considered 'substantial' nor is there an exclusion of an exact match." (Paper 7, p. 21.) As explained in the Petition and below, the prior art teaches selecting attractions where there is a "substantial match," even under PO's apparent interpretation.

Third, PO consistently, and inappropriately, argues the alleged invention is distinct from the prior art by pointing to the '983's specification, and not the language of the claims.

When the challenged claims are properly construed and considered, it is clear they are unpatentable.

II. CLAIM CONSTRUCTION

A. "Software that selects"

PO argues “software that selects” excludes “a contemporaneous or further manual confirmation or selection.” (POR, 8-13.) This is a fundamental misinterpretation of the claims and how the ’983 defines itineraries. This limitation requires that the software “selects” the attractions; and it does not require that the software make any further confirmations, selections, or reservations, nor does it restrict what a user may do with the selected attractions. (’983, Claims 1, 3.) Once the software “selects” the attractions, the limitation is met, and any further actions by the user to confirm selections or make a reservation based on the selections does not negate that the selection was made by the software.

That a user could make contemporaneous or further manual confirmations of software-selected attractions is also consistent with the ’983, which indicates that an itinerary is comprised of events, which themselves are recommended times to visit an attraction. (’983, 7:31-34 (“An itinerary is comprised of events. An event is typically a visit to an attraction at a scheduled time. *This is not necessarily a reservation*, though it can be. It is a time at which the party is *recommended* to visit an attraction.” (emphasis added)); Deposition Transcript of Dr. Gonsalves (EX1009), 69:15-75:19, 76:17-77:13.) Thus, according to the patent, software selection of an attraction to recommend in an itinerary is distinct from the overall itinerary of events, and it is further distinct from an actual reservation for that attraction. (*Id.*) That is, further user confirmation, such as making reservations, is

expressly defined as separate from the selection of attractions, which need only be recommendations to the user. (*Id.*) While the Applicants may have disavowed a manual selection of attractions during prosecution (that is, a user selecting their own attractions without the software selecting or recommending any), nothing in the prosecution history shows a similar disavowal of actions a user can take after the attractions are selected by the software. (POR, 8-13.)

In sum, the Board was correct that “software that selects” does not “exclude a contemporaneous or further manual confirmation or selection.” (Paper 7, p. 20.)

B. “Substantially Matches”

The Board correctly construed “substantially matches” in its Institution Decision, stating “Claims 1 and 3 do not recite that the data must only ‘substantially’ match such that an exact match is excluded. There is no specific definition of what would be considered ‘substantial’ nor is there an exclusion of an exact match that, by its nature, is also a ‘substantial’ match.” (Paper 7, p. 21.) In challenging this finding, PO refers to sections of the patent allegedly excluding “low/poor” or “unalluring” matches from being “substantial,” (POR, 14-15), but the argument is facially incredible. In those passages, the patent clarifies that “low/poor” and “unalluring” matches do not teach the “substantially matches” limitation. There is no logical way to stretch that to mean a much better match, such as an exact match, would not meet the “substantially matches” limitation. (EX1009, 97:6-98:15, 98:16-

99:5; 109:6-7.) Instead, as the Board properly found, an exact match is, “by its nature,” also a “substantial” match. (Paper 7, p. 21.)

III. Grounds Based on Sim

PO’s arguments that Sim in view of Doi does not render obvious claims 1 and 3 (and the claims depending therefrom) rest largely on its improper constructions of: (A) “software that selects,” and (B) “substantially matches.” However, as explained above, PO’s proposed constructions would improperly read limitations and requirements into the claims that are simply not there, and should be denied.

A. The Sim-Doi combination teaches “software that selects”

PO argues neither Sim nor Doi discloses or renders obvious “software that selects” because both allegedly require the user to perform manual selections of attractions. (POR, 15-18, 22.) PO’s argument is premised solely on its faulty assertion the limitation precludes, for example, any contemporaneous or further confirmation of software selected-attractions by the user.⁵ *See supra*, Section II.B.

⁵ Patent Owner also argues that Sim alone does not render the claims obvious by misconstruing the Petition and Sim, suggesting a user manually selects each attraction ultimately included in Sim’s itinerary. (POR, 16-18.) This is not the case. While a user can manually enter rides they may prefer to have, the queue manager computer selects the rides that will actually be included in the itinerary based on,

But, by their plain language, the claims do not prohibit users from manually confirming or making reservations for attractions selected by the software. ('983, Claims 1, 3; EX1009, 78:2-88:2; *see also* MPEP § 2111.03; *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501 (Fed. Cir. 1997) (“‘Comprising’ is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.”).) Thus, whether a user later manually makes reservations for attractions selected by a computer and presented in the itinerary is irrelevant.

Sim in view of Doi renders obvious “software that selects” a second set of attractions. (Pet., 19-22.) Doi’s system, on its own, selects attractions and recommends them to a customer. (Pet., 19-22; EX1009, 168:16-169:15, 173:10-16.) Doi’s system collects data about attractions, including use frequency by age, and uses this to “select” attractions for the customer when there is a match with customer information. (Doi, 8:20-56, 9:52-10:44, Figs. 8-9, 11.) For example, Doi’s computer selects “Attraction D” for a customer based on it being “enjoyable” for similarly-

among other things, availability, overall demand, party preferences, and party priority. (Pet., 18-19.) Further, Sim’s queue manager can, on its own, select attractions for modified itineraries when re-allocation is necessary, with no input from the user. (Pet., 17-19.)

aged persons. (Doi, 9:63-10:11, Fig. 11.) As another example, it can “positively propagate held events,” selecting events and issuing invitations for the user to attend. (*Id.*, 10:12-33 (“[I]f, for example, a popular attraction ‘Pokekun’ to be held still has non-reserved seats, there are selected matching ages from ages of customer stored in use data memories 14, and invitations are given.”), Fig. 11.)

PO does not dispute this, and instead focuses on what happens *after* Doi’s system has already selected an attraction and presented it as a recommended itinerary event to a user. (POR, 18.) PO suggests Doi only “filters” attractions—because a party makes a decision as to whether to attend the already recommended attraction, the user somehow manually made the selection. (*Id.*, 18-19) But, the claims recite selecting the “second set” of attractions from an overall “first set,” which is filtering, and thus PO’s argument is immaterial semantics. And, as discussed above, the ’983 is clear what constitutes an itinerary: “An itinerary is comprised of events. An event is typically a visit to an attraction at a scheduled time. *This is not necessarily a reservation*, though it can be. It is *a time at which the party is recommended to visit an attraction*.” (’983, 7:31-34.) Doi’s computer, on its own, provides exactly such a recommendation of a time for a party to visit an attraction, and thus performs “selection” of the attraction event it is recommending. (Doi, 9:33-10:44; Pet., 19-22.)

Moreover, with its focus solely on what Doi does, PO is arguing the references individually and misconstruing the combination of Sim with Doi. Doi teaches software that selects and recommends attractions that substantially match a user's attributes. (Pet., 17-22.) And, applying Doi's teachings to Sim would result in Sim's system selecting attractions and times that match party information when determining a "guest's itinerary."⁶ (Pet., 21-22.) Thus, whether Doi's system *on its own* could work in different ways or perform different functions is irrelevant. It is the combination of Sim and Doi, taken together, which renders the claims obvious.

B. Sim in view of Doi teach selecting attractions based on attraction data which substantially matches party information

PO does not dispute that Sim in view of Doi disclose "exact matches" between attraction data and party information. (POR, 19.) As the Board correctly found, an

⁶ Patent Owner's assertion Doi's system only operates in real-time and therefore cannot generate an itinerary is incorrect. First, nothing in the claims require generating an itinerary for "tomorrow" or any later time. Second, Doi's system knows show times and can recommend upcoming shows to matching age groups at any time. (Doi, 8:20-56, 10:12-33, Figs. 8-9, 11.) Third, this argument ignores the combination of Doi with Sim, which expressly discloses scheduling a full itinerary of attractions over the course of a day. (Pet., 17-22.)

“exact match” is a “substantial match,” and PO’s arguments regarding this limitation fail.⁷

PO’s further arguments regarding the selection of matching attractions are confusing and irrelevant. (POR, 20-21.) For example, PO argues Doi does not select attractions for users, but rather selects users for attractions. (*Id.*) This has nothing to do with the language of the claims, and it is irrefutable that Doi recommends attractions to users when information about the user (*e.g.*, their age) matches data about an attraction (*e.g.*, popularity for that same age). Similarly, as another example, PO’s argument that Doi reacts to situations to provide recommended matching attractions to a user is irrelevant. (POR, 21.) The claims do not require a particular time or situation that triggers generation of an itinerary, and it is

⁷ That Doi’s matching of an age of a party to with data indicating an attraction is popular for that same age is a “substantial” match was confirmed by Patent Owner’s own expert, who testified that “[a]ttraction data ‘substantially matches’ party information when the party profile matches *at least one*, but potentially more attraction acceptance factors having a positive response.” (EX2009, p. 69.) Doi discloses exactly this – the party profile matches at least the attraction acceptance factor regarding the attraction being popular for a certain age. (Doi, 9:65-10:33, Fig. 11.)

indisputable Doi's navigation computer generates recommended itinerary events for users. (Doi, 9:33-10:44; Pet., 19-22.) Again, PO is improperly arguing the references individually, with a focus on what Doi's system alone may do. PO does not address the combination of applying this specific teaching from Doi to Sim's system, as presented in the Petition.

C. Dependent Claim 5

PO argues that Sim and Doi do not use a party's personal attributes for "selection of attractions," but rather use personal attributes "for managing access permissions and making recommendations based on user qualifications." (POR, 22-23.) But, as explained above, Doi's system clearly uses attributes such as age when selecting attractions *because they are popular for that particular age*. (Doi, 9:65-10:33, Fig. 11; Pet., 24-25.)

D. Dependent Claim 7

PO acknowledges Sim's queue system allows for "priority" and "privileges" for guests paying additional fees or arriving at certain times, but states this does not influence the selection of attractions and that Sim's selections are not automated by software but "rather executed by users themselves." (POR, 23-24.) However, Petitioner did not allege Sim alone discloses Claim 7. Rather, the Petition explained Sim in view of Doi renders the claim obvious. (Pet., 25-26.) For example, the

combination would provide the same itinerary selection of events as disclosed in Doi, but with the selection now taking into account Sim's party privilege or paid-class status, so that such parties are given priority for popular (or desirable) attractions to be selected by the computer. (*Id.*)

E. Dependent Claim 8

While Claim 8 generally recites a "scheduled time" for an attraction, PO reads limitations into the claim and suggests this must be limited to "discretely scheduled times" for attractions like theaters or parades with specific show or arrival times, and the "scheduled time" must be the event start time. (POR, 24.) But, the claim does not specify a type of attraction or that the "scheduled time" is an event start time, nor does it exclude continuously available attractions that do not start at one specific time. ('983, Claim 8, 7:31-34, 9:7-15.) Instead it simply requires any "scheduled time" for the attraction, which could include a next available time or time available for a party to visit, as disclosed in Sim. (Pet., 27-28.)

F. Dependent Claim 10

PO confusingly argues Sim does not disclose adding scheduled times for a first and second attraction taking into account a "time required between attractions" as recited in Claim 10 because, while Sim takes into account that a user must "physically be able to get from one ride to another in time," it allegedly does not

understand the “relative positions of the attractions between them, which is critical to the ’983 Patent.” (POR, 24-25.) This argument has no basis in the language of the claim, which recites nothing about the location of other attractions that are between the two attractions being selected.⁸

G. Dependent Claim 11

PO argues the Petition “ignores the critical limitation” of a second set of attractions that “excludes” an already visited portion. (POR, 25-26.) In particular, PO argues that both Sim and Doi would allegedly include already visited portions when adjusting for “interruptions.” (*Id.*) This is incorrect and mischaracterizes the Petition. Sim’s re-allocation of an itinerary due to an interruption event would “exclude” already visited rides and provide substitute “alternative rides” as taught by Doi. (Pet. 29-30.)

H. Dependent Claim 13

PO’s arguments with respect to claim 13 again try to read in limitations to avoid the prior art. Here, PO suggests Sim cannot disclose the limitation of “an access control system operating in response to at least a portion of the itinerary

⁸ Patent Owner’s arguments regarding the ’983 recognizing speed of different groups also fail—the claim contains no limitation regarding group speed. (POR, 25.)

corresponding to said first attraction” because it does not disclose its itinerary includes “pass forms” having information like attraction names, party size, event time, or an authentication code or signature as discussed in the ’983. (POR, 26.) But none of these features are required in the claim. Further, Sim’s access control gates only admit a party to a ride when the party shows up within their time window *for that particular ride* (i.e., the itinerary on the device corresponds to the particular attraction the user is attempting to gain access to). (Pet., 31-32.)

I. Dependent Claim 17

PO asserts Sim’s “audible” “spoken message or tone” messages regarding next attractions somehow does not meet claim 17’s requirement that “at least a portion of said itinerary is announced audibly.” (POR, 26-27.) It is unclear what the basis for this is, as the claim does not require any particular announcement. In any event, Sim’s disclosure of a “spoken message” indicator for when the party should join the next attraction queue is more than sufficient disclosure of announcing a portion of the itinerary audibly. (Sim, 2:5-33, 3:28-35, 17:16-21; Pet., 33-34.)

J. Dependent Claims 4, 18, 19-20 and 22

PO’s arguments regarding claims 4, 18, 19-20 and 22 are predicated on its assertion the combination of Sim and Doi (and Waytena for claims 4 and 18) does not disclose software that selects attractions, and thus fail for the same reasons

discussed above for claims 1 and 3. (POR, 27-29, 30-32.) Additionally, regarding claims 19-20, Doi further discloses that its system is less likely to select attractions with excessive demand. (Doi, 8:20-45, 9:33-10:11, 10:38-11:27 (discussing an “optimization algorithm” that uses crowd condition and wait time data to moderate demand by recommending other attractions to certain users queued at crowded attractions); Pet. 34-45.) Moreover, Doi uses a “perturbation to a desirability” as recited in claim 22, as it adjusts prices with an “expectation function value” to increase/decrease the likelihood of attractions being selected. (Doi, 10:48-11:35; Pet., 36-38.) Thus, Sim in view of Doi renders claims 19-20 and 22 obvious. (Pet., 34-38.)

K. Dependent Claim 21

Dependent claim 21 introduces a “reservation computer” that makes reservations for the party for a first attraction. ('983, Claim 21.) Waytena discloses “attraction computers” at each attraction to facilitate making reservations, and it would have been obvious to include such attraction computers in Sim in order to, for example, ensure current operating status and crowd conditions are taken into account. (Pet., 44-48.) PO’s sole argument Waytena does not disclose the claimed “reservation computer” is that Waytena does not use that exact term. (POR, 32.) PO further argues Sim’s Queue Manager can perform some of the functionality of

Waytena's attraction computers, and so a POSITA would not have been motivated to combine Waytena's attraction computers with Sim's system. (*Id.*) Both arguments are unavailing. As explained, Sim's central Queue Manager computer could work with attraction computers as taught in Waytena, providing a method of making reservations within the overall system that takes into current attraction conditions. (Pet., 48.)

L. Dependent Claim 23

PO's arguments regarding claim 23 are based on reading into the claim that a "second set of messages" must be presented at the same time (*i.e.*, simultaneously) as the itinerary to be "in conjunction." (POR, 29) But, all that is required for them to be in "conjunction" is that the second set of messages are presented "at an appropriate time" in accordance with the itinerary, not that they are presented at the exact same time as the itinerary. ('983, Claim 23, 30:4-18.) The fallacy of PO's argument can also be seen in its assertion that the "presentation means" can be an "audio interface," which would not communicate the messages over top of the communication for the itinerary. (POR, 14.) Instead, like Sim, it could present them one after the other, or near in time, so that they are "in conjunction."

IV. GROUNDS BASED ON WAYTENA

A. Waytena Alone Renders Claims 1, 3-5, 8, 10, 12-14, 16-21, and 23-25 Obvious

Petitioner respectfully disagrees with the Board, and PO, that there was no error on the part of the Examiner in allowing the claims over Waytena. (POR, 33.) Again, the Examiner does not appear to have considered whether Waytena alone renders the claims obvious, and may have focused only on whether Waytena expressly discloses “software that selects” attractions.⁹ (Pet., 78-79.)

⁹ Petitioner maintains that Waytena does, in fact, disclose this limitation. (Pet. 54-57.) As admitted by Dr. Gonsalves, and as is clear from a close reading of the claim language, all that is required is that the software selects attractions matching party information that end up in the customized itinerary; the claims do not require that the software selects the time for such selected attractions or completes the itinerary with no further manual input from the user. ('983, Claims 1, 3; EX1009, 77:14-78:12, 86:2-88:4.) The '983 is clear that an attraction is only part of an itinerary, and only forms an itinerary event when there is a recommended time to attend that attraction. ('983, 7:31-35.) In Waytena, it is undisputed the software can select matching attractions, thus satisfying the claim element. (Waytena, 14:13-24.) Whether the user is involved in further steps of confirming reservation times for such attractions to complete the itinerary does not negate the fact that, initially, the computer itself selected at least some matching attractions that end up in the customized itinerary. (Waytena, 14:13-24; Pet., 54-57.)

However, nothing in the prosecution history suggests the Examiner considered Waytena's system's abilities when a user accepts the recommended matching attractions from the PCD and leaves it to the PCD to also select the times and complete the itinerary. (Waytena, 12:25-29, 14:12-17:55, 23:3-24, Figs. 5A-5E; Pet., 54-57.) That is, nothing suggests the Examiner considered whether the claims may nonetheless be obvious over Waytena due its ability to select recommended matching attractions for a user *and also* perform default selections of reservation times to complete an itinerary, if the user consistently chooses the recommended attractions along with the "next available" option. (Pet., 54-57, 78-79; EX1003, ¶¶146-151.)

Had the Examiner considered the full scope of Waytena's teachings, it is clear "software that selects" should have been rejected as at least obvious over Waytena as outlined in the Petition (which arguments were, of course, never before the Examiner). (Pet., 54-57, 78-79.) Respectfully, contrary to the Board's statement that "Petitioner does not provide adequate reasoning why one would modify Waytena as proposed," the Petition does in fact lay out substantial reasoning. (Paper 7, p. 57; POR, 33.) For example, the Petition laid out that it would have been obvious to simply present Waytena's list of recommended matching attractions **with** proposed reservation times (such as shown in red below) for each recommended attraction:

Selected Matching Attractions and Times

ATTRACTIONS:

DRAGON MOUNTAIN	12:15p
PYRAMID DROP	1:00p
WATER FLUME	1:30p
THE RAT	2:00p
TIME TRAVEL	2:45p
...	

INFO

RESERVE

CHANGE PERSONAL DATA

(Waytena, Fig. 5B (as modified and annotated); Pet., 54-57; EX1003, ¶¶146-151.)

This would give the party the option to simply accept an entire list of attractions **and** proposed times (*e.g.*, an itinerary), without having to schedule reservations for each individual attraction (*e.g.*, if the party wanted to use the entire recommended list). (*Id.*) Petitioner’s expert, Dr. Houh, further detailed why a POSITA would have been motivated to make such modifications, and how the modified system would work. (EX1003, ¶¶146-151.) For example, among other rationales, Dr. Houh explained:

- “[I]t would have been obvious over Waytena to simply present this list with proposed reservation times for each recommended (i.e. computer-selected) attraction, without party involvement.” (*Id.*, ¶146.)
- “This gives the party the option to simply accept an entire list of attractions and proposed times (*e.g.*, an itinerary), without having to schedule

reservations for each individual attraction (e.g., if the user wanted to use the entire recommended list).” (*Id.*)

- “[R]ather than waiting for a party to select ‘next available time’ for each selected or recommended attraction, the PCD could use “next available time” as a default and make such selections itself. Thus, these existing processes in Waytena could be used to present a list of selected, matching attractions and proposed times to visit each attraction for the party to confirm all at once, without any party involvement.” (*Id.*, ¶148.)
- “[I]t would have been obvious to simplify what is now a multistep process in Waytena, where a party can individually choose and reserve among computer-selected (or recommended) attractions, into an easy one-step process that gives the party the same resulting schedule of reserved attractions.” (*Id.*, ¶¶149, 151.)

It is not difficult to imagine a user would not wish to: i) scroll through lists of attractions, ii) make individual selection after individual selection of attractions, iii) personally review and select available times over and over, and iv) confirm reservation times over and over to eventually arrive at a final itinerary of events. (Pet., 54-57; EX1003, ¶¶146-151; Waytena, 14:12-17:55, Figs. 5A-5E.) A POSITA would have known Waytena’s system is readily capable of providing an obvious alternative to this burdensome approach, as outlined above, would have been motivated to modify Waytena to do so. (EX1003, ¶¶146-151.)

PO’s arguments Waytena could not be modified as suggested are rooted in the notion that in Waytena a user *must* pick the attractions they want. But this relates to

whether Waytena *anticipates* the limitation—not whether it renders it obvious. PO ignores the precise obviousness rationale presented that, in fact, a user may not wish to be forced to make every selection herself and could instead accept the recommended attractions and next available times Waytena’s computer system is capable of providing. (POR, 38-42.) PO’s other arguments, such as the sequence of attractions as compared to what a user may prefer (*id.*, 38-39, 41), potential time conflicts between reservations and concerns about system delays (*id.*, 39), and that users may not commit to reservations they did not themselves manually select (*id.*), are either irrelevant to the limitations in the claims or are something Waytena’s computer system (not the user) already resolves on its own. (Waytena, 12:25-29, 14:12-17:55, 23:3-24.) For example, Waytena’s system already takes into account existing reservations and time to get from one attraction to another when suggesting reservation times. (*Id.*; EX1003, ¶148.) And it already holds pending reservations until confirmed. (Waytena, 15:47-17:65, 20:41-47 (“While the patron is deciding whether to confirm or reject the proposed reservation, attraction computer 101 in one embodiment holds the proposed reservation time in the virtual queue 210, so that if other patrons request reservations at the same attraction, they will be not be given proposed reservation times that conflict with the first patron's proposed reservation time.”).)

B. Waytena and Herz Are Analogous Art

Petitioner disagrees with PO that “Herz is not analogous art because it is not in the same field of endeavor as the ’983 Patent nor is it reasonably pertinent to the problem faced by the inventor.” (POR, 43-46.)

A prior art reference qualifies as analogous art if (1) “the art is from the same field of endeavor [as the claimed invention], regardless of the problem addressed” or (2) if the reference is “reasonably pertinent to the particular problem with which the inventor is involved.” *Netflix, Inc. v. DivX, LLC*, 80 F.4th 1352, 1358 (Fed. Cir. 2023) (quoting *Airbus S.A.S. v. Firepass Corp.*, 941 F.3d 1374, 1379 (Fed. Cir. 2019)). Herz qualifies under both prongs.

The field of endeavor is determined “by reference to explanations of the invention’s subject matter in the patent application, including the embodiments, function, and structure of the claimed invention.” *Id.* at 1359 (citing *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004)). “The field of endeavor is ‘not limited to the specific point of novelty, the narrowest possible conception of the field, or the particular focus within a given field.’” *Id.* (quoting *Unwired Planet, LLC v. Google Inc.*, 841 F.3d 995, 1001 (Fed. Cir. 2016)).

PO’s arguments Herz is not from the same field of endeavor are premised on an unjustifiably narrow interpretation of the field. PO suggests the field should be limited to theme parks as discussed in Waytena (POR, 44-45), or least to scheduling of events that have a physical location. (*Id.*) This is not the case. PO’s expert, Dr.

Gonsalves, admitted the '983 is more generally about “scheduling of resources” and “software for scheduling applications.” (EX1009, 29:16-30:3, 34:17-35:12, 54:14-56:11.) He further admitted work in areas such as scheduling algorithms for air traffic control, scheduling operation of satellites, and integrated circuit resource scheduling are relevant. (*Id.*) Moreover, the '983 is clear it is not limited to just one type of attraction, but instead broadly relates to scheduling almost any type of attraction. (*See, e.g.*, '983, Claim 12 (noting attractions can include, among others, a show, movie, presentation, attraction within a district, or attraction within a country).) Taking this into account, Herz is relevant, and in the same field of endeavor, as it is also directed to software for scheduling applications. In fact, Herz is particularly close to the field of endeavor of the '983, as is it not just directed to scheduling resources in general, but rather to scheduling resources (including shows and movies as claimed by the '983) in a manner that matches information about a party with data about attractions—a key feature of the alleged invention. (Pet., 6-7, 69-72; Herz, Abstract, 4:18-5:22, 23:14-16.)

Even if Herz and the '983 were not in the same field of endeavor (they are), Herz still qualifies as analogous art because Herz is at least reasonably pertinent to the particular problem with which the '983 is involved. “A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor’s endeavor, it is one which, because of the matter with which it deals, logically would

have commended itself to an inventor’s attention in considering his problem.” *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992). Whether a reference is reasonably pertinent “ultimately rests on the extent to which the reference of interest and the claimed invention relate to a similar problem or purpose.” *Donner Tech., LLC v. Pro Stage Gear, LLC*, 979 F.3d 1353, 1359 (Fed. Cir. 2020). “The reality of the circumstances” or “common sense” must be considered when making such a determination. *In re Asset Guard Products, Inc.*, 2022 WL 1097363, *4 (Fed. Cir. Apr. 13, 2022).

The ’983 alleges its invention seeks, for example, to satisfy the need for a way to provide users with an “appropriate itinerary” taking into account their “interests and tastes.” (’983, 5:50-53.) Herz is similarly concerned with assisting parties to identify and schedule desirable attractions, such as movies—one of the specific types of attractions identified and claimed in the ’983. (Petition, 6-7, 69-73.) Thus, common sense dictates Herz logically would have commended itself to a POSITA considering the problems the ’983 seeks to address. This remains true even if Herz primarily contemplates digital content delivery at a physical location (*e.g.*, where the customer’s CATV module is located and where the customer must be present to view scheduled movies and shows) rather than traveling between physical locations. (POR, 44-45.) *See, e.g., Innovention Toys, LLC v. MGA Entertainment, Inc.*, 2011 WL 941563, *6–*8 (Fed. Cir. 2011) (finding “Laser Chess” articles describing

computer game were analogous art to an inventor facing the problem of a new physical, chess-like, laser-based strategy game). Herz's scheduling system deals with some of the same problems as the '983's scheduling system—attribution start times, attraction durations, and scheduling factors. (*See, e.g.*, '983, Claim 25; Pet., 69-73; Herz, 4:18-5:21, 6:53-7:55, 22:7-23:18, 24:53-25:30, Figs. 1-3.)

Thus, at the very least, Herz's teachings with respect to scheduling content matching a customer's profile, taking into account start times, durations, and scheduling factors for shows, movies, and other programs, are relevant to problem the '983 inventor was trying to solve.¹⁰

C. Dependent Claim 7

PO's arguments that Waytena (alone or as modified by Herz) in view of Sim does not render claim 7 obvious (POR, 46-47) are unpersuasive. *See supra* Section III.D (Claim 7). Again, Sim's system allows for "priority" and "privileges" for guests paying additional fees or arriving at certain times. (*Id.*) The combination of references would provide the same itinerary selection of events as taught by Waytena, or Waytena in view of Herz, but with the selection now taking into account

¹⁰ That Herz is relevant to the '983 is reinforced by the fact that Herz would be located in any search using terms from the patent claims, including software, match, show, movie, and schedule.

Sim’s party privilege or paid-class status, so that such parties are given priority for popular (or desirable) attractions. (Pet., 73-74.)

D. Dependent Claim 11

PO’s arguments that Waytena (alone or as modified by Herz) in view of Doi does not render claim 11 obvious are unpersuasive. (POR, 47-49) First, Waytena (alone or in combination with Herz) discloses software that selects attractions, contrary to PO’s assertion. (POR, 48; Pet., 54-57, 69-73.) And Doi discloses selecting “replacement rides” when there has been an interruption, such as one ride being overcrowded. (Pet. 74-76.) It would have been obvious to apply Doi’s teachings of selecting “replacement rides” when there has been an interruption to Waytena, such that Waytena “selects said second set of attractions as a **replacement** for said remaining portion” and “said second set of attractions substantially excludes said already visited portion, whereby said interruption is overcome.” (Pet., 75-76, EX1003, ¶¶191-92.)

E. Dependent Claim 22

PO’s arguments with respect to claim 22 are, again, premised on the improper assertion that Waytena and Doi rely on users to select attractions. (POR, 49-50.) As such, they must fail.

V. Conclusion

For the reasons above and in the Petition, the Board should cancel the challenged claims as unpatentable.

Dated: October 7, 2024

Respectfully submitted,

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Certificate of Word Count

The undersigned certifies, in accordance with 37 C.F.R. § 42.24(d), that the foregoing **PETITIONER’S REPLY TO PATENT OWNER’S RESPONSE** complies with the type-volume limitation of 5,600 words, comprising 5,560 words, excluding the parts exempted by § 42.24(c).

Dated: October 7, 2024

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Certificate of Service

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