

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.

PTAB Case No. IPR2024-00029

U.S. Patent No. 7,212,983 B2

PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY

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I. INTRODUCTION

This Sur-reply addresses the key arguments presented in Petitioner's Reply ("Reply"), focusing on the critical distinctions between the claims of U.S. Patent No. 7,212,983 (EX1001 or "the '983 Patent") and the cited prior art. The primary issues involve the interpretation of claim limitations, the applicability of the prior art references, and the feasibility of Petitioner's proposed combinations.

First, this Sur-reply analyzes the claim limitation "software that selects," which requires the software to autonomously select attractions and explicitly excludes manual selection by the user in generating an itinerary. Petitioner's reliance on Waytena (EX1007), Sim (EX1005), and Doi (EX1006) fails to demonstrate that these systems meet this requirement. Each of these systems relies on user input to create an itinerary, distinguishing them from the automated itinerary generation system disclosed and claimed in the '983 Patent.

Second, the Sur-reply examines Herz (EX1008) as prior art. Petitioner asserts that Herz operates in the same field of endeavor as the '983 Patent and is reasonably pertinent to the problems that it addresses. However, Herz deals exclusively with scheduling digital television programs, a domain unrelated to managing physical attractions and itineraries in real-world environments. This distinction makes Herz irrelevant to the scheduling challenges central to the '983 Patent.

Finally, this Sur-reply addresses Petitioner's proposed combinations of prior art references, highlighting their technical shortcomings and the lack of reasonable motivation to combine these systems in the manner suggested. The analysis underscores the differences between user-driven systems like Waytena and Sim and the autonomous software selection disclosed in the '983 Patent.

II. CLAIM CONSTRUCTION

A. "SOFTWARE THAT SELECTS"

Petitioner argues that once the software "selects" the attractions, the "software that selects" requirement is met, and any user confirmations or reservations afterward do not alter the fact that the software made the selection. Reply, 3-4. Petitioner then concludes that "software that selects" does not "exclude a contemporaneous or further manual confirmation or selection," because "[w]hether 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." Reply, 2. Petitioner's arguments intentionally obscure concepts and leave logical gaps.

First, Petitioner incorrectly implies that filtering attractions satisfies the claim limitation of "software that selects." However, software that autonomously selects attractions to create an itinerary and presents it to a user, as disclosed in the '983 Patent, is fundamentally different from software that merely assists a user in

filtering through attractions and presenting those filtered options. Gonsalves

Declaration (EX2009, “Gonsalves Decl.”), ¶¶103-105. In the ’983 Patent, the user can follow the itinerary and complete their visit without deciding on each subsequent destination because the software itself selects the attractions, eliminating the need for any further decision-making. Gonsalves Decl., ¶78. In contrast, systems like Waytena require users to manually choose which attractions to add to their itinerary and in what sequence. Gonsalves Decl., ¶104. Simply labeling the filtering action as “software that selects” does not change the fundamental nature of user dependency, nor does calling the filtered attractions an “itinerary” eliminate the additional choices that are required by the user to create a viable plan.

In prior art systems, the user is the driving force behind itinerary creation. For example, in Waytena, the system filters and presents options, but the user must manually select attractions to form an itinerary. Paper 9, Patent Owner Response (POR), 38. Similarly, Doi filters recommendations based on crowd conditions, yet users must choose from these recommendations for the process to proceed. Gonsalves Decl., ¶¶103-104. In Sim, users must actively select or prioritize attractions to join a queue; without such input, no itinerary generation or queue registration occurs. Gonsalves Decl., ¶99. If the user takes no action, the system

does *not* generate an itinerary, making all these prior art systems fundamentally dependent on user interaction and user feedback. Gonsalves Decl., ¶¶59-60.

By contrast, the '983 Patent discloses a system where the software itself selects attractions and generates a customized itinerary tailored to party preferences, eliminating the need for any user action. POR, 11-12. This distinction is pivotal: prior art systems only serve as tools to assist users in manually constructing itineraries, whereas the '983 Patent provides a fully automated solution. In the '983 Patent, a complete itinerary is generated, and the user can proceed according to that itinerary without any further action. In the prior art, if the user takes no further action, there will be no itinerary to follow. The prosecution history reinforces this difference, as the Applicants amended the claims to require that the software autonomously select attractions, excluding interpretations that rely on user-driven itinerary creation. Gonsalves Decl., ¶76.

Second, Petitioner incorrectly equates “software selects attractions” with “software selects attractions to provide an itinerary to a party,” asserting that the “software that selects” limitation does not restrict what a user may do with the selected attractions. Reply, 3. This interpretation is flawed and improperly expands the scope of claim 1 in an effort to support Petitioner’s obviousness argument. While claim 1 recites that the system “comprises” a computer having software that

selects a second set of attractions, this does not mean that further manual selection of attractions for the itinerary is part of claim language.¹ The Federal Circuit has held that the term “comprising” does not negate or alter claim limitations, holding that “[c]omprising” is not a weasel word with which to abrogate claim limitations.” *Spectrum Int’l, Inc. v. Sterilite Corp.*, 164 F.3d 1372, 1380 (Fed. Cir. 1998). Since the claim recites a “system for providing an itinerary to a party, said itinerary comprising a second set of attractions selected from a first set of attractions,” a user cannot intervene in the software’s selection to affect the itinerary. *See* EX1001, Claim 1. Any intervention *after* the complete itinerary is generated is irrelevant to the claim language.

Third, Petitioner suggests that a user confirming the software’s selection is equivalent to making reservations for attractions already included in their itinerary. Reply, 3. However, a user confirming or selecting software-selected attractions to create an itinerary is fundamentally different from making reservations for attractions already presented in the itinerary. The ’983 Patent “clearly and unambiguously disclaimed or disavowed an interpretation of the claims

¹ While the ’983 Patent does not preclude further action on the itinerary, this further action is irrelevant to the claim because in the claims of the ’983 Patent, a complete, automated itinerary has already been created.

encompassing manual selection of attractions to include in an itinerary,” POR, 9-11, thereby explicitly rejecting the former scenario. However, whether the user later makes a reservation or decides to forfeit attractions already in her itinerary is compatible with the ’983 Patent, as in the latter scenario. Gonsalves Decl., ¶83.

Petitioner asserts, “[w]hile 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.” Reply, 4. This assertion is entirely misleading. Patent Owner’s (PO’s) position has consistently been that “software that selects” excludes manual selection of attractions to provide an itinerary to a party; the prior art here does not provide an itinerary to the party without user interaction. POR, 10-11.

During prosecution, the Applicants cited Mahoney and Kanemitsu as prior art that allowed users to manually select attractions. POR, 9. Mahoney disclosed terminals that visitors could use to make and edit reservations, while Kanemitsu enabled users to select destinations to generate itineraries based on their preferences. *Id.* Both references—like the prior art asserted here—filtered attraction choices using user inputs but ultimately relied on manual selection. *Id.* A

primary objective of the '983 Patent, however, was to eliminate the reliance on manual selection by users to create itineraries. POR, 9-10. The Examiner rejected Claims 1 and 3 over Waytena, which disclosed presenting a list of filtered attractions for users to manually select and request reservations. *Id.*, 10. Following an Examiner Interview, the Applicant authorized an Examiner's Amendment to narrow the claims by replacing "software operable to select" with "software that selects," disclaiming manual selection and requiring attractions to be selected by software. *Id.* This amendment led to the application's allowance over Waytena and other prior art references disclosing manual selection of attractions. *Id.* It is unreasonable to suggest that the Applicant intended to include the very manual selection process that they sought to avoid or that the Examiner would have allowed the claims without the amendment to exclude manual selection. The prosecution history leaves no doubt that "software that selects" precludes manual selection during creation of the itinerary. *Id.*, 10-11.

In conclusion, each of independent Claims 1 and 3 recites "said itinerary comprising a second set of attractions selected from a first set of attractions . . . said computer having software that selects said second set of attractions from said first set of attractions," which excludes manual selection of attractions to include in an itinerary. POR, 8.

B. “SUBSTANTIALLY MATCHES”

Petitioner argues that “[t]here 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.” Reply, 4. However, in the ’983 Patent, the Applicants recognized the invention’s flexibility for function designers and facility operators in defining and characterizing matches, including various party profile elements and attraction acceptance factors. POR, 14-15. The specification describes many implementation options, and a PHOSITA would understand the claims when read alongside the specification. For example, among many alternatives disclosed by the ’983 Patent, one method for determining whether there is a substantial match is a utility function. Gonsalves Decl., ¶91. “A convenient basis for constructing a utility function is the one-to-ten scale. A result of ten represents an attraction that makes the *best possible* (or best available) match to a party’s profile, *just a few steps away*.” EX1001, 28:31-34 (emphasis added). If the best possible match is still a few steps away, and it is the best substantial match, then, when interpreted in light of the specification, a PHOSITA would understand “substantially matches” does not imply an exact match. Gonsalves Decl., ¶89.

III. GROUNDS BASED ON SIM

A. THE SIM-DOI COMBINATION DOES NOT TEACH “SOFTWARE THAT SELECTS”

Petitioner argues that “whether a user later manually makes reservations for attractions selected by a computer and presented in the itinerary is irrelevant,” because “the claims do not prohibit users from manually confirming or making reservations for attractions selected by the software.” Reply, 6. While PO agrees with this conclusion, it does not support Petitioner’s argument regarding Sim in view of Doi. *Id.*

Petitioner contends that “Doi’s system, on its own, selects attractions and recommends them to a customer.” *Id.* However, Doi teaches manual user selection rather than software selection, and merely filters available attractions in real-time based on crowd conditions. Gonsalves Decl., ¶¶103-104. This reliance on manual selection is incompatible with the itinerary-generation system disclosed in the ’983 Patent. POR, 18. For example, in Doi, users must decide to remain in their current queue or choose a new attraction from filtered recommendations. *Id.* Petitioner claims that “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.” Reply, 7. Petitioner’s claim is simply untrue. Doi’s

system reacts in real-time, matching users to attractions based on general criteria, such as age, to manage flow rather than proactively planning an itinerary. POR, 18. Doi's reliance on real-time crowd data and single suggestions prevents it from making future-oriented recommendations, and it fails to meet the requirement for "software that selects" attractions for a scheduled, pre-visit itinerary. *Id.*

Petitioner also argues that Sim discloses "the queue manager computer selects the rides that will actually be included in the itinerary," Reply, 5-6 n.5, echoing the Petition's statement that "[t]he queue manager (QM) . . . *accepts ride preference requests from guests* and collects information about the guest's location." Petition 18 (citing Sim, 35:21-30, emphasis added). As PO has stated, Sim teaches that "the user will be required to enter manually the required rides," to register for attraction queue. POR, 16 (citing Sim, 15:29-30, 17:22-27). Petitioner further asserts that "Sim's queue manager can, on its own, select attractions for modified itineraries when re-allocation is necessary[.]" Reply, 5-6 n.5. However, Sim describes re-allocation as a process allowing late-arriving users to bypass parts of the virtual queue, adjusting sequences in specific situations like early attraction closures. POR, 17-18. Even with these adjustments, Sim does not suggest that the controlling computer would automatically select different attractions for users. *Id.*

Petitioner asserts “PO is arguing the references individually and misconstruing the combination of Sim and Doi.” Reply, 8. However, neither Sim nor Doi discloses or renders obvious the claim limitation “software that selects,” as both require users to manually select attractions for an itinerary. Absent user selection of an attraction, Sim’s Queue Manager does not insert the user’s prompter into the queue sequence for that attraction. Gonsalves Decl., ¶59. Without this, Sim’s access control gates deny user access to the attraction. *see* EX1003, Houh Decl., ¶¶96, 104. Similarly, if Doi’s recommendations are not accepted by a user, those attractions are not added to Sim’s itinerary, and Sim’s access gates refuse access to those attractions as well. Gonsalves Decl., ¶60. Simply put, in Sim and Doi, if the user does nothing, there will be no itinerary to follow. That is fundamentally different from the invention described and claimed in the ’983 Patent, where any user action (such as changing or adding to an already-generated itinerary) is irrelevant to the claim language.

Thus, there is no motivation for a PHOSITA to combine Sim and Doi in the manner proposed by Petitioner to achieve the claim limitation “software that selects.”² Gonsalves Decl., ¶106.

B. SIM IN VIEW OF DOI DOES NOT TEACH CLAIM LIMITATION

“SUBSTANTIALLY MATCHES”

Petitioner calls PO’s “substantially matches” argument “confusing and irrelevant” without substantively addressing it. Petitioner argues that “Doi recommends attractions to users when information about the user . . . matches data about an attraction . . .” and that “Doi’s navigation computer generates recommended itinerary events for users,” concluding that Doi discloses the “substantially matches” limitation. Reply, 9-10. However, Petitioner overlooks other limitations in claims 1 and 3, which recite “[a] system for *providing an itinerary to a party*” and “whereby said itinerary is customized *for said party*.” EX1001, 31. “Customized for” and “providing an itinerary to” indicate that the software selects the itinerary for the party. Gonsalves Decl., ¶¶117-118. In contrast,

² Sim does not provide filtering of the attractions offered to a user for the purpose of making selection more convenient. Gonsalves Decl., ¶59. However, Doi’s recommendations and invitations do provide such filtering. *Id.* at ¶60. So, for the purpose of making manual attraction selection more convenient for users, a PHOSITA could be motivated to combine the teachings of Sim and Doi, but the result is strictly cumulative to Waytena, which was already considered. POR, 18.

Doi discloses *users* being selected that *match exactly* the *attraction* data, rather than *attractions* that *substantially match* the *party* information. *Id.*, ¶¶115-116.

C. CLAIM 5

Petitioner argues that “Doi’s system clearly uses attributes such as age when selecting attractions because they are popular for that particular age.” Reply, 10. However, as explained above, Doi’s system filters available options for users to ensure that they meet the usage limitations of attractions but still requires user confirmation before navigating them to attractions, with attributes primarily used at access points rather than for itinerary planning. POR, 22.

D. CLAIM 7

Petitioner’s attempt to incorporate Sim’s privileges into Doi’s itinerary selection is flawed. Reply, 10-11. Sim’s privileges for paid guests are limited to access to its virtual queue system and do not influence the selection of specific attractions. POR, 23. Sim’s process merely reserves attractions for certain users closer in time than for others, whose selections may be spread out, but it does not alter the attractions to be selected. *Id.* Sim provides no “data [that] distinguishes a portion of said first set of attractions as being more desirable with respect to the privilege,” nor any evidence that attraction selection differs based on priority. *Id.*

The assertion that the combination prioritizes popular attractions for privileged parties lacks support in either Sim or Doi.

E. CLAIM 8

Petitioner misinterprets Claim 8's requirements. While Sim discloses calculating times after a user selects an attraction, this does not satisfy the requirement of "data regarding the attraction." Claim 8 requires that the "scheduled time" is associated with and provided as data regarding the attraction itself, not computed reactively based on a user's choice. POR 24. Furthermore, Petitioner's assertion that PO improperly limits "scheduled time" to discretely scheduled times for events is misleading. PO does not impose such limitations but rather emphasizes that the claim requires "scheduled time" to be predefined and tied to the attraction. *Id.* Continuously available attractions, like those in Sim, lack such predefined times until a user's selection triggers computation. *Id.* Therefore, Petitioner's interpretation stretches the claim language beyond what is supported by the '983 Patent and fails to meet the requirement for "data regarding the attraction."

F. CLAIM 10

There is no evidence that Sim's system understands the relative positions of the attractions or the travel times between them, which is critical in the '983

Patent. Gonsalves Decl., ¶¶135-136. PO has explained that the '983 Patent also discloses that when the software selects attractions for a customized itinerary, it recognizes that slow groups have different speeds than fast groups and travel times vary on light and heavy attendance days. *See* EX1001, 17:46-18:4. Thus, a PHOSITA would not conclude that Sim teaches “time required between attractions.” Gonsalves Decl., ¶136.

G. CLAIM 11

Neither Sim nor Doi discloses or suggests the automatic selection of attractions required by the claims. *See supra* Sec. III.A. In Sim, all remaining attractions must have been manually selected by the user, while in Doi, the system only provides recommendations that the user may accept or decline. POR, 25-26. Neither system excludes already-visited attractions. Sim’s re-allocation due to interruptions (*e.g.*, ride failure) does not prevent revisiting the same ride once the issue is resolved, and Doi allows users to decline recommendations and reselect the attraction (*e.g.*, remaining in an attraction with a long line (A) instead of accepting the newly proposed attraction (D) as a replacement), regardless of prior visits. *Id.*; Gonsalves Decl., ¶¶137-140. Petitioner’s claim that Sim and Doi exclude already-visited attractions mischaracterizes their functionality, as neither system autonomously selects a new set of attractions that excludes previously visited ones.

H. CLAIM 13

Sim's system determines access solely in response to the portable module's serial number, which is not a part of the itinerary. Gonsalves Decl., ¶142. Sim explicitly states that the "portable module . . . has a receiver 70 for receiving 'identify yourself' signals from the gate units 2" and responds by transmitting "the portable module's serial number." Sim, 22:9-14. Sim discloses a Queue Database containing a list of prompters queued for each ride and a predetermined range of identification codes corresponding to the front of the queue sequence for each attraction, which are used solely to control guest access. *See* EX1003, Houh Decl., ¶104. Petitioner provides no evidence that Sim's device serial number is part of the itinerary, such as by demonstrating that the serial number is presented to the user when Sim's itinerary is displayed. *See* Petition, 31-32; Reply, 12-13.

In contrast, the '983 Patent explicitly associates itinerary components with user access. For example, the pass form 600 and its components—such as attraction name, event time, party size, and authentication code—are presented alongside the current attraction of the itinerary, establishing these elements as parts of the itinerary. Gonsalves Decl., ¶142. Thus, Sim fails to disclose the limitation "in response to at least a portion of said itinerary corresponding to said first attraction." EX1001, claim 13.

I. CLAIM 17

The '983 Patent teaches that “at least a portion of said itinerary” can be audibly announced, such as “the next event indicated on an itinerary form 400” being spoken in the party’s preferred language, '983 Patent, 30:62-67, which is distinct from the generic auditory indications (*e.g.*, tones, beeps, general voice alerts) described in Waytena or Sim. Gonsalves Decl., ¶¶146-147. A PHOSITA would recognize that these generic alerts, similar to a restaurant pager or a 1990s AOL “You’ve got mail!” announcement, do not convey specific itinerary details, as required by claim 17. *Id.*

J. CLAIMS 4, 18, 19-20, AND 22

Under the proper claim construction, “software that selects” excludes manual selection of the second set of attractions to include in an itinerary. POR, 8-13. This limitation precludes reliance on user-driven processes. *Id.* Petitioner’s misinterpretation is evident in its argument concerning claim 22, where it asserts that “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.” Reply, 14. By acknowledging that Doi’s system adjusts prices to influence user selection, Petitioner concedes that Doi provides recommendations and relies on the user to make the final selection of attractions.

Doi's system thus fails to meet the "software that selects" limitation since it does not autonomously select the set of attractions included in an itinerary without user input.

K. CLAIM 21

Petitioner's incorporation of Waytena's reservation system into Sim is unnecessary, redundant, and unsupported, as Sim already addresses the same functionalities through its Queue Manager, which independently manages reservations and adjusts for operating conditions. Gonsalves Decl., ¶59.

L. CLAIM 23

Petitioner construes "in conjunction" to mean "one after the other, or near in time." Reply, 15. However, Sim's system fundamentally cannot integrate these messages with the itinerary display. Gonsalves Decl., ¶¶165-169. Sim's prompter operates in two modes: "Normal Mode," which displays two lines for the next and subsequent attractions, and "Pager Mode," which transmits arbitrary text messages. *Id.* When "Pager Mode" is activated, it overwrites the itinerary display entirely, erasing the next and subsequent attractions and requiring up to three minutes to refresh back to the itinerary. *Id.* This interruption prevents the messages from being presented "in conjunction" with the itinerary as required by claim 23. *Id.*

While Sim can transmit zone-specific or promotional messages, these are not integrated with or displayed alongside the itinerary. *Id.* Instead, they replace the itinerary on the prompter, precluding simultaneous or complementary presentation. *Id.* Thus, Sim’s system fails to support the claim limitation requiring the second set of messages to be provided “in conjunction” with the itinerary.

IV. GROUNDS BASED ON WAYTENA

A. WAYTENA ALONE DOES NOT RENDER CLAIMS 1, 3-5, 8, 10, 12-14, 16-21, AND 23-25 OBVIOUS

As PO has explained, a PHOSITA would not view Petitioner’s proposed reconfiguration as achieving Waytena’s intended purpose or producing the asserted results. POR, 37.

While Petitioner accuses PO of “ignor[ing] the precise obviousness rationale,” it is Petitioner who disregards the language of Waytena, attempting to substitute its own interpretation. Reply, 20. Petitioner contends that Waytena’s filtering function, based on user-indicated categories and operating without user intervention, “would get the same attractions at the same time” as manual selection for an itinerary, effectively rendering the patron’s selection superfluous and functionally irrelevant to Waytena’s invention. Petition, 57. Petitioner argues that Waytena has the “ability to select recommended matching attractions for a user and

. . . to complete an itinerary, if the user *consistently* chooses the recommended attractions along with the ‘next available’ option.” Reply, 17 (emphasis added).

Both of Petitioner’s arguments fail.

Petitioner’s reconfiguration depends on a user not selecting a reservation time other than the default option, which ignores one of Waytena’s alleged advantages. *Id.* (“select recommended . . . attractions . . . and also perform default selections of reservation times”). Waytena aims to address the “inability of *patrons* to communicate their intention to attend particular attractions, and in effect, *request* a reservation for an attraction,” Waytena, 1:48-50, by “allow[ing] *patrons* to . . . make reservations for *certain ones of these* [attractions].” *Id.*, 2:31-35 (emphasis added). Waytena states, “[i]n summary, the present invention provides a system . . . to provide for *remote scheduling of reservations by patrons* for various attractions or services throughout a facility.” *Id.*, 25:17-21 (emphasis added).

Petitioner’s hypothetical “list with proposed reservation times” combined the “pageable list 541 of available attractions” and “pageable list 545 of previously-made reservations” depicted in Waytena Figure 5B. POR, 38. Petitioner asserts that this approach would allow a party 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).” Reply, 18-19. However, as Dr. Gonsalves explained, Petitioner’s proposed reconfiguration of Waytena’s mechanisms to match their hypothetical user interface would not have been obvious to a PHOSITA at the time of the invention. POR, 38-41. The proposed system neither achieves Waytena’s intended purpose nor produces the results asserted by Petitioner, and it cannot function as Petitioner contends based on Waytena’s teachings. *Id.*, 37-38. Dr. Gonsalves highlighted several problems with the reconfiguration, including loss of user intent and increased complexity, system strain and latency issues, undermining overbooking calculations, and unmanageable attraction lists. Gonsalves Decl., ¶¶210-214. Petitioner dismisses these issues by asserting they “are either irrelevant to the limitations in the claims or are something Waytena’s computer system (not the user) already resolves on its own.” Reply, 20. However, this argument is untenable.

Petitioner’s hypothetical interface proposes automatically presenting a list of attractions with pre-assigned reservation times, but this approach introduces significant technical and practical issues. Waytena’s original design relies on users manually selecting attractions to communicate their intent, aligning with its goals, whereas Petitioner’s reconfiguration removes user involvement and complicates operations by requiring constant recalculations of available times for other

attractions. Gonsalves Decl., ¶209. Displaying real-time reservation times for multiple attractions would overwhelm the system, as Waytena was designed to handle one reservation at a time; attempting to manage dozens or hundreds of simultaneous requests would exacerbate Waytena’s admitted latency and timeout issues. *Id.*, ¶212. Many attractions would likely display “WAITING FOR RESPONSE” more frequently and for extended durations, given the limitations of the communication protocols of the era. *Id.* This raises serious doubts about the feasibility of the proposed configuration. *Id.*

Assigning reservations without user input undermines Waytena’s overbooking calculations, which rely on users’ commitment to intentionally chosen reservations; this would lead to higher rates of unused bookings and invalidate Waytena’s optimization models. *Id.*, ¶213. Additionally, Petitioner’s interface lacks an effective way to prioritize or order attractions, particularly when filtering by broad categories like thrill rides or shows, resulting in unmanageable lists with no clear logic for selection. *Id.*, ¶214. These flaws demonstrate that Petitioner’s hypothetical interface fails to achieve Waytena’s intended functionality and introduces significant technical challenges. *Id.*, ¶¶212-214, 220.

B. WAYTENA AND HERZ ARE NOT ANALOGOUS ART

Petitioner’s assertion that Herz operates in the same field of endeavor as the ’983 Patent and Waytena is unsupported and overly broad. The Federal Circuit held that references focused on “human therapy, wellness, and physical training” were not in the same field of endeavor as a patent directed to “fire prevention/suppression,” based on the title, claims, and specification. *Airbus S.A.S. v. Firepass Corp.*, 941 F.3d 1374, 1380 (Fed. Cir. 2019). Similarly, the Court determined that a reference addressing image compression for camera memory was not reasonably pertinent to solving the problem of “facilitating trick play in streaming multimedia.” *Netflix, Inc. v. DivX, LLC*, 80 F.4th 1352, 1362 (Fed. Cir. 2023). These rulings support the conclusion that Herz is neither in the same field of endeavor as the ’983 Patent nor reasonably pertinent to its problem.

While the ’983 Patent and Waytena pertain to managing physical attractions and scheduling resources in theme park environments, Herz addresses a fundamentally different domain: scheduling television programs. POR, 44. The scheduling challenges in Herz are entirely digital and do not involve the management of constrained physical resources or user attendance, as in Waytena. POR, 44-45. Unlike systems that manage tangible, limited resources—such as those cited by Petitioner in air traffic control, satellite operations, and integrated

circuits—Herz faces no comparable constraints or contention management. The absence of such challenges places Herz outside the field of endeavor relevant to the '983 Patent.

Petitioner equates Herz's matching of user preferences with program data to the '983 Patent's management of physical attractions. Reply, 23. This comparison fails to recognize the significant differences in scope and application. Herz's domain of digital content delivery lacks the physicality and resource management inherent to theme park scheduling. POR, 44-45. The attractions managed by the '983 Patent and Waytena, such as rides and shows, are tangible and require real-world coordination, unlike Herz's digital programs. POR, 43-46. Petitioner's interpretation blurs critical distinctions between the domains and fails to establish that Herz belongs to the same field.

Petitioner's argument that Herz is reasonably pertinent to the problems addressed by the '983 Patent mischaracterizes both Herz's functionality and the objectives of the '983 Patent. The '983 Patent aims to create an "appropriate itinerary" for users at a physical facility, managing real-world attractions based on user preferences and facility constraints. EX1001, 5:50-53. By contrast, Herz focuses on scheduling TV programs delivered via cable systems, which involves no physical attractions, no itinerary creation, and no user movement. POR, 46.

Herz’s “virtual channel” concept—compositing program sources for viewers based on their preferences—has no analog to the scheduling of finite-capacity, physical attractions like rides or shows. Herz, 3:8-12.

Petitioner’s attempt to equate movies mentioned in the ’983 Patent as physical attractions with Herz’s TV programs is misplaced. The ’983 Patent describes movies as physical events requiring patrons to attend a theater, with specific durations and finite seating capacities. Gonsalves Decl., ¶247. Herz operates in a digital environment, managing time slots in a cable television system with no connection to the physicality of attractions or the challenges of constructing itineraries. POR, 46. Petitioner’s reliance on terms such as “movie” or “schedule” to argue for Herz’s relevance presupposes a misalignment of fields. *See* Reply, 23. A PHOSITA tasked with addressing the problems of scheduling physical attractions would reasonably search for terms such as “attraction,” “ride,” or “itinerary,” not “TV schedule” or similar terms tied to digital content delivery. Herz’s functionality is not pertinent to the specific problems addressed by the ’983 Patent.

Herz does not qualify as either part of the same field of endeavor as the ’983 Patent or Waytena, nor as reasonably pertinent to the problems they address. Herz’s focus on digital content scheduling fundamentally differs from the physical

attraction scheduling central to the '983 Patent, rendering it irrelevant to the claims. Petitioner's arguments fail to establish the necessary connection between Herz and the challenges of resource and itinerary management addressed in the '983 Patent.

C. CLAIM 7

Petitioner's claim that the combination of Waytena (alone or modified by Herz) and Sim renders claim 7 obvious is unsupported. Waytena does not disclose privileges distinguishing between attractions, focusing instead on estimating reservation reliability. EX1007, 20:51-55. Herz fails to address privileges, discussing only pay-per-view services, billing, and content delivery without influencing program selection. Gonsalves Decl., ¶270. Sim mentions privileges for premium-paying guests, but these affect only access *after* queue selection, with no mechanism to prioritize attractions based on payment. POR, 47. A PHOSITA would understand that Sim's privileges are unrelated to attraction selection and recognize no motivation to combine Herz with Waytena to achieve the claimed functionality. *Id.*

D. CLAIM 11

Petitioner's claim that Waytena (alone or modified by Herz) in view of Doi renders claim 11 obvious is flawed. Waytena does not select attractions or provide

a mechanism for replacing the “remaining portion” of an itinerary, addressing only interruptions at a single attraction. Waytena, 11:1-3. Herz is similarly inapplicable, lacking any functionality to modify a scheduled broadcast or replace missed programming, which continues uninterrupted. Gonsalves Decl., ¶273. While Doi recommends another individual ride due to overcrowding, it does not address replacing the entire remaining portion of an itinerary. POR, 48. Petitioner improperly conflates single-ride replacements with the claim requirement of replacing the entire remaining portion.

E. CLAIM 22

As discussed above, “software that selects” excludes manual selection of the second set of attractions to include in an itinerary. *See supra* Sec. II.A. Petitioner relies on Doi’s use of pricing incentives to manage the desirability of an attraction “to change the likelihood that attraction might be selected,” effectively admitting that it is the users—being price-sensitive—who make the final selection in conjunction with Doi’s system. Petition, 76; *see also* Reply, 14. No prior art of record demonstrates software capable of autonomously selecting attractions based on price sensitivity; only Doi’s system relies on user-driven selections influenced by pricing. Gonsalves Decl., ¶¶59, 60.

Without software to autonomously alter attraction desirability or determine the next attraction, and by leaving attraction choices to users, Doi fails to provide the features required to meet the limitations of claim 22. Similarly, Waytena relies entirely on user selection and lacks any mechanism for software-induced perturbation. Herz is irrelevant in this context, as it focuses solely on aligning programs with viewer preferences without need of altering attraction desirability or addressing directed demand.

V. CONCLUSION

For the reasons stated above, none of the Petitioner's grounds disclose all elements of any of the challenged claims of the '983 Patent.

Date: November 18, 2024

Respectfully submitted,

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LIST OF EXHIBITS

Exhibit No.	Descriptions
2001	Declaration of Dr. Gregory Gonsalves
2002	Detailed Comparison Table
2003	Canora <i>et al.</i> , Final Rejection
2004	Canora <i>et al.</i> , Appeal Rejection
2005	U.S. Patent No. 6,173,209 (“Laval”)
2006	U.S. Patent No. 5,502,806 (“Mahoney”)
2007	U.S. Patent No. 5,850,617 (“Libby”)
2008	U.S. Patent No. 5,940,803 (“Kanemitsu”)
2009	Declaration of Dr. Gregory Gonsalves, in support of Patent Owner’s Response to Petition
2010	Transcript of Technology Tutorial before the Honorable Carlos E. Mendoza, United States District Judge in the United States District Court for the Middle District of Florida, Case No.: 6:22-cv-2272-CEM-LHP.

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24, the undersigned certifies that the foregoing Patent Owner's Sur-reply contains less than 5,600 words excluding the table of contents, table of authorities, certificate of service, certificate of word count, and appendix of exhibits. Patent Owner has relied on the word count feature of the word processing software used to create this paper in making this certification.

By: /s/ Jay P. Kesan

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Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on the date indicated below, a complete and entire copy of this submission was served by email to Petitioner's counsel via the email addresses of record as provided in Petitioner's Service Information in the October 11, 2023 Petition submission.

Respectfully submitted,

Dated: November 18, 2024

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