

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HP INC., DELL TECHNOLOGIES INC., DELL INC.,
ASUSTEK COMPUTER INC., and ASUS GLOBAL PTE. LTD.,
Petitioner,

v.

LITL LLC,
Patent Owner

IPR2024-00404
Patent 8,624,844 B2

Before GARTH D. BAER, BRIAN D. RANGE, and DAVID COTTA,
Administrative Patent Judges.

BAER, *Administrative Patent Judge.*

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

I. INTRODUCTION

A. Background

HP Inc., Dell Technologies, Inc., Dell Inc., ASUSTeK Computer, Inc. and ASUS Global Pte. Ltd. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1, 3, 4, 7–10, 13, 14, 16–18, and 22 (the “challenged claims”) of U.S. Patent No. 8,624,844 B2 (Ex. 1001, “the ’844 patent”). Paper 6, 1 (“Pet.”). LiTL LLC (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”). With our authorization, Petitioner filed a Reply to Patent Owner’s Preliminary Response (Paper 10, “Pet. Reply”) and Patent Owner filed a Sur-reply (Paper 11, “PO Sur-reply”).

Under 35 U.S.C. § 314, an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Upon consideration of the Petition in view of the present record and for the reasons explained below, we determine that Petitioner has shown a reasonable likelihood of prevailing with respect to at least one of the challenged claims. Accordingly, we institute an *inter partes* review on all grounds set forth in the Petition.

B. Related Proceedings

The parties identify four district court cases that involve the ’844 patent: *LiTL LLC v. HP Inc.*, No. 1:23-cv-00120-RGA (D. Del.); *LiTL LLC v. Dell Technologies Inc. and Dell Inc.*, No. 1:23-cv-00121-RGA (D. Del.); *LiTL LLC v. ASUSTeK Computer Inc., et al.*, No. 1:23-cv-00122-RGA (D. Del.); and *LiTL LLC v. Lenovo (United States), Inc. et al.*, No. 1:20-cv-00689 (D. Del.). Pet. 70, Paper 8, 2. Patent Owner also identifies the following proceeding that challenged the ’844 patent: Reexamination Serial

No. 90/014,965, filed February 25, 2022 (“’844 Reexam”). *Id.* at 1. The ’844 patent was also the challenged patent in a previous *inter partes* review involving different prior art, *Lenovo (United States) Inc. v. LiTL LLC*, Case No. IPR2021-00822 (“IPR2021-00822”).

C. The ’844 Patent (Ex. 1001)

The ’844 patent is titled “Portable Computer with Multiple Display Configurations.” Ex. 1001, code (54). The computer system of the ’844 patent describes different profiles to customize the graphical user interface in different modes, including a laptop mode in which the portable computer has a conventional laptop appearance, with the display inclined at a viewing angle from the base (*id.* at 6:26–28); an easel mode in which the base of the computer and its display stand upright forming an inverted “V,” and the display and keyboard are on opposite sides (*id.* at 7:48–61); and a frame mode in which the display and base are at a similar orientation and angle as in easel mode, but with the base lying flat on a surface and the keyboard facing down (*id.* at 16:3–13).

Figure 17 of the ’844 patent, reproduced below, illustrates a portable computer in laptop mode. *Id.* at 5:13–15.

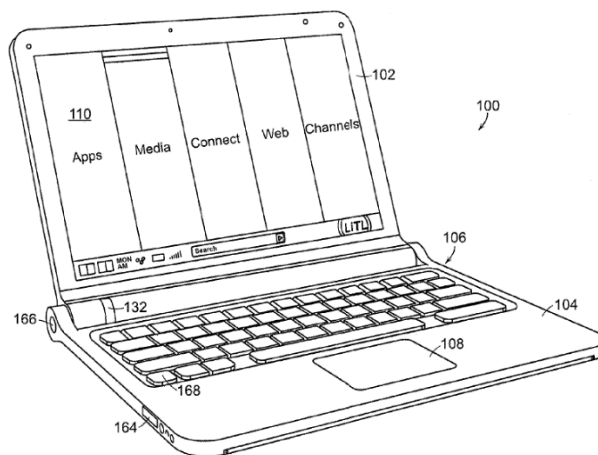


FIG. 17

Figure 4 of the '844 patent, reproduced below, illustrates the portable computer in easel mode. *Id.* at 4:47–48.

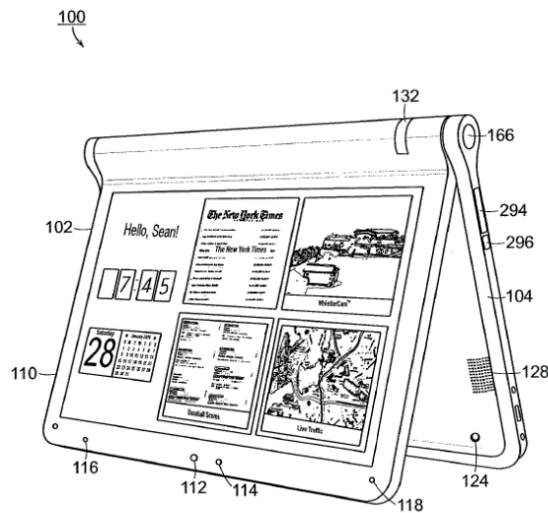


FIG. 4

Figure 26 of the '844 patent, reproduced below, illustrates the portable computer configured into frame mode. *Id.* at 5:35–37.

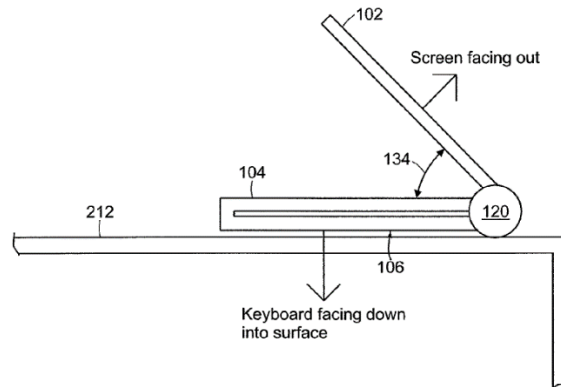


FIG. 26

The '844 patent explains that the display's orientation can change based on the different modes or in response to a user's input. *Id.* at 2:42–44.

A. Challenged Claims

Of the challenged claims, claims 1, 10, and 18 are independent. Claim 1 is exemplary of the claimed subject matter and reads as follows:

1. A portable computer configurable between a plurality of display modes including a laptop mode and an easel mode wherein transitions between the plurality of display modes allows an operator to interact with a single display screen in each of the plurality of display modes, the portable computer comprising:

a base including a keyboard;

a main display component rotatably coupled to the base such that the main display component and the base are rotatable with respect to one another about a longitudinal axis running along an interface between the main display component and the base to transition between at least the laptop mode and the easel mode, the main display component including the single display screen, wherein the transition between the laptop mode and the easel mode allows the operator to operate the portable computer while viewing the single display screen in each of the plurality of display modes, wherein

the laptop mode is configured to display to a user on the main display component a first content mode having a first content display orientation with the main display component oriented towards the user and the keyboard oriented to receive input from the user;

the easel mode is configured to display to the user on the main display component a second content mode having a second content display orientation with the main display component oriented towards the user and the keyboard oriented away from the user, wherein the first and second content display orientations are 180 degrees relative to each other, and wherein the portable computer is operable in the easel mode to enable the user to interact with displayed content without interacting with the keyboard; and

a navigation control disposed at least partially within the base and rotatable about the longitudinal axis, the navigation control configured to permit a user to control at least one of operating parameters of the portable computer and content displayed on the single display screen wherein the plurality of modes includes a frame in which the main display component is oriented towards the operator, the base contacts a substantially

horizontal surface, and the keyboard faces the substantially horizontal surface.

Ex. 1001, 17:9–51.

D. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability. Pet. 2.

Claim(s) Challenged	35 U.S.C. § ¹	References/Basis
1, 3, 4, 7–10, 13, 14, 16, 18, 22	103	Lane ² , Pogue ³
1, 3, 4, 7–10, 13, 14, 16, 18, 22	103	Lane, Pogue, Hotelling ⁴
17	103	Lane, Pogue, Segawa ⁵
1, 3, 4, 7–10, 13, 14, 16, 18, 22	103	Lane, Pogue, MIT ⁶
1, 3, 4, 7–10, 13, 14, 16, 18, 22	103	Lane, Pogue, MIT, Hotelling
17	103	Lane, Pogue, MIT, Segawa

Petitioner submits a declaration from Dr. Andrew Wolfe. Ex. 1002.

¹ The Leahy-Smith America Invents Act (“AIA”) amended 35 U.S.C. § 103. See Pub. L. No. 112-29, 125 Stat. 284, 285–88 (2011). As the application that issued as the ’844 patent was filed before the effective date of the relevant amendments, the pre-AIA version of § 103 applies.

² Pub. No. WO 95/24007, Pub. Sept. 8, 1995 (Ex. 1006, “Lane”).

³ Windows XP Home Edition: The Missing Manual (2d ed.) (David Pogue, Pogue Press, LLC & O’Reilly Media, Inc. 2004) (Ex. 1007, “Pogue”).

⁴ U.S. 2006/0026535, Pub. Feb. 2, 2006 (Ex. 1020, “Hotelling”).

⁵ U.S. 2006/0183512 A1, Pub. Aug. 17, 2006 (Ex. 1012, “Segawa”).

⁶ Ricciuti, *The \$100 Laptop Moves Closer to Reality*, C|Net, publ. Sept. 28, 2005 (Ex. 1010, “MIT”).

II. DISCUSSION

A. *Discretion under 35 U.S.C. § 325(d)*

Patent Owner contends we should deny institution under 35 U.S.C. § 325(d) “because ‘the same or substantially the same prior art or arguments previously were presented to the Office.’” Prelim. Resp. 9. Specifically, Patent Owner explains, the Office considered both Lane and Pogue during the ’844 Reexam and ultimately confirmed the patentability. *See* Prelim. Resp. 16–26. For the reasons given below, we are not persuaded to exercise our discretion to deny the Petition based on § 325(d).

In evaluating arguments under § 325(d), we use a two-part framework: (1) whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office; and (2) if either condition of the first part of the framework is satisfied, whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims. *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential).

Although Petitioner does not dispute that this case satisfies the first part of the *Advanced Bionics* framework, Petitioner asserts that we should not deny institution because it has demonstrated that the Office erred in allowing the claims. Pet. 68, Pet. Reply 2–5.

We agree with Petitioner that it has shown under part two of the *Advanced Bionics* framework that the Office materially erred when it allowed the challenged claims. As Petitioner explains, during the ’844 Reexam, “the examiner rejected the independent claims by mapping the ‘first content mode’ and ‘second content mode’ limitations of claim 10 to [a

different reference's] display of an application, such as a media player software, handwriting recognition software, and gaming software.” Pet. 68 (citing Ex. 1005, 128–29). However, the Examiner withdrew the rejection and confirmed patentability after Patent Owner successfully argued that “‘displaying a content mode’ requires the display of a visual representation of a ‘higher level construct’ that is distinct from a group of applications or other content.” Pet. 69 (citing Ex. 1005, 94–100); *see* Ex. 1005, 6–7 (Examiner noting the prior art’s failure to teach content-mode limitations).

We agree with Petitioner that the Examiner erred because “the examiner should have recognized that these limitations read on the Windows XP desktop and folder icons as disclosed in Pogue.” Pet. Reply. 2. Patent Owner does not substantively challenge whether the content-mode limitations read on Pogue’s display of a desktop with the My Documents and My Pictures. *See* Prelim. Resp. 21–25, PO Sur-reply 3–5. Instead, Patent Owner merely asserts that “the Examiner was well-aware of Lenovo’s allegation that Pogue disclosed the claimed content modes,” but “did not believe that a rejection over Lane and Pogue was proper.” Prelim. Resp. 21–22; *See* Prelim. Sur-reply 3. Conspicuously absent in Patent Owner’s briefing is any explanation why a rejection over Lane and Pogue would have been improper. In these circumstances, we agree with Petitioner that the Examiner materially erred, either by failing to consider Pogue’s disclosures relative to the claimed content modes or by considering Pogue, but failing to recognize that it teaches the claimed content modes. For these reasons, we decline to exercise our discretion to deny the Petition based on § 325(d).

B. Claim Construction

In an *inter partes* review proceeding, we construe patent claims using the same standard used in a civil action under 35 U.S.C. § 282(b), including construing the claim in accordance with the ordinary and customary meaning of the claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. 37 C.F.R. § 42.100(b).

1. “frame mode”

Petitioner proposes we construe “frame mode” the same as we did in IPR2021-00822 as “having the keyboard face down on a surface with the screen face up, and the base and display components forming a non-zero angle.” Pet. 8–9. Patent Owner does not dispute Petitioner’s construction in its Preliminary Response. On the current record, we agree with and adopt Petitioner’s proposed construction.

2. “content mode”

Petitioner proposes we construe “content mode” consistent with Patent Owner’s construction during the ’844 Reexam, where Patent Owner “argued for and received a construction of [‘Content Mode’] as meaning ‘displaying some information that represents a higher-level construct into which content is grouped.’” *Id.* at 9 (citing Ex. 1005, 6). Further, “[t]his recitation is distinct from merely displaying individual things (e.g., applications) that may be grouped into a content mode.” *Id.* Patent Owner does not dispute Petitioner’s construction in its Preliminary Response. On the current record, we agree with and adopt Petitioner’s proposed construction.

3. “*display mode*”

Petitioner proposes we construe “display mode” as “the particular physical configuration of the portable computer.” *Id.* at 10 (quoting Ex. 1005, 3480). *Id.* Patent Owner does not dispute Petitioner’s construction in its Preliminary Response. On the current record, we agree with and adopt Petitioner’s proposed construction.

4. “*navigation control*”

Petitioner proposes we construe “navigation control” . . . broadly to include any conventional tool for navigating, including a touchscreen” because that construction is consistent with the ’844 patent’s specification as well as Patent Owner’s infringement contentions in a related district court case. *Id.* at 11 (citing Ex. 1001, 12:17–21; Ex. 1013 ¶ 147). Patent Owner does not dispute Petitioner’s construction in its Preliminary Response. On the current record, we agree with and adopt Petitioner’s proposed construction.

Although Petitioner proposes we construe an additional claim term related to an axis of rotation, we agree with Petitioner that we “need not resolve this issue” to determine whether to institute an *inter partes* review. *Id.* at 11–12; *see Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (“we need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

C. *Level of Ordinary Skill in the Art*

Petitioner asserts that a person of ordinary skill in the art would have had a bachelor’s degree (or equivalent) in electrical engineering, computer engineering, computer science, or a

comparable subject and would have had two to three years of work experience in the design and architecture of laptop computers and other portable electronic devices. Alternatively, a person of ordinary skill in the art would have had an advanced degree (or equivalent) in electrical engineering, computer engineering, computer science, or a comparable subject and would have had one year of post-graduate research or work experience in the design and architecture of laptop computers and other portable electronic devices. A person of ordinary skill in the art would have been familiar the structural hardware aspects of laptop computers and other portable electronic devices as well as designs of user interfaces employed and displayed by computer operating systems and their organization of content and functionality. Similar skills and knowledge could be acquired by other means.

Pet. 7. Patent Owner does not dispute the level of ordinary skill in the art. For this Decision, we agree with and adopt Petitioner's proposal as reasonable and consistent with the level of skill reflected in both the prior art and the '844 patent. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art may reflect an appropriate level of skill in the art).

D. Description of Primary Prior Art References

1. Lane (Ex. 1006)

Lane is titled "Modular, Reconfigurable Devices." Ex. 1006, code (54). Lane describes a system adapted to rotate about two adjacent, parallel axes permitting components to be positioned throughout approximately 0–360 degrees. *Id.* at code (57).

Figure 1 of Lane, is reproduced below.

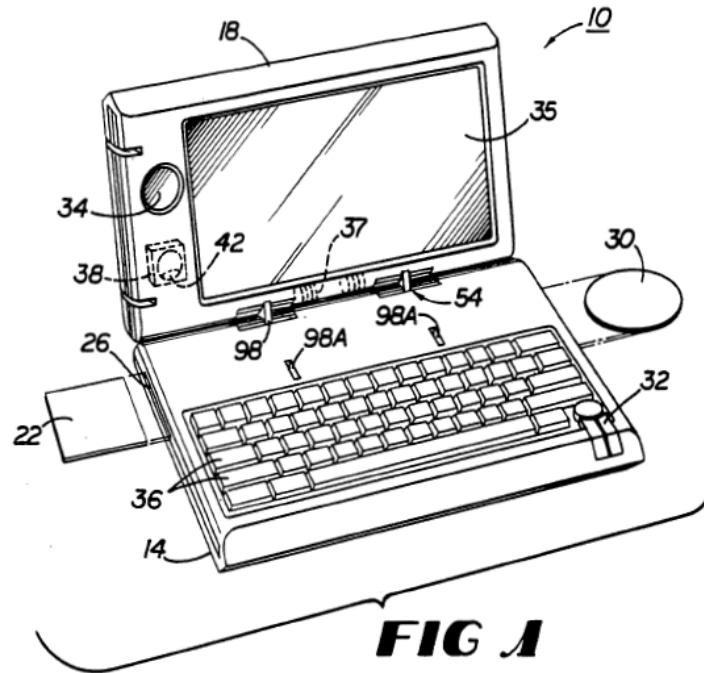
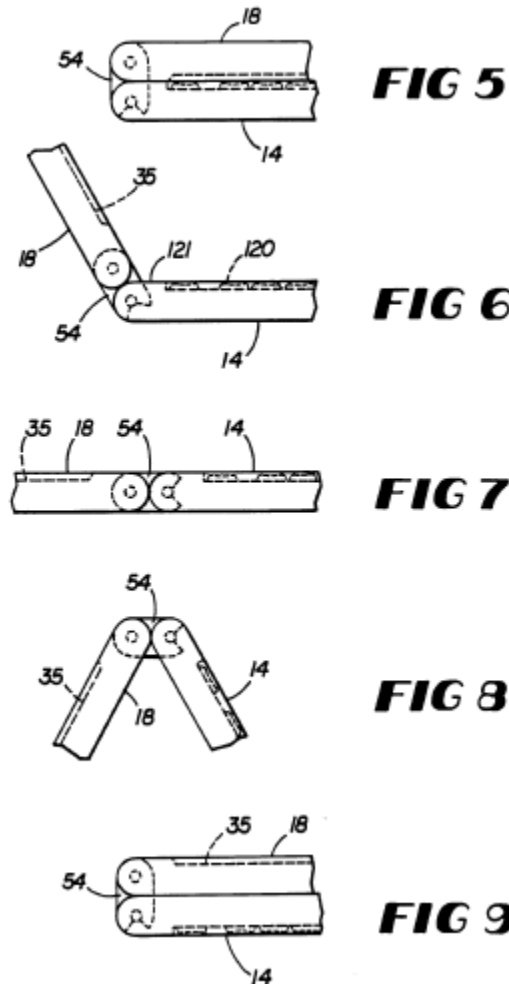


Figure 1 illustrates a module device in the open position. *Id.* at 3:31–34.

The modular device illustrated in Figure 1 includes a keyboard 14, a display 18, and torque-generating device 37. *Id.* at 5:4–6. The torque-generating device 37 is designed to retain the display 18 in a selected position relative to the keyboard 14 when the modular device is in use. *Id.* at 5:19–22. The modular device in Figure 1 also includes a position-indicating mechanism 38 that indicates the spatial orientation of the module and assists in determining “whether the information to appear on visual display 35 should be in ‘landscape’ or ‘portrait’ position.” *Id.* at 5:23–6:3.

Figures 5–9 of Lane are reproduced below.



Figures 5–9 show device 10 in various configurations. *Id.* at 7:30–32.

Figures 5–9 each illustrate a cross-sectional view of device 10, including first and second modules 14 and 18, and connector 54 attaching the first and second modules. *Id.* at 7:30–37. Figure 5 shows an unrotated or “nominally closed” view of the device. *Id.* at 7:32–35. Figure 6 illustrates “second module 18 rotated about axis 62 to form an obtuse angle.” *Id.* at 8:2–5. Figure 7 illustrates a configuration where the “second module 18 has been rotated approximately 180° relative to first module 14.” *Id.* at 8:9–12. Figure 8 illustrates rotating the second module 18 to greater than 270°, and Figure 9 illustrates rotating the second module 18 by approximately 360°. *Id.* at 8:12–19.

2. *Pogue (Ex. 1007)*

Pogue is a manual for the Microsoft Windows XP Pro operating system. EX1007, 2. Pogue's Figure 1–3 is reproduced below.

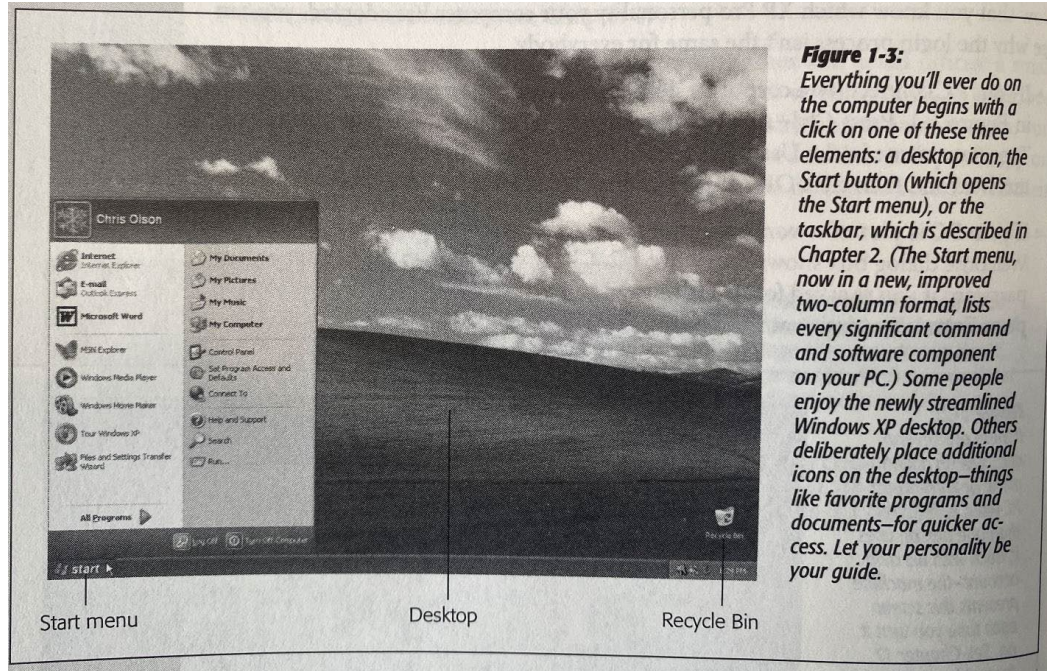


Figure 1–3 shows the Windows desktop. Ex. 1007, 36. Pogue explains that users can change the default desktop to include My Documents and My Network Places icons. *Id.* at 36.

E. Obviousness Analysis

1. Ground 1: Obviousness based on Lane and Pogue

In its first unpatentability ground, Petitioner contends that claims 1, 3, 4, 7–10, 13, 14, 16, 18, and 22 would have been obvious over Lane and Pogue. Pet. 26–56. Based on the present record and for the reasons explained below, we determine that Petitioner has demonstrated a reasonable likelihood of success in proving that claims 1, 3, 4, 7–10, 13, 14, 16, 18, and 22 would have been obvious over Lane and Pogue.

a) Petitioner’s Proposed Combination of Lane and Pogue

Petitioner relies primarily on Lane for the bulk of the challenged claims’ elements, including the portable computer’s base, keyboard, and display. *Id.* at 25–30. Petitioner also relies on Lane for disclosing the claimed laptop and easel modes, as well as corresponding display orientations. *Id.* at 31–43. Petitioner further asserts that Lane’s electronic mouse and touchscreen teaches the challenged claims’ navigation control. *Id.* at 44–49. Because Lane “is silent as to what content is displayed on the display/touchscreen,” Petitioner relies on Pogue for disclosing the claimed content modes—i.e., “My Documents” and “My Pictures” icons. *Id.* at 38, 40–41.

According to Petitioner, a skilled artisan “would have found it obvious to combine Lane and Pogue because Lane is directed toward a portable computer but does not specify an operating system.” *Id.* at 25. Petitioner explains that a skilled artisan “would have been motivated to select a Windows operating system due to market forces because, prior to and at the time of the claimed 2008 priority date of the 844 patent, Windows was the most widely used operating system for personal computers including portable personal computers such as laptop computers, and the Windows XP Pro version of that operating system as described in Pogue . . . was in widespread use.” *Id.* at 25–26.

Patent Owner challenges several aspects of Petitioner’s obviousness challenge. We address those issues below.

b) Petitioner’s Rationale and Reasonable Expectation of Success for Combining Lane and Pogue

Patent Owner argues that Petitioner’s challenge fails because “every ground relies on a computer having a working touchscreen to meet at least

one limitation in every challenged claim,” but “Windows XP Pro did not support a touchscreen.” Prelim. Resp. 42–43. “Instead, Microsoft introduced a new and different version of Windows called ‘Windows XP Tablet PC Edition’ to support pen-based computing and touchscreens.” *Id.* at 48. Thus, Patent Owner contends, Petitioner’s rationale for the combination fails because a skilled artisan “never would have used the operating system described by Pogue with Lane because it would have destroyed Lane’s ability to use Lane’s touchscreen.” *Id.* at 43. Further, Patent Owner asserts that a skilled artisan would have no reasonable expectation of success in implementing Petitioner’s proposed combination “because the operating system that the Lane-Pogue computer uses did not support a touchscreen.” *Id.*

On this record, we disagree with Patent Owner’s argument because “[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference . . . but rather whether ‘a skilled artisan would have been motivated to combine the teachings of the prior art references to achieve the claimed invention.’” *Allied Erecting & Dismantling Co. v. Genesis Attachments, LLC*, 825 F.3d 1373, 1381 (Fed. Cir. 2016) (internal citations omitted). In addition, “we do not ignore the modifications that one skilled in the art would make to a device borrowed from the prior art.” *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1382 (Fed. Cir. 2007). Even if Patent Owner is correct that Windows XP Pro did not include touchscreen support, that does not mean it would be beyond a skilled artisan’s capability to modify Windows XP Pro or select a Windows XP version like the Tablet PC Edition that does include touchscreen support as well as the My Documents

and My Pictures features on which Petitioner relies. With the rationale outlined above, Petitioner has articulated sufficient reasoning with rational underpinning to support the legal conclusion that its proffered combination would have been obvious to one skilled in the art. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). In addition, Petitioner provides testimony, yet uncontested, that a skilled artisan would have had a reasonable expectation of success in implementing both Windows XP Pro on Lane’s device and touchscreen functionality on the combined Lane-Pogue system. *See* Ex. 1002, ¶¶ 101, 103, 143.

c) “a navigation control . . . rotatable about the longitudinal axis”

Claim 1 recites “a navigation control disposed at least partially within the base and rotatable about the longitudinal axis.” Ex. 1001, 17:42–43. Petitioner asserts Lane’s electronic mouse 32 meets the claimed navigation control. Pet. 45–46.

Patent Owner asserts Petitioner’s challenge fails for two reasons. First, Patent Owner faults Petitioner for failing to explain how or why Lane’s mouse “is somehow ‘rotatable about the longitudinal axis.’” Prelim. Resp. 59–60. We disagree. In addressing the navigation control element, Petitioner notes that Lane’s mouse is “disposed in the first module 14 (the base).” Pet. 45. Elsewhere, Petitioner repeatedly asserts that Lane’s base rotates about a longitudinal axis. *E.g.*, Pet. 31, 35, 36. Moreover, it is clear from Lane’s Figures 1 and 5–9 that the electronic mouse rotates about Lane’s longitudinal axis because it is attached to Lane’s base 14 that rotates about Lane’s longitudinal axis as the device moves on its hinge assembly.

Second, Patent Owner asserts that Lane’s mouse is deficient because, unlike the ’844 patent’s scroll wheel, which “is disposed within the base and

is rotatable relative to the base about the longitudinal axis,” Lane’s electronic mouse is not “rotatable relative to the base.” PO Resp. 61. We disagree with this argument because the claim’s plain language recites only rotation “about the longitudinal axis,” but not rotation relative to the base.⁷ For these reasons, on the current record, we agree with Petitioner that the Lane’s mouse is a “navigation control . . . rotatable about the longitudinal axis” as claim 1 requires.

d) “a navigation control disposed at least partially about the longitudinal axis”

Claim 18 requires “a navigation control disposed at least partially about the longitudinal axis.” Ex. 1001, 20:24–25. Petitioner asserts Lane’s mouse 32 and its touchscreen display 35 are the claimed navigation control. Pet. 45–46, 48–49. Although Patent Owner does not dispute that the claimed “navigation control” reads on Lane’s display 35, Patent Owner alleges that Lane’s mouse is deficient because it is not “disposed in the location of the axis and around the axis.” Prelim. Resp. 65.

The parties’ dispute appears to be one of claim construction. Patent Owner asserts that, for a component to be disposed at least partially about the longitudinal axis, it must be “in the location of the axis and around the axis.” Prelim. Resp. 65. Petitioner, in contrast, asserts that “all portions of the base that are spaced apart from the longitudinal axis” are disposed at least partially about the longitudinal axis. Pet. 48. We decline to decide this issue at this stage for two reasons. First, even if Patent Owner is correct that Lane’s mouse is deficient, Patent Owner does not dispute that Lane’s display

⁷ To the extent Patent Owner intends to distinguish Lane’s mouse because its *actuation* is not rotatable about the longitudinal axis, Patent Owner has not made that argument but may do so at trial.

screen is disposed at least partially about Lane's longitudinal axis, as claim 18 requires. In addition, to the extent that this issue eventually requires resolution to determine patentability, it is better resolved at trial, after full briefing from the parties.

e) Ground 1 Summary

Other than as outlined above, Patent Owner does not additionally challenge Petitioner's obviousness analysis at this stage. We have reviewed Petitioner's arguments and the underlying evidence cited in support and are persuaded that, at this stage, Petitioner sufficiently demonstrates a reasonable likelihood of succeeding in its obviousness challenge to claims 1, 3, 4, 7–10, 13, 14, 16, 18, and 22 based on Lane and Pogue.

2. Petitioner's Additional Obviousness Grounds

In two additional obviousness grounds, Petitioner adds Hotelling for teaching "a touchscreen that is operable in all physical configurations/display modes," in case we find Lane's teaching on that feature inadequate. *Id.* at 56–58, 63. Petitioner adds another reference, Segawa for the additional limitation in dependent claim 17—manually selecting one of a plurality of display modes. *See id.* at 58–59, 64. Petitioner further adds MIT for its single-axis-hinge teaching, in case we construe the claims "as limited to having only one longitudinal axis of rotation." *Id.* at 61, 64.

Other than as outlined above, Patent Owner does not additionally challenge Petitioner's additional obviousness grounds involving Hotelling, Segawa, and MIT. *See Prelim Resp.* 68–70. We have reviewed Petitioner's arguments and the underlying evidence cited in support and are persuaded

that, at this stage, Petitioner sufficiently demonstrates a reasonable likelihood of succeeding in these additional obviousness challenges.

III. CONCLUSION

After considering the evidence and arguments presented in the current record, we determine that Petitioner has demonstrated a reasonable likelihood of success in proving that at least one of the challenged claims of the '844 patent is unpatentable. We therefore institute trial on all challenged claims and grounds raised in the Petition. At this stage of the proceeding, we have not made a final determination as to the patentability of any challenged claim or as to the construction of any claim term. Any final determination will be based on the record developed during trial. We place Patent Owner on express notice that any argument not asserted in a timely-filed Response to the Petition, or in another manner permitted during trial, shall be deemed waived, even if that argument was presented in the Preliminary Response.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of claims 1, 3, 4, 7–10, 13, 14, 16–18, and 22 of the '844 patent is instituted with respect to all grounds set forth in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), *inter partes* review of the '844 patent shall commence on the entry date of this Order, and notice is hereby given of the institution of a trial.

IPR2024-00404
Patent 8,624,844 B2

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