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Paper No. ____

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
HP INC., DELL INC., DELL TECHNOLOGIES INC.,
ASUSTEK COMPUTER INC., ASUS GLOBAL PTE. LTD.,
Petitioners,

v.

LITL LLC,
Patent Owner.

Case No. IPR2024-00456

Patent No. 8,612,888

PATENT OWNER'S PRELIMINARY RESPONSE

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LISTING OF EXHIBITS

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2001	[No Author Listed], The Litl webbook. European Consumers Choice. URL=https://www.europeanconsumerschoice.org/hi-tech/litl-webbook-computer-test-and-reviews/ [last accessed June 25, 2021]
2002	Cascading Windows, Technopedia.com, <i>available at</i> https://www.techopedia.com/definition/31278/cascading-windows (last checked April 30, 2024)
2003	U.S. Patent Appl. Publ'n No. 20120198330A1
2004	U.S. Patent Appl. Publ'n No. 20080204400A1
2005	U.S. Patent Appl. Publ'n No. 20080062625A1
2006	Andy Rathbone, WINDOWS VISTA FOR DUMMIES (2006)
2007	RESERVED
2008	RESERVED
2009	RESERVED
2010	RESERVED
2011	RESERVED
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2038	CONFIDENTIAL [REDACTED] [REDACTED] MSFT-LITL-IPR-000099
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I. INTRODUCTION

A. The Petition is Time Barred

Patent Owner (“LiTL”) sued Lenovo in 2020 for infringing the ’888 Patent. The ’888 Patent claims relate to a computer with particular graphical user interface (“GUI”) functionality. In Lenovo’s products, that GUI functionality was provided by Microsoft’s Windows software. Microsoft and Lenovo had a substantial legal relationship (formalized in [REDACTED]) governing Lenovo’s use of Microsoft’s software. Microsoft also entered a [REDACTED] [REDACTED] with Lenovo in which Microsoft acknowledged [REDACTED]

Lenovo timely filed an IPR petition challenging the ’888 Patent and it was denied institution. More than a year after [REDACTED] was sued, Microsoft filed this Petition. The “privity” language was included in §315(b) precisely to safeguard patent owners from such belated attacks from a party related to an entity sued more than a year earlier. Under the law, Lenovo was Microsoft’s privity for multiple independent reasons, one of which is that the substantive legal relationship between Microsoft and Lenovo covering the accused product put them in privity. The Petition is time barred.

B. All Grounds Fail on the Merits

All grounds rely on a combination that modifies Reavey based on Martinez and Proctor. Reavey discloses a special-purpose electronic-book. Martinez discloses a laptop running a windows-based operating system that supports multi-tasking and has various ways of arranging the display of multiple open windows running different applications. Proctor discloses a computer with a user-actuated button that activates a low-power mode where most of the display is turned off.

Despite Martinez disclosing a general-purpose computer as opposed to Reavey's e-book, Petitioners allege a POSA would have used Martinez's different window arrangements in Reavey. Petitioners further allege a POSA would have added Proctor's button to Reavey – not to activate a low-power mode as Proctor teaches – but to switch between the different window arrangements added to Reavey based on Martinez.

Petitioners' combination is pure hindsight. The Petition's "Motivation to Combine" section never even explains the contemplated workings of the Reavey-Martinez-Proctor combination. Understanding Petitioners' combination requires considering arguments and evidence found only in the expert declaration. That is improper. Additionally, in purportedly mapping the Reavey-Martinez-Proctor combination to the claims, the Petition repeatedly confronts limitations not addressed in its "Motivation to Combine" section, so Petitioners fabricate new

alleged motivations to combine that are internally inconsistent and entirely unsupported. The only evidence Petitioners cite to purportedly “support” their hindsight picking-and-choosing of features from various references is expert testimony that parrots Petitioners’ conclusory assertions word-for-word and warrants no weight.

As just one example, Reavey’s e-book does not have an operating system supporting multiple open windows running different applications, and Petitioners never allege a POSA would have modified Reavey’s *e-book* to have such a complex operating system. Purported benefits of Martinez’s window organizations are irrelevant in Reavey because Reavey does not support multiple open application windows in the first place. Petitioners’ conclusory assertion that Martinez’s window organizations would somehow provide a more “user-friendly” GUI for Reavey is baseless given Reavey’s teaching that its interface has the “look and feel” of a “conventional book” (2:66-67).

Petitioners’ failure to establish that a POSA would have made its Reavey-Martinez-Proctor combination is fatal to all grounds. There are also multiple limitations in every challenged claim that are missing from the prior art entirely. All grounds fail for these additional independent reasons.

II. THIS PETITION IS TIME BARRED

The AIA prohibits instituting an IPR if the petition “is filed more than 1 year after the date on which the petitioner, real party in interest, or *privy of the petitioner* is served with a complaint alleging infringement of the patent.” AIA §6(a), 125 Stat. 301 (codified at 35 U.S.C. §315(b)).¹

Petitioners bear the burden to demonstrate that Section 315(b) does not time-bar their Petition. *Game & Tech. v. Wargaming Grp. Ltd.*, 942 F.3d 1343, 1349 (Fed. Cir. 2019). Petitioners fail to meet that burden.

The Petition’s “STANDING” section is woefully deficient. It makes the conclusory assertion that Petitioners are not barred, alleges that “Microsoft [itself] has never been served with a complaint” (Petition, 2), but ignores the critical issue of whether Microsoft was in privity with Lenovo. Elsewhere, the Petition asserts that Lenovo did not “*request* indemnity from Microsoft” for LiTL’s ’888 Patent infringement allegations and asserts that Microsoft “had no involvement” in Lenovo’s IPR that challenged the ’888 Patent. Petition, 9. But privity does not require a demand for indemnity or Microsoft’s “involvement” in Lenovo’s IPR.

Microsoft was in privity with Lenovo so this Petition is time barred.

¹ All emphasis added and quotation marks and citations omitted except as noted.

A. Factual Background

1. The Microsoft-Lenovo Relationship

Lenovo (United States), Inc. and Lenovo (Beijing) Ltd. (collectively, “Lenovo”) were served on May 26, 2020 with a complaint alleging that Lenovo computers running Microsoft’s software infringe the ’888 Patent (EX2015 (“Compl.”), ¶¶159-77; EX2016), and with an amended complaint on December 30, 2020 (EX2017 (“FAC”), ¶¶278-313 (alleging infringement of the ’888 patent), *id.* at 163 (certificate of service)). Both complaints were served more than one year before Microsoft filed this Petition in 2024.

Lenovo and Microsoft had a substantial relationship governed by Microsoft’s [REDACTED] (EX2018, [REDACTED]).² In Microsoft’s own parlance, Lenovo was Microsoft’s “[REDACTED] [REDACTED] at 1. [REDACTED] governing the Microsoft-Lenovo relationship includes provisions relating to:

[REDACTED]

[REDACTED]

[REDACTED]

² Microsoft produced [REDACTED] responsive to LiTL’s request for “[t]he Microsoft indemnification agreement(s) referenced by Lenovo in Exhibit 1031 of IPR2024-00456 and IPR2024-00457” as identified in LiTL’s March 11, 2024 email to the Board. EX2019, 5-8.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] related to Lenovo's products accused of infringing the '888 Patent. Those products embodied Lenovo's computing devices running Microsoft's Windows software. EX2017, ¶¶92-94, ¶96, ¶¶99-102, ¶¶279-86. As discussed *infra* §IV, every '888 Patent claim relates to a computing device with a graphical user interface (GUI) having different default views of displayed content in different device configurations. In the accused Lenovo products, that GUI functionality was implemented by Microsoft's Windows software. EX2017, ¶¶99-101, ¶¶279-86. Microsoft admits its software is a "basis for [LiTL's] infringement allegations" against co-petitioners HP, Dell, and ASUS. Petition, 1. A comparison of the complaints and infringement contentions in the litigations against Lenovo, HP, Dell, and ASUS reveals that Microsoft's software was equally the basis for LiTL's infringement allegations against Lenovo. *Compare* EX2015, ¶¶159-77; EX2017, ¶¶278-313; and [REDACTED] *with* EX1016, ¶¶259-83; EX2021; EX1017, ¶¶266-87; EX2022; EX1018, ¶¶241-60; and EX2023 for the co-petitioner litigations. Additionally, on May 10, 2021, LiTL put Microsoft on notice that Microsoft itself directly infringes the '888 Patent. EX2024, ¶28 of counterclaims; EX2041, ¶28.

Microsoft and [REDACTED] Lenovo had a joint interest in challenging the '888 Patent. Lenovo and Microsoft executed a [REDACTED] [REDACTED] (EX2025, [REDACTED] at MSFT-LITL-IPR-000554³) that covers their common interest with respect to the '888 Patent [REDACTED] – more than a year before Microsoft filed the Petition. *Id.*, MSFT-LITL-IPR-000548 (the agreement covers the “LiTL Patents,” defined as including the '888 Patent).

Microsoft's [REDACTED] acknowledged that [REDACTED]

[REDACTED]

[REDACTED] *Id.* Lenovo and Microsoft [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*

LiTL settled its litigation against Lenovo and the litigation was dismissed on February 3, 2023. *See* EX2026. Three weeks *after* the dismissal, [REDACTED]

[REDACTED]

[REDACTED] EX2027, MSFT-LITL-IPR-000619.

[REDACTED] EX2028, MSFT-LITL-IPR-000620.

³ “MSFT-LITL-IPR-XXX” is Microsoft’s document-production numbering.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] EX2019, 1-2, 5-8.

2. Microsoft's Privy Relationships with HP, Dell, and Asus Confirm Microsoft's Privy Relationship with Lenovo

As demonstrated *supra* §II.A.1, LiTL sued Microsoft's co-petitioners based on infringement allegations materially identical to those against Lenovo. The accused Lenovo computers used the same Microsoft software in the same way as the accused Dell, HP, and ASUS computers. *Compare* Lenovo complaint and [REDACTED] (EX2017, ¶¶278-86; EX2020) *with* Dell complaint and infringement contentions (EX2029, ¶¶266-75; EX2022), HP complaint and infringement contentions (EX2030, ¶¶260-69; EX2023), Asus complaint and infringement contentions (EX2031, ¶¶232-41; EX2021). Microsoft's relationship with each of its co-petitioners is governed by [REDACTED]

[REDACTED] that has substantially similar or identical provisions as [REDACTED] with Lenovo. *Compare* EX2018, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *with* EX2032, [REDACTED]

[REDACTED]; EX2033, [REDACTED];
and EX2034, [REDACTED].

Microsoft intervened in the litigation involving its co-petitioners, representing to the court that its agreements created “defense and indemnity obligations to [HP, Dell, and ASUS] relating to [their] use of Microsoft’s Windows Operating System.” EX2035, ¶8; EX2036, ¶8; EX2037, ¶8. Microsoft does not deny that it is in privity with its co-petitioners. Petition, 1-2, 9-10. The provisions in Microsoft’s agreements with HP, Dell, and ASUS that Microsoft admits created “indemnity obligations” and rights relating to LiTL’s infringement allegations for the ’888 Patent (EX2034, [REDACTED] at MSFT-LITL-IPR-001154-55; EX2033, [REDACTED] at MSFT-LITL-IPR-001064-65, -001111; EX2032, [REDACTED] at MSFT-LITL-IPR-000986-87, -001041) are materially the same as [REDACTED] [REDACTED] (EX2018, [REDACTED]).

B. Privity Law

The AIA does not define “privity.” To interpret an undefined statutory term, courts rely on the entirety of the statutory scheme, Congressional intent and—where it adopts a common law term—the common law meaning. *King v. Burwell*, 576 U.S. 473, 486 (2015); *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1346-47 (Fed. Cir. 2018) (“RPX”) (applying these principles in

interpreting Section 315(b) and its use of “privy”). Congress intended common law principles to govern the scope of an AIA “privy.” *Wi-Fi One, LLC v. Broadcom Corp.*, 887 F.3d 1329, 1335-36 (Fed. Cir. 2018).

Privy “takes into account the ‘practical situation’” and extends “to parties to transactions and other activities relating to the property in question.”

WesternGeco LLC v. ION Geophysical Corp., 889 F.3d 1308, 1318 (Fed. Cir. 2018), quoting 157 Cong. Rec. S1376 (daily ed. Mar. 8, 2011) (Sen. Kyl’s statement).

Congress used the terms “real party in interest” and “privy” in “§ 315 to serve two related purposes: (1) to ensure that third parties who have sufficiently close relationships with IPR petitioners would be bound by the outcome of instituted IPRs under § 315(e)...and (2) *to safeguard patent owners from having to defend their patents against belated administrative attacks by related parties via § 315(b).*” *RPX*, 897 F.3d at 1350.

Several AIA sections recite “privy.” *See, e.g.*, AIA §6(a), 125 Stat. 301 (codified at 35 U.S.C. §§315(b), 315(e)), 125 Stat. 303 (codified at 35 U.S.C. §317(a)); AIA §6(d), 125 Stat. 308 (codified at 35 U.S.C. §325(e)); AIA §18(a)(1)(B), 125 Stat. 330 (codified at 35 U.S.C. §321 note). Congress intended that a “‘privy’ is a party that has a *direct relationship to the petitioner with respect to the allegedly infringing product* or service” such as “customers of the

petitioner” where the petitioner’s customer “had been sued for infringement.” 157 Cong. Rec. S5432 (daily ed. Sep. 8, 2011) (Sen. Schumer’s statement). As the Federal Circuit noted, this legislative history of how “privy” is used in other sections of the AIA is informative of its meaning in §315(b). *RPX*, 897 F.3d at 1350 (citing 157 Cong. Rec. S5432 for the meaning of “privy” in §315(b)).

The legislative history is consistent with the common law meaning of “privy.” In *Taylor v. Sturgell*, the Supreme Court provided a non-exhaustive, six-factor framework for determining privity and non-party preclusion. 553 U.S. 880, 893-95, 893 n.6 (2008). In a precedential decision addressing the Board’s application of “privy” under 315(b), the Board noted that “any one of the [*Taylor*] factors can support a finding of privity.” *Ventex v. Columbia Sportswear N. Am.*, IPR2017-00651, Paper 148, 12 (Jan. 24, 2019) (precedential); *see also RPX*, 897 F.3d at 1363 (Reyna, J., concurring) (even a single factor can “*independently* establish[] privity under the *Taylor* framework”).

C. Lenovo Was a Privy of Microsoft Under Section 315(b)

Under the common law meaning, Lenovo was a privy of Microsoft. The relationship between Microsoft and Lenovo satisfies at least two of the *Taylor* factors as detailed below. Finding Lenovo to be a privy of Microsoft is also consistent with the Congressional intent that “privy” cover “a party that has a direct relationship to the petitioner with respect to the allegedly infringing

product.” *RPX*, 897 F.3d at 1350; 157 Cong. Rec. S5432 (daily ed. Sep. 8, 2011) (Sen. Schumer’s statement).

1. Lenovo and Microsoft Had a Pre-Existing Substantive Legal Relationship

One *Taylor* factor that can alone establish privity is the presence of a pre-existing substantive legal relationship between the parties. *Taylor*, 553 U.S. at 893-94.

a. [REDACTED] Establishes Such a Relationship

As discussed *supra* §II.A, [REDACTED] is a formal contract establishing numerous mutual rights and obligations between Microsoft and Lenovo. [REDACTED]
[REDACTED] between Microsoft and Lenovo concerning [REDACTED]
[REDACTED]
[REDACTED]. *Supra* §II.A. That establishes common-law privity. *Taylor*, 553 U.S. at 893-94.

Finding Lenovo and Microsoft to be in privity is consistent with the Board’s finding in the precedential *Ventex* case that a “Supplier Agreement” and an “Exclusive Manufacturing Agreement,” both “directly relat[ing] to the product accused of infringing the patent at issue” in the IPR, supported a finding that the supplier and customer were in privity so the petition was time-barred. *Ventex*, IPR2017-00651, Paper 148, 12-13.

**b. The Microsoft-Lenovo Relationship Is Central to
Lenovo's Infringement**

There should be no reasonable dispute that the substantial legal relationship between Lenovo and Microsoft governed by [REDACTED] concerned [REDACTED].
[REDACTED].
Supra §II.A.

First, the '888 Patent claims all recite GUI functionality that, in the Lenovo products, was implemented by Microsoft's software. *Supra* §II.A. Indeed, as detailed above (§II.A), Lenovo and Microsoft executed [REDACTED] (EX2025, at MSFT-LITL-IPR-000554) confirming that [REDACTED].
[REDACTED]
[REDACTED]
[REDACTED]. EX2025, MSFT-LITL-IPR-000548.

Second, Microsoft's actions in the litigations against co-petitioners HP, Dell, and ASUS confirm that Microsoft's legal relationship with Lenovo, [REDACTED].
[REDACTED]. Microsoft has admitted that LiTL's litigation papers "explicitly identified Windows functionality as a basis for" the co-petitioners infringing the '888 Patent. Petition, 1. The complaint [REDACTED] in the Lenovo litigation are substantively the same as those in the litigations against the co-petitioners.

Supra §II.A.

Additionally, Microsoft’s relationship with Lenovo, HP, Dell, and ASUS is substantially the same in all relevant respects – they all sell computers that run the Microsoft Windows software that results in infringement of the ’888 Patent in the same way. *See supra* § II.A.2 (for citations to Lenovo, Dell, HP, and Asus complaints [REDACTED]); *see also* EX2017, ¶¶99-101; and ¶8, ¶¶10-11, ¶16 of EX2036, EX2035, and EX2037. Microsoft’s relationship with each of its co-petitioners is governed by a formal agreement (the OEM Master Licensing Agreement) that is substantively the same in all relevant respects to [REDACTED] [REDACTED] the Microsoft-Lenovo relationship. *Supra* §II.A. Thus, the “pre-existing substantive legal relationship” between Microsoft and Lenovo is substantively the same as the “pre-existing substantive legal relationship” between Microsoft and its co-petitioners with whom Microsoft admits it is in privity. Petition, 1-2, 9-10.

* * * * *

The “pre-existing substantive legal relationship” between Microsoft and Lenovo that directly resulted in Lenovo’s infringement of the ’888 Patent establishes common-law privity. *Taylor*, 553 U.S. at 893-94; *Ventex*, IPR2017-00651, Paper 148, 12 (“any **one** of the [*Taylor*] factors can support a finding of privity), 15 (contractual relationship established privity); *see also* *RPX*, 897 F.3d at

1363-64 (Reyna, J., concurring) (a single factor can “*independently* establish[] privity under the *Taylor* framework”). Thus, the Petition is time-barred under Section 315(b) because Microsoft filed it more than a year after its privity Lenovo was served with a complaint alleging infringement of the ’888 Patent.

2. [REDACTED] Is An Agreement To Be Bound

Another *independent* way to establish privity under *Taylor* is via “an agreement between the parties to be bound[.]” *RPX*, 897 F.3d at 1360 (Reyna, J., concurring), citing *Taylor*, 553 U.S. at 894-95.

As discussed below, [REDACTED] establishing Microsoft’s agreement to be bound. EX2018, [REDACTED]. *Intel Corp. v. U.S. Int’l Trade Comm’n*, 946 F.2d 821, 839 (Fed. Cir. 1991) (“an indemnification agreement...*has alone been enough to find privity*”).

a. [REDACTED] Establish Microsoft’s Agreement to Be Bound

[REDACTED]

[REDACTED]

EX2018, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

Microsoft cannot deny that Microsoft's Windows software is [REDACTED]

[REDACTED]

[REDACTED] Lenovo's accused computers used Microsoft's same Windows software in the same manner that the accused computers from HP, Dell, and ASUS do. *Supra* §II.A.2. Microsoft's agreements with those co-petitioners had substantively the same [REDACTED] with the same [REDACTED] requirement as [REDACTED] [REDACTED]. *Supra* §II.A.2. Microsoft told the Court that Microsoft had an *obligation* to defend its co-petitioners from LiTL's infringement claims on the '888 Patent. EX2035, ¶8; EX2036, ¶8; EX2037, ¶8. That is an admission that Microsoft's Windows software [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. EX2034, [REDACTED]; EX2033, [REDACTED]; EX2032, [REDACTED]; EX2018, [REDACTED].

Microsoft says Lenovo [REDACTED]

EX2019, at 6-7. [REDACTED]

[REDACTED] EX2018, [REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. EX2018, [REDACTED]. [REDACTED]

[REDACTED]

[REDACTED] EX1031.⁴

Lenovo [REDACTED]

[REDACTED] It is unclear why. Microsoft agreed [REDACTED]

[REDACTED]

[REDACTED]. EX2019, 5-

6. [REDACTED]

[REDACTED]

⁴ Lenovo also forwarded [REDACTED] on June 14, 2022

(EX2038, MSFT-LITL-IPR-000099 ([REDACTED]

[REDACTED]), EX2039, MSFT-LITL-IPR-000103 ([REDACTED]

[REDACTED]), EX2020, MSFT-LITL-IPR-000104-000193 [REDACTED]

[REDACTED]).

[REDACTED]

[REDACTED] EX2019, 1-2; EX2040, MSFT-LITL-IPR-000078-000079, -000084-000085, -000409-000413, -000476, -000481, -00486, -000618-000620, -000966-000968. Microsoft bears the burden to prove the absence of a time bar. Microsoft cannot carry that burden by hiding the *substance* of communications between Lenovo and Microsoft relating to [REDACTED]

[REDACTED]

Regardless, [REDACTED]

[REDACTED] is immaterial to [REDACTED]

[REDACTED], and thereby established that Microsoft “agreed to be bound” under *Taylor*. As discussed above, Microsoft’s admission that it was *obligated* to defend each of its co-petitioners from LiTL’s infringement claims on the ’888 Patent, pursuant to [REDACTED]

[REDACTED] puts that issue to rest.

Indeed, courts have found that where the “express language” of an indemnification agreement imposes an obligation, the duty to indemnify applies even in the extreme case where the indemnitor “had *no notice* of the underlying proceeding, thus depriving the [indemnitor] of any opportunity to defend the claim.” *Exec. Risk Indem., Inc. v. Jones*, 171 Cal. App. 4th 319, 331 (2009) (emphasis original) (collecting cases.); *see also, e.g., Ortega-Maldonado v. Allstate*

Ins. Co., 519 F. Supp. 2d 981, 994 (D. Minn. 2007) (discussing Minnesota statute requiring that “liability coverage becomes absolute at the time that injury or damage occurs,” no matter when or whether insurer receives notice or demand).

b. Microsoft’s Interpretation of §315(b) Renders “Privy” Superfluous

Microsoft did not need to *provide* Lenovo with indemnification to be in privity with Lenovo. Finding otherwise would read Section 315(b)’s reference to “privy” out of the statute by equating a privy with a real party in interest (“RPI”).

That is, [REDACTED]

[REDACTED] ([REDACTED]), Microsoft would have been an RPI on *Lenovo’s* petition challenging the ’888 Patent the same way Microsoft is an RPI on this Petition. Petition, 1-2, 9-10; *RPX*, 897 F.3d at 1342-43; *accord WesternGeco*, 889 F.3d at 1320 (privy analysis not limited to identifying who “controlled” decisions in infringement litigation).

By specifying that Section 315(b)’s time-bar can be triggered by service of a complaint on “the petitioner, real party in interest, or *privy* of the petitioner,” Congress intended the time-bar to extend *beyond* petitioners and RPIs. *Supra* §II.B. Limiting “privy” in Section 315(b) to parties who *provided* indemnification and thus were RPIs would contradict Congressional intent by making “privy” superfluous. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) (courts are “obliged to give effect, if possible, to every word Congress used”). Construing

“privy” narrowly to RPIs would contradict that Congressional intent. *See* Consolidated Trial Practice Guide (“TPG”) at 14 (“The notion of ‘*privy*’ is *more expansive, encompassing parties that do not necessarily need to be identified in the petition as a ‘real party-in-interest.’*”).

Microsoft’s assertion that Lenovo was not a privy of Microsoft simply because Lenovo did not “request” indemnification is baseless, at odds with Congressional intent (*supra* §II.B), and at odds with the common law meaning of privy under the “substantive legal relationship” (*supra* §II.C.1) and “agreed to be bound” (*supra* §II.C.2) *Taylor* factors.

D. The Equities Favor Finding Lenovo to be Microsoft’s Privy

The AIA balanced the rights of patent challengers and patent owners. *RPX*, 897 F.3d at 1350. Congress intended the “equitable rule” of privy to “safeguard patent owners from having to defend their patents against belated administrative attacks by related parties.” *Id.*; *see also* TPG at 14 (the Office evaluates “privies” consistent with “equitable considerations”).

Microsoft made a strategic decision to challenge another of LiTL’s patents within a year of Lenovo being served with a complaint while not challenging the ’888 Patent. *Microsoft v. LiTL*, IPR2021-01011, Paper 2 (May 25, 2021). Microsoft did so at its peril.

Microsoft’s agreement to intervene in the litigation against HP, Dell, and

ASUS reveals that [REDACTED]
[REDACTED]. EX2034, [REDACTED];
EX2033, [REDACTED]; EX2032, [REDACTED]. Microsoft was aware that other
customers could be sued and entered [REDACTED] with Lenovo in which Microsoft
[REDACTED]. *Supra* §II.A.1. Despite
that, Microsoft sat back and hoped that Lenovo’s IPR would render the ’888 Patent
unpatenable and thereby benefit Microsoft. After Lenovo failed, Microsoft filed
this Petition years later to take a second bite at the apple.

Microsoft’s IPR is precisely the type of “belated administrative attack[] by
related parties” that Congress sought to prevent by including “privity” in 315(b)’s
time bar provision. *RPX*, 897 F.3d at 1350.

* * * * *

Petitioners cannot meet their burden to show that Section 315(b) does not
time-bar the Petition. Lenovo was Microsoft’s privity and was served with a
complaint alleging infringement of the ’888 Patent over a year before Microsoft
filed the Petition. Section 315(b) prohibits institution.

III. LITL'S '888 PATENT

Before the LiTL Webbook, “home computers were essentially the same as office computers,” and home users “struggle[d] with complex interfaces designed in pre-web times.” EX2001, 1. LiTL worked for years to develop its Webbook. LiTL recruited leading user-experience design (“UXD”) experts and worked closely with some of the world’s leading technology and UXD consultancies. EX2001, 1-2.

This design effort led to the filing of the application that eventually issued as the '888 Patent. EX1001, 1. Many of the named inventors worked for Fuseproject, one of the world’s leading design firms. EX2001, 2.

The Patent discloses and claims a portable computer configurable between a plurality of display modes – *e.g.*, “a laptop mode,” “a flat mode, a frame mode, and an easel mode” (14:61-66), and sets what the Patent calls different “views” (2:47-65) as the default display for at least two of the modes to improve user-interaction based on the specific input/output (“I/O”) profile of that display mode (5:23-37).

A. Person of Ordinary Skill in the Art (“POSA”)

For this preliminary response only, LiTL does not challenge Petitioners’ definition of a POSA (Petition, 13) because institution should be denied even if Petitioners’ POSA definition is adopted.

B. Challenged Claims

Petitioners challenge independent claim 1 and its dependent claims 2-9, 15-22, and 24-25, and independent claims 26 and 27 (the “Challenged Claims”).
Petition, 3.

C. Claim Constructions

Petitioners offer explicit claim constructions for several terms. Petition, 13-16. For this preliminary response only, LiTL does not dispute those explicit claim constructions because even under Petitioners’ explicit claim constructions Petitioners fail to demonstrate unpatentability of any challenged claim.

IV. THE PETITION FAILS FOR ALL CHALLENGED CLAIMS

Every ground relies on a combination of references including at least Reavey, Martinez, and Proctor. The Petition fails to establish that a POSA would have combined these references in the manner the Petition alleges for multiple reasons, each of which provides an independent reason why all grounds fail.

The Petition also fails to establish that its Reavey-Martinez-Proctor combination meets all limitations of any Challenged Claim. All grounds fail for that additional reason.

A. Reavey (EX1009)⁵

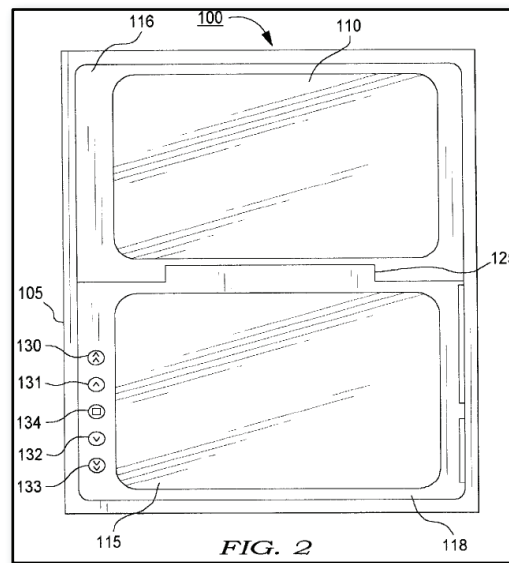
Reavey discloses an “electronic book device [that] integrates the look and feel familiarity of a book.” 4:39-42, 2:66-3:1. Reavey’s e-book includes “an electronic display unit having a multi-orientatable [sic] single flat panel or a hinged dual flat panel display.” 3:2-5, FIGS. 2-3 (reproduced below). The grounds rely on Reavey’s dual-display embodiment. Reavey’s dual displays are similarly sized and “electrically connected...through a hinge 125.” 5:32-35. “Screen orientation processing 390 in conjunction with...gravity switches and hinge 125 permit electronic book device 100 to be used in one of three available operational modes, namely, side-by-side, over-under, and over-under with touchscreen keyboard.” 7:26-31. Side-by-side mode “has both screens in the vertical position and in the over-under mode, the screens are both in a horizontal position.” 7:37-39. Over-under mode has the two screens “act as one screen, with the text and graphics scrolling downward from one to the other.” 7:42-44. Over-under mode with touchscreen keyboard “ha[s] the top horizontal screen behave as a normal display screen and the bottom horizontal screen behave as a touchscreen keyboard.” 7:39-42.

⁵ Citations in this section are to Reavey.

The mode of Reavey's e-book device is “set automatically when electronic book device 100 is opened” depending on “the way the user is holding” the device. 7:45-47.

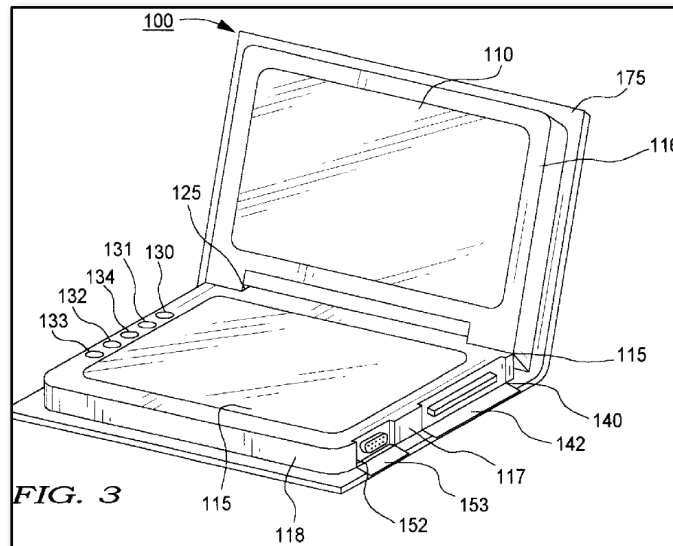
Side-by-side (Mode 1): If the e-book “is held in a normal book like manner, then mode 1 will be selected and the ensuing text and graphics will appear in a side-by-side manner.” 7:47-50.

Over-under (Mode 2): “If electronic book device 100 is held in an over-under (top-bottom) fashion, i.e. opened in a checkbook manner, then mode 2 will be set.” 7:50-53; FIG. 2:



Over-under with keyboard (Mode 3): “Mode 3 is activated if electronic book device 100 is placed on a flat surface and is *partially* opened.” 7:53-54. A “touchscreen keypad” (keyboard) is activated on the bottom screen when the

device is “partially opened” but the “keyboard will disappear” when the device is “fully opened all the way.” 7:53-62; FIG. 3:



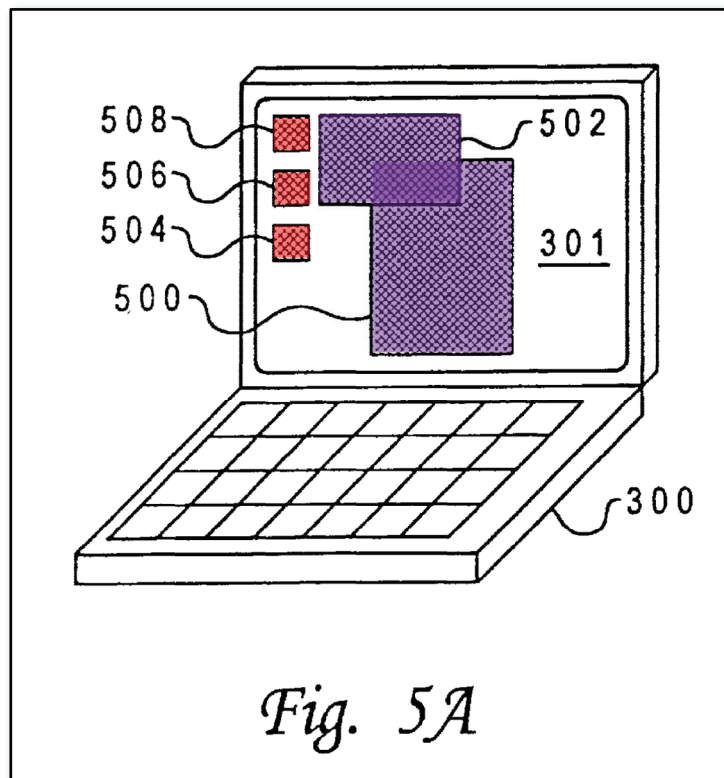
Screen-orientation software automatically rotates text/graphics based on the screen orientation in the mode the user has configured the book device into. 6:11-14, 7:24-26.

In all configurations, Reavey’s “electronic book device integrates the look and feel familiarity of a book.” 4:39-42; *see* 5:24-31 (Reavey’s device has a book cover “to enhance the book-like feel”; it “looks like a book, feels like a book and is as easy to use like a book”).

B. Martinez (EX1007)

As Martinez’s Figure 5A illustrates (color-annotated below), Martinez discloses a laptop computer using a conventional windows-and-icons based GUI typical for general-purpose computers, which supports having multiple application

“windows 500 and 502 [purple] and icons 504-508 [red]” displayed simultaneously. Martinez, 4:50-58.

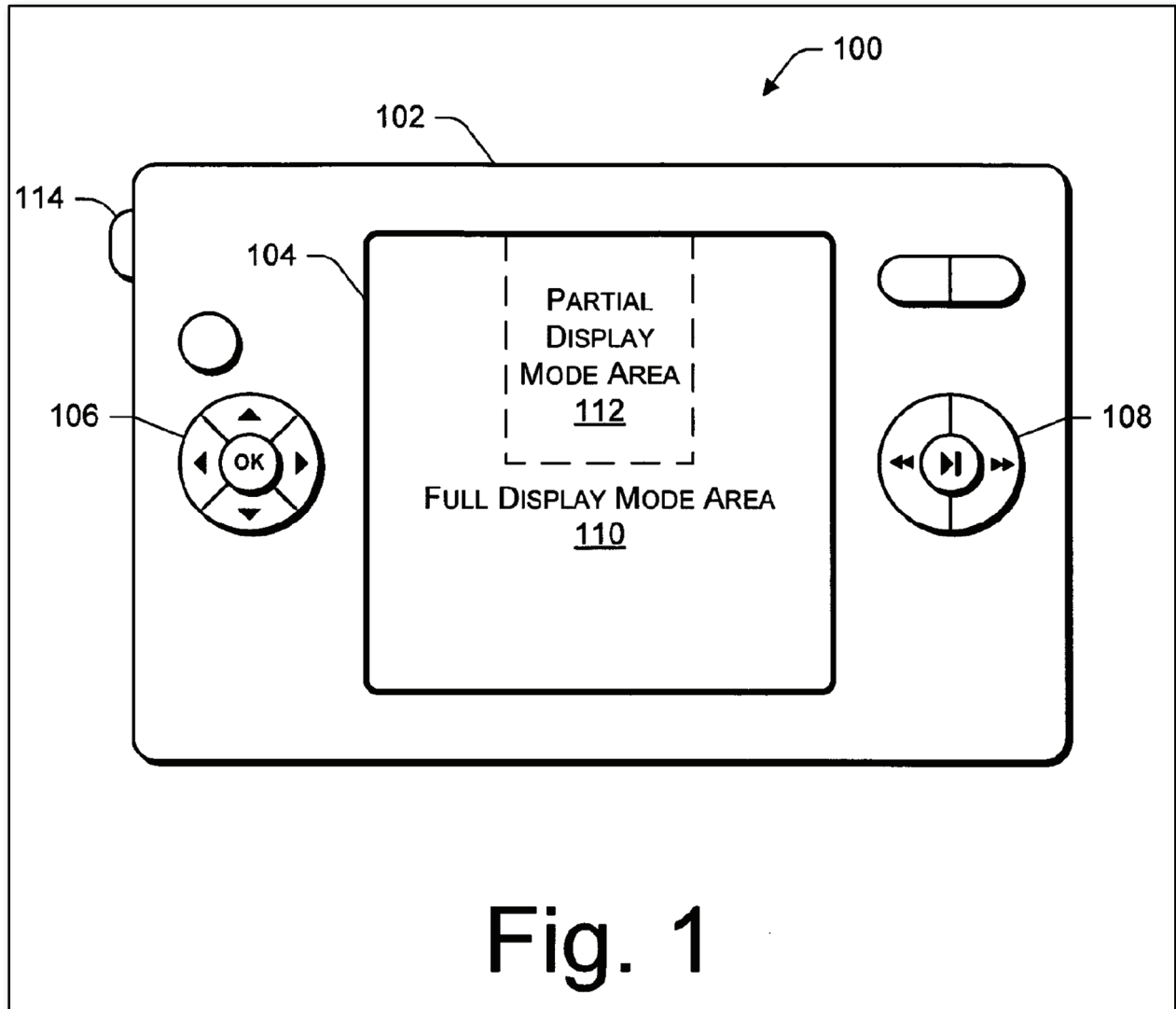


Martinez teaches a “shake feature,” whereby the user “tilting the device to the left and to the right in rapid secession” causes the open windows and/or icons to be “automatically arranged” in a user-preselected fashion. Martinez, 6:1-4. “For example,” in response to shaking the laptop, “the windows could be arranged in a tile or cascading fashion.” Martinez, 6:33-34. Martinez, however, does not explain what “tile” or “cascading” fashion means.

C. Proctor (EX1010)

Proctor concerns various “portable entertainment devices,” such as “portable digital assistants (PDAs), cellular phones, audio players, video players, notebook

computers, digital cameras, laptop computers.” Proctor, [0022]. Figure 1 (below) shows “a multifunction device that is capable of playing music and videos, depicting digital photos, downloading content from the Internet, and the like.” Proctor, [0023].



Proctor’s device has “two modes of operation”: (1) a conventional “full display mode” (110 above) where “the entire display panel is fully operational,” and (2) a “partial display mode” (112 above) where “part of the display is

operational while the rest of the display is powered off.” Proctor, [0026]-[0027]. The partial display mode reduces power consumption because “the display panel provides a smaller area for depicting a reduced amount of image data (e.g., alphanumeric characters, small graphics, etc.).” Proctor, [0027].

A “partial-to-full mode change event, which triggers a conversion from the partial display mode back to the full display mode,” “may be mechanically triggered,” such as by “pressing the switch 114 on device 100.” Proctor, [0068].

D. Ground 1 Fails for Multiple Independent Reasons

1. Petitioners Fail to Establish that a POSA Would Have Made the Alleged Reavey-Martinez-Proctor Combination

Reavey (*supra* §IV.A) discloses an electronic-book device having the “look and feel features of a conventional book” (2:66-67) and “*nominal* software and hardware” (6:33-34) to support this special-purpose functionality. Martinez (*supra* §IV.B) is directed to a general-purpose laptop computer with a GUI that rearranges multiple simultaneously-displayed application windows and icons. Martinez, 3:26-32, 4:50-58, FIGS. 5A-5C. Proctor (*supra* §IV.C) discloses media devices and laptops having a low-power display mode activated by pressing a button. Proctor, [0027], [0030], FIGS. 1, 6-11.

Despite Martinez and Proctor being directed to vastly different types of devices than Reavey, Ground 1 alleges a POSA would have been motivated to modify Reavey’s electronic-book based on Martinez and Proctor. Determining

how Petitioners allege a POSA would have modified Reavey, and what the resulting Reavey-Martinez-Proctor combination would be, is an onerous task. Petitioners do not comply with the Board's requirement to state Ground 1 with particularity, and scatter alleged motivations to combine throughout Ground 1 and bury critical explanations only in the expert declaration. That is reason enough why Ground 1 fails.

LiTL has laboriously traced through the Petition and expert declaration in an attempt to make sense of Petitioners' alleged Reavey-Martinez-Proctor combination. As detailed below, Petitioners allege Martinez and Proctor would have motivated a POSA to modify Reavey to adopt techniques for presenting different organizations of multiple simultaneously-open application windows on Reavey's device. A fundamental failing of this assertion is that Reavey is not a general-purpose laptop that runs a windows-based operating system with multitasking capabilities. Reavey nowhere discloses that its special-purpose electronic-book runs such an operating system. Petitioners do not allege otherwise, nor allege that a POSA had any reason to modify Reavey's e-book to run a windows-based, multitasking operating system, and never even attempt to explain what "multiple computer application[s]" (Petition, 40) Reavey would allegedly run in multiple simultaneously-open application windows.

Petitioners fail to establish that a POSA would have been motivated to make Petitioners' Reavey-Martinez-Proctor combination for numerous independent reasons detailed below.

a. Petitioners Fail to Provide a Clear Explanation of Their Reavey-Martinez-Proctor Combination

The Federal Circuit has made clear that “a prerequisite to adequately explaining and supporting a conclusion” of obviousness is “a *clear, evidence-supported account of the contemplated workings of the combination.*” *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017). Petitioners fail to provide the required (“prerequisite”) explanation of the alleged Reavey-Martinez-Proctor combination.

The Petition has a “Motivation to Combine” section (Petition, 24-27) but it never explains the “contemplated workings” of the alleged Reavey-Martinez-Proctor combination. Petitioners characterize Reavey’s device configurations as including a “laptop configuration” with “a single horizontally-oriented display” and a “flat configuration” wherein “Reavey’s device has a more vertically-oriented display with twice as much screen area.” Petition, 24. Petitioners argue that “[a] change to the organization of the GUI [in Reavey] would have been *required* because of (1) the change in available screen space, (2) the change in the aspect ratio of the screen space, and/or (3) the change in the input/output devices

available for manipulating the GUI,” and allege that “Reavey itself *does not explicitly disclose how the GUI should be organized.*”⁶ Petition, 25.

Petitioners argue that Martinez “teaches a GUI that allows arranging different ‘preselected’ views that include the reorganization of icons and windows.” *Id.* According to Petitioners, “[a] POSITA would have been motivated to trigger Martinez’s views” in Reavey when Reavey changes between its “laptop” and “flat” configurations “to allow for *a more user-friendly GUI organization* when [Reavey’s] display is used in different configurations.” Petition, 25-26. Petitioners additionally allege that “Proctor improves upon the combination by further expanding the set of inputs that trigger a change in display” (Petition, 26-27), which Petitioners later explain is based on the assertion that a POSA would have added a button to Reavey to allow a user to manually switch between the different Martinez “views” in the Reavey-Martinez-Proctor combination (Petition, 33-36).

Despite the basis for the alleged motivation being to modify Reavey to use different “views” of Martinez in Reavey’s “laptop” and “flat” configurations to provide “a more user-friendly GUI organization,” the Petition’s “Motivation to

⁶ Petitioners’ assertion that Reavey does not disclose how its GUI is organized is wrong as discussed *infra* §IV.D.1.b.ii.

Combine” section never even explains what alleged view from Martinez would be used in Reavey’s “laptop” configuration and what different Martinez view would be used in Reavey’s “flat” configuration. Petition, 24-27. Given that Petitioners fail to explain which view would allegedly be used for which configuration of Reavey’s device, the Petition fails to substantiate its assertion that the unexplained GUI would be “more user-friendly” than Reavey’s existing GUI. Petition, 25-26; *Personal Web*, 848 F.3d at 994 (“[A] prerequisite to adequately explaining and supporting a conclusion” of obviousness is “a *clear, evidence-supported account of the contemplated workings of the combination.*”).

Petitioners improperly impose on LiTL and the Board to hunt through the remainder of the Petition to attempt to determine what the contemplated workings of the Reavey-Martinez-Proctor combination are. Worse yet, the remainder of Petitioners’ Ground 1 showing is inconsistent and facially deficient.

In mapping the Reavey-Martinez-Proctor combination to the “plurality of views”⁷ in Limitation 1[a],⁸ Petitioners assert that “**Reavey** teaches two different

⁷ Petitioners rely on the Board’s prior construction of “plurality of views of digital media content” as “referring to a plurality of ways of organizing visual representations of computer content.” Petition, 14 (quoting IPR2021-00821, Paper 6, 7-9).

organizations of content.” Petition, 31. But Petitioners never even allege that Reavey’s “two different organizations of content” meet all the *other* limitations in claim 1 relating to the plurality of views. *E.g.*, Petition, 33-36 (1[b]-1[d]).

In the section purporting to map the Reavey-Martinez-Proctor combination to Limitation 1[a]’s “plurality of views,” Petitioners further state that “[i]f PO argues or the Board finds Reavey’s teachings insufficient alone, a POSITA would have found it obvious to combine Reavey with *Martinez’s teachings* for this limitation” and “apply *Martinez’s views* to be triggered based on Reavey’s hardware-based trigger.” Petition, 31-32 (alleging further “motivat[ion]” for the combination). Here, Petitioners point to Martinez’s disclosure of displaying windows and/or icons in “a tile or cascading fashion” as allegedly teaching two different views of content. *Id.* But Petitioners never explain what a tile display is, what a cascading display is, or which of these alleged views would be used in Reavey’s “laptop” configuration and which would be used in Reavey’s “flat” configuration.

In mapping the Reavey-Martinez-Proctor combination to Limitation 1[c], Petitioners introduce yet further alleged “motivat[ion]” to allow manual selection

⁸ LiTL adopts Petitioners’ claim-limitation labelling for the Board’s convenience.

See Petition, x-xvi.

between views, but Petitioners only illustrate Proctor’s “full image” (“View 2”) or partial image (“View 1”), which are not the tile and cascading arrangements of windows alleged to meet *Limitation 1[a]’s* “views.” Petition, 33-36.

In mapping the Reavey-Martinez-Proctor combination to Limitations 1[e2]-1[e3], Petitioners introduce yet different “motivat[ion],” alleging that a POSA would have used Martinez’s cascading view as a default for Reavey’s “laptop” configuration “to conserve screen real estate,” and Martinez’s tile view as a default for Reavey’s flat configuration “to allow more windows to be displayed and more gestures to be used” given the “more available screen real estate” “for keeping multiple computer application windows open and running.” Petition, 40-41. These new alleged motivations are unsupported for reasons discussed *infra* §§IV.D.1.b.iii-IV.D.1.b.v, §IV.D.2.c.

Thus, whenever Petitioners reach claim-limitation features missing from the Reavy-Martinez-Proctor combination described in the “Motivation to Combine” section, Petitioners simply invent new alleged motivations and form new variants of the “combination” in a hindsight attempt to reconstruct the claims. The lack of a consistent, clear explanation of the contemplated workings of the combination, and the “‘pick-and-choose’ approach to the presentation of evidence,” is routinely rejected by the Board. *Trend Micro, Inc. v. Open Text Inc.*, IPR2023-00692, Paper 8, 28 (Nov. 6, 2023) (“Regarding the explanation of the proposed combination, we

agree that *the Board tends to reject a ‘pick-and-choose’ approach to the presentation of evidence*, which is ‘challenging to follow and makes it difficult to piece together in order to understand Petitioner’s proposed combination or modification.’”); *Samsung Elecs. Co., v. Lynk Labs, Inc.*, IPR2022-00101, Paper 30, 28-29 (May 25, 2023) (The “problem[] with Petitioner’s combination” “is that *the proposed combination is not at all clear*. Although Petitioner need not propose a bodily incorporation of different embodiments, *Petitioner must provide a ‘reasoned analysis’ explaining what the combination is.*”); accord *Sisvel Int’l. S.A. v. Sierra Wireless, Inc.*, 82 F.4th 1355, 1364 (Fed. Cir. 2023) (affirming Board’s rejection of obviousness rationales that “were too conclusory, lacked clarity, or suffered from both problems”).

Petitioners’ failure to provide “a clear, evidence-supported account of the contemplated workings of the [Reavey-Martinez-Proctor] combination” is fatal. *Pers. Web*, 848 F.3d at 994. Ground 1 fails for this reason alone.

b. Petitioners Fail to Establish that a POSA Would Have Used Martinez’s Views in Reavey

Petitioners assert a “POSITA would have been motivated to trigger *Martinez’s views*” in Reavey’s e-book. Petition, 25-26. Petitioners failed to demonstrate a non-hindsight reason why a POSA would have done so.

Petitioners’ assertion that a POSA would have made this modification to Reavey “to allow for a more user-friendly GUI organization when its display is

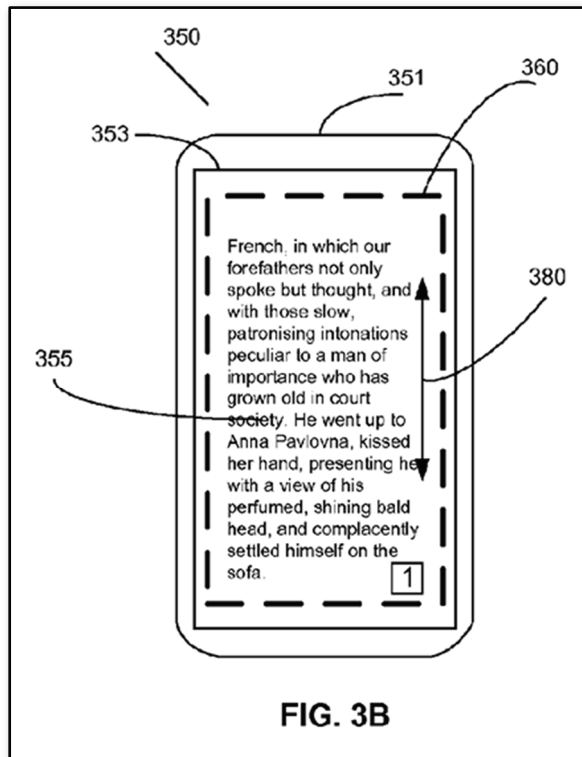
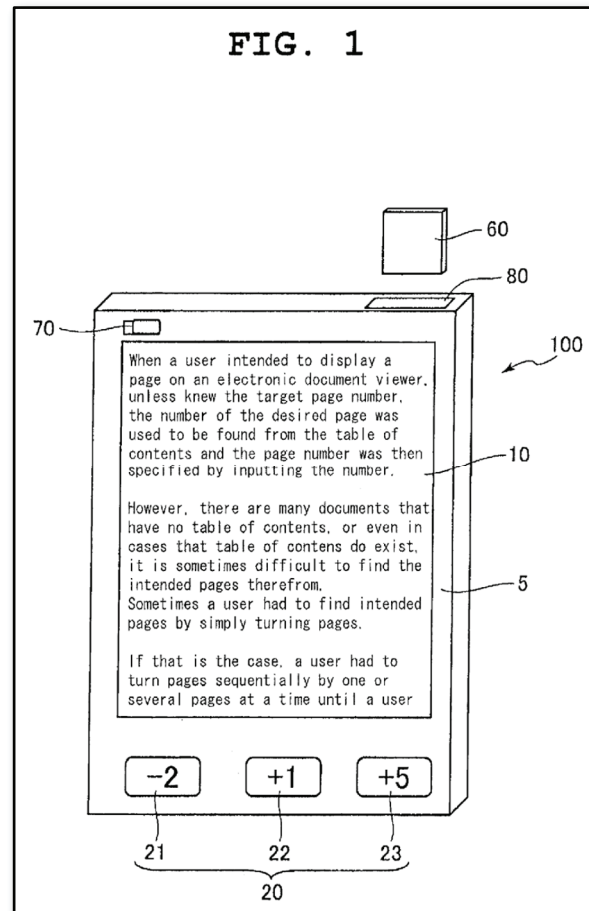
used in different configurations” (*id.*) fails because, as discussed above (§IV.D.1.a), Petitioners never establish how or why Martinez’s views would have been “more user-friendly” than Reavey’s interface for Reavey’s device. *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016) (obviousness requires more than “*mere conclusory statements*”; a “petitioner *must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness*”); *SPTS Techs. v. Plasma-Therm*, IPR2017-01792, Paper 22, 27 (Jan. 28, 2019) (“Petitioner’s unexplained assertion” that its modification “*would be of benefit*...is merely conclusory and is insufficient.”).

i. Reavey Does Not Have Multiple Application Windows

Petitioners allege a POSA would have used Martinez’s technique of arranging “*windows*” in a “cascading view” in Reavey’s “laptop” configuration and in a “tile view” in Reavey’s “flat” configuration. Petition, 40-41. Reavey’s device “looks like a book, feels like a book and is as easy to use like a book.” Reavey, 5:30-32. It is “*easy* to read and use” (Reavey, 3:10-12) and includes only “*nominal* software and hardware” (Reavey, 6:33-34). Reavey nowhere discloses that its special-purpose electronic-book runs a windows-based operating system, let alone supports “keeping *multiple computer application windows open and running*” simultaneously (Petition, 40), and Petitioners never allege that it does.

POSAs understood that a “cascading window arrangement can be *used to manage multiple windows which are open simultaneously*...[, which] make[s] it easier for the user to carry out *multitasking* easily, like when the user has to *work with multiple windows at the same time*...[and transition] from *one application* such as Microsoft Word *to another* like PowerPoint.” EX2002. Similarly, Petitioners’ expert admits that Martinez’s multiple application windows are for “a multi-tasking system” (EX1003, ¶104), but Petitioners never even allege that Reavey is a multi-tasking system that runs multiple applications in multiple simultaneously-open windows, let alone explain what those applications could be in Reavey’s special-purpose electronic-book. Petitioners also never even allege, let alone establish with *evidence*, that a POSA had reason to run a windows-based operating system on Reavey’s electronic-book.

POSAs also knew that an e-book, like Reavey’s, did not require support for multiple application windows because it mimics a book and is not a general-purpose laptop computer. EX2003, FIG. 3B (below left), [0005] (an e-book “user interface typically comprises” a “text area [that] presents the content of the book” and a “functional area [that] provides control over the presentation”); EX2004, FIG. 1 (below right).

EX2003**EX2004**

Given that Petitioners fail to establish that Reavey's e-book runs a window-based operating system, or that a POSA had any reason to modify Reavey to do so, Petitioners' arguments about alleged benefits of different ways of organizing multiple simultaneously-open application windows in different physical configurations of Reavey's e-book device fail because Reavey does not disclose ever having multiple simultaneously-open windows in the first place. That is fatal to Ground 1. *Unirac v. Ecofasten Solar*, IPR2021-00532, Paper 7, 20-21 (July 22, 2021) (motivation to combine argument failed where "[t]he gravamen of

[p]etitioner’s argument” assumed a reference’s “stanchion” was a bracket but petitioner did “*not sufficiently explain[] the predicate of [p]etitioner’s argument*—that stanchion 24 is a bracket”).

ii. Petitioners’ Assertion that Reavey Does Not Disclose a User Interface is Wrong

Petitioners argue that “Reavey itself *does not explicitly disclose* how [its] GUI should be organized.” Petition, 25. That assertion fails because Reavey discloses an electronic-book that “combines the *look and feel features of a conventional book*.” Reavey, 2:65-67; *supra* §IV.A. Reavey’s device “looks like a book, feels like a book and is as easy to use like a book.” Reavey, 5:30-32. “Prerecorded books on PC cards will present their own opening screens and menus informing the user on how to proceed....[T]he user will be presented with a menu of options including...Read a Book; Read Pages; Record Pages; and Create a Book.” Reavey, 8:66-9:7. Petitioners’ assertion that POSAs would be “required” to look elsewhere (*e.g.*, to Martinez) for a GUI because Reavey does not disclose one is false. Petition, 25.

iii. Petitioners Fail to Establish that their Modified GUI is More User-Friendly than Reavey’s

Petitioners’ assertion that Martinez’s views are “*more* user-friendly” than Reavey’s user-interface (Petition, 25-26) is entirely unsupported.

Reavey’s electronic-book has the “look and feel” of a “conventional book.” Reavey, 2:66-67, 4:39-42. Petitioners provide no credible evidence that Martinez’s cascade and tile views of multiple application windows could maintain that “look and feel” of a book. *Medtronic, Inc. v. Teleflex Innovations S.a.r.l.*, 69 F.4th 1341, 1349 (Fed. Cir. 2023) (it is “error for the Board to ignore evidence that a proposed modification would interfere with a reference’s stated purpose.”); *Cook Grp. Inc. v. Boston Sci. Scimed, Inc.*, 809 F. App’x 990, 1001 (Fed. Cir. 2020) (“where the motivation to combine rests on a modification alleged to improve the primary reference” “the Board may consider whether the modification renders the reference inoperable for its intended function in deciding whether a POSA would have a motivation to combine the references, even if that function is not a feature of the claimed device at issue”); *Plas-Pak Indus., Inc. v. Sulzer Mixpac AG*, 600 F. App’x 755, 759 (Fed. Cir. 2015) (changing “a reference’s ‘principle of operation’ is unlikely to motivate a [POSA] to pursue a combination with that reference”).

As alleged support for Petitioners’ assertion that Martinez’s views would provide “a more user-friendly GUI organization,” Petitioners cite a single paragraph of expert testimony. Petition, 25-26 (citing “Houh, ¶70”). The cited paragraph alleges that using Martinez’s “tilt sensor” in Reavey would “increase[] the responsiveness and accuracy of Reavey’s display in relation to any degree of rotation of a laptop.” EX1003, ¶70. The cited paragraph never discusses any

“GUI organization,” never alleges that Martinez’s views are “more user-friendly” than Reavey’s organization, and thus provides no evidence supporting Petitioners’ naked assertion that Martinez’s views would provide “a more user-friendly GUI organization.” Petition, 25-26.

If the Board hunts through EX1003 to find any reference to the alleged modification to Reavey based on Martinez providing a more user-friendly GUI, the Board will find nothing other than testimony parroting nearly word-for-word the Petition’s conclusory assertion. Petitioners’ expert cites no corroborating evidence and provides no explanation for the naked “more user-friendly” assertion offered. Unsupported conclusory testimony mirroring Petitioners’ attorney argument warrants no weight under the precedential *Xerox* decision. *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9, 15 (Aug. 24, 2022) (precedential) (“[T]he cited declaration testimony is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight.”) (citing 37 C.F.R. §42.65(a)).

Indeed, Petitioners’ expert admits Reavey’s electronic-book interface is “‘streamlined’ to display information in a *user-friendly format*.” EX1003, ¶77. Petitioners fail to establish how or why Martinez’s arrangements of simultaneously-open windows (Martinez, 4:50-58, FIGS. 5A-5C) would be a “more user-friendly” interface for Reavey’s electronic-book than Reavey’s

streamlined interface that provides the look and feel of a book (Reavey, 2:65-67, 3:8-10, 4:38-42, 5:30-32) in a format Petitioners’ expert admits is “user-friendly.”

Thus, the entire basis for Petitioners’ alleged motivation to modify Reavey based on Martinez – to provide a more user-friendly GUI for Reavey’s e-book – is unsupported. Ground 1 fails for this additional independent reason.

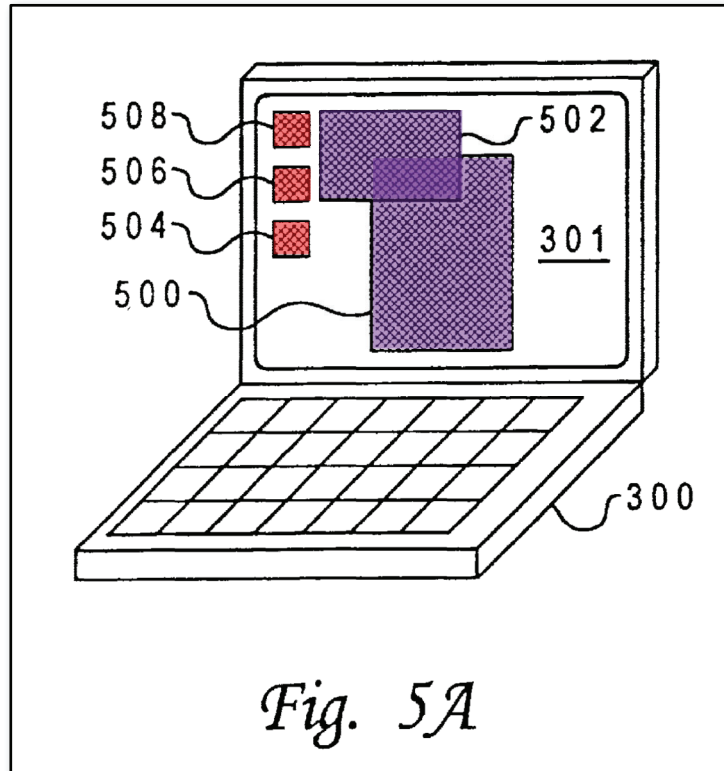
iv. Petitioners Seek to Improperly Incorporate Arguments and Evidence Only in Petitioners’ Expert Declaration

Petitioners allege a POSA would use Martinez’s “cascading view” to “conserve screen real estate” in Reavey’s “laptop” configuration and Martinez’s “tile view” for Reavey’s “flat” configuration. Petition, 40-41. But Petitioners never even explain the difference between cascading and tile views, let alone explain why using these “views” in different configurations would allegedly create a “more user-friendly GUI organization.” Petition, 25-26.

To even begin to understand the basis of Petitioners’ argument requires hunting through Petitioners’ expert declaration and considering evidence only cited there and not in the Petition. That is improper. *See* 37 C.F.R. §42.22(a)(2) (the *petition* must “includ[e] a detailed explanation of the significance of the evidence”); *Instrumentation Lab’y v. Hemosonics*, IPR2017-00855, Paper 55, 20 (Feb. 13, 2019) (“*Arguments and information* that are *not presented and developed in the Petition*, but instead are incorporated by reference, *are not*

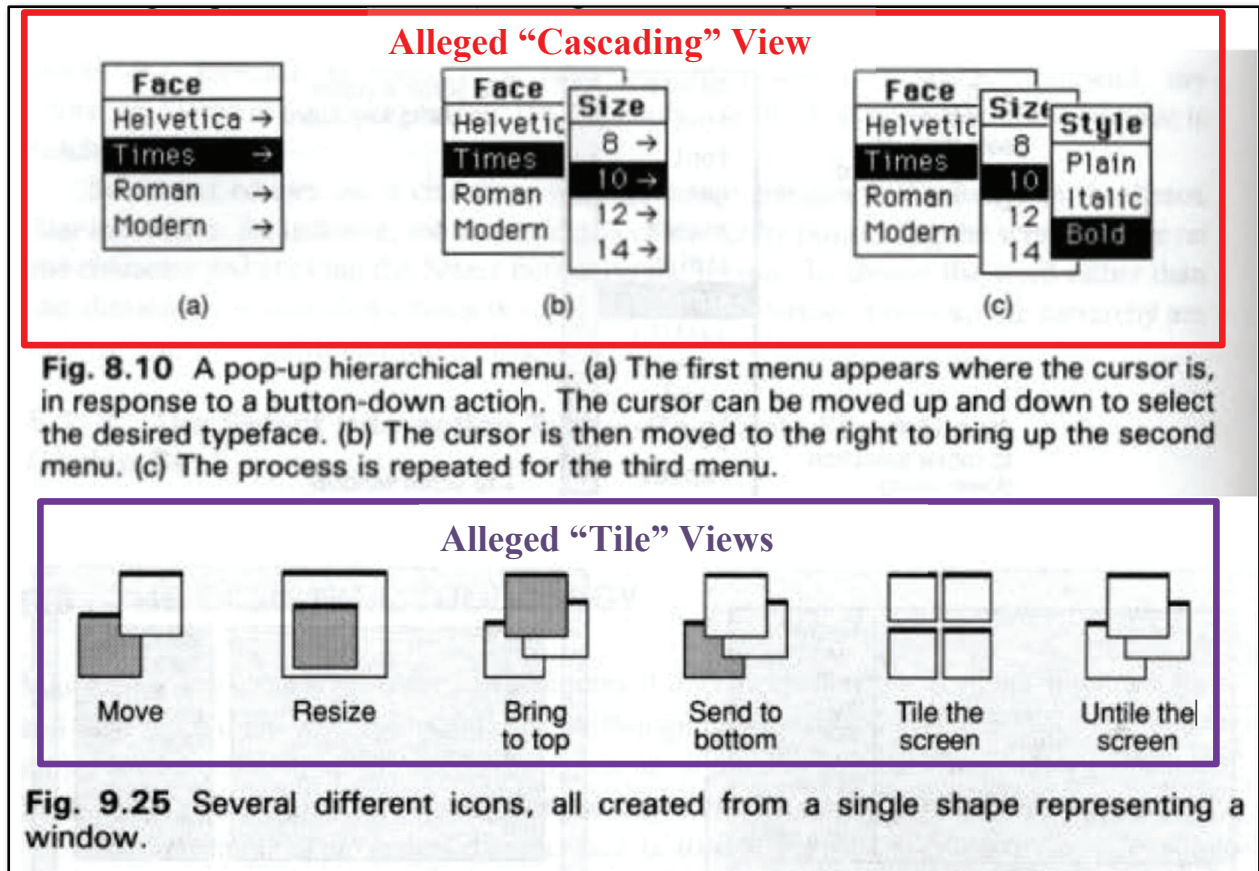
entitled to consideration, as it is improper to incorporate by reference arguments from one document into another document.”) (citing 37 C.F.R. §42.6(a)(3)); *Cook Grp. v. Boston Sci. Scimed*, IPR2017-00131, Paper 13, 15 (May 15, 2017) (“A petition must identify” “the relevance of the evidence to the challenge raised. 37 C.F.R. §42.104 (b). A string citation *purporting to incorporate arguments and evidence by reference is not a sufficient substitute for an explanation of the relevance of the asserted evidence.*”).

Martinez’s laptop GUI can simultaneously display multiple application “windows 500 and 502 [purple] and icons 504-508 [red].” Martinez, 4:50-58, FIG. 5A (annotated below); *supra* §IV.B.



Martinez says “the windows could be arranged in a tile or cascading fashion” (6:33-34) but never explains what that means. Neither does the Petition. Petition, 32; *see* Petition, 21-22, 40, 51.

Petitioners block-cite many paragraphs of expert testimony to allegedly support Petitioners’ conclusory assertion that “[a] POSITA would have been motivated to combine the Reavey’s [sic] with Martinez’s GUI display changes and Proctor’s display switching.” Petition, 24 (citing “Houh, ¶¶67-76”), 25 (citing “Houh, ¶¶69-75”), 33 (similar), 60 (similar). Petitioners’ expert reproduces figures from EX1021 (below with LiTL’s annotations) to illustrate “[e]xamples of cascading (top) and tile (bottom) arrangements.” EX1003, ¶71 (citing EX1021, 366, 426-27). The *Petition never cites EX1021* and never explains Petitioners’ understanding of Martinez’s tile and cascading window arrangements.



“It is the Petition, not the expert declaration, that must make Petitioners’ case.” *Vimeo v. British Telecoms.*, IPR2019-00833, Paper 20, 48 (Aug. 5, 2020). Arguments and evidence in the expert declaration cannot be incorporated by reference into the Petition. 37 C.F.R. §42.6(a)(3) (“*Arguments must not be incorporated* by reference...”); *see also* 35 U.S.C. §312(a)(3) (petitions must “*identif[y]*, in writing and with particularity” “*the evidence* that supports the grounds”). The Petition wholly fails to substantiate its assertion that Martinez’s tile and cascading “views” would have been “more user-friendly” than Reavey’s user interface because the Petition never even explains what Martinez allegedly

even means by “tile or cascading fashion.” Petition, 25-26, 32; *Cook*, IPR2017-00131, Paper 13, 15 (“A petition *must...[explain] the relevance of the evidence* to the challenge raised. 37 C.F.R. §42.104(b). A string citation purporting to *incorporate arguments and evidence by reference is not a sufficient substitute for an explanation* of the relevance of the asserted evidence.”).

Understanding Petitioners’ motivation-to-combine argument for Ground 1 *requires* evidence (EX1021) and argument (EX1003, ¶¶70-71) that are *only* presented in Petitioners’ expert’s declaration and thus cannot be considered. This is another independent reason Ground 1 fails.

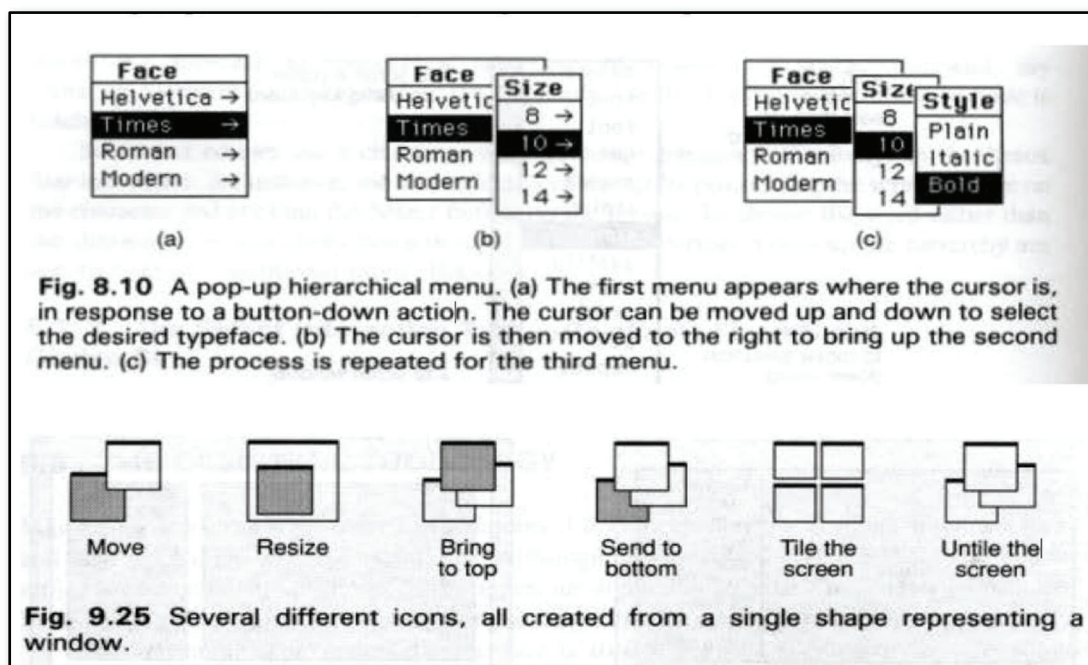
v. Petitioners’ Allegation that Martinez’s Tile View Allows More Windows and Gestures is Unsupported

The Petition’s moving target alleged motivations for adding Martinez’s tile and cascading views to Reavey includes the assertion that a POSA would have been motivated to use Martinez’s tile view “as the default view for Reavey’s Figure 2 configuration as beneficial with two touchscreens available for content to allow *more windows to be displayed* and *more gestures to be used* to navigate them in an environment with more available screen real estate. Houh, ¶106.” Petition, 41.

Martinez never says the tile view allows “more windows to be displayed.” The only evidence the Petition cites to “support” this assertion is a single

paragraph of expert testimony (“Houh, ¶106”) that merely parrots the Petition’s naked conclusion without explanation or supporting evidence, so it is entitled to no weight. *Xerox*, IPR2022-00624, Paper 9, 15.

The only evidence of the difference between tile and cascading views is the expert’s citation to EX1021 (reproduced below), which shows that tile view takes more room than cascading view for the same number of windows because windows overlap in a cascading view. Thus, tile view allows fewer (not “more”) windows to be displayed for any particular screen real estate.



Petitioners’ assertion that tile view “allow[s]...*more gestures to be used* to navigate them” fares no better. Petition, 41. This assertion is unexplained and unsupported by anything in Martinez. The only evidence Petitioners cite is the same paragraph of expert testimony (“Houh, ¶106”) that parrots the Petition’s

naked conclusion without explanation or supporting evidence, so it is entitled to no weight. *Xerox*, IPR2022-00624, Paper 9, 15.

The Petition’s alleged motivation for using Martinez’s tile view in Reavey’s flat configuration (“to allow *more windows to be displayed* and *more gestures to be used*”) is unsupported by any credible evidence. Petition, 41. Ground 1 fails for this additional reason.

vi. Conclusion: Petitioners’ Failure to Establish That a POSA Would Have Used Martinez’s Views in Reavey is Fatal to Ground 1

As detailed above (§§IV.D.1.b.i-IV.D.1.b.v), there are numerous independent reasons why Petitioners fail to substantiate their assertion that a POSA would have used Martinez’s cascading and tile views of multiple simultaneously-open application windows in Reavey. Because Ground 1 relies on Martinez’s views of application windows in the Reavey-Martinez-Proctor combination to meet several claim 1 limitations (*e.g.*, *infra* §IV.D.2.b), Petitioners’ failure to establish that a POSA would have used Martinez’s views in Reavey’s electronic-book (*supra* §§IV.D.1.b.i-IV.D.1.b.v) is fatal to Ground 1.⁹

⁹ Petitioners also assert a POSA would have used Martinez’s tilt sensor in Reavey. Petition, 26. For purposes of this POPR only, LiTL does not challenge that assertion because Ground 1 fails for the other reasons identified herein.

c. Petitioners Fail to Establish That a POSA Would Have Triggered a Change Between Martinez’s Tile and Cascading Window Arrangements Responsive to Selection of the Computer’s I/O Profile (Limitation 1[b])

Limitation 1[b] requires “providing for transition between the plurality of views in response to selection of an I/O profile.” Petitioners allege a POSA “would have been motivated to trigger Martinez’s [tile and cascading] views based on Reavey’s ‘spring and ball bearing mechanism’ using ‘hinge detents’ and ‘multi-function gravity switches.’” Petition, 25. Nothing supports this.

The only teaching in the prior art that Petitioners rely on for using tile and cascading window organizations is Martinez, which teaches transitioning between these views responsive to a user action (a “shake”) and *not* responsive to the computer transitioning between configurations with different I/O profiles.

Martinez, 6:1-37. And Reavey does not teach transitioning between these different organizations of multiple windows at all, let alone responsive to selection of the computer’s I/O profile.

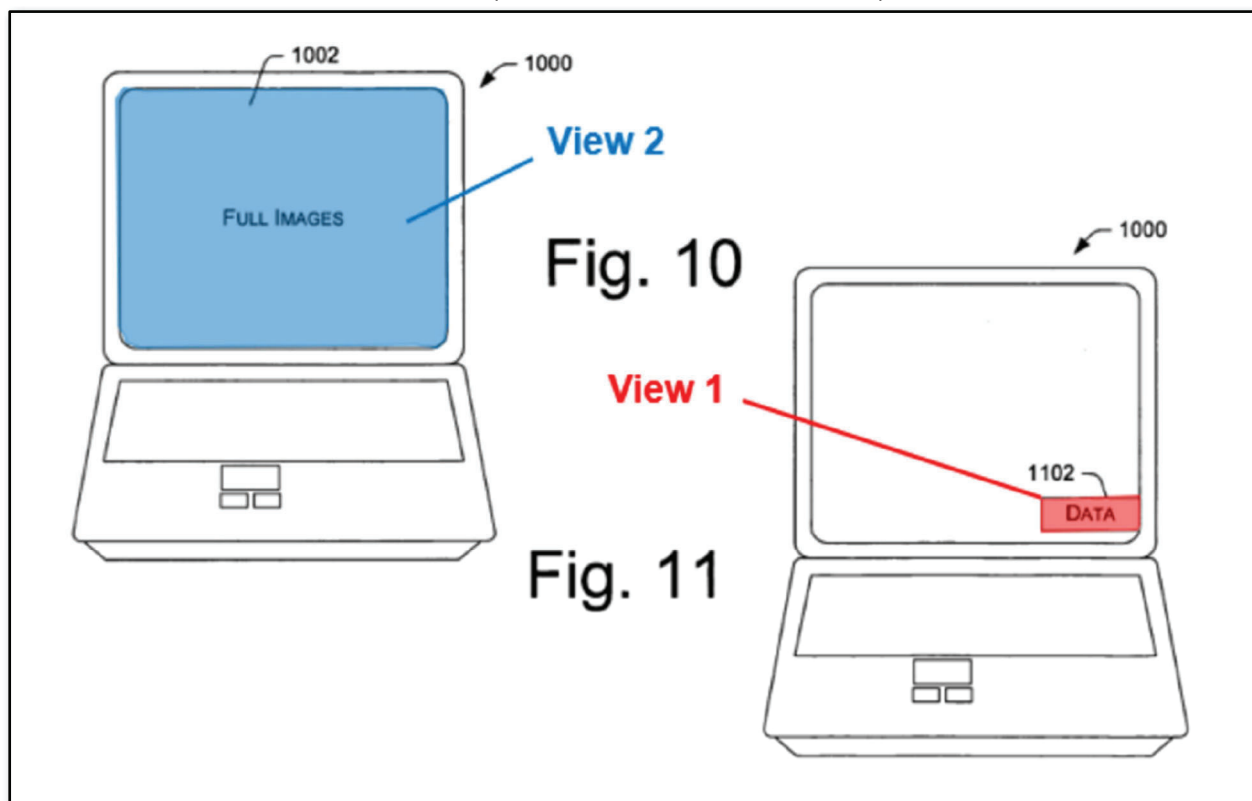
Thus, none of Petitioners’ prior art references teach “providing for transition between the plurality of views in response to selection of an I/O profile” as Limitation 1[b] requires. Any suggestion that a POSA would have combined the references in a manner meeting this claim requirement is pure hindsight.

d. Petitioners Fail to Establish That a POSA Would Have Used Proctor’s Button to Switch Between Window Organizations in Reavey-Martinez (Limitation 1[c])

Limitation 1[c] requires “providing for transition between the plurality of views in response to activation of a *view selector component* configured to permit a user to select one of the plurality of views.” Petitioners allege a POSA would have used a “navigation button” to allow a user to manually switch between the cascading and tile window views in Reavey-Martinez. Petition, 33-34.

The only alleged “navigation button” Petitioners identify in the prior art is Proctor. Petition, 33-36. Proctor’s button is used to switch a display into a power-saving “partial display mode” (FIG. 11 below), where “only a portion of the display panel is powered on.” Proctor, [0027], [0056]; Petition, 35-36; *supra* §IV.C. “The small screen area 1102” can show “notifications and status,” like “current time, reminders, news headlines, urgent e-mail notices.” Proctor, [0056].

Proctor (Petitioners' annotations)



Petitioners fail to support their assertion that Proctor’s disclosure of a button that allows a user to reduce power-consumption by switching the display to have only a small area providing “notifications and status” would have somehow motivated a POSA to use Proctor’s button in Reavey-Martinez for a *completely different purpose* – to switch between cascading and tile views of windows.

i. The Petition’s “Motivation to Combine” Section Says Nothing

In its section purporting to establish the motivation to use Proctor’s button in Reavey-Martinez, the Petition alleges a POSA would have been motivated by Proctor to “further expand[] the set of inputs that trigger a change in display.”

Petition 26-27. This does not even allege, let alone substantiate with evidence, any *reason why* a POSA would have used Proctor’s button in Reavey-Martinez for a different purpose than Proctor uses the button for.

ii. The Petition’s Limitation 1[c] Section Fares No Better

Petitioners assert “[a] POSITA would have been motivated to include functionality to also allow a user to transition between views manually [in Reavey-Martinez] by using a view selector component, such as a navigation button.”

Petition, 33. This naked conclusion that a POSA “would have been motivated” to do what the claims require, without providing any reason *why* a POSA would have been so motivated, is the epitome of hindsight. *Apple v. Telefonaktiebolaget LM Ericsson*, IPR2022-00456, Paper 8, 19 (Aug. 31, 2002) (“Petitioner[s] ‘rel[y] on improper hindsight reconstruction’” when they do not “provid[e] any basis for *why* a POSITA would have been motivated to make th[e] specific modification”).

Petitioners assert that “taking an automatic activity and merely allowing it to be performed manually would have been obvious to a POSITA.” Petition, 33-34 (citing “MPEP §2144.04(III) (citing *In re Venner*, 262 F.2d 91, 95 (CCPA 1958))” and “Houh, ¶¶98-99”). Petitioners again offer no *reason why* a POSA would have been motivated to take “an automatic activity” and “allow[] it to be performed manually.”

Petitioners’ citations do not cure this failure.

In “Houh, ¶¶98-99,” Petitioners’ expert cites no corroborating evidence, provides no explanation for his naked conclusory assertion, and essentially parrots Petitioners’ conclusory attorney argument. Such testimony warrants no weight. *Xerox*, IPR2022-00624, Paper 9, 15.

MPEP §2144.04(III) and *Venner* are inapposite because Petitioners are not alleging a POSA would have automated a manual process (which the MPEP and *Venner* address) – Petitioners are alleging the opposite. More fundamentally, the manner in which Petitioners rely on *Venner* has been expressly rejected by the Federal Circuit and the Board as legal error. Without evidence establishing a reason *why* a POSA would have made the alleged modification to Reavey-Martinez based on Proctor, Petitioners’ “citation of *In re Venner* amounts to little more than a *per se* rule of obviousness,” which “are disfavored by [the Board’s] reviewing court.” *Ex Parte Hase*, No. 2008-1769, 2009 WL 803055, at *2 (B.P.A.I. Mar. 25, 2009) (citing *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (finding that a similar bare citation to *Venner* equaled “reliance on *per se* rules of obviousness[, which] is **legally incorrect** and must cease”)); *Ex Parte Brouillet*, No. 1998-2297, 2001 WL 1339914, at *2 (B.P.A.I. Apr. 12, 2001) (in citing *Venner* “[t]he examiner has merely relied upon a *per se* rule that providing a mechanical or automatic means to replace manual activity which has accomplished the same result is unpatentable,” which is “**legally incorrect**”) (quoting *Ochiai*).

Thus, the Federal Circuit has made clear that as a matter of law there is no per se rule of obviousness. Petitioners needed to provide evidence of some reason why a POSA would have made the alleged modification and failed to do so.

Finally, Petitioners assert “[i]t was well known” “to use a user interface element such as a navigation button to change the GUI presentation” (Petition, 34), and that using Proctor’s button in Reavey-Martinez would have been “applying a known technique (using a manual switch) to a known device (Reavey’s device) to achieve a predictable results (manual user switching between views)” (Petition, 35).

Petitioners fail to establish factual predicates required by *KSR*’s “known technique” rationales. Those rationales include applying a known technique “**to improve** one device” or “to a piece of prior art ready for the **improvement.**” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417, 420 (2007). These rationales only apply when the elements are combined without “change in their respective functions.” *Id.* at 415-16 (describing as obvious “a combination which only unites old elements **with no change in their respective functions**”); MPEP §2143(A) (Feb. 2023) (proving obviousness based on “Combining Prior Art Elements According to Known Methods To Yield Predictable Results” requires that a POSA “could have combined the [known] elements as claimed by known methods **with**

no change in their respective functions”) (citing, *inter alia*, *KSR*, 550 U.S. at 416).

Petitioners’ combination uses Proctor’s button for a different purpose than Proctor does. Rather than switching a full-display mode to a reduced-display mode to save power (as in Proctor), Petitioners allege a POSA would have used Proctor’s button to switch between Martinez’s cascading and tile views of windows. That *change to the function of Proctor’s button* precludes Petitioners’ reliance on any *KSR* “known technique” rationale.

Petitioners do no more than allege that a POSA *could* have used Proctor’s button to manually transition between cascading and tile arrangements of windows in Reavey-Martinez. That does not meet Petitioners’ burden to demonstrate a reason that a POSA *would* have done so. *Virtek Vision Int’l. ULC v. Assembly Guidance Sys., Inc.*, 97 F.4th 882, 887-88 (Fed. Cir. 2024) (“[P]ossible arrangements exist[ing] in the prior art *does not provide a reason* that a skilled artisan would have substituted [one arrangement for another].... It does not suffice to simply be known. *A reason for combining must exist.*”); *Adidas AG v. Nike, Inc.*, 963 F.3d 1355, 1359 (Fed. Cir. 2020) (“The obviousness inquiry does not merely ask whether a skilled artisan *could* combine the references, but instead asks whether ‘they *would* have been motivated to do so.’”).

Thus, Petitioners fail to prove that a POSA would have been motivated to use Proctor's button in Reavey-Martinez-Proctor in the manner alleged. This is another independent reason Ground 1 fails.

2. Petitioners Fail to Establish that its Reavey-Martinez-Proctor Combination Meets all the Limitations of any Challenged Claim

a. Petitioners Fail to Show that its Reavey-Martinez-Proctor Combination Meets a “Plurality of Views” (Limitations 1[a]-1[e3])

Claim 1 requires displaying a GUI that “comprises at least *a plurality of views* of digital media content.” *See* Limitation 1[a]. Numerous claim limitations impose additional requirements on the claimed plurality of views. *E.g.*, Limitations 1[b]-1[e3].

Petitioners rely on the Board's prior construction of “plurality of views of digital media content” as “referring to a plurality of ways of organizing visual representations of computer content.” Petition, 14. As Petitioners recognize and do not dispute for purposes of the Petition, the Board further found that the “plurality of views” “is distinct from merely changing the display's orientation.” Petition, 8-9.

i. Petitioners Fail to Demonstrate that Reavey Discloses the Claimed Views

Petitioners make a vague suggestion that Reavey alone might meet Limitation 1[a]'s plurality of views because Reavey allegedly “teaches two

different organizations of content” – “one with a single screen of content with a virtual keyboard and the second with two screens of content in a tall continuously scrolling display.” Petition, 31. If the Petition is read as affirmatively asserting that Reavey meets the claimed plurality of views in Limitation 1[a], that fails for two independent reasons.

(1) Petitioners Never Even Allege that Reavey Meets All the Requirements Claim 1 Imposes on the Plurality of Views

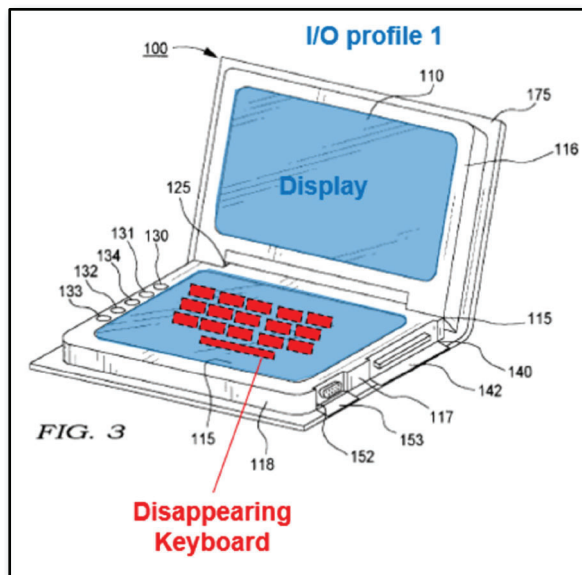
For any alleged views in Reavey to meet claim 1’s plurality of views, those alleged “views” would need to meet *everything* claim 1 requires of the plurality of views, but Petitioners never even allege that to be so.

For example, Petitioners never allege that any alleged view in Reavey meets Limitations 1[e2]-1[e3]. Limitation 1[e2] requires that one of the plurality of views be a “default” in laptop mode, whereas Limitation 1[e3] requires that another of the plurality of views be a “default” in a different mode of the computer having a different physical configuration. Petitioners never even allege that “Reavey” teaches Limitations 1[e2]-1[e3] the way Petitioners do for other limitations. Petition, 27 (“**Reavey** teaches 1[pre]”), 36 (“**Reavey** teaches 1[e1]”). Rather, Petitioners allege Limitations 1[e2]-1[e3] are met by the **Reavey-Martinez combination**. Petition, 38 (“The Reavey-Martinez combination teaches 1[e2]”), 40 (“The Reavey-Martinez combination teaches 1[e3]”).

Additionally, in mapping the Reavey-Martinez combination to Limitations 1[e2]-1[e3], Petitioners only allege the claimed default views are met by Martinez’s organization of “windows in a cascading view” and Martinez’s organization of “windows in a tile view,” respectively. Petition, 40-41.

(2) Petitioners Fail to Establish that Reavey Discloses a Plurality of Views

Reavey's “First” I/O Profile



Petitioners allege “Reavey itself *does not explicitly disclose* how the GUI should be organized” in any of Reavey’s physical configurations. Petition, 25. Thus, for Petitioners to demonstrate that Reavey discloses a plurality of views, Petitioners would need to establish that Reavey *inherently* discloses a plurality of views. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (“To establish inherency, the extrinsic evidence ‘must make clear that *the missing descriptive matter is necessarily present in the thing described in the reference....*’ The mere fact that a certain thing may result from a given set of circumstances is not sufficient.”).

Petitioners cite no credible evidence establishing that Reavey’s two physical configurations *necessarily require* different organizations of content. Petitioners allege Reavey requires “[a] change to the organization of the GUI” between its “laptop” and flat configurations “because of” changes in (1) “available screen space,” (2) “the aspect ratio of the screen space,” and (3) “the input/output devices available for manipulating the GUI.” Petition, 25. None of these three “changes” requires a change to the organization of content.

Reavey’s disclosure is consistent with its flat and “laptop” configurations having content organized in the *same* way, but viewed with different screen real estate – two screens versus one. Indeed, Reavey says in the flat “over-under placement” (above right), the panels “can function as *one panel* with text and

graphics scrolling downward from one to the other.” Reavey, 3:18-21. In “laptop configuration” (above left), “the bottom panel [serves] as a touch screen for data and text entry.” Reavey, 3:21-24. Reavey does not disclose that the way content is organized changes between these flat and “laptop” configurations.

Reavey says “text and graphics” are “automatically adjust[ed]” by “a screen *orientation* feature” (3:24-26), discloses “means for *orientating the material*...responsive to an opening position of the electronic book device” (4:4-6), and discloses “automatically *rotat[ing]* text and graphics” using “[s]creen *orientation* processing” (7:24-62). Thus, Reavey changes the *orientation* of displayed content by rotating it. That does not meet a plurality of views under the Board’s prior construction that Petitioners adopt (Petition, 14), because the Board found that “merely changing the display’s orientation” is not changing a “view” (Petition, 8-9 (quoting IPR2021-00281, Paper 6, 7-9)).

Much like changing from portrait to landscape orientation does not require changing the organization of content, additional “screen real estate” in Reavey’s flat configuration as compared to its “laptop configuration” does not require changing the organization of content. As the Board is well-aware, adding an additional display screen to a computer does not require changing the organization of content. EX2005, [0009] (Microsoft Windows “allows for multiple (up to 9 displays) *to run as one large contiguous on-screen desktop*”); EX2006, 214

(“**Doubling your workspace with a second monitor[:]** Blessed with an extra monitor...[connected] to your PC...you’ve *doubled your Windows desktop*: Vista *stretches your workspace across both monitors.*”) (unitalicized bolded emphasis original).

For the reasons above, Petitioners fail to establish that Reavey *requires* different ways of organizing displayed content. Reliance in Ground 1 on Reavey alone to allegedly disclose the claimed plurality of views fails for this additional reason.

ii. Petitioners’ Failure to Substantiate that a POSA Would Have Used Martinez’s Window Organizations in Reavey is Fatal

Given Petitioners’ failure to establish that Reavey unmodified meets all claim 1’s limitations relating to the plurality of views, Ground 1 could only prevail if Petitioners established that a POSA would have modified Reavey to use Martinez’s tile and cascading organizations of windows. The Petition’s failure to do so (*supra* §IV.D.1) is fatal to Ground 1.

b. Petitioners Fail to Show That the Reavey-Martinez-Proctor Combination “Transition[ed] Between the [Alleged] Plurality of Views in Response to Selection of an I/O profile” (Limitation 1[b])

As discussed *supra* §IV.D.1.c, Limitation 1[b] requires “providing for transition between the plurality of views *in response to selection of an I/O*

profile.” Ground 1’s section for Limitation 1[b] is a single paragraph. Petition, 33.

After stating in conclusory fashion that “[t]he Reavey-Martinez combination teaches 1[b],” Petitioners direct the reader to the Petition’s section on Limitation 1[pre] as allegedly demonstrating that “Reavey teaches selecting an I/O profile when the user manipulates the device into a configuration (e.g., laptop, flat).” Petition, 33. Petitioners then direct the reader to the Petition’s section on Limitation 1[a] as allegedly demonstrating that “the Reavey-Martinez combination teaches transitioning between views in response to a detected change in device configuration (which results in I/O profile selection).” *Id.* The section on Limitation 1[b] then concludes by arguing that “[a] POSITA would have been motivated to combine the relied-upon teachings of Reavey and Martinez for the reasons discussed” in two sections: “VIII.A.4” (alleged “Motivation to Combine”) and “VIII.A.5.b” (addressing Limitation 1[a]). Petition, 33.

i. Petitioner’s Limitation 1[b] Section is not Described with the Required Particularity

Petitioners must identify “*with particularity*...the *grounds* on which the challenge to each claim is based, and the *evidence* that supports the grounds.” 35 U.S.C. §312(a)(3). “[A] Petition that requires the panel or the Patent Owner to [‘scour the Petition to discern Petitioner’s evidence’] lacks particularity and is tantamount to impermissibly shifting Petitioner’s burden under 35 U.S.C.

§ 312(a)(3).” *InVue Sec. Prods. v. Mobile Tech.*, IPR2019-00078, Paper 7, 15 (May 1, 2019).

Petitioners’ argument for Limitation 1[b] fails to make Petitioners’ case with particularity and improperly shifts the burden onto LiTL and the Board.

First, the Petition’s Limitation 1[b] section directs the reader to “§VIII.A.5.b (1[a])” as allegedly demonstrating that “the Reavey-Martinez combination teaches transitioning between views in response to a detected change in device configuration.” Petition, 33. That cross-cited section, in turn, redirects the reader to “§VIII.A.5.a (1[pre])” as allegedly demonstrating that “Reavey teaches a device with a plurality of I/O profiles, which automatically adjusts the display to a desired mode.” Petition, 31. Limitation 1[a]’s section also redirects the reader to “§VIII.A.4” (“Motivation to Combine”) as allegedly demonstrating that a POSA would “apply Martinez’s views to be triggered based on Reavey’s hardware-based trigger.” Petition, 32.

Petitioners’ “approach of forcing the reader to follow a web of nested cross-references to find Petitioner[s’] arguments improperly shifts the burden of deciphering Petitioner[s’] arguments onto Patent Owner and the Board.” *Lenovo (U.S.) v. LiTL*, IPR2021-00800, Paper 7, 14 (Nov. 2, 2021).

Second, as discussed *supra* §IV.D.1.b.iv, Petitioners seek to improperly incorporate-by-reference evidence (EX1021) and argument (EX1003, ¶¶67-76,

¶¶91-92) from Petitioners’ expert that are necessary to even begin to understand the alleged “views” in Martinez that allegedly would have been incorporated into Reavey’s electronic book. Petition, 33.

Petitioners’ lack of clarity, use of internal and nest cross-references, and improper incorporation-by-reference result in the Petition failing to explain “with particularity” how Reavey-Martinez-Proctor is alleged to meet Limitation 1[b]. See 35 U.S.C. §312(a)(3). This is another independent reason Ground 1 fails.

ii. Petitioners Fail to Show that Reavey, Martinez, or Proctor Discloses a Transition between Views “in Response to Selection of an I/O Profile”

Even if the Board were to find that Petitioners made their case with particularity and established that a POSA would have been motivated by Martinez to use its tile and cascading window organizations in Reavey,¹⁰ Petitioners fail to show that their Reavey-Martinez-Proctor combination meets “providing for transition between” those alleged “views *in response to selection of an I/O profile*,” as Limitation 1[b] requires.

A POSA’s alleged “common sense” or “ordinary creativity” cannot be used “to supply a missing claim limitation” unless “the limitation in question was *unusually simple* and the technology *particularly straightforward*.” *DSS Tech.*

¹⁰ Petitioners failed to establish this. *Supra* §IV.D.1.

Mgmt., Inc. v. Apple Inc., 885 F.3d 1367, 1374 (Fed. Cir. 2018). As detailed below, no reference Petitioners rely on (Reavey, Martinez, or Proctor) teaches transitioning between views in response to selection of an I/O profile. Petitioners’ assertion that a POSA would have been motivated to combine these references in a manner that meets a claim limitation absent from all three prior art references is improper hindsight. *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1367 (Fed. Cir. 2016) (reversing obviousness finding because “the missing limitation is not a ‘peripheral’ one, and there is nothing in the record to support the Board’s conclusion that supplying the missing limitation would be obvious to one of skill in the art”); *10x Genomics v. Bio-Rad Lab’s*, IPR2020-00088, Paper 39, 74 (Apr. 26, 2021) (“[p]etitioner’s analysis improperly relie[d] on hindsight and conclusory assertions about the knowledge of a POSA to supply multiple important claim limitations that [we]re missing from the cited disclosure of” the prior art).

(1) Petitioners Rely on Reavey to Allegedly Disclose Transitioning Between Views Responsive to Selecting an I/O Profile

Petitioners allege that Limitation 1[b]’s “transitioning” “in response to a detected change in device configuration” is met by “the Reavey-Martinez combination” as “discussed in §VIII.A.5.b (*1a*).” Petition, 33. In their §VIII.A.5.b (1[a]), Petitioners allege that “[a]s discussed in §VIII.A.5.a (1[pre]),” “*Reavey teaches* two different organizations of content” and “*automatically*

adjusts the display to a desired mode.” Petition, 31 (citing Reavey, FIGS. 2-3, 3:12-28, 7:24-62); *see also* Petition, 24 (§VIII.A.5.a (“Motivation to Combine”): arguing that “the organization of Reavey’s GUI in [sic] changes when the user manipulates the device from the laptop configuration (Mode 3) to the flat configuration (Mode 2)”).

The above assertion that Reavey allegedly teaches “automatically adjust[ing]” the display in different configurations is the only allegation Petitioners make that any of its prior art references teaches changing views responsive to selecting a device’s I/O profile. Petitioners make no such allegation about Martinez or Proctor. Specifically, Petitioners acknowledge that “Martinez teaches using a sensor to detect movement (in Martinez’s particular embodiment, a *shake gesture*) and based on that movement, to arrange (i.e., organize) windows and/or icons in a pre-selected manner.” Petition, 32.

Petitioners argue “[a] POSITA would have been motivated to apply Martinez’s views *to be triggered based on Reavey’s* hardware-based trigger that detects rotational changes...and *responds to such changes with a different view.*” *Id.* Thus, Petitioners rely on Reavey’s alleged teaching of transitioning between views responsive to selecting an I/O profile. But as discussed below, Petitioners fail to show that Reavey has that teaching.

**(2) Petitioners Fail to Establish that Reavey
discloses Transitioning Views Responsive to
Selecting an I/O Profile**

Petitioners’ assertion that “*Reavey teaches* two different organizations of content” and “*automatically adjusts* the display to a desired mode” (Petition, 31) is entirely inconsistent with Petitioners’ separate assertion that Reavey “does not *explicitly* disclose¹¹ how the GUI should be organized” (Petition, 25).

Petitioners rely on Reavey’s flat mode and “laptop configuration” to allegedly meet Limitation 1[b]’s “I/O profile[s].” Petition, 33. Petitioners focus on Reavey’s electronic-book having “more available screen real estate” in the “flat” configuration (two screens) versus “laptop” configuration (one screen). Petition, 41 and 18-19 (annotating Reavey, FIGS. 2-3). But as discussed *supra* §IV.D.2.a.i(2), changing Reavey’s available screen real estate does not require changing the organization of content and Petitioners cite no credible evidence to the contrary.

Because Petitioners fail to establish that Reavey even discloses using different views (organizations of content) in its flat and “laptop” configurations

¹¹ Petitioners never even allege, let alone establish, that Reavey *inherently* discloses different views/organizations of content. *Supra* §IV.D.2.a.

(*supra* §IV.D.2.a.i), Petitioners necessarily fail to establish that Reavey discloses “transition[ing] between the plurality of views in response to selection of an I/O profile.” Petition, 31. Petitioners rely entirely on Reavey to meet this requirement of Limitation 1[b] (*supra* §IV.D.2.a.i), so Petitioners’ failure to show that Reavey meets this requirement means that Petitioners fail to demonstrate that their Reavey-Martinez-Proctor combination meets Limitation 1[b].

**(3) Martinez Does Not Disclose Transitioning
Between its Tile and Cascading Windows
Organizations in Response to Selecting an I/O
Profile**

If the Board were to consider Petitioners as arguing that Martinez teaches transitioning between its tile and cascading windows organizations in response to selecting an I/O profile (they did not), that argument would fail.

As Petitioners admit, Martinez teaches arranging/rearranging windows in a “tile or cascading fashion” in response to “a *shake gesture*.” Petition, 32; Martinez, FIG. 9, 5:66-6:37. A transition in response to the user shaking the computer (performing a “shake gesture”) is not a transition “in response to selection of an I/O profile” as claimed. *See* Limitation 1[b]. Martinez does not teach that its shake gesture would somehow select the computer’s I/O profile and Petitioners do not allege otherwise.

**(4) Proctor Does Not Disclose Transitioning
Between Views in Response to Selecting an I/O
Profile**

Proctor teaches transitioning between its normal display mode and its low-power mode in response to a user activating a button (Proctor, [0030]), not responsive to selection of an I/O profile. Petitioners never argue otherwise.

* * * * *

As demonstrated *supra* §§IV.D.2.b.i-IV.D.2.b.ii, Petitioners fail to show that any of Reavey, Martinez, and Proctor discloses “transition[ing] between the plurality of views in response to selection of an I/O profile,” as Limitation 1[b] requires. Petitioners fail to show that its Reavey-Martinez-Proctor combination meets claim 1 for this additional reason. This is another independent reason why Ground 1 fails.

**c. Petitioners Fail to Show that Reavey, Martinez, or
Proctor Discloses Different “Default Display[s]” for
Different Display Modes (Limitations 1[e2]-1[e3])**

Limitation 1[e2] requires “a laptop mode” having one view as a “*a default display*,” and Limitation 1[e3] requires “*another display mode*” “*with another* one of the” “views as the *default display*.” The Examiner expressly found that these limitations, which were added during prosecution, distinguished claim 1 over the “closest prior art.” EX1002, 731-32, 736. Like the Examiner, Petitioners have not

identified any prior art reference that teaches different default views for different display modes.

For Limitation 1[e2], Petitioners allege the “first physical configuration” is Reavey’s “laptop mode” and that a POSA would have used Martinez’s “cascading view” “as the default” view to “conserve screen real estate when one of the screens is dedicated to the virtual keyboard and so only one screen is available for keeping *multiple computer application windows open and running.*” Petition, 40 (citing only “Houh, ¶104”).

For Limitation 1[e3], Petitioners allege the “second physical orientation” is Reavey’s “laptop” configuration (“over/under orientation but with *no* keyboard”) and that a POSA would have used Martinez’s “tile view” “as the default view” because it would have been “beneficial with two touchscreens available for content to allow more windows to be displayed and more gestures to be used to navigate them in an environment with more available screen real estate.” Petition, 41 (Petition’s emphasis).

Petitioners’ showing for Limitations 1[e2]-[e3] fails.

First, Petitioners fail to show that a POSA would have been motivated to use Martinez’s cascading and/or tile organizations of application windows in Reavey’s e-book for the reasons discussed *supra* §§IV.D.1.b, IV.D.2.a-IV.D.2.b.

Second, none of Petitioners’ references teaches having one “default view” for a laptop (or any other display) mode *and* a different default view for a different display mode. As discussed *supra* §IV.D.2.b, Petitioners fail to show that Reavey teaches multiple views at all. As for Martinez, Petitioners do not even allege that its tile and cascading views are respective default views for different configurations of the device, let alone establish that. Similarly, Petitioners do not even allege that Proctor’s full display and partial (reduced-power) display modes are respective defaults for different configurations of the device.

It is hindsight to allege that a limitation entirely missing from the combination’s prior art is somehow obvious over that prior art.¹² *Supra*

¹² The only evidence Petitioners cite as allegedly supporting the assertion that Martinez’s tile and cascading organizations of application windows would have been beneficial default views for Reavey’s “laptop” and flat modes, respectively, is conclusory expert testimony that parrots Petitioners’ assertions nearly word-for-word and cites no corroborating evidence, and thus warrants no weight. *Compare* Petition, 38-41 *with* EX1003, ¶¶102-106; *Xerox*, IPR2022-00624, Paper 9, 15; 37 C.F.R. §42.65(a). Petitioners establish no supportable non-hindsight reason why a POSA would have been assigned Martinez’s tile and cascading views of windows as default views for Reavey’s laptop and flat configurations.

§IV.D.2.b.ii (citing *DSS Tech.*, *Arendi*, and *10x*). Ground 1 fails for claim 1 for this additional, independent reason.

d. Ground 1 Fails for Claims 2, 24, and 26-27 for the Same Reasons Ground 1 Fails for Claim 1

Ground 1 also challenges dependent claims 2 and 24, which depend from claim 1, and independent claims 26 and 27. *See* Petition, x-xvi, 3.

Claims 2 and 24: For the claim 1 limitations included in claims 2 and 24, Petitioners rely entirely on their claim 1 showing. Petition, 46-47.

Claim 26: Claim 26 requires “[a] non-transitory computer-readable medium having computer-readable instructions” for executing the same method steps as claim 1. To meet claim 26’s method steps, Petitioners’ showing for claim 26 relies entirely on Petitioners’ showing for claim 1. Petition, 49-50.

Claim 27: Claim 27 requires “[a] system for accessing and managing digital media libraries” that has the capability to perform actions mirroring claim 1’s method steps. For the portions of 27[a]-27[b] and 27[b][ii]-[iii] that correspond to 1[a]-1[b] and 1[e2]-[e3], respectively, Petitioners rely on their showings for 1[a]-[1b] and 1[e2]-[e3], respectively. Petition, 51 (27[a]: relying on “§VIII.A.5.b (1[a])” to meet 27[a]’s “plurality of views”), 52 (27[b]: relying on “§VIII.A.5.c (1[b])” to meet 27[b]’s “transition the [GUI] between the plurality of views in response to selection of an I/O profile”), 53 (27[b][ii]-[iii]: relying on “§VIII.A.5.g

(1[e2])” and “§VIII.A.5.h (1[e3])” to meet the “default display” limitations of 27[b][ii]-[iii], respectively).

Thus, Petitioners’ showings for claims 2, 24, 26-27 inherit all of the above-discussed failings for claim 1 (*supra* §§IV.D.1-IV.D.2.c).

e. Conclusion for Ground 1

As detailed above (§IV.D.1), Petitioners fail to establish any supportable reason why a POSA would have combined Reavey, Martinez, and Proctor in the manner alleged to meet the challenged claims, and fail to demonstrate that its Reavey-Martinez-Proctor combination meets all the limitations of any challenged claim. Ground 1 fails for numerous independent reasons.

E. Grounds 2-5 Fall with Ground 1

Grounds 2-5 collectively address claims 3-9, 15-22, and 25, which all depend from claim 1. *See* Petition, x-xvi, 3. For the claim 1 limitations included in those claims, Petitioners rely entirely on their Ground 1 showing based on Reavey-Martinez-Proctor. Petition, 55-115. Thus, Grounds 2-5 fail for claims 3-9, 15-22, and 25 for at least the same reasons Ground 1 fails for claim 1. *Supra* §§IV.D.1-IV.D.2.c.

Respectfully submitted,
LiTL LLC

Date: May 6, 2024

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24, the undersigned certifies that the foregoing **PATENT OWNER'S PRELIMINARY RESPONSE** contains 13,983 words excluding, a table of contents, a table of authorities, a certificate of service or word count, or appendix of exhibits or claim listing. Patent Owner has relied on the word count feature of the word processing system used to create this paper in making this certification.

Date: May 6, 2024

/MacAulay Rush/
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CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6 (e)(4)

I certify that on May 6, 2024, I will cause a copy of the foregoing document, including any exhibits filed therewith, to be served via electronic mail, as previously consented to by Petitioner, upon the following:

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