

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

LITL LLC,
Patent Owner

IPR2024-00456
Patent 8,612,888 B2

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

BAER, *Administrative Patent Judge.*

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

I. INTRODUCTION

A. Background

Microsoft Corp. (“Microsoft”), HP Inc., Dell Technologies, Inc., Dell Inc., ASUSTeK Computer, Inc. and ASUS Global Pte. Ltd. (collectively, “Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–9, 15–22, and 24–27 (the “challenged claims”) of U.S. Patent No. 8,612,888 B2 (Ex. 1001, “the ’888 patent”). Paper 7, 1 (“Pet.”). LiTL LLC (“Patent Owner”) filed a sealed Preliminary Response, Paper 11 (“Prelim. Resp.”), along with a redacted public version (Paper 13). With our authorization, Petitioner filed a sealed Reply to Patent Owner’s Preliminary Response (Paper 15, “Pet. Reply”), along with a redacted public version (Paper 16) and Patent Owner filed a sealed Sur-reply (Paper 18, “PO Sur-reply”) along with a redacted public version (Paper 20).

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

B. Related Proceedings

The parties identify the following district court case involving the ’888 patent: *Microsoft Corporation v. LiTL LLC*, Case No. 1:23-cv-00122-RGA (D. Del.). Pet. 116, Paper 10, 2. The ’888 patent was the challenged patent in IPR2021-00821.

C. The '888 Patent (Ex. 1001)

The '888 patent is titled “Method and Apparatus for Managing Digital Media Content.” Ex. 1001, code (54). Figure 1 of the '888 patent, reproduced below, illustrates a portable computer in laptop mode. *Id.* at 12:31–39.

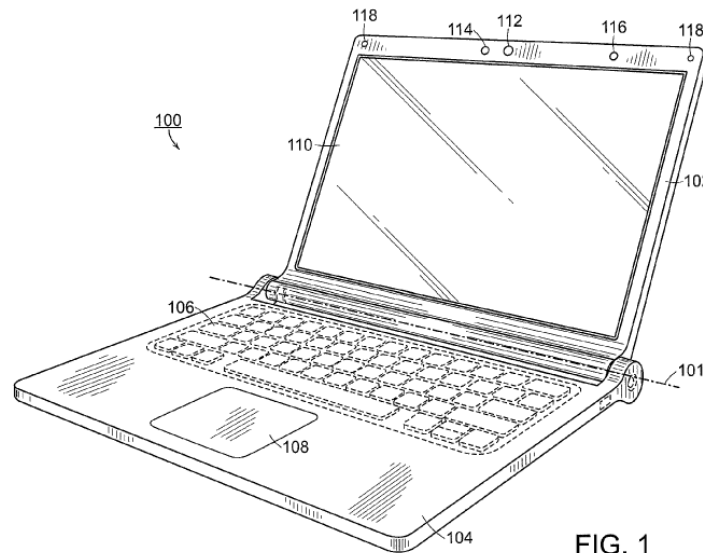


FIG. 1

According to the '888 patent, the computer includes “a graphical user interface that organizes interface elements into views of computer content for presentation to a user.” *Id.* at 2:47–50. The '888 patent further explains that “[d]ifferent views are used to provide an interface that is responsive to configurations of the device.” *Id.* at 2:52–53.

The specification discloses a number of different “views,” including a time view and an album view, among others. *Id.* at 21:11–13. Figure 8, reproduced below, illustrates a time view. *Id.* at 23:43–44.

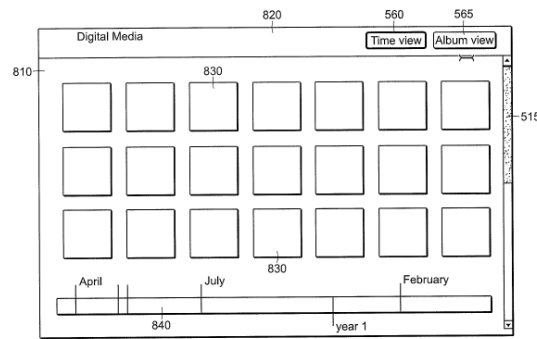


FIG. 8

Figure 5 (reproduced below) illustrates album view. *Id.* at 21:35–36.

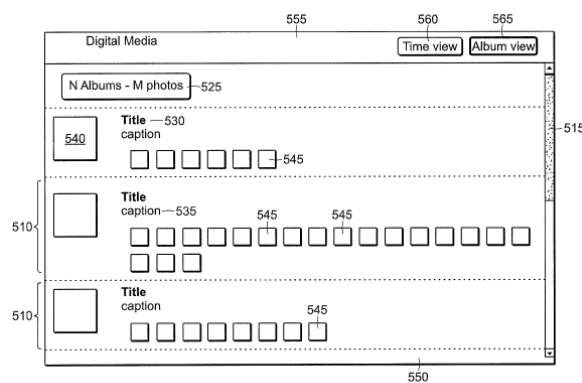


FIG. 5

D. Challenged Claims

Of challenged claims 1–9, 15–22, and 24–27, claims 1, 26, and 27 are independent. Claim 1 is exemplary of the claimed subject matter and is reproduced below:

1. A method for accessing and managing digital media libraries on a streamlined computing device with a plurality of selectable I/O profiles, the method comprising:

displaying a graphical user interface on the computing device, wherein the graphical user interface comprises at least a plurality of views of digital media content;

providing for transition between the plurality of views in response to selection of an I/O profile;

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, wherein providing for the transition between the plurality of views in response to selection of the I/O profile includes:

permitting the user to rotate a display component of the computing device about a longitudinal axis running along an interface between the display component and a base of the streamlined computing device;

wherein rotating the display component about the longitudinal axis from a closed mode to a first physical orientation configures the computing device into a laptop mode having a first physical configuration of the display component and the base, with one of the plurality of views as a default display; and

wherein rotating the display component about the longitudinal axis from the closed mode to a second physical orientation configures the computing device into another display mode having a second physical configuration of the display component and the base, with another one of the plurality of views as the default display;

associating at least one of a plurality of visual representations with digital media content;

executing the association with the at least one of the plurality of visual representations with digital media content in response to selection;

transitioning a display on the computing device to a view of the digital media content in response to the act of executing the association; and

providing for display of user digital media content and referenced digital media content in the view of the digital media content.

Ex. 1001, 47:54–48:28.

E. Asserted Grounds of Unpatentability

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

Claim(s) Challenged	35 U.S.C. §¹	References/Basis
1, 2, 24, 26, 27	103(a)	Reavey ² , Martinez ³ , Proctor ⁴
3–8, 15–17, 20, 21	103(a)	Reavey, Martinez, Proctor, Aldrich ⁵
25	103(a)	Reavey, Martinez, Pröll ⁶
9, 18, 19	103(a)	Reavey, Martinez, Proctor, Aldrich, Chao ⁷
22	103(a)	Reavey, Martinez, Proctor, Chao

Petitioner submits a declaration from Dr. Henry Houh. Ex. 1003.

II. DISCUSSION

A. Privity

Patent Owner argues the Petition is time-barred under 35 U.S.C. § 315(b) because Microsoft was in privity with Lenovo, which was sued for infringement of the '888 patent in 2020, more than one year before Microsoft and its co-petitioners filed their Petition in this case. Prelim.

¹ The Leahy-Smith America Invents Act (“AIA”) amended 35 U.S.C. § 103. See Pub. L. No. 112-29, 125 Stat. 284, 285–88 (2011). As the application that issued as the '888 patent was filed before the effective date of the relevant amendments, the pre-AIA version of § 103 applies.

² US 5,847,698, iss. Dec. 8, 1998 (Ex. 1009, “Reavey”).

³ US 6,137,468, filed Oct. 15, 1996, iss. Oct. 24, 2000 (Ex. 1007, “Martinez”).

⁴ U 2006/0227122 A1, pub. Oct. 12, 2006 (Ex. 1010, “Proctor”).

⁵ US 2006/0265390 A1, pub. Nov. 23, 2006 (Ex. 1012, “Aldrich”).

⁶ DE10331185A1, pub. Feb. 3, 2005 (Ex. 1006, “Pröll”).

⁷ US 7,970,240 B1, iss. June 28, 2011 (Ex. 1013, “Chao”).

Resp. 1. For the following reasons, we do not agree that Lenovo is Microsoft's privity such that the Petition is time-barred under § 315(b).

Privity "prevent[s] successive challenges to a patent by those who previously have had the opportunity to make such challenges in prior litigation." *WesternGeco LLC v. ION Geophysical Corp.*, 889 F.3d 1308, 1319 (Fed. Cir. 2018). In *Taylor v. Sturgell*, 553 U.S. 880, 894–95 (2008), the Supreme Court provided a non-exhaustive list for examining whether the legal relationship between two parties establishes that one is the privity of the other. Patent Owner argues two *Taylor* factors establish privity in this case: (1) Microsoft's and Lenovo's pre-existing substantive legal relationship and (2) Microsoft's agreement to be bound by the outcome of the litigation against Lenovo. Prelim. Resp. 12–20.

1. The Relationship Between Microsoft and Lenovo

Patent Owner contends that Microsoft's relationship with Lenovo is sufficiently close to establish privity. Prelim. Resp. 12–14. Specifically, Patent Owner relies on Microsoft's [REDACTED] with Lenovo, which includes an indemnity provision, and Microsoft's [REDACTED] [REDACTED] with Lenovo. *See id.* According to Patent Owner, Microsoft's privity relationships with its co-petitioners in this case confirm its privity relationship with Lenovo because Microsoft's agreements with Lenovo are substantively the same as Microsoft's indemnification agreements and software supplier arrangements with its co-petitioners in this case. *Id.* at 8–9, 13–14. Because Microsoft has intervened and agreed to be bound with its co-petitioners, Patent Owner argues that it should also be bound as a privity to Lenovo. *Id.*

We disagree with Patent Owner. It is undisputed that, unlike with Microsoft and its co-petitioners, the indemnity provisions between Microsoft

and Lenovo were not triggered. *See* Pet. Reply 1–2; Prelim. Resp. 17. That is because, as Microsoft explains, at least one prerequisite to Microsoft’s indemnification of Lenovo was not met—unlike Microsoft’s co-petitioners, Lenovo [REDACTED]

[REDACTED]. Pet. Reply 1, 5, 9. Unlike this case where Microsoft is participating as a co-petitioner, Microsoft did not participate in Lenovo’s previous IPR petition involving the ’888 patent (IPR2021-00821). Pet. Reply 2. Given these differences, Microsoft’s admitted privity relationship with its co-petitioners does not support that Microsoft is also Lenovo’s privity with respect to the ’888 patent.

Beyond noting Microsoft’s privity relationship with its co-petitioners, Patent Owner asserts that the facts here track *Ventex*, where the Board held that there was privity based on an exclusive supplier and indemnification agreement. PO Sur-reply 2–3; Prelim. Resp 12 (both citing *Ventex v. Columbia Sportswear North Am.*, IPR2017-00651, Paper 148, 12–13 (Jan. 24, 2019) (precedential)). We agree with Petitioner that this case is not like *Ventex* because, as Petitioner explains, “Microsoft and Lenovo do not have the type of ‘specially structured’ exclusive supply arrangement the Board found supported privity,” and there is no evidence of “unusual, suspect arrangements suggesting Lenovo is using Microsoft as a proxy to skirt the §315(b) time-bar provision.” Pet. Reply 5–6. Instead, this case is much closer to the facts in *WesternGeco*, where the Federal Circuit affirmed that a standard supplier-customer agreement with untriggered indemnity provisions does not establish privity. *See WesternGeco*, 889 F.3d at 1321.

2. *Microsoft's Agreement To Be Bound*

Next, Patent Owner asserts that through its indemnity provisions reflected in [REDACTED], Microsoft agreed to be bound by the outcome of the litigation against Lenovo, sufficient to establish privity. Prelim. Resp. 15–19. Here again, Patent Owner focuses on Microsoft's agreement to be bound with its co-petitioners as evidence that it also agreed to be bound with Lenovo. Prelim. Resp. 16. We disagree with this argument for two reasons. First, as outlined above, unlike with Microsoft's co-petitioners, Microsoft did not actually indemnify Lenovo or intervene in Lenovo's defense against Patent Owner's assertion that Lenovo infringed the '888 patent because the conditions triggering indemnification were not met. Second, Patent Owner has not explained why an indemnification obligation alone equates to an agreement to be bound, without language indicating as much. *See* Pet. Reply 7. Thus, we disagree with Patent Owner that Lenovo is a privy of Microsoft based on Microsoft's agreement to be bound.

3. *Equitable and Practical Considerations*

Last, we find that the equitable and practical considerations here weigh against finding that Microsoft is Lenovo's privy. Specifically, as Petitioner notes, "Microsoft had [REDACTED]
[REDACTED]" Pet. Reply 10. Further, "[n]ow that [Patent Owner's] litigation directly implicates Microsoft products as the basis for its '888 patent infringement assertions, it would be inequitable for Microsoft to be precluded from challenging the '888 patent's validity merely because [Patent Owner] previously asserted the '888 patent against another of Microsoft's customers." *Id.*; *see id.* at 3.

For the reasons outlined above, on the record presented, we determine that Lenovo is not a privy of Microsoft and the Petition is not time-barred under § 315(b).

B. Claim Construction

We find no claim terms require express construction for us to determine whether Petitioner has shown a reasonable likelihood of prevailing in showing that at least one of the challenged claims are unpatentable. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

C. Level of Ordinary Skill in the Art

Petitioner asserts that a person of ordinary skill in the art “would have had a bachelor’s degree in electrical engineering, computer engineering, computer science, or a similar field, plus two years of work experience in designing [graphical user interfaces (GUIs)] for computing devices.” Pet. 13. Patent Owner does not dispute the level of ordinary skill in the art. Prelim. Resp. 22. For this Decision, we agree with and adopt Petitioner’s proposal as reasonable and consistent with the level of skill reflected in both the prior art and the ’888 patent. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art may reflect an appropriate level of skill in the art).

D. Description of Primary Prior Art References

1. Reavey (Ex. 1009)

Reavey, titled “Electronic Book Device,” is directed to an electronic book device 100 that can be used in multiple physical configurations. Ex. 1009, code (54), 1:11–15, Fig. 3. Figure 3 from Reavey is an example of such a device and it is reproduced below.

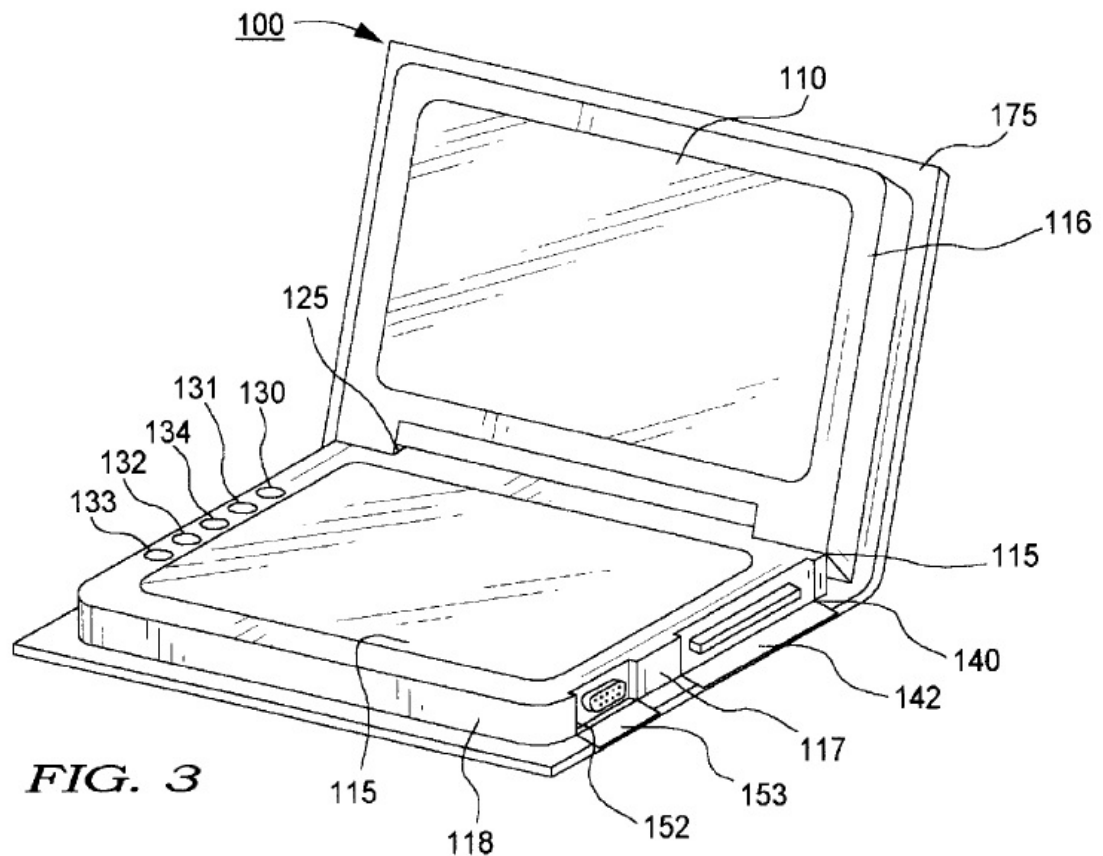


Figure 3 is an illustration of an electronic book device 100 with dual screen displays: first panel screen 110 and second panel screen 115 are connected by hinge 125. *Id.* at 5:32–35. Both screens can be provided as a touchscreen. *Id.* at 5:46–48. Device 100 can be used in multiple modes. These include a flat mode and a laptop mode. In flat mode, screens 110/115 are arranged horizontally and in an over-under fashion, lying flat on a surface, and the two screens may “act as one screen, with the text and

graphics scrolling downward from one to the other” (*id.* at 7:42–44, 7:51–53, 7:61–62, Fig. 2). In laptop mode, screens 110/115 are arranged horizontally and in an over-under fashion, with the screens only partially open with respect to one another, such as at 120°, and the “top horizontal screen [110] behave[s] as a normal display screen and the bottom horizontal screen [115] behave[s] as a touchscreen keyboard.” *Id.* at 7:39–42, 7:53–58, Fig. 3. Device 100 may change between these modes “automatically when electronic book device 100 is opened.” *Id.* at 7:45–46.

2. *Martinez (Ex. 1007)*

Martinez teaches a method and apparatus for altering the display of an object on a display device. Ex. 1007, code (57). Martinez teaches that “windows could be arranged in a tile or cascading fashion.” *Id.* at 6:34–35.

3. *Proctor (Ex. 1010)*

Proctor teaches an “electronic device” with a “display panel that operates in multiple modes.” Ex. 1010, code (57). Proctor teaches a “mechanical switch” that can “switch[] between full and partial display modes.” *Id.* ¶ 30.

E. *Obviousness Analysis*

1. *Ground 1: Obviousness based on Reavey, Martinez, and Proctor*

In its first unpatentability ground, Petitioner contends that claims 1, 2, 24, 26, and 27 would have been obvious over Reavey, Martinez, and Proctor. Pet. 24–55. Based on the present record and for the reasons explained below, we determine that Petitioner has demonstrated a reasonable likelihood of success in proving that claims 1, 2, 24, 26, and 27 would have been obvious over Reavey, Martinez, and Proctor.

a) Petitioner's Proposed Combination of Reavey, Martinez, and Proctor

Petitioner relies on Reavey for the claimed step of displaying a graphical user interface (Reavey's display with content), two I/O profiles (Reavey's laptop and flat modes), and transitioning between a plurality of views in response to rotating a display about a longitudinal axis (i.e., opening Reavey's electronic book). *See* Pet. 27–45. Because “Reavey itself does not explicitly disclose how the GUI should be organized,” Petitioner asserts “[a person of ordinary skill in the art (POSITA)] would have been motivated to combine Martinez's GUI display changes” including Martinez's “cascading view . . . as the default for Reavey's laptop configuration” and Martinez's “tile view . . . as the default view for Reavey's [flat] configuration.” *Id.* at 25, 40–41. Petitioner further relies on Proctor's mechanical switch that switches between display modes for the claimed view selecting component. *Id.* at 34–35.

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

b) Petitioner's Rationale for Combining Reavey and Martinez

Claim 1 requires that “rotating the display . . . to a first physical orientation configures the computing device into a laptop mode having a first physical configuration of the display component and the base, with one of the plurality of views as a default display,” and rotating the display into “a second physical orientation configures the computing device into another display mode having a second physical configuration of the display component and the base, with another one of the plurality of views as the default display.” Petitioner asserts that together, Reavey and Martinez teach these requirements because “Reavey 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).”

Pet. 31. Further, Petitioner explains, Martinez teaches “using a sensor to detect movement . . . and based on that movement, to arrange (i.e., organize) windows and/or icons in a pre-selected manner, such as ‘a tile or cascading fashion.’” *Id.* at 31–32. According to Petitioner, “[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 between the halves of Reavey’s device and responds to such changes with a different view.” *Id.* at 32. Petitioner explains that its combination would “allow for a more user-friendly GUI organization when its display is used in different configurations.” *Id.* at 26. Further, Petitioner asserts, a skilled artisan would have been motivated to use Martinez’s cascading view as the default for Reavey’s laptop mode “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.” *Id.* at 40. A skilled artisan would have used Martinez’s tile view, Petitioner explains, as the default for Reavey’s flat mode “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.” *Id.* at 41.

Patent Owner asserts that Petitioner’s rationale for combining Reavey and Martinez fails for two reasons. First, Patent Owner explains that Reavey “nowhere discloses that its special-purpose electronic-book runs a windows-based operating system,” or is capable of “run[ing] multiple applications in multiple simultaneously-open windows.” Prelim. Resp. 37–38. On this record, we disagree with Patent Owner’s argument because “we do not

ignore the modifications that one skilled in the art would make to a device borrowed from the prior art.” *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1382 (Fed. Cir. 2007). Even if Patent Owner is correct that Reavey’s electronic book did not support having multiple simultaneously-opened windows, that does not mean it would be beyond a skilled artisan’s capability to modify Reavey’s system to accommodate such views. To the contrary, Petitioner provides yet-uncontested testimony that “[g]raphical interfaces have long made use of windows and ‘almost all interactive application programs . . . use graphics extensively in the user interface and for visualizing and manipulating the application-specific objects.’” Ex. 1003 ¶ 72 (quoting Ex. 1021, 2). To the extent that Patent Owner disputes that one skilled in the art would have had a reasonable expectation of success in using multiple windows on Reavey’s system, that is a fact issue better suited for resolution trial with the benefit of a full record.

Patent Owner next challenges Petitioner’s rationale for adding Martinez’s tile view because “tile view allows fewer (not ‘more’) windows to be displayed” and Petitioner’s more-gestures rationale “is unexplained and unsupported by anything in Martinez.” Prelim. Resp. 48. We disagree with this argument based on the current record. It is clear from Petitioner’s explanation that Petitioner is not asserting that tile view facilitates more windows. Rather, the second additional available touch screen in Reavey’s flat mode facilitates more windows. *See* Pet. 41 (explaining that Martinez’s tile view is “beneficial with two touchscreens available for content to allow more windows to be displayed”). Though tiled windows take up more space than overlapped cascaded windows, Petitioner’s rationale explains that flat mode’s additional real estate facilitates the additional needed space, while the non-overlapped windows facilitate more gestures because touch-screen

gestures are real-estate dependent. *See* Pet. 41. Accordingly, on this record, Petitioner has articulated sufficient reasoning with rational underpinning to support the legal conclusion that its proffered combination would have been obvious to one skilled in the art. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

c) Transitioning Between Views

Claim 1 requires “providing for transition between the plurality of views in response to selection of an I/O profile.” Petitioner asserts that Reavey teaches this feature because it teaches a laptop-mode configuration with a keyboard on the bottom screen and a content display on the top, and a flat-mode configuration in which the two screens act as one and information scrolls between the two. Pet. 28–29; *see id.* at 33. In addition, as explained above, Petitioner explains that one skilled in the art would have been motivated to use Martinez’s cascade view when just one screen is available for content in laptop mode and tile view when both screens are available for content in flat mode. *See id.* at 40–41.

Patent Owner argues that Reavey does not disclose a plurality of views. Prelim. Resp. 59–62. Instead, according to Patent Owner, Reavey’s laptop and flat configurations have the same view because they “have[] content organized in the *same* way, but viewed with different screen real estate – two screens versus one.” Prelim. Resp. 60. We disagree that Reavey’s two modes display the same content. Rather, as Petitioner explains, Reavey’s two views are different because its laptop-mode view displays a touchscreen keyboard on the bottom screen, whereas its flat-mode view displays information scrolled from the top of the first screen to the bottom of the second screen. *See* Pet. 28–29 (citing Ex. 1009, 7:24–62, Figs.

2, 3). Given these differences, on this record, we agree with Petitioner that Reavey teaches a plurality of views.

Beyond Reavey's two views, Patent Owner further asserts Petitioner's challenge fails because Reavey does not teach transitioning between tile and cascade views, while Martinez "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." Prelim. Resp. 50. We disagree with these arguments because they attack the references individually, rather than the combined teachings that are asserted in the Petition. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Specifically, as Petitioner explains, a skilled artisan "would have been motivated to apply Martinez's views to be triggered based on Reavey's hardware-based trigger that detects rotational changes between the halves of Reavey's device and responds to such changes with a different view."

Pet. 32. Given Petitioner's asserted combination, it is not necessary that Martinez teach transitioning between views based on selecting an I/O profile, or that Reavey teach transitioning between cascade and tile views. In light of Petitioner's explanation as outlined above, on this record we agree with Petitioner that the combination of Reavey and Martinez teaches "providing for transition between the plurality of views in response to selection of an I/O profile," as claim 1 requires.

d) Transitioning Between Views in Response to a View Selector

Claim 1 requires "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." Petitioner asserts that its asserted combination teaches this feature because Proctor teaches a switch that allows users to choose different modes, including full and partial display

modes. Pet. 34. According to Petitioner, it would have been obvious to add “Proctor’s switch to the Reavey-Martinez combination to allow the additional functionality of the user being able to manually switch between views.” *Id.* at 35. Further, “[d]oing so would have amounted to no more than applying a known technique (using a manual switch) to a known device (Reavey’s device) to achieve a predictable result (manual user switching between views).” *Id.*

Patent Owner asserts that Petitioner’s rationale for combining Proctor’s view-selection switch fails because “Proctor’s button is used to switch a display into a power saving ‘partial display mode,’” rather than “switch[ing] between cascading and tile views of windows.” Prelim. Resp. 51–52. Patent Owner faults Petitioner for relying on “known technique” rationales because, according to Patent Owner, “[t]hese rationales only apply when the elements are combined without ‘change in their respective functions.’” Prelim. Resp. 55 (quoting *KSR*, 550 U.S. at 415–416).

We disagree with Patent Owner’s argument because in Proctor and in Petitioner’s combination, Proctor’s button serves the same function—changing between views—even if Proctor’s partial/full views are different from Martinez’s tile/cascade views. We therefore agree with Petitioner on this record that Proctor’s manual button was a known way of switching views and combining it with Reavey’s device using Martinez’s tile/cascade view yields only predictable results—i.e., switching between Martinez’s views on Reavey’s device using Proctor’s manual button. Pet. 35. Thus, Petitioner shows sufficiently for institution that its proposed combination would have been obvious. *See KSR*, 550 U.S. at 417.

e) Default Views

Claim 1 requires “configur[ing] the computing device into a laptop mode . . . with one of the plurality of views as a default display” and a “display mode having a second physical configuration . . . with another one of the plurality of views as the default display.” As Patent Owner explains, these limitations “require[] that one of the plurality of views be a ‘default’ in laptop mode,” and “another of the plurality of views be a ‘default’ in a different mode of the computer having a different physical configuration.” Prelim. Resp. 58. Patent Owner asserts that Petitioner’s challenge fails because “Petitioner[] never even allege[s] that ‘Reavey’ teaches [these] Limitations.” *Id.* We disagree.

Petitioner asserts that Reavey teaches the claimed default-views feature because when Reavey’s device is opened to laptop mode, “[t]he device then presents the opening screen with an over/under orientation[] and a keyboard on the base.” Pet. 39–40. In addition, when going to flat mode, “the device presents the opening screen with an over/under orientation but with no keyboard on the base.” *Id.* at 40–41. Thus, Petitioner asserts that Reavey’s two views are default views for its laptop and flat modes, even though Petitioner ultimately proposes substituting Martinez’s tile and cascade views for Reavey’s default views. *See id.* at 40, 41. On this record, we agree with Petitioner that Reavey teaches default views for Reavey’s two modes, as claim 1 requires.

f) Petitioner’s Explanation of Its Proposed Combination

Patent Owner asserts that we should deny the Petition because it does not explain its proposed combination of references with enough clarity and often scatters important details throughout the Petition, rather than presenting its combination clearly in a single passage. *See* Prelim. Resp. 31–

33. According to Patent Owner, “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.” *Id.* at 35. Patent Owner takes particular issue with Petitioner’s explanation for how the asserted prior art teaches transitioning between the plurality of views in response to selecting an I/O profile because it lacks clarity and “forc[es] the reader to follow a web of nested cross-references to find Petitioner[s’] arguments.” Prelim Resp. 64.

We disagree with Patent Owner’s criticism because we do not find Petitioner’s analysis overly difficult to follow. Rather, Petitioner’s proposed combination of references, as outlined above, is sufficiently clear for us to evaluate.

g) Petitioner’s Expert Declaration

Patent Owner asserts we should also deny the Petition because it improperly incorporates arguments and evidence found only in Petitioners’ Expert Declaration. Prelim. Resp. 43. Specifically, Patent Owner criticizes Petitioner for using Martinez’s tile and cascading window arrangements without explaining what those arrangements are. Instead, Petitioner relies on block cites to many paragraphs of its expert testimony and another reference to show what Martinez’s tile and cascade views look like. Prelim. Resp. 45–47. We disagree with Patent Owner’s argument because we do not consider Petitioner’s discussion of cascade versus tile windows to be improper incorporation by reference. Not every statement or additional explanation made by an expert needs to be repeated in a brief to avoid incorporation by reference. Here, because tile and cascade windows are relatively basic and well-known computing features, we do not find

Petitioner's further explanation of them in an expert declaration objectionable.

h) Ground 1 Summary

Other than as outlined above, Patent Owner does not additionally challenge Petitioner's obviousness analysis at this stage. We have reviewed Petitioner's arguments and the underlying evidence cited in support and are persuaded that, at this stage, Petitioner sufficiently demonstrates a reasonable likelihood of succeeding in its obviousness challenge to claims 1, 2, 24, 26, and 27 based on Reavey, Martinez, and Proctor.

2. Petitioner's Additional Obviousness Grounds

In four additional obviousness grounds, Petitioner adds Aldrich, Pröll, and Chao in various combinations with its other references to address various dependent-claim features in claims 3–9, 15–19, 20–22 and 25. *See* Pet. 55–115. Other than as outlined above, Patent Owner does not additionally challenge Petitioner's additional obviousness grounds involving Aldrich, Pröll, and Chao. *See* Prelim Resp. 74. We have reviewed Petitioner's arguments and the underlying evidence cited in support and are persuaded that, at this stage, Petitioner sufficiently demonstrates a reasonable likelihood of succeeding in these additional obviousness challenges.

III. CONCLUSION

After considering the evidence and arguments presented in the current record, we determine that Petitioner has demonstrated a reasonable likelihood of success in proving that at least one of the challenged claims of the '888 patent is unpatentable. We therefore institute trial on all challenged claims and grounds raised in the Petition. At this stage of the proceeding,

we have not made a final determination as to the patentability of any challenged claim or as to the construction of any claim term. Any final determination will be based on the record developed during trial. We place Patent Owner on express notice that any argument not asserted in a timely-filed Response to the Petition, or in another manner permitted during trial, shall be deemed waived, even if that argument was presented in the Preliminary Response.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of 1–9, 15–22, and 24–27 of the '888 patent is instituted with respect to all grounds set forth in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), *inter partes* review of the '888 patent shall commence on the entry date of this Order, and notice is hereby given of the institution of a trial.

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