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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. IPR2024-00457
Patent No. 9,880,715

PATENT OWNER'S PRELIMINARY RESPONSE

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LISTING OF EXHIBITS

Exhibit	Description
2001	[No Author Listed], The Litl webbook. European Consumers Choice. URL= https://www.europeanconsumerschoice.org/hi-tech/litlwebbookcomputer-test-and-reviews/ [last accessed June 25, 2021]
2002	[No Author Listed], Litl Webbook Beats ChromeOS, Becomes First Cloud Computer. CoolThings. November 16, 2009. URL: https://www.coolthings.com/litl-webbook-beatschromeosbecomes-first-cloud-computer/ [last accessed June 25, 2021]
2003	Noe, The Litl Webbook: A more social computing device. November 5, 2009. Corr77. URL: https://www.core77.com/posts/15122/The-Litl-Webbook-A-more-social-computing-device [last accessed June 25, 2021]
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2005	McDonald, LiTL Webbook Review. Little Tech Girl. August 31, 2010. URL: https://littletechgirl.com/2010/08/31/litl-webbook-review/ [last accessed June 25, 2021]
2006	Strauss, Litl Webbook Re-Defines Computing. ABC News. December 14, 2009. URL: https://abcnews.go.com/Technology/GadgetGuide/litlwebbookdefines-computing/story?id=9311095 [last accessed June 25, 2021]
2007	Scinto, Introducing The Litl WebBook. The Gadgeteer. November 19, 2009. URL: https://the-gadgeteer.com/2009/11/19/introducing-thelitlwebbook/ [last accessed June 25, 2021]
2008	[No Author Listed], All-New Litl Webbook Debuts at 2010 CES. Cision. January 5, 2010. URL: https://www.prnewswire.com/newsreleases/all-new-litl-webbook-debuts-at-2010-ces-80716797.html [last accessed June 25, 2021]
2009	International PCT Publication No. WO 95/24007 (“Lane”)

Exhibit	Description
2010	David Pogue, Windows Vista: The Missing Manual, 1st edition, 2nd printing published February 2007 (“Pogue”)
2011	Reserved
2012	Reserved
2013	Reserved
2014	Reserved
2015	Reserved
2016	Lenovo Summons Returned Executed as to Original LiTL Complaint Against Lenovo (US)
2017	LiTL’s First Amended Complaint Against Lenovo
2018	CONFIDENTIAL AEO [REDACTED] [REDACTED], MSFT-LITL-IPR-000001-14
2019	CONFIDENTIAL [REDACTED]
2020	CONFIDENTIAL [REDACTED] [REDACTED] MSFT-LITL-IPR-000360-408
2021	LiTL’s ’715 Patent Infringement Contentions Against ASUS
2022	LiTL’s ’715 Patent Infringement Contentions Against Dell
2023	CONFIDENTIAL [REDACTED] [REDACTED]
2024	LiTL’s Counterclaims against Microsoft (HP action)
2025	CONFIDENTIAL [REDACTED] [REDACTED] MSFT-LITL-IPR-000548
2026	Reserved
2027	Reserved
2028	Reserved
2029	LiTL’s First Amended Complaint Against Dell
2030	LiTL’s First Amended Complaint against HP
2031	LiTL’s Amended Complaint against ASUS
2032	CONFIDENTIAL [REDACTED] [REDACTED] MSFT-LITL-IPR-000969
2033	CONFIDENTIAL [REDACTED] [REDACTED] MSFT-LITL-IPR-001047
2034	CONFIDENTIAL [REDACTED] [REDACTED] MSFT-LITL-IPR-001115
2035	Microsoft’s Intervenor Compliant against Plaintiff and Intervenor-Defendant HP

Exhibit	Description
2036	Microsoft's Intervenor Complaint against Plaintiff and Intervenor-Defendant Dell
2037	Microsoft's Intervenor Complaint against Plaintiff and Intervenor-Defendant ASUS
2038	CONFIDENTIAL [REDACTED] [REDACTED] MSFT-LITL-IPR-000099
2039	CONFIDENTIAL [REDACTED] [REDACTED] MSFT-LITL-IPR-000103
2040	Reserved
2041	Microsoft's Answer to Counterclaims in HP Action

I. INTRODUCTION

The Petition should be denied for three independent reasons.

First, like Microsoft’s petition in co-pending IPR2024-00456, this Petition is time-barred because Microsoft was in privity with Lenovo who was sued on the ’715 Patent more than a year before this Petition was filed.

Second, this Petition should be discretionarily denied because “substantially the same prior art or arguments previously were presented to the Office” during a reexamination of the ’715 Patent filed by Lenovo. 35 U.S.C. §325(d). Indeed, both the prior art *and* the arguments Petitioners advance are substantially the same as those presented by Lenovo. The Petition ignores the reexamination entirely. The Petition never even alleges that the prior art and arguments presented to the Office during Lenovo’s reexamination were not substantially the same as those the Petition presents, and never alleges that the reexamination Examiner erred in confirming the claims over substantially the same prior art and arguments.

Third, Petitioners challenge the independent claims using the same two failed combinations (Pröll-Martinez and Pröll-Preppernau) Petitioners used in IPR2024-00458. None of Petitioners’ cited art discloses selecting one of a plurality of views “in response to the detected current computer system configuration” as claimed. Instead, Petitioners rely on the naked testimony of their expert to supply this limitation absent from the prior art. The Board should reject this argument just

like the reexamination Examiner did. Expert testimony can only supply a claim limitation missing from the prior art in rare circumstances that do not apply here. The Board routinely denies institution under these circumstances and should do so here because no credible evidence supports that POSAs would have combined the features of the prior art in the manner claimed.

II. THIS PETITION IS TIME-BARRED

The AIA time-bars an IPR if the petition is filed more than 1 year after a “*privity of the petitioner*” is served with a complaint alleging infringement of the patent.” 35 U.S.C. §315(b).¹

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

Petitioners allege they are not barred because “Microsoft has never been served with a complaint” (Petition, 2), but ignore whether Microsoft was in privity with Lenovo. Petitioners assert Lenovo did not “*request* indemnity from Microsoft” for LiTL’s ’715 Patent infringement allegations and assert Microsoft “had no involvement” in Lenovo’s IPR2021-00786 challenging the ’715 Patent. Petition, 11. But privity does not require a demand for indemnity or Microsoft’s “involvement” in Lenovo’s IPR.

¹ Emphasis is added and quotation marks and citations are omitted except as noted.

A. Factual Background

1. The Microsoft-Lenovo Relationship

Lenovo was served a complaint and amended complaint, both alleging that Lenovo computers running Microsoft’s software infringe the ’715 Patent, more than one year before Microsoft filed this Petition. EX1024 (“Compl.”), ¶¶142-158; EX2016; EX2017 (“FAC”), ¶¶237-277; *id.*, 163-164 (certificate of service).

Lenovo and Microsoft had a substantial relationship governed by

[REDACTED] (EX2018, [REDACTED]). Lenovo was Microsoft’s [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

The [REDACTED] Lenovo’s computers that ran Microsoft’s Windows and were accused of infringing the ’715 Patent. EX2017, ¶¶92-94, 96, 99-102, 238-45. As discussed *infra* §VI.A, every ’715 Patent claim covers a computer with a GUI having a plurality of views of displayed content and an execution component that selects one of those views in response to a detected configuration of the computer. In Lenovo’s accused products, that functionality

was implemented by Microsoft's Windows. EX2017, ¶¶99-101, 238-45. Microsoft admits its Windows software is a "basis for [LiTL's] infringement allegations" against co-petitioners HP, Dell, and ASUS. Petition, 1. Microsoft's software was equally the basis for LiTL's infringement allegations against Lenovo. *Compare* EX1024, ¶¶123-51; EX2017, ¶¶238-77; and [REDACTED] with EX1016, ¶¶215-37; EX2021; EX1017, ¶¶228-47; EX2022; EX1018, ¶¶207-24; and EX2023 for the co-petitioner litigations. On May 10, 2021, LiTL put Microsoft on notice that Microsoft directly infringes the '715 Patent. EX2024, ¶28 of counterclaims; EX2041, ¶28.

Microsoft and Lenovo [REDACTED]
[REDACTED], MSFT-LITL-IPR-000554) [REDACTED]
[REDACTED]. *Id.*, MSFT-LITL-IPR-000548 [REDACTED]
[REDACTED]. Microsoft's [REDACTED]
acknowledged [REDACTED]
[REDACTED] *Id.* Lenovo and Microsoft had [REDACTED]
[REDACTED] *Id.*

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

Lenovo's accused computers used the same Microsoft software as the accused Dell, HP, and ASUS computers. *Compare* EX2017, ¶¶238-45 and EX2020 with EX2029, ¶¶237-43, EX2022, EX2030, ¶¶233-239, EX2023, EX2031, ¶¶199-

205, EX2021. Microsoft’s relationship with each co-petitioner 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 co-petitioner litigations, representing 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 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 for the ’715 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 [REDACTED] (EX2018, [REDACTED]).

B. Privity Law

The AIA does not define “privity.” To interpret an undefined statutory term, courts rely on the statutory scheme, Congressional intent, and the common law meaning. *King v. Burwell*, 576 U.S. 473, 486 (2015); *Applications in Internet Time v. RPX*, 897 F.3d 1336, 1345-47 (Fed. Cir. 2018) (“RPX”); *Wi-Fi One v. Broadcom*, 887 F.3d 1329, 1335-36 (Fed. Cir. 2018).

Congress used “real party in interest” and “privity” 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.

Congress intended that a “‘privity’ 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” who “had been sued for infringement.” 157 Cong. Rec. S5432 (daily ed. Sep. 8, 2011) (Sen. Schumer’s statement). This legislative history of how “privity” is used in other AIA sections informs its meaning in §315(b). *RPX*, 897 F.3d at 1350 (citing 157 Cong. Rec. S5432 for the meaning of “privity” 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 privacy. 553 U.S. 880, 893-95, 893 n.6 (2008). “[A]ny one of the [*Taylor*] factors can support a finding of privacy.” *Ventex v. Columbia Sportswear*, 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[] privacy under the *Taylor* framework”).

C. Lenovo Was Microsoft’s Privy Under §315(b)

The Microsoft-Lenovo relationship satisfies at least two *Taylor* factors establishing privacy under the common law. Finding Lenovo to be Microsoft’s privy is also consistent with Congressional intent that “privy” cover “a party that has a direct relationship to the petitioner with respect to the allegedly infringing product or service.” *RPX*, 897 F.3d at 1350 (citing 157 Cong. Rec. S5432 (daily ed. Sep. 8, 2011) (Sen. Schumer’s statement)).

1. Lenovo and Microsoft’s Pre-Existing Substantive Legal Relationship

A pre-existing substantive legal relationship between the parties can establish privacy. *Taylor*, 553 U.S. at 8994.

a. [REDACTED] Establishes Such a Relationship

[REDACTED] is a formal contract that establishes a “pre-existing substantive legal relationship” concerning [REDACTED]

[REDACTED].

Supra §II.A. That establishes common-law privity. *Taylor*, 553 U.S. at 893-94 & n.8.

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

First, the Challenged Claims all recite GUI functionality that, in Lenovo’s products, was implemented by Microsoft’s software. *Supra* §II.A. Lenovo and Microsoft’s [REDACTED] (EX2025, MSFT-LITL-IPR-000554) confirmed [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (EX2025, MSFT-LITL-IPR-000548).

Second, Microsoft’s actions in the litigations against its co-petitioners confirm that Microsoft’s [REDACTED] relationship with Lenovo concerns [REDACTED]

[REDACTED]. Microsoft

admitted that LiTL’s litigation papers – which mirror those in the Lenovo litigation (*Supra* §II.A) – “identified Windows functionality as a basis for” the co-petitioners infringing the ’715 Patent. Petition, 1.

Microsoft’s relationships with Lenovo, HP, Dell, and ASUS are the same in relevant respects – they all sell computers running Microsoft’s Windows software that results in infringement of the ’715 Patent in the same way. *See supra* §II.A.2. Microsoft’s co-petitioner relationships are governed by [REDACTED] that are substantively the same in relevant respects to [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 legal relationships between Microsoft and its co-petitioners with whom Microsoft admits it is in privity. Petition, 1-2 and 9-10.

* * * * *

The “pre-existing substantive legal relationship” between Microsoft and Lenovo that resulted in Lenovo’s infringement of the ’715 Patent establishes common-law privity. *Taylor*, 553 U.S. at 893-94, & n.8; *Ventex*, IPR2017-00651, Paper 148, 12 (“any *one* of the [*Taylor*] factors can support a finding of privity) and 15 (contractual relationship established privity). The Petition is time-barred under §315(b).

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.

[REDACTED] establish 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].

Microsoft’s Windows software is [REDACTED]

[REDACTED]

[REDACTED]. Lenovo’s accused computers used the same Microsoft Windows software in the same manner as the accused computers from HP, Dell, and ASUS. *Supra* §II.A.2. Microsoft’s agreements with those co-petitioners had substantively the same [REDACTED]

[REDACTED]. *Supra* §II.A.2. Microsoft represented to the Court that Microsoft was *obligated* to defend its co-petitioners

from LiTL's infringement claims on the '715 Patent. EX2035, ¶8; EX2036; ¶8; EX2037, ¶8. That is an admission that Microsoft's Windows software

[REDACTED]

[REDACTED]

[REDACTED]

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

Microsoft says Lenovo [REDACTED].

EX2019, 6-7. [REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

[REDACTED]. EX1031. [REDACTED]

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

EX2039, MSFT-LITL-IPR-000103, EX2020, MSFT-LITL-IPR-000360-408).

[REDACTED] is immaterial² to

[REDACTED] under *Taylor*.

Microsoft's admission that it was *obligated* to defend its co-petitioners from LiTL's '715 Patent infringement claims, pursuant [REDACTED] [REDACTED] puts that issue to rest.

b. Microsoft's Interpretation of §315(b) Renders "Privy" Superfluous

Microsoft did not need to *provide* Lenovo with indemnification to be Lenovo's privy. Finding otherwise would read "privy" out of §315(b) by equating a privy with a real party in interest ("RPI"). [REDACTED] [REDACTED], Microsoft

² Where an indemnification agreement's "express language" imposes an obligation, the duty to indemnify applies even where the indemnitor "had *no notice* of the underlying proceeding, thus depriving the [indemnitor] of any opportunity to defend the claim." *Exec. Risk Indem. v. Jones*, 171 Cal. App. 4th 319, 331 (2009) (emphasis original) (collecting cases.); see also *Ortega-Maldonado v. Allstate*, 519 F. Supp. 2d 981, 994 (D. Minn. 2007).

would have been an RPI on *Lenovo's* petition challenging the '715 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 v. ION Geophysical*, 889 F.3d 1308, 1320 (Fed. Cir. 2018) (privy is not limited to who “controlled” the infringement litigation).

Because §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,” the time-bar extends *beyond* petitioners and RPIs. *RPX*, 897 F.3d at 1359 (Reyna, J., concurring); *Supra* §II.B. Microsoft's IPR is the type of “belated administrative attack[] by related parties” that Congress sought to prevent by including “privy” in §315(b)'s time bar provision. *RPX*, 897 F.3d at 1350.

III. '715 PATENT

LiTL recognized that the home environment lent itself to different ways in which consumers would use computers. LiTL's multi-year development effort led to a computer (shown below) more suitable for home use. EX2001-2008. The '715 Patent stems from that effort.

LiTL Webbook



EX2001.

The '715 Patent discloses and claims a computer configurable into a number of “display modes” – which are different physical configurations – including laptop, easel, frame, and flat modes. EX1001, 11:39-12:8, Figs. 4, , 17, 26-27.

Laptop Mode

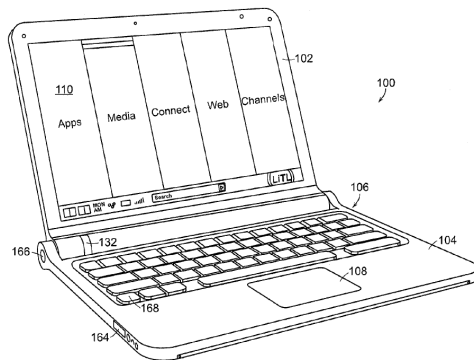


FIG. 17

Easel Mode

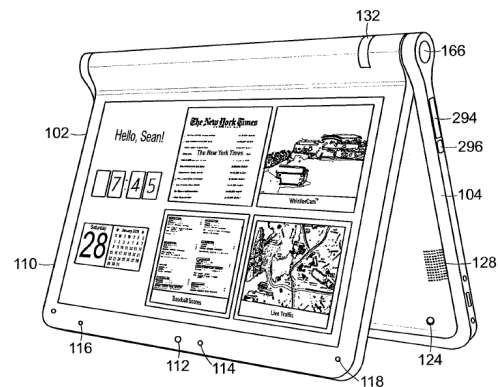


FIG. 4

Frame Mode

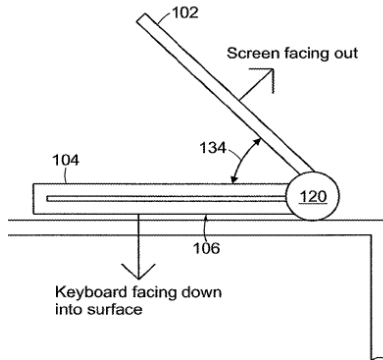


FIG. 26

Flat Mode

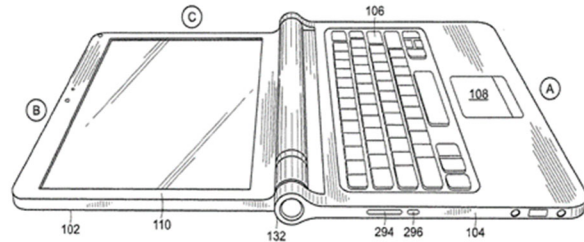


FIG. 27

The inventors recognized that different modes have different “I/O profiles” reflecting that different input/output devices may be available – or not – to the user. *Id.*, 18:17-29. The inventors also recognized that the user experience could be improved by customizing the way the computer’s content is organized for display based on the mode the computer had been configured into. *Id.*, 25:21-31, 26:55-65, 27:6-47, Figs. 2, 4, 17, 23).

Home View for Laptop Mode

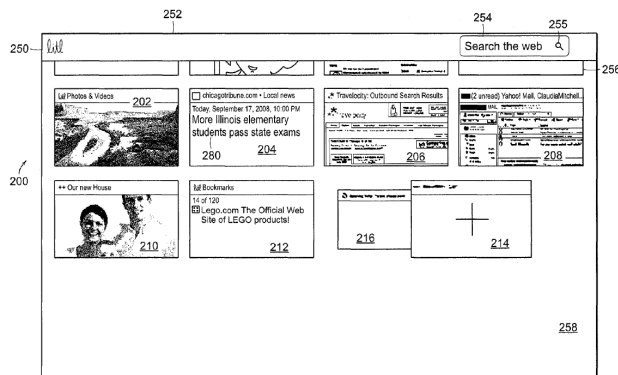


FIG. 2

Channel View for Easel Mode

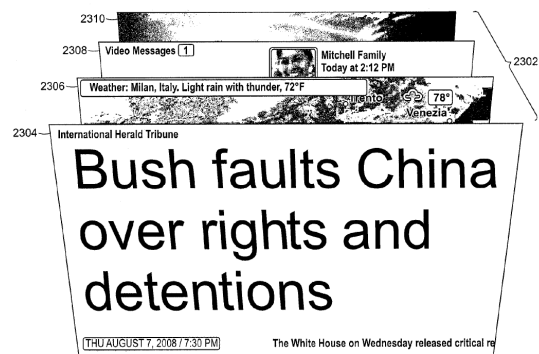
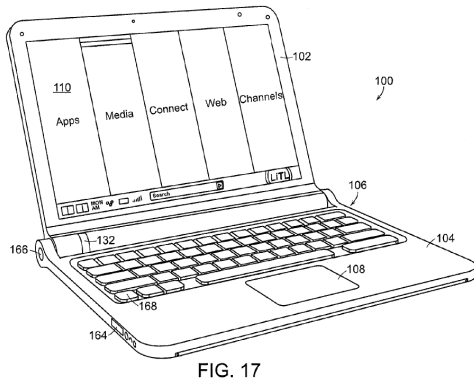
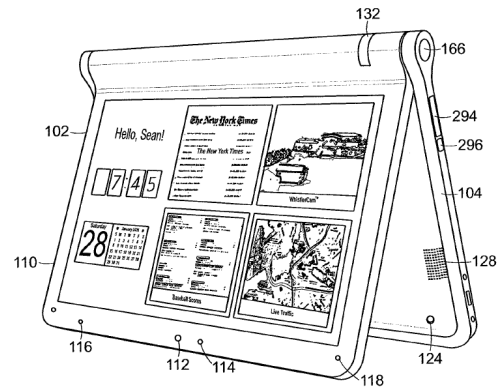


FIG. 23

Laptop Mode



Easel Mode



These different ways of organizing content are called “views.” Petition, 16 (“a ‘plurality of views...’ ‘refer[s] to a plurality of ways of organizing visual representations of computer content.’”); *see also* *Lenovo v. LiTL*, IPR2021-00786, Paper 6 at 16 (PTAB, October 21, 2021) (denying institution of an *earlier IPR challenging the ’715 Patent*) (“we construe the claim recitation ‘plurality of views of a plurality of visual representations of computer content’ (and similar recitations) as referring to a plurality of ways of organizing visual representations of computer content. The recitation is distinct from merely providing a plurality of ways of displaying content (by, for example, changing display orientation, color, resolution, etc.).”).

The ’715 Patent claims a customized user interface for a computer that automatically selects a view based on the computer’s configuration. *Infra* §VI.A.

IV. LENOVO'S '715 PATENT CHALLENGES

Lenovo challenged the '715 Patent twice. Petition, 8-11. The Board *denied* institution of Lenovo's IPR2021-00786. Lenovo then filed an *ex parte* reexamination (No. 90/014,958) which concluded with *confirmation of all claims without amendment*.

V. DISCRETIONARILY DENIAL UNDER §325(d)

Petitioners bore the burden to establish that their art and arguments were not “substantially the same” as the “*prior art or arguments* previously [] presented to the Office” under §325(d). *Ecofasten Solar v. Unirac*, IPR2021-01379, Paper 11, 38-42 (PTAB Feb. 8, 2022) (“*Ecofasten*”).

“[P]reviously presented to the Office” encompasses art and arguments presented during “reexamination of the challenged patent.” *Advanced Bionics v. Med-El Elektromedizinische Geräte*, IPR2019-01469, Paper 6 (*precedential*) (“*Advanced Bionics*”) at 7-8. Yet, the Petition’s page-long §325(d) “analysis” addresses only what happened “during prosecution” and *ignores the reexamination of the ‘715 Patent entirely*. Petition, 14-15.

The Petition’s allegation that “Section 325(d) is inapplicable” is woefully insufficient. *Id.*, 15. The Petition states in conclusory fashion that “substantially the same art or arguments were not previously presented to or considered by the Office” but never even discusses the art and arguments presented during the

reexamination, let alone address whether they are “substantially the same.” *Id.*, 14-15. The Board has denied institution under §325(d) where – like here – the petition only establishes that its prior art is not *identical* to art the Office previously considered, the art was substantially the same art the Office previously considered, and the petition failed to address whether the Office erred. *Darfon Elecs. v. Shipman*, IPR2022-01008, Paper 11, 14 (PTAB Dec. 2, 2022) (“*Darfon*”); *Ecofasten*, IPR2021-01379, Paper 11, 37-42.

The Board should discretionarily deny institution under §325(d) because Petitioners present “substantially the same prior art [and] arguments previously [] presented to the Office” in reexamination No. 90/014,958 and fail to even allege, let alone establish, that the reexamination Examiner materially erred.

A. *Advanced Bionics* Step 1 Is Met

Step 1 is met because Petitioners present art and arguments that are substantially the same as Lenovo presented to the Office during “reexamination of the challenged patent.” *Advanced Bionics* at 8.

As detailed below, Lenovo relied on a primary reference (Lane) that discloses a reconfigurable computer that keeps content displayed right-side-up but does not disclose a GUI showing different “views” (organizations of content). Lenovo relied on a secondary reference (Pogue) that describes the Windows Vista operating system which has different arrangements of windows (alleged views) a

user can select between. Lenovo argued that a POSA would have combined those references to select among Vista's different arrangements based on the computer's configuration rather than based on a user selection as Pogue taught. The Examiner rejected this, finding that a POSA would not have combined the references to select a view *in response to the computer's configuration* as claimed. EX1005, 1680-1681.

Petitioners make substantially the same argument citing cumulative prior art. Petitioners use Pröll instead of Lane but they are substantively the same – both disclose a reconfigurable computer that keeps content displayed right-side-up but do not have a GUI presenting different “views.” To meet the claimed “views,” Petitioners rely on Martinez and Preppernau instead of Pogue, but they are substantively the same – all disclose different window arrangements a user can select between. Indeed, Preppernau describes the exact same Windows Vista operating system as Pogue. Petitioners make the same argument Lenovo did – that POSAs allegedly would have combined the references to select between window arrangements based on the computer's configuration rather than a user selection as taught by the secondary references.

In confirming all Challenged Claims, the reexamination Examiner stated “[a]t best, Pogue's selection of views is *based on a user selection* and **not a computer's configuration**,” and Lane did not “cure the deficiencies” because

“Lane teaches use of a visual display in laptop format and other formats ... *but there is not explicit teaching of organizing visual representations of content differently.*” EX1005, 1680-1681. Petitioners admit that Pröll – like Lane – is “not explicit about the organization of content on its GUI” (Petition, 27) and that Martinez and Preppernau – like Pogue – only teach selecting a window arrangement based on a user selection and not the computer’s configuration. Petition, 22-25 and 79-81. Petitioner’s assertion that such teachings render the claims obvious is substantially the same argument that Lenovo made and the reexamination Examiner rejected.

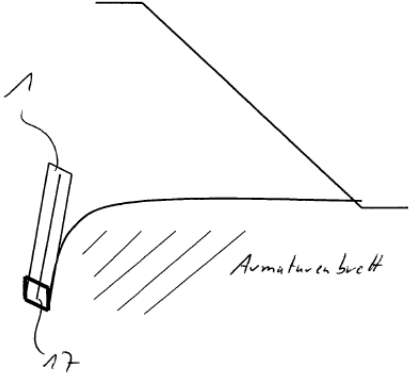
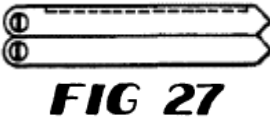
The reexamination Examiner considered substantially the same arguments as Petitioners make, based on substantially the same art. Petitioners do not even allege, let alone establish, that the reexamination Examiner materially erred in confirming the Challenged Claims.

1. Substantially the Same Art

a. Pröll and Lane are Substantially the Same

Pröll and Lane both disclose laptops with a plurality of physical configurations. *Compare* EX2009, Figs. 20-21 and 27-28 *with* EX1006, Figs., 2-3 and 6-7.

	Pröll	Lane
Laptop	Fig. 2	FIG 20
Flat	Fig. 3	FIG 21
Easel	Fig. 7	FIG 28

	Pröll	Lane
Tablet	 Fig. 6	 FIG 27

Both disclose sensors to keep displayed content right-way-up. EX1006, [0049]; Lane, 5-6 (Lane’s “position-indicating mechanism” determines whether content is displayed in “landscape” or “portrait” orientation).

The reexamination Examiner found “*there is not explicit teaching [in Lane] of organizing visual representations of content differently.*” EX2005, 1680-1681. Petitioners concede “Pröll is not explicit about the organization of content on its GUI.” Petition, 27.

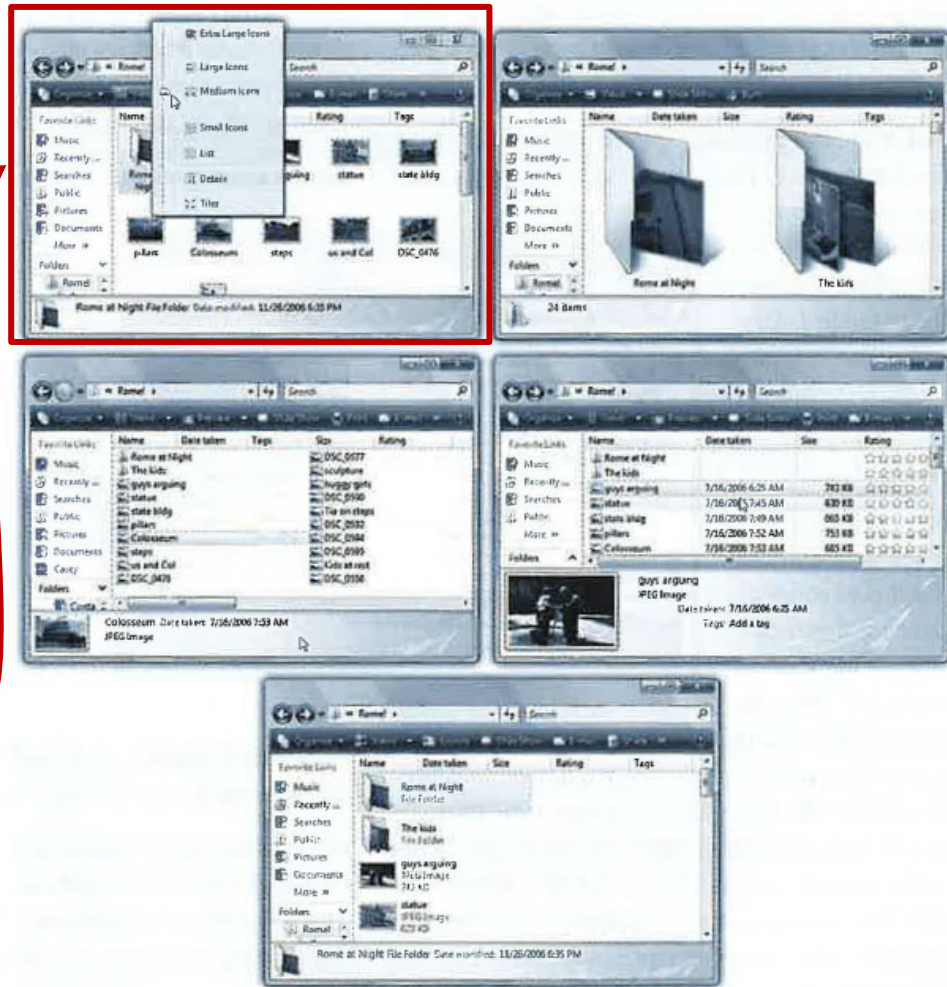
b. Martinez and Preppernau Are Substantially the Same as Pogue

Petitioners allege that Martinez’s disclosure that “windows could be arranged in a *tile* or *cascading* fashion” discloses different organizations of content meeting the claimed plurality of views. Petition, 27-28 (quoting Martinez, 6:33-34). Pogue also discloses that Windows Vista could arrange windows in a “*Tiles* view” and could “*Cascade* Windows.” EX2010, 73 (Fig. 2-11), 99 (Fig. 2-26)

(both figures annotated below). Martinez discloses a different gesture for the user to choose between “tile” and “cascade” arrangements than Pogue does – in Martinez a user “shakes” the computer to make this selection (Petition, 23-25) whereas in Pogue a user selects the desired configuration from a menu of options. EX1005, 1680-1681. This difference in *how* the *user* selects between views is irrelevant to the patentability of the Challenged Claims, which require selecting a view in response to the detected current computer system configuration, not in response to a user gesture. Pogue has the same relevant disclosure as Martinez.

Figure 2-11:
The Views pop-up menu is a little weird; it actually has two columns. At right, it displays the preset view options for the files and folders in a window. At left, a slider adjusts icon sizes to any incremental degree of scaling—at least until it reaches the bottom part of its track.

In any case, here's a survey of the window views in Vista. From top left: Icon view (small), Icon view (large), List view, Details view, and Tiles view. List and Details views are great for windows with lots of files.

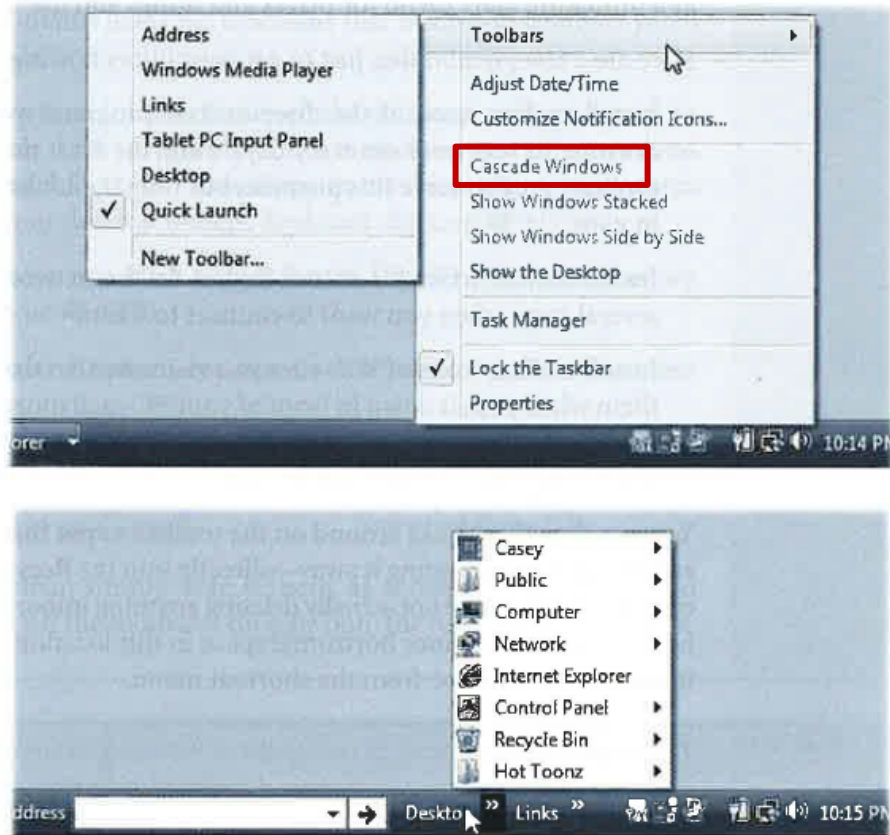


EX2010, 73.

Figure 2-26:

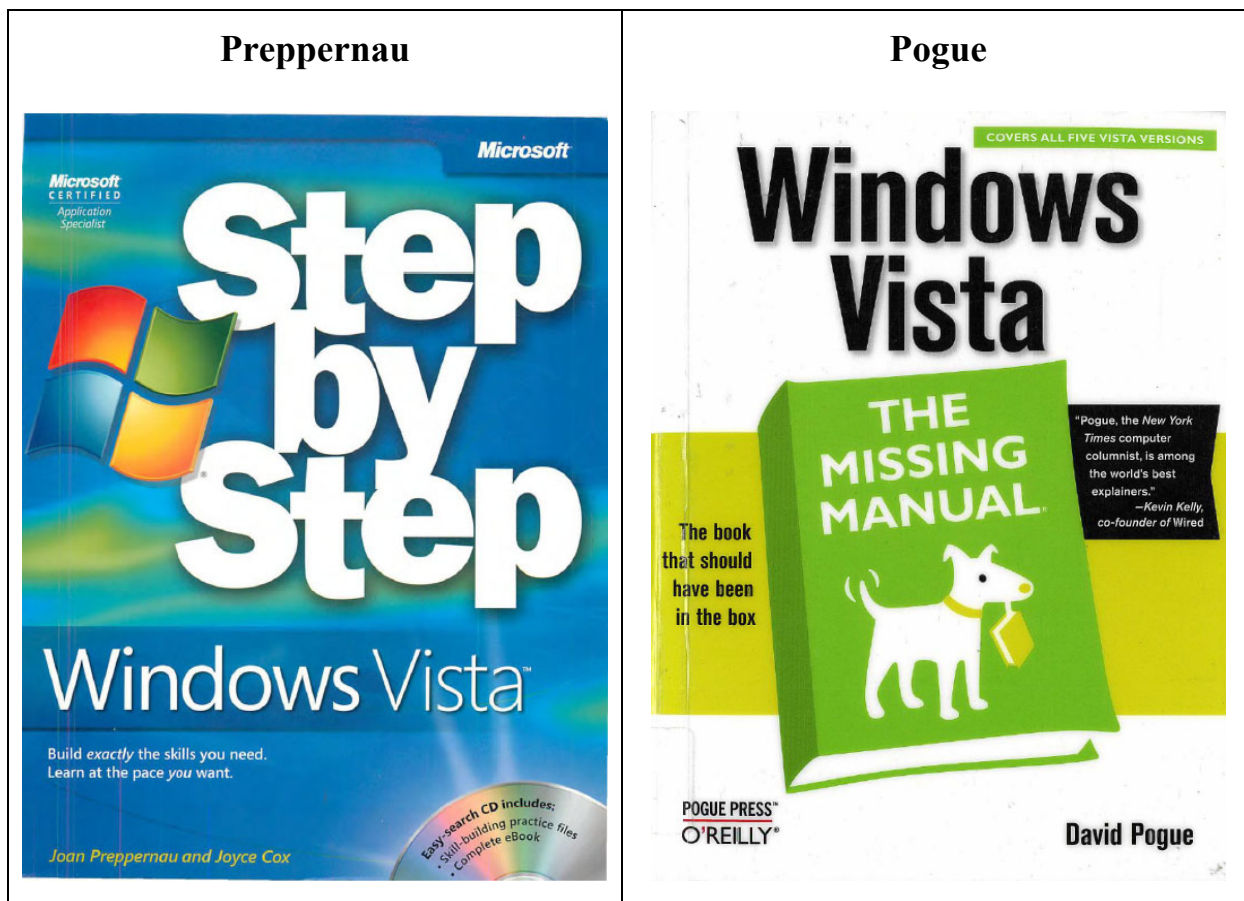
Top: Make toolbars appear by right-clicking a blank area on the taskbar, if you can find one.

Bottom: Toolbars eat into your taskbar space, so use them sparingly. If you've added too many icons to the toolbar, a >> button appears at its right end. Click it to expose a list of the commands or icons that didn't fit.



Id., 99.

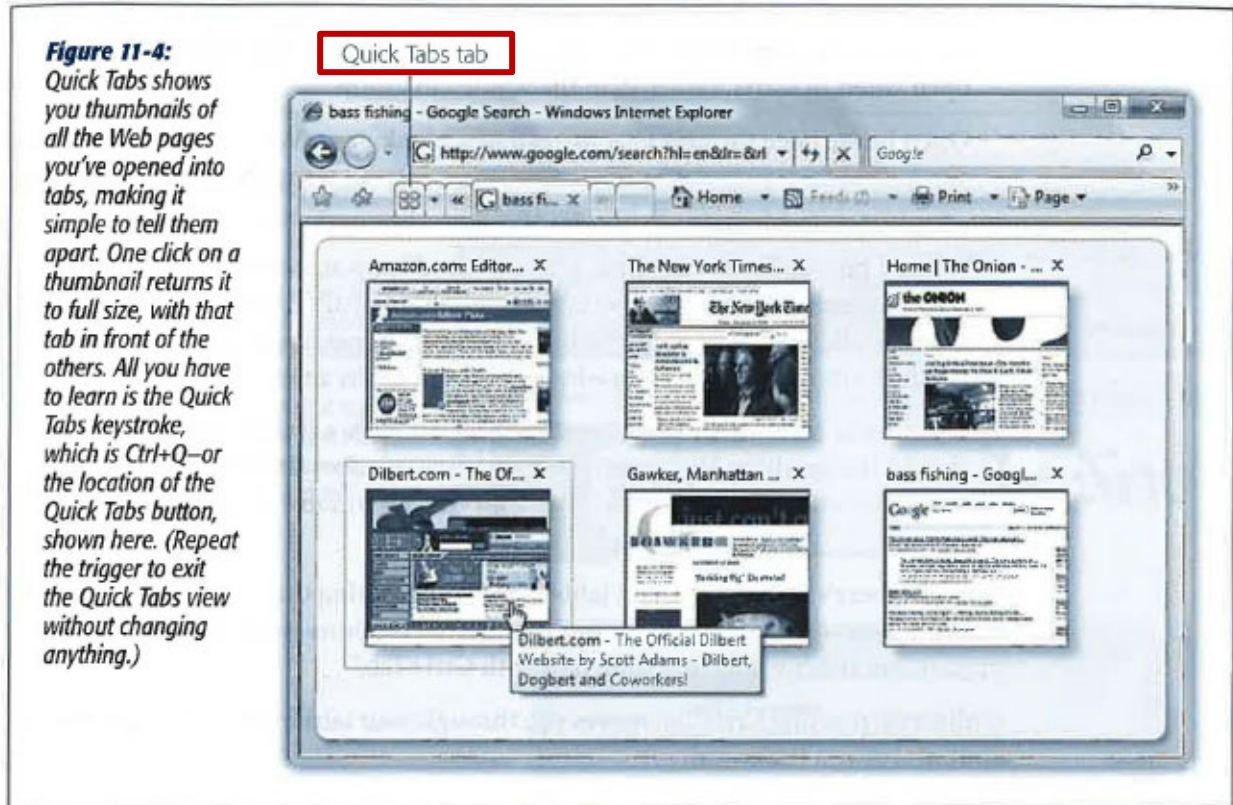
Preppernau is a manual for the same Windows Vista operating system as Pogue. Preppernau, 1; EX2010, 1.



Petitioners cite Preppernau’s disclosure of Windows Vista functionality for organizing content, including: (1) “*quick tabs*,” (2) “*Favorites Center*,” (3) arranging windows in “*cascade*,” a “grid” *stacked* vertically, or a *side-by-side* grid, and (4) “*Quick Launch* toolbar.” Petition, 79-83 (quoting Preppernau, 46-47, 50-51 and 182).

Pogue discloses those same features: (1) “*Quick Tabs*” (EX2010, 374-376 and Fig. 11-4 (annotated below)), (2) “*Favorites Center*” (*id.*, 376-378, Figs. 11-5 and 11-6 (annotated below)), (3) ability to “*Cascade Windows*,” *stack windows*, or

display them *side-by-side* (*id.*, 99, Fig. 2-26 (annotated below)), and (4) “**Quick Launch**” toolbar (*id.*, 97-98, Fig. 2-26 (annotated below)).



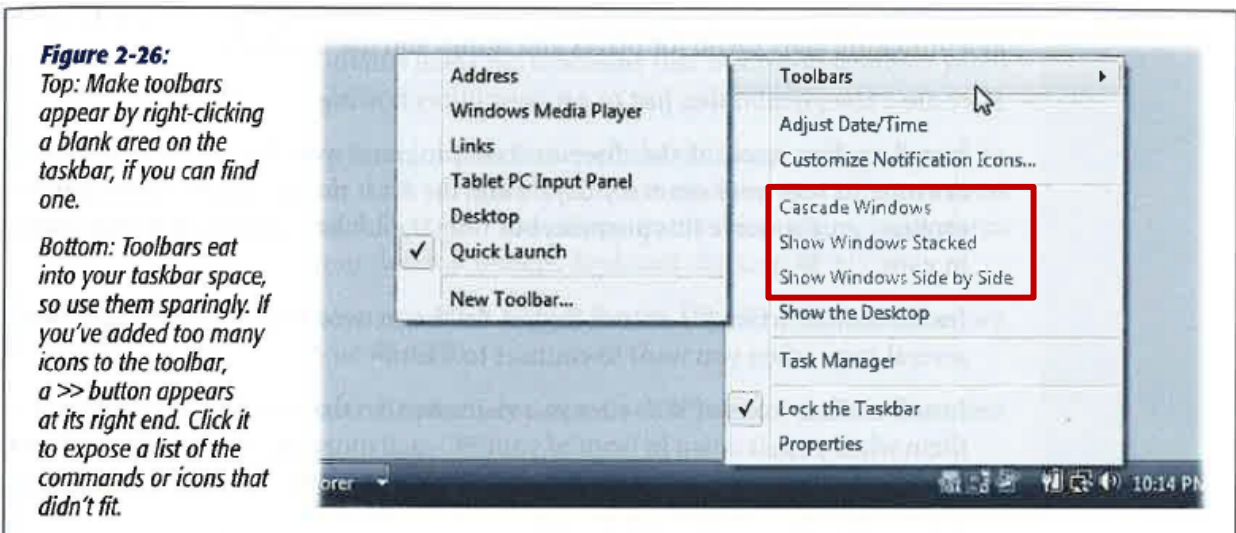
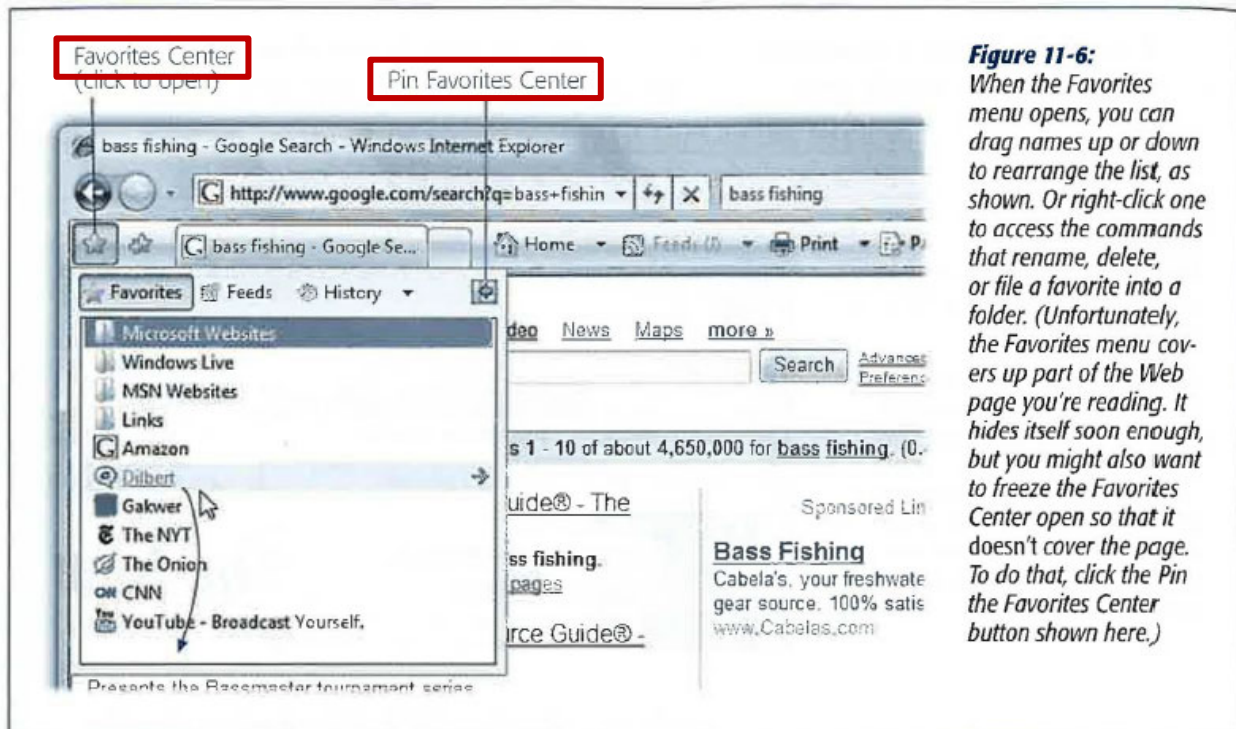
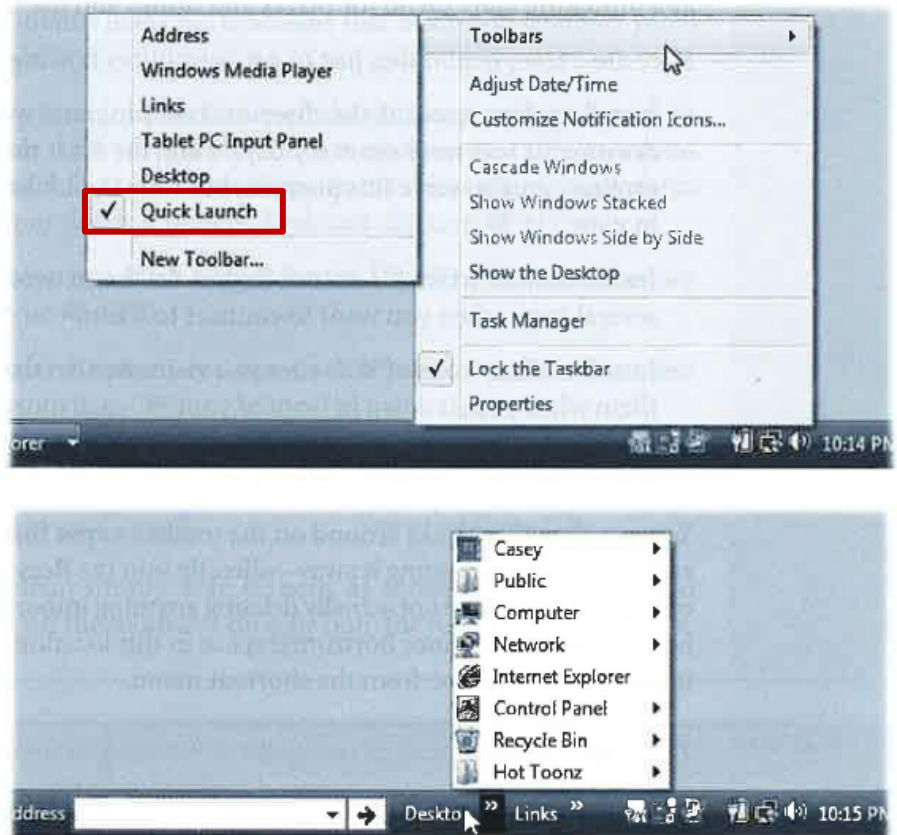


Figure 2-26:

Top: Make toolbars appear by right-clicking a blank area on the taskbar, if you can find one.

Bottom: Toolbars eat into your taskbar space, so use them sparingly. If you've added too many icons to the toolbar, a >> button appears at its right end. Click it to expose a list of the commands or icons that didn't fit.



2. Lenovo Made Substantially the Same Argument as Petitioners

Lenovo's reexamination Ground 3 argued that POSAs would have combined Lane's computer "with an operating system such as the Windows Vista operating system disclosed in Pogue" and that this rendered obvious the Challenged Claims. EX1005, 1151-1205. Lenovo relied on Lane to disclose a reconfigurable computer meeting most claim limitations and Pogue to disclose a plurality of views, then alleged POSAs would have selected among Pogue's views based on the detected configuration of Lane's computer. *Id.*, 1177 (cross-refencing *id.*, 1033-1036).

Petitioners' grounds make substantially the same argument Lenovo made. All grounds rely on Pröll to disclose a reconfigurable computer allegedly meeting most claim limitations. Petition, 25-35 (claim 1), 45-47 (claim 17), 37-38 (claim 20). Petitioners argue that Martinez and Preppernau disclose operating systems with a plurality of views, that POSAs would have used those operating systems on Pröll's computer, and that POSAs would have selected among the views based on the computer's detected configuration. *Id.*, 27-29 (Martinez), 78-81 (Preppernau).

The reexamination Examiner considered and rejected substantially the same argument. The Examiner found that the primary reference Lane has "no[] explicit teaching of organizing visual representations of content differently" (EX1005, 1681) – just like Petitioners admit is true of their primary reference Pröll. Petition, 27. The Examiner found that the selection among the plurality of views in the

secondary reference (Pogue’s Windows Vista) was “based on a user selection and not a computer’s configuration” (EX1005, 1681) – just like Petitioners admit is true in Martinez and Preppernau. Petition, 23-25 and 80-81. The Examiner concluded that POSAs would not have combined these teachings to select between views based on the computer’s configuration as claimed. In so finding, the Examiner rejected substantially the same argument Petitioners advance in all grounds.

3. Petitioners’ Conclusory Assertion Fails

Petitioners’ 325(d) “analysis” only addresses whether the *exact same* art was considered “during prosecution.” Petition, 14-15. Petitioners never address whether their art and arguments are “substantially the same” as considered during the reexamination. Petitioners fail to meet their burden to show that *Advanced Bionics* step 1 is not met; and it clearly is. *Ecofasten*, IPR2021-01379, Paper 11, 38-39.

B. *Advanced Bionics* Step 2 Is Met

When *Advanced Bionics* step 1 is met, “the Director generally will exercise discretion not to institute *inter partes* review” when “the petitioner fails to make a showing of material error.” IPR2019-01469, Paper 6, 8-9; *Darfon*, Paper 11, 14.

Petitioners never allege, let alone establish, that the reexamination Examiner materially erred. Petitioners fail to carry their burden under step 2. *Id.* The Board should deny this Petition under §325(d).

VI. PETITIONERS FAIL TO DEMONSTRATE A REASONABLE LIKELIHOOD OF PROVING ANY CLAIM UNPATENTABLE

The Challenged Claims include independent claims 1, 17, and 20. Claims 1 and 20 require an execution component configured to “*select one of the plurality of views* for display on the computer system *in response to the detected current computer system configuration*.” See EX1001, Limitations 1[f] and 20[f].³ Despite differences in language in claim 17 (Limitation 17[e]), Petitioners rely on its showing for Limitation 1[f] to meet Limitation 17[e]. Petition, 46.

Petitioners agree with the Board’s prior construction that “a ‘plurality of views...’ ‘refer[s] to a plurality of ways of *organizing* visual representations of computer content.’” Petition, 16; *infra* §VI.A.

Petitioners admit that the primary reference (Pröll) in all grounds does not disclose a plurality of views, let alone selecting from among a plurality of views in response to the computer’s detected configuration. Petition, 27 (“Pröll is not explicit about the organization of content on its GUI.”), 79 (same). Grounds 1-3 rely on Martinez to disclose a plurality of views, but Martinez only discloses changing between arrangements of windows in response to the user shaking the device. *Id.*, 23-25. Grounds 4-5 rely on Preppernau to disclose a plurality of views, but Preppernau only discloses changing between arrangements of windows in

³ LiTL adopts the Petition’s claim limitation labeling.

response to the user selecting options from a taskbar. *Id.*, 80-81. None of Petitioners’ references disclose selecting among a plurality of views in response to a detected computer system configuration as claimed.

Unable to find a single prior art reference that discloses selecting among a plurality of views in response to the computer’s detected configuration, Petitioners seek to use expert testimony to meet the missing limitation. But expert testimony can only be used to supply a limitation missing from the art if “the limitation in question [is] unusually simple and the technology particularly straightforward.” *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1362 (Fed. Cir. 2016). Petitioners do not even attempt to make that showing. The Board routinely denies institution where the petitioner seeks to meet a missing limitation based solely on expert testimony. *See e.g., Xerox v. Bytemark*, IPR2022-00624, Paper 9, 14-16 (Aug. 24, 2022) (precedential) (“*Xerox*”); *Apple v. Mullen Indus.*, IPR2023-00087, Paper 10, 19-20 (May 3, 2023) (“*Apple*”).

Establishing obviousness over a combination of references requires (1) establishing some non-hindsight ***reason why*** POSAs would have combined the prior art teachings in the manner claimed and (2) providing “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); *infra* §VI.D.2 (citing authority). The Petition does neither.

A. Petitioners Admit that a Plurality of Views Requires a Plurality of Ways of Organizing Content

The Petition’s “Claim Construction” section addresses the claim limitation requiring “a plurality of views of a plurality of visual representations of computer content” (hereafter the “plurality of views” limitation). This is a limitation of every Challenged Claim (Limitations 1[c], 17[b], 20[c]). Petitioners purport to “show[] that the Challenged Claims are unpatentable under the Board’s [prior] construction of ‘plurality of views,’ as clarified during the EPR.” Petition, 16.

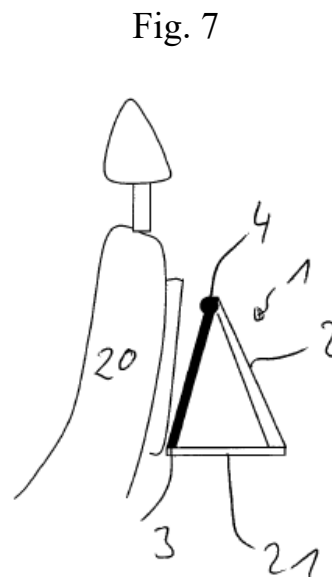
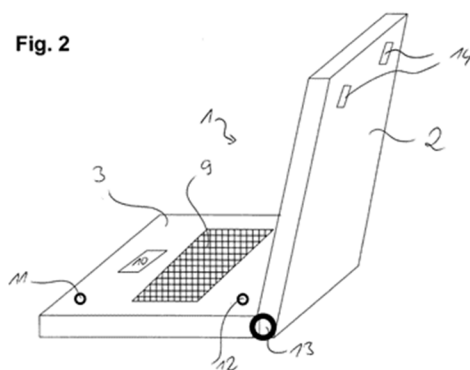
The Petition “must” identify “[h]ow the challenged claim is to be construed” and “[h]ow the *construed* claim is unpatentable.” 37 C.F.R. 42.104 (b)(3)-(4). To identify “[h]ow the *construed* claim is unpatentable,” the Petition must demonstrate the claims unpatentable when the “plurality of views” is construed as “referring to a plurality of ways of *organizing* visual representations of computer content,” as “*distinct from merely* providing a plurality of ways of displaying content (by, for example, *changing display orientation*, color, resolution, etc.),” and as “not encompass[ing] merely changing to entirely different content.” Petition, 16.

B. None of Petitioners’ Prior Art Discloses Selecting a View in Response to a Detected Computer Configuration

1. Petitioners Admit Pröll Does Not Disclose Selecting Among a Plurality of Views

Pröll is the primary reference in every ground. Under the Petition’s construction of “plurality of views” as “ways of *organizing* visual representations of computer content” (*supra* §VI.A), Petitioners admit Pröll does not disclose a plurality of views at all, let alone selecting one of a plurality of views. Petition, 27 (“Pröll is not explicit about the *organization* of content on its GUI.”), 79 (same).

Pröll discloses a laptop-like computer with a hinge that allows the display to be rotated relative to the base so the computer can be placed in various configurations. *Id.*, 22; EX1006, [0023]-[0029], Figs. 2-3 and 6-7.



To ensure content is not displayed “upside down,” Pröll “assume[s]” that when the display is rotated relative the based “by more than 270° degrees,” the

hinge 4 is up so the displayed content “is rotated by 180° degrees” to display the content right-side-up. EX1006, [0049]. A switch “in the hinge” detects whether the display is rotated by more than 270°. *Id.*

Orienting displayed content right-side-up is expressly ***not*** selecting a view under the Petition’s construction. Petition, 16 (a “plurality of views ... is distinct from merely ... changing ***display orientation***”); *supra* §VI.A. Thus, Pröll’s switch does not select a “view” as claimed under the Petition’s own construction. *See also* Petition, 27 and 79 (collectively admitting Pröll does not disclose ways of “organizing” content).

2. Martinez Does Not Select a View in Response to a Detected Computer Configuration

Petitioners allege Martinez discloses a plurality of views (i.e., a plurality of ways of organizing content) in Grounds 1-3. Petition, 27-29.

Martinez changes the displayed arrangement of windows between “a tile or cascading fashion” in response to a user shaking the computer. Martinez, 6:1-57; Petition, 24-25 (“Martinez detects a shake”; “[i]f a ***shake*** is detected, ‘the process then arranges the windows’”) and 34 (Martinez “chang[es] to one of a plurality of views ... based on detected ***motion of the computer system***”).

Even if the tile and cascading window arrangements are different views, Martinez changes between them in response to a user shake – not in response to the computer’s detected configuration. EX1007, 6:7-8. For example, the computer can

remain in the laptop configuration in Martinez’s Figs. 6A-6C while the user shakes the computer. Shaking the computer does not change the computer’s configuration.

Thus, Martinez does not disclose selecting one of its views in response to a detected current computer system configuration. Petitioners never allege otherwise.

3. Preppernau Does Not Select a View in Response to a Detected Computer Configuration

Petitioners allege Preppernau discloses a plurality of views in Grounds 4-5. Petition, 80-81.

Preppernau changes the displayed organization of windows when a user makes a selection from a taskbar. *Id.*, 83 (“Preppernau teaches that a *user* can also *select* to [display windows in various configurations].”). As the reexamination Examiner found, selecting a “view” in response to a user selection is not a selection in response to a detected computer configuration. EX1005, 1680-1681.

Thus, Preppernau does not select among the “views” Petitioners identify in response to a detected computer system configuration and Petitioners never allege otherwise.

C. The Board Denies Institution when the Prior Art Fails to Disclose a Claim Limitation

Petitioners’ assertion that POSAs would have combined Pröll and Martinez (Grounds 1-3) and Pröll and Preppernau (Grounds 4-5) in a manner meeting the claim limitation requiring selecting a view in response to a detected computer

configuration – despite that limitation being absent from *all* these references – is based entirely on the unsupported testimony of Petitioners’ expert. The risk of hindsight bias in such circumstances is apparent, so the Board routinely denies institution where a petition’s grounds rely on an expert’s naked say-so to meet a limitation missing from the art. *Xerox*, Paper 9, 14-16 (denying institution due to “a limitation missing from the prior art”); *Apple*, Paper 10, 19-20 (same).

1. Petitioners Rely on Expert Testimony to Supply a Missing Limitation

Rather than follow the teachings in the art to select a view based on a user action (Martinez’s shaking or Preppernau’s user selection), Petitioners allege POSAs would have selected a view based on a detected configuration of Pröll’s computer. Petition, 34, 82. Petitioners thereby attempt to meet a claim limitation missing from the art solely with expert testimony. The Federal Circuit has made clear that this is rarely permissible and Petitioners fail to establish the factual predicate needed to do so.

2. Expert Testimony Can Supply a Missing Limitation Only in Rare Circumstances Absent Here

For expert testimony to supply a limitation missing from the prior art, “the limitation in question [must be] unusually simple and the technology particularly straightforward.” *Arendi*, 832 F.3d at 1362; *see also DSS Tech. Mgmt., Inc. v. Apple Inc.*, 885 F.3d 1367, 1374 (Fed. Cir. 2018) (same).

In *Arendi*, the claims recited a method of identifying duplicate entries in a database and the prior disclosed a computerized address book. *Id.*, 1358-59. The Board reasoned “it would have been obvious to ... search for duplicate telephone entries when entering a telephone number in an electronic address book.” *Id.*, 1360. The Federal Circuit disagreed, noting that the prior art reference did “not mention or imply that a search [] is involved.” *Id.*, 1363. The “only documentary support the Board recited was the declaration of ... Appellees’ expert.” *Id.*, 1364. The Federal Circuit found that the Board erred by relying on “conclusory statements and unspecific expert testimony regarding searches in general,” which was “particularly problematic considering the fact that a key limitation of the [patent, identifying duplicate entries,] was missing from the prior art.” *Id.*, 1366.

In *DSS Tech.*, the claimed technology related to a communication network with peripheral devices and a base station all “energized in low duty cycle RF burst” intermittently. 885 F.3d at 1369-70. The prior art taught *peripheral devices* that operated in this manner, but ***not the base station***. *Id.*, 1373. The Board found it would have been obvious “to have the base station operate in an analogous manner” to the peripheral devices. *Id.* The Federal Circuit disagreed because the limitation was “not ‘unusually simple,’ and the technology is not ‘particularly straightforward.’” *Id.*, 1375 (quoting *Arendi*).

To LiTL’s knowledge, the Federal Circuit has only sanctioned supplying a missing limitation through expert testimony in rare circumstances where the art discloses every claimed element, but not the **repetition** of a known element as required by a claim. In *B/E Aerospace*, the Court found the technology (“lavatory enclosures”) simple and the claimed “second recess” simply involved “**repetition** of an existing element” (one disclosed recess), so the claim was obvious despite the prior art not disclosing two recesses. *B/E Aerospace, Inc. v. C&D Zodiac, Inc.*, 962 F.3d 1373, 1380 (Fed. Cir. 2020). Another oft-cited example is *Perfect Web Techs., Inc. v. InfoUSA, Inc.*, 587 F.3d 1324 (Fed. Cir. 2009). The Federal Circuit has characterized *Perfect Web* as a case where the invention was a 3-step process of sending marketing emails and the “missing claim limitation” “was nothing more than an instruction to **repeat** [the three] steps A, B, and C until a particular quantity of email was sent in accordance with the claim.” *Arendi*, 832 F.3d at 1362. The Federal Circuit has made clear that “the facts in *Perfect Web* ... **ought to be treated as the exception, rather than the rule.**” *Id.*, 1362.

3. The Board Denies Institution Where the Petition Fails to Justify Reliance on Expert Testimony to Supply a Missing Limitation

Petitioners do not even attempt to establish that their reliance on expert testimony to supply a limitation missing from the cited prior art is consistent with Federal Circuit precedent. That is reason enough to deny institution.

Xerox involved a “mobile ticketing system for detecting fraudulent activity” and the claimed method required “stor[ing] in a data record associated with the account a data value indicating the fraudulent activity.” *Xerox*, IPR2022-00624, Paper 9, 6. The prior art (“Terrell”) disclosed blocking the purchaser’s account but not storing a data value indicating the fraudulent activity as claimed. *Id.*, 14. The petitioner alleged POSAs “‘would find it obvious’ that ‘blocking the account of the purchaser’ would includ[e] ‘storing a data value indicating the fraudulent activity in a data record associated with the user account.’” *Id.* But “[p]etitioner’s only evidence in support of its assertion ... [was] the opinion of its Declarant, Dr. Jones.” *Id.* at 15. In denying institution, the Board noted that “[p]etitioner has not alleged” that “the limitation in question [is] unusually simple and the technology particularly straightforward,” “much less provided support for such an allegation.” *Id.*, 16-17 (quoting *Arendi*).

The Board reached a similar result in the more recent *Apple* decision. IPR2023-00087, Paper 10, 19-20. That case involved “determining a device’s location” (*id.*, 3) and the claims required the “device to display indicia of two locations other than its own” (*id.*, 15). The prior art (“Sheha”) disclosed “displaying the location of a caller and a called device on a screen, but [did] not disclose displaying multiple locations of other users...” *Id.*, 17. In denying institution, the Board noted that “[p]etitioner has not alleged” that “the limitation in

question [is] unusually simple and the technology particularly straightforward,” “much less provided support for such an allegation.” *Id.*, 19-20 (quoting *Arendi*).

Just like the petitioners in *Xerox* and *Apple*, Petitioners did not even allege that the missing claim limitation of selecting a view in response to a detected computer configuration is unusually simple or the claimed technology straightforward. Neither is true. Selecting different views for different physical configurations of the computer would require developing different organizations of content appropriate for those physical configurations. LiTL’s invention resulted from a multi-year development effort involving leading User Experience Design experts and consultancies. *See* §III; EX2001-2008; EX1001, 1:54-63, 2:22-62, 11:42-45, 15:22-16:67, 19:40-56, 21:1-64, 24:16-32.

Petitioners’ failure to establish that this is one of the rare exceptions to the rule forbidding reliance on expert testimony alone to meet a claim limitation missing from the prior art is reason enough to deny institution.

D. Grounds 1-3 Fail

Petitioners fail to establish any supportable reason why POSAs would have modified Pröll based on Martinez to select among Martinez’s two window arrangements *in response to a detected current computer system configuration* as claimed, rather than in response to a user shaking the computer Martinez teaches.

The Petition also fails to sufficiently explain the contemplated workings of its Pröll-Martinez combination.

1. POSAs Motivated to Modify Pröll Based on Martinez Would Not Have Arrived at Any Challenged Claim

Petitioners admit that Pröll does not disclose ways of “organizing” content. Petition, 27 and 79. Pröll uses a switch to determine the orientation of displayed content to ensure it is right-side-up. *Supra* §VI.B.1; EX1006, [0046]. Petitioners admit this does not meet a “plurality of views” under the Petition’s construction. Petition, 16 (a “plurality of views ... is distinct from merely ... changing *display orientation*”); *supra* §VI.B.1.

Martinez “arranges the windows ... in a tile or cascading fashion” in response to a user shaking the computer. EX1007, 6:1-57; *supra* §VI.B.2; Petition, 24-25 (“Martinez detects a shake” and “[i]f a *shake* is detected, ‘the process then arranges the windows’”), 34 (“Martinez teaches changing to one of a plurality of views ... based on detected *motion of the computer system*”).

POSAs motivated by Martinez to modify Pröll would have added Martinez’s tile and cascading arrangement of windows and selected between them based on detecting a shake as Martinez teaches, while using Pröll’s switch to orient displayed content right-side-up as Pröll teaches. That would not meet any Challenged Claim because it would not select a view in response to a detected

current computer system configuration as required by Limitations 1[f] and 20 [f], and as Petitioners allege to meet Limitation 17[e]. Petition, 46.

As detailed below, Petitioners’ assertion that POSAs would have combined the teachings of Pröll and Martinez in a different way that meets the Challenged Claims is unsupported by any credible evidence.

2. The Petition Does Not Adequately Explain the Contemplated Workings of its Pröll-Martinez Combination

“[A] *prerequisite* to adequately explaining and supporting a conclusion” of obviousness is to provide “a clear, evidence-supported account of the *contemplated workings of the combination...*” *Pers. Web Techs.*, 848 F.3d at 994. Petitioners allege POSAs would have selected different ones of Martinez’s tile and cascading views in response to different detected configurations of Pröll’s computer to “improve usability.” Petition, 35. But the Petition never explains what is meant by tile and cascading views. Instead, Petitioners seek to incorporate by reference argument *and evidence* found only in the expert declaration to explain the workings of the Pröll-Martinez combination. That is improper.

The Petition introduces its combination in §VIII.A.3.d, which purports to demonstrate how Limitation 1[c] is met. Petition, 27-30. Petitioners allege that POSAs would have been motivated to “switch between views ... based on Pröll’s switch” because “doing so would have allowed system [sic] to be more effectively used in different mobile environments, such as switching between *cascading and*

tiled views ... depending on the available user input from a keyboard at a stable, permanent work station or touching a screen while riding in a moving car.” *Id.*, 28-29. The Petition never explains what Martinez’s tile and cascading arrangements are.

Petitioners cite Martinez Fig. 9 and 5:66-6:37. Petition, 27. Figure 9 is a flow diagram of Martinez’s “process for aligning windows” (EX1007, 2:66-67) and the disclosure at 5:66-6:37 explains Fig. 9’s process. The cited Martinez disclosures never explain what tile and cascading arrangements are. Neither does the Petition.

Only in the expert declaration is there provided an argument about what Martinez’s tile and cascading arrangements of windows are. Compounding the problem, to provide that explanation Petitioners’ expert relies on evidence (EX1021 (“Foley”)) that is nowhere cited or discussed in the Petition – it appears only in the Exhibit Listing. EX1003 (“Houh”), ¶72. That evidence cannot be considered because it is the *Petition* that “must” identify “the supporting evidence relied upon to support the challenge and the *relevance* of the evidence to the challenge raised, *including identifying specific portions of the evidence that support the challenge*. The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify

specific portions of the evidence that support the challenge.” 37 C.F.R.

§42.104(b)(5).

The argument explaining the contemplated workings of the Pröll-Martinez combination cannot be incorporated by reference from the expert declaration – it needed to be ***in the Petition***. *Infra* §VI.D.4.a (citing authority); 37 C.F.R. §42.6(3), §42.22 and §42.104. Without even a basic explanation of the contemplated workings of the combination, the Petition fails to substantiate its assertion that POSAs would have believed that switching between the tile and cascading arrangements based on the computer’s configuration would have allowed Pröll’s “system to be more effectively used in different mobile environments.” Petition, 28-29.

By failing to provide “a clear, evidence-supported account of the contemplated workings of the combination” the Petition fails to establish “a ***prerequisite*** to adequately explaining and supporting a conclusion” of obviousness. *Pers. Web*, 848 F.3d at 994; *see also Samsung Elecs. Co., v. Lynk Labs, Inc.*, IPR2022-00101, Paper 30, 28-29 (May 25, 2023) (denying institution: 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”).

Ground 1 fails for this reason alone.

3. Petitioners Establish No Reason to Select Different Views Based on the Computer’s Configuration Rather Than a User Shake as Martinez Teaches

Establishing obviousness of a claim over a combination of references requires establishing a supportable *reason why* POSAs would have combined the prior art teachings *in a manner that meets the claim*. *TQ Delta, LLC v. CISCO Sys., Inc.*, 942 F.3d 1352, 1359 (Fed. Cir. 2019) (reversing the Board’s obviousness determination; “a conclusory assertion with no explanation is inadequate to support a finding that there would have been a motivation to combine because ‘this type of finding, without more, tracks the *ex post* reasoning KSR warned of and *fails to identify any actual reason why a skilled artisan would have combined the elements in the manner claimed*.’”) (internal citation omitted).

Petitioners fail to establish any supportable reason why POSAs would have selected among Martinez’s views in response to a detected computer configuration as claimed, rather than in response to a user shake as Martinez teaches. *Supra* §VI.D.1.

**a. Petitioners’ Modification is Not Required to “Allow”
Pröll’s Device to be Used in Mobile Environments**

Petitioners allege “[a]s discussed above for 1[c], a POSITA would have been motivated to apply Martinez’s views to be triggered based on Pröll’s switch ... to *allow* Pröll’s device to be used in mobile environments.” Petition, 35. Petitioners’ 1[c] arguments alleged some benefits to selecting between views based on the configuration of Pröll’s computer. Those arguments fail for reasons discussed below. But notably, Petitioners’ 1[c] arguments never alleged that selecting between Martinez’s views based on a detected computer configuration was – in some unexplained way – somehow necessary to “allow Pröll’s device to be used in mobile environments.” That “conclusory assertion with no explanation is inadequate...” *TQ Delta*, 942 F.3d at 1359.

Moreover, Pröll’s device *already is* a “*mobile* data processing device.” EX1006, Abstract, [0001]. There can be no supportable reason to modify Pröll to “allow” it to be used in a mobile environment when Pröll already discloses a mobile device without modification. *Amerigen Pharms. Ltd. v. UCB Pharma GmbH*, 913 F.3d 1076, 1081 (Fed. Cir. 2019) (no motivation to combine when the alleged problem “did not exist”).

Petitioners’ alleged motivation to “allow” Pröll’s device to be used in mobile environments is unexplained and unsupported.

b. Alleged Improved Usability Based on Relative Window Sizes Between Martinez’s Tile and Cascading Arrangements Fails

Petitioners allege that selecting between Martinez’s views based on Pröll’s switch would “*predictably improve usability* of Pröll’s system” (Petition, 29, 35) and allow it “to be *more effectively used* in different mobile environments” (*id.*, 28). The basis for this assertion is that “the combination would beneficially allow a user to use the touchscreen when the keyboard is inaccessible ... to tap *larger, tile-sized icons* and to use the keyboard to scroll through *cascading smaller windows* on the screen when that keyboard is again accessible in a stationary environment (e.g., laptop mode).” *Id.*, 29-30 (citing “Martinez, 6:32–37; Pröll, ¶¶0061]; Houh Decl., ¶¶76-77”).

This assertion fails for three reasons: (1) it is based on a factual predicate (that windows are larger in tile than cascading arrangement) that is unsupported by any credible evidence; (2) that factual predicate is demonstrably false; and (3) the allegation that POSAs would have selected between window arrangements in response to the computer’s configuration is based on nothing but the naked say-so of Petitioners’ expert.

i. The Assertion About Window Size Is Unsupported by any Credible Evidence

Petitioners’ assertion that Martinez’s tile arrangement has “larger,” and Martinez’s cascading arrangement has “smaller,” icons/windows is unsupported by

Petitioners’ citations to Martinez and Pröll. Petition, 29-30 (citing “Martinez, 6:32–37; Pröll, ¶¶0061; Houh Decl., ¶¶76-77”). Martinez discloses nothing about window size in its “tile or cascading” arrangements. EX1007, 6:32–37. Pröll, ¶¶0061] says the device has a touchscreen but, as Petitioners admit, “Pröll is not explicit about the organization of content on its GUI.” Petition, 27, 79 (same).

Even if the Board were to dive into the expert declaration, the cited paragraphs (Houh, ¶¶76-77) provide no credible evidence that Martinez’s tile arrangement has “larger” and Martinez’s cascading arrangement has “smaller” icons/windows. The only reference to icon/window size appears in Houh, ¶77 in language that parrots – virtually word-for-word – the Petition’s conclusory assertion. *Compare* Petition, 29 (“larger, tile-sized icons” and “cascading smaller windows”) *with* Houh, ¶77 (“larger, tile-sized icons” and “cascading smaller windows”). The only evidence that Dr. Houh cites to “support” this assertion is the same Martinez, 6:32–37 and Pröll, ¶¶0061] citations just discussed that say nothing about icon/window size.

Dr. Houh’s conclusory assertion that windows are larger in Martinez’s tile arrangement than in the cascading arrangement merely parrots the Petition’s conclusory assertion without citing any evidence or providing any analysis. It warrants no weight under the Board’s precedential *Xerox* decision. *Xerox*, IPR2022-00624, Paper 9, 15 (“[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) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight”)).

Compounding the problem, in the only cited testimony that discusses icon/window size in Martinez’s tile and cascading arrangements (Houh, ¶77), Dr. Houh cites *three references* (EX1035, EX1036 and Folely) that are *never even cited*, let alone explained, *in the Petition* – they appear only in the Exhibit List. “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.” *Instrumentation Lab’y v. Hemosonics*, IPR2017-00855, Paper 55, 20 (Feb. 13, 2019)) (citing 37 C.F.R. §42.6(a)(3)); *see also 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.”); 37 C.F.R. §42.104(b)(5) (the *Petition* that “must” identify “the *relevance* of the evidence to the challenge raised, including *identifying specific portions of the evidence* that support the challenge.”).

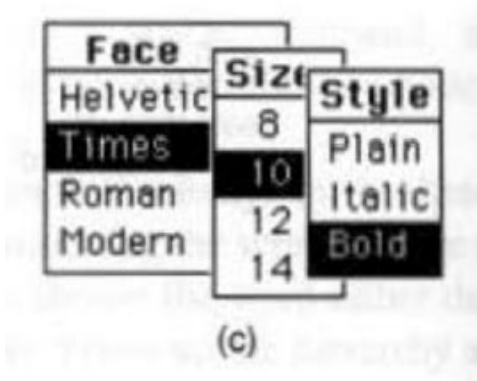
A necessary factual predicate to Petitioners’ assertion that POSAs would have selected between Martinez’s window arrangements based on a detected configuration of Pröll’s computer is that windows are “larger” in Martinez’s tile arrangement and “smaller” in its cascading arrangement. Petition, 29-30. But that assertion is unsupported by a single piece of credible evidence. Ground 1 fails for this additional independent reason.

ii. Petitioners’ Assertion About Window Size is Demonstrably False

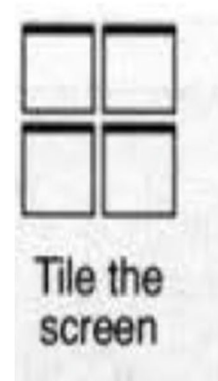
Amplifying the significance of the absence of credible evidence supporting Petitioners’ assertion that windows are larger in Martinez’s tile arrangement than in Martinez’s cascading arrangements is that Petitioners’ assertion is demonstrably false and refuted by the very evidence Dr. Houh relies on.

As discussed *supra* §VI.D.3.b.i, the only evidence Dr. Houh cites to explain his understanding of Martinez’s tile and cascading arrangements is Foley, which is never cited in the Petition. The images from Foley (EX1021, 366, 426-27) that Dr. Houh cites show that windows overlap in the cascading arrangement but not in the tile arrangement. Houh, ¶72.

Cascading

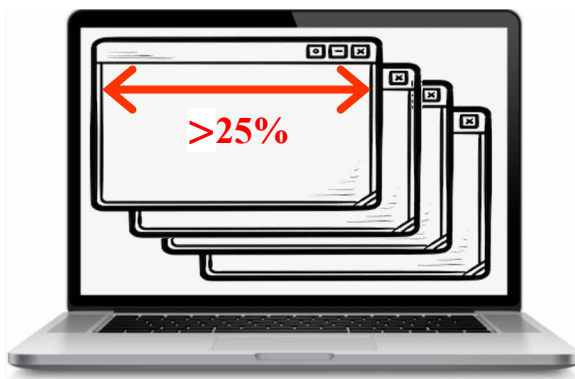


Tiled

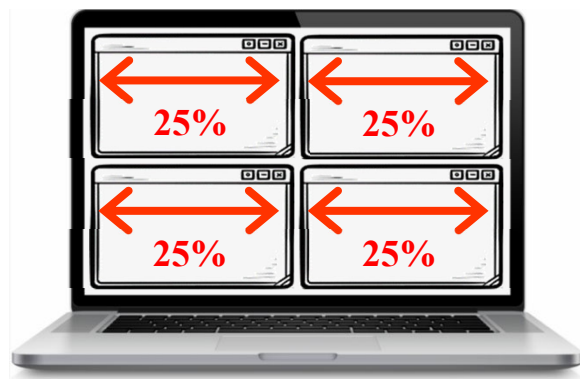


As illustrated below, because cascading windows can overlap but tiled windows cannot, for the same number of displayed windows *cascading windows can be larger* than tiled windows, *not smaller* as Petitioners erroneously allege. Petition, 29-30.

Cascading



Tiled



Thus, Petitioners' argument that icons/windows would be "larger" in Martinez's tile arrangement and "smaller" in Martinez's cascading arrangement (Petition, 29-30) is not only unsupported by any credible evidence – it is refuted by

the very evidence that Petitioners' expert cites to explain what these arrangements allegedly are.

Again, Petitioners' assertion that POSAs would have selected between Martinez's window arrangements based on a detected configuration of Pröll's computer hinges entirely on Petitioners' assertion that windows are "larger" in Martinez's tile arrangement and "smaller" in its cascading arrangement. Petition, 29-30. Because that assertion is unsupported by any credible evidence and refuted by the evidence that Petitioners' expert relied on, the Petition's alleged motivation to combine Pröll and Martinez in a manner that meets the Challenged Claims fails. That is fatal to Ground 1.

iii. Petitioners Rely on Their Expert's Naked Say-So to Meet a Limitation Missing from the Art

Even if Petitioners somehow supported their assertion that windows are "larger" in Martinez's tile arrangement and "smaller" in its cascading arrangement (they did not), Ground 1 still fails because the assertion that this would have motivated POSAs to select among those window arrangements in response to a detected computer configuration rather than a user shake as taught by Martinez is based on nothing but the naked say-so of Petitioners' expert. *See Supra* §VI.C.

Dr. Houh does not cite a single reference that teaches selecting between tile and cascading window arrangements based on a computer's detected configuration. The hindsight bias here is apparent. Dr. Houh fabricated out of

whole cloth an alleged advantage to doing so based on purported window size differences, and worse yet got it wrong on the facts. *Supra* §VI.D.3.b.ii. The authority cited *supra* § VI.C.2-3 makes clear that Petitioners cannot carry their burden to establish obviousness by relying on naked expert testimony to supply the claimed requirement of selecting a view based on the computer’s detected configuration when that limitation is missing from the prior art. Ground 1 fails.

c. The Petition’s Remaining Reasons to Combine Fail to Yield a Computer Meeting Any Challenged Claim

The Petition’s other alleged reasons to combine fail to yield a computer meeting what the claims require.

i. Alleged Similarities Between Pröll and Martinez Provides No Reason to Combine Their Teachings in the Claimed Manner

Petitioners allege that “Pröll and Martinez disclose similar systems.”

Petition, 29. This does not help Petitioners for three reasons.

First, simply establishing that two references are in the same field is insufficient to establish any reason why POSAs would have combined their features in any way, let alone in the manner claimed. *Trend Micro v. Open Text*, IPR2023-00692, Paper 8, 29-30 (PTAB Nov. 6, 2023) (denying institution where petitioner “merely allege[d] that the two references are in the same field of endeavor”), citing *Microsoft Corp. v. Enfish, LLC*, 662 F. App’x 981, 990 (Fed.

Cir. 2016) (insufficient motivation to combine was found where the only reason given was “the references were directed to the same art or same techniques”).

Second, this assertion provides no reason to combine Pröll and Martinez in a manner meeting the claim, rather than selecting between window arrangements based on a user shake as taught by Martinez.

Third, the assertion that Pröll and Martinez both disclose systems that “detect[] physical changes to the device and responds to such changes with a different GUI display” (Petition, 29) is misleading at best. The only change to its GUI display that Pröll teaches in “respond[ing] to” changes in the computer’s configuration is re-orienting displayed content to be right-side up. EX1006, [0046]; *Supra* §VI.B.1. Petitioners are explicit that this does not meet a “plurality of views” under the Petition’s construction. Petition, 16. Pröll does not teach different *organizations* of content as required to meet the Petition’s construction of “plurality of views.”

**ii. That POSAs Could Have Implemented a
Computer Meeting the Claims Provides No Reason
Why POSAs Would Have Done So**

Petitioners allege that modifying Pröll’s computer to select among Martinez’s views based on a detected computer configuration “would have been well within the programming skills of a POSITA.” *Id.*, 29 and 35. While relevant to establishing a reasonable expectation of success, that does not help Petitioners in

meeting the separate requirement to establish obviousness – which is a non-hindsight *reason why* POSAs would have done so in the first place. *Pers. Web Techs.*, 848 F.3d at 993–994.

iii. Even if POSAs Had Been Motivated to Combine Martinez with Pröll, that Would Not Have Resulted in a Computer Meeting Any Challenged Claim

Even if POSAs would have been motivated to combine Martinez’s arrangements of windows with Pröll’s device, that provides *no reason why* POSAs would have modified Pröll to select among Martinez’s arrangements of windows based on a detected computer configuration, rather than based on a user selection (via a shake) as taught by Martinez. *Supra* §VI.D.1. The improved usability Petitioners rely on is achieved by doing what Martinez teaches and allowing the user to select between views by shaking the computer. *Id.*

Establishing some “reason” to combine the references in a manner that does not meet the claims is insufficient to establish obviousness. Petitioners needed to establish a reason to combine the prior art features in a manner that meets the claims. *TQ Delta*, 942 F.3d at 1359 (obviousness requires an “*actual reason why a skilled artisan would have combined the elements in the manner claimed.*”).

Petitioners’ improved usability “reason” is facially insufficient because it would have been achieved by simply following the teachings of Martinez to select between views based on a user shake, which does not meet any Challenged Claim.

4. The Expert Declaration Cannot and Does Not Cure the Petition's Failures

a. The Evidence Relied Upon Needed to Be Cited and Explained in the Petition

The Board's rules governing "Content" in the Petition, which "***must***" "include[e] a detailed explanation of the significance of the evidence" (Rule 42.22(a)(2)) and "***must***" identify "the ***relevance*** of the evidence to the challenge raised, including identifying specific portions of the evidence that support the challenge" (Rule 42.104(b)(5)). The Petition violates these rules.

The Petition's two-paragraph section addressing Limitation 1[f] and its requirement to select a view based on a detected computer configuration (Petition, 34-35), whether directly or through cross-references to Petition §§VIII.A.3.d and VIII.A.3.f, cites eleven paragraphs of Houh testimony spanning about nine pages. There, Dr. Houh cites disclosures in Pröll and Martinez that are never cited in the Petition. Worse yet, Dr. Houh also cites ***four references*** (EX1009, EX1021, EX1035, and EX1036) that are ***never even cited*** – let alone explained – ***in the Petition*** apart from the Exhibit List.

None of that argument and evidence can save Petitioners because it cannot be incorporated by reference into the Petition. "***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.” *Instrumentation Lab’y*, IPR2017-00855, Paper 55 at 20 (citing 37 C.F.R. §42.6(a)(3)); *see also* *Cook*, IPR2017-00131, Paper 13 at 15 (“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.”); 37 C.F.R. §42.104(b)(5) (the *Petition* that “must” identify “the *relevance* of the evidence to the challenge raised, including *identifying specific portions of the evidence* that support the challenge.”).

Thus, nothing in the expert declaration can save the Petition from its failure to explain the contemplated workings of its Pröll-Martinez combination and to establish a supportable reason why POSAs would have combined Pröll and Martinez in a manner that meets the Challenged Claims.

b. The Expert Declaration Fails to Cure the Petition’s Fatal Deficiencies

Even if the Board were to wade into the Houh declaration, it fails to carry Petitioners’ burden. To meet the Challenged Claims, Petitioners needed to establish some reason why POSAs would have selected among Martinez’s views based on a detected computer configuration. As discussed *supra* §VI.D.3.b.i-iii, on that critical issue Dr. Houh merely parrots the Petitioner’s conclusory assertion, cites no supporting evidence and erroneously alleges that icons/windows are larger

in Martinez’s tile view. Nothing in the remainder of Dr. Houh’s testimony even attempts to cure that fatal deficiency.

i. Dr. Houh’s Assertion that Pröll Discloses Different Views Warrants No Weight

Dr. Houh alleges that Pröll “displays different content views depending on” how the computer is arranged and “contemplates *different organizations* of content for different configurations.” Houh, ¶70; *see also id.*, ¶75 (“as discussed previously, Pröll already contemplates changing the *organization* of displayed content”). These conclusory assertions warrant no weight because they are inconsistent with Dr. Houh’s admission that “Pröll is not explicit about the *organization of content* on its GUI.” Houh, ¶71. Pröll cannot disclose different organizations of content when it discloses nothing about “the organization of content on its GUI.” *Id.*; *supra* §VI.B.1.

These conclusory assertions also warrant no weight because they are unsupported by the portions of Pröll that Dr. Houh cites – Pröll, [0061]-[0062]. *See* Houh, ¶¶70, 75. Pröll, [0061] says its display can be a touchscreen acting as an “input medium.” Pröll, [0062] says “the interfaces on the mobile data processing device 1 ... can only be arranged in one of the housing halves 2, 3.” Neither paragraph discloses anything about what is displayed, let alone “different organizations of [displayed] content for different configurations” as Dr. Houh alleges. Houh, ¶¶70, 75.

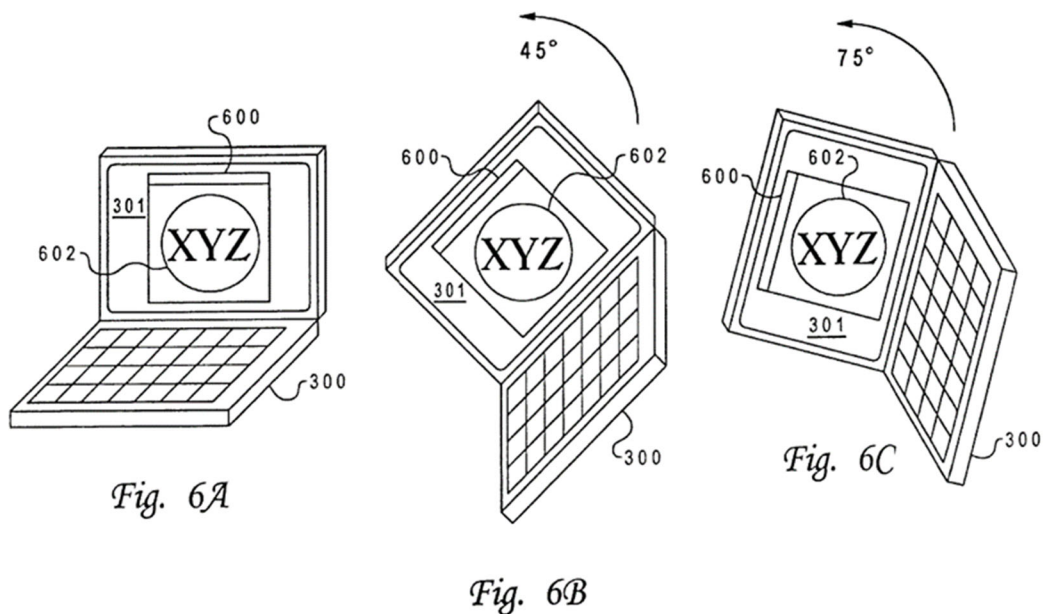
Dr. Houh’s conclusory assertion that POSAs would have modified Pröll to select among Martinez’s alleged views based on a detected computer configuration is based, at least in part, on Dr. Houh’s erroneous assertion that “Pröll already contemplates changing the **organization** of displayed content to simplify and improve the interface for a user.” Houh, ¶75. As demonstrated above, that assertion is inconsistent with Dr. Houh’s own admissions and is entirely unsupported by Pröll.

ii. Martinez Does Not Select Among Window Arrangements Based on the Computer’s Configuration

Dr. Houh alleges “Martinez teaches that it would be ‘advantageous ... to detect various changes in orientation of hardware associated with a data processing system in which the display is altered in response to various changes in orientation of the hardware.’” Houh, ¶75. POSAs motivated by Martinez’s teachings would have modified Pröll to select among Martinez’s arrangements of windows based on a user shake as Martinez teaches. *See supra* §VI.D.1. Martinez provides no motivation to do something Martinez does not disclose.

Dr. Houh cites a portion of Martinez the Petition nowhere cites. Houh, ¶75 (*citing* Martinez, 1:62-67). That is reason enough to not consider, let alone credit, Dr. Houh’s testimony because it is the **Petition** that must identify and explain the relevance of the evidence. 37 C.F.R. §§42.22 and 42.104(b)(5). Worse yet, Dr.

Houh’s citation is misleading. The cited disclosure does not relate to selecting between different organizations of windows (which Petitioners allege to be different “views”). Instead, it describes Martinez detecting “changes in orientation” of the monitor between landscape and portrait modes, and then orienting the displayed content right-way-up. EX1007, 1:55-62 and Figs. 6A-6C (reproduced below). Petitioners admit that such orienting of content does not meet a “plurality of views” under the Petition’s construction. Petition, 16; *supra* §VI.A. Dr. Houh’s citation to this Martinez disclosure is misleading because it has nothing to do with the way Martinez selects between the tile and cascading arrangements of windows that are alleged to meet the claimed plurality of views. Petition, 27. Martinez only teaches selecting between those “views” based on a user shake. *Supra* §VI.B.2.



iii. Dr. Houh’s Assertion that POSAs Would Have Selected Among Views Based on a Detected Computer Configuration is Unsupported

Dr. Houh alleges POSAs would have been motivated to arrange displayed content in a manner “best suited to the user’s needs” to “increase the computer’s usefulness.” Houh, ¶75 (citing EX1021, which is *nowhere cited in the Petition*, for its teaching that “[t]he visual design of a user-computer interface affects ... the system’s longer-term usefulness”); *see also id.*, ¶85 (combination would “predictably improve usability of Pröll’s system”). Those general assertions provide no support for modifying Pröll to select between Martinez’s alleged views based on a detected computer configuration. Dr. Houh does not even allege – let alone substantiate – that selecting a view based on a detected computer configuration would somehow “better suit[] the user’s needs” or “improve usability” as compared to Martinez’s shake selection technique that allows the user to choose the view (*supra* §VI.D.1).

To support Petitioners’ Pröll-Martinez combination, Dr. Houh needed to establish that POSAs would have selected a view based on the computer’s detected configuration, rather than based on a shake as taught by Martinez. *See supra* §VI.D.1. Dr. Houh states that “[i]n my opinion, a POSITA would have been motivated to combine Pröll with Martinez such that Pröll’s GUI displays a different organization of content when its housing halves are arranged in various

configurations.” Houh, ¶71 (*citing nothing*). That naked conclusory assertion does not even identify what the alleged motivation would have been, let alone support any (unidentified) motivation with evidence. It warrants no weight. *Xerox*, Paper 9, 15; 37 C.F.R. §§42.65(a), 42.104(b)(5).

In paragraph 76, Dr. Houh again alleges that “instead of Martinez’s shake feature ... a POSITA would have been motivated to trigger Martinez’s views based on Pröll’s switch...” That is another conclusory assertion that fails to identify any alleged *reason why* POSAs would have done so.

Dr. Houh misleads again by alleging that Pröll and Martinez each disclose a system that responds to changes in the computer’s physical configuration “with a different GUI display.” Houh, ¶76. Petitioners and Dr. Houh admit that Pröll teaches *nothing* about the “*organization* of content on its GUI” (Petition, 27, 79; Houh, ¶71) as required to meet the Petition’s construction of “views” (Petition, 16). And Martinez does not teach different GUI displays responsive detected configurations of the computer – Martinez teaches changes in response to a user shake. *Supra* §VI.B.2. In addition to the misleading nature of this testimony, it provides no *reason why* POSAs would have selected between Martinez’s views based on a detected computer configuration.

Dr. Houh next alleges POSAs would have been “motivated to simply apply the *known technique* of rearranging the display in response to sensor data to

improve the usability of Pröll.” Houh, ¶76. But the only evidence Dr. Houh cites of such a “known technique” is Martinez, 5:24-28, which describes Martinez’s “tilt” sensor. Houh, ¶76. Thus, what was “known” from Martinez was “respon[ding] to sensor data” by changing the orientation of displayed content to ensure it is right-way-up (Martinez, 1:55-62, Figs. 6A-6C), and using the tilt sensor to detect a “shake” that selects between the tile and cascading windows arrangements (Martinez, 6:1-37). Neither of those “known technique[s]” meets the claims. Thus, even if POSAs had reason to use these “known technique[s]” to “improve the usability of Pröll” (Houh, ¶76), that would not have yielded any Challenged Claim. Instead, it would have yielded the Pröll-Martinez system described *supra* §VI.D.1, where different views would be selected in response to a user shake – not in response to a detected computer configuration as required by every Challenged Claim. Thus, Dr. Houh’s testimony that POSAs would have been motivated to apply a “known technique” provides no support for Petitioners’ assertion that POSAs would have modified Pröll to select a view from among Martinez’s plurality of views based on a detected computer configuration.

5. Conclusion: Ground 1 Fails

The Petition’s failure to support its Pröll-Martinez combination by explaining its contemplated workings and by establishing some supportable reason why POSAs would have combined the references in the claimed manner is fatal

and cannot be cured by the expert declaration. But even if the evidence and argument provided only in the expert declaration is considered it cannot and does not save Ground 1.

E. Grounds 2-3 Inherit Ground 1's Failures

Ground 2 adds Chandhri to the Pröll-Martinez combination in challenging claims 2 and 15-18. Petition, 3. Petitioners rely entirely on Ground 1's Pröll-Martinez combination to meet claim 1 for claims 2 and 15-16 that depend therefrom. Petition, 39, 42. While claim 17 is independent (claim 18 depends therefrom), the Petition relies entirely on Ground 1's failed showing for Limitation 1[f] to meet Limitation 17[e]. Petition, 46. Thus, Ground 2 inherits Ground 1's failings. *Supra* §VI.D.

Ground 3 adds Preppernau to the Pröll-Martinez combination in challenging claims 3-14 that depend from claim 1. Petition, 3. Petitioners rely entirely on Ground 1's Pröll-Martinez combination to meet claim 1 for claims 3-11. Petition, 48-76. Thus, Ground 3 fails for the same reasons as Ground 1. *Supra* §VI.D.

F. Ground 4 Fails

Ground 4 challenges claims 1, 3-14, and 19-20 as obvious over Pröll and Preppernau. Petition, 3. Ground 4 fails because Petitioners fail to explain the contemplated workings of their Pröll-Preppernau combination and fail to establish any reason why POSAs would have combined these references in a manner meeting any Challenged Claim.

1. POSAs Motivated to Modify Pröll Based on Preppernau Would Not Have Arrived at a Computer Meeting Any Challenged Claim

Petitioners admit that Pröll does not disclose ways of “organizing” content. Petition, 27, 79; *supra* §VI.B.1. That is required to disclose a “plurality of views” under the Petition’s construction. Petition, 16.

Petitioners allege that Preppernau – a user guide for Windows Vista (EX1008, 46-47; *supra* §VI.B.3) – discloses a plurality of views that “organize content.” Petition, 78-81. Petitioners identify various “button[s]” and “tabs” on a “taskbar” or “toolbar” that a *user can select* to organize the displayed content, including the option to choose “cascade displays of windows, arrange windows in a grid and/or arrange windows side-by-side.” *Id.*; *see also id.* 83-84 (“*a user can [] select*” among the cascade, grid and side-by-side arrangements); Preppernau, 47 (the user can use a taskbar button to “click[] the arrangement you want” among the cascade, “stacked” grid, and side-by-side arrangements).

Petitioners allege POSAs would have “use[d]” the “popular” Windows Vista operating system “with the Pröll computer.” Petition, 76-77. Doing so would have yielded a computer running Vista’s operating system allowing a user to select any of the Preppernau “views” Petitioners identify by clicking a taskbar or toolbar button or tab as Preppernau discloses. Pröll’s switch would be used to orient displayed content to ensure it was right-side-up as taught by Pröll. *Supra* §VI.B.1.

But that modification of Pröll based on Preppernau fails to meet any Challenged Claim because it would not have selected among Preppernau’s alleged views in response to a detected computer configuration.

2. The Petition Fails to Explain the Contemplated Workings of the Pröll-Preppernau Combination

Petitioners identify multiple window arrangements in Preppernau, including at least “cascade,” stacked “grid” and “side-by-side” arrangements. Petition, 79-84. But the Petition never even explains which of Preppernau’s arrangements allegedly would have been used with which configuration of Pröll’s computer. Without that basic explanation of the contemplated workings of the combination – which is a “prerequisite” to establishing obviousness – Petitioners cannot possibly substantiate that POSAs would have made Petitioners’ unexplained Pröll-Preppernau combination⁴ to “improve ... usability.” Petition, 77; *Pers. Web*, 848 F.3d at 994 (“a clear, evidence-supported account of the contemplated workings of the combination is a *prerequisite* to adequately explaining and supporting a conclusion” of obviousness). Ground 4 fails for this reason alone.

⁴ Ground 4’s Pröll-Preppernau combination is different from Ground 1’s Pröll-Martinez combination, so its “contemplated workings” needed to be explained separately.

3. The Petition Never Alleges a Reason to Combine Pröll and Preppernau in a Manner Meeting the Challenged Claims

To establish obviousness, it is insufficient to provide a “reason” to combine the references in *some* manner. There must be an “actual reason why a skilled artisan would have combined the elements *in the manner claimed*.” *TQ Delta*, 942 F.3d at 1359 (internal citation omitted).

As detailed below, the Petition never even alleges a reason why POSAs would have combined Pröll’s and Preppernau’s teachings in a manner that would have modified Preppernau’s Vista operating system, or any aspect of Pröll’s computer, to select a view in response to a detected computer configuration as required by all Challenged Claims. Ground 4 fails for this additional reason.

a. Petitioner’s “Motivation to Combine” Section Alleges No Such Reason

Petitioners’ assertion that Pröll discloses changing the GUI “in response to the configuration of the computer device” (Petition, 77) is misleading. The only GUI change Pröll discloses is changing the orientation of displayed content to be right-side-up, which does not meet the Petition’s construction of “plurality of views,” which are ways of organizing visual representations of content. *Supra* §VI.B.1; Petition, 16. Indeed, Petitioners admit “Pröll is not explicit about the organization of content on its GUI.” Petition, 79.

Petitioner’s “Motivation to Combine” Section VIII.D.1 (*id.*, 76-78) describes “numerous features” of Preppernau’s Windows Vista operating system and alleges POSAs would have used this “popular” operating system on Pröll’s computer. The Petition never alleges a reason to modify the Vista operating system, or any aspect of Pröll’s computer, to select a view in response to a detected computer configuration as claimed.

A motivation to use Windows Vista to “improve[] the usability” of Pröll’s computer (*id.*, 76-78) is facially insufficient to render any Challenged Claim obvious. The identified benefits would have been achieved by simply running Windows Vista on Pröll’s computer, which would have allowed the user to select any desired “view” (e.g., from the taskbar) as Preppernau teaches. EX1008, 46-47; *see also* §VI.B.3. Using Vista on Pröll’s computer would not meet any Challenged Claim because Petitioners identify no teaching in Preppernau that Vista selects a view in response to a detected computer configuration. And the motivation Petitioners identify –“improved [] usability” – provides no reason to modify Vista, or any other aspect of Pröll’s computer, to select a view in response to the computer’s detected configuration as required by the Challenged Claims.

**b. The Petition’s Addressing Limitation 1[f] Similarly
Alleges No Reason to Combine Pröll and Preppernau
in the Manner Claimed**

In purporting to map the “Pröll-Preppernau” combination to Limitation 1[f], the Petition repeats that POSAs “would have found it obvious to select one of the plurality of views taught in Preppernau.” Petition, 82 (§VIII.D.2.g). Again, that would have been achieved by running Windows Vista on Pröll’s computer, which would have allowed a user to select any of Preppernau’s arrangements (e.g., from the taskbar) as taught by Preppernau. EX1008, 46-47; *see also* §VI.B.3. Such a resulting system does not meet any Challenged Claim.

The Petition then alleges in conclusory fashion that POSAs would have selected one of Preppernau’s “views” “*based on the detected configuration of Pröll’s device.*” Petition, 82; *see also id.*, 83 (“A POSITA would have been motivated to trigger ... Preppernau’s views ... *based on Pröll’s switch.*”), 83-84 (“displaying different views ... *based on the configuration of the laptop device.*”). These assertions fail.

First, the Petition never explains *why* POSAs would have been so motivated. Such “a conclusory assertion with no explanation is inadequate...” *TQ Delta*, 942 F.3d at 1359. Petitioners allege the combination would “predictably improve the usability of Pröll’s system” (Petition, 83), but Petitioners never even explain the contemplated workings of the combination (*see infra* §VI.F.2) by

identifying which Preppernau view would allegedly be used with which “configuration of [Pröll’s] laptop device.” Petition, 84. Without that explanation, Petitioners cannot remotely support their conclusory assertion that POSAs would have made Petitioners’ unexplained combination to, in some unexplained way, “improve the usability of Pröll’s system.” *Id.*

Second, Petitioners’ conclusory hindsight assertion cites no teaching in Pröll, Preppernau or any other prior art reference. Petitioners’ argument is improperly based on nothing but the naked say-so of Petitioners’ expert. *See supra* §VI.C.2-3.

Third, Petitioners cite Preppernau, but Preppernau only “teaches that a *user* can [] select” how windows are displayed. Petition, 83. A user’s manual selection is not made in response to a detected computer configuration as claimed.

The Petition failed to establish an “actual reason why a skilled artisan would have combined the elements [of Pröll and Preppernau] *in the manner claimed*.” *TQ Delta*, 942 F.3d at 1359 (internal citation omitted). That is fatal to Ground 4.

4. The Expert Declaration Cannot Save Ground 4

a. Incorporation by Reference is Prohibited

The Petition’s “Motivation to Combine” and Limitation 1[f] sections collectively cite Houh, ¶¶162-164, 172, and 175-177, which in turn cite two

references (EX1021 and EX1023) cited nowhere in the Petition outside the Exhibit List.

None of the explanation and evidence appearing only in the expert declaration can be incorporated by reference into the Petition. *See supra* §VI.D.4.a (collecting authority). Thus, the expert declaration cannot save Ground 4 from its fatal deficiencies discussed *supra* §VI.F.1-3.

b. If Considered, the Expert Declaration Fails

i. Windows Vista Running on Pröll's Computer Does Not Meet Any Challenged Claim

Like the Petition, Dr. Houh's "Motivation to Combine" Section XI.D.1 (Houh, ¶¶162-164) primarily extols the virtues of Windows Vista and alleges POSAs would have run it on Pröll's computer. But the resulting modified Pröll computer would have selected among Preppernau's arrangements based on a user selection as taught by Preppernau and would not have met any Challenged Claim. *Supra* §VI.F.1.

ii. Dr. Houh Provides No Reason Why POSAs Would Have Modified Windows Vista

Houh, ¶172 (cited Petition, 84) does not allege POSAs would have changed Windows Vista in any way. Preppernau only teaches that a *user* manually selects among the views Petitioners identified. *Supra* §VI.B.3. Dr. Houh acknowledges that "Preppernau's teachings would have allowed *users* to optimize one of the GUIs" and that "switching to a Quick Tabs view *as Preppernau teaches* would

have allowed a *user* to predictably reorganize the interface...” Houh, ¶172. As the reexamination Examiner found, a user selecting a view does not meet the claimed limitation of selecting a view in response to a detected computer configuration. EX1005, 1680-1681.

Dr. Houh alleges POSAs would have “combine[d] Pröll with Preppernau such that Pröll’s GUI displays a different organization of content when its housing halves are arranged in various configurations.” Houh, ¶176. The only “support” for this assertion is a cross-reference to “Section XI.D.1” which is Dr. Houh’s Motivation to Combine section (¶¶162-164). The cross-referenced “Section XI.D.1” only alleges that POSAs would have run Windows Vista on Pröll’s device, not that POSAs would have further modified the system to select a view based on a detected computer configuration. Dr. Houh’s conclusory opinion that POSAs would have combined Pröll and Preppernau such that different organizations of content would be selected based on a detected computer configuration is entirely unsupported and warrants no weight. *Xerox*, Paper 9, 15 (“[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*.”).

Dr. Houh also says POSAs would have combined “Pröll and Preppernau to predictably improve the usability of Pröll’s system for the reasons I discussed in Section XI.D.1.” Houh, ¶177. Again, “Section XI.D.1” never offers any reason

why POSAs would have combined Pröll and Preppernau to select views in response to a detected computer configuration rather than in response to a user selection as Preppernau teaches. *See supra* §VI.B.3.

c. Dr. Houh Fails to Explain the Contemplated Workings of the Pröll-Preppernau Combination

In alleging that the Pröll-Preppernau combination meets Limitation 1[f]’s requirement of selecting a view in response to a detected computer configuration, Dr. Houh points to three Preppernau window arrangements – cascading, stacked grid (“stacked vertically”), and side-by-side (“stacked horizontally” – as meeting the plurality of views. Houh, ¶¶176-177. Yet, Dr. Houh never identifies which of these arrangements POSAs allegedly would have used with which configuration of Pröll’s device, let alone substantiate a reason why.

Without that fundamental explanation of the “contemplated workings of the combination,” Dr. Houh’s testimony does not remotely substantiate his conclusory assertion that POSAs would have been motivated to arrive at some (unexplained) implementation of Pröll and Preppernau that meets the Challenged Claims because it would have improved usability of Pröll’s system. *Pers. Web*, 848 F.3d at 994; Houh, ¶177.

d. Dr. Houh’s Assertion that Pröll Discloses Different Views is Unsupported in Pröll and Refuted by Dr. Houh’s Own Admission

Dr. Houh misleadingly states that “Pröll also contemplates different organizations of content for different configurations of the two housing halves.” Houh, ¶175. But Dr. Houh admits that “Pröll is not, however, explicit about the organization of content on its GUI.” Houh, ¶176. Pröll only discloses maintaining content right-way-up which does not the Petition’s construction of “views” that are different organizations of content. Petition, 16; *Supra* §VI.A.

5. Conclusion: Ground 4 Fails

The Petition’s failure to support its Pröll-Preppernau combination by explaining its contemplated workings and by establishing some supportable reason to combine the references in the claimed manner is fatal and cannot be cured by the expert declaration. But even if the evidence and argument provided only in the expert declaration is considered, it does not save Ground 4.

G. Ground 5 Fails

Ground 5 adds Chandhri to the Pröll-Preppernau combination in challenging claims 2 and 15-18. Petition, 3. Petitioners rely entirely on Ground 4’s Pröll-Preppernau combination to meet claim 1 for claims 2 and 15-16 that depend therefrom. Petition, 91-92. Thus, Ground 5’s showing for claims 2 and 15-18 inherits Ground 4’s failings. *Supra* §VI.D.

Ground 5’s purported showing for claim 17 is facially deficient. For Limitation 17[e], the Petition’s entire “analysis” is “*See* Section VIII.B.5.f for 17[e].” Petition, 93. But “Section VIII.B.5.f” is Ground 2’s showing based Pröll, *Martinez* and Chandri. Petition, iii. The Petition nowhere even attempts to establish that Limitation 17[e] is met by the Pröll, *Preppernau* and Chandri combination that is the basis of Ground 5. Petition, 91. To the extent the Petition intended to rely on some showing from Ground 4’s Pröll-Preppernau combination to meet Limitation 17[e], that would inherit Ground 4’s failings. *Supra* §VI.D.

VII. CONCLUSION

For the foregoing reasons, the Board should deny institution.

Respectfully submitted,
LiTL LLC

Date: June 12, 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 13,915 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: June 12, 2024

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

I certify that on June 12, 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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