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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. IPR2024-00458

Patent No. 10,564,818

PATENT OWNER'S PRELIMINARY RESPONSE

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37 C.F.R. § 42.65(a).....	50, 56, 69, 72

Statutes

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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/litlwebbook-computer-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-beats-chromeosbecomes-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]
2004	Saxena, CES 2010: All New Litl Webbook Makes Its Debut Appearance. Elite Choice. URL: https://elitechoice.org/luxury/ces-2010-all-new-litl-webbook-makes-its-debut-appearance [last accessed June 25, 2021]
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/litlwebbook-defines-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-the-litlwebbook/ [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”)
2010	David Pogue, <i>Windows Vista: The Missing Manual</i> , 1st edition, 2nd printing published February 2007 (“Pogue”)

I. INTRODUCTION

Every Challenged Claim in U.S. Patent No. 10,564,818 (the “’818 Patent”) relates to a computer that can be configured by the user into a plurality of physical configurations, and where the computer detects the configuration the user has placed the computer into and selects one of a “plurality of views” in response to the detected configuration. As the Petition concedes, a “plurality of views” relates to different ways of organizing content displayed to the user. Petition, 14-15. The inventors recognized that this would improve the user’s experience by customizing the way displayed content was organized to best suit the anticipated uses for the computer in its various configurations.

The Petition presents Grounds 1 and 2. Both rely on the same primary reference Pröll. Pröll discloses a computer configurable in various configurations. But the Petition admits Pröll does not describe anything about how displayed content is organized. Petition, 20. The Petition relies on a secondary reference in each ground – Martinez for Ground 1 and Preppernau for Ground 2 – to teach “a plurality of views.” However, both Martinez and Preppernau teach selecting between a plurality of arrangements of windows based on a user action, not in response to the detected current computer system configuration as claimed.

The Petition does not cite a single prior art reference that discloses the claimed limitation of selecting among a plurality of views in response to the

computer's detected configuration. Instead, in both grounds the Petition relies entirely on the naked testimony of its expert to meet this limitation absent from the prior art. As detailed in §III.C.2 below, the Federal Circuit has made clear that expert testimony can only supply a claimed limitation missing from the prior art in rare circumstances that do not apply here. Where a Petition relies on expert testimony to purportedly meet a limitation missing from the prior art the Board routinely denies institution. *See infra* §III.C.3 (collecting cases). The Board should do the same here.

The Petition fails to establish that any Challenged Claim is rendered obvious by Pröll and Martinez (Ground 1) or Pröll and Preppernau (Ground 2) for additional reasons summarized below.

A. Ground 1 Fails

The Petition alleges that POSAs would have modified Pröll to use a plurality of views (ways of organizing content) based on Martinez's disclosure to arrange computer windows in a "tile or cascading arrangement." But Martinez teaches selecting between those arrangements based on a user shaking the computer – not in response to the computer's detected configuration. POSAs motivated by Martinez would have modified Pröll to select between Martinez's tile and cascading window arrangements based on a user shake. That does not meet any Challenged Claim.

In a hindsight attempt to reconstruct the claims, Petitioners allege POSAs would have modified Pröll to select between Martinez’s tile and cascading window arrangements based on the computer’s configuration. The alleged reason to have done so is to achieve boilerplate alleged benefits of improved usability and effectiveness. But Ground 1 is facially deficient because the Petition never even explains what Martinez’s tile and cascading window arrangements are, and never explains which arrangement POSAs allegedly would have used with which configuration of Pröll’s computer to achieve alleged improved usability and effectiveness. The Federal Circuit has made clear that a “prerequisite” to establishing obviousness is providing a clear explanation of the “contemplated workings of the combination.” *See infra* § III.D.2. The Petition provides no such explanation. That is fatal to Ground 1.

To understand what Martinez’s tile and cascading arrangements are, and how they allegedly would have been used with Pröll’s computer, requires delving into the declaration of Petitioners’ expert. The expert cites numerous references never discussed in the Petition to explain what Martinez means by tile and cascading window arrangements and to identify particular configurations of Pröll’s computer that allegedly would have been used with each. None of that argument or evidence can be considered because it cannot be incorporated by reference into the Petition. *See infra* §III.D.8. Without it, Ground 1 is facially deficient.

Even if the Board were to dive into the expert declaration and consider the arguments and evidence found nowhere in the Petition, they fail to demonstrate obviousness of any Challenged Claim over Pröll and Martinez. The improper use of hindsight is apparent where, as here, an expert seeks to meet a limitation entirely missing from the prior art. Petitioners' expert simply fabricates benefits he sees from using Martinez's tile and cascading arrangements in different configurations of Pröll's computer. None of these benefits are supported by anything in the prior art – it is just the expert's naked say-so. Worse yet, Petitioners' expert is demonstrably wrong. He alleges that POSAs would have chosen Martinez's tile arrangement when Pröll's computer is in a configuration that relies on a touchscreen because images are purportedly larger in the tile arrangement than in the cascading arrangement. But as demonstrated *infra* §III.D.8.b.v, the exact opposite is true.

Nothing supports Petitioners' assertion that POSAs would have modified Pröll to select between Martinez's tile and cascading arrangements based on the computer's configuration rather than based on a user shake as taught by Martinez. Ground 1 fails.

B. Ground 2 Fails

The Petition alleges POSAs would have modified Pröll to use a plurality of views (ways of organizing content) based on Preppernau's disclosure to arrange

computer windows in various ways. Preppernau is a user guide for Microsoft's Windows Vista operating system and teaches that users can select a desired window arrangement from a taskbar. POSAs motivated by Preppernau would have modified Pröll to select between Preppernau's window arrangements based on a user selection. That does not meet any Challenged Claim.

The Petition only alleges that it would have been "obvious to use [the Windows Vista operating system disclosed by Preppernau] with the Pröll computer." Petition, 43. That would not result in a combination meeting any Challenged Claim. The Petition never even alleges, let alone establishes, any reason to modify the Windows Vista operating system to select among the available window arrangements based on the detected computer system configuration rather than based on a user selection. Ground 2 fails for this reason alone.

Additionally, the Petition fails to identify the contemplated workings of its Pröll-Preppernau combination. The Petition never identifies which Preppernau window arrangement allegedly would have been used with particular configurations of Pröll's computer. Ground 2 fails for that additional reason.

Because Petitioners fail to carry their burden on either ground, institution should be denied.

II. LITL'S '818 PATENT

A. LiTL's Webbook

Before Patent Owner (“LiTL”) introduced its Webbook product (shown below) more than a decade ago, home computers were essentially the same as office computers. EX2001. LiTL recognized that the home environment could lend itself to more and different ways in which consumers would use computers. LiTL recruited leading user experience design (“UXD”) experts and worked closely with some of the world’s leading technology and UXD consultancies in a multi-year development effort that led to a computer more suitable for home use. Ex2001-EX2008; EX1001, 1:54-63, 2:22-62, 11:42-45, 15:22-16:67, 19:40-56, 21:1-64, 24:16-32.

LiTL Webbook



EX2001, 1.

LiTL's Webbook included a number of new inventions initially described in provisional application no. 61/041,365 filed April 1, 2008. The '818 Patent is one of several LiTL patents stemming from that provisional.

B. Claimed Subject Matter

The '818 Patent discloses a computer configurable into different physical configurations called "operating modes," which include the laptop, easel, frame, and flat modes shown below. EX1001, 11:42-12:11, Figs. 4, 17, 26, 27.

Laptop Mode

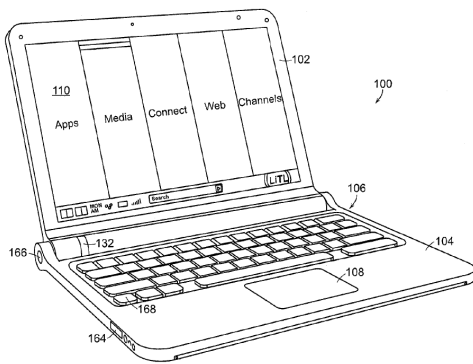


FIG. 17

Easel Mode

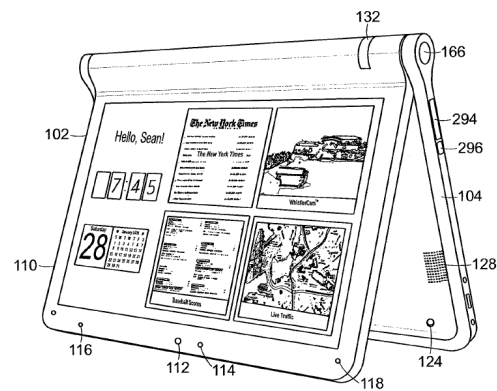


FIG. 4

Frame Mode

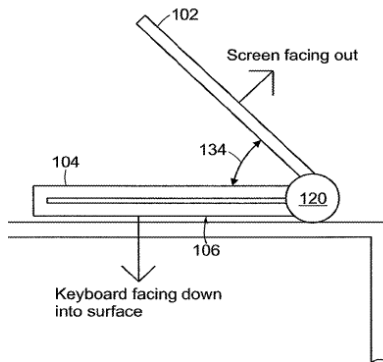


FIG. 26

Flat Mode

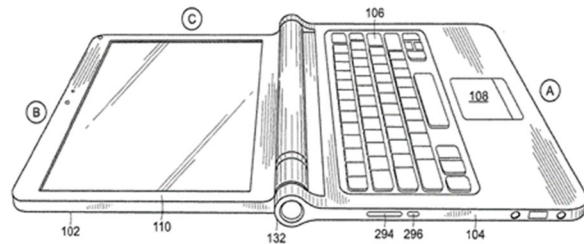


FIG. 27

The inventors recognized that different modes have different “I/O profiles” (*id.*, 18:23-35) reflecting that different input/output devices may be available – or not – to the user. Thus, the inventors 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.*, 25:28-38. These different ways of organizing content are called “views.” Petition, 14-15 (“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 (Oct. 21, 2021) (denying institution of an IPR challenging parent U.S. Patent No. 9,880,715 (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.).”).

For example, the '818 Patent discloses displaying a “home view” in laptop mode (Fig. 2) and a “Channel View” in easel mode (Fig. 23). EX1001, 31:26-31. As shown in Figures 2 and 23 (reproduced below), in both “home view” and “Channel View” visual representations of content are rendered as cards, where different types of cards may render different types of content. *Id.*, 16:5-23. Cards are organized differently in the home and channel views, and the inventors recognized that using the home view for laptop mode and the channel view for easel mode would improve the user’s experience. The home view leverages the keyboard’s accessibility in laptop mode by organizing cards 202-216 into pages so the user can select from among a number of cards viewed simultaneously (*id.*, 33:14-24), and by providing a web search box 254 (*id.*, 33:14-34, Fig. 2). Conversely, the channel view is better suited to easel mode (where the keyboard is not readily accessible) because it presents “channel cards” that stream web-based content in a “summarized” manner (*id.*, 16:4-22, 57:19-26, 53:62-54:13, Fig. 23) and organizes the channel cards so a user can navigate through them (like flipping through a rolodex) by actuating a scroll wheel 132 (Fig. 4) (*id.*, 54:25-35).

Home View for Laptop Mode

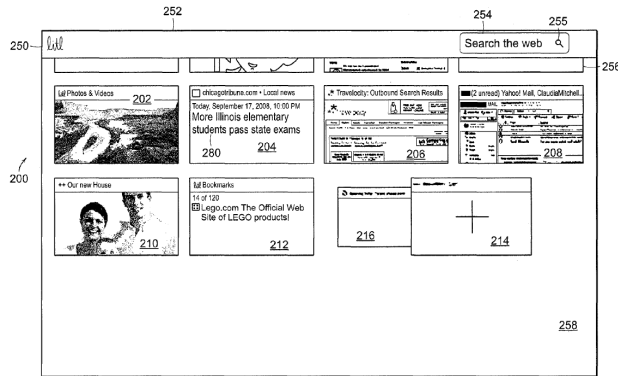


FIG. 2

Channel View for Easel Mode



FIG. 23

Laptop Mode

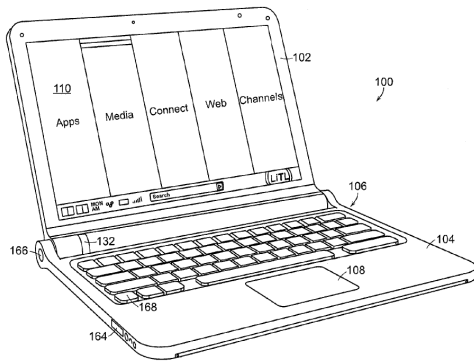


FIG. 17

Easel Mode

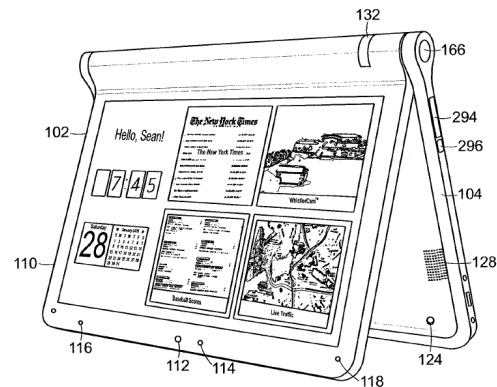


FIG. 4

The '818 Patent discloses (and claims) that the computer automatically selects a view (*e.g.*, home or channel view) in response to the current physical configuration the user has configured the computer into. For example, in response to the user changing the device's configuration "from laptop to easel mode ... the computer system switches view from its current view to a channel view," whereas in response to the user changing "from an easel mode to a laptop mode ... the device displays a home view of available content." *Id.*, 56:58-57:33.

The “Challenged Claims” include independent claims 1 and 11, and dependent claims 2-4 and 12-14 that, respectively, depend therefrom. Both challenged independent claims, and thus every Challenged Claim, require “detecting a current computer system configuration” (Limitations 1[b] and 11[b]) and “selecting one of the plurality of views for display ... in response to the *detected current computer system configuration*....” (Limitations 1[c] and 11[c]).¹ The Petition concedes that the claimed “plurality of views” “refer[s] to a plurality of ways of organizing visual representations of computer content.” Petition, 14-15.

C. Prior Office Proceedings Involving the Parent ’715 Patent

As Petitioners acknowledge (Petition, 14-15), the ’715 Patent—the ’818 Patent’s parent—was challenged twice. The Office upheld the patentability of the ’715 Patent both times.²

Lenovo first challenged the ’715 Patent in IPR2021-00786. The Board denied institution on the merits. *Lenovo v. LiTL*, IPR2021-00786, Paper 6 (Oct. 21,

¹ LiTL adopts the Petition’s claim limitation labeling for the Board’s convenience and all emphasis is added unless otherwise indicated.

² The ’715 Patent is concurrently being challenged by Petitioners in IPR2024-00457.

2021). Lenovo then filed Ex Parte Reexamination No. 90/014,958. The Office reexamined the '715 Patent and confirmed all claims without amendment. EX1005, 1679-1681.

These prior proceedings are relevant to the claim interpretation of the “plurality of views,” as Petitioners purport to demonstrate unpatentability under the interpretation the Office used for the same term in these proceedings. Petition, 14-15.

The ex parte reexamination of the '715 Patent is also informative because the Office rejected an obviousness argument advanced by Lenovo that largely tracks the arguments Petitioners advance here. EX1005, 1680-1681. The Board should reject Petitioners' obviousness arguments for the same reasons.

1. The Art Considered During the '715 Patent Reexamination Is Substantially the Same as Petitioners' Art

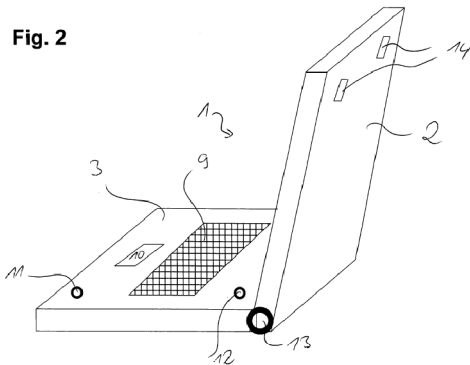
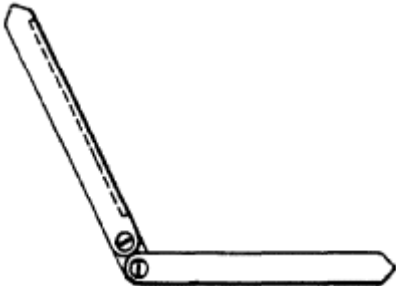
Lenovo argued that the claims were obvious over WO 95/24007 (“Lane”; EX2009) and David Pogue’s “Windows Vista, The Missing Manual” (“Pogue”; EX2010). EX1005, 947. Lane was relied on to teach a computer configurable into a plurality of configurations and Pogue to disclose a plurality of views. *Id.*, 1169-1172. Lenovo alleged it would have been obvious to run Pogue’s software on Lane’s computer *and* configure Lane’s computer to automatically select among Pogue’s alleged views in response to a detected current computer system

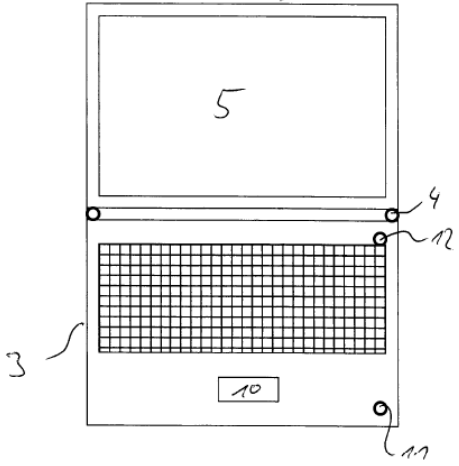
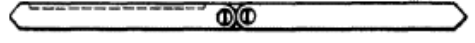
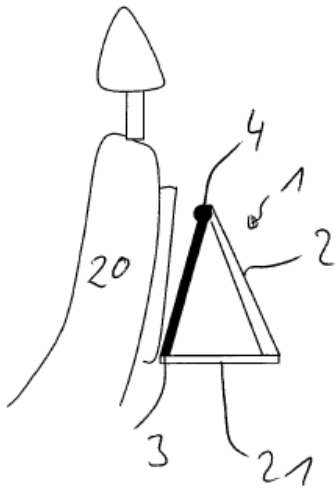
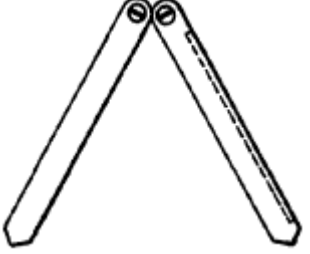
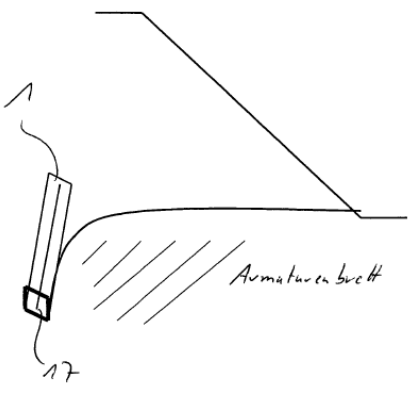
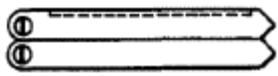
configuration. *Id.*, 1177, cross-refencing *id.*, 1033-1036. The Office rejected that assertion. *Id.*, 1680-1681.

Petitioners' Ground 1 relies on Pröll in combination with Martinez, and Ground 2 relies on Pröll in combination with Preppernau. Pröll is substantively the same as Lane. Martinez and Preppernau each are substantively the same as Pogue.

a. Pröll and Lane are Substantially the Same

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

	Pröll	Lane
Laptop	Fig. 2 	 FIG 20

	Pröll	Lane
Flat		 FIG 21
Easel	 Fig. 7	 FIG 28
Tablet	 Fig. 6	 FIG 27

Both Pröll and Lane disclose sensors to keep the displayed content right-way-up. Pröll, [0049]; Lane, 5-6 (Lane’s “position-indicating mechanism” determines whether the 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.*” EX1005, 1680-1681. Petitioners concede “Pröll is not explicit about the organization of content on its GUI.” Petition, 20.

b. Martinez and Preppernau Have Substantially the Same Disclosure as Pogue

Lenovo argued that “a POSITA would have been motivated to combine Lane with an operating system such as the Windows Vista operating system disclosed in Pogue.” EX1005, 1157. In confirming all claims of the ’715 Patent, the reexamination Examiner found that “[a]t best, Pogue’s selection of views is based on a user selection and not a computer’s configuration.” *Id.*, 1681. The same is true of Martinez and Preppernau.

Petitioners allege Martinez’s disclosure that “windows could be arranged in a *tile* or *cascading* fashion” discloses two different organizations of content meeting the claimed plurality of views. Petition, 19 (quoting Martinez (EX1007), 6:33-34). Pogue also discloses that Windows Vista could arrange windows in a “*Tiles* view” and could “*Cascade* Windows.” Pogue, 73 (Fig. 2-11), 99 (Fig. 2-26)

(both figures reproduced below, annotated). Martinez discloses a different gesture for the user to choose between “tile” and “cascade” arrangements than Pogue does – in Martinez a user can “shake” the computer to make this selection (Petition, 19-20) 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.

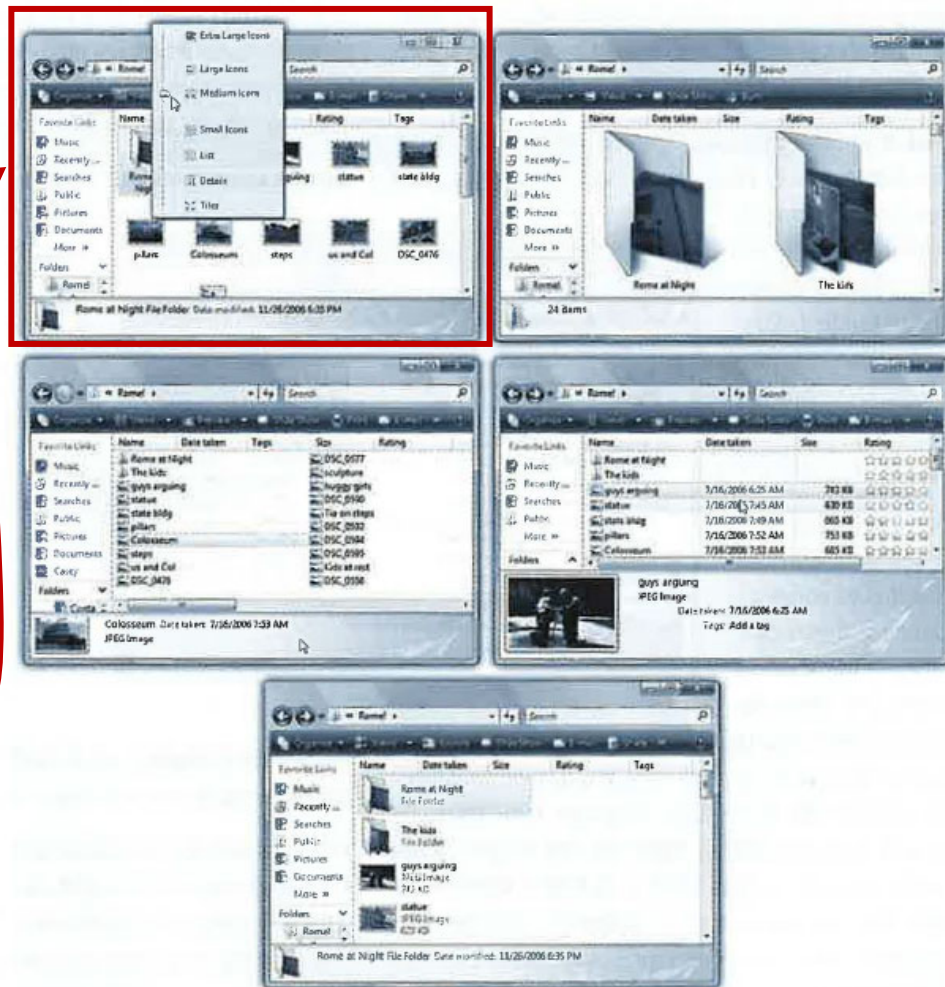
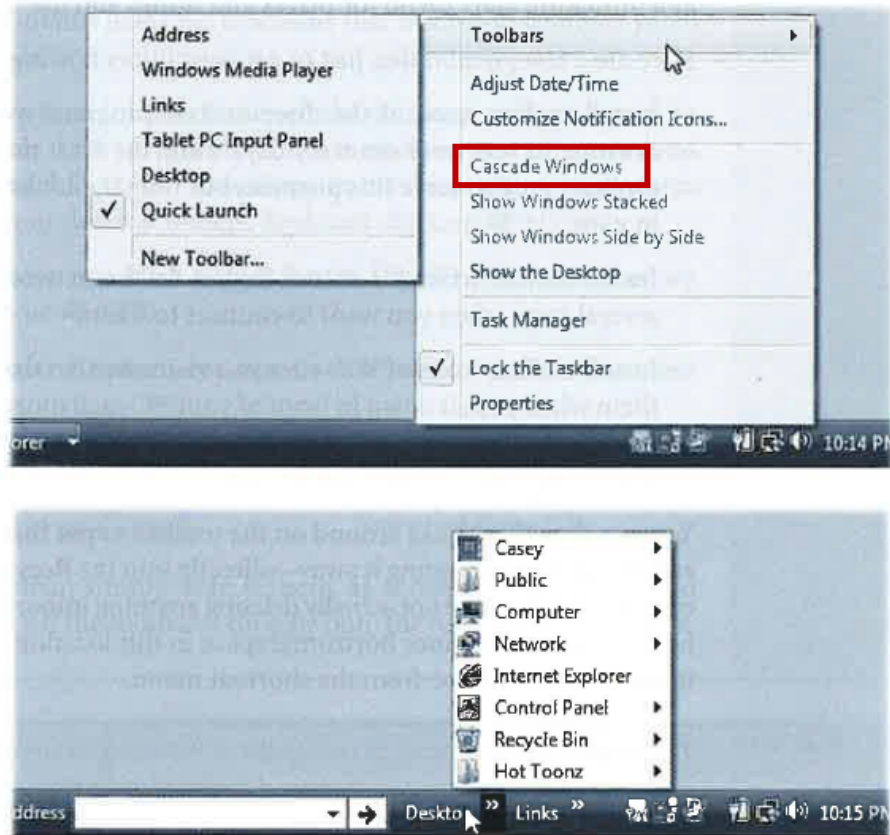


Figure 2-26:

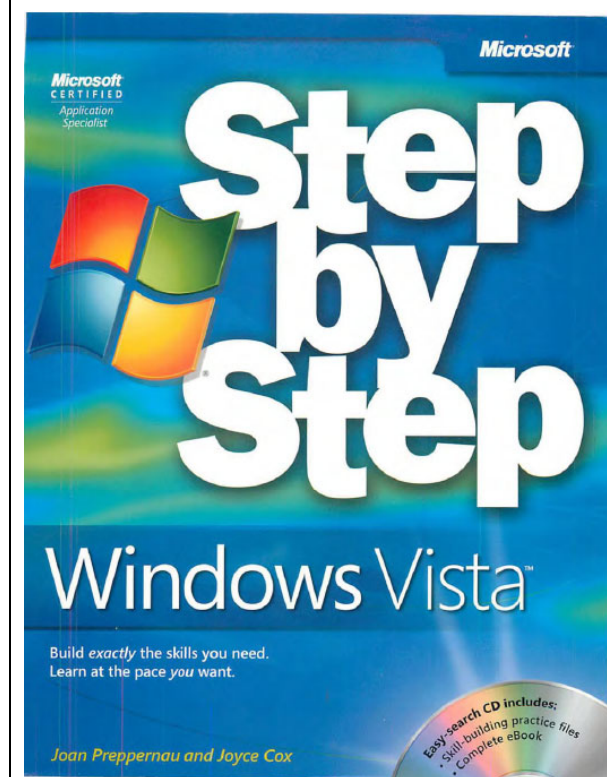
Top: Make toolbars appear by right-clicking a blank area on the taskbar, if you can find one.

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.

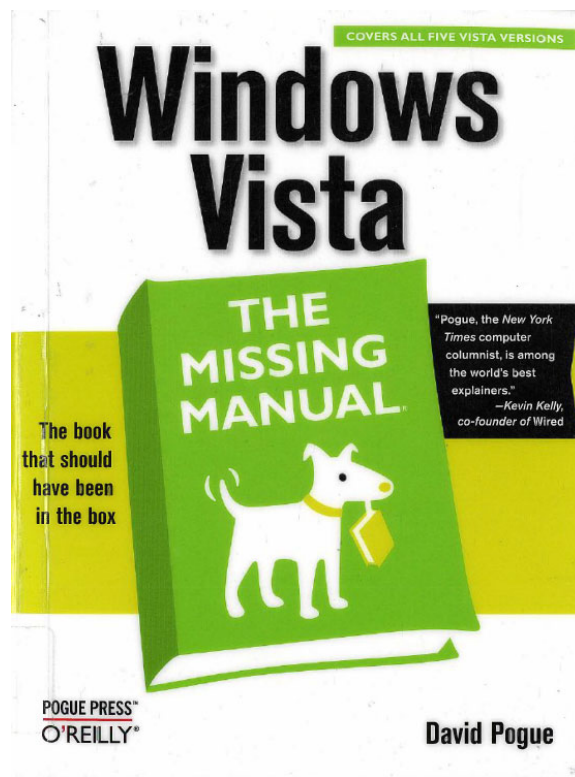


Preppernau is a manual for the same Windows Vista operating system as Pogue. *Compare* Preppernau (EX1008), 1 with Pogue, 1.

Preppernau

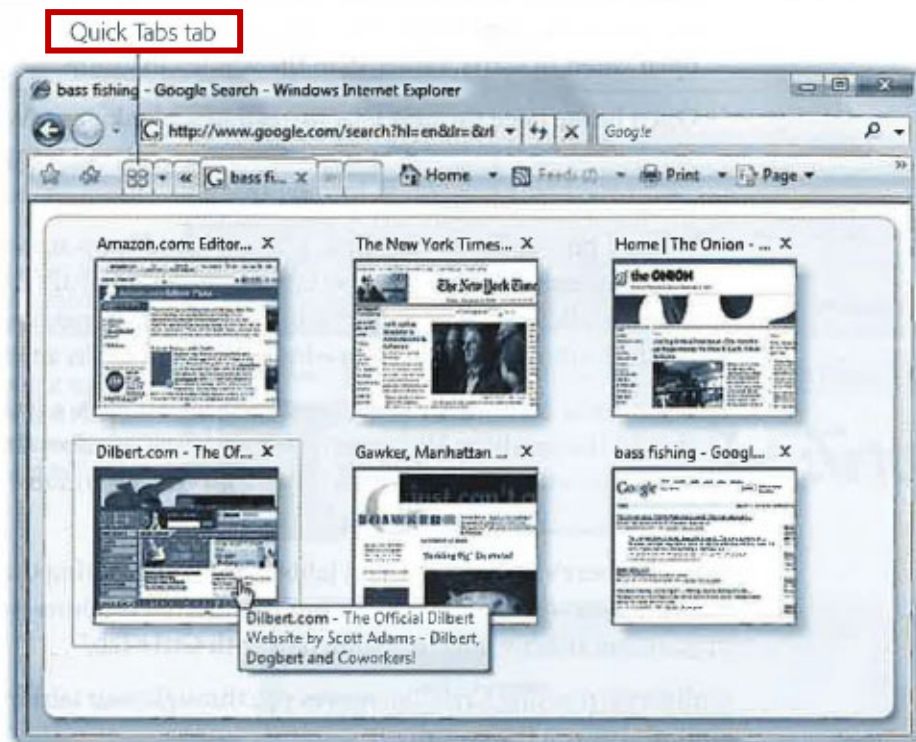


Pogue



Petitioners rely on Preppernau to disclose Windows Vista functionality for organizing content, including: (1) the “*quick tabs* feature,” (2) the “*Favorites Center*,” (3) the “*cascade* displays of *windows*,” and (4) the “*Quick Launch* toolbar.” Petition, 47-48 (quoting Preppernau, 46-47, 50-51 and 182). Pogue discloses those same features: (1) “*Quick Tabs*” feature (Pogue, 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*,” to 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 11-4: Quick Tabs shows you thumbnails of all the Web pages you've opened into tabs, making it simple to tell them apart. One click on a thumbnail returns it to full size, with that tab in front of the others. All you have to learn is the Quick Tabs keystroke, which is Ctrl+Q—or the location of the Quick Tabs button, shown here. (Repeat the trigger to exit the Quick Tabs view without changing anything.)



Favorites Center
(click to open)

Pin Favorites Center

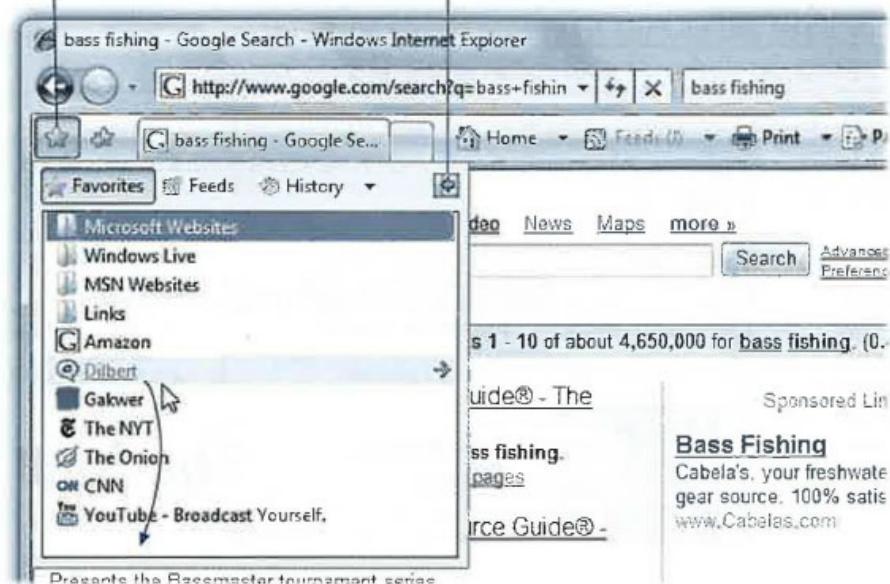


Figure 11-6: When the Favorites menu opens, you can drag names up or down to rearrange the list, as shown. Or right-click one to access the commands that rename, delete, or file a favorite into a folder. (Unfortunately, the Favorites menu covers up part of the Web page you're reading. It hides itself soon enough, but you might also want to freeze the Favorites Center open so that it doesn't cover the page. To do that, click the Pin the Favorites Center button shown here.)

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.

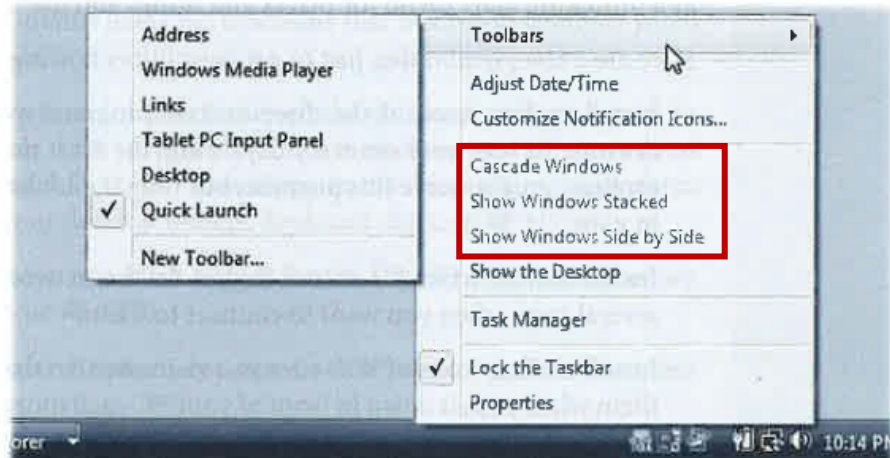
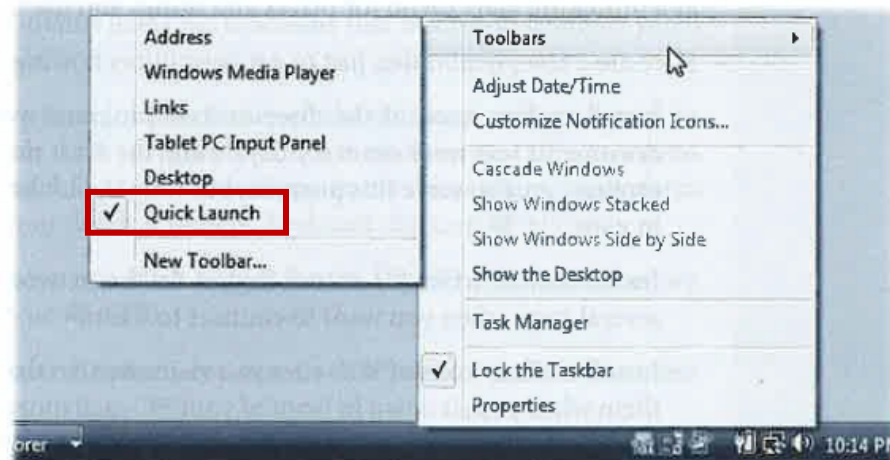


Figure 2-26:

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. The Office Confirmed that Prior Art Substantially the Same as Petitioners’ Does Not Render Obvious Selecting a View in Response to the Computer’s Physical Configuration

The reexamination Examiner recognized that even if Windows Vista used a plurality of views, the displayed view was selected “based on a user selection and not a computer’s configuration” (EX1005, 1681) – just like in Martinez and Preppernau. The reexamination Examiner further noted that, Lane does “not cure the deficiencies” because “Lane teaches use of a visual display in laptop format and other formats by changing the orientation from landscape or portrait position, *but there is not explicit teaching of organizing visual representations of content differently.*” *Id.*, 1680-1681.

Thus, the Office found that disclosure of a computer that can be configured into different configurations (like Lane and Pröll) together with disclosure that Windows Vista has different arrangements of windows a *user* can select (as in Pogue, Martinez and Preppernau) does not render obvious claims that recite selecting a view from among a plurality of views *in response to the current physical configuration* of the computer as the ’715 Patent claimed.

The Challenged Claims require the same limitation of selecting from among a plurality of views in response to the current detected physical configuration of the computer. Pröll, Martinez and Preppernau fail to render the Challenged Claims

obvious for the same reasons the Examiner found that Lane and Pogue failed to render the ‘715 Patent claims obvious.

III. THE PETITION FAILS TO DEMONSTRATE A REASONABLE LIKELIHOOD OF PROVING ANY CLAIM UNPATENTABLE

Ground 1 relies on Pröll in combination with Martinez. Petition, 3. Ground 2 relies on Pröll in combination with Preppernau. *Id.* The Petition fails to demonstrate that either Ground is likely to demonstrate unpatentability of any Challenged Claim.

The Challenged Claims include independent claims 1 and 11. Claims 1 and 11 each recite a computer-readable medium storing instructions for performing a method that includes “selecting one of the plurality of views for display on the computer system in response to the detected current computer system configuration.” Thus, every Challenged Claim requires selecting a view “*in response to* the detected current computer system configuration.” 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, 14-15; *see also* §III.A, below.

Selecting a view in response to a detected current computer system configuration was a key feature the ’818 Patent inventors recognized would improve a user’s ability to interact with displayed content by customizing the way

displayed content was organized for different display modes (*e.g.*, laptop, frame, and easel modes). EX1001, 25:28-38; *supra* §II.B.

Petitioners admit that the primary reference (Pröll) in both grounds does not disclose a plurality of views, let alone selecting from among a plurality of views in response to the computer's detected current configuration. Petition, 20 ("Pröll is not explicit about the organization of content on its GUI.") and 46 (same). Ground 1 relies 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.*, 19. Ground 2 relies on Preppernau to disclose a plurality of views, but Preppernau only discloses changing between arrangements of windows in response to the user selecting options from a taskbar. *Id.*, 50-51. Thus, none of Petitioners' references disclose selecting among a plurality of views in response to the detected current computer system configuration as required by every Challenged Claim.

Unable to find a single prior art reference that discloses selecting among a plurality of views in response to the computer's detected current configuration, Petitioners seek to reconstruct that limitation in hindsight in the Pröll-Martinez (Ground 1) and Pröll-Preppernau (Ground 2) combinations by using expert testimony to fill in the missing limitation. Federal Circuit precedent establishes that 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*”). The Board should do so here as well.

Establishing obviousness over a combination of references requires (1) establishing some non-hindsight *reason why* POSAs would have combined the teachings in the art 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* §III.D.2 (citing authority). As detailed below, the Petition does neither for either of its grounds.

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. The Petition acknowledges the Board’s construction of the same “plurality of views” limitation in the parent ’715 Patent IPR, and the manner

in which the Board’s construction was “clarified” by the reexamination Examiner. Petition, 14-15; *see also supra* §II.C. The Petition expressly adopts that construction and purports to “show[] that the Challenged Claims are unpatentable under the Board’s construction of ‘plurality of views,’ as clarified during the EPR.” Petition, 15.

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, 14-15.

B. Petitioners Fail to Demonstrate that Pröll, Martinez, or Preppernau Disclose Selecting a View in Response to a Detected Computer System Configuration

All Challenged Claims recite “detecting a current computer system configuration” (Limitations 1[b] and 11[b]) and “selecting one of the plurality of views for display ... in response to the detected current computer system configuration...” (Limitations 1[c] and 11[c]). None of Petitioners’ prior art

discloses selecting a view in response to a detected current computer system configuration.

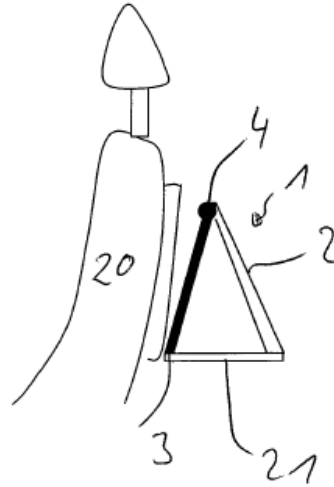
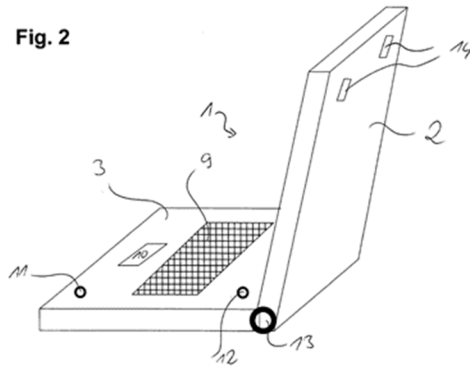
1. Petitioners Admit Pröll Does Not Disclose Selecting Among a Plurality of Views

Pröll is the primary reference in both grounds. Under the Petition’s construction of “plurality of views” as “ways of *organizing* visual representations of computer content” (*supra* §III.A), Petitioners admit that Pröll does not disclose a plurality of views at all, let alone selecting one of a plurality of views. Petition, 20 (“Pröll is not explicit about the organization of content on its GUI.”), 24 (“Pröll does not explicitly discuss different organizations of content”), 46 (same). Petitioners thus admit Pröll fails to disclose *selecting a view* in response to the detected current computer system configuration as claimed.

Pröll discloses a laptop-like computer with a hinge that allows the display to be rotated 360 degrees relative to the base so the computer can be placed in various configurations. *Id.*, 16; Pröll, [0023]-[0029], Figs. 2-3 and 6-7. Two example configurations are shown in Figs. 2 and 7 below. The display screen is oriented differently in these two configurations – the hinge is at the bottom in Fig. 2 and at the top in Fig. 7.

Fig. 7

Fig. 2



To ensure content is not displayed “upside down,” Pröll “assume[s]” that when the display housing “is swiveled in reference to” the base housing “by more than 270° degrees,” the hinge side of the display is up so the displayed content “is rotated by 180° degrees” to display the content right-side-up. Pröll, [0049]. A switch “in the hinge 4” detects whether the display is rotated by more than 270 degrees. *Id.*

Orienting displayed content to be right-side-up is expressly **not** selecting a view under the Petition’s construction. Petition, 14-15 (a “plurality of views ... is distinct from merely ... changing **display orientation**”); *supra* §III.A. Thus, Pröll does not disclose a plurality of views, and Pröll’s switch does not select a “view” as claimed under the Petition’s own construction. *See also* Petition, 20, 24 and 46 (admitting Pröll does not disclose ways of “organizing” content).

2. Martinez Does Not Disclose Selecting a View in Response to a Current Computer System Configuration and Petitioners Never Allege that it Does

Petitioners rely on Martinez as a secondary reference in Ground 1 to disclose a plurality of views (i.e., a plurality of ways of organizing content). Petition, 18-19.

As Petitioners acknowledge, 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, 19 (“Martinez detects a shake”; “[i]f a *shake* is detected, ‘the process then arranges the windows.’”) and 28 (“Martinez teaches changing to one of a plurality of views ... based on detected *motion of the computer system.*”).

Even if the tile and cascading arrangement of windows are different views, Martinez changes between them in response to the user shaking the computer – not in response to the computer’s detected configuration. Martinez, 6:7-8 (“‘Shake’ means to shake the object containing the sensor to the left and right relative to the user.”). 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 and Petitioners never allege that it does.

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

3. Preppernau Does Not Disclose Selecting a View in Response to a Current Computer System Configuration and Petitioners Never Allege that it Does

Petitioners rely on Preppernau as a secondary reference in Ground 2 to disclose a plurality of views. Petition, 50-51.

As Petitioners acknowledge, Preppernau changes the displayed organization of windows when a user makes a selection from a taskbar. *Id.* (“Preppernau teaches that its taskbar can organize windows into multiple configurations which is itself a ‘view’ that is *selected*.... Preppernau teaches that a *user* can also *select* to [display windows in various configurations].”).

Even if Preppernau’s different window organizations are different views, Preppernau does not select among them in response to the detected current computer system configuration. Selecting a “view” in response to a user selection is not a selection in response to the detected current configuration of the computer. *See e.g.*, EX1005, 1680-1681 (the reexamination Examiner for the parent ’715 Patent found that user-selected views are “based on a user selection and not a computer’s configuration”).

Preppernau does not disclose selecting one of its alleged views in response to a detected current computer system configuration. Petitioners never allege that it does. Petition, 50-51.

C. The Board Routinely Denies Institution when the Petition’s Grounds Rely on Prior Art with Missing Claimed Features

As detailed in §III.B above, neither Pröll, Martinez nor Preppernau discloses the limitation in every Challenged Claim that requires selecting a view in response to a detected current computer system configuration.

Petitioners’ assertions that POSAs would have combined Pröll and Martinez (Ground 1) and Pröll and Preppernau (Ground 2) in a manner that meets this claim limitation – despite it being absent from *all* these references – are based on nothing but the unsupported assertion from Petitioners’ expert. The risk of hindsight bias in such circumstances is apparent so the Board routinely denies institution where a petition’s grounds rely only 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). The Board should do the same here.

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

Petitioners allege that POSAs would have modified Pröll to use the different arrangements of windows taught by Martinez (Ground 1) and Preppernau (Ground

2). But even if POSAs had been motivated to do so, POSAs following the teachings of the references would not have arrived at a system that meets any Challenged Claim. That is because Martinez and Preppernau both teach selecting among their arrangements of windows based on a user action (Martinez’s shaking or Preppernau’s selecting from a taskbar), not in response to a detected configuration of the computer. *Supra* §III.B.2-3.

Given that the plain teachings of the references would not have led POSAs to the claimed system, Petitioners allege POSAs would have made a selection based on the configuration of Pröll’s computer, rather than in the manner taught by Martinez and Preppernau. Petition, 29, 50-51. This is a blatant hindsight reconstruction of the claims that attempts to meet a claim limitation missing from the art solely with expert testimony. The Federal Circuit has made clear that it is a rare case where a missing limitation can be met by expert testimony alone, and Petitioners fail to establish the factual predicate needed to do so.

2. Expert Testimony Can Supply a Missing Limitation Only in Rare Circumstances Not Present Here

The Federal Circuit has repeatedly held that 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) (“we have invoked common sense to fill in a *missing* limitation

only when the limitation in question was unusually simple and the technology particularly straightforward.”) (internal quotes and citations omitted).

In *Arendi*, the Federal Circuit reversed the Board’s finding of obviousness when not all limitations were disclosed by the prior art. 832 F.3d at 1366. The claimed technology related to a method of identifying duplicate entries in a database and the prior art disclosed a computerized address book. *Id.* at 1358-59. The Board reasoned that “it would have been obvious to ... search for duplicate telephone entries when entering a telephone number in an electronic address book.” *Id.* at 1360. The Federal Circuit disagreed, noting that the prior art reference did “not mention or imply that a search of any kind is involved with the ‘Add to address book’ function.” *Id.* at 1363. The “only documentary support the Board recited was the declaration of ... Appellees’ expert.” *Id.* at 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.* at 1366.

In *DSS Tech.*, the Federal Circuit again reversed the Board’s finding of obviousness when not all limitations were disclosed by the prior art. 885 F.3d at 1375. The claimed technology related to a communication network with a single base station and multiple peripheral devices, where each was “energized in low

duty cycle RF bursts” intermittently. *Id.* at 1369-70. The prior art taught **peripheral devices** that operated in this manner, but **not the base station**. *Id.* at 1373. The Board found that 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 at issue was “not ‘unusually simple,’ and the technology is not ‘particularly straightforward.’” *Id.* at 1375 (quoting *Arendi*).

The Federal Circuit has only sanctioned supplying a missing limitation through expert testimony in the rare circumstance where the prior art discloses every claimed element, but not the **repetition** of a known prior art element as required by a claim. For example, in *B/E Aerospace*, the Federal Circuit found that the claimed technology (“lavatory enclosures”) was not complex and that the claimed “second recess” simply involved “**repetition** of an existing element” (a disclosed first recess), and thus was obvious despite the prior art not having 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 patented invention related to a 3-step process of sending marketing emails where 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.*

3. The Board Routinely Denies Institution Where Petitioners’ Fail to Justify Reliance on Expert Testimony to Supply a Missing Limitation

The Petition does not even attempt to establish that Petitioners’ 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 a step of “stor[ing] in a data record associated with the account a data value indicating the fraudulent activity.” *Xerox*, IPR2022-00624, Paper 9, 6. While the prior art (“Terrell”) taught that “the purchaser of the ticket could be blocked from further use of the system,” the petitioner did not allege that Terrell disclosed storing a data value indicating the fraudulent activity as claimed. *Id.*, 14. Instead, petitioner alleged that 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 not only found that Dr. Jones failed to adequately support his opinions, but that petitioner ran afoul of the principles

articulated in the Federal Circuit’s *Arendi* decision. *Id.* at 16. 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.* (quoting *Arendi*).

The Board reached a similar result in the more recent *Apple* decision. IPR2023-00087, Paper 10, 19-20. That case involved “systems and methods for 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. Petitioner alleged “it would have been obvious to display the locations of second and third devices simultaneously.” *Id.* Petitioner’s only evidence was “the opinion of its Declarant, Mr. Williams.” *Id.*, 17-18.

In addition to finding that Mr. Williams failed to adequately support his opinions (*id.*, 18), the Board found that petitioner ran afoul of the principles articulated in *Arendi*. *Id.*, 19. 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). The Board denied institution at least in part on that basis. *Id.* (quoting *Arendi*).

Just like the petitioners in *Xerox* and *Apple*, Petitioners did not even allege that the missing claimed limitation of selecting a view in response to the detected computer system configuration is unusually simple or that the claimed technology is particularly straightforward. Neither is true. Selecting different views for two or more different physical configurations of the computer requires developing different organizations of content appropriate for those physical configurations. LiTL recruited leading UXD experts and worked closely with some of the world's leading technology and UXD consultancies in a multi-year development effort that led to LiTL's computer. *See* §II.A; Exs. 2001-2008; 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. Ground 1 Fails: Petitioners Fail to Establish Any Reason Why POSAs Would Have Modified Pröll Based on Martinez in a Manner Meeting Any Challenged Claim

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 ‘[t]his 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).

“[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.

The Petition fails 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 the detected current computer system configuration as required by all Challenged Claims, rather than in response to a user shaking the computer as taught by Martinez. The Petition’s alleged motivations are boilerplate general assertions about alleged improved “usability” and “effectiveness.” Those assertions are facially deficient because the Petition never even explains the “contemplated workings” of the Pröll-Martinez combination, let alone establish that the Petition’s unexplained combination would have improved usability or effectiveness. Petitioners’ assertions are also facially deficient because they are based on nothing but the naked say-so from Petitioners’ expert unsupported by any evidence in the prior art.

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

Pröll discloses a laptop computer. Petitioners admit that Pröll does not disclose ways of “organizing” content. Petition, 20, 24 and 46. Pröll uses a switch in its hinge to determine the orientation of the displayed content to ensure it is right-side-up. *Supra* §III.B.1; Pröll, [0049]. Petitioners admit this does not meet a “plurality of views” under the Petition’s construction. Petition, 14-15 (a “plurality of views ... is distinct from merely providing a plurality of ways of displaying content (by, for example, changing ***display orientation***”); *supra* §III.B.1.

Martinez teaches “arrang[ing] the windows ... in a tile or cascading fashion” in response to a user shaking the computer. Martinez, 6:1-57; *supra* §III.B.2; Petition, 19 (“Martinez detects a shake (i.e., ***shaking the device***...)” [and] “[i]f a ***shake*** is detected, ‘the process then arranges the windows.’”) and 28 (“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 arrangements of windows and would have selected between them based on detecting a shake as Martinez teaches, while using Pröll’s switch to orient the displayed content to ensure it is right-side up as Pröll teaches. That is what POSAs would have done based on the teachings of these references. But that

modification of Pröll based on Martinez would fail to meet any Challenged Claim because it would not select a view in response to the detected current computer system configuration as required by Limitations 1[c] and 11[c].

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 hindsight, unsupported by any credible evidence.

2. The Petition Never Explains the Contemplated Workings of its Pröll-Martinez Combination

The Petition alleges POSAs would have selected different ones of Martinez's alleged views in response to different configurations of Pröll's computer for the boilerplate reasons of providing a "more user friendly" GUI and a "more effective[]" system. Petition, 21. But *the Petition never even explains which of Martinez's alleged views (tile or cascading) would be used with which configuration of Pröll's computer*. As detailed below, Petitioners force LiTL and the Board to hunt through the expert declaration to find any such explanation. That is improper. The explanation of the contemplated workings of the combination cannot be incorporated by reference into the Petition. *Infra* §III.D.8.a (citing authority). It is the *Petition* that needed to provide the detailed explanation of the grounds. 37 C.F.R. §42.22 and §42.104.

Without the most basic explanation of the contemplated workings of the combination, the Petition cannot substantiate that its unexplained Pröll-Martinez

computer would be “more user friendly” or “more effective[]” than some other unexplained implementation.

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. Ground 1 fails for this reason alone.

3. Selecting Different Window Organizations Based on Whether Pröll’s Keyboard is Operable is Unexplained and Unsupported

Petitioners allege that POSAs would have “been motivated to combine Pröll with Martinez such that Pröll’s GUI displays a different organization of content when its input devices are operable than when its input devices are inoperable.” Petition, 20. The Petition cites no teaching in Pröll, Martinez or any other prior art reference to support this assertion. Instead, Petitioners rely entirely on expert testimony. Petition, 20 (*citing* only Houh ¶¶60-61). That is improper and evidences the pure hindsight of Petitioners’ combination, which is not supported by any teaching in the prior art. *Infra* §III.D.8.a.

The Petition’s showing is also facially deficient. The Petition never identifies which one of Martinez’s organizations of content (tile or cascading window arrangements) allegedly would have been used in Pröll’s configuration(s) where “its input devices are operable” and which one would have been used in

Pröll’s other configuration(s) where “its input devices are inoperable.” Given this fatal failure to even identify the contemplated workings of the combination, the Petition wholly fails to even explain – let alone establish – how or why POSAs would have found one of Martinez’s arrangement of windows to be preferable over the other for any of Pröll’s configurations. *Id.*

4. Alleged Improved Usability is Unexplained and Unsupported

Petitioners allege “[a] POSITA would have found Martinez’s teachings predictably *improve the usability* of Pröll’s device’s display by allowing views that include the reorganization of icons and windows.” Petition, 20. But the Petition never explains *how* or *why* different organizations of icons and windows would allegedly “improve the usability of Pröll’s device’s display.” *Id.*

Moreover, this alleged reason to modify Pröll based on Martinez provides no reason to select a view in response to the device’s configuration, rather than in response to a user shake as taught by Martinez. In this respect, the Petition cites Martinez to support that “usability” is improved by “allowing views that include the reorganization of icons and windows.” *Id.* (citing Martinez, Figs. 9-10 and 6:32–36). The cited Martinez disclosure teaches the “shake feature” that “arrange[s] the windows,” such as “in a tile or cascading fashion,” when the user “tilt[s] the device to the left and right in rapid secession twice.” Martinez, 6:1-57; *see also supra* §III.B.2. The improved usability Petitioners rely on is achieved by

simply doing what Martinez teaches and allowing the user to select different 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.

With respect to a more specific alleged modification to meet the claims, Petitioners allege that “[r]ather than use Martinez’s shake gesture, a POSITA would have been motivated to trigger Martinez’s views based on Pröll’s switch indicating rotation of its two halves by more or less than 180°” to allegedly “allow for a more ***user-friendly*** GUI organization when Pröll’s keyboard is blocked (i.e., when Pröll’s two halves are rotated by more than 180° relative to each other).” Petition, 20-21. According to Petitioners, this “would have allowed Pröll’s system to be ***more effectively used*** in different mobile environments” such as a workstation environment where the computer is in “laptop mode” with an operable keyboard, versus a car environment where the computer is in “easel

mode” and a touchscreen is used rather than the keyboard. Petition, 21. This hindsight assertion fails for two reasons.

First, this assertion is based on nothing but the naked say-so of Petitioners’ expert, which is improper. *Supra* §III.C.2. Neither Pröll nor Martinez teaches that any one of Martinez’s arrangements of windows are better suited to one configuration over another. Petitioners point to Pröll’s figures that show some configurations where a touchscreen is used and others where a keyboard is used. *Id.* But that provides ***no reason why*** POSAs would have modified Pröll to select among Martinez’s arrangements of windows based on the computer’s configuration, rather than based on a user selection (via a shake) as taught by Martinez. *See supra* §III.D.1.

Second, the Petition once again fails to even identify which one of Martinez’s arrangements of windows (tile or cascading) allegedly would have been used when the touchscreen is used (i.e., when the “two halves are rotated by more than 180°”) and which one would have been used when the keyboard is used (i.e., when the halves are rotated less than 180°). Without this explanation of the contemplated workings of the combination, the Petition wholly fails to establish that POSAs would have been motivated to pursue Petitioners’ unexplained combination because POSAs would believe it to be “more user-friendly” and “more effectively used in different mobile environments.” Petition, 21; *Pers. Web*

Techs., 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).

5. Pröll and Martinez Being “Similar” Provides No Reason to Combine Their Teachings in the Claimed Manner

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

Petition, 20. This does not help Petitioners for multiple 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 (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 where the only reason given was “the references were directed to the same art or same techniques”).

Second, like Petitioners’ “improve usability” argument discussed *supra* §III.D.4, this assertion provides no reason to combine Pröll and Martinez in a manner meeting the claim, rather than arranging windows 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 configuration or orientation of the device and

responds to such changes with a different GUI display” (Petition, 20) is misleading at best. The only change to its GUI display that Pröll teaches to “respond[] to” changes in the computer’s configuration is re-orienting displayed content to be right-side up. Pröll, [0049]; *Supra* §III.B.1. Petitioners explicitly admit that this does not meet a “plurality of views” under the construction the Petition advances. Petition, 14-15. Pröll does not teach different *organizations* of content as required to meet the Petition’s construction of “plurality of views.”

6. 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 alleged views based on the computer’s detected configuration “would have been well within the programming skills of a POSITA.” *Id.*, 21. 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 (“that reasoning seems to say no more than that a skilled artisan, once presented with the two references, would have understood that they *could be* combined,” which “is not enough: it does not imply a motivation to pick out those two references and combine them to arrive at the claimed invention.”) (emphasis in original).

7. The Petition’s Section Purporting to Map Limitation 1[c] to the Pröll-Martinez Combination Provides No Supportable Reason for Combining Them in the Claimed Manner

Petitioners re-state what Pröll and Martinez individually teach and again never allege that either discloses selecting a view in response to a detected computer system configuration. Petition, 28-29; *see also supra* §III.B.1-2.

Petitioners allege that “[i]n addition to rotating the display, a POSITA would have *found it obvious* to ‘select’ one of the plurality of views taught in Martinez.” Petition, 29. Obviousness is a legal conclusion that applies to a claim “as a whole.” 35 U.S.C. § 103. Establishing obviousness requires establishing a reason *why* POSAs would have combined the references in the manner claimed. *See supra* §III.D.2 (citing authority). Petitioners’ conclusory assertion that “a POSITA would have found it obvious” to combine the references in the manner claimed does not even allege, let alone establish, any *reason why* POSAs would have selected among Martinez’s views based on the computer’s configuration. Petition, 29.

Petitioners re-state that such a modification “would predictably *improve the usability* of Pröll’s system by displaying different views that include reorganization of the icons and windows based on the configuration of the laptop device, allowing Pröll’s device to be used in mobile environments.” *Id.*, 29-30. The Petition alleges “the most-appropriate view from those preselected views [would be selected] based on whether the keyboard is or is not operable.” *Id.* But once

again, the Petition fails to explain the contemplated workings of the combination. The Petition never explains which one of Martinez's arrangements of windows would allegedly be "most-appropriate" when the keyboard is operable and which one would allegedly be "most-appropriate" when the keyboard is inoperable. For the reasons discussed *supra* §III.D.2, without this basic explanation of the contemplated workings of the combination, Petitioners cannot remotely support their conclusory assertion that POSAs would have made Petitioners' unexplained combination because it would "improve the usability of Pröll's system." Petition, 29.

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

The Petition's "Motivation to Combine" section is only three paragraphs long. Petition, 20-21. As discussed above, it repeatedly makes conclusory assertions that are unsupported and unexplained in the Petition. The Petition also fails to explain the contemplated workings of the Pröll-Martinez combination by explaining what alleged arrangement of windows (tile or cascade) of Martinez POSAs allegedly would have used for which physical configurations of Pröll's computer.

Petitioners' expert declaration cannot cure the Petition's fatal deficiencies.

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

The Board has rules governing “Content” the *Petition* “**must**” have. 37 C.F.R. §42.22 and §42.104. Those rules make clear that the *Petition* “**must**” “includ[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 three-paragraph “Motivation to Combine” section cites nine paragraphs of expert testimony (Houh, ¶¶60-67 and 79) spanning seven pages of Dr. Houh’s declaration. In that expert testimony, Dr. Houh cites various disclosures in Pröll and Martinez that are never cited in the Petition. Worse yet, Dr. Houh cites *four references* (EX1009, EX1021, EX1035, and EX1036) that are *never even cited*³ – let alone explained – *in the Petition*.

Dr. Houh’s declaration thus cites evidence, and includes argument, nowhere found in the Petition to explain the contemplated workings of the Pröll-Martinez combination. None of that explanation and evidence cited only in the expert declaration can save Petitioners because it cannot be incorporated by reference into the Petition. “*Arguments and information* that are *not presented and developed in*

³ They appear only in the Petition’s “Exhibit List.”

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* “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 its failure 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: (1) the testimony warrants no weight because it is conclusory, unsupported, and offers contradictory opinions; and (2) the testimony provides no

supportable reason why POSAs would have modified Pröll to select a view based on the computer’s configuration rather than based on the user shaking the computer as taught by Martinez.

i. Establishing a Reasonable Expectation of Success Provides No Reason to Make the Modification

The expert testimony purports to demonstrate that modifying Pröll to use Martinez’s tile and cascading views and to select between them based on the computer’s configuration (using Pröll’s hinge sensor) “would have been well within” POSAs’ skill. Houh, ¶¶66-67. That only goes to a reasonable expectation of success. This testimony provides no *reason why* POSAs would have done so in the first place.

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

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, ¶60; *see also* Houh, ¶65 (“as I 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, ¶61. Pröll cannot disclose *different*

organizations of content when it discloses **nothing** about “the organization of content on its GUI.” *Id.*; *supra* §III.B.1.

These conclusory assertions also warrant no weight because they are unsupported by the portions of Pröll Dr. Houh cites – Pröll, [0049] and [0061]. *See* Houh, ¶¶60-61 and 65. In [0049], Pröll explains that its hinge switch/sensor is used to determine how to orient displayed content to ensure it is right-side-up. *Supra* §III.B.1 (describing Pröll). But this does not meet the Petition’s construction of a “plurality of views.” *See supra* §III.A. Dr. Houh’s assertion that Pröll, [0049] teaches displaying “different content views” (Houh, ¶¶60, 65) by reorienting content to be right-side-up fails because it is inconsistent with the Petition’s claim construction of “plurality of views.”

Pröll, [0061] says its display can be a touchscreen acting as an “input medium.” This discloses nothing about what is displayed, let alone “different organizations of [displayed] content for different configurations” as Dr. Houh alleges. Houh, ¶¶61, 65.

Dr. Houh’s conclusory assertion that POSAs would have modified Pröll to select among Martinez’s alleged views based on the computer’s detected 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, ¶65. As demonstrated above,

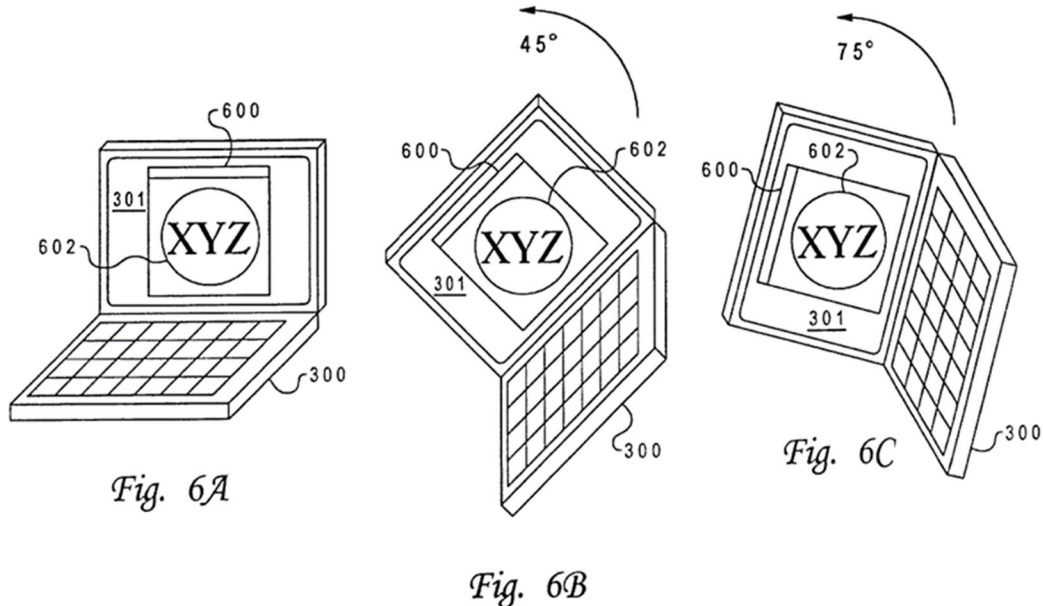
that assertion is inconsistent with Dr. Houh’s own admissions and is entirely unsupported by Pröll.

iii. Martinez Does Not Support Selecting Among Arrangements of Windows 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, ¶65. 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* §III.D.1. Martinez provides no motivation to do something that Martinez does not disclose – select among views based on the computer’s configuration rather than a shake.

Dr. Houh cites a portion of Martinez the Petition nowhere cites. Houh, ¶65 (*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 section of Martinez 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 even when the monitor is at “intermediate positions” between landscape and portrait modes. Martinez, 1:55-67 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, 14-15; *supra* §III.A. Thus, Dr. Houh’s citation to this Martinez disclosure is misleading because it has nothing to do with the way in which Martinez selects between the tile and cascading arrangements of windows. It is those window arrangements that are alleged to meet the claimed plurality of views (Petition, 24), and Martinez only teaches selecting between those “views” based on a user shake. *See supra* §III.B.2.



iv. Dr. Houh’s Assertion that POSAs Would Have Selected Among Views Based on the Computer’s Configuration is Entirely 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, ¶65 (citing EX1021, which is *not cited in the Petition*, for its teaching that “[t]he visual design of a user-computer interface affects ... the system’s longer-term usefulness”). Those general assertions provide no support for modifying Pröll to select between Martinez’s alleged views based on the computer system configuration. Dr. Houh does not even allege that selecting a view based on the computer’s configuration would “better suit[] the user’s needs” or make the system more “useful” than Martinez’s shake selection technique that allows the user to choose the view (*supra* §III.D.1), let alone substantiate such an assertion.

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* §III.D.1. Dr. Houh states that “[i] 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, 61 (*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 66, 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 once again misleads 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, ¶66. Petitioners and Dr. Houh admit that Pröll teaches *nothing* about the “*organization* of content on its GUI” which is required to meet the Petition’s construction of “views.” Petition, 14-15, 20; Houh, ¶61. And Martinez does not teach different GUI displays responsive to changes to the computer’s detected configuration – it teaches changes in response to a user shake. *Supra* §III.B.2. Putting aside the misleading nature of this testimony, it provides no *reason why* POSAs would have selected between Martinez’s views based on the computer’s 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, ¶66. But the only evidence Dr. Houh cites of such a “known technique” is Martinez, 5:24-28, which describes Martinez’s “tilt”

sensor. Houh, ¶66. Thus, what was “known” from Martinez was to “respon[d] to sensor data” by changing the orientation of the display content to ensure it is right-way-up (Martinez, 1:55-62, Figs. 6A-6C), and to use the tilt sensor to detect a “shake” and select between the tile and cascading windows arrangements in response to a user shake (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, ¶66), that would not have yielded any Challenged Claim. Instead, it would have yielded the Pröll-Martinez system described *supra* §III.D.1, where different views would be selected in response to a user shake – not in response to a detected configuration of the computer 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 the computer’s configuration.

v. Dr. Houh’s Explanation of the Contemplated Workings of the Pröll-Martinez Combination Is Improper and Unsupported

It is impossible to understand the contemplated workings of the Pröll-Martinez combination without argument and evidence that is provided only in Dr. Houh’s declaration and absent from the Petition.

To begin with, while the Petition noted Martinez’s disclosure of arranging windows in “a tile or cascading fashion,” the Petition never even explained what those arrangements were. Petition, 19. Dr. Houh cites *evidence nowhere cited in the Petition* (“Foley,” EX1021) to illustrate and explain Petitioners’ argument about what Martinez’s disclosure means. Houh, ¶¶62-63. This is improper because that evidence and explanation needed to be in the Petition. *See Supra* §III.D.8.a (citing authority). As explained further below, that is far from the only evidence Dr. Houh relies on that is nowhere cited in the Petition.

The “Motivation to Combine” section of Dr. Houh’s declaration (Houh, ¶¶60-67) alleges POSAs would have modified Pröll “to be more effectively used in different mobile environments, such as *switching between cascading and tiled views* (Martinez, 6:32-37) depending on the available precision of a user input from a keyboard at a stable, permanent work station or touching a screen while riding in a moving car.” Houh, ¶66. Here, Dr. Houh does not explain which one of the “cascading and tiled views” POSAs allegedly would have used when the keyboard is used at a workstation, and which one would have been used when only a touch screen is used. That explanation of the contemplated workings of the Pröll-Martinez combination is buried in a section that purports to map the combination to Limitation 1[a]. *Id.*, ¶79.

Dr. Houh alleges that the Pröll-Martinez combination would have been a “predictable improvement upon Pröll’s system” because it would have allowed for “larger, tile-sized icons” when Pröll’s “keyboard is inaccessible” and “smaller, cascading windows” when using Pröll’s computer is in “a more conventional laptop configuration.” *Id.* To purportedly support this assertion, Dr. Houh cites ***three exhibits (EX1035-EX1036 and Foley) that appear nowhere in the Petition other than the “Exhibit List.”*** The Board should not consider this explanation or the cited evidence that purportedly supports it, because this evidence and argument needed to be in the Petition. *See Supra* §III.D.8.a (citing authority).

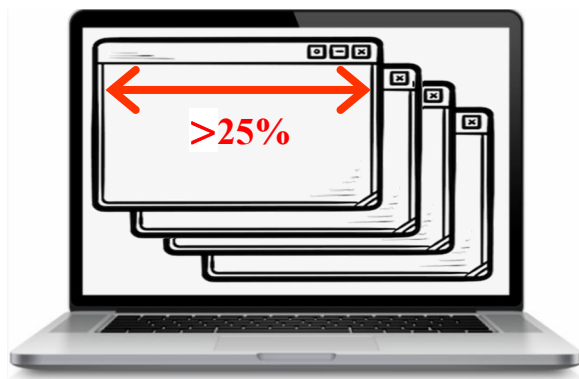
Dr. Houh’s explanation and evidence fail to support his assertion that POSAs would have modified Pröll to select between Martinez’s tile and cascading arrangements of windows in response to the computer’s configuration by selecting the cascading arrangement when the keyboard is available and the tile arrangement when it is not. Houh, ¶79.

First, this conclusory assertion is based on nothing but Dr. Houh’s naked say-so. It is not supported by Pröll, Martinez or any other prior art reference. There is simply no teaching in the art of selecting among views based on the computer’s configuration. The risk of hindsight is apparent when an expert simply alleges that a claim limitation entirely absent from the prior art is nonetheless obvious. Relying

on this naked expert testimony to meet a claim limitation runs afoul of Federal Circuit precedent. *See supra* §III.C.2.

Second, Dr. Houh’s naked assertion that the tile arrangement is better for a touchscreen because the displayed image is larger is not supported by anything. Indeed, the images from Foley that Dr. Houh relies on show that in a cascading arrangement, multiple windows overlap, whereas in a tile arrangement, no windows overlap. Houh, ¶¶62 and 76. Thus, as illustrated below, for the same number of displayed windows, tiled windows would be smaller – not larger as Dr. Houh erroneously alleges – than cascading windows. Dr. Houh’s hindsight conclusory testimony is unsupported by the very evidence he cites.

Cascading Windows



Tiled Windows



Dr. Houh cites no credible evidence establishing that POSAs would have considered one of Martinez’s tile or cascading arrangements to be more or less suitable in any of Pröll’s computer configurations. Houh’s conclusory and unsupported testimony warrants no weight. *Xerox*, Paper 9, 15. No credible

evidence supports the assertion that POSAs would have modified Pröll to select among Martinez’s window arrangements based on the computer’s configuration rather than based on a user shake as taught by Martinez.

c. 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 save Ground 1. The expert’s naked say-so cannot provide a limitation missing from the prior art.

E. Ground 2 Fails: Petitioners Never Establish Any Reason Why POSAs Would Have Modified Pröll Based on Preppernau in a Manner Meeting Any Challenged Claim

The Petition alleges that it would have been “obvious to use [the Windows Vista operating system disclosed by Preppernau] with the Pröll computer.” Petition, 43. For purposes of this POPR, LiTL does not challenge that assertion. But that does not result in a combination that meets any Challenged Claim.

Preppernau teaches selecting among its different arrangements of windows (which Petitioners allege are different “views” as claimed) in response to a manual user selection from a taskbar. *See supra* §III.B.3. Preppernau does not teach

selecting among its views in response to the detected current computer system configuration – as required by all Challenged Claims – and the Petition does not allege that it does.

The Petition also never alleges, let alone establishes, any reason to modify the Windows Vista operating system or any aspect of Pröll’s computer to select among views based on the detected computer system configuration. That is fatal to Ground 2.

Additionally, the Petition fails to identify the contemplated workings of the Pröll-Preppernau combination because the Petition never identifies what alleged views disclosed by Preppernau allegedly would have been used with which particular configurations of Pröll’s computer. Ground 2 fails for that additional reason.

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, 46; *supra* §III.B.1. That is required to disclose a “plurality of views” under the Petition’s construction. Petition, 14-15.

Preppernau is a user guide for the Windows Vista operating system and describes a “taskbar button” that allows users to “[d]isplay one window” or “[d]isplay all the windows in the group.” Preppernau, 46-47; *supra* §III.B.3. When

multiple windows are displayed simultaneously, the user can “click[] the arrangement you want” from among the available arrangements. *Id.* The available arrangements include “cascade” which “displays the windows on top of each other,” “stacked” which displays windows in a grid with more windows stacked vertically than horizontally, and “side by side” which displays windows in a grid with more windows stacked horizontally than vertically. *Id.*

Petitioners allege that POSAs would have been motivated to “use” the “popular” Windows Vista operating system “with the Pröll computer.” Petition, 43. Doing so would yield a system with Vista’s feature that allowed a user to select an arrangement of windows from the taskbar as disclosed by Preppernau. Pröll’s switch would continue to be used to orient displayed content to ensure it is right-side-up as taught by Pröll. *Supra* §III.B.1. But this modification of Pröll based on Preppernau would fail to meet any Challenged Claim because it would not select among Preppernau’s arrangements of windows in response to the detected current computer system configuration.

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

To establish obviousness of a claim, it is insufficient to provide a “reason” to combine the references in *some* manner. Rather, 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 the teachings of Pröll and Preppernau in a manner that modifies the 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 2 fails for this reason alone.

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

Petitioners’ assertion that “Pröll discloses how to change the GUI on a screen in response to the configuration of the computer device” (Petition, 43) is misleading. The only GUI change that Pröll discloses is changing the orientation of displayed content to be right-side-up, which Petitioners concede does not meet the Petition’s construction of “plurality of views” as referring to ways of organizing visual representations of content. *Supra* §III.B.1; Petition, 14-15. Indeed, Petitioners admit that “Pröll does not explicitly discuss the organization of content on its GUI.” Petition, 46.

The Petition’s “Motivation to Combine” Section VIII.B.2 (Petition, 42-45) describes “numerous features” of Preppernau’s Windows Vista operating system and argues that POSAs would have used this “popular” operating system on Pröll’s computer to improve the computer’s usability. But as the Board can see from reading those four pages, the Petition never even 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 (Petition, 43-45) is facially insufficient to render any Challenged Claim obvious. The identified benefits would have been achieved by simply using Windows Vista on Pröll’s computer, which would have allowed the user to select a desired arrangement of windows from the taskbar. Preppernau, 46-47; *see also supra* §III.C.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 the computer’s detected configuration. The motivation Petitioners identify – to achieve the “improved [] usability” that Windows Vista offers – 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 Section Addressing Limitation 1[c] Similarly Alleges No Reason to Combine Pröll and Preppernau in the Manner Claimed

In its section purporting to map the “Pröll-Preppernau” combination to Limitation 1[c], the Petition repeats that POSAs “would have found it obvious to select one of the plurality of views taught in Preppernau.” Petition, 50 (§VIII.B.3.d). But again, that would have been achieved by running Windows

Vista on Pröll's computer, which would allow a user to select different arrangements of windows from the taskbar as taught by Preppernau. Preppernau, 46-47; *see also supra* §III.C.3. Such a resulting system does not meet any Challenged Claim.

The Petition then alleges that “[a]s discussed above in Section VIII.B.3, a POSITA would have been motivated to trigger the display of Preppernau's views (‘selecting’), *including based on the detection configuration of Pröll's device* via its switch.” Petition, 50. That assertion fails because the Petition never “discussed” any “motivat[ion]” for POSAs to have selected among Preppernau's views based on the detected configuration of Pröll's device.

The “Section VIII.B.3” that the Petition alleges “discussed” the alleged motivation manifestly does not. Petition, 50. Section VIII.B.3 purports to map claim 1 to Pröll and Preppernau. Indeed, the cross-reference to that section is made from a subsection of Section VIII.B.3 itself. Petition, 50. The other subsections of Section VIII.B.3 do not even discuss Limitation 1[c]'s requirement of selecting a view in response to the detected computer system configuration. Nothing in “Section VIII.B.3” alleged any motivation to combine Pröll and Preppernau in the manner claimed.

To the extent Petitioners meant to refer to the “Motivation to Combine” Section VIII.B.2, as just discussed, that section only alleged that POSAs would

have run Windows Vista on Pröll's device and never alleged a reason to combine Pröll and Preppernau in a manner that meets the Challenged Claims. *See supra* §III.E.2.a.

Thus, the Petition asserts that it established a motivation for POSAs to have selected among Preppernau's views based on the detected configuration of Pröll's device elsewhere, but that assertion is simply false – the Petition never identified any reason why POSAs would have done so.

Finally, Petitioners state in conclusory fashion that POSAs “would have been motivated to combine Pröll and Preppernau to predictably improve the usability of Pröll's system by displaying different views that reorganize the icons and windows, ***including based on the configuration of the laptop device.***”

Petition, 51. This assertion fails.

First, the Petition fails to explain its alleged predictable improvement. The Petition never even explains the contemplated workings of the combination (*see infra* §III.E.3) by identifying which Preppernau view would allegedly be used with which “configuration of [Pröll's] laptop device.” Petition, 51. Without that explanation of the contemplated workings of the combination, Petitioners cannot remotely support their conclusory assertion that POSA would have made Petitioners' unexplained combination to, in some unexplained way, “improve the usability of Pröll's system.” *Id.*

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

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 2.

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

The Petition never explains which of Preppernau’s alleged views (stacked grid, side-by-side grid, or cascading) allegedly would have been used with which configuration of Pröll’s computer. Without that basic explanation – which is a “prerequisite” to establishing obviousness – Petitioners cannot possibly substantiate that POSAs would have been motivated to make Petitioners’ unexplained Pröll-Preppernau computer to “improve ... usability.” Petition, 51; *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 2 fails for this additional reason.

4. The Expert Declaration Cannot Save Ground 2

The Petition’s sections alleging a “Motivation to Combine” and addressing Limitation 1[c] collectively cite six paragraphs of expert testimony (Houh, ¶¶107-

109 and 117-119) that, in turn, cite two references (EX1021 and EX1023) that are never even cited – let alone explained – in the Petition outside the table of exhibits. None of this can save Ground 2.

a. The Expert Declaration Cannot Cure the Petition’s Failures

None of the explanation and evidence cited only in the expert declaration can be incorporated by reference into the Petition. Thus, nothing in the expert declaration can save the Petition from its failures to establish a supportable reason to combine Pröll and Preppernau in a manner that meets the Challenged Claims and to explain the contemplated workings of the combination. *Cook Grp. v. Boston Sci. Scimed*, IPR2017-00131, Paper 13, 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.***”); *Instrumentation Lab’y v. Hemosonics*, IPR2017-00855, Paper 55, 20 (“***Arguments and information*** that are ***not presented and developed in the Petition***, but instead are incorporated by reference, ***are not entitled to consideration***, as it is improper to incorporate by reference arguments from one document into another document.”) (citing 37 C.F.R. §42.6(a)(3)); 37 C.F.R. 42.22(a)(2) (the ***Petition “must”*** “includ[e] a detailed explanation of the significance of the evidence”); 37 C.F.R. 42.104(b)(5) (the ***Petition “must”***

identify “the *relevance* of the evidence to the challenge raised, including identifying specific portions of the evidence that support the challenge”).

Petitioners needed to make their case in the Petition. The Board should not consider any of the arguments and evidence provided only in the expert declaration, and should find that Ground 2 is facially deficient for the reasons discussed *supra* §III.E.1-3.

b. Even if Considered, the Expert Declaration Fails to Cure the Petition’s Fatal Deficiencies

The Houh declaration fails to carry Petitioners’ burden because the testimony: (1) warrants no weight given that it is conclusory, unsupported, and offers contradictory opinions; and (2) provides no supportable reason why POSAs would have modified Pröll to select between views based on the computer’s detected configuration rather than based on a user’s manual selection as disclosed by Preppernau.

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

Like the Petition, Dr. Houh’s “Motivation to Combine” Section X.B.2 (Houh, ¶¶107-109) primarily extols the virtues of Windows Vista and alleges that POSAs would have run it on Pröll’s device. But as discussed *supra* §III.E.1, the resulting Pröll-Preppernau combination would select among Preppernau’s views based on a user taskbar selection and would not meet any Challenged Claim.

Indeed, Dr. Houh acknowledges that Preppernau only discloses that “a *user* can select” one of the organizations of windows. Houh, ¶119.

In purporting to map claim 1 to the Pröll-Preppernau combination, Dr. Houh refers back to his Motivation to Combine Section X.B.2, then explains why this “combination” would have been beneficial because it would have allowed “users” to select one of the various window arrangements taught by Preppernau when the computer was in various configurations. Houh, ¶115. This does not allege any reason for POSAs to have modified Windows Vista to select between various window arrangements automatically *based on the computer’s detected configuration* rather than having the “user” make a selection.

Dr. Houh later alleges that POSAs “would have been motivated to combine Pröll with Preppernau such that Pröll’s GUI displays a different organization of content when its housing halves are arranged in various configurations.” Houh, ¶118. But the only “support” for this assertion is a cross-reference to “Section X.B.2” which is the above-discussed Motivation to Combine section (¶¶107-109). As just discussed, “Section X.B.2” only alleges that POSAs would have run Windows Vista on Pröll’s device, not that POSAs would have further modified the system to select views based on the computer’s 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 the computer’s

detected configuration is thus 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*.”) (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”))).

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 X.B.2.” Houh, ¶119. Again, Section X.B.2 is the Motivation to Combine section (¶¶107-109) that never offers any reason why POSAs would have implemented the Pröll and Preppernau combination to select views in response to a detected computer system configuration rather than in response to a user selection as Preppernau teaches. *See supra* §III.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[c] and its requirement of selecting one of the plurality of views in response to the computer’s detected configuration, Dr. Houh points to three Preppernau window arrangements (cascading, vertically-stacked and horizontally-stacked) as meeting

the plurality of views.⁴ Houh, ¶118-119. Yet, Dr. Houh never even identifies which of these three arrangements of windows 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 allegedly would have improved the usability of Pröll’s system. Houh, ¶119; *Pers. Web*, 848 F.3d at 994 (“a clear, evidence-supported account of the *contemplated workings of the combination*.”).

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, ¶117. But Dr. Houh admits in the very next paragraph that “Pröll is not, however, explicit about the organization of content on its GUI.” Houh, ¶118. Pröll

⁴ This is different from Preppernau’s “Quick Tabs” that Dr. Houh mentioned in ¶115. “Quick Tabs” is not an arrangement of windows but instead “displays screenshots of all Web pages currently open.” Preppernau, 182.

only discloses maintaining content right-way-up, not different “views” as claimed, which are different organizations of content. Petition, 14-15; *Supra* §III.A.

5. Conclusion: Ground 2 Fails

The Petition’s failure to support its Pröll-Preppernau combination by explaining its contemplated workings and by establishing a 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 does not save Ground 2. The expert’s naked unsupported say-so cannot provide a limitation missing from the prior art.

F. Conclusion

For the foregoing reasons, the Petition fails to carry its burden for either ground. The Board should deny institution.

Respectfully submitted,
LiTL LLC

Date: May 30, 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 13,988 words excluding; a table of contents, a table of authorities, a certificate of service or word count, or appendix of exhibits or claim listing. Patent Owner has relied on the word count feature of the word processing system used to create this paper in making this certification.

Date: May 30, 2024

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

I certify that on May 30, 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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