

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., AND
ASUS GLOBAL PTE. LTD.,
Petitioner,

v.

LITL LLC,
Patent Owner.

IPR2024-00458
Patent 10,564,818 B2

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

RANGE, *Administrative Patent Judge.*

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

I. INTRODUCTION

Microsoft Corporation, HP Inc., Dell Inc., Dell Technologies Inc., ASUSTeK Computer Inc., and Asus Global Pte. Ltd. (collectively, “Petitioner”) filed a Petition requesting *inter partes* review of claims 1–4 and 11–14 of U.S. Patent No. 10,564,818 B2 (Ex. 1001, “the ’818 patent”). Paper 7 (“Pet.”). LiTL LLC (“Patent Owner”) filed a Preliminary Response. Paper 14 (“Prelim. Resp.”).

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the petition “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Upon consideration of the Petition in view of the present record and for the reasons explained below, we determine that Petitioner has not shown a reasonable likelihood of prevailing with respect to at least one of the challenged claims. Accordingly, we do not institute an *inter partes* review on the grounds set forth in the Petition. *See* 37 C.F.R. § 42.108(a).

II. BACKGROUND

A. Related Matters

The parties identify three district court cases that involve the ’818 patent: *LiTL LLC v. Dell Technologies Inc. and Dell Inc.*, No. 1:23-cv-00121-RGA (D. Del.); *LiTL LLC v. HP Inc.*, No. 1:23-cv-00120-RGA (D. Del.); and *LiTL LLC v. ASUSTeK Computer Inc., et al.*, No. 1:23-cv-00122-RGA (D. Del.). Pet. 60–61; Paper 10, 2.

Patent Owner also identifies *LiTL LLC v. Lenovo (United States), Inc. et al.*, No. 1:20-cv-00689 (D. Del.), as a district court case that involves patents related to the ’818 patent. Paper 10, 2. Patent Owner additionally

identifies the following proceedings that challenge patents related to the '818 patent: IPR2021-00681; IPR2021-00800; IPR2021-00822; IPR2021-00786; IPR2021-00821; IPR2024-00404; IPR2024-00480; IPR2024-00481; IPR2021-01011; IPR2024-00454; IPR2024-00455; IPR2024-00456; IPR2024-00457; and IPR2024-00532. *Id.* Patent Owner also indicates that patents related to the '818 patent were subject to the following reexamination proceedings: 90/015,035; 90/015,025; 90/014,965; and 90/014,958. *Id.*

B. The '818 patent

The '818 patent is titled “System and Method for Streamlining User Interaction with Electronic Content.” Ex. 1001, code (54). The '818 patent describes a graphical user interface that organizes interface elements into different views, where views are used to provide an interface responsive to configurations of a device. *Id.* at code (57).

Fig. 1 of the '818 patent, reproduced below, illustrates a portable computer configured in a “laptop” mode. *Id.* at 12:51–53.

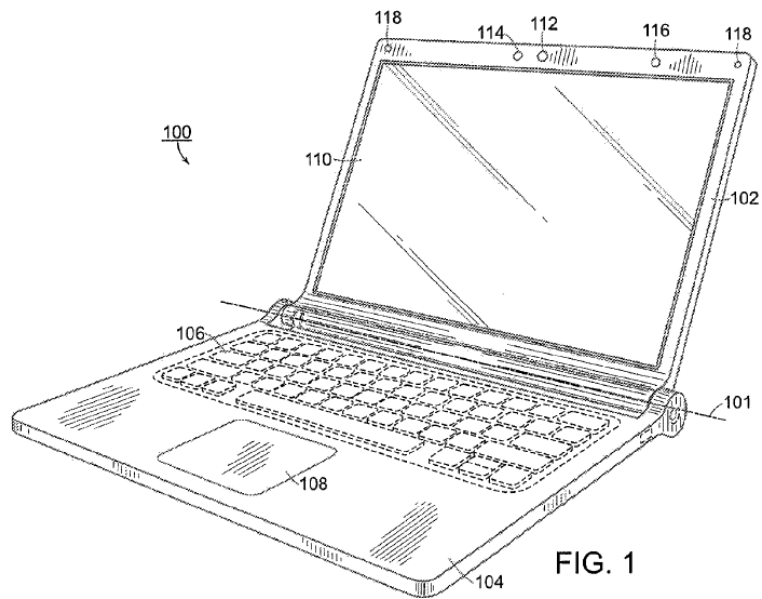


Fig. 1 illustrates an example of a portable computer. *Id.* at 19:18–19.

Portable computer 100 illustrated in Fig. 1 includes a display component 102 and a base 104. *Id.* at 19:19–22. The display component 102 is pivotably coupled to the base 104 by a hinge assembly that allows rotating the display component about a longitudinal axis 101 running along an interface between the display component and base. *Id.* at 19:22–33. The base 104 of the portable computer also includes a keyboard 106 and touch pad 108. *Id.* at 19:33–39.

Fig. 4 of the '818 patent, reproduced below, illustrates a portable computer in an “easel” configuration. *Id.* at 12:60–61.

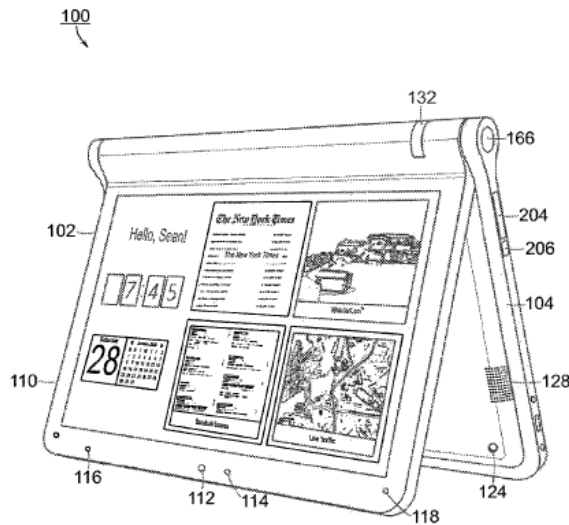


FIG. 4

Fig. 4 illustrates portable computer 100 configured into an easel mode. *Id.* at 19:57–58.

Portable computer 100 illustrated in Fig. 4 includes a display component 102 and a base 104. *Id.* at 19:58–61. The portable computer 100 is converted from a laptop mode to an easel mode by folding away from the base 104, in the same direction as to open the computer such that the base 104 and the display component 102 form an inverted “V” shape. *Id.* at 19:58–67. When in easel mode, the keyboard may be concealed and not easily accessible. *Id.* at 25:1–3.

The portable computer 100 is configurable between a laptop mode, easel mode, closed mode, flat mode, and frame mode. *Id.* at 25:49–55. A mode sensor detects the current display mode. *Id.* at 12:2–6. Each display mode may employ a different I/O profile. *Id.* at 25:56–57. Figs. 2 and 23 of the '818 patent, reproduced below, illustrate different graphical user interfaces. *Id.* at 12:54–56, 13:50–52.

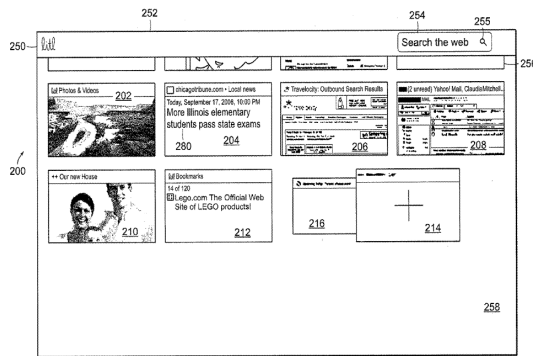


FIG. 2



FIG. 23

Figs. 2 and 23 illustrate example “home views” and “channel view” graphical user interfaces, respectively.

The home view 200 shown in Fig. 2 organizes user interface elements and maps visual representations of available content into a plurality of views of the available content. *Id.* at 27:30–38. The home view may be used when a portable computer is in laptop mode. *Id.* at 31:26–28. Fig. 23 illustrates a channel card view, which provides high level navigation options to a user. *Id.* at 53:61–63, 54:14–16. The channel card view is rendered when the portable computer is configured into easel mode. *Id.* at 54:7–9.

C. Illustrative Claims

Among challenged claims 1–4 and 11–14, claims 1 and 11 are independent. Claims 2–4 depend from claim 1, and claims 12–14 depend from claim 11. Claim 1 is exemplary of the claimed subject matter of the ’818 patent and is reproduced as follows, with added bracketed identifiers to claim elements.

1. [1pre] At least one non-transitory computer-readable storage medium storing processor-executable instructions that, when executed by at least one processor in a computer system comprising a display and a keyboard and being configurable

between a plurality of computer system configurations, cause the at least one processor to perform a method comprising:

[1a] displaying a plurality of views of a plurality of visual representations of computer content;

[1b] detecting a current computer system configuration from at least a first computer system configuration of the plurality of computer system configurations where the keyboard is operable to receive input from an operator of the computer system to control the computer system and a second computer system configuration of the plurality of computer system configurations where the keyboard is inoperable to receive input from the operator of the computer system to control the computer system;

[1c] selecting one of the plurality of views for display on the computer system in response to the detected current computer system configuration;

[1d] transitioning to the selected one of the plurality of views; and

[1e] displaying the selected one of the plurality of views.

Ex. 1001, 71:15–39; *see also* Pet. at vi (annotating claim 1 with the same identifiers).

D. Asserted Grounds of Unpatentability

Petitioner, supported by the declaration of Dr. Henry Houh (Ex. 1003), asserts the following grounds of unpatentability (Pet. 3):¹

¹ The relevant sections of the Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112–29, took effect on March 16, 2013. The ’818 patent claims priority to applications filed before this date. *See* Ex. 1001, code (63). For the purposes of this Decision, pre-AIA statutes apply. *See* Pet. 2 n.3.

Claims Challenged	35 U.S.C. §	References/Basis
1–4, 11–14	103(a)	Pröll ² , Martinez ³
1–4, 11–14	103(a)	Pröll, Preppernau ⁴

III. ANALYSIS

A. *Legal Standard*

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and “the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) when in evidence, objective evidence of nonobviousness.⁵ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. *Level of Ordinary Skill in the Art*

In order to determine whether an invention would have been obvious at the time the application was filed, we consider the level of ordinary skill in the pertinent art at the critical time. *Graham*, 383 U.S. at 17. The

² Pröll, DE 10331185 A1, publ. Feb. 3, 2005 (Ex. 1006 (“Pröll”)).

³ Martinez, et al., US 6,137,468, issued Oct. 24, 2000 (Ex. 1007 (“Martinez”)).

⁴ Preppernau et al., Windows Vista Step by Step, 2007 (Ex. 1008 (“Preppernau”)).

⁵ Objective indicia of non-obviousness are not at issue for this decision.

resolution of this question is important because it allows us to “maintain[] objectivity in the obviousness inquiry.” *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 718 (Fed. Cir. 1991). In assessing the level of ordinary skill in the art, various factors may be considered, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC, Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (quotation omitted). Generally, it is easier to establish obviousness under a higher level of ordinary skill in the art. *Innovation Toys, LLC v. MGA Entm’t, Inc.*, 637 F.3d 1314, 1323 (Fed. Cir. 2011) (“A less sophisticated level of skill generally favors a determination of nonobviousness . . . while a higher level of skill favors the reverse.”).

Petitioner asserts that a person of ordinary skill in the art (POSITA):
would have had a bachelor’s degree in electrical engineering, computer engineering, computer science, or a similar field, plus two years of work experience in designing [graphical user interfaces (GUIs)] for computing devices. [Ex. 1003] ¶ 20–22. More education could substitute for experience and vice versa. *Id.*

Pet. 14; *see also* Ex. 1003 ¶ 21 (Dr. Houh testifying that this level of skill is appropriate). Patent Owner does not dispute the level of ordinary skill in the art. *See* Prelim. Resp.

For purposes of this Decision, we adopt Petitioner’s proposal as reasonable and consistent with the prior art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art may reflect an appropriate level of skill in the art).

C. Claim Construction

In an *inter partes* review proceeding based on a petition filed on or after November 13, 2018, a patent claim shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b). 37 C.F.R. § 42.100(b) (as amended Oct. 11, 2018). This rule adopts the same claim construction standard used by Article III federal courts, which follow *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc), and its progeny. Under this standard, the words of a claim are generally given their “ordinary and customary meaning,” which is the meaning the term would have to a person of ordinary skill at the time of the invention, in the context of the entire patent including the specification. *See Phillips*, 415 F.3d at 1312–13.

Petitioner argues that in IPR2021-00786, the Board construed “plurality of views of a plurality of visual representations of computer content” as “referring to a plurality of ways of organizing visual representations of computer content.” Pet. 14–15 (citing IPR2021-00786, Paper 6, 13–16). IPR2021-00786 involved U.S. Patent No. 9,880,715 B2 (“the ’715 patent”). Petitioner further notes that “the Board found [this] limitation ‘is distinct from merely providing a plurality of ways of displaying content (by, for example, changing display orientation, color, resolution, etc.).’” *Id.* Petitioner further argues that during a reexamination proceeding of the ’715 patent, “the Examiner also clarified that the ‘plurality of views’ limitation does not encompass merely changing to entirely different content.” *Id.* (citing Ex. 1005 (90/014,958 Ex Parte Reexamination)). Petitioner’s witness, Dr. Houh, applied this construction

when forming opinions and Petitioner proposes that we adopt this construction in this proceeding. Ex. 1003 ¶ 53; Pet. 15.

At this stage of the proceeding, Patent Owner does oppose Petitioner's proposed construction. Prelim. Resp. 25–26.

For this decision, we again construe “plurality of views of a plurality of visual representations of computer content” as “referring to a plurality of ways of organizing visual representations of computer content.” We again note that this limitation is distinct from merely providing a plurality of ways of displaying content (by, for example, changing display orientation, color, resolution, etc.). Petitioner assumes this construction for the Petition, and Patent Owner assumes this construction for Patent Owner's Preliminary Response. Moreover, the construction is well supported by the '818 patent's claims and specification for reasons similar to those stated in the prior decision cited by Petitioner. IPR2021-00786, Paper 6, 13–16 (construing this term in the context of U.S. Patent No. 9,880,715 B2). The '818 patent has text similar (or identical) to that of U.S. Patent No. 9,880,715 B2 that supports this construction. *See, e.g.*, Ex. 1001, 2:51–3:33.

For this decision, we do not discern a need to construe explicitly any other claim language because doing so would have no effect on our analysis below and will not assist in resolving the present controversy between the parties. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’”) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

D. Overview of the Asserted Art

1. Pröll (Ex. 1006)

Pröll is a certified English translation of German patent application DE 10331185 A1, titled “Mobile data processing device.” Ex. 1006, code (54). Pröll describes connecting a mobile data processing device to a docking station. *Id.* ¶ 10.

Fig. 1 of Pröll, reproduced below, illustrates a mobile computer system.

Fig. 1

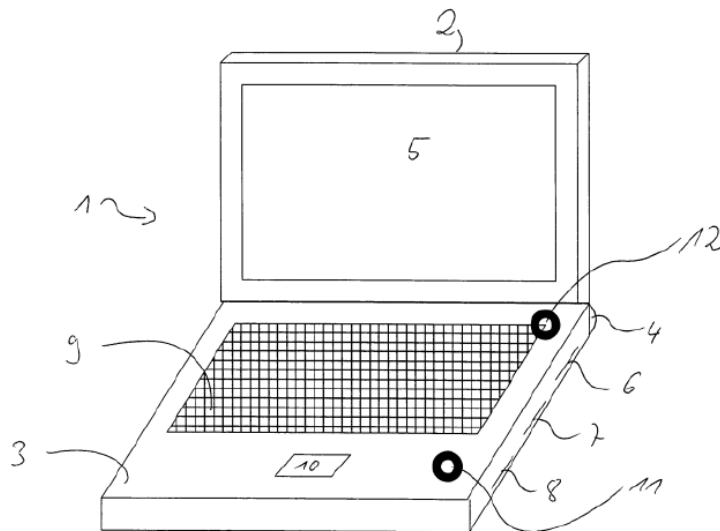


Fig. 1

Fig. 1 shows a mobile data processing device 1. *Id.* ¶ 33.

Fig. 1 depicts a first housing half 2 arranged to rotate about a hinge 4 in reference to a second housing half 3. *Id.* Hinge 4 is adapted such that the housing halves 2 and 3 can be swiveled in reference to each other by almost 360 degrees. *Id.*

According to Pröll, a switch may be arranged in hinge 4 which can detect that the first housing half 2 is swiveled in reference to the second housing half 3 by more than 270 degrees. *Id.* ¶ 49. Fig. 9 of Pröll, reproduced below, shows the mobile data processing device in a swiveled state. *Id.* ¶ 58.

FIG. 9

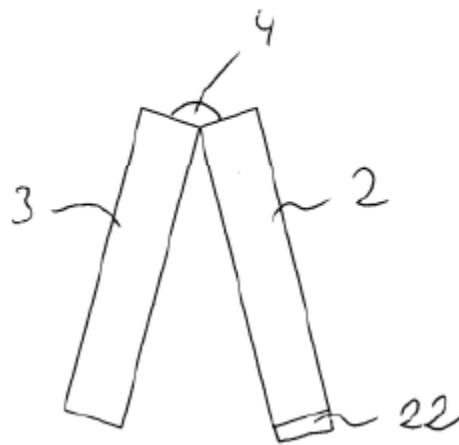


Fig. 9 shows a mobile data processing device 1 in a state where both housing halves are swiveled at an angle of more than 270 degrees. *Id.* ¶ 58.

When the first and second housing halves are swiveled at an angle greater than 270 degrees, the display can be rotated by 180 degrees when the first housing half is in a swiveled position. *Id.* ¶ 49.

2. *Martinez (Ex. 1007)*

Martinez is titled “Method and Apparatus for Altering a Display in Response to Changes in Attitude Relative to a Plane.” Ex. 1007, code (54). Martinez describes altering the display of an object on a display device in response to detecting changes in the attitude of the device. *Id.* at code (57). Martinez also teaches that its device may detect a shake (i.e., shaking the device containing a sensor to the left and right relative to the user) and, if a

shake is detected, arrange windows in a tile or cascading function. *Id.* at 6:5–37.

3. *Preppernau (Ex. 1008)*

Preppernau is a Windows Vista user guide titled Step by Step. *See* Ex. 1008. Preppernau describes how to use and modify a taskbar to allow displaying windows on a computer. *Id.* at 46–47.

E. *Unpatentability Grounds*

1. *Unpatentability over Pröll and Martinez (Ground 1)*

Petitioner asserts that claims 1–4 and 11–14 are unpatentable under 35 U.S.C. § 103(a) as obvious over Pröll in view of Martinez, citing the Declaration of Dr. Houh for support. Pet. 22–40 (citing Ex. 1003 ¶¶ 68–102). We address claim 1 and claim 11, and address other claims collectively.

a) Claim 1

Claim 1 recites, for example, at element 1[a], “displaying a plurality of views of a plurality of visual representations of computer content.” Ex. 1001, 71:22–23. Claim 1 also recites detecting whether the computer system is configured so that the keyboard is operable or inoperable at element 1[b]:

detecting a current computer system configuration from at least a first computer system configuration of the plurality of computer system configurations where the keyboard is operable to receive input from an operator of the computer system to control the computer system and a second computer system configuration of the plurality of computer system configurations where the keyboard is inoperable to receive input from the operator of the computer system to control the computer system.

Id. at 71:24–33. Claim 1 also recites selecting, transitioning, and displaying a view in response to the detected configuration. *Id.* at 71:34–39.

Petitioner argues that these recitations would have been obvious over Pröll in view of Martinez. Pet. 20–31. Petitioner’s argument is based on the combined teachings of Pröll and Martinez, but we first address the relevant teachings of these two references individually.

Petitioner argues that Pröll teaches a device with a pivoting hinge such that the keyboard is operable in one configuration and not operable in the other configuration. *Id.* at 16–17, 25–26. Petitioner argues that Pröll teaches “adjusting the text and graphics on its GUI in a plurality of ways” but admits Pröll “is not explicit about the organization of content on its GUI.” *Id.* at 20. Patent Owner agrees with Petitioner that Pröll teaches a device with different configurations. Prelim. Resp. 27–28. Patent Owner argues that Pröll teaches rotating displayed content 180° based upon configuration but contends that such rotation is not “selecting one of a plurality of views” based on the Petition’s claim construction. *Id.* at 28 (citing Ex. 1006 ¶ 49 (Pröll teaching inversion of displayed content); Pet. 20, 24, 46. We agree with Patent Owner that Pröll teaches adjusting displayed content after detecting configuration but does not teach, for example, “selecting one of a plurality of views . . . in response to the detected current computer system configuration” because merely inverting displayed content is a way of organizing a visual content within the scope of this claim recitation as we have construed it. *See* Ex. 1006 ¶ 49; *see also* Section III(C), *supra*.

Petitioner argues that Martinez teaches a system similar to Pröll that also has different configurations. Pet. 20. Petitioner argues that Martinez

teaches that the user may “shake” the Martinez device to change views. Pet. 19–21. Upon detecting the user shaking the Martinez device, Martinez may rearrange windows on the display. *Id.* at 19 (citing Ex. 1007, 6:5–37). For example, the display’s windows might change from tiled to cascading when the user shakes the device. *Id.* Patent Owner agrees that Martinez teaches rearranging windows in response to a user manipulation—i.e., shake. Prelim. Resp. 39.

Patent Owner argues that neither reference alone “discloses selecting among a plurality of views in response to the computer’s detected current configuration.” Prelim. Resp. 24. We agree. As we explain above, Pröll detects a current configuration and rotates a display, but this is not the same as selecting among a plurality of views under the claim construction we explain above. *See* Section III(C), *supra*. Martinez teaches selecting among a plurality of views, but such selection is based on a user selecting a view by shaking the device. *See, e.g.*, Ex. 1007, 6:1–7:16.

Petitioner relies on the testimony of Dr. Houh to argue that selecting a view based on configuration nonetheless would have been obvious based on the references’ combined teachings. *See, e.g.*, Pet. 29–30 (citing Ex. 1003 ¶¶ 79, 85). Petitioner argues that a person having ordinary skill in the art would have modified “Pröll by adding the teachings of Martinez.” Pet. 20–21 (citing Ex. 1003 ¶¶ 62–66 (declaration of Petitioner’s witness, Dr. Houh)). In particular, Petitioner argues that a person having ordinary skill in the art would have triggered Martinez’s view change (for example, going from tiled to cascading windows) “based on Pröll’s switch indicating rotation of its two halves by more or less than 180°.” *Id.* Petitioner argues that, in addition to rotating Pröll’s display based on configuration, a person

having ordinary skill in the art “would have found it obvious to ‘select’ one of the plurality of views taught in Martinez” based on the change in hardware configuration. *Id.* at 29 (citing Ex. 1003 ¶ 85). Petitioner argues that the combination would have advantages including improving the usability of Pröll’s system and allowing Pröll’s device to be used in mobile environments. *Id.* at 29–30 (citing Ex. 1003 ¶¶ 79, 85).

Precedent does not align with Petitioner’s argument. The Court of Appeals for the Federal Circuit has refused to permit “common sense” to fill in a missing claim limitation except where the missing limitation is “unusually simple and the technology particularly straightforward.” *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1362 (Fed. Cir. 2016). For example, in *Arendi*, the Federal Circuit reversed the Board’s determination that searching for duplicate telephone numbers prior to adding a number to an address book would have been obvious based on common sense. *Id.* at 1363. The court emphasized that the disputed term was central to representative claim 1. *Id.* The court also emphasized that the function of searching for duplicate telephone numbers in a database would work differently than the function of searching for duplicate name entries. *Id.* at 1366. The court further counsels that a missing claim limitation cannot be determined obvious based on “conclusory statements and unspecific expert testimony.” *Id.*

The court’s decision in *DSS Tech. Mgmt., Inc. v. Apple Inc.*, 885 F.3d 1367, 1374 (Fed. Cir. 2018), is also illustrative. In that case, the Board determined that a person having ordinary skill in the art would have been motivated to modify the prior art base station transmitter so that it is “energized in low duty cycle RF bursts.” *Id.* at 1374. The prior art reference,

Natarajan, taught reducing power consumption in mobile units but was silent regarding doing the same for the base station transmitter. *Id.* at 1373. The court held that the limitation at issue was not “unusually simple” and that the missing limitation (a server energized in low duty cycle RF bursts) “plays a major role in the subject matter claimed.” *Id.* at 1374–1375. The court further held that, to the extent the Board relied on the petitioner’s expert testimony of Dr. Hu, the testimony was “conclusory and unspecific” and did not adequately address differences between the base station and transmitters. *Id.* at 1376–1377.

Here, claim 1 requires the functionality of, for example, “selecting one of the plurality of views for display on the computer system in response to the detected current computer system configuration.” Ex. 1001, 71:34–36. As in *Arendi* and *DSS*, this functionality plays a major role in the subject matter claimed; this selection as at the heart of the ’818 patent. *See, e.g.*, Ex. 1001, 2:49–62 (explaining that patent is directed to providing different views). We also determine that the limitation is not “unusually simple.” The cited art understood that display orientation could be modified based on a change in configuration (Pröll) and understood that a view could be selected based on a user’s active choice (the user shaking the device as in Martinez⁶), but the cited art did not recognize selecting a view based on a change of configuration. Prelim. Resp. 41. The evidence of record does not indicate that recognition of this function would be “unusually simple.”

⁶ As we explain when addressing Petitioner’s second ground, Preppernau also teaches selecting a view based on a user’s active choice. *See, e.g.*, Ex. 1008, 46 (explaining that a user may select a view by “[c]licking”).

The Petition’s reliance on Dr. Houh’s testimony does not adequately close the gap between claim 1 and the teachings of the cited references.⁷ Dr. Houh’s testimony is supported and persuasive in some respects. For example, Dr. Houh persuasively testifies that Pröll teaches adjusting its display based upon change of configuration. Ex. 1003 ¶ 60. Dr. Houh also persuasively testifies that cascading, tiling, and rearranging icons as in Martinez were well-known arrangements. *Id.* ¶¶ 62–64.

In other places, however, Dr. Houh’s testimony is speculative or does not adequately address the issue at hand. For example, Dr. Houh testifies that a person having ordinary skill in the art would have understood that “arranging the display to correspond to a new hardware configuration would ensure that the arrangement is best suited to the user’s needs” and “would have understood that organizing content to account for the manner in which a user interacts with the computer would increase the computer’s usefulness to the user.” *Id.* ¶ 65. While these opinions are supported, they do not establish that a person having skill in the art would have recognized as obvious that the Pröll device could have been modified to select a view upon change in configuration (without further user intervention). Rather, a gap remains between a person of ordinary skill in the art recognizing that reorganization can be useful and the ’818 patent’s recognition that reorganization should occur based on the device detecting a change in configuration.

⁷ We note that the Petition must include a detailed explanation of the significance of any evidence. 37 C.F.R. § 42.22(a)(2). Here, we consider Houh’s declaration in some detail, but to the extent Dr. Houh’s testimony is not explained in the Petition, it cannot support institution. 37 C.F.R. § 42.6(a)(3); Prelim. Resp. 49–50.

When Dr. Houh testifies that a person having skill in the art would have been motivated to trigger Martinez’s views based on Pröll’s switch indicating a change in device configuration, the opinion lacks support. *Id.* ¶ 66. Dr. Houh characterizes the combination as “simply apply[ing] the known technique of rearranging the display in response to sensor data to improve the usability of Pröll.” *Id.* But Martinez’s use of sensor data is sensing a shake, and the shake is a manual user input indicating the user’s desire to select a different view; Martinez does not suggest automatically changing views. Claim 1 does not reflect mere application of Martinez’s technique.

Dr. Houh also persuasively testifies that it would have been within the skill of a person having ordinary skill in the art “to program Pröll’s switch to rearrange windows as Martinez teaches” (*id.* ¶¶ 66–67; *see also id.* ¶ 79) but this falls short of establishing that a person having ordinary skill in the art would have had reason to make this modification. Prelim. Resp. 46 (citing *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 993–994 (Fed. Cir. 2017) (“[T]hat 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))).

Dr. Houh’s testimony is sufficient to establish that, as Patent Owner acknowledges, a person having ordinary skill in the art would have been motivated to modify Pröll by adding “Martinez’s tile and cascading arrangements of windows” and allowing selecting between tiling and cascading “based on detecting a shake as Martinez teaches” while also

“using Pröll’s switch to orient the displayed content to ensure it is right-side up as Pröll teaches.” Prelim. Resp. 39. But this modification would not meet the challenged claims, and as we explain above, Petitioner does not adequately establish that a person having ordinary skill in the art would have reached a system that selects a view in response to detected current computer system configuration (as opposed to selecting a view based on user input such as shaking).

Based on the above, Petitioner has not adequately established that a person having ordinary skill in the art would have combined the teachings of Pröll and Martinez to reach the recitations of claim 1. Thus, Petitioner has not established a reasonable likelihood of establishing that claim 1 is unpatentable based on Pröll and Martinez.

b) Claim 11

Claim 11 is similar to claim 1 in relevant respects. Claim 11 requires a non-transitory computer-readable storage medium storing instructions that, when executed by a processor, display “a plurality of views of a plurality of visual representations of computer content,” detect a computer system configuration where the keyboard is positioned to receive input or positioned to not receive input, select a view based on configuration, and transition the display to a view. Ex. 1001, 72:17–39. For example, claim 11 recites “selecting one of the plurality of views for display on the computer system in response to the detected current computer system configuration.” *Id.* at 72:35–38.

Petitioner’s arguments as to claim 11 are the same as for claim 1. Pet. 37–38 (referring back to arguments for claim 1). For the same reasons we provide as to claim 1, Petitioner has not established a reasonable

likelihood of establishing that claim 11 is unpatentable based on Pröll and Martinez.

c) Claims 2–4 and 12–14

Claims 2–4 depend from claim 1 and claims 12–14 depend from claim 11. The Petition does not address these claims in a manner that would cure deficiencies with regard to claims 1 and 11. Pet. 31–37, 39–40. Thus, Petitioner has not established a reasonable likelihood of establishing that claims 2–4 and 12–14 are unpatentable based on Pröll and Martinez.

2. *Unpatentability over Pröll and Preppernau (Ground 2)*

Petitioner asserts claims 1–4 and 11–14 are unpatentable under 35 U.S.C. § 103(a) as obvious over Pröll in view of Preppernau. Pet. 46–60. We address claim 1 and claim 11, and address other claims collectively.

a) Claim 1

The key recitations for claim 1 are the same as those we discuss when addressing Ground 1. Petitioner argues that these recitations would have been obvious over Pröll in view of Preppernau. Pet. 40–52. Petitioner’s argument is based on the combined teachings of Pröll and Preppernau. We address the relevant teachings of Pröll above, and, here, we further set the stage by addressing the relevant teachings of Preppernau.

Petitioner argues that Preppernau is a Microsoft publication that provides step-by-step directions for Windows Vista. Pet. 40 (citing Ex. 1015, Title, xi). Petitioner argues that Preppernau teaches a taskbar button that a user may interact with (via clicking) to rearrange how windows are displayed. *Id.* at 42 (citing Ex. 1015, 46–47). Petitioner argues that Preppernau teaches many ways of organizing files and content. *Id.* at 44–45. Patent Owner does not disagree but argues that “Preppernau does not teach

selecting among its views in response to the detected current computer system configuration.” Prelim. Resp. 61–62.

Petitioner argues that a person having ordinary skill in the art would have modified Pröll with the teachings of Preppernau. Pet. 42–43. Petitioner argues that a person having ordinary skill in the art would have been motivated to add the Windows Vista operating system from Preppernau to the Pröll device. Pet. 43 (citing Ex. 1003 ¶ 109). Petitioner argues that a person having ordinary skill in the art would have modified Pröll so that it changes to different Preppernau views based on change in configuration as follows:

As discussed above in Section VIII.B.3 [of the Petition], a POSITA [person having ordinary skill in the art] 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 indicating rotation of Pröll’s two halves.

Pet. 50. In the text above, however, Petitioner does not explain why a person having skill in the art would have been motivated to make this modification. Instead, elsewhere in Section VIII.B.3, the Petition argues that different ways of organizing content would be beneficial to Pröll’s device and that these methods would improve usability of Pröll’s display. *Id.* at 42–45, 49.

Patent Owner does not dispute that a person having ordinary skill in the art would have been motivated to install Windows Vista on Pröll’s device. Prelim. Resp. 61. But Patent Owner disputes that this would result in any of the challenged claims. Similar to its arguments against the Pröll and Martinez combination, Patent Owner argues that neither Pröll nor Preppernau teach selecting a window arrangement (allegedly a view) in response to detecting a current computer system configuration. Prelim. Resp.

61–62 (addressing Preppernau); *see also id.* at 24 (addressing Pröll). We again agree. As we explain above, Pröll detects a current configuration and rotates a display, but this is not the same as selecting among a plurality of views under the claim construction we explain above. *See* Section III(C), *supra*. Preppernau teaches selecting a window arrangement in response to a manual user selection from a taskbar. Prelim. Resp. 30, 61 (citing Pet. 50–51); *see also* Ex. 1008, 46–47 (referring to “[c]licking” to activate different windows). Petitioner relies on the testimony of Dr. Houh to argue that selecting a view based on configuration would have been obvious based on the references’ combined teachings. *See, e.g.*, Pet. 51 (citing Ex. 1003 ¶ 119).

We again note that claim 1 requires the functionality of, for example, “selecting one of the plurality of views for display on the computer system in response to the detected current computer system configuration.” Ex. 1001, 71:34–36. As in *Arendi* and *DSS*, this functionality plays a major role in the subject matter claimed. *See* Section III(E)(1)(a), *supra*. We also do not determine that the limitation is “unusually simple.” *Id.* The cited art understood that display could be modified based on a change in configuration (Pröll) and understood that a window configuration could be selected based on a user’s active choice (the user selecting window configuration with a click as in Preppernau), but the cited art did not recognize automatically selecting a view based on a change of configuration. Prelim. Resp. 30. Nothing in the present record suggests that recognition of this feature would be “unusually simple.”

The Petition’s reliance on Dr. Houh’s testimony does not adequately close this gap.⁸ Dr. Houh’s testimony is supported and persuasive in some respects. For example, Dr. Houh persuasively testifies that a person having ordinary skill in the art would have had reason to modify Pröll to add the ability to change GUI (graphical user interface) elements as taught by Preppernau. Ex. 1003 ¶¶ 107–109. Dr. Houh also teaches that, using Preppernau’s Window’s Vista functionality, a “user could reorganize the view” to improve functionality. *Id.* ¶¶ 114–115. This testimony, however, does not establish a reason to select a view *based on change in configuration*.

Dr. Houh states that a person having ordinary skill in the art “would have found it obvious to display one of the plurality of views taught in Preppernau when Pröll’s device detects a change in configuration” and cites to prior sections of his declaration for support. *Id.* ¶ 120. This statement, however, is conclusory, and the cited sections of Dr. Houh’s testimony do not adequately address, with evidentiary support or reasoning, why a person having ordinary skill in the art would have found this functionality obvious. 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.”). Instead, Dr. Houh testifies, for example, that Preppernau’s teachings “would have *allowed users to optimize* one of the GUIs rendered by Pröll’s physical configurations according to the rearrangement of windows and icons that Preppernau teaches.” *Id.* ¶ 115. But user optimization is different than automatic optimization based upon detecting

⁸ Again, to the extent Houh’s testimony is not explained in the Petition, it cannot support institution.

change in configuration. Other portions of Dr. Houh's testimony are similar. *Id.* ¶¶ 111–115 (explaining why a person having ordinary skill in the art would have incorporated Preppernau's ability to rearrange windows and icons into Pröll but not adequately addressing why a person having ordinary skill in the art would have reached selecting a view based on detecting a configuration), 117–119 (same).

Dr. Houh's testimony is sufficient to establish that, as Patent Owner acknowledges, a person having ordinary skill in the art would have been motivated to modify Pröll by adding Preppernau's ability to rearrange windows and icons based on user selection. But this modification would not meet the challenged claims, and as we explain above, Petitioner does not adequately establish that a person having ordinary skill in the art would have reached a system that selects a view in response to detected current computer system configuration (as opposed to selecting a view based on user input such as clicking a selection).

Based on the above, Petitioner has not adequately established that a person having ordinary skill in the art would have combined the teachings of Pröll and Preppernau to reach the recitations of claim 1. Thus, Petitioner has not established a reasonable likelihood of establishing that claim 1 is unpatentable based on Pröll and Preppernau.

b) Claim 11

Claim 11 is similar to claim 1 in relevant respects. Petitioner's arguments as to claim 11 are the same as for claim 1. Pet. 57–58 (referring back to arguments for claim 1). For the same reasons we provide as to claim 1, Petitioner has not established a reasonable likelihood of establishing that claim 11 is unpatentable based on Pröll and Preppernau.

c) Claims 2–4 and 12–14

Claims 2–4 depend from claim 1 and claims 12–14 depend from claim 11. The Petition does not address these claims in a manner that would cure deficiencies with regard to claims 1 and 11. Pet. 52–57, 59–40. Thus, Petitioner has not established a reasonable likelihood of establishing that claims 2–4 and 12–14 are unpatentable based on Pröll and Preppernau.

IV. CONCLUSION

After considering the evidence and arguments presented in the current record, we determine that Petitioner has not demonstrated a reasonable likelihood of success in proving that at least one of the challenged claims of the '818 patent is unpatentable. We therefore do not institute trial on any challenged claims or grounds raised in the Petition.

V. ORDER

For the foregoing reasons, it is

ORDERED that, pursuant to 35 U.S.C. § 314(a), we do not institute an *inter partes* review of any claim of the '818 patent based on a ground asserted in the Petition.

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