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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC and MOTOROLA MOBILITY LLC,
Petitioner,

v.

MULTIFOLD INTERNATIONAL INCORPORATED PTE. LTD.,
Patent Owner.

IPR2025-00058
Patent 9,158,494 B2

Before KRISTEN L. DROESCH, HYUN J. JUNG, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

PESLAK, *Administrative Patent Judge*.

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

I. INTRODUCTION

Google LLC and Motorola Mobility LLC (collectively "Petitioner") filed a Petition requesting an *inter partes* review of claims 1, 2, 4, 6, 9, 10, 12–14, and 18–20 ("the Challenged Claims") of U.S. Patent No. 9,158,494 B2 (Ex. 1001, "the '494 patent"). Paper 1 ("Pet."). Multifold International Incorporated Pte. Ltd. ("Patent Owner") filed a Preliminary Response. Paper 8 ("Prelim. Resp."). Thereafter, with our authorization, Petitioner filed a Preliminary Reply. Paper 9 ("Prelim. Reply"). Patent Owner filed a Preliminary Sur-reply. Paper 10 ("Prelim. Sur-reply").

We have authority, acting on the designation of the Director, to determine whether to institute an *inter partes* review under 35 U.S.C. § 314(a). *See* 37 C.F.R § 42.4(a) (2024) ("The Board institutes the trial on behalf of the Director."). Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the Petition shows "there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

Considering the Petition, the Preliminary Response, the Preliminary Reply, and the Preliminary Sur-reply as well as all supporting evidence, we conclude that the information presented in the Petition establishes a reasonable likelihood that Petitioner would prevail in its challenge of at least one claim of the '494 patent as unpatentable. Pursuant to 35 U.S.C. § 314, we hereby institute an *inter partes* review of all challenged claims of the '494 patent on the grounds stated in the Petition.

A. Related Matters

Petitioner states "[t]he '494 patent is asserted in *Multifold International Incorporated Pte. Ltd. v. Google LLC*, Case No. 1:23-cv-

01323 (D. Del.) and *Multifold International Incorporated Pte. Ltd. v. Motorola Mobility LLC*, Case No. 1-23-cv-01173 (D. Del.)" and was "previously asserted in *Multifold International Incorporated Pte. Ltd. v. Samsung Electronics Co., Ltd. et al*, Case No. 2-21-cv-00371 (E.D. Tex.)." Pet. 1–2. Patent Owner lists *Multifold International Incorporated Pte. Ltd. v. Motorola Mobility LLC*, No. 1:23-CV-1173-UNA (D. Del.) (filed October 17, 2023) and *Multifold International Incorporated Pte. Ltd. v. Google LLC*, No. 1:23:CV-01323-UNA (D. Del.) (filed November 17, 2023) as related matters. Paper 5, 1.

B. Real Parties-in-Interest

Petitioner identifies Google LLC and Motorola Mobility LLC as the real parties-in-interest. Pet. 1. Petitioner further notes that Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc., but XXVI Holdings Inc. and Alphabet Inc. are not real parties-in-interest; and Motorola Mobility LLC is a direct, wholly owned subsidiary of Motorola Mobility Holdings LLC, which is indirectly a wholly-owned subsidiary of Lenovo Group Ltd., but Motorola Mobility Holdings LLC and Lenovo Group Ltd. are not real parties-in-interest. *Id.*

Patent Owner identifies itself as the sole real party-in-interest. Paper 5, 1.

C. Summary of the '494 Patent (Ex. 1001)

The '494 patent is titled "Minimizing and Maximizing Between Portrait Dual Display and Portrait Single Display" and describes methods and devices for minimizing and maximizing displayed output associated with applications. Ex. 1001, codes (54), (57). The inventors named on the '494 patent are Sanjiv Sirpal and Mohammed Selim. *Id.* at code (75).

The ’494 patent’s application, No. 13/366,483, was filed February 6, 2012. *Id.* at codes (21), (22). The ’494 patent also identifies related provisional application, No. 61/539,884 filed September 27, 2011. *Id.* at code (60).

The ’494 patent explains that while touch screen displays of handheld computing devices provide useful dual use to both deliver information and receive user inputs, the small form factor of such devices and their displays “require[] a careful balancing between the displayed graphics and the area provided for receiving inputs.” Ex. 1001, 1:16–29. That is because “[o]n the one hand, the small display constrains the display space, which may increase the difficulty of interpreting actions or results” but “[o]n the other, a virtual keypad or other user interface scheme is superimposed on or positioned adjacent to an executing application, requiring the application to be squeezed into an even smaller portion of the display.” *Id.* at 1:29–35. The ’494 patent explains that single display touch screen devices are particularly “crippled by their limited screen space” because “[w]hen users are entering information into the device, through the single display, the ability to interpret information in the display can be severely hampered, particularly when a complex interaction between display and interface is required.” *Id.* at 1:36–42. Thus, according to the ’494 patent “[t]here is a need for a dual multi-display handheld computing device that provides for enhanced power and/or versatility compared to conventional single display handheld computing devices.” *Id.* at 1:45–49.

The ’494 patent discloses a device (and associated method for controlling the display of the device) by which a first page of a first application is presented in a first portion of the screen of the device, and a second page of the first application is presented in a second portion of the

screen. Ex. 1001, 2:12–48. In response to a first input entered by the user (e.g., in a gesture capture region of the screen) to minimize the first application to one of the first and second portions of the screen, the second page of the first application is presented in one of the first and second portions of the screen, and the presentation of the first page of the application is discontinued. *Id.* An application presented as two or more pages in a portrait mode can be minimized to present one of the two or more pages following a minimization operation. *Id.* at code (57).

Figures 1A–1J of the '494 patent are reproduced below:

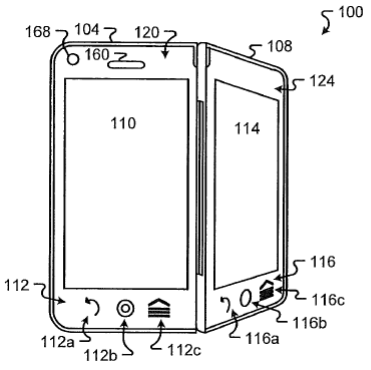

FIG. 1A

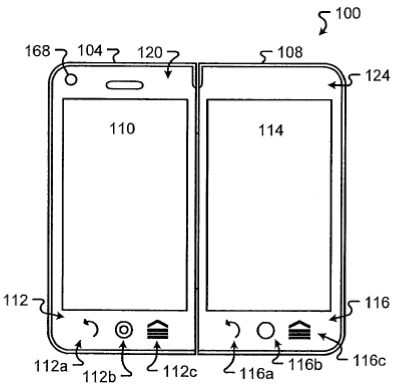

FIG. 1B

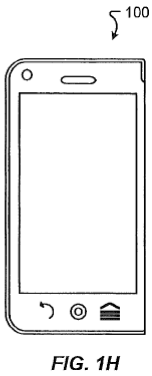

FIG. 1H

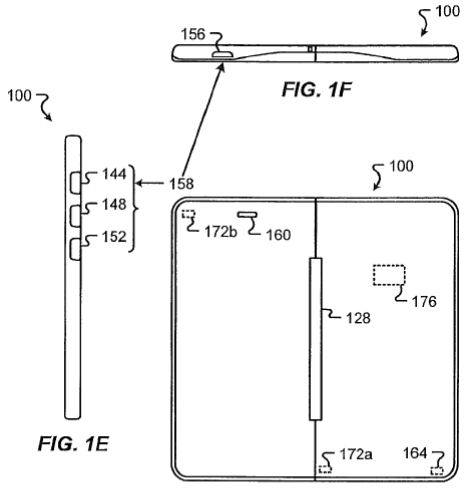

FIG. 1F

FIG. 1E

FIG. 1C

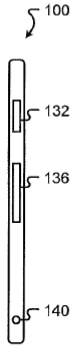

FIG. 1D

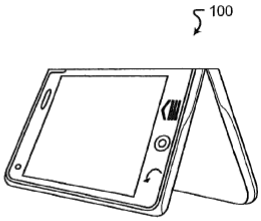

FIG. 1I

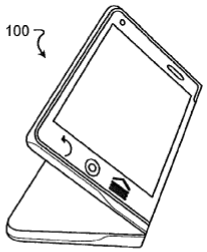

FIG. 1J

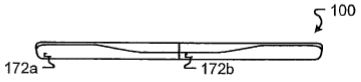

FIG. 1G

Figures 1A-1J illustrate a multi-screen user device that can be positioned in a number of different ways each of which provides different functionality to a user. Ex. 1001, 8:55–60. Device 100 is a multi-screen device that includes a primary screen 104 and a secondary screen 108, both of which are touch sensitive. *Id.* at 8:60–9:3. Primary screen 104 includes touch sensitive display 110, which, in addition to being touch sensitive, also displays information to a user. *Id.* Secondary screen 108 includes touch sensitive display 114, which also displays information to a user. *Id.* Screens 104 and 108 may include more than one display area. *Id.* Primary screen 104 also includes a configurable area 112 that has been configured for specific inputs when the user touches portions of the configurable area 112. *Id.* at 9:4–27. Secondary screen 108 also includes a configurable area 116 that has been configured for specific inputs. *Id.*

In addition to touch sensing, primary screen 104 and secondary screen 108 also include areas that receive input from a user without requiring the user to touch the display area of the screen. *Id.* at 9:28–38. For example, primary screen 104 includes gesture capture area 120, and secondary screen 108 includes gesture capture area 124. *Id.* These areas are able to receive input by recognizing gestures made by a user without the need for the user to actually touch the surface of the display area. *Id.*

Figures 37A and 37B of the '494 patent are reproduced below:

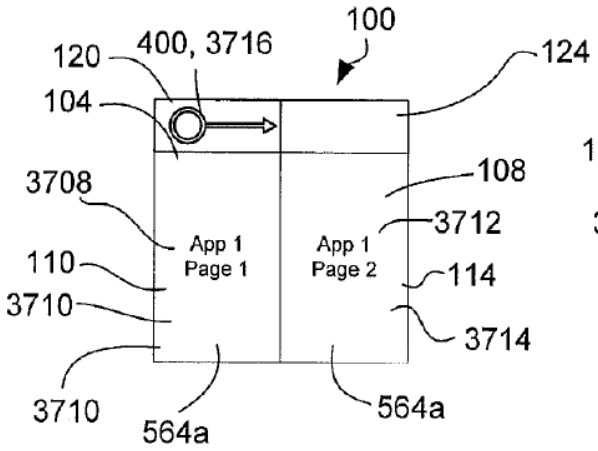

Fig. 37A

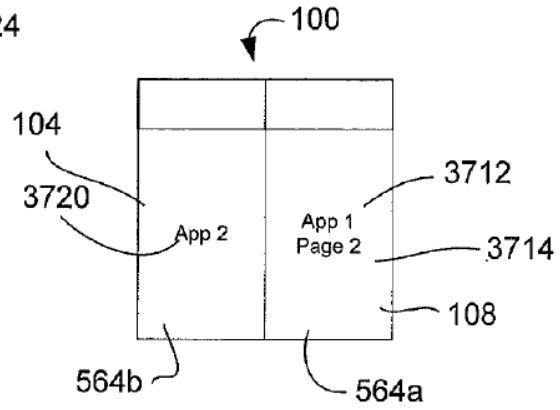

Fig. 37B

Figure 37A is a representation of an output of a multiple screen device, and Figure 37B is a representation of an output of the multiple screen device illustrated in Figure 37A but after a minimization operation. *Id.* at 8:13–18.

Figure 37A illustrates a device 100 with first 104 and second 108 screens in a dual portrait mode. Ex. 1001, 46:38–47:4. Device 100 is shown executing or accessing a first application 564*a*. *Id.* First screen 104 displays a first set of information comprising a first page 3708 of first application 564*a*. *Id.* Second screen 108 displays a second set of information comprising a second page 3712 of first application 564*a*. *Id.* For example, the first application 564*a* may comprise a browser application; the first page 3708 may comprise a control page or other ancillary page 3710. *Id.* Control page 3710 may present a list of bookmarks, a list of most visited websites, or a browsing history; second page 3712 may comprise a content page or other primary page 3714; and content page 3714 may comprise the content of a website accessed by the browser application, or a landing page generated by the browser application. *Id.* Gesture 3716 shown in Figure 37A depicts a gesture or other touch input provided by a user to minimize the view of the

first application 564*a* from two pages to one. *Id.* As shown, gesture 3716 may be entered in an area or region of screens 104, 108 that is outside of the areas where pages 3708, 3712 are presented or displayed. *Id.* Gesture 3716 can be received in gesture capture region 120 of first screen 104 or gesture capture region 124 of second screen 108; gesture 3716 may be entered in touch sensitive display region 110 of first screen 104 or touch sensitive display region 114 of second screen 108. *Id.*

Figure 37B depicts the output of the screens 104, 108 after the receipt of gesture 3716 from the user. Ex. 1001, 47:5–22. First screen 104 displays a page or other output 3720 related to a second application 564*b* in a stack 760, or alternatively a desktop view where a second application 564*b* is not active. *Id.* Second screen 108 continues to display second page 3712 of the first application 564*a*. *Id.*

D. Illustrative Claim

Independent claim 1 is reproduced below with Petitioner's annotations[1]:

> 1. [1.pre] A method for controlling a display of a device, comprising:
>
> [1.a] presenting a first page of a first application on a first display of the device, wherein the first page is an auxiliary page;
>
> [1.b] presenting a second page of the first application on a second display of the device, wherein the second page is a primary page,
>
> [1.c] wherein the first and second pages present different content and are distinct pages, and wherein the auxiliary page is a child of the primary page;

[1] We use Petitioner's annotations herein for ease of reference.

> [1.d] receiving a first input from a user, wherein the first input includes an input to minimize the first application to one of the first and second displays of the device, wherein the second page of the first application is displayed by one of the first display of the device and the second display of the device, and wherein the first page of the first application is not displayed.

Ex. 1001, 51:32–47.

E. Asserted Grounds of Unpatentability

Petitioner, supported by the declaration of Sandeep Chatterjee, Ph.D. (Ex. 1002), asserts the following grounds of unpatentability (Pet. 4)[2]:

Claims Challenged	35 U.S.C. §	References/Basis
1, 2, 4, 6, 10, 12	§ 102	Seo[3]
1, 2, 4, 6, 10, 12, 13	§ 103	Seo
14, 18–20	§ 103	Seo, Yook[4]
9	§ 103	Seo, Choi[5]

II. ANALYSIS

A. Overview

Petitioner bears the burden of persuasion to prove unpatentability of the claims challenged in the Petition, and that burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). At this stage of the proceeding, Petitioner bears the

[2] We apply the pre-AIA version of 35 U.S.C. § 102 and 35 U.S.C. § 103 because the claims at issue have an effective filing date prior to March 16, 2013, the effective date of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) ("AIA"). *See* Ex. 1001, code (22).
[3] Seo et al., U.S. Pat. Appl. Pub. 2012/0306782 A1, published December 6, 2012 (Ex. 1005, "Seo").
[4] Yook et al., U.S. Pat. Appl. Pub. 2010/0248788 A1, published September 30, 2010 (Ex. 1007, "Yook").
[5] Choi, U.S. Pat. 8,649,824 B2, issued February 11, 2014 (Ex. 1010, "Choi").

burden of demonstrating a reasonable likelihood that it would prevail with respect to at least one challenged claim for a petition to be granted. 35 U.S.C. § 314(a).

To establish anticipation under 35 U.S.C. § 102, each and every element in a claim, arranged as recited in the claim, must be found in a single prior art reference. *Net MoneyConn, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008); *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). Each element of the challenged claim must be found, either expressly or inherently, in the single prior art reference. *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). When evaluating a prior art reference in the context of anticipation, the reference must be "considered together with the knowledge of one of ordinary skill in the pertinent art." *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (citing *In re Samour*, 571 F.2d 559, 562 (CCPA 1978)). "[A] reference can anticipate a claim even if it 'd[oes] not expressly spell out' all the limitations arranged or combined as in the claim, if a person of skill in the art, reading the reference, would 'at once envisage' the claimed arrangement or combination." *Kennametal, Inc. v. Ingersoll Cutting Tool Co.*, 780 F.3d 1376, 1381 (Fed. Cir. 2015) (quoting *In re Petering*, 301 F.2d 676, 681 (CCPA 1962)).

A claim is unpatentable under § 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 skill in the art; and (4) when in evidence, objective indicia of non-obviousness (i.e., secondary considerations).[6] *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

The Supreme Court explained in *KSR* that

> [o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (alteration in original)).

B. Level of Ordinary Skill in the Art

Petitioner asserts that:

> [a] person of ordinary skill in the art at the time of the alleged invention of the '494 patent ("POSITA") would have had an undergraduate degree in electrical engineering, computer engineering, computer science or a related field along with two years of work experience in the field of user interface technologies, including *e.g.*, graphical user interface technologies, or a related field. (EX1002 ¶¶20–21.)[] More

[6] No evidence of secondary considerations has been presented at this stage of the proceeding.

> education can supplement practical experience and vice versa. (*Id.*)

Pet. 5–6.

At this time, Patent Owner does not challenge Petitioner's proffered level of one skilled in the art. *See generally* Prelim. Resp.

For the purposes of this Decision, we apply Petitioner's currently uncontested definition because it appears consistent with the problems addressed in the '494 patent and the prior art.

C. Claim Construction

In an *inter partes* review proceeding, 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). Our 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. *See Phillips*, 415 F.3d at 1312–13. In construing claims in accordance with their ordinary and customary meaning, we take into account the specification and prosecution history. *Id.* at 1315–17.

Petitioner submits that "the Board need not construe any terms of the challenged claims to resolve the underlying controversy" as "the prior art in the proposed grounds disclose or suggest and render obvious the challenged claims under their plain and ordinary meaning of the terms." Pet. 11.

At this time, Patent Owner does not submit arguments pertaining to claim construction. *See generally* Prelim. Resp.

We determine, at this stage of the proceeding, that we need not construe any claim terms and phrases to resolve the controversy before us. *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))).

The parties are free to address the construction of any claim term in subsequent authorized briefing during trial. If either party chooses to present claim construction arguments, the arguments should be in a separately delineated portion of the brief labelled accordingly.

D. Prior Art Status of Seo

Patent Owner challenges the prior art status of Petitioner's primary reference Seo. Prelim. Resp. 13. According to Patent Owner, "the inventors of the '494 Patent conceived of the claimed invention and reduced it to practice before the filing date of Seo's provisional parent application." *Id.*

The Petition is premised on the assumption that "the earliest possible priority date of the '494 patent is September 27, 2011 [(date of the related provisional application)]." Pet. 5, 12. Petitioner contends that "Seo published from an application filed February 10, 2012 and claims priority to provisional application No. 61/441,491 filed February 10, 20[11]." *Id.* at 5. According to Petitioner, the Petition "demonstrates that (1) at least one claim of Seo is supported by the Seo Provisional, and (2) the subject matter relied upon in Seo is also described by the Seo Provisional." *Id.*

Patent Owner contends Seo is not prior art because

> [t]he challenged claims of the '494 Patent were conceived and actually reduced to practice prior to February 10, 2011, which is

> the earliest possible effective filing date for the Seo reference. Alternatively, the challenged claims were conceived prior to February 10, 2011 and reduced to practice no later than February 22, 2011 with diligence between February 10 to February 22, 2011.

Prelim. Resp. 1.[7]

Patent Owner submits that prior to February 10, 2011, at least two series of prototype Imerj smartphones (referred to in the project as EV-1 and EV-2) and a prototype Imerj tablet were running dual display applications with the ability to minimize and maximize between dual display and single display, and were all tested to confirm they worked for their intended purpose. Prelim. Resp. 3–4. In the alternative, Patent Owner submits that on or around February 22, 2011, the Imerj project began a new phase of polish testing operational prototypes to ensure a smooth user experience, whereby dozens of engineers on the Imerj team were continuously testing operational EV-2 prototypes to refine the operation and identify and resolve minor bugs at a time when "the issues being identified were relatively minor and there was no question the phones worked for their intended purpose." *Id.* at 4. Additionally, Patent Owner submits testing and diligence on this project are not in question "[a]s confirmed by inventor Sanjiv Sirpal and corroborated by Imerj team members Ron Cassar and Ed Becze and documentary evidence" showing that "over 100 engineers were working full time on the Imerj project over the critical time period from late 2010 through February 2011."

[7] Patent Owner supports its contentions with, *inter alia*, the Declaration of Sanjiv Sirpal (Ex. 2001), the Declaration of Ron Cassar (Ex. 2002), and the Declaration of Ed. Becze, Ph.D. (Ex. 2003).

1. Patent Owner's Conception Evidence

The following is a summary of Patent Owner's most pertinent evidence and argument concerning conception of the claimed invention.

Patent Owner argues that the claimed invention was "conceived no later than November 18, 2010." Prelim. Resp. 17. Patent Owner's evidence of conception includes:

(i) inventor Sanjiv Sirpal's testimony (Ex. 2001 ¶¶ 9–24) which Patent Owner contends is corroborated by documents, objects, and testimony by non-inventors;

(ii) "UX Foundation Overview" (Ex. 2006), a PowerPoint Presentation authored by Sanjiv Sirpal (Ex. 2001 ¶ 11);

(iii) "Windowing Management Interaction Design Specification" (Ex. 2012) which is an interaction design specification dated September 10, 2010 created by Sanjiv Sirpal's design team with his input and discussing examples of how different user interactions and inputs should affect the phone displays (Ex. 2001 ¶ 15);

(iv) "Browser–Interaction Design" (Ex. 2013) which is a UX design specification created by co-inventor Mohammed Selim, revised by Sanjiv Sirpal, and dated October 6, 2010, defining the operation of the Imerj project's dual-screen capable internet browser "including its support for "Portrait Dual" (or "Portrait Dual Screen," or "Dual Portrait," or "PD") mode which is a mode where the browser displays two views (or pages) on two displays" (Ex. 2001 ¶ 21); and

(v) basic gesture functionality for the Imerj project such as moving applications between screens which had already been implemented based on the specifications provided by Sanjiv Sirpal and his team on development

kits and prototype smartphones known as "EV-1 prototypes" which had been manufactured and had fully tested software implementing maximizing and minimizing between dual display and single display (discussed in Exs. 2001, 2002, 2003, 2033 (Project Plan), 2019).

Patent Owner has not submitted testimony from co-inventor Mohammed Salim concerning conception of the claimed invention. Mr. Cassar testifies that Exhibit 2006 confirms his recollection that Mr. Sirpal came up with the idea for gesture functionality at issue here . . . no later than November 18, 2010. Ex. 2002 ¶ 12. Dr. Becze offers substantially identical testimony that Exhibit 2006 confirms his recollection that Mr. Sirpal conceived "the idea for the gesture functionality at issue here . . . no later than November 18, 2010." Ex. 2003 ¶ 8.

2. Patent Owner's Reduction to Practice Evidence

The following is a summary of Patent Owner's most pertinent evidence and argument that the claimed invention was actually reduced to practice before February 10, 2011:

1) EV-1 prototype smartphones (of which 50 were manufactured, with 20 to 26 of those used for software testing) (Prelim. Resp. 32–43, Ex. 2001 ¶¶ 25–35; Ex. 2002 ¶¶ 19–23, 25–40; Ex. 2003 ¶¶ 13–20, 24; Ex. 2014; Ex. 2011; Ex. 2015; Ex. 2016; Ex. 2017; Ex. 2032; Ex. 2033; Ex. 2034; Ex. 2035);

2) EV-2 prototype smartphones (of which at least 200 had been distributed to Imerj engineers by the end of January 2011) (Prelim. Resp. 34–36, 45–49; Ex. 2001 ¶¶ 36–38; Ex. 2002 ¶¶ 41–49; Ex. 2003 ¶¶ 21–26; Ex. 2018; Ex. 2036; Ex. 2037; Ex. 2038); and

3) Imerj Smartpad prototype with dual display capabilities (Prelim. Resp. 33, 43–45; Ex. 2002 ¶¶ 79–83; Ex. 2023; Ex. 2024; Ex. 2025).

3. Patent Owner's Evidence that The Invention Was Actually Reduced to Practice No Later Than February 22, 2011

The following is a summary of Patent Owner's most pertinent evidence and argument that the invention was actually reduced to practice no later than February 22, 2011, with continuous diligence from before February 10, 2011, through February 22, 2011.

Patent Owner argues that EV-2 prototypes had successfully implemented maximizing and minimizing between dual display and single display because members of the Imerj team had begun "polish" testing on the EV-2 prototypes. Prelim. Resp. 50–55; Ex. 2001 ¶¶ 37–48; Ex. 2002 ¶¶ 50–57; Ex. 2003 ¶¶ 28–31; Ex. 2007; Ex. 2008.

4. Patent Owner's Contentions that the EV-1 And EV-2 Prototypes Contain All Limitations of the Challenged Claims

Patent Owner submits a claim chart mapping the specific evidence it relies on to show that each limitation of the Challenged Claims was implemented and functional on both EV-1 and EV-2 Prototypes. Prelim. Resp. 55–79.

5. *Petitioner's Preliminary Reply*

Petitioner contends that Patent Owner does not "identify[] supporting evidence purportedly showing conception and reduction to practice of each claim element with particularity" but relies on "overbroad string cites sending Petitioner and the Board on a scavenger hunt through PO's 83 exhibits." Prelim. Reply 1. Petitioner further contends that Patent Owner fails to provide "any user manual, software development kit, developer

guide, or other materials sufficient to prove that any specific claim feature was embodied in the EV-1, EV-2, or Smartpad" which according to Petitioner means that "whatever functionality existed in the EV-1 or EV-2, there is no particularized showing of how those devices worked." *Id.* at 2. Petitioner next argues that Ex. 2033 fails to establish that the gesture requirements referred to therein actually reflects features in the EV-1 or EV-2 prototypes, Exhibit 2034 and Exhibit 2035 are inadmissible hearsay, and the two video clips set forth in Exhibits 2023 and 2024 are only authenticated by Mr. Sirpal and lack independent corroboration. *Id.* at 3–4.

Petitioner next argues that the "the striking similarity and repetitiveness across the declarations [of Sirpal, Cassar, and Becze] indicates that inventor Sirpal and the other two declarants prepared their declarations in concert." Prelim. Reply 4 (citing Ex. 2001 ¶¶ 27–32, 75–76; Ex. 2002 ¶¶ 21–25, 50; Ex. 2003 ¶¶ 13–15, 18, 20, 28, 29). Petitioner further argues that "the named inventor plainly collaborated with the other declarants in preparing testimony." *Id.* at 4–5. According to Petitioner, "[w]hile declarations may provide independent corroboration under some circumstances, that is not warranted here, particularly at this preliminary stage without the benefit of robust cross-examination to aid the Board's factfinding." *Id.* at 4.

Petitioner next argues that Patent Owner fails to prove conception and reduction to practice of claims 2 and 14 prior to Seo's priority date. Prelim. Reply 6–10.[8] With respect to conception, Petitioner argues that Mr.

[8] Claim 2 recites, *inter alia*, "a gesture capture region of the device . . . included as part of at least one of the first and second displays of the device." Ex. 1001, 51:49–51. Claim 14 contains similar recitations for "a

Sirpal "explained that the claimed gesture capture region he conceived corresponds to 'a gesture capture bar running across the top of both 'screens' of two devices: the 'Imerj EV-1 and EV-2.'" Prelim. Reply 7 (citing Ex. 2001 ¶ 55). Petitioner further argues that Mr. Sirpal "contends that '[t]he gesture capture bar is included as part of at least one of the screens and cites to, *inter alia*, his discussion of EX2006." *Id.* (citing Ex. 2001 ¶ 55). According to Petitioner, "EX2006 unequivocally shows the gesture capture region is **above** the display, not **as part of** or **within** the display." *Id.* at 8 (citing Ex. 2001 ¶ 11; Ex. 2006, 15, 30). For reduction to practice, Petitioner makes a substantially similar argument. *See, e.g.*, *id.* at 10 ("[T]he 'gesture capture strip in both the EV-1 and EV-2 prototypes and the Smartpad tablet is **above**, and **not included/located as part of/within a first/second display**.").

6. Patent Owner's Preliminary Sur-reply

Patent Owner does not dispute, but appears to confirm, that its declarants, Sirpal, Cassar, and Becze worked "with each other . . . to confirm their recollections." Prelim. Sur-reply 4. With respect to Exhibits 2034 and 2035, Patent Owner argues that the "exhibits are not offered for the truth of any matter asserted therein; they are used to corroborate (*and refresh*) the independent recollection of Cassar that the claimed functionality was working for its intended purpose before Feb. 10, 2011." *Id.* at 5 (citing Ex. 2002 ¶¶ 30–35) (emphasis added).

Patent Owner disputes Petitioner's argument that Patent Owner did not disclose any user manual or other items (Prelim. Reply 7) to establish

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gesture capture region" and "a second gesture capture region." *See id.* at 52:50–58.

reduction to practice by pointing to various exhibits and testimony. *See id.* at 5–8.

Patent Owner next argues that a co-inventor of the '494 patent, Mr. Selim, is employed by Petitioner. Prelim. Sur-reply 9 (citing Ex. 3001, 2). Patent Owner notes that Petitioner did not submit a declaration from Mr. Selim to rebut Patent Owner's reduction to practice evidence. *Id.*

Patent Owner does not dispute Petitioner's contentions in the Preliminary Reply that it failed to establish conception and reduction to practice of claim 2 and claim 14 prior to Seo's priority date. Prelim. Sur-reply 9–10. Rather, it argues that Petitioner has not shown that that Seo discloses limitation 14[m] so "[n]o swear behind is necessary for claim 14." *Id.* at 9. According to Patent Owner, we should deny institution because "claim 2 [is] the only claim with a disputed swear-behind limitation" and "Petitioners would at best be reasonably likely to prevail on only one of eleven challenged claims." *Id.* at 10.

7. Analysis

The Federal Circuit instructs that: "[t]o demonstrate an actual reduction to practice, the applicant must have: (1) constructed an embodiment or performed a process that met all the limitations of the claim and (2) determined that the invention would work for its intended purpose." *In re Steed*, 802 F.3d 1311, 1318 (Fed. Cir. 2015). "That is, to reduce any particular claim to practice, the applicant must have constructed an operational embodiment within the scope of that claim." *Nintendo of America Inc. v. iLife Technologies, Inc.*, 717 Fed. Appx. 996 (Fed. Cir. 2017) (addressing *Steed's* two-prong standard). The Board may find an actual reduction to practice based on, for example, "testimony of the

inventors, corroborating witnesses, and corroborating documentary evidence" (*id.* at 1002) if "[t]his evidence, taken together, is sufficient for a reasonable mind to conclude that the prototype created by the inventors . . . was within the scope of claims . . . and would work for its intended purpose." *Id.* at 1003. But if "[t]he prototype has not been shown to meet all the limitations of the[] claims, . . . the record thus lacks evidence sufficient to support the . . . conclusion [of an actual reduction to practice]." *Id.* at 1004 (citing *Steed*, 802 F.3d at 1318).

"[A]n inventor's testimony alone is insufficient to establish an earlier reduction to practice. *Medichem[, S.A. v. Rolabo, S.L.*], 437 F.3d [1157,] 1169–71." "In the final analysis, each corroboration case must be decided on its own facts with a view to deciding whether the evidence as a whole is persuasive." *Cooper v. Goldfarb*, 154 F.3d 1321, 1331 (Fed. Cir. 1998) (quoting *Berges v. Gottstein*, 618 F.2d 771, 776 (C.C.P.A. 1980)).

If a patent owner attempts to antedate a reference in an *inter partes* review, the patent owner bears the burden of producing evidence supporting an invention date before the reference's effective date. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1379–80 (Fed. Cir. 2015).

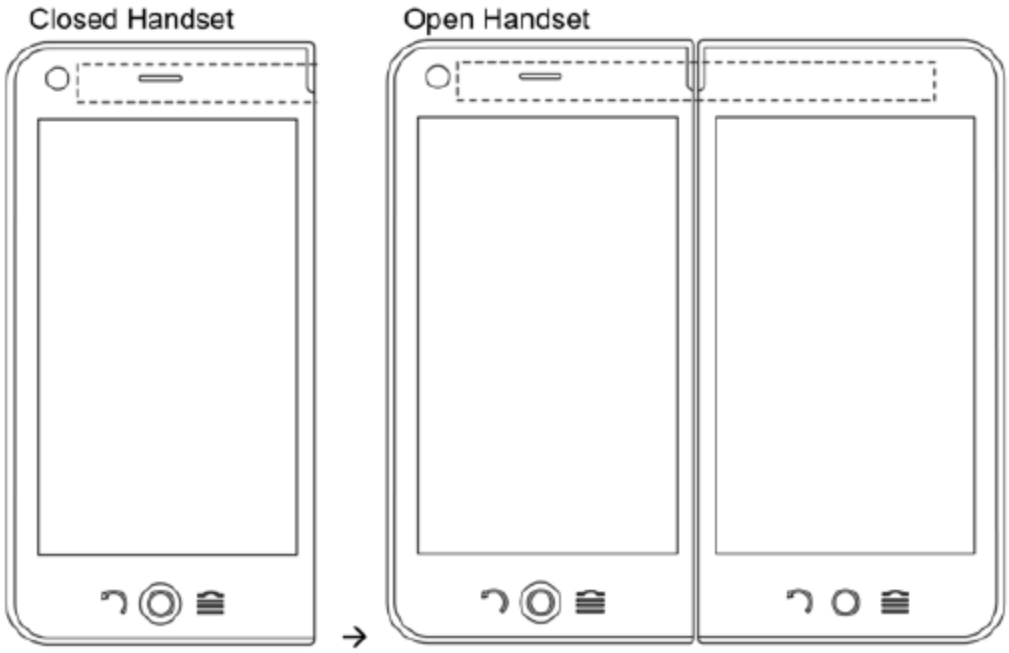
We start with claims 2 and 14. For the following reasons, based on the current record at this stage of the proceeding, Patent Owner has not produced sufficient evidence showing conception or reduction to practice of "a gesture capture region" either "included as part of at least one of the first and second displays of the device" (claim 2) or "located within a second area" of the first and second displays (claim 14).

The ’494 patent explains that “[t]he term ‘screen’ . . . refers to a physical structure that includes one or more hardware components” and ‘can encompass any combination of gesture capture region, touch sensitive display, and /or configurable area.” Ex. 1001, 3:57–72. “A ‘display’ refers to a portion of one or more screens used to display the output of a computer to a user.” *Id.* at 4:22–23. Further, the ’494 patent explains that:

> The term ‘gesture capture’ refers to a sense or otherwise a detection of an instance and/or type of user gesture. The gesture capture can occur in one or more areas of the screen. A gesture region can be on the display, where it may be referred to as a touch sensitive display or off the display where it may be referred to as a gesture capture area.

Id. at 5:4–9. From these disclosures, we understand that claim 2 and claim 14 require the “gesture capture region” to be located “on the display.”

For conception, Mr. Sirpal provides the following sketch of a handset:



Ex. 2001 ¶ 11. The above sketch “shows a handset with the same form factor of the Imerj prototypes.” *Id.*

Mr. Sirpal testifies that "[t]he dual screen handset includes a capacitive gesture strip across the top of *the device* shown by the dashed box in the figure above which can be used for gesture input by a user to navigate through applications running on the device." Ex. 2001 ¶ 11 (emphasis added). Mr. Sirpal's reference to "device" is unclear in the context of claim 2 and claim 14 which, as discussed above, require the gesture capture region to be located "on the display" not "on the device." *See id.* For these reasons, based on the present record at this stage of the proceeding, Patent Owner's evidence in support of conception of claims 2 and 14 is not sufficient to support conception prior to the Seo Provisional filing date.

For reduction to practice, Mr. Sirpal provides the following photograph:

Ex. 2001, 20 (reproducing Ex. 2017). The above is "[a] photo of an EV-1 Imerj smartphone from fall 2010." *Id.* ¶ 31.

Mr. Sirpal testifies that "[t]he gesture strip runs across the top of the two *screens*." Ex. 2001 ¶ 31 (emphasis added); *id.* ¶ 55 (testifying in connection with claim 2 that "[t]he Imerj EV-1 and EV-2 has a gesture

capture bar running across the top of both screens."). However, Mr. Sirpal also testified in connection with claim 14 that "[e]ach display had *a gesture capture region along the top of the display* and a touch display encompassing most of the display below the gesture capture region." *Id.* ¶ 62 (emphasis added). Thus, Mr. Sirpal's testimony concerning whether the gesture capture region in the EV-1 smartphone shown in Exhibit 2017 is located "on the display" or potentially "off the display" is inconsistent and potentially calls into question his credibility on this point. For these reasons, based on the current record at this stage of the proceeding, Patent Owner's evidence in support of conception of claims 2 and 14 is not sufficient to support a reduction to practice for claim 2 and claim 14 prior to the Seo Provisional filing date.

We now turn to claims 1, 4, 6, 9, 10, 12, 13, and 18–20.

For these claims, Patent Owner provides a large amount of evidence of conception and reduction to practice as summarized above including three declarations. Patent Owner does not dispute Petitioner's contention that Mr. Sirpal, Mr. Cassar, and Mr. Becze collaborated in the preparation of the declarations "to confirm their recollections." Prelim. Sur-reply 4. Further, Patent Owner submits that it used Exhibit 2034 and Exhibit 2035 to "refresh[] the independent recollection of Cassar that the claimed functionality was working for its intended purpose before Feb. 20, 2011." *Id.* at 5. Additionally, there is a potential credibility issue with respect to Mr. Sirpal's testimony concerning claims 2 and 14.

Petitioner argues that "[a] better developed record, including cross-examination of the inventor and other declarants would . . . assist the Board in parsing through the voluminous evidence and homing in on the disputed

issues." Prelim. Reply 5. Given the fact that Patent Owner does not dispute that its declarants collaborated in preparing the declarations and that Mr. Cassar's "independent recollection" required refreshing by someone, we agree with Petitioner that our determination of whether or not Seo qualifies as prior art will be assisted by cross-examination of Patent Owner's witnesses as well as any additional evidence that Petitioner may wish to present. Further development of the evidentiary record will be useful to the Board to properly assess credibility of the three declarants and, importantly, to determine whether Mr. Sirpal's testimony is sufficiently corroborated.[9] Patent Owner is free to present additional evidence of conception and reduction to practice in subsequent authorized briefing during trial if it chooses to do so.[10]

As discussed below, we find that Petitioner establishes a reasonable likelihood that claim 2 is anticipated by Seo. Consequently, for the reasons just discussed, we decline Patent Owner's request to deny institution (Prelim. Sur-reply 10) even in light of the issues discussed above with respect to claim 2 and claim 14.

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[9] Patent Owner's reliance (Preliminary Sur-reply 4–5) on the decision in *Shenzhen Buxiang Network Technology Co., LTD. v. Sun Pleasure Co. Limited*, IPR2021-00080, Paper 43 (PTAB April 11, 2022) for the proposition that we should give weight to its declarants testimony at this time is unavailing because *Shenzhen* was a Final Written Decision after the petitioner was afforded an opportunity to take discovery.

[10] Patent Owner is cautioned that any arguments not raised in the Patent Owner Response may be deemed waived. *See In re NuVasive, Inc.*, 842 F.3d 1376, 1379–82 (Fed. Cir. 2016) (holding that a patent owner waived an argument addressed in a preliminary response by not raising the same argument in the patent owner response).

E. Alleged Anticipation of Claims 1, 2, 4, 6, 10, and 12 by Seo

Petitioner provides a chart mapping the limitations of claim 1 to the Seo Provisional. Pet. 12–16. Patent Owner does not address Petitioner's mapping of the Seo Provisional to claim 1. *See generally* Prelim. Resp. We have reviewed Petitioner's mapping and find it reasonable and sufficient for institution.

Petitioner contends that claims 1, 2, 4, 6, 10, and 12 are anticipated by Seo. Pet. 17–43. Petitioner supports its contentions with the Declaration of Dr. Chatterjee. Ex. 1002. Patent Owner does not dispute Petitioner's mapping of Seo to the limitations of claims 1, 2, 4, 6, 10 and 12. *See generally* Prelim. Resp.

We begin with a summary of Seo and then address Petitioner's contentions for independent claim 1 and claim 2 which depends from claim 1.

1. Seo (Ex. 1005)

Seo is titled "Apparatus Including Multiple Touch Screens and Method of Changing Screens Therein." Ex. 1005, code (54). Seo's method displays a first screen in a first touch screen, displays a second screen in a second touch screen, detects multiple touches in the first touch screen, detects continuous movements of the multiple touches from the first touch screen to the second touch screen, and changes the second screen of the second touch screen in response to the continuous movements of the multiple touches. *Id.* at code (57).

Seo's Figure 1 is reproduced below:

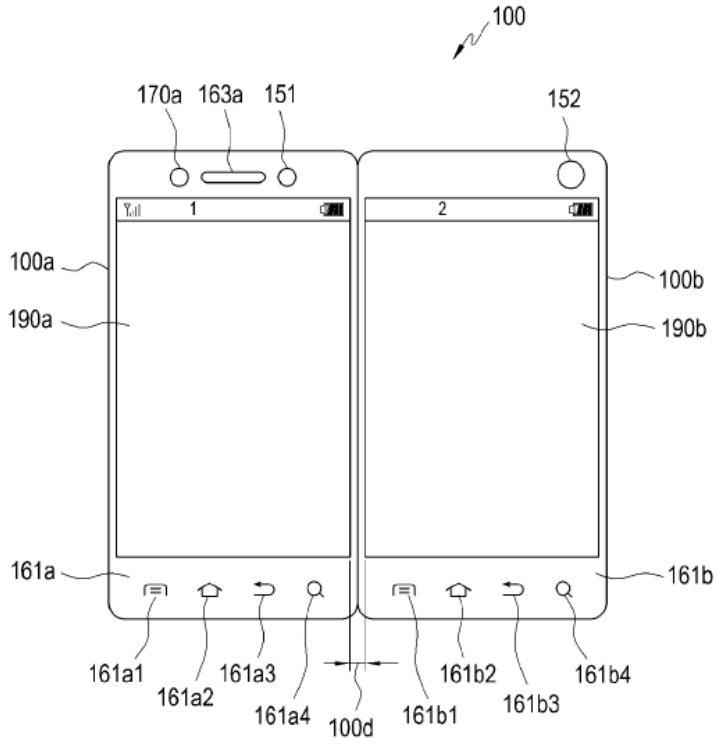


FIG.1

Figure 1 illustrates an apparatus including multiple touch screens. Ex. 1005 ¶ 18.

Figure 8A of Seo is reproduced below:

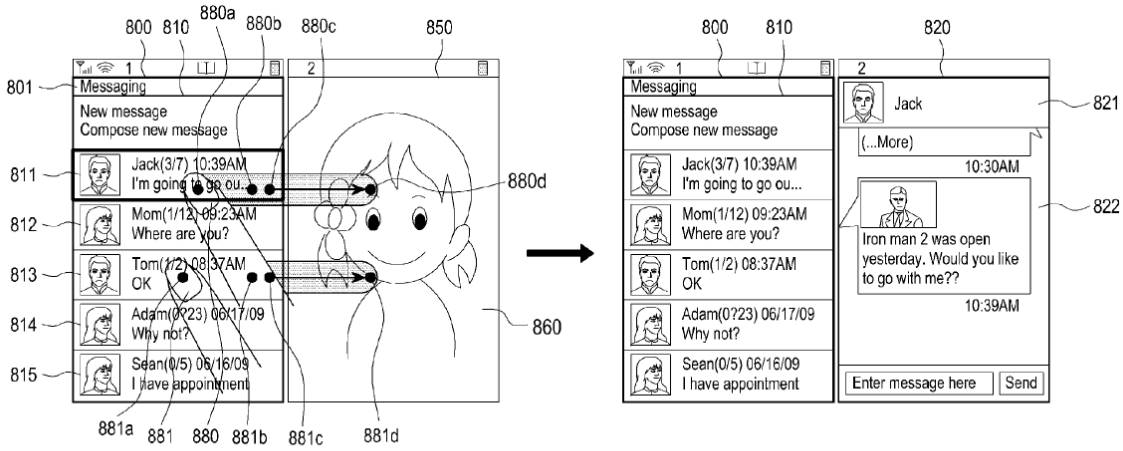


FIG.8A

Figure 8A of Seo illustrates screen images while changing screens of an apparatus including multiple touch screens (such as that shown in Figure 1). Ex. 1005 ¶¶ 25, 97.

Figure 8A illustrates first screen 800 in first touch screen 190*a*. *Id.* ¶ 99. First screen 800 includes a title bar 801 displaying a name of a messenger application and a friend list screen 810. *Id.* Each of the displayed friends 811 to 815 may include a name, a picture, a number of messages, a time of message receipt, and/or a part of a message. *Id.* Second screen 850 is displayed in second touch screen 190*b*, where second screen 850 includes a photo screen 860 that may display multiple photos. *Id.* ¶ 101. First screen 800 and second screen 850 are screens corresponding to separate applications executed in the apparatus 100. *Id.* ¶ 102.

Figure 8A further illustrates a user inputting multiple touches 880 and 881 in first touch screen 190*a*. Ex. 1005 ¶ 104. A controller of the device receives positions 880*a* and 881*a*, e.g., coordinates (x, y), on first screen 800 corresponding to the multiple touches 880 and 881, from touch screen controllers of the device. *Id.* ¶ 105. In Figure 8A, the positions on first screen 800 corresponding to the multiple touches 880 and 881 are in friend list screen 810. *Id.* ¶ 106. The friend corresponding to the position of touch 880 is identified and displayed. *Id.* Movements of the multiple touches in the first touch screen are then detected. *Id.* ¶ 107. In Figure 8A, the multiple touches 880 and 881 are drag & drop gestures or flick gestures in a direction of second touch screen 190*b*. *Id.* ¶ 108. Multiple touches 880 and 881 begin in first touch screen 190*a* and pass through space 100*d* between first touch screen 190*a* and second touch screen 190*b* to arrive at second touch screen 190*b*. *Id.* ¶¶ 111–112.

As a result of multiple touches 880 and 881, a second screen of the second touch screen is changed. Ex. 1005 ¶ 124. More particularly, as shown in Figure 8A, the device's controller changes a second screen 850 to a third screen 820 in response to the arrivals of multiple touches 880 and 881 at positions 880*c* and 881*c* in second touch screen 190*b*. *Id.* ¶ 125. The third screen 820 corresponds to the first screen 800. *Id.* For example, third screen 820 is a detailed screen of friend 811 displayed in friend list screen 810. *Id.* Third screen 820 includes a name region 821 for displaying a photo of a friend and a message region 822 for displaying a time of receipt/transmission of a message from/to a friend, and contents 823 of the received/transmitted message. *Id.*

2. Claim 1

Petitioner provides a limitation-by-limitation analysis of independent claim 1, mapping each claim limitation to Seo. Pet. 17–31.

Patent Owner makes no specific arguments directed toward Petitioner's anticipation ground aside from the arguments discussed above that Seo does not qualify as prior art.

We now address Petitioner's asserted mapping of claim 1 to the disclosure of Seo.

i. [1.pre] "A method for controlling a display of a device, comprising"

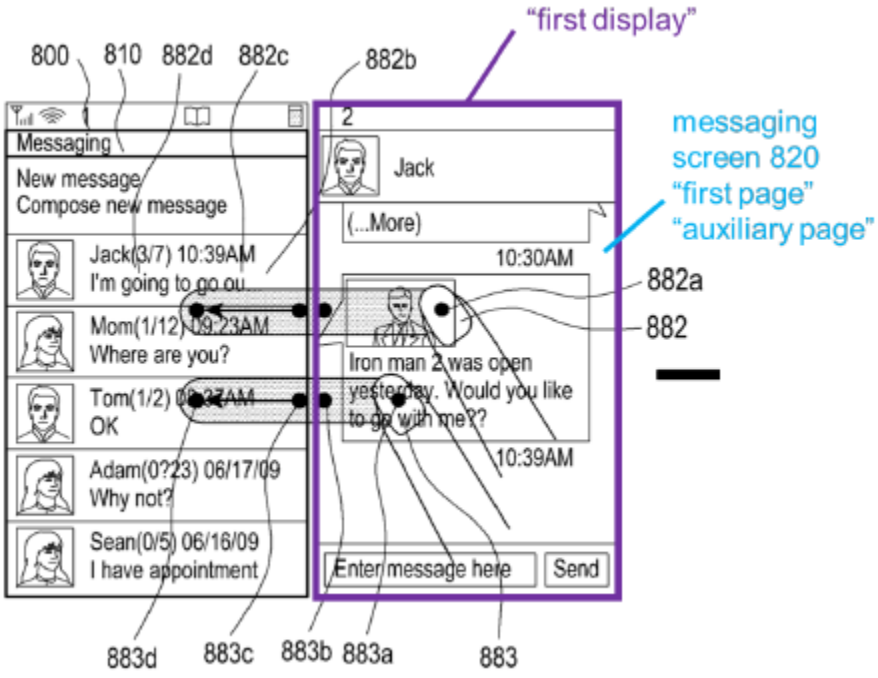
Petitioner contends Seo discloses the subject matter of the preamble because "Seo provides a 'method of changing screens using multiple touch screens' [(190a (left screen) and 190b (right screen) shown in Figure 1)] in response to a user input such as 'multiple touches' [(880/881 in Figure 8A and 882/883 in Figure 8B)]." Pet. 17–19 (citing Ex. 1005 ¶¶ 32–33, 99,

101–126, 130–140, Abstr., Figs. 1, 8A, 8B; Ex. 1006, 34, 38; Ex. 1002 ¶¶ 35–38, 49–50).

We have reviewed Petitioner's contentions and evidence and find, on the present record at this stage of the proceeding, Petitioner sufficiently establishes that Seo discloses the subject matter of the preamble. Consequently, we need not address whether the preamble of claim 1 is limiting.

ii. [1.a] "presenting a first page of a first application on a first display of the device, wherein the first page is an auxiliary page"

Petitioner provides the following annotated excerpt of Seo's Figure 8B:



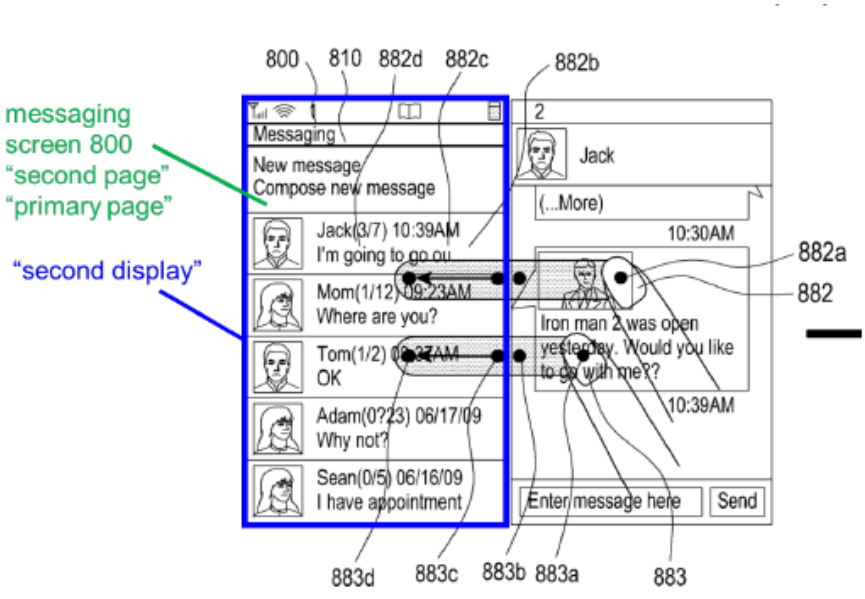
Pet. 20. Figure 8B is a "screen image[] illustrating a method of changing screens of an apparatus including multiple touch screens." Ex. 1005 ¶ 25. Petitioner annotates Figure 8B by placing a purple box around the right screen with purple annotated text stating "first display" and blue annotated text stating "messaging screen 820 'first page' 'auxiliary page.'" Pet. 20.

Petitioner contends Seo discloses this limitation because it "discloses a messaging screen 820 . . . in a portion of the right-side touch screen 190b ('first display') for a specific contact in the main messaging screen 800 on left-side touch screen 190a," and "[t]he messaging screen 820 is a screen of the messaging application ('first application')." Pet. 19–20 (citing Ex. 1005, Fig. 8B; Ex. 1002 ¶ 51). Petitioner next contends that an ordinarily skilled artisan would have understood that "Seo's messaging screen for a specific contact 820 is an 'auxiliary page' to the main messaging screen 800 at least because it is alternatively displayed or hidden in response to a user input, whereas screen 800 is always displayed." *Id.* at 21 (citing Ex. 1002 ¶ 52).

We have reviewed Petitioner's contentions and evidence and find that, on the present record at this stage of the proceeding, Petitioner sufficiently establishes that Seo discloses this limitation.

iii. [1.b] "presenting a second page of the first application on a second display of the device, wherein the second page is a primary page"

Petitioner provides the following annotated excerpt of Seo's Figure 8B:



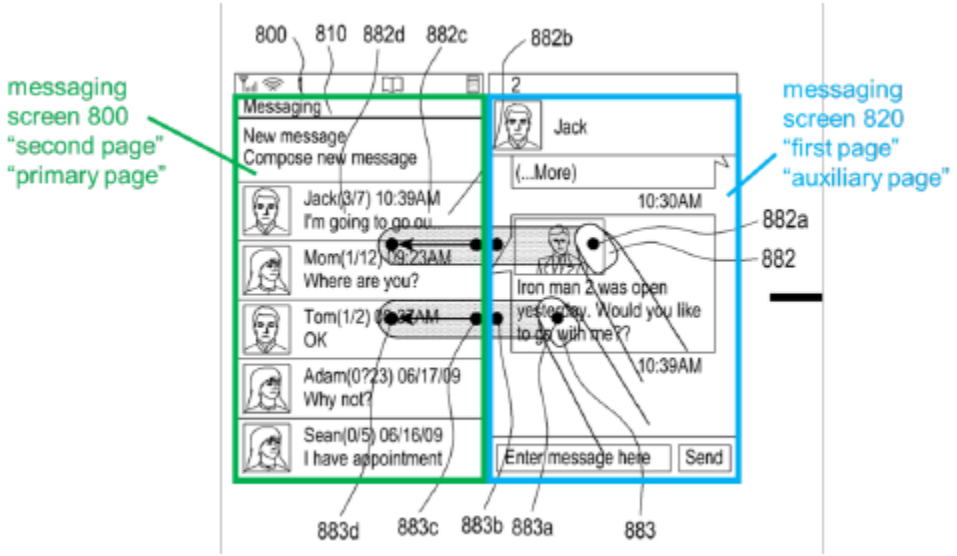
Pet. 25. Figure 8B is a "screen image[] illustrating a method of changing screens of an apparatus including multiple touch screens." Ex. 1005 ¶ 25. Petitioner annotates Figure 8B by placing a blue box around the left screen with blue annotated text stating "second display" and green annotated text stating "messaging screen 800 'second page' 'primary page.'" Pet. 25.

Petitioner contends Seo discloses this limitation because it "discloses a main messaging screen 800 ('second page') including a title bar 801 and friend list screen 810 in the left-side touch screen 190a ('second display')" and "[t]he main messaging screen 800 is a screen of the messaging application ('first application')." Pet. 24 (citing Ex. 1005 ¶ 99, Fig. 8B; Ex. 1002 ¶ 55). Petitioner further contends that an ordinarily skilled artisan would have understood that "Seo's main messaging screen 800 with the contact list is a 'primary page' for similar reasoning described above for the 'auxiliary page.'" *Id.* at 26. According to Petitioner, an ordinarily skilled artisan would have understood from Figures 8A and 8B "that a user could select a contact from the primary messaging screen 800 to view that contact's detailed chat window on an auxiliary messaging screen 820," "the auxiliary screen 820 opens from an input (gesture) started on the messaging screen 800," and "that screen 800 is the primary screen of the two screens (or 'pages')." *Id.* (citing Ex. 1002 ¶ 56; Ex. 1005, Figs. 8A, 8B).

We have reviewed Petitioner's contentions and evidence and find that, on the present record at this stage of the proceeding, Petitioner sufficiently establishes that Seo discloses this limitation.

iv. [1.c] "wherein the first and second pages present different content and are distinct pages, and wherein the auxiliary page is a child of the primary page"

Petitioner provides the following annotated excerpt of Seo's Figure 8B:



Pet. 27. Figure 8B is a "screen image[] illustrating a method of changing screens of an apparatus including multiple touch screens." Ex. 1005 ¶ 25. Petitioner annotates Figure 8B by placing a blue box around the right screen with blue annotated text stating "messaging screen 820 'first page' 'auxiliary page'" and a green box around the left screen with green annotated text stating "messaging screen 800 'second page' 'primary page.'" Pet. 27.

Petitioner contends Seo discloses this limitation because its "first page (messaging screen 820) presents a detailed messaging window for a particular contact, whereas the second page (messaging screen 800) presents a list of contacts, which is different content in distinct pages." Pet. 26–27 (citing Ex. 1005, Fig. 8B). Petitioner further contends that the pages shown in Figure 8B "are unlike Seo's figure 9A, or the '494 patent's figure 6I, where the same content—a single continuous image—is spread across two

displays so that the two pages are not distinct and display portions of the same content (the image)." *Id.* at 28 (citing Ex. 1001, 26:35-44, Fig. 6I; Ex. 1005 ¶¶ 159–160, Fig. 9A). According to Petitioner, based on these differences, an ordinarily skilled artisan "would have recognized Seo's figure 8B embodiment as disclosing 'distinct pages' with 'different content.'" *Id.* (citing Ex. 1002 ¶ 58).

With respect to the limitation "wherein the auxiliary page is a child of the primary page," Petitioner submits that an ordinarily skilled artisan "would have recognized messaging screen 820 as 'a child of the primary page' 800" because "Seo's first/auxiliary page (messaging screen 820) opens via interactions with Seo's primary page (messaging screen 800) that cause the messaging application to expand or maximize onto the second display to show the auxiliary page (messaging screen 820)." Pet. 28–29 (citing Ex. 1005, Fig. 8A; Ex. 1006, 34, 38; Ex. 1002 ¶ 59).

We have reviewed Petitioner's contentions and evidence and find that, on the present record at this stage of the proceeding, Petitioner sufficiently establishes that Seo discloses this limitation.

v. [1.d] "receiving a first input from a user, wherein the first input includes an input to minimize the first application to one of the first and second displays of the device, wherein the second page of the first application is displayed by one of the first display of the device and the second display of the device, and wherein the first page of the first application is not displayed."

Petitioner provides the following annotated version of Seo's Figure 8B:

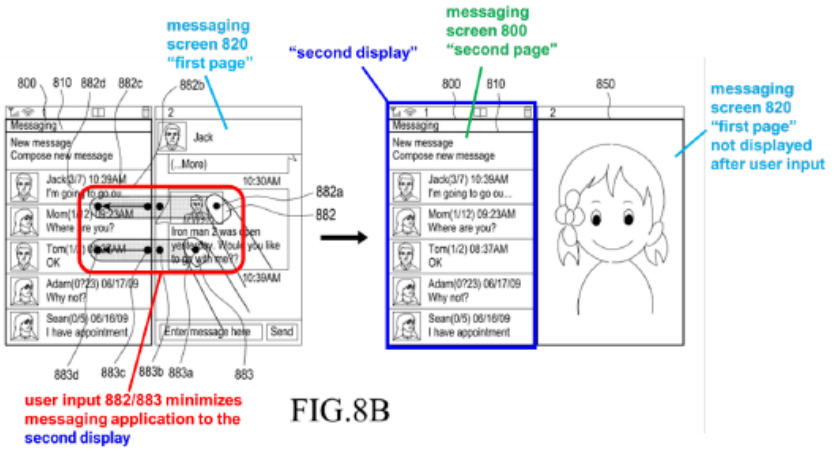


FIG.8B

Pet. 30. Figure 8B is a "screen image[] illustrating a method of changing screens of an apparatus including multiple touch screens." Ex. 1005 ¶ 25. Petitioner annotates Figure 8B by placing a red rectangle in the left side device with blue text "messaging screen 820 'first page'" and red text "user input 882/883 minimizes messaging application to the second display" and placing a blue rectangle around the left screen in the right device with blue text "second display," green text "messaging screen 800 'second page,'" and light blue text "messaging screen 820 'first page' not displayed after user input." Pet. 30.

> Petitioner contends Seo discloses this limitation because
>
> gesture input 882/883 ("a first input from a user") that minimizes the messaging application to the left-side touch screen 190a ("the second display[] of the device"), such that the main messaging screen 800 remains displayed on the left-side touch screen 190a ("second page of the first application is displayed by . . . the second display of the device") and the messaging screen 820 is no longer displayed on the right-side touch screen 190b ("the first page of the first application is not displayed).

Pet. 29 (citing Ex. 1002 ¶ 60; Ex. 1005 ¶¶ 129–130, 137–140, Fig. 8B)

> Petitioner next contends that
>
> Seo explains that "the user inputs the multiple touches 882 and 883" in the "screen 820 of . . . touch screen 190b" . . . which

> changes "screen 820 to . . . screen 850 in response to the arrivals of the multiple touches 882 and 883 at the positions 882c and 883c in . . . touch screen 190a."

Pet. 31 (citing Ex. 1002 ¶ 61; Ex. 1005 ¶¶ 130, 137).

We have reviewed Petitioner's contentions and evidence and find that, on the present record at this stage of the proceeding, Petitioner sufficiently establishes that Seo discloses this limitation.

3. Claim 2

Claim 2 depends from claim 1 and recites "wherein the first input from the user is received in a gesture capture region of the device and wherein the gesture capture region is included as part of at least one of the first and second displays of the device." Ex. 1001, 51:48–51.

Petitioner contends that Seo discloses the limitations of claim 2. Pet. 32 (citing Ex. 1002 ¶ 62). Specifically, Petitioner contends that Seo's

> multiple touch input 882/883 ('first input from the user') is received by the device starting in touchscreen 190b and continuing into touchscreen 190a ('received in a gesture capture region of the device . . . included as part of at least one of the first and second displays of the device.').

Pet. 32 (citing Ex. 1002 ¶ 62; Ex. 1005, Fig. 8B). Petitioner further contends that an ordinarily skilled artisan "would have understood that the multiple touch input 882/883 is a two-finger gesture" and "the area where the gesture input is made is a 'gesture capture region' because the gesture input within that region is detected ('captured') by the device." *Id.* (citing Ex. 1001, 3:60–61, 5:4–9, 9:28–38; Ex. 1002 ¶ 62; Ex. 1008 ¶ 108). Petitioner also cites to the Seo provisional application as supporting claim 2. *Id.* (citing Ex. 1006, 34, 38).

We have reviewed Petitioner's contentions and evidence and find that, on the present record at this stage of the proceeding, Petitioner sufficiently establishes that Seo discloses the limitations of claim 2. As discussed above,

we find that Petitioner sufficiently establishes that Seo discloses the limitations of independent claim 1.

Consequently, based on the present record at this stage of the proceeding, Petitioner establishes a reasonable likelihood that claim 2 is anticipated by Seo.

F. Petitioner's Remaining Challenges

Because we have determined that Petitioner has shown a reasonable likelihood that it would prevail in establishing that at least one challenged claim of the '494 patent is unpatentable and because we have addressed all of Patent Owner's arguments set forth in the Preliminary Response and the Preliminary Sur-reply, we do not reach the remaining challenges at this time.

III. CONCLUSION

Based on the present record, we determine that Petitioner demonstrates a reasonable likelihood that it would prevail in establishing that at least one challenged claim of the '494 patent is unpatentable. We, thus, institute an *inter partes* review of all challenged claims of the '494 patent based on all grounds in the Petition. At this stage of the proceeding, we have not made a final determination under 35 U.S.C. § 318(a) with respect to the unpatentability of any challenged claim.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of the '494 patent is instituted with respect to all challenged claims and the grounds set forth in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(a) and 37 C.F.R. § 42.4(b), *inter partes* review of the '494 patent shall commence on the entry date of this Order, and notice is hereby given of the institution of a trial.

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