

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD., AND
SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner

v.

KEYLESS LICENSING LLC,
Patent Owner

Case IPR2025-00526
U.S. Patent No. 9,304,602

**PATENT OWNER PRELIMINARY RESPONSE
UNDER 37 C.F.R. § 42.107(a)**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
2001	Amended Docket Control Order [43], <i>Keyless Licensing LLC v. Samsung Electronics America, Inc.</i> , Case No. 2:24-cv-00464 (E.D. Tex. Jan. 10, 2025)
2002	Federal Court Management Statistics (December 31, 2024)
2003	Defendants' Invalidity Contentions, <i>Keyless Licensing LLC v. Samsung Electronics America, Inc.</i> , Case No. 2:24-cv-00464 (E.D. Tex. Jan. 29, 2025)
2004	Defendants' Subject Matter Eligibility Contentions, <i>Keyless Licensing LLC v. Samsung Electronics America, Inc.</i> , Case No. 2:24-cv-00464 (E.D. Tex. Jan. 29, 2025)
2005	Complaint [1], <i>Keyless Licensing LLC v. Samsung Electronics America, Inc.</i> , No. 2:24-cb-00464 (E.D. Tex. June 20, 2024)
2006	Order Denying Motion to Stay [52], <i>Keyless Licensing LLC v. Samsung Electronics America, Inc.</i> , No. 2:24-cb-00464 (E.D. Tex. May 30, 2025)
2007	Patent Trial and Appeal Board Appeal Statistics: April 2025, USPTO (Apr. 30, 2025), https://www.uspto.gov/sites/default/files/documents/fy2025_appeal_stats_april2025.pdf
2008	FAQs for Interim Processes for PTAB Workload Management, USPTO (Mar. 26, 2025), https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management
2009	Plaintiff's Opposition to Samsung's Motion to Stay Pending <i>Inter Partes</i> Review [47], <i>Keyless Licensing LLC v. Samsung Electronics America, Inc.</i> , No. 2:24-cb-00464 (E.D. Tex. May 15, 2025)

I. INTRODUCTION

The Board should deny institution of *inter partes* review because Petitioner has not met its burden to show a reasonable likelihood that any of claims 1-13, 15-19, and 21-36 (the “challenged claims”) of U.S. Patent No. 9,304,602 (“the ’602 patent”) are unpatentable. The Petition presents a kitchen-sink approach that includes five invalidity grounds, none of which presents a compelling reason demonstrating that the challenged claims of the ’602 patent are unpatentable.

First, the Jeong reference applied in Grounds 4-5 fails to disclose or suggest every element of independent claims 1 and 19. Specifically, Jeong does not teach presenting a window or zone that functions independently of “an interface of an application.” Jeong does not teach the recited “application,” and therefore cannot teach a window or zone that functions independently of “an interface of an application.” And Petitioner’s two obviousness fallback positions fail to cure this deficiency of Jeong. Further, Petitioner fails to adequately support its conclusory assumptions about Jeong’s tag system.

Second, the Tseng reference applied in Grounds 1-3 also fails to disclose or suggest every element of independent claims 1 and 19. For claim 1, Tseng is deficient because Tseng’s system requires a user to press and then swipe to display the status bar. Because of this, Tseng does not teach a “gliding action provided from outside of the touch screen.” Additionally, Tseng does not teach a “window

[that] functions independently of an interface of an application in use on the touch screen.” For claim 19, Tseng fails to teach that “said zone is located on the touch screen before said gliding action begins.”

Finally, the Petition is further fundamentally flawed because Petitioner fails to account for the difference in claim scope between independent claim 1 and independent claim 19. Namely, claim 19 differs from claim 1 by reciting a system that executes a responsive “*function* related to said zone” rather than an “*action* assigned to said window” as recited in claim 1. In view of these differences, the terms of the independent claims are presumed to have different scope. But Petitioner fails to address any difference in claim scope, instead merely relying on the same theories and teachings for each claim limitation. Petitioner’s failure to adequately account for these differences in the claims renders the Petition’s grounds deficient.

For at least these reasons, Petitioner has not met—and cannot meet—its burden to show a reasonable likelihood that the challenged claims are unpatentable. Proceeding with such a facially flawed Petition would be an inefficient use of Board resources. Accordingly, the Board should deny institution.

II. THE ’602 PATENT

A. The ’602 patent describes and claims a novel way of obtaining and responding to user input from the edge of a touch screen.

Before the ’602 patent’s invention, existing techniques for capturing user

input on “small size” touch interfaces included offering limited key selections or providing “mode keys” to change the meanings of keys on an input interface.

EX1001, 1:45-57, 2:9-12, 2:31-35. These techniques, however, were complicated, slow, and required extensive memorization. *Id.*, 2:41-43, 2:53-55. The ’602 patent improved on these previous methods with a novel way for capturing gilding actions from a user starting from the edge of a touch screen. *Id.*, 7:59-8:02.

The ’602 patent describes how the input interface may be presented independently of an application interface. For example, the ’602 patent describes displaying an input interface over a word processing application. EX1001, 9:17-25. Further, the ’602 patent describes displaying or using keypads over an application to enable the system to “use the whole screen for the output such [as] the text window,” i.e., the word processing application. *Id.*, 61:18-25.

B. Overview of the ’602 Patent Claims

The inventive concepts of obtaining and responding to user input from the edge of a touch screen are recited in independent claims 1 and 19. EX1001, Cl. 1, Cl. 19. Independent claims 1 and 19 recite different claim limitations that relate to different concepts of obtaining and responding to user input from the edge of a touch screen.

For example, claim 1 of the ’602 patent recites a system including “at least one *window*” that “functions independently of an interface of an application in use

on the touch screen.” *Id.*, Cl. 1.¹ After providing a gliding action, the processor will “cause an *action* assigned to said window.” *Id.*

Distinctly, claim 19 of the ’602 patent recites a system including “a *zone*” that, when “a gliding action provided from said zone of the touch screen towards any arbitrary direction,” “the processor executes a *function* related to said zone.” *Id.*, Cl. 19.

Because claims 1 and 19 each recite different claim terms, there is a presumption that the different claim terms have different meanings. *Seachange Int’l, Inc. v. C-COR Inc.*, 413 F.3d 1361, 1368–69 (Fed. Cir. 2005) (“[T]here is still a presumption that two independent claims have different scope when different words or phrases are used in those claims”); *CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG*, 224 F. 3d 1308, 1317 (Fed. Cir. 2000) (“In the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings.”); *Neville v. Foundation Constructors, Inc.*, 972 F. 3d 1350, 1357 (Fed. Cir. 2020) (“While the ‘protrusion’ and ‘end plate’ structures must be connected in some fashion, the use of these ‘two terms in a claim requires that they connote different meanings.’” (citing *Applied*

¹ *Emphasis* added throughout unless otherwise specified.

Med. Res. Corp. v. U.S. Surgical Corp., 448 F.3d 1324, 1333 n.3 (Fed. Cir. 2006))).

C. Person of Ordinary Skill in the Art (POSA)

For purposes of this Preliminary Response, Patent Owner applies Petitioner's level of skill for a person of ordinary skill in the art (POSA). Pet., 9. Patent Owner reserves the right to contest Petitioner's level of skill for a POSA should trial be instituted.

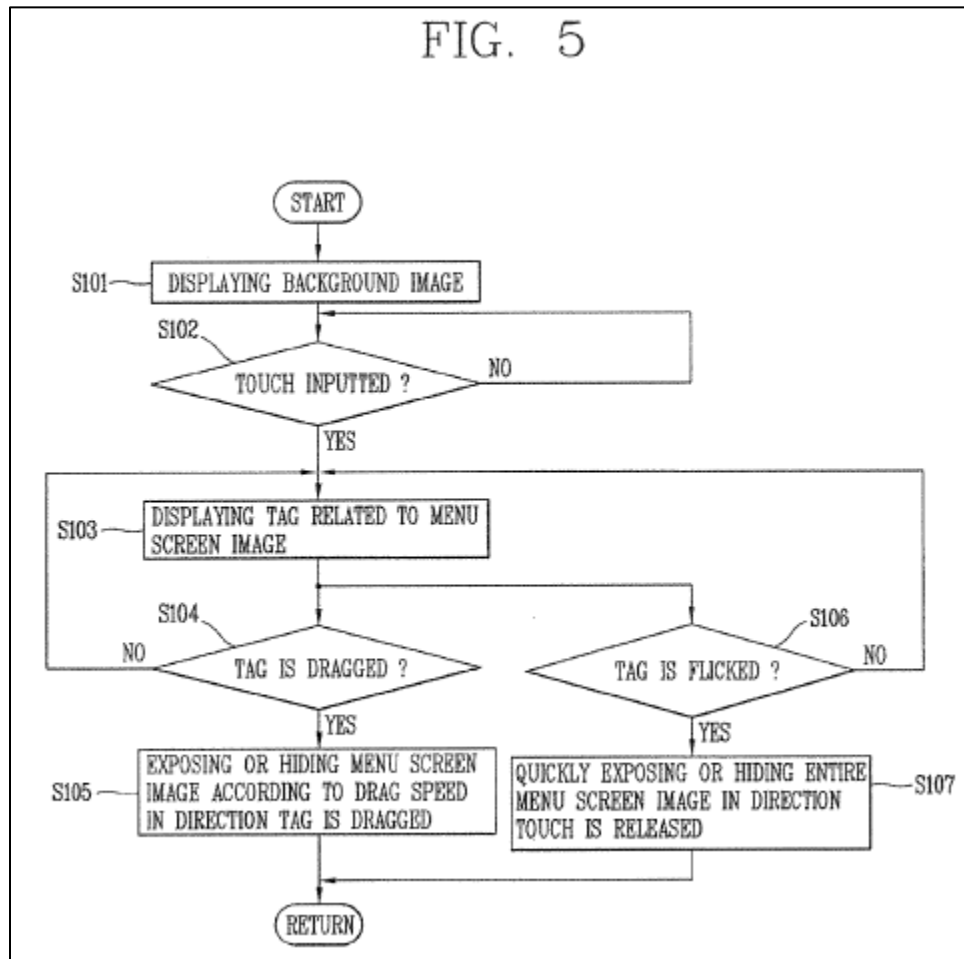
D. Claim Construction

For purposes of this Preliminary Response, Patent Owner agrees the *Phillips* standard applies. See Pet., 9; *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). No express construction is required for the Board to deny institution. See *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Ltd.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017); *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))). Patent Owner reserves the right to contest Petitioner's implicit or explicit constructions should trial be instituted.

III. OVERVIEW OF THE ART APPLIED IN THE PETITION

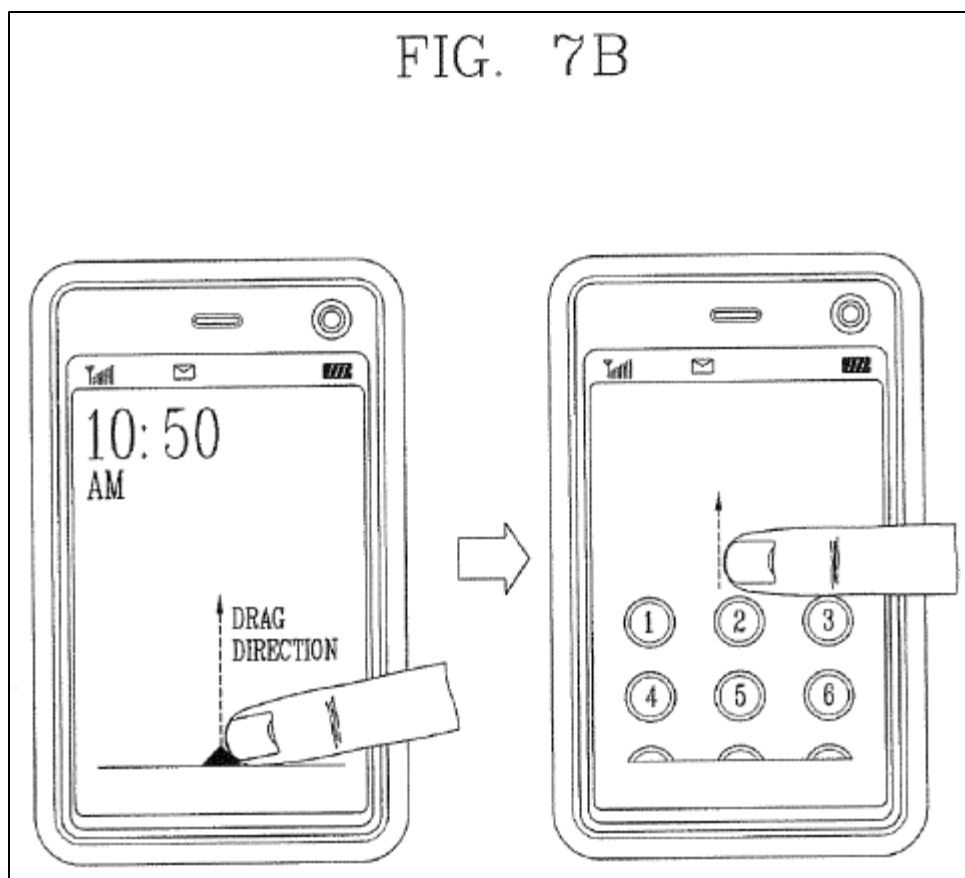
A. Jeong

Jeong is directed to displaying a menu screen based on dragging a tag associated with the menu. As illustrated in Figure 5, Jeong describes revealing the menu over a “background screen image.” *See* EX1010, ¶¶2, 57-60.



EX1010, FIG. 5.

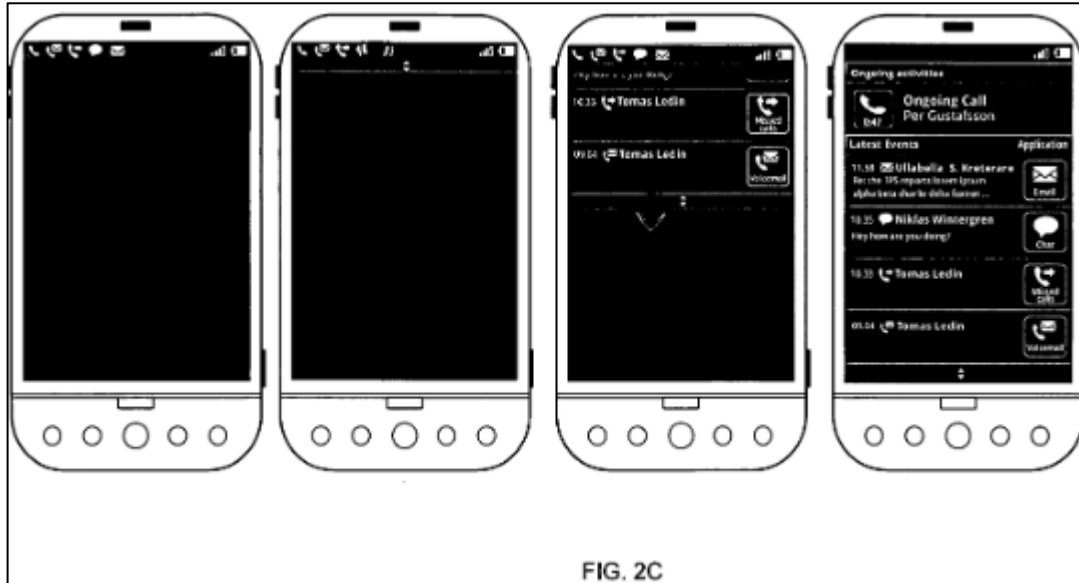
Jeong further illustrates how the menu is displayed over the background screen image in Figure 7B.



EX1010, FIG. 7B.

B. Tseng

Tseng is directed to a user interface on a mobile device “that may be used to alert a user of a mobile device about an event, such as about the presence of a recently-received message, e.g., an e-mail, voice mail, or text message, or other form of event such as a change in song on a music player running in a background state.” EX1005, ¶5. When an “event” occurs, a status bar may display an icon or portion of the message. *Id.*, ¶¶5-7. Tseng further describes enabling a user to reveal a drop down with messages associated with the displayed icons, as shown in Figure 2C. *Id.*, ¶¶57-61, FIG. 2C.



EX1005, FIG. 2C.

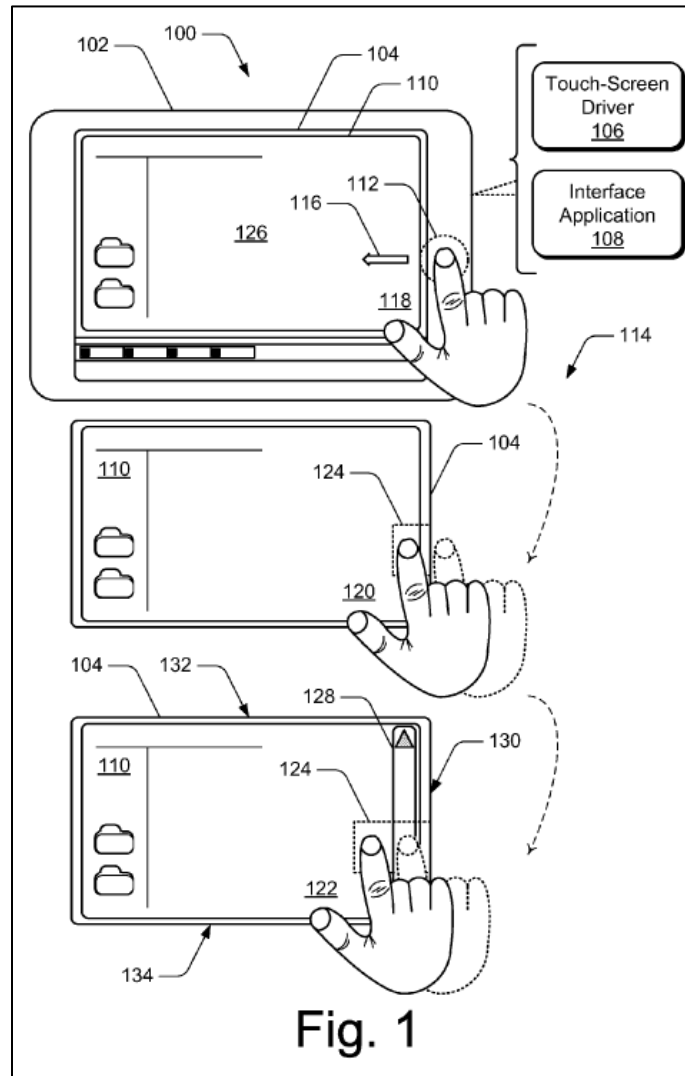
To open the drop down, a user must select the status bar. EX1005, ¶29. To select the status bar, the user must provide a press *then* drag input. *Id.*

C. Wilairat

Wilairat is directed to a “touch pull-in gesture” for a device with a touch screen. EX1006, Abstract. Wilairat describes systems and methods for detecting a touch input from “an edge of a touch-screen and progresses as an expanding contact region from the edge of the touch-screen toward approximately a center region of the touch-screen while the touch input remains in contact with the touch-screen.” *Id.*, ¶3. As shown in Figure 1, “a user of portable device 102 can initiate a touch input 112 with a finger just off an edge of the touch-screen 104 and then motion a pull-in gesture 114 in a direction 116 across the touch-screen.” *Id.*, ¶12, FIG. 1. Based on detecting the gesture, “a contact region 124 progressively

expands, such as illustrated when the hand moves from the edge of the touch-screen at position 118 to position 120, and then from position 120 to position 122.”

Id., ¶12, FIG. 1. For example, in Figure 1, this motion reveals “vertical scrollbar 128.” *Id.*, ¶14.



EX1006, FIG. 1.

D. Hisatomi

Hisatomi is directed to displaying function menus by enabling the user to slide out the menu on a touch screen interface. In particular, Hisatomi describes a process for interpreting the direction of the user's input. For example, in response to a user input that slides down a screen, Hisatomi's "operation stands by to receive Y-coordinate information and ignores the X coordinate." EX1008, ¶65.

IV. GROUNDS 4-5: JEONG DOES NOT TEACH A WINDOW OR ZONE THAT FUNCTIONS INDEPENDENTLY OF "AN INTERFACE OF AN APPLICATION" AS RECITED BY THE INDEPENDENT CLAIMS.

Claim 1 recites a "window [that] functions independently of an application in use on the touch screen" while claim 19 recites a "zone [that] is present on [an] edge regardless of the interface of an application on [a] touch screen." Because Jeong does not present a window or zone over an "application," Jeong does not—and cannot—disclose a window or zone that functions independently of "an interface of an application in use on the touch screen."

First, Jeong's "tags" function over a "background screen image," and therefore do not function relative to or over an application. Second, Petitioner's two obviousness arguments fail to cure this deficiency because neither address Jeong's deficient teaching of functionality relative to an application. Finally, Dr. Bederson's conclusory testimony also fails to address Jeong's deficiencies.

Thus, Grounds 4 and 5 are deficient.²

A. Jeong’s tags function over a “background screen image” rather than an “application.”

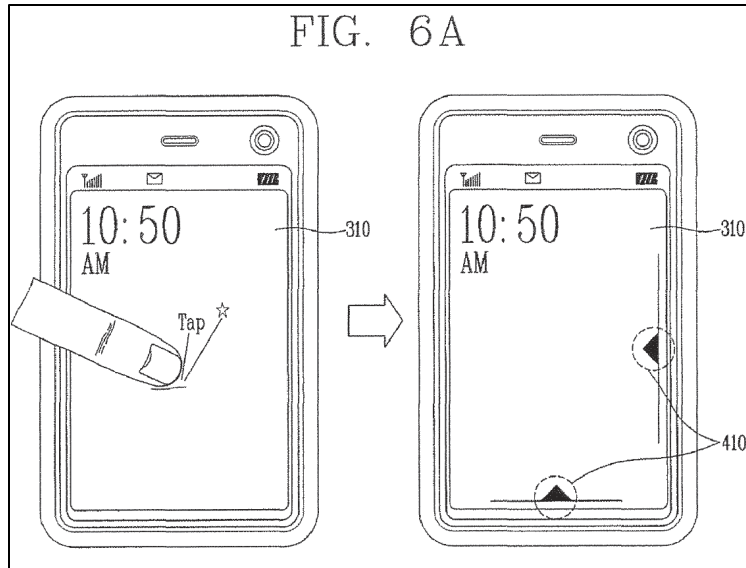
Jeong does not present a window or zone that functions “independently of” or “regardless of” an “application in use on [a] touch screen” because Jeong displays an interface over a static “background screen image” rather than an “application.” EX1010, ¶57. Specifically, Jeong states:

As shown in FIG. 6A, if there is nothing displayed on the *background screen image 310* with respect to a menu item, the user may touch the background screen image 310 to display tags 410 to display a menu screen image 320. That is, *when a touch is inputted with nothing displayed on the background screen image 310, the tags 410 related to the menu screen image 320 are displayed* (S101 to S103).

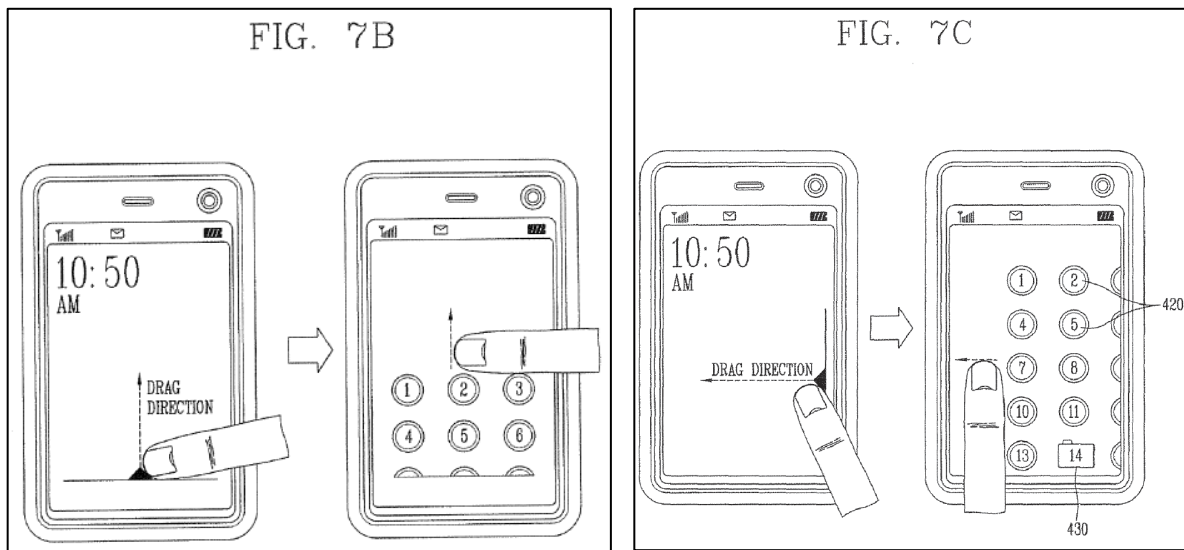
EX1010, ¶57.

Petitioner relies on Jeong’s Figures 6A and 7B-7C, which depict the “background screen image” and functionality described above. Pet., 72-74.

² Ground 5 adds Wilairat to Jeong, but Petitioner does not rely on Wilairat for a window or a zone presented regardless of “an interface of an application on [the] touch screen.” Pet., 101-102. Thus, Wilairat does not cure Jeong’s deficiencies, and Ground 5 is deficient for the same reasons as Ground 4.



EX1010, FIG. 6A.



EX1010, FIGs. 7B-7C.

As Petitioner acknowledges and confirmed by Jeong's description and figures, Jeong displays tags 410 over background screen image 310. Pet., 74; EX1010, ¶¶57-58. Background screen image 310, however, is not an application. First, Jeong does not refer to background screen image 310 as an "application."

Indeed, Jeong never even uses the term “application.” Thus, nothing in Jeong suggests that tags 410 are displayed relative to an “application” as recited in claims 1 and 19.

Moreover, Jeong’s “background screen image” does not function like an application. Rather, Jeong’s background screen image 310 is more akin to a home screen or lock screen, which is static and could potentially be tapped to reveal Jeong’s tags 410. Specifically, Jeong repeatedly states that background screen image 310 is tapped or pressed to reveal tags 410. EX1010, ¶¶57, 65. Jeong states that “the user may *touch the background screen image 310* to display tags 410.” *Id.*, ¶57. Jeong also displays tags 410 “when the background screen image 310 is *touched for a particular time period* and then dragged or flicked.” *Id.*, ¶65. From this description and from Figure 6A, a user is expected to touch or press background screen image 310 to reveal tags 410. This type of press demonstrates that background screen image 310 is not an application because it does not operate as an application.

To illustrate, consider the following counterfactual: if background screen image 310 were the claimed “application,” such a press or an interaction would not display tags 410—rather, such a press in this portion of the screen would amount to an interaction *with the application itself*. That is, a touch in this area of the screen would amount to manipulating an application. Because Jeong reveals tags 410 in

response to a press—rather than illustrating an application reacting to the press—background screen image 310 is not an “application,” as recited in claims 1 and 19.

Thus, because Jeong’s background screen image 310 is not an application, Jeong’s background screen image and tag functionality do not teach displaying a window or zone that functions independently over an application that is in use or displayed on a touch screen.

B. Petitioner’s two obviousness arguments do not address Jeong’s failure to teach the claimed “window” or “zone” operating relative to an “application.”

As previously discussed, Jeong does not display tags over an application because Jeong’s background screen image is not an application. *See* Section IV.A. While Petitioner additionally presents two obviousness theories, both fail to demonstrate that Jeong renders obvious a window or zone that functions “independently of” or “regardless of” an “application in use on [a] touch screen.” Pet., 74, 80-82.

Petitioner’s first obviousness theory is directed to the location of Jeong’s tags on the edge of a touch screen. Pet., 74, 77-79. But this theory says nothing about the placement of the tags over an “application” that is “in use” or displayed “on said touch screen” as recited in claims 1 and 19, respectively. Pet., 78-79. Regardless of where the tags are positioned on a touch screen, Petitioner still does not present any obviousness theory that would account for displaying tags over an

“application.” Therefore, Petitioner’s first obviousness theory does not cure Jeong’s deficiency.

Petitioner’s second obviousness theory relies on a “status bar,” but this theory fails because (1) Jeong provides no suggestion of modifying any area outside of the background screen image to implement tags and (2) this theory improperly incorporates Tseng, which is not part of Ground 4.

Petitioner argues that “Jeong shows a status bar at the top edge of the screen outside of the background image.” Pet., 80. Based on this observation, Petitioner argues—without citing any of Jeong’s actual disclosures outside of figures—that Jeong’s alleged status bar would be updated with notifications “regardless of the application shown on the rest of the touch screen.” *Id.* Petitioner then asserts that “a POSITA would have been motivated to use the area outside of the background image as an active portion of the display, such as for Jeong’s tags.” *Id.*

This theory fails because nothing in Jeong suggests adding the tag functionality to any status bar. Indeed, Jeong does not refer to any “status bar” in its disclosure at all. As explained in Section IV.A, Jeong’s specification explicitly discusses touching the background image—not any other portion of the screen—to reveal the tags. EX1010, ¶57. Given these deficiencies and Jeong’s explicit description of touching the background image to reveal tags, nothing in Jeong suggests that Jeong’s tags would be implemented using a status bar.

Seeming to recognize this deficiency, Petitioner cites Tseng when alleging that it would have been obvious to modify Jeong's alleged status bar to implement tags. Pet., 80-81. To the extent this an attempt to incorporate Tseng into Ground 4, this is improper and the Board should reject it. *Koninklijke Philips N.V. v. Google LLC*, 948 F.3d 1330, 1335-1337 (Fed. Cir. 2020) (holding that the Board erred when instituting *inter partes* review based on a combination of prior-art references not advanced in the petition); *Intel Corp. v. Pact XPP Schweiz AG*, No. 23-1537 at *3-4 (Fed. Cir. 2024) (holding that a prior-art reference that was not advanced as an asserted ground should not be considered by the Board to find a missing limitation). Indeed, Jeong does not recite any "status bar," so to even support any obviousness theory directed to moving Jeong's tag functionality to a status bar, Petitioner would need to include Tseng in Ground 4 and provide a full analysis of this combination. But Petitioner does not.

Instead, Petitioner relies on Dr. Bederson's explanation of how one would modify Jeong based on the teachings of Tseng. See Pet., 80-82; EX1003, ¶¶241-242. However, Dr. Bederson's explanation relies heavily on attempting to map Jeong to the system of Tseng and still does not address Jeong's failure to teach a window or a zone presented regardless of "an interface of an application in use on the touch screen." See EX1003, ¶¶241-242. Petitioner's theory based on Tseng's teachings therefore also fails to render obvious displaying a window or zone that

functions independently over an application that is in use or displayed on a touch screen as recited in claims 1 and 19.

Accordingly, Petitioner's two obviousness theories also fail to address and cure Jeong's deficiencies.

C. Dr. Bederson's conclusory testimony also fails to address Jeong's deficiencies.

Petitioner fails to adequately support its conclusory assumptions about Jeong's tag system. Petitioner merely concludes that a POSA "would have recognized" that Jeong's tags are independent of an application without further explanation. *See* Pet., 74. This conclusory statement is insufficient to meet Petitioner's burden to show that Jeong discloses the claimed features. *TQ Delta, LLC v. Cisco Systems, Inc.*, 942 F.3d 1352, 1359 (Fed. Cir. 2019) ("Rejections on obviousness grounds,' in particular, '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.'" (citing *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)))).

Petitioner relies on Dr. Bederson's declaration to support its conclusory assumption; however, Dr. Bederson merely parrots the Petition:

Pet., 74	EX1003, ¶232.
“A POSITA would have recognized that Jeong’s tags are independent of an application in use on the touch screen because Jeong’s background image and any applications running on it are shown irrespective of the tags’ presence.”	“A POSITA would have recognized that [Jeong’s] tags are independent of an application in use to display the background image on the touch screen because the background image is shown irrespective of the tags’ presence.”

From the comparison above, and further comparison of the Petition and declaration, Dr. Bederson’s testimony on this point is nearly verbatim to what is stated in the Petition and is similarly conclusory and deficient. *Compare* Pet., 74, *with* EX1003, ¶¶232-233. Accordingly, the Board should not credit such testimony. *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (P.T.A.B. August 24, 2022); *TQ Delta, LLC*, 942 F.3d at 1358 (“Conclusory expert testimony does not qualify as substantial evidence.”).

Thus, because Petitioner provides a flawed analysis of Jeong, as applied to independent claims 1 and 19, Grounds 4 and 5 fail.

V. GROUNDS 1-3: TSENG FAILS TO DISCLOSE EVERY ELEMENT OF INDEPENDENT CLAIMS 1 AND 19.

In Tseng, in order to interact with the status bar, a user must “select,” “long press,” or press *then* swipe on the status bar in order to display the menu interface. EX1005, ¶¶29, 39, 48. With this understanding of Tseng’s functionality, Tseng fails to disclose or suggest every element of independent claims 1 and 19 because Tseng does not teach (1) a “gliding action provided from outside of the touch screen,” (2) a “window [that] functions independently of an interface of an application in use on the touch screen,” or (3) a “zone [that] is located on the touch screen before said gliding action begins.”

A. Grounds 1-3 – Claim 1: Tseng’s requirement to press before swiping does not teach the functionality recited in claim 1.

1. In view of Tseng’s required press before swiping, Tseng fails to disclose a “gliding action provided from outside of the touch screen.”

Based on Tseng’s requirement to press a status bar or “status area” prior to activation, Tseng does not explicitly disclose a “gliding action provided from outside the touch screen” as recited in claim 1.

As Petitioner admits in Ground 1, Tseng does not explicitly disclose a “gliding action provided from outside of the touch screen.” Pet., 22-29. This is because Tseng describes the requirement of a press *and then* swiping across the screen in order to reveal the interface. EX1005, ¶29 (“[S]election of the status area may occur by long press on the status area, or by pressing on the status area and

dragging downward”); *see also id.*, ¶¶48 (emphasizing the requirement that the user must “select” the status bar to interact with it), 80-81 (Tseng’s process “waits for a user selection” before displaying alerts or messages). Because Tseng requires a user to select or press the status area before subsequent interactions, there is no suggestion that Tseng would recognize any gliding action from outside of the touch screen, as claimed. EX1005, ¶¶29, 48, 74. Thus, Tseng does not explicitly teach a system that accounts for a “gliding action provided from outside of the touch screen.”

In view of this deficiency, Petitioner asserts an obviousness theory, arguing that a POSA “would have recognized” that such an action “requires no alteration to Tseng’s design because only the starting location of the gliding action changes,” and that such a gesture “would be registered as the press/touch and swipe/drag gesture.” Pet., 28-32. But this theory is also deficient. As previously explained, there is no indication in Tseng that a gliding action starting outside of the touch screen would even be registered as an interaction with Tseng’s status area.

EX1005, ¶29. In view of Tseng’s requirement of an explicit selection of the status area (e.g., via a tap and swipe, a long press, or by “pressing” and subsequently “dragging downward”), Tseng requires an affirmative selection of the status area to initiate interactions. EX1005, ¶¶29, 48. In this manner, Tseng does not describe or even suggest that a swipe starting from outside of the touch screen would be

registered or acknowledged as a selection of the status area. *Id.*

While Petitioner argues it would have been obvious to modify Tseng to include this functionality, what Petitioner's theory actually requires is to again improperly incorporate additional references into Ground 1. Pet., 29-31 (relying on Bezel Swipe, Roth, Wilairat, and Hinckley); *Philips v. Google*, 948 F.3d at 1335-1337; *Intel*, No. 23-1537 at *3-4. Further, Petitioner relies on Dr. Bederson's conclusory testimony to craft theories not based on Tseng's teachings in order to gap-fill Tseng's deficiencies. Pet., 29-31; EX1003, ¶¶110-117.

Thus, in view of Tseng's requirement that its status area must be affirmatively selected or pressed before swiping, Tseng does not disclose a "gliding action provided from outside of the touch screen."

Additionally, for Ground 2, Petitioner fails to demonstrate why a POSA would have been motivated to modify Tseng to include Wilairat because Tseng already defines a process for accepting user input. EX1005, ¶¶29, 48, 74. Petitioner argues that Wilairat discloses revealing a "user interface component" by detecting a "pull-in gesture" when a user "initiate[s] a touch input with a finger just off an edge of the touch-screen and then motion[s] a pull-in gesture across the touch-screen." Pet., 55-56 (citing EX1006, ¶¶9, 12, 15). Based on this observation, Petitioner asserts that a POSA would have modified Tseng to incorporate Wilairat's "pull-in gesture." *Id.* Petitioner's rationale fails to acknowledge that

Tseng explicitly enumerates options for accessing the status area (e.g., selecting the status area via a press or long press) and waits until one of these options is performed. EX1005, ¶¶29, 48, 74, 80-81. Rather than acknowledging Tseng's explicit functionality, Petitioner and Dr. Bederson rely on improper hindsight bias and use the claims as a roadmap when alleging that a POSA would have modified Tseng to incorporate Wilairat's functionality. Nothing in Tseng suggests modifying its options for accessing the status area. Rather, Petitioner has clearly used the '602 patent as a roadmap to argue that a POSA would have been motivated to modify Tseng with Wilairat's pull-in gesture. The Board should reject Petitioner's improper tactic in view of Tseng's clear disclosure.

Outside of improper hindsight bias, Petitioner has not explained why a POSA would have been motivated to modify Tseng to implement a system that can detect a gliding action provided from outside of the touch screen. Because Petitioner has failed to sufficiently establish a motivation to combine Tseng and Wilairat, Ground 2 is deficient.

For Ground 3, Petitioner does not rely on Hisatomi for a "gliding action from outside of the touch screen." Thus, Hisatomi does not cure Tseng's deficiencies, and Ground 3 is deficient for the same reasons as Grounds 1 and 2.

2. In view of Tseng’s required press before swiping, Tseng does not teach a “window [that] functions independently of an interface of an application in use on the touch screen.”

Tseng does not teach a “window [that] functions independently of an interface of an application *in use* on the touch screen,” as recited in claim 1, because the selection of Tseng’s status bar makes an underlying application no longer “in use.”

As described above, Tseng requires a user to select the status bar before swiping in order to reveal the status bar interface. EX1005, ¶¶29, 48. When a user presses the status area, however, the user’s selection of the status bar causes the status bar’s interface to become the interface “in use.” EX1005, ¶¶29, 48. Due to this switch in which interface is “in use,” Tseng does not disclose a window that exists independently while an underlying application is still “in use.” That is, Tseng’s status bar does not function independently of an application that is “in use” because pressing the status bar (i.e., making the status bar “in use”) requires switching out of other applications and causing those other applications to no longer be “in use.” Tseng therefore does not disclose a “window [that] functions independently of an interface of an application *in use* on the touch screen” as recited in claim 1.

In Ground 2, Petitioner does not rely on Wilairat for teaching a “window [that] functions independently of an interface of an application in use on the touch

screen” of claim 1. *See* Pet., 55-60. Thus, Wilairat does not cure Tseng’s deficiencies, and Ground 2 is deficient for the same reasons as Ground 1.

In Ground 3, Petitioner does not rely on Hisatomi for claim 1. *See* Pet., 11. Thus, Hisatomi does not cure Tseng’s deficiencies, and Ground 3 is deficient for the same reasons as Ground 1.

B. Grounds 1-3 – Claim 19: Tseng does not disclose that “said zone is located on the touch screen before said gliding action begins.”

Independent claim 19 recites: “wherein said zone is located on the touch screen before said gliding action begins.” But Tseng does not disclose the claimed “zone.”

As Petitioner has noted, Tseng’s “gliding action” is defined by two components: (1) a user pressing on the status bar and (2) dragging downward. Pet., 24 (citing EX1005, ¶¶13, 29, 41, 53, 59, 74). As indicated in claim 19, however, the claimed zone is located on the touch screen *before* the gliding action begins. EX1001, Cl. 19. Because Tseng first requires pressing the status bar to activate its interface (i.e., start of gliding action), Tseng does not teach an interactive zone that exists on the touch screen *prior to* any gliding action beginning, as recited in claim 19. EX1005, ¶¶29, 48. That is, because Tseng’s user must initiate the zone with the press part of the gliding action, the status bar is not an interactive zone prior to the gliding action beginning. EX1005, ¶¶29, 48. Thus, Tseng’s gliding action (i.e., a press followed by a drag) does not teach that “said zone is located on the touch

screen before said gliding action begins.”

In Ground 2, Petitioner does not rely on Wilairat for claim 19. *See* Pet., 11. Thus, Wilairat does not cure Tseng’s deficiencies, and Ground 2 is deficient for the same reasons as Ground 1.

In Ground 3, Petitioner does not rely on Hisatomi for teaching that “said zone is located on the touch screen before said gliding action begins” of claim 19. *See* Pet., 66. Thus, Hisatomi does not cure Tseng’s deficiencies, and Ground 3 is deficient for the same reasons as Ground 1.

VI. PETITIONER’S GROUNDS FAIL TO ACCOUNT FOR THE DIFFERENCES IN CLAIM SCOPE BETWEEN INDEPENDENT CLAIMS 1 AND 19, AND ARE THEREFORE DEFICIENT.

The Petition here is fundamentally deficient. Petitioner does not meet its burden under 35 U.S.C. § 312(a)(3) because it fails to point out with particularity the evidence that supports the presented grounds. 35 U.S.C. § 312(a)(3); *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (“It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim.’”).

Petitioner fails to adequately address the difference in the independent claim language, where claim 1 recites a “wherein a gliding action provided from outside of the touch screen towards inside of the touch screen ... is processed by said

processor to cause *an action* assigned to said window,” while claim 19 recites “wherein the processor *executes a function* related to said zone.” Pet., 48, 99.

Instead, Petitioner uses conclusory language, presuming the claim language means the same thing. *Id.*, 48, 99; *TQ Delta*, 942 F.3d at 1359.

Independent claim 1 recites “wherein a gliding action provided from outside of the touch screen towards inside of the touch screen . . . is processed by said processor to cause *an action* assigned to said window.” Independent claim 19 recites “wherein the processor *executes a function* related to said zone.”

However, under accepted canons of construction, there is a presumption that different words used in the same claim set have different meanings. *Seachange*, 413 F.3d at 1368–69 (“[T]here is still a presumption that two independent claims have different scope when different words or phrases are used in those claims.”); *CAE*, 224 F. 3d at 1317 (“In the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings.”); *Neville*, 972 F. 3d at 1357 (“While the ‘protrusion’ and ‘end plate’ structures must be connected in some fashion, the use of these ‘two terms in a claim requires that they connote different meanings.’” (citing *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 n.3 (Fed. Cir. 2006))); *Microsoft Corp. v. IPA Techs. Inc.*, No. 2021-1412, 2022 WL 989403 at *6-7 (Fed. Cir. 2022).

Independent claim 1 recites that the processor causes an “action,” while independent claim 19 recites that the processor executes a “function” in response to a finger that is glided over a screen edge. Therefore, there is a presumption that the different claim terms in claim 1 and claim 19 have different meanings.

Petitioner, however, fails to address this, rendering the Petition deficient.

Seachange, 413 F.3d at 1368–69; *CAE*, 224 F. 3d at 1317; *Foundation*

Constructors, 972 F. 3d at 1357; *Microsoft Corp.*, No. 2021-1412, 2022 WL

989403 at *6-7.

A. Grounds 1-3 based on Tseng are deficient because the Petition fails to address the presumption that different terms have different meanings.

Petitioner’s Tseng analysis fails to address the differences in claim scope between independent claims 1 and 19, merely pointing to the same teaching in Tseng for both claim elements. Pet., 48. Indeed, Petitioner cites the same sections of Tseng to allegedly teach “action” of claim 1 and “function” claim 19, providing no explanation to address the presumption that the different terms have different meanings. *See* Pet., 48 (relying solely on the analysis from claim element [1d] for claim element [19d]); *Microsoft Corp.*, 2022 WL 989403 at *7 (“Microsoft, in its petition, said nothing at all to defend the crucial premise that the different wording did not matter”); *Microsoft Corp.*, 2022 WL 989403 at *6 (“[T]here are

potentially meaningful differences in claim language that warrant discussion” that Microsoft failed to address in its petition.).

Petitioner’s assertion that “[a]s explained in [1d], the processor executes the function related to the status bar zone of displaying message area 206/224 in response to the user’s gliding action” is conclusory. Pet., 48. It does not appreciate that a “function” is a recited claim term that differs from an “action” as recited in claim 1. Pet., 48; EX1003, ¶169; *Microsoft Corp.*, 2022 WL 989403 at *6-7. Dr. Bederson’s Declaration does not provide any further support or explanation. EX1003, ¶169; 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.”); *Xerox Corp.*, IPR2022-00624, Paper 9 at 15-16; *Upjohn Co. v. Mova Pharm. Corp.*, 225 F.3d 1306, 1311 (Fed. Cir. 2000) (“Lack of factual support for expert opinion going to factual determinations, however, may render the testimony of little probative value in a validity determination.” (quoting *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 294 (Fed. Cir. 1985))); *TQ Delta, LLC*, 942 F.3d at 1359 (“Conclusory expert testimony does not qualify as substantial evidence.”).

Rather, the declaration merely repeats the Petition as shown below:

Pet., 48	EX1003, ¶169.
“As explained in [1d], the processor executes the function related to the status bar zone of displaying the message area 206/224 in response to the user’s gliding action.”	“As I explain in [1d], Tseng’s processor executes the function related to the status bar zone of displaying the message area 206/224 in response to the user’s gliding action.”

Dr. Bederson’s testimony is nearly verbatim to the Petition and is similarly conclusory and deficient. Accordingly, the Board should not credit such testimony. *Xerox Corp.*, IPR2022-00624, Paper 9 at 15 (repeating “verbatim” conclusory assertions from the Petition in a declaration is conclusory and unsupported, and therefore entitled to little weight); *Upjohn Co.*, 225 F.3d at 1311; *TQ Delta, LLC*, 942 F.3d at 1359.

Therefore, at the very least, Petitioner fails to meet its burden of showing that Tseng discloses the recited “function” of claim 19.

In Ground 2, Petitioner does not rely on Wilairat for the “action” of claim 1 or “function” of claim 19. *See* Pet., 55-57. Thus, Wilairat does not cure Tseng’s deficiencies, and Ground 2 is deficient for the same reasons as Ground 1.

In Ground 3, Petitioner does not rely on Hisatomi for the “action” of claim 1 or “function” of claim 19. *See* Pet., 60. Thus, Hisatomi does not cure Tseng’s deficiencies, and Ground 3 is deficient for the same reasons as Ground 1.

B. Grounds 4-5 based on Jeong are similarly deficient because the Petition fails to address the presumption that different terms have different meanings.

Petitioner’s Jeong analysis similarly fails to address the differences in claim scope, again merely pointing to the same teachings in Jeong for both claim elements. Petitioner cites the same sections of Jeong as allegedly teaching the “action” of claim 1 and “function” of claim 19. *See* Pet., 99. Yet Petitioner provides no explanation to address the presumption that the different terms have different meanings. *Microsoft Corp.*, 2022 WL 989403 at *7 (“Microsoft, in its petition, said nothing at all to defend the crucial premise that the different wording did not matter[.]”); *id.* at *6 (“[T]here are potentially meaningful differences in claim language that warrant discussion” that Microsoft failed to address in its petition.).

Like Grounds 1-3, Petitioner’s assertion that “[a]s explained in [1d], *Jeong*’s processor executes the function related to the tag 330/410 of displaying the menu screen image in response to the user’s gliding action” is conclusory. Pet., 99. It does not appreciate the different claim terms “action” of claim 1 and “function” of claim 19. *Id.*; EX1003, ¶300; *Microsoft Corp.*, 2022 WL 989403 at *6-7. And

again, Dr. Bederson’s Declaration does not offer any further support or explanation. *See* EX1003, ¶300; 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.”); *Xerox Corp.*, IPR2022-00624 at 15-16; *Upjohn Co.*, 225 F.3d at 1311; *TQ Delta, LLC*, 942 F.3d at 1359.

As with Grounds 1-3, the declaration merely repeats the Petition, as shown below:

Pet., 99	EX1003, ¶300.
“As explained in [1d], Jeong’s processor executes the function related to the tag 330/410 of displaying the menu screen image in response to the user’s gliding action.”	“As I explain in [1d], Jeong’s processor executes the function related to the tag 330/410 of displaying the menu screen image in response to the user’s gliding action.”

Again, Dr. Bederson’s testimony is nearly verbatim to the Petition and is similarly conclusory and deficient. Accordingly, the Board should not credit such testimony. *Xerox Corp.*, IPR2022-00624, 15 (repeating “verbatim” conclusory assertions from the Petition in an expert declaration is conclusory and unsupported, and therefore entitled to little weight); *Upjohn Co.*, 225 F.3d at 1311; *TQ Delta, LLC*, 942 F.3d at 1359.

Therefore, at the very least, Petitioner has failed to meet its burden of showing that Jeong teaches the recited “function” of claim 19.

In Ground 5, Petitioner does not rely on Wilairat for the “action” of claim 1 or “function” of claim 19. *See* Pet., 101-102. Thus, Wilairat does not cure Jeong’s deficiencies, and Ground 5 is deficient for the same reasons as Ground 4.

VII. IF THE BOARD FINDS THAT PETITIONER FAILS TO MEET ITS BURDEN FOR LESS THAN ALL OF THE CHALLENGED CLAIMS AND/OR PROPOSED GROUNDS, THE BOARD SHOULD DENY THE INSTITUTION TO CONSERVE RESOURCES.

Patent Owner identifies numerous deficiencies in Petitioner’s arguments above. Should the Board determine that Petitioner met its burden for some claims or Grounds, but failed to meet its burden for other claims or Grounds, the Board should still deny institution to conserve the Board’s valuable resources. *See* Interim Processes for PTAB Workload Management Memorandum, 3 (March 26, 2025) (the “Interim Processes Memo”); *Chevron Oronite Co. LLC v. Infineum USA L.P.*, IPR2018-00923, Paper 9 at 10–11 (P.T.A.B. Nov. 7, 2018).

Pursuant to 35 U.S.C. § 314(a), an *inter partes* review may not be instituted “unless ... the information presented in the petition ... and any response ... 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.” But even when a petitioner demonstrates a reasonable likelihood of prevailing with respect to one or more claims, institution of review remains discretionary. *SAS Inst. Inc. v. Iancu*, 138 S.

Ct. 1348, 1356 (2018) (“[Section] 314(a) invests the Director with discretion on the question whether to institute review” (emphasis omitted)); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) (“[T]he PTO is permitted, but never compelled, to institute an IPR proceeding.”). 35 U.S.C. § 316(b) also provides that, when determining whether to exercise its discretion, the Board should consider the effect of any regulations on “the efficient administration of the Office [and] the ability of the Office to timely complete proceedings.”

Additionally, 37 C.F.R. § 42.1(b) provides that the Board should also take into account the requirement to construe the rules to “secure the just, speedy, and inexpensive resolution of every proceeding.” The Consolidated Trial Practice Guide also explains that the Board may consider the number of claims and grounds that meet and do not meet the reasonable likelihood standard when deciding whether to institute *inter partes* review under 35 U.S.C. § 314(a). Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019, 64 (Nov. 20, 2019), available at <https://www.uspto.gov/TrialPracticeGuideConsolidated> (“CTPG”) (“[T]he panel will evaluate all the challenges and determine whether, in the interests of efficient administration of the Office and integrity of the patent system, the entire petition should be denied.”).

Here, should the Board determine that Petitioner failed to meet its burden of establishing unpatentability for some but fewer than all of the challenged claims of

the '922 patent as discussed in Sections IV and V, the Petition should still be denied in order to conserve the Board's valuable time and resources. *See* Interim Processes Memo, 3; *Deeper, UAB. v. Vexilar, Inc.*, IPR2018-01310, Paper 7 at 43 (P.T.A.B. Jan. 24, 2019) (finding that because Petitioner only demonstrated a reasonable likelihood of prevailing with respect to a subset of the 23 challenged claims, "instituting a trial with respect to all twenty-three claims ... would not be an efficient use of the Board's time and resources"). Similarly, should the Board determine that Petitioner has failed to meet its burden of establishing unpatentability for some but not all Grounds, the Petition should again be denied in order to conserve the Board's valuable time and resources. *See* Interim Processes Memo, 3; CTPG, 64; 35 U.S.C. § 316(b); 37 C.F.R. § 42.1(b).

VIII. CONCLUSION

The Petition fails to show a reasonable likelihood that the challenged claims are unpatentable as obvious in view of the cited art and, therefore, the Board should deny institution.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT (37 C.F.R. § 42.24(d))

1. This Patent Owner Preliminary Response complies with the type-volume limitation of 14,000 words, comprising 7,003 words, excluding the parts exempted by 37 C.F.R. § 42.24(a)(1).

2. This Patent Owner Preliminary Response complies with the general format requirements of 37 C.F.R. § 42.6(a) and has been prepared using Microsoft® Word 2016 in 14-point Times New Roman font.

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

I certify that the above-captioned **PATENT OWNER PRELIMINARY
RESPONSE UNDER 37 C.F.R. § 42.107(a)** was served in its entirety on July 9,
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