

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO. LTD. and SAMSUNG ELECTRONICS
AMERICA, INC.,

Petitioners

v.

MOBILE DATA TECHNOLOGIES LLC,

Patent Owner

IPR2025-00542
U.S. Patent No. 9,922,348

PATENT OWNER'S PRELIMINARY RESPONSE

35 U.S.C. § 313, and 37 C.F.R. § 42.107(a)

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EXHIBIT LIST

Ex.	Description
2001	E-mail serving amended infringement contentions in EDTX-Litigation
2002	Comparison between the specifications of the '348 and '578 Patents
2003	Petition for <i>Inter Partes</i> Review in IPR2025-00541 (Feb. 6, 2025)
2004	Reserved
2005	Return of Service filed in the EDTX-Litigation (June 21, 2024)
2006	E-mail from the Board regarding the 541 and 542 IPR panel assignments (May 2, 2025)
2007	Decision Granting Institution of <i>Inter Partes</i> Review in IPR2024-00250 (June 11, 2024)
2008	E-mail from Erick S. Robinson memorializing the phone conversation with Petitioners' counsel (September 26, 2024)
2009	Reserved
2010	Reserved
2011	Reserved
2012	Reserved
2013	E-mail exchange between Erick S. Robinson and Petitioners' counsel regarding a stay (October 17, 2024)
2014	E-mail exchange between Erick S. Robinson and Petitioners' counsel regarding a stay (February 19, 2025)
2015	E-mail exchange between Erick S. Robinson and Petitioners' counsel wherein Petitioners shared their motion to stay with Patent Owner (March 4, 2025)
2016	Second Amended Docket Control Order in the EDTX-Litigation (December 19, 2024)
2017	United States District Courts — National Judicial Caseload Profile (March 31, 2025)
2018	E-mail from Petitioners' counsel serving their initial and additional disclosures (October 16, 2024)
2019	E-mail from Petitioners' counsel serving their invalidity contentions (January 31, 2025)
2020	E-mail from Petitioners providing materials produced by third-party Microsoft Corporation and Sybase, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (April 25, 2025)
2021	E-mail from Petitioners providing materials produced by third-party Casio America, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (March 7, 2025)

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2022	E-mail from Petitioners providing materials produced by third-party Sony Electronics, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (February 24, 2025)
2023	E-mail from Petitioners providing materials produced by third-party Casio America, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (February 21, 2025)
2024	E-mail from Petitioners providing materials produced by third-party Sony Electronics, Inc. in response to Petitioners' subpoena in the EDTX-Litigation (February 11, 2025)
2025	E-mail from Petitioners providing materials produced by third-party AT&T Mobility LLC in response to Petitioners' subpoena in the EDTX-Litigation (February 5, 2025)
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2027	Petitioners' Invalidity Contentions in the EDTX-Litigation (January 31, 2025)
2028	E-mail exchange between Homayoon Rafatijo and Petitioners' counsel regarding Petitioners' contacting the Board for filing their proposed <i>Sotera</i> stipulation (April 21-23, 2025)
2029	E-mail from Petitioners' counsel with a draft of a proposed communication to the Board (April 30, 2025)
2030	E-mail from Petitioners' counsel sharing with Patent Owner their proposed <i>Sotera</i> stipulation (April 21, 2025)
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2032	Petitioners' proposed <i>Sotera</i> stipulation for '541 and '542 IPRs (April 21, 2025)
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2036	E-Mail from Petitioners providing Casio America, Inc.'s declarations certifying business records in response to Petitioners' subpoena in the EDTX-Litigation (May 9, 2025)
2037	Joel West & David Wood, <i>EVOLVING AN OPEN ECOSYSTEM: THE RISE AND FALL OF THE SYMBIAN PLATFORM</i> (2013)
2038	Bradston Henry, <i>Multiplayer Server Basics Creating a Multiplayer Game Server - Part 1</i> (Oct. 25, 2021),

Ex.	Description
	https://dev.to/ibmdeveloper/multiplayer-server-basics-ep-1-creating-a-multiplayer-game-server-5aed
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2041	Redacted version of Samsung's Motion for Relief from Protective Order filed in the EDTX-Litigation (May 29, 2025)
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2050	Petitioners' expert declaration from the '538 IPR
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Pursuant to 35 U.S.C. § 313 and 37 C.F.R. § 42.107(a), Mobile Data Technologies, LLC (“Patent Owner” or “MDT”) submits this Preliminary Response to the Petition for Inter Partes Review (“IPR”) of U.S. Patent No. 9,922,348 (the “’348 Patent”), filed by Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc. (collectively, “Petitioners”), challenging claims 1-2, 6-9, 12-14, and 17-18 (the “Challenged Claims”). Paper 4, 2 (“’542 IPR Petition” or “Petition”). Institution should be denied because Petitioners fail to meet their burden to show a reasonable likelihood they would prevail with respect to at least one claim challenged in the Petition.

I. INTRODUCTION

A. Summary

Petitioners present improper combinations, mixing distinct embodiments without acknowledgment and arguing motivations that are illogical. Petitioners also fail to identify teachings in the cited art that correspond to explicit claim limitations, including 1) “web-based shared information channel” and 2) “personalized content application.” These are each independent reasons for why an IPR trial should not be instituted.

Furthermore, Petitioners have failed to provide a reasoned analysis of how and why a person of ordinary skill in the art (“POSITA”) would combine the prior art for at least two distinct reasons. First, Petitioners have failed to provide a

reasoned analysis that would have motivated a POSITA to combine Randall and Forsyth or Pelkey and Eck. Second, Petitioners have also failed to provide any meaningful discussion of a reasonable expectation of success, which is a separate and distinct point of analysis in any obviousness inquiry. Because Petitioners have not met their burden, institution of this IPR should be denied.

B. The '348 Patent

The '348 Patent is titled Method, Apparatus and System for Management of Information Content for Enhanced Accessibility Over Wireless Communication Networks, and was issued by the U.S. Patent & Trademark Office on March 20, 2018. Ex.1001 (face).

In one embodiment, the '348 Patent describes a method that enables a mobile device user to transfer data captured by the mobile device to a server for integration into a web-based information channel so that the mobile device user can interact with one or more additional users.

The '348 Patent also describes integrating at least first and second-device captured data into the web-based shared information channel via respective personalized content applications.

II. PETITIONERS HAVE NOT DEMONSTRATED A REASONABLE LIKELIHOOD OF PREVAILING ON ANY CLAIM CHALLENGED IN GROUND 1 OR 2

Petitioners assert two obviousness grounds of unpatentability. Petition, 2. For this Response, the Board need only consider the validity of independent claims 1, 13, and 17. As discussed below, MDT and its expert Mahdi Eslamimehr, Ph.D (Ex.2051) demonstrate that the Petition fails to establish a reasonable likelihood that Petitioners will prevail and thus an IPR trial should not be instituted.

A. Relevant Legal Principles

It is Petitioners' burden to show why the challenged claims are unpatentable. *Harmonic Inc. v Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016). The PTAB Consolidated Trial Practice Guide ("CTPG") advises that a petitioner must "focus on *concise, well-organized, easy-to-follow arguments supported by readily identifiable evidence* of record." CTPG, 39. It is Petitioners' duty to provide sufficient grounds for the institution of a review "focus[ing] on concise, well organized, easy-to-follow arguments supported by readily identifiable evidence of record." *Cisco Sys., Inc. v. C-Cation Tech, LLC*, IPR2014-00454, Paper 12, 11 (P.T.A.B. Aug. 29, 2014).

The ultimate determination of obviousness under 35 U.S.C. §103 is a question of law based on underlying factual findings. *In re Baxter Int'l, Inc.*, 678 F.3d 1357, 1362 (Fed. Cir. 2012) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966)).

“To satisfy its burden of proving obviousness, a petitioner cannot employ merely conclusory statements. The petitioner must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380-81 (Fed. Cir. 2016).

The “factual inquiry” into the reasons for “combin[ing] references must be thorough and searching, and the need for specificity pervades.” *In re NuVasive, Inc.*, 842 F.3d 1376, 1381-82 (Fed. Cir. 2016) (internal quotations and citations omitted). The specific reasoning must include some rational underpinning to combine the prior art elements as claimed to support the conclusion of obviousness. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). In addition, the references must be viewed without the benefit of hindsight vision afforded by the claimed invention. *See, e.g., W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983); *Interconnect Plan. Corp. v. Feil*, 774 F.2d 1132, 1143 (Fed. Cir. 1985) (“When prior art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself.”); *see also, e.g., Kinetic Concepts, Inc., v. Smith and Nephew, Inc.*, 688 F. 3d. 1342, 1369 (Fed. Cir. 2012).

For a combination of prior art references to render a claimed invention obvious, at the time the invention was made, a POSITA must have (1) been motivated to combine the teachings of the prior art references and (2) had a

reasonable expectation of success in making such combination. *See, e.g., Samsung Elecs. Co., v. Elm 3DS Innovations, LLC*, 925 F.3d 1373, 1380-81 (Fed. Cir. 2019) (holding that a patent challenger must show both a motivation to combine and a reasonable expectation of success; affirming Board’s finding of lack of reasonable expectation of success despite that the references were in the “same technological field”); *Eli Lilly & Co v. Teva Pharm. Int’l GmbH*, 8 F.4th 1331, 1344 (Fed. Cir. 2021) (“[W]e must first emphasize the clear distinction in our case law between a patent challenger's burden to prove that a skilled artisan would have been motivated to combine prior art references and the additional requirement that the patent challenger also prove that the skilled artisan would have had a reasonable expectation of successfully achieving the claimed invention from the combination.”); *see also Procter & Gamble Co. v. Teva Pharms. USA, Inc.*, 566 F.3d 989, 994 (Fed. Cir. 2009) (“A party seeking to invalidate a patent based on obviousness must demonstrate ‘by clear and convincing evidence that a skilled artisan would have been motivated to combine the teachings of the prior art references to achieve the claimed invention, and that the skilled artisan would have had a reasonable expectation of success in doing so.’ ” (quoting *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1361 (Fed. Cir. 2007))). It is Petitioners’ burden to demonstrate **both** a motivation to combine **and** a reasonable expectation of success.

See In re Magnum Oil Tools, 829 F.3d at 1381. Mere conclusory statements are insufficient. *Id.*, at 1380.

B. The Petition Fails to Set Forth the Grounds with the Required Particularity

Instead of presenting a particularized argument and “specify[ing] where each element of the claim is found in the prior art patents or printed publications relied upon” as required by 37 C.F.R. §42.104(b)(4), the Petition parses claim elements, addresses terms out of context, and jumps between disparate discussions in the references. The Petition is anything but “concise, well-organized, easy-to-follow arguments supported by readily identifiable evidence.” CTPG, 39.

For example, Petitioners impermissibly blend the disclosure of Randall with that of Forsyth when discussing the “Forums server.” Petitioners cannot argue that “the Forums server” provides features disclosed in Randall and features disclosed in Forsyth, without addressing the combination, which Petitioners failed to do. *See, e.g., Intel Corp. v. Tela Innovations*, IPR2019-01521, Paper 65, 25 (P.T.A.B. Mar. 9, 2021) (“**It is not sufficient to demonstrate that each of the components in a challenged claim is known in the prior art; Petitioner must also explain why a POSITA would have combined the elements** disclosed in the separate embodiments described in [a single reference].”).

In the context of independent claim 1, Petitioners argue “The Randall-Forsyth combination, as informed by general knowledge of a POSITA, teaches or at least suggests an ‘*apparatus*’ (server) includes ‘a processing element....” Petition, 17. The Petition refers repeatedly to the “Forums server,” as if it were a single, identified server. *Id.*, 18 (“***The Forums server*** performs...”). But here, again, despite discussing a singular “Forums server,” the Petition ambiguously refers to servers of each of Forsyth and Randall and cites to its expert’s equally ambiguous discussion of both. *Id.* citing Ex.1003, ¶88; *see also id.* (“***the server*** includes ‘a memory’...”; “***The Forums server*** acts as ‘a store for resources...”). While Petitioners point to the “Private Forum Server” in Randall, Figure 4, they also quote from Forsyth in describing the “server.” *See* Petition, 18 (“Specifically, the Forums server acts as ‘a store for resources which group-members may wish to discuss and share (e.g., personal information, personal photographs, music, web sites, etc.).” citing 3:31-34). This portion of Forsyth describes a “central server,” also described as a “remote server ... designed to handle all aspects of storing and forwarding messages to the intended recipients, maintaining message [sic, message] threads and making then [sic, them] readable to recipients etc.” 3:21-24. This server is not illustrated in any of Forsyth’s figures and is not referred to as the “private Forum server” of Randall, so the Petition fails to establish which disclosure of either reference allegedly

corresponds to the apparatus required by limitations 1[A] and 1[B]. *See* Ex.2051, ¶64.

With regard to the processing limitations 1[C]-1[D]/13[A]-13[B]/17[A]-17[B], Petitioners argue Forums receives first and second device-captured data at the “server.” Petition, 27-28. The Petition then describes *that server* with references to Randall’s inclusion in Figure 4 of the “private Forum Server” *and* in the very same sentence, continues describing *that server* by quoting from Forsyth. Petition, 28. *See* Ex.2051, ¶64.

Petitioners’ expert, Houh, likewise impermissibly cites to Randall and Forsyth when describing the “Forums server” without even attempting to establish the servers are the same. Ex.1003, ¶117 (“As I discussed above, the server, illustrated in *Randall’s Figure 4* below, ‘handles contacting each group member, storing messages, allowing message to be read, sending, receiving and distributing messages.’ *Forsyth, 3:28-31*; Randall, 57:4 (describing ‘server side software’), 38:24 (describing ‘server side message handling applications’)); *see also* ¶88 (“*Both* Randall and Forsyth describe that *the server* performs...”), ¶49 (describing the “Symbian Forums server” functionality with reference to Forsyth and its implementation (“ServML”) with reference to Randall), ¶65 (“Forsyth enhances the functionality of *the Symbian infrastructure*”). *See* Ex.2051, ¶64. Petitioners and

Houh fail to establish that the server in Randall is the same server as in Forsyth and thus impermissibly blend the disclosures in these references. *See* Ex.2051, ¶¶64-66.

It is not the PO's or the Board's job to decipher the alleged teachings; Petitioners have the burden, which they have not met. *See* 35 U.S.C. §312(a)(3); 37 C.F.R. §42.104(b)(4).

C. Ground 1: The Challenged Claims Are Not Obvious Over the Randall-Forsyth Combination

Ground 1 asserts independent claims 1, 13, and 17 are rendered obvious under 35 U.S.C. §103 by the combination of Randall and Forsyth, relying on the declaration of Henry Houh, Ph.D. (Ex.1003) as support. Petitioners' arguments fail for multiple reasons. Not only do Petitioners present improper prior art combinations, mixing references and embodiments without explanation, but also their stated motivation for the combination is nonsensical, and they provide no support that a POSITA would have a reasonable expectation of success. Further, even considering Petitioners' proposed combination of Randall-Forsyth, the asserted combination fails to teach or suggest explicit limitations.

1. Petitioners' Combination of Randall-Forsyth is Improper and Lacks a Motivation

a) Randall and Forsyth are Distinct Publications and Do Not Describe the Same Server

Randall and Forsyth are distinct publications. As an initial matter, Randall published in 2002 (Ex.1005, 1), whereas Forsyth published in 2004 (Ex.1006 (face)).

Neither claims priority to or incorporates the other by reference. Petitioners make no showing that both describe the same version of Forums or the same version of the Symbian operating system. Notwithstanding different disclosures and different time frames, Petitioners' expert treats them as describing the same system and application. Petitioners' expert premises his opinion on the fact that "Randall and Forsyth were both assigned to [Symbian] and describe different aspects of functionality provided by Symbian." Ex.1003, ¶39. Merging the two distinct *publications*, he continues—without citation to the references—that the "client-server infrastructure is described in Randall which along with Forsyth describes use of *this infrastructure* to provide *the Forums service*." Ex.1003, ¶17 (emphasis added). The issue shows up throughout his declaration and the Petition, but there is no basis for treating "the Forum service" as one-in-the-same across references. *See* Ex.2051, ¶¶64-66.

By Petitioners' expert's (and Petitioners') logic, a publication referencing iOS version 1.0 could be combined with a publication on iOS version 26 without explanation or motivation, or "Google Hangouts," which evolved significantly in infrastructure, operational logic, and communication protocols, but that is improper. *See In re NuVasive, Inc.*, 842 F.3d at 1381-82 (holding the "factual inquiry" into the reasons for "combin[ing] references must be thorough and searching, and the need for specificity pervades"); *see also KSR Int'l*, 550 U.S. at 418 (holding the specific

reasoning for combining references must include some rational underpinning to combine the prior art elements as claimed); *see* Ex.2051, ¶66.

As discussed above, the Petition refers to “the Forums server” as a unitary, singular device, relying on the combined teachings of Randall and Forsyth. A server in Randall does not inherently correspond to a server in Forsyth. Petitioners cannot argue that “the Forums server” provides features X, Y, and Z, where X is from Randall and Y is from Forsyth, without addressing the combination. *In re NuVasive, Inc.*, 842 F.3d at 1381; *see also KSR Int’l*, 550 U.S. at 418; *see* Ex.2051, ¶¶64-66. Tellingly, with regard to claim 1[P], Petitioners argue “The Randall-Forsyth combination discloses **a server**”. Petition, 14. The Petition repeatedly refers to the “Forums server,” as if it were a single, identified server. Petition, 18 (“**The Forums server** performs processing...”; “**The Forums server** acts as ‘a store...’”). But the Petition ambiguously refers to servers of each of Forsyth and Randall, citing the expert’s conflated discussion of both. *Id.* citing Exs.1005, 1006; *id.* citing Ex.1003, ¶88 (“Randall and Forsyth also disclose or suggest the ‘processing element’ in **the server** includes ‘a memory.’”). The expert’s faulty premise is pervasive throughout related IPRs. *See, e.g., Samsung Elecs. Co. Ltd., et al. v. Mobile Data Technologies LLC*, IPR2025-00536, Paper 10, 14-17 (P.T.A.B. June 17, 2025) (discussing expert’s conflating Randall and Forsyth with citations to declaration).

Further, after noting “[t]he combination of Randall and Forsyth discloses *a server*”, the expert describes *that server* with references to Randall’s “server hosting Forums” and describes *that server* relying on Forsyth’s server. Ex.1003, ¶77; *see also* ¶88 (“**Both** Randall and Forsyth describe that *the server* performs...” (emphasis added), ¶49 (describing the “Symbian Forums server” functionality with reference to Forsyth and Randall’s “ServML” implementation), ¶65 (“Forsyth enhances the functionality of *the Symbian infrastructure*”).

Concerning the limitation to receive first and second device-captured data, Petitioners and Houh also treat “Forums” as a singular application across references. Petition, 28 (describing “The server, illustrated in Randall’s Figure 4” with citations to Forsyth); Ex.1003, ¶117 (“Forums, *described by Randall and Forsyth*, is *group-based, two-way communication platform....*”) (emphasis added)). After concluding that “[o]ne application discussed in Randall using its data architecture is Forums” (Ex.1003, ¶41), the expert turns to Forsyth as describing Forums (*id.* ¶42). There is no acknowledgement that Randall and Forsyth are separate publications and embodiments.

That each of Randall and Forsyth mention Symbian or Forums is not enough for Petitioners and Houh to combine the disclosures without explanation, as they have done. *Inter partes* reviews are limited to publication art, and the references should be treated as such and not as if they are directed to the same system or

application. *See* 35 U.S.C. § 311(b); *see also* Ex.2051, ¶67. At a minimum, they are different references, so combining them requires competent explanation, which Petitioners have not provided. *See, e.g., Reactive Surfaces Ltd. v. Toyota Motor Corp.*, IPR2019-00867, Paper 6, 8 (P.T.A.B. Sep.18, 2019) (explaining that even when “combining multiple embodiments *from a single reference, ... there must be a motivation to make the combination and a reasonable expectation that such a combination would be successful*”) (quoting *In re Stepan Co.*, 868 F.3d 1342, 1345-46 n.1 (Fed. Cir. 2017)); *see also Apple Inc. v. Arigna Technology*, IPR2022-01037, Paper 9, 20 (P.T.A.B. Dec. 2, 2022); *Samsung SDI Co. v. Ube Industries, Inc.*, IPR2017-02116, Paper 8, 21 (P.T.A.B. Mar. 12, 2018); *Abiomed, Inc. v. Maquet Cardiovascular, LLC*, IPR2017-01204, -01205, Paper 8, 8-12 (P.T.A.B. Oct. 23, 2017).

b) Petitioners’ Stated Motivation to Combine Randall and Forsyth for Ground 1 Fails

Petitioners adopt the expert’s opinion on the motivation to combine, but his opinion is contrary to law and logic. His premise for combining—relied on by Petitioners—is “to enhance the Forums service taught by Randall.” Petition, 11 (citing Ex.1003, ¶¶69-75). Contrary to the expert’s rationale of “enhanc[ing] *the Forums service*,” Petitioners and their expert point to the benefit of using group objects *in other applications*. Petition, 12; Ex.1003, ¶71 (emphasizing “group created in one application ...can immediately be used *in other applications*” and

“data specifically created for one group in one application can be *re-used in a different application*”). This benefit is not connected to the Forums service and has nothing to do with “enhanc[ing] the Forums service.” *See* Ex.2051, ¶¶68, 70. It therefore cannot serve as a motivation to combine.

Additionally with regard to the expert’s notion of “enhanc[ing] the Forums service” of Forsyth with Randall’s infrastructure, including its extensible database (*see* Petition, 11; Ex.1003, ¶¶69), there is no reason to do so; it is merely impermissible hindsight reconstruction. Ex.2051, ¶¶68, 71. Forsyth describes the use of “content and application independent group objects” so there is no need for Randall. Forsyth, 3:14-18; *see* Ex.2051, ¶¶42, 71. Forsyth itself describes the use of a client-server architecture, with group objects residing on a remote server and the use of pointers to such a central server (Forsyth, 3:19-31), which indicates the use of a central database. *See* Ex.2051, ¶¶68. As explained by Petitioners and their expert, the combination is not rooted in any additional benefit, but rather impermissible hindsight. *See W.L. Gore*, 721 F.2d at 1553; *Interconnect Plan. Corp.*, 774 F.2d at 1143. Furthermore, each of Randall and Forsyth describe a system that independently operates and there is thus no reason for a POSITA to combine the features of both systems. *See, e.g., Kinetic Concepts*, 688 F.3d. at 1369 (“[b]ecause each device independently operates effectively, a person having ordinary skill in the

art, who was merely seeking to create a better device [for the same function], would have no reason to combine the features of both devices into a single device.”).

c) Petitioners Fail to Demonstrate a Reasonable Expectation of Success

It is Petitioners’ burden to demonstrate both a motivation to combine, and a reasonable expectation of success. *See In re Magnum Oil Tools*, 829 F.3d at 1381. Mere conclusory statements are insufficient. *Id.*, at 1380. First, as established above, Petitioners have not established any motivation to combine the references; this failure alone is dispositive. Second, Petitioners make only a single, conclusory statement regarding a reasonable expectation of success. Petition, 14. This is plainly insufficient, as “attorney argument is no substitute for evidence.” *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005). The Federal Circuit has held that “a party’s unsworn attorney argument... is not evidence” and cannot rebut record evidence. *Wasica Fin. GmbH v. Cont’l Auto. Sys.*, 853 F.3d 1272, 1284-85 (Fed. Cir. 2017).

Petitioners’ reliance on their expert’s testimony (Petition, 14) does not cure the deficiency, as the expert merely repeats the conclusory assertion without any meaningful analysis. Ex.1003, ¶75; *see* Ex.2051, ¶72 (explaining fundamentally different architectures of Randall and Forsyth). This fails to meet the evidentiary requirements of 37 C.F.R. § 42.65(a) and improperly circumvents the prohibition on incorporation by reference under 37 C.F.R. § 42.6(a)(3).

2. Ground 1 Lacks a “web-based shared information channel”

As a threshold matter, parroting their expert’s conclusory statements, Petitioners take inconsistent positions across IPRs: the individual Forum is the application-based information channel in the ‘536 Petition, the web-based shared information channel in this Petition, and the mobile information channel in the ‘538 Petition. The Board should resolve this double-speak against Petitioners on merits. *See Google LLC v. Makor Issues & Rights Ltd.*, IPR2017-00815, Paper 31, 24 (P.T.A.B. Aug. 10, 2018) (noting a party’s failure to “explain persuasively” why it has “taken inconsistent positions between IPRs with respect to this limitation.”); *see also Meta Platforms, Inc. v. Eight kHz, LLC*, IPR2023-01004, Paper 9, 29-30 (P.T.A.B. Jan. 9, 2024) (pointing to inconsistencies in the petitioner’s positions regarding the prior art teachings across two IPRs).

Further, the Petition fails to establish that an individual Forum is a “web-based” shared information channel, as required by each independent claim. *See* limitation 1[F]/13[C]/17[C]. Petitioners cite to two portions—just two lines each—in Randall to support their argument that the Forums user interface pages are provided to users via the web. Petition, 35 (citing Randall, 13:22-24, 45:14-15). The first two lines acknowledges that Randall is *not* a web-based channel, but only “acts in effect” like one. Randall, 13:22-24; *see* Ex.2051, ¶¶75. The second two lines of Randall also do not establish that the web is used: “ServML embraces existing

standards and initiatives such as SyncML and XML and uses standard data transports such as WAP or http for data access.” Randall, 45:14-15. Using standard data transports does not teach or suggest that the information is provided via the web. *See* Ex.2051, ¶¶75, 76. Tellingly, Petitioners turn to other references to fill this gap. Petition, 35 (citing EX-1013 and EX-1027); *see also id.*, 78-79 (citing EX-1013, EX-1027, and EX-1020). These references, however, are not relied upon in either Ground, and thus should not be considered. *See Helmerich & Payne Int’l Drilling Co. v. Nabors Drilling Techs. USA, Inc.*, IPR2021-00671, 2021 WL 4864389, *8 (P.T.A.B. Oct. 1, 2021) (holding “Petitioner’s and its expert’s reliance on several references beyond those in the stated ground as purported evidence of knowledge in the art indicates the use of improper hindsight reasoning”).

Petitioners also point to the “ADS naming convention” in Randall to support that Forums are designed to be mobile website accessible “via the web.” Petition, 36. The ADS number, however, is not associated with the Forums interface, and Petitioners do not tie it to an individual Forum, which Petitioners identify as the claimed web-based information channel. *See* Petition, 35. It is a “pointer to **entity specific data** held on the web server,” as Petitioners admit. *Id.* quoting Randall, 64:27-28; *see also* Randall, 9:13-15 (“wireless information device (as well as web browsers) can access **an entity’s database** by sending to the server an unchanging pointer or key (an ‘ADS number’) which is unique to that entity”). It is a pointer to

“Alice’s” personal information stored in the central database, not a Forum or Forum interface. *See* Ex.2051, ¶77.

Petitioners’ hypothetical scenario of a user entering an “ADS number associated with the Forum, Naked Chef (e.g., www.forums.com/NakedChef)” (Petition, 37) *appears nowhere* in Randall and is inconsistent with the express teachings of Randall that the ADS number points to an entity’s database, not a Forum. Indeed, the only support for this hypothetical scenario is conclusory statements in Houh’s declaration. *Id.* (citing Ex.1003, ¶137).

Moreover, by relying on the ADS, Petitioners are taking an inconsistent position. *On the one hand*, in connection with the 536 IPR, Petitioners argue that an individual Forum is “application-based” despite the Forum being implemented using “content and application-independent” “group object.” *See* IPR2025-00536, Paper 9, Petitioners’ Response to Patent Owner’s Discretionary Denial Brief, 35 (“that Forsyth’s group object is ‘application independent’ does not, as PO suggests, mean that it is not ‘application-based.’”). Group objects include information of the group members, and use of group objects involves pointers to such information. *See, e.g.,* Forsyth, 2:17-39. Thus, Petitioners (and their expert) argued the individual Forum is application-based *by ignoring its implementation using group objects—which are application independent—and pointers to group members’ information*. On the other hand, as just discussed above, Petitioners (and their expert) (at Petition, 36) argue

that an individual Forum is a web-based channel *by relying on exactly what Petitioners ignore to argue it is application-based, namely the use of the ADS and pointers to an individual member's information.* See Ex.2051, ¶78. Petitioners cannot have it both ways, and in any event, they fail to present a reasonable likelihood of success.

Petitioners' argument that the ADS number supports that Forums is a web-based shared information channel fails.

3. Ground 1 Lacks a “personalized content application”

Petitioners fail to present a plausible argument that Ground 1 teaches or suggests the claimed “personalized content application.” As an initial matter, Petitioners do not present any claim construction for the term. Instead, they take a position that is inconsistent with its position on other terms and is illogical.

Petitioners argue that Forums is an application. Petition, 32 (“[t]he Forums service is an ‘application’ with a program component at the wireless device and a program component on the server.”) (citations omitted). Petitioners argue “[e]ach individual Forum is a ‘channel’....” Petition, 34. Despite these clear annunciations, when addressing the “personalized content application” limitation, Petitioners conclude that:

Forums further provides a user with the capability of creating a personalized Forum which is also a “personalized content application” operating within Forums. (EX-1003, ¶128.)

Petition, 33.

Thus, according to Petitioners, an individual Forum is both the claimed “channel” and the “personalized content application.” This alone is improper. *See, e.g., Becton, Dickinson and Co. v. Tyco Healthcare Gr., LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2010) (“Where a claim lists elements separately, the clear implication of the claim language is that those elements are distinct component[s] of the patented invention.”)(internal quotations omitted); *Hopkins Manufacturing Corporation v. Cequent Performance Products, Inc.*, IPR2015-00613, Paper 9, 12 (P.T.A.B. Aug. 7, 2015).

Moreover, according to Petitioners’ logic, *an individual Forum is an application “operating within” an application* (i.e., the Forums service). This application-within-an-application argument makes little, if any sense, and in any event, Petitioners do not explain how this could be. *See* Ex.2051, ¶ 78. All they do is copy the sentence *verbatim* from their expert’s declaration, which itself has no rational explanation. *Compare* Petition, 33 with Ex.1003, ¶128; *see also* Ex.2051, ¶78.

The Petition does not set forth a reasonable basis that Ground 1 teaches or suggests the “personalized content application.”

D. Ground 2: The Challenged Claims Are Not Obvious Over the Pelkey-Eck Combination

Ground 2 of the Petition asserts that the combination of Pelkey (Ex.1007) and Eck (Ex.1008) discloses or renders obvious every element of the independent claims of the '348 Patent. This ground also fails. Petitioners' explanation to combine Pelkey and Eck is nothing more than impermissible hindsight.

1. Petitioners' Stated Motivation to Combine Pelkey and Eck Fails

Petitioners fail to identify any plausible motivation to combine the teachings of Pelkey and Eck. Petitioners merely state, without support, that a "POSITA would have been motivated to combine Eck's teachings regarding PagerWorld with the network and message server architecture taught in Pelkey." Petition, 58.

As an initial matter, the holes in Petitioners' argument are particularly notable given their admissions as to the deficiencies of Pelkey and Eck. Admitted deficiencies include:

(i) Eck does not describe a client-server structure as taught in Pelkey (Ex.1003, ¶183; Petition, 59-60);

(ii) Pelkey does not describe integration of messaging and sharing content like photos with multiple users (Ex.1003, ¶176; Petition, 60);

(iii) Pelkey does not describe any in-game messaging (Ex.1003, ¶176; Petition, 60); and

(iv) Pelkey does not disclose details of the wireless network used to provide wireless messaging from the game system to the server (Ex.1003, ¶213; Petition, 77).

Petitioners argue that a “POSITA would be motivated to apply the network and message server architecture in Pelkey to Eck in order to avoid the charge-based system for exchanging messages and photos via pager cartridge in Eck. (EX-1003, ¶176.)” Petition, 59. This is contrary to the teaching of Eck, which solves any issue regarding “cost” an entirely different way. Specifically, Eck teaches that a user can turn to “user-generated custom libraries of words, phrases and graphics” to reduce message length. This practice is called “coding,” which Eck expressly acknowledges can be used “to reduce message length” and thus “reduce message charges.” Eck, 16:59-60; *see also id.* 16:49-63 (“It can be seen that by using ‘coding’, the length of the messages may be reduced.”). *See* Ex.2051, ¶86-87. Petitioners and their expert point to no evidence to support a combination of Pelkey and Eck based on cost reduction, failing to address the additional costs of the proposed modification (e.g., communication and bandwidth costs of the proposed network and message server architecture) or the specific savings that would motivate the combination or prompt a user to switch to WAP using a GSM-SMS network. *In re Schmidt*, 892 F.2d 1051, *2 (Fed.Cir.1989) (“[W]hile we agree that cost saving may serve as a motive for making a modification, **it must be clear at least that the**

modification, in fact, effects a reduction in the cost.”). Petitioners have made no showing regarding the cost savings allegedly available for a user using the client server architecture of Pelkey, which is also a charge-based service. *See* Ex.2051, ¶¶88-90. Instead, Petitioners improperly rely on their expert’s conclusory statement.

Petitioners continue that “a POSITA would be motivated to modify the ‘pager cartridge’ in Eck as necessary to use PagerWorld in Pelkey given the disclosed benefits of PagerWorld including ‘exploration and adventure,’ ‘chat and community interaction,’ and ‘character growth.’” *Petition*, 59 (citing Ex.1003, ¶176; Eck 10:13-19). The statement is telling: Petitioners are suggesting both a modification to Eck’s “pager cartridge” and a modification of Pelkey. However, Petitioners never explain what either modifications would actually be.

This is a glaring failure given the fundamentally different architectures of Pelkey (client-server) and Eck (peer-to-peer) (*see* Ex.2051, ¶91-92) and Petitioners’ admission that “Pelkey does not describe any game play that includes in-game messaging in conjunction with the aforementioned features” (*Petition*, 60). Petitioners present no evidence—not even a conclusory statement from their expert—to support that a user would consider any messaging disclosed in Eck to foster the features in Pelkey of “exploration and adventure,” “chat and community interaction,” and “character growth.”

Furthermore, Petitioners parrot their expert's conclusory opinions that Eck's PagerWorld game is a known technique, Pelkey's client-server based messaging server is a known method/product, and "[r]eplacing the pager system infrastructure system in Eck with the client-server architecture in Pelkey is the simple substitution of one known element for another to achieve a predictable result (internet-based functionality)." Petition, 60 citing Ex.1003, ¶176. These are fundamentally different architectures, and Petitioners' expert never explains what those modifications would be given differences in operation of a game system using a client-server based messaging platform via a modem and a wide area network (Pelkey) versus a specific device-to-device paging system over a paging network that allows two users to communicate while playing a portable game device (Eck) and fundamentally different network architectures. *See* Ex.2051, ¶92. Indeed, their expert provides no explanation of whether, circa 2002, a "GSM-SMS and WAP cartridge" could be constructed, how a pager cartridge could be replaced with such a hypothetical "GSM-SMS or WAP cartridge" in the system of Eck, including in the context of other portions relied on by Petitioners involving piggy-backing a digital camera cartridge onto the "GSM-SMS or WAP cartridge."

Potential issues not addressed by Petitioners or their expert, include, for example, redesigning the game cartridge interface to accommodate differing electrical and communication protocols between the pager and GSM/WAP systems,

addressing increased power consumption and battery management demands typical of GSM or WAP devices, implementing necessary changes in software drivers and firmware to manage GSM/WAP-specific network registration, messaging protocols, and error-handling routines, and ensuring robust signal integrity and electromagnetic compatibility, particularly given the distinct operational frequency bands and interference concerns of GSM/WAP compared to paging systems. *See* Ex.2051, ¶92.

Regardless, Petitioners' motivation to combine is technically baseless and contradictory. As noted, Pelkey's described network architecture is both fundamentally incompatible with Eck's messaging system. *See* Ex.2051, ¶¶81-84. And Petitioners claim that it is necessary to adopt Pelkey's client-server network architecture to avoid the charge-based messaging system disclosed in Eck and obtain "internet-based functionality" (Petition, 60-61) is simply baseless. Eck already addresses cost reduction (*see* Ex.2051, ¶¶86-87), and the GSM-SMS network Petitioners propose in the resulting combination was also a charge-based system for exchanging messages, which contradicts Petitioners' stated cost reason for a motivation to combine (*see* Ex.2051, ¶¶88-89). Thus, it would have been nonsensical for a POSITA to attempt a complicated redesign of the Eck network architecture for Pelkey's to merely substitute a cost model that is comparably the same as the one a POSITA is trying to avoid. *See, e.g., Kinetic Concepts*, 688 F. 3d. at 1369 ("[b]ecause each device independently operates effectively, a person having

ordinary skill in the art, who was merely seeking to create a better device [for the same function], would have no reason to combine the features of both devices into a single device.”).

Petitioners have thus failed to provide a sufficient explanation of the Ground 2 combination of Pelkey and Eck or the motivation to combine them. This applies to all ‘348 Patent claims.

2. Petitioners Fail to Demonstrate a Reasonable Expectation of Success

As above, it is Petitioners’ burden to demonstrate both a motivation to combine, and a reasonable expectation of success. *See In re Magnum Oil Tools*, 829 F.3d at 1381. Mere conclusory statements are insufficient. *Id.*, at 1380. First, Petitioners have not established any motivation to combine Pelkey and Eck; this failure alone is dispositive. Second, Petitioners fail to address the fundamentally different architecture of Pelkey and Eck discussed above and, instead, make only a single, conclusory statement regarding a reasonable expectation of success. Petition, 60. This is plainly insufficient, as “attorney argument is no substitute for evidence.” *Enzo Biochem*, 424 F.3d at 1284. The Federal Circuit has held that “a party’s unsworn attorney argument... is not evidence” and cannot rebut record evidence. *Wasica*, 853 F.3d at 1284-85.

Petitioners’ reliance on their expert’s testimony (Petition, 60) does not cure the deficiency, as the expert merely repeats the conclusory assertion without any

meaningful analysis. Ex.1003, 177. This fails to meet the evidentiary requirements of 37 C.F.R. § 42.65(a) and improperly circumvents the prohibition on incorporation by reference under 37 C.F.R. § 42.6(a)(3).

III. CONCLUSION

Based on the deficiencies identified above, Petitioners have not shown that they have a reasonable likelihood of prevailing on any of the proposed grounds. The Board should decline to institute an IPR proceeding based on the Petition.

Date: July 14, 2025

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. §42.24(d), the undersigned hereby certifies that the foregoing Patent Owner's Preliminary Response to Petition for *Inter Partes* Review contains 5,772 words using the word count feature of Microsoft Word.

Date: July 14, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2025, I caused a true and correct copy of the foregoing Patent Owner's Preliminary Response to Petition for *Inter Partes* Review to be served via electronic mail upon the following attorneys of record for the Petitioners:

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