UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KAHOOT! AS
Petitioner

v.

INTERSTELLAR INC.
Patent Owner

Case No. IPR2025-00696
U.S. Patent No. 10,339,825

PATENT OWNER'S PRELIMINARY RESPONSE

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EXHIBIT LIST

Exhibit	Description
2005	Comparison of excerpts of Petition and Dr. Abowd's Declaration

I. INTRODUCTION

Patent owner Interstellar Inc. ("Interstellar" or "Patent Owner") respectfully submits this Preliminary Response pursuant to 37 C.F.R. § 42.107(a) to Kahoot! AS's ("Kahoot!" or "Petitioner") Petition for Inter Partes Review of U.S. Patent No. 10,339,825 (the "'825 Patent"). The Petition should be denied because it fails to demonstrate a reasonable likelihood of prevailing on any of the challenged claims.

II. LEVEL OF ORDINARY SKILL IN THE ART

For purposes of this proceeding, Patent Owner accepts Petitioner's definition regarding the level of skill of a person of ordinary skill in the art ("POSA") at the time of the '825 Patent invention. Specifically, Petitioner states that a POSA 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 web-based technologies. Petitioner further states that additional education can supplement practical experience and vice versa.

III. OVERVIEW OF THE '825 PATENT AND THE PRIOR ART

An overview of the prior art focusing on disclosures related to team participation in question-and-answer experiences provides the foundation for demonstrating that the references fail to teach or suggest the claim limitations addressed herein.

A. The ’825 Patent

The ’825 Patent describes a web-based system and method that “facilitates live academic competition between teams and individuals on multiple choice or fill-in-the-blank questions and methods for fostering academic competition.” (Ex. 1001, 1:6-10). The system fosters collaborative teamwork and collective purpose, expanding access to academic-styled competition to users of various backgrounds including students, work group members, and so forth.

The patented system enables a manager user (e.g., coaches, teachers, managers, etc.) to activate an account, input profile information, form teams including the activation of accounts for individual competitor users, and then arrange competition activity for a team by dividing it into competing teams, by challenging another team, or by enrolling the team in a competition event created by an administrator user. (*Id.*, 15:53-17:20).

The system encourages contestants by creating a competitive environment similar to sporting events. (*Id.*, 1:59-60). During an academic competition, the participants are presented with one or more predetermined test questions at participant processing devices for response in a time frame allocated for the academic competition. (*Id.*, 2:39-42). A real-time scoreboard at the respective participant processing devices (FIGS. 108-114) enables participants in the academic contests to track their progress with respect to both the allocated time

frame for the contest and questions answered correctly. (*Id.*, FIGS. 108-114; 2:43-46). The scoreboard calculates and displays individual score and/or a team score. (*Id.*, 2:53-58). Combined, these features provide a competitive atmosphere akin to any team sport which measures and presents accuracy with respect to a targeted skill by utilizing a scoring system within a timed environment (e.g., basketball, football, etc.).

In the Reasons for Allowance, the Examiner expressed that the features of "enabling a user …[to] … search for and select at least one team for participation in an inter-team academic competition…[or] … divide a team into multiple teams for an intra-team academic competition; and enabling teams of individual contestants to compete over a series of test questions for an allotted time period in an online format including both a test item presentation area and the real time scoreboard with time clock, at least one of (1) live, if the teams have common time availability, wherein the real time scoreboard displays at least one of the following in real time: individual contestant's score, teams' scores, and the individual contestant's score and teams' scores and (2) non-live, if the teams do not have common time availability, wherein the real time scoreboard displays at least one of the following in real time: individual contestant's score, team score of the individual contestant's team, and the individual contestant's score and team score of the individual contestant's team" were not anticipated or made obvious by the

prior art. (Ex. 1004, pp. 25-27). Such features also are not made obvious by the prior art cited by Petitioner.

B. Feeney

Feeney[1] describes systems, methods and techniques for conducting question-and-answer contests that are played by multiple players across a communications network where the players compete to earn points (called "Dallions") awarded by a central contest administrator. (Ex. 1005, Abstract). The individual players are ranked based on their total number of points. (*Id.*). In addition, individual players are allowed to select a sponsor from a set of previously identified sponsors and to earn points from the sponsors they select. (*Id.*). For this purpose, individual sponsors are allocated points by the contest administrator and have flexibility regarding how to award their allocated points to the players that have selected them. (*Id.*). Sponsors are typically corporate, commercial, or charitable entities which desire to build brand loyalty with existing or potential customers. (*Id.*, 7:31-36, 12:31-41).

Generally, the contests described in Feeney are "conducted over a significant period of time (e.g., at least 2-3 days, a week, 2-3 weeks, a month or even longer)." (*Id.*, 3:23-27). In preferred embodiments, the approach entails "multiple individual contests, each typically involving questions to be answered or other problems to be

[1] Ex. 1005, U.S. Patent No. 8,231,470 to Feeney et al.

solved and often played over an extended period of time, such as anywhere from several days to a month, or even longer." (*Id.*, 20:2-8). Feeney describes delivering a few problems per day to players participating in various contests. (*Id.*, 20:9-28). "While the various players are participating in different contests, the same kinds of points (typically called 'Dallions' herein) preferably are earned across all contests and, in some cases, are capable of being earned independent of any contest." (*Id.*, 20:29-37). These Dallion points can be earned by answering questions correctly, performing tasks assigned by a sponsor such as reading their materials, watching their videos, or evaluating their products. (*Id.*, 8:4-9). Dallions can also be subtracted from an individual's total if they redeem them for a sponsor's products or services. (*Id.*, 8:9-13, 20:33-35).

Although Feeney primarily focuses on individuals interacting with contests and sponsors, it provides an option for players to associate into teams called "rings." These can be formed in several ways, but are always organized by the players themselves, not by an administrator. In one embodiment, a player starts a ring and selects or entices players to join the ring. (*Id.*, 21:63-67). Players can also message each other to request to join another's ring. (*Id.*, 18:16-19). These rings are loosely described as being able to compete against each other, with ring scores appearing in rankings, but the specification omits further, detailed discussion as to how such activity is organized, initiated, or completed in the system. (*Id.*, 21:56-

59, 12:66-13:3). Indeed, Feeney focuses on individual-based, not team-based, activity.

In the Feeney system, the contests are intended to create an opportunity for businesses/sponsors to communicate and interact with purchasers, which is the primary purpose of the invention more generally. (*Id.*, 12:31-41; 1:37-52; 7:31-8:17). This mercantilist orientation stands in stark contrast to the educational purpose of the ’825 Patent claimed subject matter. Such divergence of purpose between Feeney and the ’825 Patent anticipates the inadequacy of Petitioner’s selection of Feeney as its foundation for an obviousness argument, as shown by further analysis below.

C. Rogers

Rogers[2] describes an online test platform for the development, delivery, and management of educational tests with interactive participation by students, teachers, proctors and administrators, even when some or all of them are remotely located. (Ex. 1006, Abstract). As described with respect to FIG. 8, the test screens of the online test platform may include the number of questions to answer, the number of minutes allowed, and progress indicators for time used and questions completed. (*Id.*, 19:16-20, FIG. 8). The described platform permits test proctors to

[2] Ex. 1006, U.S. Patent No. 10,861,343 to Rogers et al.

monitor the test sessions, provide assistance to test takers, and pause or add time to a test, among other functions. (*Id.*, 2:21-26, 2:50-4:7, 26:19-27:8).

Rogers provides illustrative test screens, including FIG. 9. The test interface includes buttons to "GO-ON" and "GO-BACK" which allow a test taker to skip questions and return to unanswered questions later during the testing session. (*Id.*, 19:28-37, 19:55-20:15). As with traditional paper tests, the test taker's screens in Rogers do not have an indicator for the number of questions answered correctly, only for the number of questions attempted. Also, Rogers only addresses test takers taking the test individually, with no mention of team formation or competition between teams.

D. Maurseth

Maurseth[3] describes "a method for teaching and developing the culture, values, and skills of an organization" using a Monopoly-styled gameboard. (Ex. 1007, Abstract). An organization is divided into associated small teams through a succession of divisions. (*Id*.). Teams work together to complete the board game using tokens that advance based on randomly generated numbers such as by rolling a die. (*Id.*, FIG. 3, [0038]). As each small team completes the educational board game, which might involve answering questions around industry knowledge and company history or similar topics, members of the small team assist other teams in

[3] Ex. 1007, US Patent Pub. No. 2004/0004325 to Maurseth.

completing the educational game. (*Id.*, Abstract, [0007], [0027]). Maurseth includes no disclosure or suggestion relating to online competition, databases, player profiles, or real-time scoreboards.

IV. CLAIM CONSTRUCTION

In an inter partes review, claim terms receive their plain and ordinary meaning in light of the specification of the patent in which it appears, the same standard as used in district court. 37 C.F.R. § 42.100(b); *see Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005). The words of a claim are given "their ordinary and customary meaning." *Id*. at 1312. "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Id*. at 1313. "There are only two exceptions to this general rule: 1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution." *Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012) (citing *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1580 (Fed. Cir. 1996)).

If an inventor acts as his or her own lexicographer, the definition must be set forth in the specification with reasonable clarity, deliberateness, and precision. *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249 (Fed. Cir. 1998). "It is not enough for a patentee to simply disclose a single embodiment or

use a word in the same manner in all embodiments, the patentee must 'clearly express an intent' to redefine the term." *Thorner*, 669 F.3d at 1365.

"The standard for disavowal of claim scope is similarly exacting." *Id*. at 1366. "The patentee may demonstrate intent to deviate from the ordinary and accustomed meaning of a claim term by including in the specification expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." *Id*. (quoting *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002)). The disavowal, if any, can be effectuated by language in the specification or the prosecution history. *Poly-Am., L.P. v. API Indus., Inc.*, 839 F.3d 1131, 1136 (Fed. Cir. 2016).

The following chart includes Patent Owner's and Petitioner's proposed constructions:

Claim language: displays[4] an individual contestant's progress with respect to [] the time frame for answering questions	
Patent Owner's construction	**Petitioner's construction**
Displays the time that is remaining and/or has elapsed for answering all and/or each of the questions in a series of questions.	Displaying the total time that is remaining or has elapsed for answering the series of questions, as opposed to displaying the time remaining or elapsed for each question in the series of questions.

[4] Petitioner omits the word "displays" from the phrase to be construed (Petition, 10); however its construction suggests the word should be included in the phrase.

A basis for Petitioner's proposed construction limiting the time element to "the total time that is remaining or has elapsed for answering the series of questions, as opposed to displaying the time remaining for each question in the series of questions" cannot be found in the plain and ordinary meaning of the claim language. Petitioner argues that the use of the plural "questions" supports its construction. (Petition, 10). However, the use of "questions" in "series of test questions" and "time frame for answering questions and questions answered correctly while answering the series of questions" does not pertain to how time is displayed; it simply reflects that students will typically answer a plurality (series) of questions during a contest.

Of course, claims "must be read in view of the specification, of which they are a part." *Phillips*, 415 F.3d at 1315. The specification "is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Id*. Here, the specification strongly supports Patent Owner's construction. The specification describes preferred embodiments which display a contestant's progress with respect to the time remaining and/or elapsed to answer all and/or each of the questions in a series. (e.g., Ex. 1001, 8:18-23 description of FIG. 110). These embodiments fall within Patent Owner's construction of the clause, "an individual contestant's progress with respect to [] the time frame for answering questions," but are expressly

excluded from Petitioner's construction of the same. Indeed, when describing the '825 Patent in general, Petitioner and Dr. Abowd[5] quote portions of the specification which, ironically, set forth these very embodiments and support Patent Owner's construction (Petition, 4-6 and Ex. 1002, ¶¶27-29):

- "The time mechanism shows…how much time has elapsed in the test and consecutively for each question…" (Ex. 1001, 17:34-38) (cited by Petitioner and Dr. Abowd (Petition, 4-5; Ex. 1002, ¶27)).

- "FIG. 110 illustrates the scoreboard where the space between the leading edge of the grey area and the radius line in relation to the space between the mark at the leading edge of the grey area and the following mark represents the proportion of time that has elapsed for that particular question. (Ex. 1001, 8:18-23, 39:38-43) (8:18-26 cited by Petitioner and Dr. Abowd (Petition, 4; Ex. 1002, ¶27)).

- "A clock figure appears on the scoreboard. The radius line inside the clock figure marks the proportion of time remaining in the competition…The marks around the tube represent each question..." (Ex. 1001, 17:60-18:11) (cited by Petitioner and Dr. Abowd (Petition, 5-6; Ex. 1002, ¶27, 29)).

- "Fig. 109 illustrates the scoreboard during a contest. As illustrated, as soon as the radius line reaches a mark in the tube, the area behind it fills in as grey. This signifies that the average amount of time allotted for a particular question has elapsed." (Ex. 1001, 39:29-37) (cited by Petitioner and Dr. Abowd (Petition, 5-6; Ex. 1002 ¶28-29)).

- "The radius line inside the clock figure displayed in the scoreboard marks the proportion of time remaining in the competition…The

[5] Dr. Abowd's Declaration includes a claim construction section that repeats the Petition nearly verbatim. As addressed in Sec. VI herein, such repetitive expert declarations should be given no weight. Exhibit 2005 provides a side-by-side comparison of the claim construction section in the Petition and Dr. Abowd's Declaration, with identical portions highlighted in yellow. As can be seen in the comparison, Dr. Abowd provides no analysis that is not already in the Petition.

> marks around the tube represent each question." (Ex. 1001, 38:33-46) (cited by Petitioner and Dr. Abowd (Petition, 5; Ex. 1002, ¶29)).

These specification citations make clear that the time element of the claim is not limited to the display of total time for answering the entire series of questions. Instead, time can be presented according to any of the disclosed manners, including as an allotment per question as further exemplified by the marked clock face of the scoreboard found in Figures 109-113. Petitioner's exclusion or misunderstanding of these repeated disclosures in its analysis amounts to error:[6] "A claim construction that 'excludes the preferred embodiment is rarely, if ever, correct and would require highly persuasive evidentiary support.'" *Synqor, Inc. v. Artesyn Tech., Inc.*, 709 F.3d 1365, 1378-79 (Fed. Cir. 2013) (quoting *Adams Respiratory Therapeutics, Inc. v. Perrigo Co.*, 616 F.3d 1283, 1290 (Fed. Cir. 2010); *Rembrandt Diagnostics, LP v. Alere, Inc.*, 809 F. App'x 903, 907-911 (Fed. Cir. 2020) (reversing a district court's construction that excluded a preferred embodiment). Contrary to the Petitioner's proposed claim construction, the '825 Patent specification does not support excluding the display of the time element in terms of the time allocated for each question of a series of questions.

Moreover, the prosecution history does not alter or contradict the Patent Owner's construction. Petitioner states, "Patentee expressly emphasized that in

[6] Petitioner's construction is likely motivated by non-infringement positions it intends to pursue in district court.

'Panetta and Lavanchy, a separate time component operates for each question' whereas 'the claimed academic competition allocates an undivided time period to all players to answer the entire series of questions.'" (Petition, 12). The statement Petitioner relies on was made in April 16, 2014 Remarks addressing an obviousness rejection relating to the claims as they existed at the time. The Patent Owner argued, "By contrast, the claimed academic competition allocates an undivided time period to all players to answer the entire series of questions. The players may answer each question in any order and allot as much time to each question as they wish" to distinguish the claims from the Panetta and Lavanchy references which did not align with the '825 Patent's discussion around the overall time period for play. (Ex. 1004, 478). However, the Examiner disagreed with the analysis and on August 21, 2014 responded:

> [i]n response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an undivided time period to all players to answer the entire series of questions where the players may answer each question in any order and allot as much time to each question as they wish) are not recited in the rejected independent claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

(*Id.*, 441).

The Patent Owner's statements did not overcome the obviousness rejection. Instead, the Examiner stated that certain dependent claims would be allowable if

rewritten in independent form. (*Id.*, 438-440). With this guidance, the Patent Owner amended claims 43, 59, 75 to incorporate limitations of dependent claims 58, 74, and 87, respectively. (Ex. 1004, 394-402, 408). That amended claim overcame the obviousness rejection (Ex. 1004, 390) but was then the subject of an appeal to the Board to address a Section 101 rejection. The claims were again amended after the appeal on April 26, 2018, on November 11, 2018, on March 8, 2019, and on March 12, 2019. (Ex. 1004, 218-226, 149-158, 128-137, 68-76).[7] A redline comparing claim 43 as it existed on April 16, 2014 (and addressed in the prosecution history comment Petitioner relies on for claim construction) (Ex. 1004, 464) and the claim as it issued (as claim 1) in the '825 Patent (Ex. 1001, claim 1) is provided below:

~~43. (New)~~1. A system for on-line academic competition, comprising:

a database that stores test questions, team and individual contestant profiles, and test response statistics for the ~~teams~~team and individual contestants; and

a processor programmed to interact with the database and with individual contestant processing devices to perform the steps of:

enabling the creation of teams of individual contestants for participation in an academic competition;

enabling a user, through a user interface connected to said database, to perform at least one of the following: (1) create a league of teams and a cycle of academic competition amongst the league of teams, (2) search for and select at least one team for participation in an inter-team academic competition, and (3) divide a team into multiple teams for an intra-team academic competition;

[7] The application's claim 43 became '825 Patent claim 1, the application's claim 59 became '825 Patent claim 14: the two independent claims at issue in the Petition. (Ex. 1004, 33).

presenting a series of ~~predetermined~~ test questions to the contestant processing devices of the individual contestants of competing teams for response in a time frame allocated for the academic competition; ~~and~~

providing a real time scoreboard with time clock to each contestant processing device that ~~permits each~~displays an individual ~~contestant to track his/her and his/her opponent's~~contestant's progress with respect to both the time frame for answering questions and questions answered correctly while answering the series of questions during an academic competition~~.~~, where each correctly answered question contributes on the real time scoreboard to at least one of (1) an individual score of the individual contestant and (2) a team score of the individual contestant's team; and

enabling teams of individual contestants to compete over a series of test questions for an allotted time period in an online format including both a test item presentation area and the real time scoreboard with time clock, at least one of (1) live, if the teams have common time availability, wherein the real time scoreboard displays in real time at least one of (a) the individual score of the individual contestant and (b) the team scores of the competing teams, and (2) non-live, if the teams do not have common time availability, wherein the real time scoreboard displays in real time at least one of (a) the individual score of the individual contestant and (b) the team score of the individual contestant's team.

The amendments included revisions to the clause relating to an individual contestant's progress with respect to [] the time frame for answering questions as well as additional revisions to address the Examiner's rejections and incorporate elements from previously dependent claims. The Examiner disagreed with the Patent Owner's explanation that Petitioner relies on to support its claim construction, the claim as written was not allowed, and there were multiple amendments to the claim after April 16, 2014. "Because the prosecution history represents an ongoing negotiation between the PTO and the applicant, rather than the final product of that negotiation, it often lacks the clarity of the specification and thus is less useful for claim construction purposes." *Phillips*, 415 F.3d at 1317.

Here, the specification's recital of the embodiments delineated above supports Patent Owner's construction. Petitioner fails in its attempt to overshadow these preferred embodiments by offering incomplete references to negotiations with the Examiner in the prosecution history.

Petitioner's reliance on *Univ. of Massachusetts v. L'Oreal S.A.*, 36 F.4th 1374, 1379 (Fed. Cir. 2022) to argue that statements not rising to the level of disclaimer nonetheless inform claim construction is misplaced. In that case, the court looked beyond the specification to the prosecution history for guidance regarding the meaning of claim language that was ambiguous. The prosecution history included a representation made by the applicant about a claim amendment that supported a particular claim construction. The Examiner allowed the claim based on this representation. *L'Oreal*, 36 F.4th at 1382-83. That is not the case here. The specification offers ample support for the Patent Owner's construction while the prosecution history lacks indication that the Examiner based allowance on a representation made by the Patent Owner around the clause in question. Indeed, the prosecution history does not limit the claim construction as Petitioner proposes and does not provide a clear disavowal of claim scope as urged by Petitioner. *Teleflex*, 299 F.3d at 1325.

In sum, Patent Owner's construction of the phrase "displays an individual contestant's progress with respect to [] the time frame for answering questions" is

consistent with the plain language of the claims as read in view of the specification. The prosecution history excerpt Petitioner identifies does not alter that construction. Adoption of the Patent Owner's construction is appropriate and is requested.

Patent Owner notes that claim construction is not necessary in this proceeding if the Board denies institution based on claim elements that do not include the disputed claim language (addressed in Sec. V.A.1, V.A.2, and V.B.1). *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (holding that "only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy"); *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017); *Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019).

V. PETITIONER FAILS TO SHOW A REASONABLE LIKELIHOOD OF PREVAILING ON THE MERITS

Petitioner fails to meet its burden of showing a reasonable likelihood that any of the claims would have been obvious under 35 U.S.C. § 103 in view of the prior art. Obviousness is determined based on the scope and content of the prior art, any differences between the claims at issue and the prior art, and the level of ordinary skill in the art. *See Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). IPR petitions "must address the Graham factors." *Eizo Corp. v. Barco N.V.*, IPR2014-00358, Paper 11 at 29-30 (PTAB July 23, 2014) (citing *Graham*, 383

U.S. at 17-18) (faulting Petitioner for its failure to identify differences between the claimed subject matter and the prior art and its conclusory assertions about the teachings of the prior art).

Petitioner fails to address the *Graham* factors. In its analysis, Petitioner does not adequately consider the scope and content of the prior art. Instead, it selectively extracts seemingly supportive disclosures out of context in a manner calculated to obscure the fundamental distinctions between the prior art and claimed subject matter. In addition, Petitioner's expert declaration merely repeats positions from the Petition, omitting both explanation of the state of the art at the time of the invention and demonstration as to how and why one skilled in the art would have combined the references to arrive at the claimed subject matter.

Indeed, Petitioner and its expert's arguments frequently amount to mere hindsight reconstruction of the '825 Patent claims rather than reasoned, step by step construction built upon the prior art. Utilizing a challenged claim as a roadmap to piece together disparate disclosures in hindsight fashion is improper. *See InTouch Techs., Inc. v. VGo Comm'ns., Inc.*, 751 F.3d 1327, 1351 (Fed. Cir. 2014) (reversing obviousness finding where "[i]t appears that [the expert] relied on the [] patent itself as her roadmap for putting what she referred to as pieces of a 'jigsaw puzzle' together."); *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007) ("A factfinder should be aware, of course, of the distortion caused by

hindsight bias and must be cautious of arguments reliant upon ex post reasoning."). For these reasons, more thoroughly described below, Petitioner fails to establish a reasonable likelihood of obviousness with respect to the claimed subject matter.

A claim cannot be obvious if even one element of the claim is missing from the prior art. *See CFMT, Inc. v. YieldUp Int'l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) ("Obviousness requires a suggestion of all limitations in a claim.") (citing *In re Royka*, 490 F.2d 981, 985 (C.C.P.A. 1974)). At least three elements from independent claims 1 and 14 are missing from the prior art. The claims are reproduced below, with these elements highlighted in bold/italics.

Claim 1	Claim 14
1. A system for on-line academic competition, comprising: a database that stores test questions, team and individual contestant profiles, and test response statistics for the team and individual contestants; and a processor programmed to interact with the database and with individual contestant processing devices to perform the steps of: enabling the creation of teams of individual contestants for participation in an academic competition; ***enabling a user, through a user interface connected to said database, to perform at least one of the following: (1) create a league of teams***	14. A method for on-line academic competition, comprising: enabling, using a processing device, the creation of teams of individual contestants for participation in an academic competition; ***enabling a user, through a user interface, to perform at least one of the following: (1) create a league of teams and a cycle of academic competition amongst the league of teams, (2) search for and select at least one team for participation in an inter-team academic competition, and (3) divide a team into multiple teams for an intra-team academic competition;***

Claim 1	Claim 14
and a cycle of academic competition amongst the league of teams, (2) search for and select at least one team for participation in an inter-team academic competition, and (3) divide a team into multiple teams for an intra-team academic competition;	***presenting, using a processing device, a series of test questions to the contestant processing devices of the individual contestants of competing teams for response in a time frame allocated for the academic competition;***
presenting a series of test questions to the contestant processing devices of the individual contestants of competing teams for response in a time frame allocated for the academic competition;	***providing a real time scoreboard with time clock at each contestant processing device that displays an individual contestant's progress with respect to both the time frame for answering questions and questions answered correctly while answering the series of questions during an academic competition, where each correctly answered question contributes on the real time scoreboard to at least one of (1) an individual score of the individual contestant and (2) a team score of the individual contestant's team***; and
providing a real time scoreboard with time clock to each contestant processing device that displays an individual contestant's progress with respect to both the time frame for answering questions and questions answered correctly while answering the series of questions during an academic competition, where each correctly answered question contributes on the real time scoreboard to at least one of (1) an individual score of the individual contestant and (2) a team score of the individual contestant's team; and	enabling teams of individual contestants to compete over a series of test questions for an allotted time period in an online format including both a test item presentation area and the real time scoreboard with time clock, at least one of (1) live, if the teams have common time availability, wherein the real time scoreboard displays in real time at least one of (a) the individual score of the individual contestant and (b) the team scores of the competing teams, and (2) non-live, if the teams do not have common time availability, wherein the real time
enabling teams of individual contestants to compete over a series of test questions for an allotted time period in an online format including both a test item presentation area and the real time scoreboard with time clock, at least one of (1) live, if the teams have common time availability,	

Claim 1	Claim 14
wherein the real time scoreboard displays in real time at least one of (a) the individual score of the individual contestant and (b) the team scores of the competing teams, and (2) non-live, if the teams do not have common time availability, wherein the real time scoreboard displays in real time at least one of (a) the individual score of the individual contestant and (b) the team score of the individual contestant's team.	scoreboard displays in real time at least one of (a) the individual score of the individual contestant and (b) the team score of the individual contestant's team.

A. Petitioner Fails to Demonstrate a Reasonable Likelihood That Claims 1 and 14 Are Unpatentable Under Ground 1 (Feeney and Rogers)

Ground 1, Feeney in combination with Rogers, does not establish a reasonable likelihood that Petitioner will prevail with respect to at least one challenged claim as required for institution. Petitioner fails to demonstrate that independent claims 1 or 14 (and therefore, any of the dependent claims) would have been obvious because the prior art does not teach or suggest several claim limitations.

1. Feeney Does Not Disclose "Enabling a user...to…search for and select at least one team for participation in an inter-team academic competition"

Petitioner alleges that Feeney discloses the following limitation in claims 1 and 14:

> enabling a user, through a user interface connected to said database, to perform at least one of the following:

> (1) create a league of teams and a cycle of academic competition amongst the league of teams, (2) search for and select at least one team for participation in an inter-team academic competition, and (3) divide a team into multiple teams for an intra-team academic competition;

Petitioner specifically focuses on (2) from the claim: "enabling a user, through a user interface connected to said database, to … search for and select at least one team for participation in an inter-team academic competition." (Petition, 23-27).[8] Petitioner relies on a mischaracterization of Feeney to support its argument, incorrectly conflating Feeney's disclosure of "[t]he act of requesting to join a team" with "select[ing] at least one team for participation in an inter-team academic competition." (Petition, 26; Ex. 1002, ¶64).

The '825 Patent claims and describes searching for and selecting a team for participation in an inter-team academic competition. That is, the user (such as a teacher or coach) is looking for a team(s) to match against his/her team in a competition between the teams. The specification explains, "The processor also enables one team to search for and then challenge another team of common time availability to an academic competition and enables a team to be divided into multiple teams for an intra-team academic competition." (Ex. 1001, 3:15-20, FIG.

[8] Feeney clearly does not teach, and Petitioner does not allege that Feeney teaches, creating a league of teams and a cycle of academic competition amongst the league of teams (sublimitation (1)) or dividing a team into multiple teams for an intra-team academic competition (sublimitation (3)), which are claimed in the alternative.

83, 33:52-58, 32:10-14). "The educator can arrange competition events for that team by dividing it into two or more opposing teams (here students can work independently or in small groups), or by challenging another team in the Interstellar Network on a specific date." (*Id.*, 1:43-47; *See also* 3:35-41; 16:33-41). The '825 Patent claims address the creation of a competition between teams where the user searches for and selects an entire team as a participant.

In contrast with the claimed subject matter, Feeney does not describe searching for and selecting a team for participation in an inter-team academic competition. Not one of the three types of users (Contest Administrator, Sponsor, Player) is described as having an ability to search for and select an opponent team for matched play. Facing this gap in Feeney's disclosure, Petitioner states that a player can click the "Advanced tab 425" to "perform a search for a ring or team." (Petition, 25). But Petitioner truncates the quote from Feeney to fit the '825 Patent claim language. The full statement in Feeney indicates that a player can click the Advanced tab 425 to narrow the search "across any combination of a variety of different parameters," including "ring or team *membership*." (Ex. 1005, 18:37-46 (emphasis added)). That is, the search made possible in Feeney is one where a player searches for another player and can narrow that search to that player's membership in a specific ring. This is illustrated in Petitioner's reliance on Feeney's FIG. 7. (Petition, 24-25). The search result is not a team, but an

individual player's profile that permits the searcher to message that player. Searching for a player to join one's team or to join their team in Feeney is a decidedly different action than searching for a team and inviting it to participate in an inter-team competition as in the '825 Patent claims.

Petitioner's reliance on an individual player searching for other individual players based on team membership demonstrates a fatal error in its Ground 1 analysis. This limitation is present in independent claims 1 and 14. As a result, the Petition fails on Ground 1 because this limitation is not disclosed or taught by the prior art, and the challenge of all dependent claims fails as well.

2. Feeney Does Not Disclose "Presenting a series of test questions to the contestant processing devices of the individual contestants of competing teams…"

Petitioner alleges (Petition, 27-31) that Feeney discloses the following limitation in claims 1 and 14:

> presenting a series of test questions to the contestant processing devices of the individual contestants of competing teams for response in a time frame allocated for the academic competition;

In the head-to-head team competition format claimed in the '825 Patent, all contestants are presented with the same series of questions during a single contest. The series of test questions is referenced several times in the claim (displaying a contestant's or team's progress as they answer the series of questions, and enabling teams to compete over the same series of test questions live or non-live if the teams

do not have common time availability) (Ex. 1001, Claims 1, 14), highlighting that the competition tests teams on the same set of questions.

The ’825 Patent specification confirms that contestants receive the same series of questions, explaining an embodiment of the invention as “presenting predetermined test questions to the processing devices of the individual contestants of competing teams…” (*Id.*, 2:39-40). The advantage of having the same series of questions is two-fold: objectivity and predictability. First, it is a fair manner to compare scores between teams for the purpose of deciding a winner and a loser since the content is the same for all players. In the real world, teachers and business managers highly value such objectivity when evaluating their teams. Second, a pre-selected series of questions allows the match-creating user to test the exact topics desired.

In Feeney, players do not compete over the same set of pre-selected questions as claimed in the ’825 Patent and described in the specification. Petitioner cites Feeney regarding “a stream of problems” provided by a server (Petition, 27 citing Ex. 1005, 20:18-25) but ignores how these problems are actually delivered for test purposes.[9] The “stream of problems” in Feeney has an altogether different meaning than the “series of test questions” in the ’825 Patent

[9] Petitioner’s citation to the “stream of problems” in Feeney is another example of taking a cited passage in Feeney out of context. A POSA would not have ignored the surrounding context of Feeney that undermines Petitioner’s conclusion.

claims. Feeney teaches that the "stream of problems" is a central repository or question bank from which various problems are selected and delivered to players, explaining: "problems are selected (e.g., randomly or based on expressed preferences as to time of day) from the stream and made available to the players (e.g., 1-3 problems per day)." (Ex. 1005, 20:22-25). The same "problem stream" is used across multiple different contests, and players participate in one or more contests that they select from time to time. (*Id.*, 20:38-45). The "problem stream" in Feeney is used "across multiple different contests" which "provides both efficiency for the contest administrators and personalized selection by the various players." (*Id.*).

Feeney further highlights that not all players in a contest receive the same problems, explaining that problems delivered may be based on a player's geographic location, their web browsing history, previous text messages, and/or product ordering history. (*Id.*, 20:53-21:11). Players may choose to decline

problems based on difficulty or to customize the level of difficulty of problems delivered to them. (*Id.*, 23:3-12).[10]

The use of the "stream of problems" and delivery of problems highlights the varying purposes of the '825 Patent and Feeney. The '825 Patent's claims are directed to head-to-head academic competitions between teams. The Feeney system is not designed to create such objective, predictable team competitions. Instead, the system is designed to engage individuals using questions in a way to stimulate, maintain, and expand purchasing relationships between consumers and sellers (i.e., sponsors). These vastly different goals result in different claims and disclosures, and explain why one system (the '825 Patent) features the same set of questions to test opposing teams while the other (Feeney) does not. They also underscore why a person of ordinary skill in the art ("POSA") would not have looked to Feeney for guidance in developing the '825 Patent's invention in the first place.

[10] Petitioner also cites to the '179 Application, which Feeney purports to incorporate by reference. (Petition, 27-28). The '179 Application is focused on ensuring that questions for a contest are shown to participating users at approximately the same time, given that the specification contemplates myriad users competing across time zones. (Ex. 1008, [04]-[05]). Incorporating the '179 Application's method of substantially simultaneous delivery of questions does not cure Feeney's failure to teach delivering the same series of questions to competing teams. The contests in the '179 Application, like the ones in Feeney, do not teach all players receiving and responding to the same series of test questions. (*See e.g., Id.*, [55], [75]).

In sum, Feeney does not teach or suggest presenting a series of the same questions to contestants of competing teams. This limitation is present in independent claims 1 and 14. As a result, the Petition fails on Ground 1 for the additional reason that this limitation is not disclosed or taught by the prior art, and the challenge of all dependent claims fails as well.

3. Feeney Alone or In Combination with Rogers Does Not Disclose "Providing a real time scoreboard with time clock to each contestant processing device…"

Petitioner alleges (Petition, 31-42) that Feeney alone or Feeney in combination with Rogers discloses the following limitation in claims 1 and 14:

> providing a real time scoreboard with time clock to each contestant processing device that displays an individual contestant's progress with respect to both the time frame for answering questions and questions answered correctly while answering the series of questions during an academic competition, where each correctly answered question contributes on the real time scoreboard to at least one of (1) an individual score of the individual contestant and (2) a team score of the individual contestant's team; and;

As an initial matter, Feeney's contests do not present "the series of questions" to competing teams (See Sec. V.A.2), and therefore any progress displayed by Feeney does not teach or suggest the '825 Patent claim limitation that a contestant's progress be displayed with respect to the time frame and questions answered correctly "while answering the series of questions during an academic competition." Feeney's display measures progress with respect to a unique series

of questions assigned to an individual, not an identical series of questions assigned to competing teams. Petitioner's additional positions are addressed in two parts, consistent with the Petition.

(i) Feeney Alone Does Not Disclose "Providing a real time scoreboard with time clock to each contestant processing device…"

Petitioner alleges that Feeney alone discloses the claim limitation under Patent Owner's claim construction. (Petition, 31-36). Petitioner's arguments here focus only on the time remaining or elapsed for each question of the series of questions. (Petition, 32-33; See Sec. IV for the parties' claim constructions). The '825 Patent claims include a real time scoreboard with time clock to simulate an athletic competition where contestants can track their progress in real time as they answer a series of questions in a competition. In addressing a "real time" scoreboard, Petitioner incorrectly relies on an excerpt from Feeney to conflate two distinct disclosures from the '825 Patent and Feeney. Petitioner refers to Feeney's description of an interface (300) that includes a player-status summary area (330) that "continuously displays statistics regarding a player or the player's team's performance in the contest" and concludes that this discloses the claimed "real time scoreboard." (Petition, 31-32). In doing so, Petitioner mischaracterizes Feeney to fit the '825 Patent claims. "Continuously" in Feeney, which Petitioner equates with "real time" in the '825 Patent, simply means the display is permanently

present in the display area regardless of changes to other portions of the display area. Feeney explains, "Player-status summary area 330 preferably *continuously displays* certain pre-specified statistics regarding the player (particularly the player's performance in the contest), *irrespective of other content changes* as a result of the player navigating around the interface 300." (Ex. 1005, 12:55-59) (emphasis added). The use of "continuously" does not reflect a real time scoring mechanism but instead is meant to describe a permanent display of data. That is, the summary area is intended to remain viewable, fixed, regardless of which pages the user might visit inside the application.

Feeney elaborates on the types of "pre-specified statistics" that can be shown in the player-status summary area. These include the player's performance in the contest; the total number of points ("Dallions") won or presently held; the rank of a group or team ("ring") to which the player belongs; indications of the player's own overall rank or rank within a particular contest, competition or tournament; aggregate number of points of everyone within the player's ring; among others. (Ex. 1005, 12:64-13:17). Petitioner proposes that the "number of Dallions earned" is equivalent to the individual score of a contestant in the '825 Patent claims. (Petition, 34-35). However, in Feeney, a player can earn Dallions in a variety of ways (see Sec. III.B; Ex. 1005, 20:29-32; 8:4-9; 10:32-37; 22:53-55; 24:31-34; 28:24-25; 28:32-33 (all disclosing ways of earning Dallions outside of a question-

and-answer contest)). Instead of a real-time scoreboard that instantaneously tracks progress with respect to the number of questions answered correctly and time within a single contest, the Dallion count in Feeney represents overall earnings or the player's current balance (i.e., overall earnings minus Dallions redeemed for prizes and/or Dallions used or given for other purposes). (*Id.*, 13:13-17; 5:17-24). Given the number of ways a player can earn Dallions/points in Feeney, including earning points through group competitions, individual competitions, and outside of competitions, and the fact that players may spend down their Dallions, the Dallion count as displayed in the player status summary area does not reflect the "real time scoreboard" found in the '825 Patent claims. Feeney does not teach displaying an individual contestant's progress in a manner that accounts for the number of questions answered correctly and the speed with which a contestant answers questions in a particular contest/series of test questions.

Petitioner also points to an excerpt from Feeney that "scores" or "percentages" are "updated on a regular basis" and equates it with the "real time scoreboard" of the '825 Patent claims. (Petition, 32). This, again, does not take into account Feeney's full disclosure. The discussion of "score(s)" immediately preceding Petitioner's citation reveals that score is based on the number of problems a player attempts, as well as problems answered correctly, and that problems are not necessarily the same for all players in a contest. (Ex. 1005, 21:33-

45 (players attempting more problems are given a higher score, score preferably calculated according to a formula that accounts for how many opportunities a player has with one subject versus other subjects); *see also* 20:18-21:45 (generally describing players receiving different questions customized to or selected by them)). Given these details omitted in Petitioner's argument, as well as the expansive definition of "Dallions" discussed above, the discussion of "scores" and "percentages" "updated on a regular basis" in Feeney does not point to the real time scoring as each question is answered during a single competition as claimed in the '825 Patent.

Again, the difference in player status displays in Feeney and the '825 Patent are to be expected given the divergent purposes of the systems disclosed therein. Feeney is designed to connect players with corporate sponsors as an advertising mechanism using long-term overlapping contests. The '825 Patent claims are designed to engage teams in head-to-head timed competitions that simulate the excitement of a sporting event.

Turning to the presence (or absence) of a time clock, Petitioner states that a POSA would have been motivated to include a clock in the "player-status summary area 330" in Feeney and that a POSA would have a reasonable expectation of success in providing a clock in the player-status area. (Petition, 32-33). Feeney does not support either conclusion.

Feeney's player-summary area is not a repository for contest-specific information which would be necessary to display progress with respect to time when answering questions in a contest as claimed in the '825 Patent. Instead, the player-summary area shows progress parameters in the aggregate (i.e., how a player is performing overall across multiple contests or even outside of contests). Petitioner does not explain why a POSA would be motivated to include a question-specific timer in an area reserved for overall player information. While obviousness can be based on a single prior art reference, "there must be a showing of a suggestion or motivation to modify the teachings of that reference to the claimed invention in order to support the obviousness conclusion." *IGT v. Bally Gaming Int'l, Inc.*, 610 F. Supp. 2d 288, 320 (D. Del. 2009) (quoting S*IBIA Neurosciences, Inc. v. Cadus Pharm. Corp.*, 225 F.3d 1349, 1356 (Fed. Cir. 2000)), aff'd, 659 F.3d 1109 (Fed. Cir. 2011). Modifying the player-status area in Feeney to include a question-specific timing mechanism without any teaching or motivation from the prior art to do so constitutes an impermissible hindsight reconstruction of the scoreboard of the '825 Patent claims.

Turning to a reasonable expectation of success, Petitioner cites Dr. Abowd's declaration[11] to propose that a POSA would have a reasonable expectation of

[11] As addressed in Sec. VI, Dr. Abowd's declaration simply repeats the Petition's arguments and therefore should be given little to no weight.

success in providing a question clock in the player-summary area. (Petition, 33 citing Ex. 1002 ¶74). The corresponding paragraph of Dr. Abowd's declaration is conclusory and provides no explanation to support a reasonable expectation of success. Dr. Abowd simply concludes that "providing such a clock in area 330 would also have been feasible in Feeney because Feeney provides a settings page 321 through which the user can customize the parameters displayed in area 330." (Ex. 1002 ¶74). Dr. Abowd does not address the fact that Feeney lists the parameters that can be displayed in area 330 which all relate to a player's status, not to timers and not to progress with respect to individual questions or even a series of questions from a single competition. (Ex. 1005, 12:55-13:24). In addition, Feeney permits players to participate in multiple contests at once (including individual contests and playing as part of a team/ring). Dr. Abowd does not explain how it would be desirable, practical, or even possible to fit clocks for each contest or question in a contest in the player-summary area.

Dr. Abowd's general statement that the time clock modification would have been "feasible" should be given no weight. *Rohm and HaasCo. v. Brotech Corp.*, 127 F.3d 1089, 1092 (Fed. Cir. 1997) (noting that a fact finder is not required to "credit the unsupported assertions of an expert witness"); 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."). Feeney provides no motivation

to include a clock in the player-summary area and a POSA would have no reasonable expectation of success of doing so. Thus, Petitioner's argument fails.

Finally, Petitioner refers to alternative displays of progress in Feeney, i.e., a display of concentric rings that light up and icons moving along a track as a player answers questions correctly. (Petition, 35-36). However, neither of these exemplary visuals addresses the timing element of a real-time scoreboard (under any claim construction) and, therefore, do not teach the claim limitation. In addition, neither of these visuals addresses whether all players are competing over the same series of questions. In fact, the concentric circles embodiment includes a bonus question that appears only for some players (Ex. 1005, 24:64-25:7) and the track embodiment contemplates players ending the game before they answer all the questions in a series of questions (*Id.*, 25:28-34). Petitioner facilely concludes that these visuals would be presented in the "summary area 330," but provides no reason as to why they would be included there. Feeney itself does not locate the visuals in the player summary area despite listing a plethora of (player-specific) information that can be displayed there. (*Id.*, 12:55-13:24). Modifying the player-status area in Feeney to include such visuals despite no teaching or motivation from the prior art to do so constitutes another impermissible hindsight reconstruction of the scoreboard of the '825 Patent claims.

(ii) Feeney in Combination with Rogers Does Not Disclose "Providing a real time scoreboard with time clock to each contestant processing device…"

Petitioner alleges that Feeney in combination with Rogers discloses the claim limitation under Petitioner's claim construction (displaying only the total time for answering a series of questions). (Petition, 36-42; *See* Sec. IV for the parties' claim constructions).

As an initial matter, Petitioner fails to meet its burden to show that a POSA would have been motivated to combine Feeney with Rogers. A party who petitions the Board for a determination of obviousness must show 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." *Procter & Gamble Co. v. Teva Pharms. USA, Inc.*, 566 F.3d 989, 994 (Fed. Cir. 2009) (quoting *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1361 (Fed. Cir. 2007)). Merely demonstrating that the prior art includes separate references which cover each separate limitation in a challenged claim does not meet this standard. *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011). Rather, establishing obviousness requires the identification of reasons as to why a POSA at the time of the invention "would have selected and combined those prior art elements in the normal course of research and development to yield the claimed invention." *Id*.; *Metalcraft of*

Mayville, Inc. v. Toro Co., 848 F.3d 1358, 1366 (Fed. Cir. 2017) ("In determining whether there would have been a motivation to combine prior art references to arrive at the claimed invention, it is insufficient to simply conclude the combination would have been obvious without identifying any reason why a POSA would have made the combination.").

Petitioner attempts to stitch together Feeney and Rogers despite their dissimilar question-and-answer formats. A POSA in the normal course of research and development would not have arrived at such a combination. Feeney generally discloses lengthy (weeks or even months-long) contests where players answer questions of their choosing. (Sec. III.B). Rogers, on the other hand, is a platform designed for taking a test in a single session. (Sec. III.C). Despite these differences, Petitioner and Dr. Abowd propose that a POSA would have been motivated to combine Rogers and Feeney to provide an indication of total time remaining or elapsed when answering a series of questions. Dr. Abowd opines that adding a timer feature from Rogers to Feeney would enhance Feeney's applicability to other games, such as those involving a speed round. (Ex. 1002 ¶84). However, Feeney does not suggest any need for a speed round. Instead, it emphasizes that contests are meant to take place over an extended period of time. (Ex. 1005, 3:23-27).

To justify the inclusion of a "speed round," Dr. Abowd cites a third reference, Smith (Ex. 1002 ¶84). He does not explain how Smith relates to the

other prior art or the invention in the '825 Patent or why a POSA would consider Smith together with Feeney and Rogers. Dr. Abowd simply states that Feeney supports the combination because it applies to "any kind of game in which the players compete against each other." (Ex. 1002 ¶84). This summary conclusion does not reflect those "articulated reasons with rational underpinnings for modifying references" required in an obviousness analysis. Again, the conclusion of obviousness based on a combination of references must be supported with an explicit analysis of a reason to combine those references. *KSR*, 550 U.S. at 418; *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (reasons to combine references must be more than "mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.").

The Petition also fails with respect to the requirement that a POSA have a reasonable expectation of success when combining references. The Petition, relying on Dr. Abowd, concludes that "A POSA would have had a reasonable expectation of success in combining the teachings of Feeney and Rogers because, as discussed above, both disclose similar software concepts for presenting questions and handling answers in a graphical user interface" and that no more than basic software coding would be necessary to combine the different elements. (Petition, 40-41 citing Ex. 1002, ¶85). This does not meet Petitioner's burden as to

obviousness. Petitioner and its expert do not consider how a timing mechanism for a particular contest would be displayed in Feeney's system when a player has the ability to participate in multiple contests at the same time. Notably, Feeney's Dallion count reflects progress with respect to questions answered correctly and is an aggregate across all contests (as well as Dallions received or spent outside of contests), whereas the timer would be separate for each individual contest. Nor does Petitioner address how a real time scoreboard would be implemented, given that it is not disclosed by either reference. As the prior art does not identify the features that would be coded, a POSA could not have relied on "basic software coding" to implement the unidentified features as Dr. Abowd summarily asserts.

Even combined, the references fail to render the claim limitation obvious (under either party's claim construction). Rogers does not teach a real time scoreboard that displays an individual contestant's progress with respect to both the time frame for answering questions and questions answered correctly. Instead, Rogers describes an online test platform with progress indicators for time used and questions answered (without displaying whether they were answered correctly). (Ex. 1006, 19:16-20; FIG. 8). Rogers does not suggest that the test questions are immediately evaluated for correctness such that the number of questions answered correctly might be displayed, as claimed in the '825 Patent. Rather, the test question and time indicators permit the test taker to allocate test time to questions,

skip questions, and return to questions later if time allows. (*Id.*, 9:64-10:15). Test takers in the Rogers system do not receive any indication as to their progress answering questions correctly in the allocated time frame. In the absence of this feature, Rogers, under Petitioner's and Patent Owner's claim constructions, would not have suggested the competitive nature of the claimed academic contest where the presentation of the number of questions answered correctly stimulates the feelings associated with a sports competition, similar to the '825 Patent.

Petitioner suggests that: "Both Feeney and Rogers disclose interface elements associated with a scoreboard, time clock, time for answering questions, and questions answered correctly: Feeney discloses a summary area 330, visuals, concentric rings, countdowns, icons, time, clock indicator, and number of Dallions (see e.g., Ex. 1005, 13:61-14:6, 24:14-26, FIGs. 5-7); and Rogers discloses indicators with a progress bar, a pie chart, a count, a clock, and a digital timer (see e.g., Ex. 1006, 19:56-20:15, FIGs 8-12)." (Petition, 39-40). However, Petitioner fails to explain why a POSA would combine certain elements of Feeney (which in no way discloses a real-time scoreboard) with selected elements from Rogers (which in no way discloses a real-time scoreboard).[12] Even if all the elements of an invention are found in a combination of prior art references, Petitioner has the

[12] At best, Petitioner points to Smith and the inclusion of a "speed round" to support motivation, but as addressed above, reliance on this third reference without explanation of why or how it applies does not meet Petitioner's burden.

"burden to demonstrate … 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" *In re Magnum Oil Tools Int'l*, 829 F.3d 1364, 1381 (Fed. Cir. 2016), and must "articulate[] reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 550 U.S. at 418. The requirement of a reason to combine is a safeguard against "an impermissible 'hindsight reconstruction,' using 'the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit.'" *Intel Corp. v. Qualcomm Inc.*, IPR2018-01429, Paper 43 at 51-52 (P.T.A.B. Jan. 30, 2020) (quoting *In re NTP, Inc.*, 654 F.3d 1279, 1299 (Fed. Cir. 2011)). Simply listing features mentioned in the prior art that could be meshed together to recreate the '825 Patent claims' real-time scoreboard does not constitute an appropriate obviousness analysis.

To conclude, neither Feeney nor Rogers nor their combination suggests or describes "a real time scoreboard with time clock...that displays an individual contestant's progress with respect to both the time frame for answering questions and questions answered correctly." Absent a hindsight analysis, a basis does not exist for Petitioner's obviousness contentions.

B. Petitioner Fails to Demonstrate a Reasonable Likelihood That Claims 1 and 14 Are Unpatentable Under Ground 4 (Feeney, Rogers, Panetta, and Maurseth)

Ground 4, Feeney in combination with Rogers, Panetta, and Maurseth,[13] does not establish a reasonable likelihood that Petitioner will prevail with respect to at least one challenged claim as required for institution. Petitioner fails to demonstrate that independent claims 1 or 14 (and therefore, any of the dependent claims) would have been obvious because the prior art does not ultimately teach or suggest several claim limitations.

Petitioner incorporates its analysis under Ground 1 in Ground 4 and provides no further explanation relating to "presenting a series of test questions to the contestant processing devices of the individual contestants of competing teams for response in a time frame allocated for the academic competition" and "providing a real time scoreboard with time clock to each contestant processing device…" Patent Owner incorporates its response to the Petition relating to these elements. (Sec. V.A.2, V.A.3). Thus, Ground 4 fails for the same reasons as discussed above

[13] Petitioner relies on Panetta for claim limitations that are not addressed in this brief. Discussion of Panetta herein is not necessary to defeat Petitioner's Ground 4 argument. It is surprising that Petitioner asserts only Downs, and not Panetta, was considered by the USPTO during prosecution. (Petition, 3). Panetta was addressed during prosecution of the '825 Patent (Ex. 1001, p. 2 References Cited), including in the passage Petitioner cites in its claim construction argument.

in Sec. V.A.2 and V.A.3. Ground 4 also fails for the additional reason provided below.

1. Feeney in Combination with Maurseth Does Not Disclose "Enabling a user...to…divide a team into multiple teams for an intra-team academic competition"

Petitioner alleges that Feeney in combination with Maurseth discloses the following limitation in claims 1 and 14:

> enabling a user, through a user interface connected to said database, to perform at least one of the following: (1) create a league of teams and a cycle of academic competition amongst the league of teams, (2) search for and select at least one team for participation in an inter-team academic competition, and (3) divide a team into multiple teams for an intra-team academic competition;

Petitioner focuses on (3) from the claim: "enabling a user, through a user interface connected to said database, to … divide a team into multiple teams for an intra-team academic competition." (Petition, 64-65).[14]

Petitioner's states as its reason for combining Feeney and Maurseth that a "POSA would have looked to Maurseth because it relates to games involving teams like Feeney," the same statement Dr. Abowd makes in his declaration.

[14] Feeney and Maurseth clearly do not teach, and Petitioner does not allege that the combination teaches, creating a league of teams and a cycle of academic competition amongst the league of teams (sublimitation (1)), which is claimed in the alternative. As addressed above, Feeney does not teach searching for and selecting at least one team for participation in an inter-team academic competition (sublimitation (2)).

(Petition, 65 citing Ex. 1002, ¶136). This conclusory statement is not sufficient to show that a POSA would have selected and combined the references. The conclusion of obviousness based on a combination of references must be supported with an explicit analysis of a reason to combine those references. *KSR*, 550 U.S. at 418; *In re Kahn*, 441 F.3d at 988; *see also LG Elecs., Inc. v. Cellular Commc'ns Equip. LLC*, IPR2016-00197, Paper 7 at 7-11 (PTAB Apr. 29, 2016) (petition's conclusion of obviousness lacked sufficient articulated reasons with rational underpinnings for modifying references to achieve specific elements of the claims); 37 C.F.R. § 42.65(a).

As addressed above (Sec. III.B, III.D), Feeney and Maurseth are directed to unrelated game environments. Feeney generally discloses players taking part in one or more potentially simultaneous contests on an online platform designed to connect players with corporate sponsors as an advertising mechanism. These contests are played "over a significant period of time" such as at least 2-3 days, a month or even longer. (*Id.*, 3:23-27). The system functions via servers, a network, and personal devices to permit thousands of geographically dispersed players to participate in any of the contests. (Ex. 1005, 3:64-4:5).

On the other hand, Maurseth describes a physical game played by "small teams" using a physical board with dice. (Ex. 1007, [0038] ("Questions for the players are stored on the board in stacks at different locations"), Abstract).

Maurseth is not a time-based question and answer game. Moreover, Maurseth omits any discussion relating to online systems of play or systems of play involving a user interface (as recited by the challenged claims). The mere classification of Feeney and Maurseth as games having a team component does not amount to the articulated reasoning with rational underpinning required in an obviousness analysis.

To fill the gap, Petitioner and Dr. Abowd attempt to connect Maurseth and Feeney by identifying a potential problem that Feeney may have sought to solve. Dr. Abowd opines, "if teams get too large, the administrator could need the ability to divide the teams into sub-teams and host the competition between the sub-teams." (Petition, 65 citing Ex. 1002, ¶136). However, Feeney does not even hint that the number of players in a game or on teams has, or might have, any size limitation. Feeney does not discuss balancing the number of team members or limiting the number of team members. Quite the opposite, Feeney teaches away from dividing teams into sub-teams by emphasizing that the system is designed to accommodate thousands or even tens of thousands of players. (Ex. 1005, 19:61-64). The lack of a rational reason to combine the references betrays Petitioner's use of the '825 Patent claims and hindsight to find claim elements in prior art. *See Polaris Indus., Inc. v. Arctic Cat, Inc.*, 882 F.3d 1056, 1068–69 (Fed. Cir. 2018) (citing *InTouch*, 751 F.3d at 1352 (concluding that a party's expert "succumbed to

hindsight bias in her obviousness analysis" where such analysis "primarily consisted of conclusory references to her belief that one of ordinary skill in the art *could* combine these references, not that they would have been motivated to do so")) (emphasis in original).

Even allowing for the possibility that a POSA might combine Maurseth and Feeney, the disclosures do not teach the missing claim limitation. The '825 Patent claim requires "enabling a user, through a user interface connected to said database" to "divide a team into multiple teams for an intra-team academic competition." (Ex. 1001, Claims 1, 14). Maurseth also discusses an approach to team division (e.g., "Divide Organization into Aggregate Teams," "Divide Aggregate Teams into Teams," and "Teams Divide Themselves into Mini-Teams"). (*Id.*, FIG. 1). Maurseth describes that the teams at each given level are responsible for dividing themselves into the requisite number of lower-level teams: "To play the game, the organization divides (10) itself into a set of aggregate teams. Each aggregate team in the organization divides (12) itself into a set of teams. Each team in an aggregate team divides (14) itself into a set of mini-teams." (*Id.*, [0024]; *see also* [0036] ("Mini-teams are selected by the team members based on their cross-functional expertise as mini-team members share knowledge and skills in order to succeed.")). However, Maurseth does not discuss the utilization of a user interface or a database in its approach to team division; it is a *board game*.

(Ex. 1007, Abstract). More specifically, it omits any description of users accessing a user interface connected to a database to perform activity relating to dividing teams in a manner that enables intra-team competition.

Petitioner relies on another mischaracterization in addressing Maurseth's team division disclosure. The Petition states that "a POSA would have been motivated to configure the Feeney-Rogers system to provide the ability for the administrator to divide teams through Feeney's user interface." (Petition, 65 citing Ex. 1002, ¶136). However, Petitioner carefully avoids a fact central to Feeney's system: players create and manage their own membership in teams, not an administrator. Identifying potential team members in Feeney requires searching through individual player profile cards and sending requests to join a team. Petitioner's suggestion that providing the '825 Patent claim's team division feature "would take no more than basic coding" (*id.*) does not address that Feeney's interface (consisting of individual player cards presented one player card at a time) would have to be significantly transformed to permit a user to divide players between teams. 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). "It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts

necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *Charles v. Hedges*, 783 F.2d 1038, 1041 (Fed. Cir. 1986) (quoting *In re Wesslau*, 353 F.2d 238, 241 (CCPA 1965)). The Petition does exactly what the caselaw proscribes: it takes a reference regarding team division from one reference and uses it to argue obviousness without acknowledging the different teachings, game environments, and implementation of team structures of the references.

As a result, the Petitioner also fails to show that a POSA would have a reasonable expectation of success combining Feeney and Maurseth. The Petitioner merely states that providing the ability for the administrator to divide teams through Feeney's user interface "would take no more than basic software coding," (Petition, 65) even though the features to be coded are not described. As addressed above, Feeney does not provide an administrator user with the ability to create, view, or modify teams. Teams are formed and disbanded by players themselves with no administrator control. Maurseth provides no coding guidance because it is a physical board game.

In sum, a POSA would not have had the motivation to combine Feeney and Maurseth nor the reasonable expectation of success modifying Feeney to incorporate the features Petitioner identifies. Moreover, the combination does not ultimately teach or suggest the '825 Patent claim limitation of dividing a team into

multiple teams. This limitation is present in independent claims 1 and 14. As a result, the Petition fails on Ground 4 for the additional reason that this limitation is not disclosed or taught by the prior art, and the challenge of all dependent claims fails as well.

C. The Petition Does Not Show That Any of the Claims Are Unpatentable Under Any Ground

All grounds presented in the Petition rely on Grounds 1 or 4 to allege independent claims 1 and 14 are obvious. If any of the elements addressed above are missing from Grounds 1 or 4, then they are also missing from all dependent claims. Grounds 2 and 5 incorporate other prior art to address only claims 9 and 22, Grounds 3 and 6 incorporate other prior art to address only claims 11 and 24. None of Grounds 2, 3, 5, or 6 can succeed due to the missing elements from the independent claims as to Grounds 1 and 4.

VI. DR. ABOWD'S DECLARATION REPEATS THE PETITION AND SHOULD BE GIVEN NO WEIGHT

Dr. Abowd's declaration should be given no weight. The 101-page/140-paragraph declaration amounts to little more than reiteration of the Petition's arguments: it cites the same portions of the prior art as the Petition and provides the same explanations without more meaningful analysis.[15] *TikTok Inc. v. NTech*

[15] Dr. Abowd states the opinions in the declaration are based on his "knowledge regarding motion sensing techniques and devices," a technology not at issue in this proceeding. (Ex. 1002, ¶13).

Properties, Inc., IPR2024-01339, Paper 9 at 16 (PTAB Feb. 25, 2025) (denying institution and giving little to no weight to an expert declaration that "repeats, almost verbatim, the language in the Petition"); *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB Aug. 24, 2022) (decision denying institution) (precedential) ("[T]he cited declaration testimony is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight.").

A comparison of the sections of the Petition and Dr. Abowd's declaration relating to claim construction and the claim limitations addressed above demonstrates that the two documents use the same language. Exhibit 2005 hereto provides a side-by-side comparison of these portions of the Petition and Dr. Abowd's Declaration.[16] Language that is the same in both documents is highlighted in yellow. As can be seen in Ex. 2005, the two documents provide the same explanations, the same analysis, and the same citations. Dr. Abowd adds nothing substantive to the content of the Petition. The main differences are that Dr. Abowd's declaration includes quotes from the references in several places where

[16] Ex. 2005 compares the claim construction section (Petition, 9-12; Ex. 1002 ¶¶ 30-24), Ground 1 sections relating to the limitation Petitioner labels [1.d] "enabling a user…to…search for and select at least one team…" (Petition, 23-27; Ex. 1002 ¶¶ 62-66), limitation Petitioner labels [1.e] "presenting a series of test questions…" (Petition, 27-31; Ex. 1002 ¶¶ 67-71), limitation Petitioner labels [1.f] "providing a real time scoreboard" (Petition, 31-42; Ex. 1002 ¶¶ 72-88), and Ground 4 (Petition, 62-65; Ex. 1002 ¶¶ 132-136).

the Petition includes only citations (potentially as a result of word-count limits that apply to the Petition), the Petition cites caselaw, and the Petition refers to a person of skill the art as "POSA" whereas Dr. Abowd uses "POSITA." Substantively, they are identical.[17] The Board has repeatedly given no weight to expert declarations that parrot the Petition and should likewise give no weight to Dr. Abowd's Declaration. *Samsung Electronics Co., Ltd. et al v. RightQuestion, LLC*, IPR2022-00251, Paper 17 at 25 (PTAB June 9, 2022) ("Petitioner's declarant also makes this same statement verbatim, without more, and with no further explanation or additional citations to evidence. . . We give such conclusory, unsupported assertions by Petitioner's expert little or no weight."). In *Volkswagen*, the Board denied institution, in part because the petitioner's expert declaration "provide[d] little additional probative value" because it contained arguments that were identical to arguments set forth in the petition. V*olkswagen Group of America, Inc. v. StratosAudio, Inc.*, IPR2021-00717, Paper 12 at 36-38 (PTAB Nov. 12, 2021); "Merely repeating an argument from the Petition in the declaration of a proposed

[17] Elements of the Petition and Dr. Abowd's Declaration strongly suggest they were simply a copy/paste of each other. The language highlighted in yellow in Ex. 2005 appears verbatim in the same order in the Petition and declaration, the two use the same transitional words, emphasize the same language, use the same section numbers so that citations such as "supra Section IX.A.1.iii" can be used in both (see Petition, 41 and Ex. 1002 ¶88), and Dr. Abowd's Declaration has an "*Id*." citation in ¶84 that appears in the corresponding paragraph in the Petition (p. 40), but makes no sense in Abowd's Declaration (because it refers to a previous citation to Dr. Abowd's Declaration that appears in the Petition only).

expert does not give that argument enhanced probative value." *See Kinetic Technologies, Inc. v. Skyworks Solutions, Inc.*, IPR2014-00529, Paper 8 at 14-15 (PTAB Sep. 23, 2014).

VII. CONCLUSION

For the reasons addressed herein, Patent Owner respectfully requests that the Board decline to institute *inter partes* review of the '825 Patent.

Dated: July 16, 2025

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the portions of the above-captioned PATENT OWNER'S PRELIMINARY RESPONSE specified in 37 C.F.R. § 42.24 has 12,790 words in compliance with the 14,000 word limit set forth in 37 C.F.R. § 42.24. This word count was prepared using Microsoft Word for Office 365.

Dated: July 16, 2025

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