

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CAPITAL ONE, N.A. AND CAPITAL ONE SERVICES LLC,
Petitioners,

v.

WAPP TECH CORP.,
Patent Owner.

Case IPR2025-01325
Patent 8,924,192

**PATENT OWNER'S PRELIMINARY RESPONSE UNDER
37 C.F.R. § 42.107 TO PETITION FOR INTER PARTES REVIEW**

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EXHIBIT LIST

Exhibit	Description
EX2001	Complaint for Patent Infringement , Dkt. No. 1, <i>Wapp Tech. Ltd. P'ship v. Apple, Inc.</i> , Case No. 4:25-cv-230 (E.D. Tex. Filed March 6, 2025)
EX2002	Complaint for Patent Infringement , Dkt. No 1, <i>Wapp Tech. Ltd. v. Micro Focus Int'l PLC</i> , Case No. 4:18-cv-469 (E.D. Tex. Filed July 2, 2018)
EX2003	Complaint for Patent Infringement in first Wells Fargo suit, Dkt. No. 1, <i>Wapp Tech. Ltd. v. Wells Fargo & Co.</i> , Case No. 4:18-cv-501 (E.D. Tex., July 16, 2018)
EX2004	Complaint for Patent Infringement in first Bank of America suit, Dkt. No. 1, <i>Wapp Tech. Ltd. v. Bank of America Corp.</i> , Case No. 4:18-cv-519 (E.D. Tex., July 20, 2018)
EX2005	Markman Order , Dkt. No. 176, <i>Wapp Tech. Ltd. v. Micro Focus Int'l PLC</i> , Case No. 4:18-cv-469, (E.D. Tex., April 27, 2020)
EX2006	Motion to Stay by Defendant Wells Fargo , Dkt. No. 137, <i>Wapp Tech. Ltd. v. Wells Fargo & Co.</i> , Case No. 4:18-cv-501 (E.D. Tex., Oct. 30, 2020)
EX2007	Motion to Stay by Defendant Bank of America , Dkt. No. 12, <i>Wapp Tech. Ltd. v. Bank of America Corp.</i> , Case No. 4:18-cv-519 (E.D. Tex., Oct. 17, 2018)
EX2008	Trial Transcript Volume 5 of 5 , Dkt. No. 478, <i>Wapp Tech. Ltd. v. Micro Focus Int'l PLC</i> , Case No. 4:18-cv-469, (E.D. Tex., March 5, 2021)
EX2009	Order regarding Defendants' Opening Brief Opposing Enhancement of Damages , Dkt. No. 486, <i>Wapp Tech. Ltd. v. Micro Focus Int'l PLC</i> , Case No. 4:18-cv-469 (E.D. Tex. April 22, 2021)
EX2010	Final Judgement , Dkt. No. 487, <i>Wapp Tech. Ltd. v. Micro Focus Int'l PLC</i> , Case No. 4:18-cv-469 (E.D. Tex. April 22, 2021)
EX2011	Docket sheet for <i>Wapp Tech. Ltd. v. Micro Focus Int'l PLC</i> , Case No. 4:18-cv-469
EX2012	Docket sheet for <i>Wapp Tech. Ltd. v. Wells Fargo & Co.</i> , Case No. 4:18-cv-501
EX2013	Docket sheet for <i>Wapp Tech. Ltd. v. Bank of America Corp.</i> ,

	Case No. 4:18-cv-519
EX2014	Complaint for Patent Infringement in second Wells Fargo suit, Dkt. No. 1, <i>Wapp Tech. Ltd. v. Wells Fargo Bank, N.A.</i> , Case No. 4:21-cv-00671 (E.D. Tex., August 27, 2021)
EX2015	Complaint for Patent Infringement in second Bank of America suit, Dkt. No. 1, <i>Wapp Tech. Ltd. v. Bank of America Corp.</i> , Case No. 4:21-cv-00670 (E.D. Tex., August 27, 2021)
EX2016	Markman Order in second Wells Fargo suit, Dkt. No. 96, <i>Wapp Tech. Ltd. v. Wells Fargo Bank, N.A.</i> , Case No. 4:21-cv-00671 (E.D. Tex. July 6, 2022)
EX2017	Docket sheet for <i>Wapp Tech. Ltd. v. Bank of America Corp.</i> , Case No. 4:21-cv-00670
EX2018	Docket sheet for <i>Wapp Tech. Ltd. v. Wells Fargo Bank, N.A.</i> , Case No. 4:21-cv-00671
EX2019	Complaint for Patent Infringement , Dkt. No. 1, <i>WAPP Tech. Ltd. P'ship v. JPMorgan Chase Bank, N.A.</i> , Case No. 4:23-cv-01137 (E.D. Tex., December 22, 2023)
EX2020	Markman Order in JPMorgan Chase Bank case, Dkt. No. 80, <i>WAPP Tech. Ltd. P'ship v. JPMorgan Chase Bank, N.A.</i> , Case No. 4:23-cv-01137 (E.D. Tex. Nov. 11, 2024)
EX2021	Docket sheet for <i>WAPP Tech. Ltd. P'ship v. JPMorgan Chase Bank, N.A.</i> , Case No. 4:23-cv-0113
EX2022	Docket sheet for <i>ams Sensors USA v. Intersil Corporation</i> , Case No. 4:08-cv-00451 (E.D. Tex. Filed Nov. 25, 2008)
EX2023	Docket sheet for <i>Oasis Research, LLC v. Adrive, LLC et al.</i> , Case No. 4:10-cv-00435 (E.D. Tex. Filed Aug. 20, 2010)
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EX2028	Order Governing Proceedings , Dkt. No. 44, <i>Imperium IP Holdings (Cayman), Ltd. v. Samsung Electronics Co., Ltd. et</i>

	<i>al</i> , Case No. 4:14-cv-00371 (E.D. Tex. Oct. 15, 2014)
EX2029	Docket sheet for <i>Tech Pharmacy Services, LLC v. Alixa Rx LLC et al</i> , Case No. 4:15-cv-00766 (E.D. Tex. Filed Nov. 2, 2015)
EX2030	Order Governing Proceedings , Dkt. No. 21, <i>Tech Pharmacy Services, LLC v. Alixa Rx LLC et al</i> , Case No. 4:15-cv-00766 (E.D. Tex. Feb. 22, 2016)
EX2031	Docket sheet for <i>Evicam International, Inc. v. Enforcement Video, LLC</i> , Case No. 4:16-cv-00105 (E.D. Tex. Filed Nov. 24, 2015)
EX2032	Order Governing Proceedings , Dkt. No. 12, <i>Evicam International, Inc. v. Enforcement Video, LLC</i> , Case No. 4:16-cv-00105 (E.D. Tex. Feb. 22, 2016)
EX2033	Docket sheet for <i>Innovation Sciences, LLC v. Amazon.com Inc.</i> , Case No. 4:18-cv-00474 (E.D. Tex. Filed July 5, 2018)
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EX2038	Order Governing Proceedings , Dkt. No. 56, <i>Wapp Tech. Ltd. P’ship v. Apple, Inc.</i> , Case No. 4:25-cv-230 (E.D. Tex. Aug. 20, 2025)
EX2039	Wapp’s Production Notice Letter to Capital One in <i>Wapp Tech. Ltd. P’ship v. Apple, Inc.</i> , Case No. 4:25-cv-230 dated Sept. 30, 2025
EX2040	Wapp’s First Set of Interrogatories to Capital One (Nos. 1-2) in <i>Wapp Tech. Ltd. P’ship v. Apple, Inc.</i> , Case No. 4:25-cv-230 dated Sept. 30, 2025
EX2041	Wapp’s Venue Interrogatories to Apple (Nos. 1-4) in <i>Wapp Tech. Ltd. P’ship v. Apple, Inc.</i> , Case No. 4:25-cv-230 dated Sept. 8, 2025
EX2042	Wapp’s Request for Production to Apple (Nos. 1-7) in <i>Wapp</i>

	<i>Tech. Ltd. P'ship v. Apple, Inc.</i> , Case No. 4:25-cv-230 dated Sept. 8, 2025
EX2043	U.S. Patent No. 9,965,797
EX2044	U.S. Patent No. 10,665,204

I. Introduction

Wapp Tech Corp. (“Wapp”) respectfully requests that the Board deny Capital One, N.A. and Capital One Services LLC’s (collectively, “Capital One” or “Petitioner”) Petition to institute *inter partes* review of U.S. Patent No. 8,924,192 (“the ’192 Patent”) because Petitioner has not shown a reasonable likelihood of prevailing on its challenge to any of claims 60-69 (the “Challenged Claims”).

The ’192 Patent has been asserted and/or challenged in nine different District Court proceedings since 2018, and to date not a single one of the Patent’s 69 Claims has been invalidated. *See* Paper 5 at 2 (Wapp’s Mandatory Notices listing prior related matters). Petitioner was well aware from the District Court complaint that it was infringing at least Claim 1 of the ’192 Patent, EX2001 ¶122, but quite tellingly it chose to challenge **only** Claims 60-69 of the ’192 Patent. Even more telling is the fact that Petitioner does not assert any cogent theory of invalidity based on actual prior art, but instead rests its challenge on two untenable theories that would allow it to avoid a traditional challenge based on prior art patents and printed publications, specifically (1) that Claims 60-69 are product-by-process claims and Petitioner therefore does not need to address most of the limitations, and (2) that, despite being a continuation of U.S. Patent No. 7,813,910, the ’192 Patent is somehow not entitled to its parent’s priority date, and therefore the parent patent can be used as prior art. As discussed further below, neither theory has any legal or substantive merit, and

Petitioner's half-hearted attempt to invalidate a small subset of the '192 Patent's claims based on incorrect legal interpretations and backdoor written description challenges rather than actual prior art should be rejected.

II. Background

A. Problems Addressed

The '192 Patent inventions relate to development and testing of applications for mobile devices. Today, these patented solutions have been incorporated into leading software for mobile application development and testing, including Xcode and Android Studio.

Prior to filing his June 10, 2005 provisional application, the inventor recognized that the mobile device market was evolving much more quickly than the broader eCommerce market as a whole. EX1004 ¶ [0002]; EX1031 at PDF Pages 4-5, 9.¹ However, applications intended for use on mobile devices were achieving little

¹ For portions of this Preliminary Response, Wapp cites to (1) the '192 Patent's Parent Application No. 12/759,543 (the "'543 application") filed as EX1004, and (2) Provisional Patent Application No. 60/689,101 (the "'101 Provisional) filed as EX1031 and incorporated by reference into both the '192 Patent and the '543 application. *See* EX1001 at 1:12-19; EX1004 ¶ [0001]. The common support across these disclosures further demonstrates that Petitioner's assertion that the '543

success despite the growth of the mobile device market. EX1031 at PDF Page 9. The inventor determined that this failure was due to limitations of the tools that were being used to develop mobile applications. *Id.* at PDF Pages 4-7, 9-13; EX1004 ¶¶ [0003]-[0005]. In response, he identified multiple technical shortcomings in existing software and hardware tools and invented concrete solutions to overcome those shortcomings and improve the functionality of the tools.

The inventor identified several different existing tools that were deficient, including Flash/FlashLite, Java/J2ME, .Net, and BREW. EX1004 ¶ [0003]-[0004]; EX1031 at PDF Pages 2-4, 6-7, 9-13. He noted that existing development tools were often targeted at developing for a single mobile device type, and therefore quickly became obsolete. EX1004 ¶ [0002], [0089]. Such solutions could not support the rapid development needed to serve the quickly diversifying mobile market. *Id.*

He also noted that attempts to adapt application development tools previously targeted at the desktop computer market (such as Flash and Java) to work for mobile devices were deficient because they failed to provide the ability to develop and test for the large number of diverse mobile device types. EX1004 ¶ [0003]; EX1031 at PDF Page 4. For example, for Flash Lite (the “mobile” version of Flash), he observed

application and '192 Patent do not provide written description support for the '192 Patent's claims is meritless.

that “[t]he inherent needs of the Flash Lite developer are very different from those of its sister developer in Flash. Unlike the PC market, Flash Lite application development involves realtime authoring and testing of the product **on all addressable handset platforms**.” EX1031 at PDF Page 4 (emphasis added). However, while Flash could generically “simulate operation of the application,” it was not capable of simulating how the application would operate on a specific type of mobile device model. EX1004 ¶¶ [0003]-[0004]. As a result, “[a]lthough a Flash Player application may operate correctly on one mobile device model, it may crash when playing on a different mobile device model.” *Id.* The only way that such issues could be detected and avoided was to have access to “all available mobile devices” and “transfer[] and test[] [the application] on a mobile device representative of each targeted mobile device type”—something which simply was not possible at the time. *Id.* The same was true of software development tools such as Java. While J2ME was the “mobile” version of Java, it too failed to provide mechanisms to test on all handset platforms as needed to ensure a functional mobile application.

Furthermore, “[d]uring development of an application for a mobile device, an application author may transfer and play the application hundreds of times (development life cycles) on the targeted mobile device before identifying and correcting all system resource problems within the application.” *Id.* Therefore, even if a developer somehow had access to every possible type of physical mobile device,

it would have been a virtual impossibility to repeatedly transfer the application under development to each mobile device type for testing across the number of development cycles typically required to develop a satisfactory mobile application.

Id.

Because then-existing mobile application development tools did not provide for device-specific testing, the inventor recognized that mobile applications would continue to fail or underperform on certain mobile devices, resulting in application crashes and unsatisfactory user experiences. *Id.* ¶¶ [0003], [0043], [0045]. The inventor further recognized that it was not enough to simply recreate the kinds of mobile device characteristics and scenarios that would lead to crashes and unsatisfactory user experiences. He also recognized that new types of mobile application development tools and user interfaces would also be needed to enable a developer to not just identify that problems existed, but also to identify which parts of the application were underperforming and causing problems, for example, because the capabilities of one or more available resources of the mobile device (e.g., CPU, memory, etc.) were not adequate to process the application.

Moreover, the inventor noted that a factor in achieving end user adoption of mobile content (e.g., mobile applications) would be to provide “client side personalization” of content, giving the example of “personalized Wallpapers.”

EX1031 at PDF Pages 9-10.

B. '192 Patent Solutions

In response to these technical problems in the various computer-based tools used for mobile application development, the inventor developed multiple specific technical improvements. Only certain improvements specific to the Challenged Claims are highlighted here.

1. Mobile Device Simulation

First, the inventor developed the ability to emulate/simulate² each of the *specific* mobile device types, which differed from prior solutions that provided device-agnostic emulation and simulation unconstrained by the particular hardware characteristics of a mobile device type. EX1031 at PDF Pages 4, 7; EX1004 at Abstract, Figs. 1A, 1B, 2, 4-12, 14, ¶¶ [0006]-[0011], [0024], [0027]-[0041], [0043]-[0067], [0071], [0073]-[0091]. This is achieved, in part, by emulating/simulating mobile device characteristics that are indicative of the performance of specific mobile device types. Exemplary characteristics are shown in Table 1:

² As discussed below in Section V, in the context of the '192 Patent the District Court has previously construed “simulate” to mean “emulate” and “emulate” to have its plain meaning. EX2020 at 7-15.

TABLE 1	
Mobile Device Characteristics	
Parameter	Value
Name	NOKIA 3650
Processor	ARM 4T
Processor Speed	104 MHz
Storage Access Speed	5.88 files/second
RAM Size	256 MB
Storage Size	512 MB
Display Width	256
Display Height	394
Pixel Depth	24
Processor Availability	60%
RAM Availability	60%
Storage Availability	40%

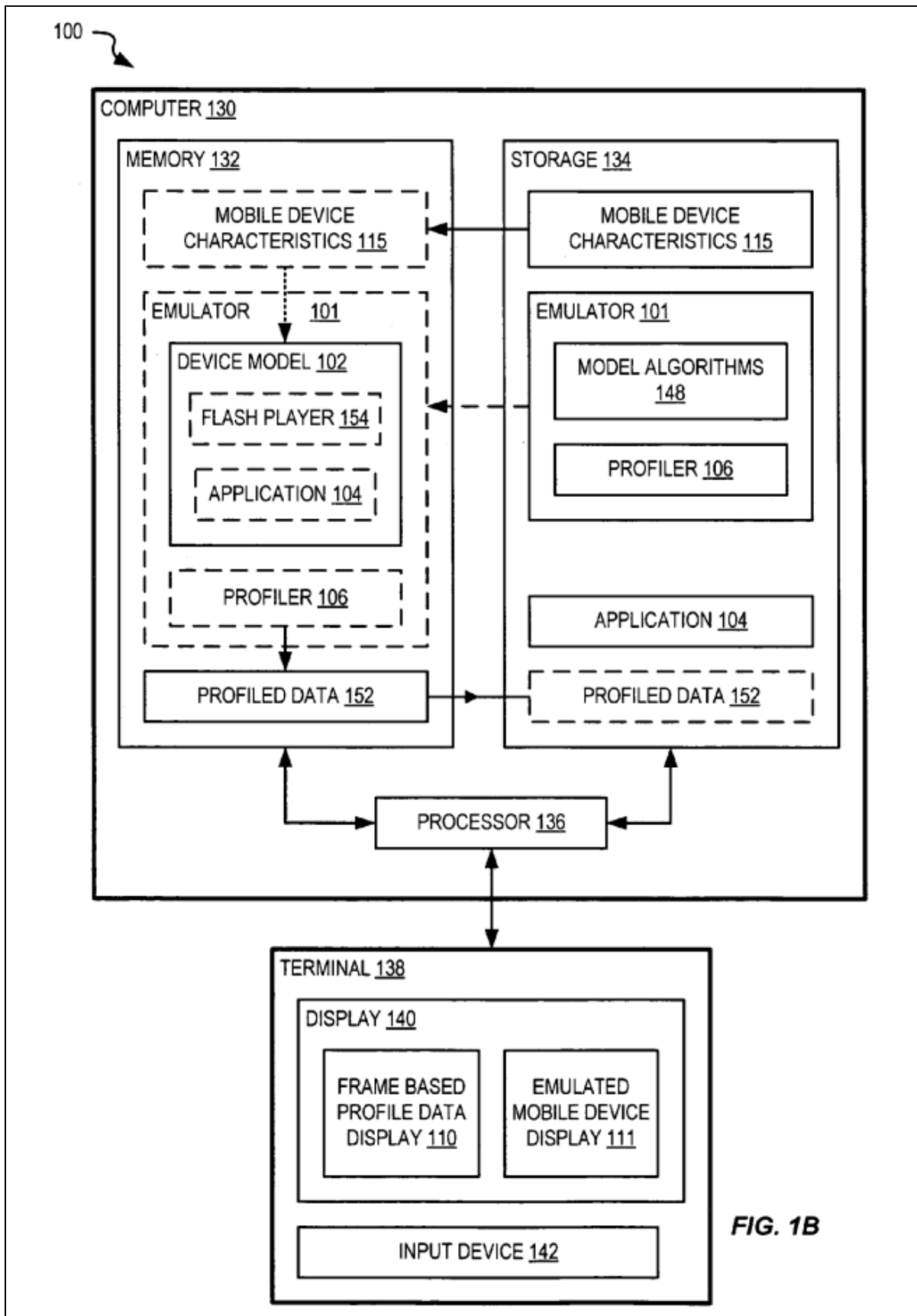
EX1009 Table 1; EX1004 ¶ [0032].

These characteristics can significantly affect the performance of an application being run on the device. For example, a device with a slower processor speed will generally process data slower than a device with a faster processor speed, and a device with slower storage access speed will generally load (and store) data slower than a device with faster storage access speed. Thus, an application tested against one mobile device type (with premium hardware) may appear to run successfully, while on the majority of mobile device types it would operate poorly.

The '192 Patent further teaches how to utilize these mobile device characteristics to emulate/simulate a mobile device. For example, '192 Patent “FIG. 1B shows one exemplary embodiment of the system of FIG. 1A within a computer,” and “FIG. 1A shows one exemplary embodiment of a system for emulating,

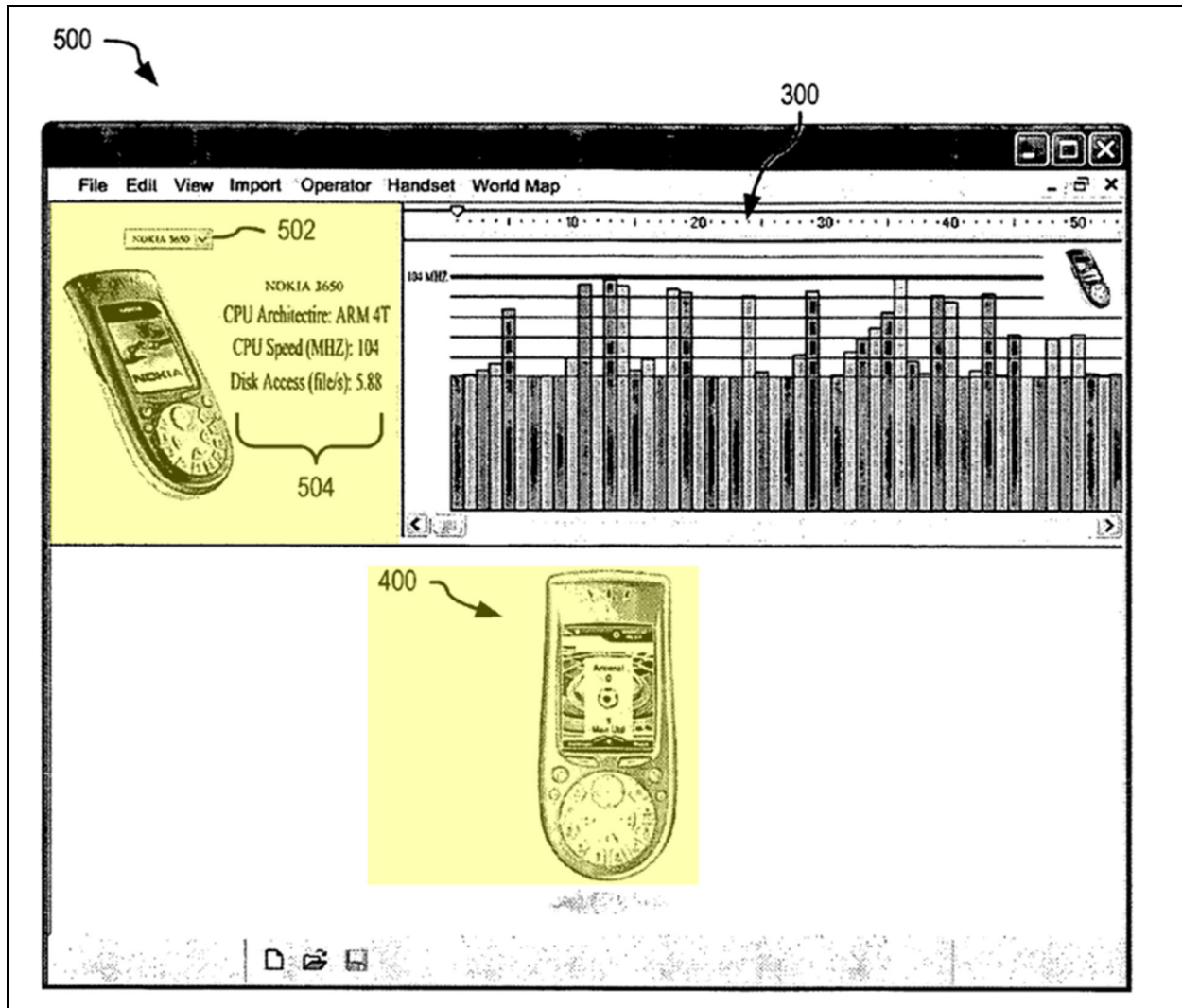
authoring and visually profiling an application playing on a mobile device...”

EX1001 at Figs. 1A-1B; EX1004 at Figs. 1A-1B, ¶¶ [0012]-[0013].



“A user of system 100 may [] select one or more target mobile devices from a list based upon available characteristics 115. As appreciated, additional or fewer characteristics may be included within characteristics 115 to specify performance of mobile device.” EX1004 ¶ [0034]. “Device model 102, within emulator 101, has a modeled display 210, a modeled processor 212, modeled input keys 214, modeled memory 216 and modeled non-volatile storage 218. In this example, modeled display 210 represents display 118 of mobile device 114, FIG. 1, processor 212 represents a processor (not shown) of mobile device 114, modeled input keys 214 represent input keys 120 of mobile device 114, modeled memory 216 represents memory (e.g., RAM) of mobile device 114 and modeled non-volatile storage 218 represents non-volatile storage (e.g., flash memory, disk drive storage) of mobile device 114. Fewer or more elements and/or components of mobile device 114 may be modeled within device model 102.” *Id.* ¶ [0040].

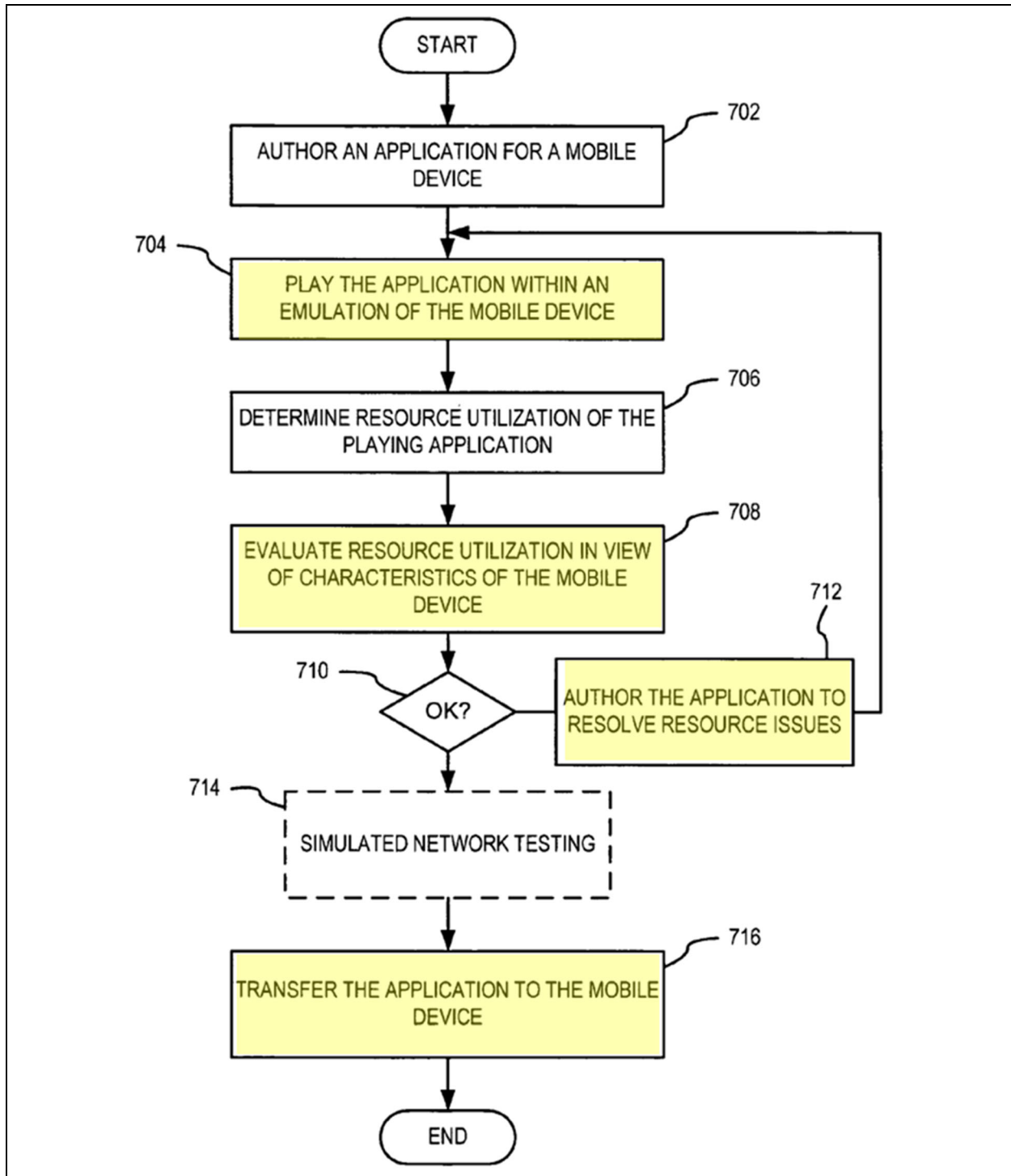
’192 Patent Figure 5 (annotated) further shows an example of using these mobile device characteristics to simulate/emulate a mobile device type.



In this example, the user has selected a Nokia 3650 mobile phone, and relevant device characteristics (including CPU Speed and Disk Access speed) are used to emulate/simulate the mobile device. The display identified as 400 is the emulated or simulated mobile phone with which the developer can interact to test the mobile application. By testing on various emulated or simulated mobile devices with different characteristics, users can identify problems they might otherwise miss if they only tested on a single device type. “For example, a NOKIA 6600 has a 16%

reduction in ARM CPU speed and available memory resources compared to a NOKIA 7610, thus an application that plays correctly on the NOKIA 7610 may not play correctly on the NOKIA 6600 due to this drop in inherent resources.” EX1004 ¶ [0003].

The '192 Patent teaches that these emulated/simulated versions of the mobile device can be used until the author is able to resolve issues with the application that might be specific to that type of mobile device. Once these issues are resolved and the application is “OK” to move forward, the application can be transferred to a physical mobile device for further testing, as shown in annotated Figure 7:

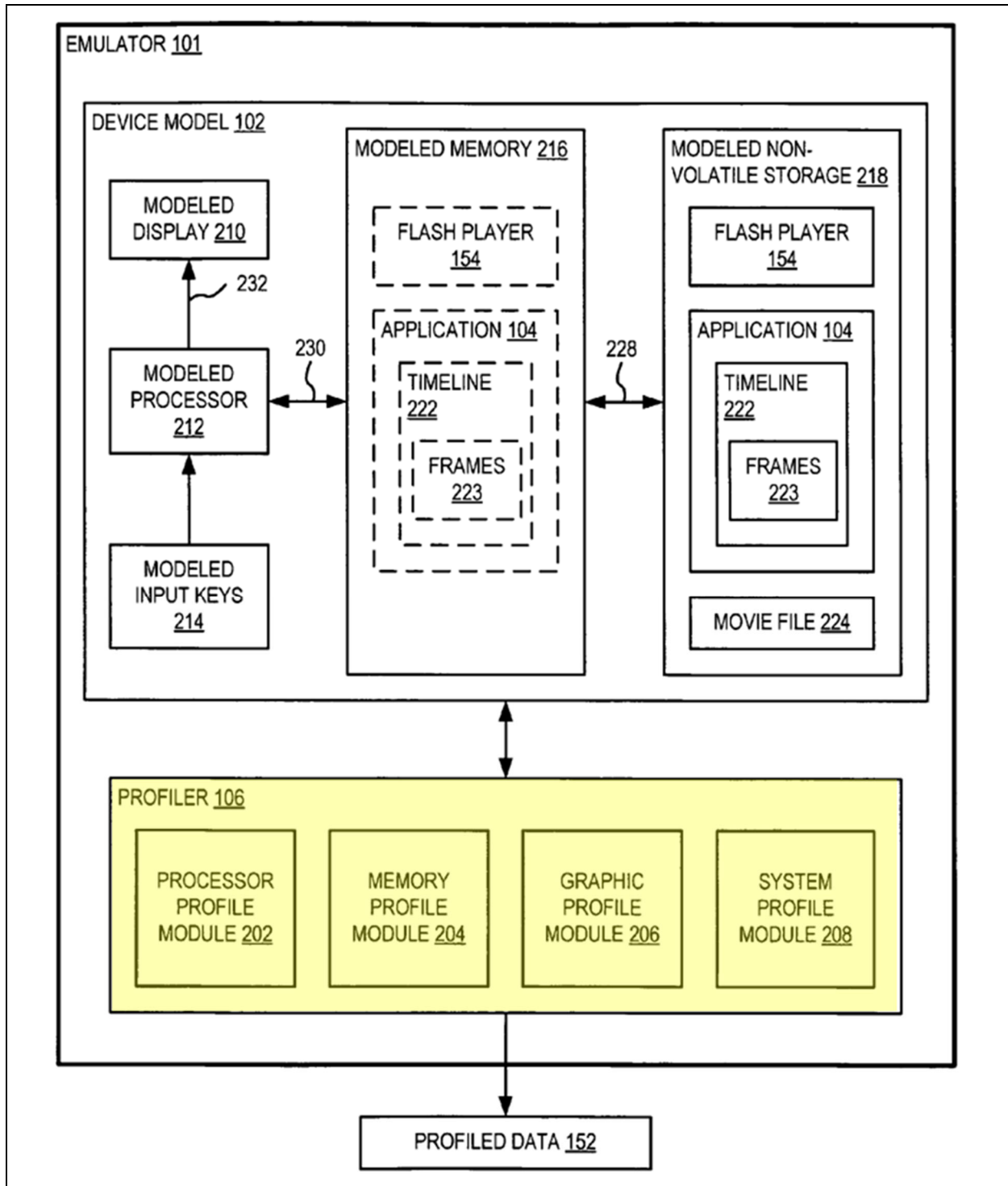


Id. at Fig. 7 (annotated), ¶¶ [0056]-[0064], [0090].

2. Mobile Device Profiling and Profile Displays

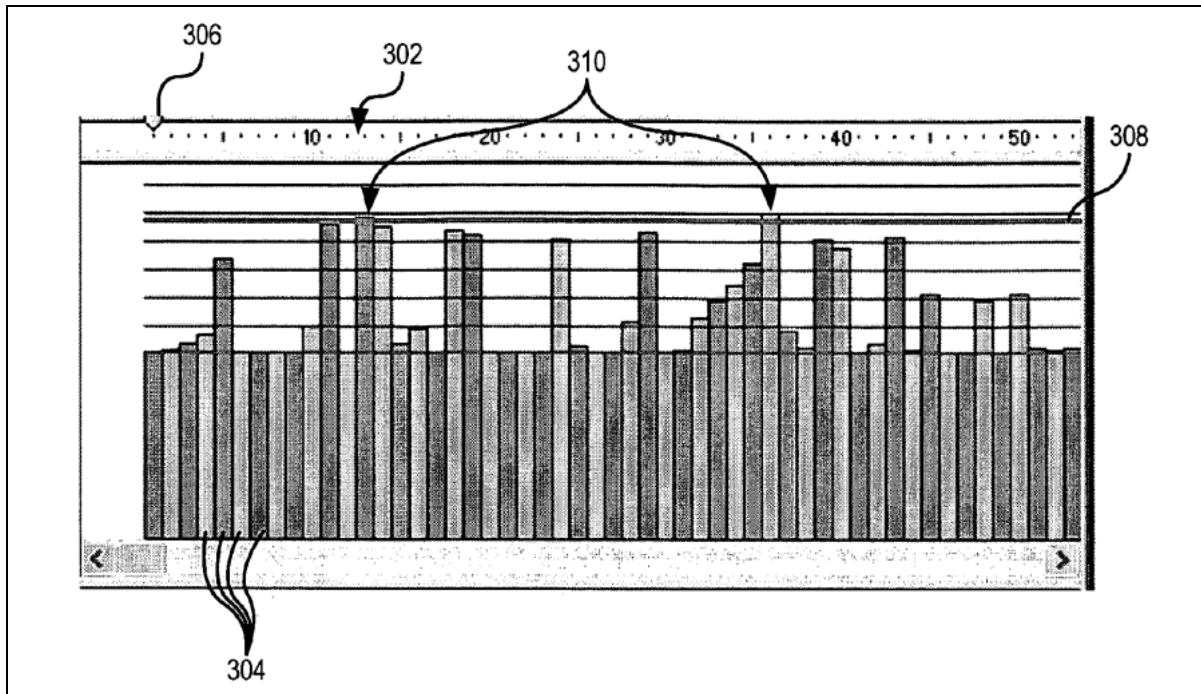
Second, the inventor addressed the problem of how to quickly identify what parts of the mobile application are performing poorly due to resource limitations so that the poorly performing code can be corrected. *See, e.g.*, EX1004 ¶¶ [0024]-[0027], [0038]-[0042], [0044]-[0046], [0048]-[0055], [0058]-[0060], [0067]. Based on the previously discussed new abilities to simulate/emulate mobile device hardware characteristics, developers would be able to test on a variety of mobile device models that a mobile application might encounter. These abilities are focused on testing under particular resource constraints that were not previously available for mobile application development. In light of such constraint-driven testing, the '192 Patent also teaches applying “stress” to the mobile device running the application and profiling resource usage in order to identify “areas where failure may occur.” *Id.* ¶¶ [0038], [0043], [0045].

The '192 Patent further teaches particular tools to help identify specific parts of the mobile application that experience problems when certain resources are stressed. *Id.* ¶¶ [0025], [0038], [0043], [0046]. The '192 Patent details multiple exemplary profilers that monitor and record profiled data including resources used by the application. *Id.* ¶ [0038]. Several exemplary profile modules (including processor, memory, graphics, and system) are shown in annotated Figure 2:



“One or more profiler modules 202, 204, 206 and 208 within profiler 106 monitor resource utilization of each frame, storing results as profiled data 152. Profiled data 152 is then displayed as frame based profile data 110 on display 140

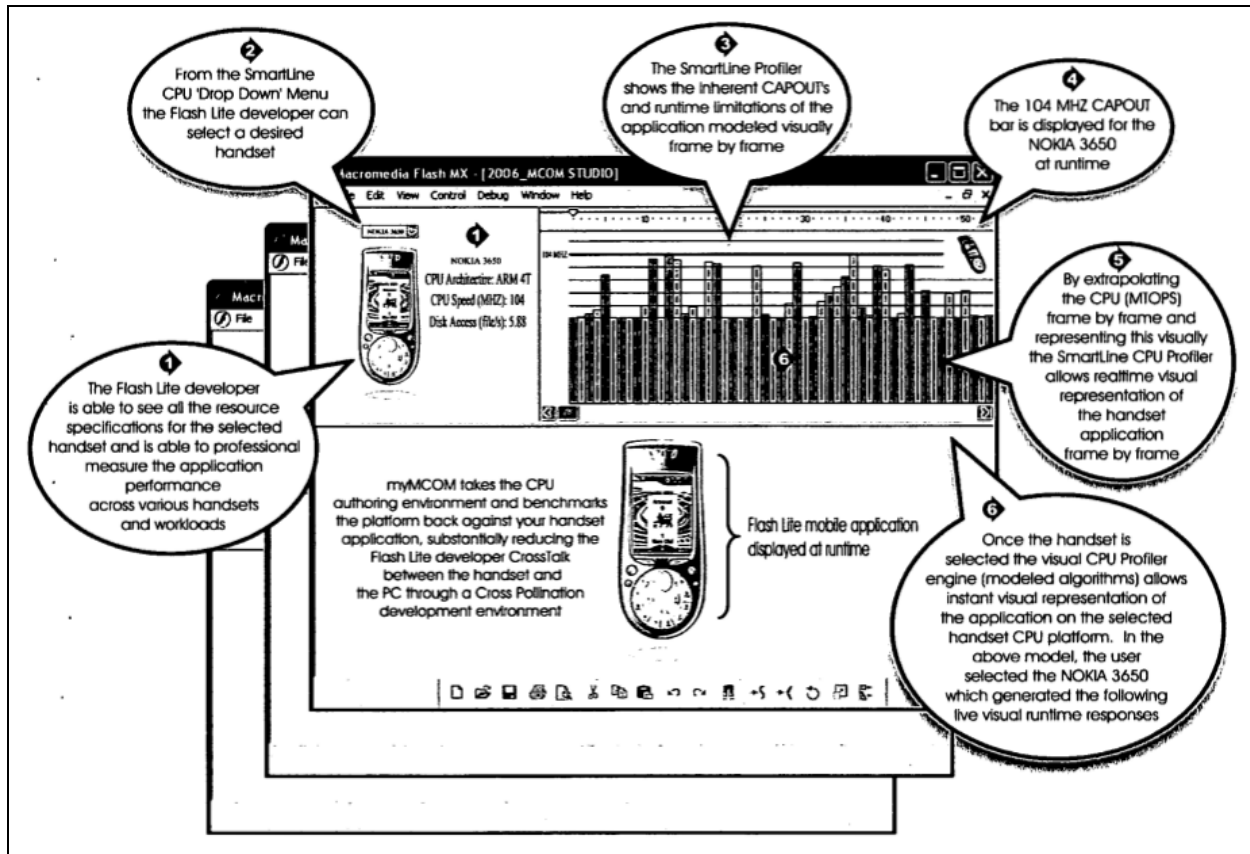
for review by the user. Profile data 152 may be displayed in real time as application 104 is played within model 102.” *Id.* ¶ [0044]. “[P]rofiler 106, within emulator 101, is shown with a processor profile module 202, a memory profile module 204, a graphic profile module 206 and a system profile module 208. Processor profile module 202 may, for example, estimate processor utilization of application 104 within model 102. Memory profile module 204 may, for example, estimate memory utilization by application 104 within model 102. Graphic profile module 206 may, for example, estimate utilization of 3D fill rate and 3D polygon count of application 104 within model 102. System profile module 208 may, for example, determine overall system utilization of application 104 within model 102. More or fewer profile modules may be included within profiler 106.” *Id.* ¶ [0039]. The profiled data that these profilers generate can be used to create displays that enable developers and testers to quickly identify where the resource utilization is occurring. Figure 3 shows an exemplary profile graph:



In '192 Patent Figure 3 (shown above) “Display 300 clearly displays processor resource utilization by frame 223 of application 104, thereby facilitating assimilation of stresses applied to mobile device 114 when playing application 104.” *Id.* ¶ [0045]. “Where bars 304 rise above capacity line 308 at locations 310, resource utilization for indicated frames of application 104 exceed the available processor resources of mobile device 114; thus application 104 may capout or crash when playing those frames.” *Id.*

Furthermore, the '192 Patent teaches producing these displays in real time as the application is running to better pinpoint which functionality is causing excessive resource usage. *Id.* ¶ [0044]. These are not generic data and displays, but rather a specific system of monitoring resources in the newly resource-constrained testing environment taught by the '192 Patent, which includes a resource-constrained

mobile device model. This new type of testing is enabled by the teachings of the '192 Patent and provides previously unavailable details about mobile device performance within resource-constrained simulations/emulations, including the utilization and availability of mobile device resources. The solutions help counter the resource limitations that are particular to mobile devices due to the constraints under which they operate (*e.g.*, limited energy availability, temperature management challenges, unstable network conditions, etc.). For example, mobile devices often have slower processors to conserve power due to battery constraints, and limited storage due to device-size constraints. The visual profilers of the '192 Patent allow instant visual representation of the mobile application on the selected mobile device type (and its associated mobile device characteristics) to help mobile application developers and testers account for such limitations:



EX1031 at PDF Page 3.

3. Personalization and Modification of Mobile Device Content

As discussed above in Section II.A, the inventor noted that a factor in achieving end user adoption of mobile applications would be to provide “client side personalization” of content, giving one example of “personalized Wallpapers.” EX1031 at PDF Pages 9-10. The '192 Patent teaches several solutions regarding modification and personal customization of content such as photos, animations, etc. For example, the disclosure addresses image modification (e.g., “image manipulation”), EX1004 ¶ [0043], as well as user personalization of content such as wallpapers, EX1031 at PDF Pages 9-10.

III. Legal Standards

An IPR should not be instituted unless Petitioner has shown a likelihood of success on the invalidity grounds *presented in the petition*. See *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016) (“[T]he Board must base its decision on arguments that were advanced by a party, and to which the opposing party was given a chance to respond.”).

“In an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (petitions must identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”); 35 U.S.C. § 312 (a)(3). This burden of persuasion never shifts to the patent owner. See *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

“To satisfy its burden of proving obviousness, a petitioner cannot employ mere 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*, 829 F.3d at 1380. The obviousness inquiry requires considering whether one of skill in the art “would have been motivated to combine the prior art to achieve the claimed invention.” *In re NuVasive, Inc.*, 842 F.3d 1376, 1381 (Fed. Cir. 2016) (quoting *In re Warsaw Orthopedic, Inc.*,

832 F.3d 1327, 1333 (Fed. Cir. 2016)). “[T]he factual inquiry whether to combine references must be thorough and searching...” *Id.*

“[W]ords of limitation that can connote with equal force a structural characteristic of the product or a process of manufacture are commonly and by default interpreted in their structural sense, unless the patentee has demonstrated otherwise.” *In re Nordt Dev. Co., LLC*, 881 F.3d 1371, 1375 (Fed. Cir. 2018) (internal quotes and citations omitted).

“To comply with the written description requirement of 35 U.S.C. 112(a) or pre-AIA 35 U.S.C. 112, first paragraph, or to be entitled to an earlier priority date or filing date under 35 U.S.C. 119, 120, 365, or 386, each claim limitation must be expressly, implicitly, or inherently supported in the originally filed disclosure.” MPEP § 2163. “[W]hen examining the written description for support for the claimed invention, [the Federal Circuit has] held that the exact terms appearing in the claim need not be used *in haec verba*.” *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1345 (Fed. Cir. 2016) (internal quotes and citations omitted).

“There is a presumption that an adequate written description of the claimed invention is present when the application is filed.” MPEP § 2163 (citing *In re Wertheim*, 541 F.2d 257, 263, (CCPA 1976)); *see also id.* (“A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption.” (citing *In*

re Marzocchi, 439 F.2d 220, 224, (CCPA 1971)). “With respect to entitlement to earlier effective filing dates, the Patent Owner is not presumed to be entitled to the earlier filing dates of ancestral applications which do not share the same disclosure... In other words, because the [] Provisional does not have the same disclosure as the [] patent, we do not presume the [] patent is entitled to the benefit of the [] Provisional’s filing date.” *GEMoaB Monoclonals GmbH v. University Of Maryland, Baltimore*, IPR2020-00233, Paper 16 at 12 (P.T.A.B. June 17, 2020) (internal quotes and citations omitted); *Maxlite, Inc. v. Jiaxing Super Lighting Electric Appliance Co., Ltd.*, IPR2020-00208, Paper 10 at 8-9 (P.T.A.B. June 24, 2020) (similar). Here, because the ancestral application (the ’543 application) **does** share substantively the same disclosure as the ’192 Patent, the reasoning of *GEMoaB* regarding the lack of a presumption would not apply. “Petitioner, [] must [] raise the issue of whether Patent Owner is entitled to an effective filing date by identifying, specifically, the features, claims, and ancestral applications allegedly lacking written description support for the claims based on the identified features.” *Maxlite*, Paper 10 at 8-9 (internal quotes and citations omitted).

IV. Level of Ordinary Skill in the Art

Petitioner asserts a POSITA “would have possessed a bachelor’s degree in computer science or computer engineering, and two years of experience and familiarity with software development and software development tools, such as

integrated development environments.” Pet. at 7. Wapp asserts that, consistent with the ’192 Patent disclosure, a POSITA at the time of invention for the ’192 Patent would have had an undergraduate degree in electrical engineering, computer science, or computer engineering, or a related field, and at least one year of experience in the development and testing of software. A higher level of education or skill might make up for less experience, and vice-versa. Regardless of which POSITA definition is applied, the Petition still fails to present a reasonable likelihood of invalidating any Challenged Claims.

V. Claim Construction

Claims are construed according to *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). *See* 37 C.F.R. § 42.100(b). “Any prior claim construction determination concerning a term of the claim in a civil action...will be considered.” *Id.*

Several claim terms of the ’192 Patent have been construed in prior district court proceedings. *See generally* EX2005; EX2016; EX2020. Specific to the Challenged Claims in this proceeding, the district court previously construed several claim terms of Claim 60:

60. A system comprising:

an application³ configured to⁴ enable a user to modify a photo on the mobile device⁵, wherein the application is developed using a software authoring platform configured to simultaneously visually emulate⁶, via⁷ one or more profile display windows⁸, a plurality of hardware characteristics indicative of performance of the mobile device when executing the application.

³ EX2020 at 16-19 (construing “application” has having its plain meaning).

⁴ *Id.* at 6-7 (adopting the construction of “configured to” as meaning “actually programmed to”).

⁵ *Id.* at 29-31 (construing “on the mobile device” to have its plain meaning).

⁶ *Id.* at 7-15 (construing “simulate” to mean “emulate” and “emulate” to have its plain meaning).

⁷ *Id.* at 6-7 (adopting the construction of “simultaneously visually emulate, via one or more profile display windows” as meaning “emulate simultaneously, and display one or more windows showing resources of the mobile device that are available to the application”); *see also* EX2005 at 26-35 (construing similar language in other claims of the ’192 Patent and related patents); EX2016 at 8-9 (adopting a similar construction for other claims of the ’192 Patent and related patents).

⁸ EX2020 at 6-7 (adopting the construction of “one or more profile display windows” as meaning “one or more windows showing resources of the mobile device that are available to the application”).

'192 Patent Claim 60 (annotated with highlighting and footnotes).

Because Petitioner has asserted grounds solely based on (1) incorrect product-by-process interpretations, and (2) improper written description attacks instead of invalidity theories based on actual prior art patents and printed publications, Wapp does not believe it is necessary to address these constructions at this time for purposes of rendering a decision on institution. Wapp reserves the right to propose additional constructions if the proceeding is instituted.

Petitioner's only proposed construction is that Claim 60 should be treated as a "product-by-process" claim so that Petitioner does not have to address the full recited structure of the system claim. Pet. at 8-10. Petitioner's "product-by-process" interpretation of Claim 60 is legally and factually unsupported and should be rejected.

"Product-by-process claims are not specifically discussed in the patent statute. The practice and governing law have developed in response to the need to enable an applicant to claim an otherwise patentable product that **resists definition by other than the process by which it is made.**" *In re Thorpe*, 777 F.2d 695, 697 (Fed. Cir. 1985) (emphasis added). Conversely, claim 60 recites "[a] system comprising" two structural components: (1) "an application" and (2) "a software authoring platform" that was used in developing "the application." Claims 61 through 69, all of which depend from Claim 60, similarly recite a system. On their face, none of these

“system” claims facially resemble a “product-by-process” claim (which typically arises in the chemical arts). *See, e.g., Thorpe*, 777 F.2d at 696 (quoting a product-by-process claim: “The product of the process of Claim 1.”); *Cont’l Circuits LLC v. Intel Corp.*, 915 F.3d 788, 794 (Fed. Cir. 2019) (quoting a product-by-process claim: “A product produced by the process of claim 2.”).

Notably, no prior ’192 Patent challenger has asked for a product-by-process construction for Claim 60. *See generally* EX2020; EX2016; EX2005. On the contrary, as shown above the Court adopted specific constructions regarding the structure and meaning of ’192 Patent Claim 60’s “software authoring platform configured to simultaneously visually emulate, via one or more profile display windows.” EX2020 at 6-7. Thus, Petitioner’s assertion that those limitations can be ignored based on its product-by-process interpretation conflicts with past claim constructions adopted by the District Court.⁹

⁹ Petitioner has failed to demonstrate why a different outcome than the prior District Court proceedings is warranted in this proceeding. *See* Memorandum, https://www.uspto.gov/sites/default/files/documents/Memo_re_prior_findings_of_fact_and_conclusions_of_law_9_16_25.pdf, accessed on October 29, 2025 (noting “if the Board reaches an initial or final decision on a finding of fact or conclusion of law that is different than the prior finding or conclusion of the Office, district court,

To the extent Petitioner’s product-by-process argument can be understood, Petitioner appears to be asserting that “using a software authoring platform to develop the application” is a process step used to develop the system (ignoring the fact that the system claim recites both an application and a software authoring platform). Even assuming for the sake of argument that “using a software authoring platform” could arguably be a process step, the argument still fails. “[W]ords of limitation that can connote with equal force a structural characteristic of the product or a process of manufacture **are commonly and by default interpreted in their structural sense**, unless the patentee has demonstrated otherwise.” *In re Nordt Dev. Co., LLC*, 881 F.3d 1371, 1375 (Fed. Cir. 2018) (internal quotes and citations omitted, emphasis added). Petitioner has provided nothing which would contradict the default interpretation that the software authoring platform of Claim 60 should be interpreted in its structural sense. Indeed, the authoring platform is one part of the claimed “system.” And as discussed below, nothing in the patent suggests that the claimed “software authoring platform” of Claim 60 should be interpreted in anything other than the structural sense.

or the ITC, the Board shall explain in the institution or final written decision why a different outcome is warranted.”).

VI. Argument

All Petition grounds fail to present a reasonable likelihood of invalidating any Challenged Claims.

Grounds 1A–1C (collectively, “Ground 1”) require (improperly) construing system claims 60–69 as product-by-process claims. *See, e.g.*, Pet. at 8–10. Petitioner relies on the unsound theory that a system claim reciting two structural components (an application and a software authoring platform) is somehow a product-by-process claim. Petitioner relies on that theory because it has no compelling prior art with which to challenge the ’192 Patent, and by arguing that the Challenged Claims are product-by-process claims it hopes to avoid addressing what the claims actually recite. As discussed above in Section V and below in Section VI.A, Petitioner’s interpretation is incorrect and all of its Ground 1 theories necessarily fail for at least that reason.

In Grounds 2A–2C (collectively, “Ground 2”), Petitioner asserts that Poulin-910 is prior art (*see* Pet. at 46–47, 51–54), even though the ’192 patent claims priority to Poulin-910 through continuation (not CIP) applications and the two patents have substantially the same disclosures. This is nothing more than an improper attempt to backdoor a challenge to the written description support for the ’192 Patent claims, which is prohibited in an IPR. Yet again, Petitioner has taken that approach because it has no compelling prior art with which to challenge the ’192

Patent, and instead is improperly attempting to use the '192 Patent's own disclosure against it. As a result, both Grounds 1 and 2 fail to present a reasonable likelihood of invalidating any Challenged Claim and institution should be denied.

A. Ground 1

For Ground 1, Petitioner asserts that '192 Patent Claim 60 recites a product-by-process claim, and therefore it does not need to address every limitation of the Challenged Claims. *See, e.g.*, Pet. at 8-10

'192 Patent Claim 60 is reproduced below, with the language that Ground 1 fails to address highlighted in yellow:

60. A system comprising:
an application configured to enable a user to modify a photo on the mobile device, wherein the application is developed using a software authoring platform configured to simultaneously visually emulate, via one or more profile display windows, a plurality of hardware characteristics indicative of performance of the mobile device when executing the application.

As shown, Petitioner's proposed interpretation ignores much of the structure of the recited claim, specifically "a software authoring platform configured to simultaneously visually emulate, via one or more profile display windows, a plurality of hardware characteristics indicative of performance of the mobile device when executing the application." Similar structure is recited in, for example, '192 Patent Claim 1 (except it recites emulating network characteristics rather than

hardware characteristics): “a software authoring interface configured to simultaneously visually emulate, via one or more profile display windows, a plurality of network characteristics indicative of performance of the mobile device when executing the application.” Thus, neither the claimed “application” nor “software authoring platform” of Claim 60 are products that “resist[] definition by other than the process by which it is made.” *See Thorpe*, 777 F.2d at 697.

Furthermore, as discussed in Section V, “words of limitation that can connote with equal force a structural characteristic of the product or a process of manufacture **are commonly and by default interpreted in their structural sense**, unless the patentee has demonstrated otherwise.” *Nordt*, 881 F.3d at 1375 (internal quotes and citations omitted, emphasis added). Petitioner has cited nothing to contradict the “default interpretation” that the software authoring platform of Claim 60 should be interpreted in its structural sense. Quite the opposite, Petitioner here actively asserts that Poulin-910 (parent to the ’192 Patent with substantively the same disclosure) teaches the specific structure of the claimed software authoring platform. *See Pet.* at 46-47, 50-54.

Correspondingly, the ’192 Patent supports the same conclusion that the claimed software authoring interface should be interpreted in its structural sense. By way of example, the disclosure notes that “[a]pplication authors [] are provided with a visual authoring environment in which the authored application may be emulated

as operating within one or more modeled mobile devices (that are optionally connected to a simulated wireless network) without leaving the authoring environment.” EX1004 ¶ [0087]. “One or more profiler modules 202, 204, 206 and 208 within profiler 106 monitor resource utilization of each frame, storing results as profiled data 152. Profiled data 152 is then displayed as frame based profile data 110 on display 140 for review by the user. Profile data 152 may be displayed in real time as application 104 is played within model 102.” *Id.* ¶ [0044]. Support for mobile device simulation, profiling, and profiling displays are discussed in further detail in Section II.B (incorporated here by reference).

Furthermore, none of the cases that Petitioner cites support construing the limitations of Claim 60—reciting software components of the claimed system—as product-by-process. Rather, each case involves a chemical structure resulting from an expressly recited chemical process. In *Greenliant Sys., Inc. v. Xicor LLC*, the claim recited a “silicon dioxide layer being formed by low pressure chemical vapor deposition comprising the use of tetraethylorthosilicate.” 692 F.3d 1261, 1264 (Fed. Cir. 2012). In *Kamstrup A/S v. Axioma Metering UAB*, the claims recited a “monolithic polymer structure being cast in one piece.” 43 F.4th 1374, 1377 (Fed. Cir. 2022). And the other two cases expressly recite a “product” of a specified chemical (or biochemical) process. *See Amgen Inc. v. F. Hoffmann-La Roche, Ltd.*, 580 F.3d 1340, 1364 (Fed. Cir. 2009) (discussing claim 3, reciting in part: “A non-

naturally occurring glycoprotein product of the expression in a mammalian host cell of an exogenous DNA sequence”); *Thorpe*, 777 F.2d at 696-97 (discussing claim reciting: “The product of the process of Claim 1”). None of these cases involve construing a software application that is part of an overall system as product-by-process.

Ultimately, Petitioner’s product-by-process argument is not only unsupported by existing case law, but also ignores Federal Circuit guidance regarding the purpose of product-by-process claims (“claim[ing] an otherwise patentable product that resists definition by other than the process by which it is made,” *Thorpe*, 777 F.2d at 697) as well as the Federal Circuit’s admonition not to depart from the default structural interpretation of claim terms in favor of product-by-process interpretations (*Nordt*, 881 F.3d at 1375). Given Petitioner’s failure to address the “wherein” clause of Claim 60 under Ground 1, Pet. at 10, 12-16, the Ground cannot present a reasonable likelihood of invalidating Claim 60 or any of its dependent claims (and therefore fails for all Challenged Claims).

B. Ground 2

For Ground 2 Petitioner has once again eschewed the intended use of the *inter partes* review process (*i.e.*, challenging a patent based on prior art patents and printed publications), and has instead tried to frame what is clearly a written description challenge as a priority date argument. Notably, Petitioner is not arguing that the ’192

Patent Claims cannot claim priority to a document with a substantively different disclosure than itself (like a provisional application or a parent in a continuation-in-part chain). Instead, Petitioner is arguing that a patent application with a substantively identical disclosure to its parent application (Poulin-910—which is even incorporated by reference into the '192 Patent, EX1001 at 1:12-19) cannot provide written description support for the Challenged Claims. Petitioner's argument is substantively no different than arguing that the '192 Patent itself fails to provide written description support, and is therefore improper in an *inter partes* review. *See* 35 U.S.C. § 311(b). To allow Petitioner to move forward with such a challenge would encourage all Petitioners to challenge written description support of continuation applications in IPRs (regardless of merit) under the false guise of a priority date challenge. This is contrary to the purpose of the IPR Statute. *See* 35 U.S.C. § 311(b).

Nor would Petitioner's challenge have any merit even if written description challenges were allowed under statute in an IPR proceeding. For example, Claims 60-69 were not part of the initial application and were added later during the prosecution of the '192 Patent. *Compare* EX1002 at 31-34 (November 9, 2012 claims) *with id.* at 93-94 (April 7, 2014 amended claims). Thus, the question of whether those amendments introduced new matter was considered during the initial

prosecution. *See, e.g.*, MPEP § 2163(I)(B). As discussed further below, each Challenged Claim is fully supported by the '192 Patent disclosure.

1. Claim 60

Contrary to Petitioner's arguments, the '543 application provides support for the recited "application configured to enable a user to modify a photo on a mobile device." *See* Pet. at 42-46.

First, Petitioner concedes that the '543 application discloses "a frame based application being developed using the emulator" that "include[s] multiple frames," which include "graphics and/or action scripts that generate the graphical image for display." Pet. at 44 (citing EX1004 ¶ [0043]). The same paragraph of the '543 application explains that the application enables modification of an image (*e.g.*, "image manipulation"). *See* EX1004 ¶ [0043] ("[E]ach frame of frames 223 [included in application 104] includes multiple graphic elements and/or action scripts that involve image manipulation...."). Petitioner does not dispute that the mobile application supports image modification, and a photo is an image.

Rather, the crux of Petitioner's argument is the purported absence of a "user" from this passage. *See* Pet. at 44 ("But this does not disclose any ability for a **user** (*i.e.*, a mobile device user) of an application to **modify** a photo."). Petitioner ignores the 2005 provisional, however, which the '543 application incorporates by reference. *See* EX1004 ¶ [0001]. The 2005 provisional discloses an "Active2Play™"

embodiment that includes “ImageVu™ (a personalized Over-the-Air photo imaging line).” EX1031 at PDF Page 10. The 2005 provisional expressly teaches that one component, “Active2Play™ Consumer[,] allows the end user the ability to personalize their content operating experience Over-the-Air.” *Id.* Another component, “Active2Play™ UI” provides a user interface that “can be managed and updated Over-the-Air by the consumer, . . . providing realtime personalization and brand marketing of the handset user interface.” *Id.*; *see also id.* at PDF Page 9 (discussing “personalized Wallpapers”). This handset interface that can be customized and personalized by the user (or consumer) includes the graphics detailed in paragraph [0043] of the ’543 application, and the mobile application provides the software code for modifying these graphics.

Thus, the ’543 application discloses: (1) software for image manipulation, which includes photo modification; and (2) software for a “photo imaging line” that provides for “realtime personalization” by consumers of the user interface, which is comprised of images. In short, Petitioners’ statement that “the ’543 application does not provide any specific examples of the frame based applications that are developed using the emulator” (Pet. at 43) is false. Not only are such applications disclosed, but the 2005 provisional teaches that they enable the user to customize graphics within those applications. Petitioner’s written description challenge completely

ignored the 2005 provisional disclosures, which are highly relevant (and counter) to their arguments. As a result, Ground 2 fails for Claim 60.

2. Dependent Claims

Petitioner's Ground 2 challenges to dependent Claims 61-69 fail along with its challenge to Claim 60.

First, because the ground fails to teach or render obvious the broader independent Claim 60, it follows that the ground similarly fails to teach or render obvious the narrower dependent claims. *See In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“[D]ependent claims are nonobvious if the independent claims from which they depend are nonobvious”); *Ortho-McNeil Pharm., Inc. v. Mylan Labs., Inc.*, 520 F.3d 1358, 1365 (Fed. Cir. 2008) (“[I]f claim 1 is not obvious then claims 6-8 also cannot be obvious because they all depend from a nonobvious claim.” (citation omitted)); *In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) (“Dependent claims are nonobvious under section 103 if the independent claim from which they depend are nonobvious.” (citations omitted)). Petitioner has offered no evidence or analysis challenging the written description support for the dependent claims, and therefore its Petition fails. *C.f.* MPEP § 2163 (“A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption.” (citing *In re Marzocchi*, 439 F.2d 220, 224 (CCPA 1971))). Instead, Petitioner's analysis is focused on Claim 60,

which (as discussed above) is fully supported by the '192 Patent as well as the earlier '543 application and 2005 provisional disclosures. For the dependent claims, Petitioner relies on an unsupported statement that “[t]he dependent claims 61-69 recite further features of the recited application...[b]ut the '192 patent’s immediate parent, the '543 application (including its as-filed claims) lacks any disclosure of these features.” Pet. at 43-44. Petitioner’s conclusory statement (devoid of any analysis or evidence) is insufficient to meet Petitioner’s initial burden regarding challenging support for those claims. To hold otherwise would render that burden meaningless, encouraging other petitioners to rely on similar unsupported and meritless written description challenges, thereby wasting the resources of both patent owners and the Board as needed to rebut the petitioners’ unsubstantiated challenges. Furthermore, Petitioner’s lack of detail for its challenges to the dependent claims means the Petitioner fails the requirement to identify its grounds “with particularity.” 35 U.S.C. § 312(a)(3).

These claims were added during prosecution of the '192 Patent and reviewed by the Examiner, and no rejection for lack of written description support was raised. *See* EX1002 at 93-94 (FH 4/7/2014 amendment adding claims), 106 (FH 7/17/2014 Notice of Allowability). Accordingly, it is presumed that the Examiner was satisfied that the claims were supported, and Petitioners have failed to provide particular

arguments as to any of the dependent claims identified for this Ground. For this reason alone, Petitioner's arguments lack merit.

Furthermore, each of Claims 61-69 has written description support from the '543 application disclosure, as discussed below.

(a) Claim 61

Ground 2 fails as to Claim 61 because Claim 61 is fully supported by the '543 application disclosure. Claim 61 recites "[t]he system of claim 60, wherein the application is configured to allow an end user to add content to modify the photo." EX1001 at 18:8-11. As discussed above for Claim 60, the patent provides written description support for personalization and manipulation of photos by a user.

For instance, the Provisional explains that the "[a]bility to seamlessly update handset *content* and logic" is provided by "'Over-the-Air' handset update capability." EX1031 at PDF Page 7 (emphasis added). And it further explains that "the new platform places the *personalization of content directly into the hands of the consumer on the client side.*" *Id.* at PDF Page 10 (emphasis added). The Provisional also explains that the user's customization of content is enabled by the same "Over-the-Air" capability detailed above. *See id.* ("Active2Play™ Consume allows the end user the ability to personalize their content operating experience Over-the-Air....").

Thus, Claim 61 is fully supported by the '543 application, and Ground 2 fails for the same reasons discussed above for Claim 60.

(b) Claim 62

Ground 2 fails as to Claim 62 because Claim 62 is fully supported by the '543 application disclosure for the same reason as discussed above for Claims 60-61. Claim 62 recites “[t]he system of claim 61, wherein the content includes text.” As discussed above for Claims 60 and 61, the '543 application discloses personalization and modification of photos, including photos modified to include text content. The specification explains that the same user-interface that can be customized by the user is displayed as “text and images to a user of mobile device 114....” EX1004 ¶ [0030]. One of skill in the art would readily understand that the disclosed content includes text, and the user-based customization of user-interfaces and content detailed above includes customization of text content. *See Immunex Corp. v. Sandoz Inc.*, 964 F.3d 1049, 1063 (Fed. Cir. 2020) (“Written description is a question of fact, ***judged from the perspective of one of ordinary skill in the art*** as of the relevant filing date.” (quoting *Falko-Gunter Falkner v. Inglis*, 448 F.3d 1357, 1363 (Fed. Cir. 2006)) (emphasis added)).

(c) Claim 63

Ground 2 fails as to Claim 63 because Claim 63 is fully supported by the '543 application disclosure for the same reason as discussed above for Claims 60-62.

Claim 63 recites “[t]he system of claim 62, wherein the text includes a caption.” Petitioner asserts that demonstrating a caption entails showing “adding or overlapping a text message to a photo and the ability to write a message below a photo.” Pet. at 22. However, Petitioners have not alleged that adding captions to photos was not readily known to one of skill in the art. On the contrary, a POSITA would have readily understood that the image modification and personalization described in the patent disclosure included the well-known use of adding text in the form of a caption.

What is conventional or well known to one of ordinary skill in the art need not be disclosed in detail. *See Bos. Sci. Corp. v. Johnson & Johnson*, 647 F.3d 1353, 1366 (Fed. Cir. 2011) (“Because the specification is viewed from the perspective of one of skill, in some circumstances, a patentee may rely on information that is ‘well-known in the art’ for purposes of meeting the written description requirement.”); *BASF Plant Sci., LP v. Commonwealth Sci. & Indus. Research Organisation*, 28 F.4th 1247, 1264 (Fed. Cir. 2022) (“[A] patentee may rely on information that is well-known in the art to the extent it informs how a relevant artisan would reasonably understand what is actually described in the specification.” (internal quotes and citations omitted)). As discussed above for Claims 60-62, the ’543 application discloses personalization and modification of photos, which a POSITA

would have understood to include photos modified to include overlapping text messages on a photo.

(d) Claim 64

Ground 2 fails as to Claim 64 because Claim 64 is fully supported by the '543 application disclosure for the same reason as discussed above for Claims 60-63. Claim 64 recites “[t]he system of claim 61, wherein the content includes an image, animation, or both.” As discussed above, the '543 application disclosure supports manipulation and personalization of images and animations, including updating handset content.

(e) Claim 65

Ground 2 fails as to Claim 65 because Claim 65 is fully supported by the '543 application disclosure as discussed above for Claims 60-64. Claim 65 recites “[t]he system of claim 60, wherein the application is configured to allow an end user to distribute the modified photo through a server or other connection to the internet.” In addition to what is discussed above for Claim 60, the disclosure provides further support for this limitation. For example, the '101 Provisional discusses “ImageVu™ (a personalized Over-the-Air¹⁰ photo imaging line)” which as part of

¹⁰ As Petitioner notes in its own Patents, an “over-the-air data connection” is a known “means of data transmission.” EX2043 at 7:58-63 (U.S. Patent No. 9,965,797

“Active2Play™ Consumer allows the end user the ability to personalize their content operating experience Over-the-Air, delivering an unparalleled platform of client side consumer personalization.” EX1031 at PDF Page 10; *see also id.* (discussing “Active2Play™ UI [which] dramatically reduces Server Crosstalk™ (a client side architecture), and can be managed and updated Over-the-Air by the consumer, operator and handset maker providing realtime personalization and brand marketing of the handset user interface.”); *id.* at PDF Page 7 (noting the “‘Over-the-air’ handset update capability” addresses the “[a]bility to seamlessly update handset content and logic”).

(f) Claim 66

Ground 2 fails as to Claim 66 because Claim 66 is fully supported by the ’543 application disclosure for the same reasons as discussed above for Claim 60. Claim 66 recites “[t]he system of claim 60, wherein the application is configured to allow

assigned to Capital One Services, LLC). “[O]ver-the-air” techniques such as Wi-Fi “can be used to connect computers to each other, to the Internet, and to wire networks.” EX2044 at 18:40-54 (U.S. Patent No. 10,665,204). A POSITA would have understood that transmission of photos using such techniques would include distribution through a server or other connection to the internet.

an end user to manage or update the modified photo or photo application through a server or other connection to the internet.”

For example, as discussed above for Claim 65 (incorporated here by reference), the disclosure addresses, e.g., “ImageVu™ (a personalized Over-the-Air photo imaging line),” “the end user [having] the ability to personalize their content,” the “[a]bility to seamlessly update handset content and logic,” and that the “platform...can be managed and updated Over-the-Air by the consumer.” *See* EX1031 at PDF Page 10.

(g) Claim 67

Ground 2 fails as to Claim 67 because Claim 67 is fully supported by the ’543 application disclosure for the same reasons as discussed above for Claim 60. Claim 67 recites “[t]he system of claim 60, wherein mobile revenues are created using the modified photo or application.” In addition to what is discussed above for Claim 60, the disclosure provides further support for this limitation. For example, it describes “development of applications...increasing operator and/or author revenues.” *See* EX1004 ¶¶ [0079], [0088]; *see also* EX1031 at PDF Page 9 (discussing “Average Revenue Per User[] in mobile commerce,” “mobile service revenue,” and revenue from sources such as “personalized Wallpapers”), 11-12 (discussing “revenue sharing applications”), 13 (discussing applications which generate “mobile commerce revenues” and “the ‘client side’ specifics of [mobile commerce]”).

(h) Claim 68

Ground 2 fails as to Claim 68 because Claim 68 is fully supported by the '543 application disclosure for the same reasons as discussed above for Claims 60 and 67. Claim 68 recites “[t]he system of claim 67, wherein the revenues include ads.” In addition to what is discussed above for Claims 60 and 67, the disclosure provides further support for this limitation. *See, e.g.*, EX1031 at PDF Pages 6 (discussing “personalized marketing”), 10-12 (describing “a personalized Over-the-Air corporate branding and one-to-one marketing line” and “realtime personalization and brand marketing”). A POSITA would have understood the marketing disclosure in combination with the support discussed above for Claim 67 to provide written description support for “the revenues includ[ing] ads.”

(i) Claim 69

Ground 2 fails as to Claim 69 because Claim 69 is fully supported by the '543 application disclosure for the same reasons as discussed above for Claims 60 and 67-68. Claim 69 recites “[t]he system of claim 67, wherein the revenues include brand marketing.” In addition to what is discussed above for Claims 60 and 67-68, the disclosure provides further support for this limitation. *See, e.g.*, EX1031 at PDF Pages 10-12 (discussing “branding” and “brand marketing”).

VII. Conclusion

Wapp respectfully requests that the USPTO refuse to institute *inter partes* review for the reasons stated herein.

Dated: October 31, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that pursuant to 37 C.F.R. § 42.6(e), a copy of the foregoing **Patent Owner's Preliminary Response and accompanying Exhibits**, were served via email to counsel of record for Petitioners as follows:

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned hereby certifies that this brief complies with the type-volume limitation of 37 C.F.R. § 42.24 because this brief contains 8,151 words.

Dated: October 31, 2025

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