

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DANXIAO INFORMATION TECHNOLOGY LTD.,
Petitioner,

v.

SHENZHEN SVAKOM TECHNOLOGY CO., LTD.,
Patent Owner.

PGR2022-00050
Patent 11,134,041 B1

Before SHARON FENICK, JASON W. MELVIN, and IFTIKHAR AHMED,
Administrative Patent Judges.

MELVIN, *Administrative Patent Judge.*

DECISION
Granting Institution of Post-Grant Review
35 U.S.C. § 324

I. INTRODUCTION

Danxiao Information Technology Ltd. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting institution of post-grant review of all claims (1–20) (“the challenged claims”) of U.S. Patent No. 11,134,041 B1 (Ex. 1001, “the ’041 patent”). Shenzhen Svakom Technology Co., Ltd. (“Patent Owner”) did not file a Preliminary Response.

A post-grant review may not be instituted unless “the information presented in the petition . . . if such information is not rebutted, would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.” 35 U.S.C. § 324(a). “When instituting post-grant review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.” 37 C.F.R. § 42.208(a).

For the reasons that follow, based on the present record, we conclude that Petitioner has demonstrated that it is more likely than not that it will prevail with respect to at least one challenged claim, and we institute post-grant review of the ’041 patent.

A. REAL PARTIES IN INTEREST

Petitioner identifies itself as the sole real party in interest. Pet. 111. Patent Owner identifies itself as the sole real party in interest. Paper 3, 1.

B. RELATED MATTERS

The parties both certify there are no related matters. Pet. 111; Paper 3, 1.

C. THE ’041 PATENT

The ’041 patent is titled “System and Method for Interactive Online Entertainment” and is directed to an interactive system in which a user may provide inputs and perform predefined acts via an adult toy. Ex. 1001, codes (54),

(57). The '041 patent discloses allowing users to interact with models through an adult video chatting website, influencing the model's adult toy. *Id.* at 1:41–52. This allows users to interact with models from a distance during an online video chat session on a website, wherein the models can define input parameters and provide an interactive interface, and receive an interactive result according to the interactive interface to perform predefined acts, via an adult toy or another stimulation device, based on the interactive result received. *Id.* at 1:45–52.

Figure 3 of the '041 patent illustrates this system and is reproduced below.

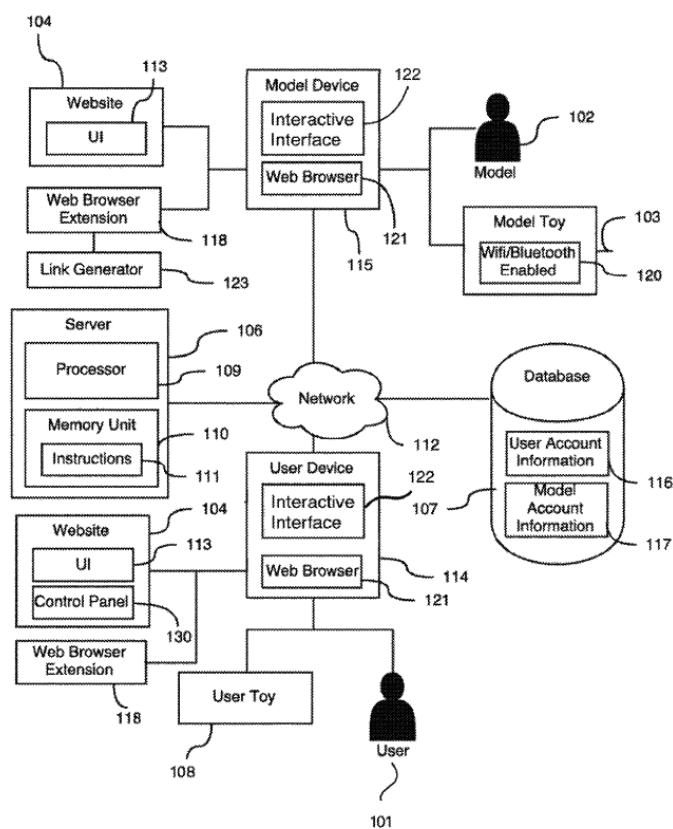


FIG. 3

Id., Fig. 3. Figure 3 is a high-level block diagram that discloses a system where user 101 operates user device 114 to access website 104 via web browser 121 to engage in an online chat with model 102 using user interface (UI) 113. *Id.* at 4:49–

58. Website 104 is configured to recognize an input value and send an interactive command to model device 115 and user device 114 through respective interactive interface 122. *Id.* at 6:4–9. Model toy 103 is Wi-Fi or Bluetooth enabled 120, which allows model toy 103 to communicate with web browser 121 via model device 115. *Id.* at 5:22–26.

In some embodiments, the '041 patent describes that “website 104 outputs randomly an interactive result.” *Id.* at 6:13–15. That result may come from an online game such as “a finger guessing game,” such as rock-paper-scissors, “a dice game, and a lottery game.” *Id.* at 6:31–34; *accord id.* at 6:31–9:4.

D. CHALLENGED CLAIMS

Claims 1, 11, and 20 are independent. Claim 1 is representative and is reproduced below, with bracketed numbering and formatting added to identify limitations as in the Petition (*see* Ex. 1004).

- 1[pre] A system for providing online communication, comprising:
 - 1[a] an operable adult toy configured to receive signals;
 - 1[b] a memory having stored thereon instructions;
 - 1[c][1] at least one processor to execute said instructions resulting in a software application; said software application configured to:
 - 1[c][2] define input parameters;
 - 1[c][3] receive an input from one or more users; and
 - 1[c][4] providing at least one interactive interface,
 - 1[c][5] outputting randomly an interactive result according to the at least one interactive interface,
 - 1[c][6] receiving the interactive result and controlling said adult toy to actuate according to the interactive result.

Ex. 1001, 15:36–49. Claim 11 recites similar limitations, further including user and model devices accessing an online chat room, and that the user input includes

virtual currency. *Id.* at 16:58–17:16. Claim 20 recites a method with limitations similar to those of claim 11. *Id.* at 18:35–53. The other challenged claims depend, directly or indirectly, from the independent claims. *Id.* at 15:50–18:34.

E. ASSERTED GROUNDS

Petitioner asserts the following unpatentability grounds:

Claims	35 U.S.C. §	References/Basis
1–20	101	Inventorship
1, 2, 4–9, 11, 12, 14–17, 19, 20	102	2019 Lovense System ¹
1, 2, 4–6, 8–12, 14–16, 18–20	103	Olivares, ² 2019 Video ³
3, 7, 13, 17	103	Olivares, 2019 Video, Wiltshire ⁴

Pet. 12. Petitioner also relies on the Declaration of Dr. Stan McClellan. Ex. 1006.

II. ANALYSIS

Petitioner asserts that the '041 patent's claims are unpatentable for lack of proper inventorship under 35 U.S.C. § 101 (claims 1–20), for lack of novelty under § 102 (claims 1, 2, 4–9, 11, 12, 14–17, 19, 20), and for obviousness under § 103 (claims 1–20). Pet. 12. We find that Petitioner has established it is more likely than not that at least claim 1 of the '041 patent would have been obvious at the time of

¹ 2019 Lovense System “includes the combination of Lovense products described in the 2019 Video” (Pet. 10–12; Ex. 1008; Exs. 1010-1, 1010-2, 1010-3) and described on the Lovense Website (Pet. 7–10; Ex. 1008; Exs. 1009-1, 1009-2).

² U.S. 9,762,515 B1, issued Sept. 12, 2017 (Ex. 1002).

³ Ex. 1010-1 (“2019 Video”) (May 20, 2019), *available at* <https://www.youtube.com/watch?v=9fiQGTKNAGU>; Ex. 1010-2 (YouTube metadata); Ex. 1010-3 (transcript of 2019 Video).

⁴ U.S. 6,409,602 B1, issued June 25, 2002 (Ex. 1011).

filing. Because we reach this conclusion on obviousness, we do not address Petitioner's other grounds at this time.

A. PGR ELIGIBILITY

The '041 patent was filed on November 3, 2020, and does not claim priority to earlier applications. Ex. 1001, code (22), 1:1–10. It issued on September 28, 2021, within nine months before the Petition was filed. *Id.*, code (45); Pet. 113 (filed June 27, 2022); Paper 5. Therefore, the '041 patent was eligible for post-grant review when Petitioner filed the Petition. *See* 35 U.S.C. § 321(c).

B. LEVEL OF ORDINARY SKILL IN THE ART

Petitioner contends that a person of ordinary skill in the art would “have a bachelor's degree in electrical engineering, software engineering, computer science, or a similar field with at least two years of experience related to development of software for distributed or networked applications.” Pet. 26 (citing Ex. 1006 ¶ 51). We adopt this definition for purposes of institution, as it appears to be consistent with the '041 patent's description and the asserted prior art.

C. CLAIM CONSTRUCTION

For a post-grant review petition filed after November 13, 2018, we construe claim terms “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b).” 37 C.F.R. § 42.200(b) (2019). Thus, claim terms generally are construed in accordance with their ordinary and customary meaning, as would have been understood by a person of ordinary skill in the art, and the prosecution history pertaining to the patent at issue. *Id.* The ordinary and customary meaning of a claim term “is its meaning to the ordinary artisan after reading the entire patent,” and “as of the effective filing

date of the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313, 1321 (Fed. Cir. 2005) (en banc).

“[W]e need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy.’” *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Matal*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

Petitioner asserts, and we agree, that no term requires construction at this stage. Pet. 13.

D. OBVIOUSNESS OF CLAIMS 1, 2, 4–6, 8–12, 14–16, AND 18–20
OVER OLIVARES AND THE 2019 VIDEO

Petitioner asserts that Olivares in combination with the 2019 Video teach claims 1, 2, 4–6, 8–12, 14–16, and 18–20 of the ’041 patent. Because Patent Owner did not file a Preliminary Response, Patent Owner has not yet addressed the merits of Petitioner’s arguments. For purposes of institution, we are persuaded that Petitioner demonstrates that it is more likely than not that claims 1, 2, 4–6, 8–12, 14–16, and 18–20 are unpatentable.

1. *Overview of Olivares*

Olivares relates to a system and method for allowing a user to interact with models from a distance by enabling the user to tip the models during online video chat sessions. Ex. 1002, code (57). Petitioner asserts that Olivares and the ’041 patent are “largely identical.” Pet. 2–6. Petitioner notes that the ’041 patent adds “an interactive interface (e.g., a game)” to website 104 to provide “a random interactive result (e.g., the outcome of a game).” *Id.* at 6. Exhibit 1003 compares the text of both patents. Ex. 1003.

Olivares’s Figure 1 is nearly identical to the ’041 patent’s Figure 3. *Compare* Ex. 1001, Fig. 3, *with* Ex. 1002, Fig. 1. The only difference between the

figures appears to be that Olivares's Figure 1 does not include an interactive interface 122 in user device 114 and model device 115. *See* Ex. 1001, Fig. 3, 2:49–6:9; Ex. 1002, Fig. 1, 4:16–6:45.

2. *Overview of the 2019 Video (Ex. 1010)*⁵

The 2019 Video is a 10 minute, 41 second YouTube video explaining how to use the Lovense Smartcam. Ex. 1010-2, 3; 1010-3, 1–6. It explains that the Lovense overlay “allows your viewers to know what tip ranges you have set up and what toys are gonna vibrate.” Ex. 1010-3, 2:01–2:09. The Lovense overlay can “add animations” such as a “dice game” and, for one embodiment, “you need to tip 12 tokens to roll the dice,” which causes “all toys to react for three seconds.” *Id.* at 4:10–4:12, 4:34–4:40.

3. *Claim 1*

a. 1[Pre] A system for providing online communication, comprising: [1[a]] an operable adult toy configured to receive signals; [1[b]] a memory having stored thereon instructions; [1[c][1]] at least one processor to execute said instructions resulting in a software application; said software application configured to:

Petitioner argues “[t]here can be no dispute that Olivares expressly teaches and claims the Preamble, 1[a], 1[b], 1[c][1] because it recites identical limitations.” Pet. 70. We agree. The only difference between these limitations in the ’041 patent and Olivares is that the ’041 patent claims “at least one processor” whereas Olivares claims “a processor,” which plainly satisfies the claim language.

⁵ Exhibit 1010 includes 3 parts, 1010-1 is the YouTube video, 1010-2 is the corresponding metadata, and 1010-3 is a transcript that corresponds to various time increments of the YouTube video.

b. 1[c][2] “define input parameters”

The '041 patent discloses “[t]he input value may be the tip amounts, and the input parameters may be the tip parameters.” Ex. 1001, 6:1–3. Petitioner contends that because Olivares teaches and claims “define tip parameters,” Olivares discloses “define input parameter.” Pet. 71; Ex. 1002, 5:16–20 (“Each model 102 can define and edit tip parameters that are used during each chat session.”). We agree that Olivares satisfies this limitation.

c. 1[c][3] “receive an input from one or more users”

Petitioner asserts that because a tip is an input and because Olivares discloses “the website 104 (the application) ‘is configured to scan for tips during chat sessions and receive tips from the user 101,’” Olivares meets this limitation. Pet. 72 (citing Ex. 1001, 5:58–61; Ex. 1006 ¶ 163). We agree that Olivares satisfies this limitation.

d. 1[c][4] “providing at least one interactive interface”

Petitioner contends that because Olivares describes an “interactive online communication system,” it discloses “at least one interactive interface.” *Id.* at 72. Olivares teaches a “website 104 (the application) provides UIs [user interfaces] 113 for a user device 114 and a model device 115 to engage in online chat with each other.” Pet. 72–73 (citing Ex. 1001, 1:31–35, 4:4:20–25, 4:31–37; Ex. 1006 ¶ 164). Petitioner asserts that UIs 113, which enables interaction through chat, discloses an “interactive interface.” *Id.* at 73.

In absence of a construction limiting the scope of “interactive interface,” we agree with Petitioner that Olivares teaches an interactive interface. We note that Petitioner asserts that skilled artisans would have had reason to modify Olivares’s user interface to include the 2019 Video’s interactive dice game. Pet. 73–75. We

discuss that modification below but note it here because the modified system even more plainly discloses an interactive interface as claimed.

We agree that Olivares, or alternatively Olivares as modified by the 2019 Video, discloses this limitation.

e. 1[c][5] “outputting randomly an interactive result according to the at least one interactive interface”

Petitioner asserts that the combination of Olivares and the 2019 Video meets this limitation. Pet. 73. According to Petitioner, skilled artisans would have “understood that the interactive interface of Olivares could be predictably modified to output randomly an interactive result as claimed, for example, in the form of a dice game.” *Id.* Moreover, Petitioner points out, the 2019 Video shows that Petitioner did so in its commercial embodiment. *Id.* Petitioner provides evidence that a skilled artisan would have understood that the 2019 Video is a commercial embodiment of Olivares, which builds upon the disclosure of Olivares to include exemplary interactive interfaces that use a random output. Pet. 74, 75 (citing Ex. 1006 ¶¶ 167–168; Ex. 1008 ¶ 16). The 2019 Video depicts “playing a dice game by rolling the dice, which randomly outputs a number ‘7,’ which is ‘an interactive result,’” and Petitioner contends an ordinary artisan “would have also understood that adding the dice game involves applying known techniques to a known device to predictably enhance the fun and entertainment value of the chat experience.” *Id.* at 74–75 (citing Ex. 1006, ¶¶ 167–168).

On the present record, we conclude that Petitioner presents sufficient evidence that skilled artisans had reason to modify Olivares to include a game with a random output from the interactive interface, as taught by the 2019 Video, and that the combination of Olivares and the 2019 Video discloses this limitation.

f. 1[c][6] “receiving the interactive result and controlling said adult toy to actuate according to the interactive result.”

Petitioner relies on the combined teachings of Olivares and the 2019 Video for this limitation. Petitioner asserts that “Olivares discloses that the toy can be controlled by the website 104 with different actuations” producing various results, and that the 2019 Video “discloses that the interactive result can be the outcome of a dice roll,” which corresponds to an embodiment disclosed in the ’041 Patent. Pet. 75–76 (citing Ex. 1002, 5:16–24). Petitioner further asserts that, in the 2019 Video, “the interactive result can be the outcome of a dice roll, which is the exact embodiment disclosed in the ’041 Patent.” *Id.* at 76. We agree with Petitioner that Olivares’s system, as modified in the 2019 Video, discloses controlling the adult toy to actuate according to the interactive result. *See id.* (citing Ex. 1006 ¶ 169).

4. Summary

Having reviewed the record, we conclude that Petitioner has shown it is more likely than not of prevailing with respect to obviousness of claim 1 over Olivares and the 2019 Video.

5. Independent Claims 11 and 20

Claim 11 differs from claim 1 mainly by requiring user and model devices connected by a network through a web browser, and that the input is virtual currency. Ex. 1001, 16:68–17:16. Except for virtual currency, these limitations are already discussed for claim 1. As to the virtual currency limitation, Petitioner asserts, and we agree, that Olivares’s user 101 uses “virtual currency to tip the model 102.” Pet. 77, 90 (citing Ex. 1002, 6:7–11; Ex. 1006 ¶ 200).

Claim 20 differs from claim 1 by being directed to a method and requiring that the input parameters are one or more ranges of input values. Ex. 1001, 18:35–53. As already discussed for claim 1, Olivares discloses that “specific tip amounts

and/or ranges of tip amounts and actions correlating to each of the tip amounts and/or ranges.” Ex. 1002, 5:16–20.

Having reviewed the record, we conclude that Petitioner has shown claims 11 and 20 are more likely than not unpatentable as obvious over Olivares and the 2019 Video.

6. *Dependent claims*

Claims 2, 4–6, and 8–10 depend from claim 1. Ex. 1001, 15:50–16:57. Claims 12, 14–16, 18, and 19 depend from claim 11. Ex. 1001, 17:17–18:34. Petitioner raises additional contentions for these dependent claims, drawing from further teachings of Olivares and the 2019 Video. Pet. 76–87, 94–98.

We have reviewed Petitioner’s contentions, and on the present record, we conclude that Petitioner presents sufficient evidence regarding obviousness of the above dependent claims over Olivares and the 2019 Video.

E. ADDITIONAL GROUNDS

Because we have determined that it is more likely than not that at least one claim would have been obvious over Olivares and the 2019 Video, we need not evaluate the merits of Petitioner’s additional asserted grounds at this stage.

III. CONCLUSION

For the reasons discussed above, we conclude that the Petition shows it is more likely than not that at least one claim is unpatentable. Accordingly, we institute post-grant review. The review includes all asserted grounds. Consolidated Trial Practice Guide 64 (Nov. 2019) (“The Board will not institute on fewer than all claims or all challenges in a petition.”).⁶ Our findings and conclusions are

⁶ Available at <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>.

preliminary and, at this stage of the proceeding, we have not made a final determination with respect to the patentability of the challenged claims. Any final decision will be based on the full trial record, including any response timely filed by Patent Owner.

IV. ORDER

Accordingly, it is

ORDERED that, pursuant to 35 U.S.C. § 324(a), post-grant review of claims 1–20 of the '041 patent is instituted; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 324(c) and 37 C.F.R. § 42.4(b), notice is hereby given of the institution of trial, which will commence on the entry date of this Decision.

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