

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIGHTSPEED COMMERCE INC. and
CLOVER NETWORK, LLC,
Petitioner,

v.

CLOUDOFCHANGE, LLC,
Patent Owner.

IPR2022-01143
Patent 11,226,793 B2

Before HUBERT C. LORIN, JEREMY M. PLENZLER, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

A. Background and Summary

Lightspeed Commerce Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–4, 7–28, and 31–44 of U.S. Patent No. 11,226,793 B2 (Ex. 1001, “the ’793 patent”). Paper 1 (“Pet.”).

CloudofChange, LLC (“Patent Owner”) file a Preliminary Response. Paper 6 (“Prelim. Resp.”). We instituted an *inter partes* review of claims 1–4, 7–28, and 31–44 of the ’793 patent on all grounds of unpatentability alleged in the Petition. Paper 8 (“Institution Decision” or “Inst. Dec.”). Clover Network, LLC was joined to this proceeding on June 8, 2023. Paper 18. This decision refers to Lightspeed Commerce Inc. and Clover Network, LLC, collectively, as “Petitioner.”

After institution of trial, Patent Owner filed a Response (Paper 12, “PO Resp.”), Petitioner filed a Reply (Paper 16, “Pet. Reply”), and Patent Owner filed a Sur-Reply (Paper 21, “PO Sur-Reply”).

An oral hearing was held on August 2, 2023, and the record includes a transcript of the hearing. Paper 25 (“Transcript” or “Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that claims 1–4, 7–28, and 31–44 of the ’793 patent are unpatentable.

B. Related Matters

The parties indicate that the ’793 patent is involved in *CloudofChange, LLC v. Lightspeed POS Inc.*, 6:21-cv-01102 (W.D. Tex. Oct. 22, 2021) (“the Lightspeed Litigation”). Pet. 1 (“P[atent] O[wner]’s May 2, 2022 amended complaint in the Lightspeed Litigation alleged infringement of . . . ‘the ’793 patent’”); Paper 5, 1.

The ’793 patent is a continuation filing of U.S. Patent No. 10,083,012 B2 (“the ’012 patent”), which is continuation of U.S. Patent No. 9,400,640 B2 (“the ’640 patent”).

The '640 and '012 patents are also involved in the Lightspeed Litigation. The '640 and '012 patents were both previously involved in a lawsuit *CloudfChange, LLC v. NCR Corporation*, 6:19-cv-00513 (W.D. Tex. Aug. 30, 2019) (“the NCR Litigation”), which resulted in a jury verdict for Patent Owner, but is still pending final judgment. *See* Paper 5 (referencing the NCR Litigation).

The '640 patent is challenged in IPR2022-00779 and the '012 patent is challenged in IPR2022-00997. Trial has been instituted for both proceedings and final written decisions have been entered.

C. The '793 Patent

The '793 patent relates to “a system and a method for online, web-based point of sale (POS) building and configuration.” Ex. 1001, Abstract. According to the '793 patent, “[c]urrent practice in the field of assembling point of sale systems includes manually coding front-of-screen information,” which “contains menu selections, page selections, and general answers to business questions.” *Id.* at 1:33–37. The '793 patent explains that “in the prior art, a specialized programmer had to design the layout and data for these POS touch keys,” but “[w]ith this invention, the store operator will be able to build his POS screens online over the Internet.” *Id.* at 3:5–7, 13–14.

“In this invention, this product data and the touch key structure is stored in relational databases in the back office which is stored on the web servers 36 shown in FIG. 3.” Ex. 1001, 2:67–3:3. Figure 3 from '793 patent is reproduced below.

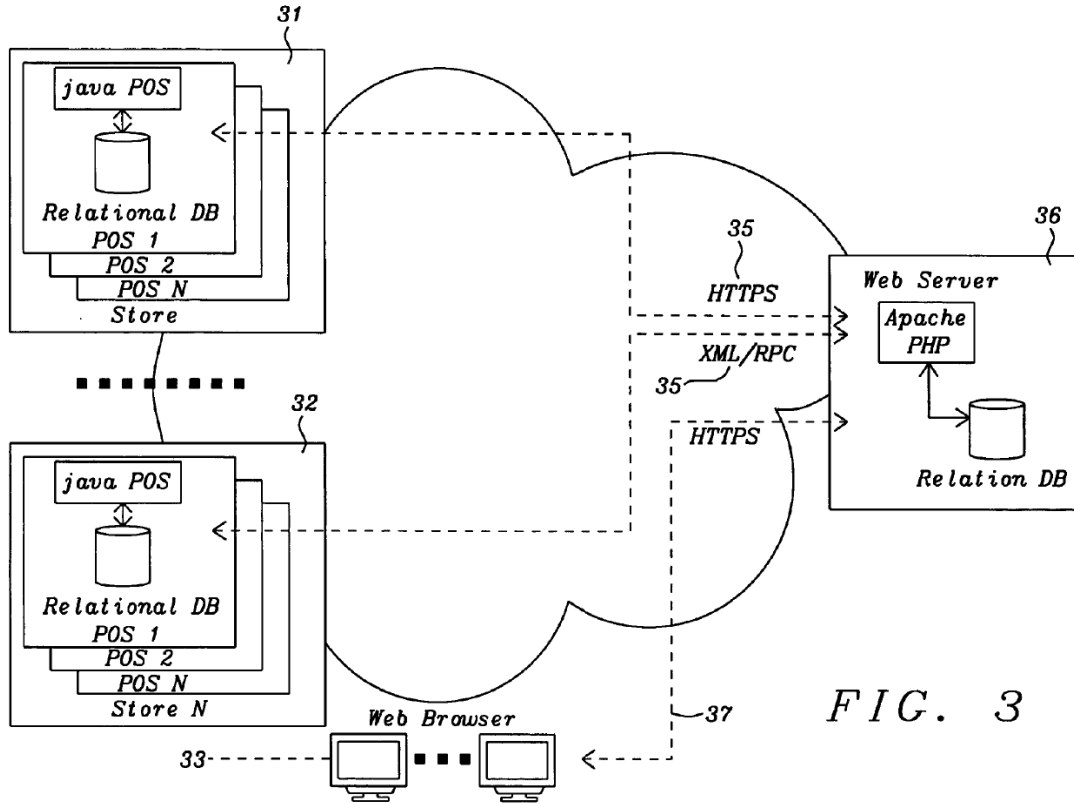


FIG. 3

“F[igure] 3 is a system diagram for web-based back office which supports point of sale terminals” (*id.* at 2:41–42) and “shows a high level diagram of this invention” (*id.* at 3:57).

The discussion of Figure 3 spans little more than one column of the ’793 patent. *See* Ex. 1001, 3:57–4:62. And that discussion lacks any specificity that would indicate that the web-based back office architecture, itself, is anything other than well-known. The Specification explains, for example:

POS 31 is in Store 1 and POS 2 (32) is in Store 2. Each POS includes personal computer hardware and software. Additional POS terminals beyond those shown, as well as additional stores beyond the two shown, are within the scope of the invention. Each POS normally operates with a hardware/software connection 35 to the Internet or Web.

Id. at 3:59–65. “[I]f the web goes down, the POS terminal continues to operate” because “[t]here is a ‘loose coupling’ of the POS to the back office (BO): the POS to BO connection is not required for the basic business functions of the POS” and “[a]ll transaction data is stored in a relational database on the hard drive in the POS.” *Id.* at 3:65–4:3.

“The POS terminals communicate via HTTP protocol (hypertext transfer protocol) 35 with Back-office BO software, which is implemented on web servers 36, which can be located anywhere in the world.” Ex. 1001, 4:36–40. The ’793 patent explains that its “POS builder system can be provided as a service or deployed within a corporation,” and notes that “[f]or example, Software as a Service (SAAS) is a software distribution model in which applications are hosted by a vendor or service provider and made available to customers over a network, typically the Internet.” *Id.* at 6:11–16.

D. Illustrative Claim

1. A web-based point of sale (POS) builder system comprising:
 - at least one server configured to:
 - communicate with one or more POS terminals over a network comprising the Internet, wherein the one or more POS terminals are configured to display one or more POS screens;
 - receive, over the network from a POS builder interface, information used for creating or modifying the one or more POS screens including creating or modifying one or more display interfaces for display on the one or more POS screens, the one or more display interfaces being associated with one or more items;
 - receive, from at least one of the one or more POS terminals over the network, further information regarding one or more POS transactions corresponding to the one or more items;

configure the one or more POS terminals with the information over the network to create or modify based on the further information regarding one or more POS transactions the one or more POS screens displayed on the one or more POS terminals; and

wherein the further information regarding the one or more POS transactions, the information used for creating or modifying the one or more POS screens, or a combination thereof comprises one or more of employee clock information, customer add/update information, item add/update information, promotion information, loyalty point information, discount information, taxation information, item cost information, or inventory information;

wherein said further information regarding the one or more POS transactions relate to one or more transactions by corresponding customers respectively associated with at least one of said one or more POS terminals.

Ex. 1001, 6:29–64.

E. Evidence and Asserted Grounds

Petitioner asserts that claims 1–4, 7–28, and 31–44 would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §¹	Reference(s)/Basis
1–4, 7–28, 31–44	103	Woycik ²
1–4, 7–28, 31–44	103	Tengler ³

¹ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284 (2011), amended 35 U.S.C. § 103, effective March 16, 2013. Because the application from which the ’640 patent issued was filed before this date, the pre-AIA version of § 103 applies.

² US Patent Pub. No. US 2007/0265935 A1, published Nov. 15, 2007 (Ex. 1004).

³ US Patent Pub. No. US 2005/0049921 A1, published Mar. 3, 2005 (Ex. 1005).

Petitioner submits a declaration from Stephen Gray. Ex. 1002. Patent Owner submits a declaration from Alex Cheng. Ex. 2015⁴.

II. ANALYSIS

A. *Legal Standards*

Petitioner bears the burden of persuasion to prove unpatentability, by a preponderance of the evidence, of the claims challenged in the Petition. 35 U.S.C. § 316(e). This burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

As seen above, Petitioner's challenges are based on obviousness. A claim is unpatentable under 35 U.S.C. § 103 if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious at the time of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved based on underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) when in the record, objective evidence of non-obviousness. *Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 17–18 (1966).

B. *Level of Ordinary Skill in the Art*

The level of ordinary skill in the art is “a prism or lens” through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261

⁴ Patent Owner includes two Exhibit 2015's in the record. When this decision references Exhibit 2015, those references are to Mr. Cheng's Declaration.

F.3d 1350, 1355 (Fed. Cir. 2001). The person of ordinary skill in the art is a hypothetical person presumed to have known the relevant art at the time of the invention. *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995). In determining the level of ordinary skill in the art, we may consider certain factors, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *Id.*

1. Petitioner

Petitioner contends that “[a] ‘person of ordinary skill in the art’ (POSITA) on the ’793 patent’s effective filing date would have had a working knowledge of designing, developing, and deploying web-based systems” and “would have a Bachelor of Science in computer science or a related field, and approximately two years of professional experience or equivalent study in the design and development of web-based systems, including web-based POS systems.” Pet. 7; *see also* Ex. 1002 ¶¶ 29–30 (repeating the same). Petitioner contends that “[a]dditional graduate education could substitute for professional experience, or significant experience in the field could substitute for formal education.” Pet. 7; *see also* Ex. 1002 ¶¶ 29–30 (repeating the same).

2. Patent Owner

Patent Owner disputes Petitioner’s characterization of a person of ordinary skill in the art. PO Resp. 13–15. Patent Owner contends that “Petitioner’s proposed definition of a POSITA does not require any experience with retail POS systems—let alone **building POS screens**—that

are the field of the '[793]⁵ patent" and "makes experience in retail POS systems optional." *Id.* at 13–14 (citing Ex. 2015 ¶ 30).

Patent Owner contends that its "proposed definition of a POSITA remedies this deficiency by including experience or equivalent study in the field of the '793 Patent, retail point of sale ('POS') systems, including experience with building POS screens." PO Resp. 14. According to Patent Owner "a proper definition of a POSITA . . . includes experience or additional study in the field of web-based POS builder software and systems." *Id.* at 15. Patent Owner contends that "Stephen Gray is not a POSITA with reference to the '793 Patent" and "[t]estimony of an expert that fails to meet the definition a POSITA should be excluded."⁶ *Id.*

3. *Analysis*

The level of skill in the art is a reference point for gauging what would have been obvious based on the reference disclosures. *See Okajima*, 261 F.3d at 1355. In other words, the lens of the level of ordinary skill in the art does not change a prior art's disclosure, though it may change one's understanding of what is disclosed. Patent Owner does not explain how its definition provides a reference point that would alter the Petition's assertion of obviousness.

Indeed, as noted by Petitioner, "P[atent]O[wner]'s expert does not know how P[atent]O[wner]'s proposed definition would impact any opinions in his supporting declaration." *Id.* (citing Ex. 1029, 10:20–11:11); *see also* Ex. 1034, 10–14. Patent Owner provides no rebuttal to this position in its Sur-Reply, other than alleging that "[a]lthough experienced in 'point-

⁵ Patent Owner references the '640 patent.

⁶ There has been no motion filed by Patent Owner to exclude the testimony of Mr. Gray.

of-transaction techniques,' Petitioner's expert is not a POSITA with respect to the '793 Patent under either standard." PO Sur-Reply 32 (citing PO Resp. 13–15).

Petitioner's position has support in the record, not only based on the statements from Patent Owner's expert noted above, but also with respect to the issues presented in the Patent Owner Response. With respect to the challenges based on Woycik, for example, the disputed issues relate to server considerations. There is no dispute that Woycik teaches POS builder software. Indeed, at oral hearing Patent Owner expressly acknowledged that is taught in Woycik. *See* Tr. 42:3–7 (When asked: "[D]oes Woycik teach point-of-sale builder software?" counsel for Patent Owner answered: "I don't think we've disputed that that the administrative tool is building things. Where we disagree is that Woycik's administrative tool doesn't fit within the claimed architecture of any of the three Patents. But, I mean, Woycik talks about building menus and some other screens."). The disputes regarding the purportedly "claimed architecture" concern whether Woycik requires an in-store server (PO Resp. 28–32), whether Woycik teaches receiving further information from POS terminals over the Internet (*id.* at 32–33), and whether Woycik teaches configuring POS terminals with the information over the Internet (*id.* at 33–35).

As explained below, we do not reach the challenge based on Tengler.

Accordingly, we discern no reason that Mr. Gray's qualifications are insufficient to testify on the disputed issues.

Nevertheless, we also agree with Petitioner that a person of ordinary skill in the art is not limited to someone experienced building POS screens. Although, as noted above, the '793 patent characterizes the novelty as eliminating the need for a specialized programmer to build POS screens, we

know that is not novel, as Patent Owner, itself, now acknowledges as explained above. And that is not even recited in the claims of the '793 patent. Rather, what is now alleged by Patent Owner to be the novel aspect of the invention relates to the web-based back office system.

And even if we accept that experience with POS systems is necessary, as Petitioner notes, and Patent Owner does not dispute, “Mr. Gray explains his work experience ‘had to do with point of sale *and* point of transaction.’” *See* Pet. Reply 3–4 (citing Ex. 1030, 53:3–54:2). Patent Owner makes much of purported differences between point of sale and point of transaction, but never provides any meaningful articulation of what those actual differences are or how they affect Mr. Gray’s qualifications to testify in this proceeding. *See* Pet. Reply 4; PO Sur-Reply 32 (stating without further discussion: “Although experienced in ‘point-of-transaction techniques,’ Petitioner’s expert is not a POSITA with respect to the '793 Patent under either standard. POR, 13-15.”).

For purposes of this decision, we analyze the asserted prior art with respect to the level of skill set forth by Petitioner, but we see no meaningful difference in the outcome of this decision if we were to apply the level of skill in the art set forth by Patent Owner.

C. Claim Construction

In an *inter partes* review, we construe a patent claim “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. § 42.100(b) (2021). Under this standard, the words of a claim generally are given their “ordinary and customary meaning,” which is the meaning the term would have to a person of ordinary skill at the time of the invention, in the context of the

entire patent including the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc).

The Petition offers constructions for several limitations. Pet. 8–9. In Petitioner’s reply, however, Petitioner notes that “[t]he Petition included clarifications for several claim terms,” but because “P[atent]O[wner] does not dispute Petitioner’s clarifications . . . construction of these terms is unnecessary.” Pet. Reply 4. Petitioner notes that “Prior *Markman* orders [from the NCR Litigation] do not impact the Petition’s grounds.” Pet. 7 n.2 (citing Exs. 1024, 1025).

Patent Owner disputes Petitioner’s contention regarding the prior *Markman* orders. PO Resp. 15–17. Patent Owner “proposes that the PTAB adopt Judge Albright’s constructions in the Lightspeed Litigation and final constructions in the NCR Litigation that are applicable to this case.” *Id.* at 17. According to Patent Owner, “[s]pecifically, the Board should adopt the Court’s construction for ‘POS screens’ and ‘web-based point of sale (POS) builder system.’” *Id.*

Patent Owner addresses only the preamble of claims 1, 27, and 42–44 (reciting “a web-based point of sale (POS) builder system”). PO Resp. 17–18. Referencing the claim construction orders from the NCR Litigation, Patent Owner contends that the preambles of claims 1, 27, and 42–44 should be construed as a point of sale (POS) builder system that requires the internet. *Id.* (citing Ex. 1024, 1).

In its Reply, Petitioner notes that Patent Owner’s contentions regarding the preamble are contrary to the positions taken by Patent Owner in the Lightspeed Litigation. Pet. Reply 4–5. According to Petitioner, however, “even considering the preamble is limiting—it does not *preclude*[] a system that allows *both* access locally and access via the

Internet.” *Id.* at 5 (citing Inst. Dec. 21). In response, Patent Owner reiterates that it “asks this Panel to adopt the Court’s prior constructions for all claims.” PO Sur-Reply 10.

Pursuant to our authorization, and without objection from Patent Owner, Petitioner submitted a Supplemental Claim Construction Order from the District Court in the Lightspeed Litigation, including final claim constructions for that proceeding. Ex. 1031. That order determined that the preamble is not limiting.⁷ We agree.

“In general, a preamble limits the invention if it recites essential structure or steps, or if it is ‘necessary to give life, meaning, and vitality’ to the claim.” *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002). A preamble, however, “generally is not limiting when the claim body describes a structurally complete invention such that deletion of the preamble phrase does not affect the structure or steps of the claimed invention.” *Id.* at 809.

We agree with Petitioner and the Supplemental Claim Construction Order from the District Court in the Lightspeed Litigation that the preamble is unnecessary to understand the claim. Here, the claim body describes a structurally complete invention such that deletion of the preamble phrase does not affect the structure or steps of the claimed invention.

We do not need to construe any terms expressly to reach our decision. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’”)

⁷ The parties agree that this issue has been fully briefed. *See* Tr. 21:2–6, 38:25–39:3.

(quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

D. Secondary Considerations of Non-Obviousness

Patent Owner alleges that “[s]econdary considerations further confirm the patentability of Claims [1–4, 7–28, and 31–44].” PO Resp. 74 (citing Ex. 2015 ¶¶ 156–159). The cited paragraphs of Mr. Cheng’s testimony essentially repeat, verbatim, pages 76–78 of the Patent Owner Response, which we address below.

Objective indicia of non-obviousness may include long-felt but unsolved need, failure of others, unexpected results, commercial success, copying, licensing, industry praise, and expert skepticism. *Mintz v. Dietz & Watson, Inc.*, 679 F.3d 1372, 1379 (Fed. Cir. 2012). “[O]bjective indicia ‘may often be the most probative and cogent evidence of nonobviousness in the record,’” and “help turn back the clock and place the claims in the context that led to their invention.” *Id.* at 1378. Evidence of objective indicia of non-obviousness “must always when present be considered en route to a determination of obviousness.” *Transocean Offshore Deepwater Drilling, Inc. v. Maersk Drilling USA, Inc.*, 699 F.3d 1340, 1349 (Fed. Cir. 2012); *see also Apple Inc. v. Samsung Elecs. Co.*, 839 F.3d 1034, 1048 (Fed. Cir. 2016) (en banc).

Objective indicia of non-obviousness are “only relevant to the obviousness inquiry ‘if there is a nexus between the claimed invention and the [objective indicia of non-obviousness].’” *In re Affinity Labs of Tex., LLC*, 856 F.3d 883, 901 (Fed. Cir. 2017) (quoting *Ormco Corp. v. Align Tech., Inc.*, 463 F.3d 1299, 1312 (Fed. Cir. 2006)). For objective indicia of non-obviousness to be accorded substantial weight, their proponent must establish a nexus between the evidence and the merits of the claimed

invention. *ClassCo, Inc. v. Apple, Inc.*, 838 F.3d 1214, 1220 (Fed. Cir. 2016).

As the Federal Circuit has explained, “a patentee is entitled to a rebuttable presumption of nexus between the asserted evidence of secondary considerations and a patent claim if the patentee shows that the asserted evidence is tied to a specific product and that the product ‘is the invention disclosed and claimed.’” *Fox Factory, Inc. v. SRAM, LLC*, 944 F.3d 1366, 1373 (Fed. Cir. 2019) (quoting *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir. 1988)). A patentee is not entitled to a presumption of nexus if the patented invention is only a component of a commercially successful machine or process. *Id.* Once “the patentee has presented a prima facie case of nexus, the burden of coming forward with evidence in rebuttal shifts to the challenger . . . to adduce evidence to show that the commercial success was due to extraneous factors other than the patented invention.” *Demaco*, 851 F.2d at 1392–93.

Here, we have no presumption of nexus. Nor does Patent Owner allege such a presumption should apply. *See* PO Resp. 74–78.

Patent Owner contends that “[t]here is a strong nexus between [Patent Owner]’s claimed invention and [Patent Owner]’s secondary consideration evidence.” PO Resp. 75. Patent Owner proceeds to allege that “[a]s discussed below, there is evidence that the long-felt of the present invention is due to the novel and unique combination of elements of CloudofChange’s claimed web-based POS builder system.” *Id.* But the only reference to any particular claim is a subsequent allegation that “the web-based POS builder system is built completely on the web and the software communicates from web server 36 to POS 31 in-store, as recited in claims. EX1001, Claims 1,

27, 42, 43, and 44.” *Id.* at 77. This general allegation does not establish nexus.

Patent Owner’s allegations regarding long-felt need are also unavailing. *See* PO Resp. 76–78.

Long-felt need can be shown by evidence that indicates that the prior art had a recognized need for a solution to the problem and that others had tried and failed to find a solution to that problem. *Al-Site Corp. v. VSI Int’l, Inc.*, 174 F.3d 1308, 1325 (Fed. Cir. 1999); *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1540 (Fed. Cir. 1983). Notably, the case law characterizes the need in terms of a long-felt but unresolved need. *Al-Site*, 174 F.3d at 1325 (discussing “long felt but unresolved needs”). Accordingly, Patent Owner must show that the need was both known and not resolved.

Patent Owner fails to provide evidence to support its allegations regarding long-felt need. Instead, Patent Owner cites to conclusory paragraphs from Mr. Cheng’s declaration that simply parrot the statements in the Petition. And, based on Patent Owner’s Response, it is not entirely clear what the prior art allegedly had recognized as a problem needing a solution, let alone that others had tried and failed to find a solution to that problem. There is simply no evidence supporting Patent Owner’s position.

Moreover, Patent Owner must also show that if the need was known, it was also unresolved. As best we can decipher what the alleged need was, based on our analysis of the challenges below, that need was already met.

Finally, we note that it is unclear how the claimed arrangement provides a solution to the problem that others had tried and failed to solve. Indeed, as noted above, the only reference to any claim is Patent Owner’s allegation that “the web-based POS builder system is built completely on the

web and the software communicates from web server 36 to POS 31 in-store, as recited in claims. EX1001, Claims 1, 27, 42, 43, and 44.” PO Resp. 77.

For at least the reasons set for above, Patent Owner’s evidence of non-obviousness is entitled to little, if any, weight.

E. Woycik Challenge

Petitioner asserts that claims 1–4, 7–28, and 31–44 are unpatentable under 35 U.S.C. § 103 as obvious over Woycik in view of the knowledge of a person of ordinary skill in the art. Pet. 21–72. As seen below, Petitioner’s challenge based on Woycik is largely unrebutted by Patent Owner, as the majority Patent Owner’s contentions relate to features not actually required by the claims. We adopt Petitioner’s undisputed contentions and supporting evidence for purposes of this decision.

1. Woycik

Woycik “relates generally to computer-based systems used for ordering goods and services and, more particularly, to self-service terminals and software tools for administering self-service terminals.” Ex. 1004 ¶ 4. Woycik explains that “Point of Sale (POS) systems provide a means by which ordering and purchasing transactions can be carried out electronically at the store or other venue where the goods or services are supplied.” *Id.* ¶ 6. According to Woycik, “[s]elf-service POS systems typically have a central computer acting as a server and one or more terminals which are the individual client units that are used by customers to input their orders.” *Id.* ¶ 7.

Woycik describes an “administration tool application [that] includes a menu editor that enables the administrator to create and edit the interactive menu screens provided by the self-order application at the self-service client terminals.” Ex. 1004 ¶ 16. “The menu editor enables the administrator to,

during creation/editing of an interactive menu screen, select a template for the interactive menu screen and associate functions with the buttons included on the selected template.” *Id.* ¶ 19. Woycik explains that “there are many possible arrangements and the administrative tool application may be located at a variety of locations, including . . . an offsite location provided that the administrative tool application is able to communicate with the server.” *Id.* ¶ 17.

Figure 1 of Woycik is reproduced below.

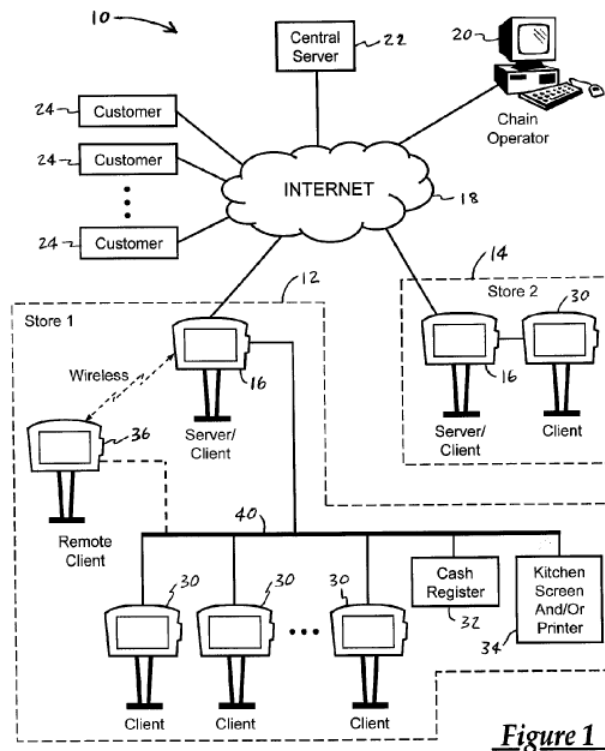


Figure 1 of Woycik is a schematic illustration of a “self-service ordering system.” Ex. 1004 ¶ 31. “[R]ather than using a dedicated ‘back room’ computer as the local server, one of the kiosks 16 is used both as a client to permit customer entry of orders and as the local server to interface to the Internet 18 and to respond to requests from the local client kiosks 30.” *Id.* ¶ 72. “In each store [12, 14], the local (on-site) server 16 is connected to the

Internet 18 which allows remote access by the restaurant chain operator 20 and enables the local server 16 to access a central server 22 for software and media updates.” *Id.* ¶ 71.

Woycik explains that “the local server kiosk 16 further includes an administrative tool comprising a second user interface application that can be accessed by the administrator to perform various administrative functions such as configuring kiosks, creating and editing menus and available food items, and specifying tax and payment features of the system.” Ex. 1004 ¶ 73. Woycik explains that an alternative “approach is to have the administrative tool loaded on the central server 22 and then provide the chain operator 20 with web access to the central server 22.” *Id.* ¶ 75. “In this approach, the central server 22 then accesses and stores updated configuration information on the local server 16.” *Id.*

Figure 2 illustrates an exemplary kiosk from Woycik's system, and is reproduced below.

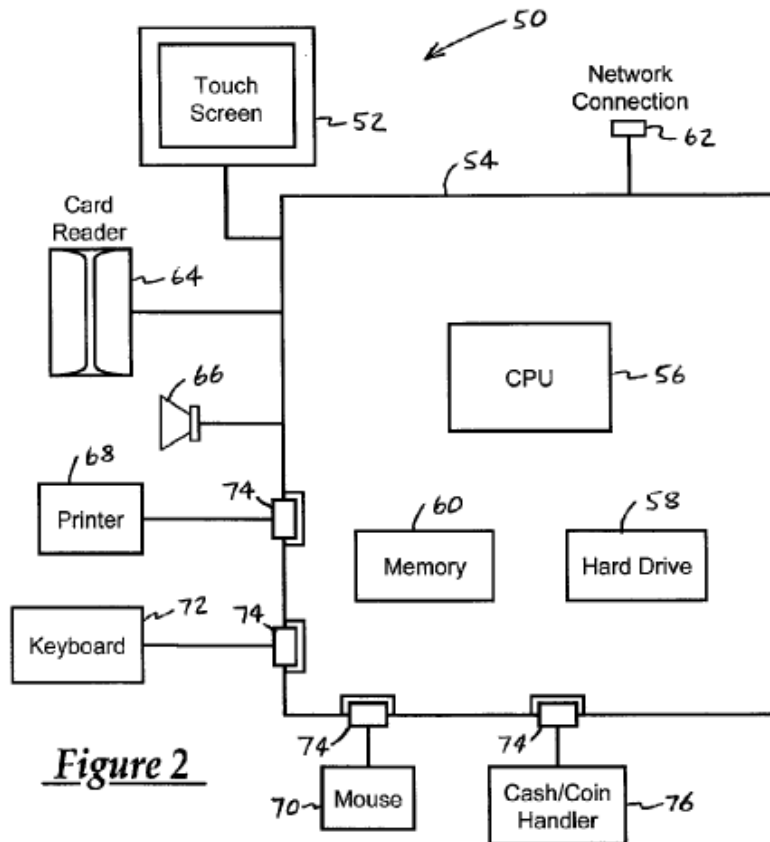


Figure 2

Figure 2 is “an exemplary kiosk of the ordering system.” Ex. 1004 ¶ 32. “The kiosk 50 includes most of the elements commonly found in a general purpose computer.” *Id.* ¶ 77. In “one embodiment of a kiosk of the ordering system” seen in Figure 2, “[t]he kiosk 50 . . . display screen 52 is implemented as a touch screen that operates as both a display unit and an input device for use by customers and administrators.” *Id.*

Figure 3 further illustrates Woycik's system, and is reproduced below.

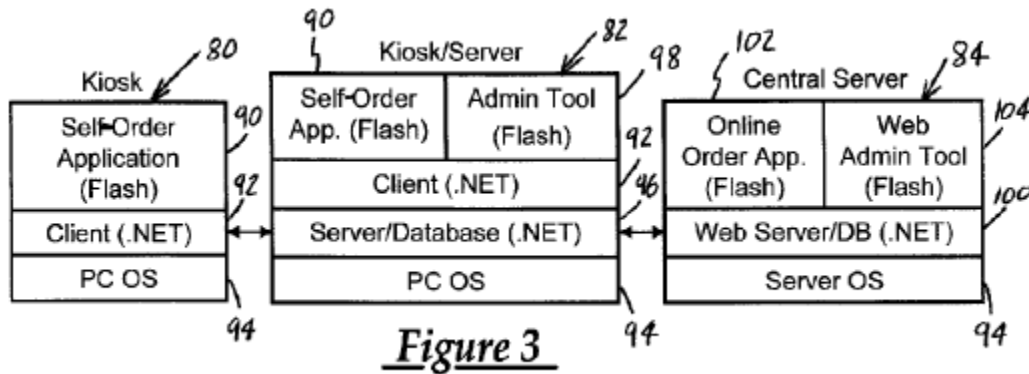


Figure 3 “illustrates the various software layers running on the client kiosks, client/server kiosk, and central server in the . . . ordering system.” Ex. 1004

¶ 33. Kiosk 80, kiosk/server 82, and central server 84 in Figure 3 correspond to kiosk 30, kiosk/server 16, and central server 22, respectively, in Figure 1. “[T]he server kiosk 82 . . . includes not only the client program 92, but also a server program 96 (including its associated database) as well as an administrative tool 98 for configuring the server program 96.” *Id.*

¶ 79. But as noted above, an alternative “approach is to have the administrative tool loaded on the central server 22.” *Id.* ¶ 75.

With Woycik's administration tool, “the store owner or chain operator can carry out administration of the system using a simplified user interface that requires little if any training or experience with computers.” Ex. 1004 ¶ 80. “Furthermore, the web services platform provided by .NET can be used to provide remote administration by the chain operator from any Internet-connected computer (such as a home office computer) so that various store locations can be configured from a single computer.” *Id.* According to Woycik, “[t]he programming needed to implement this software architecture strategy is known to those skilled in the art.” *Id.*

2. Claim 1

Petitioner cites Woycik as teaching every limitation of claim 1. *See* Pet. 21–41. The majority of Petitioner’s contentions regarding Woycik’s teachings are not disputed by Patent Owner. *See* PO Resp. 27–35. We adopt Petitioner’s contentions and supporting evidence for purposes of this decision, and note that as explained further below, Patent Owner’s dispute is based primarily on features not required by the claims, or issues that are not related to the actual bases for Petitioner’s challenges.

Patent Owner contends, for example, that “*Woycik* does not disclose a ‘web-based point of sale (POS) builder system’[□] at least because Woycik requires an in-store local server . . . not the Internet.” PO Resp. 27. This dispute at least partially concerns the preamble (i.e., the recitation of “a web-based point of sale (POS) builder system.” As explained above, the preamble is not limiting.

Nevertheless, as explained further below, these contentions are also unpersuasive because Woycik teaches its system being web-based and using the Internet. And Woycik teaches POS builder software, as Patent Owner acknowledged. *See* Tr. 42:3–7. Accordingly, whether or not the preamble is limiting does not affect the outcome.

Patent Owner’s ultimate dispute appears to be that Woycik uses an in-store server *in addition to* a web server. *See, e.g.*, PO Resp. 25 (“Unlike the claimed technology, which communicates directly from the webserver to the POS system located in the store, *Woycik’s* system and software communicates from the central server 22/84 to the in-store local server 16/82 to the kiosk [180.]”); *see also id.* at 28–32. Patent Owner, however, identifies nothing in the claim that precludes the use of an in-store server *in addition to* the POS builder system being installed on a web server. Nor do we see

anything in the claim that precludes the addition of an in-store server. Rather, the claim expressly recites “a network *comprising* the Internet,” which means that network can include more than just the Internet.

Because the claim does not preclude an in-store server, there is little, if any, dispute remaining. We provide a simplified version of the claim below that concisely illustrates the communication required between the server and POS terminal.

According to claim 1, the “server [is] configured to . . . communicate with . . . [a] POS terminal[] over . . . a network comprising the Internet,” “receive . . . information used for creating or modifying the one or more POS screen[of the POS terminal],” “receive . . . further information [from the POS terminal],” and “configure the . . . POS terminal[] . . . over the network” using the information and further information “to create or modify . . . the . . . POS screen[].”⁸

Patent Owner, itself, characterizes Woycik’s “local server of the server kiosk act[ing] as the middleman for all communications,” with that local server facilitating communication between Woycik’s web server (central server 22/84) and POS terminals (kiosks 16/82 and/or kiosks 30/36). PO Resp. 31. There is no dispute that Woycik’s local server communicates with its central server over the Internet. Under Patent Owner’s own characterization of Woycik, therefore, central server 22/84 communicates with POS terminals 16/82, 30/36 over a network including the Internet, albeit through the use of an intermediary (i.e., the local server) facilitating that communication.

⁸ Much of the claim recites the specific types of “information” and “further information” received and used to configure the POS terminal, which Patent Owner does not dispute is taught by Woycik.

Ultimately, the dispute is about what the claim requires, rather than what is taught by Woycik. This is made clear by the discussion below.⁹

a. at least one server

Claim 1 recites a single element, “at least one server,” which is “configured to” perform the functions discussed below. Ex. 1001, 6:31. Petitioner cites Woycik’s central server 22 (also referred to as central server 84 in Woycik) as corresponding to recited server. *See, e.g.*, Pet. 22–23. There is no dispute that Woycik teaches a server consistent with Petitioner’s contentions.

b. communicate with one or more POS terminals over a network comprising the Internet, wherein the one or more POS terminals are configured to display one or more POS screens

Petitioner contends that “Woycik discloses at least one server (central server 22/84) configured to communicate with POS terminals (kiosks 16/82 and/or kiosks 30/36) over a network comprising the Internet (Internet 18 alone or in combination with network 40)” and that the “POS terminals are configured to display POS screens (interactive menu screens depicting buttons/keys, e.g., Figs. 4-9).” Pet. 24 (citing Ex. 1002 ¶¶ 64–66); *see also id.* at 22–24 (citing Ex. 1004 ¶¶ 4–8, 14–16, 71, 73, 77–78, 82, 100, 124, 129, Figs. 1, 3–9).

There is no dispute that Woycik’s POS terminals (kiosks 16/82 and/or kiosks 30/36) are configured to display POS screens. There is also no

⁹ For simplicity, when appropriate, we refer to the limitations discussed in each section below with reference to the heading letter. For example, the first limitation discussed below would be referenced as “limitation 1(a)” and subsequent limitations would be referred to by their respective heading letter (i.e., “limitation 1(b),” “limitation 1(c)”, etc.).

dispute that Woycik's central server 22/84 communicates with kiosks 16/82 or kiosks 30/36.

Rather, as noted above, Patent Owner's dispute relates to the use of a local server in Woycik. *See* PO Resp. 30. But, as explained above, even the characterization of Woycik's disclosure provided by Patent Owner teaches limitation (b).

As Patent Owner acknowledges, Woycik's central server 22 communicates with kiosks 16/82 and kiosks 30/36 over the Internet even when a local server is used. *See* PO Resp. 31 ("the local server of the server kiosk [16/82] acts as the middleman"); *see also* Pet. Reply 7–8 (noting same). That is, according to Patent Owner's characterization of Woycik, central sever 22 communicates with the local server, which then communicates with kiosks 16/82, 30/36. Again, there is nothing in the claim that precludes a "local server . . . middleman" as alleged by Patent Owner.

Moreover, we note that kiosks 16/82 are in direct communication with central server 22.

c. receive, over the network from a POS builder interface, information used for creating or modifying the one or more POS screens including creating or modifying one or more display interfaces for display on the one or more POS screens, the one or more display interfaces being associated with one or more items

Petitioner contends that "*Woycik . . . discloses information received by central server 22/84 from the administrative tool user interface (POS builder interface) over the network including Internet 18 used for creating/modifying interactive menu screens (POS screens), including creating/modifying buttons/keys (display interfaces) associated with items.*" Pet. 30 (citing Ex. 1002 ¶¶ 67–70); *see also id.* at 24–30 (citing Ex. 1004

¶¶ 13, 16–17, 19–20, 71, 73, 75, 79–82, 96–113, 115, 121–122, 132, Figs. 1, 3–13, 20–22, 34).

Patent Owner responds that “*Woycik* does not disclose [this limitation] because the administrative tool and web server identified by Petitioner are co-located at the central server.” PO Resp. 28; *see also id.* at 29–30. As Petitioner explains, however, “the POS builder interface is not the administrative tool at central server 22, but instead the user interfaces (e.g., main menu, menu editor, and item editor interfaces) provided by the administrative tool and accessible, e.g., by chain operator 20 over the Internet.” Pet. Reply 13 (citing Pet. 24–30).

Petitioner provides annotated portions of *Woycik*’s Figures 1 and 3, reproduced below, to illustrate this distinction. Pet. 25; Pet. Reply 13.

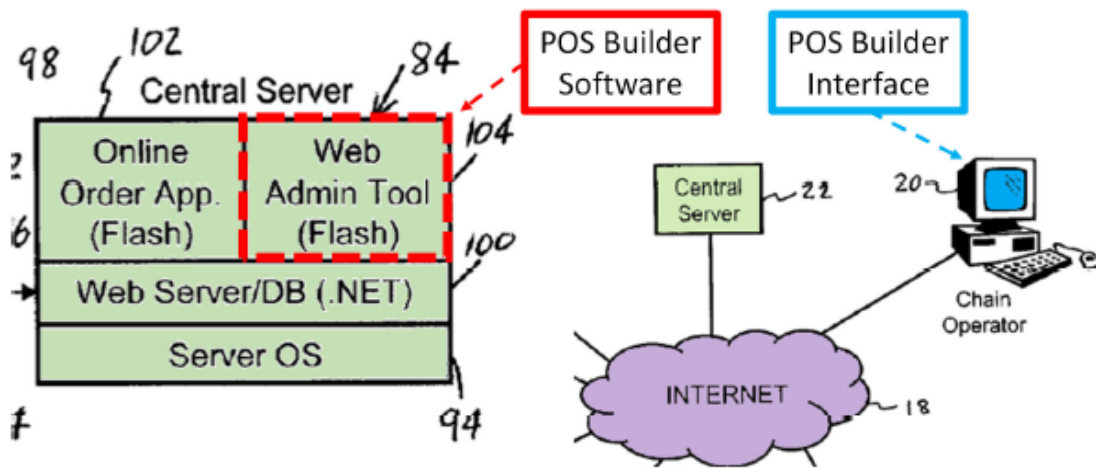


Fig. 3 (excerpted)

Fig. 1 (excerpted)

The annotated version of Figure 3 illustrates *Woycik*’s various software layers running on the central server, including the web administration tool annotated by Petitioner as “POS Builder Software.” Pet. 25; Pet. Reply 13. The annotated version of Figure 1 is a portion of *Woycik*’s self-service

ordering system, including the chain operator terminal annotated by Petitioner as “POS Builder Interface.” Pet. 25; Pet. Reply 13.

Consistent with Petitioner’s contentions, Woycik’s “POS Builder Interface” is not co-located at its central server with the “POS Builder Software.”

d. receive, from at least one of the one or more POS terminals over the network, further information regarding one or more POS transactions corresponding to the one or more items

Petitioner contends that Woycik teaches limitation (d) because its “central server 22/84 receives further information over the network (including Internet 18) regarding POS transactions by respective customers ordering items (POS transactions) from kiosks 16/82 (POS terminals).” Pet. 31 (citing Ex. 1004 ¶¶ 28, 30, 89–92). Petitioner further contends that “[c]entral server 22/84 retains information regarding ‘previous orders by the customer’ received from kiosks 16/82.” *Id.* (citing Ex. 1004 ¶¶ 89, 91).

Patent Owner contends that Woycik does not teach limitation (d) because of its “reliance on an in-store, local server to act as the middleman for all communications to the central server over a network (the Internet).” PO Resp. 32. As stated repeatedly above, however, there is nothing in claim 1 precluding the use of an in-store server as a “middleman for . . . communications to the central server.” And there is no dispute that Woycik’s “central server 22/84 receives further information over the network (including Internet 18) regarding POS transactions by respective customers ordering items (POS transactions) from kiosks 16/82 (POS terminals)” using the local server as the middleman for that communication. In fact, that is the scenario Patent Owner contends is taught by Woycik.

e. configure the one or more POS terminals with the information over the network to create or modify based on the further information regarding one or more POS transactions the one or more POS screens displayed on the one or more POS terminals

Petitioner contends that “[a]s explained for limitation 1[c], *Woycik*’s central server receives information (input by managers/administrators) over Internet 18 from the administrative tool’s user interface (POS builder interface) used to create/modify interactive menus (POS screens) displayed on kiosks 16/82 (POS terminals).” Pet. 32 (citing Ex. 1004 ¶¶ 71, 73, 75). As seen in the annotated figure provided above in the discussion of limitation 1(c), *Woycik*’s administrative tool interface communicates with POS builder software on web server 22 over the Internet.

Patent Owner responds that *Woycik*’s “central server does not configure kiosk 80 over a network (*e.g.*, the Internet)” because “*Woycik* expressly relies on an in-store, local server (server of the server kiosk 16, 82) to communicate with the central server.” PO Resp. 34. This is not persuasive for the reasons provided repeatedly above (*i.e.*, the claim does not preclude use of an intermediate local server).

Patent Owner additionally responds that “the administrative tool identified is not the same as the ‘web-admin tool’ expressly taught by *Woycik*.” PO Resp. 34. Specifically, Patent Owner contends that in *Woycik*, “[t]he local ‘admin tool’ 98, **not** the web admin tool 104, . . . modifies (*e.g.*, configures) kiosk configurations **at the local server.**” *Id.*

Patent Owner is correct that *Woycik* teaches modifying kiosk configurations using an administrative tool located at the local server as one option. *See* Ex. 1004 ¶ 75. As reiterated in Petitioner’s Reply, however, “Petitioner does not rely on *Woycik*[’s] embodiments in which the

administrative tool is installed on kiosk 16/82.” Pet. Reply 17. Rather, Petitioner explains that “[w]hen run on the central server, *Woycik’s* administrative tool ‘accesses and stores updated configuration information on the local server 16.’” *Id.* (citing Ex. 1004 ¶ 75); *see also* Pet. 32. As Petitioner contends, “[a] local version of the administrative tool is not disclosed or required in the arrangement on which Petitioner relies.” *Id.*

Woycik expressly teaches that “[a] second approach is to *have the administrative tool loaded on the central server 22* and then provide the chain operator 20 with web access to the central server 22. In this approach, the central server 22 then accesses and stores updated configuration information on the local server 16.” Ex. 1004 ¶ 75 (emphasis added). We read this statement from Woycik as teaching not only that its administrative tool is located on the web server, but also that it is located on the web server instead of being on the local server. But even if located at both the local server and web server, we see no reason why Woycik’s administrative tool would have any less functionality at one location compared to the other.

In its Sur-Reply Patent Owner contends that “Petitioner does not, and cannot, identify a figure where the remote version is present but the local administrative tool is absent.” PO Sur-Reply 19. Patent Owner contends that “the local version of the administrative tool is always present, including in the arrang[e]ment on which Petitioner relies.” *Id.* at 20. We again note that the claim does not preclude the POS builder software from being present at any particular additional location, so it does not matter if Woycik’s administrative tool is located at the local server *in addition to* the web server.

- f. wherein the further information regarding the one or more POS transactions, the information used for creating or modifying the one or more POS screens, or a combination thereof comprises one or more of employee clock information, customer add/update information, item add/update information, promotion information, loyalty point information, discount information, taxation information, item cost information, or inventory information*

There is no dispute that Woycik teaches use of the specific types of “further information” recited in limitation (f). *See* Pet. 38–41. As noted above, we adopt Petitioner’s undisputed contentions and supporting evidence for purposes of this decision.

- g. wherein said further information regarding the one or more POS transactions relate to one or more transactions by corresponding customers respectively associated with at least one of said one or more POS terminals*

Petitioner provides its contentions for limitation (g) with those presented for limitation (d), which are addressed above. There is no dispute that Woycik teaches use of the specific types of “further information” recited in limitation (g). As noted above, we adopt Petitioner’s undisputed contentions and supporting evidence for purposes of this decision.

Summary

For the reasons set forth above, the preponderance of the evidence before us supports Petitioner’s contentions regarding Woycik with respect to claim 1. As explained above, Patent Owner’s evidence of non-obviousness is not compelling and is outweighed by the case of obviousness.

3. Dependent Claims 2–4 and 7–26

As discussed above, Patent Owner asserts claim 1 is relevant to its evidence of non-obviousness, but not any of its dependent claims.

a. Claims 2–4, 11, 19, 20, 22, and 26

As Petitioner notes, “P[atent] O[wner] does not dispute the Petition’s contentions for additional limitations of dependent Claims 2–4, 11, 19–20, 22, or 26.” Pet. Reply 18; *see also* PO Resp. 53.

We adopt Petitioner’s arguments and evidence (Pet. 41–44, 57–60, 63–65), which are unrebutted. Absent any persuasive argument and evidence from Patent Owner, the preponderance of the evidence weighs heavily in favor of Petitioner, and significantly outweighs the weak evidence of non-obviousness discussed above.

b. Claims 7–10, 12, 14, 18, 21, and 23–25

Petitioner notes that “[f]or Claims 7–10, 12, 14, 18, 21, and 23–25, the [Patent Owner Response] repeats the arguments [for claim 1].” Pet. Reply 18. Petitioner additionally notes Patent Owner’s contentions regarding the features of claims 7–10, 12, 14, 18, 21, and 23–25 occurring at the local server, rather than the central server. *Id.* at 19. Petitioner’s response to those contentions is that Patent Owner “ignores the explanations and disclosure relating to central server 22” and does not address that “*Woycik* discloses a configuration where the administrative tool is installed at central server 22, which is the embodiment on which the Petition relies.” *Id.*

In response, Patent Owner reiterates that “[t]he actions cited by Petitioner performed by *Woycik*’s administrative tool rely on the actions at the required in-store local server and local admin[i]strative tool.” PO Sur-Reply 22. Patent Owner provides no specificity in its contentions. And we note that some of the claims in this group do not even reference additional actions by the administrative tool. *See, e.g.*, Ex. 1001, 7:17–21 (claim 7 further specifying “the [further] information regarding [the] one or more POS transactions”).

Patent Owner does not contend that Woycik’s administrative tool fails to perform any of the “additional actions” it references. We see no real dispute from Patent Owner related to the addition features recited in claims 7–10, 12, 14, 18, 21, and 23–25 beyond that discussed above with respect to claim 1 regarding the dispute as to whether Woycik teaches the administrative tool at the central server, rather than the administrative tool at the store, performing the functions relied on by Petitioner.

We adopt Petitioner’s arguments and evidence (Pet. 45–51, 53, 57–65), which are effectively un rebutted. As explained above, we agree with Petitioner that Woycik teaches these features when the administrative tool is installed at central server 22. Petitioner relies on Woycik’s teaching that one of the “many possible arrangements” is having “the administrative tool application . . . located at . . . an offsite location.” Ex. 1004 ¶ 17. More specifically, as explained above, Petitioner relies on “a[n] . . . approach . . . hav[ing] the administrative tool loaded on the central server.” *Id.* ¶ 75. Woycik’s administrative tool would perform the same functions relied on by Petitioner regardless of where it is located.

Accordingly, we do not agree with Patent Owner that “[t]he actions cited by Petitioner performed by *Woycik*’s administrative tool rely on the actions at the required in-store local server and local admin[i]strative tool.” PO Sur-Reply 22.

For the reasons set forth above, the preponderance of the evidence before us supports Petitioner’s contentions regarding Woycik with respect to claims 7–10, 12, 14, 18, 21, and 23–25.

c. Claims 13 and 15

Claim 13 depends from claim 1 and recites:

the at least one server is further configured to:

receive, over the network from the POS builder interface,
second information regarding a modification to at least
one of the one or more POS screens; and

update the at least one of the one or more POS screens on the
one or more POS terminals based on the second
information.

Ex. 1001, 7:39–46. Claim 15 depends from claim 1 and recites that “the at least one server is located remotely from the one or more POS terminals.”

Id. at 7:50–52.

The dispute with respect to claims 13 and 15 once again relates to Patent Owner’s contentions regarding Woycik’s use of a local server. *See* PO Resp. 38–40; Pet. Reply 19–21; PO Sur-Reply 23. For the reasons discussed above with respect to the same dispute regarding claim 1, we agree with Petitioner.

We adopt Petitioner’s arguments and evidence regarding the additional features of claims 13 and 15 (Pet. 51–54), which are effectively un rebutted.

For the reasons set forth above, the preponderance of the evidence before us supports Petitioner’s contentions regarding Woycik with respect to claims 13 and 15.

d. Claim 16

Claim 16 depends from claim 1 and recites that the “server is further configured to receive the information for creating or modifying the one or more POS screens and create or modify the one or more POS screens in real time while the one or more POS terminals are in use performing one or more

POS transactions.” Ex. 1001, 7:53–59. The “real time” aspect of claim 16 is accomplished by the store owner being able to implement the changes without the need of a skilled programmer. *See id.* at 3:48–56 (“[T]he store operator will be able to edit, change and test the screens within minutes in real time,” rather than “working with programmers off line.”).

Again, there does not appear to be any dispute with respect to Woycik’s teachings asserted by Petitioner. Rather, Patent Owner’s dispute is based on features not required by the claim. Patent Owner presents three main contentions: (1) “*Woycik* provides a procedure that occurs over time, not a process that is ‘real time’”; (2) “[C]hanges are not saved to the in-store server until all changes are made”; and (3) “[I]t is the administrative tool installed on the local server [in Woycik] that is communicating **over LAN 40** and modifying the kiosks.” PO Resp. 41–43.

With respect to Appellant’s first two contentions, the claim does not specify when changes are saved to the kiosks (POS terminals). As Petitioner notes, “the claim language, which recites ‘create or modify the one or more **POS screens** in real time,’ not creating or modifying the POS terminals on which the POS screens are displayed.” Pet. Reply 20.

Patent Owner’s third contention also relates to purported kiosk modifications that are not required by the claim, as well as contentions similar to those discussed above regarding Woycik’s purported use of a local server as a middleman, which is also not based on any claim requirement.

In addition to the contentions noted above, Patent Owner concludes that “*Woycik* cannot be relied on as teaching or suggesting ‘the *testing of said POS screens is done iteratively* in real time while said POS terminals are simultaneously in use *during store and business operation hours.*’” PO Resp. 43–44 (emphasis added). It is unclear how this statement is relevant

because it has no basis in the claims before us in this proceeding.

We adopt Petitioner’s arguments and evidence regarding the additional features of claim 16 (Pet. 54–56), which are effectively un rebutted.

For the reasons set forth above, the preponderance of the evidence before us supports Petitioner’s contentions regarding Woycik with respect to claim 16.

e. Claim 17

Claim 17 depends from claim 1 and recites that “the one or more POS terminals use the one or more POS screens after completing a pending POS transaction.” Ex. 1001, 7:60–63.

Petitioner contends that “*Woycik* discloses a ‘kiosk’s status (idle, in use, etc.)’ may be determined by the system” (Pet. 56 (citing Ex. 1004 ¶ 97)) and “updates to the POS screens may be made ‘during idle time when the kiosk is not in use’” (*id.* (citing Ex. 1004 ¶¶ 115, 117)). Petitioner explains that based on these teachings, “*Woycik* . . . discloses and suggests waiting until after a POS terminal’s pending transaction is complete to update POS screens during idle time.” *Id.* Petitioner further reasons that “a [person of ordinary skill in the art] would understand the kiosks reuse POS screens for each new transaction after a prior transaction is complete, thus using/re-using updated POS screens after completing each transaction.” *Id.* at 57.

Patent Owner responds that “*Woycik* is silent with regard to ‘waiting until after a POS terminals’ pending transaction is complete to update POS screen during idle.’” PO Resp. 44. Patent Owner contends that “*Woycik* teaches that this administrative tool can make updates to the configuration of kiosks, and save these changes to the in-store server kiosk” and “[t]hereafter, ‘the server updates each client connected to it with the corresponding saved

changes **when each client is idle.**” *Id.* According to Patent Owner, “this process involves two steps that happen sequentially over time, not a process that occurs while ‘the one or more POS terminals use the one or more POS screens after completing a pending POS transaction.’” *Id.* at 44–45.

Patent Owner’s contentions make little sense. As Petitioner explains, “[t]he claim does not require updating POS screens while POS terminals use the POS screens,” it “recites ‘POS terminals use the one or more POS screens after completing a pending POS transaction.’” Pet. Reply 22.

We agree with Petitioner that Woycik teaches the features of claim 17. As Petitioner notes, Woycik defines various states of kiosk operation (*see* Ex. 1004 ¶ 97 (discussing “kiosk’s status (idle, in use, etc[.]”)), and explains that its “the server updates each client connected to it with the corresponding saved changes when each client is idle” (*id.* ¶ 115). Petitioner cites the testimony of Mr. Gray to support its contentions. *See* Pet. 57 (citing Ex. 1002 ¶¶ 119–120). Mr. Gray testifies, based on the portions of Woycik cited above, that one skilled in the art would understand that “*Woycik . . . discloses and suggests waiting until after a POS terminal’s pending transaction is complete to update POS screens during idle time.*” Ex. 1002 ¶ 119. Consistent with Petitioner’s contentions, it seems beyond dispute that the client would not be idle if a transaction is pending.

For the reasons set forth above, the preponderance of the evidence before us supports Petitioner’s contentions regarding Woycik with respect to claim 17.

4. Claim 27

Claim 27 is similar to claim 1, but focuses on a “POS terminal configured to” perform a number of functions, rather than a “server configured to” perform various functions as in claim 1. The claims both

recite a server and a POS terminal communicating with one another over a network including the Internet.

Claim 27 recites that the POS terminal is configured to “receive . . . from the . . . server, information used for creating or modifying . . . POS screens . . .” (Ex. 1001, 8:41–46), while claim 1 recites that the server is configured to “receive . . . from a POS builder interface, information used for creating or modifying the one or more POS screens . . .” (*id.* at 6:36–41).

Claim 27 additionally recites “perform[ing] one or more transactions with respect to the one or more items” and “transmit[ting], from . . . the . . . POS terminals . . . further information regarding . . . POS transactions . . .” (Ex. 1001, 8:47–52), while claim 1 additionally recites “receiv[ing], from . . . the . . . POS terminals . . . further information regarding one or more POS transactions . . .” (*id.* at 6:42–45).

In claim 27, the POS terminal “create[s] or modif[ies] based on the received information or further information the . . . POS screens” (Ex. 1001, 8:53–54), and in claim 1, the server “configure[s] the . . . POS terminals with the information . . . to create or modify based on the further information . . . the . . . POS screens displayed on the . . . POS terminals” (*id.* at 6:46–50).

The “information” and “further information” is defined the same in both claim 1 and claim 27. *Compare* Ex. 1001, 6:51–64, *with id.* at 8:55–67.

The dispute concerning claim 27 is essentially identical to that discussed above with respect to claim 1, and Petitioner reiterates many of its contentions regarding claim 1 in the challenge of claim 27. *See* Pet. 65–68; PO Resp. 45–51. We adopt Petitioner’s contentions and supporting evidence for claim 27, and reiterate the relevant discussion above related to claim 1. We address, specifically, the limitations where Petitioner provides

specific contentions with respect to claim 27 and explain how Patent Owner's contentions relate to those addressed above with respect to claim 1.

Initially, we note that Patent Owner's contention that "Claim 27[pre] recites similar features as Claim 1[pre]" and, "[f]or the same reasons, as provided above [with respect to claim 1], *Woycik* does not disclose a "web-based point of sale (POS) builder system." PO Resp. 45. We reiterate our discussion above regarding the preamble of claim 1, which explains why the preamble is not limiting and, nevertheless, is taught by *Woycik*.

Patent Owner additionally presents contentions related to *Woycik*'s local server similar to those discussed above relative to claim 1. *See* PO Resp. 45–51. For example, like with claim 1, Patent Owner contends that (1) "the local server of *Woycik* (Figs. 1 and 3), **not** the 'kiosk' 80 communicates over the Internet with central server 22." *Id.* at 45. And Patent Owner also again contends that "*Woycik*[] express[ly] reli[es] on an in-store, local server to act as the middleman for all communications to the central server over a network (the Internet)," its "administrative tool and web server identified by Petitioner are **co-located at the central server,**" and it "does not teach a POS builder interface accessible **over a communications network** with a web server." *Id.* at 47–49. Also similar to the contentions for claim 1, Patent Owner contends that "the kiosk 80 does not transmit information over a network (*e.g.*, the Internet) to the central server." *Id.* at 49. Those contentions are addressed above in our discussion of claim 1.

In addition to the contentions presented with respect to claim 1, Petitioner contends, for example, that "*Woycik*'s configuration changes (*e.g.*, menu/item changes) made over the Internet with the administrative tool at central server 22/84 are saved to the central server, then pushed to local store

POS terminals” and “[k]iosks 16/82 (POS terminals) thus receive that information from central server 22/84 over the network comprising the Internet.” Pet. 67 (citing Ex. 1004 ¶¶ 76, 115, 122).

We note that Petitioner specifically references kiosks 16/82. With respect to claim 27, Patent Owner does not mention, let alone dispute that kiosks 16/82 receive the recited information from central server 22/84 over a network comprising the Internet. As explained above, “a network comprising the Internet” means that network can include more than just the Internet. And in the case of kiosks 16/82 the communication is directly between kiosks 16/82 and Woycik’s central server 22/84.

Similar to the challenge to claim 1, we are left with essentially no dispute regarding the challenge to claim 27, as the features relied on by Patent Owner to distinguish claim 27 from the teachings of Woycik relied on by Petitioner are not based on actual requirements of the claim.

For the reasons set forth above, the preponderance of the evidence before us supports Petitioner’s contentions regarding Woycik with respect to claim 27.

5. Dependent Claims 28 and 31–41

Claims 28 and 31–41 depend from claim 27, and Patent Owner relies on the patentability of claim 27 to address the challenges related to claims 28 and 31–41. *See* PO Resp. 53. Patent Owner additionally notes that “Claims 33–35 recite similar limitations to the claims depending from Claim 1” and contends that those claims are patentable “[f]or the same reasons as discussed above [regarding the claims depending from claim 1].” *Id.* at 51. Patent Owner additionally reiterates its unpersuasive contentions discussed above with respect to claim 15 for the patentability of claim 33. *Id.* at 51–52.

We reiterate our discussion above relative to Patent Owner’s contentions. We adopt Petitioner’s arguments and evidence (Pet. 68–70), which are essentially un rebutted.

For the reasons set forth above, the preponderance of the evidence before us supports Petitioner’s contentions regarding Woycik with respect to claims 28 and 31–41.

6. *Claims 42–44*

Claims 42–44 are each independent. Patent Owner notes that “Claim 42 recites similar limitations to Claim 1, but recites a method of implementing . . . with limitations similar to the limitations of Claim 1” and relies on the “same reasons discussed above [regarding claim 1].” PO Resp. 52. Patent Owner notes that “Claim 43 is similar to Claim 27, but recites a method . . . with limitations similar to the limitations of Claim 27” and relies on the “same reasons discussed above [regarding claim 27].” *Id.* Patent Owner notes that “Claim 44 recites similar limitations to Claim 1” and relies on the “same reasons as discussed above [regarding claim 1].” *Id.* at 53.

We reiterate our discussion above relative to Patent Owner’s contentions. We adopt Petitioner’s arguments and evidence (Pet. 70–72), which are essentially un rebutted.

For the reasons set forth above, the preponderance of the evidence before us supports Petitioner’s contentions regarding Woycik with respect to claims 42–44.

F. *Tengler Challenge*

Petitioner asserts that claims 1–4, 7–28, and 31–44 are un patentable under 35 U.S.C. § 103 as obvious over Tengler in view of the knowledge of a person of ordinary skill in the art. Pet. 72–126. Because, as explained above, Petitioner has established by a preponderance of the evidence that

claims 1–4, 7–28, 31–44 are unpatentable in view Woycik, we do not reach the challenge based on Tengler.

III. CONCLUSION

Claims	35 U.S.C. §	Reference(s)/Basis	Claims Shown Unpatentable	Claims Not Shown Unpatentable
1–4, 7–28, 31–44	103	Woycik	1–4, 7–28, 31–44	
1–4, 7–28, 31–44	103	Tengler ⁸		
Overall Outcome			1–4, 7–28, 31–44	

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 1–4, 7–28, and 31–44 on the '793 patent are unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to this proceeding seeking judicial review of the Decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

⁸ As noted above, we do not reach the challenge based on Tengler.

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