

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SALESFORCE.COM, INC.,
Petitioner,

v.

WSOU INVESTMENTS, LLC d/b/a
BRAZOS LICENSING AND DEVELOPMENT,
Patent Owner.

IPR2022-00357
Patent 8,209,411 B2

Before BRIAN J. McNAMARA, ROBERT J. WEINSCHENK, and
JOHN A. HUDALLA, *Administrative Patent Judges*.

HUDALLA, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

Salesforce.com, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–20 (“the challenged claims”) of U.S. Patent No. 8,209,411 B2 (Ex. 1001, “the ’411 patent”). Petitioner

filed declarations of Dr. Douglas C. Schmidt (Ex. 1003) and Dr. Sylvia Hall-Ellis (Ex. 1016) with its Petition. WSOU Investments, LLC d/b/a Brazos Licensing and Development (“Patent Owner”) filed a Preliminary Response (Paper 8, “Prelim. Resp.”). With our authorization (*see* Paper 9), Petitioner also filed a Reply (Paper 10, “Pet. Reply”) and Patent Owner filed a Sur-reply (Paper 11, “PO Sur-reply”) addressing Patent Owner’s arguments in the Preliminary Response regarding whether the Fox reference¹ qualifies as prior art.

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314; 37 C.F.R. § 42.4(a). Under 35 U.S.C. § 314(a), we may not authorize an *inter partes* review unless the information in the petition and the preliminary response “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons that follow, we do not institute an *inter partes* review.

I. BACKGROUND

A. *Real Parties-in-Interest*

Petitioner identifies Salesforce.com, Inc., as the real party-in-interest. Pet. 2. Patent Owner identifies WSOU Investments, LLC d/b/a Brazos Licensing and Development as the real party-in-interest. Paper 3, 1.

B. *Related Proceedings*

The parties identify the following proceeding related to the ’411 patent (Pet. 2; Paper 3, 2):

¹ *See infra* § I.E.

WSOU Investments LLC v. Salesforce.com, Inc., No. 6-20-cv-01164
(W.D. Tex. filed Dec. 18, 2020).

We additionally note that Petitioner has challenged other patents owned by Patent Owner in IPR2022-00154 and IPR2022-00428.

C. The '411 patent

The '411 patent is directed to “providing content to a terminal having a limited display area for presenting such content.” Ex. 1001, 1:15–19. The '411 patent issued from an application that was filed on July 21, 2009, which itself was a continuation of an application filed on June 4, 2004. *Id.* at codes (22), (63). Petitioner applies the June 4, 2004, date for qualifying the asserted references as prior art. *See* Pet. 6–7.

D. Illustrative Claim

Of the challenged claims, claims 1, 10, and 18 are independent. Claims 2–9 depend directly or indirectly from claim 1; claims 11–17 depend directly or indirectly from claim 17; and claims 19 and 20 depend from claim 18. Claim 1 is illustrative of the challenged claims and recites:

1. A method comprising:
 - interfacing, via a messaging gateway, a first network environment and a second network environment to receive, from the first network environment, content and addressing information associated with an apparatus within the second network environment, wherein the content is reformatted in a vectorized format; and
 - determining to generate a signal specifying access information to access the content.

Ex. 1001, 19:65–20:6.

E. Prior Art

Petitioner relies on the following prior art:

G. C. Fox et al., “Integration of Hand-Held Devices into Collaborative Environments,” *Proceedings of the 2002 International Conference on Internet Computing*, June 24–27, 2002, Las Vegas, Nev. (Ex. 1005, “Fox”); and

Monson-Haefel, R. et al., *Java Message Service*, 1st ed., O’Reilly & Associates, 2001 (Ex. 1006, “JMS”).

F. The Asserted Grounds

Petitioner challenges claims 1–20 of the ’411 patent on the following grounds (Pet. 4):

Claims Challenged	35 U.S.C. §	References
1–20	103(a) ²	Fox, JMS
1–7, 10–16, 18–20	103(a)	Fox
8, 9, 17	103(a) ³	Fox, JMS

II. ANALYSIS

We now consider Petitioner’s asserted grounds and Patent Owner’s arguments to determine whether Petitioner has met the “reasonable likelihood” standard for institution under 35 U.S.C. § 314(a).

² The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. §§ 102 and 103. Because the ’411 patent was filed before March 16, 2013 (the effective date of the relevant amendments), the pre-AIA versions of §§ 102 and 103 apply to all asserted grounds.

³ This is an alternative ground that builds upon the Fox obviousness ground for claims 1–7, 10–16, and 18–20. Pet. 73.

A. Legal Standards

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007).

The question of obviousness is resolved on the basis of 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 skill in the art; and (4) where in evidence, so-called secondary considerations.⁴ *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

We also recognize that prior art references must be “considered together with the knowledge of one of ordinary skill in the pertinent art.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (citing *In re Samour*, 571 F.2d 559, 562 (CCPA 1978)).

B. Level of Ordinary Skill in the Art

Citing testimony from Dr. Schmidt, Petitioner contends a person of ordinary skill in the art (“POSITA”) would have had “a Bachelor of Science degree in computer science, or a related subject matter, plus at least two years of professional experience in the field of computer networks, wireless communications, or a similar field.” Pet. 8 (citing Ex. 1003 ¶¶ 32–34).

Patent Owner does not offer a different definition, and Patent Owner

⁴ The present record does not include any evidence of secondary considerations of nonobviousness.

contends that Petitioner has not met the “reasonable likelihood” standard for institution even if we were to apply Petitioner’s definition. Prelim. Resp. 2.

For purposes of this Decision, we adopt Petitioner’s definition of the level of ordinary skill in the art. On the present record, we are satisfied that this definition comports with the level of skill necessary to understand and implement the teachings of the ’411 patent and the asserted prior art.

C. Claim Interpretation

In an *inter partes* review, we construe each claim “in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. § 42.100(b). Accordingly, our claim construction standard is the same as that of a district court. *See id.* Under the standard applied by district courts, claim terms are generally given their plain and ordinary meaning as would have been understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc). “There are only two exceptions to this general rule: 1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution.” *Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012).

We determine that no aspects of the challenged claims require explicit construction. *See, e.g., 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.” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

D. Obviousness Ground Based on Fox and JMS

Petitioner contends the subject matter of claims 1–20 would have been obvious over the combination of Fox and JMS. Pet. 23–61; Pet. Reply 1–5. Patent Owner disputes Petitioner’s contentions. Prelim. Resp. 2–27; PO Sur-reply 1–5. Our disposition of this ground turns on the prior art status of Fox, which we now address.

1. The Parties’ Contentions Regarding the Prior Art Status of Fox

Fox is an article directed to “the integration of personal digital assistants (PDA) into synchronous collaborative sessions.” Ex. 1005, 1. Petitioner contends that each of its asserted references, including Fox, “qualifies as prior art under at least one of pre-AIA 35 U.S.C. 102(a), (b), and/or (e).” Pet. 6–7 (citing Ex. 1003 ¶ 31). Petitioner’s entire argument for qualifying Fox is reproduced below:

Fox, Ex. 1005, was a printed publication that was publicly available at least as early as September 5, 2003, such that a POSITA, exercising reasonable diligence, could have located it. Moreover, the attached Ex. 1005 is a true and authentic copy as it existed on such date. This is supported by the attached declaration of Dr. Hall-Ellis, Ex. 1016.

Pet. 13 n.3.

Dr. Hall-Ellis is a professor with experience in the field of library science. Ex. 1016 ¶¶ 6–8. She testifies that she obtained the copy of Fox at Exhibit 1005 “from the Community Grids Laboratory at Indiana University website.” *Id.* ¶ 39. She provides a hyperlink to the website where this copy

was downloaded. *Id.* ¶ 39 n.22. According to Dr. Hall-Ellis, “Exhibit 1005 was found within the custody of the faculty author’s educational institution – a place where, if authentic, a copy of the conference paper would likely be.” *Id.* ¶ 39.

Dr. Hall-Ellis also testifies that “Exhibit 1005 is a copy of a conference paper published in the *Proceedings of the 2002 International Conference on Internet Computing* found in the University of North Carolina at Raleigh Library” based on a citation to a web address at that library. Ex. 1016 ¶ 39 & n.20; *see also* Ex. 2003 (Patent Owner’s printout of the webpage at that web address). She further testifies that Fox “appears beginning on page 231 of volume 2” of the conference proceedings based on a citation to another web address at the “DBLP” computer science bibliography website. Ex. 1016 ¶ 39 & n.21; *see also* Ex. 2004 (Patent Owner’s printout of the webpage at that web address).

Dr. Hall-Ellis additionally testifies that Attachment 1a to the Hall-Ellis Declaration is a true and correct copy of the MARC record⁵ “for the three-volume set *Proceedings of the 2002 International Conference on Internet Computing*” harvested from the OCLC⁶ bibliographic database. *Id.* ¶ 41. According to Dr. Hall-Ellis, this MARC record shows that this “three-volume set was cataloged at the Verbundzentrale des Gemeinsamen Bibliotheksverbundes (Göttingen, Germany)” and that the record was

⁵ “MARC” refers to “an industry-wide standard method of storing and organizing library catalog information.” Ex. 1016 ¶ 28. A MARC record comprises several fields containing specific data about the work that is the subject of the record. *Id.* ¶ 31.

⁶ “OCLC” refers to the Online Computer Library Center. Ex. 1016 ¶ 21 & n.1.

created on September 5, 2003. *Id.* Based on this, Dr. Hall-Ellis testifies that the three-volume set “was publicly available on or shortly after September 5, 2003, because by that date it had been received, cataloged, and indexed at the Verbundzentrale des Gemeinsamen Bibliotheksverbundes and made part of the OCLC bibliographic database.” *Id.* ¶ 43. Thus, Dr. Hall-Ellis opines that “Exhibit 1005 was published and publicly accessible on or shortly after September 5, 2003.” *Id.*

Patent Owner argues that Petitioner has put forth insufficient evidence of indexing at the German library to support the proposition that an ordinarily skilled artisan exercising reasonable diligence would have found Fox. Prelim. Resp. 13–20; PO Sur-reply 2–3. Specifically, Patent Owner notes that Dr. Hall-Ellis’s only evidence of indexing is the MARC record at Attachment 1A of her declaration. Prelim. Resp. 13–14 (reproducing Ex. 1016, Attach. 1A). Patent Owner argues that Dr. Hall-Ellis provides “no specific discussion of how this particular MARC record would have been ‘indexed,’ and more importantly no discussion of [how] a POSITA exercising reasonable diligence would have found Fox based on this MARC record. *Id.* at 14 (citing Ex. 1016 ¶¶ 39–43).

In its Reply, Petitioner notes Dr. Hall-Ellis’s explanation “that MARC records provide information enabling retrieval of a reference such as bibliographic information, subject matter classification, and call numbers.” Pet. Reply 3 (citing Ex. 1016 ¶¶ 31–38). Petitioner argues that her testimony establishes proper indexing because “Fox was indexed by volume and page

number such that one could readily search for and find it.”⁷ *Id.* (citing Ex. 1016 ¶¶ 39, 43, 52). Petitioner also emphasizes that “Dr. Hall-Ellis did not testify, as asserted by [Patent Owner], that a POSITA would search for Fox by the MARC record.” *Id.* (citing Prelim. Resp. 17–20).

In its Sur-reply, Patent Owner argues that indexing merely by volume and page number does constitute meaningful indexing commensurate with Federal Circuit precedent regarding printed publications (as discussed by Patent Owner in its Preliminary Response). PO Sur-reply 2–3 (citing Prelim. Resp. 14–17). Patent Owner argues that, under Petitioner’s logic, an ordinarily skilled artisan would already have to have known Fox’s volume and page number in order to locate Fox, but that Petitioner put forth “no evidence that a POSITA would be motivated to search for the particular volume and page number.” *Id.* at 3.

2. *Legal Standards Regarding Printed Publications*

“[A]t the institution stage, the petition must identify, with particularity, evidence sufficient to establish a reasonable likelihood that the reference was publicly accessible before the critical date of the challenged patent and therefore that there is a reasonable likelihood that it qualifies as a printed publication.” *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (precedential). The determination of whether a document is a “printed publication” under 35 U.S.C. § 102 “involves a case-by-case inquiry into the facts and

⁷ We note that Petitioner does not attempt to establish that Fox was publicly accessible based on other theories such as, for example, actual dissemination.

circumstances surrounding the reference's disclosure to members of the public." *Medtronic, Inc. v. Barry*, 891 F.3d 1368, 1380 (Fed. Cir. 2018) (citing *In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004)). "A reference is considered publicly accessible if it was disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it." *Acceleration Bay, LLC v. Activision Blizzard Inc.*, 908 F.3d 765, 772 (Fed. Cir. 2018) (internal quotation omitted). Evidence of cataloging and indexing can sometimes play a significant role in determining whether a library reference qualifies as a printed publication. *See In re Lister*, 583 F.3d 1307, 1312 (Fed. Cir. 2009). In assessing public accessibility, our reviewing court considers whether a reference is "*meaningfully* indexed such that an interested artisan exercising reasonable diligence would have found it." *Acceleration Bay*, 908 F.3d at 774 (citing *In re Cronyn*, 890 F.2d 1158, 1161 (Fed. Cir. 1989)).

3. *Analysis*

We agree with Patent Owner that Petitioner has failed to establish a reasonable likelihood that Fox was publicly accessible before the critical date of the '411 patent (June 4, 2004). Although Petitioner contends that "Fox was indexed by volume and page number such that one could readily search for and find it" based on paragraphs 39, 43, and 52 of the Hall-Ellis declaration (Pet. Reply 2–3), the present record does not substantiate Petitioner's contention. We now consider Petitioner's cited evidence of indexing *seriatim*.

Petitioner cites footnotes in paragraph 39 of Dr. Hall-Ellis’s declaration as establishing “that the conference occurred (footnote 20) and that Fox was published (footnotes 21 and 22).” Pet. Reply 2. As discussed above, these footnotes relate to (1) a hyperlink to a website at the North Carolina library that shows a catalog record for the conference proceedings (*see* Ex. 1016 ¶ 39 & n.20; Ex. 2003); (2) a hyperlink to the “DBLP” computer science bibliography website showing a listing of the papers and authors in Volume 1 of the conference proceedings⁸ (*see* Ex. 1016 ¶ 39 & n.21; Ex. 2004); and (3) a hyperlink to the Indiana laboratory website from which Dr. Hall-Ellis downloaded the copy of Fox at Exhibit 1005 (*see* Ex. 1016 ¶ 39 & n.22). Yet the record contains no evidence or testimony supporting that these hyperlinked websites were publicly accessible to persons of ordinary skill in the art—or that they even existed—as of the critical date of the ’411 patent. Rather, Dr. Hall-Ellis references only the present-day versions of these websites. Thus, Petitioner’s reliance on these websites is insufficient to establish a reasonable likelihood that Fox was publicly accessible as of the critical date of the ’411 patent.

Paragraph 43 of Dr. Hall-Ellis’s declaration pertains to the MARC record regarding the German library’s holding of the three-volume

⁸ Fox allegedly appears in Volume 2 of the conference proceedings. Ex. 1016 ¶ 39. Patent Owner makes arguments about the fact that Dr. Hall-Ellis’s hyperlink to the DBLP website (*see id.*) is associated with information about Volume 1, not Volume 2. Prelim. Resp. 21–22; PO Sur-reply 1–2; Ex. 2004. Petitioner contends that the webpage at that hyperlink has “clear instruction[s]” on how to click through to information about Volume 2. Pet. Reply 1–2. We need not resolve this dispute, because our disposition would be the same even if Dr. Hall-Ellis’s hyperlink was directly associated with information about Volume 2.

conference proceedings. *See* Ex. 1016 ¶ 43, Attach. 1A. Petitioner contends that Fox is sufficiently indexed “by volume and page number” via the three disparate website hyperlinks mentioned above in conjunction with this MARC record. *See* Pet. Reply 2–3. Although the MARC record may have existed as of the critical date, Petitioner’s case for public accessibility still relies on the hyperlinked websites mentioned above, because the DBLP website is the only place where the “volume and page number” of Fox are found. *See* Pet. Reply 3 (“Fox was indexed by volume and page number such that one could readily search for and find it.”); Ex. 1016 ¶ 39 & n.21 (Dr. Hall-Ellis citing the DBLP website for the proposition that Fox “appears beginning on page 231 of volume 2”); Ex. 2004 (example of volume and page number listing on DBLP website). But Petitioner has not established that these hyperlinked websites were available by the critical date. Furthermore, even if we assumed that these websites were available on the Internet at that time, Petitioner does not put forth any evidence or testimony showing that an ordinarily skilled artisan exercising reasonable diligence would have found Fox based on these disparate websites in conjunction with the MARC record. This is particularly true given that Petitioner and Dr. Hall-Ellis fail to show how “volume and page number” indexing would have been meaningful to an interested artisan such that the artisan, when exercising reasonable diligence, would have found Fox. *See Acceleration Bay*, 908 F.3d at 772–74 (affirming the Board’s determination that a reference indexed by author and year was not a prior art printed publication because it was not indexed in a meaningful way).

We further note that Petitioner expressly disavows the notion that an ordinarily skilled artisan would have found Fox based solely on the MARC

record. Pet. Reply 3. But even if we were to consider the MARC record by itself, Petitioner does not explain how the MARC record provides meaningful indexing such that an ordinarily skilled artisan would have located Fox.⁹ In particular, the MARC record is keyed to the title of the entire conference proceedings, and the only name evident in the record is the editor of the proceedings. *See* Ex. 1016, Attach. 1A. In other words, the MARC record neither includes the title of Fox nor lists its authors. *See id.* Although MARC record field 245 includes text stating “Vol. 2,” nothing in the record links this text to Fox. *See id.* Furthermore, the MARC record does not include any subject matter search terms. *See id.* Dr. Hall-Ellis’s declaration is likewise devoid of testimony that would support the notion that an ordinarily skilled artisan exercising reasonable diligence would have located Fox based solely on the MARC record. Thus, even if the conference proceedings were “received, cataloged, and indexed” in the German library as Dr. Hall-Ellis contends (*id.* ¶ 43), the MARC record itself does not evidence meaningful indexing relative to Fox. *See Acceleration Bay*, 908 F.3d at 772–74.

Finally, Petitioner’s citation to paragraph 52 of Dr. Hall-Ellis’s declaration (Pet. Reply 3) does nothing to salvage Petitioner’s case for qualifying Fox as prior art. Rather, that paragraph is merely a recapitulation and summary of her testimony, which is deficient for the reasons discussed above.

⁹ For example, Petitioner does not identify evidence indicating that an ordinary skilled artisan exercising reasonable diligence would have found Fox based on the MARC record’s indexing of the title of the entire conference proceedings.

4. *Conclusion Regarding Claims 1–20*

Based on the present record, Petitioner has not identified, with particularity, evidence sufficient to establish a reasonable likelihood that Fox was publicly accessible before June 4, 2004. Therefore, Petitioner has not established a reasonable likelihood that Fox qualifies as a prior art printed publication under 35 U.S.C. § 102. Accordingly, Petitioner has not established a reasonable likelihood that it would prevail in showing that the subject matter of claims 1–20 would have been obvious over the combination of Fox and JMS.

E. *Obviousness Ground Based on Fox*

Petitioner contends the subject matter of claims 1–7, 10–16, and 18–20 would have been obvious over Fox. Pet. 61–73; Pet. Reply 1–5. Patent Owner disputes Petitioner’s contentions. Prelim. Resp. 2–27; PO Sur-reply 1–5. Petitioner’s analysis for this ground incorporates the same deficiency discussed above with respect to the Fox–JMS ground, namely, that Petitioner has not established a reasonable likelihood that Fox qualifies as a prior art printed publication under 35 U.S.C. § 102. Thus, based on the present record, Petitioner has not established a reasonable likelihood that it would prevail in showing that the subject matter of claims 1–7, 10–16, and 18–20 would have been obvious over Fox.

F. *Alternative Obviousness Ground Based on Fox and JMS*

In an alternative analysis to the Fox–JMS ground discussed above, Petitioner contends the subject matter of claims 8, 9, and 17 would have been obvious over the combination of Fox and JMS. Pet. 73–74; Pet.

Reply 1–5. Patent Owner disputes Petitioner’s contentions. Prelim. Resp. 2–27; PO Sur-reply 1–5. Petitioner’s analysis for this ground incorporates the same deficiency discussed above with respect to the primary Fox–JMS ground, namely, that Petitioner has not established a reasonable likelihood that Fox qualifies as a prior art printed publication under 35 U.S.C. § 102. Thus, based on the present record, Petitioner has not established a reasonable likelihood that it would prevail in showing that the subject matter of claims 8, 9, and 17 would have been obvious over the combination of Fox and JMS in this alternative ground.

III. CONCLUSION

For the reasons discussed above, we determine that Petitioner has not demonstrated a reasonable likelihood that it would prevail with respect to at least one of the claims challenged in the Petition. Therefore, we do not institute an *inter partes* review on the asserted grounds as to any of the challenged claims.

IV. ORDER

Accordingly, it is

ORDERED that the Petition is denied as to all challenged claims, and no *inter partes* review is instituted.

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