UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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KAHOOT! ASA and KAHOOT EDU, INC.,
Petitioner,

v.

AVIEL D. RUBIN,
Patent Owner.

———————

IPR2023-00693
Patent 9,064,376 B1

———————

Before KEN B. BARRETT, KEVIN W. CHERRY, and
CYNTHIA L. MURPHY, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

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

I.   INTRODUCTION

Kahoot! ASA and Kahoot EDU, Inc. (collectively "Petitioner") filed a petition to institute *inter partes* review of claims 1–5, 9–10, 12–17, and 23–25 of U.S. Patent No. 9,064,376 B1 (Ex. 1001, the '376 patent). Paper 1 ("Pet."). Dr. Aviel Rubin ("Patent Owner") filed a Preliminary Response. Paper 8 ("Prelim. Resp.").[1] Petitioner filed a Reply to the Patent Owner's Preliminary Response. Paper 9 ("Reply").

We have authority under 35 U.S.C. § 314 to determine whether to institute an *inter partes* review. The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless "there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." The Supreme Court has held that the Board, in a decision to institute under 35 U.S.C. § 314(b), may not institute review on less than all claims challenged in the petition. *SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1355–56 (2018).

Moreover, in accordance with our rules, "[w]hen instituting *inter partes* 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. § 42.108(a) (2020); *see also PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (interpreting the statute to

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[1] Patent Owner filed a Preliminary Response on June 13, 2023 (Paper 6) and a corrected Preliminary Response on June 20, 2023 (Paper 8). Our references and citations to the Preliminary Response correspond to the corrected Preliminary Response.

require "a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition").

Applying those standards, and upon considering the Petition, the Preliminary Response, the Reply, and the evidence of record, we determine the information presented shows a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one of the challenged claims of the '376 patent. Accordingly, we institute an *inter partes* review of all challenged claims (i.e., claims 1–5, 9–10, 12–17, and 23–25) of the '376 patent, based on all the grounds asserted in the Petition.

II.   RELATED MATTERS

Aviel D. Rubin sued Kahoot! ASA and Kahoot! EDU, Inc. for patent infringement. *Rubin v. Kahoot! ASA et al.*, No. 6:22-cv-00236 (W.D. Tex.). The case has been transferred to the Austin Division and assigned to Judge Lee Yeakel. *Rubin v. Kahoot! ASA et al.*, No. 1:23-cv-031-LY (W.D. Tex.). Pet. 97; Paper 4, 2.

III.   REAL PARTIES IN INTEREST

Petitioner identifies the real parties in interest as Kahoot! ASA and Kahoot EDU, Inc.. Pet. 96.

Patent Owner identifies Aviel D. Rubin as the real party in interest. Paper 4, 2.

IV.   35 U.S.C. § 315(b)

Patent Owner contends that we "should not reach the merits" of the Petition because Petitioner "failed to timely serve its petition." Prelim.

Resp. 1. Patent Owner asserts that Petitioner "wait[ed] until the last few hours of the very last day of a one-year deadline to file and serve its petition," and "did not take steps to ensure service would be the next business day." *Id.* at 2. Patent Owner argues that "[i]nstead, actual service was three (3) business days after the deadline," and so, Patent Owner argues, the Petition should be dismissed under 35 U.S.C. § 315(b). *Id.*

"An inter partes review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent." 35 U.S.C. § 315(b). In addition, a petition for inter partes review may be considered only if "the petitioner provides copies of any of the documents required under paragraphs (2), (3), and (4) to the patent owner or, if applicable, the designated representative of the patent owner." 35 U.S.C. § 312(a)(5). Our rules expand on this service requirement stating that "[s]ervice may be by Priority Mail Express® or by means at least as fast and reliable as Priority Mail Express®." 37 C.F.R. § 42.105(b).[2]

Here, the timeline of relevant events is not in dispute. There is no dispute that March 10, 2023 was the one-year deadline for filing the petition. *See* Prelim. Resp. 1; Reply 1. There is no dispute that the Petition was received by the Office on March 10, 2023. *See* Paper No. 3. There is no dispute that Petitioner delivered the Petition to a FedEx location on March

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[2] 37 C.F.R. § 42.105 says that its requirements are "[i]n addition to the requirements of § 42.6." 37 C.F.R. § 42.6 requires "[e]ach document filed with the Board" to be "served simultaneously on each opposing party."

10, 2023; there is no dispute that the FedEx package was addressed to the Patent Owner's correspondence address of record; and there is no dispute that FedEx successfully delivered the service copy of the Petition on March 15, 2013. *See* Prelim. Resp. 1–2, Reply 1–2, Exs. 1021, 2001, 2002.

Patent Owner is correct, therefore, that the FedEx package containing the service copy of the Petition was not received by Patent Owner's correspondence counsel of record until March 15, 2023, "a full five (5) days after the [filing] deadline." Reply 2.

Patent Owner alleges that Petitioner "neglected to email its Petition to Dr. Rubin's counsel which could have at least mitigated the prejudice caused by the Wednesday, March 15, 2023 delivery, five (5) days after the Petition was first filed." Prelim. Reply. 8. However, Eric Benisek was notified via email on March 10, 2023 that the Petition had been filed. *See* Ex. 1019. This email provided the Petition's assigned IPR number (*see id.*) so that he "could download the Petition from the P-TACTS system" (Reply 5). And Eric Benisek is listed as Back-up Counsel in the Patent Owner's Power of Attorney. *See* Paper 5. Thus, counsel participating in this proceeding on behalf of Patent Owner was aware that the Petition had been filed with the Office on March 10, 2023.[3] Patent Owner also had the case number for this proceeding, and thus, had information sufficient to locate the Petition and supporting documents with relative ease. We note that Petitioner appears to have emailed Eric Benisek within six minutes of receiving the IPR number

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[3] The record further reflects that Patent Owner's counsel of record (James Denaro) was aware of the Petition at least as early as Monday, March 13, 2023. *See* Ex. 1020.

from the Office. *See* Ex. 1019. While this email is not a substitute for service, it demonstrates Petitioner's desire to provide Patent Owner with notice as soon as possible. And there is no contention that a service copy of the Petition was not delivered to the Patent Owner's correspondence address.

Thus, to the extent that Petitioner failed to follow perfectly regulatory requirements related to service, we waive any such requirements for the purposes of institution because Petitioner did deliver the Petition to FedEx in a timely manner, did serve or at least attempted in good faith to serve the Petition using an equivalent to Priority Mail Express, provided notice of the proceeding and the case number sufficient to locate the proceeding in the Office's P-TACTS system, and there was no undue prejudice to Patent Owner.

V.   OVERVIEW OF THE '376 PATENT

The '376 patent is titled "Utilization of Multiple Devices to Secure Online Transactions." Ex. 1001, code (54). The '376 patent claims priority to U.S. Provisional Application No. 62/008,561 filed on June 6, 2014. *Id.* at 1:7–8.

The '376 patent discloses a method in which a user interacts with "a first [electronic] device and a second [electronic] device throughout the use of an online application." *Id.* at 2:29–30, *see also id.* at 2:40–45. For example, the user's first electronic device can be a "computer" and the user's second electronic device can be a "smartphone." *Id.* at 2:42, *see also id.* at Fig. 5.

"[O]ne preferred embodiment of the invention is directed to online games." *Id.* at 2:46–47. The '376 patent particularly describes a game of

poker involving community cards (dealt so as to be visible to all players) and hole cards (dealt so as to be visible only to each respective player). *See id.* at 2:55–3:8.

Figure 7 of the '376 patent, reproduced below, "illustrates an example flow of control" for such a poker game "at the game server." Ex. 1001 2:17–18.
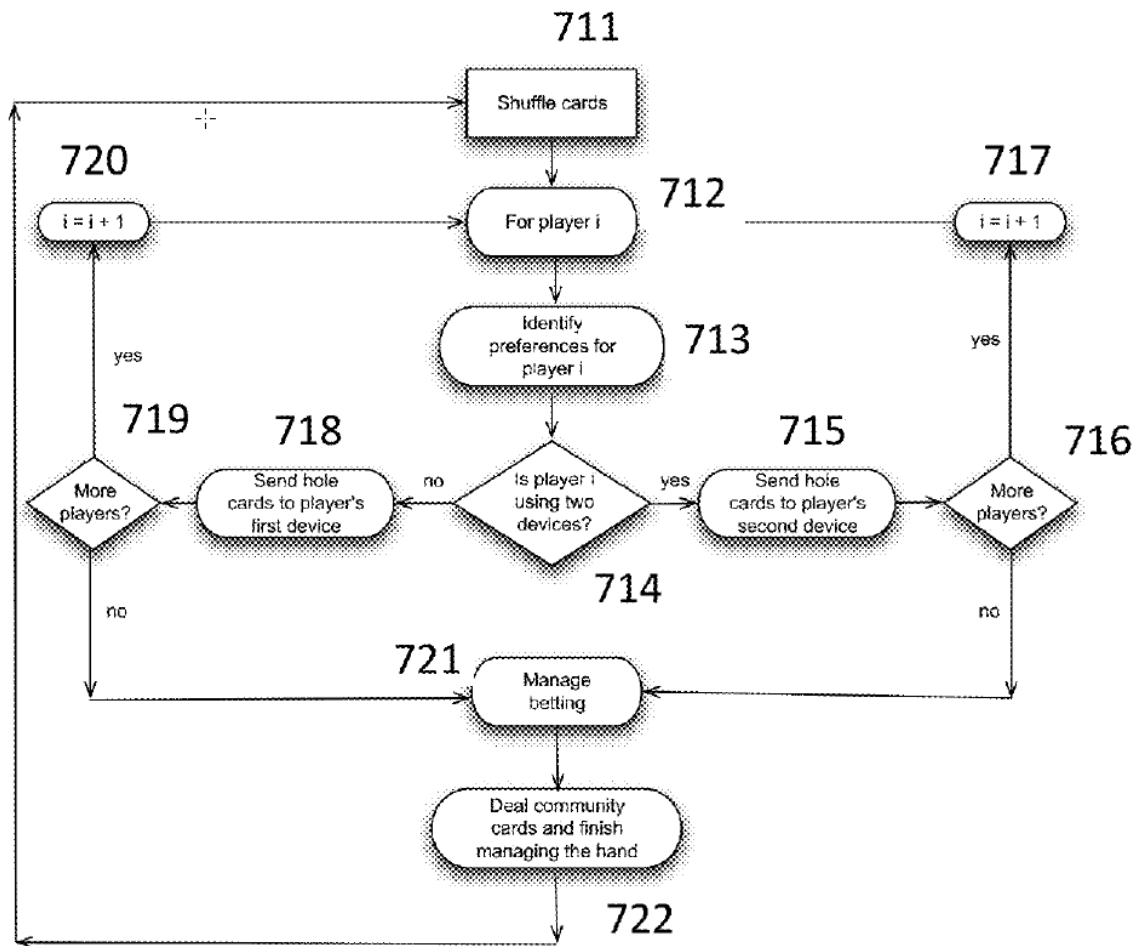

Figure 7 illustrates a flowchart showing the flow of control in an embodiment of the invention. *Id.* The illustrated flowchart 710 shows that the game server shuffles the cards (rectangle 711). *See id.* at 4:6–7. Then, for each player (ovals 712, 717, 720), the game server sequentially identifies

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the player's preferences (oval 713), and determines whether the player is using two electronic devices (diamond 714). *See id.* at 4:7–10. If a player is using two electronic devices, the game server sends the hole cards to the player's second electronic device (e.g., the player's phone) (oval 715). *See id.* at 4:12–14. If a player is not using two electronic devices, the game server sends the hole cards to the player's first electronic device (e.g., the player's computer) (oval 718). *See id.* at 4:10–12. Once this sequence has been completed for each player, the game server manages betting (oval 721). The game server then deals the community cards to the players' first (and sometimes only) electronic devices (oval 722). *Id.* at 4:14–16, *see also id.* at 16:15–17.

The game server determines whether a player is using two electronic devices (diamond 714) by determining "whether both a first device and a second device are accessible over at least one electronic communications network." *Id.* at 4:47–50. If a player is required to log onto their account from both the first device and the second device (*see id.* at 7:37–41, 8:16–21), the game server can determine, based on these logons, that both the electronic devices are "in possession of" and are "being directly operated by" a particular player (*id.* at 15:25–31).

The community cards sent by the game server (oval 722) can be called "a first subset of the information" and the hole cards sent by the server (oval 715 or oval 718) can be called "a second the subset of information." *Id.* at 15:21–22. These subsets of information are "generated by the same application at the server" (i.e., the poker game application) and they are "specific to that application" (i.e., the poker game). *Id.* at 15:22–24.

As indicated above, hole cards are sent to a player's second device if (and only if) it is determined that both the first and second devices are accessible by the game server. *See id.* at 4:12–14, 4:47–50. Thus, if (and only if) both of the devices are determined to be accessible by the game server, then:

> the first subset of information (the community cards) are transmitted to the player's first device (e.g., the player's computer) from the game server, and
>
> the second subset of information (the hole cards) are transmitted to the player's second device (e.g., the player's phone) from the game server.

See id. at 15:32–37. And the second set of information (the hole cards) includes information that is not transmitted to the first device. *See id.* at 15:38–39.

As indicated above, a "preferred embodiment" of the invention is directed to online games. *Id.* at 2:46–47. The '376 patent stresses, however, that "the invention may also be used in any other domain, such as online banking, mobile healthcare, online investing, and other online activities." *Id.* at 2:47–49.

VI.   ILLUSTRATIVE CLAIM

1. A method for transmitting information to multiple electronic devices, the method comprising:

[i.] electronically storing a set of information at a server;

[ii.] identifying a first subset of the information and identifying a second subset of the information, wherein the first and

second subsets of information are generated by the same application at the server and are specific to that application;

[iii.] determining at the server whether both a first device in possession of and being directly operated by a first user and a second device also in possession of and being directly operated by the first user are accessible over at least one electronic communications network based on the first user being logged into the application at both the first and second devices;

[iv.] if and only if both the first and second devices are determined to be accessible by the server, then:

transmitting a first subset of the information to the first device from the server; and

transmitting a second subset of the information to the second device from the server,

wherein the second subset of the information includes information not transmitted to the first device.

Ex. 1001, 15:17–38.

VII. ASSERTED GROUNDS OF UNPATENTABILITY

Ground	Basis 35 U.S.C. §[4]	References	Challenged Claims
1	103	Zha,[5] POSITA's knowledge[6]	1–4, 9, 13, 14, 16, 23–25

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[4] The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) ("AIA"), amended 35 U.S.C. §§ 102, 103. Because the '376 patent has an effective filing date after the effective date of the applicable AIA amendment, we refer to the AIA version of § 103.

[5] US 9,497,565 B1, filed Feb. 10, 2015, issued November 15, 2016, foreign priority date Dec. 11, 2013 ("Zha," Ex. 1004).

[6] "POSITA" refers to a "person of ordinary skill in the art." Pet. 2.

2	103	Zha, POSITA's knowledge, Tsushima[7]	1–4, 9, 13, 14, 16, 23–25
3	103	Zha, POSITA's knowledge, Gumbula[8]	5, 15
4	103	Zha, POSITA's knowledge, Tsushima, Gumbula	5, 15
5	103	Zha, POSITA's knowledge, Stafford[9]	10
6	103	Zha, POSITA's knowledge, Stafford, Tsushima	10
7	103	Takahashi,[10] POSITA's knowledge	1–5, 9, 10, 12–14, 16, 17, 23–25
8	103	Takahashi, POSITA's knowledge, Tsushima	1–5, 9, 10, 12–14, 16, 17, 23–25

Pet. 2. Patent Owner does not present any arguments or evidence related to Petitioner's patentability challenges. *See* Prelim. Resp. 1–9.

VIII. PATENTABILITY ANALYSIS

Petitioner contends that independent claim 1 of the '376 patent is unpatentable under 35 U.S.C. § 103(a) over Zha and POSITA's knowledge. Pet. 2 (Ground 1). Having considered the arguments and evidence before us,

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[7] US 2014/0006485 A1, filed May 22, 2013, published January 2, 2014 (Tsushima, "Ex. 1010").

[8] US 9,591,083 B1, filed November 23, 2005, issued March 7, 2017 ("Gumbula," Ex. 1011).

[9] US 2012/0017236 A1, filed July 13, 2010, published January 19, 2012 ("Stafford," Ex. 1012).

[10] US 2015/0011318 A1, filed Nov. 27, 2012, published January 8, 2015 ("Takahashi," Ex. 1007).

we determine that the record establishes a reasonable likelihood that the Petitioner would prevail on this asserted ground of patentability.

A.   Obviousness

A patent claim is unpatentable under 35 U.S.C. § 103 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. *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 ordinary skill in the art; and (4) when in evidence, objective evidence of nonobviousness.[11] *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B.   Burden of Proof

"In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable." *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify "with particularity . . . the evidence that supports the grounds for the challenge to each claim")). This burden of persuasion never

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[11] As indicated above, Patent Owner does not present any arguments or evidence related to Petitioner's patentability challenges. *See* Prelim. Resp. 1–9. Therefore, secondary considerations do not constitute part of our analysis herein.

shifts to Patent Owner. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing the burden of proof in *inter partes* review).

C. Level of Ordinary Skill in the Art

We consider the asserted grounds of unpatentability in view of the understanding of a person of ordinary skill in the art. In assessing the level of ordinary skill in the art, various factors may be considered, 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." *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (quoting *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986)). "[O]ne or more factors may predominate." *Id.*

Petitioner asserts that "[a] person of ordinary skill in the art ('POSITA') at the time of the alleged invention of the '376 patent would have a bachelor's degree in electrical or computer engineering or computer science or a comparable field of study, plus approximately two years of professional experience in the field of computer and/or network design and security or other relevant industry experience." Pet. 5.

For the purposes of this proceeding, we adopt Petitioner's definition of the level of ordinary skill in the art, which is consistent with the '376 patent and the asserted prior art, and we apply it in our obviousness evaluations below. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed.

Cir. 2001) (the prior art, itself, can reflect appropriate level of ordinary skill in art).[12]

D. Claim Construction

We consider the proper construction of the claims. In interpreting the claims of the '376 patent, we "us[e] the same claim construction standard that would be used to construe the claim[s] in a civil action under 35 U.S.C. [§] 282(b)." *See* 37 C.F.R. § 42.100(b) (2020). The claim construction standard includes construing claims in accordance with the ordinary and customary meaning of such claims as would have been understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. *See id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005) (*en banc*).

Petitioner submits that, for the purposes of institution, "[t]erms should be given their plain meaning." Pet. 5. We determine that at the present time, no express claim construction is necessary for any claim terms. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (holding that only claim terms in controversy need to be construed, and only to the extent necessary to resolve the controversy (citing *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

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[12] As indicated above, Patent Owner does <u>not</u> present any arguments or evidence related to Petitioner's patentability challenges. *See* Prelim. Resp. 1–9.

E.   Overview of Zha

Zha discloses a method in which "a user runs an application program with the same account through two or more terminals simultaneously." Ex. 1004, 4:19–21. For example, the first terminal (i.e., first electronic device) can be a "laptop computer" and the second terminal (i.e., second electronic device) can be a "cellphone." *Id.* at 4:25–26.

In a disclosed embodiment, "the application is a microblog" (*id.* at 6:57) having "a homepage functional interface" and "a private message functional interface" (*id.* at 7:33–34). Zha addresses the scenario where a user "wants to send a private message to a friend while visiting a microblog homepage," without "exit[ing] the microblog homepage." *Id.* at 1:29–30.

Figure 2B "is a flowchart of a method for displaying an interface." *Id.* at 3:33–34. This flowchart shows that two terminals (i.e., first and second electronic devices) send a request to a server for "running the same application program with the same account simultaneously" (S201). *Id.* at 5:17–18. The server "receives" this request (S202) and "assigns respective access permission for accessing at least one functional interface provided by the application program to the at least two terminals" (S203). *Id.* at 5:19–24. Each terminal "obtains" the assigned "access permission" (S204) (*id.* at 5:28–29), and the server "sends data" to each terminal corresponding to its access permission (S205) (*id.* at 5:35–37).

Thus, in Zha's method, the server will receive a request from a user to turn the same application program (e.g., microblog application) on two terminals (e.g., a laptop computer and a cellphone) simultaneously. *See id.* at 7:33–43. Access permissions can be assigned so that server sends data

corresponding to the homepage functional interface (e.g., a first subset of information) to the user's laptop computer and sends data corresponding to the private message functional interface (e.g., a second subset of information) to the user's cellphone. *See id.* Thus, "the server may send a private message only to the cellphone without sending the private message to the laptop computer." *Id.* at 10:48–50.

F.   Independent Claim 1

Independent claim 1 sets forth a "method for transmitting information to multiple electronic devices" comprising steps (i)–(iv). Ex. 1001, 15:17–18. Petitioner contends that Zha teaches a method for transmitting information to multiple electronic devices. *See* Pet. 8.

In Zha's method, the server running the application program (e.g., a microblog) transmits functional-interface data to multiple electrical devices (e.g., a laptop computer, a cellphone, and a desktop computer). *See* Ex. 1004, 4:25–26, 5:10–38, Fig. 2B; Ex. 1002 ¶¶ 57–58.

Thus, on the present record and for the purposes of institution, we determine that Petitioner has demonstrated sufficiently that Zha discloses or suggests the features recited in claim 1's preamble.[13]

i. Step (i)

Step (i) requires "electronically storing a set of information at a server." Ex. 1001, 15:19. Petitioner contends that Zha teaches this step. *See* Pet. 8–9.

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[13] Because Petitioner has shown that the recitations in the preamble are satisfied by the prior art, we need not determine whether the preamble is limiting at this time. *See Vivid Techs.*, 200 F.3d at 803.

In Zha's method, the server is tasked with providing information (i.e., sending the functional-interface data) to the user's electronic devices. *See* Ex. 1004, 4:22–24, 5:38–42. Petitioner provides evidence of POSITA's general knowledge that a server electronically stores information that it is tasked with providing to client devices. *See* Ex. 1002 ¶¶ 60–62; *see also* Ex. 1017[14] ¶ 84, Fig. 7.

Thus, on the present record and for the purposes of institution, we determine that Petitioner has demonstrated sufficiently that Zha discloses or suggests the features recited in claim 1's step (i).

ii. Step (ii)

Step (ii) requires "identifying a first subset of the information and identifying a second subset of the information, wherein the first and second subsets of information are generated by the same application at the server and are specific to that application." Ex. 1001, 15:25–31. Petitioner contends that Zha teaches this step. *See* Pet. 9–10.

The functional-interface data sent to Zha's laptop computer (i.e., functional-interface data corresponding to the homepage) can be called "a first subset of information" and the functional-interface data sent to Zha's cellphone (i.e., functional-interface data corresponding to a private message) can be called "a second subset of information." *See* Ex. 1004, 5:19–21, 18:66–19:13. These subsets of information are generated by the same microblog application running at Zha's server and they are specific to the microblog application. Petitioner provides evidence of POSITA's general

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[14] US 2014/0121015 A1, filed Mar. 7, 2013, published May 1, 2014 ("Massing," Ex. 1017).

knowledge that Zha's server "necessarily identifies the data related to the functional interfaces prior to sending that data" to these electronic devices. Ex. 1002 ¶ 64.

Thus, on the present record and for the purposes of institution, we determine that Petitioner has demonstrated sufficiently that Zha discloses or suggests the features recited in claim 1's step (ii).

iii. Step (iii)

Step (iii) requires "determining at the server whether both a first device in possession of and being directly operated by a first user and a second device also in possession of and being directly operated by the first user are accessible over at least one electronic communications network based on the first user being logged into the application at both the first and second devices." Ex. 1001, 4:25–31. Petitioner contends that Zha teaches this step. *See* Pet. 11–12.

In Zha's method, the server receives a request from the two terminals for "running the same application program with the same account simultaneously." Ex. 1004, 5:17–18. Zha also discloses a login process to determine whether a single user has logged into the same microblog application at two terminals. *See id.* at 18:41–49. Petitioner provides evidence of POSITA's general knowledge that a login process can be used to ensure that an electrical device is being directly operated by and in possession of a particular user. *See* Ex. 1002 ¶¶ 76–80; Ex. 1007 ¶¶ 109–110; Ex. 1010 ¶¶ 41, 57, Fig. 7A.

Thus, on the present record and for the purposes of institution, we determine that Petitioner has demonstrated sufficiently that Zha discloses or suggests the features recited in claim 1's step (iii).

iv. Step (iv)

Step (iv) requires "if and only if both the first and second devices are determined to be accessible by the server, then: transmitting a first subset of the information to the first device from the server; and transmitting a second subset of the information to the second device from the server, wherein the second subset of the information includes information not transmitted to the first device." Ex. 1001, 4:32–38. Petitioner contends that Zha teaches this step. *See* Pet. 13–14.

In Zha's method, if (and only if) the server receives a request from the two terminals for running the same application program (e.g., microblog application) with the same account simultaneously, the first subset of information (e.g., homepage interface data) is sent to the first terminal (e.g., the user's laptop computer) and the second subset of information (e.g., private message data) is sent to the second terminal (e.g., the user's cellphone). *See* Ex. 1004, 5:17–27, 18:66–19:19, Fig. 2B, 8; Ex. 1002 ¶¶ 82–84. The second subset of information (e.g., the private message data) includes information not transmitted to the first terminal (e.g., the user's laptop computer). *See* Ex. 1004, 10:48–50.

Thus, on the present record and for the purposes of institution, we determine that Petitioner has demonstrated sufficiently that Zha discloses or suggests the features recited in claim 1's step (iv).

G.   Summary

Accordingly, Petitioner has shown there is a reasonable likelihood that it would prevail in proving that challenged claim 1 would have been obvious over Zha, when viewed in the context of POSITA's knowledge. Pet. 2 (Ground 1).

H.   Other Claims and Other Grounds

Petitioner also contends that claims 2–4, 9, 13, 14, 16, and 23–25 are unpatentable under 35 U.S.C. § 103 over Zha and POSITA's knowledge. Pet. 2 (Ground 1). Petitioner further contends that claims 1–4, 9, 13, 14, 16, and 23–25 are unpatentable under 35 U.S.C. § 103 over other prior art references and POSITA's knowledge. *Id.* (Grounds 2–8). As indicated above, Patent Owner does not present any arguments or evidence related to Petitioner's patentability challenges. *See* Prelim. Resp. 1–9. We have reviewed Petitioner's evidence and arguments regarding those claims and grounds and on this record, we find that Petitioner has shown a reasonable likelihood of prevailing on those claims and grounds as well.

IX.   CONCLUSION

After considering the arguments presented in the Petition and the evidence of record,[15] we determine that Petitioner has demonstrated a reasonable likelihood of success in proving that at least one claim of the '376 patent is unpatentable. Thus, we institute an *inter partes* review of all

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[15] As indicated above, Patent Owner does not present any arguments or evidence related to Petitioner's patentability challenges. *See* Prelim. Resp. 1–9.

challenged claims (i.e., claims 1–5, 9–10, 12–17, and 23–25) on all grounds set forth in the Petition.

Our determinations at this stage of the proceeding are based on the evidentiary record currently before us. This decision to institute trial is not a final decision as to patentability of any claim for which we have instituted an *inter partes* review. *See TriVascular, Inc. v. Samuels*, 812 F.3d 1056, 1068 (Fed. Cir. 2016) (noting that "there is a significant difference between a petitioner's burden to establish a 'reasonable likelihood of success' at institution, and actually proving invalidity by a preponderance of the evidence at trial"). We will base any final decision on the full record developed during trial.

X. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review is instituted for challenged claims 1–5, 9–10, 12–17, and 23–25 of the '376 patent on all the unpatentability grounds asserted in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial, which commences on the entry date of this decision.

FOR PETITIONER:

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FOR PATENT OWNER:

Robert McArthur
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