UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMERICAN MULTI-CINEMA, INC.; AMC ENTERTAINMENT HOLDINGS,
INC.; BOSTON MARKET CORPORATION; MOBO SYSTEMS, INC.;
MCDONALD'S CORPORATION; MCDONALD'S USA; PANDA
RESTAURANT GROUP, INC.; PANDA EXPRESS INC.; PAPA JOHN'S
INTERNATIONAL, INC.; STAR PAPA LP; and PAPA JOHN'S USA, INC.,
Petitioners

v.

FALL LINE PATENTS, LLC

Patent Owner.

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Case No. IPR2019-00610
Patent No. 9,454,748

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PETITIONERS' NOTICE OF APPEAL

Pursuant to 35 U.S.C. §§ 142 and 37 C.F.R. § 90.2(a), Petitioners AMC Multi-Cinema, Inc., AMC Entertainment Holdings, Inc., Boston Market Corporation, Mobo Systems, Inc., McDonald's Corporation, McDonald's USA, Papa John's International, Inc., Star Papa LP, and Papa John's USA, Inc. respectfully give Notice that they hereby appeal to the United States Court of Appeals for the Federal Circuit from the Patent Trial and Appeal Board's ("Board") Final Decision on Remand, dated May 17, 2022 (Paper 42), and from all other underlying orders, decisions, rulings and opinions related thereto and included therein. This notice is timely filed within 63 days of the Board's Final Decision on Remand.

For the limited purpose of providing the Director with the information specified in 37 C.F.R. § 90.2(a)(3)(ii), Petitioners indicate that the issues on appeal include, but are not limited to whether Claim 7 of U.S. Patent No. 9,454,748 is obvious over U.S. Patent No. 6,961,586 B2, filed September 17, 2001, issued November 1, 2005, and which claims the benefit of an application filed on September 28, 2000 ("Barbosa") in view of U.S. Patent No. 5,991,771, issued November 23, 1999 ("Falls").

Simultaneous with this submission, a copy of this Notice of Appeal is being filed with the Board and the Clerk's Office for the United States Court of Appeals for the Federal Circuit.

Dated: June 16, 2022

Respectfully submitted,

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Counsel for Petitioners

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4), the undersigned certifies that on June 16, 2022, a complete and entire copy of this Petitioners' Notice of Appeal was provided via email to the Patent Owner by serving the correspondence address of record as follows:

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I hereby certify that, in addition to being filed electronically through the Board's E2E System, the original version of the foregoing Notice of Appeal was delivered by USPS Certified Mail on June 16, 2022, with the Director of the United States Patent and Trademark Office, at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that on June 16, 2022, a true and correct copy of the foregoing Notice of Appeal, along with a copy of Final Decision on Remand, was

filed electronically with the Clerk's Office of the United States Court of Appeals

for the Federal Circuit, at the following address:

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AMERICAN MULTI-CINEMA, INC.; AMC ENTERTAINMENT
HOLDINGS, INC.; BOSTON MARKET CORPORATION; MOBO
SYSTEMS, INC.; MCDONALD'S CORPORATION;
MCDONALD'S USA; PANDA RESTAURANT GROUP, INC.;
PANDA EXPRESS INC.; PAPA JOHN'S INTERNATIONAL, INC.;
STAR PAPA LP; and PAPA JOHN'S USA, INC.,
Petitioner,

v.

FALL LINE PATENTS, LLC,
Patent Owner.

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IPR2019-00610
Patent 9,454,748 B2

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Before MICHELLE N. WORMMEESTER, SHEILA F. McSHANE,
and JOHN R. KENNY, *Administrative Patent Judges.*

KENNY, *Administrative Patent Judge*.

JUDGMENT
Final Decision on Remand
35 U.S.C. §§ 144, 318(a)

I. INTRODUCTION

American Multi-Cinema, Inc.; AMC Entertainment Holdings, Inc.; Boston Market Corp.; Mobo Systems, Inc. d/b/a OLO Online Ordering; McDonald's Corp; McDonald's USA; Panda Restaurant Group, Inc.; Panda Express Inc.; Papa John's International, Inc.; Star Papa LP; and Papa John's USA, Inc. (collectively, "Petitioner") filed a Petition (Paper 7, "Pet.")[1] requesting an *inter partes* review of claims 1, 2, 5, 7, and 19–22 ("challenged claims") of U.S. Patent No. 9,454,748 B2 (Ex. 1001, "the '748 patent," "challenged patent"). Pet. 1. An *inter partes* review of all challenged claims was instituted on August 7, 2019. Paper 14 ("Inst. Dec."). After institution, Fall Line Patents, LLC ("Patent Owner") filed a Patent Owner Response (Paper 17, "PO Resp."), Petitioner filed a Reply (Paper 19, "Pet. Reply"), and Patent Owner filed a Sur-reply (Paper 20, "PO Sur-reply"). An oral hearing was held on April 28, 2020. Paper 25 ("Tr.").[2]

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[1] The Petition was also filed on behalf of Starbucks Corporation, but Starbucks entered into a settlement agreement and was terminated from this proceeding. Pet. 1; Papers 11, 13.

[2] After the oral hearing, we authorized additional briefing on a claim construction issue concerning certain claim terms. Paper 24. Pursuant to that authorization, Petitioner filed a Supplemental Brief (Paper 27) as did Patent Owner (Paper 28). Petitioner responded to Patent Owner's Supplemental Brief (*see* Paper 29) and Patent Owner responded to Petitioner's Supplemental Brief (*see* Paper 30).

On August 5, 2020, we issued a Final Written Decision
(Paper 32, "Final Written Dec."), in which we determined that
Petitioner had proven that claims 1, 2, 5, and 19–22 are unpatentable,
but had not proven that claim 7 is unpatentable. Final Written
Dec. 63–64. Patent Owner did not appeal our decision regarding
claims 1, 2, 5, and 19–22. *AMC Multi-Cinema, Inc. v. Fall Line
Patents, LLC*,[3] No. 2021-1051, slip op. 3 (Fed. Cir. Sept. 30, 2021)
("Remand Decision," "Remand Dec."). Petitioner, however, appealed
our decision regarding claim 7. *Id.* The Federal Circuit affirmed in
part, vacated in part, and remanded our decision regarding claim 7. *Id.*
at 21.

After the remand, we authorized supplemental briefing.
Papers 34, 35. The parties filed a joint statement. Paper 36 ("Joint
Statement"). Petitioner filed an opening supplemental brief (Paper 38,
"Pet. Supp. Br.") and a responsive supplemental brief (Paper 41, "Pet.
Resp. Br."). Patent Owner also filed an opening supplemental brief
(Paper 37, "PO Supp. Br.") and a responsive supplemental brief
(Paper 40, "PO Resp. Br.").

After considering the instructions and guidance from the Federal
Circuit in the Remand Decision, the Joint Statement, the parties'
supplemental briefing, and the complete record, we determine that

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[3] In this Decision, we cite to the slip opinion, as Petitioner did in its
supplemental briefing. *See, e.g.*, Pet. Supp. Br. 1. Patent Owner
referenced the Westlaw citation for this decision, which is 2021 WL
4470062. *See, e.g.*, PO Supp. Br. 2–3.

Petitioner has not proven, by a preponderance of the evidence, that claim 7 is unpatentable.

II. CLAIM 7, THE SCOPE OF THE REMAND, AND THE TERM "EXECUTABLE"

A.   Claim 7

Claim 7 recites:

7. A method for collecting survey data from a user and making responses available via the Internet, comprising:

(a) designing a questionnaire including at least one question said questionnaire customized for a particular location having branching logic on a first computer platform wherein at least one of said at least one questions requests location identifying information;

(b) automatically transferring said designed questionnaire to at least one loosely networked computer having a GPS integral thereto;

(c) when said loosely networked computer is at said particular location, executing said transferred questionnaire on said loosely networked computer, thereby collecting responses from the user;

(d) while said transferred questionnaire is executing, using said GPS to automatically provide said location identifying information as a response to said executing questionnaire;

(e) automatically transferring via the loose network any responses so collected in real time to a central computer; and,

(f) making available via the Internet any responses transferred to said central computer in step (e).

Ex. 1001, 14:45–67.

B. Asserted Grounds for Claim 7

The Petition asserts that claim 7 would have been obvious over the following references:

Claims Challenged	35 U.S.C. §	Reference(s)/Basis
7	103(a)	Barbosa,[4] Falls[5]
7	103(a)	Hancock,[6] Falls

Pet. 5.

C. Scope of the Remand

The issue before us concerns Petitioner's challenge based on Barbosa and Falls, and in particular, whether Petitioner has proven by a preponderance of the evidence that Barbosa teaches limitation (b) of claim 7 ("limitation 7(b)") for that challenge. Remand Dec. 16, 21. In addition, the Federal Circuit instructed us that if we determine that Petitioner has proven that Barbosa teaches limitation 7(b), then we should address limitation (f) of claim 7 ("limitation 7(f)") for Petitioner's Barbosa and Falls challenge. *Id.* at 21 n.4.

The remand concerns only claim 7 because, as mentioned, Patent Owner did not appeal the Final Written Decision regarding claims 1, 2, 5, and 19–22. Remand Dec. 3. The remand is further

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[4] U.S. Patent No. 6,961,586 B2, filed Sept. 17, 2001, claims the benefit of an application filed on Sept. 18, 2000, and issued on Nov. 1, 2005 (Ex. 1002, "Barbosa"). The earliest filing date that the '748 patent claims the benefit of is August 19, 2002. Ex. 1001, code (60).

[5] U.S. Patent No. 5,991,771, issued Nov. 23, 1999 (Ex. 1017, "Falls").

[6] U.S. Patent No. 6,202,023 B1, issued Mar. 13, 2001 (Ex. 1003, "Hancock").

limited to whether claim 7 would have been obvious over Barbosa and Falls because the Federal Circuit upheld our determination that Petitioner had not proven that claim 7 is unpatentable over Hancock and Falls. *Id.* at 15–16. Thus, the Final Written Decision sets forth the disposition of all grounds, other than the asserted obviousness of claim 7 over Barbosa and Falls. *Id*. at 3, 15–16, 21.

For limitation 7(b), the remand is further limited to the issue of whether Petitioner has proven that Barbosa itself teaches that limitation because the Federal Circuit upheld our determination that Petitioner did not timely argue that limitation was an obvious modification of Barbosa. *Id.* at 15–16.

For the issue of whether Barbosa teaches limitation 7(b), the Federal Circuit held that, in the Final Written Decision, we did not fully consider Petitioner's arguments in the Petition and we erroneously determined certain arguments in the Reply to have been belatedly presented. Remand Dec. 16–17. The Federal Circuit further held that, in the Final Written Decision, we did not adequately address Petitioner's reply evidence regarding Barbosa's teachings. *Id.* at 19–20.

The Federal Circuit noted that, in the Final Written Decision, we determined that the questionnaire transferred in limitation 7(b) must be executable. Remand Dec. 11. The Federal Circuit did not disagree. *Id.* The Federal Circuit, however, noted that we did not explain what "executable" means in this setting. *Id.* at 20.

D. Meaning of the Term "Executable"

To provide a definition for the term "executable" in this

Decision, we requested that the parties provide proposed definitions.

Paper 34. On remand, the parties agree to the following definition:

> The parties agree that Java and markup languages (XML,
> HTML, JSON, etc.) are "executable" and that the
> Microsoft Dictionary definition cited by the Board ("of,
> pertaining to, or being a program file that can be run") is
> acceptable with that clarification.

Joint Statement 1.

We accept and apply this agreed-to definition for "executable"

in this Decision.

III. BARBOSA AND LIMITATION 7(b)

On remand, we determine that Petitioner has not proven, by a

preponderance of the evidence, that Barbosa teaches limitation 7(b),

which reads:

> (b) automatically transferring said designed questionnaire
> to at least one loosely networked computer having a GPS
> integral thereto.

Ex. 1001, 14:52–54.

As we held in the Final Written Decision, and no party has

disputed in any supplemental briefing, the recited questionnaire that is

automatically transferred in limitation 7(b) must be executable. Final

Written Decision 50 ("[T]he recited questionnaire in claim 7 is

executable, as claim 7 additionally recites 'executing said

questionnaire.'"); Remand Dec. 11 ("At the core of the Board's

conclusion in this respect was its determination—about which we have

seen no reasonable dispute—that, because 'claim 7 additionally recites

"executing said questionnaire,'" the questionnaire that is transferred under limitation step (b) must be executable.").

In supplemental briefing on remand and prior briefing, the parties made a number of arguments regarding whether Barbosa automatically transfers an executable questionnaire, including whether Barbosa discloses: an executable questionnaire, the transfer of an executable program, and data synchronization. As set forth below, we find that Barbosa discloses an executable questionnaire, the transfer of an executable questionnaire, and data synchronization. However, as discussed below, we determine that Petitioner has not proven that Barbosa teaches or discloses, to an ordinarily skilled artisan, automatically transferring an executable questionnaire to at least one loosely networked computer. Thus, Petitioner has not proven, by a preponderance of the evidence, that Barbosa discloses limitation 7(b).

A. Executable Questionnaire

Petitioner argues that Barbosa discloses an executable questionnaire. Pet. Supp. Br. 2–5; Pet. Resp. Br. 1–4. In its supplemental briefing, Patent Owner does not dispute this argument.[7] Patent Owner, however, asserts that Petitioner has not identified any

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[7] Petitioner suggests that Patent Owner's argument in earlier briefing regarding the tokenized questionnaire recited in claim 19 demonstrates that Patent Owner disputed that Barbosa discloses an executable questionnaire. Pet. Supp. Br. 3–4. Patent Owner, however, did not make such an argument in its supplemental briefing on remand, and, moreover, as set forth in this section, we find that Barbosa discloses an executable questionnaire.

questionnaire in Barbosa that is both executable and automatically transferred. PO Resp. Br. 1–3.

We agree with Petitioner that Barbosa teaches an executable questionnaire. Barbosa discloses that "programs operated by the microprocessor ask questions or provide guidance related to a particular field problem" and "[t]he program would prompt the user for input of data related to the problem." Ex. 1002, 6:60–61, 7:47–48. Further, Figure 7 of Barbosa discloses a flow chart for a construction application. *Id.* at 7:42–47; 8:49–50. In that flow chart, at a job site, the assessor starts an appraisal program 702 on device 10. *Id.* at 7:42–47, 8:49–54. Barbosa further discloses that "[t]he program may start by asking for the identification of [] the client or matter 703 (e.g., customer, or job site)," and "[t]he program may next ask the representative to identify the problem or type of assessment 704 (e.g., HVAC, plumbing, electrical, landscaping, etc.)." *Id.* at 8:54–59. We agree with Petitioner that these disclosures teach an executable questionnaire.

B. Transfer of an Executable Program

Petitioner argues that Barbosa discloses the transfer of an executable program. Pet. Supp. Br. 4; Pet. Resp. Br. 3. Further, Petitioner asserts that, if we were to find otherwise, such a finding would conflict with findings we made regarding claim 19 in the Final Written Decision. Pet. Supp. Br. 4. In its supplemental briefing, Patent Owner does not dispute that Barbosa discloses the transfer of an executable program. Patent Owner, however, disputes that Barbosa

discloses the *automatic* transfer of an executable program. PO Supp. Br. 5–6; PO Resp. Br. 5.

We find that Barbosa discloses the transfer of an executable program. Barbosa discloses providing a template from a remote server (1302) to assessors. Ex. 1002, 12:11–14. Barbosa further discloses that this "template may operate in combination with programs resident in the handheld computer or may be accompanied by a *computer program transmitted from the sever (e.g., in the form of a JAVA applet)*." *Id.* at 12:14–18 (emphasis added). We agree that a computer program transmitted from the server in the form of a JAVA applet describes the transfer of an executable program. In particular, as set forth above, the parties stipulated to the following definition for the term "executable":

> The parties agree that Java and markup languages (XML, HTML, JSON, etc.) are "executable" and that the Microsoft Dictionary definition cited by the Board ("of, pertaining to, or being a program file that can be run") is acceptable with that clarification.

Joint Statement 1. Petitioner argues that, under this definition, a computer program in the form of a JAVA applet is an executable program. Pet. Supp. Br. 2–5. Patent Owner does not dispute this argument. PO Resp. Br. 6–7. We agree with Petitioner; the parties' agreed-to definition deems JAVA executable. Joint Statement 1. Thus, we accept Petitioner's argument that Barbosa discloses the transfer of an executable program. We address whether Barbosa discloses the *automatic* transfer of an executable questionnaire in Section III.D below.

C. Data Synchronization

Petitioner argues that Barbosa discloses data synchronization. Pet. Supp. Br. 5–6; Pet. Resp. Br. 5. Patent Owner does not dispute this argument. We agree with Petitioner that Barbosa discloses data synchronization. In particular, Barbosa discloses that "[f]ield assessment data synchronization and/or delivery is enabled using wireless capabilities resident in handheld personal computing devices." Ex. 1002, code (57).

D. Automatic Transfer of an Executable Questionnaire

1. Petitioner's Arguments

Petitioner argues that the need for synchronization between the handheld device and the server disclosed in Barbosa would have led an ordinarily skilled artisan to understand Barbosa to disclose automatic transfers, not just manual transfers, of data between the two devices. Pet. Supp. Br. 5–6; Pet. Resp. Supp. Br. 4–7. Petitioner asserts that an ordinarily skilled artisan would understand "that during synchronization on a wireless network, data is automatically transferred when a connection is available, and temporarily stored for later transmission when a connection is unavailable." Pet. Supp. Br. 5 (quoting Pet. 43 (citing Ex. 1005 ¶ 177)); Pet. Resp. Br. 5 (quoting Pet. 43 (citing Ex. 1005 ¶ 177)). Petitioner further asserts that "this was a well-known characteristic of network communication protocols that relied on synchronization for transmission and delivery over a wireless network at the time." Pet. Supp. Br. 5 (quoting Pet. 43 (citing Ex. 1005 ¶ 177)); Pet. Resp. Br. 5 (quoting Pet. 43 (citing Ex. 1005 ¶ 177)). Further, Petitioner contends that "[t]he Federal Circuit

recognized this passage from the Petition as explaining Barbosa's disclosure of automatic transfers because of the need for synchronization and how networks apply synchronization when networks are not entirely reliable, which would have been the case around the time of Barbosa's disclosure." Pet. Supp. Br. 5–6 (citing Remand Dec. 17); Pet. Resp. Br. 5 (citing Remand Dec. 17).

Petitioner argues that its Reply relied on Barbosa's disclosure of synchronization to explain why Barbosa discloses automatic transfers of executable questionnaires. Pet. Supp. Br. 6 (citing Pet. Reply 13–15); Pet. Resp. Br. 5–6 (citing Pet. Reply 13–15). Petitioner quotes from its Reply that "Barbosa discloses an interactive environment that allows two-way communications between a remote device and a server, including automatic synchronization and information transfers." Pet. Supp. Br. 6 (quoting Pet. Reply 13 (citing Ex. 1005, ¶¶ 176–177; Ex. 1018 ¶ 24)); Pet. Resp. Br. 6 (quoting Pet. Reply 13 (citing Ex. 1005, ¶¶ 176-177; Ex. 1018 ¶ 24)).

Petitioner further argues that "Barbosa discloses automatically distributing executable templates for entering inventory tracking/ordering information into a remote device, which would allow a 'technician [to] coordinate inventory needs with the company automatically using this method.'" Pet. Supp. Br. 6 (quoting Ex. 1002, 11:29–30) (emphasis omitted). Petitioner further asserts that it "explained why automatic transfers of inventory-tracking questionnaires to be executed on remote devices would be necessary: to ensure 'that no more inventory than is needed is taken to the field.'"

Id. (quoting Pet. Reply 13–14 (quoting Ex. 1002, 11:29–40, citing Ex. 1018 ¶ 25)).

Petitioner argues that "[t]he same principle underlies the other examples of automatic/synchronized transfers of executable questionnaires in Barbosa." Pet. Supp. Br. 6. Petitioner asserts that, in its Reply, it referred to Barbosa's disclosure of synchronizing a worker's handheld device "with a server to receive an updated template containing tasks for the worker at the beginning of every work shift." *Id.* (citing Pet. Reply 14 (quoting Ex. 1002, 10:32–42)). Petitioner further argues that it asserted, in its Reply, that an ordinarily skilled artisan "would appreciate that the disclosed synchronization process for transferring the updated template is an automatic process; such automatic communications ensure workers are provided appropriate 'daily input' so tasks 'are not repeated (wasting time) and that unfinished task[]s are addressed.'" *Id.* at 7 (quoting Pet. Reply 14 (quoting Ex. 1002, 10:59–67; citing Ex. 1018 ¶ 26)).

Petitioner further argues that these examples and others cited by Petitioner in its Reply support Barbosa's disclosure of automated transfers of executable questionnaires "given Barbosa's express teaching regarding the importance of coordinating among remote users in the field.' Pet. Supp. Br. 7 (quoting Pet. Reply 15 (citing Ex. 1002, 11:55-62; Ex. 1018 ¶ 27)).

2. Patent Owner's Arguments

Patent Owner disagrees with Petitioner, arguing:

> The various teachings of Barbosa that Petitioner points to might have supported an argument that it would have been obvious to automatically transfer the industry specific

program—which explains why Petitioner repeatedly couched them in language about what Barbosa "would have led" a person of skill to "understand" or to "appreciate" about the system disclosed by Barbosa. *See* [Pet. Supp. Br.] 5–7 (quoting various portions of Petitioner's original papers). But they do not establish that Barbosa actually discloses automatically transferring the executable questionnaire, which is the sole issue on which the Federal Circuit remanded.

PO Resp. Supp. 3 (emphases omitted).

3. Analysis

We considered all of the arguments the parties have made regarding Barbosa's purported disclosure of the automatic transfer of an executable questionnaire. We, however, are not persuaded that Barbosa has such a disclosure. We address each of the arguments Petitioner set forth separately below.

a. Automatic Transfer of Data

Patent Owner disputes that the need for synchronization between the handheld device and the server disclosed in Barbosa would have led an ordinarily skilled artisan to understand Barbosa to disclose automatic transfers, not just manual transfers, of data between the two devices. PO Resp. Br. 5. For purposes of this analysis, we accept Petitioner's argument that Barbosa's data synchronization requires the automatic transfer of data between its server and handheld device for the data that Barbosa is synchronizing. But nothing cited by Petitioner in Barbosa expressly or implicitly discloses synchronizing, in particular, an executable questionnaire. The mere synchronization of data does not teach the synchronization of an executable questionnaire because Barbosa discloses transferring data that is not necessarily

executable, e.g., templates, which Petitioner has not shown *have to be* executable. Ex. 1002, 7:26–28 ("e.g., task/punch lists"), 7:51–53 ("Web pages"), 10:39–42 ("updated template"); s*ee also* section III.D.3.b below (addressing Petitioner's arguments and Mr. Roman's testimony regarding synchronization with intermittent connections).

> *b. Storage and Automatic Transfer When a Connection is Unavailable*

As mentioned, Petitioner argues that an ordinarily skilled artisan would understand "that during synchronization on a wireless network, data is automatically transferred when a connection is available, and temporarily stored for later transmission when a connection is unavailable." Pet. Supp. Br. 5 (quoting Pet. 43 (citing Ex. 1005 ¶ 177)); Pet. Resp. Br. 5 (quoting Pet. 43 (citing Ex. 1005 ¶ 177)). Petitioner further asserts that this was a well-known characteristic of network communication protocols that relied on synchronization for transmission and delivery over a wireless network at the time. Pet. Supp. Br. 5 (quoting Pet. 43 (citing Ex. 1005 ¶ 177)); Pet. Resp. Br. 5 (quoting Pet. 43 (citing Ex. 1005 ¶ 177)).

We, however, do not find that Barbosa discloses that data (let alone an executable questionnaire) is automatically transferred when a connection is available, and temporarily stored for later transmission when a connection is unavailable, during synchronization on a wireless network. Petitioner cites nothing from Barbosa with such a disclosure. The only evidence that Petitioner relies on to support its argument is conclusory testimony by Mr. Roman, which reads:

> A[n ordinarily skilled artisan] would understand that during synchronization on a wireless network, data is

automatically transferred when a connection is available, and temporarily stored for later transmission when a connection is unavailable, as this was a well-known characteristic of network communication protocols that relied on synchronization for transmission and delivery over a wireless network at the time. Through such synchronization, networked computers coordinate their transmission of data to one another, sending data when appropriate and storing date for later transmission when a connection is established. Such techniques for handling unreliable network connections were necessary at that time for wireless applications given the unreliable nature of existing wireless data connections.

Ex. 1005 ¶ 177 (cited in Pet. Supp. Br. 5, Pet. 43). As can be seen above, Mr. Roman cites nothing to support this testimony. Conclusory testimony by an expert is not persuasive. 37 C.F.R. § 42.65; *see also Skky, Inc. v. MindGeek, s.a.r.l.*, 859 F.3d 1014, 1022 (Fed. Cir. 2017) (the Board is "not required to credit [a party's] expert evidence simply because [the party] offered it"); *TQ Delta, LLC v. CISCO Sys., Inc.*, 942 F.3d 1352, 1359 (Fed. Cir. 2019) ("This court's opinions have repeatedly recognized that conclusory expert testimony is inadequate to support an obviousness determination on substantial evidence review.").

Further, although this testimony (and Petitioner's argument that relies on this testimony) might describe a motivation for an ordinarily skilled artisan to modify Barbosa to add synchronization by storing data during times when there is a lack of connection and automatically transmitting data after a connection is restored, this testimony does not demonstrate that such a feature is taught by Barbosa. Petitioner and Mr. Roman cite nothing from Barbosa demonstrating that Barbosa

teaches storing data for intermittent connections and automatically transmitting such data after connections are restored, other than the mere reference to data synchronization using wireless capabilities. And we do not interpret the latter to require storing data for intermittent connections and automatically transmitting such data after connections are restored. Instead, based on the trial record, data synchronization simply means synchronizing data via any mechanism of synchronizing data.

The Petition addresses the concept of synchronizing data by storing data for intermittent connections and automatically transmitting such data after connections are restored when addressing the claim language of "at least one loosely networked computer," which is also recited in limitation 7(b). Pet. 43. The Petition argues that, to the extent we did not find that Barbosa discloses such a feature, Fall discloses storing data for intermittent connections and automatically transmitting such data after connections are restored. *Id.* at 44. We agree with Petitioner that Falls expressly discloses storing data for intermittent connections and automatically transmitting such data after connections are restored. Ex. 1017, 3:16–37. Barbosa, however, does not, and the issue on remand is whether Barbosa discloses the automatic transfer of an executable questionnaire, not whether such a transfer is taught or suggested by the combination of Barbosa and Falls. Remand Dec. 16.

As mentioned, Petitioner further argues that "[t]he Federal Circuit recognized [a] passage from the Petition as explaining Barbosa's disclosure of automatic transfers because of the need for

synchronization and how networks apply synchronization when networks are not entirely reliable, which would have been the case around the time of Barbosa's disclosure." Pet. Supp. Br. 5–6 (citing Remand Dec. 17); Pet. Resp. Br. 5 (citing Remand Dec. 17). We agree with Petitioner that the Federal Circuit recognized that the Petition presented that argument regarding data synchronization and instructed us to consider it. Remand Dec. 17. To the extent, however, Petitioner is suggesting that the Federal Circuit found that Barbosa discloses automatic transfers of an executable questionnaire because of the need of synchronization and unreliable networks, we do not read the Federal Circuit's remand decision as having such a finding. *Id.*

c. Additional Arguments Regarding Synchronization

As mentioned, Petitioner argues that, in its Reply, it continued to rely on Barbosa's disclosure of synchronization to explain why Barbosa discloses automatic transfers of executable questionnaires. Pet. Supp. Br. 6 (citing Pet. Reply 13–15); Pet. Resp. Br. 5–6 (citing Pet. Reply 13–15). Petitioner quotes from its Reply that "Barbosa discloses an interactive environment that allows two-way communications between a remote device and a server, including automatic synchronization and information transfers." Pet. Supp. Br. 6 (citing Pet. Reply 13 (citing Ex. 1005 ¶¶ 176–177; Ex. 1018 ¶ 24)); Pet. Resp. Br. 6 (citing Pet. Reply 13 (citing Ex. 1005 ¶¶ 176–177; Ex. 1018 ¶ 24)).

We are not persuaded by this argument in Petitioner's Reply. The mere fact that Barbosa may disclose some automatic

synchronization and information transfers does not mean that it
discloses the automatic transfer of an executable questionnaire.

d. Executable Templates

As mentioned, Petitioner argues that "Barbosa discloses
automatically distributing executable templates for entering inventory
tracking/ordering information into a remote device, which would allow
a 'technician [to] coordinate inventory needs with the company
automatically using this method.'" Pet. Supp. Br. 6 (quoting Ex. 1002,
11:29–30) (emphasis omitted); *see also* Pet. Resp. Br. 6. We address
this argument in two parts: (i) whether Barbosa discloses templates and
(ii) whether Barbosa discloses templates that are executable.

i. Templates

Patent Owner does not dispute that Barbosa discloses templates,
and we find that Barbosa discloses templates. In particular, Barbosa
discloses:

> At least one device 10/10' can be remotely linked to a
> management system that may provide *templates* (e.g.,
> task/punch lists) and/or programs to a group of users. A
> *template* may be stored locally on a user's personal digital
> assistant (PDA). Job *templates* and/or programs may also
> be centrally stored within one or more databases 61/59
> accessible to management system or the directly by the []
> handheld device 10/10'. Accordingly, users may access a
> central *template* through a private or public computer
> networks in a conventional manner via wireline or
> wireless communications. By maintaining a *template* in a
> central location, such as a management system, updates
> can be made to the *template* as procedures, best practices,
> and/or laws are added, amended or deleted.

Ex. 1002, 7:26–40 (emphases added).

ii. Executable Templates

Patent Owner asserts that Petitioner did not argue that Barbosa's templates were executable in prior briefing during trial and thus we should disregard this argument. PO Resp. Br. 2, 6. Patent Owner also disputes that Barbosa discloses templates that are executable. *Id*. at 6.

Petitioner appears to have raised the argument that Barbosa discloses executable templates for the first time in supplemental briefing on remand. Pet. Supp. Br. 6. Petitioner provides no references to any prior briefing where it made such an argument. *Id.* Our order permitting supplemental briefing prohibited the parties from presenting new arguments in the supplemental briefing. Paper 34. Nevertheless, we do not need to reach the issue of whether to disregard this argument because, even if it is considered, we find it unpersuasive.
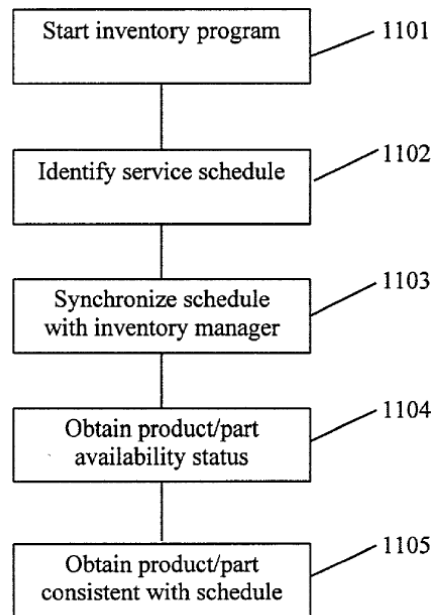
To support its argument that Barbosa discloses executable templates, Petitioner cites to column 11, lines 29–30 in Barbosa, which states: "Referring to FIG. 11, a flow chart outlining a method relating to inventory tracking/ordering is described." Ex. 1002, 11:29–30 (cited by Pet. Supp. Br. 6). Although the cited text does not describe templates that are executable, Petitioner appears to have intended to refer to lines 38–40 of column 11 because Petitioner quotes the sentence at those lines. Pet. Supp. Br. 6. The full version of that sentence reads: "The technician may coordinate inventory needs with the company automatically using this method so that no more inventory than is needed is taken to the field." Ex. 1002, 11:38–40.

That sentence also does not disclose executable templates. The complete paragraph with the sentence Petitioner cites reads as follows:

> Referring to FIG. 11, a flow chart outlining a method relating to inventory tracking/ordering is described. Field technicians may utilize [] handheld devices to ensure that the proper inventory will be provided prior to embarking on a daily service schedule. The assessor may start an inventory program 1101, identify a service schedule 1102, and synchronize the schedule 1103 with an inventory manager. The inventory manager assesses the schedule requirements and provides the technician with an inventory availability status 1104. The technician may coordinate inventory needs with the company automatically using this method so that no more inventory than is needed is taken to the field.

Ex. 1002, 11:29–40. This disclosure also does not describe templates that are executable. It merely describes synchronizing schedule 1103 and the provision of inventory availability status 1104, without any disclosure that the schedule 1103 or inventory availability status 1104 is executable.

Figure 11 of Barbosa, reproduced below, which is referenced in the above paragraph, also does not disclose that Barbosa's templates are executable:

FIG. 11

Ex. 1002, Fig. 11. Figure 11, above, "illustrates a flow chart outlining a method relating to inventory tracking/ordering." *Id.* at 5:3–4. As shown, Figure 11 does not disclose the use of executable templates.

Petitioner cites no other evidence (neither testimonial nor nontestimonial evidence) to support its argument that Barbosa discloses templates that are executable. Pet. Supp. Br. 6; Ex. 1005 ¶¶ 176–177; Ex. 1018 ¶¶ 23–27. Further, the passage from Barbosa discussed in Section III.D.3.d.i above also does not teach that any of Barbosa's templates are executable. That passage discloses that the "management system that may provide templates (e.g., task/punch lists) and/or programs to a group of users." Ex. 1002, 7:26–40. But nothing in this passage teaches that the templates, examples of which are task and punch lists, are executable. *Id.*

Given the lack of evidence supporting Petitioner's argument that Barbosa discloses executable templates, we find that Barbosa does not disclose templates that are executable.

e. Alleged Necessity of Automatic Transfers of Executable Questionnaires

As mentioned, Petitioner argues that it "explained why automatic transfers of inventory-tracking questionnaires to be executed on remote devices would be necessary: to ensure 'that no more inventory than is needed is taken to the field.'" Pet. Supp. Br. 6 (quoting Pet. Reply 13–14 (quoting Ex. 1002, 11:29–40; citing Ex. 1018 ¶ 25)). We are not persuaded by this argument.

Barbosa discloses a program that resides on its handheld device can interact with templates. Ex. 1002, 12:14–17. Petitioner does not provide persuasive evidence, explanation, or supporting testimony from Mr. Roman, however, that Barbosa would need to automatically transfer an executable questionnaire to ensure no more inventory than is needed is taken to the field. For example, Petitioner has not persuasively explained why the automatic transfer of a non-executable template from the server to the handheld device could not be used by the resident executable program to ensure that no more inventory than is needed is taken to the field. Pet. Reply 13–14.

f. Other Alleged Disclosures of Automatic Transfers of Executable Questionnaires

As mentioned, Petitioner asserts that, in its Reply, it referred to Barbosa's disclosure of synchronizing a worker's handheld device "with a server to receive an updated template containing tasks for the

worker at the beginning of every work shift." Pet. Supp. Br. 6–7
(citing Pet. Reply 14 (quoting Ex. 1002, 10:32–42)).

Although we agree that Petitioner made that argument in its
Reply, we do not find that argument persuasive. Barbosa discloses the
transfer of an updated template: "a program managed by a central
computer/server may track every aspect of a project and provide
worker with tasks via a *template*." Ex. 1002, 10:36–39 (emphasis
added). Barbosa further discloses that "[a]worker's handheld device
(or device assigned to the worker for the shift) may be synchronized
901 with a server to receive an *updated template* containing tasks for
the worker at the beginning of every work shift." *Id.* at 10:39–42
(emphasis added). Nothing from those disclosures teaches that
transferred template is executable. *See also* Section III.D.3.d. above.
Thus, we are not persuaded that the cited disclosures teach the
automatic transfer of an *executable questionnaire*.

Petitioner also cites Barbosa's disclosure that a template may
operate in combination with programs resident in the handheld
computer or may be accompanied by a computer program transmitted
from a server, for example, in the form of a JAVA applet. Pet. Resp.
Br. 3 (citing Pet. Reply 2; Ex. 1002, 12:14–18, Pet. 23). Petitioner
appears to suggest that this disclosure teaches that an updated template
that is transferred in Barbosa at the beginning of a work shift would
necessarily be accompanied by an executable program such as JAVA
applet. *Id.* at 3–4. We disagree.

Barbosa merely discloses that a computer program such as a
JAVA applet *may* accompany the provision of a template. Ex. 1002,

12:14–18. Barbosa, however, does not disclose that a computer
program *accompanies* an *updated* template, and Petitioner provides no
reason why an update to a template would require or teach an
accompanying new program, when a program on the handheld device
used for the template being updated would be available. Pet. Resp.
Br. 3; Pet. Reply 2, 13–15; Pet. 23, 43–44. And Mr. Roman provides
no such reason. Ex. 1005 ¶¶ 176–181; Ex. 1018 ¶¶ 23–27. Further,
when Barbosa discloses the transfer of an updated template, it
describes the transfer of the updated template, not the transfer of an
accompanying program. Ex. 1002, 10:39–42. In addition, when
describing the advantages of transferring the updated template,
Barbosa describes the benefits of using a *synchronized project task list*,
not a synchronized executable program:

> Project efficiency would increase with the present method.
> Workers *utilizing a synchronized project task list* to carry
> out their daily input into a project can insure that []
> completed task[s] are not repeated (wasting time) and that
> unfinished task[s] are addressed by a subsequent project
> member, possibly avoiding project delays and/or damages
> (e.g., monetary loss based on inefficiency).

Ex. 1002, 10:60–67 (emphasis added).

Petitioner additionally argues that an ordinarily skilled artisan
"would appreciate that the disclosed synchronization process for
transferring the updated template is an automatic process; such
automatic communications ensure workers are provided appropriate
'daily input' so tasks 'are not repeated (wasting time) and that
unfinished task[s] are addressed." Pet. Supp. Br. 7 (quoting Pet.
Reply 14 (quoting Ex. 1002, 10:59–67; citing Ex. 1018 ¶ 26)). Even if

we accept this argument as true, however, Barbosa does not disclose the transfer of an *executable template*. Thus, it does not disclose the automatic transfer of an *executable template*, and its disclosed transfer of an updated template is not the automatic transfer of an *executable* questionnaire.

Petitioner also argues that the examples that it cited in its supplemental papers and prior briefing support Barbosa's disclosure of automated transfers of executable questionnaires given Barbosa's express teaching regarding the importance of coordinating among remote users in the field. Pet. Supp. Br. 7 (citing Pet. Reply 15 (citing Ex. 1002, 11:55–62, Ex. 1018 ¶ 27)). We are not persuaded by this argument. Barbosa teaches certain coordination for remote users, but it does not teach automatically transferring an executable questionnaire for that purpose or any other purpose. *See, e.g.*, Ex. 1002, 10:32–67.

E. Summary

The issue before us on remand is whether, to an ordinarily skilled artisan, Barbosa discloses limitation 7(b), which requires the automatic transfer of an executable questionnaire. Petitioner notes that Barbosa teaches an executable questionnaire, the transfer of an executable questionnaire, data synchronization, and the provision of updated templates at the beginning of shifts. Whether these disclosures could indicate that the automatic transfer of executable questionnaires are suggested by Barbosa alone, or in combination with Fall's description of storing data for intermittent connections and automatically transmitting such data after connections are restored, is not the issue before us. *See* Ex. 1017, 3:16–37; Remand Dec. 15–16.

The issue before us is whether Barbosa itself teaches or discloses the automatic transfer of an executable questionnaire, and none of the disclosures cited by Petitioner, alone or combined, establish the automatic transfer of an executable questionnaire. Thus, Petitioner has not proven that Barbosa discloses the automatic transfer of an executable questionnaire. Accordingly, Petitioner has not proven that Barbosa discloses limitation 7(b). Consequently, Petitioner has not proven, by a preponderance of the evidence, that claim 7 would have been obvious over Barbosa and Falls.

IV. BARBOSA AND LIMITATION 7(f)

The Federal Circuit instructed us to address limitation (f) of claim 7 with respect to Barbosa and Falls if we change our earlier decision regarding limitation 7(b). Remand Dec. 21 n. 4. As set forth above, we did not change our earlier decision regarding limitation 7(b). Nevertheless, for completeness, we address limitation 7(f) and Barbosa and Falls in this Decision. Limitation 7(f) recites: "(f) making available via the Internet any response transferred to said central computer in step (e)." Ex. 1001, 14:66–67.

A. Parties' Arguments and Our Institution Decision

The Petition argues that Barbosa discloses limitation 7(f). Referring to limitation 7(f), the Petition states:

> Barbosa discloses this limitation. *See* VII.C.ii.A. Further, Barbosa discloses making the responses available via the Internet. Ex. 1002, 12:55–57, 7:12–22, 7:41–63, F[ig]s. 6 and 7 (steps 709, 710); Ex. 1005 ¶ 185.

Pet. 45.

In the Institution Decision, we noted that the Petition "does not explain how the portions of Barbosa that it cites as disclosing making available responses on the Internet actually disclose making responses transferred to the central computer in step (e) available via the Internet." Inst. Dec. 44. The Patent Owner Response merely cites to our preliminary findings in our Institution Decision regarding limitation 7(f). PO Resp. 23.

Petitioner's Reply argues that Barbosa discloses and renders obvious the claimed use of the Internet. Pet. Reply 15. There, Petitioner asserts that "Barbosa discloses an environment in which remote com[p]uters communicate with enterprise severs via the Internet." *Id.* (citing Ex. 1002, 7:12–22, 7:37–56, 12:55–58). Petitioner further argues that "[u]sing the Internet for such communications between centralized servers and remote devices was extremely common by Barbosa's filing date." *Id.* at 16 (citing Ex. 1018 ¶¶ 29, 30). Further, Petitioner asserts that "[u]sing the disclosed Internet/Web-based environment, Barbosa teaches various workflows in which responses to a template of questions are transmitted to a central server, and then those responses are distributed by the central server to other remote devices over a network, e.g., via the Internet." *Id.* (citing Ex. 1002, 10:36–55, 11:52–62, 12:8–18, 7:12–22; Ex. 1018 ¶ 31).

Petitioner asserts that "[t]his distribution of responses among different users allows for efficiencies in data collection and coordination of efforts." Pet. Reply 16 (citing Ex. 1002, 10:60–67; 11:58–62; Ex. 1018 ¶ 31). Petitioner continues: "[t]hrough Barbosa's

disclosure of a web/Internet-based architecture, [an ordinarily skilled artisan] would understand the disclosure of Barbosa encompasses a central computer using the Internet to make available responses received from one remote device in the form of updated and synchronized information provided to the other handheld remote devices." *Id.* (citing Ex. 1018 ¶ 31). Petitioner further argues that "[i]t would also have been obvious to [an ordinarily skilled artisan] at the time of the alleged invention to use the Internet—which even at that time was the largest and most ubiquitous network in the world—to send responses from other users, e.g., in multi-user environments." *Id.* at 16–17 (citing Ex. 1018 ¶ 32). According to Petitioner, "[t]his obvious use of the Internet to disseminate a user's responses would facilitate the real-time coordination of resources, as discussed throughout Barbosa." *Id.* at 17 (citing Ex. 1002, code (57), 11:55–62; Ex. 1018 ¶ 32).

In its supplemental briefing, Petitioner reiterates many of the arguments from its Reply. Pet. Supp. Br. 7–10; Pet. Resp. Br. 7–8. Petitioner further argues that our Institution Decision included excerpts from Barbosa that are replete with references to the Internet, which would have allowed an ordinarily skilled artisan to understand that the network over which Barbosa's handheld and server devices would communicate would be the Internet. Pet. Supp. Br. 7–8. Petitioner argues that portions of Barbosa discuss using the Internet to communicate between client and remote devices, making network resources available over the Internet, and connecting remote computers via Internet Service Providers. *Id.* at 8.

Petitioner also argues that an ordinarily skilled artisan would have known of the Internet and how it could be used to communicate and distribute resources to and from centralized servers and distributed handheld devices. Pet. Supp. Br. 8. Petitioner also argues that Barbosa emphasizes "the need to distribute responses among different users of the system to promote efficient data collection and coordination of efforts." *Id.* Petitioner continues: "[d]istribution of resources, coordination of efforts, and synchronization of data among the various parts of the system all support the idea of using an ubiquitous, far reaching, and generally reliable network, like the Internet." *Id.* at 8–9.

Petitioner further argues that:

Barbosa discusses Figure 6 at columns 7 and 8 of its specification, and in pertinent part, it discloses a user may use a hand held device to "access remote resources (e.g., information, data, assistance) via wireless communication systems 51 and networks 55. Information may be obtained from a server 58 located at the user's enterprise, or from other network 55 resources available to the user (e.g., *Web pages provided/obtained over the Internet*)." Ex. 1002, 7:49–54 (emphasis added). The "server 58" is also connected to the various resources available to the user's handheld device, including "network 55," which can make resources available "over the Internet." *See id.*

Pet. Supp. Br. 9 (emphasis original).

In addition, Petitioner argues:

For example, as discussed in the Reply, a worker uses a handheld device to input responses to a template reporting the "status" of tasks, which are automatically transferred to ("synchronized" at "end of the workday") the central computer "as described" in Barbosa (which includes transfer over the Internet), and such received "status"

("[u]nfinished business recorded by" the responses) is then distributed to other workers (i.e., made available) in a new template. Ex. 1002, 10:36–55. As a second example, investigators respond to a "checklist" by "entering data" that is transmitted to the server; the collected "data" (responses) are then processed for "distribution to plural case workers" (i.e., made available). *Id.*, 11:52–62. As noted above, Barbosa describes transmitting over the Internet these communications to and from the handheld devices (including templates and responses to templates).

Pet. Supp. Br. 10.

Petitioner also argues that Patent Owner has failed to advance any substantive arguments or evidence regarding limitation 7(f). Pet. Resp. Br. 7. Petitioner further states: "[t]here is no evidence in the record supporting Patent Owner's challenge for this claim limitation." *Id.* at 8.

In its supplemental briefing, Patent Owner asserts: "[o]n remand, Petitioner argues that the portions of Barbosa that it cited in its original petition 'are replete with references to the Internet, *which would have allowed [an ordinarily skilled artisan] to understand* that the network over which Barbosa's handheld and server devices *would* communicate *would be* the Internet.'" PO Resp. Br. 8 (quoting Pet. Supp. Br. 8 (emphases added by Patent Owner)). According to Patent Owner, this "at best supports an argument that it would have been obvious in view of the teachings of Barbosa to make the responses available via the Internet—not that Barbosa actually discloses making them available over the Internet." *Id.* Further, Patent Owner argues that Petitioner's original theory for limitation 7(f) was that Barbosa actually discloses the step, not that the step would have been obvious

in view of Barbosa. *Id.* at 9. Patent Owner asserts that "just as it was too late for Petitioner to switch from its actual-disclosure theory to a makes-obvious theory for [limitation 7(b)], it is too late for Petitioner to make that swap for [limitation 7(f)]." *Id.*

B. Analysis

We find that Petitioner has not proven, by a preponderance of evidence, that Barbosa discloses limitation 7(f) and thus, for that reason, has not proven that claim 7 would have been obvious over Barbosa and Falls.

First, in the Petition, Petitioner only argued that Barbosa disclosed limitation 7(f) and did not raise the issue of whether Barbosa suggests or renders obvious limitation 7(f). In particular, as indicated above, the Petition made the following arguments regarding limitation 7(f):

> Barbosa *discloses* this limitation. *See* VII.C.ii.A. Further,
> Barbosa *discloses* making the responses available via the
> Internet. Ex. 1002, 12:55–57, 7:12–22, 7:41–63, FIGs. 6
> and 7 (steps 709, 710); Ex. 1005 ¶ 185.

Pet. 45 (emphases added).

It was too late for Petitioner to raise the issue of whether Barbosa suggests or renders obvious limitation 7(f) for the first time in its Reply. *See Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369–70 (Fed. Cir. 2016); 37 C.F.R. § 42.23(b); *see also* Remand Dec. 16.

Second, for the issue Petitioner timely raised—whether Barbosa discloses limitation 7(f), we consider all of the arguments and evidence Petitioner presented in all of its briefing (i.e., its Petition, Reply, and

supplemental briefing). Remand Dec. 16. After considering those arguments and evidence, and Patent Owner's arguments, we determine that Petitioner has not proven, by a preponderance of the evidence, that Barbosa has such a disclosure.

As mentioned, limitation 7(f) reads: "making available via the Internet any response transferred to said central computer in step (e)." Ex. 1001, 14:66–67. The responses transferred in step (e) are "any responses so collected in real time." *Id.* at 14:63–65. The so-collected responses are specified by step (d) to be the responses that result from, "while said transferred questionnaire is executing, using said GPS to automatically provide said location identifying information as a response to said executing questionnaire." *Id.* at 14:59–62. Thus, limitation 7(f) requires more than merely making information available over the Internet: it requires, making available over the Internet, any responses that are (i) collected in real time while the transferred questionnaire is executing are (ii) transferred to the central computer.

Barbosa has disclosures that collectively might suggest or render obvious this limitation: Barbosa discloses web browsers for requesting services on the Internet (Ex. 1002, 7:12–19), "client requests for files from . . . servers in other computers on the Internet" (*id.* at 7:19–22), providing/obtaining web pages over the Internet (*id.* at 7:51–54), providing links to third party information on the Internet (*id.* at 9:45–49), connecting to the Internet through an internet service provider (*id.* at 12:54–58), and accessing a third party data base over the Internet (*id.* at 14:47–48). But none of these disclosures nor any other disclosures cited by Petitioner, alone or combined, teach making

available via the Internet any response transferred to said central computer that is collected in real time while the transferred questionnaire is executing. Pet. 45; Pet. Reply 15–17; Pet. Supp. Br. 7–10; Pet. Supp. Br. 7–8. And Petitioner has not persuasively explained how the disclosures in Barbosa teach, rather than merely suggest, making available via the Internet any response transferred to said central computer that is collected in real time while the transferred questionnaire is executing. Pet. 45; Pet. Reply 15–17; Pet. Supp. Br. 7–10; Pet. Supp. Br. 7–8.

Thus, we find that Petitioner has not proven, by a preponderance of the evidence, that Barbosa discloses limitation 7(f). Accordingly, for this additional reason, we determine that Petitioner has not proven, by a preponderance of the evidence, that claim 7 would have been obvious over Barbosa and Falls.

V. CONCLUSION

On remand, we determine that Petitioner has not proven, by a preponderance of the evidence, that claim 7 would have been obvious over Barbosa and Falls, as set forth in the table below:

Claim	35 U.S.C. §	Reference(s)	Claims Shown Unpatentable	Claims Not Shown Unpatentable
7	103(a)	Barbosa, Falls		7

VI. ORDER

Thus, it is:

ORDERED that claim 7 has not been shown, by a preponderance of the evidence, to be unpatentable; and

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

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