

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PUBLISHING TECHNOLOGIES, LLC
_____ ,

Petitioner or Appellant,

v. PETITION FOR REVIEW

RPX CORPORATION
_____ ,

Respondent or Appellee.

PUBLISHING TECHNOLOGIES, LLC (name all parties* bringing the petition or appeal)
hereby petition/appeal the court for review of the IPR2018-01132 for US Patent 7,908,342 B2 (describe
the order or decision and include decision number) of the USPTO Patent Trial and Appeal Board
(name the agency, board, office or bureau) entered on Dec 2, 2019 (date).

The order or decision was received on Dec 2, 2019 (date).

Date: Jan 30, 2020

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing NOTICE OF APPEAL TO THE FEDERAL CIRCUIT was served via email on January 29, 2020, on the attorneys for the Petitioners:

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Date: January 29, 2020

/Jeremy S. Pitcock/
Jeremy S. Pitcock

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RPX CORPORATION,
Petitioner,

v.

PUBLISHING TECHNOLOGIES, LLC,
Patent Owner.

IPR2018-01132
Patent 7,908,342 B2

Before DENISE M. POTHIER, JESSICA C. KAISER, and
KAMRAN JIVANI, *Administrative Patent Judges*.

JIVANI, *Administrative Patent Judge*.

JUDGMENT

Final Written Decision

Determining All Challenged Claims Unpatentable

35 U.S.C. § 318(a)

ORDER

Granting Petitioner's and Patent Owner's Motions to Seal

Denying Patent Owner's Motion to Exclude

37 C.F.R. §§ 42.5, 42.14, 42.54(a), 42.64

I. INTRODUCTION AND BACKGROUND

Petitioner RPX Corporation requested an *inter partes* review of claims 1–4, 6–8, and 12–15 of U.S. Patent No. 7,908,342 B2 (Ex. 1001, “the ’342 patent”). Paper 2 (“Petition” or “Pet.”). Patent Owner Publishing Technologies, LLC filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). With prior authorization (Paper 8), Petitioner filed a Reply to Patent Owner’s Preliminary Response with respect to Petitioner’s disclosure of the real party-in-interest and the application of the time bar provision of 35 U.S.C. § 315(b). Paper 9. After considering the parties’ arguments and evidence of record, we instituted this review of all challenged claims on all grounds set forth in the Petition. Paper 10 (“Inst. Dec.”).

During trial, the parties engaged in discovery related to Petitioner’s real party-in-interest disclosure. *See* Papers 13–15. The parties agreed to bifurcate Patent Owner’s Response in this proceeding in light of this discovery practice. Paper 15. Patent Owner, therefore, filed a Response (Paper 16, “PO Resp.”) addressing the merits of the Petition and subsequently filed a Supplemental Response (Paper 18, “Supp. Resp.”) addressing the real party-in-interest disclosure. Petitioner filed a single Reply addressing both the Response and Supplemental Response. Paper 24 (“Reply”). Patent Owner filed a Sur-Reply. Paper 26 (“Sur-Reply”).

In addition to the foregoing filings, Petitioner and Patent Owner each moved to seal certain papers and information of record in this proceeding. Papers 17, 23. Patent Owner also moved to exclude certain testimony of record. Paper 28. Petitioner filed an opposition to the motion (Paper 33), and Patent Owner filed a reply in support of its motion. Paper 34.

Both parties requested an oral hearing, and a hearing was held on September 4, 2019. Papers 32, 35. A transcript of the oral hearing has been entered into the record. Paper 42 (“Tr.”).

A. Related Matters

According to Petitioner, the ’342 patent is not involved in any “active litigation.” Pet. 61. Patent Owner asserts that the ’342 patent has been asserted in or is at issue in approximately ten actions for patent infringement or related appeals. Paper 4, 2–3.

Regarding proceedings before the Patent and Trademark Office, Petitioner states, “[a] patent application claiming the benefit of an earlier filing date through the ’342 patent was filed on February 6, 2018 and was given application number 15/889,781.” Pet. 61. Additionally, the ’342 patent is the subject of IPR2018-01131, addressing claims 1, 4, 5, 9–11, and 16–20. IPR2018-01132, Paper 2, 61.

B. Real Party-in-Interest

Petitioner identifies only itself, RPX Corporation, as “the sole real party-in-interest in this proceeding.” Pet. 61. Patent Owner contends that Petitioner failed to identify a number of real parties-in-interest or privies. Supp. Resp. 5, n. 1. We address the parties’ dispute on this issue below. *See infra* Section III.

Patent Owner identifies Publishing Technologies, LLC and Engagelogic Corporation as real parties-in-interest. Paper 4, 2. Patent Owner represents that “Publishing Technologies, LLC is a wholly owned subsidiary of Engagelogic Corporation.” *Id.*

C. The ’342 Patent

The ’342 patent is titled “Method, Apparatus and Sytem for Management of Information Content for Enhanced Accessibility Over

Wireless Communication Networks.” Ex. 1001, 1, code (54). The ’342 patent is a continuation of U.S. Patent No. 7,599,983. *Id.* at 1, code (63). The ’342 patent discloses “techniques for efficient generation and management of mobile sites that are advantageously integrated with wireless networking functionality of a wireless network in a network-based communication system.” *Id.* at 1:66–2:3. One aspect of the invention provides a content management web site (“CMS”) accessible to a system user in a network-based communication system. *Id.* at 2:7–9. The user utilizes the CMS to designate at least one data source that is external to the CMS. *Id.* Furthermore, “[a] mobile web site is generated that is accessible independently of the content management web site via one or more mobile devices over a wireless network of the communication system, with the mobile web site being configured to receive data automatically from the external data source designated by the user at the content management web site.” *Id.* at 2:9–15.

D. Illustrative Claim

Petitioner challenges claims 1–4, 6–8, and 12–15 of the ’342 patent, of which claim 1 is the sole independent claim. Claim 1 is illustrative of the claimed subject matter and is reproduced below:

1. A method for managing information content in a network-based communication system, the method comprising the steps of:

providing a content management web site identified by a first uniform resource locator and accessible to a user of the communication system, the content management web site being configured to permit the user to designate at least one data source that is external to the content management web site; and

generating a mobile web site identified by a second uniform resource locator different than the first uniform resource

locator, the mobile web site being accessible independently of the content management web site via one or more mobile devices, the mobile web site being configured to receive data automatically from the external data source designated by the user at the content management web site.

Ex. 1001, 18:26–42.

E. Prior Art and Asserted Grounds

Petitioner asserts the following grounds of unpatentability:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1	102(e)	Underwood ¹
1, 12, 13	103(a)	Underwood
3, 6, 8	103(a)	Underwood, Sahota ²
2	103(a)	Underwood, Sahota, RSS Paper ³
7	103(a)	Underwood, Appling ⁴
4, 14, 15	103(a)	Underwood, Phelan ⁵
1, 8, 12, 13	103(a)	Austin ⁶
1, 8, 12–14	103(a)	Austin, Chang ⁷
3, 6	103(a)	Austin, Chang, Sahota
2	103(a)	Austin, Chang, Sahota, RSS Paper
7	103(a)	Austin, Chang, Morris ⁸
15	103(a)	Austin, Chang, Phelan

¹ U.S. Patent No. 7,668,913 B1; Feb. 23, 2010 (Ex. 1006) (“Underwood”).

² U.S. Patent Application Publication No. 2001/0056460; Dec 27, 2001 (Ex. 1011) (“Sahota”).

³ Dieter Fensel, et al., The semantic Web and its languages, IEEE Intelligent Systems, pp.67-73 (Nov./Dec. 2000) (“RSS Paper”)

⁴ U.S. Patent No. 7,640,512 B1; Dec 29, 2009 (Ex. 1013) (“Appling”).

⁵ U.S. Patent No. 6,240,360 B1; May 29, 2001 (Ex. 1015) (“Phelan”).

⁶ International Publication No. WO 02/03243 A1; Jan. 10, 2002 (Ex. 1004) (“Austin”).

⁷ U.S. Patent No. 7,590,681 B1; Sept. 15, 2009 (Ex. 1005) (“Chang”).

⁸ U.S. Patent No. 6,112,206; Aug. 29, 2000 (Ex. 1012) (“Morris”).

F. Testimony

Petitioner supports its challenges with a declaration of Mark Crovella, Ph.D. Ex. 1002 (“Crovella Declaration”). Dr. Crovella testified by deposition on January 29, 2019, and a transcript of his testimony has been entered into evidence. Ex. 2016. With respect to its real party-in-interest disclosure, Petitioner proffers two declarations of Mr. William W. Chuang. Exs. 1033 (“First Chuang Declaration”), 2018 (“Second Chuang Declaration”).

II. CONSTITUTIONAL CHALLENGES

Patent Owner requests that we find *inter partes* review of the ’342 patent to be unconstitutional because this review constitutes (1) a taking prohibited by the Fifth Amendment and (2) an application of an *ex post facto* law impermissible under Article I. PO Resp. 9, 33–35. Patent Owner’s arguments here are identical to those advanced in IPR2018-01131, and therefore, we adopt from our Final Written Decision in that proceeding our analysis, declining Patent Owner’s request to find *inter partes* review of the ’342 patent to be unconstitutional. IPR2018-01131, Paper 43, 6–7.

III. TIME BAR OF 35 U.S.C. § 315(B)

Patent Owner contends the Petition is time barred under 35 U.S.C. § 315(b). *See generally* Supp. Resp. Patent Owner’s arguments here are identical to those advanced in IPR2018-01131, and therefore, we adopt from our Final Written Decision in that proceeding our analysis determining the Petition is not subject to the time bar provision of 35 U.S.C. § 315(b). IPR2018-01131, Paper 43, 7–18.

IV. CLAIM CONSTRUCTION

A. *Construction of Disputed Claim Limitations*

Petitioner seeks our construction of the limitation “the mobile web site being accessible independently of the content management web site,” recited in independent claim 1. Pet. 6. Petitioner contends, “all other terms should have their plain and ordinary meaning as understood by a [person of ordinary skill in the art].” *Id.*

Patent Owner seeks our construction of the limitations “mobile web site,” “content management web site,” and “configured to receive data automatically from the external data source designated by the user at the content management website.” PO Resp. 11–14. Patent Owner asks us to construe each of these limitations because each relates to its arguments in opposition to Petitioner’s theories of unpatentability. *See, e.g., id.* at 14–15 (asserting that “[e]ven if the prior art were construed as a ‘content management web site,’ there is no teaching in the prior art cited that the ‘mobile website’ [sic] is ‘programmed to receive data without further action required by the user from the same sources specified by the user in the preceding step’”).

The parties’ arguments here are identical to those advanced in IPR2018-01131, and therefore, we adopt from our Final Written Decision in that proceeding our analysis construing the disputed claim terms as follows:

- “mobile web site” as a web site designed to be accessed by a mobile device;
- content management web site” as a website that allows a user without programming to create and manage content at a mobile website;

- “the mobile web site being accessible independently of the content management web site” as the mobile website is capable of being reached without visiting the content management website; and
- “configured to receive data automatically from the external data source designated by the user at the content management website” as programmed to receive data without further action required by the user from the same sources specified by the user in the preceding step.

IPR2018-01131, Paper 43, 20–22. We further determine in light of our analysis of Petitioner’s asserted unpatentability grounds (*see infra* Section V) that construing additional limitations in the claims is not necessary, and, therefore, we do not construe any additional claim terms. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (explaining that only claim terms in controversy need to be construed, and only to the extent necessary to resolve the controversy).

B. Alleged Administrative Procedures Act Violation

As discussed above, the Petition in this proceeding proposes a construction of the limitation “the mobile web site being accessible independently of the content management web site,” recited in independent claim 1, and further states that “all other terms should have their plain and ordinary meaning as understood by a [person of ordinary skill in the art].” Pet. 6. Patent Owner contends that the Petition is deficient because “[t]he petition does not, nor does the Board’s Institution decision, explain how these terms should be construed and applied.” PO Resp. 15; *see also* Sur-Reply 13 (arguing that Petitioner’s alleged failure to satisfy 37 C.F.R. § 42.104(b) “should have barred institution of trial in the matter”). According to Patent Owner, “[f]ailing to require the Petitioner to provide claim constructions and simply stating adoption of the ‘plain and ordinary

meaning’ for all but one of the terms in the ‘342 patent, is improper.” *Id.* at 16. Patent Owner continues, “[r]equiring the Patent Owner to make these arguments and decisions in the dark about the Board’s view of the constructions of the claims in the case is a fundamental violation of the APA.” *Id.* at 17. Patent Owner elaborates:

Here, Patent Owner has no notice at all of the Board’s claim construction positions on various critical claims construction issues. Simply informing Patent Owner of those decisions after the hearing does not comply with the APA, and gives the Patent Owner no meaningful chance to amend the claims in order to amend them for patentability, in violation of the process set forth for IPRs by Congress.

Id. at 18.

Patent Owner’s arguments here are identical to those advanced in IPR2018-01131, and therefore, we adopt from our Final Written Decision in that proceeding our analysis rejecting Patent Owner’s arguments alleging a violation of the Administrative Procedures Act. IPR2018-01131, Paper 43, 23–27.

V. ANALYSIS OF ASSERTED GROUNDS

A. *Principles of Law*

Petitioner bears the burden of proving unpatentability of the challenged claims, and the burden of persuasion never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). To prevail in its challenges, Petitioner must demonstrate by a preponderance of the evidence that the challenged claims are unpatentable. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d).

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. *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) when in evidence, objective evidence of non-obviousness such as commercial success, long-felt but unsolved needs, failure of others, and unexpected results. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966) (“the Graham factors”). The obviousness inquiry further requires an analysis of “whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR*, 550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (requiring “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”)).

Neither party presents evidence on the fourth *Graham* factor. We, therefore, do not consider that factor in this decision.

B. Level of Ordinary Skill in the Art

The level of skill in the art is a factual determination that provides a primary guarantee of objectivity in an obviousness analysis. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 1324 (Fed. Cir. 1999) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966); *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 718 (Fed. Cir. 1991)).

Petitioner asserts that a person of ordinary skill in the art (“skilled artisan”) at the time of the invention would have attained “a bachelor’s degree in computer science, computer engineering, or a related field and two years of experience working in development of web-based content and/or applications.” Pet. 5 (citing Ex. 1002 ¶ 17). Petitioner adds that

“[i]ndividuals with additional education or additional industry experience could be a [person of ordinary skill in the art] if the additional aspect compensates for a deficit in one of the other aspects.” *Id.* Patent Owner does not address the level of ordinary skill of a skilled artisan. *See generally* PO Resp.

We regard Petitioner’s formulation of the level of skill as consistent with the prior art before us. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (prior art itself may reflect an appropriate level of skill). Thus, we adopt Petitioner’s proposal.

C. Overview of Asserted Prior Art

1. Underwood

Underwood “provide[s] an improved method . . . for web site generation that harnesses and coordinates all the resources required for creating, updating and maintaining a quality web site,” and provides an “improved method . . . for web site generation that allows for the collection of various information from an external database” Ex. 1006, 3:51–54, 61–65; *id.* at 10:13–15, Fig. 1.

2. Sahota

Sahota describes acquiring and transforming existing content (e.g., Hyper Text Markup Language HTML content) for display and execution on multiple platforms and architectures, wherein data is extracted from disparate content sources, a standardized data stream is generated, and the stream is provided for display on one or more different type of platforms. Ex. 1011, Abst.

3. RSS Paper

RSS Paper, titled “The semantic Web and its languages,” describes the Resource Description Framework as a standard for web metadata that the

World Wide Web Consortium (W3C) developed. Ex. 1014, 67. RSS Paper continues:

Several interesting RDF applications have already emerged. Mozilla (also known as Netscape 6) uses RDF internally as a representation format. In 1999, Netscape also introduced the RSS formalism (RDF Site Summary, www.egroups.com/group/rss-dev), which has now grown into a broader effort to build an extensible information description and syndication format.

Id. at 68.

4. *Appling*

Appling describes “[s]electively updating objects of [a] webpage without requiring that the entire web page be refreshed, without Java applets and without requiring user intervention.” Ex. 1013, Abst.

5. *Phelan*

Phelan describes a system for identifying local resources, wherein a map of the area of a client computer is requested from a map server and information relating to a place of interest, such as hotels, restaurants, and shops, is superimposed or overlaid on the map. Ex. 1015, Abst.

D. *Asserted Anticipation of Claim 1 by Underwood*

Petitioner contends claim 1 is anticipated by Underwood. Pet. 12–21. Patent Owner asserts that Underwood does not describe a “content management web site” because in Underwood, “the designer creates web sites, which may not be designed for access by a mobile user at all.” PO Resp. 24. According to Patent Owner, “[t]he designer controls the appearance of the web site, and thus there is no teaching of a content management web site for use with a mobile web site, as required by the properly construed claims.” *Id.* Furthermore, Patent Owner asserts that Underwood does not disclose “generating a mobile web site configured to

receive data automatically from the external data source designated by the user at the content management website” because the system of Underwood requires a user to design its web site. *Id.* at 25.

The parties’ arguments and evidence here are substantially identical to those advanced in IPR2018-01131, and therefore, we adopt from our Final Written Decision in that proceeding our analysis finding that Petitioner has shown by a preponderance of the evidence that claim 1 is anticipated by Underwood. IPR2018-01131, Paper 43, 30–36.

E. Asserted Obviousness of Claims 1, 12, and 13 over Underwood alone

1. Claim 1

Petitioner’s obviousness challenge to this claim relies on Underwood in the same manner as its anticipation challenge, discussed above. *See* Pet. 13–21. Patent Owner does not address this challenge beyond its arguments discussed above in the context of anticipation. *See* PO Resp. 21–27. The parties’ arguments here are identical to those advanced in IPR2018-01131, and therefore, we adopt from our Final Written Decision in that proceeding our analysis finding that Petitioner has shown by a preponderance of the evidence that Underwood renders obvious claim 1. IPR2018-01131, Paper 43, 40–41.

2. Claim 12

Claim 12 recites, in relevant part, “the data source is associated with a particular entity and the mobile web site is identified by an identifier indicative of the particular entity.” Ex. 1001, 19:4–6. Petitioner and Dr. Crovella demonstrate where this subject matter is disclosed in Underwood. Pet. 27–28 (citing Ex. 1002 ¶¶ 185–86). In particular, Petitioner asserts, “Underwood teaches that Definer websites may provide

portal services.” *Id.* at 27 (citing Ex. 1006, 37:63–38:2). According to Petitioner and Dr. Crovella “[a person of ordinary skill in the art] would have enabl[ed] the additional portal services described by Underwood,” turning their website into a portal. Such a person “would have understood that their existing website content would have been included in the portal via Underwood’s DXCs by simply referencing the existing website using a DXC instance on Underwood’s portal site to include ‘anything that is accessible via HTTP.’” *Id.* at 27 (citing Ex. 1006, 37:63–38:2, 4:8–11, 45:60–65; Ex. 1002 ¶ 185). An artisan of ordinary skill further “would have found it obvious to identify the resulting mobile website with an identifier indicative of the site owner (e.g., by a URL reflecting the name of the entity that owns or operates the website or by a logo inserted on pages of the site), and that entity would also be associated with the data source (the non-portal version of the website).” *Id.* at 28 (citing Ex. 1006, 24:45–60; Ex. 1002 ¶ 186).

Patent Owner states, “claim[] 12 . . . [is] not obvious under 35 U.S.C. § 103(a) over Underwood for at least the same reasons that claim 1 is not.” PO Resp. 30.

Having reviewed the disclosure of Underwood upon which Petitioner and Dr. Crovella rely, we agree with Petitioner that Underwood teaches the subject matter of claim 12. Accordingly, based on the complete trial record before us, we find Petitioner has shown by a preponderance of the evidence that Underwood renders obvious claim 12.

3. *Claim 13*

Claim 13 recites, in relevant part, “said entity comprises a multi-member organization.” Ex. 1001, 19:7–8. Petitioner and Dr. Crovella demonstrate where this subject matter is disclosed in Underwood. Pet. 28–

29 (citing Ex. 1002 ¶¶ 187–88). In particular, Petitioner asserts, Underwood teaches that “‘almost any individual, group or organization’ wanting a website can use the Definer.” *Id.* at 27 (citing Ex. 1006, 6:45–51).

According to Petitioner and Dr. Crovella, “[a]llowing both single and multi-member entities to use the Definer would have been obvious because allowing all sorts of entities to do so would have allowed the Definer provider to maximize revenues; all types of entities—multi-member or otherwise—would have been able to subscribe to the Definer.” *Id.* at 28–29 (citing Ex. 1002 ¶ 188).

Patent Owner states, “claim[. . .] 13 [is] not obvious under 35 U.S.C. § 103(a) over Underwood for at least the same reasons that claim 1 is not.” PO Resp. 30.

Having reviewed the disclosure of Underwood upon which Petitioner and Dr. Crovella rely, we agree with Petitioner that Underwood teaches the subject matter of claim 13. Accordingly, based on the complete trial record before us, we find Petitioner has shown by a preponderance of the evidence that Underwood renders obvious claim 13.

F. Asserted Obviousness of Claims 3, 6, and 8 by Underwood with Sahota

1. Motivation to Combine

Petitioner observes that “Sahota teaches a ‘syndication server’ that ‘can acquire content from a range of sources on [a] network . . . and repackage the content for’ a device such as a mobile device.” Pet. 22 (citing Ex. 1011 ¶¶ 33, 40, 46). According to Petitioner, “Sahota’s syndication server 110 ‘transforms an HTML web page into an XML file or document (‘XML file’) . . . for multiple types of platforms.’” *Id.* (citing Ex. 1011 ¶ 34; Ex. 1002 ¶ 157). Petitioner and Dr. Crovella state, an ordinarily skilled

artisan “would have found it obvious to designate a syndication source that provides XML documents to be accessed automatically by a DXC embedded in a mobile website,” like that of Underwood. *Id.* at 23 (citing Ex. 1002 ¶¶ 158–59). “Benefits would have included (1) simplifying interfacing between numerous external data sources and a user’s website, (2) simplifying the data format for data brought into the user’s website, and (3) providing additional DXC options for users to buy.” *Id.* (citing Ex. 1002 ¶ 159).

2. *Claim 3*

Claim 3 recites, in relevant part, “the data source comprises a source of extensible markup language (XML) documents.” Ex. 1001, 18:45–47. Petitioner and Dr. Crovella demonstrate where this subject matter is disclosed in the combination of Underwood and Sahota. Pet. 22–23.

Patent Owner states, “Sahota does nothing to help overcome the shortcomings of Underwood with respect to independent claim 1. In short, Sahota does not teach a content management web site, much less one that automatically generates a mobile web site that include designated external data sources.” PO Resp. 29. Notably, Patent Owner does not challenge Sahota’s teaching regarding claim 3.

Petitioner and Dr. Crovella identify particular teachings of Underwood and Sahota, combine them in a specific way, and describe in detail the rationale that would lead one of ordinary skill in the art to such a combination. *See supra* Section V.F.1. Having reviewed the disclosure of Underwood and Sahota upon which Petitioner and Dr. Crovella rely, we agree with Petitioner that the combined teachings of Underwood and Sahota teaches the subject matter of claim 3, and that Petitioner has provided a sufficiently persuasive reason to combine the teachings of those references.

Accordingly, based on the complete trial record before us, we find Petitioner has shown by a preponderance of the evidence that the combination of Underwood and Sahota renders obvious claim 3.

3. *Claim 6*

Claim 6 recites, in relevant part, “the data source comprises a syndication services source.” Ex. 1001, 18:52–53. Petitioner and Dr. Crovella demonstrate where this subject matter is disclosed in the combination of Underwood and Sahota. Pet. 22–23.

Patent Owner states, “Sahota does nothing to help overcome the shortcomings of Underwood with respect to independent claim 1. In short, Sahota does not teach a content management web site, much less one that automatically generates a mobile web site that include designated external data sources.” PO Resp. 29. Notably, Patent Owner does not challenge Sahota’s teaching regarding claim 6.

Petitioner and Dr. Crovella identify particular teachings of Underwood and Sahota, combine them in a specific way, and describe in detail the rationale that would lead one of ordinary skill in the art to such a combination. *See supra* Section V.F.1. Having reviewed the disclosure of Underwood and Sahota upon which Petitioner and Dr. Crovella rely, we agree with Petitioner that the combined teachings of Underwood and Sahota teaches the subject matter of claim 6, and that Petitioner has provided a sufficiently persuasive reason to combine the teachings of those references. Accordingly, based on the complete trial record before us, we find Petitioner has shown by a preponderance of the evidence that the combination of Underwood and Sahota renders obvious claim 6.

4. *Claim 8*

Claim 8 recites, in relevant part, “the data source comprises a web services source.” Ex. 1001, 18:56–57. Petitioner and Dr. Crovella contend this phrase was not a term of art by June 2002 and one of ordinary skill in the art “would have understood the term to mean ‘a data source provided using a web service’ in the context of the ’342 patent, which discusses using web services in its data integration suite and using SOAP (a messaging protocol for accessing web services).” Pet. 23 (citing Ex. 1001, 9:8–19; Ex. 1002 ¶ 173). According to Petitioner, “Sahota discloses that [its] syndication service operates using XSLT, XPATH, or web APIs, all of which were known web services.” *Id.* at 24 (citing Ex. 1011, ¶ 48; Ex. 1002 ¶ 178).

Patent Owner states, “Sahota does nothing to help overcome the shortcomings of Underwood with respect to independent claim 1. In short, Sahota does not teach a content management web site, much less one that automatically generates a mobile web site that include designated external data sources.” PO Resp. 29. Notably, Patent Owner does not challenge Sahota’s teaching regarding claim 8.

Petitioner and Dr. Crovella identify particular teachings of Underwood and Sahota, combine them in a specific way, and describe in detail the rationale that would lead one of ordinary skill in the art to such a combination. *See supra* Section V.F.1. Having reviewed the disclosure of Underwood and Sahota upon which Petitioner and Dr. Crovella rely, we agree with Petitioner that the combined teachings of Underwood and Sahota teaches the subject matter of claim 8, and that Petitioner has provided a sufficiently persuasive reason to combine the teachings of those references. Accordingly, based on the complete trial record before us, we find Petitioner

has shown by a preponderance of the evidence that the combination of Underwood and Sahota renders obvious claim 8.

G. Asserted Obviousness of Claim 2 by Underwood, Sahota, and RSS Paper

Claim 2 recites, in relevant part, “the data source comprises a rich site summary (RSS) feed.” Ex. 1001, 18:43–44. As discussed above Petitioner and Dr. Crovella persuasively demonstrate that the combined teachings of Underwood and Sahota would include have an external data source that was a “syndication services source.” *See supra* Section V.F. Petitioner and Dr. Crovella assert that ordinarily skilled artisans “were aware of RSS feeds as shown by *RSS Paper*” because “Netscape introduced the RSS formalism in 1999 as part of an effort to develop a common syndication format.” Pet. 25 (citing Ex. 1014, 67–68; Ex. 1002 ¶ 162). “Based on Sahota’s teachings, a [person of ordinary skill in the art] would have looked to *RSS Paper* to learn about additional web-enabled techniques such as specific syndication formats, and would have been motivated to use RSS because it was developing as a standard, was ‘lightweight’ and ‘multipurpose.’” *Id* at 26 (citing Ex. 1002 ¶ 164).

Patent Owner states, “there is nothing in Underwood about using RSS as an external data feed, and nothing in the *RSS Paper* about content management web sites, much less using one to automatically generate a mobile web sites with an RSS feed as an external data source.” PO Resp. 29. Notably, Patent Owner does not challenge Sahota’s teaching regarding claim 2.

Petitioner and Dr. Crovella identify particular teachings of Underwood, Sahota, and *RSS Paper*, combine them in a specific way, and describe in detail the rationale that would lead one of ordinary skill in the art

to such a combination. Pet. 25–26; *see also supra* Section V.F.1. Having reviewed the disclosure of Underwood, Sahota, and RSS Paper upon which Petitioner and Dr. Crovella rely, we agree with Petitioner that the combined teachings of Underwood, Sahota, and RSS Paper teaches the subject matter of claim 2, and that Petitioner has provided a sufficiently persuasive reason to combine the teachings of those references. Accordingly, based on the complete trial record before us, we find Petitioner has shown by a preponderance of the evidence that the combination of Underwood and Sahota renders obvious claim 2.

H. Asserted Obviousness of Claim 7 by Underwood with Appling

Claim 7 recites, in relevant part, “the data source comprises a device-captured data Source.” Ex. 1001, 18:54–55. Petitioner and Dr. Crovella demonstrate where this subject matter is disclosed in Underwood and Appling. Pet. 26–27. In particular, Petitioner states, “Underwood discloses that DXCs are ‘external web-server hosted applications that generate custom content for inclusion within a page of a Definer web site’ and are developed using a [software development kit].” *Id.* at 26 (citing Ex. 1006, 45:23–27). Petitioner continues, “Appling teaches providing device-captured data, such as ‘live camera feeds’ and sensor data such as temperature, position, airflow variables, humidity, ambient noise level, and luminosity, ‘to a webpage displayed in a web browser.’” *Id.* (citing Ex. 1013, 1:15–18, 2:17–21, 2:58–59, 7:52–58; Ex. 1002 ¶ 170). Petitioner states that “it would have been obvious for a developer to provide a DXC interface to one of Appling’s external data sources and access those sources on the server-side DXC, thus enabling device-captured data to be provided to Underwood’s mobile websites.” *Id.* According to Petitioner and Dr. Crovella, doing so “would have advantageously provided additional DXC options for sale and for

would-be users to include in their websites, thereby increasing the functionality of the platform and potentially increasing revenue for the Definer provider.” *Id.* at 27 (citing Ex. 1002 ¶ 171).

Patent Owner states, “there is nothing in Appling about content management web sites, much less using ‘device captured data’ as an external data source for automatically generating a mobile web site.” PO Resp. 30.

Petitioner and Dr. Crovella identify particular teachings of Underwood and Appling, combine them in a specific way, and describe in detail the rationale that would lead one of ordinary skill in the art to such a combination. Pet. 26–27. Having reviewed the disclosure of Underwood and Appling upon which Petitioner and Dr. Crovella rely, we agree with Petitioner that the combined teachings of Underwood and Appling teaches the subject matter of claim 7, and that Petitioner has provided a sufficiently persuasive reason to combine the teachings of those references.

Accordingly, based on the complete trial record before us, we find Petitioner has shown by a preponderance of the evidence that the combination of Underwood and Appling renders obvious claim 7.

I. Asserted Obviousness of Claims 4, 14, and 15 by Underwood with Phelan

1. Motivation to Combine

Petitioner and Dr. Crovella assert that Underwood’s “DXCs provided applications with a wide range of functionalities for insertion into custom websites.” Pet. 29 (citing Ex. 1006, 4:59–61 (use of Definer to generate custom web sites); 9:15–24 (DXC development); 45:43–59 (describing certain aspects of DXCs); Ex. 1002 ¶ 203). According to Petitioner, “Phelan teaches providing map and other data based on location data sent from a mobile device to map and ‘information’ servers.” *Id.* at 30 (citing Ex. 1015,

Abst., 3:27–30, 5:40–55; Ex. 1002 ¶ 204). “The servers include databases to provide map and overlay information to be served as part of a webpage.” *Id.* (citing Ex. 1015, 7:19–22, 8:61–64). Petitioner contends:

Based on these teachings, a POSA would have found it obvious to: (1) make Underwood’s Definer accessible via a GPS-enabled mobile device, and (2) to allow the Definer to receive location information from the mobile device. A POSA would have found it obvious to modify Underwood’s Definer to receive location information from mobile devices because this would have allowed Definer users to properly test mobile sites that included location-based DXCs.

Id. Relying on Dr. Crovella, Petitioner asserts that “[b]eing able to test location-based DXC instances in the Definer environment would have provided additional functionality for Definer users; functional location-based DXCs would have increased revenue for the Definer provider and DXC developers.” *Id.* at 31 (citing Ex. 1002 ¶ 206).

2. Claim 4

Claim 4 recites, in relevant part, “the data source comprises a database source.” Ex. 1001, 18:48–49. Petitioner and Dr. Crovella demonstrate where this subject matter is disclosed in the combination of Underwood and Phelan. Pet. 32 (citing Ex. 1015, 7:19–22, 8:61–64 (referring to “standard database tools”); Ex. 1002 ¶¶ 206–08).

Patent Owner states, “Petitioner merely cites to location-based features in Phelan in order to proclaim it would have been obvious to include such [in Underwood]. However, this is nothing more than hindsight, and still does nothing to render claim 1 obvious, much less dependent claims 4, 14 and 15.” PO Resp. 30.

We disagree with Patent Owner. Petitioner and Dr. Crovella identify particular teachings of Underwood and Phelan, combine them in a specific

way, and describe in detail the rationale that would lead one of ordinary skill in the art to such a combination. *See supra* Section V.I.1. Having reviewed the disclosure of Underwood and Phelan upon which Petitioner and Dr. Crovella rely, we agree with Petitioner that the combined teachings of Underwood and Phelan teaches the subject matter of claim 4. Accordingly, based on the complete trial record before us, we find Petitioner has shown by a preponderance of the evidence that the combination of Underwood and Phelan renders obvious claim 4.

3. *Claim 14*

Claim 14 recites, in relevant part, “the content management web site is configured to receive location information from at least a given one of the mobile devices and to process the data from the designated data source based at least in part on the received location information.” Ex. 1001, 19:9–13. Petitioner and Dr. Crovella demonstrate where this subject matter is disclosed in the combination of Underwood and Phelan. Pet. 32. In particular, Petitioner states:

Phelan discloses a method and system in which requests are sent to two servers to obtain a map and an information overlay (e.g., locations of restaurants, shopping centers, ATMs, etc.). Ex. 1015, FIGS. 2-3; 5:18-25, 5:39-47. The request is provided from a mobile device and may include GPS data, i.e., location information. *Id.*, 4:23-27, 6:21-25, 8:1-4.

Id.

Patent Owner states, “Petitioner merely cites to location-based features in Phelan in order to proclaim it would have been obvious to include such [in Underwood]. However, this is nothing more than hindsight, and still does nothing to render claim 1 obvious, much less dependent claims 4, 14 and 15.” PO Resp. 30.

We disagree with Patent Owner. Petitioner and Dr. Crovella identify particular teachings of Underwood and Phelan, combine them in a specific way, and describe in detail the rationale that would lead one of ordinary skill in the art to such a combination. *See supra* Section V.I.1. Having reviewed the disclosure of Underwood and Phelan upon which Petitioner and Dr. Crovella rely, we agree with Petitioner that the combined teachings of Underwood and Phelan teaches the subject matter of claim 14, and that Petitioner has provided a sufficiently persuasive reason to combine the teachings of those references. Accordingly, based on the complete trial record before us, we find Petitioner has shown by a preponderance of the evidence that the combination of Underwood and Phelan renders obvious claim 14.

4. *Claim 15*

Claim 15 recites, in relevant part, “the given mobile device comprises a GPS-based navigation device.” Ex. 1001, 19:14–15. Petitioner and Dr. Crovella demonstrate where this subject matter is disclosed in the combination of Underwood and Phelan. Pet. 32. In particular, Petitioner states:

Phelan discloses a method and system in which requests are sent to two servers to obtain a map and an information overlay (e.g., locations of restaurants, shopping centers, ATMs, etc.). Ex. 1015, FIGS. 2-3; 5:18-25, 5:39-47. The request is provided from a mobile device and may include GPS data, i.e., location information. *Id.*, 4:23-27, 6:21-25, 8:1-4.

Id.

Patent Owner states, “Petitioner merely cites to location-based features in Phelan in order to proclaim it would have been obvious to include such [in Underwood]. However, this is nothing more than hindsight, and

still does nothing to render claim 1 obvious, much less dependent claims 4, 14 and 15.” PO Resp. 30.

We disagree with Patent Owner. Petitioner and Dr. Crovella identify particular teachings of Underwood and Phelan, combine them in a specific way, and describe in detail the rationale that would lead one of ordinary skill in the art to such a combination. *See supra* Section V.I.1. Having reviewed the disclosure of Underwood and Phelan upon which Petitioner and Dr. Crovella rely, we agree with Petitioner that the combined teachings of Underwood and Phelan teaches the subject matter of claim 15, and that Petitioner has provided a sufficiently persuasive reason to combine the teachings of those references. Accordingly, based on the complete trial record before us, we find Petitioner has shown by a preponderance of the evidence that the combination of Underwood and Phelan renders obvious claim 15.

J. Asserted Obviousness of Claims 1–3, 6–8, and 12–15 over Austin Alone or in Combination with Various Other References

As discussed above, Petitioner has shown by a preponderance of the evidence that the claims challenged under this ground are rendered obvious by Underwood, either alone or in combination with various other references. *See supra* Sections V.A–I. In light thereof and although we considered these further grounds, we decline to reach whether these claims are also rendered obvious by Austin either alone or in combination with various other references because the claims are determined to be unpatentable on other grounds previously discussed.

VI. MOTION TO EXCLUDE

Patent Owner moves to exclude the First Chuang Declaration (Paper 28) and Petitioner opposes the motion (Paper 33). The parties’

arguments here are identical to those advanced in IPR2018-01131, and therefore, we adopt from our Final Written Decision in that proceeding our analysis denying Patent Owner's motion to exclude the First Chuang Declaration. IPR2018-01131, Paper 43, 58–62. Therefore, the motion to exclude is *denied*.

VII. MOTIONS TO SEAL

Petitioner moves to seal the First Chuang Declaration (Paper 23) and Patent Owner moves to seal the Second Chuang Declaration, outside counsel's email correspondence, and certain portions of its Supplemental Response (Paper 17). The parties' arguments here are identical to those advanced in IPR2018-01131, and therefore, we adopt from our Final Written Decision in that proceeding our analysis granting both motions to seal. IPR2018-01131, Paper 43, 62–64. Therefore, the motions to seal are *granted*.

The record for the instant proceeding will be preserved in its entirety, and the confidential documents will not be expunged or made public, pending appeal.⁹ Notwithstanding 37 C.F.R. § 42.56 and the Office Patent Trial Practice Guide, neither a motion to expunge confidential documents nor a motion to maintain these documents under seal is necessary or authorized at this time. *See* 37 C.F.R. § 42.5(b).

⁹ We refer the parties to our Final Written Decision in IPR2018-01131 for more information related to timing and appealing this decision. Paper 43, 63–64.

VIII. CONCLUSION¹⁰

Petitioner has shown by a preponderance of the evidence that: (i) claim 1 is anticipated by Underwood; (ii) claims 1, 12 and 13 are rendered obvious by Underwood; (iii) claims 3, 6, and 8 are rendered obvious by Underwood and Sahota; (iv) claim 2 is rendered obvious by Underwood, Sahota, and RSS Paper; (v) claim 7 is rendered obvious by Underwood and Appling; and (vi) claims 4, 14, and 15 are rendered obvious by Underwood and Phelan.

In addition Petitioner's motion to seal is *granted*, Patent Owner's motion to seal is *granted*, and Patent Owner's motion to exclude is *denied*.

IX. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 1–4, 6–8, and 12–15 of '342 patent are unpatentable;

FURTHER ORDERED that Petitioner's Motion to Seal is *granted*;

FURTHER ORDERED that Patent Owner's Motion to Seal is *granted*;

FURTHER ORDERED that Patent Owner's Motion to Exclude is *denied*; and

¹⁰ Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner's attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. § 42.8(a)(3), (b)(2).

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

In summary:

Claims	35 U.S.C. §	Reference(s)/ Basis	Claims Shown Unpatentable
1	102(e)	Underwood	1
1, 12, 13	103(a)	Underwood	1, 12, 13
3, 6, 8	103(a)	Underwood, Sahota	3, 6, 8
2	103(a)	Underwood, Sahota, RSS Paper	2
7	103(a)	Underwood, Appling	7
4, 14, 15	103(a)	Underwood, Phelan	4, 14, 15
Overall Outcome			1-4, 6-8, 12-15

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