

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FISERV, INC.,  
Petitioner,

v.

DATATREASURY CORPORATION,  
Patent Owner.

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CBM2014-00087  
Patent 5,910,988 C1

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Before MICHAEL P. TIERNEY, WILLIAM V. SAINDON, and  
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

DECISION

Final Written Decision  
*35 U.S.C. § 328(a) and 37 C.F.R. § 42.73*

Dismissing Patent Owner's Motion to Exclude as Moot  
*37 C.F.R. § 42.64(c)*

## I. INTRODUCTION

We have jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is entered pursuant to 35 U.S.C. § 328(a) and 37 C.F.R. § 42.73.

With respect to the grounds asserted in this trial, we have considered the papers submitted by the parties and the evidence cited therein. For the reasons discussed below, we determine that Petitioner has shown by a preponderance of the evidence that claims 1, 2, 16, 18, 22, 26, 29, 36, 38–42, 46–49, 58–60, 66–69, 73, 74, 80, 82–84, 88–91, 102, 106–110, and 114–123 of U.S. Patent No. 5,910,988 C1 (Ex. 1001, “the ’988 patent”) are unpatentable, but has not shown that claims 25, 45, 55, 64, 70, 75, 78, and 105 are unpatentable.<sup>1</sup> In addition, for the reasons discussed below, we dismiss Patent Owner’s Motion to Exclude as moot because we expunge the exhibits sought to be excluded, for being improperly filed.

### A. *Procedural History*

Petitioner filed a Petition (Paper 1, “Pet.”) requesting a covered business method patent review of claims 1–7, 9–27, and 29–123 of the ’988 patent over five proposed grounds of unpatentability. *See* Pet. i–iv. Petitioner filed therewith a Declaration including the testimony of James Knox, Ph.D. Ex. 1003. Patent Owner filed a Preliminary Response. Paper 5 (“Prelim. Resp.”). Reviewing the arguments and evidence then before us, we issued a Decision Instituting Covered Business Method Review (Paper 6, “Dec. Inst.”), instituting review on claims 1, 2, 16, 18, 22,

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<sup>1</sup> Patent Owner argues that the evidentiary standard is “clear and convincing proof” (Paper 9, 1), but 35 U.S.C. § 326(e) makes clear the appropriate standard is “preponderance of the evidence.”

25, 26, 29, 36, 38–42, 45–49, 55, 58–60, 64, 66–70, 73–75, 78, 80, 82–84, 88–91, 102, 105–110, and 114–123 over one of the five proposed grounds of unpatentability. Dec. Inst. 18.

Patent Owner subsequently filed a Response to the Petition (Paper 9, “PO Resp.”), including the testimony of Paul M. Ginsberg (Ex. 2004). Petitioner filed a Reply (Paper 10, “Pet. Reply”). Upon the request of the parties, an Oral Hearing was held. *See* Paper 21 (Transcript of the Hearing, cited as “Tr.”).

Patent Owner filed a Motion to Exclude certain evidence. Paper 16 (“PO Mot. Excl.”). Petitioner filed an Opposition to that Motion (Paper 17, “Pet. Opp. Mot. Excl.”), to which Patent Owner filed a Reply (Paper 20, “PO Reply Mot. Excl.”).

### *B. Related Matters*

The parties indicate that the ’988 patent is asserted in a number of district court actions. Pet. xi–xii; Paper 4. The ’988 patent is the subject of an ongoing *ex parte* reexamination proceeding, 90/012,537,<sup>2</sup> as well as a number of proceedings before this Board, including *Fidelity National Information Services, Inc. v. DataTreasury Corp.*, Case CBM2014-00021

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<sup>2</sup> Claims 42, 46–50, 84, 88–92, 97–102, 106–110, 114–117, 121, and 122 of the ’988 patent are subject to the reexamination and were finally rejected in an office action mailed April 24, 2014. That rejection was appealed, and the PTAB issued an opinion on April 28, 2015, affirming the examiner’s rejections. The prior art asserted in the reexamination is different from the prior art asserted in this proceeding. Claims 42, 46–49, 84, 88–91, 102, 106–110, 121, and 122 are involved in both proceedings.

(PTAB) (“Fidelity CBM”)<sup>3</sup> and *Jack Henry and Associates, Inc. v. DataTreasury Corp*, Case CBM2014-00057 (PTAB) (“Jack Henry CBM”).<sup>4</sup> Paper 4.

U.S. Pat. No. 6,032,137 is a continuation-in-part of the application that issued as the ’988 patent, and is also the subject of a number of district court actions and matters before the Board. Pet. xi–xii.

### *C. The ’988 Patent*

The ’988 patent is directed to a system for remote data acquisition, and centralized processing and storage of the acquired data. Ex. 1001, Abstract. An object of the invention is to provide an automated system to manage and store captured electronic and paper transactions from various activities, including banking and consumer applications. *Id.* at 3:30–35. Generally, the ’988 patent describes scanning documents using a scanner attached to a general purpose network computer, which is connected via a carrier cloud to a server that inserts images and data received into a database. *Id.* at Figs. 1–2, 3:30–51, 4:60–67, 5:40–45, 16:38–45. Additionally, the general purpose network computer encrypts the images and

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<sup>3</sup> In the Fidelity CBM proceeding, a Final Written Decision (Paper 34) was issued on April 29, 2015, determining claims 1–123 of the ’988 patent to be unpatentable under 35 U.S.C. §§ 101 and 112, first paragraph. The Board received a Notice of Appeal to the Federal Circuit of this Decision on August 27, 2015.

<sup>4</sup> In the Jack Henry CBM, a Final Written Decision (Paper 37) was issued on July 8, 2015, determining claims 1, 2, 16, 18, 26, 27, 42, and 46 of the ’988 patent to be unpatentable under 35 U.S.C. §§ 102 and 103. The Board received a Notice of Appeal to the Federal Circuit of this Decision on August 27, 2015.

data to provide a system with maximal security. *Id.* at 3:30–35, 7:31–35, 8:3–5.

Figure 1 of the '988 patent, provided below, depicts a preferred embodiment of the system having three major operational elements:

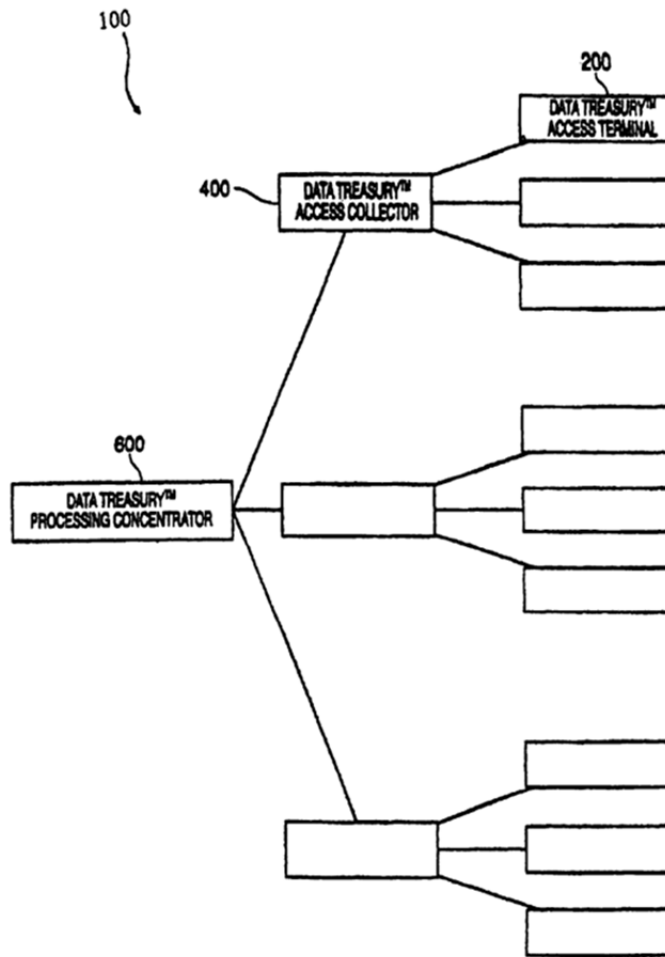


FIG. 1 (Amended)

The '988 patent describes the tiered arrangement depicted in Figure 1 as follows:

FIG. 1 shows the architecture of the DataTreasury™ System 100. The DataTreasury™ System 100 has three operational elements: the DataTreasury™ System Access Terminal (DAT) 200 (the remote data access subsystem), the DataTreasury™ System Access Collector (DAC) 400 (the

intermediate data collecting subsystem), and the DataTreasury™ System Processing Concentrator (DPC) 600 (the central data processing subsystem).

*Id.* at 4:60–67.

Figure 2 of the '988 patent, provided below, depicts a block diagram of the DAT:

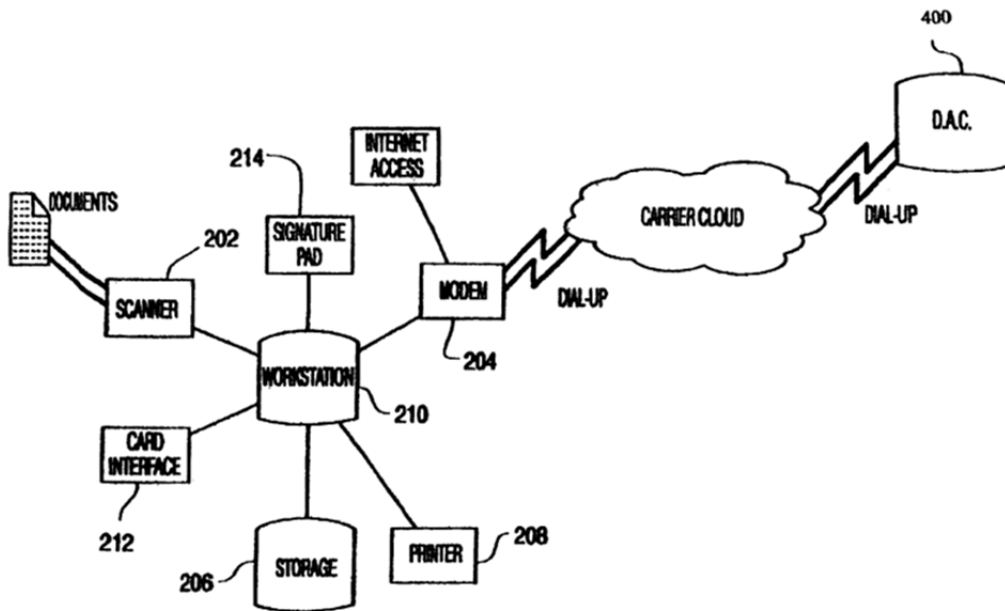


FIG. 2 (Amended)

As shown in Figure 2, scanner 202 is connected to workstation 210, which is connected to data system access collector 300. The workstation can be a general purpose computer and performs tasks including compressing, encrypting, and tagging a scanned bitmapped image. *Id.* at 5:40–45, 7:31–35.

The '988 patent is said to improve upon the prior art by providing an automated, reliable, secure system to process electronic and paper transactions. *Id.* at 3:25–29.

*D. Illustrative Claims*

Claim 1 is directed to an aspect of the '988 patent involving various subsystems and including encrypted subsystem identification information. Claim 42 is directed to an aspect of the '988 patent involving remote, intermediate, and central subsystems, each having a local area network (later referred to as a "three-tier architecture"). These two independent claims are illustrative, and are reproduced below.

1. A system for central management, storage and report generation of remotely captured paper transactions from documents and receipts comprising:
  - one or more remote data access subsystems for capturing and sending paper transaction data and subsystem identification information comprising at least one imaging subsystem for capturing the documents and receipts and at least one data access controller for managing the capturing and sending of the transaction data;
  - at least one central data processing subsystem for processing, sending, verifying and storing the paper transaction data and the subsystem identification information comprising a management subsystem for managing the processing, sending and storing of the transaction data; and
  - at least one communication network for the transmission of the transaction data within and between said one or more data access subsystems and said at least one data processing subsystem, with the data access subsystem providing encrypted subsystem identification information and encrypted paper transaction data to the data processing subsystem.
  
42. A communication network for the transmission of data within and between one or more remote data processing subsystems, at least one intermediate data collecting subsystem and at least one central subsystem

forming a tiered architecture wherein each of said at least one central data processing subsystem communicate with a corresponding some of said at least one data collecting subsystem and each of said at least one data collecting subsystem communicate with a corresponding some of said one or more data processing subsystems, said data processing subsystem including an imaging subsystem for capturing images of documents and receipts, comprising:

- at least one first local area network for transmitting data within a corresponding one of said one or more remote subsystems;
- at least one second local area network for transmitting data within a corresponding one of said at least one intermediate subsystem;
- at least one third local area network for transmitting data within a corresponding one of said at least one central subsystem; and
- at least one wide area network for transmitting data between said one or more remote subsystems, said at least one intermediate subsystem and said at least one central subsystem.

### *E. Asserted Grounds and Prior Art*

A covered business method patent review was instituted as to claims 1, 2, 16, 18, 22, 25, 26, 29, 36, 38–42, 45–49, 55, 58–60, 64, 66–70, 73–75, 78, 80, 82–84, 88–91, 102, 105–110, and 114–123 as anticipated by Campbell under 35 U.S.C. § 102. Dec. Inst. 18.

## II. ANALYSIS

### *A. The '988 Patent Is a Covered Business Method Patent*

Patent Owner argues that the '988 patent is not eligible for covered business method patent review because one or more of its claims are

directed to a technological invention. PO Resp. 21–26. We have discussed whether the ’988 patent is eligible for covered business method patent review at length in our Decision to Institute and Final Written Decision in the Fidelity CBM. *See* Fidelity CBM, Paper 14, 9–13; Fidelity CBM, Paper 34, 8–10. For the same reasons as those we expressed in the Fidelity CBM, we hold that the ’988 patent is eligible for covered business method patent review.

*B. Patent Owner’s Motion to Exclude*

Patent Owner moves to exclude Exhibits 1062–1065. PO Mot. Excl. 2–3. Petitioner filed the disputed exhibits on April 7, 2015, which was more than two months after Petitioner filed its Reply and 22 days before oral hearing. *Id.* Petitioner characterizes its submission as “supplemental information” and “apologizes for its oversight” of the “minor procedural defect” of not seeking authorization to file a motion for supplemental information. Pet. Opp. Mot. Excl. 2. We dismiss as moot Patent Owner’s Motion to Exclude because we hereby order the expungement of Exhibits 1062–1065 for being filed without prior authorization.

*C. Claim Construction*

We interpret the claims of an unexpired patent using the broadest reasonable interpretation in light of the specification of the patent. 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278–80 (Fed. Cir. 2015). Under the broadest reasonable interpretation standard, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art, in the context of the entire disclosure. *In re Translogic Tech. Inc.*, 504 F.3d 1249, 1257 (Fed. Cir.

2007). Any special definition for a claim term must be set forth with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

In our Decision to Institute this trial, we determined the broadest reasonable interpretation of “subsystem identification information” is “information that identifies a subsystem.” Dec. Inst. 8. There, as here, we relied on our prior interpretation of this term in the Jack Henry CBM. *See* Jack Henry CBM, Paper 17, 9–10; *id.*, Paper 37, 9–12. Notably, we determined, as an ancillary matter to construing the term, that “nothing in the claims, as would be understood by a person of ordinary skill in the art in view of the specification, requires any form of ownership or other type of corporate relationship between the various subsystems; only that they function in the manner set forth in the claims.” *Id.*, Paper 37, 12.<sup>5</sup>

Patent Owner does not comment specifically on or discuss our prior claim construction of “subsystem identification information” (“SSID”). Instead, Patent Owner attacks as “Completely Unacceptable” Petitioner’s proposed construction in the Petition, which we did not adopt. PO Resp. 19; Dec. Inst. 8 (adopting our prior construction of the term in the Jack Henry CBM rather than Petitioner’s proposed construction); Jack Henry CBM, Paper 17, 8–10 (adopting neither Petitioner’s nor Patent Owner’s then-

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<sup>5</sup> Our reasoning in this regard was confirmed by Patent Owner’s admission during Oral Argument during the Jack Henry CBM that common ownership is not required. *See* Jack Henry CBM, Paper 37, 11–12. Although Petitioner impermissibly filed the transcript of this Oral Argument as Exhibit 1064, which we expunged, we are nevertheless aware of Patent Owner’s admission because we took part in the Jack Henry CBM oral hearing.

proffered constructions of SSID).<sup>6</sup> Patent Owner then suggests that we “consider and accept” a district court construction of SSID, without providing any explanation for why we should adopt that construction, especially given that we have explicitly considered and did not accept that construction before (Jack Henry CBM, Paper 17, 8–10).<sup>7</sup> PO Resp. 21. Patent Owner notes that, if we do not adopt that construction, it will “abide by the Board’s decision.” *Id.* We decline to adopt the district court construction, a construction previously considered and not adopted, in the absence of arguments explaining why we should adopt that construction.

Upon consideration of the record before us, we maintain that the broadest reasonable interpretation of “subsystem identification information” is “information that identifies a subsystem.”

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<sup>6</sup> Patent Owner does not explain what errors it sees in the construction offered by Petitioner in its Petition. Petitioner proposed: “Information that identifies a remote data access subsystem, *such as the identification of a specific branch or terminal of a banking institution*, or a subsystem or component that is a part of a remote data access subsystem.” Pet. 7 (emphasis added). The difference between Petitioner’s and Patent Owner’s construction lies in the emphasized language, which appears to be a non-limiting example.

<sup>7</sup> The difference between the district court interpretation and ours is minor and not outcome-determinative in this case. The district court limited the SSID to identification of the *remote* access device, whereas our analysis concluded that the broadest reasonable interpretation of the term did not require limiting the SSID to identifying any particular subsystem, so long as it identified *some* subsystem of the system. *See* Jack Henry CBM, Paper 17, 9–10. In application, the difference is immaterial because, in Petitioner’s ground, the alleged SSID in Campbell identifies the remote access device (sending bank).

*D. Anticipation by Campbell*

Petitioner asserts that claims 1, 2, 16, 18, 22, 25, 26, 29, 36, 38–42, 45–49, 55, 58–60, 64, 66–70, 73–75, 78, 80, 82–84, 88–91, 102, 105–110, and 114–123 are anticipated by Campbell. Pet. 10–39.<sup>8</sup>

Campbell discloses a system that transmits check images and routes those images between banks. Ex. 1019, Abstract. A first entity in the system lies within sending bank 14. *Id.* at Fig. 1. Within this first bank, hardware and software are configured to create a check image and other data (e.g., source and destination identifiers). *Id.* at 2:64–3:32, 5:23–28; *see also id.* at 4:10–25 (describing the same hardware and software performing the same operations for a dishonored check). The first bank sends the gathered information to a second entity of the system, node 12, over a network. *Id.* at 3:20–36; *see also id.* at 4:26–29 and 4:59–5:1 (describing the transmission in the dishonored check example). Node 12 performs various tasks with the sent information, one task being the forwarding of the check image to the appropriate receiving bank. *Id.* at 1:60–67, 2:30–32. Receiving bank 16, therefore, is a third entity in the system. *See id.* at Figs. 1, 2. The system is

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<sup>8</sup> Patent Owner points out that Petitioner did not list claims 45 and 105 in its statement of unpatentability (Pet. 10), but that Petitioner does address these claims in its analysis (Pet. 23). PO Resp. 26. In our Decision to Institute, we included explicitly claims 45 and 105 in the trial. Dec. Inst. 16, 18. The Petition also lists claims 9, 19, 50, 57, 65, 72, 81, and 92 (Pet. 10), but we did not institute a review of those claims because the Petition includes no analysis of those claims. Dec. Inst. 15. Similarly, the Petition lists claims 56, 71, 79, 93, and 97–100, but we did not institute a review of those claims. *Id.*

equipped to send and receive encrypted information between the banks and within its own central node 12. *Id.* at 5:55–60, 6:37–38.

We have reviewed Patent Owner’s arguments against Petitioner’s ground (PO Resp. 29–60); the principal arguments are addressed below.

*1. Claim 1*

Independent claim 1 requires, *inter alia*, a remote data access subsystem that captures images of paper transaction data and provides encrypted SSID and image data. Claim 1 also requires a central data processing system and a communications network.

Petitioner reads the remote data access subsystem on the sending bank of Campbell, the central data processing subsystem on the node of Campbell, and the communications network on the communications network in Campbell. Pet. 17–21. Petitioner asserts that Campbell captures images of checks and sends that data to the central subsystem via the network. *Id.* Petitioner also asserts that Campbell transmits an encrypted SSID in the form of an endorsement or as additional identifying data sent along with the encrypted check image. *Id.* at 11–18.

With respect to independent claim 1, Patent Owner principally argues that Campbell fails to disclose a) “subsystems” and b) “encryption” of the SSID in the manner required by the claim. *See, e.g.*, PO Resp. 31, 33 (arguing “subsystem”); *id.* at 32, 34–35 (arguing “encryption”).

*a. “subsystem”*

Campbell discloses a system for transporting the images of checks. Ex. 1019, 2:18–20 (“FIG. 1 shows an example of a system for transporting images of checks”). As such, we are persuaded by Petitioner’s position that

the various separately identifiable objects operating within this system—namely, the first bank, the node, and the second bank—are subsystems within this system.<sup>9</sup> Except for the “encryption” aspect of the claim, discussed below, Patent Owner raises no credible argument that the first bank, the node, or the second bank in Campbell fail to disclose any element of claim 1. Instead, Patent Owner’s argument appears to be that one or more entities in Campbell are not commonly owned or are not subsystems of each other. *See* PO Resp. 31, 33.<sup>10</sup> As we noted in our claim construction of SSID, however, there is no ownership requirement to be a “subsystem” of the claimed system. Further, the claims do not require one subsystem to be a subsystem of another subsystem, but merely that there are subsystems of the claimed system. Accordingly, Patent Owner’s arguments are unpersuasive. Reviewing the record before us, we are persuaded that Petitioner has established that the “remote data access subsystem” reads on the first bank in Campbell, and the “central data processing system” reads on the node.

*b. “encryption”*

Patent Owner’s arguments regarding “encryption” fall into two lines:  
i) arguments that Campbell does not disclose an encrypted SSID because

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<sup>9</sup> “system. A collection of components organized to accomplish a specific function or set of functions.” *IEEE Standard Glossary of Software Engineering Terminology* 73 (IEEE Std 610.12-1990, 1990) (Ex. 3001). “subsystem. A secondary or subordinate system with a larger system.” *Id.* at 72.

<sup>10</sup> Patent Owner’s Declarant, Mr. Ginsberg, testifies that “Petitioner (and also the Board) mistakes the two banks in Figure 1 of the Campbell patent as being remote data access subsystems of a single bank.” Ex. 2004 ¶ 11. We cannot find any such assertion by Petitioner or the Board, and neither PO nor its Declarant direct us to where such an assertion exists.

Campbell does not disclose a SSID (*see, e.g.*, PO Resp. 35–36); and  
ii) arguments that Campbell does not require encryption of check images  
(*see, e.g., id.* at 32, 34–36).

*i. SSID*

We have determined already that the hardware and software system at the first bank is a subsystem of the check image processing system of Campbell. When the system of the first bank transmits the check to the node, it includes information identifying itself. Pet. 14–15 (quoting Ex. 1019, 5:23–28 (“The [node] may read some data accompanying check images, for example . . . information may instruct the node 12 about the identity of the sending institution and the intended receiving institution.”)). Accordingly, we are persuaded by Petitioner’s assertion that the first bank transmits a SSID because it transmits information that identifies a subsystem (the first bank subsystem).<sup>11</sup> Patent Owner argues:

Again, Campbell does not state that the identity of the sending and/or receiving institutions has been encrypted. But even if the identity of the sending and/or receiving institutions were encrypted in the Campbell patent, a given bank such as a Sending Bank or a Payor Bank is simply **not** a subsystem of a Receiving Bank or a Bank of First Deposit. Thus, Campbell might be able to identify a given Sending Bank and/or a given Bank of First Deposit, but the identity of such banks does not

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<sup>11</sup> Petitioner also provides an alternative reading of SSID on Campbell: that the endorsement printed on the check itself is a SSID. *See* Pet. Reply 5; *see also* Dec. Inst. 11 (pointing out that Petitioner has two readings of the term on Campbell). Although Patent Owner does not appear to discuss this particular alternative reading, we do not rely on this alternative reading in reaching our Decision.

qualify as subsystem identification information. Placing a serial number, or other identification number, on a scanner that imaged a check in a Sending Bank or a Bank of First Deposit does not necessarily provide subsystem identification information, since it is the identification name/number of the subsystem, and not the serial number of a scanner, or a name of bank, that is encrypted in the '988 Patent.

PO Resp. 35–36.<sup>12,13</sup>

Patent Owner here appears to argue that the name of a bank is not a SSID because one bank is not the subsystem of another bank. Patent Owner also appears to argue that a SSID is “not the serial number of a scanner, or a name of bank” that is encrypted. PO Resp. 36. Patent Owner points to no portions of the record and provides no credible analysis in support of these assertions. We are persuaded that the bank is a subsystem; thus, the name of the bank would serve to identify that subsystem and meets the limitation of

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<sup>12</sup> Patent Owner’s Declarant, Mr. Ginsberg, seems to contradict Patent Owner here, by implying that the ID number of a scanner would be a SSID: “Nowhere does Campbell teach that a receiving institution would have any use for information such as the ID number of a scanner in a sending institution.” Ex. 2004 ¶ 15.

<sup>13</sup> Patent Owner seems to take an opposite position in its Preliminary Response in another matter involving a similar term, *Fiserv, Inc. v. DataTreasury Corp.*, Case CBM2014-00088 (PTAB) (Paper 5), suggesting that information that identifies a scanner is a SSID: “claim 1 requires encrypting identification information that identifies ‘at least one imaging subsystem’ (such as the 3897 scanner of the IBM 3890 system . . . ) and requires identification information that identifies ‘at least one data access controller’ (such as a workstation that operates the 3897 scanner).” CBM2014-00088, Paper 5, 22.

claim 1 requiring a SSID.<sup>14</sup> Reviewing the record before us, Patent Owner’s argument that Campbell does not describe an encrypted SSID because it does not disclose a SSID is unpersuasive in view of the arguments and evidence offered by Petitioner.

*ii. Requiring Encryption*

Campbell discusses encryption of information as follows:

The controller **42** may read some data accompanying check images, for example, it may identify that TCP/IP protocol information accompanying those images. That information may instruct the node **12** about the identity of the sending institution and the intended receiving institution. That information may also identify the disposition of the check . . . .

The controller **42** may also be configured to handle information encrypted by sending institutions to provide security for the images transported by the network **38**. The controller **42** may have its own encryption and decryption equipment to provide a secure environment in the node **12**.

Ex. 1019, 5:14–60; *see also* Pet. 13–16, 18, 20–21 (explaining Petitioner’s position regarding encrypting the SSID). In our Decision to InSTITUTE this trial, we determined that Campbell’s system “is equipped to send and

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<sup>14</sup> Further, although not necessary to reach our finding here, we are persuaded by Petitioner’s logic that the SSID is “particularly apt where financial institutions have myriad branches or equipment that send data to a central location.” Pet. 14. In other words, Petitioner implies that one of ordinary skill would understand that the identifying information (SSID) in Campbell is not just a bank name but the name of a particular bank. Our analysis of dependent claims 119 and 120, below, further address this point.

receive encrypted information between the banks,” relying on the above-cited passage in Campbell. Dec. Inst. 9 (citing Ex. 1019, 5:55–60).

With a full record, we find that the preponderance of the evidence supports Petitioner’s position. Campbell does not state that only the *image* is encrypted. Instead, Campbell states that “*information* [is] encrypted . . . to provide security *for the images* transported.” Ex. 1019, 5:55–58 (emphasis added). Thus, Campbell uses the terms *information* and *image* to refer to different collections of data. Earlier in that column, Campbell also explains what it means by “information,” and it is clear that this information is not just images but rather includes “information [that] *accompan[ies]* those images.” *Id.* at 5:25–26 (emphasis added). For example, the information identifies the “sending institution,” “receiving institution,” and “the disposition of the check.” *Id.* at 5:26–31. As we discussed in a prior claim construction of this term, we are persuaded that information identifying the sending institution is a SSID. *See* Jack Henry CBM, Paper 37, 9–12. Thus, when this information is encrypted, it is an encrypted SSID, as required by claim 1. *See also* Ex. 1003 ¶¶ 64–65, 78–84, 91 (Petitioner’s Declarant, Dr. Knox, testifying that the encrypted information in Campbell identifies the receiving institution).

Patent Owner argues that Campbell discloses that the controller *may* be configured to handle encrypted information, which means that it “does not necessarily encrypt subsystem information,” and that encryption is not “necessarily always . . . accomplished.” PO Resp. 32, 34–36.<sup>15</sup> Patent

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<sup>15</sup> Later in its Response, Patent Owner argues that, although Campbell may “encrypt the name of th[e] bank,” Campbell does not “encrypt[]

Owner does not provide an explanation as to how this, even if true, would preclude anticipation: Campbell would still disclose encrypted SSIDs if it disclosed the encryption as a capability but not a necessity of the system. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983) (“The law of anticipation does not require that the reference ‘teach’ what the subject patent teaches. . . . [I]t is only necessary that the claims under attack, as construed by the court, ‘read on’ something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or ‘fully met’ by it”); *see also* Pet. Reply 5–6 (arguing that there is no requirement that the prior art mandate the use of a disclosed feature). Notwithstanding, we disagree that Campbell only occasionally encrypts SSIDs, for the reasons explained in the prior paragraph. Reviewing the record before us, we are persuaded that Campbell discloses transmitting an encrypted SSID.

*c. Conclusion Regarding Claim 1*

In view of the above, we determine that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claim 1.

*2. Claim 2*

Claim 2 depends from claim 1 and further requires that the data access subsystem comprises a scanner. Petitioner asserts that Campbell’s imaging

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identification information that identifies a particular subsystem of the . . . Bank.” PO Resp. 45. Thus, Patent Owner appears to recognize that, in fact, Campbell discloses encrypting the name of the bank (while disputing that the name is sufficient to be a SSID).

equipment scans the check. Pet. 29.<sup>16</sup> Patent Owner identifies the claim language in claim 2 and argues that Petitioner's ground is deficient because Campbell does not anticipate claim 1. PO Resp. 37. We determine that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claim 2.

### *3. Claim 16*

Claim 16 depends from claim 1 and further requires that the remote data access and data processing subsystems each contain a local area network (LAN), and that they are connected by a wide area network (WAN). Petitioner asserts that Campbell's imaging equipment is formed of "large multiworkstation systems" that sends images to "a network interface" of the remote data access subsystem (sending bank), and then subsequently sends information to the data processing subsystem (node), which has its own LAN 56. Pet. 19–21 (explaining how Campbell discloses LANs and a WAN), 21–22 (claim chart citing Ex. 1019, 2:20–22, 2:50–3:12, 3:17–20, 5:17–20; Ex. 1003 ¶ 158). Patent Owner argues that "Campbell teaches a single LAN 56, and does not teach a WAN." PO Resp. 38. Patent Owner, aside from citing to its Declarant, Mr. Ginsberg, provides no further credible

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<sup>16</sup> Petitioner misquotes the Decision to Institute as having said that: "Patent Owner did not discuss these claims in its Preliminary Response and that the claims will remain invalid unless rebutted." Paper 6 at 16." Pet. Reply 11. The cited portion of our Decision to Institute states: "Patent Owner does not discuss these claims at this time. We have reviewed Petitioner's assertions and determine that, if unrebutted, they demonstrate that these claims are more likely than not anticipated by Campbell."

explanation for its argument. We address each of these challenged limitations below.

*a. WAN*

A WAN is simply a network that spans geographically separated areas.<sup>17</sup> As explained by Petitioner’s Declarant, Dr. Knox:

Campbell discloses the transmission of data between sending bank 14 and node 12 using a public switched telephone network 10. Campbell further discloses that the network 10 may be a frame relay network. Ex. 1019, 2:61. “Frames” is a general term in telecommunication, and is included in many protocols. A frame relay network is a type of Wide Area Network.

Ex. 1003 ¶ 158.

Notably, the ’988 patent also describes its WAN as using a frame relay network over a telecommunications company network. Ex. 1001, 12:38–39, 12:62–13:9. Patent Owner’s Declarant, Mr. Ginsberg, acknowledges that Campbell describes transmission of signals over a public switched telephone network, but states that “the ‘central offices’ are not described as being remote from the receiving bank.” Ex. 2004 ¶ 22. Mr. Ginsberg appears to be discussing the portion of Campbell where it describes the signals produced by the sending bank being transmitted on

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<sup>17</sup> “Wide Area Network (WAN)[:] A data communications network that covers geographically separated areas, typically containing cities. Thus a WAN is usually composed of Local Area Networks (LAN) interconnected by other communications links hired from a PTT or other common carrier.” *Focal Dictionary of Telecommunications* (1999) available at [http://search.credoreference.com/content/entry/bhfidt/wide\\_area\\_network\\_wan/0](http://search.credoreference.com/content/entry/bhfidt/wide_area_network_wan/0) (Ex. 3002).

network access lines 22 to reach telephone network 10 and, more specifically, that “[t]he signals received by the network on line 22 may be transmitted through the network 10 via . . . one or more central offices to the check image processing node 12.” Ex. 1019, 3:17–43. Mr. Ginsberg does not explain how this passage supports his conclusion. Whether the “central offices” (not relied on by Petitioner for this claim) are remote to the sending bank has no bearing, which we can see, on whether Campbell describes a WAN.

Campbell describes transmission of information between the *sending bank* and the *node* over a public switched telephone network; it is that communication that Petitioner asserts occurs over a WAN. *See* Pet. Reply 10; Pet. 21–22. A public switched telephone network covers geographically distinct locations. One of ordinary skill in the art would understand that transmitting information over such a network generally involves the sender and receiver being in different locations; likewise, the system of Campbell makes little sense if the banks and the node are all in the same location. Accordingly, Mr. Ginsberg’s testimony on this point is unpersuasive. On the other hand, Petitioner’s Declarant, Dr. Knox, explains how the Campbell system uses a public switched telephone network and a frame relay network, which Dr. Knox testifies is a type of WAN. Ex. 1003 ¶ 158. This testimony is persuasive, under its own reasoning and because, as we mentioned above, the WAN in the ’988 patent involves a frame relay network over a telecommunications company’s network.

Patent Owner’s Declarant also testifies that “Campbell does not teach . . . a wide area network that transmits data within and between the [claimed subsystems].” Ex. 2004 ¶ 22. The wide area network in claim 16 does not

require data to be transmitted “within and between,” but rather just “between,” the remote and data processing subsystems. Accordingly, Mr. Ginsberg’s testimony is directed to language not found in the claims (and even if it were, his conclusory statement is entitled to little or no weight).

Lastly, Patent Owner’s Declarant argues that Campbell does not teach a “carrier cloud.” *Id.* ¶ 23.<sup>18</sup> Mr. Ginsberg here directs us to the testimony of Petitioner’s Declarant, Dr. Knox, at Exhibit 1003, paragraphs 174 and 175. Dr. Knox’s testimony there is directed to claim 22, not claim 16; Dr. Knox does not discuss a “carrier cloud” with respect to claim 16. *See generally* Ex. 1003 ¶¶ 169–177 (Dr. Knox’s testimony discussing claim 22); *see also* ¶¶ 154–158 (Dr. Knox’s testimony discussing claim 16). Thus, Mr. Ginsberg’s testimony is unpersuasive.

Reviewing the arguments and evidence before us, we are persuaded that Campbell discloses a WAN as claimed.

*b. LAN*

Petitioner’s position is that the “multiworkstation systems [at the banks] cited in Campbell necessarily include a LAN.” Pet. 20 (citing Ex. 1003 ¶ 112, Ex. 1020, 2); Ex. 1019, 3:10–12 (“The imaging equipment may be large multiworkstation systems available from companies such as IBM, UNISYS, or NCR.”).<sup>19</sup> To bolster that point, Petitioner’s Declarant, Dr. Knox, testifies and offers evidence that the imaging device mentioned by Campbell and offered for sale by IBM at that time “manage[d] the

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<sup>18</sup> Neither claim 16 nor claim 22 include a “carrier cloud” limitation.

<sup>19</sup> Petitioner’s assertion that node 12 includes a LAN is supported by the evidence and does not appear to be in dispute.

distribution of image and coded data on the LAN.” Ex. 1003 ¶ 112 (quoting Ex. 1020, 193654). We find Dr. Knox’s testimony persuasive. Patent Owner offers no persuasive evidence or explanation to the contrary, merely stating that “Petitioner’s claim chart . . . does not address the two LANs recited in claim 1.” PO Resp. 38. Reviewing the arguments and evidence before us, we are persuaded that Campbell discloses the LANs as claimed.

*c. Conclusion for Claim 16*

Reviewing the arguments and evidence before us, we determine that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claim 16.

*4. Claims 18, 58, 59, and 60*

Claim 18 depends from claim 1 and requires “a further management subsystem for managing the collecting and sending of the transaction data.” Claims 58, 59, and 60 include similar limitations.<sup>20</sup> In effect, this subsystem serves as an intermediary, collecting data and then sending it on. *See* Ex. 1001, Fig. 4 (wherein the DAC collects data from the DAT and sends it to the DPC). Petitioner asserts that Campbell discloses check processing and transmitting equipment, and that banks may transmit images through one or more central offices. Pet. 22 (citing Ex. 1019, 3:32–36 (describing

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<sup>20</sup> Claim 18 depends from claim 1. Claim 18 refers to “the electronic or paper transaction data” of claim 1, but there is no antecedent basis for “electronic transaction data.” In addition, claim 1 limits the data to “paper transaction data”; it would be impermissible for dependent claim 18 to expand the scope of claim 1 beyond paper transaction data. 35 U.S.C. §112(d). We take no position on the definiteness of the claims but limit our application of them on the art to the “paper transaction data” aspect of the “the electronic or paper transaction data” element.

sending data to node 12), 3:17–22 (describing images collected by the imaging equipment and sent across the network), 2:64–3:12 (same)); Ex. 1003 ¶¶ 159–168 (Dr. Knox’s explanation for how the limitation is met).

Reviewing Petitioner’s assertions, we understand Petitioner to be asserting that the claimed “data collecting subsystem” that has the “management subsystem” is one of the intermediaries Campbell describes as between the banks and the node. *See, e.g.*, Pet. 22 (citing to portions of Campbell that discuss routing the images through intermediaries); Ex. 1003 ¶ 161 (“[S]ending bank 14 can send images indirectly to a node 12 through a trunk or central office. Ex. 1019, 3:32–36. The trunks and/or central office may be another bank 14 and/or 16.”).

Patent Owner argues that, “[a]lthough Dr. Knox’s analysis is interesting, claims 18, 58, 59 and 60 each depend directly from claim 1,” and that “Campbell . . . does not indicate that any two banks are subsidiaries of one another.” PO Resp. 39–40. As we explained above, however, the claims do not require such a “subsidiary” feature, and we have determined already claim 1 is anticipated by Campbell.

Reviewing the arguments and evidence before us, we determine that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claims 18, 58, 59, and 60.

### 5. *Claim 22*

Claim 22 depends from claim 18 and specifies that each of the (now three) subsystems include a LAN, and that each of the subsystems are connected by a WAN. Petitioner largely points to the same things in Campbell as it did for claim 18. Pet. 22–23 (citing, *inter alia*, Ex. 1003

¶¶ 174–177); *see also* Ex. 1019, 3:46–48 (“The check image processing equipment [at the receiving bank] may be similar to the imaging equipment **18** located in the sending institution **14**”). Petitioner’s Declarant, Dr. Knox, testifies that Campbell describes an intermediary bank being a second sending bank, which would then have its own multi-workstation system forming a LAN. Ex. 1003 ¶ 172; *see also id.* ¶ 161 (setting forth Dr. Knox’s reasons for concluding that the “trunks and/or central office may be another bank 14 and/or 16”). As we discussed above, Petitioner has shown persuasively that the banks have LANs (via multi-workstation systems) and are connected via a WAN (over the public switched telephone network).

Patent Owner argues that “Campbell simply does not mention a wide area network at all.” PO Resp. 41. It is well established that a reference need not teach a limitation *in haec verba*. *In re Bode*, 550 F.2d 656, 660 (CCPA 1977). Patent Owner’s argument is nothing more than observing that the term does not appear in Campbell; such is not the test for anticipation. *See id.* Apparently in contesting Petitioner’s assertion that the frame relay network 38 shown in Figure 2 of Campbell is a WAN, Patent Owner also argues that Figure 2 “is illustrative and certainly not drawn to scale in any manner, [such that] it is impossible to conclude from the drawings that Campbell teaches anything remotely resembling a wide area network.” PO Resp. 41. A wide area network is not defined by its size but rather by the geographic separateness of the entities communicating over it. *See supra* n.17. As we discussed in our analysis of claim 16, addressing whether Campbell describes a WAN, we are persuaded that frame relay network 38 (over the public switched telephone network) is a WAN, because it connects geographically separate entities.

Reviewing the arguments and evidence before us, we determine that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claim 22.

*6. Claim 55, 64, 70, 75, and 78*

Claims 55, 64, 70, 75, and 78 further require that the system “automatically generates at least one of credit card statements, bank statements, and tax reports” (claims 55, 64, 70, 75) or just tax reports (claim 78). Petitioner points to the disclosure in Campbell of the data used in the billing interface: tracking the “number of checks processed, converted, stored, and transmitted.” Pet. 38 (citing Ex. 1019, 5:35–38, 7:32–42). The testimony of Petitioner’s Declarant, Dr. Knox, simply quotes language from Campbell, without analysis or explanation. Ex. 1003 ¶¶ 304–305.

Reviewing the arguments and evidence before us, we determine that Petitioner has not shown sufficient evidence that this billing interface information is one of the claimed statements or reports. The billing interface certainly provides reports, but the claims require the functionality to gather and present certain information in those reports. Credit card and bank statements typically are understood to refer to a list of account activities for a consumer account; a tax report is typically understood to refer to taxes. Although the number of checks processed, etc., may be related to things that eventually make it on a bank statement, Petitioner does not set forth a claim construction or analysis that would allow us to conclude, by a preponderance of the evidence, that such features are a “bank statement” as claimed (or any of the other claimed reports). As such, we determine that Petitioner has not

shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claims 55, 64, 70, 75, and 78.

*7. Claim 26*

Independent claim 26 is similar in scope to independent claim 1. Petitioner's assertions for unpatentability and Patent Owner's arguments are substantially similar to those we discussed in our analysis of claim 1. *See* Pet. 23–27; PO Resp. 42–45. We determine that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claim 26.

*8. Claims 29, 36, and 66–69*

Claim 29 depends from claim 26 and requires a plurality of remote locations and a plurality of central locations. Claim 36 depends from claim 29 and requires intermediate locations between the remote and central locations. Claims 66–69 depend from claim 26 and include similar limitations.

Petitioner asserts that there are a plurality of remote locations (banks) and a plurality of central locations (nodes). Pet. 24, 27; Ex. 1019, 2:27–29 (disclosing “network **10** contains at least one check image processing node”). Petitioner also asserts that there are intermediate locations between the bank and node. Pet. 27–28; Ex. 1019, 2:46–49 (“One or both of institutions **14** and **16** may also be any intermediary institution . . . between a bank of first deposit and a payor bank.”). Patent Owner reiterates its unpersuasive arguments about the banks not being subsystems of one another. PO Resp. 45–46. Reviewing the arguments and evidence before us, we determine that Petitioner has shown, by a preponderance of the

evidence, that Campbell anticipates the subject matter of claims 29, 36, and 66–69.

#### 9. Claims 38–41

These claims depend indirectly from independent claim 26 and generally provide more detail to the steps previously recited. Claim 41 specifically recites that the transmission between the intermediate location and the central location occurs via frames. Petitioner asserts that Campbell describes each limitation of these claims, along the lines discussed above for similar limitations (e.g., claims 26, 29, and 36, or their analogues in claims 1, 18, and 22). *See* Pet. 28–30. Patent Owner’s arguments for claim 38 are similar to its unpersuasive arguments above, about one bank not being a subsystem of another, or that Campbell does not describe a SSID when it transmits the bank’s name. *See* PO Resp. 47. Patent Owner’s argument for claims 39–41 is that they allegedly depend from a patentable claim or are patentable for reasons already explained. *See id.* at 48.

Reviewing the arguments and evidence before us, we determine that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claims 38–41.

#### 10. Claims 42, 84, 102, 110, and 118

These independent claims are directed generally to a “three-tier architecture.” PO Resp. 49. Petitioner asserts and explains how Campbell describes at least two three-tier architectures: (1) sending bank → node → receiving bank, and (2) sending bank → intermediary → node. Pet. 30–36.

Patent Owner first argues that the examiner in the *ex parte* reexamination proceeding 90/012,537 “has absolutely no basis for the

position that is stated by Petitioner.” PO Resp. 50. This argument appears to be directed to Petitioner’s discussion in its Petition of the current and prior reexamination proceedings involving the ’988 patent. *See* Pet. 30–32.

There, Petitioner points out that these claims require communication “within” a particular level (e.g., within a remote data access subsystem) and “between” different levels (e.g., between the remote data access subsystem and the central data processing subsystem) but do not require communication between subsystems at the same level. Petitioner points this out because the examiner in the prior reexamination (90/007,829) appeared to have, according to Petitioner, misconstrued these claim limitations. *Id.*

We have reviewed Patent Owner’s arguments about the reexamination but are not persuaded that Petitioner’s assertions are in error. Notably, we agree with Petitioner’s observation that the claims do not require transmitting information between subsystems at the same level, i.e., the claims require transmitting information “within” the same level and “between” different levels. *See, e.g.*, Ex. 1001, 27:17–42 (claim 42 claiming LANs “for transmitting data *within* a corresponding one of said [subsystem]” and a WAN “for transmitting data *between* said [subsystems]”) (emphasis added); *id.* at Figs. 1, 2, 4 (showing each so-called tier as only communicating with other tiers, not with other entities in the same tier).

Patent Owner next argues that the “three-tier architecture . . . in the ’988 Patent is not an architecture in which a sending institution . . . is a subsystem of the Receiving Bank . . . (or vice versa).” PO Resp. 52. Patent Owner also argues that the “subsystems . . . claimed in the ’988 Patent . . . are subsystems that perform various processes on data, not banking institutions.” *Id.* Lastly, Patent Owner argues that the claims “further

specify that data is transmitted within those local area networks claims” and “specify at least one wide area network.” *Id.* at 52–53.

None of Patent Owner’s arguments are persuasive. We have determined previously that Campbell discloses three LANs connected by a WAN in our analysis of claim 22. All of these systems process data because they are all transmitting images and data over a network. *See, e.g.*, Ex. 1019, 5:20–31 (describing the transmission of data).

Reviewing the arguments and evidence before us, we determine that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claims 42, 84, 102, 110, and 118.

#### *11. Claims 73 and 74*

Claims 73 and 74 are similar and require that each of the “one or more” subsystems of claim 42 comprises specifically “a plurality” of that subsystem. Petitioner’s analysis here is the same as it was for claims 29, 36, and 66–69, discussed above. Pet. 24, 27–28. Patent Owner argues that “Campbell does not teach or suggest a plurality of each of three different subsystems that reside within a bank” and repeats its unpersuasive argument about one bank not being a subsystem of the other bank. PO Resp. 54 (further relying on the testimony of Mr. Ginsberg at paragraph 30). Neither Patent Owner’s argument nor the testimony of Mr. Ginsberg here is persuasive because it is premised either on a misinterpretation of Petitioner’s ground, or a claim construction not commensurate with the broadest reasonable interpretation of the terms “system” and/or “subsystem,” as we have explained above. Reviewing the arguments and evidence before us, we determine that Petitioner has shown, by a preponderance of the evidence,

that Campbell anticipates the subject matter of claims 73 and 74.

*12. Claims 119 and 120*

Claims 119 and 120 both depend from independent claim 118 and require that the remote data processing subsystem “uniquely identifies the remote data processing subsystem” and, for claim 120, additionally “encrypts and tags the data.” Petitioner asserts that these limitations are met by the functionality of Campbell that identifies the sending institution and keeps records for billing purposes. Pet. 38–39. We understand this to mean that the data accompanying the check images sent to the node is the tagged data (we have already discussed how this is encrypted), and that, because Campbell is able to bill the institutions, it must have uniquely identified them. Patent Owner argues that these claims are patentable based upon their dependency from claim 118. Reviewing the arguments and evidence before us, we determine that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claims 119 and 120.

*13. Claims 46, 88, 106, 114, and 121*

Independent claim 46 requires “one or more remote subsystems,” “at least one intermediate subsystem,” and “at least one central subsystem” arranged in a “tiered manner.” Because the scope of the phrases “one or more” and “at least one” both include “one,” Petitioner reads “one or more remote subsystems” on the sending bank of Campbell, “at least one intermediate subsystem” on the node (or the intermediary), and “at least one central subsystem” on the receiving bank (or the node). Pet. 36; *see also id.* at 36–38 (addressing the additional limitations of the claims).

Patent Owner argues that “it is clear that the subsystems recited in [the claims] transmit data within and between the various subsystems.” PO Resp. 56. Patent Owner does not explain, however, why it believes the particular arrangement in Campbell fails to satisfy the claim limitations. As we mentioned in our analysis of claims 42, 84, 102, 110, and 118, the transmission is within a given level and between different levels, not both for all (as Patent Owner appears to imply). Patent Owner’s argument (*id.*) that Petitioner relies on “banking institutions as being subsystems of one another” is misplaced, as we do not understand Petitioner to rely on one bank being a subsystem of another to meet the claims (nor do the claims appear to preclude or require such an arrangement). *Id.*

Reviewing the record before us, we are persuaded that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claims 46, 88, 106, 114, and 121.

#### *14. Claims 47–49*

These claims depend from independent claim 46 and involve a more detailed breakout of prior-claimed steps, similar to claims 39–41, discussed above. Petitioner relies on the same analysis as claims 39–41. Pet. 29–30.

Of interest, claim 48 states that the intermediate location is connected “to an external communication network.” Patent Owner argues that “the communication network that is disclosed in Campbell, i.e., the PSTN, is an internal communication network available within banks that have subscribed to the PSTN.” PO Resp. 57–58. Patent Owner further argues that “the frame[] relay assembler/dissembler 40 is internal within node 12 of the PSTN which is internal within the banking institutions.” *Id.* at 58. Patent

Owner concludes that “[t]he PSTN is an internal communications network, not an external communications network.” *Id.*

Patent Owner’s internal/external arguments are unpersuasive. The public switched telephone network is a public network; we are not persuaded that this public network is somehow “internal,” whatever meaning Patent Owner ascribes to that term, to the banks or the node in Campbell. *See* Ex. 1019, 2:50–57 (explaining that the PSTN is the telephone network). Patent Owner states that Campbell discloses that “banks . . . have subscribed to the PSTN,” PO Resp. 58, but fails to provide any factual support for this assertion. Instead, Campbell discloses that banks subscribe to the check image transport system described therein (i.e., “the services provided by node 12”). Ex. 1019, 5:62; *see also id.* at 5:61–6:56 (explaining how the subscription service works). Accordingly, Patent Owner’s arguments are unpersuasive.

Reviewing the record before us, we are persuaded that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claims 47–49.

*15. Claims 80, 82, and 83*

Claim 80 depends from independent claim 46 and requires “polling the intermediate locations.” Claims 82 and 83 also depend from claim 46 and require a plurality of remote, intermediate, and central subsystems.

As to claim 80, Petitioner asserts that this limitation is met by the disclosure in Campbell that interface 52 of node 12 polls node controller 42 periodically. Pet. 38. As to claims 82 and 83, Petitioner presents the same

analysis as it does for claims 29, 36, 66–69, 73, and 74, discussed previously and reciting similar limitations. Pet. 27–28.

For claim 80, Patent Owner argues that “[i]t is clearly stated at 5:1–9 of the ’988 Patent that the intermediate tier . . . is engaged in polling the lowest tier.” PO Resp. 59. Notably, Patent Owner cites to no claim limitation in support of its argument and instead attempts to incorporate unclaimed disclosures of the specification into the claims. As we explained in our Decision to Institute, claim 80 “only require[s] that polling of the . . . intermediate locations . . . occurs, i.e., th[is] claim[] do[es] not specify whether the polling occurs between locations.” Dec. Inst. 14.<sup>21</sup> Thus, Patent Owner’s argument that claim 80 requires polling a lower tier is not commensurate in scope with the claim.

For claims 82 and 83, Patent Owner argues:

The disclosure of a three-tier arrangement using three subsystems that interact with one another to extract and transmit data is wholly different than the mere transmission of an image of check, which can be stored or routed to an ultimate destination.

PO Resp. 61.

We have explained already that we are persuaded that Campbell discloses multiple banks, intermediaries, and nodes, arranged in the claimed tiered manner, in our discussions of claims 29 and 42. Reviewing the record before us, we are persuaded that Petitioner has shown, by a preponderance

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<sup>21</sup> This was in contrast to claims 56, 71, 93, and 97–100, upon which we did not institute because these claims “each require polling or calling one location by another location,” and we determined that Petitioner had not shown polling between locations in Campbell. *See* Dec. Inst. 14–15.

of the evidence, that Campbell anticipates the subject matter of claims 80, 82, and 83.

*16. Claims 89–91, 107–109, and 115–117*

These claims involve a more detailed breakout of prior-claimed steps, and are similar to claims 39–41 and 47–49, addressed above. Petitioner’s position is the same. *See* Pet. 29–30. Patent Owner’s arguments are repetitive of ones found unpersuasive for the reasons expressed above. *See* PO Resp. 61–63. Reviewing the record before us, we are persuaded that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claims 89–91, 107–109, and 115–117.

*17. Claims 122 and 123*

These claims involve uniquely identifying the subsystem, and are similar to claims 119 and 120, addressed above. Petitioner’s position is the same. *See* Pet. 38–39. Patent Owner’s arguments are repetitive of ones found unpersuasive, for the reasons expressed above. *See* PO Resp. 63. Reviewing the record before us, we are persuaded that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claims 122 and 123.

*18. Claims 25, 45, and 105*

These claims include further limitations wherein some of the LANs include “at least one network switch for routing transaction data within [the LAN].” Petitioner asserts that Campbell discloses multi-workstation imaging systems that form a LAN at the bank, and that a network switch is inherent to a LAN. Pet. 23 (citing Ex. 1003 ¶¶ 182–185).

Patent Owner argues that “Campbell is completely silent regarding network switches.” PO Resp. 64. Petitioner’s ground, however, asserts that Campbell *inherently* describes the feature; by this, Petitioner is admitting that Campbell is silent on the matter.

Patent Owner also points us to “several documents that describe means other than a network switch to operate a network,” citing us to “[f]ootnote 8, at page 11, *supra*.” *Id.* We find no such footnote on page 11 of the Response, but find a series of URLs on page 28 in a footnote 8. There is no indication that the documents at the URLs are in evidence, nor do we see them in the record. *See* 37 C.F.R. § 42.63(a) (“All evidence must be filed in the form of an exhibit”). There is no explanation of what these documents contain, when and whether they were published, or how, specifically, they are relevant to the discussion at hand. *See* 37 C.F.R. § 42.23(b) (“All arguments for the relief requested in [a Response] must be made in the [Response]”); *see also* 37 C.F.R. § 42.220(a) (indicating the Response is filed as an opposition, and, thus, subject to Rule 42.23). The documents at these URLs are not in evidence, not discussed in a paper, and, therefore, are not considered.

Petitioner’s Declarant, Dr. Knox, sets out his reasoning that network switches are a standard part of LANs, and that a person of ordinary skill in the art envisioning a LAN would also envision it having a network switch. Ex. 1003 ¶ 184 (testifying, “such as switch is a standard part of a modern local area network”); *id.* at ¶¶ 182–185 (setting forth Dr. Knox’s reasoning on the network switch, which includes testimony that the claimed network switch “would be a part of virtually all of the prior art disclosing a LAN”). Whether a network switch is “standard” or in “virtually all” of the prior art,

however, goes to whether a network switch is obvious, not whether a network switch is inherent in Campbell.

Reviewing the record before us, we determine that Petitioner has not shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claims 25, 45, and 105.

*19. Conclusion for the Campbell Anticipation Ground*

Reviewing the arguments and evidence before us, we determine that Petitioner has shown, by a preponderance of the evidence, that Campbell anticipates the subject matter of claims 1, 2, 16, 18, 22, 26, 29, 36, 38–42, 46–49, 58–60, 66–69, 73, 74, 80, 82–84, 88–91, 102, 106–110, and 114–123, but has not made a sufficient showing for claims 25, 45, 55, 64, 70, 75, 78, and 105.

III. ORDER

In view of the foregoing, it is hereby:

ORDERED that claims 1, 2, 16, 18, 22, 26, 29, 36, 38–42, 46–49, 58–60, 66–69, 73, 74, 80, 82–84, 88–91, 102, 106–110, and 114–123 are unpatentable;

FURTHER ORDERED that Exhibits 1062–1065 are to be expunged;

FURTHER ORDERED that Patent Owner's Motion to Exclude is dismissed as moot; and

FURTHER ORDERED that, because this is a Final Written Decision, the 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.

CBM2014-00087  
Patent 5,910,988 C1

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