

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MOTOROLA MOBILITY LLC,  
Petitioner,

v.

INTELLECTUAL VENTURES I LLC,  
Patent Owner.

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Case IPR2014-00500  
Patent 5,790,793

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Before MICHAEL W. KIM, PATRICK R. SCANLON, and  
KRISTINA M. KALAN, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

FINAL WRITTEN DECISION  
*35 U.S.C. § 318(a) and 37 C.F.R. § 42.73*

## I. INTRODUCTION

Motorola Mobility LLC (“Petitioner”) filed a Petition (“Pet.”) to institute an *inter partes* review of claims 1, 4–6, 8, 10, 13–15, 17, 21, 24–26, 28, 30, 33–35, 37, 39, and 40 of U.S. Patent No. 5,790,793 (“the ’793 patent”) pursuant to 35 U.S.C. § 311–319. Paper 4. Intellectual Ventures I LLC (“Patent Owner”) filed a Preliminary Response (“Prelim. Resp.”). Paper 7. We instituted trial on all challenged claims. Paper 12 (“Dec.”).

During trial, Patent Owner filed a Patent Owner Response (Paper 21, “PO Resp.”), which was accompanied by a Declaration from Mark T. Jones, Ph.D. Ex. 2013. Petitioner filed a Reply to the Patent Owner Response. Paper 28 (“Pet. Reply”). A hearing for this proceeding was held on May 5, 2015. A transcript of the hearing has been entered into the record. Paper 47 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. We determine that Petitioner has shown by a preponderance of the evidence that claims 1, 4–6, 8, 10, 13–15, 17, 21, 24–26, 28, 30, 33–35, 37, 39, and 40 of the ’793 patent are unpatentable. Patent Owner’s Motion to Exclude (Paper 35) is dismissed-in-part and denied-in-part.

### *A. Related Proceedings*

Petitioner represents that the ’793 patent has been asserted against it by Intellectual Ventures I LLC and Intellectual Ventures II LLC in *Intellectual Ventures I LLC v. Motorola Mobility LLC*, No. 0:13-cv-61358-RSR (S.D. Fla.) (“the district court case”). Pet. 1–2; Ex. 1013.

*B. The '793 Patent*

The '793 patent relates to “a method and system for sending and receiving Uniform Resource Locators (URLs) in electronic mail over the Internet.” Ex. 1001, Abstract. Figure 4 of the '793 patent is reproduced below.

**FIG. 4**

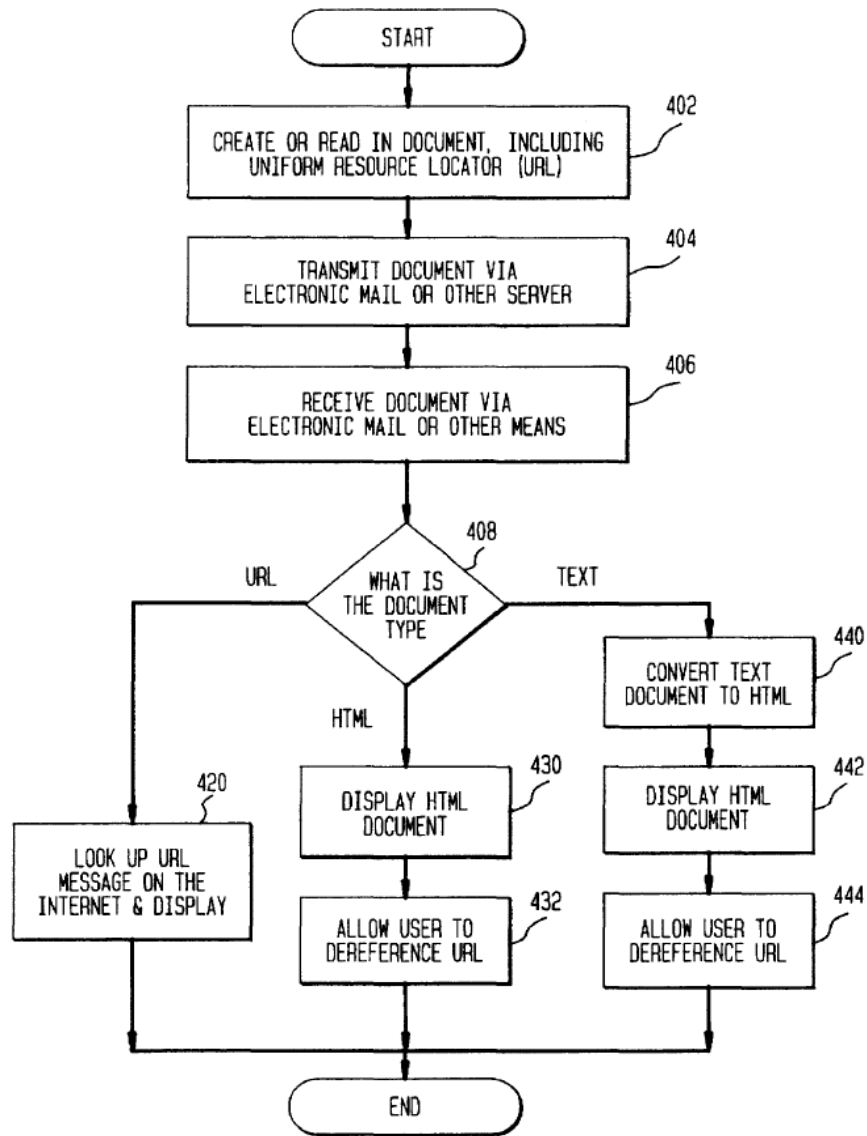


Figure 4 illustrates a flow chart which contains an exemplary process of the '793 patent. *Id.* at 5:1–2.

*C. Illustrative Claims*

Of the challenged claims, claims 1, 10, 21, 30, and 39 are independent. Claim 1 is illustrative of the claims at issue:

1. A method of communicating between computers, comprising the steps of:  
creating a message at a first computer, said message including a reference to a predetermined location;  
transmitting, by the first computer, said message to a second location; and  
receiving said message by a computer at the second location;  
decoding said message by the computer at the second location by retrieving data from the predetermined location, automatically by a single application, without requiring user interaction, into the computer at the second location.

Ex. 1001, 9:3–15.

*D. Prior Art Supporting Instituted Unpatentability Grounds*

Payne            U.S. 5,715,314            Feb. 3, 1998            (Ex. 1007)

Steve Putz, *Interactive Information Services Using World-Wide Web Hypertext*, Xerox Palo Alto Research Center (April 20, 1994) (Ex. 1011).

Steve Putz, *Interactive Information Services Using World-Wide Web Hypertext*, *Computer Networks and ISDN Systems* 27 (1994) 273–280 (Ex. 1012).<sup>1</sup>

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<sup>1</sup> Petitioner represents that Putz (Ex. 1011) was reprinted at a later date, and submits the reprint as Ex. 1012. Pet. 4. Petitioner also represents that “these references [Ex. 1011 and Ex. 1012] have the same disclosure, in different formats.” *Id.* at 29. In our discussion of Putz, we refer to Exhibit 1011.

*E. Instituted Unpatentability Grounds*

We instituted an *inter partes* review of claims 1, 4–6, 8, 10, 13–15, 17, 21, 24–26, 28, 30, 33–35, 37, 39, and 40 of the '793 patent on the following grounds. Dec. 24.

Reference(s)	Basis	Claims Challenged
Payne	§ 102(e)	1, 4–6, 8, 10, 13–15, 17, 21, 24–26, 28, 30, 33–35, 37, 39, 40
Putz	§ 102(a)	1, 4–6, 8, 10, 13–15, 17, 21, 24–26, 28, 30, 33–35, 37, 39, 40

II. ANALYSIS

*A. Claim Construction*

The Board interprets claims in an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1277–79 (Fed. Cir. 2015), *reh'g en banc denied*, 2015 WL 4100060 (Fed. Cir. July 8, 2015); *see also* Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48766 (Aug. 14, 2012). Under that construction, 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 patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Both parties present their claim construction arguments under the broadest reasonable interpretation standard. PO Resp. 6; Pet. Reply 1. Although neither party has noted the expiration date of the '793 patent, it appears that the '793 patent expired on August 4, 2015. We construe expired patent claims according to the standard applied by the district courts. *See In re Rambus, Inc.*, 694 F.3d 42, 46 (Fed. Cir. 2012). Specifically, we

apply the principles set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005).

Claim terms generally are given their ordinary and customary meaning, unless it appears from the specification or the file history that they were used differently by the inventor, in a clear, deliberate, and precise manner. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). Prosecution history disclaimers, like lexicographic meanings, must be clear and unambiguous: “[W]hile the prosecution history can inform whether the inventor limited the claim scope in the course of prosecution, it often produces ambiguities created by ongoing negotiations between the inventor and the PTO. Therefore, the doctrine of prosecution disclaimer only applies to unambiguous disavowals.” *Grober v. Mako Prods., Inc.*, 686 F.3d 1335, 1341 (Fed. Cir. 2012) (citing *Abbott Labs. v. Sandoz, Inc.*, 566 F.3d 1282, 1289 (Fed. Cir. 2009)). Disavowal must be “unmistakable” and “unambiguous.” *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1322 (Fed. Cir. 2013).

In its Response, Patent Owner proposes that the term “by the first computer” in claims 1 and 21 be construed as “at the discretion of the first computer.” PO Resp. 8. Patent Owner proposes similar constructions for the term “by a computer at the first location” in claims 10 and 30 (“at the discretion of the computer at the first location”) and the term “computer for transmitting” in claim 39 (“computer for transmitting at its own discretion”). *Id.* Patent Owner argues that the Specification “distinguishes prior-art pull communications from inventive push communications,” and that the proper interpretation of the foregoing terms, therefore, “should reflect the nature of the inventive push communications” described in the Specification. *Id.* at 7–

8 (citing Ex. 2013 ¶¶ 26, 28). Patent Owner argues further that the prosecution history supports its construction, because there is a clear and unmistakable disavowal of anything related to “pull” communications. *Id.* at 6–7.

Petitioner argues that “no evidence supports giving ‘by’ anything but its plain and ordinary meaning.” Pet. Reply 4; Tr. 8:8–9. Petitioner further argues that the Specification’s only disclosed embodiment, POP3, is a “pull” system rather than a “push” system, which contravenes Patent Owner’s argument that the Specification only describes “push” functions in conjunction with the claimed invention. Pet. Reply 4–5. Concerning disavowal, Petitioner responds that disavowal must be clear and unmistakable, and there is no disavowal where an applicant’s statements are amenable to multiple reasonable interpretations. Reply 2–3; Tr. 12:10–17. Petitioner argues that the alleged disavowal was unrelated to the “by,” in that the amendment in the prosecution history was to the decoding step (rather than the transmitting step). Tr. 59:10–15. Petitioner further argues that Patent Owner’s uncertainty as to why the Examiner used the word “discretion” is “anything but clear disavowal.” *Id.* at 59:16–60:4.

We are unpersuaded that the “by” terms identified by Patent Owner should be accorded anything other than their ordinary and customary meaning, which in the context of the relevant claim limitations, is a computer’s performance of a given action. Regarding Patent Owner’s arguments concerning the Specification, Patent Owner concedes that the term “discretion” appears neither in the claims nor in the Specification. Tr. 43:22–25. Instead, Patent Owner would have us infer “discretion” based on an allegedly clear and unmistakable disavowal of “pull” communications in

the Specification. As an initial matter, we are unpersuaded that there is a sufficiently definitive relationship between “pull” communications and “discretion” to infer that a disavowal of “pull” communications requires the inclusion of the term “discretion” in a proper construction of “by.” Moreover, we are unpersuaded that disclosure of exemplary “pull” communications in the Background section and use of “push” communications in a non-limiting embodiment of the Specification, without more, constitutes a clear and unmistakable disavowal of “pull” communications, especially where the referenced embodiment in the Specification actually may refer to “pull” communications.

Moreover, we do not find sufficient evidentiary support for Patent Owner’s assertion that a proper interpretation of the “by” terms “should reflect the nature of the inventive push communications described in the specification.” PO Resp. 8. Although Patent Owner’s expert opines that Patent Owner’s proposed construction “properly reflect[s] the applicant’s and the Office’s mutual understanding” (Ex. 2013 ¶ 28), he further testifies that in his experience he does not recall using (or not using) or hearing someone else using the term “discretion” to describe what a computer does. Ex. 1032, 43:12–22. Petitioner’s expert, conversely, opines that the “concept of a computer transmitting at its own discretion, or creating a message at its own discretion have no meaning in or currency in computer engineering.” Ex. 1030 ¶ 17. We credit Petitioner’s expert that a person of ordinary skill in the art would understand “by” to describe, generally, a computer’s performance of an action. Pet. Reply 1–2 (citing Ex. 1030 ¶ 16).

To be sure, the word “discretion” does appear in the prosecution history. Patent Owner, however, points to no persuasive evidence in the



prosecution history or elsewhere supporting its assertion that the “by” terms identified above should be limited to actions taken at the relevant computer’s “discretion.” Patent Owner characterizes the word “discretion” as being “used by the examiner to restate his . . . understanding of the push concept.” Tr. 46:13–14. We have no further insight on this record, however, into the Examiner’s reasoning or what the Examiner meant by using the word “discretion.” Moreover, because Patent Owner did not respond to the Examiner’s “discretion” comment during prosecution, the connection between the proposed “by” construction, the push concept, and the use of the word “discretion” is tenuous at best, and certainly not clear and unmistakable, as required for any determination of disavowal.

The term “by” occurs throughout independent claims 1, 10, 21, and 30, referring to actions not only by the first computer, but also by the second computer or by a single application. In each case the term “by” indicates a computer or application simply performing the action indicated, whether it be transmitting a message, receiving a message, or decoding a message. Tr. 10:21–22. Patent Owner has proffered a push/pull explanation as to why the term “by” should be construed as Patent Owner proposes, but has not explained persuasively why we should treat “by” as it relates to actions by the first computer any differently than “by” as it is used elsewhere in the claims. Thus, we determine that the “by” terms identified by Patent Owner do not require “discretion,” and instead indicate a computer’s performance of a given action without further limitation. We note that we would reach this conclusion under both the broadest reasonable interpretation standard and the standard applied by the district courts.

In the Decision to Institute, we determined that the term “displaying the message and the data from the predetermined location” did not require express construction. Dec. 12–13. Regarding the “means” terms, Petitioner in its Petition proposed that the several terms containing “means” in claims 21 and 28 qualify as terms under 36 U.S.C. § 112, sixth paragraph.<sup>2</sup> Pet. 6–7. We determined that the various “means” terms of claim 21 and 28 were means-plus-function elements under § 112, ¶ 6, and adopted Petitioner’s construction of the terms “means for creating,” “means for transmitting,” “means for receiving,” and “means . . . for decoding,” and Patent Owner’s construction of “means for displaying.” Dec. 12. Neither party now proposes a different construction of these terms. We note that, in the Petition and Preliminary Response, the parties represented that the “means” terms constructions proposed to the Board were also proposed and agreed upon in the district court case. Pet. 6; Prelim. Resp. 6–7. We have reviewed our analysis in the Decision to Institute, and have determined, on the record presently before us, that application of the district court standard does not change our construction of the various terms reciting “means” set forth in the Decision to Institute. Dec. 9–12. Based on the complete record now before us, we see no reason to alter our earlier constructions, and maintain these constructions for this Final Written Decision.

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<sup>2</sup> Section 4(c) of the Leahy-Smith America Invents Act, Pub. L. No. 112–29, 125 Stat. 284 (2011) (“AIA”) re-designated 35 U.S.C. § 112, ¶ 6, as 35 U.S.C. § 112(f). Because the ’793 patent has a filing date prior to September 16, 2012, the effective date of § 4(c) of the AIA, we refer to the pre-AIA version of 35 U.S.C. § 112.

*B. Alleged Anticipation of Claims 1, 4–6, 8, 10, 13–15, 17, 21, 24–26, 28, 30, 33–35, 37, 39, and 40 Under 35 U.S.C. § 102(e), Based on Payne*

We have reviewed the Petition, the Patent Owner Response, and Petitioner’s Reply, as well as the relevant evidence discussed in those papers. Petitioner asserts that claims 1, 4–6, 8, 10, 13–15, 17, 21, 24–26, 28, 30, 33–35, 37, 39, and 40 are unpatentable under 35 U.S.C. § 102(e) as anticipated by Payne. Pet. 13–28. Petitioner refers to Ex. 1014 (Declaration of Peter Alexander, Ph.D.) to support its anticipation arguments. *Id.*

Payne discloses a network-based sales system including at least one buyer computer for operation by a user desiring to buy a product, at least one merchant computer, and at least one payment computer. Ex. 1007, Abstract.

Figure 1 of Payne is reproduced below:

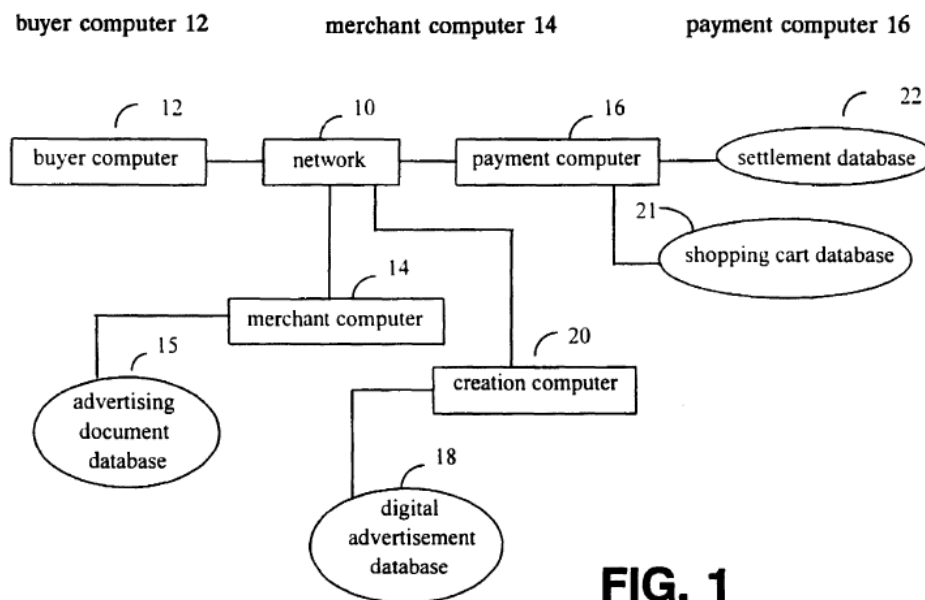


Figure 1 shows a block diagram of a network sales system. *Id.* at 3:59–60.

(i) *Independent Claims 1 and 10*

Petitioner argues that Payne discloses a method for communicating between computers, as recited in claim 1, including two embodiments of

creating a message at a first computer, said message including a reference to a predetermined location, and transmitting, by the first computer, said message to a second location. Pet. 15 (citing Ex. 1007, 4:35–45). Petitioner argues that in the first embodiment, the first computer is the payment computer, the message includes an access URL, and the payment computer sends a message to the buyer computer. Petitioner argues that in the second embodiment, the first computer is the merchant computer, the message includes payment URL A, and the merchant computer sends a message to the buyer computer. *Id.* at 16–20.

Petitioner further argues that Payne discloses two embodiments of receiving said message by a computer at the second location and decoding said message by the computer at the second location, as recited in claim 1. Petitioner argues that in the first embodiment, the buyer computer receives the message sent by the payment computer, automatically decodes the URL, and retrieves a “fulfillment document.” Pet. 20–22. Petitioner argues that in the second embodiment, the buyer computer receives the message sent by the merchant computer, automatically decodes the URL, and retrieves a “confirmation document.” *Id.* Petitioner argues that Payne discloses decoding of URLs to retrieve data from a predetermined location, in that the URLs are transmitted in standard HTTP requests and in HTTP redirect responses, and Payne uses standard HTTP protocol methodology for redirecting an HTTP request automatically to a different URL. Pet. 13–14 (citing Ex. 1014 ¶¶ 64–67).

Petitioner argues that independent claim 10 and its dependent claims have essentially the same limitations as claim 1 and its dependent claims and

that, therefore, “Payne anticipates these claims in the same manner as described in the charts for claims 1, 4, 5, 6, and 8 above.” Pet. 26.

Patent Owner, in its Response, argues generally that Payne does not anticipate the aforementioned claims under either the first embodiment or “primary embodiment” theory, or the second embodiment or “alternate embodiment” theory. PO Resp. 17, 34. Patent Owner argues that “[t]he alternate embodiment theory is a mere variation of the pull communications of the primary embodiment theory.” *Id.* at 34.

Concerning the transmitting step, Patent Owner argues that the HTTP message in the first embodiment of Payne is not transmitted or “pushed” by the payment computer at the payment computer’s discretion, relying on Patent Owner’s proffered construction of the term “by a first computer,” which requires that the first computer “push” a message to the second location. *Id.* at 19. Patent Owner argues similarly that the HTTP message in the second embodiment is not transmitted at the merchant computer’s discretion. *Id.* at 34. Patent Owner notes that Petitioner’s expert doesn’t remember Payne “having anything that one of ordinary skill in the art would understand to be a push system.” Ex. 2019, 64:8–16; Tr. 48:6–8.

Petitioner responds that “Patent Owner’s sole argument that this [transmitting] limitation is not disclosed relies on its proposed claim construction for ‘by,’ which as explained above, is incorrect.” Pet. Reply 6.

We have not adopted Patent Owner’s construction of the term “by,” as discussed *supra*. Thus, there is no requirement that the transmitting action be taken at the “discretion” of the first computer. Independent claims 1 and 10 require only that the action of transmitting the first message be done by the first computer. The payment computer of Payne in the first embodiment

sends the first message. Ex. 1007, 7:31–39 (“The payment computer then sends a redirect to access URL to the buyer computer (step 90), which sends the access URL to the merchant computer (step 92).”); Pet. 19–20, 26. The merchant computer of Payne in the second embodiment sends the first message. Ex. 1007, 5:48–53 (“merchant computer provides payment VRL A to the buyer computer in response to the purchase product message.”); Pet. 20; 26. Therefore, we determine that the transmitting limitation is anticipated by Payne.

With respect to the decoding step in the first embodiment and in the second embodiment, Patent Owner argues that the buyer computer does not “decode” the HTTP message automatically, without requiring user interaction. PO Resp. 19, 35. Patent Owner takes the position that the user at the buyer computer controls the purchase process and repeatedly requests action by the merchant computer (in the first embodiment) or requests action by the payment computer (in the second embodiment). PO Resp. 21, 37. Although Patent Owner agrees that Payne sends a redirect, Patent Owner argues that Petitioner’s reliance on extrinsic evidence to show how a redirect works is flawed, in that the extrinsic evidence (RFC 1945 (Ex. 1019)) does not antedate the critical date. *Id.* at 21–22, 38. Patent Owner also argues that Payne does not disclose that the redirect operation is automatic, because some embodiments of Payne require user interaction, which purportedly defeats Petitioner’s inherency argument. Tr. 50:9–51:12.

Petitioner disputes Patent Owner’s contention that Payne requires user interaction for the buyer computer to perform the decoding step, either in the primary embodiment or in the alternate embodiment. Pet. Reply 6–7. Petitioner asserts that any user interaction steps occur before or after the

steps recited in the claim, and therefore that Patent Owner's contentions are irrelevant. *Id.* at 7. Petitioner also argues that Payne discloses "automatic (without user interaction) redirection of a web browser based on a standard HTTP request message that includes a URL (such as the access URL)." *Id.*

With respect to the decoding step in the first embodiment, we find that the buyer computer of Payne decodes the message without user interaction, sending the access URL to the merchant computer to retrieve the fulfillment document. Ex. 1007, 7:46–50 ("the merchant computer verifies that the buyer computer network address is the same as the buyer network address in the access URL (step 101), and if so, sends a fulfillment document to the buyer computer (step 102), which is displayed by the buyer computer (step 104)"), Figs. 2H, 10. With respect to the decoding step in the second embodiment, we find that the buyer computer sends the payment URL to the payment computer to automatically retrieve the confirmation document. *Id.* at 5:53–60 ("buyer computer then sends the payment URL A it has received from the merchant computer to the payment computer."), *id.* at 6:5–14 ("payment computer sends a payment confirmation document to the buyer computer,"), Fig. 6 (showing an example of the confirmation document), *id.* at 4:7–9.

We are persuaded by Petitioner's arguments and evidence, supported by Dr. Alexander's testimony, that the redirection of a web browser based on a standard HTTP request message including a URL disclosed in Payne is automatic. Tr. 28:2–9. In discussing HTTP protocol methodology as it relates to Payne, Dr. Alexander states that the "HTTP protocol is described in various Internet RFCs." Ex. 1014 ¶¶ 65–66. As an example, he relies on, and cites in a footnote, a March 1995 publication describing the HTTP

protocol, to establish the knowledge of one of ordinary skill in the art at the time of the invention. *Id.* at ¶66; Pet. 14. Patent Owner objects to Dr. Alexander's reliance on the March 1995 publication, on the ground that the first page of Exhibit 1019, a later version of the March 1995 publication submitted by Petitioner with its Petition, shows a date of May 1996. PO Resp. 21–22, 38. Patent Owner's objection, however, does not account properly for the express reliance by Dr. Alexander on the March 1995 publication referenced in his declaration. Ex. 1014 ¶ 66 n.4. We can accord appropriate weight to an expert's testimony, taking into account the expert's understanding of the level of skill in the art at the time of the invention, and the later submission of the March 1995 publication as Exhibit 1036. *See, e.g., Yorkey v. Diab*, 601 F.3d 1279, 1284 (Fed. Cir. 2010) (holding the Board has discretion to give more weight to one item of evidence over another “unless no reasonable trier of fact could have done so”); *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1368 (Fed. Cir. 2004) (“[T]he Board is entitled to weigh the declarations and conclude that the lack of factual corroboration warrants discounting the opinions expressed in the declarations.”). Moreover, given the “comprising” construction of claims 1 and 10, the method may include additional steps before and after the disputed steps, but whether those additional steps require user interaction does not change our analysis of the steps at issue in claims 1 and 10. *See Invitrogen Corp. v. Biocrest Mfg., L.P.*, 327 F.3d 1364, 1368 (Fed. Cir. 2003).

On this record, we are persuaded by Petitioner's arguments that Payne, by a preponderance of the evidence, anticipates claims 1 and 10 of the '793 patent.



*(ii) Independent Claims 21 and 30*

Independent Claims 21 and 30 are means-plus-function claims. Petitioner argues that independent claims 21 and 30 and their respective disputed dependent claims “have essentially the same limitations as Claims 1, 4, 5, 6, and 8” and that, therefore “Payne anticipates these claims in the same manner as described in the charts for claims 1, 4, 5, 6, and 8 above.” Pet. 25 (citation and footnote omitted).

Patent Owner argues that the Petition “suffers from a complete failure of proof for claims 21 and 30” in that (a) Payne does not disclose the transmitting means of claim 21 or the corresponding structure, and that the payment/merchant computer sends the HTTP message to the buyer computer directly, not via a server; (b) the HTTP message with the access URL in claims 21 and 30 is not created or transmitted at the payment/merchant computer’s discretion (relying on its earlier claim construction arguments); and (c) Payne does not disclose the decoding means of claims 21 and 30, because the Petition does not explain how Payne discloses the corresponding structure of the decoding means. PO Resp. 22–29 (first embodiment), 38–43 (second embodiment).

Petitioner identified, and we construed, the transmitting means’ corresponding structure as including Step 404 (TRANSMIT DOCUMENT VIA ELECTRONIC MAIL OR OTHER SERVER). Pet. 6–7; Dec. 11–12. Petitioner responds that (a) Payne discloses the transmitting means of claim 21 and its corresponding structure, in that the HTTP message with the access URL is transmitted via a payment computer (first embodiment) or merchant computer (second embodiment): “In other words, the ‘payment computer’ (primary) or the ‘merchant computer’ (alternate) is the ‘other server.’” Pet.

Reply 8–9 (citing Pet. 19–20, 26; Ex. 1007, 5:48–53, 7:31–39, Fig. 2G.).

We are persuaded by Petitioner’s arguments that the structure identified in the ’793 patent is found in Payne. Use of the term “via” in step 404 does not require an additional step or structure in the transmission process. *See also* Step 406 (RECEIVE DOCUMENT VIA ELECTRONIC MAIL OR OTHER MEANS). In this case, “via” means that the document can be sent by a server such as the payment computer or the merchant computer.

Patent Owner’s arguments for its point (b) rely on its proposed construction of the terms “by the first computer” in claim 21 and “by a transmitting computer at a first location” in claim 30. We have considered and discussed the proposed constructions, and for substantially the reasons given above, are not persuaded by Patent Owner’s arguments on this point.

Petitioner identified, and we construed, the decoding means’ corresponding structure as including Step 408 (WHAT IS THE DOCUMENT TYPE). Pet. 7; Dec. 11–12. Patent Owner’s argument (c) is that because Payne’s HTTP message is always the same type of message, Payne’s computers need not and likely do not determine whether the message could be another type. PO Resp. 27, 41. Payne states that “in preferred embodiments the URL is sent in a standard HTTP request message,” and also allows that a URL message may be specified as a redirection. Ex. 1007, 9:51–54. Petitioner responds that the examination of redirect commands is an examination of the document type. Pet. Reply 9. Petitioner further argues that Payne’s access URL could be one of many other messages capable of being sent via standard HTTP protocol. *Id.* at 9–10. We are not persuaded by Patent Owner’s speculation that Payne’s computers “need not and likely do not” determine the document type. PO

Resp. 27, 41. In determining whether the message is one type or another, we find that the decoding means would need to examine the document type.

On this record, we are persuaded by Petitioner's arguments that Payne, by a preponderance of the evidence, anticipates claims 21 and 30 of the '793 patent.

*(iii) Independent Claim 39*

Patent Owner refers to and relies on its earlier arguments for claims 21 and 30 to argue that claim 39 is not anticipated, because (a) the HTTP message with the access URL is not transmitted at the payment/merchant computer's discretion, (b) Payne does not disclose examining a type of the message, and (c) Payne does not disclose the transmitting means. PO Resp. 29–30, 43–44.

For the same reasons given above, we are not persuaded by Patent Owner's arguments. On this record, we are persuaded that Petitioner has demonstrated by a preponderance of the evidence that Payne discloses the limitations of claims 39.

*(iv) Dependent Claims 5, 14, 25, and 34*

Patent Owner argues that claims 5, 14, 25, and 34 are not anticipated by Payne, because Payne does not automatically retrieve data “without the user requesting the retrieval of the data corresponding to the URL.” PO Resp. 30, 44. Specifically, Patent Owner argues that Payne's user at the buyer computer explicitly requests the retrieval of the fulfillment document associated with the access URL, at least twice, and retrieval of the confirmation document. *Id.* Petitioner responds that Patent Owner's argument “focuses only on irrelevant steps that occur before or after the steps recited in the claims.” Reply 10. We are persuaded by Petitioner's

earlier arguments that the computer automatically takes the steps required by claims 5, 14, 25, and 34, without user interaction. Moreover, given the “comprising” construction of claims 5, 14, 25, and 34, the method may include additional steps before and after the disputed steps, but whether those additional steps require user interaction does not change our analysis of the steps at issue.

On this record, we are persuaded by Petitioner’s arguments that Payne, by a preponderance of the evidence, anticipates claims 5, 14, 25, and 34 of the ’793 patent.

(v) *Dependent Claims 8, 17, 28, and 37*

Patent Owner argues that claims 8, 17, 28, and 37, which recite additional limitations for “display,” are not anticipated by Payne, because Payne does not display any part of the HTTP message from the payment computer to the buyer computer (first embodiment) or from the merchant computer to the buyer computer (second embodiment). PO Resp. 32, 47.

We agree with Petitioner that Payne discloses displaying the message. Figure 10 of Payne is “a screen snapshot of a fulfillment document that the merchant computer sends to the buyer computer,” as in Petitioner’s proposed first embodiment. Ex. 1007, 4:20–21. Figure 6 of Payne is “a screen snapshot of a confirmation document that the payment computer sends to the buyer computer,” as in Petitioner’s proposed second embodiment. *Id.* at 4:7–8. Figures 6 and 10 clearly indicate display of a URL in a field denominated “Document URL”. Dr. Alexander testifies that “the browser URL field designated “Document URL” in Figure 10 is the access URL—representing a message that was sent from the merchant computer to the buyer computer.” Ex. 1014, 42. He further testifies that in the alternate

embodiment, the “‘Document URL’ in Fig. 6 is the payment URL.” *Id.* at 45. We agree with Petitioner that in Figure 10 of Payne, the Document URL is consistent with the Access URL (the message in the first embodiment), and in Figure 6 of Payne, the Document URL is consistent with the Payment URL (the message in the second embodiment). Pet. Reply 10–11.

On this record, we are persuaded by Petitioner’s arguments that Payne, by a preponderance of the evidence, anticipates claims 8, 17, 28, and 37 of the ’793 patent.

*(vi) Appendix E*

Patent Owner argues that Exhibit 1008 (“Appendix E”) was not part of Payne’s application, and is not part of Payne for the purposes of § 102(e). PO Resp. 9–15. In our Decision to Institute, we stated that our reasons for instituting rely on portions of Payne’s specification cited by Petitioner, not on Appendix E. Dec. 17. Here, we find similarly that our reasons for reaching our determination do not rely on Appendix E. Accordingly, for purposes of this final decision, we need not reach the merits of Patent Owner’s arguments regarding Appendix E.

*(vii) Conclusion*

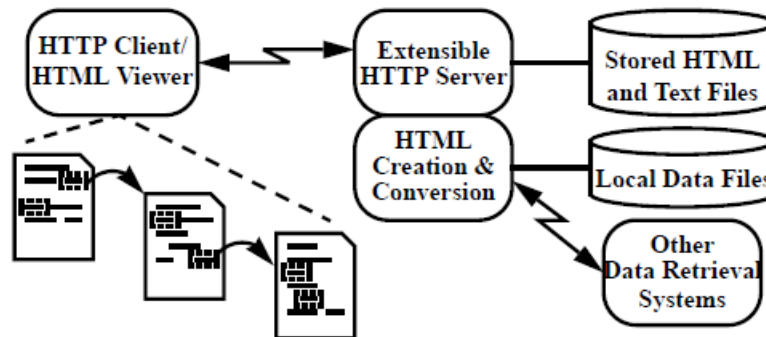
Based on the information presented, Petitioner has demonstrated by a preponderance of the evidence that challenged claims 1, 4–6, 8, 10, 13–15, 17, 21, 24–26, 28, 30, 33–35, 37, 39, and 40 are unpatentable as anticipated by Payne.

*D. Alleged Anticipation of Claims 1, 4–6, 8, 10, 13–15, 17, 21, 24–26, 28, 30, 33–35, 37, 39, and 40 Under 35 U.S.C. § 102(a), Based on Putz*

Petitioner asserts that claims 1, 4–6, 8, 10, 13–15, 17, 21, 24–26, 28, 30, 33–35, 37, 39, and 40 are unpatentable under 35 U.S.C. § 102(a) as anticipated by Putz. Pet. 29–40.

Putz discloses certain interactive World-Wide Web servers that produce information displays and documents dynamically, rather than just providing access to static files. Ex. 1011, 1. Putz gives examples such as the PARC Map Viewer, which uses a geographic database to create and display maps of any part of the world on demand, and the Digital Tradition folk music server, which provides access to a large database of song lyrics and melodies. *Id.*

The first unnumbered figure of Putz (“Figure 1”) is reproduced below:



Putz’s Figure 1 shows an overview of the system described by Putz. *Id.* at 2.

*(i) Putz as Prior Art*

Patent Owner contends that the Petition does not establish that the Putz references are printed publications that are prior art under § 102(a). PO Resp. 13–14. Patent Owner argues that its own evidence, i.e., a Section 131 affidavit filed in the subject patent’s original prosecution indicating conception prior to December 20, 1994, supports a conclusion that Putz is not prior art. *Id.* at 14. As we noted in our Decision to Institute, the earliest

date mentioned in the Section 131 affidavit was November 24, 1994.  
Dec. 22–23.

Petitioner responds that Putz is prior art, by virtue of at least its inclusion in a publication distributed to at least 380 attendees of the First International Conference on the World-Wide Web which took place on May 25–27, 1994. Pet. Reply 11 (citing Ex. 1028, 2–3). Petitioner also relies on Putz’s public availability on the First International Conference on World-Wide Web website by at least mid-June 1994. *Id.* at 11–12 (citing Ex. 1023, 3–5). Finally, Petitioner relies on the testimony of Steve Putz, stating that Putz is prior art and qualifies as a printed publication, to support its argument. *Id.* at 12 (citing Ex. 1023, Ex. 1028).

Although the ultimate determination of whether a document is a printed publication is a question of law, it is a question that is closely based on the underlying facts and circumstances surrounding the disclosure of a document to members of the public. *Suffolk Techs., LLC v. AOL Inc.*, 752 F.3d 1358, 1364 (Fed. Cir. 2014); *SRI Int’l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1192 (Fed. Cir. 2008); *In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004). Public accessibility is a key question in determining whether a document is a printed publication and is determined on a case-by-case basis. *Suffolk Techs.*, 752 F.3d at 1364. To qualify as a printed publication, a document “must have been sufficiently accessible to the public interested in the art.” *In re Lister*, 583 F.3d 1307, 1311 (Fed. Cir. 2009).

“A given reference is ‘publicly accessible’ upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the

subject matter or art exercising reasonable diligence, can locate it.” *SRI Int’l*, 511 F.3d at 1194 (quoting *Bruckelmyer v. Ground Heaters, Inc.*, 445 F.3d 1374, 1378 (Fed. Cir. 2006)).

Putz, on its face, has a date of April 20, 1994. Ex. 1011, 1. Putz also indicates, in its front-page footer, that the document was “[p]repared for the First International Conference on World-Wide Web, May 25–27, in Geneva, Switzerland.” *Id.* Petitioner states that Putz was “presented at the First International Conference on the World-Wide Web, held at CERN in Geneva, Switzerland, in May, 1994.” See <http://www94.web.cern.ch/WWW94/Welcome.html>.” Pet. 3–4. Petitioner also cites to a “list of the formal presentations given at the conference, which references” Putz. *Id.* at 4 (citing <http://www94.web.cern.ch/WWW94/PrelimProcs.html>). Petitioner submitted copies of these cited webpages with the Petition as Exhibit 1006.<sup>3</sup> *Id.*

Exhibit 1006, which on its face denotes that the aforementioned webpage was accessed on August 30, 2013, indicates that the abovementioned conference took place on May 25–27, 1994, and that “[t]his page remains of interest as a report and as pointer to the next ones.” Ex. 1006, 1. It also states that the “three days in Geneva were attended by 380 participants from all over the world.” *Id.* The page indicates that the “proceedings will be published in two forms, and until then, the preliminary proceedings [linked] are available for inspection.” *Id.* On the linked “Preliminary Proceedings” page, which includes links “to the PostScript files as submitted,” Putz appears as item 38. *Id.* at 2, 6.

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<sup>3</sup> Patent Owner objected to Exhibit 1006 (Exhibit 2020, 2), but did not make it a part of its Motion to Exclude.



The evidence submitted with the Petition supports that Putz was delivered orally at the First International Conference on the World-Wide Web held on May 25–27, 1994. *See Mass. Inst. of Tech. v. AB Fortia*, 774 F.2d 1104, 1109 (Fed. Cir. 1985) (holding that a paper delivered orally at a conference attended by 50–500 people, and later distributed to at least six people, was a printed publication). The “List of PostScript files for the WWW94 advance proceedings” includes a link to Putz, illustrating that the linked document was disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence could locate it.

Mr. Putz’s testimony, which we find credible, confirms that he gave an oral presentation of the material contained in Exhibit 1011 at the conference. Ex. 1023 ¶ 8, Ex. 1028 ¶ 4. According to Mr. Putz, he visited the conference webpage no later than mid-June 1994 and downloaded a copy of his document; he states that the webpage “currently is in the same condition, with the same contents, as I remember it being in when I accessed it.” Ex. 1023 ¶¶ 14–15. *See Thompson v. Bank of Am. N.A.*, 783 F.3d 1022, 1027 & n.9 (5th Cir. 2015) (citing *Osborn v. Butler*, 712 F. Supp. 2d 1134, 1146–47 (D. Idaho 2010)). Finally, Mr. Putz confirms that all attendees of the conference were given a copy of “Advance Proceedings,” which included copies of the articles presented at the conference. Ex. 1028 ¶¶ 5–6.

Based on the totality of evidence regarding presentation and dissemination of Putz, we determine that Putz was publicly accessible as of at least mid-June 1994, and thus is prior art<sup>4</sup>.

(ii) *Independent Claims 1 and 10*

Petitioner argues that Putz discloses a method for communicating between computers, as recited in claim 1, including creating a message at a first computer, said message including a reference to a predetermined location, and transmitting, by the first computer, said message to a second location. Pet. 31–34; Ex. 1011, 2, Fig. 1. Petitioner states that an HTML document is created in Putz that includes an IMG element with a URL specifying the appropriate map image, Ex. 1011, 3, and that the message created by the HTTP web server is transmitted to the client computer in the form of an HTTP response. Pet. 33–34; Ex. 1011, 2.

Petitioner further states that Putz discloses receiving said message by the client computer, i.e., the computer at the second location, and decoding said message by the computer at the second location as recited in claim 1. Pet. 34–35. Petitioner argues that the client computer receives the HTTP response (Ex. 1011, 2), and that the web browser automatically decodes the <IMG> tag with no user interaction required, because Putz uses standard web browsers that inherently operate in that manner for fetching images identified by <IMG> tags. Pet. 34; Ex. 1011, 5; Tr. 23:14–21.

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<sup>4</sup> We are persuaded that the evidence submitted with the Petition alone is sufficient to support our determination as to the public accessibility of Putz. Nevertheless, we acknowledge the testimony of Mr. Putz himself, which leaves little doubt that our determination is correct.

Patent Owner argues that claims 1 and 10 are not anticipated by Putz because, first, the HTML response with the image URL is not transmitted at the server's discretion, but rather, the client computer is manually activated to retrieve it under a user's direct manual control. PO Resp. 52. Patent Owner points to Dr. Alexander's testimony that he doesn't remember Putz having anything to do with push. Ex. 2019, 64:7-9; Tr. 49:2-3. Second, Patent Owner argues, the client does not "decode" the HTML response automatically, without requiring user interaction. PO Resp. 53.

Petitioner, referring back to its earlier argument regarding claim construction of the term "by," argues that the transmitting limitation of claims 1 and 10 "only requires transmission of a message by a first computer to a second location, it does not require transmission of a message 'at the discretion' of the first computer to a second location." Pet. Reply 12; Tr. 23:9-13. Petitioner further argues, regarding the decoding step, that the web browser at the client computer in Putz fetches or retrieves the images identified by the <IMG> tag from the URL location, thus requiring no user interaction. Pet. Reply 13. Petitioner argues that the "user interaction" all occurs before any of the limitations—transmitting, creating, receiving, decoding—of the claimed method. Tr. 23:21-24.

Referring to our discussion of the "by" terms, we are not persuaded that the transmitting step must be taken at the discretion of the first computer. Thus, it is enough that the first computer transmits a message to a second location. Putz's first computer, i.e., a web server, transmits an HTML document with an embedded URL image element to a second location, i.e., a client computer. Ex. 1011, 2; Pet. 29-30, 33-34. Thus, we find that this element is anticipated by Putz.

Regarding the decoding step, we agree with Petitioner that steps taken before or after a retrieval step are immaterial. *See Invitrogen Corp.*, 327 F.3d at 1368. Putz provides that the “HTML document is created which includes an IMG element with a URL specifying the appropriate map image.” Ex. 1011, 3. We are persuaded that this language and the Petitioner’s evidence support adequately a finding that the client browser of Putz fetches or retrieves and automatically decodes, without user interaction, the images identified by the <IMG> tag from the URL location.

On this record, we conclude that Petitioner has demonstrated by a preponderance of the evidence that claims 1 and 10 are anticipated by Putz.

*(iii) Independent Claims 21 and 30*

Patent Owner argues that (1) Putz does not disclose the transmitting means of claim 21; (2) for claims 21 and 30, that Putz does not disclose that the HTML response with the image URL is created at the server’s discretion; and (3) Putz does not disclose the decoding means of claims 21 and 30. PO Resp. 54–58.

Petitioner argues, regarding Patent Owner’s argument (1) that Putz discloses the structure of the transmitting means as, for example, an HTML document containing an embedded URL image element, transmitted via a web server (i.e., the “other server”) to a client computer. Pet. Reply 13. Petitioner further argues, regarding Patent Owner’s argument (3) that the decoding means, and its corresponding structure, is disclosed in Putz, as there are multiple document types (i.e. images, SGML) in Putz that are examined. *Id.* at 14.

For argument (1), we agree with Petitioner that Putz discloses the transmitting means of claim 21. As discussed, Petitioner identifies, and we

construe, the transmitting means' corresponding structure as including Step 404 (TRANSMIT DOCUMENT VIA ELECTRONIC MAIL OR OTHER SERVER). Pet. 6–7; Dec. 11–12. We are persuaded by Petitioner's arguments that the web server of Putz corresponds properly to the recited "other server." Use of the term "via" in step 404 does not require an additional step or structure in the transmission process. *See also* Step 406 (RECEIVE DOCUMENT VIA ELECTRONIC MAIL OR OTHER MEANS). In this case, "via" means that the document can be sent by a server, such as Putz's web server.

Patent Owner's argument (2) relies on its proposed construction of the terms "by the first computer" in claim 21 and "by a transmitting computer at a first location" in claim 30. We have considered and discussed the proposed constructions above, and for substantially the reasons given above, are not persuaded by Patent Owner's arguments on this point.

Finally, for argument (3), we agree with Petitioner that Putz examines multiple document types. Pet. Reply 14. As discussed, Petitioner identifies, and we construe, the decoding means' corresponding structure as including Step 408 (WHAT IS THE DOCUMENT TYPE). Pet. 7; Dec. 11–12. Petitioner argues that the MIME-type parameters used in the HTTP response message of Putz can specify document types, such as images. Pet. Reply 13. Putz also discloses HTML, "which is a . . . SGML document type allowing structured text with links," (Ex. 1011, 1) and thus Petitioner argues that multiple document types are examined in Putz. *Id.* We are not persuaded by Patent Owner's speculation that "[Putz's] computers "need not and likely do not determine whether the message could be another type." PO Resp. 58. In

determining whether the message is one type or another, we find that the decoding means would need to examine the document type.

On this record, we conclude that Petitioner has demonstrated by a preponderance of the evidence that claims 21 and 30 are anticipated by Putz.

*(iv) Independent Claim 39*

Patent Owner refers to and relies on its earlier arguments for claims 21 and 30 to argue that claim 39 is not anticipated, because (i) the HTML response with the image URL is not transmitted at the server's discretion, (ii) Putz does not disclose examining a type of the message, and (iii) Putz does not disclose the recited transmitting means. PO Resp. 58–59.

For the same reasons given above, we are not persuaded by Patent Owner's arguments. We are persuaded that Petitioner has demonstrated by a preponderance of the evidence that Putz discloses the limitations of claims 39.

*(v) Dependent Claims 5, 14, 25, and 34*

Patent Owner argues that claims 5, 14, 25, and 34 are not anticipated by Putz, because Putz does not automatically retrieve data “without the user requesting the retrieval of the data corresponding to the URL.” PO Resp. 59. Specifically, Patent Owner argues that Putz's user at the client computer explicitly requests the retrieval of the map image associated with the image URL by clicking or selecting a web page URL. *Id.* Petitioner responds that the “web browser on the client computer automatically retrieves the map image from the image source without user interaction and thus anticipates these claims.” Pet. Reply 14. We are persuaded by Petitioner's earlier arguments that the computer of Putz automatically takes the steps required by claims 5, 14, 25, and 34, without user interaction, notwithstanding any

earlier step that may be taken by a user at a client computer. Moreover, given the “comprising” construction of claims 5, 14, 25, and 34, the method may include additional steps before and after the disputed steps, but whether those additional steps require user interaction does not change our analysis of the steps at issue.

On this record, we conclude that Petitioner has demonstrated by a preponderance of the evidence that claims 5, 14, 25, and 34 are anticipated by Putz.

*E. Remaining Claims*

Petitioner argues that “Patent Owner does not address claims 4, 6, 13, 15, 24, 26, 33, 35 and 40; thus concedes Payne discloses each of these limitations.” Pet. Reply 11. Petitioner also argues that “Patent Owner does not address claims 4, 6, 8, 13, 15, 17, 24, 26, 28, 33, 35, 37 and 40, thus conceding that Putz . . . discloses each of the limitations of these claims.” *Id.* at 14.

As discussed, we find that Petitioner has established, by a preponderance of the evidence, that Payne anticipates independent claims 1, 10, 21, 30, and 39, and dependent claims 5, 14, 25, and 34 as well as 8, 17, 28, and 37. We further find that Petitioner has established, by a preponderance of the evidence, that Putz anticipates independent claims 1, 10, 21, 30, and 39, and dependent claims 5, 14, 25, and 34. We have reviewed the arguments presented in the Petition and the supporting evidence regarding the anticipation of the remaining claims as identified by Petitioner (Pet. Reply 11, 14), which were not disputed by Patent Owner in its Response. Patent Owner, in its Response, relies solely on its arguments and evidence concerning the independent claims and additional dependent

claims identified in its Response. In the Scheduling Order, we cautioned Patent Owner that any arguments for patentability not raised in the Response would be deemed waived. Paper 13, 3. After reviewing of the arguments and evidence presented concerning the remaining claims, we find a preponderance of the evidence establishes that Payne expressly discloses the limitations of claims 4, 6, 13, 15, 24, 26, 33, 35 and 40, and that Putz discloses the limitations of claims 4, 6, 8, 13, 15, 17, 24, 26, 28, 33, 35, 37 and 40.

*F. Real Parties in Interest*

The Petition, in its real-party-in-interest section, identified Google as a party that holds more than a 10% ownership of Petitioner. Dec. 8. In the Decision to Institute, we determined that the Petition sufficiently identified all real parties-in-interest pursuant to 35 U.S.C. § 312(a)(2). *Id.* at 9. Patent Owner argues that the Decision to Institute relies on a legally incorrect interpretation of the statute. PO Resp. 15. In its Response, Patent Owner presents no substantially new arguments that require revisiting our determination regarding identification of real parties-in-interest. We, therefore, decline to dismiss the Petition for the same reasons given in the Decision to Institute.

*G. Patent Owner's Motion to Exclude*

Patent Owner filed a Motion to Exclude (Paper 35, "Mot. to Excl."), to which Petitioner responded (Paper 38, "Resp. to Mot. to Excl."), and Patent Owner filed a Reply (Paper 39, "Reply on Mot. to Excl."). Patent Owner's Motion seeks to exclude (i) Exhibit 1008 (Payne Appendix E) as irrelevant and confusing; (ii) Exhibit 1019 (RFC 1945) as irrelevant and confusing; (iii) Exhibit 1035 (Payne prosecution history) as needlessly



cumulative of Exhibit 2003; and (iv) Exhibit 1036 (RFC 1945 draft) as improper reply evidence, not a printed publication, and prejudicial. Mot. to Excl. 1–12.

Petitioner argues that (i) Exhibit 1008 is relevant, admissible, and not confusing; (ii) Exhibit 1019 is relevant, admissible, and not confusing; (iii) Exhibit 1035 contains the complete prosecution history of Payne, unlike the excerpted prosecution history in Exhibit 2003, and therefore is not cumulative; and (iv) Exhibit 1036 is relevant, admissible, and proper reply evidence. Resp. to Mot. to Excl. 1–11.

As an initial matter, we note that we do not rely upon Exhibit 1008 or Exhibit 1035 in our present determination. We therefore need not decide the Motion to Exclude as to those Exhibits; it is dismissed as moot.

The moving party has the burden of proof to establish that it is entitled to the requested relief. 37 C.F.R. § 42.20(c). A motion to exclude is neither a substantive sur-reply, nor a proper vehicle for arguing whether a reply or supporting evidence is of appropriate scope. *Zynga Inc. v. Personalized Media Commc'ns, LLC*, IPR2013-00162, slip op. at 3 (PTAB Aug. 28, 2013) (Paper 15); *Berk-Tek LLC v. Belden Tech., Inc.*, IPR2013-00057, slip op. at 3 (PTAB Oct. 31, 2014) (Paper 39).

Patent Owner's objections to Exhibits 1019 and 1036 are directed to the weight that the information disclosed therein should be afforded, rather than to its admissibility. It is within our discretion to assign the appropriate weight to be accorded to the information in Exhibits 1019 and 1036. The Board, sitting as a non-jury tribunal with administrative expertise, is well-positioned to determine and assign appropriate weight to evidence presented. *Gnosis S.P.A. v. S. Ala. Med. Sci. Found.*, IPR2013-00118, slip op. at 43

(PTAB June 20, 2014) (Paper 64); *see also Donnelly Garment Co. v. NLRB*, 123 F.2d 215, 224 (8th Cir. 1941) (“One who is capable of ruling accurately upon the admissibility of evidence is equally capable of sifting it accurately after it has been received.”). We thus decline to exclude Exhibits 1019 and 1036.

Accordingly, the Motion to Exclude is *dismissed* as to Exhibits 1008 and 1035, and *denied* as to Exhibits 1019 and 1036.

#### SUMMARY

Petitioner has demonstrated, by a preponderance of the evidence, that claims 1, 4–6, 8, 10, 13–15, 17, 21, 24–26, 28, 30, 33–35, 37, 39, and 40 of the ’793 patent are unpatentable under 35 U.S.C. § 102(e) as anticipated by Payne, and unpatentable under 35 U.S.C. § 102(a) as anticipated by Putz. This is a Final Written Decision of the Board under 35 U.S.C. § 318(a).

#### ORDER

For the reasons given, it is

ORDERED that Patent Owner’s Motion to Exclude is *dismissed* as to Exhibits 1008 and 1035 and *denied* as to Exhibits 1019 and 1036.

FURTHER ORDERED that claims 1, 4–6, 8, 10, 13–15, 17, 21, 24–26, 28, 30, 33–35, 37, 39, and 40 of the ’793 patent are *unpatentable*; and

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

Case IPR2014-00500  
Patent 5,790,793

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