

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ARISTA NETWORKS, INC.,  
Petitioner,

v.

CISCO SYSTEMS, INC.,  
Patent Owner.

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Case IPR2015-00978  
Patent 7,340,597 B1

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Before BRYAN F. MOORE, MATTHEW R. CLEMENTS, and  
PETER P. CHEN, *Administrative Patent Judges*.

CHEN, *Administrative Patent Judge*.

DECISION  
Institution of *Inter Partes* Review  
*37 C.F.R. § 42.108*

## I. INTRODUCTION

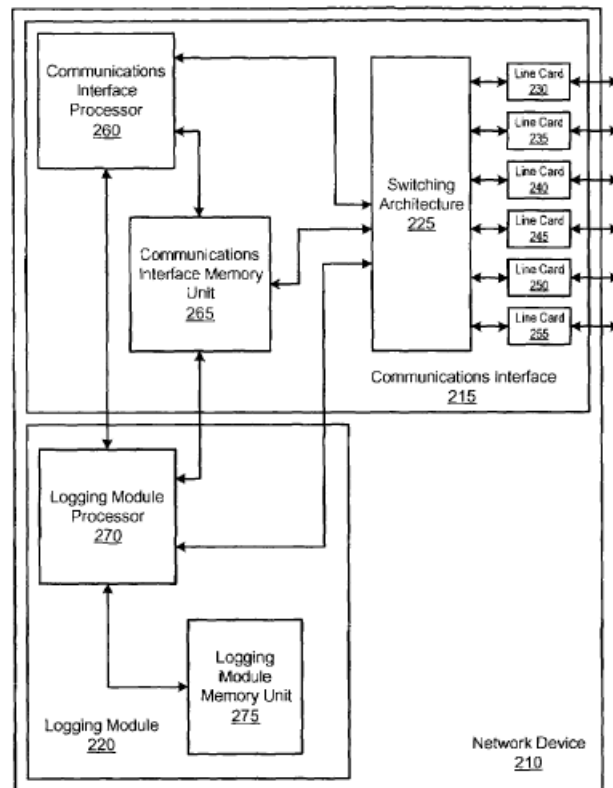
Petitioner, Arista Networks, Inc., filed a Petition for *inter partes* review of claims 1, 14, 15, 29, 39–42, 63, 64, 71–73, and 84–86 of U.S. Patent No. 7,340,597 B1 (Ex. 1001, “the ’597 patent”). Paper 2 (“Pet.”). Patent Owner, Cisco Systems, Inc., filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). Institution of an *inter partes* review is authorized by statute when “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108. Upon consideration of the Petition and the Preliminary Response, we conclude the information presented shows there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of claims 1, 14, 29, 39–42, 63, 64, 71–73, and 84–86 of the ’597 patent.

### A. *Related Matters*

The parties state that the ’597 patent is the subject of *Cisco Systems, Inc. v. Arista Networks, Inc.*, No. 4:14-cv-05343-JSW (N.D. Cal.), filed December 5, 2014, and ITC Investigation No. 337-TA-944 (Network Devices, Related Software and Components Thereof (II)), filed December 19, 2014. Pet. 1; Paper 5 (Patent Owner’s Mandatory Notice). Petitioner has also filed petitions requesting *inter partes* review of other patents owned by Patent Owner: IPR2015-00973 (U.S. Patent No. 6,377,577), IPR2015-00974 (U.S. Patent No. 7,224,668), IPR2015-00975 (U.S. Patent No. 8,051,211), IPR2015-00976 (U.S. Patent No. 7,023,853), IPR2015-01049 (U.S. Patent No. 6,377,577), and IPR2015-01050 (U.S. Patent No. 7,023,853).

*B. The '597 Patent*

The '597 patent is titled, "Method and Apparatus for Securing a Communications Device Using a Logging Module," and relates generally to security for communications devices, and more specifically, to including in a communications device a logging module that communicates information regarding changes occurring to a configuration of a subsystem of the communications device. Ex. 1001, Abstract. Figure 2 of the '597 patent is reproduced below.



**Fig. 2**

Figure 2 depicts a block diagram of network device 210 with communications interface 215 connected to logging module 220, which includes logging module processor 270 connected to logging module

memory unit 275. Ex. 1001, 6:54–63. Logging module processor 270 is configured to control operations of logging module 220, and writes data to and reads data from logging module memory unit 275, which stores a configuration of logging module 220. *Id.* at 7:10–15. Logging module 270 monitors a configuration of communications interface 215 and detects a change in the configuration of communications interface 215 and indicates such change. *Id.* at 7:20–25. In one embodiment, logging module processor 270 may be coupled to switching architecture 225 and can broadcast the change in configuration of communications interface 215 to one or more security monitors on the network. *Id.* at 7:38–42.

#### *C. Illustrative Claim*

Claims 1, 39, 71, and 84 of the '597 patent are independent. Claim 1 is illustrative of the claimed subject matter:

1. An apparatus comprising:
  - a communications device comprising:
    - a subsystem; and
    - a logging module, coupled to said subsystem, and configured to detect a change to a configuration of said subsystem of said communications device, and communicate information regarding said change to said configuration of said subsystem of said communications device.

Ex. 1001, 16:44–53.

#### *D. Asserted Grounds of Unpatentability*

Petitioner contends that claims 1, 14, 15, 29, 39–42, 63, 64, 71–73, and 84–86 of the '597 patent are unpatentable based on the following specific grounds (Pet. 9–42):

References	Basis	Challenged Claims
Sheikh <sup>1</sup>	35 U.S.C. § 102	1, 14, 15, 29, 39–42, 63, 64, and 71–73
Sheikh	35 U.S.C. § 103	71–73 and 84–86
Sheikh and Endicott <sup>2</sup>	35 U.S.C. § 103	84–86
Sheikh and Iwayama <sup>3</sup>	35 U.S.C. § 103	29, 63, 64, 73, and 86

## II. DISCUSSION

### A. Claim Construction

In an *inter partes* review, we construe claim terms in an unexpired patent according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1278–79 (Fed. Cir. 2015) (“Congress implicitly approved the broadest reasonable interpretation standard in enacting the AIA,” and “the standard was properly adopted by PTO regulation.”). Consistent with the broadest reasonable construction, claim terms are presumed to have their ordinary and customary meaning as understood by a person 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). An inventor may provide a meaning for a term that is different from its ordinary meaning by defining the term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

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<sup>1</sup> U.S. Patent Application Pub. No. 2002/0078382 A1, filed May 15, 2001 (Ex. 1005, “Sheikh”).

<sup>2</sup> U.S. Patent No. 5,404,525, filed Sept. 30, 1992, issued Apr. 4, 1995 (Ex. 1007, “Endicott”).

<sup>3</sup> European Patent Application No. 1,033,844 A2, published Sept. 6, 2000 (Ex. 1006, “Iwayama”).

Petitioner proposes constructions for two claim terms, “broadcast” and “set of instructions.” Pet. 7–9. We agree with Patent Owner that construction of “set of instructions” is unnecessary. Prelim. Resp. 12–13. Petitioner proposes “broadcast” to mean, “transmitting to one or more devices.” Pet. 8. We disagree with Petitioner, as its proposed construction is overbroad and could include any type of communication (*see* Prelim. Resp. 10), and also cites to a passage of the specification that expressly describes only one embodiment of the invention (Pet. 8, citing Ex. 1001, 7:38–42). Patent Owner also proposes a construction for “broadcast,” contending that the term should be construed as, “transmitting data to one or more devices without specifying what device(s) will ultimately receive the data,” and citing to extrinsic evidence as support for the construction. Prelim. Resp. 8–12. The specification, however, does not expressly describe broadcast in such terms, and for purposes of this decision, we decline to adopt either party’s proposed construction for “broadcast” and instead construe “broadcast” by its ordinary and customary meaning to one of skill in the art, “a transmission of a message simultaneously to all destinations in a network.” *See* Pet. 7.

*B. Assignor Estoppel*

Patent Owner argues the Petition should be denied based on the defense of assignor estoppel. Prelim. Resp. 13–29. Petitioner disagrees. Pet. 2 n.1. Patent Owner asserts that David Cheriton, co-founder and shareholder of Petitioner and named inventor on the '597 patent, invented the subject matter of the '597 patent while employed by Patent Owner and assigned his rights in the '597 patent to Patent Owner for valuable consideration. Prelim. Resp. 13.

Patent Owner acknowledges that the Board has “been reluctant to apply assignor estoppel in the context of *inter partes* review.” Prelim. Resp. 14 (citing *Athena Automation Ltd. v. Husky Injection Molding Sys. Ltd.*, Case IPR2013-00290, slip op. at 12–13 (PTAB Oct. 25, 2013) (Paper 18)).

As explained in that case:

Under the AIA, “a person *who is not the owner of a patent* may file with the Office a petition to institute an *inter partes* review of the patent.” 35 U.S.C. § 311(a) (emphasis added). Consequently, under the statute, an assignor of a patent, who is no longer an owner of the patent at the time of filing, may file a petition requesting *inter partes* review. This statute presents a clear expression of Congress’s broad grant of the ability to challenge the patentability of patents through *inter partes* review.

*Athena Automation*, slip op. at 12–13; *see also* *Esselte Corp. v. DYMO B.V.B.A.*, Case IPR2015-00779 (PTAB Aug. 28, 2015) (Paper 13); *B/E Aerospace, Inc. v. MAG Aerospace Industries, LLC*, Case IPR2014-01510, slip op. at 14–15 (PTAB March 26, 2015) (Paper 24); *Redline Detection, LLC, v. StarEnvirotech, Inc.*, Case IPR2013-00106, slip op. at 12–13 (PTAB June 30, 2014) (Paper 66); *Synopsys, Inc. v. Mentor Graphics Corp.*, Case

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IPR2012-00042, slip op. 16–17 (PTAB Feb. 19, 2014) (Paper 60). Patent Owner asserts:

The facts here present a classic case for application of the assignor estoppel doctrine. . . . Patent Owner respectfully submits that those decisions should not control the outcome of this Petition, as doing so would be contrary to the rules governing this proceeding and would work a substantial injustice on Cisco if David Cheriton, through his company Arista, were permitted to disavow his prior assignment and use these proceedings as an end run around the assignor estoppel doctrine. . . . By not recognizing assignor estoppel, the Board has created a serious loophole whereby parties that Article III courts would estop from contesting the validity of a patent can do an end-run around that result by venue-shopping. . . . [I]t would be exceedingly unfair to allow Dr. Cheriton or his privies, after he collected millions of dollars in value from Cisco in part for his obligation to assign his patents, to be heard now to contend that assignment was worthless. Arista is estopped. The Board should recognize this and deny Arista institution of any '597 patent claim.

Prelim. Resp. 13, 14, 19, 28–29. We have reviewed and considered Patent Owner's arguments for application of assignor estoppel, as quoted above and otherwise explicated throughout its Preliminary Response. While we are cognizant of the specter of forum shopping, we agree with the Board's prior statements, that "Congress has demonstrated that it will provide expressly for the application of equitable defenses when it so desires." *See Redline*, Paper 40, slip op. at 4 (citing *Intel Corp. v. Int'l Trade Comm'n*, 946 F.2d 821, 836–38 (Fed. Cir. 1991)). Accordingly, we decline to apply assignor estoppel to this *inter partes* review proceeding.



*C. Asserted Anticipation by Sheikh*

Petitioner contends that claims 1, 14, 15, 29, 39–42, 63, 64, and 71–73, are unpatentable under 35 U.S.C. § 102 as anticipated by Sheikh. Pet. 15–28. Relying on the testimony of Prasant Mohapatra, Ph.D., Petitioner explains how Sheikh allegedly discloses each limitation of the claims. *Id.* (citing Ex. 1003).

*1. Sheikh (Ex. 1005)*

Sheikh is titled, “Scalable System for Monitoring Network System and Components and Methodology Therefore,” and relates generally to monitoring of network security systems for security purposes. Ex. 1005 ¶ 3. Sheikh describes a security software system that monitors and tracks changes made to information systems and their applications within a network. *Id.* at ¶ 11. In particular, Sheikh describes “agent transport[s],” which are small software packages installed on monitored systems and including “sensors,” or executable blocks of code, for monitoring various aspects of the system on which the agent is installed. *Id.* at ¶¶ 33–36. Agent transports deliver information generated by sensors to a master transport on a central server. *Id.* at ¶¶ 32, 34–35. Figure 1A of Sheikh is reproduced below.

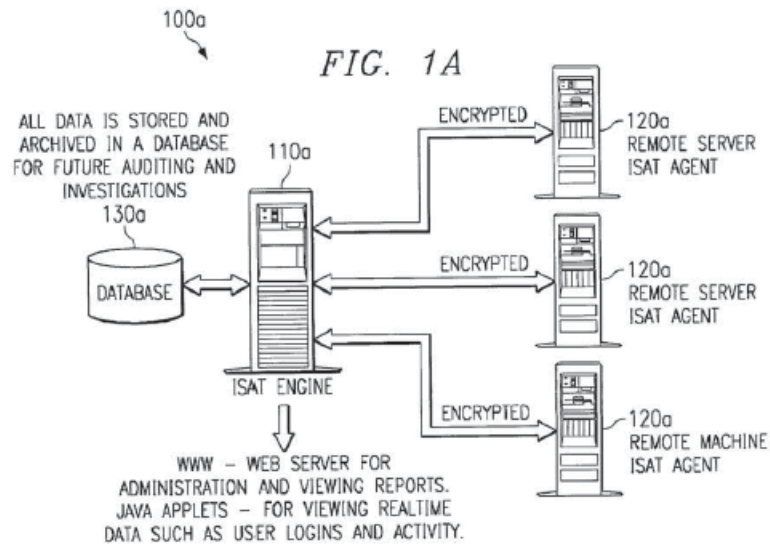


Figure 1A depicts network 100a with master transport located on central server 110a. Agent transports are located throughout network 100a on remote host servers 120a. *Id.* at ¶ 32.

## 2. Analysis

Petitioner contends that Sheikh discloses all the limitations of independent claims 1 and 39. Pet. 15–21, 24. Petitioner asserts the recited logging module of these claims is disclosed by Sheikh’s logging module that “accomplishes its tasks by monitoring and archiving in a central database changes made to system.” Pet. 18; Ex. 1005 ¶ 12; *see also* Pet. 19–21. Patent Owner asserts Sheikh’s logging module includes both Sheikh’s agent transport *and* its master transport and, because the master transport is on a central server, the logging module is not contained within a communications device. Prelim. Resp. 29–38. We are not persuaded, however, that the recited “logging module” requires the functionality of Sheikh’s master transport. The independent claims require only that the logging module communicate information, which Sheikh’s agent transport does. Moreover,

Sheik's agent transport is contained within a communication device, e.g., remote server 120a. Accordingly, we are persuaded that Sheikh discloses this limitation and the other limitations of claims 1 and 39.

Independent claim 71 does not recite a logging module and instead recites a communications device comprising a subsystem, a processor coupled to the subsystem, computer readable medium coupled to the processor, and computer code configured to detect a change in a configuration of the subsystem. Petitioner concedes that Sheikh does not expressly disclose a processor or computer readable medium or computer code. Pet. 27. Relying on the declaration of Dr. Mohapatra, Petitioner asserts these elements are inherent in the Sheikh system. *Id.* (citing Ex. 1003 ¶¶ 102–105). We are persuaded of Sheikh's disclosure of claim 71's limitations.

Patent Owner argues that, as to dependent claim 15, Sheikh's logging module does not restrict a change to its configuration by the communications interface. Prelim. Resp. 38–46. Petitioner contends that Sheikh discloses the agent transport with an encrypted configuration file that can be updated only through an authentication process involving the master transport. Pet. 22–23. Petitioner, however, nowhere identifies a specific communications interface that both experiences a change to its configuration and is restricted by the logging module from changing a configuration of the logging module. *See* Prelim Resp. 39–45. We are not persuaded that Sheikh discloses the limitations of dependent claim 15.

We are further persuaded that on the present record, Sheikh discloses the limitations of dependent claims 14 and 40–42. Pet. 22–25.

Dependent claims 29, 63, 64, and 73 recite that the change to the subsystem's configuration is communicated by broadcast. Ex. 1001, 18:47–51, 20:59–63, 21:35–39. Petitioner cites to a pair of paragraphs in Sheikh that describe the issuance of alerts to a system administrator but do not expressly disclose broadcasting. Pet. 23–24 (citing Ex. 1005 ¶¶ 65, 93). Petitioner elsewhere concedes that Sheikh does not expressly disclose the broadcast limitation. Pet. 31. Petitioner also argues for inherent disclosure (*id.*), but we are not persuaded that a broadcast, as construed above for purposes of this decision, is necessarily present in Sheikh's description of issuance of alerts to a system administrator.

Accordingly, the information presented shows a reasonable likelihood that Petitioner would prevail in showing that claims 1, 14, 39–42, 71, and 72 are anticipated by Sheikh. However, the information presented does not show a reasonable likelihood that Petitioner would prevail in showing that claims 29, 63, 64, and 73 are anticipated by Sheikh.

#### *D. Asserted Obviousness Over Sheikh*

Petitioner contends that claims 71–73 and 84–86 are unpatentable under 35 U.S.C. § 103 as obvious over Sheikh. Pet. 29–35. Relying on the testimony of Dr. Mohapatra, Petitioner explains how Sheikh allegedly discloses each limitation of the claims. *Id.* (citing Ex. 1003).

Claims 71–73 and 84–86 do not expressly recite a logging module, but rather, for claims 71–73, a communications device comprising a subsystem, a processor coupled to the subsystem, computer readable medium coupled to the processor, and computer code configured to detect a change in a configuration of the subsystem; and, for claims 84–86, a computer program product comprising first and second sets of instructions

configured to detect a change in a configuration of a subsystem of a communications device and to communicate information regarding the change. Ex. 1001, 21:23–39, 22:34–50.

Petitioner explains how Sheikh teaches or suggests the processor, computer readable medium, computer code, and other limitations of claims 71 and 72. Pet. 29–31 (citing Ex. 1003 ¶¶ 108–110). For example, Petitioner asserts:

It was well-known in the art that a server contains the same components as a general-purpose computer, namely a processor and computer readable storage. [*Id.* at ¶ 109.] It would have been obvious to one skilled in the art that the repeated references to a host server in Sheikh were referring to a server with a processor and computer readable storage.

Pet. 29 (citing Ex. 1003 ¶ 109).

Petitioner also explains how Sheikh teaches or suggests the computer program product and other limitations of claims 84 and 85. Pet. 32–34 (citing Ex. 1003 ¶¶ 113–116, 120). For example, Petitioner asserts, “[i]t would have been obvious to a POSITA to organize the program into a first and second set of instructions. [*Id.* at ¶ 113.] One skilled in the art would understand the concepts of modular programming and decomposition and how to apply them when practicing the invention taught by Sheikh.” Pet. 32 (citing Ex. 1003 ¶¶ 113–114).

On this record, we are persuaded that the information presented shows a reasonable likelihood that Petitioner would prevail in showing that claims 71, 72, 84, and 85 are obvious over Sheikh.

We are not similarly persuaded as to dependent claims 73 and 86 reciting that information about changes to subsystem configuration are broadcast. As noted above, Sheikh does not disclose broadcasting. We

determine that Sheikh’s description of issuance of alerts to a system administrator (Ex. 1005 ¶¶ 65, 93) also does not teach or suggest broadcasting.

*E. Asserted Obviousness Over Sheikh and Iwayama*

Petitioner contends that dependent claims 29, 63, 64, 73, and 86 are unpatentable under 35 U.S.C. § 103 as obvious over Sheikh and Iwayama. Pet. 38–42. These claims recite that the change to the subsystem’s configuration is communicated by broadcast. Ex. 1001, 18:47–51, 20:59–63, 21:35–39, 22:47–50.

As noted above, Petitioner concedes that Sheikh does not expressly disclose broadcasting of information regarding a change in subsystem configuration. Pet. 31. Petitioner states that “Iwayama teaches a variety of broadcasting scenarios” and “communicating detected changes by broadcasting notifications to a group.” Pet. 13, 14. Iwayama describes monitoring status changes in a database and generating a notification when a status change occurs. Ex. 1006, 3:48–56, 7:9–19. Specifically, a “notification of the status change is transmitted to the group of information terminals in a broadcasting manner.” *Id.* at 7:9–19.

Petitioner relies on the Mohapatra declaration and explains how Sheikh and Iwayama teach or suggest the recited broadcasting limitations of claims 29, 63, 64, 73, and 86. Pet. 39–42 (citing Ex. 1003 ¶¶ 108–111, 134, 137, 140, 142–143). Patent Owner argues that Iwayama “does not disclose ‘broadcasting’ as recited in the ’597 patent” (Prelim. Resp. 51), but that argument is premised on Patent Owner’s proposed construction for broadcasting, which we have rejected for purposes of this decision. *See* section II.A above.

Petitioner also provides a rationale for combining Sheikh and Iwayama:

A POSITA would understand that the notification system of Sheikh, which communicates to one or more master transports, could benefit from sharing the information simultaneously and “conduct[ing] communication based on an assumption that all the [devices] share the same information.” [Id. at 2:30-34; see also Ex. 1003 (Declaration of Mohapatra) at ¶¶ 142-43.] Iwayama teaches that a system may disseminate a message by “distribut[ing] mail in a broadcasting manner to a predetermined group of email addresses.” [Ex. 1006 (Iwayama) at 1:14-16.] A POSITA would understand that the notifications and alerts described in Sheikh (emails, pages, etc.) could be used in conjunction with the broadcasting disclosed in Iwayama. [Ex. 1003 (Declaration of Mohapatra) at ¶ 134.] Thus, a POSITA would be motivated to communicate the configuration change information detected and packaged by the Sheikh system by broadcasting it across a network in the manner taught by Iwayama. [Id. at ¶¶ 142-43.]

Pet. 40.

On this record, we are persuaded that the information presented shows reasonable likelihood that Petitioner would prevail in showing that claims 29, 63, 64, 73, and 86 are obvious over Sheikh and Iwayama.

#### *F. Other Asserted Ground*

Pursuant to 35 U.S.C. § 316(b), rules for *inter partes* proceedings were promulgated to take into account the “regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings.” The promulgated rules provide that they are to “be construed to secure the just, speedy, and inexpensive resolution of every proceeding.” 37 C.F.R. § 42.1(b). As a result, and in determining whether to institute an *inter partes* review of a

patent, the Board, in its discretion, may “deny some or all grounds for unpatentability for some or all of the challenged claims.”

37 C.F.R. § 42.108(b).

As explained above, *inter partes* review of the ’597 patent will proceed on all of the claims challenged by Petitioner in its other asserted ground. Exercise of our discretion in declining to institute on the additional obviousness ground is consistent with the authority granted under 35 U.S.C. § 315(d) to manage *inter partes* proceedings and with the objective of “secur[ing] the just, speedy, and inexpensive resolution of every proceeding.” 37 C.F.R. § 42.1.

### III. CONCLUSION

For the foregoing reasons, we determine that the information presented establishes a reasonable likelihood that Petitioner would prevail in showing that claims 1, 14, 39–42, 71, and 72 of the ’597 patent are unpatentable as anticipated by Sheikh; claims 71, 72, 84, and 85 are unpatentable as obvious over Sheikh; and claims 29, 63, 64, 73, and 86 are unpatentable as obvious over Sheikh and Iwayama. At this preliminary stage, the Board has not made a final determination with respect to the patentability of the challenged claims or any underlying factual and legal issues.

### IV. ORDER

Accordingly, it is

ORDERED that pursuant to 35 U.S.C. § 314(a), an *inter partes* review is instituted, as to claims 1, 14, 39–42, 71, and 72 of the ’597 patent on the ground of anticipation under 35 U.S.C. § 102 by Sheikh, as to claims



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71, 72, 84, and 85 on the ground of obviousness under 35 U.S.C. § 103 in view of Sheikh, and as to claims 29, 63, 64, 73, and 86 on the ground of obviousness under 35 U.S.C. § 103 in view of Sheikh and Iwayama;

FURTHER ORDERED that no other grounds set forth in the Petition are authorized for *inter partes* review as to the claims of the '597 patent; and

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

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