UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS, LLC, Petitioner,

v.

MICROPAIRING TECHNOLOGIES LLC, Patent Owner.

> IPR2021-01557 Patent 8,953,816 B1

Before MIRIAM L. QUINN, JULIET MITCHELL DIRBA, and IFTIKHAR AHMED, *Administrative Patent Judges*.

AHMED, Administrative Patent Judge.

DECISION Denying Institution of *Inter Partes* Review 35 U.S.C. § 314

I. INTRODUCTION

Unified Patents, LLC ("Petitioner" or "Unified") requested an *inter partes* review of claims 1–4, 6, and 10–23 (the "challenged claims") of U.S. Patent No. 8,953,816 B1 (Ex. 1001, "the '816 patent"). Paper 1 ("Petition" or "Pet."). MicroPairing Technologies LLC ("Patent Owner") filed a Preliminary Response. Paper 7 ("Prelim. Resp."). We authorized additional briefing "regarding the applicability of 35 U.S.C. § 314(a) and the identification of real parties in interest." Paper 8, 3. Petitioner filed a Preliminary Reply. Paper 10 ("Prelim. Reply"). Patent Owner filed a

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless it is determined that there is a reasonable likelihood that the petitioner would prevail with respect to at least one of the claims challenged in the petition. After considering the parties' briefing and the evidence of record, we conclude the information presented does not show there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one of the challenged claims of the '816 patent. Accordingly, we do not institute an *inter partes* review.

II. BACKGROUND

A. Real Parties in Interest

Petitioner identifies itself as the real party-in-interest. Pet. 1. Patent Owner identifies itself as the real party-in-interest. Paper 4, 2.

B. Related Matters

According to Petitioner, the '816 patent has been involved in these matters:

Case Caption	Case Number	Court	Filed
MicroPairing Technologies LLC v. Toyota Motor Manufacturing Texas Inc.	6:20-cv-01001	W.D. Tex.	Oct. 28, 2020
MicroPairing Technologies LLC v.	6:20-cv-01002	W.D.	Oct. 28,
General Motors LLC		Tex.	2020
MicroPairing Technologies LLC v.	8:21-cv-00881	C.D.	May 12,
Hyundai Motor America		Cal.	2021
MicroPairing Technologies LLC v.	8:21-cv-00882	C.D.	May 12,
Kia America, Inc.		Cal.	2021
MicroPairing Technologies LLC v.	8:21-cv-00885	C.D.	May 12,
Mazda Motor of America, Inc.		Cal.	2021
MicroPairing Technologies LLC v. American Honda Motor Co.	2:21-cv-04034	C.D. Cal.	May 13, 2021

Pet. 1–2. Patent Owner also identifies *MicroPairing Technologies LLC v*. *Toyota Motor Manufacturing Texas Inc.*, No. 5:21-cv-940-XR (W.D. Tex.). Paper 4, 2.

C. The '816 Patent (Ex. 1001)

The '816 patent is titled "Method and Apparatus to Dynamically Configure a Vehicle Audio System," was filed August 2, 2011, and claims priority to an application filed on April 24, 2001. Ex. 1001 at codes (54), (22), (63). The '816 patent explains that cars include many different electro-mechanical and electronic applications that use separate processors and separate user interfaces, which either operate independently of each

other or are "so tightly coupled together that it is impossible to change any one of these processors without disrupting all of the systems that are linked together." *Id.* at 1:17–36. Integration of new systems, e.g., aftermarket devices, is limited, requiring drivers to operate the aftermarket system from a completely new interface. *Id.* at 1:42–59.

The '816 patent invention is directed to a system that "includes multiple processors that run different real-time applications." *Id.* at 1:65–67. The invention also "automatically detects and adds new devices to the multiprocessor system, and the configuration manager automatically reconfigures which processors run the real-time applications." *Id.* at 2:2–6. The data manager identifies the type of data generated by the new devices and identifies which devices in the multiprocessor system are able to process the data. *Id.* at 2:6–8.





Figures 5 and 6 show how a device manager of the '816 patent's dynamic configuration system operates. Ex. 1001, 2:18–19. With reference to these figures, the '816 patent explains that device manager 46 found in each of the multiple processors A, B, C, and D can identify other devices in the multiprocessor system that it communicates with. *Id.* at 4:36–50. When a new device E is brought into the multiprocessor system over an 802.11 or Bluetooth wireless link, device E may send out signals that may be detected by one or more of the processors A, B, C, or D. *Id.* at 4:54–62. The device manager in the processor receiving the signals from processor E then checks data codes from the new device, and those "data codes identify data types used in one or more applications by processor E." *Id.* at 4:66–5:5. Once the data parameters are verified, the device manager adds the new processor E to the existing processor array and applications running on device E may be displayed on the graphical user interface of the system. *Id.* at 5:8–15.

D. Challenged Claims

Petitioner challenges claims 1–4, 6, and 10–23, of which claims 1, 6, and 17 are independent claims. Claim 1 is reproduced below.

1. A method of operating a vehicle audio system having a wired audio source, a display, multiple speakers and a logic circuit configured to:

sense the availability of a wireless audio device that is located within or proximate to the vehicle;

identify a wireless audio device record from among a plurality of different wireless audio device records previously identified and stored in memory, wherein the wireless device record includes previously identified data codes from the wireless audio device and from a first software application running on the wireless audio device; responsive to identifying the data codes and first software application running on the wireless audio device from the stored record, download a copy of a second software application selected from the memory and process data from the wireless audio device with the second software application;

provide a user with an option to direct sound from the wireless audio device through at least a first one of the speakers of the vehicle audio system or back to a speaker in the wireless audio device.

Id. at 9:2–23.

E. The Asserted Grounds

Petitioner asserts the following grounds of unpatentability. Pet. 4–5.

Ground	Claim(s) Challenged	35 U.S.C. § ¹	References
1	1-4, 6, 10, 11, 13-23	103(a)	Berry, ² Ohmura ³
2	1-4, 6, 10, 11, 13-23	103(a)	Berry, Ohmura, Gosling ⁴
3	1-4, 6, 10, 11, 13-23	103(a)	Berry, Ohmura, Nüsser ⁵

¹ Because the challenged claims of the '816 patent have an effective filing before March 16, 2013, patentability is governed by the version of 35 U.S.C. § 103 preceding the Leahy-Smith America Invents Act ("AIA"), Pub L. No. 112–29, 125 Stat. 284 (2011).

² U.S. Patent No. 6,559,773 B1, issued May 6, 2003 (Ex. 1004, "Berry").

⁴ U.S. Patent No. 6,618,754 B1, issued September 9, 2003 (Ex. 1006, "Gosling").

⁵ René Nüsser & Rodolfo Mann Pelz, *Bluetooth-based Wireless Connectivity in an Automotive Environment*, IEEE VTS FALL VTC2000, 52ND VEHICULAR TECHNOLOGY CONFERENCE 2000, vol. 4, 1935–42 (2000) (Ex. 1007, "Nüsser").

³ U.S. Patent No. 6,937,732 B2, issued August 30, 2005 (Ex. 1005, "Ohmura").

Ground	Claim(s) Challenged	35 U.S.C. § ¹	References
4	1-4, 6, 10, 11, 13-23	103(a)	Berry, Ohmura, Gosling, Nüsser
5	17–22	103(a)	Berry
6	12	103(a)	Berry, Ohmura, Witkowski ⁶
7	12	103(a)	Berry, Ohmura, Gosling, Witkowski
8	12	103(a)	Berry, Ohmura, Nüsser, Witkowski
9	12	103(a)	Berry, Ohmura, Gosling, Nüsser, Witkowski

Petitioner also relies on declarations from Mr. Christopher K. Wilson (Ex. 1002), Mr. Kevin Jakel (Ex. 1009), Dr. Sylvia Hall-Ellis (Ex. 1011), Mr. Gordon Macpherson (Ex. 1012).

III. ANALYSIS

A. Real Parties in Interest

Patent Owner contends that the Petition fails to name all real partiesin-interest ("RPIs") as required by 35 U.S.C. § 312(a)(2). Prelim. Resp. 33–37; Prelim. Sur-reply 1–4. Section 312(a)(2) requires that the "petition identif[y] all real parties in interest." This provision serves important notice functions to patent owners, to identify whether the petitioner is barred from

⁶ International Patent Publication WO 00/72463, published November 30, 2000 (Ex. 1008, "Witkowski").

bringing an IPR due to an RPI that is time-barred or otherwise estopped, and to the Board, to identify conflicts of interests that are not readily apparent from the identity of the petitioner. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide 12 (Nov. 2019) ("TPG")⁷. Accordingly, petitioners must comply with these requirements in good faith. *See* 37 C.F.R. § 42.11(a) (duty of good faith and candor in proceedings). Whether a non-party is an RPI is a "highly fact-dependent question" and must be considered on a case-by-case basis. *Ventex Co. v. Columbia Sportswear N. Am., Inc.*, IPR2017-00651, Paper 148 at 6 (PTAB Jan. 24, 2019) (precedential).

Petitioner identifies itself as the sole RPI in this proceeding. Pet. 1. Patent Owner, relying on the Federal Circuit's decision in *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1351 (Fed. Cir. 2018) ("*AIT*") contends that Petitioner also should have named at least three members of Unified ("Unnamed RPIs") as RPIs. Prelim. Resp. 35; *see also* Prelim. Sur-reply 2 (listing three different members of Unified as unnamed real parties-in-interest). Patent Owner contends that because the Unnamed RPIs were paying members of Unified's "Transport Zone"—the Unified Zone to which Patent Owner contends the '816 patent belongs—the Unnamed RPIs have a preexisting, established relationship with Unified. Prelim. Resp. 34–36. Patent Owner more particularly contends that these members have been accused by Patent Owner as infringing the '816 patent and stand to benefit from the outcome of this proceeding. *Id.* Patent Owner contends that although Petitioner provides a declaration from Mr. Kevin

⁷ Available at https://www.uspto.gov/sites/default/files/documents/ tpgnov.pdf.

Jakel, Unified's CEO, detailing Unified's activities and averring that Unified's members were not involved in the preparation of, payment for, or decision to file the Petition, that declaration is silent as to what members' subscription fees Unified is using to fund its activities with respect to this proceeding. *Id.* at 36 (citing Ex. 1009). Patent Owner therefore concludes that Petitioner has not satisfied its burden of identifying all real parties in interest, and the Petition should be denied. *Id.*; Prelim. Sur-reply 2–4.

Unified responds that it is the sole RPI and that the Board has rejected similar arguments with regard to Unified members every time such arguments have been made. Prelim. Reply 1 (citing Unified v. Am. Patents, IPR2019-00482, Paper 115 (PTAB, Aug. 18, 2020); Unified v. Barkan Wireless, IPR2018-01186, Paper 56, 4-12 (PTAB, Jan. 8, 2020) aff'd, 838 F. App'x. 565 (Fed. Cir. 2021)); but see Unified Patents Inc., v. Uniloc USA, Inc., IPR2018-00199, Paper 41 (PTAB, Aug. 8, 2019) (J. Quinn concurring on the merits but stating that a Unified member would be an RPI given certain circumstances). Petitioner contends that analyzing the factors of AIT and RPX Corp v. Applications in Internet Time, LLC, IPR2015-01750, Paper 128 (Oct. 2, 2020) (precedential) ("AIT Remand") confirms that Unified is the sole RPI. Prelim. Reply 2–8 (providing an analysis under the AIT Remand factors and distinguishing the facts in AIT Remand). Petitioner also argues that we need not address whether a party is an unnamed RPI where, as here, no time bar or estoppel provisions under 35 U.S.C. § 315 are implicated. Id. at 1 n.1 (citing SharkNinja Operating LLC v. iRobot Corp., IPR2020-00734, Paper 11, 18 (PTAB Oct. 6, 2020) (precedential) ("SharkNinja")).

On this record, we determine that we need not address whether the Unnamed RPIs were improperly excluded because, "even if [they] were, it would not create a time bar or estoppel under 35 U.S.C. § 315." *SharkNinja*, IPR2020-00734, Paper 11 at 18. Like in *SharkNinja*, the Unnamed RPIs here are currently members of Unified and some of them may have been accused of infringement of the '816 patent, but there is no allegation or evidence that any of those members are barred or estopped from this proceeding.⁸ And although Patent Owner contends that "Petitioner's failure to identify members funding its activities as real-parties-in-interest raises estoppel issues," the only estoppel issue that Patent Owner identifies is estoppel that could potentially arise under 35 U.S.C. § 315(e) in the future. Prelim. Sur-reply 1-2. However, because we deny institution of *inter partes* review on the merits (*see infra* § III.F), there is no estoppel triggered under 35 U.S.C. § 315(e) by our decision.

In the present proceeding, there is no allegation that Petitioner's exclusion of the Unnamed RPIs should result in termination of the proceeding or denial of institution of review for any reason other than for the alleged failure to comply with the Board's rules requiring the identification of RPIs. Additionally, there is no allegation or evidence that any of the Unnamed RPIs is barred or estopped from this proceeding, or that Petitioner purposefully omitted any of the Unnamed RPIs to gain some advantage. We

⁸ Patent Owner contends that the three Unnamed RPIs have been accused of infringing the '816 patent (Prelim. Resp. 35), while Petitioner asserts that it is not aware of any pending lawsuits asserting the '816 patent against at least two of those three Unnamed RPIs. Prelim. Reply 5 (citing Paper 4, 2; Pet. 1–2). Regardless, there is no allegation that any of the three Unnamed RPIs is barred from this proceeding.

therefore decline to address Patent Owner's argument whether the Unnamed RPIs were improperly excluded. *See SharkNinja*, IPR2020-00734, Paper 11 at 18–20.

B. Principles of Law

"In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable." *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify "with particularity . . . the evidence that supports the grounds for the challenge to each claim")). This burden of persuasion never shifts to Patent Owner. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing the burden of proof in *inter partes* review).

As set forth in 35 U.S.C. § 103(a),

[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) when in evidence, objective evidence of nonobviousness.⁹ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). An obviousness analysis "need not seek out precise teachings

⁹ Neither party presents evidence of objective considerations of non-obviousness at this stage of the proceeding.

directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). However, Petitioner cannot satisfy its burden of proving obviousness by employing "mere conclusory statements." *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016). Instead, Petitioner must articulate a reason why a person of ordinary skill in the art would have combined the prior art references. *In re NuVasive*, 842 F.3d 1376, 1382 (Fed. Cir. 2016).

We analyze Petitioner's asserted grounds of unpatentability in accordance with these principles to determine whether Petitioner has met its burden to establish a reasonable likelihood of prevailing in establishing unpatentability of the remaining challenged claims at trial.

C. Level of Ordinary Skill in the Art

We review Petitioner's asserted obviousness grounds in view of the understanding of a person of ordinary skill in the art at the time of the invention. *Graham*, 383 U.S. at 17. Petitioner contends that a person of ordinary skill in the art "would have had a bachelor's degree in electrical engineering, computer science, computer engineering, physics, or a related subject, and two to three years of work experience in in-vehicle infotainment systems." Pet. 9–10 (citing Ex. 1002 ¶¶ 25–28). Patent Owner does not propose any particular skill level in its Preliminary Response. *See generally* Prelim. Resp.

We determine, on the current record, that Petitioner's proposed level of ordinary skill is consistent with the '816 patent and the asserted prior art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re*

GPAC Inc., 57 F.3d 1573, 1579 (Fed. Cir. 1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978). We adopt that level in deciding whether to institute trial.

D. Claim Construction

In this *inter partes* review, claims are construed using the same claim construction standard that would be used to construe the claims in a civil action under 35 U.S.C. § 282(b). *See* 37 C.F.R. § 42.100(b) (2021). The claim construction standard includes construing claims in accordance with the ordinary and customary meaning of such claims as understood by one of ordinary skill in the art at the time of the invention. *See id.*; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005) (en banc). In construing claims in accordance with their ordinary and customary meaning, we take into account the specification and prosecution history. *Phillips*, 415 F.3d at 1315–17.

Petitioner identifies certain claim terms that were construed in pending district court litigation. Pet. 12–13 (listing constructions for "application," "audio source," "multi-processor system," and "download a copy of a second/fourth software application"). Patent Owner does not address any of these constructions. *See* Prelim. Resp. 8. For purposes of this decision, we determine that no claim terms require express construction. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (holding that only claim terms in controversy need to be construed, and only to the extent necessary to resolve the controversy (citing *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

E. Overview of the Asserted Prior Art1. Berry (Ex. 1004)

Berry discloses a reconfigurable display architecture in automotive vehicles that can be used to control various electronic accessories from a single control panel. Ex. 1004 at code (54), 1:15–17. Berry's reconfigurable control panel is coupled to a human-machine interface ("HMI") controller that includes a local archive for storing interface specifiers. *Id.* at 2:1–8. Each interface specifier defines interaction between the reconfigurable control panel and a respective electronic accessory for performing operations using a predetermined communications protocol. *Id.* at 2:8–11.

Figure 2 of Berry is reproduced below.



Figure 2 shows Berry's overall network system. Ex. 1004, 2:32–33. Examples of electronic accessories include cellular phone 40, MP3 audio player 41, and palm-sized PC or personal digital assistant (PDA) 42. *Id.* at 3:51–54. Each device has a unique device type identifier and interacts with a reconfigurable display type using an interface specifier developed for the combination of that device and that display sub-system. *Id.* at 3:52–55. When HMI controller 34 detects the presence of an accessory, it checks whether it currently has an interface specifier to support interaction with that device stored in memory 35, and if so the HMI controller can communicate core functionality messages between the reconfigurable display and the

accessory device. *Id.* at 3:66–4:6. If an appropriate interface specifier is not already in the memory, the HMI controller retrieves the appropriate interface specifier, either from a local server in the vehicle's system or a remote server outside the vehicle. *Id.* at 4:6–37.

2. Nüsser (Ex. 1007)

Nüsser discloses a Bluetooth-based wireless access system for use in car-based communication and infotainment systems. Ex. 1007, 17.

Figure 2 of Nüsser is reproduced below.



Ex. 1007, 20. Figure 2 shows Nüsser's in-car system including a Central Control Unit ("CCU") that connects wireless Bluetooth devices to electronic devices that require high data rates and provides "bridging functionality" between mobile devices and the wired devices connected to the multimedia bus in order to "share resources and use the mutually provided services." *Id.* at 19–20. When a passenger wants to use a mobile device to communicate with other car-embedded systems, the CCU runs a service component that provides "capability negotiation and the download of an adjusted, device/user dependent HMI (e.g., a XML- or HTML-file) to the mobile device." *Id.* at 23. This enables the mobile device to display the available services of the CCU and the various CCU-connected devices to the user. *Id.*

Nüsser discloses that the mobile device stores two types of profiles, the user profile and the device profile, characterizing the preferences of a user and the capabilities of the device. *Id.* The device profile of a mobile device enables the CCU to analyze the hardware and software capabilities of the mobile device and to present information to the mobile device in an appropriate format. *Id.* "Information about devices include[s]... the hardware platform, system software, applications, class of device, screen size, version of HTML supported." *Id.*

F. Grounds 1–9: Obviousness of Claims 1–4, 6, 10–23 over Berry in view of Nüsser and Other References

Petitioner relies on Berry in combination with Ohmura, Gosling and/or Nüsser for teaching the limitations of independent claims 1, 6, and 17 of the '816 patent. Pet. 21–44, 46–55, 60–64. Petitioner relies on Berry alone or the combination of Berry and Nüsser for teaching the limitation "wherein the wireless device record includes previously identified data codes from the wireless audio device and from a first software application running on the wireless audio device." Pet. 33–38, 54, 61–62; Ex. 1001, 9:9–13, 9:51–55, 10:30–34. We focus our analysis on that limitation because, in its Preliminary Response, Patent Owner contends that the asserted prior art fails to teach that limitation. Prelim. Resp. 15–28.

1. Berry Alone

Petitioner asserts that Berry's unique device type identifier teaches the claimed wireless audio device record because "[e]ach stored unique device type identifier corresponds to an individual wireless device." Pet. 33 (citing Ex. 1004, 3:62–4:9, 6:33–38). Petitioner asserts that "the '816 patent describes that the claimed data are data codes that 'identify data types used

in one or more applications' of the wireless device," e.g., "an MP3 player that outputs streaming audio data (i.e., audio data is the data type identified by the data codes) using an audio application (i.e., first software application running on the wireless audio device)." Id. (emphasis omitted) (citing Ex. 1001, 4:44–50, 5:4–5, 5: 24–26, 7:45–47). Like the data codes described in the '816 patent, Petitioner contends, "Berry's unique device type identifier identifies the device type of the wireless device such as whether the device is a cellular telephone or an MP3 player and the specific communications protocol being used." Id. at 34 (citing Ex. 1004, 2:8–11, 3:20–39, 7:43–49, Fig. 2). According to Petitioner, a person of ordinary skill in the art "would have understood that the device type and communication protocol include the data type (data codes)." Id. (emphasis omitted) (citing Ex. 1002 ¶¶ 69–70; Ex. 1021, 103, 131–32, 266–67). Because "[t]he device type identifier allows for the HMI controller to identify the particular interface specifier needed to implement an application specific HMI interface for the unique display driver/wireless device combination," Petitioner contends, "[t]he selection of the correct interface specifier for displaying and interacting with a particular application running on the wireless device is based on the information provided in the unique device type identifier." Id. (emphasis omitted) (citing Ex. 1004, 3:62-4:9, 5:14-39, 6:5-15).

Petitioner further contends that a person of ordinary skill in the art would have also understood that "a cellular phone application and audio player application have different user interfaces, and the 'device type' of *Berry* (which determines the specific interface specifier) includes an indication of a particular software application running on the specific device

and eliciting a particular interface." Pet. 34–35 (citing Ex. 1004, 3:6–19, 3:62–4:33, 5:14–34; Ex. 1002 ¶ 71). According to Petitioner, in order to support the available features of a device, Berry's system must know which features are present, and thus must determine both the device and software on that device. *Id.* at 35. Petitioner therefore asserts a person of ordinary skill in the art would have understood "that a stored unique device type identifier (wireless device record) that identifies the connected device as an MP3 player identifies that the connected device includes an audio application (first software application running on the wireless audio device) for processing audio data (data type identified by the data codes) and the available features of that application." *Id.* (emphasis omitted) (citing Ex. 1002 ¶ 72).

In its Preliminary Response, Patent Owner asserts that Berry's device type identifier is not a "wireless device record" because it is merely a value used to identify a device type and indexed to identify the appropriate device driver for a device-display combination. Prelim. Resp. 16. Even if it could be considered a "record," Patent Owner argues, "Berry does not disclose a 'device type identifier' that 'includes previously identified data codes' (i.e., more than one data code)." *Id*. Patent Owner also disagrees that Berry's device type identifier identifies a communications protocol being used because a cell phone or PDA might use multiple communications protocols for communicating with a vehicle and a unique identifier would not identify these specific communication protocols. *Id*. at 17–18 (citing Pet. 33–34). Patent Owner argues that Petitioner's contention—concerning whether a person of ordinary skill in the art would have understood that the device type and communication protocol include the data type, i.e., data codes—fails

because "Berry never states that any protocol is itself part of 'unique device type identifier," and because "there is no disclosure in Berry that this identifier includes the required 'data codes." *Id.* at 18–19.

Patent Owner further contends that Petitioner's allegation that Berry's device type identifier includes codes "from a first software application running on the wireless audio device" improperly relies on attorney argument and unsupported expert testimony. Prelim. Resp. 19–21 (citing Pet. 34–36). Patent Owner asserts that nothing in Berry suggests that the disclosed device type identifier includes any previously identified data code from a software application running on a wireless audio device. *Id.* at 22. Patent Owner acknowledges that Berry suggests that a device type, by itself, may be sufficient to identify applicable applications, but Patent Owner contends that "this does not mean that the device type identifier 'includes previously identified data codes . . . from a first software application running on the wireless audio device." *Id.* (citing Ex. 1004, 5:14–6:15).

On the record before us, we agree with Patent Owner that Petitioner fails to show sufficiently that Berry teaches or suggests a "wireless device record [that] includes previously identified data codes from the wireless audio device and from a first software application running on the wireless audio device," as recited in claims 1, 6, and 17. Petitioner argues that "Berry's unique device type identifier identifies the device type of the wireless device . . . and the specific communications protocol being used." Pet. 34 (citing Ex. 1004, 2:8–11, 7:43–49) (emphasis omitted). The cited portions of Berry, however, disclose that it is the interface specifier (or driver), not the device type identifier, that "defines interaction between the reconfigurable control panel and a respective electronic accessory for

performing operations via the menu items using a predetermined communications protocol." Ex. 1004, 2:8–11; 3:27–31, 7:43–49. And although we agree with Petitioner that the selection of the correct interface specifier is based on the unique device type identifier, that identifier does not *identify* the specific communications protocol being used in the manner asserted by Petitioner. Pet. 34. Instead, as Patent Owner points out, that identifier "is indexed alongside a 'display type identifier' to identify the appropriate device driver for a device/display combination." Prelim. Resp. 16; Ex. 1004, 4:20–25; 6:30–33, Fig. 2.

Petitioner further argues that a person of ordinary skill in the art would have understood that the device type and communication protocol include the data type (data codes). Pet. 34 (citing Ex. 1002 ¶¶ 69–70). But on the record before us, Petitioner does not explain in sufficient detail why this is so, nor does Petitioner cite any disclosure in Berry explicitly stating that the device type identifier *includes* anything more than an identifier which identifies the device type, e.g., a cellular phone, as is required by the claim. *See id.*; *see also* Ex. 1004, 2:63–63, 6:19–23. Mr. Wilson's declaration, although explaining why a person of ordinary skill in the art would have considered a communication protocol to describe a data code, fails to provide any explanation or citation in support of Petitioner's contention that Berry's device type identifier *includes* data codes. Ex. 1002 ¶¶ 69–70. On that point, Mr. Wilson's declaration mirrors the language in the Petition. *Id*.

On the present record, we also agree with Patent Owner that Petitioner's allegations concerning the wireless device record including previously identified data codes *from a first software application*

unpersuasively rely on unsupported expert testimony rather than on Berry's disclosure. Prelim. Resp. 19–22. As Patent Owner acknowledges, Berry does suggest that a device type identifier, through the selection of an interface specifier, enables identification of applicable software applications for a wireless device (Prelim Resp. 22 (citing Ex. 1004, 5:14–6:15)), but Petitioner does not explain how Berry's device type identifier includes data codes from any of those software applications. Pet. 34–36 (citing Ex. 1002 ¶¶ 71–72). Mr. Wilson's declaration, which parallels the discussion in the Petition, similarly does not provide any additional explanation or citation in support of Petitioner's contention. Ex. 1002 ¶¶ 71–72. Mr. Wilson testifies that because a person of ordinary skill in the art would have understood Berry's unique device type identifier could identify that the device includes a specific software application, "a [person of ordinary skill in the art] would have understood, or at least found obvious, that the unique device type identifier includes data codes from the wireless audio device and from a first software application running on the wireless audio device." Id. ¶ 72 (emphasis added). Mr. Wilson fails to identify any evidence that provides the necessary link for this conclusion.¹⁰ On the record before us, Petitioner

¹⁰ While Mr. Wilson testifies that data codes here identify application specific data types such as audio data or voice data (Ex. 1002 ¶ 72; Pet. 35), he also testifies that the claimed data codes refer to coding of data at the data-link layer of the Open Systems Interconnection (OSI) model rather than at a higher layer of the OSI model. *See* Ex. 1002 ¶ 69; *see also* Ex. 1021, 266-67 (explaining the lower OSI layers deal with hardware while the higher layers deal with software interactions). Because we determine that Petitioner has not sufficiently shown that Berry's identifier *includes any* data codes, we need not address this potential inconsistency in Mr. Wilson's testimony.

has not shown sufficiently that Berry alone teaches the claimed "wireless device record."

2. The Combination of Berry and Nüsser

Petitioner alternatively contends that Nüsser teaches "data codes . . . from a first software application running on the wireless audio device."¹¹ Pet. 36. Petitioner contends that Nüsser's in-vehicle system's central control unit ("CCU") receives a device profile from the mobile device characterizing the capabilities of the mobile device. *Id.* (citing Ex. 1007, 1935, 1937, 1941). Petitioner further contends that the device profile enables the CCU "to analyze the hardware and *software capabilities of the mobile device*" to produce and deliver content to best fit the capabilities and preferences of the mobile device, and that the device profile includes information about the system software and applications running on the mobile device. *Id.* (citing Ex. 1007, 1941). According to Petitioner, "this data is received from and is regarding both the device and the application running on the device because the device profile is sent from the personal

¹¹ Petitioner does not specifically contend that Nüsser teaches "data codes from the wireless audio device," for which, as discussed above, Petitioner relies solely on Berry's disclosure. *See* Pet. 36 ("To the extent that MicroPairing argues that Berry does not render obvious that the stored unique device type identifier identifies data codes . . . from a first software application running on the wireless audio device, this element would have been obvious in view of Nüsser" (ellipsis in original)). Because Petitioner more generally contends that the combination of Berry and Nüsser teaches this claim limitation (Pet. 34), we address Petitioner's contentions based on Nüsser as well.

wireless device to the in-vehicle system and includes an indication of the applications running on the personal wireless device." *Id.*

Petitioner contends that a person of ordinary skill in the art would have been motivated to modify Berry with Nüsser because Berry discloses a Bluetooth interface and Nüsser discloses certain details and advantages regarding the contents of a device profile that is transmitted from a wireless device to an in-vehicle system during a Bluetooth registration process. Pet. 36–37 (citing Ex. 1004, 7:27–35; Ex. 1007, 1937, 1941; Ex. 1002 ¶ 74). Petitioner provides reasons why a person of ordinary skill in the art would have been motivated to combine the teachings of Berry and Nüsser, including that the two reference are analogous, they both seek to solve the same problem of driver frustration of not being able to connect a wireless device to an in-vehicle system, and because combining the teachings would have been no more than the combination of prior art elements according to known methods to yield predictable results. Id. at 37 (citing Ex. 1001, code (57); Ex. 1004, code (57), 3:40–4:9; Ex. 1007, 1935, 1937, 1941; Ex. 1002 ¶¶ 75–76). Petitioner argues that a person of ordinary skill in the art

would have looked to standardized communications protocols, such as Bluetooth identified in Berry and described by Nüsser, and would have looked for beneficial data sent from the wireless device during registration with the in-vehicle system to provide for a smoother operation [and] would have understood that including the application specific information from Nüsser's device profile in Berry's unique device type identifiers was a conventional and beneficial way to allow for the in-vehicle system to determine the correct interface specifier needed to implement an application specific HMI interface in which the

messages and control signals sent to the wireless device best fit the capabilities of the wireless device.

Id. at 37–38 (citing Ex. 1007, 1941; Ex. 1002 ¶ 77).

Patent Owner responds that Berry addresses improvements to configurable displays, not any alleged driver frustration, and that Berry offers a self-contained solution for the problem it presents. Prelim. Resp. 25–26 (citing Ex. 1004, 1:39–60). Patent Owner asserts that Berry locates the appropriate device driver for a device-display combination using a "device type unique identifier" and a "display type unique identifier," thereby solving the problem of locating the appropriate device driver to be used in connection with a reconfigurable display. *Id.* at 26. Patent Owner contends that because Berry itself teaches precisely how to select the appropriate interface specifier (i.e., device driver) based on these two identifiers, a person of ordinary skill in the art reading Berry would not be motivated to look elsewhere for a different solution. Id. at 27-28 (citing Kinetic Concepts, Inc. v. Smith & Nephew, Inc., 688 F.3d 1342, 1368-70 (Fed. Cir. 2012)). According to Patent Owner, there is no suggestion in Berry that application specific information from Nüsser's device profile would assist in any way with the selection of the appropriate device driver, and Petitioner never explains what "application specific information" from Nüsser would be used by Berry's system, how such information would be used, and how use of such information would enhance Berry's device driver selection. Id. at 28 (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)).

We agree with Patent Owner that Petitioner's proffered reasoning to combine the references is inadequate. Petitioner contends, as part of its argument on this limitation, that Berry's device type unique identifier allows determination of the relevant interface specifier, and therefore, elicits a

particular interface. Pet. 34–35 (citing Ex. 1004, 5:14–34). Petitioner's cited portion of Berry discloses that "an interface specifier which would be downloaded from either a local or a remote archive *contains compiled* software class objects that collectively implement an application specific HMI for the unique display driver/accessory device combination." Ex. 1004, 5:14–18 (emphasis added). Berry further explains that "[i]n a Java implementation, these objects will be precompiled from Java source code into Java bytecodes which are the instructions that run on the Java Virtual machine (JVM). Id. at 5:18–21. That is, Berry's interface specifier already contains software that implements an *application specific* HMI interface for a display-device combination for specific application(s) running on the wireless device. Although we agree with Petitioner that an ordinarily skilled artisan would have considered Bluetooth a "standardized communications protocol," Petitioner has not explained how information from Nüsser's device profile would be beneficial in using "the correct interface specifier needed to implement an application specific HMI interface in which the messages and control signals sent to the wireless device best fit the capabilities of the wireless device." Pet. 38. Mr. Wilson's declaration, which mirrors the language in the Petition, similarly does not provide additional explanation in support of Petitioner's contention on this point. Ex. 1002 ¶¶ 74–77. The record thus lacks sufficient persuasive explanation why an ordinarily skilled artisan would have taken that path of including Nüsser's device profile information in Berry's unique device type identifiers, when Berry's system already provides the relevant functionality and there is no perceptible benefit from the proposed modification. See Kinetic Concepts, 688 F.3d at 1369; see also Belden Inc. v. Berk-Tek LLC,

805 F.3d 1064, 1073 (Fed. Cir. 2015) ("obviousness concerns whether a skilled artisan not only could have made but would have been motivated to make the combinations or modifications of prior art to arrive at the claimed invention"). On the current record, we are not persuaded that an ordinarily skilled artisan would have been motivated to combine the teachings of Berry with those of Nüsser with a reasonable expectation of success.

For these reasons, based on the record before us, Petitioner has not shown sufficiently that a person of ordinary skill in the art would have understood that Berry alone or the combination of Berry and Nüsser teaches or suggests "wherein the wireless device record includes previously identified data codes from the wireless audio device and from a first software application running on the wireless audio device" recited in independent claim 1, 6, and 17. Therefore, we determine the information presented does not demonstrate a reasonable likelihood that Petitioner would prevail in establishing that claims 1–4, 6, and 10–23 of the '816 patent are unpatentable under 35 U.S.C. § 103(a) for obviousness over Petitioner's asserted grounds of Berry in combination with other references, Berry and Nüsser in combination with other references, or Berry alone. Pet. 4–5.

IV. CONCLUSION

After considering the parties' evidence and arguments, we determine that the information presented does not show a reasonable likelihood that Petitioner would prevail in establishing that at least one of claims 1–4, 6, and 10–23 of the '816 patent is unpatentable based on the grounds asserted in the Petition.¹²

¹² Patent Owner also argues that we should exercise discretion under 35 U.S.C. § 314(a) to deny institution for multiple reasons. Prelim.

V. PETITIONER'S MOTION FOR ENTRY OF PROTECTIVE ORDER AND MOTION TO SEAL

Petitioner moves for entry of the Board's default protective order and also moves to seal Exhibits 1047 and 1050. Paper 9. Petitioner contends that these documents contain non-public proprietary information. *Id.* at 2. Exhibit 1047 is a declaration from Unified's CEO, Mr. Kevin Jakel. *See* Ex. 1051 (redacted version). Exhibit 1050 is a confidential member agreement that Petitioner contends includes information regarding Unified's business operations that Unified maintains as confidential. Paper 9, 2. Petitioner contends that disclosure of this information to the public would expose Unified's business model and Unified's members wishing to remain confidential may be adversely affected. *Id.* at 2–3. Petitioner argues that the interest in maintaining confidentiality outweighs the public interest in having an entirely open record and these documents should therefore be sealed. *Id.* at 3. Patent Owner does not oppose Petitioner's request. *Id.* at 1.

There is a strong public policy for making all information filed in an *inter partes* review open to the public. *See Garmin Int'l v. Cuozzo Speed Techs., LLC*, IPR2012-00001, Paper 34 at 1–2 (PTAB Mar. 14, 2013). All papers are available for public access by default, and only "confidential information" may be protected from disclosure. *See* 35 U.S.C. § 316(a); 37 C.F.R. § 42.14. A motion to seal may only be granted on a showing of good cause. 37 C.F.R. § 42.54(a). Applying the rules, the Board has required that

a movant to seal must demonstrate adequately that (1) the information sought to be sealed is truly confidential, (2) a

Resp. 28–33. Because of the determination we reach on the merits, we do not address the Patent Owner's arguments on discretionary denial.

concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

Argentum Pharms. LLC v. Alcon Research, Ltd., IPR2017-01053, Paper 27 at 4 (PTAB Jan. 19, 2018) (informative).

Evaluating Petitioner's arguments under these factors, we determine that Unified's member agreement (Ex. 1050) and redacted portions of Mr. Jakel's declaration (Ex. 1047) contain confidential information, and disclosing that information could harm Unified by potentially affecting its business relationship with other companies. Moreover, given that we need not address the RPI dispute, the understandability of the public record will not be substantially diminished by these limited redactions. Thus, Unified's interest in maintaining confidentiality outweighs the public interest in having an open record in this proceeding.

Accordingly, Petitioner's motion for entry of the default protective order and its motion to seal are *granted*. This matter shall be governed by the Default Protective Order set forth in the TPG, and Petitioner's confidential information shall be considered designated "PROTECTIVE ORDER MATERIAL" under that Order.

VI. PATENT OWNER'S MOTION TO SEAL

Patent Owner moves to seal Patent Owner's Preliminary Sur-reply (Paper 12) which Patent Owner asserts references certain materials from Exhibits 1047 and 1050 that Petitioner has designated as confidential and are subject to Petitioner's motion to seal. Paper 14, 1; *see also* Paper 13 (redacted version of Patent Owner's Preliminary Sur-reply). Petitioner does not oppose Patent Owner's motion. *Id.* Because we grant Petitioner's

motion to seal Exhibits 1047 and 1050, Patent Owner's motion to seal portions of its Preliminary Sur-reply is also *granted*.

VII. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is *denied*, and no *inter partes* review is instituted;

FURTHER ORDERED that Petitioner's motion for entry of a protective order and motion to seal Exhibits 1047 and 1050 (Paper 9) are *granted*;¹³

FURTHER ORDERED that this matter shall be governed by the Default Protective Order set forth in the TPG, and Petitioner's confidential information shall be considered designated "PROTECTIVE ORDER MATERIAL" under that Order; and

FURTHER ORDERED that Patent Owner's motion to seal (Paper 14) Patent Owner's Preliminary Sur-reply (Paper 12) is *granted*.

¹³ The attention of the parties is directed to 37 C.F.R. § 42.56 ("After denial of a petition to institute a trial or after final judgment in a trial, a party may file a motion to expunge confidential information from the record.").

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