

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION,
Petitioner,

v.

PROXICOM WIRELESS, LLC,
Patent Owner.

IPR2020-00978
Patent 8,116,749 B2

Before BRIAN J. McNAMARA, JESSICA C. KAISER, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

Target Corporation (“Petitioner”) filed a Petition for *inter partes* review of claims 1–3, 13, 14, and 17–20 (“the challenged claims”) of U.S. Patent No. 8,116,749 B2 (Ex. 1001, “the ’749 patent”). Paper 2 (“Pet.”), 1. Proxicom Wireless, LLC (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”).

Institution of an *inter partes* review is authorized by statute only 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) (2018). For the reasons set forth below, upon considering the Petition, Preliminary Response, and evidence of record, we conclude that the information presented in the Petition fails to establish a reasonable likelihood that Petitioner will prevail in showing the unpatentability of any of the challenged claims. Accordingly, we decline to institute an *inter partes* review.

B. Real Parties in Interest

Petitioner identifies itself as the sole real party in interest. Pet. 5.
Patent Owner identifies itself as the sole real party in interest.
Paper 4, 2.

C. Related Matters

The parties indicate that the ’749 patent is the subject of the following district court proceeding:

Proxicom Wireless, LLC v. Target Corporation, No. 6:19-cv-1886 (M.D. Fla. filed Oct. 2, 2019) (“the District Court litigation”).¹

Pet. 5; Paper 4, 2. The parties further note various petitions for *inter partes* review concerning separate patents, and Patent Owner identifies two pending patent applications. Pet. 5–6; Paper 4, 2–3.

D. The Challenged Patent

The ’749 patent disclosure “is generally concerned with facilitating the exchange of information and transactions between two entities associated with two wireless devices when the devices are in close proximity to each other utilizing both a short range and a long range wireless capability.” Ex. 1001, 2:50–54. The devices use a short range communication protocol, such as Bluetooth, only to detect the presence of other devices and use a long range communication protocol, such as Wi-Max, to communicate with a central server and to perform the actual substantive communications with other devices. *Id.* at 6:29–42. Each device transmits identifier information via short range communication as a proximity detection process. *Id.* at 6:46–49. This use of peer-to-peer short range communication beneficially allows proximity between devices to be determined without the need of a global positioning system (GPS), which may not always be present or available for use. *Id.* at 3:52–59. Use of a central server to mediate communications between the devices beneficially provides security to the

¹ Stayed on June 17, 2020 pending resolution of ten petitions for *inter partes* review filed by Petitioner. *See* Paper 6.

transaction, allows for anonymity between the parties, and implements policy enforcement. *Id.* at 4:9–57.

In one application, only a user's device is capable of long range communication and the second device is only capable of broadcasting its identifier information. *Ex.* 1001, 7:16–25. This application is illustrated in Figure 2, which is reproduced below:

Figure 2

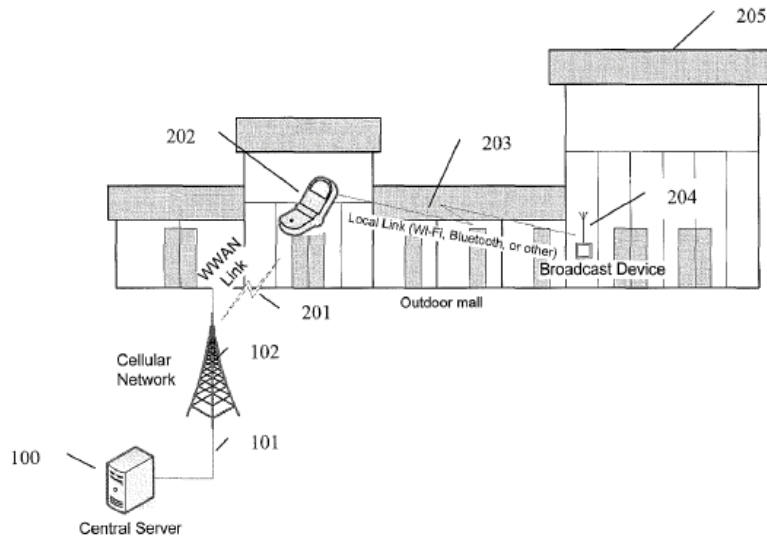


Figure 2 shows a block diagram of fixed broadcast device 204 and mobile device 202. *Id.* at 5:3–4. The user's mobile device detects the broadcast device and transmits the broadcast device's identifier information, along with a request for information regarding the broadcast device, to central server 100. *Id.* at 14:42–54. The server determines what information regarding the broadcast device is available and transmits a description of the information to the user's device. *Id.* at 14:55–57. The user then has the option to download the information. *Id.* at 14:57–64. The server may also

coordinate the several steps of an electronic commerce transaction between the user's device and the broadcast device. *Id.* at 17:30–18:60.

E. The Challenged Claims

Petitioner challenges claims 1–3, 13, 14, and 17–20 of the '749 patent.

Pet. 1. Claim 1 is the sole independent claim and is reproduced below:

1. A method for exchange of information between one or more applications executing on at least a first wireless device and a second wireless device, the method comprising the steps of:

at the first wireless device, providing initial identification information to a central server, said initial identification information having been collected by the first wireless device from the second wireless device via a first, direct, short range local wireless link between the second and first wireless devices, wherein the initial identification information is associated at the central server with an identity of a user or entity associated with the second wireless device, and wherein the initial identification information is provided to the central server, by the first wireless device, over a second wireless link;

at the second wireless device, upon an occurrence of a predetermined event coordinated with said central server, within a specific application on the second wireless device, providing modified identification information over the first, direct, short range local wireless link in place of the initial identification information, such that the modified identification information is associated at the central server with said identity of a user or entity associated with the second device; and

at the first wireless device, collecting said modified identification information.

Ex. 1001, 23:29–55.

F. Asserted Grounds of Unpatentability

The Petition relies on the following prior art references:

Name	Reference	Exhibit
Mgrdechian	US 7,545,784 B2, issued June 9, 2009	1005
Kulakowski	WO 2007/084973 A2, published July 26, 2007	1013

Petitioner asserts the following grounds of unpatentability:

Claims Challenged	35 U.S.C. §	Reference(s)
1–3, 13, 14, 17–20	102(b) ²	Mgrdechian
1–3, 13, 14, 17–20	103(a)	Mgrdechian
1–3, 13, 14, 17–20	103(a)	Mgrdechian, Kulakowski

Pet. 12. Petitioner submits a declaration of Mr. David Hilliard Williams (Ex. 1003, “Williams Declaration”) in support of its contentions.

II. DISCRETIONARY DENIAL

Patent Owner argues that we should exercise our discretion to deny institution under 35 U.S.C. § 325(d) because Mgrdechian was already considered by the Office. Prelim. Resp. 11–29. Patent Owner also argues that we should exercise our discretion to deny institution under 35 U.S.C. § 314(a), alleging that the Petition contains a position inconsistent with Petitioner’s arguments in the now stayed District Court litigation. *Id.* at 53–60. Given that we are not instituting review based on the shortcomings of the Petition as discussed below, we need not consider

² The application resulting in the ’749 patent was filed prior to the date when the Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112–29, 125 Stat. 284 (2011), took effect. Thus, we refer to the pre-AIA version of sections 102 and 103.

Patent Owner's arguments that we should exercise our discretion to deny institution.

III. ANALYSIS

A. Principles of Law

Petitioner bears the burden of persuasion to prove unpatentability, by a preponderance of the evidence, of the claims challenged in the Petition. 35 U.S.C. § 316(e). This burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). The Board may authorize an *inter partes* review if we determine that the information presented in the Petition and Patent Owner's Preliminary Response shows that there is a reasonable likelihood that Petitioner will prevail with respect to at least one of the claims challenged in the Petition. 35 U.S.C. § 314(a).

“Under 35 U.S.C. § 102 a claim is anticipated ‘if each and every limitation is found either expressly or inherently in a single prior art reference.’” *King Pharm., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1274 (Fed. Cir. 2010) (quoting *Celeritas Techs. Ltd. v. Rockwell Int'l Corp.*, 150 F.3d 1354, 1360 (Fed. Cir. 1998)). “Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim.” *Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1325, 1332 (Fed. Cir. 2010) (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983)).

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which the subject matter pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) when in evidence, any objective evidence of non-obviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

Petitioner contends that a person having ordinary skill in the art at the time of the invention (“POSITA”) would have had “a Bachelor’s degree in Electrical Engineering, or a related field, and approximately 3-5 years of professional experience in the field of wireless communications.” Pet. 16. Petitioner acknowledges that “graduate education could substitute for professional experience” and “significant experience in the field could substitute for formal education.” *Id.* (citing Ex. 1003 ¶¶ 8–20, 36–38).

Patent Owner does not contest Petitioner’s definition of the level of ordinary skill in the art. Prelim. Resp. 8–9.

The level of ordinary skill in the art usually is evidenced by the references themselves. *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). The level of ordinary skill proposed by Petitioner appears to be consistent with that of the references, and we apply Petitioner’s proposed level of ordinary skill for purposes of this Decision.

C. Claim Construction

In an *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), including construing the claims in accordance with the ordinary and customary meaning of such claims as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent. 37 C.F.R. § 42.100(b) (2019). Thus, we apply the claim construction standard as set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc).

Claim terms are generally given their ordinary and customary meaning as would be understood by one with ordinary skill in the art in the context of the specification, the prosecution history, other claims, and even extrinsic evidence including expert and inventor testimony, dictionaries, and learned treatises, although extrinsic evidence is less significant than the intrinsic record. *Phillips*, 415 F.3d at 1312–17. Usually, the specification is dispositive, and it is the single best guide to the meaning of a disputed term. *Id.* at 1315.

Only those terms that are in controversy need be construed, and only to the extent necessary to resolve the controversy. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (citing *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

“Petitioner interprets the claim terms according to their plain and ordinary meaning consistent with the [S]pecification.” Pet. 17 (citing Ex. 1003 ¶¶ 22–24). Petitioner asserts that the challenged claims use “a term of degree (e.g., ‘short range local wireless link’),” but does not explain

how this assertion affects claim construction. *Id.* Petitioner acknowledges that “[a] district court in another proceeding has construed terms of this patent,” but argues that those “constructions do not impact the outcome of this IPR as the prior art . . . meets the limitations under the district court’s constructions or the plain and ordinary meaning of the terms.” *Id.* at 18 (citing Ex. 1003 ¶ 67; Ex. 1021).

Patent Owner asserts that no “constructions are . . . necessary at this juncture.” Prelim. Resp. 9.

At this time, we determine that no express construction of any term is necessary.

D. Overview of the Asserted Prior Art

1. Mgrdechian

Mgrdechian discloses a wireless communication system. Ex. 1005, 1:32–35. Mgrdechian recognizes that on-line dating and social networking applications allow users to search for previously unknown parties based on specific qualities or characteristics, but contends that “there is no efficient methodology . . . where[by] a person may quickly obtain information about a specific individual that he or she may encounter but does not yet know anything about.” *Id.* at 2:43–57. Mgrdechian purports to overcome this problem by providing a wireless communication system. *Id.* at 3:6–9.

Figure 3A illustrates Mgrdechian’s system and is reproduced below:

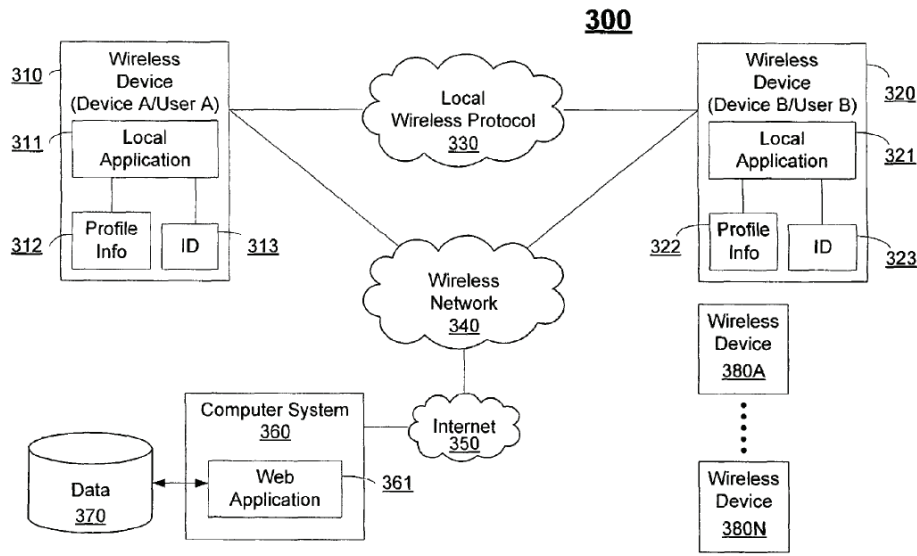


Fig. 3A

Figure 3A illustrates Mgrdechian’s wireless communication system 300, showing wireless devices 310, 320 that communicated directly using local wireless protocol 330. Ex. 1005, 9:34–37. The system also includes remote computer system 360, which communicates with the wireless devices via wireless network 340 and Internet 350 and provides access to additional information regarding users of the wireless devices. *Id.* at 10:48–61.

Mgrdechian is particularly directed to a dating application (*see* Ex. 1005, 11:53–14:45), but contemplates use in other applications (*see id.* at 14:49–15:42). In general, communication is initiated by a first user, referred to as the initiator or “User A” using “Device A,” who wants to gather information about another user, referred to as the target or “User B” using “Device B.” *Id.* at 9:40–55. Device A initiates communication by transmitting an identification request over the local wireless protocol. *Id.* at 10:38–40. Wireless devices within range of Device A, such as Device B, receive the request and respond by sending a reply message that includes

that device's identification ("device ID"). *Id.* at 10:41–47. Device A receives the reply message and transmits the device ID to the remote computer system over the wireless network and the Internet. *Id.* at 10:48–52. The computer system receives and uses the device ID to access information associated with the device ID within database 370, and transmits the information to Device A. *Id.* at 10:62–11:22. The transmitted information can be profile information regarding User B, which may include a variety of personal information about User B and other information, including "items or services for sale." *Id.* at 11:23–33.

2. *Kulakowski*

Kulakowski discloses "a network security system and method for detecting clones of true or properly registered client devices attempting to steal services without payment or otherwise mimic a real client device." Ex. 1013 ¶ 2. Kulakowski recognizes that malfeasants attempt to steal distributed services by creating multiple clients with credentials identical to those of a valid client. *Id.* ¶ 3. Kulakowski's system purports to detect such cloned devices. *Id.* ¶ 5.

Figure 4 is a flow diagram illustrating operation of Kulakowski's system and is reproduced below:

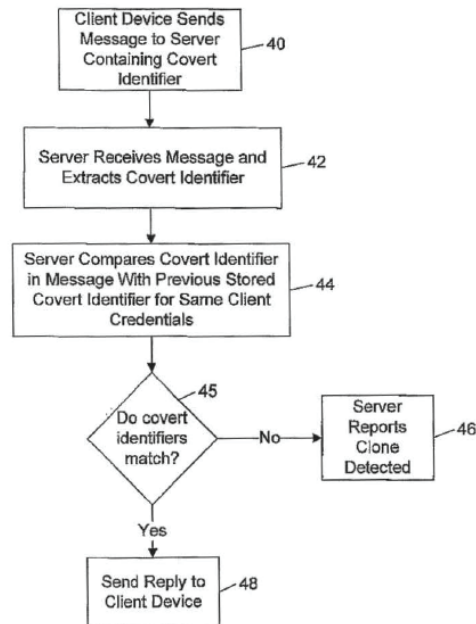


FIG. 4

Figure 4 is a flow diagram illustrating a method for detecting the presence of cloned client devices. Ex. 1013 ¶ 48. The detection process begins when a client device sends a message to a system server (step 40). *Id.* The message is adapted to include embedded therein a covert identifier derived from one or more operational events at the client device. *Id.* ¶¶ 6, 37. The covert identifier is unique to the specific client device and is based on covert data values such as the number of times a client has performed a certain event or the microsecond time of day that an event occurred. *Id.* ¶¶ 8, 34, 50. The server extracts the covert identifier upon receiving the message (step 42) and compares the extracted covert identifier with stored values corresponding to the client credentials (step 44). *Id.* ¶ 48. The server then determines whether there is a match (step 45). *Id.* If so, the message is processed further per normal operating procedures (step 48). *Id.* If there is no match,

the server generates a report to the system operator indicating that the client credentials may have been cloned (step 46). *Id.* The system operator can then take further action as deemed appropriate. *Id.* ¶ 41.

E. Asserted Anticipation by or Obviousness in View of Mgrdechian

Petitioner argues that claims 1–3, 13, 14, and 17–20 would have been unpatentable as being anticipated by or obvious in view of Mgrdechian. Pet. 19–53. In support of its showing, Petitioner relies upon the Williams Declaration. *Id.* (citing Ex. 1003). We have reviewed Petitioner’s assertions and supporting evidence. For the reasons discussed below, and based on the record before us, we determine that Petitioner does not demonstrate a reasonable likelihood of prevailing in showing that these claims would have been unpatentable in view of Mgrdechian.

A petition for *inter partes* review must identify, “with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim.” 35 U.S.C. § 312(a)(3); *see also* 37 C.F.R. § 42.104(b) (specifying necessary elements of a petition).

As the Federal Circuit has explained, “[i]n an IPR, the petitioner has the burden from the onset to show *with particularity* why the patent it challenges is unpatentable.” *Harmonic*, 815 F.3d at 1363 (emphasis added) (citing 35 U.S.C. § 312(a)(3)); *see also* *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (“It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that

supports the grounds for the challenge to each claim.” (quoting 35 U.S.C. § 312(a)(3))).

Claim 1 recites, in relevant part,

at the second wireless device, upon an occurrence of a predetermined event coordinated with said central server, within a specific application on the second wireless device, providing modified identification information over the first, direct, short range local wireless link in place of the initial identification information, such that the modified identification information is associated at the central server with said identity of a user or entity associated with the second device.

Ex. 1001, 23:44–53. Petitioner notes that Mgrdechian discloses that, when responding to an identification request, the device ID sent by the target device in its reply message may be “dynamic or pseudo-random” and maps this to the recited modified identification information. Pet. 35–36.

However, Petitioner does not address the “upon an occurrence of a predetermined event” recitation. *See id.* at 35–38; *see also* Prelim. Resp. 33 (arguing that the Petition “entirely ignores the limitation that the identifier is changed ‘upon an occurrence of a predetermined event coordinated with said central server.’ Petitioner identifies no teaching in Mgrdechian that contemplates a ‘predetermined event.’”). The Petition, therefore, fails to identify with requisite particularity how Mgrdechian discloses or teaches all of the recitations of claim 1.

Petitioner also contends that Mgrdechian’s Device B provides its device ID to the Device A and “*changes* its ID in a ‘dynamic’ or ‘pseudo-random’ manner.” Pet. 35–36 (emphasis added) (citing Ex. 1005, 3:38–42, 3:59–67, 4:4–14, 5:1–3, 12:7–14, 16:17–19).

Patent Owner argues that Mgrdechian does not provide any details regarding its “dynamic or pseudo-random” embodiments. Prelim. Resp. 31. Patent Owner argues that “Petitioner provides no explanation of or description of how ‘dynamic or pseudo-random’ IDs would be implemented.” *Id.* According to Patent Owner,

Mgrdechian does not even indicate that its reference to “dynamic” means that identifiers are changed at all, as opposed to, for example, identifier[s] being determined dynamically. Similarly, Mgrdechian does not indicate that its reference to “pseudo-random” means that identifiers would be changed, as opposed to generated as a pseudo-random number to be used as an identifier.

Id.

We agree that the Petition fails to explain adequately how Mgrdechian discloses or teaches providing modified identification information as required by claim 1. As noted by both of the parties, Mgrdechian discloses that its device IDs can be “dynamic or pseudo-random.” Ex. 1005, 5:1–3. However, Petitioner does not support adequately its contention that the second device *changes* its device ID during a communication process with the first device and provides the modified ID to the first device. Indeed, to support its contention, Petitioner does little more than reproduce Mgrdechian’s statement that “embodiments of the devices can include cases where the ID’s are static, dynamic or pseudo-random.” *See* Pet. 37 (quoting Ex. 1005, 5:2–3). Nor do we discern any disclosure within Mgrdechian supporting Petitioner’s contentions that a first device sends its device ID to a second device, the first device modifies its device ID, and the first device transmits the modified device ID to the second device.

Nor do we find Mr. Williams’s testimony persuasive. Mr. Williams’s testimony is substantially the same as the language in the Petition. *Compare* Pet. 35–36, *with* Ex. 1003 ¶¶ 114–119. Mr. Williams opines that “Mgrdechian discloses that each wireless device, including a second device (*e.g.*, Device B) that provides its ‘ID’ to ‘a first wireless device’ using a ‘local wireless protocol,’ changes its ID in a ‘dynamic’ or ‘pseudo-random’ manner, which is retrieved using the device’s ‘local software application.’” Ex. 1003 ¶ 116 (citing Ex. 1005, 3:38–42, 3:59–67, 4:4–14, 5:1–3, 12:7–14, 16:17–19). As with the Petition, the cited portions of Mgrdechian fail to provide support for Mr. Williams’s contention that Mgrdechian’s device *changes* its device ID and provides the modified ID to a second device. Nor are we persuaded by Mr. Williams’s assertion that it would have been obvious to modify Mgrdechian such that Device B provides modified identification information as required by claim 1. *Id.* ¶ 119; *see also* 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”). Although Mr. Williams asserts that the modification would “advantageously increase security of the system,” he does not explain how security would be increased by providing modified identification information while at the same time making the modified identification information “search[able] by other users.” *See* Ex. 1003 ¶ 119.

For the reasons explained above, the arguments and evidence presented in the Petition fail to provide sufficient reasoning and evidence to support Petitioner’s contention that Mgrdechian discloses or teaches providing modified identification information as required by claim 1 and incorporated into dependent claims 2, 3, 13, 14, and 17–20. Therefore, the

Petition has not demonstrated a reasonable likelihood of success in challenging these claims.

F. Asserted Obviousness in View of Mgrdechian and Kulakowski

Petitioner argues that claims 1–3, 13, 14, and 17–20 would have been obvious over the combination of Mgrdechian and Kulakowski. Pet. 53–69. Petitioner relies on Mgrdechian as set forth in § III.E above and relies on Kulakowski to teach the use of a “covert identifier” in a network security system to detect clones that mimic a real client device. *Id.* Regarding claim 1, Petitioner argues that it would have been obvious to change “Mgrdechian’s ‘dynamic’ or ‘pseudo-random’ identifier for device B” based on a predetermined event and then broadcast the modified device ID. Pet. 61 (citing Ex. 1003 ¶¶ 154–159; Ex. 1013 ¶¶ 63, 73). According to Petitioner, it would have been obvious “to apply Kulakowski’s known teachings of covert, changing identifiers in implementing Mgrdechian’s ‘dynamic’ device identifiers” in order to “improve security and detect spoofed or ‘clone’ client wireless devices.” *Id.* at 59 (emphasis omitted) (citing Ex. 1003 ¶ 92; Ex. 1005, 4:65–5:3, 5:21–30; Ex. 1013 ¶¶ 8, 15, 48).

Initially, we find Petitioner’s assertion that Mgrdechian’s disclosure of a “dynamic” device ID constitutes providing modified identification information as recited in claim 1 (*see* Pet. 58–59, 61) unpersuasive for the reasons set forth in § III.E above.

Additionally, we are unpersuaded by Petitioner’s assertion that Kulakowski teaches providing modified identification information as required by claim 1. Petitioner maps Kulakowski’s “covert identifier” to the recited identification information. Pet. 60–61. Petitioner relies on

Kulakowski to teach “covert, changing identifiers” that “improve security and detect spoofed or ‘clone’ client wireless devices” and “protect user privacy by validating the legitimacy of the client devices.” *Id.* at 59.

Patent Owner argues that Kulakowski “does not contemplate a scenario where identifiers are passed from client device to client device as in Mgrdechian.” Prelim. Resp. 46. Patent Owner argues that the combination of Mgrdechian and Kulakowski as set forth in the Petition “is directly contrary to [Kulakowski’s] teachings” because “Kulakowski seeks to prevent cloning by utilizing ‘covert identifiers’ that are known to no other client devices.” *Id.* (emphasis omitted).

Kulakowski discloses a security method in which a device sends a message to a server, the message having embedded therein a covert identifier. Ex. 1013 ¶¶ 6, 37. The server extracts the covert identifier upon receiving the message and compares the extracted covert identifier with stored values corresponding to the client credentials to determine if the device is an authentic device or a cloned device. *Id.* ¶ 48. “The covert identifier is generated by operational events occurring during actual operation of a client device. . . . The covert data therefore provides a unique identifier for a particular client device which is stored by the client device and subsequently used in messages to a server.” *Id.* ¶ 15. “Such values are covert because their nature makes them difficult for hackers to detect and duplicate in cloned client devices” *Id.* ¶ 34.

Thus, Kulakowski teaches that its “covert identifiers” are covert and provide added security because they are known only to the particular device and the server. Neither Petitioner nor Petitioner’s declarant explains adequately why it would have been obvious to use this covert teaching to

enhance the security of Mgrdechian’s system by transmitting the covert identifier to another client device. *See* Pet. 58–61; Ex. 1003 ¶¶ 91–92. We agree with Patent Owner that, by transmitting the modified information to other devices, the modification proposed by Petitioner “creates the very risk Kulakowski is trying to prevent” and that the Petition does not explain adequately why a person having ordinary skill in the art would “broadcast[] a Kulakowski ‘covert identifier’ in a way that could be intercepted by other client devices.” *See* Prelim. Resp. 47. By transmitting this information to devices sending an identification request (*see, e.g.*, Ex. 1005, 10:38–47), the information would no longer be “covert,” and the Petition does not explain adequately how this information would “improve security and detect spoofed or ‘clone’ client wireless devices.” *See* Pet. 59.

For the reasons explained above, the arguments and evidence presented in the Petition fail to provide sufficient reasoning and evidence to support Petitioner’s contention that the combination of Mgrdechian and Kulakowski teaches providing modified identification information as required by claim 1 and incorporated into dependent claims 2, 3, 13, 14, and 17–20. Therefore, the Petition has not demonstrated a reasonable likelihood of success in challenging these claims.

IV. CONCLUSION

For the foregoing reasons, we are not persuaded that the Petition establishes a reasonable likelihood that Petitioner would prevail in any of its challenges to claims 1–3, 13, 14, and 17–20 of the ’749 patent.

IPR2020-00978
Patent 8,116,749 B2

V. ORDER

In consideration of the foregoing, it is hereby ordered that the Petition is *denied*.

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Patent 8,116,749 B2

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