

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TARGET CORPORATION,
Petitioner,

v.

PROXICOM WIRELESS, LLC,
Patent Owner.

IPR2020-00934
Patent 8,385,896 B2

Before BRIAN J. McNAMARA, CHARLES J. BOUDREAU, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

BOUDREAU, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

A. Background

Target Corporation (“Petitioner”) filed a Petition for *inter partes* review of claims 1–3, 5, 6, 8, 9, 17, 18, 40, 41, 44, 48–53, and 56 (“the challenged claims”) of U.S. Patent No. 8,385,896 B2 (Ex. 1001, “the ’896 patent”). Paper 2 (“Pet.”). Proxicom Wireless, LLC (“Patent Owner”) filed a Preliminary Response. Paper 9. On December 4, 2020, we instituted an *inter partes* review of the challenged claims on all grounds raised in the Petition. Paper 10 (“Institution Decision” or “Inst. Dec.”).

Subsequent to institution, Patent Owner filed a Patent Owner Response (Paper 19, “PO Resp.”), Petitioner filed a Reply to the Patent Owner Response (Paper 22, “Pet. Reply”), and Patent Owner filed a Sur-reply (Paper 23, “PO Sur-reply”). An oral hearing was held on September 1, 2021. A transcript of the hearing has been entered into the record. Paper 29 (“Tr.”).

For the reasons that follow, we conclude that Petitioner has proven by a preponderance of the evidence that all of the challenged claims are unpatentable.

B. Real Parties in Interest

Petitioner identifies itself as the sole real party in interest. Pet. 5–6. Patent Owner identifies itself as the sole real party in interest. Paper 4, 2 (Patent Owner’s Mandatory Notice).

C. Related Matter

The parties indicate that the ’896 patent is involved in *Proxicom Wireless, LLC v. Target Corporation*, No. 6:19-cv-1886 (M.D. Fla. filed

Oct. 2, 2019). Pet. 6; Paper 4, 2. We understand that litigation to have been stayed on June 18, 2020, pending resolution of this proceeding and other *inter partes* review proceedings involving other patents asserted in the same litigation. Paper 6 (Notice of District Court Decision Granting Petitioner’s Motion to Stay the Related District Court Litigation.

D. The Challenged Patent

The ’896 patent is titled “Exchanged Identifiers Between Wireless Communication to Determine Further Information to be Exchanged or Further Services to be Provided.” Ex. 1001, code (54). The ’896 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.” *Id.* at 2:55–59. One wireless device detects the presence of another wireless device located within a certain proximity by using a short range communications protocol, such as Bluetooth or Wi-Fi, to receive transmitted identifying information. *Id.* at 2:64–3:4. The devices may then employ the use of a wide area wireless connection to communicate and establish data flow with a server to facilitate and perform the substantive communications between the devices. *Id.* at 6:35–55. 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 3:57–64. Use of a central server to mediate communications between the devices beneficially provides security to the transaction, allows for anonymity between the parties, and implements policy enforcement. *Id.* at 4:6–50.

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, 7:22–31. This application is illustrated in Figure 2, which is reproduced below:

Figure 2

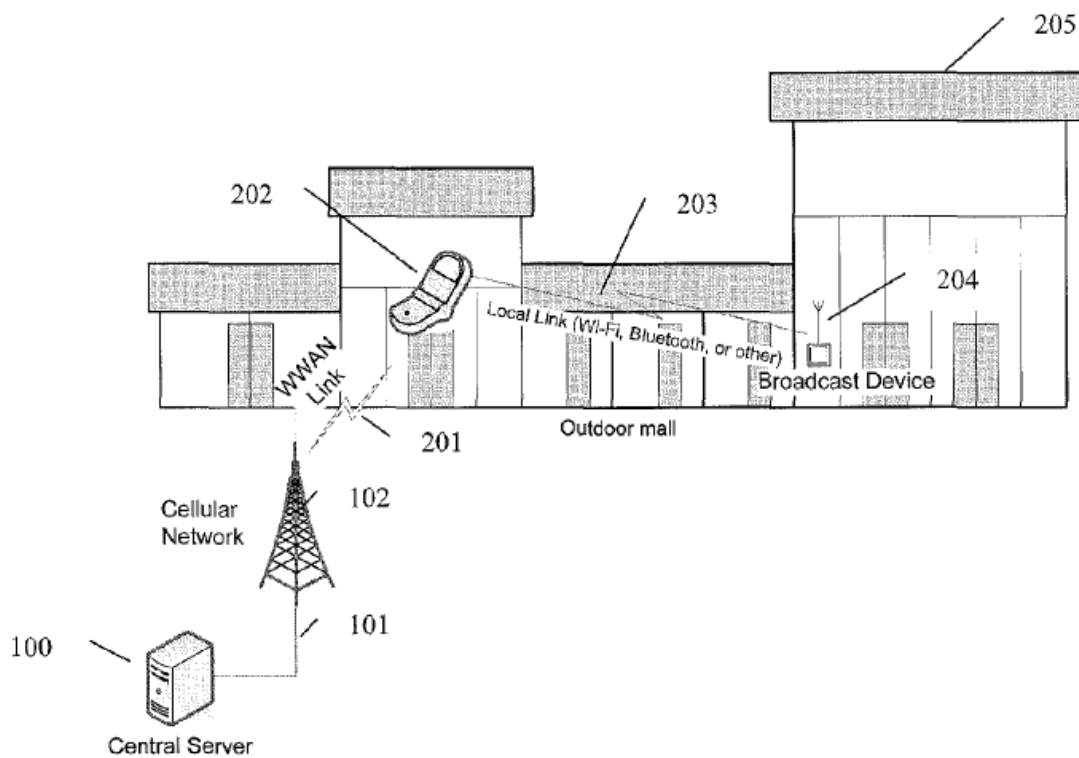


Figure 2 shows a block diagram of fixed broadcast device 204 and mobile device 202. *Id.* at 5:8–9. The user's mobile device detects the broadcast device and transmits the broadcast device's identifier information, along with a request for information regarding the broadcast device, to central server 100. *Id.* at 14:47–60. 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 14:61–63. The user then has the

option to download the information. *Id.* at 14:63–15:3. The server may also coordinate the several steps of an electronic commerce transaction between the user’s device and the broadcast device. *Id.* at 17:36–18:64.

E. Illustrative Claim

Of the challenged claims, claims 1 and 40 are independent. Claim 1 is illustrative and is reproduced below.

1. A method for a server to exchange information with one or more wireless devices comprising the steps of:

receiving identifier information from a first wireless device related to a second wireless device or an entity associated with said second wireless device, said identifier information having been received by the first wireless device using short range wireless communication;

said server using the identifier information to determine information concerning an entity or object located in proximity to the second wireless device;

the server delivering first information to the first wireless device based at least in part upon the identifier information related to the second wireless device;

the server receiving second information from either said first wireless device or said second wireless device indicating selection of one or more goods for purchase;

the server transmitting a request to either said first or said second wireless device for confirmation of said purchase;

the server receiving confirmation that a user wishes to complete said purchase; and

the server transmitting a receipt to either said second wireless device or to an entity associated with said second wireless device.

Ex. 1001, 23:35–58.

F. Instituted Grounds of Unpatentability

We instituted trial based on the grounds of unpatentability asserted in the Petition:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–3, 5, 6, 8, 17, 18, 40, 41, 44, 48–53, 56	103 ¹	Perttila, ² Emmons ³
9	103	Perttila, Emmons, Insolia ⁴

Petitioner also relies on a declaration of Mr. David Hilliard Williams (Ex. 1003, “Williams Declaration”) in support of its contentions. Patent Owner relies on a declaration of Michael Foley, Ph.D. (Ex. 2020, “Foley Declaration”) in support of its contentions.

II. ANALYSIS

A. Principles of Law

To prevail in its challenges to the patentability of the challenged claims of the ’896 patent, Petitioner must demonstrate by a preponderance of the evidence that the claims are unpatentable. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d) (2019). “In an [*inter partes* review], the petitioner has the burden

¹ The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011), amended 35 U.S.C. §§ 102 and 103 effective March 16, 2013. Because the ’896 patent has an effective filing date prior to the effective date of the applicable AIA amendments, we refer to the pre-AIA versions of §§ 102 and 103.

² Perttila et al., US 2004/0243519 A1, published Dec. 2, 2004 (Ex. 1006).

³ Emmons et al., US 7,963,441 B2, issued June 21, 2011 (Ex. 1010). Petitioner further relies upon Emmons as incorporating by reference Attia et al., US 7,156,311 B2, issued Jan. 2, 2007 (Ex. 1011) and Recktenwald et al., US 6,439,345 B1, issued Aug. 27, 2002 (Ex. 1012). Pet. 8–10.

⁴ Insolia et al., US 8,121,917 B2, issued Feb. 21, 2012 (Ex. 1008).

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) (2012) (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); *see also In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1375–78 (Fed. Cir. 2016) (discussing the burden of proof in *inter partes* review).

A claim is unpatentable for obviousness if, to one of ordinary skill in the pertinent art, “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.” 35 U.S.C. § 103(a) (2006); *see also 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 ordinary skill in the art; and (4) when in evidence, objective evidence of nonobviousness.⁵ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). Additionally, the obviousness inquiry typically requires an analysis of “whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR*, 550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (requiring “articulated reasoning with some rational underpinning to support the legal conclusion of

⁵ The parties do not direct our attention to any evidence of objective indicia of nonobviousness.

obviousness”)); *see also In re Warsaw Orthopedic, Inc.*, 832 F.3d 1327, 1333 (Fed. Cir. 2016) (citing *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1360 (Fed. Cir. 2006)).

An obviousness analysis “need not seek out precise teachings 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*, 550 U.S. at 418; *accord In re Translogic Tech., Inc.*, 504 F.3d 1249, 1259 (Fed. Cir. 2007). 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).

A reason to combine or modify the prior art may be found explicitly or implicitly in market forces; design incentives; the “interrelated teachings of multiple patents”; “any need or problem known in the field of endeavor at the time of invention and addressed by the patent”; and the background knowledge, creativity, and common sense of the person of ordinary skill. *Perfect Web Techs., Inc. v. InfoUSA, Inc.*, 587 F.3d 1324, 1328–29 (Fed. Cir. 2009) (quoting *KSR*, 550 U.S. at 418–21).

We analyze the asserted grounds of unpatentability in accordance with the above-stated principles.

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 “would have had a minimum of 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. 14 (citing Ex. 1003 ¶¶ 36–38). Petitioner also asserts that “graduate education could substitute for professional experience” or that “significant experience in the field could substitute for formal education.” *Id.* (citing Ex. 1003 ¶¶ 36–38).

While contending that a person of ordinary skill in the art with respect to the challenged claims “should also have 1–2 years of experience designing or implementing systems for electronic commerce including the use of wireless communications,” Patent Owner concedes that the level of skill as defined by Petitioner “is generally sufficient for the Board to evaluate the Petition Grounds.” PO Resp. 10–11.

The level of ordinary skill in the art may be 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). 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 did not assert construction of any specific terms in its Petition, instead contending simply that it “interprets the claim terms according to their plain and ordinary meaning consistent with the specification.” Pet. 15. Petitioner acknowledges that “[a] district court in another proceeding has construed terms of a related patent,” but argues that those “constructions do not impact the outcome of this IPR as the prior art . . . meets the limitations under these constructions.” *Id.* (citing Ex. 1003 ¶ 71; Ex. 1021). Patent Owner raised arguments with respect to two phrases in the Patent Owner Response, “an entity or object located in proximity to the second wireless device” and “wireless device.” PO Resp. 13–21. We address these phrases in turn below.

1. “an entity or object located in proximity to the second wireless device”

Patent Owner contends that the phrase “an entity or object located in proximity to the second wireless device,” recited in independent claims 1 and 40 of the ’896 patent, should be construed “to require that the claimed ‘entity or object’ must have a physical presence.” PO Resp. 13. According to Patent Owner, “the reference to the object being ‘located in proximity to the second wireless device’ makes clear that the claimed ‘object’ of that phrase must be physically present.” *Id.* at 14. Patent Owner argues similarly that “located in proximity to the second wireless device” also applies to the recited “entity,” thus requiring “that the ‘entity’ referred to in this claim element must be physically present, so that it may be ‘located in . . . proximity to the second wireless device’ as claimed.” *Id.* at 14–15. Patent Owner argues that “proximity” is used in accordance with its plain and ordinary meaning and “unquestionably refers to physical placement.” *Id.* at 16–18.

In its Reply, Petitioner responds that we need not construe “entity or object” to require a physical presence as proposed by Patent Owner because a device can be in proximity to an intangible object, such as music being played or a video or image displayed on a billboard. Pet. Reply 2–3. Further, Petitioner argues, each of Patent Owner’s citations to instances of the term “proximity” in the specification of the ’896 patent refers only to the proximity of either two individuals or two wireless devices to each other, not to the proximity of an object to the second wireless device, as recited in claims 1 and 40. *Id.* at 3–4 (citing PO Resp. 16–18). Still further, Petitioner argues that Patent Owner’s declarant conceded in a deposition concerning a

related patent having substantially the same specification of the '896 patent that he did not base his interpretation of “proximity” on how the term is used in the specification, testifying that the usage of proximity in the specification “is not” relevant to his understanding of the usage of proximity in the claims. *Id.* at 4–5 (quoting Ex. 1040, 75:18–21) (citing Ex. 1040, 69:17–25, 70:11–71:9, 72:16–73:9).

Patent Owner replies that “object” must be construed to have a physical presence because “the claimed ‘object’ is limited by the requirement that it be ‘located in proximity to the second wireless device.’” PO Sur-reply 1; *see also id.* at 1–4 (presenting similar arguments). Patent Owner contends that Petitioner’s assertions regarding Patent Owner’s declarant take the testimony out of context. *Id.* at 5–9. According to Patent Owner, “the issue here [is] whether the claimed ‘entity or object’ can be ‘located in proximity to the second wireless device’ if the ‘entity or object’ is not physically present.” *Id.* at 5–6.

Notwithstanding the arguments in its briefing, Petitioner’s counsel acknowledged during the hearing that the claims require the entity or object to have a physical presence. *See, e.g.,* Tr. 7:25–8:11 (“Patent Owner says on the one hand, ‘Located in proximity to requires some physical manifestation.’ No argument about that. Of course, it does. But . . . Patent Owner ignores that an intangible can have a physical presence and location.”).⁶ There is, accordingly, no controversy regarding whether “an

⁶ In related IPR2020-00931, referenced by Petition in the hearing of this proceeding (*see, e.g.,* Tr. 8:7–9), Petitioner’s counsel similarly represented that “there’s no debate . . . that physical presence is connoted by the word ‘proximity’ and by ‘located.’” IPR2020-00931, Paper 28 at 8:17–19 (oral hearing transcript).

entity or object located in proximity to the second device” requires the entity or object to have a physical presence. Moreover, our decision does not depend on an express construction of this term or on whether the recited “entity” or “object” may be intangible. We conclude, therefore, that there is no need for us to construe this term.

2. “*wireless device*”

Patent Owner argues that, as recited in the challenged claims, “wireless device” “refer[s] to wireless communication capabilities, not that a wireless device would be precluded from having any external wires whatsoever.” PO Resp. 21. However, Patent Owner concedes that construction of “wireless device” is “not necessary to resolve the dispute here.” *Id.* at 20–21.

Petitioner argues that “‘wireless device’ should be construed as a device without external wires,” noting that the claims of the ’896 patent recite a “wireless device” rather than a “wireless communication device.” Pet. Reply 6. However, Petitioner also concedes that construction of this term is unnecessary. *Id.* at 5–6.

No construction of this term is necessary. The parties both agree that no construction is needed, and our decision does not depend on a construction of this term.

D. Overview of the Asserted Prior Art

1. *Perttila*

Perttila describes “a system, apparatus, and method for sending service data in response to electronic communications between a user

communications device and a merchant-media arrangement.” Ex. 1006 ¶ 8.
Figure 1a shows such a system and is reproduced below:

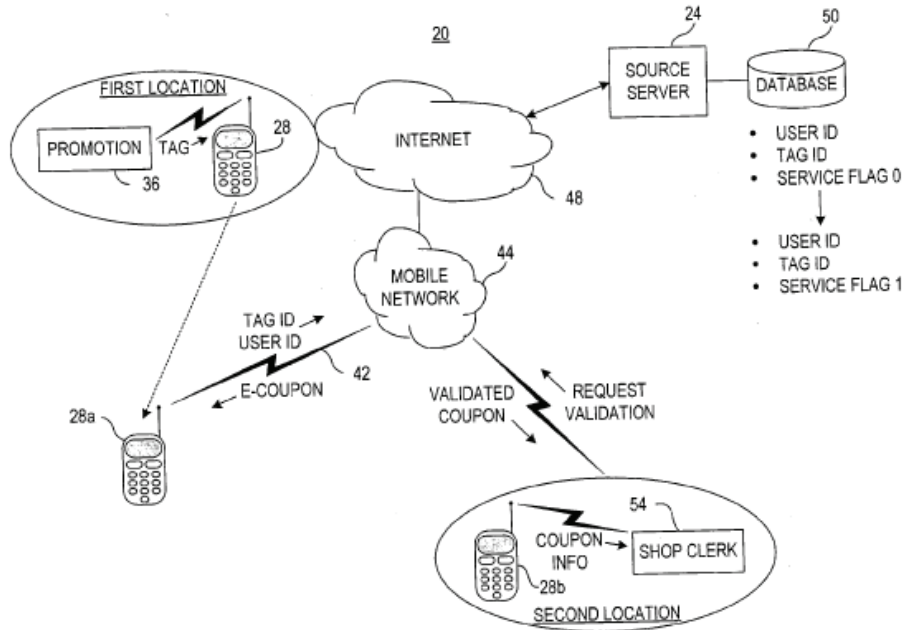


FIG. 1a

Figure 1a shows coupon-retrieval system 20 for the communication of an electronic coupon to user 28 via link 42 established with source server 24 by mobile communications device 28a. *Id.* ¶¶ 19, 36. When the user’s mobile device is within proximity of merchant-media arrangement 36, which may be a poster or the like, the arrangement transmits to the mobile device a merchant ID code and, optionally, link information for connecting to the server. *Id.* ¶ 37. This transmission may be via radio frequency identification (RFID) or Bluetooth. *Id.* The mobile device establishes a communication link with the server through a mobile network or the Internet and transmits a merchant-information-request signal to the server. *Id.* ¶ 38. The server first extracts the mobile device ID and the merchant ID code from the request. *Id.* The server then generates an electronic coupon based on the merchant

ID code and provides the user with an option to download the coupon. *Id.*
¶¶ 28, 37–39.

2. *Emmons*

Emmons describes “a system and method for providing self service checkout and product delivery using a mobile device.” Ex. 1010, 2:45–63. Figures 1 and 2 of Emmons are reproduced below.

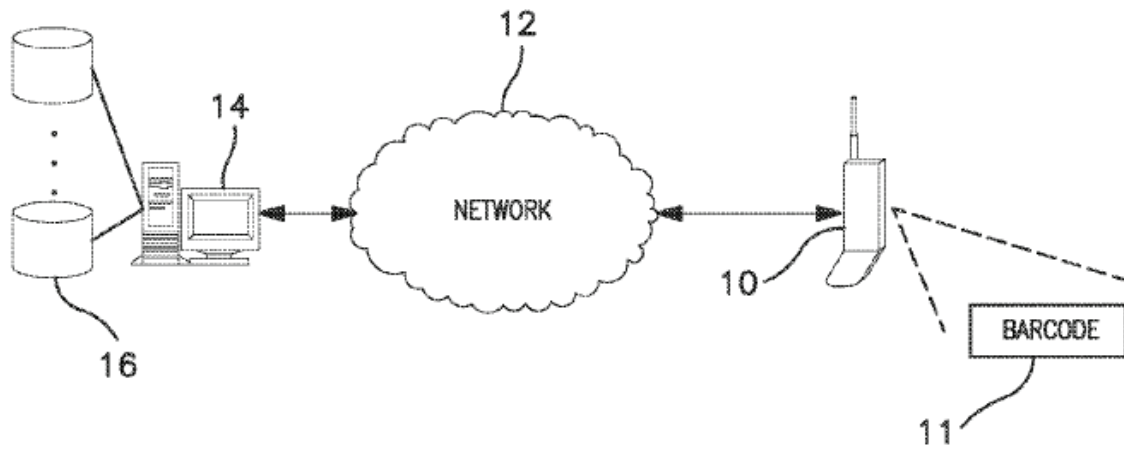


FIG. 1

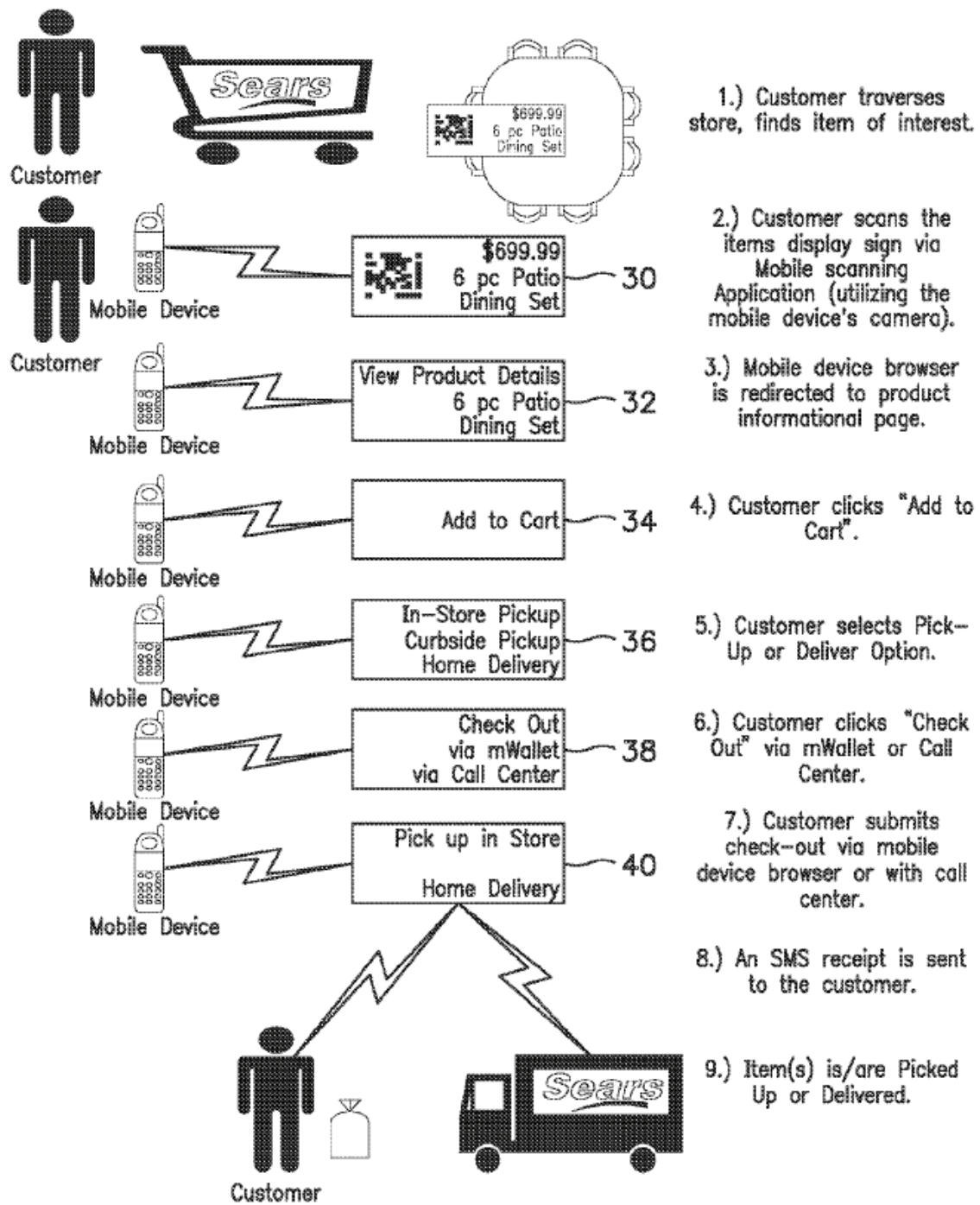


FIG. 2

Figure 1 shows an exemplary system as utilized by Emmons's method depicted in Figure 2. Ex. 1010, 3:10-14. Specifically, Figure 2 shows how a mobile device 10 is used to extract information from product display

indicia 11, then send appropriate extracted information to server 14 via network 12 where associated data repositories 16 allow the mobile device to be redirected to a desired information page 30, 32. *Id.* at 3:47–60, 4:26–31. From there, a customer can add a product to virtual cart 34, see the contents of their cart before purchase, pay for selected products 38, and receive a receipt 40. *Id.* at 4:45–5:3.

Emmons incorporates by reference Recktenwald and Attia. Ex. 1010, 4:26–31, 5:4–13; *see also* Ex. 1011, 1012. Recktenwald describes a kiosk-driven product pickup procedure that allows customers to pick up purchased items. Ex. 1012, 3:48–60. Attia describes a cellular telephone application that is able to analyze an image of a barcode or information carrying indicia in order to access a Web/WAP page with content associated with the information carrying indicia. Ex. 1011, 3:35–4:29.

3. *Insolia*

Insolia discloses “systems and methods for implementing a loyalty program.” Ex. 1008, 1:7–8. Insolia recognizes that, regarding the immediate consumption channel, which provides food and beverages that are immediately available and ready to consume from vending machines and the like, the diverse nature of the equipment used and of the consumer’s interaction with the equipment can complicate the implementation of broad marketing opportunities. *Id.* at 1:12–55. Insolia purports to provide a system that overcomes these drawbacks. *Id.* at 2:7–11. Figure 1 illustrates Insolia’s system and is reproduced below:

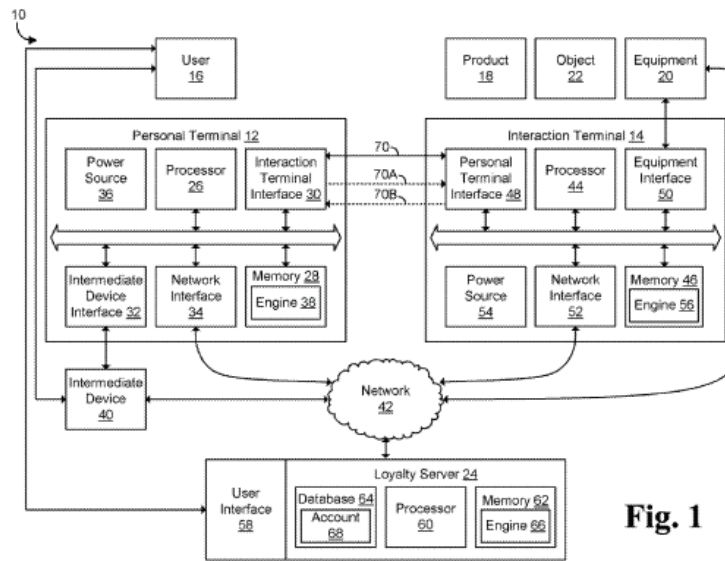


Fig. 1

Figure 1 shows a block diagram illustrating a system for implementing a loyalty network. *Id.* at 3:49–50. Loyalty program management system 10 includes personal terminal 12, interaction terminal 14, and loyalty server 24. *Id.* at 5:47–64. The personal terminal is transported by user 16. *Id.* at 5:65–66. The interaction terminal can be associated with product 18, such as a beverage, equipment 20, such as a vending machine, or promotional object 22, such as a poster. *Id.* at 5:51–53, 6:9–37. The personal terminal and the interaction terminal communicate when the personal terminal is brought within proximity of the interaction terminal. *Id.* at 9:12–18. A benefit, such as a loyalty point, can be awarded to the user for interacting with the interaction terminal. *Id.* at 9:58–64. The benefit can be stored on one or both of the personal terminal and the loyalty server. *Id.* at 13:35–38. When used, the benefit is communicated to the equipment to provide the user with a product for free or at a reduced price. *Id.* at 14:31–35. In some embodiments, the rate at which the loyalty points are awarded can be filtered to limit the accrual of rewards to a predefined rate. *Id.* at 36:19–20.

E. Asserted Obviousness of Claims 1–3, 5, 6, 8, 17, 18, 40, 41, 44, 48–53, and 56 over Perttila and Emmons

Petitioner contends claims 1–3, 5, 6, 8, 17, 18, 40, 41, 44, 48–53, and 56 are unpatentable as obvious over Perttila and Emmons (incorporating by reference Recktenwald and Attia). Pet. 17–66. In support of its showing, Petitioner relies upon the Williams Declaration. *Id.* (citing Ex. 1003). We have reviewed the Petition, Patent Owner Response, Petitioner Reply, Patent Owner Sur-reply, and evidence of record and determine that, for the reasons explained below, Petitioner has shown, by a preponderance of the evidence, that claims 1–3, 5, 6, 8, 17, 18, 40, 41, 44, 48–53, and 56 would have been obvious in view of Perttila and Emmons and that Petitioner has set forth reasoning with rational underpinnings why it would have been obvious to combine the teachings of Perttila and Emmons.

1. Motivation to Combine Perttila and Emmons

Citing Mr. Williams’s supporting testimony, Petitioner contends that a person of ordinary skill in the art “would have been motivated to apply Emmons’s implementation detail teachings for purchasing goods on a mobile device while ‘travers[ing a] store’ in implementing Perttila’s e-commerce arrangement, which uses ‘tag or beacons located at the store itself’ to enable a mobile device to purchase particular products after receiving e-coupon offerings.” Pet. 28 (alteration in original) (emphases omitted) (citing Ex. 1003 ¶ 102; Ex. 1006 ¶¶ 9, 25, 39; Ex. 1010, Fig. 2). For example, Petitioner contends, “Perttila teaches that the in-store arrangement provides ‘coupon offerings’ to [a] user’s mobile device,” and a person of ordinary skill in the art “would have understood that it would have advantageously benefitted Perttila’s system to allow a user to easily and

quickly use his/her mobile device to purchase the products for which information was received, as taught by Emmons.” *Id.* (emphases omitted) (citing Ex. 1003 ¶¶ 103–104; Ex. 1006 ¶¶ 25, 39).

Petitioner further contends that Emmons provides additional implementation details for purchasing goods on-line from the merchant and that “[i]mplementing Perttila’s ‘electronic commerce arrangement’ by allowing the purchase of goods directly from a user’s mobile device as taught by Emmons would have further enhanced Perttila’s e-commerce system.” Pet. 28–29 (emphases omitted) (citing Ex. 1003 ¶¶ 104–105; Ex. 1006 ¶¶ 28, 70; Ex. 1010, 4:16–5:3). In light of such teachings, Petitioner alleges, a person of ordinary skill in the art “would have found it obvious and straightforward” to apply Emmons’s teachings of a mobile self-service checkout and delivery system in implementing Perttila’s system for processing e-commerce transactions and “would have known that such a combination (yielding the claimed limitations) would predictably work and provide the expected functionality.” *Id.* at 29–30 (citing Ex. 1003 ¶ 108).

In the Institution Decision, we noted that Patent Owner had raised certain arguments in its Preliminary Response with respect to implementation of Emmons’s teachings (including those of Recktenwald and Attia, incorporated by reference in Emmons) with Perttila’s commerce arrangement, but we found, notwithstanding those arguments, that Petitioner sufficiently supported its proposed rationale for the combination for purposes of institution of trial and that Patent Owner’s arguments were not sufficiently persuasive to undermine Petitioner’s showing. Inst. Dec. 20–21. We found, for example, that Emmons describes a system for “self service checkout and product delivery,” allowing a user to complete the purchase

and delivery of products utilizing a mobile telephone to scan product information from information carrying indicia, attain information, and allow for mobile purchase; that Perttola suggests that electronic coupons and merchant-media arrangements may be located at or near the same location where such a coupon would be redeemed and validated to facilitate merchant transactions; and that Petitioner's reliance on Emmons's system and method to allow for full purchase of goods at a redemption site where an e-coupon can be used, as in Perttola, is supported by the testimony of Mr. Williams and the cited references. *Id.* (citing Ex. 1003 ¶¶ 102–104; Ex. 1006 ¶¶ 28, 39, 40; Ex. 1010, 2:45–63).

In its post-institution briefing, Patent Owner repeats substantively the same arguments that we found unpersuasive in the Institution Decision (*see* PO Resp. 45–58; PO Sur-reply 25–28), and we remain persuaded by Petitioner's evidence in support of the combination, including the testimony of Mr. Williams and the disclosures of the cited references (*see, e.g.*, Ex. 1003 ¶¶ 102–108, 147; Ex. 1006 ¶¶ 9, 25, 28, 39, 42, 70; Ex. 1010, 2:47–55, 3:18–25, 3:56–60, 4:16–5:13, Fig. 2; Pet. 28–30; *see also* Pet. Reply 17–23).

2. Independent Claim 1

a. Preamble

Claim 1 recites “[a] method for a server to exchange information with one or more wireless devices.” Ex. 1001, 23:35–36. Petitioner contends Perttola teaches this preamble recitation, mapping Perttola's source server 24 to the recited server and user-communication device 28 and merchant-media arrangement 36 to the recited wireless devices. Pet. 30 (citing Ex. 1006 ¶¶ 8–9); *see also id.* at 30–31 (citing Ex. 1003 ¶¶ 119–121; Ex. 1006 ¶¶ 8–9,

11–15, 19, 25–27, 37, 41, 60, Fig. 1a). Petitioner argues that a person of ordinary skill in the art “would have understood that Perttila discloses a wireless merchant-media arrangement and at minimum it would have been obvious to use a wireless merchant-media arrangement, such as a mobile battery-powered device that communicates wirelessly, to advantageously enable ‘portab[ility].’” *Id.* at 30 (emphasis omitted) (alteration in original) (citing Ex. 1003 ¶ 121; Ex. 1006 ¶ 60).

Patent Owner does not contest Petitioner’s contentions with respect to the preamble of claim 1. *See generally* PO Resp.; PO Sur-reply.

We are persuaded by Petitioner’s arguments and cited evidence that Perttila teaches or at least suggests a method for a central server to exchange information with one or more wireless devices. As cited by Petitioner, Perttila discloses that, when a user’s mobile communications device 28 is within proximity of merchant-media arrangement 36, the arrangement transmits a merchant ID code to the mobile device. Ex. 1006 ¶ 37. The mobile device then establishes a communication link with source server 24 and transmits a request containing the ID code to the server, and the server generates an electronic coupon based on the merchant ID code and provides the user with an option to download the coupon. *Id.* ¶¶ 36–39. Perttila at least suggests that the user’s mobile communications device and the merchant-media arrangement communicate wirelessly. *See id.* ¶ 37 (disclosing that the merchant-media arrangement can transmit the merchant ID code to the mobile device via radio frequency identification (RFID) or Bluetooth). Perttila further suggests that a communication link 42 between the user communications device 28 and the server 24 occurs wirelessly through a mobile network 44 and/or the Internet 48. *Id.* ¶ 38.

Accordingly, to the extent that the preamble of claim 1 is limiting, we are persuaded that the preamble is taught or suggested by Perttila.

b. The Receiving Identifier Information Limitation

Claim 1 recites “receiving identifier information from a first wireless device related to a second wireless device or an entity associated with said second wireless device, said identifier information having been received by the first wireless device using short range wireless communication.” Ex. 1001, 23:37–41. Petitioner maps Perttila’s user-communication device 28 to the recited first wireless device, merchant-media arrangement 36 to the recited second wireless device, and the “merchant ID code” to the recited identifier information. Pet. 31–32; *see also id.* at 31–33 (citing Ex. 1003 ¶¶ 122, 123; Ex. 1006 ¶¶ 9, 12–16, 20, 25, 27, 29, 30, 37, 38, 54, 55). Petitioner notes that the merchant-media device includes RFID tag 38 or, alternatively, a local short-range wireless access point or beacon device. *Id.* at 32–33 (citing Ex. 1006 ¶¶ 37–38). Petitioner contends Perttila’s user communications device sends an ID signal from the merchant-media arrangement to a remote source server, the ID signal having been transferred to the user communications device from the merchant-media arrangement via short-range communications like RFID or Bluetooth. *Id.* at 31–33 (citing Ex. 1006 ¶¶ 37–38). Petitioner further contends that the user communications device transmits “a merchant-information request signal that includes the merchant-media ID code” to the server 24. *Id.* at 32 (emphasis omitted) (quoting Ex. 1006 ¶ 9).

Patent Owner does not contest Petitioner’s contentions with respect to this limitation. *See generally* PO Resp.; PO Sur-reply.

We are persuaded by Petitioner’s arguments and cited evidence that Perttila teaches this limitation. As noted in the above discussion of the preamble of claim 1, Perttila discloses that merchant-media arrangement 36 transmits the merchant ID code via RFID tag 38 to mobile communications device 28 over a short-range wireless communication link, and the mobile device sends the ID code to source server 24. Ex. 1006 ¶¶ 36–39.

c. The Determining Limitation

Claim 1 recites “said server using the identifier information to determine information concerning an entity or object located in proximity to the second wireless device.” Ex. 1001, 23:42–44. Petitioner maps Perttila’s electronic coupon to the recited information and “the content promoted by [Perttila’s] billboard” to the recited entity or object and argues that the “‘remote source server’ generates ‘an electronic coupon’ ‘in the form of an electronic data set corresponding to the merchant-media’s ID code,’ [an] ‘electronic coupon that corresponds to the content promoted by the billboard.’” Pet. 33; *see also id.* at 33–34 (citing Ex. 1006 ¶¶ 15, 27–29, 37, 39).

Patent Owner makes several arguments regarding this recitation. First, Patent Owner interprets the Petition to map Perttila’s billboard to the recited second device and argues that Perttila does not disclose using its merchant-media arrangement’s ID code “to determine information about ‘an entity or object located *in proximity to*’ [the] billboard.” PO Resp. 33–34; *see also id.* at 39 (“Petitioner has identified the merchant media arrangement/billboard itself as the ‘second wireless device’ of the challenged claims.”). Rather, Patent Owner argues, Perttila’s electronic coupon is associated with the billboard itself. *Id.* at 40 (“The Perttila server

merely uses the merchant media ID to determine the billboard to which the ID relates [T]he Perttila server simply provides the coupon that it has been told to provide based on the merchant media ID.”). Further, according to Patent Owner, “Perttila does not teach that the entity or object being *promoted by* the billboard of the ‘merchant-media arrangement’ is located *in proximity to* the disclosed ‘merchant-media arrangement’” *Id.* at 38.

Petitioner replies that Perttila’s electronic coupon is information concerning an object in proximity to the “short-range communicator” (i.e., the RFID tag or Bluetooth link). Pet. Reply 9. Petitioner argues that such objects include the billboard and content promoted by the billboard. *Id.*; *see also id.* at 14 (“Because the billboard (and thus the promotional content) is in proximity to (‘co-located’ with) the merchant-media arrangement’s tag/beacon, the billboard and separately its promotional content meet the requirement of the claimed object.” (citing Pet. 33–34; Ex. 1003 ¶¶ 82, 124–126)).

Patent Owner argues that mapping the content promoted by Perttila’s billboard to the recited object does not satisfy the claim requirements because this mapping “results in reading the claim language to mean ‘[second wireless device] in proximity to the second wireless device.’” PO Sur-reply 18–24 (alteration in original).

As we noted in the Institution Decision, Perttila’s merchant-media arrangement includes RFID tag 38 (or, alternatively, a Bluetooth link or an IrDa link provided through a local short-range wireless access point or beacon device). *See* Inst. Dec. 18–19. Petitioner maps the short-range transmitter to the recited second device (*see* Pet. 31–33; Inst. Dec. 18–19) and maps the electronic coupon to the recited information (*see* Pet. 33–34;

Inst. Dec. 18). Petitioner maps the billboard and, separately, its contents to the recited entity or object, which is in proximity to the short-range transmitter. *See* Pet. 33–34; Pet. Reply 9; Inst. Dec. 18–19.

Patent Owner equates “merchant-media arrangement” as a billboard; that is, a single entity. In the Institution Decision, we noted that the merchant-media arrangement includes a poster or billboard and the RFID tag or Bluetooth link is “co-located” at the merchant-media arrangement. Inst. Dec. 18–19. Petitioner maps the “short-range communicator” (i.e., the RFID tag or Bluetooth link) to the recited second device. Pet. Reply 9; *see also* Pet. 33–34. Thus, we disagree with Patent Owner’s assertion that the Petition maps the merchant-media arrangement, as a singular entity, to both the recited second wireless device and the recited entity or object.

We further disagree with Patent Owner’s assertion that the electronic coupon does not correspond to the content promoted by the billboard. *See* PO Resp. 38–40. Perttala discloses that the “downloadable electronic coupon . . . corresponds to the content promoted by the billboard.” Ex. 1006 ¶ 27 (emphasis added). Perttala’s remote server uses the merchant-media ID code “to associate the promotional information with an e-coupon to be provided to the user visiting this billboard location.” *Id.* ¶ 28.

In its Reply, Petitioner further maps the “store in which the merchant-media arrangement is located” and “product offerings in the store” to the recited entity or object. Pet. Reply 9 (citations omitted). We disagree with these mappings. As noted above, Perttala’s e-coupon corresponds to the content of the billboard. Petitioner has cited no disclosure that Perttala’s e-coupon corresponds to the store or an item in the store.

Regarding Petitioner’s “store in which the merchant-media arrangement is located” mapping, Petitioner does not explain adequately how Perttila’s e-coupon, which Petitioner maps to the recited information, concerns the store itself. Rather, Petitioner relies only on products offered for sale within the store. *See* Pet. Reply 14–16.

Regarding Petitioner’s “product offerings in the store” mapping, at best, Petitioner appears to present an inherency argument that if the billboard is placed in a store, the advertised products must be in the store. *See* Pet. Reply 15 (“Perttila expressly discloses placing the merchant-media arrangement ‘at the store itself,’ such that the location where product offerings corresponding to the e-coupons are redeemed is the ‘same location’ as where the e-coupons are provided.” (citing Ex. 1006 ¶¶ 28, 39; Pet. 20–21, 33–34; Ex. 1003 ¶¶ 86, 124–126)). However, while it may be likely that the advertised products are in the store, this is not necessarily the case. For example, the products may be out of stock, in which case, Petitioner acknowledged at oral hearing in related IPR2020-00931, the claim language is not satisfied. *See* IPR2020-00931, Paper 28 at 24:7–12 (“[T]he limitations are met when the e-coupon is distributed for a product, and that product is in the store with the merchant media arrangement. If there are times, for example, when the store is sold out of that particular product, that wouldn’t be met during those times.”). Petitioner’s assertions regarding the recited entity or object corresponding to product offerings within the store are based on speculation, which is insufficient to satisfy the requirements for an inherency argument. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (“Inherency, however, may not be established by probabilities or

possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” (citations omitted)).

Additionally, Patent Owner argues that Perttila’s server does not make a determination that any object is in proximity to the second wireless device. PO Resp. 36–37; *see also* PO Sur-reply 12–13.

Petitioner argues that claim 1 does not require the central server to make a determination that an object is in proximity to the second device. Pet. Reply 11–12.

Claim 1 requires the recited server to “determine information concerning an entity or object located in proximity to the second wireless device.” However, claim 1 does not require the server to also determine that the object (or entity) is in proximity to the second device. Moreover, Patent Owner’s arguments are inconsistent with the ’896 patent, which indicates that the first wireless device is positioned in proximity to an object about which information is delivered rather than the server making a determination that an object is in proximity to the second device. *See, e.g.*, Ex. 1001, 8:45–54 (discussing the first device being “tied to a location or product”). Even if we were to interpret the claims as containing such a requirement, as noted above Perttila’s server “associate[s] the promotional information with an e-coupon to be provided to the user visiting this billboard location.” Ex. 1006 ¶ 28. The “promotion information is linked to th[e] particular location.” *Id.* Thus, Perttila at least suggests that its server has information that the billboard is in proximity to the RFID tag.

Accordingly, for the foregoing reasons, Perttila supports Petitioner’s contentions.

d. The Delivering Limitation

Claim 1 recites “the server delivering first information to the first wireless device based at least in part upon the identifier information related to the second wireless device.” Ex. 1001, 23:45–47. Petitioner contends that Perttila’s server returns first information (i.e., an “electronic commerce application” such as an electronic coupon) to the user-communication device in response to the server generating the information “by relying on the merchant ID code.” Pet. 34–36 (citing Ex. 1003 ¶¶ 127–129; Ex. 1006 ¶¶ 15, 33, Fig. 1b).

Patent Owner does not contest Petitioner’s contentions with respect to this limitation. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Perttila teaches this limitation.

e. Remaining Recitations of Claim 1

Claim 1 further recites,

the server receiving second information from either said first wireless device or said second wireless device indicating selection of one or more goods for purchase;

the server transmitting a request to either said first or said second wireless device for confirmation of said purchase;

the server receiving confirmation that a user wishes to complete said purchase; and

the server transmitting a receipt to either said second wireless device or to an entity associated with said second wireless device.

Ex. 1001, 23:48–58.

Petitioner relies for these further recitations on the combination of Perttila with Emmons. Pet. 36–44 (citing Ex. 1006 ¶ 28; Ex. 1010, 2:55–63,

4:45–5:28; Ex. 1012, 4:1–3, 4:48–55; Ex. 1003 ¶¶ 133–140, 147). With respect specifically to the recitation in claim 1 of “the server receiving second information from either said first wireless device or said second wireless device indicating the selection of one or more goods for purchase,” Petitioner points to disclosure in Emmons of, for example, a user activating an “add to cart” link on their cellular phone or mobile device, where the “link . . . is activatable to allow for the purchase of the product.” *Id.* at 36–37 (quoting Ex. 1010, 2:47–55, 4:45–52). More particularly, as cited by Petitioner, Emmons’s server receives an indication of purchase from a customer’s phone after the customer scans a barcode, is redirected to an informational page regarding the product associated with the barcode, and indicates purchase through activating an “add to cart” link. *Id.* at 36–38 (citing Ex. 1010, Fig. 1, 2:47–55, 3:35–40, 3:56–60, 4:26–52). Moreover, Petitioner contends that a person of ordinary skill in the art “would have understood that it would have advantageously benefitted Perttila’s system to allow a user to easily and quickly use his/her mobile device to purchase the products for which information was received, as taught by Emmons.” *Id.* at 28 (emphases omitted) (citing Ex. 1003 ¶ 104). Petitioner further asserts that using a mobile self-service checkout and delivery system, i.e., Emmons’s implementation details, “in implementing Perttila’s system for processing e-commerce transactions . . . would predictably work and provide expected functionality.” *Id.* at 29–30 (emphasis omitted) (citing Ex. 1003 ¶ 108).

With respect to the recitation of “the server transmitting a request to either said first or said second wireless device for confirmation of said purchase,” Petitioner contends Emmons’s server directs a user to confirm

their purchase by redirecting the user's mobile device 10 to a "shopping cart" Web/WAP page 38 that displays what products the user has indicated for purchase and allows the user to select a purchase payment option. Pet. 39–40 (citing Ex. 1003 ¶¶ 134–136; Ex. 1010, 2:55–63, 4:45–5:3, 6:14–19).

For the recitation of "the server receiving confirmation that a user wishes to complete said purchase," Petitioner points to disclosure in Emmons of the server receiving indication of the product purchase process being "completed by the user" and of "payment and the ability to deliver" being "verified by the system." Pet. 40 (citing Ex. 1010, 4:63–5:3; Ex. 1003 ¶¶ 137–140).

Finally, regarding the recitation of "the server transmitting a receipt to either said second wireless device or to an entity associated with said second wireless device," Petitioner cites disclosure in Emmons of the server transmitting a list of purchased products for pick-up to an in-store associate (i.e., an "entity associated with said second device") for either "in-store" or "in-car" pickup of the products by the customer. Pet. 40–44 (citing Ex. 1006 ¶¶ 28, 42; Ex. 1010, 5:4–28, Figs. 2, 3; Ex. 1012, 4:1–3, 4:48–55, 7:38–54, 8:42–51; Ex. 1003 ¶¶ 141–147). For example, Petitioner contends, Emmons discloses that the customer may provide identifier information such as a phone number to the server, either at a kiosk (for in-store pickup) or through his or her mobile device (for in-car pickup), and the server sends to the store kiosk or associate the "prior purchase history of the user" (a receipt), whereby the store associate "use[s] th[is] information . . . to thereby deliver to the vehicle of the user the appropriate purchased products." *Id.* at 41 (alterations in original) (citing Ex. 1010, 5:14–28, Figs. 2, 3). According to

Petitioner, “[t]he store ‘Associate’ thus uses the receipt for said purchase to identify and deliver the ‘customer’s item(s)’ to the customer, and at minimum it would have been obvious to do so such that the product is delivered to the customer.” *Id.* (citing Ex. 1003 ¶ 142).

Patent Owner does not contest Petitioner’s contentions with respect to these limitations. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown the combination of Perttila and Emmons teaches or suggests each of these limitations and, as stated above, that Petitioner has provided sufficient reasons to combine the relied upon teachings from those references.

f. Conclusion Regarding Claim 1

For the foregoing reasons, we conclude that Petitioner has shown by a preponderance of the evidence that claim 1 is unpatentable over the combination of Perttila and Emmons.

3. Independent Claim 40

a. Preamble

Claim 40 recites “[a] server apparatus for exchanging information with one or more wireless devices.” Ex. 1001, 25:58–59. Petitioner relies on its showing made regarding the preamble of claim 1, contending that Perttila teaches this preamble recitation by disclosing an interactive communications system where server 24 communicates information to user communications device (e.g., wireless telephone) 28 in response to electronic communications between the user communications device and merchant-media arrangement 36. Pet. 50 (citing Ex. 1003 ¶¶ 168–169),

30–31 (citing Ex. 1006 ¶¶ 8–9, Fig. 1a). Petitioner further contends one of ordinary skill in the art would have understood Perttila “discloses a wireless merchant-media arrangement and . . . it would have been obvious to use a wireless merchant-media . . . to advantageously enable ‘portab[ility].’” *Id.* at 50, 30 (alteration in original) (citing Ex. 1006 ¶ 60; Ex. 1003 ¶ 121); *see also* Ex. 1003 ¶¶ 166–167.

Patent Owner does not contest Petitioner’s contentions with respect to the preamble of claim 40. *See generally* PO Resp.; PO Sur-reply.

For the reasons set forth in § II.E.2.a above, to the extent the preamble is limiting, we are persuaded that the preamble is taught or suggested by Perttila.

b. The Receiver and Transmitter Limitations

Claim 40 recites “a receiver, for receiving information from a first wireless device and a second wireless device” and “a transmitter, for delivering information to the first wireless device and the second wireless device.” Ex. 1001, 25:60–63. For these limitations, Petitioner relies principally on its showing made regarding the receiving and delivering limitations of claim 1. Pet. 50–54 (citing *id.* at 31–36; Ex. 1003 ¶¶ 170–177; Ex. 1006 ¶¶ 12–14, 24, 29, 31–38, 54, 55, 60, 61, 75, 77). Petitioner contends that Perttila’s server receives information concerning a user communications device after the user communications device has interacted with a RFID tag within a certain proximity. *Id.* at 50–52 (citing Ex. 1006 ¶¶ 33, 37–38; Ex. 1003 ¶¶ 172–173). Petitioner further contends that Perttila’s server returns an e-commerce application in the form of an e-coupon back to a user communications device, and the server also sends electronic coupon data sets to the merchant-media arrangement. *Id.* at 52–54

(citing Ex. 1006 ¶¶ 33–34, 38, 55–56; Ex. 1003 ¶ 176–177). Petitioner further contends that one of ordinary skill in the art would have understood that in order for the server to receive identifier information, the server would have a receiver, or alternatively, that it would have been obvious to use a receiver to do so. *Id.* at 51 (citing Ex. 1003 ¶ 172). Similarly, Petitioner contends that one of ordinary skill in the art would have understood that for the server to send e-commerce application information, the server would have a transmitter, or alternatively, that it would have been obvious to use a transmitter to do so. *Id.* at 53 (citing Ex. 1003 ¶ 176).

Patent Owner does not contest Petitioner’s contentions with respect to these limitations. *See generally* PO Resp.; PO Sur-reply.

For the reasons set forth in §§ II.E.2.b and II.E.2.d above, we are persuaded by Petitioner’s arguments and cited evidence that Perttala teaches or at least suggests these limitations.

c. The Server Limitation

Claim 40 recites “a server processor, for cooperating with the receiver and transmitter,” where the server processor, in cooperation with the receiver and the transmitter, is configured to perform, essentially, each of the steps recited in claim 1, as discussed in §§ II.E.2.b–II.E.2.e above.

Ex. 1001, 25:64–26:23; *compare id.* at 25:66–26:23, *with id.* at 23:37–58.

Accordingly, Petitioner relies for those functions on the same arguments made with respect to the corresponding steps of claim 1. Pet. 56–58 (citing *id.* at 31–44; Ex. 1003 ¶¶ 181–198). With respect to the server itself, Petitioner contends Perttala’s server is also a “remote processing arrangement” and that the server processes the merchant ID code to generate an e-coupon. *Id.* at 55 (citing Ex. 1006 ¶¶ 29, 37). Petitioner further

contends that one of ordinary skill in the art would have understood that in order for the server to process merchant ID codes, the server would have a processor, or alternatively, that it would have been obvious to use a processor to do so. *Id.* (citing Ex. 1003 ¶ 180).

In response to Petitioner’s arguments, Patent Owner focuses specifically on the recitation in claim 40 of “a server processor, for cooperating with the receiver and transmitter to . . . use the identifier information to determine information concerning an entity or object located in proximity to the second wireless device,” corresponding to the determining limitation of claim 1 addressed in § II.E.2.c above, contending that “Petitioner’s theory for this element suffers from the same defects” as for that limitation. PO Resp. 44–45; *see also* PO Sur-reply 12–25 (raising same arguments for claim 40 as for claim 1).

We disagree with Patent Owner’s arguments for the same reasons set forth in § II.E.2.c above. For the reasons set forth in §§ II.E.2.b–II.E.2.e, more generally, we are persuaded by Petitioner’s arguments and cited evidence that the combination of Perttila and Emmons teaches the recited server limitation and that Petitioner has provided sufficient reasons to combine the relied upon teachings from those references.

d. Conclusion Regarding Claim 40

For the foregoing reasons, we conclude that Petitioner has shown by a preponderance of the evidence that claim 40 is unpatentable over the combination of Perttila and Emmons.

4. Dependent Claim 2

Claim 2 depends from claim 1 and further recites “wherein said short range wireless communication comprises one or more near field communication technologies, including Radio Frequency Identification (RFID), Bluetooth and Local Area Network related protocols.” Ex. 1001, 23:59–63.

Petitioner relies on Perttila as specifically disclosing RFID and Bluetooth for short-range communication, referring back to the discussion of claim 1. Pet. 44 (citing Ex. 1003 ¶¶ 148–149); *see also id.* at 32–33 (citing Ex. 1006 ¶¶ 37–38).

Patent Owner does not challenge separately the arguments and evidence presented for claim 2. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Perttila teaches this limitation. As cited by Petitioner, for example, Perttila discloses that “[a]n RFID tag 38 is co-located at the merchant-media arrangement,” and that “[a]s an alternative to using of the RFID tag 38, the merchant ID code can be communicated through an alternative short-range communication link such as a Bluetooth link” Ex. 1006 ¶ 37.

Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claim 2 is unpatentable over the combination of Perttila and Emmons.

5. Dependent Claim 3

Claim 3 depends from claim 1 and further recites “wherein said first wireless device initiates communication with said second wireless device to

acquire said identifier information related to the second wireless device.”
Ex. 1001, 23:64–67.

Petitioner relies on Perttila as teaching this further recitation, citing disclosure in Perttila, for example, that when activated by an RF activation waves emitted by an RFID reader in a user’s mobile communications device, “the tags transmit . . . the merchant ID code . . . to the RFID reader.” Pet. 44–45 (quoting Ex. 1006 ¶¶ 30) (citing Ex. 1003 ¶¶ 150–152).

Patent Owner does not challenge separately the arguments and evidence presented for claim 3. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Perttila teaches this limitation. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claim 3 is unpatentable over the combination of Perttila and Emmons.

6. Dependent Claim 5

Claim 5 depends from claim 1 and further recites “wherein an entity associated with said second wireless device initiates communication with said first wireless device.” Ex. 1001, 24:5–7.

Petitioner relies on Perttila as teaching this further recitation, citing disclosure in Perttila, for example, that the merchant-media ID code “can be communicated” to the user’s mobile communications device “through a[] . . . short-range communication link such as a Bluetooth link . . . through a . . . beacon device,” such that the beacon—a broadcast-only device—initiates communication by sending out the merchant ID.” Pet. 45–46 (quoting Ex. 1006 ¶ 37) (citing Ex. 1003 ¶¶ 153–154).

Patent Owner does not challenge separately the arguments and evidence presented for claim 5. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Perttila teaches this limitation. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claim 5 is unpatentable over the combination of Perttila and Emmons.

7. Dependent Claim 6

Claim 6 depends from claim 1 and further recites “wherein said receipt includes a list of goods being purchased.” Ex. 1001, 24:8–9.

Petitioner relies on Emmons as teaching this further recitation, citing disclosure in Emmons, for example, of the server “access[ing]” the “prior purchase history of the user,” as well as disclosure in Recktenwald, incorporated by reference in Emmons, of “sales check information” containing “one or more items of merchandise which were purchased by the customer.” Pet. 46–47 (quoting Ex. 1010, 5:22–26; Ex. 1012, 1:62–67) (citing Ex. 1003 ¶¶ 155–158; Ex. 1010, 5:14–28, Fig. 3).

Patent Owner does not challenge separately the arguments and evidence presented for claim 6. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Emmons teaches this limitation. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claim 6 is unpatentable over the combination of Perttila and Emmons.

8. Dependent Claim 8

Claim 8 depends from claim 1 and further recites “initiating delivery of a good or service at or near a location proximate to the second wireless device.” Ex. 1001, 24:12–14.

Petitioner relies on Emmons as teaching this further recitation, citing disclosure in Emmons, for example, of “in store” and “in-car pickup,” as previously cited in connection with claim 1. Pet. 47–48 (quoting Ex. 1010, 2:59–63) (citing Ex. 1003 ¶¶ 159–161; Ex. 1010, 4:52–61, 5:4–13, Fig. 3).

Patent Owner does not challenge separately the arguments and evidence presented for claim 8. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Emmons teaches this limitation. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claim 8 is unpatentable over the combination of Perttila and Emmons.

9. Dependent Claims 17 and 18

Claim 17 depends from claim 1 and further recites “transmitting, from said server to said first wireless device, information to enable authentication of said second wireless device or an entity associated with said second wireless device.” Ex. 1001, 24:40–43. Claim 18 depends from claim 17 and further recites “wherein the information transmitted to the first wireless device comprises an image of an entity or object associated with the second wireless device.” *Id.* at 24:44–46.

Petitioner relies on Emmons as teaching these further recitations, citing disclosure in Emmons, for example, of the server sending to the customer’s mobile device “a Web/WAP page 32 having information for the

product that was associated with the information carrying indicia 11 that was scanned,” such as “an image of the product.” Pet. 48–50 (quoting Ex. 1010, 4:26–37) (citing Ex. 1003 ¶¶ 162–167).

Patent Owner does not challenge separately the arguments and evidence presented for claims 17 and 18. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Emmons teaches these limitations. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claims 17 and 18 are unpatentable over the combination of Perttala and Emmons.

10. Dependent Claim 41

Claim 41 depends from claim 40 and further recites “wherein said short range wireless communication comprises one or more near field communication technologies, including Radio Frequency Identification (RFID), Bluetooth and Local Area Network related protocols.” Ex. 1001, 26:24–28.

Petitioner relies on Perttala as teaching this further recitation as for the identical limitation of claim 2. Pet. 58–59.

Patent Owner does not challenge separately the arguments and evidence presented for claim 41. *See generally* PO Resp.; PO Sur-reply.

For the reasons presented above with respect to claim 2, we find that Petitioner has sufficiently shown that Perttala teaches this limitation. *See supra* § II.E.4. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claims 41 is unpatentable over the combination of Perttala and Emmons.

11. Dependent Claim 44

Claim 44 depends from claim 40 and further recites “wherein said server further enables access to media content provided electronically to the first or the second wireless device, as a step in purchasing goods.” Ex. 1001, 26:39–42.

Petitioner relies on Emmons as teaching this further recitation, citing disclosure in Emmons, for example, of the server sending to the customer’s mobile device “a Web/WAP page 32 having information for the product that was associated with the information carrying indicia 11 that was scanned,” such as “an image of the product.” Pet. 59 (quoting Ex. 1010, 4:26–37) (citing Ex. 1003 ¶¶ 201–202).

Patent Owner does not challenge separately the arguments and evidence presented for claim 44. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Emmons teaches this limitation. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claim 44 is unpatentable over the combination of Perttila and Emmons.

12. Dependent Claim 48

Claim 48 depends from claim 40 and further recites “wherein said server further enabling access to an electronic coupon provided electronically to the first or the second wireless device, as a step in a multiple step process for an ongoing electronic commerce transaction.” Ex. 1001, 26:49–53.

Petitioner relies on Perttila as teaching this further recitation, citing disclosure in Perttila, for example, of the server being adapted to provide “an

electronic coupon” that is “downloadable by the user’s mobile terminal,” as well as disclosure that the “remote server can generate and return an appropriate electronic commerce application, such as an electronic coupon by relying on the merchant ID code to identify the type of product conveyed by the merchant media arrangement.” Pet. 59–60 (quoting Ex. 1006 ¶¶ 33, 34) (citing Ex. 1003 ¶¶ 203–205; Ex. 1006 ¶¶ 11, 15, 25, Fig. 1b).

Patent Owner does not challenge separately the arguments and evidence presented for claim 48. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Perttila teaches this limitation. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claim 48 is unpatentable over the combination of Perttila and Emmons.

13. Dependent Claim 49

Claim 49 depends from claim 40 and further recites “wherein said first information includes a list of one or more goods for purchase.” Ex. 1001, 26:54–55.

Petitioner relies on Perttila as teaching this further recitation, citing disclosure in Perttila, for example, of the “electronic coupon information including various offerings,” “electronic coupon information including, for example, a restaurant menu,” and coupon offerings [being] provided to mobile users through tag[s] or beacons.” Pet. 60–61 (quoting Ex. 1006 ¶¶ 26, 39) (citing Ex. 1003 ¶¶ 206–208; Ex. 1006 ¶¶ 44, 50, 69).

Patent Owner does not challenge separately the arguments and evidence presented for claim 49. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Perttila teaches this limitation. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claim 49 is unpatentable over the combination of Perttila and Emmons.

14. Dependent Claim 50

Claim 50 depends from claim 49 and further recites “wherein said second information is based at least in part upon said first information.” Ex. 1001, 26:56–57.

Petitioner relies on Perttila and Emmons as teaching this further recitation, citing disclosure in Perttila, for example, of the server sending “electronic coupon information including various offerings” of goods, as cited for claim 49, as well as disclosure in Emmons of “the user purchasing goods from the server using his/her mobile device by adding products to purchase to the user’s ‘cart.’” Pet. 61–62 (citing Ex. 1003 ¶¶ 209–212; Ex. 1006 ¶¶ 26, 28, 39; Ex. 1010, 4:45–51). Citing the testimony of Mr. Williams, Petitioner contends that a person of ordinary skill in the art would have been motivated, for reasons previously discussed, “to apply Emmons’s teachings of purchasing products from the server using the user’s mobile communications device in implementing Perttila’s teaching of the user redeeming the e-coupon containing product offerings sent to the device, such that the e-coupon is redeemed to purchase the products from the server.” *Id.* at 61 (citing Ex. 1003 ¶ 212).

Patent Owner does not challenge separately the arguments and evidence presented for claim 50. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that the combination of Perttila and Emmons teaches this limitation and, as stated above, that Petitioner has provided sufficient reasons to combine the relied upon teachings from those references. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claim 50 is unpatentable over the combination of Perttila and Emmons.

15. Dependent Claim 51

Claim 51 depends from claim 50 and further recites “wherein said second information includes a list of said goods to be purchased.” Ex. 1001, 26:58–59.

Petitioner relies on Emmons as teaching this further recitation, citing disclosure in Emmons, for example, of a “shopping cart” including a list of “products that the user has indicated a desire to purchase,” as well as use of “the subject system . . . in connection with a registry application, such as a bridal or baby registry, where a user would populate the registry using the mobile phone scanning device and the registry would be available on-line or in-store to facilitate purchasing of items.” Pet. 62 (emphases omitted) (quoting Ex. 1010, 4:47–52, 5:33–38) (citing Ex. 1003 ¶¶ 213–216).

Patent Owner does not challenge separately the arguments and evidence presented for claim 51. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Emmons teaches this limitation. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claim 51 is unpatentable over the combination of Perttila and Emmons.

16. Dependent Claim 52

Claim 52 depends from claim 50 and further recites “wherein the server further receives user input at said first wireless device providing authorization to proceed.” Ex. 1001, 26:60–62.

Petitioner relies on Emmons as teaching this further recitation, citing disclosure in Emmons, for example, of the server receiving a user’s selection of “a desired delivery option . . . as well as . . . a desired payment option,” thereby authorizing the server to proceed with the purchase. Pet. 62–63 (quoting Ex. 1010, 4:47–5:3). Petitioner contends that it would have been obvious to apply these teachings in implementing Perttila. *Id.* at 63 (citing Ex. 1003 ¶¶ 217–218).

Patent Owner does not challenge separately the arguments and evidence presented for claim 52. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Emmons teaches this limitation. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claim 52 is unpatentable over the combination of Perttila and Emmons.

17. Dependent Claim 53

Claim 53 depends from claim 51 and further recites “wherein said server utilizes a username and password for an account holder of the first wireless device in performing payment processing.” Ex. 1001, 26:63–65.

Petitioner relies on Emmons as teaching this further recitation, citing disclosure in Attia, incorporated by reference in Emmons, that “[t]o provide additional security, a user of [a] mobile device [] may be prompted to provide a username and/or password to access [the] server.” Pet. 63–64

(quoting Ex. 1011, 6:45–50) (citing Ex. 1010, 4:26–31). Petitioner contends that a person of ordinary skill in the art would have been motivated to apply these teachings in implementing Perttila’s e-commerce system to advantageously enhance security. *Id.* at 64 (citing Ex. 1003 ¶¶ 219–222; Ex. 1006 ¶¶ 28, 42; Ex. 1011, 5:58–60, 6:15–18, 6:28–35).

Patent Owner does not challenge separately the arguments and evidence presented for claim 53. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Emmons teaches this limitation. Accordingly, we are persuaded that Petitioner has shown by a preponderance of the evidence that claim 53 is unpatentable over the combination of Perttila and Emmons.

18. Dependent Claim 56

Claim 56 depends from claim 51 and further recites “wherein said server provides for control of the release of funds to an account associated with one of the first and second wireless devices, and from an account associated with the respective other of the first and second wireless devices.” Ex. 1001, 27:8–12.

Petitioner relies on Emmons as teaching this further recitation, citing disclosure in Emmons, for example, that “[i]n connection with the product purchase process, the system may additionally present to the user . . . a Web/WAP page 38 which allows the user to select a desired payment option, e.g., to pay via a payment option already registered by the system” and that “[o]nce the product purchase process has been completed by the user, e.g., payment and the ability to deliver has been verified by the system using conventional methods.” Pet. 64–66 (emphases omitted) (quoting Ex. 1010,

4:52–67) (citing Ex. 1003 ¶¶ 223–226; Ex. 1006 ¶ 28; Ex. 1010, 2:55–63). Petitioner contends that a person of ordinary skill in the art would have understood that the server provides for control of the release of funds to an account associated with a retailer and from a registered account associated with the user in order to verify payment as expressly taught in Emmons, and at a minimum it would have been obvious to control the release of funds to and from accounts in order to advantageously facilitate a merchant transaction. *Id.* at 65 (citing Ex. 1003 ¶ 225; Ex. 1010, 4:63–66). Petitioner further contends that a person of ordinary skill in the art would have been motivated to apply these teachings in implementing Perttila’s e-commerce system so that the customer can easily purchase items of interest. *Id.* (citing Ex. 1003 ¶ 226; Ex. 1006 ¶ 28; Ex. 1010, 4:63–66).

Patent Owner does not challenge separately the arguments and evidence presented for claim 56. *See generally* PO Resp.; PO Sur-reply.

Based on the record presented and as discussed above, we find that Petitioner has sufficiently shown that Emmons teaches this limitation. Accordingly, we are persuaded that Petitioner has shown, by a preponderance of the evidence, that claim 56 is unpatentable over the combination of Perttila and Emmons.

F. Asserted Obviousness of Claim 9 in View of Perttila, Emmons, and Insolia

Claim 9 depends from claim 1 and further recites “crediting said purchase in a reward program associated with an entity using said second wireless device.” Ex. 1001, 24:15–17. Petitioner argues that claim 9 would have been obvious over the combination of Perttila, Emmons, and Insolia. Pet. 66–70. We have reviewed the Petition, Patent Owner Response,

Petitioner Reply, Patent Owner Sur-reply, and evidence of record and determine that, for the reasons explained below, Petitioner has shown, by a preponderance of the evidence, that claim 9 would have been obvious in view of Perttila, Emmons, and Insolia and that Petitioner has set forth reasoning with rational underpinnings why it would have been obvious to combine the teachings of Perttila, Emmons, and Insolia.

Petitioner relies on the combination of Perttila and Emmons for the limitations of claim 1 as described in § II.E.2 above, and relies on Insolia to teach the use of a loyalty system utilizing a reward program. Pet. 66. According to Petitioner, although Perttila and Emmons do not expressly teach a reward program, Insolia provides this teaching as recited in claim 9, and claim 9 is, accordingly, rendered obvious by Perttila, Emmons, and Insolia. *Id.* (citing Ex. 1003 ¶¶ 227–230). In particular, Petitioner contends, Insolia teaches a system with a “loyalty server” to “‘implement[] a loyalty program’ for customers on behalf of a ‘good or service, brand, company, or other entity.’” *Id.* (alteration in original) (citing Ex. 1008, 2:15–23, 6:32–37, 8:44–60). “When the user’s ‘personal terminal’ comes into proximity with an ‘interaction terminal . . . associated with a product or service,’” Petitioner contends, Insolia teaches that “‘a benefit may be provided to the user 16 as a reward for interacting with’ the terminal,” where “[t]he benefit ‘may vary’ based on, for example, whether the user ‘purchase[d] . . . a product.’” *Id.* at 66–67 (citing Ex. 1003 ¶¶ 109, 228; Ex. 1008, 2:15–23, 8:44–60, 9:61–10:4). Petitioner points out that Insolia’s loyalty server also “includes ‘a loyalty management . . . module 66’ to ‘process the interaction’ between the two terminals and ‘determine the benefit’ to be provided to the personal terminal” and “analyzes past purchasing behavior of a user, including

‘product[s] . . . purchased . . . [and] cost of the product’ for trends or other relevant information’” *Id.* at 67–68 (alterations in original) (citing Ex. 1003 ¶¶ 111, 229; Ex. 1008, 8:44–60, 9:61–10:4, 11:8–30, 12:48–56, 16:40–58, 35:60–36:2).

In support of the asserted combination, Petitioner argues that, “[w]hile Perttila teaches the delivery of a coupon to a user’s device based on its proximity to a promotional object, Insolia teaches additional details for how to encourage customer loyalty when the customer purchases a product from that promotional object.” Pet. 68 (emphases omitted). According to Petitioner, a person of ordinary skill in the art “would have been motivated, and would have found it advantageous, to apply these known loyalty-program teachings in implementing Perttila’s promotional e-coupon system (as modified by Emmons’ teachings), such that loyalty points are awarded by the merchant upon a purchase of the product.” *Id.* (emphasis omitted) (citing *id.* at 39–44; Ex. 1003 ¶ 112). Petitioner further contends that Perttila and Insolia both are in the same field and both are analogous art to the ’896 patent. *Id.* (citing Ex. 1003 ¶ 113; Ex. 1006 ¶¶ 26–28; Ex. 1008, 5:27–64, 35:60–36:2). Still further, Petitioner contends, a person of ordinary skill in the art “would have recognized Insolia’s teachings of a loyalty rewards program that rewards purchases would have advantageously improved Perttila’s promotional e-coupon system (as modified by Emmons’ teachings),” and “would have recognized that Insolia’s teachings of utilizing past purchases would have improved Perttila’s e-coupon system by increasing consumer confidence in the system and ensuring that businesses are maximizing the impact of the offered promotions. *Id.* at 69 (emphases omitted) (citing Ex. 1006 ¶ 28; Ex. 1008, 1:56–60, 1:66–2:3, 5:38–46). For

these reasons, Petitioner argues, with support from Mr. Williams’s testimony, a person of ordinary skill in the art “would have found it obvious and straightforward to apply Insolia’s teachings for utilizing a loyalty rewards program in implementing Perttila’s e-coupon system, and would have known that such a combination (yielding the claimed limitations) would predictably work and provide the expected functionality.” *Id.* at 69–70 (citing Ex. 1003 ¶¶ 114, 230).

Patent Owner raises two principal arguments with respect to Petitioner’s contentions. PO Resp. 58–61.

First, Patent Owner contends, “claim 9 depends from independent claim 1” and therefore includes the “determining” limitation of claim 1 (*see supra* § II.E.2.c), but “neither Emmons nor Insolia cannot [sic] cure th[e] deficiency of Petitioner’s Perttila theories” with respect to that limitation. PO Resp. 58–59. For the reasons stated in our discussion of claim 1 above, we disagree with Patent Owner’s assertion of deficiency with respect to claim 1, and we likewise disagree with that assertion as it relates to claim 9. *See supra* § II.E.2.c. As Patent Owner recognizes, “Petitioner relies on Perttila, not Insolia (or Emmons)” for the “determining” limitation of claim 1 (PO Resp. 59), and we are persuaded, for the reasons previously stated in § II.E.2.c, by Petitioner’s evidence that Perttila teaches that limitation.

Second, Patent Owner contends that “Petitioner . . . has not demonstrated that a [person of ordinary skill in the art] would have been motivated to combine Perttila and Insolia to arrive at . . . challenged claim [9].” PO Resp. 59–60. According to Patent Owner, “Insolia’s teachings address a system that functions differently than Perttila’s, and has

different goals, such that a [person of ordinary skill in the art] would not have been motivated to arrive a challenged claim 9 absent improper hindsight.” *Id.* at 60. Specifically, Patent Owner argues, “Insolia . . . wants to reward *interactions*, not purchases,” and “[a]lthough Insolia does contemplate that a purchase ‘may be required,’ (e.g., E[x.] 1008, 9:67–10:4), Insolia primarily contemplates that rewards will *not* be contingent on a purchase.” *Id.* (citing Ex. 1008, code [57], 2:23–24, 3:5–7, 11:66–12:5).

Petitioner replies that Patent Owner “cherry picks disclosures from Insolia . . . to suggest that Insolia does not teach rewarding a user for purchasing the marketed product,” but that “this ignores Insolia’s express teachings that ‘[w]hen the consumer purchases a product, the consumer demonstrates product loyalty . . . [and] may receive an additional reward.’” Pet. Reply 24–25 (emphases omitted) (alterations in original) (quoting Ex. 1008, 35:60–36:2) (citing Pet. 67–69; Ex. 1003 ¶¶ 111, 229; Ex. 1008, 9:61–10:4, 12:48–56).

In its Sur-reply, Patent Owner responds that “Insolia’s teachings of additional rewards for a purchase does not render obvious claim 9,” contending that the Response specifically addressed the teachings of Insolia cited by Petitioner and repeating that a person of ordinary skill in the art would not have been motivated to add Insolia to arrive at challenged claim 9 absent improper hindsight. PO Sur-reply 28 (citing Ex. 1008, 9:67–10:4). Patent Owner further contends that certain additional arguments raised in Petitioner’s Reply with regard to Insolia’s application to Perttila and e-coupons are inconsistent with Petitioner’s reliance in the Petition on Emmons for its teaching of the “purchase” elements of claim 1. *Id.* (citing Pet. Reply 23–24; Pet. 36–40).

Having considered the parties respective arguments, we are persuaded on the full record before us that a person of ordinary skill in the art would have been motivated to combine the teachings of Insolia with those of Perttila and Emmons for the reasons stated by Petitioner and supported by the testimony of Mr. Williams. Even if Insolia may express a preference for rewarding “interactions” rather than “purchases” in certain embodiments, as Patent Owner contends (PO Resp. 59–61; PO Sur-reply 28), a proposition of which we are not convinced as a general matter, we agree with Petitioner that Insolia also expressly teaches provision of rewards for purchases. For example, as cited by Petitioner, Insolia expressly discloses that, while “in some cases the user 16 may receive a benefit for being in proximity of the product 18, equipment 20, or promotional object 22, . . . in other cases the user 16 may be required to purchase or obtain a product from the equipment 20”; that “the loyalty management engine . . . may set a relatively more valuable benefit when . . . the user actually purchased . . . a product”; and that “additional loyalty rewards or promotional awards can be given to the consumer when the consumer demonstrates trademark loyalty and product loyalty,” where the consumer demonstrates product loyalty “[w]hen the consumer purchases a product.” Ex. 1008, 9:61–10:4, 12:48–56, 35:60–36:2 (cited by Pet. 67–68).

Based on the record presented and as discussed above, we find that the combination of Perttila, Emmons, and Insolia teaches or suggests each of the limitations of claim 9, as well as that Petitioner has provided sufficient reasons to combine the relied upon teachings from those references. Accordingly, we conclude that Petitioner has shown, by a preponderance of

the evidence, that claim 9 is unpatentable as obvious over the combination of Perttila, Emmons, and Insolia.

III. CONCLUSION⁷

Based on the evidence presented with the Petition, the evidence introduced during the trial, and the parties' respective arguments, Petitioner has shown by a preponderance of the evidence that each of claims 1–3, 5, 6, 8, 9, 17, 18, 40, 41, 44, 48–53, and 56 of the '896 patent is unpatentable.

IV. ORDER

Accordingly, it is

ORDERED that claims 1–3, 5, 6, 8, 9, 17, 18, 40, 41, 44, 48–53, and 56 of the '896 patent are determined to be unpatentable; and

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

⁷ Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner's attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. §§ 42.8(a)(3), (b)(2).

In summary:

Claim(s)	35 U.S.C. §	Reference(s)/Basis	Claims Shown Unpatentable	Claims Not shown Unpatentable
1-3, 5, 6, 8, 17, 18, 40, 41, 44, 48-53, 56	103(a)	Perttila, Emmons	1-3, 5, 6, 8, 17, 18, 40, 41, 44, 48-53, 56	
9	103(a)	Perttila, Emmons, Insolia	9	
Overall Outcome			1-3, 5, 6, 8, 9, 17, 18, 40, 41, 44, 48-53, 56	

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