

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ASKELADDEN LLC,  
Petitioner,

v.

PURPLE LEAF, LLC,  
Patent Owner.

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Case IPR2016-01720  
Patent 8,527,407 B1

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Before NEIL T. POWELL, BART A. GERSTENBLITH, and  
JAMES A. TARTAL, *Administrative Patent Judges*.

GERSTENBLITH, *Administrative Patent Judge*.

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

## I. INTRODUCTION

### A. Background

Askeladden LLC (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting institution of *inter partes* review of claims 1–11 of U.S. Patent No. 8,527,407 B1 (Ex. 1001, “the ’407 patent”). Purple Leaf, LLC (“Patent Owner”) did not file a Preliminary Response. We instituted this trial pursuant to 35 U.S.C. § 314, finding that Petitioner established a reasonable likelihood that it would prevail in showing the unpatentability of claims 1–11 of the ’407 patent. Paper 7 (“Inst. Dec.”).

The Scheduling Order issued in this case set the due date for Patent Owner’s Response as June 7, 2017. Paper 8, 6. Patent Owner repeatedly sought and received extensions of time in which to file the Response, the last extension resulting in a due date of July 21, 2017. *See* Papers 14, 17, 22. Patent Owner did not file a Response; rather, on Saturday, July 22, 2017, we received an email requesting authorization to file a motion to stay. Paper 22, 2. We denied said request in a responsive email and explained our reasoning in a Decision issued on September 11, 2017. *Id.* Additionally, we vacated the oral argument scheduled for December 14, 2017, because neither party requested oral argument by the November 21, 2017, deadline. Paper 23. Accordingly, any argument for patentability is deemed waived because Patent Owner did not file a Patent Owner Response. Paper 8, 3 (“Patent Owner is cautioned that any arguments for patentability not raised in the response will be deemed waived.”).

We have jurisdiction under 35 U.S.C. § 6(c). This Decision is a final written decision under 35 U.S.C. § 318(a) as to the patentability of the challenged claims. After considering the full record before us, we determine

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that Petitioner has demonstrated, by a preponderance of the evidence, that claims 1–11 of the '407 patent are unpatentable.

*B. Related Proceedings*

Petitioner indicates that the '407 patent was challenged previously in CBM2015-00051, which was terminated prior to any final written decision. Pet. 1. Claims 1–11 of the '407 patent also are challenged on different grounds in IPR2016-01721. *Id.* Additionally, Petitioner challenges the patentability of claims 1–17 of U.S. Patent No. 8,744,963 B1, which issued from a continuation of the application issuing as the '407 patent, in IPR2016-01722. *Id.*

The parties indicate that the '407 patent was the subject of an infringement action against Zuora Inc. in the United States District Court for the Northern District of California, No. 3-13-cv-04776, which was dismissed upon settlement on April 21, 2014. Pet. vi.; Paper 5, 2.

*C. Real Parties in Interest*

Petitioner identifies “Askeladden LLC” and “The Clearing House Payments Company LLC” as the real parties in interest. Paper 24, 2. Patent Owner identifies itself, “Purple Leaf LLC,” as the sole real party in interest. Paper 5, 2.

*D. The References*

Petitioner relies on the following references:

European Patent Application Publication No. EP 0950968 A1, published Oct. 20, 1999 (Ex. 1003, “Takayama”);

U.S. Patent No. 7,376,583 B1, issued May 20, 2008 (Ex. 1004, “Rolf”);

B. Clifford Neuman & Gennady Medvinsky, *Requirements for Network Payment: The NetCheque<sup>TM</sup> Perspective*, PROC. OF IEEE COMPCON '95 (1995) (Ex. 1005, “Neuman”);

U.S. Patent No. 5,754,655, issued May 19, 1998 (Ex. 1006, “Hughes”);

U.S. Patent No. 6,289,322 B1, issued Sept. 11, 2001 (Ex. 1007, “Kitchen”); and

International Application Publication No. WO 96/13814, published May 9, 1996 (Ex. 1008, “Vazvan”).

*E. The Instituted Grounds of Unpatentability*

We instituted this proceeding based on the following grounds of unpatentability:

Reference(s)	Basis	Claim(s) challenged
Takayama	§ 102(a)	1, 3, and 6–9
Takayama and Rolf	§ 103(a)	10 and 11
Takayama and Neuman	§ 103(a)	2
Takayama, Hughes, and Kitchen	§ 103(a)	4
Takayama, Hughes, and Vazvan	§ 103(a)	5

Inst. Dec. 17. Petitioner supports its challenge with a Declaration by Peter Alexander, Ph.D., dated September 1, 2016 (Ex. 1002).

*F. The '407 Patent*

The '407 patent is directed to a process for conducting electronic transactions, particularly “a more effective and efficient way to make a payment over the Internet.” Ex. 1001, Abst. In particular, the '407 patent

explains that the processes for paying, *inter alia*, citations, tickets, and utility bills are “very cumbersome.” *See, e.g., id.* at 1:57, 2:3, 2:20–21, 2:34–35, 2:49. Thus, the ’407 patent teaches a “simpler and more efficient way to pay” a citation, for example, “using the Internet.” *Id.* at 2:57–59.

*G. Illustrative Claims*

Claims 1 and 10 are the only independent claims challenged in this proceeding. Claims 2–9 depend from claim 1, and claim 11 depends from claim 10. Claims 1 and 10 are illustrative of the claimed subject matter and are reproduced below:

1. A method for conducting a transaction based on a request for payment remittance information, comprising:
  - receiving from a payor, an authorization of at least one payment due on the request for a payment to a payee;
  - associating in a computer readable memory, the at least one payment with a payment request information;
  - sending to a wireless computing device at least one payment instruction;
  - initiating via the wireless computing device the at least one payment of an amount at least in part responsive to the at least one payment instruction; and
  - wherein the at least one payment has payment remittance information arranged within a computer readable data structure and delivered via the wireless computing device, the data structure comprising one or more data fields to hold data that is responsive to received information from the payee, and wherein said payment remittance information further comprises a structured remittance data, wherein at least part of the payment remittance information is kept hidden from the payee.

Ex. 1001, 19:46–20:7.

10. A method of executing computer-executable instructions residing on a non-transitory computer readable medium, comprising:
  - storing a receipt and a payment remittance information in a memory, the payment remittance information comprising at

least in part a structured remittance data, a portion of the payment remittance information is not transmitted and therefore kept hidden from a payee;

presenting the receipt to the payee without revealing at least part of said structured remittance data;

accepting from a payor a payment instruction comprising at least an amount to be paid and an account of the payor from which to draw the amount while prohibiting the payor from altering data obtained in the structured remittance data;

associating the payment instructions with the structured remittance data;

communicating the payment instructions from the memory to initiate at least one payment; and routing a paid amount to the payee.

*Id.* at 20:35–54.

## II. CLAIM CONSTRUCTION

In an *inter partes* review, claim terms in an unexpired patent are construed according to their broadest reasonable interpretation in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). There is a presumption that claim terms are given their ordinary and customary meaning, as would be understood by a person of ordinary skill in the art in the context of the specification. *See In re Translogic Tech. Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Nonetheless, if the specification “reveal[s] a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess[,] . . . the inventor’s lexicography governs.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) (citing *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002)). Another exception to the general rule that claims are given their ordinary and customary meaning is “when the patentee disavows

the full scope of a claim term either in the specification or during prosecution.” *Uship Intellectual Props., LLC v. United States*, 714 F.3d 1311, 1313 (Fed. Cir. 2013) (quoting *Thorner v. Sony Computer Entm’t Am., LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012)). Additionally, only terms that are in controversy need to be construed, and these need be construed only to the extent necessary to resolve the controversy. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

Although Petitioner proposes that we construe the term “receipt” (Pet. 6), we determine that no express construction is necessary for purposes of this Decision and decline to expressly construe the term. *See Vivid Techs.*, 200 F.3d at 803 (only terms that are in controversy need to be construed, and these need be construed only to the extent necessary to resolve the controversy).

### III. ANALYSIS

#### A. *Level of Ordinary Skill in the Art*

Petitioner contends that a person of ordinary skill in the art, as of December 14, 1999, would have had either: “(i) a Bachelor-of-Science degree in Computer Science, Electrical Engineering, or Computer Engineering, or equivalent, and two (2) years of prior experience in software development, or (ii) a post-graduate degree in Computer Science, Electrical Engineering, or Computer Engineering, or equivalent.” Pet. 7 (citing Ex. 1002 ¶¶ 22–26).

Because it is consistent with the level of ordinary skill in the art reflected by the prior art of record, *see Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir.

1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978), we adopt Petitioner’s unopposed position as to the level of ordinary skill in the art.

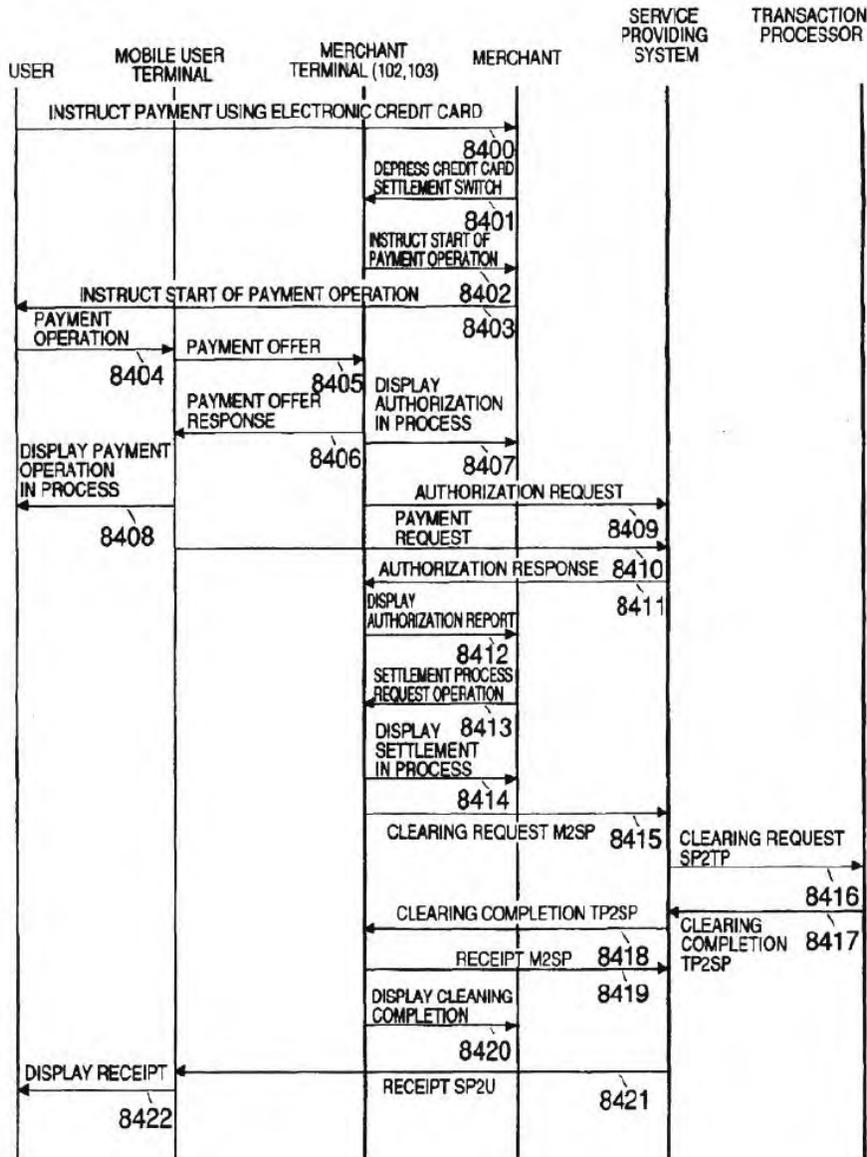
*B. Anticipation by Takayama*

A prior art reference anticipates a patent claim if it “discloses each and every element of the claimed invention arranged or combined in the same way as in the claim.” *Monsanto Tech. LLC v. E.I. DuPont de Nemours & Co.*, 878 F.3d 1336, 1342–43 (Fed. Cir. 2018) (internal quotation and citation omitted). Petitioner contends that Takayama discloses each and every element of claims 1, 3, and 6–9. Pet. 7–25.

*1. Takayama*

Takayama is directed to “an electronic commerce system that provides a settlement function” using a wireless communication means, such as a telephone. Ex. 1003 ¶¶ 1, 32–33, Abst., Fig. 1. Takayama generally discloses four embodiments of mobile electronic commerce services: (1) an electronic ticket service; (2) an electronic payment card service; (3) an electronic telephone card service; and (4) an electronic credit card service. *Id.* ¶ 361. Petitioner’s challenge to claims 1, 3, and 6–9 of the ’407 patent is primarily based on the electronic credit card service embodiment. *See* Pet. 9 (referring to Takayama, paragraph 369). Takayama’s Figure 84, which shows the process steps and messages exchanged when performing an electronic credit card payment via a mobile user device, is shown below:

FIG. 84



Takayama’s Figure 84 is “a flowchart showing real credit settlement.”  
 Ex. 1003, 53:50–52.

2. Discussion

In support of its challenge, Petitioner provides an analysis of Takayama’s disclosure, including a claim chart and detailed discussion explaining how each limitation of the challenged claims is allegedly

disclosed by Takayama. Pet. 7–25. We have reviewed Petitioner’s arguments and evidence, and we find that a preponderance of the evidence supports Petitioner’s arguments. We hereby adopt Petitioner’s position on the facts as our own, including Petitioner’s citations to the evidence of record as reflected in pages 7–25 of the Petition. Accordingly, Petitioner has demonstrated by a preponderance of the evidence that Takayama anticipates claims 1, 3, and 6–9 of the ’407 patent.

*C. Obviousness over Takayama and Rolf*

The U.S. Supreme Court set forth the framework for applying the statutory language of 35 U.S.C. § 103 in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966):

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.

As explained by the Supreme Court in *KSR Int’l Co. v. Teleflex Inc.*:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit.

550 U.S. 398, 418 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere

conclusory statements; instead, there must be some articulated reasoning with rational underpinning to support the legal conclusion of obviousness.”)).

Petitioner contends that the combination of Takayama and Rolf would have rendered the subject matter of claims 10 and 11 obvious to one of ordinary skill in the art at the time of the invention. Pet. 25–41.

*1. Rolf*

Rolf is directed to a device for making a transaction via a communications link. Ex. 1004, [54]. In particular, Rolf discloses a process of making a payment transaction at a point of sale terminal using a cellular telephone. *Id.* at 3:13–17. Rolf explains that “the point of sale terminal may provide an output, such as a display . . . to indicate that the transaction has been complete[d].” *Id.* at 6:12–14.

*2. Discussion*

In support of its challenge, Petitioner provides an analysis of each reference, including a claim chart and detailed discussion explaining how the references meet each limitation of the challenged claims. Pet. 25–41. In particular, Petitioner relies upon Rolf as teaching the following step of claim 10: “presenting the receipt to the payee without revealing at least part of said structured remittance data.” Ex. 1001, 20:43–44; Pet. 25–28, 34. Additionally, Petitioner asserts:

One of ordinary skill in the art plainly would have recognized to modify Takayama such that the merchant terminal displays (i.e., presents), instead of or in addition to the clearing completion notification 8418, the receipt message 8419 (which contains the receipt 13708) on the merchant terminal LCD, based on the teachings of Rolf, as doing so would have provided the payee with additional information “relating to the sale just

made”, as taught by Rolf (Ex. 1004, 6:7–14). Indeed Takayama already discloses that the displayed information on the merchant terminal is used “to notify the operator (merchant) that the settlement process has been completed” (Ex. 1003, ¶ 813), and by further displaying the information contained within the receipt message 8419 (such as the clearing number 13703 and transaction number 13704), the payee could have had immediate access to such transaction information for additional verification or review.

Pet. 27–28 (citing Ex. 1003, Fig. 137A, ¶ 2092; Ex. 1002 ¶ 144).

We have reviewed Petitioner’s arguments and evidence, and we find that a preponderance of the evidence supports Petitioner’s arguments. We hereby adopt Petitioner’s position on the facts as our own, including Petitioner’s citations to the evidence of record as reflected in pages 25–41 of the Petition. Accordingly, Petitioner has demonstrated by a preponderance of the evidence that the combination of Takayama and Rolf would have rendered the subject matter of claims 10 and 11 of the ’407 patent obvious to one of ordinary skill in the art at the time of the invention.

*D. Obviousness over Takayama and Neuman*

Petitioner contends that the combination of Takayama and Neuman would have rendered the subject matter of claim 2 obvious to one of ordinary skill in the art at the time of the invention. Pet. 41–43.

*1. Neuman*

Neuman describes several Internet payment models and systems, including a system called NetCheque. Ex. 1005, Abst. “NetCheque is a payment system based on the credit-debit model.” *Id.* (emphasis omitted). Neuman discloses that a NetCheque account works in a manner similar to that of a conventional checking account, where an account holder writes an electronic document that includes, *inter alia*, the name of the payor. *Id.* § 4.

2. *Discussion*

Claim 2 recites the method of claim 1, “wherein the payment remittance information further comprises of payor’s first name where the wireless device is a cellular telephone.” Ex. 1001, 20:8–10. Petitioner provides an analysis of each reference, including a claim chart and detailed discussion explaining how the references meet each limitation of the challenged claim. Pet. 41–43. In particular, Petitioner relies upon Neuman as disclosing payment remittance information that “includes the payor’s name, the payor financial institution’s name, the payor’s account, the payee name, and the payment amount.” *Id.* at 41–42 (citing Ex. 1005 § 4; Ex. 1002 ¶¶ 36–37, 80–81). Additionally, Petitioner asserts:

One of ordinary skill in the art plainly would have recognized to include, as part of payment remittance information in Takayama, a payor’s name including his/her first name, as taught by Neuman, as the payor’s name would provide a source of payor identity verification information. Indeed, in a typical credit card payment transaction, the payor’s name has been frequently used for such purpose when a merchant compares the name listed on a credit card against a requested identification document (e.g., driver’s license) for identity verification. By including the payor’s first name in the payment remittance information, the service providing system 110 and transaction processing system 106 of Takayama could have an additional source of information for verifying or further verifying the payor’s identity, thus preventing fraudulent payment transactions.

*Id.* at 42 (citing Ex. 1002 ¶ 82).

We have reviewed Petitioner’s arguments and evidence, and we find that a preponderance of the evidence supports Petitioner’s arguments. We hereby adopt Petitioner’s position on the facts as our own, including Petitioner’s citations to the evidence of record as reflected in pages 41–43 of

the Petition. Accordingly, Petitioner has demonstrated by a preponderance of the evidence that the combination of Takayama and Neuman would have rendered the subject matter of claim 2 of the '407 patent obvious to one of ordinary skill in the art at the time of the invention.

*E. Obviousness over Takayama, Hughes, and Kitchen*

Petitioner contends that the combination of Takayama, Hughes, and Kitchen would have rendered the subject matter of claim 4 obvious to one of ordinary skill in the art at the time of the invention. Pet. 43–47.

*1. Hughes*

Hughes is directed to a system for remote purchase payment and remote bill payment transactions. Ex. 1006, at [54]. Hughes discloses a “terminal which can perform purchase payment and bill payment transactions” and “allow debit and credit card holders the ability to conveniently and remotely perform these financial transactions.” *Id.* at 2:15–20. Hughes teaches that its terminal provides for “wireless or cellular telephone communication with a remote host computer.” *Id.* at 2:25–27.

*2. Kitchen*

Kitchen is directed to electronic bill processing, Ex. 1007, at [54], specifically “a technique for electronically presenting billing information in a manner which facilitates the timely payment of bills by payors” *id.* at 2:46–49. One option taught by Kitchen is for a payor to select a particular indicator causing an instruction to issue to make payment of the minimum amount due on a bill. *Id.* at 15:5–8.

*3. Discussion*

Claim 4 recites the method of claim 1 “wherein said payment remittance information further comprises of minimum acceptable payment

and where the wireless device being a cellular telephone.” Ex. 1001, 20:14–17. Petitioner provides an analysis of each reference, including a claim chart and detailed discussion explaining how the references meet each limitation of the challenged claim. Pet. 43–47.

In particular, Petitioner relies upon Hughes for its teaching of “a method of performing an electronic payment using a terminal in the form of a cellular telephone.” *Id.* at 43 (citing Ex. 1006, Abst., 10:61–63, 11:1–3). Petitioner notes that Hughes’s “terminal (i.e., cellular telephone) ‘can perform [both] purchase payment and bill payment transactions’ and ‘allow debit and credit card holders the ability to conveniently and remotely perform these financial transactions.’” *Id.* at 44 (alteration by Petitioner) (quoting Ex. 1006, 2:16–20) (citing Ex. 1006, 10:61–63).

Petitioner relies upon Kitchen for teaching “payment remittance information for an electronic bill payment that includes a minimum acceptable payment.” *Id.* Petitioner states that “[i]n performing the electronic bill payment, when a payor selects an option to pay the minimum amount due for a bill, an ‘instruction’ to make such minimum-due payment is issued to a centralized bill processing system.” *Id.* (citing Ex. 1007, 15:5–8, 14:50–53, 6:18–19; Ex. 1002 ¶¶ 34–35, 38–39, 89–93).

Additionally, Petitioner asserts:

One of ordinary skill in the art plainly would have recognized to apply the electronic payment process of Takayama for conducting, not only merchant payment transactions, but also bill payment transactions, as taught by Hughes, as such functionality would provide additional user convenience by “allow[ing] debit and credit card holders the ability to conveniently and remotely perform [both types] of these financial transactions.” (Ex. 1006, 2:16–20.) Since Hughes further discloses that the processes for performing merchant

payments and bill payments involve parallel steps (*see generally* Ex. 1006, 9:64–10:23 (for purchase payment transactions), 10:24–60 (for bill payment transactions), one of ordinary skill in the art would have been motivated to include a bill payment feature in Takayama, so that the user can avoid the inconvenience of “pay[ing] monthly bills by writing checks and mailing or delivering them”, as recognized in Hughes (Ex. 1006, 2:2–4).

Pet. 44–45 (alterations by Petitioner) (citing Ex. 1002 ¶ 94). Petitioner further contends:

[O]ne of ordinary skill in the art plainly would have also recognized to include, in connection with bill payment functionality, various payment options typically associated with such a transaction. In particular, one of ordinary skill in the art plainly would have also recognized to include an instruction to make payment of the minimum payment due (a minimum acceptable payment) as taught by Kitchen, within the payment remittance information for such bill payment transaction in the combination of Takayama and Hughes, as such information would have . . . further extended the user’s convenience and provided the user with the opportunity to quickly fulfill the minimum requirements of a bill obligation.

*Id.* at 45–46 (citing Ex. 1002 ¶ 95).

We have reviewed Petitioner’s arguments and evidence, and we find that a preponderance of the evidence supports Petitioner’s arguments. We hereby adopt Petitioner’s position on the facts as our own, including Petitioner’s citations to the evidence of record as reflected in pages 43–47 of the Petition. Accordingly, Petitioner has demonstrated by a preponderance of the evidence that the combination of Takayama, Hughes, and Kitchen would have rendered the subject matter of claim 4 of the ’407 patent obvious to one of ordinary skill in the art at the time of the invention.

*F. Obviousness over Takayama, Hughes, and Vazvan*

Petitioner contends that the combination of Takayama, Hughes, and Vazvan would have rendered the subject matter of claim 5 obvious to one of ordinary skill in the art at the time of the invention. Pet. 47–51.

*1. Vazvan*

Vazvan is directed to “a real time mobile tele-payment system that relates to payments of bills of mobile users.” Ex. 1008, Abst. Vazvan discloses that when a mobile user pays a bill, the user “enters all information required for payment (like his/her account number, the payee’s account number, payment’s due date, bill’s reference number, etc.)” *Id.* at 3:7–9.

*2. Discussion*

Claim 5 recites the method of claim 1 “wherein said payment remittance information further comprises of payment due date and where the wireless device being a cellular telephone.” Ex. 1001, 20:18–20. Petitioner provides an analysis of each reference, including a claim chart and detailed discussion explaining how the references meet each limitation of the challenged claim. Pet. 47–51.

In particular, Petitioner relies upon Vazvan for its teaching of payment remittance information for an electronic bill payment that includes a payment due date. *Id.* at 48. Petitioner contends: “In performing the electronic bill payment, the cellular telephone user enters information relating to the bill, including the bill’s due date, and such information is transmitted to perform the bill payment.” *Id.* at 48–49 (citing Ex. 1008, 5:14–24 (“due date of the bill”), 3:7–10 (“payment’s due date”); Ex. 1002 ¶¶ 34–35, 40–41, 98–102).

Petitioner relies upon its reasoning, discussed above, as to why one of ordinary skill in the art would have been prompted to combine the bill payment transactions of Hughes with the electronic payment process of Takayama. *Id.* at 49; *see supra* Section III.E. Additionally, Petitioner asserts:

Moreover, one of ordinary skill in the art plainly would have also recognized to include, in connection with bill payment functionality, a payment due date within payment remittance information for such bill payment transaction, as taught by Vazvan, in the combination of Takayama and Hughes, as such information would have confirmed the specific bill intended for payment. Indeed, Vazvan identifies the payment due date among other information, such as the payee's account number and the bill's reference number, as "information required for payment" of the bill. (Ex. 1008, 3:7–10.) By including the payment due date among the payment remittance information, one of ordinary skill in the art would have provided a safeguard against payment being directed to an incorrect bill and being applied later than the payment due date.

Pet. 49–50 (citing Ex. 1002 ¶ 104).

We have reviewed Petitioner's arguments and evidence, and we find that a preponderance of the evidence supports Petitioner's arguments. We hereby adopt Petitioner's position on the facts as our own, including Petitioner's citations to the evidence of record as reflected in pages 47–51 of the Petition. Accordingly, Petitioner has demonstrated by a preponderance of the evidence that the combination of Takayama, Hughes, and Vazvan would have rendered the subject matter of claim 5 of the '407 patent obvious to one of ordinary skill in the art at the time of the invention.

#### IV. CONCLUSION

Petitioner has demonstrated by a preponderance of the evidence that:

- (1) claims 1, 3, and 6–9 of the '407 patent are anticipated by Takayama;
- (2) claims 10 and 11 would have been obvious over Takayama and Rolf;
- (3) claim 2 would have been obvious over Takayama and Neuman;
- (4) claim 4 would have been obvious over Takayama, Hughes, and Kitchen;
- and (5) claim 5 would have been obvious over Takayama, Hughes, and Vazvan.

#### V. PATENT OWNER'S MANDATORY NOTICE

On September 28, 2016, Patent Owner filed its mandatory notice (Paper 5) under seal, designating the document for "Parties and Board Only" in our PTAB E2E filing system. Patent Owner has not filed a motion to seal. Additionally, based on our review, none of the information appears to be confidential. Accordingly, we consider this confidentiality designation to be in error and will remove the confidentiality designation, making the document publicly available, seven (7) business days after entry of this Final Written Decision unless Patent Owner contacts the Board before then to request reconsideration of the changed designation.

#### VI. ORDER

Accordingly, it is:

ORDERED that, the confidentiality designation of Paper 5, Patent Owner's Mandatory Notice, shall be removed, making the document publicly available, unless Patent Owner contacts the Board to request reconsideration of the changed designation within seven (7) business days of the entry of this Order;

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FURTHER ORDERED that, based on a preponderance of the evidence, claims 1–11 of U.S. Patent No. 8,527,407 B1 are unpatentable; and

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

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