

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MICROSOFT CORPORATION,  
Petitioner,

v.

COREL SOFTWARE, LLC,  
Patent Owner.

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Case IPR2016-01083  
Patent 7,827,483 B2

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Before RAMA G. ELLURU, JAMES A. TARTAL, and  
DANIEL N. FISHMAN *Administrative Patent Judges.*

TARTAL, *Administrative Patent Judge.*

DECISION

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

Petitioner, Microsoft Corporation, filed a Petition requesting an *inter partes* review of claims 1–4, 6, 7, 10–12, and 14 of U.S. Patent No. 7,827,483 B2 (“the ’483 patent”). Paper 2 (“Pet.”). Patent Owner, Corel Software, LLC, filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Upon consideration of the Petition and the Preliminary Response, we conclude the information presented does not show a reasonable likelihood that Petitioner would prevail in showing the unpatentability of any claim of the ’483 patent. Accordingly, we deny the Petition and do not authorize an *inter partes* review of the ’483 patent to be instituted.

## I. BACKGROUND

### A. *The ’483 Patent (Ex. 1001)*

The ’483 patent, titled “Real Time Preview,” issued November 2, 2010, from U.S. Application No. 10/752,048, filed January 6, 2004. Ex. 1001. The ’483 patent “provides a method and system of . . . previewing the impact of User commands on the entire document by executing User commands as they are identified.” *Id.* at Abstract. According to the ’483 patent, “[g]enerally in the prior art, a command must be selected and then executed by the User, before the menu will be closed and the document will be updated.” *Id.* at 3:26–28. The “primary distinction” between the ’483 patent and the prior art “is that commands need only be identified by the

User, and the identified command will be executed on the active document and the menu left open.” *Id.* at 3:22–25.

Figure 2 of the ’483 patent is reproduced below.

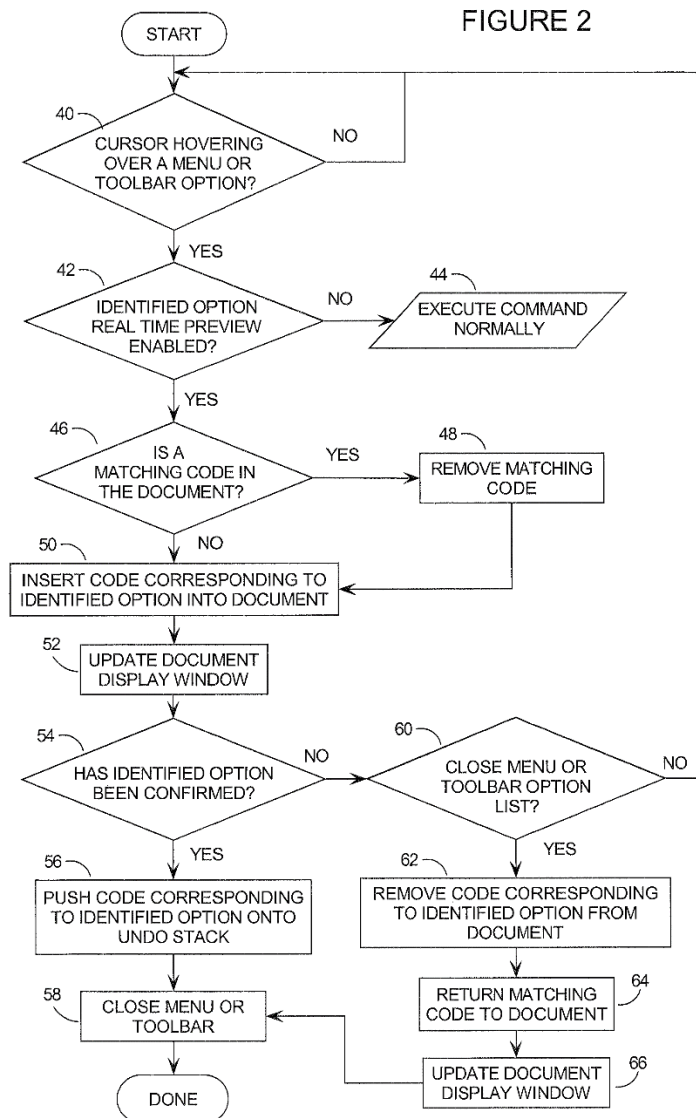


Figure 2 illustrates “a flow chart of a computer software routine for performing real time preview of text document commands.” *Id.* at 3:1–3.

“At step 40 a command is identified by a cursor hovering over a menu or toolbar option.” *Id.* at 6:45–46. “The cursor being positioned above a

command is generally described as hovering, and is used to identify commands.” *Id.* at 6:53–55. “Once a command has been identified, the software routine corresponding to the identified command is executed, and it checks whether the identified command is enabled for the real time preview at step 42.” *Id.* at 7:4–7. “If the identified command is enabled for real time preview, the execution continues with step 46, which investigates whether there is a matching code already in the User document.” *Id.* at 7:24–27. “A matching code is typically one which effects the same text block and in the same manner as the identified command, but yields a different appearance.” *Id.* at 7:27–29.

If a matching code exists, the routine will remove the matching code at step 48 and insert the identified command code at step 50. *Id.* at 7:30–35. “If no matching code exists, the program continues directly to insert the code corresponding to the identified command at step 50.” *Id.* at 7:36–38. “If the document display window requires updating to present a clear image to the User, it is done at step 52.” *Id.* at 7:64–66. The User may confirm or accept the identified command at step 54 wherein “a query to the User may be provided as a dialogue box in a command window, or by similar means.” *Id.* at 8:5–8. “If the User confirms the identified command, then the program need only push the identified command unto the Undo Stack at step 56, which contains a listing of the executed commands in sequential order, and close the menu or toolbar at step 58.” *Id.* at 8:9–13. “If the User does not confirm the identified command at step 54, either the menu or toolbar may be closed, or a new command identified which returns the program to step 40.” *Id.* at 8:25–27. “When the menu or toolbar is closed without

confirming the identified command at step 60, the application returns the document to the state it was prior to the command being identified.” *Id.* at 8:27–30. “Code corresponding to the identified command is removed from the active document at step 62, the matching code that was removed at step 48 is returned at step 64, and the document display window is updated at step 66.” *Id.* at 8:30–34.

*B. Illustrative Claim*

Of the challenged claims of the ’483 patent, claims 1 and 14 are independent. Claims 2–4, 6, 7, and 10–12 depend from claim 1. Claim 1 of the ’483 patent is illustrative of the claims at issue:

1. A method of providing a real time preview of changes to fonts in a computer system operating a document editing program having a document display window, comprising:
  - storing an active document in a memory medium;
  - displaying at least part of the active document in the document display window including text having an associated font command code, the document display window for editing the active document therein;
  - tracking a cursor position controlled by a user in the document editing program;
  - identifying a font by hovering of the cursor for a predetermined period of time over the font displayed in a menu or tool bar option of the document display window, the menu or tool bar option providing one or more available fonts, each of the available fonts associated with a respective font command codes that can be applied to the active document;
  - inserting the font command code corresponding to the identified font into the memory medium storing the active document and
  - updating the display of the active document in the document display windows to show the impact of the inserted font command code on the display of the text of the active

document, without confirmation being received from the user;  
pushing the font command code corresponding to the identified font to the undo stack when a subsequent confirmation is received from the user; and  
removing the font command code corresponding to the identified font from the memory medium when subsequent confirmation is not received from the user or when another font command code is identified.

Ex. 1001, 14:2–33.

### C. *Related Proceedings*

Petitioner states that the '483 patent is a subject of the following civil action: *Corel Software LLC v. Microsoft Corporation*, 2:15-cv-00528 (D. Utah). Pet. 2. Petitioner filed a concurrent challenge to the same claims of the '483 patent on a different ground in Case IPR2016-01084. Related patents owned by Patent Owner directed to similar technology are challenged by Petitioner in Cases IPR2016-01085, IPR2016-01086, and IPR2016-01300.

### D. *Asserted Ground of Unpatentability*

Petitioner contends that claims 1–4, 6, 7, 10–12, and 14 are unpatentable as obvious over the combined teachings of WordPerfect,<sup>1</sup> QuarkXPress,<sup>2</sup> IBM,<sup>3</sup> and Baker.<sup>4</sup> *Id.* at 4.

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<sup>1</sup> Simpson, Alan, *Mastering WordPerfect 8 2nd Edition* (June, 1997) (Ex. 1004, “WordPerfect”).

<sup>2</sup> QuarkXPress Reference Manual (1993) (Ex. 1005, “QuarkXPress”).

<sup>3</sup> IBM Technical Disclosure Bulletin Vol. 34 No. 7A (December 1991) (Ex. 1007, “IBM”).

<sup>4</sup> U.S Patent No. 6,185,591 B1, issued Feb. 6, 2001 (Ex. 1006, “Baker”).

## II. ANALYSIS

### A. *Claim Construction*

The Board interprets claims using the “broadest reasonable construction in light of the specification of the patent in which [they] appear[.]” 37 C.F.R. § 42.100(b). We presume a claim term carries its “ordinary and customary meaning,” which is “the meaning that the term would have to a person of ordinary skill in the art in question” at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). A patentee may, however, act as their own lexicographer and give a term a particular meaning in the Specification, but must do so with “reasonable clarity, deliberateness, and precision.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). Only terms which are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

#### 1. “*confirmation*”

Claim 1 recites, *inter alia*, “updating the display of the active document in the document display windows . . . without confirmation being received.” Petitioner contends that “confirmation” means “indication of final acceptance by a user.” Pet. 8. Patent Owner contends that “confirmation” must be understood in context, and that there is ambiguity in what user action would constitute “final” acceptance as proposed by Petitioner. Prelim. Resp. 41–45. Patent Owner further argues that “[i]f the Board adopts any part of Petitioner’s proposed construction, which it need not do, it should adopt only ‘an indication of acceptance by the user.’” *Id.* at

45. We determine that no express definition of “confirmation” is necessary for purposes of this decision.

2. *Additional Claim Terms*

The parties do not identify any additional claim term that requires express construction and we determine no additional express construction of any claim term is necessary for purposes of this decision.

B. *Asserted Obviousness Over WordPerfect, QuarkXPress, IBM, and Baker*

Petitioner contends each of claims 1–4, 6, 7, 10–12, and 14 of the ’483 patent would have been obvious over the combined teachings of WordPerfect, QuarkXPress, IBM, and Baker. Pet. 9–56.

1. *Background and Overview of the Prior Art*

Patent Owner states that Real Time Preview, as disclosed in the ’483 patent, “relates to the field of Graphical User Interfaces (GUIs), and specifically GUIs for productivity applications like document editors.” Prelim. Resp. 4. Patent Owner further contends that prior to the ’483 patent “there simply was no user interface that allowed users to view formatting commands in a user’s document without committing the command.” *Id.* at 9. According to Patent Owner “[o]ne of the essential insights of the invention was that rather than confirming a command (typically by clicking a button) and then optionally ‘undo’ing it if the user did not like it, the user could temporarily explore the effect of a command by simply hovering over the command in a menu.” *Id.* at 13; *see also id.* at 15 (noting two distinctive features: “it updates the area of the display containing the user’s document to show the preview” and “the document is updated in response to a user hovering a mouse cursor over a font in a menu or toolbar”). By contrast,



Petitioner argues that “the ’483 patent openly concedes that the claimed invention uses ‘the same routines as known in the art,’ but merely executes those known routines in a slightly different order (which was predictable in light of the suggestions for real time previews from the earlier software publications).” Pet. 9. According to Petitioner, “WordPerfect, QuarkXPress, IBM, and Baker all disclose text editing software.” Pet. 38.

a) WordPerfect

Petitioner offers no general description of WordPerfect, which spans over 900 pages. Ex. 1004. Petitioner contends “both the U.S. Copyright registration and the ISBN listing for WordPerfect indicate a publication date of June 19, 1997.” *Id.* at 4. According to Patent Owner “WordPerfect is a user reference for Corel’s WordPerfect 8 ‘writing tool’ software for Windows 95.” Prelim. Resp. 20 (citing Ex. 1004, 36).

b) QuarkXPress

Petitioner offers no general description of QuarkXPress, which spans over 400 pages, other than the statement that it is “a reference manual for the QuarkXPress version 3.2 software.” Pet. 5 (citing Ex.1005 at 23, 84, 287, 292). Petitioner contends QuarkXpress is prior art based on its copyright registration in 1993 and a screen capture of a WorldCat listing allegedly corroborating the 1993 publication date. *Id.* at 4–5. Specifically, Petitioner states that a “WorldCat listing for the QuarkXPress version 3.2 software that includes three volumes of documentation, including the ‘Reference manual’ indicates a publication year of 1993.” *Id.* at 5.

c) IBM

Petitioner offers no general description of IBM. IBM is a “Technical Disclosure Bulletin” titled “Pause Preview: A Technique for Improving the Interactivity of Direct Manipulation.” Ex. 1007. Petitioner contends IBM is prior art based on a copyright date and a specified date of availability in 1991. Pet. 5. IBM describes “Pause Preview” as a “technique for providing visual feedback before a direct manipulation is completed.” Ex. 1007, 1.

d) Baker

Petitioner offers no general description of Baker, a U.S. Patent filed on July 29, 1997, and titled “Text Edit System with Enhanced Undo User Interface.” See Ex. 1006. As Patent Owner explains, “Baker generally describes ‘an enhanced undo interface, permit[ting] the selective display of undo elements intermixed in the edit view of [a] document with actual text elements[.]’” Prelim. Resp. 31 (quoting Ex. 1006, Abstract).

2. *Petitioner Has Not Made a Threshold Showing that QuarkXPress is a Prior Art Printed Publication*

The scope of an *inter partes* review is limited. In particular, 35 U.S.C. § 311(b) provides:

SCOPE.—A petitioner in an *inter partes* review may request to cancel as unpatentable 1 or more claims of a patent only on a ground that could be raised under section 102 or 103 and only on the basis of prior art consisting of patents or printed publications.

Petitioner contends QuarkXPress qualifies as prior art under 35 U.S.C. § 102(b), as a publication published more than a year before the purported priority date of the ’483 patent. Pet. 4.

The determination of whether a given reference qualifies as a prior art “printed publication” involves a case-by-case inquiry into the facts and

circumstances surrounding the reference's disclosure to members of the public. *In re Klopfenstein*, 380 F.3d 1345, 1350 (Fed. Cir. 2004). The key inquiry is whether the reference was "sufficiently accessible to the public interested in the art" before the critical date. *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989); *In re Wyer*, 655 F.2d 221, 226 (CCPA 1981). "A given reference is 'publicly accessible' upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence, can locate it." *Suffolk Techs., LLC v. AOL Inc.*, 752 F.3d 1358, 1364 (Fed. Cir. 2014) (quoting *SRI Int'l, Inc. v. Internet Sec. Sys., Inc.*, 511 F.3d 1186, 1194 (Fed. Cir. 2008)). The status of a reference as a printed publication is a legal question "based on underlying factual determinations." *Id.*

[W]hether information is printed, handwritten, or on microfilm or a magnetic disc or tape, etc., the one who wishes to characterize the information, in whatever form it may be, as a "printed publication" . . . should produce sufficient proof of its dissemination or that it has otherwise been available and accessible to persons concerned with the art to which the document relates and thus most likely to avail themselves of its contents.

*In re Wyer*, 655 F.2d 221, 227 (CCPA 1981) (citing *Philips Electronic & Pharmaceutical Industries Corp. v. Thermal & Electronics Industries, Inc.*, 450 F.2d 1164, 1171 (3d Cir. 1971)).

In support of its contention that QuarkXPress is a prior art printed publication, Petitioner contends QuarkXPress includes a copyright notice indicating it was first published in 1993. Pet. at 4. Petitioner also asserts that a "WorldCat listing for the QuarkXPress version 3.2 software that

includes three volumes of documentation, including the ‘Reference manual’ indicates a publication year of 1993, which corroborates with the year indicated by the QuarkXPress Reference Manual itself and which is more than a year before the purported priority date of the ’483 patent.” *Id.* at 5 (citing, *inter alia*, Ex. 1008 (identified in the Petition Exhibit List as a “[s]creen capture of WorldCat listing for University of Toronto Scarborough Library copy of QuarkXPress 3.2 including the QuarkXPress ‘Reference Manual’”). Petitioner argues, without citing any precedential opinion, that the “Board has long considered a copyright notice in the reference it-self alone as sufficient to establish a prima facie publication date.” Pet. 5–6 (citing, *inter alia*, *Ford Motor Co. v. Cruise Control Techs. LLC*, Case IPR2014-00291, slip op. at 7–8 (PTAB June 29, 2015) (Paper 44)).

Patent Owner argues that a copyright notice, alone, is insufficient to establish public accessibility as of a particular date. Prelim. Resp. 34–35 (citing, *inter alia*, *ServiceNow, Inc. v. Hewlett-Packard Co.*, Case IPR2015-00716, slip op. at 17 (PTAB Aug. 26, 2015) (Paper 13) (finding a copyright notice insufficient)). Patent Owner further contends that the WorldCat listing identified by Petitioner as corresponding to QuarkXPress is insufficient additional support of public accessibility for multiple reasons, including that: (1) the WorldCat listing refers to a “Reference Manual,” not specifically to the document submitted with the Petition as QuarkXPress, (2) the WorldCat listing refers to a three volume set, while QuarkXPress indicates it is part of a four volume set, and (3) the WorldCat listing indicates a copyright notice for itself of 2001-2016, providing no evidence of accessibility prior to the effective filing date of the ’483 patent. *Id.* at 36–

37. Patent Owner additionally notes that Petitioner provides no declaration testimony in support of its contention that QuarkXPress was publicly accessible.<sup>5</sup> *Id.* at 37.

Petitioner's focus on whether a copyright notice is evidence of the date of a reference disregards Petitioner's burden to show that the reference was publicly accessible by a particular date. Indeed, a copyright notice may be evidence of the date of a reference. *See, e.g., FLIR Systems, Inc. v. Leak Surveys, Inc.*, Case IPR2014-00411, slip op. at 18–19 (PTAB Sep. 5, 2014) (Paper 9) (stating that “[o]n the record before us, we are persuaded that the Copyright notice prima facie establishes a prior art date of 2002”). The

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<sup>5</sup> We note that Petitioner sought authorization to file a reply brief to Patent Owner's Preliminary Response to further address whether QuarkXPress was prior art. *See* 37 C.F.R. § 42.108(c) (providing that a petitioner may be authorized to file a reply to the preliminary response upon a showing of good cause). During a teleconference between counsel for the parties and the Board on October 27, 2016, Petitioner explained that it not only sought to file an additional brief, but also to submit additional evidence in the form of declarations. Petitioner's request was denied for lack of “good cause.” That Petitioner may have determined from Patent Owner's Preliminary Response that the information Petitioner provided with the Petition failed to provide a threshold showing that QuarkXPress is a prior art printed publication did not support a finding of “good cause” in this case, much less justify submitting additional evidence not included with the Petition, which Patent Owner was deprived of addressing in its Preliminary Response. As noted above, an *inter partes* review may not be instituted unless “the information presented in the petition” shows a reasonable likelihood that the petitioner would prevail. 35 U.S.C. § 314(a). Petitioner did not identify any persuasive basis to provide additional declaration evidence outside of the Petition prior to institution of *inter partes* review to show a fundamental element of Petitioner's contentions -- that the reference asserted by Petitioner was prior art as a printed publication.

copyright notice, alone, however, sheds virtually no light on whether the document was publicly accessible as of that date, therefore additional evidence is typically necessary to support a showing of public accessibility. *See, e.g., Ford Motor Co.*, slip op. at 9–10 (discussing evidence of public accessibility that supported a finding that a reference was a prior art printed publication). Rather than evidence public accessibility, the copyright notice appears in QuarkXPress along with an express limitation on the use and dissemination of QuarkXPress, stating “[t]his manual may not, in whole or in part, be copied, photocopied, reproduced, translated, or converted to any electronic or machine readable form without prior written consent of Quark, Inc.” Ex. 1005, 4. Thus, the evidence suggests that if it was distributed at all, it was only in a restricted and limited fashion to persons who acquired the underlying QuarkXPress software product. Accordingly, we look to whether Petitioner has provided other evidence or argument to support its contention that QuarkXPress was publicly accessible.

In this case Petitioner has provided insufficient persuasive evidence that QuarkXPress was disseminated to the public as of any particular date, and does not otherwise explain why this particular manual was “sufficiently accessible to the public interested in the art” before the critical date. *See In re Cronyn*, 890 F.2d at 1160; *see also ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 865–66 (Fed. Cir. 2010) (finding no error in district court’s determination that user manuals were not printed publications in the absence of evidence of the source, publication, or public accessibility of either manual). Petitioner does not provide a satisfactory explanation of the relevance of the WorldCat listing for QuarkXpress software, contending

only that it “indicates a publication year of 1993, which corroborates with the year indicated by the QuarkXPress Reference Manual itself.” Pet. 5. Rather than “corroborate” the year, the WorldCat listing appears to do no more than identify the copyright date shown on QuarkXPress. The WorldCat listing does not contain a creation or entry date for the WorldCat listing itself and, therefore, provides no additional evidence of when QuarkXPress was publicly accessible. Indeed, Petitioner provides no explanation for how the WorldCat listing shows QuarkXPress was available such that interested and ordinarily skilled persons could locate it exercising reasonable diligence. *See Suffolk Techs.*, 752 F.3d at 1364; *see also International Business Machines Corporation v. Intellectual Ventures II LLC*, Case IPR2015-01323, slip op. at 13–14 (PTAB Sep. 27, 2016) (Paper 38) (finding listing in WorldCat database fails to support public accessibility of asserted reference).

Moreover, the evidence offered by Petitioner does not show sufficiently that the WorldCat listing of a “Reference Manual” purportedly included with the “QuarkXPress version 3.2 software” necessarily corresponds to the document Petitioner identifies as QuarkXPress. Collectively, all of the information provided by Petitioner shows only a copyright notice date and that, alone, is insufficient to support a threshold showing of public accessibility for QuarkXPress. Accordingly, we are not persuaded, based on the facts of this case, that the copyright notice on the QuarkXPress reference coupled with the WorldCat listing provided in this case are sufficient evidence to support a threshold showing of public accessibility as of a particular date to support institution of *inter partes*

review. *See, e.g., ServiceNow, Inc. v. Hewlett-Packard Co.*, Case IPR2015-00716, slip op. at 17 (PTAB Aug. 26, 2015) (Paper 13) (finding a copyright notice insufficient).

### III. CONCLUSION

The only ground of unpatentability asserted by Petitioner against the '483 patent in the Petition relies upon QuarkXPress, and, as discussed above, Petitioner has not presented sufficient persuasive information in the Petition and accompanying evidence to make a threshold showing that QuarkXPress is a prior art printed publication. Accordingly, for the foregoing reasons, the information presented in the Petition and accompanying evidence does not establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of any challenged claim of the '483 patent.

### IV. ORDER

In consideration of the foregoing, it is hereby:

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



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PETITIONER:

Michael Hawkins  
Patrick Bisenius  
Stuart Nelson  
Jonathan Lamberson  
FISH & RICHARDSON P.C.  
IPR42342-0001IP1@fr.com  
PTABInbound@fr.com

PATENT OWNER:

Cyrus Morton  
Shui Li  
ROBINS KAPLAN LLP  
cmorton@robinskaplan.com  
sli@robinskaplan.com