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Paper 7
Entered: February 13, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HTC CORPORATION and HTC AMERICA, INC.,
Petitioner,

v.

CELLULAR COMMUNICATIONS EQUIPMENT LLC,
Patent Owner.

Case IPR2016-01503
Patent 8,570,957 B2

Before JUSTIN T. ARBES, BRYAN F. MOORE, and GREGG I. ANDERSON, *Administrative Patent Judges*.

ARBES, *Administrative Patent Judge*.

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

HTC Corporation and HTC America, Inc. (collectively, "Petitioner") filed a Petition (Paper 1, "Pet.") requesting *inter partes* review of claims 1–14 of U.S. Patent No. 8,570,957 B2 (Ex. 1001, "the '957 patent") pursuant to 35 U.S.C. § 311(a). Patent Owner Cellular Communications Equipment LLC filed a Preliminary Response (Paper 6, "Prelim. Resp.") pursuant to 35 U.S.C. § 313. Pursuant to 35 U.S.C. § 314(a), the Director may not authorize an *inter partes* review unless the information in the petition and preliminary response "shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." For the reasons that follow, we have decided not to institute an *inter partes* review.

I. BACKGROUND

A. The '957 Patent

The '957 patent describes "an extension of power headroom reporting to be used by each and every user equipment (UE) to allow for a more efficient resource allocation by an evolved Node B (eNodeB)" in, for example, a "Third Generation Partnership Project (3GPP) Long Term Evolution (LTE)" wireless communication system. Ex. 1001, col. 1, ll. 15–32. According to the '957 patent, a UE in conventional usage reports, in a "power headroom report" to the eNodeB, the difference between the UE's current transmission power and nominal maximum transmission power. *Id.* at col. 3, ll. 8–18. Because that difference is positive, the eNodeB will not know "the 'missing' power at the UE" (i.e., the power beyond the nominal maximum transmission power that the UE would use to fulfill transmission requirements if it could exceed the maximum), such that

"resources on the air interface are . . . wasted since the scheduler is not aware of how much the UE power budget is exceeded." *Id.* at col. 3, ll. 12–18, col. 4, ll. 16–19, col. 4, l. 61–col. 5, l. 15.

The '957 patent describes a system capable of reporting both positive and negative values in the power headroom report so that the "missing" power at the UE is known. *Id.* at col. 3, ll. 19–46. Specifically, the UE reports

> (a) positive headroom if the current transmit power is lower than the nominal maximum transmission power and (b) negative headroom if the required transmit power according to the allocation scheme in terms of number of resource blocks, broadcasted and dedicated offset parameters, path loss estimates, as well as selected modulation and coding scheme and closed-loop power correction values requires higher power than the nominal maximum transmit power.

Id. at col. 3, ll. 19–28. After being informed by the UE of the amount of "missing" power at the UE, the eNodeB scheduler can take various actions to optimize resource allocation, such as, for example, "reduc[ing] the number of allocated [resource blocks] to an optimum bandwidth" or "reconfiguration of signaling resources and power." *Id.* at col. 3, ll. 36–46, col. 5, ll. 24–60.

B. Illustrative Claims

Claims 1 and 4 of the '957 patent recite:

> 1. An apparatus, comprising:
>
> a processor configured to determine a power headroom report; and
>
> a transmitter configured to transmit the headroom report,

wherein the processor is configured to determine the power headroom report with both positive and negative values of power headroom, as applicable, in which negative values indicate the missing power in dB to fulfill transmission requirements, and

wherein the processor is configured to determine the power headroom by subtracting the nominal maximum transmission power and the power that the apparatus would use if it did not apply maximum power limitations, wherein the result of said subtracting is not limited to zero and positive values.

4. An apparatus, comprising:

a receiver configured to receive a power headroom report;

a processor configured to allocate radio network resources based on the power headroom report,

wherein the processor is configured to obtain both positive and negative values of power headroom from the power headroom report, as applicable, in which negative values indicate the missing power in dB to fulfill transmission requirements,

wherein the processor is configured to allocate additional radio network resources to a user equipment when the power headroom indicates positive headroom, when applicable, and to allocate fewer radio network resources to the user equipment when the power headroom report indicates negative headroom.

C. The Prior Art

Petitioner relies on the following prior art:

U.S. Patent Application Publication No. 2004/0198369 A1, published Oct. 7, 2004 (Ex. 1004, "Kwak '369");

International Patent Application Publication No. WO 2006/104348 A1, published Oct. 5, 2006 (Ex. 1005, "Kwak '348");

3RD GENERATION PARTNERSHIP PROJECT; TECHNICAL SPECIFICATION GROUP RADIO ACCESS NETWORK; REQUIREMENTS FOR SUPPORT OF RADIO RESOURCE MANAGEMENT (TDD) (RELEASE 7), 3GPP TS 25.123 v7.7.0 (2007-12) (Ex. 1006, "TS 25.123");

R1-080947, 3GPP TSG RAN WG1 #52 MEETING, SORRENTO, ITALY, FEBRUARY 11-15, 2008 (Ex. 1007, "R1-080947"); and

R1-073224, 3GPP TSG-RAN WG1 #49-BIS, ORLANDO, USA, JUNE 25TH–29TH, 2007 (Ex. 1008, "R1-073224").

D. The Asserted Grounds

Petitioner challenges claims 1–14 of the '957 patent on the following grounds:

References	Basis	Claims Challenged
Kwak '369 and Kwak '348	35 U.S.C. § 103(a)[1]	1–14
TS 25.123, R1-080947, and R1-073224	35 U.S.C. § 103(a)	1–14

E. Claim Interpretation

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); *Cuozzo Speed Techs., LLC v. Lee*,

[1] The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) ("AIA"), amended 35 U.S.C. §§ 102 and 103. Because the '957 patent has an effective filing date before the effective date of the applicable AIA amendments, we refer to the pre-AIA versions of 35 U.S.C. §§ 102 and 103.

136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard as the claim interpretation standard to be applied in *inter partes* reviews). Petitioner provides a proposed interpretation for one claim limitation. *See* Pet. 10–12. For purposes of this Decision, however, we conclude that no claim terms require interpretation.[2]

II. DISCUSSION

A. Obviousness Ground Based on Kwak '369 and Kwak '348 (Claims 1–14)

Petitioner contends that claims 1–14 are unpatentable over Kwak '369 and Kwak '348 under 35 U.S.C. § 103(a), citing the testimony of Tim A. Williams, Ph.D. as support. Pet. 22–42 (citing Ex. 1003). We are not persuaded that Petitioner has established a reasonable likelihood of prevailing on its asserted ground for the reasons explained below.

1. Kwak '369

Kwak '369 describes a "method for determining a data rate of a user equipment (UE) for an enhanced uplink dedicated channel (EUDCH) service by a Node B in a mobile communication system having a radio network controller (RNC)." Ex. 1004, Abstract. Kwak '369 describes a prior art "maximum CQI (Channel Quality Indicator) scheduling" method where each UE notifies the Node B of its transmission power, the Node B estimates

[2] We note that on December 18, 2016, after the filing of the Petition and Preliminary Response in this proceeding, the district court in *Cellular Comm'cns Equip. LLC v. AT&T, Inc.*, Case No. 2:15-CV-576-RWS-RSP (E.D. Tex.), issued an Order construing various claim terms of the '957 patent and finding certain terms in claims 4 and 7–10 to be indefinite. *See* Ex. 3001, 7–17, 43–44.

the uplink channel condition for the UE based on the transmission power, and the Node B performs scheduling such that transmission power is in reverse proportion to data rate (i.e., UEs physically located close to the Node B having low uplink transmission power are assigned high data rates, and UEs physically located far from Node B having high uplink transmission power are assigned low data rates). *Id.* ¶¶ 11–13. In that arrangement, "Node B has no information on a transmission power margin available for each UE, increasing [the] possibility that flexibility of scheduling will be lost." *Id.* ¶ 12. "That is, even though more resources are assigned to a UE having a good uplink channel environment, if a transmission power margin of the UE is not sufficient, the UE cannot sufficiently use the assigned resources." *Id.* ¶¶ 13, 55.

Kwak '369 also describes a second prior art method where each UE informs the Node B of its "available power margin" and the Node B "assigns resources to the UEs through scheduling so as to efficiently increase cell capability." *Id.* ¶¶ 14–16. That arrangement also is inefficient, however, because the Node B does not know the channel condition of each UE. *Id.* ¶¶ 15, 55. For example, more resources would be assigned to a UE having a large power margin, but if the channel condition of that UE is poor, the additional resources cannot be used efficiently. *Id.* ¶ 16.

The disclosed system in Kwak '369 optimizes scheduling by providing to the Node B both pieces of information: "transmission power margin and uplink channel information of the UE." *Id.* ¶¶ 55–57. Kwak '369 discloses the following equation, where "the total transmission power can be expressed as the sum of the transmission power and a transmission power margin value": $Tx_{power}+Tx_{margin}=Tx_{total\_power}$. *Id.* ¶¶ 59–60.

Figure 8 of Kwak ’369 is reproduced below.

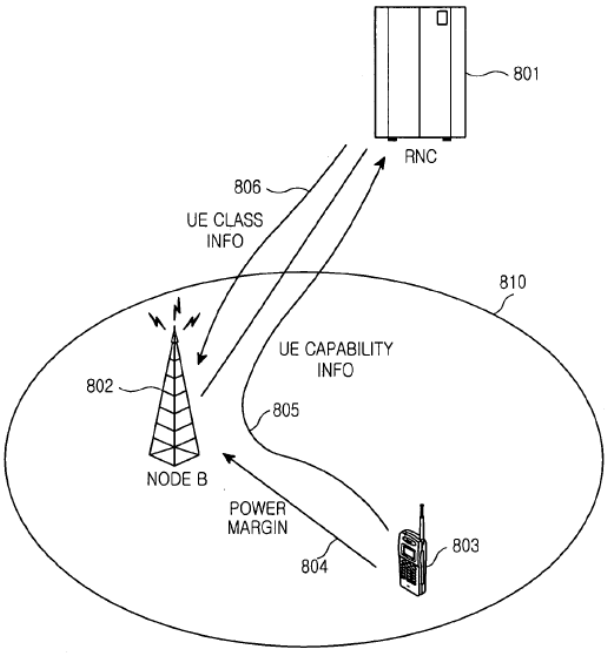

Figure 8 depicts UE 803 receiving an EUDCH service, RNC 801 that controls UE 803, and Node B 802. *Id.* ¶ 92. Node B 802 receives current transmission power margin information 804 from UE 803, receives total transmission power information 806 (of UE 803) from RNC 801, and uses those values to “acquire transmission power margin information representing uplink channel information of the UE 803” using the equation above. *Id.* ¶¶ 91–92; *see also id.* ¶¶ 110–18, 128–29, 136–37, Figs. 12, 16, 18 (similar embodiments). Thus, the Node B “acquire[s] both the transmission power information and the transmission power margin information of UEs, thereby enabling more efficient and optimized scheduling.” *Id.* ¶ 92.

2. Kwak ’348

Kwak ’348 describes a method for “signaling a maximum UE transmitter power to a Node B for use in scheduling of uplink packet

transmission in a mobile communication system." Ex. 1005, Abstract. Similar to Kwak '369, Kwak '348 states that if the Node B only receives channel information, not power margin information, or vice versa, scheduling will be inefficient. *See id.* at p. 3, l. 6–p. 4, l. 16. Kwak '348 discloses an optimized scheduling system where "Node B takes into account the Tx power margins and Tx powers of the UEs." *Id.* at p. 7, ll. 19–21. Kwak '348 discloses the following equation, where "a maximum UE transmitter power is the sum of a Tx power and a Tx power margin": *Tx(power) + Tx(margin) = Maximum UE transmitter power*. *Id.* at p. 7, ll. 26–34. "Hence if the Node B has knowledge of the maximum UE transmitter power of a UE, even though it receives only one of the Tx power and the Tx power margin from the UE, it can estimate the other information by using [the equation above], thereby enabling efficient scheduling." *Id.* at p. 7, l. 35–p. 8, l. 3. Figure 7 of Kwak '348 is reproduced below.

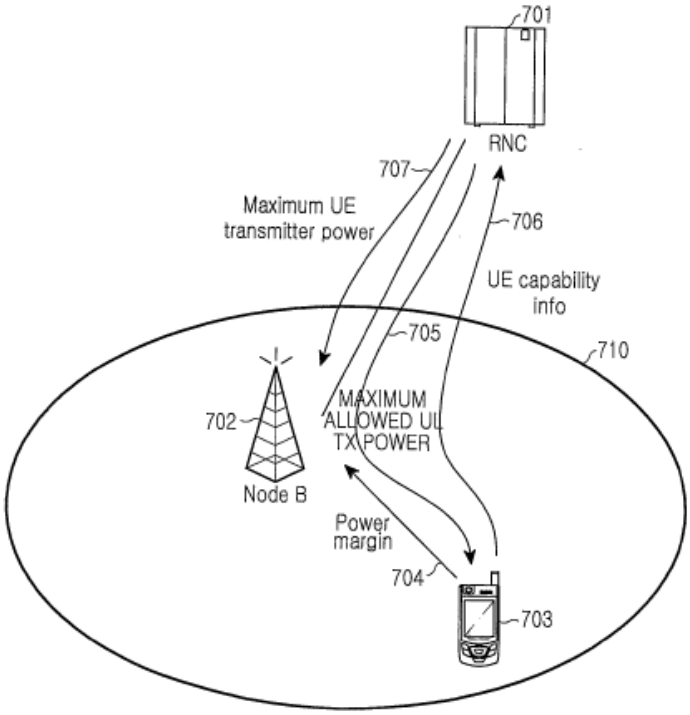

Figure 7 depicts UE 703, RNC 701, and Node B 702. *Id.* at p. 12, ll. 23–29. Node B 702 receives Tx power 704 from UE 703, receives maximum UE transmitter power 707 (of UE 703) from RNC 701, and uses those values to "calculate the Tx power margin of the UE 703" using the equation above. *Id.* at p. 12, l. 23–p. 13, l. 8.

3. Level of Ordinary Skill in the Art

> Section 103(a) forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007) (quoting 35 U.S.C. § 103(a)). Petitioner argues that a person of ordinary skill in the art at the time of the '957 patent would have had "a Bachelor's degree in electrical engineering or a similar degree, with 2–4 years of experience in the design and implementation of . . . wireless communication systems, or the equivalent." Pet. 10 (citing Ex. 1003 ¶¶ 42–45). Patent Owner does not dispute Petitioner's assessment in its Preliminary Response. Based on the current record, including our review of the '957 patent and the types of problems and solutions described in the '957 patent and cited prior art, we agree with Petitioner's assessment of the level of ordinary skill in the art and adopt it for purposes of this Decision.

4. Analysis

We are not persuaded that Petitioner has shown a reasonable likelihood of prevailing on its assertion that claims 1–14 are unpatentable

over Kwak '369 and Kwak '348. Because the issues explained below with respect to independent claims 1, 4, 7, 10, 13, and 14 are dispositive, we focus primarily on Petitioner's analysis regarding those claims.

Pursuant to 35 U.S.C. § 312(a)(3), a petition for *inter partes* review "may be considered only if . . . the petition identifies, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim." A petition must include a "full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence," must identify "[h]ow the construed claim is unpatentable under the statutory grounds identified" and "where each element of the claim is found in the prior art patents or printed publications relied upon," and must "identify[] specific portions of the evidence that support the challenge." 37 C.F.R. §§ 42.22(a)(2), 42.104(b)(4)–(5). "The Board may exclude or give no weight to the evidence where a party has failed to state its relevance or to identify specific portions of the evidence that support the challenge." 37 C.F.R. § 42.104(b)(5).

The Petition lacks a limitation-by-limitation analysis explaining how the asserted prior art allegedly teaches each limitation of independent claims 1, 4, 7, 10, 13, and 14. *See* Prelim. Resp. 15–18. Petitioner argues that the challenged claims would have been obvious over "the combination of" Kwak '369 and Kwak '348. Pet. 23, 30 (arguing that "[t]ogether, Kwak 369 and the Kwak '348 Publication clearly disclose or render obvious the limitations" of the challenged independent claims). Petitioner's analysis is in three parts. First, the Petition includes a section labeled "The Disclosure of Kwak 369 in view of the Kwak '368 Publication." *Id.* at 22–33. In this

section, Petitioner states that Kwak '369 "discloses the claimed method[s] and apparatus[es]" of all of the challenged claims, and discusses the disclosure of Kwak '369 generally. *Id.* at 23–26. Petitioner then does the same for Kwak '348, asserting that the reference "discloses the claimed method[s] and apparatus[es]" of all of the challenged claims. *Id.* at 26–30. Although portions of Petitioner's discussion mention aspects of the claims, Petitioner does not refer to any specific claim limitations in its analysis. *See id.* at 23–30. For example, Petitioner argues that Kwak '369 "describes that the power margin can represent the 'missing power' to fulfill transmission requirements in describing the benefit of the disclosed method," but does not tie its arguments to the language of any particular claim reciting "missing power" or explain in sufficient detail how Kwak '369 teaches the limitations of the claims pertaining to "missing power." *Id.* at 25. Without such explanation, we can only speculate as to why Petitioner believes each specific limitation of the claims is taught. Nor does Dr. Williams's declaration assist Petitioner, as it simply mirrors what is argued in the Petition. *Compare id.* at 23–30 *with* Ex. 1003 ¶¶ 84–95.

Second, the Petition includes a section labeled "Motivation to Combine." Pet. 33–36. In this section, Petitioner argues that it would have been obvious to combine Kwak '369, Kwak '348, and "the knowledge of a person of ordinary skill in the art at the time of the alleged invention of the '957 patent." *Id.* Again, Petitioner does not identify specific claim limitations and explain why each is taught by the asserted prior art, instead addressing in general terms why a person of ordinary skill in the art allegedly would have combined the teachings of the references. *See id.*

Third, the Petition includes a claim chart with the limitations of the claims in the left column and citations to Kwak '369 and Kwak '348 in the right column. *Id.* at 36–42. The claim chart does not present any explanation as to *how* the limitations allegedly are taught; it includes only citations. For example, the claims recite various devices and structures, such as a "processor," "transmitter," "receiver," "power headroom report," and "6 bit report," but Petitioner does not identify specifically what devices and structures in the references correspond to those limitations. In addition, for many of the limitations, Petitioner includes numerous citations, further requiring us to speculate as to what Petitioner is arguing. For example, with respect to the limitation of claim 1 that "the processor is configured to determine the power headroom by subtracting the nominal maximum transmission power and the power that the apparatus would use if it did not apply maximum power limitations, wherein the result of said subtracting is not limited to zero and positive values," Petitioner cites 15 paragraphs and four figures of Kwak '369 and eight portions and two figures of Kwak '348. *Id.* at 37. For these reasons, Petitioner has not identified and explained sufficiently how each limitation of the challenged claims is taught by the asserted prior art, as required by 37 C.F.R. §§ 42.22(a)(2) and 42.104(b).

We also are not persuaded that Kwak '369 or Kwak '348 teach the limitations of the claims pertaining to "missing power." *See* Prelim. Resp. 8–11. Claim 1 recites that "the processor is configured to determine the power headroom report with both positive and negative values of power headroom, as applicable, in which negative values indicate the missing power in dB to fulfill transmission requirements." Independent claims 4, 7, 10, 13, and 14 similarly recite "positive and negative values of power

headroom, . . . as applicable, in which negative values indicate the missing power in dB to fulfill transmission requirements." We refer to these collectively as the "missing power limitation" of the independent claims.

With respect to Kwak '369, Petitioner equates the transmission power (Tx_{power}) in Kwak '369's equations with "the power the user equipment would use to transmit information without regard to maximum power limitations," such that the power margin ($Tx_{margin} = Tx_{total\_power} - Tx_{power}$) "can represent the 'missing power' to fulfill transmission requirements." Pet. 24–25 (citing Ex. 1003 ¶ 86). As support, Petitioner cites the statement in Kwak '369 that "even though more resources are assigned to a UE having a good uplink channel environment, if a transmission power margin of the UE is not sufficient, the UE cannot sufficiently use the assigned resources." Ex. 1004 ¶ 13; *see* Pet. 25. We are not persuaded. Petitioner does not point to anything in Kwak '369 stating or suggesting that negative values of power headroom are used to indicate missing power to fulfill transmission requirements. Nor does Petitioner cite any disclosure in Kwak '369 that Tx_{power} represents the power that the UE requires to fulfill transmission requirements or that the value can exceed the total power, resulting in a negative value for the power margin. Indeed, the relied upon portions of Kwak '369 appear to disclose only the conventional usage of positive power headroom (i.e., the maximum transmission power for the UE minus the UE's current transmission power) as described in the '957 patent. *See* Ex. 1004 ¶¶ 13 (describing a prior art method), 59–61, 117–18; Ex. 1001, col. 3, ll. 12–18.

Petitioner next argues that even if transmission power (Tx_{power}) in Kwak '369 is not the power that the UE would use regardless of maximum

power limitations, using that value would have been an "obvious variation" based on "[t]he description of the advantages of allowing a Node B to know the extent to which a user equipment can use assigned resources" in paragraph 13 of Kwak '369. Pet. 26 (citing Ex. 1003 ¶¶ 87–88). Again, we are not persuaded. Paragraph 13 describes a desire to use "maximum resources" determined by the Node B, not resources *in excess of the maximum* to fulfill transmission requirements. *See* Ex. 1004 ¶ 13. Petitioner does not explain sufficiently why this would have suggested to a person of ordinary skill in the art using the power that the UE would use regardless of maximum power limitations, resulting in a potential negative value of power headroom. Thus, we are not persuaded that Kwak '369 teaches or suggests the missing power limitation.

Finally, Petitioner's arguments regarding Kwak '348 are similar to those made for Kwak '369. Petitioner equates Kwak '348's transmission power (*Tx(power)*) with "the power the user equipment would use if it did not apply maximum power limitations," such that the power margin is the maximum UE transmitter power minus the transmission power. Pet. 28–29. Petitioner cites a statement from Kwak '348 regarding the desire to fully use allocated resources that is similar to the paragraph 13 statement in Kwak '369, and makes a similar argument regarding why a person of ordinary skill in the art allegedly would have been motivated to modify Kwak '348. *Id.* at 28–30 (citing Ex. 1005, p. 3, ll. 25–33, Ex. 1003 ¶¶ 92–93). We are not persuaded for the same reasons explained above regarding Kwak '369. Petitioner has not provided sufficient proof that Kwak '369 or Kwak '348, alone or in combination, teach or suggest the missing power limitation of the independent claims.

Petitioner has not shown a reasonable likelihood of prevailing on its assertion that independent claims 1, 4, 7, 10, 13, and 14, as well as claims 2, 3, 5, 6, 8, 9, 11, and 12 depending therefrom, are unpatentable over Kwak '369 and Kwak '348.

B. Obviousness Ground Based on TS 25.123, R1-080947, and R1-073224 (Claims 1–14)

Petitioner contends that claims 1–14 are unpatentable over TS 25.123, R1-080947, and R1-073224 under 35 U.S.C. § 103(a), citing the testimony of Dr. Williams as support. Pet. 43–55 (citing Ex. 1003). We are not persuaded that Petitioner has established a reasonable likelihood of prevailing on its asserted ground.

The first issue to be decided is whether Petitioner has made a threshold showing that TS 25.123, R1-080947, and R1-073224 are prior art printed publications under 35 U.S.C. § 102. At this stage of the proceeding, the question is not whether a preponderance of the evidence supports the documents being prior art, but rather whether Petitioner has provided sufficient evidence, based on the current record, to show a reasonable likelihood of prevailing on its asserted ground. *Compare* 35 U.S.C. § 314(a) (regarding threshold for instituting a trial) *with* 35 U.S.C. § 316(e) (regarding proving unpatentability of a claim).

The determination of whether a document is a "printed publication" under 35 U.S.C. § 102 "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). "'Because there are many ways in which a reference may be disseminated to

the interested public, 'public accessibility' has been called the touchstone in determining whether a reference constitutes a 'printed publication' bar under 35 U.S.C. § 102(b).'" *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1348 (Fed. Cir. 2016) (citation omitted). "A reference will be considered publicly accessible if it was '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.'" *Id.* (citation omitted); *In re Wyer*, 655 F.2d 221, 227 (CCPA 1981) (a party asserting a reference as a prior art 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").

We agree with Patent Owner that Petitioner has not made a threshold showing of public accessibility for TS 25.123, R1-080947, and R1-073224. *See* Prelim. Resp. 25–27. Petitioner argues that the references each qualify as prior art under 35 U.S.C. §§ 102(a) or 102(e). Pet. 4, 17–20. According to Petitioner, TS 25.123 "published in December 2007," R1-080947 "was submitted and published for the February 11–15, 2008 meeting of TS RAN working group 1," and R1-073224 "was submitted and published for the June 25–29, 2007 meeting of TS RAN working group 1." *Id.*; *see also* Ex. 1003 ¶¶ 63–64, 66, 69 (testimony of Dr. Williams that the documents were "published" or "submitted and published" on the cited dates). Petitioner, however, does not provide any explanation or supporting evidence to show the alleged public accessibility of the documents. Petitioner does not explain, for example, how, to whom, or in what manner the documents allegedly were disseminated or otherwise made available.

Nor do we find anything on the face of the documents themselves that would be sufficient to make a threshold showing of public accessibility. TS 25.123 is a 3GPP technical specification, and states:

> The present document has been developed within the 3rd Generation Partnership Project (3GPP™) and may be further elaborated for the purposes of 3GPP.
>
> The present document has not been subject to any approval process by the 3GPP Organizational Partners and shall not be implemented. This Specification is provided for future development work *within 3GPP only*. The Organizational Partners accept no liability for any use of this Specification. Specifications and reports for implementation of the 3GPP™ system should be obtained via the 3GPP Organizational Partners' Publications Offices.

Ex. 1006, 1 (emphasis added). TS 25.123 also lists a copyright date of 2007, but states: "No part may be reproduced except as authorized by written permission. The copyright and the foregoing restriction extend to reproduction in all media." *Id.* at 2. R1-080947 appears to be a "Discussion/Decision" document for a 3GPP Technical Specification Group (TSG) meeting on February 11–15, 2008. Ex. 1007, 1. Similarly, R1-073224 appears to be a "Decision" document for a 3GPP TSG meeting on June 25–29, 2007. Ex. 1008, 1. Although the documents are dated, Petitioner provides no argument or supporting evidence to show how the documents allegedly were publicly accessible on those dates (or any other date), instead merely asserting that each was "published" or "submitted and published." *See* Pet. 4, 17–20. Absent any such explanation or supporting evidence from Petitioner, we are not persuaded that Petitioner has made a threshold showing that the documents were disseminated or otherwise made

available to the extent that interested persons of ordinary skill in the art, exercising reasonable diligence, could have located them.

Based on the record presented, Petitioner has not made a threshold showing that TS 25.123, R1-080947, and R1-073224 are prior art printed publications under 35 U.S.C. § 102. Accordingly, Petitioner has not shown a reasonable likelihood of prevailing on its assertion that claims 1–14 are unpatentable over TS 25.123, R1-080947, and R1-073224.

C. Conclusion

We conclude that Petitioner has not demonstrated a reasonable likelihood of prevailing with respect to at least one claim of the ’957 patent challenged in the Petition. Therefore, we do not institute an *inter partes* review on any of the asserted grounds as to any of the challenged claims.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is denied as to all challenged claims of the ’957 patent.

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