

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MONSTER WORLDWIDE, INC., INDEED, INC., and  
THELADDERS.COM, INC.,  
Petitioner,

v.

CAREER DESTINATION DEVELOPMENT, LLC,  
Patent Owner.

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Case CBM2014–00070  
Patent No. 8,374,901 B2

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Before SALLY C. MEDLEY, MEREDITH C. PETRAVICK, and  
JUSTIN BUSCH, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

DECISION

*Institution of Covered Business Method Patent Review*  
37 C.F.R. § 42.208

I. INTRODUCTION

*A. Background*

Indeed, Inc., Monster Worldwide, Inc., and theLadders.com, Inc. (collectively “Petitioner”) filed a Petition (Paper 1, “Pet.”) on February 12, 2014 that requests review under the transitional program for covered

business method patents of U.S. Patent No. 8,374,901 B2 (Ex. 1001, “the ’901 patent”). Career Destination Development, LLC (“Patent Owner”) did not file a preliminary response. We have jurisdiction under 35 U.S.C. § 324, which provides that a post-grant review may not be instituted “unless . . . the information presented in the petition . . . would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.”

Petitioner challenges the patentability of claims 1–33 (“the challenged claims”) of the ’901 patent under 35 U.S.C. §§ 112, 102, and 103. We determine that the Petition demonstrates that it is more likely than not that the challenged claims 1 and 12–33 are unpatentable. Pursuant to 35 U.S.C. § 324, we institute a covered business method patent review of claims 1 and 12–33 of the ’901 patent.

#### *B. Related Matters*

Petitioner and Patent Owner identify three related U.S. District Court cases, each filed in the District of Kansas: *Career Destination Dev., LLC v. Monster Worldwide, Inc.*, No. 2:13-cv-02434 KHV/KGG (D. Kan.); *Career Destination Dev., LLC v. Indeed, Inc.*, No. 2:13-cv-02486 JWL/JPO (D. Kan.); and *Career Destination Dev., LLC v. theLadders.com, Inc.*, No. 2:13-cv-02522 JWL/KGS (D. Kan.). Pet. 1–2; Paper 7, 2.

Further, Petitioner and Patent Owner state that the '901 patent is the subject of another covered business method patent review, CBM2014-00069. Pet. 1; Paper 7, 2. In addition, Petitioner states that related U.S. Patent No. 7,424,438<sup>1</sup> is the subject of CBM2014-00077 and CBM2014-00068. Pet. 2.

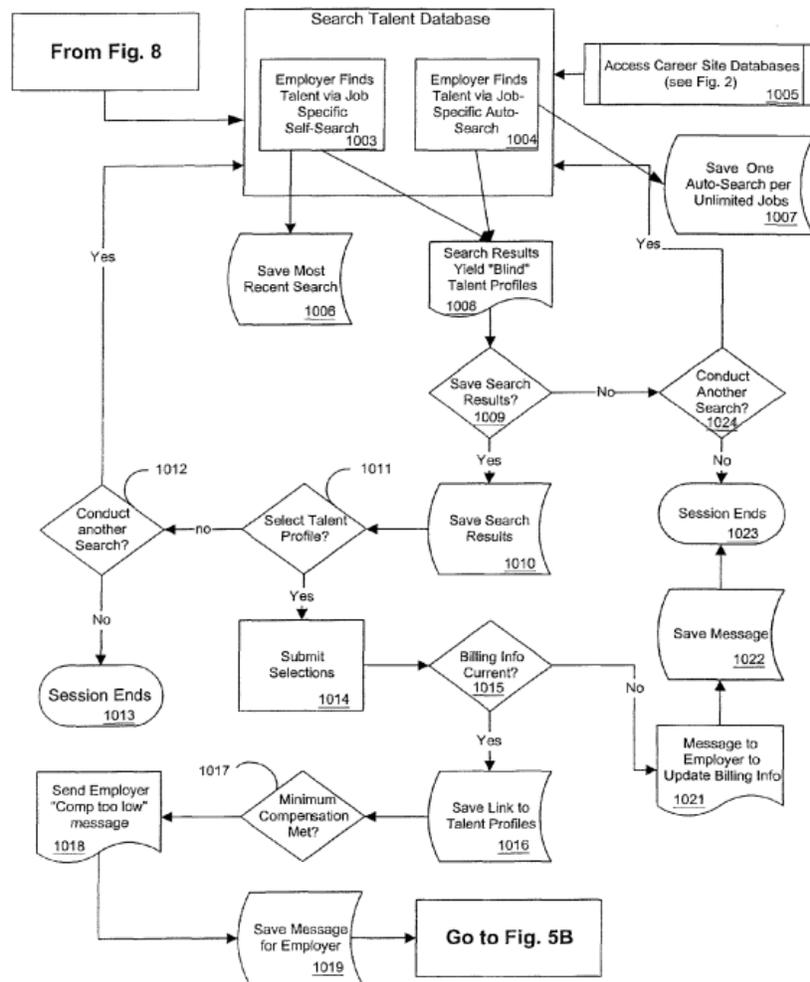
*C. The '901 Patent (Ex. 1001)*

The '901 patent is titled “Career and Employment Services System and Apparatus,” and issued February 12, 2013 from Application No. 12/846,635 filed July 29, 2010. Ex. 1001, 1. Application No. 12/846,635 is a divisional of Application No. 10/101,644, filed March 19, 2002. *Id.*

The '901 patent discloses a system that matches talent (i.e., employment candidates) with employers based upon information provided by each. *See id.* at col. 5, 1. 59 – col. 6, 1. 2. Figure 10 is reproduced below.

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<sup>1</sup> The '901 patent resulted from a divisional of the application that resulted in U.S. Patent No. 7,424,438. Ex. 1001, 1.



**Fig. 10**

Figure 10 depicts a flow diagram illustrating an employer-initiated search for talent. *Id.* at col. 7, ll. 14–18. The flow diagram begins with stage 1003 or stage 1004, where the employer performs a self-search or an automatic search of the talent profiles for a specific job. *Id.* at col. 39, ll. 33–42. The employer searches by specifying “a geographic point of reference and at least one of several non-geographic search parameters, such as industry, occupation, license, language, etc.” *Id.* at col. 39, ll. 43–46. The system returns to the employer “blind” talent profiles that satisfy the employer-provided search parameters. *Id.* at col. 43, ll. 37–44, Fig. 10, stage 1008.

“Blind” talent profiles do not include talent contact or confidential information. Ex. 1001, col. 41, l. 67–col. 42, l. 1; col. 22, ll. 38–52. The employer then selects one or more talent profiles, from the resulting talent profiles, for further employment inquires. *Id.* at col. 43, ll. 48–50; Fig. 10, stage 1011. The system then determines whether a maximum compensation the employer is willing to pay is greater than the minimum compensation the talent is willing to accept. *Id.* at col. 44, ll. 7–10; Fig. 10, stage 1017. If maximum compensation and minimum compensation match, the talent is contacted to disclose contact information and to provide further information and, subsequently, that information is then provided to the employer for a fee. *See id.* at col. 44, ll. 27–29; col. 47, ll. 6–11; Fig. 10, stage 1018; Fig. 5B. Similar to the above described employer initiated search for talent, talent can perform talent initiated searches of employer provided job descriptions. *See id.* at Fig. 4.

Claims 1, 12, and 23 of the '901 patent are illustrative of the challenged claims and are reproduced below:

1. A method of searching a plurality of candidate profiles having respective candidate attributes and threshold requirements by a computer system having at least one computer comprising at least one processor and storage medium within a computer network, said method comprising:

storing candidate attributes received from a candidate in a structured format on said at least one storage medium in communication with said at least one computer;

receiving by said at least one computer from a prospective employer at least one threshold requirement selected from said candidate profiles;

identifying at least one candidate profile by said computer system based on at least one search parameter received from said prospective employer;

comparing said at least one search parameter with said candidate attributes by said computer system;

determining by said computer system whether at least one of said identified candidate profiles matching said at least one search parameter meets said threshold requirement, and;

communicating to said prospective employer said at least one determined candidate profile.

12. A method of searching a plurality of candidate profiles having respective candidate threshold requirements and being stored in a computer system having at least one computer comprising a processor within a computer network, said method comprising:

receiving a request for a search associated with a specific job description received from a prospective employer;

identifying at least one candidate profile by said computer system based on at least one search parameter;

comparing said job description with at least one of said candidate threshold requirements by said computer system having at least one computer comprising said processor;

determining by said computer system whether said job description matches said at least one candidate threshold requirement, and;

communicating to said prospective employer said at least one identified candidate profile based upon said search parameters.

23. A method of searching a plurality of job descriptions having respective employer threshold requirements and being stored in a computer system having at least one computer comprising at least one processor and storage medium within a computer network, said method comprising:

identifying at least one job description by said computer system based upon at least one search parameter, said at least one search parameter received by said computer system;

storing attributes of at least one candidate profile associated with a candidate in said computer system;

comparing said candidate profile with said at least one employer threshold requirement of said identified job description by said computer;

determining whether said candidate profile matches said identified job description based on said at least one employer threshold requirement, and;

communicating said identified job description to said candidate.

#### *D. Alleged Grounds of Unpatentability*

Petitioner sets forth grounds of unpatentability of the challenged claims as follows:

Ground	Prior Art	Challenged Claims
§ 112, second paragraph	n/a	1
§ 112, first paragraph	n/a	1 and 15
§ 102	Cooper <sup>2</sup>	1, 2, 7-9, 12, 17-20, 23-25, 28, and 29
§ 102	Litvak <sup>3</sup>	1, 2, 8, 12, 18, 20, 23, 25, and 29
§ 103	Cooper, Thomas <sup>4</sup>	3, 4, 10, 11, 15, 16, 21, 22, 26, 27, and 30-33

<sup>2</sup> Cooper et al., WO 99/17242 (Apr. 8, 1999) (Ex. 1016).

<sup>3</sup> Litvak et al., WO 00/58866 (Oct. 5, 200) (Ex. 1019).

<sup>4</sup> Thomas et al., WO 00/28438 (May 18, 2000) (Ex. 1020).

Ground	Prior Art	Challenged Claims
§ 103	Cooper, Pineda <sup>5</sup>	5, 6, 13, 14, 26, and 27
§ 103	Cooper, Long <sup>6</sup>	5-7, 13, 14, 17, and 24
§ 103	Cooper, Coueignoux <sup>7</sup>	1, 2, 7-9, 12, 17-20, 23-25, 28, and 29
§ 103	Cooper, Coueignoux, Thomas	3, 4, 10, 11, 15, 16, 21, 22, 26, 27, and 30-33
§ 103	Cooper, Coueignoux, Long	5-7, 13, 14, 17, and 24
§ 103	Cooper, Coueignoux, Pineda	5, 6, 13, 14, 26, and 27
§ 103	Cooper, Litvak	1, 2, 7-9, 12, 17-20, 23-25, 28, and 29
§ 103	Cooper, Litvak, Thomas	3, 4, 10, 11, 15, 16, 21, 22, 26, 27, and 30-33
§ 103	Cooper, Litvak, Long	5-7, 13, 14, 17, and 24
§ 103	Cooper, Litvak, Pineda	5, 6, 13, 14, 26, and 27

## II. ANALYSIS

### *A. Requirements for Covered Business Method Patent Review*

Section 18 of the AIA<sup>8</sup> provides for the creation of a transitional program for reviewing covered business method patents. Section 18 limits

<sup>5</sup> Pineda et al., WO 01/82185 A2 (Apr. 21, 2000) (Ex. 1018).

<sup>6</sup> Long et al., WO 01/61611 A1 (Feb. 16, 2000) (Ex. 1021).

<sup>7</sup> Coueignoux, WO 99/01834 (Jan. 14, 1999) (Ex. 1017).

review to persons or their privies that have been sued or charged with infringement of a “covered business method patent,” which does not include patents for “technological inventions.” AIA §§ 18(a)(1)(B), 18(d)(1); *see* 37 C.F.R. § 42.302. Petitioner and Patent Owner indicate that each of Monster Worldwide, Inc., theLadders.com, Inc., and Indeed, Inc. were sued for infringement of the ’901 patent. Pet. 1–2; Paper 7, 2. For reasons discussed below, we find that the ’901 patent is eligible for covered business method patent review.

*i. Covered Business Method Patent*

A covered business method patent “claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions.” AIA § 18(d)(1). The “legislative history explains that the definition of covered business method patent was drafted to encompass patents ‘claiming activities that are financial in nature.’” 77 Fed. Reg. 48,734, 48,735 (Aug. 14, 2012) (quoting 157 Cong. Rec. S5432 (daily ed. Sept. 8, 2011) (statement of Sen. Schumer)). The legislative history indicates that “financial product or service” should be interpreted broadly. *Id.* A patent need have only one claim directed to a covered business method to be eligible for review. *Id.* at 48,736 (Response to Comment 8).

First, Petitioner argues that the ’901 patent is a covered business method patent because all of the claims encompass an embodiment in which the disclosed system is operated as a business where employers pay fees for

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<sup>8</sup> Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (2011) (“AIA”).

information on qualified candidates. Pet. 6. Next, Petitioner argues that the '901 patent is a covered business method patent because the claims recite methods of searching for jobs or employment candidates in specified industries, including, as disclosed in the '901 patent, financial service industries. *Id.* at 6–7 (citing Ex. 1001, col. 12, lines 58–60 (describing a “certified public accountant” licensing requirement) and claims 3, 10, 15, 21, 30, and 32 (reciting an “occupational classification system”)). Petitioner argues, therefore, that the claimed methods are at least incidental or complementary to the management of a financial institution. *Id.* at 7.

On this record, we are persuaded by Petitioner that the '901 patent is a covered business method patent. All of the claims of the '901 patent recite a method of searching for employment candidates or jobs which, in a preferred embodiment, is performed by a career site for a fee. *See* Ex. 1001, col. 9, ll. 12–35; col. 38, ll. 3–6; col. 43, ll. 48–67; col. 47, ll. 6–37. Operating a career site for a fee is an activity that is financial in nature. In addition we are persuaded by Petitioner that the '901 patent is a covered business method patent, because the claims encompass searching for employment candidates that are certified public accountants. A certified public accountant job is a job that involves a financial activity. Thus, we determine that the '901 patent is at least incidental and/or complementary to a financial activity, and determine, therefore, that the '901 patent is a covered business method patent.

*ii. Not a Technological Invention*

The definition of “covered business method patent” in § 18(d)(1) of the AIA does not include patents for “technological inventions.” To determine whether a patent is for a technological invention, we consider

“whether the claimed subject matter as a whole recites a technological feature that is novel and unobvious over the prior art; and solves a technical problem using a technical solution.” 37 C.F.R. § 42.301(b). Both prongs must be satisfied in order for the patent to be excluded as a technological invention. The following claim drafting techniques, for example, typically do not render a patent a “technological invention”:

- (a) Mere recitation of known technologies, such as computer hardware, communication or computer networks, software, memory, computer-readable storage medium, scanners, display devices or databases, or specialized machines, such as an ATM or point of sale device.
- (b) Reciting the use of known prior art technology to accomplish a process or method, even if that process or method is novel and non-obvious.

77 Fed. Reg. 48,756, 48,763–64 (Aug. 14, 2012)

Petitioner argues that the ’901 patent is not for a technological invention because none of the claims recite a technological feature that is novel and unobvious over the prior art. Pet. 8–9. In addition, Petitioner argues that the ’901 patent does not solve a technical problem using a technical solution, because optimizing employers’ recruiting and hiring processes is a business solution to a business problem and not a technical solution to a technical problem. *Id.* at 9–10. Petitioner argues that all of the structural elements recited in the claims (e.g., computer, processor, computer network) are generic computer parts. *Id.*

On this record, we are persuaded by Petitioner that the ’901 patent is not for a technological invention. At least independent claims 1, 12, and 23 do not recite a technological feature that is novel and unobvious over the prior art. Independent claims 1, 12, and 23 all recite a method that is

performed using a “computer system,” “computer,” “processor,” “storage medium,” and “computer network.” The ’901 patent discloses that such elements were conventional and known at the time the ’901 patent was filed. *See Ex. 1001, col. 8, ll. 3–67.* Because both prongs must be satisfied for a patent to be excluded from covered business method patent review for being a technological invention, we find that the ’901 patent is eligible for a covered business method patent review for at least the reason that claims 1, 12, and 23 fail to recite a technological feature that is novel and unobvious.

Notwithstanding our determination above, on this record, we are also persuaded by Petitioner that the ’901 patent does not solve a technical problem using a technical solution. The ’901 patent solves the business problem of ineffective and expensive job recruitment and hiring with a central career site that charges fees only for employment candidate/employer matches. *See id.* at col. 5, ll. 53–57, col. 9, l. 1– col. 10, l. 9. Independent claims 1, 12, and 23 recite methods for matching employment candidates and employers. The methods are computer-implemented through the use of a “computer system,” “computer,” “processor,” “storage medium,” and “computer network.” As discussed above, the ’901 patent discloses that such elements were conventional and known at the time the ’901 patent was filed. *See id.* at col. 8, ll. 3–67. We, therefore, find that at least claims 1, 12, and 23 do not solve a technical problem using a technical solution, and thus, at least these claims do not satisfy the second prong. Accordingly, we find that the ’901 patent is eligible for covered business method patent review.

*B. Claim Construction*

Consistent with the statute and legislative history of the AIA, 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. § 42.300(b). At this stage of the proceeding, no express construction is needed in order to resolve the issues in our decision.

*C. Ground Under 35 U.S.C. § 112, Second Paragraph*

Petitioner argues that claim 1 is indefinite under 35 U.S.C. § 112, second paragraph<sup>9</sup>, because it cannot be determined whether the “threshold requirement” of claim 1’s receiving step refers to candidate threshold requirements or the employer threshold requirements, as described in the ’901 patent. Pet. 17–18.

The scope of the claims must be sufficiently definite to inform the public of the bounds of the protected invention, i.e., what subject matter is covered by the exclusive rights of the patent. *Halliburton Energy Servs. v. M-I, LLC*, 514 F.3d 1244, 1249 (Fed. Cir. 2008). “[A] patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2123 (2014).

Claim 1 generally requires a method that searches candidate profiles for matches with parameters received from prospective employers. Claim 1

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<sup>9</sup> Because the ’901 patent has an effective filing date before September 16, 2012, we refer to the pre-AIA version of 35 U.S.C. §§ 112, 102.

recites candidate profiles that include “threshold requirements” and a step of “receiving by said at least one computer from a prospective employer at least one threshold requirement selected from said candidate profiles.” In other words, claim 1 recites two threshold requirements: one threshold requirement that is included in the candidate profile (“first claimed threshold requirement”) and one threshold requirement that is both received from a prospective employer and selected from the candidate profiles (“second claimed threshold requirement”). The method also recites a step of “determining . . . whether at least one of said identified candidate profiles matching said at least one search parameter meets *said threshold requirement*” (emphasis added). This determining step doesn’t specify whether “said threshold requirement” refers to the first claimed threshold requirement or the second claimed threshold requirement. Regardless of whether “said threshold requirement” refers to either the first or second claimed threshold requirement, claim 1 is ambiguous because it is illogical to match a candidate profile by a threshold requirement already included in the candidate profiles or selected from the candidate profiles, particularly, in a method of searching for candidate profiles that meet employer’s requirements. *See* Pet. 18–19. Further, the ’901 patent’s disclosure sheds no light on this ambiguity. The ’901 patent describes candidate profiles containing *candidate* threshold requirements and employer provided *employer* threshold requirements, but does not describe matching candidate threshold requirements included in candidate profiles or selected from candidate profiles. The ’901 patent, in contradiction to the method of claim 1, discloses that candidate threshold requirements are not known to the employer. Ex. 1001, col. 22, ll. 47–52.

On this record and for these reasons, we determine that Petitioner demonstrates that claim 1 is more likely than not indefinite under 35 U.S.C. § 112, second paragraph.

*D. Grounds Under 35 U.S.C. § 112, First Paragraph*

Petitioner argues that claims 1 and 15 fail to comply with the written description requirement of 35 U.S.C. § 112, first paragraph. Pet. 19–22, 52–55.

*i. Claim 1*

Claim 1 recites “receiving by said at least one computer from a prospective employer at least one threshold requirement selected from said candidate profile.” Petitioner argues that, regardless of the ambiguity discussed above, the ’901 patent fails to provide written description support for an employer selecting a threshold requirement from a candidate profile. Pet. 19–22.

The written description requirement of 35 U.S.C. § 112, first paragraph, requires that “the disclosure of the application relied upon reasonably convey[] to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010). One shows “possession” by descriptive means such as words, structures, figures, diagrams, and formulas that set forth fully the claimed invention. *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997).

Although the ’901 patent discloses employer threshold requirements and candidate threshold requirements (*e.g.*, Ex. 1001, col. 10, ll. 37–45, col. 42, ll. 45–51, col. 44, ll. 21–29), the ’901 patent does not include any

description of an employer selecting the employer threshold requirement from a candidate profile or accessing the candidate threshold requirement from the candidate profile. In contrast, the '901 patent discloses that candidate threshold requirements are not provided to the employer. *Id.* at col. 22, ll. 47-52.

On this record and for these reasons, we determine that Petitioner has demonstrated that it is more likely than not that claim 1 fails to comply with the written description requirement of 35 U.S.C. § 112, first paragraph.

*ii. Claim 15*

Claim 15, which depends from independent claim 12, recites “said at least one candidate threshold requirement is received by said employer.” For the same reasons as discussed above, Petitioner argues that the '901 patent fails to provide written description support for an employer receiving a candidate threshold requirement. Pet. 21-22. On this record, and for the same reasons as discussed above, we determine that Petitioner has demonstrated that it is more likely than not that claim 15 fails to comply with the written description requirement of 35 U.S.C. § 112, first paragraph.

*E. Grounds Under 35 U.S.C. §§ 102, 103*

*i. Claims 1-11*

A determination of anticipation and obviousness over prior art begins with claim construction. *See In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998). Not every such patentability analysis, however, necessarily ends with a determination with respect to the prior art. The language used in a claim to define the scope of coverage, read in light of the specification, may be indefinite and fail to indicate the scope of the claimed invention. *See*,

*e.g.*, *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970); *In re Steele*, 305 F.2d 859, 862–63 (CCPA 1962). As previously discussed, the scope of claim 1 cannot be determined without speculation. Consequently, the differences between the claimed invention and the prior art cannot be determined. In this circumstance, the analysis begins and ends with the claims, and we do not attempt to apply the prior art to the claims. *In re Wilson*, 424 F.2d at 1385; *In re Steele*, 305 F.2d at 862–63; accord *United Carbon Co. v. Binney & Smith Co.*, 317 U.S. 228, 237 (1942) (indefiniteness moots consideration of prior art issues).

Because we cannot determine the scope of claim 1, as discussed above, and the scope of claims 2–11, dependent thereon, we cannot determine whether Petitioner has demonstrated that claims 1-11 are more likely than not unpatentable over the asserted grounds under 35 U.S.C. §§ 102, 103. *See* 37 C.F.R. § 42.208(c).

*ii. Anticipation of Claims 12, 17–20, 23–25, 28, and 29 by Cooper*

Petitioner argues that claims 12, 17–20, 23–25, 28, and 29 are anticipated under 35 U.S.C. § 102(b) by Cooper. Pet. 26-31. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

*a. Independent claims 12 and 23*

Petitioner argues that Cooper’s recruiting system anticipated claims 12 and 23. Pet. 26–27, 28–30. Cooper is titled “On-line Recruiting System

with Improved Candidate and Position.” Ex. 1016, 1<sup>10</sup>. Cooper describes electronic, network based, recruiting system 100 that facilitates entry, retrieval, and matching of data regarding employment candidates and job openings. *Id.* at 2. Recruiting system 100 includes database 112, which includes both job profiles 120 and candidate profiles 120. *Id.* at 7–8. Job profiles 120 are created by hiring manager 106 and contain information describing an open position. *Id.* at 7, 17. Candidate profiles 120 are created by a candidate (i.e., applicant 108) and contain information describing the candidate, such as compensation. *Id.* at 18, 12. Figures 8 A and 8 B are reproduced below

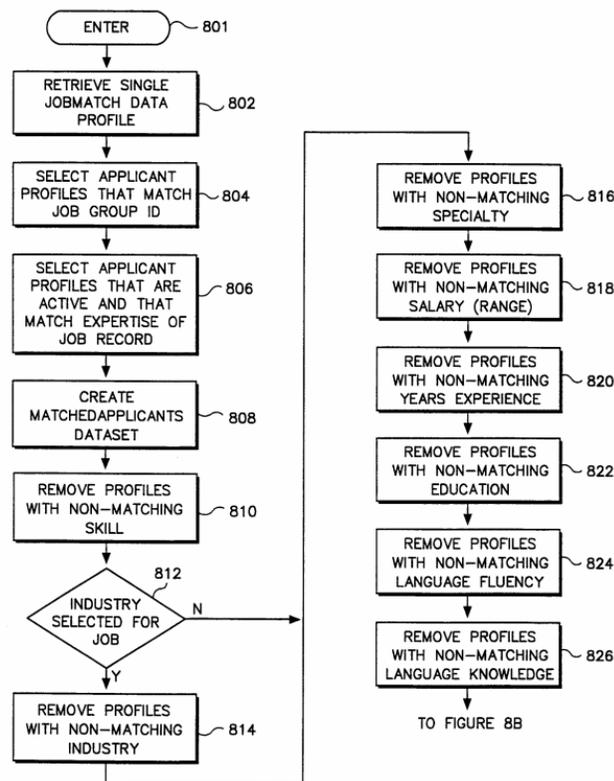


FIGURE 8A

<sup>10</sup> In this Decision, we refer to the original pagination of Cooper and not the page numbers inserted by Petitioner.

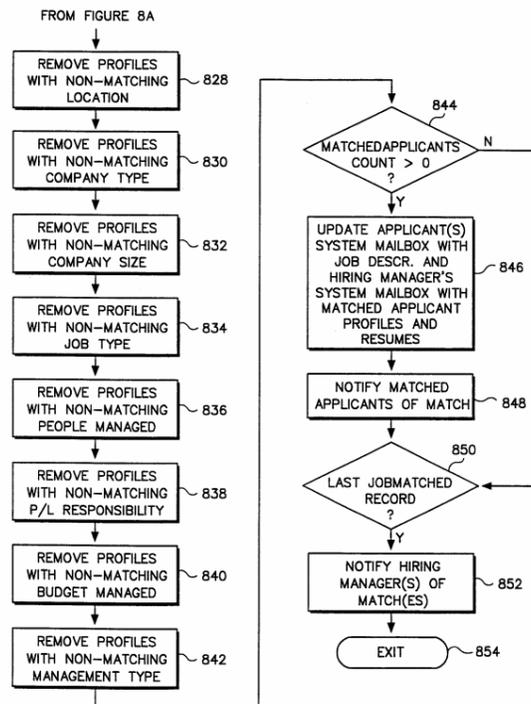


FIGURE 8B

Figures 8A and 8B depict a flow chart illustrating an automatic matching operation embodiment. *Id.* at 6. Figure 8A and Figure 8B describe a method of comparing an open job profile (*see id.* at Fig. 8A, step 802) with a subset of applicant (i.e., candidate) profiles that match certain parameters of the open job profile (*see id.* at Fig. 8A, step 804–808). *Id.* at 20–21. The job profile is then compared with candidate profiles to determine whether the profile matches certain criteria, such as salary range (i.e., threshold requirements) (Fig. 8A, step 818). *See id.* at 21; Fig. 8A–8B, steps 810–842. Candidates and hiring managers are notified of resulting matches. *Id.* at 21–22; Fig. 8B, steps 848, 852. Cooper describes that the same method is used to match candidate profiles with job profiles. *See id.* at 19. Upon review of Petitioner’s evidence and analysis, we are persuaded that Cooper describes all of the steps recited by claims 12 and 23, and we

determine that Petitioner has demonstrated that claims 12 and 23 are more likely than not anticipated under 35 U.S.C. § 102(b) by Cooper.

*b. Dependent Claims 17 and 24*

Petitioner argues that Cooper's recruiting system anticipates claims 17 and 24. Pet. 27, 30. Claims 17 and 24 depend from claims 12 and 23, respectively. Claims 17 and 24 recite receiving a request for an interview from an employer/candidate, transmitting the request to the candidate/employer, and receiving a request-acceptance indication from the candidate/employer. Cooper describes that hiring managers and candidates can communicate via recruiting system 101 to apply for jobs and set up interviews. Ex. 1016, 9-11, 13, Fig. 4A. Upon review of Petitioner's evidence and analysis, we are persuaded that Cooper describes the additional limitations of claims 17 and 24, and we determine that Petitioner has demonstrated that claims 17 and 24 are more likely than not anticipated under 35 U.S.C. § 102(b) by Cooper.

*c. Dependent claims 18 and 25*

Petitioner argues that Cooper's recruiting system anticipates claims 18 and 25. Pet. 28, 30-31. Claim 18 recites "permitting said prospective employer to modify said at least one job description in response to said threshold determination." Claim 25 recites "permitting said candidate to modify said at least one search parameter." Cooper describes that a hiring manager can edit a job profile to arrive at the best candidates. Ex. 1016, 7, 10. Cooper also describes that candidates can edit their candidate profile. *Id.* at 9. Upon review of Petitioner's evidence and analysis, we are persuaded that Cooper describes the additional limitations of claims 18 and

25, and we determine that Petitioner has demonstrated that claims 18 and 25 are more likely than not anticipated under 35 U.S.C. § 102(b) by Cooper.

*d. Dependent claims 19 and 28*

Petitioner argues that Cooper's recruiting system anticipates claims 19 and 28. Pet. 28, 31. Claims 19 and 28 recite that the search is automatically performed. Cooper describes automatic searching of job profiles and candidate profiles. *See e.g.*, Ex. 1016, 10, 16. Upon review of Petitioner's evidence and analysis, we are persuaded that Cooper describes the additional limitations of claims 19 and 28, and we determine that claims 19 and 28 are more likely than not anticipated under 35 U.S.C. § 102(b) by Cooper.

*e. Dependent claims 20 and 29*

Petitioner argues that Cooper's recruiting system anticipates claims 20 and 29. Pet. 28, 31. Claims 20 and 29 require that the threshold requirement is provided by the candidate and employer, respectively. Cooper describes that both candidate profiles and job profiles include criteria, such as salary. *See e.g.*, Ex. 1016, 8, 17, 12, 22. Upon review of Petitioner's evidence and analysis, we are persuaded that Cooper describes the steps recited in claims 20 and 29, and we determine that Petitioner has demonstrated that claims 20 and 29 are more likely than not anticipated under 35 U.S.C. § 102(b) by Cooper.

*iii. Obviousness of Claims 15, 16, 21, 22, 26, 27, and 30-33 over Cooper and Thomas*

Petitioner argues that claims 15, 16, 21, 22, 26, 27, and 30-33 are unpatentable under 35 U.S.C. § 103(a) over Cooper and Thomas. Pet. 59-65.

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). 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, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966); *see KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”).

*a. Claims 15, 16, 21, 22, and 30–33*

Petitioner argues that the additional limitations of claims 15, 16, 21, 22, and 30–33 are obvious over Cooper and Thomas. Pet. 42–44, 59–64; Ex. 1005 ¶¶ 74–90. Claim 15 depends from claim 12 and recites “said at least one threshold requirement comprising data structured according to an occupational classification system.” Claim 21 also depends from claim 12 and recites “at least one candidate profile comprises data structured according to an occupational classification system.” Claim 32 depends from claim 23 and recites a similar limitation. Claim 30 depends from claim 23 and recites “said at least one search parameter comprises data structured according to an occupational classification system.” Claims 16, 22, 31, and 33 are similar to claims 15, 21, 30, and 32, respectively, except that the data is structured according to an industry classification system.

Petitioner argues that although Cooper describes entering information in a graphical interface that includes drill down menus and multiple choice

options (*see* Pet. 60 (citing Ex. 1016, 8, 16–17 Fig. 2, Fig. 3A, Fig. 3B)), Cooper does not disclose that the data is structured according to an occupational classification system or industry classification system. *Id.* at 59–64. Petitioner argues that Thomas cures this deficiency by teaching entry of this information into a template using an occupational classification system and industry classification system (*see e.g., id.* at 43), and argues that one of ordinary skill in the art would have recognized that modifying Cooper’s graphical interface to include entering information using the classification systems from Thomas would provide a more efficient means for specifying an occupation or industry when creating profiles and searches. *Id.*

Thomas is titled “System for Providing Business Information.” Ex. 1020, 1<sup>11</sup>. Similar to Cooper, Thomas discloses a system that allows an outsourcing company to search for contractors based upon information provided by the contractor. *See id.* at 3. Thomas discloses both a contractor template and a search template where occupational and industry information is entered into an occupational classification field using a menu of occupations and an industry classification field using a menu of industries. *Id.* at 12, 13, Fig. 3, Fig. 4. On this record, we determine that modifying Cooper’s graphical interface to allow for specifying occupational and industry information according to known occupational and industry classification systems as taught by Thomas, is nothing more than the predictable use of prior art elements according to their established functions. *KSR*, 550 U.S. at 417.

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<sup>11</sup> In this Decision, we refer to the original pagination of Thomas and not the page numbers inserted by Petitioner.

Upon review of Petitioner's evidence and analysis, we are persuaded that Petitioner has demonstrated that claims 15, 16, 21, 22, and 30-33 are more likely than not unpatentable under 35 U.S.C. §103(a) over Cooper and Thomas.

*b. Claims 26 and 27*

Petitioner argues that the additional limitations of claims 26 and 27 are obvious over Cooper and Thomas. Pet. 49-50, 64-65; Ex. 1005 ¶¶ 91-95. Claim 26 depends from claim 23 and recites "wherein said at least one job description is ranked by said computer system indicating a relative maximum compensation associated with said at least one job description." Claim 27 depends from claim 26 and recites "wherein said computer system generates a listing of said at least one job description arranged based upon said ranking."

Petitioner argues that although Cooper teaches job profiles that result from a search (Ex. 1016, Fig. 8B, step 846), Cooper does not teach that the resulting job profiles are ranked based upon compensation. Pet. 64. Petitioner relies upon Thomas's teaching of ranking a list of positions that meet certain criteria to cure this deficiency. *Id.* (citing Ex. 1020, 5, 22). Petitioner argues that based upon the teachings of Thomas, one of ordinary skill in the art would have modified Cooper to include ranking of job profiles based upon compensation in order to allow candidates to quickly ascertain which jobs are better than others. *Id.* at 65.

Thomas discloses a contractor or job seeker receiving a ranked, comprehensive listing of available positions. Ex. 1020, 5. The positions are ranked so that positions that most closely match the criteria specified by a job seeker are first. *Id.* at 22. Cooper discloses that salary is a criterion that

may be specified by a candidate. Ex. 1016, 9, 12. On this record, we determine that modifying Cooper to include ranking job profiles according to criteria, such as salary, as taught by Thomas, is nothing more than the predictable use of prior art elements according to their established functions. *See KSR*, 550 U.S. at 417.

Upon review of Petitioner's evidence and analysis, we are persuaded that that claims 26 and 27 are more likely than not unpatentable under 35 U.S.C. §103(a) over Cooper and Thomas.

*iv. Obviousness of Claims 13, 14, 26, and 27 over Cooper and Pineda*

Petitioner argues that the additional limitations of claims 13, 14, 26, and 27 are obvious over Cooper and Pineda. Pet. 41-42, 49-50, 65-68; Ex. 1005 ¶¶ 96-102.

Claim 13 depends from claim 12 and recites "wherein said at least one candidate profile is ranked according to its relative extent of compatibility with said job description." Claim 14 depends from claim 13 and recites "wherein said computer system generates a listing of said at least one candidate profile based upon said ranking." Claim 26 depends from claim 23 and recites "said at least one job description is ranked by said computer system indicating a relative maximum compensation associated with said at least one job description." Claim 27 depends from claim 26 and recites "said computer system generates a listing of said at least one job description arranged based upon said ranking."

Petitioner argues that although Cooper teaches job profiles and candidate profiles that result from a search, Cooper does not teach ranking the candidate profiles and job descriptions. Pet. 65-68. Petitioner relies upon Pineda's teachings of ranking candidate profiles and job profiles,

which match search criteria, based upon the criteria. *Id.* (citing Ex. 1018, 12, 13). Petitioner argues that based upon the teachings of Pineda one of ordinary skill in the art would have modified Cooper to include ranking of candidates or jobs based upon criteria, such as compensation, in order to allow candidates to quickly ascertain which jobs are better than others and employers to quickly ascertain which candidates are the best. *Id.* at 67–68.

Pineda is titled “Interactive Employment System and Method.” Ex. 1018, 1<sup>12</sup>. Similar to Cooper, Pineda discloses an interactive employment system that allows candidates to enter candidate profile data and search for available job postings and allows employers to search candidate profiles for candidates who match their search terms, specified in a job profile. *Id.* at 2. Pineda teaches that a listing of matching candidates and jobs are sorted according to a percentage of search terms that match each candidate or job. *Id.* at 12–13. Pineda teaches that search terms can include a salary range. *Id.* at 12. On this record, we are persuaded that modifying Cooper to include a ranked listing of matching job descriptions or candidates according to search criteria, such as salary, as taught by Pineda, is nothing more than the predictable use of prior art elements according to their established functions. *KSR*, 550 U.S. at 417.

Upon review of Petitioner’s evidence and analysis, we are persuaded that claims 13, 14, 26, and 27 are more likely than not unpatentable under 35 U.S.C. §103(a) over Cooper and Thomas.

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<sup>12</sup> In this Decision, we refer to the original pagination of Pineda and not the page numbers inserted by Petitioner.

*v. Obviousness of Claims 13, 14, 17, and 24 over Cooper and Long*

Petitioner argues that claims 13, 14, 17, and 24 are unpatentable under 35 U.S.C. § 103(a) over Cooper and Long. Pet. 68–72.

*a. Claims 13 and 14*

Petitioner argues that the additional limitations of claims 13 and 14 are obvious over Cooper and Long. Pet. 41–42, 71–72; Ex. 1005 ¶¶ 110–113. Claim 13 depends from claim 12 and recites “said at least one candidate profile is ranked according to its relative extent of compatibility with said job description.” Claim 14 depends from claim 13 and recites, “said computer system generates a listing of said at least one candidate profile based upon said ranking.”

Petitioner argues that although Cooper teaches job profiles and candidate profiles that result from a search, Cooper does not teach ranking the candidate profiles and job descriptions. Pet. 71. Petitioner relies upon Long’s teachings of rating candidates, which match a search criterion, based upon the criterion. *Id.* (citing Ex. 1021, 3, 9). Petitioner argues that based upon the teachings of Long, one of ordinary skill in the art would have modified Cooper to include ranking of candidates in order to allow an employer to quickly ascertain the best candidates. *Id.* at 71–72.

Long is titled “System and Method for Matching A Candidate with an Employer.” Ex. 1021, 1<sup>13</sup>. Similar to Cooper, Long discloses a system that matches a candidate and an employer based upon candidate information and employer criteria. *Id.* Long discloses rating candidates based upon the search criteria. *Id.* at 3. On this record, we are persuaded that modifying

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<sup>13</sup> In this Decision, we refer to the original pagination of Long and not the page numbers inserted by Petitioner.

Cooper to include a rated listing of candidates according to search criteria, as taught by Long, is nothing more than the predictable use of prior art elements according to their established functions. *KSR*, 550 U.S. at 417.

Upon review of Petitioner's evidence and analysis, we are persuaded that claims 13 and 14 are more likely than not unpatentable under 35 U.S.C. §103(a) over Cooper and Long.

*b. Claims 17 and 24*

Petitioner argues that the additional limitations of claims 17 and 24 are obvious over Cooper and Long. Pet. 43, 48, 68-71; Ex. 1005 ¶¶ 103-109. Claims 17 and 24 depend from claims 12 and 23, respectively. Claims 17 and 24 recite receiving a request for an interview from an employer/candidate, transmitting the request to the candidate/employer, and receiving a request-acceptance indication from the candidate/employer. Petitioner argues that although Cooper discloses that hiring managers and candidates can communicate via recruiting system 101 to apply for jobs and set up interviews (Pet. 68-69 (citing Ex. 1016, 9-11, 13, Fig. 4A)), Cooper does not explicitly teach the receiving and transmitting recited in claims 17 and 24. Petitioner relies upon Long to explicitly teach these steps. *Id.* at 69-71 (citing Ex. 1021, Abstract, 1, 8-9, 16)). Petitioner argues that based upon the teachings of Long and Cooper one of ordinary skill in the art would have modified Cooper's communications to explicitly include a request for an interview or an acceptance of an interview in order to better facilitate interviews between candidate and employers. *Id.* at 67-68.

Long's system includes Interview Module 414 which facilitates an interview via email by arranging the schedules of employers and candidates. Ex. 1021, 16. Long's system includes Interview Schedule Screen 310 and a

Candidate Engagement Screen 31, which facilitates the scheduling of an in-person interview. *Id.* at 8–9. On this record, we are persuaded that modifying Cooper’s system to include a module that facilitates the scheduling of an interview, including receiving and transmitting interview requests and acceptances, as taught by Long, is nothing more than the predictable use of prior art elements according to their established functions. *See KSR*, 550 U.S. at 417.

Upon review of Petitioner’s evidence and analysis, we are persuaded that Petitioner has demonstrated that claims 17 and 24 are more likely than not unpatentable under 35 U.S.C. § 103(a) over Cooper and Long.

#### *F. Other Grounds*

We do not institute review on the following grounds:

claims 1–2, 8, 12, 18, 20, 23, 25, and 29 under 35 U.S.C. § 102 as anticipated by Litvak;

claims 1–2, 7–9, 12, 17–20, 23–25, 28, and 29 under 35 U.S.C. § 103(a) as unpatentable over Cooper and Coueignoux;

claims 3, 4, 10, 11, 15, 16, 21, 22, 26, 27, and 30–33 under 35 U.S.C. § 103 (a) as unpatentable over Cooper, Coueignoux, and Thomas;

claims 5, 6, 13, 14, 26, and 27 under 35 U.S.C. § 103 (a) as unpatentable over Cooper, Coueignoux, and Pineda;

claims 5–7, 13, 14, 17, and 24 under 35 U.S.C. § 103 (a) as unpatentable over Cooper, Coueignoux, and Long;

claims 1, 2, 7–9, 12, 17–20, 23–25, 28, and 29 under 35 U.S.C. § 103(a) as unpatentable over Cooper and Litvak;

claims 3, 4, 10, 11, 15, 16, 21, 22, 26, 27, and 30–33 under 35 U.S.C. § 103(a) as unpatentable over Cooper, Litvak, and Thomas;

claims 5, 6, 13, 14, 26, and 27 under 35 U.S.C. § 103(a) as unpatentable over Cooper, Litvak, and Pineda; and

claims 5–7, 13, 14, 17, and 24 under 35 U.S.C. § 103(a) as unpatentable over Cooper, Litvak, and Long.

*See* 37 C.F.R. § 42.208.

### III. CONCLUSION

The Petition demonstrates that it is more likely than not that claims 1 and 12-33 are unpatentable. The Board has not yet made a final determination as to the patentability of any claim.

### IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that pursuant to 35 U.S.C. § 324(a), a covered business method patent review is hereby instituted as to claims 1 and 12–33 of the '901 patent based upon the following grounds of unpatentability:

claim 1 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention;

claims 1 and 15 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement;

claims 12, 17–20, 23–25, 28, and 29 under 35 U.S.C. § 102 as anticipated by Cooper;

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claims 15, 16, 21, 22, 26, 27, and 30-33 under 35 U.S.C. § 103(a) as unpatentable over Cooper and Thomas;

claims 13, 14, 26, and 27 under 35 U.S.C. § 103(a) as unpatentable over Cooper and Pineda; and

claims 13, 14, 17, and 24 under 35 U.S.C. § 103(a) as unpatentable over Cooper and Long; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 324(d) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial commencing on the entry date of this Order.

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