

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAFEWAY, INC. and THE KROGER CO.,
Petitioner,

v.

KROY IP HOLDINGS, LLC,
Patent Owner.

Case IPR2014-00685
Patent 7,054,830 B1

Before MICHAEL J. FITZPATRICK, BARRY L. GROSSMAN, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

Safeway, Inc. and The Kroger Co. (collectively, “Petitioner”) filed a Petition to institute an *inter partes* review of claims 1 and 19–25 of U.S. Patent No. 7,054,830 B1 (Ex. 1001, “the ’830 patent”). Paper 1 (“Pet.”). Kroy IP Holdings, LLC (“Patent Owner”) 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 . . . 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 given below, we deny the petition.

B. Related Proceedings

Petitioner indicates that the following co-pending federal district court cases would be affected by the outcome of this proceeding: *Kroy IP Holdings, LLC v. Safeway, Inc.*, No. 2:12-cv-800 (E.D. Tex.); *Kroy IP Holdings, LLC v. The Kroger Co.*, No. 2:13-cv-141 (E.D. Tex.); *Kroy IP Holdings, LLC v. AutoZone, Inc.*, No. 2:13-cv-888 (E.D. Tex.); *Kroy IP Holdings, LLC v. BJ’s Rests., Inc.*, No. 2:13-cv-889 (E.D. Tex.); *Kroy IP Holdings, LLC v. Genghis Grill Franchise Concepts, LP*, No. 2:13-cv-890 (E.D. Tex.); *Kroy IP Holdings, LLC v. Panera Bread Co.*, No. 2:13-cv-891 (E.D. Tex.); *Kroy IP Holdings, LLC v. TGI Friday’s, Inc.*, No. 2:13-cv-892 (E.D. Tex.); *Kroy IP Holdings, LLC v. Hallmark Cards, Inc.*, No. 2:13-cv-933 (E.D. Tex.); *Kroy IP Holdings, LLC v. The Men’s Wearhouse, Inc.*, No. 2:13-cv-934 (E.D. Tex.); *Kroy IP Holdings, LLC v. Ms. Fields Famous Brands, LLC*, No. 2:13-cv-935 (E.D. Tex.); and *Kroy IP Holdings, LLC v. Starbucks Corp.*, No. 2:13-cv-936 (E.D. Tex.). Pet. 59.

C. Asserted Grounds of Unpatentability and Evidence of Record

Petitioner contends that the challenged claims are unpatentable under 35 U.S.C. §§ 102 and 103 based on the following grounds (Pet. 17–58).

References	Basis	Claims Challenged
Barnett ¹	§ 102	1 and 19–22
Barnett	§ 103	1 and 19–22
Barnett and Powell ²	§ 102	23–25
Narasimhan ³	§ 102	1 and 19–25
Narasimhan	§ 103	1 and 19–25
Scroggie ⁴	§ 102	1 and 19–25
Scroggie	§ 103	1 and 19–25

Petitioner also provides testimony from Warren Lieberman, Ph.D. (“the Lieberman Declaration”). Ex. 1010.

D. The ’830 Patent

The ’830 patent is directed to incentive programs and fulfillment of prizes (awards) won in incentive programs. Ex. 1001, 1:23–25. Incentive programs are described as scratch-and-win games, sweepstakes games, treasure hunt games, or computer games. *Id.* at 13:43–44; 14:28–29. A “prize” is described as being synonymous with an “award,” and

¹ U.S. Patent No. 6,321,208 B1, issued Nov. 20, 2001 (Ex. 1004, “Barnett”).

² U.S. Patent No. 6,237,145 B1, issued May 22, 2001 (Ex. 1005, “Narasimhan”).

³ U.S. Patent No. 5,806,044, issued Sep. 8, 1998 (Ex. 1006, “Powell”).

⁴ U.S. Patent No. 5,970,469, issued Oct. 19, 1999 (Ex. 1007, “Scroggie”).

“encompass[ing] all types of incentives, including merchandise, coupons, points, cash, services and other forms of incentives.” *Id.* at 7:44–47.

The ’830 patent explains that a consumer can register on a consumer site (i.e., website) on a host computer, and subsequently participate in a sponsor’s incentive program by accessing the consumer site. *Id.* at 12:22–24, 15:57–59. When a consumer wins a prize from participation in the incentive program on the site, an award database is queried to determine the available geographic locations of the prize won by the consumer. *Id.* at 21:61–63, 46:30–34. The award database communicates with the retailer’s inventory system, so that each prize recorded in the award database can be tied to the inventory of the retailer. *Id.* at 46:25–30. The host computer selects the appropriate fulfillment option for the prize, and identifies the nearest retail location for fulfillment of the prize or, if no location is suitable, the prize may be mailed to the consumer. *Id.* at 21:64–22:4. The ’830 patent explains that a card linked to the consumer’s identity is provided to the consumer after registration, and the card is used to claim the prize at the retailer. *Id.* at 22:17–22, 22:36–47.

E. Illustrative Claims

As noted above, Petitioner challenges claims 1 and 19–25. Claims 1 and 19 are independent, with claims 20–25 depending from claim 19. Claim 1 illustrates the claimed subject matter and is reproduced below:

1. A system for incentive program participation and automated award fulfillment, comprising:
 - a host computer coupled to a network;
 - a first database accessible from said host computer;
 - and

an automated award fulfillment application program executed on said host computer for participation in incentive programs of a plurality of providers in communication with an inventory management system associated with each of said plurality of providers wherein said automated award fulfillment application program provides sponsor-selected fulfillment, said automated award fulfillment application program comprising:

code adapted to provide a sponsor-selected specific award unit item, said sponsor-selected specific award unit item being tailored to demographic and psychographic preferences of a sponsor-selected consumer user, and

code adapted to provide a sponsor-selected geographic location for fulfillment.

Id. at 47:11–30.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review proceeding, claim terms in an unexpired patent are given their broadest reasonable interpretation in light of the specification in which they appear and the understanding of others skilled in the relevant art. 37 C.F.R. § 42.100(b). Applying that standard, we interpret the claim terms of the '830 patent according to their ordinary and customary meaning in the context of the patent's written description. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Petitioner and Patent Owner propose constructions for several terms of the challenged claims. Pet. 8–16; Prelim. Resp. 8–18. We determine that the only claim term requiring express construction for purposes of this decision is “inventory management system.”

Claim 1 recites “an automated award fulfillment application program . . . in communication with an inventory management system associated with each of said plurality of providers.” Claim 19 similarly recites “providing communication with an inventory management system associated with each of a plurality of providers.” Petitioner proposes that “inventory management system” be construed to mean a “system to manage award units.” Pet. 13–15. Patent Owner responds that “Petitioners’ construction is inconsistent with the claims and the specification because it reads out the word ‘inventory.’” Prelim. Resp. 15. We agree with Patent Owner.

As noted above, the claims recite an “*inventory* management system.” Although the specification does not specifically mention the phrase “inventory management system,” it discusses a retailer’s inventory system. For example, the specification explains that “award database 204 that is created by participation by the retailer is also connected via an electronic data interchange 126 to the retailer’s proprietary inventory system 212” so that “award database 204 can be automatically updated to reflect the retailer’s current inventory according to inventory numbers, such as SKUs, type of inventory, or the like.” *Id.* at 15:41–47. Thus, the inventory system reflects the current *inventory* of an item (e.g., merchandise, coupons, points, cash, services or other forms of incentives). The plain meaning of “inventory” is “[t]he quantity of goods and materials on hand.” THE AMERICAN HERITAGE® DICTIONARY OF THE ENGLISH LANGUAGE (2011) (<http://search.credoreference.com/content/entry/hmdictenglang/inventory/0>) (last accessed Aug. 18, 2014). This is consistent with the disclosure of the ’830 patent discussed above.

Accordingly, we construe “inventory management system” as requiring a system that manages the available quantity (i.e., inventory) of an item.

B. Anticipation by Barnett

Petitioner contends that claims 1 and 19–22 are anticipated by Barnett. Pet. 18–30. We are not persuaded by Petitioner’s contentions for the reasons discussed below.

1. “inventory management system”

Independent claim 1 recites “an automated award fulfillment application program . . . in communication with an inventory management system,” and independent claim 19 recites “providing automated award fulfillment . . . including providing communication with an inventory management system.”

Petitioner cites Barnett’s “database 11” as corresponding to an inventory management system, and contends that “[t]he database manages coupons and ‘information regarding all coupons’ (e.g., coupons selected or redeemed).” *Id.* at 20, 24–25, 27 (citing Ex. 1004, 12:26–32; Ex. 1010 ¶ 39). Dr. Lieberman’s testimony alleges that “Barnett’s database is an inventory management system because it is a system that manages an inventory of coupons and related information.” Ex. 1010 ¶ 39 (citing Ex. 1004, 12:33–34). Patent Owner responds that the Barnett “database 11 is not described as containing or providing inventory information associated with the providers’ products, services or other items associated with coupons defined in the database.” Prelim. Resp. 28. We agree with Patent Owner.

Barnett describes a system for electronic distribution of coupons and marketing incentives to a consumer (user). Ex. 1004, 1:6–13. Barnett

describes database 11 as storing “information . . . regarding the coupon data selected by the user, the coupon data printed by the user, and the requested demographic information,” “information from the coupon redemption center 13 regarding the coupons actually redeemed by the user,” and “information regarding all coupons which are made available by the various coupon issuers 14 from which it will generate coupon data packages for subsequent downloading to users.” *Id.* at 12:27–36. We are not persuaded that Barnett discloses a system that manages the available quantity of an item, as required by our construction of “inventory management system.” Although Barnett describes database 11 as including coupons made available to a user, there is no disclosure of database 11 having any information regarding the available quantity (i.e., inventory) of coupons.

For these reasons, we are not persuaded that Barnett discloses an “automated award fulfillment application program” in communication with an “inventory management system,” as required by claims 1 and 19.

2. *“sponsor-selected geographic location for fulfillment”*

Independent claims 1 and 19 each additionally recite “a sponsor-selected geographic location for fulfillment.”

Petitioner contends that Barnett discloses this limitation in view of: (1) Barnett’s discussion of ZIP code-targeted coupon distribution; (2) the redemption address on the coupon in Barnett’s Figure 3; (3) Barnett’s discussion of electronically sending coupons to a specific retailer; and (4) Barnett’s discussion of “store-specific data.” Pet. 23, 26, 28–29 (citing Ex. 1004, 4:34–37, 9:12–15, 11:39–43; Ex. 1010 ¶ 44). The testimony of Dr. Lieberman cited by Petitioner simply reiterates Petitioner’s contentions. *See* Ex. 1010 ¶ 44; *see also* 37 C.F.R. § 42.65(a) (“Expert testimony that

does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.”). Patent Owner responds that Barnett does not permit a sponsor to dictate any location for coupon fulfillment. Prelim. Resp. 27, 29–30. With respect to the redemption address in Barnett’s Figure 3, Patent Owner explains that this address “is a mailing address associated with the coupon issuer printed on the face of the coupon” and “is presumably used by the redemption center in its role of coordinating settlement between the issuer and redeeming retailer.” *Id.* at 27. We agree with Patent Owner.

Although Barnett discusses targeting consumers by ZIP code for coupon distribution, it does not disclose imposing a geographic location limitation (whether sponsor-selected or otherwise) on where the coupons can be fulfilled. *See* Ex. 1004, 4:34–37. Petitioner does not identify any disclosure in Barnett that a coupon must be redeemed in the consumer’s ZIP code. A consumer appears to be free to fulfill the coupon at the location of his or her choice.

Barnett’s discussion of electronically sending coupons to a specific store is also based on a user selection, rather than a sponsor selection as alleged by Petitioner. Barnett explains that “the user simply selects the store he intends on using at that particular time” (*id.* at 10:42–43) and “[t]he electronic coupon data could also be routed . . . to a retail store where the user will be shopping” (*id.* at 11:39–43). As for Barnett’s discussion of “store-specific data,” this is directed to data presented to a user regarding a user-selected store, such as the layout of a specific user-selected store. *Id.* at 9:12–15, 10:42–43.

With respect to the redemption address on the coupon in Barnett's Figure 3, this appears to be nothing more than the address used by the redemption center, as Patent Owner contends. *See* Ex. 1004, 12:19–25, Fig. 3; Prelim. Resp. 27.

For these reasons, we are not persuaded that Barnett discloses a “sponsor-selected geographic location for fulfillment,” as required by claims 1 and 19.

Petitioner has failed to establish a reasonable likelihood that it would prevail in challenging claims 1 and 19 as anticipated by Barnett because, as discussed above, Petitioner has not shown that Barnett meets at least two limitations of those claims. For the same reasons, Petitioner has failed to establish a reasonable likelihood that it would prevail in challenging dependent claims 20–22 as anticipated by Barnett.

C. Anticipation by Narasimhan

Petitioner contends that claims 1 and 19–25 are anticipated by Narasimhan. Pet. 35–47. We are not persuaded by Petitioner's contentions for the reasons discussed below.

1. “inventory management system”

Petitioner contends that Narasimhan's vendor promotions database 134 corresponds to the required “inventory management system.” *Id.* at 37, 41, 43–44 (citing Ex. 1005, 2:20–24, 4:34–36, 5:28–30; Ex. 1010 ¶¶ 62–63). The testimony of Dr. Lieberman cited by Petitioner simply reiterates Petitioner's contentions. *See* Ex. 1010 ¶¶ 62–63. Patent Owner responds that, in Narasimhan, “[t]he vendor database is not described as containing or providing inventory information associated with providers or their products,

services or other items associated with promotions defined in the vendor database.” Prelim. Resp. 38. We agree with Patent Owner.

Narasimhan provides “an interactive promotion system 100 for accessing and presenting promotions to a user at the user’s remote location and for generating redeemable electronic coupons based on the promotions.” Ex. 1005, 3:5–8. None of the portions of Narasimhan pointed to by Petitioner discloses a system that manages the available quantity of items (promotions or coupons), as required by our construction of “inventory management system.” For example, Narasimhan explains that the authored promotion information preferably resides on a vendor promotions database 134 connected to or associated with the server 108 and is employed to produce the CD-ROM disk 104.” *Id.* at 4:34–37. Narasimhan further discusses “updating promotion information and the like.” *Id.* at 5:29–31. Although this discussion addresses a listing of promotions and coupons, it does not address the available quantity of promotions or coupons.

For these reasons, we are not persuaded that Narasimhan discloses an “automated award fulfillment application program” in communication with an “inventory management system” as required by claims 1 and 19.

2. “*sponsor-selected geographic location for fulfillment*”

Petitioner contends that Narasimhan’s discussion of promotions being “location sensitive” discloses the claimed “sponsor-selected geographic location for fulfillment.” Pet. 39, 42–43, 45 (citing Ex. 1005, 3:21–26, 6:47–49, 8:5–7; Ex. 1010 ¶ 68). Patent Owner responds that Narasimhan only vaguely states that promotions can be “location sensitive,” but does not explain what the term means. Prelim. Resp. 38.

The meaning of “location sensitive” is not clear from the disclosure of Narasimhan. Although Dr. Lieberman testifies that “‘location sensitive’ . . . mean[s] that the sponsor – either the sponsor of the individual award or the sponsor of the incentive program – selects one or more locations for fulfillment that form the basis of the location sensitivity,” he provides no support for this opinion other than citing to Narasimhan’s discussion of a consumer requesting promotions from a specific geographic location and printable promotion-related information. Ex. 1010 ¶ 68 (citing Ex. 1005, 6:47–49, 8:5–8). Narasimhan provides no details regarding the meaning of “location sensitive.”

Column 6, lines 47–49 of Narasimhan state that a consumer can “print out promotion-related information including maps, addresses, telephone numbers, and the like,” but does not discuss any sponsor-selected limitation regarding a fulfillment location. The additional portion of Narasimhan cited by Dr. Lieberman explains that “the user may request a specific type of promotion and/or indicate that he or she wishes to be presented with promotions from a specific geographic area.” Ex. 1005, 8:5–7. This also fails to address any sponsor-imposed limitations regarding a fulfillment location for the promotion. As Patent Owner suggests, for example, “location sensitive” simply may mean that offers are distributed to consumers in a specific location without imposing any limitation on a fulfillment location. Prelim. Resp. 39.

For these reasons, we are not persuaded that Narasimhan discloses the required “sponsor-selected geographic location for fulfillment.”

Petitioner has failed to establish a reasonable likelihood that it would prevail in challenging claims 1 and 19 as anticipated by Narasimhan

because, as discussed above, Petitioner has not shown that Narasimhan meets at least two limitations of those claims. For the same reasons, Petitioner has failed to establish a reasonable likelihood that it would prevail in challenging dependent claims 20–25 as anticipated by Narasimhan.

D. Anticipation by Scroggie

Petitioner contends that claims 1 and 19–25 are anticipated by Scroggie. Pet. 47–58. We are not persuaded by Petitioner’s contentions for the reasons discussed below.

1. “inventory management system”

Petitioner cites Scroggie’s discussion of products available for purchase at a retail store and offers stored on a storage device by manufacturers and retailers as corresponding to the claimed “inventory management system” in communication with an “automated award fulfillment application program.” *Id.* at 49–50, 53, 55 (citing Ex. 1006, 1:49–52, 2:4–13, 2:42–43, 3:40–46, 11:51–53; Ex. 1010 ¶ 81). Dr. Lieberman testifies that Scroggie discloses an “inventory management system” because “the manufacturers and retailers store ‘a variety of offers on the storage device 306’ and Figure 13 shows ‘supermarkets online incentive distribution server’ coupled to the ‘ads. and promotions’ storage device 306.” Ex. 1010 ¶ 81 (citing Ex. 1006, 11:51–53, Fig. 15). Patent Owner responds that Scroggie’s discussion of products available for purchase “is accessed by a separate consumer shopping list creation application,” rather than an award fulfillment application. Prelim. Resp. 45. With respect to storage device 306, Patent Owner contends that the “storage device is an award database, not a separate inventory management system.” *Id.*

Scroggie describes a “shopping list maker,” which allows a consumer to select a store department and items sold in that department to generate a shopping list. Ex. 1006, 9:1–11. The additional portions of Scroggie cited by Petitioner with respect to Scroggie’s discussion of products available for purchase at a retail store are directed to generating a shopping list for a consumer. *See id.* at 2:4–13, 3:40–46. Petitioner offers no explanation as to how the listing of products available for purchase at a retail store used in the “shopping list maker” could correspond to an “inventory management system” in communication with an “automated award fulfillment application program,” as required by the claims.

As for the offers on storage device 306, Scroggie explains that “[a] user 308 logs on to the server 300 through the network 304 and selects from a variety of offers stored on the storage device 306 by manufacturers and retailers.” Ex. 1006, 11:51–53. This discussion of storage device 306 does not include storage device 306 containing or managing information regarding the quantity of offers (or coupons) available. Dr. Lieberman’s testimony does not address this deficiency.

For these reasons, we are not persuaded that Scroggie discloses an “automated award fulfillment application program” in communication with an “inventory management system” as required by claims 1 and 19.

2. *“sponsor-selected geographic location for fulfillment”*

Petitioner contends that Scroggie discloses a “sponsor-selected geographic location for fulfillment” because Scroggie allows the sponsor to select one or more places for fulfillment based on a user’s ZIP code (geographic location), and subsequently allows the user to select a specific location at which to redeem the award. Pet. 51–52, 54, 56 (citing Ex. 1006,

1:47–55, 3:2–7, 3:22–39, 6:44–47, 6:61–64, 8:34–38; Ex. 1010 ¶ 86). The testimony of Dr. Lieberman cited by Petitioner simply reiterates Petitioner’s contentions. *See* Ex. 1010 ¶ 86. Petitioner also cites Scroggie’s discussion of supermarket special offers as meeting this limitation. *Id.* at 54 (citing Ex. 1006, 2:42–43). Patent Owner responds that the consumer, not the sponsor, controls the location for fulfillment in Scroggie. Prelim. Resp. 46. Patent Owner contends that, although the system in Scroggie filters out offers that are not applicable to a consumer’s region, it does not select the fulfillment location for the offers. *Id.* at 47. We agree with Patent Owner.

Scroggie describes a system that provides incentives to consumers “in such a way that they may be redeemed only at a specific retailer selected by each customer.” Ex. 1006, 1:41–43. Scroggie does not discuss any sponsor-imposed limitations on where the incentives can be exercised. For example, Scroggie discusses transmitting offers to consumers based on the consumer’s ZIP code and the incentive offers being exercisable in the customer’s geographic region, but the customer ultimately selects where the offer is redeemed. *Id.* at 1:51–55, 3:2–7, 3:22–39, 6:44–47, 6:61–64. As for the discussion of supermarkets providing special offers, Scroggie explains that information regarding specials at supermarkets in an area determined by a user’s ZIP code is presented to a user, but “[t]he user selects a supermarket.” *Id.* at 8:34–44.

For these reasons, we are not persuaded that Scroggie discloses a “sponsor-selected geographic location for fulfillment,” as required by claims 1 and 19.

Petitioner has failed to establish a reasonable likelihood that it would prevail in challenging claims 1 and 19 as anticipated by Scroggie because, as

discussed above, Petitioner has not shown that Scroggie meets at least two limitations of those claims. For the same reasons, Petitioner has failed to establish a reasonable likelihood that it would prevail in challenging dependent claims 20–25 as anticipated by Scroggie.

E. Obviousness Challenges

Petitioner also challenges claims 1 and 19 as being obvious over Barnett, Narasimhan, or Scroggie. Pet. 30–31, 47, 58. As Patent Owner notes, however, these challenges are conclusory, and the Lieberman Declaration does not provide any meaningful evidence or analysis of obviousness. Prelim. Resp. 32, 42–43, 55. Although the Petition states that “[f]or obviousness grounds, Petitioners evaluate the scope and content of the prior art, any differences between the art and the claims, and the knowledge of a person of ordinary skill in the art” and “provide a rational underpinning to support the references’ combination” (Pet. 17–18), no such analysis or reasoning is provided for any of the obviousness challenges to claims 1 and 19.

For example, with respect to the challenge based on Barnett, Petitioner simply states that “[e]ven if Barnett did not directly anticipate those claims, claims 1 and 19–22 are nonetheless obvious based on the disclosure of Barnett, as detailed in Section VI.A (above) as modified or combined with Dr. Lieberman’s confirmations as documented in his declaration.” Pet. 31 (citing Ex. 1010 ¶¶ 36–49). The cited portions of the Lieberman Declaration, however, address the anticipation challenge based on Barnett, not the obviousness challenge. Paragraph 50 of the Lieberman Declaration addresses obviousness based on Barnett, but only states that Dr. Lieberman considers the limitations of claims 1 and 19 obvious based on his

personal knowledge. Ex. 1010 ¶ 50. Dr. Lieberman concludes that “should it be determined that any specific limitation of the claims is not disclosed by Barnett, it is my opinion that one with ordinary skill in the art would have understood such a limitation to be an obvious variation from the system disclosed in Barnett.” *Id.* The obviousness challenges based on Narasimhan and Scroggie include similar conclusory allegations of obviousness. *See* Pet. 47, 58; Ex. 1010 ¶¶ 75, 93. We are not persuaded by these conclusory statements. *See* 37 C.F.R. § 42.65(a).

For these reasons, Petitioner’s challenges to claims 1 and 19 as obvious over Barnett, Narasimhan, or Scroggie do not cure the deficiencies in the corresponding anticipation challenges discussed above.

Accordingly, Petitioner has failed to establish a reasonable likelihood that it would prevail in challenging claims 1 and 19 as obvious over Barnett, Narasimhan, or Scroggie. For the same reasons, Petitioner has failed to establish a reasonable likelihood that it would prevail in challenging dependent claims 20–22 as obvious over Barnett, dependent claims 23–25 as obvious over Barnett and Powell, and dependent claims 20–25 as obvious over Narasimhan or Scroggie.

III. SUMMARY

Petitioner has failed to demonstrate that there is a reasonable likelihood of prevailing on any of the challenges to the patentability of claims 1 and 19–25 of the ’830 patent.

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IV. ORDER

For the reasons given, it is

ORDERED that the petition is *denied* and no trial is instituted.

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