

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ASKELADDEN L.L.C.,

Petitioner,

v.

NEXTCARD, LLC,

Patent Owner.

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Case IPR2017-00105

Patent 7,552,080 B1

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Before MITCHELL G. WEATHERLY, CARL M. DeFRANCO, and  
MICHAEL L. WOODS, *Administrative Patent Judges*.

WOODS, *Administrative Patent Judge*.

DECISION

Institution of *Inter Partes* Review

37 C.F.R. § 42.108

## I. INTRODUCTION

Askeladden L.L.C. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–11 of U.S. Patent No. 7,552,080 B1 (Ex. 1001, “the ’080 patent”). Pet. 3. Nextcard, LLC (“Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”) to the Petition.

To institute an *inter partes* review, we must determine if the information presented in the Petition shows “a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). Upon consideration of the Petition and for the reasons set forth below, we conclude that the information presented in the Petition establishes a reasonable likelihood that Petitioner would prevail in challenging claims 1–11 of the ’080 patent. Accordingly, pursuant to 35 U.S.C. § 314, we hereby authorize an *inter partes* review to be instituted as to claims 1–11.

Our factual findings and conclusions at this stage of the proceeding are based on the record developed thus far. This is not a final decision as to patentability of claims for which *inter partes* review is instituted. Our final decision will be based on the full record developed during trial.

### A. *Related Proceedings*

Petitioner is not aware of any related proceedings. Pet. 1.

### B. *The ’080 patent (Ex. 1001)*

The ’080 patent relates generally to an online application for a credit card and, more particularly, determining an offer based on an applicant’s preferences. *Id.* at 1:24–26.

According to the '080 patent, an applicant for a credit card specifies certain credit card terms, such as the credit limit, the interest rate, or an annual fee, and may select a term (or terms) that is most important to him or her. *See id.* at 1:50–53, 4:38–41. Based on the applicant's preferred terms, a server will generate an offer that satisfies all or some these preferences, to the extent possible. *Id.* at 1:56–59.

### *C. Illustrative Claim*

Claims 1, 10, and 11 are independent, with claims 2–9 depending directly or indirectly from claim 1. *Id.* at 6:49–8:35. Claim 1 is illustrative of the subject matter at issue and is reproduced below:

1. A computer implemented method of transmitting a customized offer to an applicant comprising:
  - receiving over a network a plurality of terms requested by the applicant, wherein at least one of the requested terms is indicated by the applicant as preferred over at least another one of the requested terms;
  - determining with one or more computers a set of offers for the applicant;
  - if the set of offers includes at least one offer that meets all of the requested terms, selecting with the one or more computer from among the set of offers at least one offer that meets all of the requested terms;
  - if the set of offers does not include at least one offer that meets all of the requested terms but includes at least one offer that meets at least one of the preferred requested terms, selecting with the one or more computers from among the set of offers at least one offer that meets the at least one of the preferred requested terms; and
  - otherwise, not selecting an offer from the set of offers; and
  - transmitting any selected offer from the set of offers to the applicant.

*Id.* at 6:49–7:2.

#### *D. References Relied Upon*

The Petitioner relies in relevant part on the following references:

Short Name	Reference	Ex. No.
Tengel	US 5,940,812, issued Aug. 17, 1999	1006
Walker I	US 5,794,207, issued Aug. 11, 1998	1007
Nabors	US 7,236,983 B1, issued June 26, 2007	1008
Walker II	US 5,970,478, issued Oct. 19, 1999	1010
Watson	US 8,271,379 B1, issued Sept. 18, 2012	1011

#### *E. Alleged Grounds of Unpatentability*

Petitioner contends that claims 1–11 of the '080 patent are unpatentable under the following three grounds:

Ground	Basis	Prior Art	Claim(s)
I	§ 103	Tengel, Walker I, and Nabors	1–6 and 9–11
II	§ 103	Tengel, Walker I, Nabors, and Walker II	7
III	§ 103	Tengel, Walker I, Nabors, and Watson	8

Pet. 3.

Petitioner also relies on the declaration testimony of Professor Justin Douglas Tygar, Ph.D. (Ex. 1013) in support of its Petition. *Id.*

## II. ANALYSIS

### *A. Claim Construction*

As a first step in our analysis, we determine the meaning of the 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*, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation approach). Under that standard, claim

terms are generally given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Although Petitioner and Patent Owner propose different interpretations for certain limitations recited in independent claims 1, 10, and 11 (*compare* Pet. 7–9, *with* Prelim. Resp. 3–7), we determine that there are no limitations that require express construction for the purposes of this Decision. *See Wellman, Inc. v. Eastman Chem. Co.*, 642 F.3d 1355, 1361 (Fed. Cir. 2011) (“[C]laim terms need only be construed ‘to the extent necessary to resolve the controversy.’”) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

### *B. Ground I: Tengal, Walker I, and Nabors*

Petitioner contends that claims 1–6 and 9–11 are unpatentable under 35 U.S.C. § 103 over Tengal, Walker I, and Nabors. Pet. 9.

#### *1. Tengal (Ex. 1006)*

Tengal discloses a system and method for matching the “best available loan to a potential borrower.” Ex. 1006, Abstr. In particular, Tengal describes a process for an applicant to complete an electronic form, where the applicant selects the loan type and specifies certain weighting factors for loan attributes. *Id.* at 2:33–37, 3:5–9. Tengal discloses that these loan attributes may be the loan’s interest rate, origination fee, and closing costs, for example. *Id.* at 7:50–51, Fig. 4. In response to the loan request, Tengal discloses that a single lender may offer a set of loan offers to the applicant, or a plurality of lenders may provide several loan offers in

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