

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVER INFORMATION INC. AND IPEVO, INC.,
Petitioner,

v.

PATHWAY INNOVATIONS AND TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2017-02108
Patent 8,508,751 B1

Before JONI Y. CHANG, THOMAS L. GIANNETTI, and
NORMAN H. BEAMER, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On April 24, 2018, the Supreme Court held that a decision to institute under 35 U.S.C. § 314 may not institute on less than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 2018 WL 1914661, at *10 (U.S.

Apr. 24, 2018). In our Decision on Institution, we determined that Petitioner demonstrated a reasonable likelihood that it would establish that at least one of the challenged claims of the '751 patent is unpatentable. Paper 9, 26. However, we did not institute review of all claims challenged in the Petition. Specifically, we did not institute review of claims 8–10, 12–14, 16, 18, and 20. Paper 9, 24, 25. We also did not institute review as to the grounds based on Krisbergh, Hara, Mitsui, and Ishii. *Id.*

On May 21, 2018, at the Board's request, a telephone conference was held with counsel for the parties to discuss the status of this Proceeding in light of the *SAS* decision, including a discussion of whether the parties might consider a joint motion to limit the Petition to withdraw or waive any grounds set forth therein. In a May 25, 2018 email to the Board, Patent Owner advised that, after further discussion between the parties, Patent Owner preferred to proceed on all of the challenged claims and all grounds raised in the Petition. Patent Owner proposes a two-month extension for all remaining deadlines, starting with Patent Owner's response. Petitioner proposes a one-month extension for the Patent Owner response, and a two-week extension for Petitioner's reply, all other deadlines remaining the same.

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), we modify our Decision on Institution (Paper 9) to include review of all challenged claims and all grounds presented in the Petition (Paper 3, 20) — namely, the following grounds:

- (1) claims 1–5, 7, 18, and 20 as unpatentable under § 103(a) over Morichika alone;

IPR2017-02108
Patent 8,508,751 B1

- (2) claims 8–10, 12, 14, and 16 as unpatentable under § 103(a) over the combination of Krisbergh and Hara;
- (3) claims 13 and 16 as unpatentable under § 103(a) over the combination of Krisbergh, Hara, and Mitsui; and
- (4) claims 1–5, 8, and 16 as unpatentable under § 103(a) over Ishii alone;

FURTHER ORDERED that the Scheduling Order (Paper 8) is modified as follows:

Due Date 1	July 23, 2018
Due Date 2	October 8, 2018
Due Date 3	October 29, 2018

(Remaining dates as scheduled)

IPR2017-02108
Patent 8,508,751 B1

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