

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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HEALTH CARE LOGISTICS, INC.,  
Petitioner,

v.

KIT CHECK, INC.,  
Patent Owner.

Case No. IPR2019-00394  
Patent No. 9,367,665 B2

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**PATENT OWNER'S PRELIMINARY RESPONSE**

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## I. INTRODUCTION

Petitioner Health Care Logistics, Inc. (“Petitioner”) argues that it would have been obvious for a person of ordinary skill in the art (“POSA”) to arrive at the invention of claims 1-3, 5, 7, 8, 24-28, and 30 of U.S. Patent No. 9,367,665 (“the ‘665 Patent”), asserting four different grounds of asserted references.<sup>1</sup>

The allegations in the Petition (“Pet.”), however, fail to meet the basic requirements of a *prima facie* showing of obviousness. Petitioner has failed to show a reasonable likelihood of prevailing as to any of challenged claims 1-3, 5, 7, 8, 24-28, and 30, for the following reasons:

First, Petitioner fails to demonstrate *why* a POSA would have allegedly been motivated to combine any of the references in its four proposed combinations, even though the Board and the Federal Circuit have repeatedly emphasized that such a demonstration is necessary for a proper obviousness combination. Indeed, the Petition does not even *address* whether and why a POSA would have been motivated

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<sup>1</sup> Specifically: (1) Andreasson in view of Sriharto and further in view of Tethrake; (2) Andreasson in view of Sriharto, further in view of Tethrake, and further in view of Lowenstein; (3) Danilewitz in view of an RFID Journal article (which the Petition refers to as “Children’s”) and further in view of Vishik; and (4) Danilewitz in view of Children’s, further in view of Vishik, and further in view of Higham.

to make these combinations—instead, it merely provides generalized descriptions of the references, Pet. at 15-18 (Ground 1), 40 (Ground 2), 41-42 (Ground 3), and 62-63 (Ground 4), and claim charts purporting to map certain elements of claims 1-3, 5, 7, 8, 24-28, and 30 to the individual references' disclosures (but omitting any explanation of why a POSA would have combined the reference with any other reference), *id.* at 18-39 (Ground 1), 40 (Ground 2), 42-62 (Ground 3), and 63 (Ground 4).

Second, the Petition fails to address at all (let alone demonstrate) *how* a POSA would have allegedly combined Petitioner's asserted references. Instead, as discussed above, the Petition only contains generalized descriptions of the references in isolation and attempts to map each reference individually to the elements of claims 1-3, 5, 7, 8, 24-28, and 30, without addressing how a *combination* of the references would allegedly teach or suggest each and every limitation of claims 1-3, 5, 7, 8, 24-28, and 30 (or even how the references would have purportedly been combined by a POSA).

Third, the Petition also fails to demonstrate where each element of the asserted claims is allegedly found in the asserted references. As noted above, the Petition attempts to map the individual references in isolation to the claim elements, without addressing *which* particular disclosure the Petition is relying on to allegedly teach or suggest each claim element. Further, the Petition fails to provide *any* argument

regarding how certain elements of claims 1-3, 5, 7, 8, 24-28, and 30 are allegedly taught or suggested by the prior art, as discussed below.

Finally, the Petition also contains a section entitled “VI.D. State of the Art Prior to the Critical Date of the ’665 Patent,” in which the Petition argues that everything “that is described and claimed in the ’665 Patent was known well prior to the critical date.” Pet. at 9-11. But the broad, conclusory, and unsupported statements in this section (such as the one quoted above) should be given no weight. The section relies entirely on the declaration of Dr. Zoghi. *Id.* at 10-11 (citing Ex. 1003 at ¶¶ 27, 30-45). But Dr. Zoghi’s declaration adds nothing in the way of support. The cited-to portions of Dr. Zoghi’s declaration consist solely of conclusory statements that Dr. Zoghi was “personally aware” of various capabilities of the prior art. Ex. 1003 at ¶¶ 33-44. None of these statements are supported by or even *cite to* underlying facts on which Dr. Zoghi’s opinion is purportedly based. “Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight.” 37 C.F.R. § 42.65(a). Accordingly, neither Zoghi’s conclusory and unsupported arguments, nor those in section VI.D. of the Petition, should be given consideration.

For at least the reasons discussed above, Petitioner has failed to demonstrate a reasonable likelihood of prevailing as to any of claims 1-3, 5, 7, 8, 24-28, and 30.

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