

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HEALTH CARE LOGISTICS, INC.,
Petitioner,

v.

KIT CHECK, INC.,
Patent Owner.

Case IPR2019-00394
Patent 9,367,665 B2

Before JAMES A. TARTAL, GEORGE R. HOSKINS, and
PAUL J. KORNICZKY, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

Health Care Logistics, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–3, 5, 7, 8, 24–28, and 30 of U.S. Patent No. 9,367,665 B2 (Ex. 1001, “the ’665 patent”). Pet. 1. Kit Check, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b); 37 C.F.R. § 42.4(a). An *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows there is 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).

Applying that standard, and upon consideration of the Petition, the Preliminary Response, and the evidence of record, we conclude the information presented does not show a reasonable likelihood that Petitioner would prevail in showing the unpatentability of any of claims 1–3, 5, 7, 8, 24–28, and 30 of the ’665 patent challenged by Petitioner. In particular, for the reasons provided below, we find Petitioner did not provide sufficient reasoning with some rational underpinning to support the legal conclusion that any of the challenged claims of the ’665 patent would have been obvious over the asserted prior art. Accordingly, we deny the Petition and do not authorize institution of an *inter partes* review of the ’665 patent.

II. BACKGROUND

A. *The ’665 Patent*

The ’665 patent, titled “Management of Pharmacy Kits,” issued June 14, 2016, from U.S. Application No. 14/818,113, filed August 4, 2015. Ex. 1001, [21], [22], [45], [54]. The ’665 patent generally relates to a

“system for managing pharmacy kits” using radio frequency identification (“RFID”) tags associated with a pharmacy kit, a reading station configured to read tag information, and an information processing system to determine a status of the pharmacy kit. *Id.* at [57].

According to the ’665 patent, hospital pharmacies use pharmacy kits to manage groups of medical items, such as a group of items specified by a template for a specific medical procedure. *Id.* at 1:19–31. The template may also specify “ways in which individual items [in the pharmacy kit] may be satisfied.” *Id.* at 1:31–32. The ’665 patent explains that a kit is typically created by receiving specified items in a pharmacy, manually recording product identifiers and information, and then loading the items into a container, which may later be updated periodically by manually inspecting the kit, modifying the contents, and recording any changes. *Id.* at 1:49–59. The ’665 patent describes the typical procedure for creating a kit as time consuming, error prone, and inefficient. *Id.* at 1:60–2:2.

As a purported improvement of the techniques and technologies for managing pharmacy kits, the ’665 patent describes the following “system for managing pharmacy kits”:

a reading station configured to read tag information from a plurality of radio frequency identification (RFID) tags associated with a pharmacy kit, and an information processing system operatively connected to the reading station and configured to receive the tag information from the reading station and determine a status of the pharmacy kit based on the tag information, a plurality of stored templates defining contents to be included in each of a plurality of pharmacy kits, and a plurality

of kit records indicating the current contents of a plurality of pharmacy kits.

Id. at 2:9–20. The ’665 patent states that “RFID technology can allow a pharmacy to accurately and efficiently determine whether items in the kit are consumed, missing, expired, or near expiration.” *Id.* at 3:39–42.

B. Illustrative Claims

Challenged claims 1 and 24 are independent. Challenged claims 2, 3, 5, 7, and 8 depend from claim 1, and claims 25–28 and 30 depend from claim 24. Claim 1 is illustrative of the claimed subject matter and is reproduced below:

1. A system, comprising:
 - a pharmacy kit container that includes an enclosed space for receiving a pharmacy kit and at least one door, wherein the enclosed space is accessible through the at least one door, and wherein the pharmacy kit container provides electromagnetic shielding; and
 - an information processing system communicatively coupled to a radio frequency identification (RFID) reader, the information processing system comprising computer-executable instructions that when executed by one or more processors cause the one or more processors to:
 - cause an antenna coupled to the pharmacy kit container to emit a radio signal at least within the enclosed space of the pharmacy kit container when the at least one door is closed;
 - receive tag information associated with a plurality of RFID tags located within the enclosed space based at least in part on the antenna emitting the radio signal at least within the enclosed space of the pharmacy kit container, the plurality of RFID tags being coupled to a plurality of pharmacy item containers,
 - wherein the plurality of pharmacy item containers are configured to store a plurality of pharmacy items,
 - wherein a particular RFID tag of the plurality of RFID tags is coupled to a particular pharmacy item container of

the plurality of pharmacy item containers and the particular pharmacy item container is configured to store a particular pharmacy item of the plurality of pharmacy items, and
wherein the particular RFID tag is associated with particular pharmacy item data comprising at least an identifier of the particular pharmacy item;
verify the pharmacy kit based at least in part on the received tag information and a pharmacy kit template stored in a non-transitory computer-readable medium, wherein the pharmacy kit template identifies a group of pharmacy items that form at least a portion of the pharmacy kit, and wherein to verify the pharmacy kit, the computer-executable instructions cause the one or more processors to compare pharmacy item data associated with the tag information with the pharmacy kit template, wherein the pharmacy item data associated with the tag information comprises at least the particular pharmacy item data; and
cause a display to display results of the verification of the pharmacy kit.

Ex. 1001, 17:38–18:18.

C. *Related Proceedings*

The parties indicate that the '665 patent is a subject of *Kit Check, Inc. v. Health Care Logistics, Inc.*, Case No. 2:17-cv-01041 (S.D. Ohio, filed Dec. 1, 2017). Pet. 1; Paper 3, 1. Petitioner also states that it has requested *inter partes* review of U.S. Patent Nos. 8,990,099 B2 (IPR2019-00376); 9,058,412 B2 (IPR2019-00385); 9,058,413 B2 (IPR2019-00387); and 9,805,169 B2 (IPR2019-00388). Pet. 1–2.

D. *Real Parties in Interest*

Petitioner identifies only itself as a real party in interest. Pet. 1.
Patent Owner identifies only itself as a real party in interest. Paper 3, 1.

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