UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LIGHTSPEED COMMERCE INC.,
Petitioner,

v.

CLOUDOFCHANGE, LLC,
Patent Owner.

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IPR2022-01143
Patent 11,226,793 B2

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Before HUBERT C. LORIN, JEREMY M. PLENZLER, and
CARL M. DeFRANCO, *Administrative Patent Judges.*

PLENZLER, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background and Summary

Lightspeed Commerce Inc. ("Petitioner") filed a Petition requesting *inter partes* review of claims 1–4, 7–28, and 31–44 of U.S. Patent No. 11,226,793 B2 (Ex. 1001, "the '793 patent"). Paper 1 ("Pet.").

CloudofChange, LLC ("Patent Owner") file a Preliminary Response. Paper 6 ("Prelim. Resp.").

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the petition "shows that 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 stated below, we determine that Petitioner has established a reasonable likelihood that it would prevail with respect to at least one of the challenged claims. We hereby institute an *inter partes* review in this proceeding.

B. Related Matters

The '793 patent is a continuation filing of U.S. Patent No. 10,083,012 B2 (Ex. 2016, "the '012 patent"), which is continuation of U.S. Patent No. 9,400,640 B2 (Ex. 2015, "the '640 patent").

The parties indicate that the '793 patent is involved in *CloudofChange, LLC v. Lightspeed POS Inc.*, 6:21-cv-01102 (W.D. Tex. Oct. 22, 2021) ("the Lightspeed Litigation"). Pet. 1 (P[atent] O[wner]'s May 2, 2022 amended complaint in the Lightspeed Litigation alleged infringement of . . . the '793 patent.); Paper 5, 1.

The '640 and '012 patents are also involved in the Lightspeed Litigation, and were both previously involved in a lawsuit *CloudofChange, LLC v. NCR Corporation*, 6-19-cv-00513 (W.D. Tex. Aug. 30, 2019) ("the NCR Litigation"), which resulted in a jury verdict for Patent Owner, but is still pending final judgment. *See* Paper 5 (referencing the NCR Litigation).

The '640 patent is challenged in IPR2022-00779 and the '012 patent is challenged in IPR2022-00997. Trial has been instituted for both proceedings and is currently pending.

C. The '793 Patent

The '793 patent relates to "a system and a method for online, web-based point of sale (POS) building and configuration." Ex. 1001, Abstract. According to the '793 patent, "[c]urrent practice in the field of assembling point of sale systems includes manually coding front-of-screen information," which "contains menu selections, page selections, and general answers to business questions." *Id.* at 1:33–37.

The '793 patent explains that "in the prior art, a specialized programmer had to design the layout and data for these POS touch keys," but "[w]ith this invention, the store operator will be able to build his POS screens online over the Internet." Ex. 1001, 3:5–7, 13–14.

The '793 patent explains that its "POS builder system can be provided as a service or deployed within a corporation," and notes that "[f]or example, Software as a Service (SMS) is a software distribution model in which applications are hosted by a vendor or service provider and made available to customers over a network, typically the Internet." Ex. 1001, 6:11–16.

D. Illustrative Claim

 1. A web-based point of sale (POS) builder system comprising:

  at least one server configured to:

   communicate with one or more POS terminals over a network comprising the Internet, wherein the one or more POS terminals are configured to display one or more POS screens;

   receive, over the network from a POS builder interface, information used for creating or modifying the one or more POS screens including creating or modifying one or more display interfaces for display on the one or

more POS screens, the one or more display interfaces being associated with one or more items;

receive, from at least one of the one or more POS terminals over the network, further information regarding one or more POS transactions corresponding to the one or more items;

configure the one or more POS terminals with the information over the network to create or modify based on the further information regarding one or more POS transactions the one or more POS screens displayed on the one or more POS terminals; and

wherein the further information regarding the one or more POS transactions, the information used for creating or modifying the one or more POS screens, or a combination thereof comprises one or more of employee clock information, customer add/update information, item add/update information, promotion information, loyalty point information, discount information, taxation information, item cost information, or inventory information;

wherein said further information regarding the one or more POS transactions relate to one or more transactions by corresponding customers respectively associated with at least one of said one or more POS terminals.

Ex. 1001, 6:29–64.

E. Evidence and Asserted Grounds

Petitioner asserts that claims 1–4, 7–28, and 31–44 would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–4, 7–28, 31–44	103	Woycik[1]
1–4, 7–28, 31–44	103	Tengler[2]

Petitioner submits a declaration from Stephen Gray (Ex. 1002). Patent Owner submits a declaration from Alex Chang. (Ex. 2012).

II. ANALYSIS

A. Legal Standards

Petitioner bears the burden of persuasion to prove unpatentability, by a preponderance of the evidence, of the claims challenged in the Petition. 35 U.S.C. § 316(e). This burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). The Board may authorize an *inter partes* review if we determine that the information presented in the Petition and Patent Owner's Preliminary Response shows that there is a reasonable likelihood that Petitioner will prevail with respect to at least one of the claims challenged in the Petition. 35 U.S.C. § 314(a). "When instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim." 37 C.F.R. § 42.108(a) (2021).

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[1] US Patent Pub. No. US 2007/0265935 A1, published Nov. 15, 2007 (Ex. 1004).
[2] US Patent Pub. No. US 2005/0049921 A1, published Mar. 3, 2005 (Ex. 1005).

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