

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CELLCO PARTNERSHIP D/B/A
VERIZON WIRELESS
Petitioner,

v.

BRIDGE AND POST, INC.,
Patent Owner.

Case IPR2017-02046
Patent 7,657,594 B2

Before MIRIAM L. QUINN, BARBARA A. PARVIS, and
KEVIN C. TROCK, *Administrative Patent Judges*.

TROCK, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Cellco Partnership d/b/a Verizon Wireless (“Petitioner”) filed a request for *inter partes* review of claims 1–24 (the “challenged claims”) of U.S. Patent No. 7,657,594 B2 (Ex. 1001, “the ’594 patent”). Paper 1 (“Pet.”). Bridge and Post, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”).

Under 35 U.S.C. § 314, an *inter partes* review must 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.” 35 U.S.C. § 314(a). Upon considering the Petition and Preliminary Response, we determine that Petitioner has not demonstrated a reasonable likelihood that it would prevail in showing the unpatentability of at least one of the challenged claims. Accordingly, we do not institute an *inter partes* review as to any claim of the ’594 patent.

A. *Related Proceedings*

Petitioner advises that the ’594 patent is the subject of a civil action, *Bridge and Post, Inc. v. Verizon Commc’ns, Inc.*, Case No. 3:17-cv-00094 (E.D. Va.). Pet. 1–2. Petitioner also advises that the ’594 patent was the subject of an IPR petition filed by Unified Patents, Inc., IPR2017-01423. Pet. 2. Patent Owner identified the same matters, as well as related patent applications. Paper 4, 2.

B. *The ’594 Patent*

The ’594 patent relates to determining directed media to provide to a user on a network, such as the Internet, based on user preferences. Ex. 1001, 1:20–22, 2:1–14. The directed media may include “advertisement, coupons,

video, music, or any other media which is tailored to the user preferences.” *Id.* at 2:41–43. The ’594 patent notes that traditionally, users have been identified on a network through personal accounts or through downloaded programs on the user’s network access device (e.g., “cookies”). *Id.* at 1:29–32. To avoid the problems associated with using cookies to track a user’s computing device, such as a user blocking or deleting cookies (*id.* at 1:52–59), the ’594 patent describes the use of user profiles associated with a persistent device identifier to identify a user’s network access device (*id.* at 2:67–3:4, 3:33–36). “The device identifier may comprise a media access control address (MAC address), an international mobile station identity (IMSI), an international media equipment identity (IMEI), or any anonymous device identifier.” *Id.* at 36–39.

A history module collects and maintains historic information about the network access device, including the number, date, and time of network accesses. *Id.* at 7:57–8:2. A profile engine generates user profiles based on the collected information and associates it with the persistent device identifier. *Id.* at 5:66–6:5, 6:64–7:1. The profile engine may incorporate into the profiles group characteristics, and include group identifiers indicating the associated group. *Id.* at 6:24–27. A media selection optimizer determines a directed media component based on the user profile. *Id.* at 2:15–29. The directed media is then provided to the user’s network access device. *Id.* at 8:54–64.

C. Challenged Claims

Petitioner challenges claims 1–24 of the ’594 patent. Claims 1, 15, and 24 are independent and are substantially similar– the principal difference being that claim 1 recites a method, claim 15 recites a system, and

claim 24 recites a machine-readable storage medium. *Id.* at 11:58–12:31, 13:7–50, 14:17–59. Claim 1 is illustrative.

1. A method for providing directed media to a user on a network, comprising:

receiving a request from the user to access a content provider web site over a network through a network access device operated by the user;

retrieving a persistent device identifier of the network access device;

determining a current network address of the network access device and one or more characteristics of the access device, wherein the current network address is assigned to the network access device by a network service provider for a present network access session;

retrieving historic information for the user, the historic information including patterns of usage for the network access device, and wherein the historic information comprises network access information including times and locations of network access and number of previous network accesses by the network access device;

retrieving location-centric information for a location from which the user is accessing the network;

generating a user profile based on the historic information for the user, the location-centric information, and the one or more characteristics of the access device;

storing the user profile as a record that identifies the user through the current network address and the persistent device identifier associated with the network access device;

incorporating into the user profile one or more group characteristics identifying a group with which the user is associated;

assigning a group identifier to the group based on the patterns of usage;

analyzing the retrieved device identifier, historic information, and location-centric information to determine a directed media component to be provided to the user or the group on the network access device, and

placing directed media referenced by the directed media component in the web site requested by the user request from the content provider, wherein the directed media comprises content that is customized to the user based on the user profile.

Id. at 11:58–12:31.

D. Applied Evidence

Petitioner relies upon the following references:

(1) U.S. Patent No. 6,487,538 B1, issued Nov. 26, 2002 (“Gupta I”) (Ex. 1004);

(2) U.S. Patent Application Publication No. 2001/0020242 A1, published Sep. 6, 2001 (“Gupta II”) (Ex. 1005);

(3) International Patent Application Publication No. PCT/US00/11803, published Nov. 9, 2000 (“Parekh”) (Ex. 1006);

(4) R. Droms, RFC 2131, Dynamic Host Configuration Protocol, March 1997 (“DHCP Protocol”) (Ex. 1008);

(5) U.S. Patent No. 7,366,523 B2, issued Nov. 12, 2002 (“Viikari”) (Ex. 1010);

(6) U.S. Patent Application Publication No. 2005/0172154 A1, published Aug. 4, 2005 (“Short”) (Ex. 1011);

Petitioner also relies on the Declaration of Stephen Gray. (“Gray Decl.”) (Ex. 1013).

E. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Ground 1: Claims 1–3, 5–10, 13–17, and 19–24 are unpatentable

under 35 U.S.C. § 103 as obvious over the combination of Gupta I, Gupta II, Parekh and DHCP Protocol. Pet. 5.

Ground 2: Claims 4 and 18 are unpatentable under 35 U.S.C. § 103 as obvious over the combination of Gupta I, Gupta II, Parekh, DHCP Protocol and Viikari. *Id.*

Ground 3: Claims 11 and 12 are unpatentable under 35 U.S.C. § 103 as obvious over the combination of Gupta I, Gupta II, Parekh, DHCP Protocol and Short. *Id.*

Ground 4: Claims 1–24 are unpatentable under 35 U.S.C. § 103 as obvious over the combination of Gupta I/II, Parekh, DHCP Protocol, Viikari, and Short. *Id.*

II. ANALYSIS

A. *Claim Construction*

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent. 37 C.F.R. § 42.100(b). Consistent with that standard, we assign claim terms their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention, in the context of the entire patent disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Only those terms that are in controversy need be construed, and only to the extent necessary to resolve the controversy. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

Petitioner proposes constructions for the claim terms “network access information” and “location-centric information.” Pet. 10–11. Patent Owner disagrees with Petitioner’s constructions and proposes that these terms be

given their plain meaning because a person of ordinary skill in the art (“POSITA”) would understand them without further construction. Prelim. Resp. 11–30.

For purposes of our decision, we do not find it necessary to construe expressly any claim terms.

B. Asserted References

1. Gupta I (Ex. 1004)

Gupta I relates to advertising on the Internet in which Internet Service Providers (ISPs), or proxies owned by an ISP, insert advertisements transmitted from a web host to a client. Ex. 1004, Abstract. Gupta I states that by providing the ISP with the ability to insert the advertisement, advertisements may appear on small web sites that do not normally attract advertisers. *Id.* at 6:17–19. Gupta I explains that an ISP may collect and store demographic information regarding a user in a profile, as the user utilizes an ISP typically to conduct Internet access. *Id.* at 6:24–26; 9:14–16. The profile information may be used to conduct targeted advertising to the user. *Id.* at 6:31–34. The profile information may be forwarded to an advertiser or advertising agency that evaluates and forwards back an advertisement for the proxy to transmit to the user. *Id.* at 6:41–44. Gupta explains, however, that if the user is at a public terminal, such as a library, the profile may be limited to the user’s recent history and information about the terminal and the terminal’s location. *Id.* at 10:2–5.

2. Gupta II (Ex. 1005)

Gupta II relates to the collection of user demographic information (“profile information”) and advertising on the Internet, in which ISPs, or their proxies, insert advertisements transmitted from a web host to a client.

Ex. 1005, Abstract. The demographic information may include the user's age, residence, credit history, etc., and may also include the web sites that the user has accessed, the time spent on each web site, and any internet searches performed by the user. *Id.* ¶ 33. The profile information may be used to conduct targeted advertising to the user or to customize the user's display. *Id.* ¶ 34. Gupta II explains that the profile and demographic information can be utilized to individually customize information displayed to a customer. *Id.*

3. *Parekh* (Ex. 1006)

Parekh relates to determining the geographic location of an Internet user, profiling the user, and selectively delivering content information based on the geographic location. Ex. 1006, Abstract. For example, *Parekh* collects geographic information by taking an IP address or host name and determining the organization that owns the IP address. *Id.* at 5. *Parekh* determines the route to the host, analyzes it, and maps it against a database of stored geographic locations. *Id.* *Parekh* also gathers information about specific IP addresses based upon Internet user's interactions with various web sites. *Id.* at 31. This information may include the types of web sites visited, and the pages hit, such as sports sites, auction sites, news sites, e-commerce sites, geographic information, bandwidth information, and time spent at the web site. *Id.* The information may be stored as a profile in a database by IP address. *Id.* The geographic location and profile information may be used by web sites to deliver content or advertising based on the geographic location and preferences of visitors. *Id.* at 6.

4. DHCP Protocol (Ex. 1008)

The Dynamic Host Configuration Protocol (DHCP) provides configuration parameters to Internet hosts. Ex. 1008, 2. DHCP consists of two components: a protocol for delivering host-specific configuration parameters from a DHCP server to a host and a mechanism for allocation of network addresses to hosts. *Id.* DHCP is built on a client-server model, where designated DHCP server hosts allocate network addresses and deliver configuration parameters to dynamically configured hosts. *Id.*

DHCP supports three mechanisms for IP address allocation. *Id.* at 3. In “automatic allocation,” DHCP assigns a permanent IP address to a client. *Id.* In “dynamic allocation,” DHCP assigns an IP address to a client for a limited period of time (or until the client explicitly relinquishes the address). *Id.* In “manual allocation,” a client’s IP address is assigned by the network administrator, and DHCP is used simply to convey the assigned address to the client. *Id.* A particular network will use one or more of these mechanisms, depending on the policies of the network administrator. *Id.*

5. Viikari (Ex. 1010)

Viikari relates to “techniques for providing customized content to wireless communications devices across a communications network,” (Ex. 1010, 1:17–19) “based on the location of an access point that is in wireless communication with” a device. *Id.* at 2:11–12. Viikari does this, for example, by including a “location indicator” for the access point in a “resource request,” such as “a hypertext transfer protocol (HTTP) request,” that is forwarded to a content server. *Id.* at 2:11–20. In response, the content server sends a resource, such as an “HTML document[],” customized to the device location indicated by the access point. *Id.* at Fig. 8,

14:29–36.

6. Short (Ex. 1011)

Short relates to a method for providing custom digital content to wireless network enabled devices. Ex. 1011, Abstract. In order to provide custom content, Short uses “an identifier uniquely associated with the client device” (*id.* ¶10), such as “an IMEI (International Mobile Equipment Identifier) number” or “an IMSI (International Mobile Subscriber Identification) number.” *Id.* ¶ 105.

C. Ground 1 - Obviousness Over Gupta I, Gupta II, Parekh, and DHCP Protocol

Petitioner contends that claims 1–3, 5–10, 13–17, and 19–24 of the ’594 patent would have been obvious over the combined teachings of Gupta I, Gupta II, Parekh, and DHCP Protocol. Pet. 19–45. As noted above, claims 1, 15, and 24 are independent and are substantially similar. Petitioner combines its analysis of Gupta I, Gupta II, Parekh, and DHCP Protocol with respect to the three independent claims, 1, 15, and 24. In the Preliminary Response, Patent Owner focuses on several alleged deficiencies in Petitioner’s arguments and evidentiary proof. After reviewing the Petition, and the arguments and evidence presented therein, we determine that Petitioner has not met its burden in demonstrating a reasonable likelihood that it would prevail in showing the unpatentability of at least one of the challenged claims. We discuss some of the deficiencies in the Petition below.

1. Independent Claims 1, 15, and 24

Representative claim 1 recites in pertinent part:

retrieving historic information for the user, the
historic information including patterns of usage

for the network access device, and wherein the historic information comprises network access information including times and locations of network access and number of previous network accesses by the network access device;

Ex. 1001, 12:3–8. Claims 15 and 24 recite similar limitations. *Id.* at 13:19–25, 14:31–36.

Petitioner relies on the combination of Gupta I, Gupta II, and Parekh to teach the recited limitation, asserting that Gupta I and Gupta II teach that “all URL requests, text, and other information” from a client device are “store[d] . . . locally in a raw database,” thereby enabling the proxy or ISP server to track “the time that a user spends on a particular website.” Pet. 33 (citing Ex. 1004, 9:38–41; Ex. 1005 ¶ 57). Petitioner argues that a POSA would have understood that by “tracking all URL requests, it would be trivial to determine the number of previous network accesses” because those requests are stored as raw data. *Id.* (quoting Gray Decl. ¶ 83). Further, Petitioner argues, a POSA would have had reason to track the number of previous accesses because it “would help distinguish between a user’s ‘propensity’ for visiting a web site and a user’s passing interest in doing so, thereby improving the tailoring of content to a user’s interests.” *Id.*

Petitioner also argues Parekh teaches that when “an IP address has previously hit several e-commerce sites and sport sites in the network and that the address is located in California,” this enables provision of “dynamically tailored” content such as “show[ing] sports items for sale that are more often purchased by Californians, such as surf boards.” Pet. 35 (quoting Ex. 1006, 33:10-15). This teaching, Petitioner argues, “allows for more customized experiences for users at e-commerce and information

sites.” *Id.* Petitioner argues that a POSA would understand this discussion in Parekh as describing “tracking the number, times and locations of networks accessed by a network access device because: (1) the reference to ‘previously hit’ implies knowledge of repeat accesses, (2) the reference to ‘dynamically tailored’ implies the ability to track access in real time in order to serve customized content during a particular session, and (3) the reference to the IP address being located in California implies tracking of the location of network access.” *Id.* (quoting Gray Decl. ¶ 89).

Patent Owner argues, however, that Petitioner provides no direct evidence of the recited limitation “wherein the historic information comprises network access information including . . . number of previous network accesses by the network access device.” Prelim. Resp. 53. Patent Owner argues that Petitioner’s Declarant “adds only the generic opinion that any raw data in a database can be counted.” *Id.* at 53–54.

In connection with Figure 1, the ’594 Specification explains that:

[u]nlike much of the prior art where users of computing devices are tracked through cookies on their computing devices or sites the users visit over the Internet, users of the present embodiment can be identified and their preferences determined and tracked *through a user's act of logging onto a network 130 or obtaining network service through a service provider 120.*

Ex. 1001, 3:10–16 (emphasis added). The ’594 Specification explains that “a user activates the network access device 110 in order to communicate with the network 130.” Ex. 1001, 3:24–25. “The service provider 120 is a device configured to provide the network access device 110 *access to the communications network 130.*” *Id.* at 3:46–48 (emphasis added). “The service provider 120 is typically controlled by a business that supplies

network connectivity (e.g. Internet service provider, ‘ISP’).” *Id.* at 3:50–52.

The flow chart depicted in Figure 6 of the ’594 Patent shows that after the user accesses the network, the user then requests content provider page(s). *Id.* at Fig. 6. The ’594 Specification explains that these content providers may be web sites, e-mailers, or file transport (FTP) sites. *Id.* at 3:59–61. The ’594 Specification explains that “[t]ypically, the user will request access to a particular content provider.” *Id.* at 8:18–19. “The content provider 140 then provides the requested content to the requesting user.” *Id.* at 8:54–55; see Fig. 5.

Independent Claims 1, 15, and 24 separately recite, and therefore, distinguish between, “a request from the user to access a content provider web site” and “network access.” These claims also require that the historic information retrieved for the user include “times and locations of *network access* and *number of previous network accesses* by the network access device.” Ex. 1001, cols 12–14 (emphasis added).

Petitioner, however, appears to conflate, and therefore, blur the distinction between, the recited “request from the user to access a content provider web site” and “network access.” Petitioner argues that because Gupta I and Gupta II indicate that “all URL requests, text, and other information” from a client device are “store[d] . . . locally in a raw database,” thereby enabling a proxy or ISP server to track “the time that a user spends on a particular website” (Pet. 33 (citing Ex. 1004, 9:38–41; Ex. 1005 ¶ 57)), that a POSA would have understood that by “tracking all URL requests in a raw database, *it would be trivial to determine the number of previous network accesses by simply counting them since those requests are stored as raw data* in a database.” (Ex. 1013 ¶ 83, emphasis added).

Thus, Petitioner asserts, without sufficient explanation and factual support, that by simply counting URL requests (Uniform Resource Locator requests, i.e. requested web page or web site addresses), a POSA would be able to determine *the number of previous network accesses*. Petitioner, however, provides no factual basis or rationale for equating a user's URL request for a web page with network access granted by an ISP, nor does Petitioner explain how "simply counting" the number of URL requests made by a user provides the number of previous network accesses granted by an ISP to the network access device.

Moreover, Petitioner's argument that Parekh's discussion of "dynamically tailored" content somehow teaches "tracking the number, times and locations of networks accessed by a network access device," is similarly unpersuasive. Pet. 35. Petitioner concludes, without sufficient explanation or factual support, that a POSA would understand this discussion in Parekh as describing "tracking the number, times and locations of networks accessed by a network access device." *Id.*; see also Ex. 1013 ¶ 89.

Petitioner, therefore, has not provided persuasive evidence of how a person of ordinary skill in the art would be able to determine the number of previous network accesses of a network access device by simply counting the number of URL requests made by the user of the device, or how dynamically tailoring content teaches the number of previous network accesses.

Accordingly, we are not persuaded by Petitioner's evidence and arguments that the combined teachings of Gupta I, Gupta II, Parekh, and DHCP Protocol make obvious the recited limitations of independent claims

1, 15 and 24. Therefore, Petitioner has not demonstrated a reasonable likelihood of prevailing in its challenge to independent claims 1, 15, and 24 as obvious over the combined teachings of Gupta I, Gupta II, Parekh, and DHCP Protocol.

2. Dependent Claims 2–3, 5–10, 13–14, 16–17, and 19–23

Petitioner also contends that dependent claims 2–3, 5–10, 13–14, 16–17, and 19–23 would have been obvious over the combined teachings of Gupta I, Gupta II, Parekh, and DHCP Protocol. Pet. 45–55. These dependent claims, however, incorporate all the limitations of the independent claims from which they depend. Petitioner’s arguments and evidence presented with respect to these dependent claims do not remedy the deficiencies in Petitioner’s analysis of independent claims 1, 15, and 24 discussed above. Accordingly, Petitioner has not demonstrated a reasonable likelihood of prevailing in its challenge to dependent claims 2–3, 5–10, 13–14, 16–17, and 19–23 as obvious over the combined teachings of Gupta I, Gupta II, Parekh, and DHCP Protocol.

D. Grounds 2–4

Ground 2 challenges claims 4 and 18 as obvious over the combined teachings of Gupta I, Gupta II, Parekh, DHCP Protocol, and Viikari. Pet. 55–60. Ground 3 challenges claims 11 and 12 as obvious over the combined teachings of Gupta I, Gupta II, Parekh, DHCP Protocol, and Short. *Id.* at 60–62. Ground 4 challenges claims 1–24 as obvious over the combined teachings of Gupta I, Gupta II, Parekh, DHCP Protocol, Viikari, and Short. *Id.* at 62–65.

With respect to Grounds 2 and 3, dependent claims 4, 11, 12, and 18 incorporate all the limitations of the independent claims from which they

depend. Petitioner's arguments and evidence presented with respect to these dependent claims do not remedy the deficiencies in Petitioner's analysis of independent claims 1, 15, and 24 discussed above.

With respect to Ground 4, Petitioner's arguments and evidence presented do not remedy the deficiencies in Petitioner's analysis of independent claims 1, 15, and 24 discussed above with respect to Ground 1.

Accordingly, Petitioner has not demonstrated a reasonable likelihood of prevailing in its challenge to claims 1–24 as obvious over the teachings of Gupta I, Gupta II, Parekh, DHCP Protocol, Viikari, and Short as argued in Grounds 2–4.

III. CONCLUSION

For the foregoing reasons, we determine that Petitioner has not demonstrated a reasonable likelihood that it would prevail in showing at least one of the challenged claims is unpatentable on any of the asserted grounds. Therefore, we do not institute an *inter partes* review with respect to any of the challenged claims of the '594 patent.

IV. ORDER

Accordingly, it is

ORDERED that the Petition is denied as to all challenged claims of the '594 patent and no trial is instituted.

IPR2017-02046
Patent 7,657,594 B2

PETITIONER:

Jay I. Alexander
Andrea G. Reister
COVINGTON & BURLING LLP
jalexander@cov.com
areister@cov.com

PATENT OWNER:

Lauren N. Robinson
Craig Y. Allison
BUNSOW DE MORY LLP
lrobinson@bdiplaw.com
callison@bdiplaw.com