

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHOPIFY, INC., PRICELINE.COM LLC, and BOOKING.COM B.V.
Petitioner,

v.

DDR HOLDINGS, LLC,
Patent Owner.

IPR2018-01014
Patent 8,515,825 B1

Before CARL M. DEFRANCO, PATRICK M. BOUCHER, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

Opinion for the Board filed by *Administrative Patent Judge* BOUCHER.

Opinion Dissenting-in-Part filed by *Administrative Patent Judge*
DEFRANCO.

BOUCHER, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining Some Challenged Claims Unpatentable
35 U.S.C. § 318(a)

In response to a Corrected Petition (Paper 8, “Petition” or “Pet.”) filed by Shopify, Inc., we instituted an *inter partes* review of claims 1–8 and 11–18 of U.S. Patent No. 8,515,825 B1 (“the ’825 patent”). Paper 10 (“Dec.”). During the trial, DDR Holdings, LLC, (“Patent Owner”) filed a Response (Paper 19, “PO Resp.”), to which Shopify filed a Reply (Paper 21, “Reply”) and Patent Owner filed a Sur-Reply (Paper 23, “Sur-Reply”). Subsequent to this briefing, Priceline.com LLC and Booking.com B.V. were joined as parties to the proceeding, and we accordingly refer herein to “Petitioner” as including Shopify, Priceline, and Booking.com.¹ Paper 24. An oral hearing was held with the parties, and a copy of the transcript was entered into the record. Paper 31 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Decision is a Final Written Decision under 35 U.S.C. § 318(a) as to the patentability of the claims on which we instituted trial. Based on the record before us, Petitioner has shown, by a preponderance of the evidence, that claims 1, 2, 5, 8, 11, 12, and 17 are unpatentable.

I. BACKGROUND

A. *The ’825 Patent*

1. *Disclosure*

The ’825 patent “relates to a system and method supporting commerce syndication.” Ex. 1001, 1:23–24. The patent is particularly focused on the

¹ In light of this joinder, we adjusted the one-year pendency for issuing this Final Written Decision. Paper 32.

implementation of “affiliate” marketing systems on the Internet, which Petitioner’s expert, Michael I. Shamos, describes as follows:

Commonly known as affiliate marketing (though the world’s largest system, owned by Amazon.com, actually uses the term associate rather than affiliate), the concept is simple. If website owner A sends a visitor from his website to the ecommerce site owned by website owner B, and if that visitor makes a purchase from B’s website, then B pays A a commission on the sale. A merchant could multiply sales many times by having affiliates market his products.

Ex. 1002 ¶ 16. As the ’825 patent itself explains, with such affiliate marketing systems, “companies let third-party website owners list a subset of their goods (e.g., 10 of Amazon.com’s millions of books, selected by the website owner) and promote them as they choose within their websites.”

Ex. 1001, 2:20–23.

Although the ’825 patent acknowledges that “[t]he benefits of affiliate programs are significant,” it also recognizes that “the greater benefit almost always accrues not to the affiliate, but to Amazon.com and other online stores.” *Id.* at 2:27–33. In particular, the patent identifies a “fundamental drawback of the affiliate programs” as “the loss of the visitor to the vendor,” because, with such an arrangement, the vendor is “able to lure the visitor traffic away from the affiliate.” *Id.* at 2:33–42. The patent describes a solution to this problem by “includ[ing] a data store including a look and feel description associated with a host website.” *Id.* at 4:49–52.

A particular solution relevant to the challenged claims involves three distinct parties: a “host,” which is an operator of a website, a “merchant” selling a product, and an “outsource provider” that facilitates maintaining the

look and feel of the host website when a link to a product of the merchant is selected:

The processor performs the tasks of capturing a look and feel description associated with a host website, storing the captured look and feel description in the data store, providing the host website with a link that link correlates the host website with a commerce object for inclusion within a page on the host website and which, when activated, causes the processor to serve an e-commerce supported page via the communication link with a look and feel corresponding to the captured look and feel description of the host website associated with the provided link and with content based on the commerce object associated with the provided link.

Id. at 4:52–63. In other embodiments described by the '825 patent, “[t]his folds into two parties where one party plays the dual role of Host and Merchant.” *Id.* at 22:40–41.

According to the '825 patent, “[m]erchants are the producers, distributors, or resellers of the goods to be sold through the outsource provider.” *Id.* at 22:45–46. “A Host is the operator of a website that engages in Internet commerce by incorporating one or more link[s] to the e-commerce outsource provider into its web content.” *Id.* at 23:7–9. And the “outsource provider” has a number of functions that provide support services between merchants and hosts, and which may be illustrated with a description of a typical overall transaction process flow. *See id.* at 23:23–51.

In such a typical transaction process, a customer visits a host website and “through contextually relevant content, becomes interested in a product offered.” *Id.* at 23:56–57. The customer selects the item by clicking a product image or similar link, “taking her to [] dynamically generated web

pages which retain the look and feel of the referring Host and are served by the e-commerce outsource provider.” *Id.* at 23:58–63. After browsing through and selecting certain offered products, “the customer initiates the checkout procedure, never leaving the Host website.” *Id.* at 23:64–24:6. A secure checkout interface appears, “still consistent in look and feel with the Host’s referring website,” and the customer provides billing and shipping information. *Id.* at 24:7–12. The customer is returned to another section of the host’s website, “possibly just returning to the page in which the offer was placed.” *Id.* at 24:13–16. The outsource provider passes the order to the merchant, which receives and logs the order before assembling and shipping the order to the customer. *Id.* at 24:17–23. Settlement is effected by the outsource provider periodically remitting payment to the merchant for filled orders and remitting payment to hosts for commissions earned. *Id.* at 24:24–27.

2. Illustrative Claim

Independent claim 1 is illustrative of the claims at issue, and is reproduced below.

1. A method of an outsource provider serving web pages offering commercial opportunities, the method comprising:
 upon receiving over the Internet an electronic request generated by a visitor computer in response to selection of a uniform resource locator (URL) within a source web page that has been served to the visitor computer when visiting a first website, wherein the URL correlates the source web page with at least one commerce object associated with a buying opportunity of a merchant,

(a) automatically, with a server computer associated with a second website, retrieving data pre-stored in a storage device accessible to the server computer, and

(b) automatically, with the server computer, serving to the visitor computer a composite web page of the second website, which composite web page includes:

(i) information associated with the commerce object associated with the URL that has been activated, which commerce object includes at least one product available for sale through the second website after activating the URL, and

(ii) a plurality of visually perceptible elements derived from the retrieved pre-stored data defining an overall appearance of the composite web page that, excluding the information associated with the commerce object, visually corresponds to the source web page,

wherein the owner of the first website is a third party with respect to the owner of the server computer, and the merchant is also a third party with respect to the owner of the server computer.

Ex. 1001, 27:2–30.

B. Evidence Relied Upon

Petitioner relies on the following references.

Moore	US 6,330,575 B1	Dec. 11, 2001	Ex. 1010
Arnold	US 6,016,504	Jan. 18, 2000	Ex. 1011

Digital River Brochure (“Brochure”) (Ex. 1004)

Digital River April 1997 Website (“April 1997 Website”) (Ex. 1005)

Digital River December 1997 Website (“December 1997 Website”) (Ex. 1006)

Corel Web Page (July 1998) (Ex. 1007)

21 Software Drive Web Page (April 1998) (Ex. 1008)

21 Software Drive Web Page (April 1998) (Ex. 1009)²

Petitioner further relies on the Declaration of its witness, Michael I. Shamos, Ph.D. Ex. 1002. Dr. Shamos was cross-examined by Patent Owner, and a transcript of his deposition entered into the record. Ex. 2027. Patent Owner provides a declaration by Arthur M. Keller, Ph.D. Ex. 2025. No cross-examination testimony of Dr. Keller was entered into the record.

C. Asserted Grounds of Unpatentability

Petitioner challenges the patentability of claims 1–8 and 11–18 of the '825 patent on the following grounds. Pet. 4–5.

² Petitioner asserts that certain of its challenges “utilize six different printed publications describing the Digital River system and Digital River websites,” i.e., Exhibits 1004–1009. Pet. 5 n.1. Patent Owner does not challenge Petitioner’s position that “[t]his art may be viewed individually and as two or more together as a whole.” *See id.* Both parties often refer to the six publications collectively in their briefs. Consistent with Petitioner’s usage, we also refer collectively to the six publications as “the Digital River Publications.”

Petitioner also provides evidence in the form of a Declaration by James Pichler authenticating the Digital River Publications as prior-art printed publications. Ex. 1003. Patent Owner does not dispute the sufficiency of Petitioner’s authentication evidence.

Claims Challenged	35 U.S.C. §³	Reference(s)
1–8, 11–18	103(a)	Digital River Publications
1–8, 11–18	102(a)	Moore
1, 3, 11, 13	103(a)	Moore and Arnold
1–8, 11–18	103(a)	Moore and the Digital River Publications

D. Real Parties in Interest

Petitioner identifies Shopify, Inc., The Priceline Group Inc., Priceline.com LLC, Priceline Partner Network, Booking.com B.V., Booking.com Holding B.V., Priceline.com Bookings Acquisition Co., Ltd., Priceline.com International Ltd., Priceline.com Holdco U.K. Ltd., and Priceline.com Europe Holdco, Inc. as real parties in interest. Pet. 1; *Priceline.com LLC and Booking.com B.V. v. DDR Holdings, LLC*, IPR2019-00438, Paper 3, 1 (petition in proceeding where Priceline.com LLC and Booking.com B.V. moved for joinder as parties to this proceeding).

Patent Owner identifies only itself as a real party in interest. Paper 5, 1.

E. Related Proceedings

The parties identify the following district court proceedings as related to this proceeding: (1) *DDR Holdings, LLC v. Priceline.com, LLC*, No. 1:17-cv-498 (D. Del.); (2) *DDR Holdings, LLC v. Booking.com B.V.*, No.

³ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 285–88 (2011), amended 35 U.S.C. §§ 102 and 103. Because the application from which the ’825 patent issued was filed before March 16, 2013, the effective date of the relevant amendment, the pre-AIA versions of §§ 102 and 103 apply.

1:17-cv-499 (D. Del.); (3) *DDR Holdings, LLC v. Ticketnetwork, Inc.*, No. 1:17-cv-500 (D. Del.); (4) *DDR Holdings, LLC v. Shopify, Inc.*, No. 1:17-cv-501 (D. Del.); and (5) *DDR Holdings, LLC v. Travel Holdings, Inc.*, No. 1:17-cv-502 (D. Del.).⁴ Pet. 2; Paper 5, 2–3. In addition, the parties identify *DDR Holdings, LLC v. Hotels.com, L.P.*, 954 F.Supp.2d 509 (E.D. Tex. 2013) and the appeal of that district court case in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). Pet. 2–3; Paper 4, 2–3.

Petitioner further identifies two reexamination proceedings as related, both of which included appeals to the Board: (1) *Ex parte DDR Holdings, LLC*, Appeal No. 2009-0013987, Reexamination Control No. 90/008,374 (BPAI April 16, 2010); and (2) *Ex parte DDR Holdings, LLC*, Appeal No. 2009-0013988, Reexamination Control No. 90/008,375 (BPAI April 16, 2010). Pet. 3.

Patent Owner also identifies pending U.S. Patent Appl. No. 15/582,105 as related to the '825 patent, as well as issued U.S. Patent Nos. 6,629,135, 6,993,572, 7,818,399, 8,515,825, and 9,043,228. Paper 5, 4; *see also* Paper 20 (Patent Owner disclosing completion of prosecution and allowance of Appl. No. 15/582,105). The following *inter partes* review proceedings involve the '825 patent or one of these related patents: (1) IPR2018-00482; (2) IPR2018-01008; (3) IPR2018-01009; (4) IPR2018-01010; (5) IPR2018-01011; and (6) IPR2018-01012. *See id.* at 4–5.

⁴ Patent Owner indicates that these five proceedings were consolidated under No. 1:17-cv-498, and that Nos. 1:17-cv-500 and 1:17-cv-502 have been terminated because the parties settled. Paper 5, 1–2.

II. ANALYSIS

A. Legal Principles

To establish anticipation under 35 U.S.C. § 102, each and every element in a claim, arranged as recited in the claim, must be found in a single prior art reference. *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008); *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). While the elements must be arranged in the same way as is recited in the claim, “the reference need not satisfy an *ipsissimis verbis* test.” *In re Gleave*, 560 F.3d 1331, 1334 (Fed. Cir. 2009); *In re Bond*, 910 F.2d 831, 832–33 (Fed. Cir. 1990). Identity of terminology between the anticipatory prior art reference and the claim is not required. Prior art references must be “considered together with the knowledge of one of ordinary skill in the pertinent art.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

A claim is unpatentable for obviousness under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are “such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) when in evidence, objective

indicia of nonobviousness, i.e., secondary considerations.⁵ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

Additionally, the obviousness inquiry typically requires an analysis of “whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR*, 550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (requiring “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”)); see *In re Warsaw Orthopedic, Inc.*, 832 F.3d 1327, 1333 (Fed. Cir. 2016) (citing *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1360 (Fed. Cir. 2006)).

To prevail on its challenges, Petitioner must demonstrate by a preponderance of the evidence that the claims are unpatentable. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d). “In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)). This burden never shifts to Patent Owner. See *Dynamic Drinkware, LLC v. National Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (citing *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1326–27 (Fed. Cir. 2008)) (discussing the burden of proof in *inter partes* review). Furthermore, Petitioner does not satisfy its burden of proving obviousness by employing “mere conclusory

⁵ The parties do not address objective indicia of nonobviousness, which accordingly do not form part of our analysis.

statements.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016).

B. Level of Skill in the Art

Petitioner contends that a person of ordinary skill in the art “would need to have an undergraduate degree in computer science or a related field, or equivalent experience, and, in addition, at least one year of experience with Web user-interface design, electronic catalogs and online payment processing.” Pet. 8 (citing Ex. 1002 ¶ 58). Petitioner’s declarant, Dr. Shamos, makes the same assertion. Ex. 1002 ¶ 58.

Patent Owner does not specifically advocate for a particular level of skill in the art, but its declarant, Dr. Keller, asserts that he “ha[s] reviewed Dr. Shamos’[s] formulation defining the level of skill o[f] a person of ordinary skill in the art and ha[s] no material substantive dispute.” Ex. 2025 ¶ 18.

Because there is no apparent dispute between the parties, and because Petitioner’s articulation is both reasonable and supported by Dr. Shamos’s testimony and the skill reflected in the prior art of record, we adopt Petitioner’s proposed level of skill for this Decision.

C. Claim Construction

In an *inter partes* review proceeding based on a petition filed prior to November 13, 2018, the Board interprets claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b) (2017); *Cuozzo*

Speed Techs., LLC v. Lee, 136 S. Ct. 2131, 2144–46 (2016) (upholding the use of the broadest reasonable interpretation standard). Under the broadest reasonable interpretation standard, claim terms generally are given their ordinary and customary meaning, as would have been understood by one of ordinary skill in the art at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). An inventor may provide a meaning for a term that is different from its ordinary meaning by defining the term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

The Federal Circuit has cautioned that “[t]he protocol of giving claims their broadest reasonable interpretation . . . does not include giving claims a legally incorrect interpretation.” *In re Skvorecz*, 580 F.3d 1262, 1267 (Fed. Cir. 2009). “Rather, ‘claims should always be read in light of the specification and teachings in the underlying patent.’” *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015) (quoting *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010) (overruled on other grounds by *Aqua Products, Inc. v. Matal*, 872 F.3d 1290 (Fed. Cir. 2017) (en banc))). “Even under the broadest reasonable interpretation, the Board’s construction ‘cannot be divorced from the specification and the record evidence,’ *In re NTP, Inc.*, 654 F.3d 1279, 1288 (Fed. Cir. 2011), and ‘must be consistent with the one that those skilled in the art would reach,’ *In re Cortright*, 165 F.3d 1353, 1358 (Fed. Cir. 1999).” *Microsoft Corp.*, 789 F.3d at 1298.

1. Preliminary Constructions

In the Institution Decision, we provided the following preliminary constructions of terms that appear in claim 1. Dec. 9–12.

“merchants”	producers, distributors, or resellers of the goods or services to be sold
“commerce object”	a product (goods or services), a product category, a catalog, or an indication that product (goods or services), product category, or catalog should be chosen dynamically
“outsource provider”	a party, independent from the host associated with the commerce object and from the merchant of the commerce object, that provides e-commerce support services between merchant(s) and host(s)

Patent Owner comments on these preliminary constructions, such as by expressing a preference that “merchant” be construed in the singular rather than in the plural, but generally accepts the constructions. PO Resp. 6–7. Petitioner does not further remark on these terms as a matter of claim construction in its Reply. Because Patent Owner’s comments do not cause us to reevaluate those preliminary constructions, we adopt them for this Final Written Decision.

2. “commission”

Claims 6 and 15 recite “a contract . . . providing for receipt of a commission based on the level of sale made through activation of the URL

as a result of a transaction involving the commerce object displayed on the source web page.” Ex. 1001, 27:60–63, 29:18–22. Claim 7, which depends from claim 6, incorporates the recitation by reference to “the commission.” *Id.* at 27:63. Petitioner proposes that “commission” be construed as “‘money earned by a host for sales of a third party merchant’s product’s through the host’s website,’ and should not be limited to being earned based on any particular business arrangement.” Pet. 9 (citing Ex. 1002 ¶ 66; Ex. 1021; Ex. 1022). Patent Owner proposes that the term be construed as “money paid to a party by or on behalf of a third-party seller for facilitating the seller’s sales of products.” PO Resp. 34 (citing Ex. 2033, 264).

According to Patent Owner, “Petitioner’s construction ignores the concept, inherent in the word ‘commission,’ of the selling party making a *payment to someone else* for assisting with the sale.” *Id.* In addition, Patent Owner notes that “[a]n additional defect with the proposed construction is that there is no need to include context in the definition of ‘commission’ itself, so referring to ‘hosts’ and ‘merchants’ is unnecessary.” *Id.* at 28 n.6. We agree with these points made by Patent Owner.

The parties have provided three dictionary definitions as evidence, two by Petitioner and one by Patent Owner. In the relevant sense, the American Heritage College Dictionary defines “commission” as “[a] fee or percentage allowed to a *sales representative or an agent* for services rendered.” Ex. 1021 (emphasis added). Webster’s New World Basic Dictionary of American English defines the word as “a part of the money taken in on sales that is paid *to the person making the sale.*” Ex. 1022 (emphasis added). Webster’s Ninth New Collegiate Dictionary defines the

word as “a fee paid *to an agent or employee* for transacting a piece of business or performing a service.” Ex. 2033 (emphasis added). As indicated by the emphasized portions of each definition, the word “commission” is consistently understood as Patent Owner indicates, i.e. “of the selling party making a *payment to someone else* for assisting with the sale.”

We also agree with Patent Owner that the written description of the ’825 patent supports its proposed construction. In particular, the written description refers to the outsource provider as “[m]anag[ing] the commission structure for Merchant-Host relationships,” and also draws a distinction between payment for “filled orders” and “commissions.” Ex. 1001, 23:42–44, 24:24–27.

Accordingly, we adopt Patent Owner’s proposed construction of “commission” as money paid to a party by or on behalf of a third-party seller for facilitating the seller’s sales of products.

D. Digital River Publications

Petitioner challenges claims 1–8 and 11–18 as unpatentable under 35 U.S.C. § 103(a) over the Digital River Publications.⁶

⁶ We have reconsidered the preliminary conclusions expressed in our Institution Decision in light of the full trial record. *See* Dec. 13–15. *TriVascular, Inc. v. Samuels*, 812 F.3d 1056, 1068 (Fed. Cir. 2016) (“[T]he Board is not bound by any findings made in its Institution Decision. At that point, the Board is considering the matter preliminarily without the benefit of a full record. The Board is free to change its view of the merits after further development of the record, and *should do so* if convinced its initial inclinations were wrong.”). We disagree with Patent Owner that Petitioner has waived this ground. *See* Sur-Reply 24.

1. Overview of the Digital River Publications

The Digital River Publications are a Digital River brochure (Exhibit 1004), printouts from the Digital River website from 1997 (Exhibits 1005 and 1006), a printout of a Corel web page (Exhibit 1007), and printouts of a 21 Software Drive web page (Exhibits 1008 and 1009). Pet. 5–6.

The April 1997 website explains that “Digital River’s Secure Sales System (SSS) brings together software manufacturers and dealers[,] enabling them to sell and deliver product via the Internet.” Ex. 1005, 1. The document adds that “it will appear to the consumer as if the transaction is being processed by the manufacturer or dealer while the Digital River SSS is handling the whole transaction ‘behind the scenes.’” *Id.* at 1–2.

Of particular relevance to the challenged claims are the Digital River brochure (“the Brochure”) and the December 1997 website. The Brochure describes an arrangement in which a client of Digital River “will become part of the Digital River Network.” Ex. 1004, 3. Within this network “members will be able to link between each other’s sites so that compl[e]mentary products can be bundled.” *Id.* The December 1997 website further explains that, within the network, products of a given member “will appear on the sites of all the dealers who are part of the Digital River Network.” Ex. 1006, 5.

An integral part of this arrangement is that “the entire transaction takes place in the selling environment” created by the network member, “with your products presented the way you want them presented.” *Id.* This is achieved with “an integrated back-end commerce system tailored just to your site so your customers will feel that they’ve never left your page.” Ex.

1004, 3. Instead, “[a]ll they’ll see is the Digital River icon in the corner of their screen reassuring them that their transaction will be secure, easy, accurate and immediate.” *Id.* Operating within the network, “customers simply hit the purchase icon at your site and the whole process unfolds smoothly.” Ex. 1006, 3.⁷ According to Dr. Shamos, “[t]hese disclosures taught a [person of ordinary skill in the art] that an outsource provider could enable products of a merchant to be marketed across a network of ecommerce websites while maintaining the appearance that a user remained on a single merchant’s webstore throughout the duration of a transaction.” Ex. 1002 ¶ 71.

2. *Combination of the Digital River Publications*

Supported by the testimony of Dr. Shamos, Petitioner contends that a person of ordinary skill in the art “would have understood that each of the Digital River Publications discusses a single system—the DR SSS—and would therefore have viewed these references as a combined teaching as of their respective publication dates.” Pet. 14 (citing Ex. 1002 ¶ 76). In particular Petitioner contends that a person of ordinary skill in the art “would have been motivated to combine their teachings because they include an explicit motivation for doing so” by virtue of the description of what purports to be a common system, with each touting the benefits of their respectively described features. *Id.* (citing Ex. 1002 ¶ 76).

⁷ Consistent with the apparent practice adopted by Petitioner, we cite to the native pagination of Exhibit 1006 throughout.

We agree with this reasoning, which provides rational underpinning to effect the combination of teachings, and which is not contested by Patent Owner.

3. Independent Claim 1

a. Undisputed Limitations

In addressing the specific limitations of independent claim 1, Petitioner contends that the Digital River Publications teach or render obvious the claim's preamble, i.e. "[a] method of an outsource provider serving web pages offering commercial opportunities." Pet. 14–15. As observed by Petitioner, the Digital River Publications describe that the DR SSS brought together manufacturers and dealers to enable them to sell products via the Internet, with the DR SSS acting as the recited "outsource provider" by providing an integrated back-end commerce system. *Id.* at 15 (citing Ex. 1004, 3; Ex. 1005; Ex. 1006, 2–3). Regardless of whether the preamble is limiting, Petitioner's showing for this recitation is sufficient, and not disputed by Patent Owner.

With respect to the claim element reciting "upon receiving over the Internet an electronic request generated by a visitor computer in response to selection of a uniform resource locator (URL) within a source web page that has been served to the visitor computer when visiting a first website," Petitioner points to the ability of Digital River network members to link between each other's sites in a manner that "a customer will feel that they've never left your page." *Id.* at 15–16 (citing Ex. 1004, 3). Petitioner reasons that the recitation is met because "links on source pages direct users to

products of other members in Digital River’s network” and “once a link to a network member has been activated, Web pages are served by a server belonging to Digital River.” *Id.* at 16 (citing Ex. 1005). Specifically, Petitioner identifies the statement of the April 1997 website that “[a] key advantage to a partnership with Digital River is the high level of service offered by the company, including customization of Web presentation so that the SSS remains behind the scenes.” Ex. 1006, 2–3. We agree that the statement supports Petitioner’s position, which is not disputed by Patent Owner.

With respect to the claim limitation that “the URL correlates the source web page with at least one commerce object associated with a buying opportunity of a merchant,” Petitioner identifies the ability of Digital River network members, which are third parties to the outsource provider, to link between each other’s sites. Pet. 16–17 (citing Ex. 1004, 3). From this, Petitioner reasons that the Digital River Publications teach or render obvious “that links on source pages direct users to products of other members in Digital River’s network and that once a link to a network member has been activated, Web pages are served by a server belonging to Digital River.” *Id.* at 17. We agree with this reasoning, which is not disputed by Patent Owner.

The claim also requires that “the owner of the first website is a third party with respect to the owner of the server computer, and the merchant is also a third party with respect to the owner of the server computer.” Petitioner addresses this requirement by observing that the Digital River Publications “teach serving webpages from an outsource provider’s server, i.e., Digital River’s server, having information regarding one or more

products from third party merchants / web site owner.” *Id.* at 19. We agree with this reasoning, which is not disputed by Patent Owner.

b. Serving Limitations

Petitioner addresses further limitations similarly, namely

(a) automatically, with a server computer associated with a second website, retrieving data pre-stored in a storage device accessible to the server computer, and

(b) automatically, with the server computer, serving to the visitor computer a composite web page of the second website, which composite web page includes:

(i) information associated with the commerce object associated with the URL that has been activated, which commerce object includes at least one product available for sale through the second website after activating the URL.

Id. at 17–18. That is, Petitioner observes that the Digital River Publications teach generation and transmission of a second web page to a user in allowing the user to shop for products of another merchant. *Id.* And Petitioner observes that the Digital River Publications disclose links corresponding to purchasing opportunities which, when activated, allow a user to view a web page associated with a selected commerce object. *Id.* at 18 (citing Ex. 1004, 3). Petitioner supports these identifications with testimony by Dr. Shamos. Ex. 1002 ¶ 96.

Patent Owner disputes the sufficiency of Petitioner’s showing with respect to this element. According to Patent Owner, “Petitioner does not explain why links ‘between’ web sites of fellow ‘Network members’ disclose the links from Hosts to Outsource Providers that are the subject of these claim elements.” PO Resp. 42. In particular, Patent Owner contends

that Petitioner’s argument is inconsistent with its identification of the DR SSS with the recited “outsource provider.” *Id.* This contention is not persuasive because each of the network members described in the Digital River Publications is similarly situated, with Digital River providing a web page that appears to be owned by a source merchant. *See* Ex. 1004, 3; Ex. 1006, 2–3.

In addition, Patent Owner contends that the Digital River Publications provide insufficient detail about how the “back end” system might operate, “much less teach doing so by linking away from a Network Member’s site.” PO Resp. 42. But the claim language requires no specific features related to operation of a back-end system. We also disagree with Patent Owner’s interpretation of language in the December 1997 website that the “Digital River Secure Sales System® (S3) lets you . . . sell your products instantaneously, right from *your* site.” Ex. 1006, 2 (emphasis added). According to Patent Owner, “[o]n its face, the page refers to sales taking place on the seller’s *own* site.” PO Resp. 43. But in context, references in the Digital River Publications to “your site” clearly refer to the site maintained by the DR SSS with the member’s desired “look and feel.” *See* Ex. 1006, 3.

We accordingly find that Petitioner makes a sufficient showing with respect to this limitation.

c. Visual-Correspondence Limitations

The remaining limitation of independent claim 1 relates to the requirement of visual correspondence between the composite web page and

the source web page, reciting that the server computer serve “a plurality of visually perceptible elements derived from the retrieved pre-stored data defining an overall appearance of the composite web page that, excluding the information associated with the commerce object, visually corresponds to the source web page.” In addressing this limitations, Petitioner contends that the Digital River Publications “teach serving webpages having information regarding one or more products from third party merchants that include retrieved data that visually corresponds to the source page.” Pet. 18. Petitioner supports this contention with testimony by Dr. Shamos. Ex. 1002 ¶¶ 97. Petitioner’s contention is consistent with the disclosures in at least the Brochure and the November 1997 website. See Ex. 2004, 3 (“Our new account team will develop an integrated back-end commerce system tailored just to your site so your customers will feel that they’ve never left your page.”); Ex. 2006, 3 (“There’s no sensation of being suddenly hustled off to another location. Your customers won’t end up at some foreign-looking page where they have to hunt to find your product.”).

Patent Owner disputes this aspect of Petitioner’s showing. According to Patent Owner, Petitioner’s contention “says nothing about correspondence in ‘*overall* appearance’—the statement that the Digital River-served ‘webpages . . . *include retrieved data* that visually corresponds to the source page’ (emphasis added) does not say that the Digital River page *overall* visually corresponds.” PO Resp. 43–44. This argument is not persuasive in light of *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), in which the Federal Circuit considered similar limitations.

In *DDR Holdings*, the parties had stipulated to a construction of similar terms in related patents as “[a] set of elements related to visual appearance and user interface *conveying an overall appearance* identifying a website; such elements include logos, colors, page layout, navigation systems, frames, ‘mouse-over’ effects, or others elements consistent through some or all of the website.” *DDR Holdings*, 773 F.3d at 1250–51 (emphasis added). The Federal Circuit rejected the argument that such language required an “overall match” in appearance with the host website. *Id.* at 1254 (“There is nothing in the parties stipulated construction of ‘look and feel,’ the claim language, or the specification that requires the generated composite web page to match the host website or to incorporate a specific number, proportion, or selection of the identified ‘look and feel’ elements on a host website”; “There is no claim language requiring an ‘overall match’ or a specific number of ‘look and feel’ elements.”).

During prosecution of related U.S. Patent No. 9,043,228 B1, Patent Owner addressed the Federal Circuit’s comments, and argued to the Examiner that they “are *emphatically not* equally applicable to the pending claims.” Ex. 2005, 61. But in doing so, Patent Owner represented to the Examiner that “the phrase ‘overall match’ was used in the trial in Texas as a shorthand reference to general correspondence of overall appearance.” *Id.* at 62. Such a representation is inconsistent with the Federal Circuit’s express finding that “[t]here is nothing in the parties stipulated construction [which includes ‘conveying an overall appearance’] that requires the generated composite web page to match the host website.” *DDR Holdings*, 773 F.3d at 1254.

Accordingly, we find that Petitioner's showing with respect to the "visual correspondence" limitations is sufficient.

d. Summary

For the foregoing reasons, we find that Petitioner makes a sufficient showing with respect to each limitation of independent claim 1. Petitioner therefore shows, by a preponderance of the evidence, that claim 1 is unpatentable under 35 U.S.C. § 103(a) over the Digital River Publications.

4. Dependent Claims 2–8

a. Claim 2

Claim 2 depends from claim 1 and recites that "the visually perceptible elements comprise data defining a set composed of a plurality of URLs, each of which URLs appear on at least some of the web pages of the first website, and which URLs point to respective web pages of the first website." Ex. 1001, 27:31–35. For this limitation, Petitioner points to the 21 Software Drive web pages filed as Exhibits 1008 and 1009, noting that such web pages "show that the URLs have a common look [and] feel, specifically many of the URLs are bright red text with underline." Pet. 19. We agree that this evidence is consistent with Petitioner's contention that a person of skill in the art "would understand from the Digital River Publications that the URLs of a website would visually correlate." *Id.* (citing Exs. 1004–1006).

Patent Owner disputes this showing because the 21 Software Drive web pages relied on by Petitioner are copies of webpages of a Digital River

client, rather than “copies of the *Digital River* (the supposed Outsource Provider) pages linked from any of these client pages, which is supposedly the ‘composite page.’” PO Resp. 45. This argument is not persuasive. In addressing the independent claim’s recitation of displaying commerce object information “on a composite web page visually corresponding to the source web page,” we note above that the disclosures in both the Brochure and the November 1997 Website provide sufficient disclosure of such a composite web page, of which the 21 Software Drive copies are examples.

We accordingly conclude that Petitioner shows, by a preponderance of the evidence, that claim 2 is unpatentable under 35 U.S.C. § 103(a) over the Digital River Publications.

b. Claims 3 and 4

Claim 3 depends from claim 1 and recites that “the commerce object associated with the URL that has been activated comprises information defining an electronic catalog having a multitude of products offered for sale by the merchant through the second web site, and wherein the composite web page contains one or more selectable URLs connecting a hierarchical set of additional web pages of the second web site, each pertaining to a subset of the product offerings in the catalog.” Ex. 1001, 27:36–43. In addressing these limitations, Petitioner relies on the Brochure’s teaching that “compl[e]mentary products can be bundled” to assert that the Digital River Publications teach that “multiple products can be offered for sale on a single page.” Pet. 20. In addition, Petitioner relies on a shopping-cart functionality

of the 21 Software Drive website, as being “capable of containing multiple product offerings.” *Id.* at 21.

It is unclear from Petitioner’s argument whether it intends to draw a correspondence between the bundling of complementary products and the recited “electronic catalog” or between the shopping cart and the recited “electronic catalog.” At best, Petitioner’s argument appears to suggest that the bundled products are an “electronic catalog” and that movement of those products as a group into the shopping cart results from selecting a URL that “pertain[s] to a subset of the product offerings in the electronic catalog.” Regardless, Petitioner does not sufficiently address the claim’s requirement that the selectable URLs connect “a hierarchical set of additional web pages of the outsource provider website,” each of which pertains to a subset of product offerings. Even crediting Petitioner’s assertion that a person of skill in the art “would have understood that this shopping cart would be capable of containing multiple product offerings,” it is not apparent that movement of bundled products to a shopping cart requires a hierarchical set of additional web pages of the outsource provider website. Claim 4 depends from claim 3, and Petitioner’s showing is accordingly similarly deficient.

We conclude that Petitioner does not show, by a preponderance of the evidence, that claims 3 and 4 are unpatentable under 35 U.S.C. § 103(a) over the Digital River Publications.

c. Claim 5

Claim 5 depends from claim 1 and recites that “the commerce object associated with the URL that has been activated comprises information

defining a multitude of products of at least the merchant, and further comprising, automatically with the server computer, (i) accepting search parameters inputted through the browser of the visitor computer, (ii) using said parameters to search for specific products within the plurality of products, and (iii) serving the results for display using the browser of the visitor computer.” Ex. 1001, 27:50–58. In addressing these limitations, Petitioner observes that “[s]everal Digital River websites utilized search engines on their websites,” referring to the Corel website and the 21 Software Drive websites as examples. Pet. 23 (citing Ex. 1007, 1; Ex. 1008, 1).

In particular, Petitioner points to the fact that “[t]he Corel website provided a structured search that allowed a user to search for software by product, platform, or program.” *Id.* (citing Ex. 1007, 1). We agree that this evidence, which is also supported by testimony of Dr. Shamos, is consistent with Petitioner’s conclusion that a person of skill in the art “would have understood that the Digital River Publications disclose a search engine as part of [] a web storefront for searching for products,” and that “[n]ormal operation of a search engine in the eyes of a [person of skill in the art] would provide search results as required by the second clause of Claim 5.” *Id.* at 23–24 (citing Ex. 1002 ¶ 106).

Patent Owner disputes Petitioner’s showing as providing insufficient proof of the “multitude of products” associated with a single URL. PO Resp. 45–46. This argument is not persuasive in light of the Digital River Publications’ express disclosure of being able to “bundle” products for purchase. *See* Ex. 1004, 3.

Accordingly, we conclude that Petitioner shows, by a preponderance of the evidence, that claim 5 is unpatentable under 35 U.S.C. § 103(a) over the Digital River Publications.

d. Claims 6 and 7

Claim 6 depends from claim 1 and recites that “the owner of the source web page is party to a contract providing for receipt of a commission based on the level of sales made through activation of the URL as a result of a transaction involving the commerce object displayed on the source web page.” Ex. 1001, 27:59–63. In addressing this limitation, Petitioner argues that “[n]o particular type of commission is required” by the claim, and that the Digital River Publications teach that the outsource provider pays network members for product sales, “which requires taking payment information from consumers.” Pet. 24 (citing Ex. 1002 ¶ 107; Ex. 1004, 2).

Patent Owner disputes that the types of payments described by the Digital River Publications are “commissions.” PO Resp. 46. In light of our adopted construction of “commission,” we agree with Patent Owner. The mere fact that the Digital River Publications teach that the outsource provider pays network members for product sales is insufficient to support Petitioner’s position in light of the distinction drawn by the ’825 patent between payment for “filled orders” and for “commissions.” Indeed, in asserting that “Digital River reports sales of your product immediately via e-mail, provides monthly digital registration reports, and most importantly, *supplies you with a check from your sales,*” the Brochure appears to refer to

payment for filled orders. Ex. 1004, 2. Claim 7 depends from claim 6, and Petitioner's showing is accordingly similarly deficient.

We conclude that Petitioner does not show, by a preponderance of the evidence, that claims 6 and 7 are unpatentable under 35 U.S.C. § 103(a) over the Digital River Publications.

e. Claim 8

Claim 8 depends from claim 1 and recites that

the composite web page contains a further URL associated with the information associated with the commerce object associated with the URL that has been activated, which URL, when activated by the web browser, places data representing the commerce object into a virtual shopping cart, and further comprising, automatically with the server computer, accepting inputted billing information from the visitor computer, recording the billing information, and using the billing information to facilitate payment to the merchant for the commerce object associated with the activated URL when the server computer detects activation by the web browser of a checkout URL associated with the shopping cart.

Ex. 1001, 28:1–13. For these limitations, Petitioner observes that the Digital River Publications disclose being able to “bundle” products for purchase.

Pet. 26 (citing Ex. 1002 ¶ 109; Ex. 1004, 3). In addition, at least some of the Digital River Publications make explicit reference to shopping-cart functionality. See Ex. 1009, 1 (references to “add to cart,” “view cart,” “modify cart,” “check out”). Also, Dr. Shamos testifies that “shopping cart functionality was a common approach to ecommerce Web page design at the time of the alleged invention, and a [person of skill in the art] at the time of the alleged invention would have understood that the Digital River

Publications would accommodate such functionality.” Ex. 1002 ¶ 109. Furthermore, Petitioner reasons, supported by the testimony of Dr. Shamos, that a person of skill in the art would understand such functionality “to mean that the system would record information about the customer’s payment and process a payment to the merchant.” Pet. 26.

We agree with Petitioner’s reasoning, which is not separately disputed by Patent Owner outside of its general argument, addressed above, that the 21 Software Drive webpages are client webpages rather than Digital River webpages. *See* PO Resp. 45. Accordingly, we conclude that Petitioner shows, by a preponderance of the evidence, that claim 8 is unpatentable under 35 U.S.C. § 103(a) over the Digital River Publications.

5. Claims 11–14

Claims 11–14 are apparatus claims that recite elements that parallel the steps of method claims 1–4. Petitioner relies on that correspondence in arguing that claims 11–14 would have been obvious over the Digital River Publications. Pet. 27. Because Petitioner makes a sufficient showing for claims 1 and 2, but not for claims 3 and 4, we find that Petitioner makes a sufficient showing for claims 11 and 12, but not for claims 13 and 14. In doing so, we note that Patent Owner makes no arguments for the apparatus claims independent from its arguments for the method claims. *See* PO Resp. 45–46.

For the same reasons as discussed above, we conclude that Petitioner shows, by a preponderance of the evidence, that claims 11 and 12 are unpatentable under 35 U.S.C. § 103(a) over the Digital River Publications.

Similarly, for the same reasons as discussed above, Petitioner does not show, by a preponderance of the evidence, that claims 13 and 14 are unpatentable under 35 U.S.C. § 103(a) over the Digital River Publications.

6. Claims 15 and 16

Petitioner characterizes claim 15 as “a system claim reciting largely the same elements as are found in method claims 6 and 7, though claim 15 recites the limitations in opposite order.” Pet. 27. Petitioner relies on the correspondence with claims 6 and 7 in arguing that claim 15 is unpatentable over the Digital River Publications. Because we find Petitioner’s analysis insufficient with respect to the recitation of a “commission” in those claims, we find that Petitioner makes an insufficient showing with respect to claim 15. For the same reason, Petitioner’s showing with respect to claim 16, which depends from claim 15, is also insufficient.

We conclude that Petitioner does not show, by a preponderance of the evidence, that claims 15 and 16 are unpatentable under 35 U.S.C. § 103(a) over the Digital River Publications.

7. Claims 17 and 18

Petitioner characterizes independent claim 17 as “a system claim reciting largely the same elements as are found in method claim 1, though in a different order.” Pet. 29. As observed by Patent Owner, that characterization is incorrect because “[c]laim 17 is a method claim, not a system claim, and is not reordered.” PO Resp. 47. Despite this inaccuracy in its general characterization of claim 17, Petitioner cites the testimony of

Dr. Shamos, which provides an explicit identification of the correspondences between apparatus claim 17 and method claim 1. Pet. 29 (citing Ex. 1002 ¶¶ 115–122). In light of Dr. Shamos’s specific identifications and of Petitioner’s complete analysis of claim 1, we find that Petitioner makes a sufficient showing that each of the limitations of claim 17 is taught or suggested by the Digital River Publications.

Patent Owner contends that “claim 17 has additional elements compared to claim 1,” and specifically identifies claim 17’s recitation of a dynamically generated composite web page containing instructions that “direct the visitor computer to download data defining the visually perceptible elements form a storage device.” PO Resp. 47. We disagree with Patent Owner that this limitation is not sufficiently addressed by Petitioner. Dr. Shamos identifies this limitation as “substantially similar” to the limitation of claim 1 that recites “retrieving data pre-stored in a storage device accessible to the server computer,” for which we find Petitioner makes a sufficient showing as described above. Accordingly, we conclude that Petitioner makes a sufficient showing for claim 17.

Claim 18 depends from claim 17 and recites that “the storage device is coupled to the server computer associated with the second website.” Ex. 1001, 30:21–23. Petitioner offers no reasoning why this limitation is taught or suggested by the Digital River Publications. See PO Resp. 49 (“The Petition (at 4) includes dependent claim 18 in the list of claims supposedly obviated by the Digital River Publications, but the discussion

contains no reason for invalidation.”).⁸ Although we recognize the modest nature of the additional recitation of claim 18, it exceeds our role to make Petitioner’s argument for it—particularly since Petitioner made no effort to remedy the apparent omission in its Reply, filed after Patent Owner highlighted the omission in its Response. See Sur-Reply 24 (“The Reply does not mention Ground 1 (obviousness over Digital River Publications) at all, as to any claim . . .”).

Accordingly, we conclude that Petitioner shows, by a preponderance of the evidence that claim 17 is unpatentable under 35 U.S.C. § 103(a) over the Digital River Publications. Petitioner does not show, by a preponderance of the evidence, that claim 18 is unpatentable under 35 U.S.C. § 103(a) over the Digital River Publications.

E. Anticipation by Moore

1. Overview of Moore

Moore describes “methods and apparatus for providing a scalable distributed Internet commerce system.” Ex. 1007, 1:11–13. In doing so, Moore addresses three “major functions,” namely: (1) “the virtual presentation, using text, graphics, or otherwise, of a merchant’s products to customers[, which] is sometimes called the ‘electronic storefront’ or ‘Web storefront,’ or in the case of a catalog merchant, the ‘electronic catalog’”;

⁸ Because Petitioner provides no reasoning whatsoever with respect to claim 18, we are uncertain whether Petitioner’s listing of claim 18 in the challenge was inadvertent or intentional. *Compare* Pet. ii (omitting claim 18 from Table of Contents), *with* Pet. 4, 29 (listing but not addressing claim 18). As a precaution, we nonetheless address claim 18.

(2) “maintenance of inventory, stock, pricing, and availability of each product, as well as tracking sales and revenues”; and (3) “performing the electronic transactions for payment in a secure environment, where the collection of a customer’s payment information, such as a credit card, is performed.” *Id.* at 2:4–19.

Figure 4 of Moore is reproduced below.

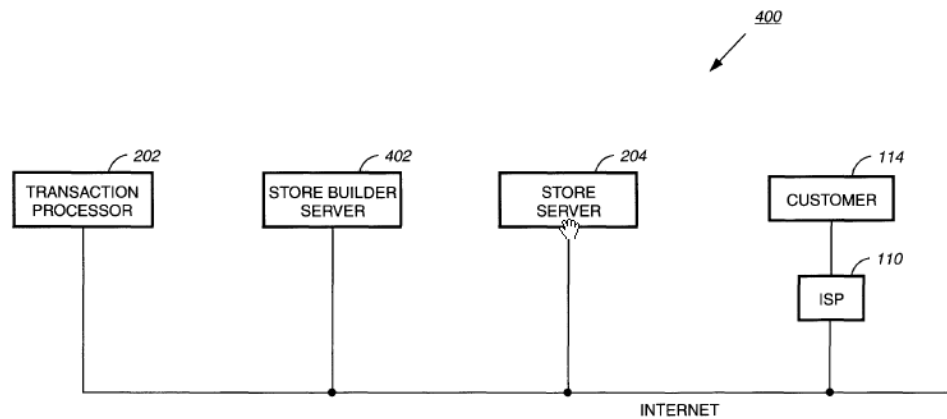


FIG. 4 PRIOR ART

Figure 4 illustrates distributed electronic commerce system 400 in which the three functions of product presentation, database management, and transaction processing are distributed among different servers, rather than integrated into a single server as was sometimes previously done. *Id.* at 4:23–33, 4:43–46, 5:51–53. Specifically, in this distributed system, “Store Server” 204 allows a customer to browse the content of a web storefront, *id.* at 6:12–14; “Store Builder Server” 402 manages a shopping-basket function in response to customer selections, *id.* at 6:16–38; and “Transaction

Processor” 202⁹ establishes a secure connection to allow the customer to provide payment information, but “is not involved until money is ready to be transferred,” *id.* at 6:44–55.

In the system, Store Server 204 “performs one basic service, and that is to present the multi-media content to the customer in order to let the customer shop.” *Id.* at 7:28–30. “The format of this presentation is controlled by the merchant,” such as by using a “Development Tool” that “allows the merchant to design, build, and publish a web site in a short period of time.” *Id.* at 7:30–32, 8:41–43. Store Builder Server 402 is used “to help the merchant get his Web storefront up and running,” and “to provide the shopping basket for the customer.” *Id.* at 7:49–50, 7:61–62. Transaction Processor 202, which is managed by a transaction service provider, “has only one general responsibility, and that is to process the customer’s information.” *Id.* at 8:2–4. “This involves getting the information from the customer and transferring it to the merchant.” *Id.* at 8:4–5.

The Development Tool, which may be downloaded from Store Builder Server 402, breaks the design process down into four steps: (1) selection of a Web site (industry) category; (2) collection of optional page header and footer information; (3) selection of defaults for a background color or image, and for a page style; and (4) filling in the content of each page. *Id.* at 10:44–61. Although we do not reproduce the

⁹ Although the drawing identifies “Transaction Processor 202,” Moore describes functions of the system in terms of “Transaction Server 202,” on which is maintained “Transaction Processor 102.” Ex. 1007, 4:46–51.

sequence of drawings used by Moore to illustrate the Development Tool, we make two particular observations about them. First, these four steps are described in a section of Moore titled “Building a Page” and illustrated in Figures 6–14. *Id.* at 10:43–11:67. The last of these drawings, Figure 14, includes a step for “PUBLISHING THE SITE,” and Moore provides the following explanation:

When the pages are all created, the Development Tool allows the merchant to upload or publish the Web pages to a site specified by the merchant. The merchant must, of course, provide the login ID and password. FIG. 14 shows a screen which prompts the merchant for the publishing information.

Id. at 11:62–67.

Second, in a separate section titled “Interfacing with a Distributed Electronic Commerce System,” Moore refers to Figures 15 and 16 in describing a “preferred embodiment” that uses a special URL referred to as a “price URL.” *Id.* at 12:1–32. “The price URL has attached an encrypted message that contains a text description of the item for sale, including a picture, its costs, quantity of measure, the merchant’s ID, several fields used to customize the Buy Page that is created from the attached data, and a special signature from the Store Builder Server.” *Id.* at 12:12–18. In addition, “[t]he Store Builder Server is able to decrypt the price URL data and convert it into an HTML page (a Buy Page),” an example of which is illustrated with Figure 16. *Id.* at 12:25–28.

2. Analysis

Petitioner challenges claims 1–8 and 11–18 as anticipated by Moore. Pet. 29–47. Of particular relevance to our analysis are the limitations of independent claims 1, 11, and 17 that recite a “plurality of visually perceptible elements” that define “an overall appearance of the composite web page that, excluding the information associated with the commerce object, visually corresponds to the source web page.” Ex. 1001, 27:22–26, 28:54–59, 30:6–11.

In addressing these limitations, Petitioner contends that Moore “discloses that during the design process, header and footer information is collected for use on every page.” Pet. 37 (citing Ex. 1002 ¶ 121; Ex. 1010, 10:43–11:67, Fig. 7). From this contention, Petitioner concludes that a person of ordinary skill in the art “would have understood that *Moore* discloses that all of the Web pages, including the buy page(s), contain headers and/or footers that provide visually perceptible elements corresponding to the source page, such as company name, logo, URLs, and/or e-mail address information.” *Id.* (citing Ex. 1002 ¶ 133; Ex. 1010, 7:48–60, 12:23–24, Fig. 15). Patent Owner specifically disputes this characterization of Moore. *See* PO Resp. 9–25. According to Patent Owner, “Moore’s reference to causing a ‘default header and footer’ to appear on ‘all pages’ . . . forms the entire basis for Petitioner’s claim that Moore teaches visual correspondence.” *Id.* at 14.

Under Petitioner’s reading of Moore, the “default” headers and footers described in connection with Figure 7 of Moore apply both to the storefront pages and to the Buy Pages. *See* Reply 2 (“Moore describes creating a

default header and footer under the ‘Building a Page’ subheading of the description of the Development Tool.”). According to Petitioner, within the context of such defaults, the Buy Page is “a special type of page” that “require[s] further customization” because “Buy Pages have some additional, specialized attributes.” *Id.* at 6 (citing Ex. 1010, 12:1–32).

Conversely, under Patent Owner’s reading of Moore, such “default” headers and footers are limited to the storefront pages. *See* PO Resp. 13 (“Every reference to ‘all pages,’ ‘any pages,’ and the like are contained within the section of Moore talking about the Storefront Pages ‘uploaded or published’ in that fashion. The Buy Page, by contrast is defined by a separate section of the Development Tool.”). That is, according to Patent Owner, “Moore teaches separate parts of his Development Tool to define the Buy Page appearance and storefront page appearances.” *Id.* at 14. In particular, according to Patent Owner, “Moore does not mention having his Development Tool use information provided during the creation of Storefront pages to create Buy Pages.” *Id.* at 15 (citing Ex. 2025 ¶ 32). Petitioner disagrees, asserting that “[n]o distinction is made between Storefront and Buy Pages, and creating the special characteristics of the Buy Page.” Reply 2; *see also* Tr. 9:24–10:1 (Petitioner conceding that Moore “doesn’t explicitly say that it’s going to be at the top of each storefront page and each buy page,” but arguing that the language of Moore is also not limited to “each storefront page.”).

As we note above in our general summary, Moore has a well-defined delineation between its description of building the storefront pages and using a price URL to interface with a distributed ecommerce system by way of a

Buy Page. This is reflected in the use of different textual sections and a logical separation between the two distinct phases by including a publication step in Figure 14. In addition to highlighting this delineation, Patent Owner observes a degree of redundant duplication that would be present under Petitioner's reading of Moore:

Figure 8 shows a dialog that allows a user to select a background for the store pages. But Figure 15 shows a second control for specifying the background of the Buy Page. That control would be pointless if the prior selection specified a common background for both store pages and Buy Pages. Likewise Figure 15 has separate and redundant controls to select text color, text size, and text background, unique to the Buy Page.

PO Resp. 20 (citing Ex. 1010, 28:16–29:16; Ex. 2025 ¶ 28). According to Dr. Keller, “[t]he fact that the two parts have a redundant element, namely *each* having a ‘background’ setting, strongly suggests that it would *not* have been obvious to have carried over the store configurations to the Buy Page.” Ex. 2025 ¶ 28. The overall structure of Moore thus more strongly supports Patent Owner's reading. In particular, we agree with Patent Owner that there would be little point to providing duplicative control over specifying the background of the Buy Page, and—in light of that overall structure—neither Petitioner nor its expert provide convincing reasons otherwise.

In making its argument, Petitioner also relies on an ambiguity in Figure 16 of Moore (an example of a Buy Page). It is undisputed that Figure 16 shows no headers and footers, which is consistent with Patent Owner's position, but Petitioner points out that portions of the Buy Page where those would be seen are absent from the drawing, as evident from the vertical

scroll bar seen on the right side of the drawing. Reply 16. This ambiguity is insufficient to counter our finding that Moore uses different templates for designing the owner's web storefront and the owner's Buy Pages.

For these reasons, Petitioner does not persuade us that Moore discloses a "plurality of visually perceptible elements" that define "an overall appearance of the composite web page that, excluding the information associated with the commerce object, visually corresponds to the source web page," as recited in independent claims 1, 11, and 17. We accordingly conclude that Petitioner does not show, by a preponderance of the evidence, that the challenged independent claims are anticipated by Moore. Because the dependent claims implicitly include those limitations also, Petitioner also does not show, by a preponderance of the evidence, that claims 2–8, 12–16, or 18 are anticipated by Moore.

F. Obviousness over Moore and Arnold

Petitioner challenges claims 1, 3, 11, and 13 as unpatentable under 35 U.S.C. § 103(a) over Moore and Arnold. Pet. 47–53. In doing so, Petitioner offers no reasoning why Arnold discloses the limitations that we find are not disclosed by Moore. *See id.* at 51 ("Claim 1 is rendered obvious by Moore in view of Arnold for the same reasons articulated above . . . in which anticipation of claim 1 by Moore is shown."), 53 (similar statement directed at independent claim 11); PO Resp. 34 (Patent Owner contending that Petitioner's argument "does not rely on anything in Arnold allegedly addressing the feature discussed above as missing from Moore"). This is true even with Petitioner's more specific arguments directed at dependent

claims 3 and 13, for which Petitioner argues only that the specific additional limitations recited in those claims are disclosed by Arnold. *See* Pet. at 51–53.

Because Petitioner articulates no basis under which Arnold accounts for the deficiencies in the disclosure of Moore, we conclude that Petitioner does not demonstrate, by a preponderance of the evidence, that claims 1, 3, 11, or are unpatentable for obviousness over the combination of Moore and Arnold.

G. Obviousness over Moore and the Digital River Publications

Petitioner challenges claims 1–8 and 11–18 as unpatentable under 35 U.S.C. § 103(a) over Moore and the Digital River Publications. Pet. 53–55. The “factual inquiry” into the reasons for “combin[ing] references must be thorough and searching, and the need for specificity pervades.” *In re Nuvasive, Inc.*, 842 F.3d 1376, 1381–82 (Fed. Cir. 2016) (internal quotations and citations omitted). A determination of obviousness cannot be reached where the record lacks “explanation as to how or why the references would be combined to produce the claimed invention.” *Trivascular, Inc. v. Samuels*, 812 F.3d 1056, 1066 (Fed. Cir. 2016); *see Nuvasive*, 842 F.3d at 1382–85; *Magnum Oil*, 829 F.3d at 1380–81.

Although Petitioner generally addresses *why* a person of skill in the art would combine the teachings of Moore and the Digital River Publications, it does not provide sufficient explanation of *how* such a combination would be effected. *See* Pet. 53–54. Instead, Petitioner generically argues that a person of skill in the art “would have found it

advantageous to implement *certain aspects* of the Digital River Publications in the system described by Moore” without specifically identifying which “certain aspects” would be implemented. Pet. 54 (emphasis added). Rather than articulate which specific features of the combination would address the deficiencies in its anticipation challenge by Moore, Petitioner merely relies on those separate analyses without any specific integration of teachings. See Pet. 51 (“Claims 1-8 and 11-18 are rendered obvious by *Moore* in view of the *Digital River Publications* for the same reasons articulated above with respect to Ground 2, in which anticipation of claims 1-8 and 11-18 by Moore were shown and with respect to Ground 1, in which obviousness of claims 1-8 and 11-18 in view of *Digital River Publications* are shown.”).

Conclusory reliance on those analyses in asserting that a person of skill in the art “would have understood these teachings of *Moore* and the *Digital River Publications* to render claims 1-8 and 11-18 obvious” is insufficient to meet Petitioner’s burden. See *id.*; *Harmonic*, 815 F.3d at 1363 (“[T]he petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.”).

We accordingly conclude that Petitioner does not demonstrate, by a preponderance of the evidence, that claims 1–8 or 11–18 are unpatentable for obviousness over Moore and the Digital River Publications.

III. CONCLUSION

In summary, we make the following conclusions.¹⁰

Claims	35 U.S.C. §	Reference(s)	Claims Shown Unpatentable	Claims Not Shown Unpatentable
1–8, 11–18	103(a)	Digital River Publications	1, 2, 5, 8, 11, 12, 17	3, 4, 6, 7, 13– 16, 18
1–8, 11–18	102(a)	Moore		1–8, 11–18
1, 3, 11, 13	103(a)	Moore and Arnold		1–8, 11–18
1–8, 11–18	103(a)	Moore and the Digital River Publications		1–8, 11–18
Overall Outcome			1, 2, 5, 8, 11, 12, 17	3, 4, 6, 7, 13– 16, 18

¹⁰ Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner’s attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. § 42.8(a)(3), (b)(2).

IV. ORDER

It is

ORDERED that, based on a preponderance of the evidence, claims 1, 2, 5, 8, 11, 12, and 17 of U.S. Patent No. 8,515,825 B1 have been shown to be unpatentable;

FURTHER ORDERED that, based on a preponderance of the evidence, claims 3, 4, 6, 7, 13–16, and 18 of U.S. Patent No. 9,639,876 B1 have not been shown to be unpatentable; and

FURTHER ORDERED that, because this is a final written decision, parties to this proceeding seeking judicial review of our decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHOPIFY, INC., PRICELINE.COM LLC, and BOOKING.COM B.V.
Petitioner,

v.

DDR HOLDINGS, LLC,
Patent Owner.

IPR2018-01014
Patent 8,515,825 B1

DEFRANCO, *Administrative Patent Judge, dissenting-in-part.*

I respectfully dissent from the portion of the majority opinion holding that Petitioner fails to prove that dependent claims 3, 4, 6, 7, 13, 14, 15, and 16 are unpatentable as obvious over the Digital River Publications (collectively, Exhibits 1004–1009). *See* Majority Op. *supra*, §§ II.D.4.b, II.D.4.d, II.D.5, II.D.6.

Claims 3, 4, 13, and 14

Claim 3 depends from claim 1 and recites two “wherein” clauses. The *first* wherein clause requires that the host merchant’s web page include a “catalog” of product offerings for sale, and the *second* wherein clause requires that the host merchant’s web page include at least one “selectable

URL” connecting to “a hierarchical set” of web pages that is a “subset” of the catalog’s product offerings. Ex. 1001, 27:36–43.

As for the first “wherein” clause, the majority appears to find Petitioner’s showing is sufficient. In particular, the majority finds, and I agree, that “Petitioner’s argument appears to suggest that the *bundled products* [as taught by Digital River Brochure] are an ‘electronic catalog’ and that movement of those products as a group into the shopping cart results from selecting a URL that ‘pertain[s] to a subset of the product offerings in the electronic catalog.’” Majority Op. *supra*, § II.D.4.b (citing Pet. 20–21); *see also* Ex. 1004, 3; Ex. 1006, 2–3 (describing Digital River’s ability to provide clients with storefront web pages that have multiple links to “bundled” products of other network members). I also agree with the majority’s finding that “a person of skill in the art ‘would have understood that [Digital River’s] shopping cart would be capable of containing multiple product offerings.’” *Id.*; *see also* Ex. 1002 ¶¶ 101–102 (unrebutted testimony of Petitioner’s expert as to Digital River’s “shopping cart”). Those express findings by the majority can only mean that Petitioner sufficiently shows that the Digital River Publications teach the first wherein clause of claim 3.

As for claim 3’s second “wherein” clause, the majority finds that “Petitioner does not sufficiently address the claim’s requirement that the selectable URLs connect ‘a hierarchical set of additional web pages of the outsource provider website,’ each of which pertains to a subset of product offerings.” Majority Op. *supra* § II.D.4.b. In doing so, the majority explains that “*it is not apparent that movement of bundled products to a*

shopping cart requires a hierarchical set of additional web pages of the outsource provider website.” *Id.* (emphasis added). The majority provides no further explanation before concluding that Petitioner’s argument falls short. *See id.*

I am not swayed by the majority’s analysis for the simple reason that it fails to account for Petitioner’s *actual* argument and evidence that the Digital River Publications meet claim 3’s “hierarchical” limitation. In that regard, Petitioner points to Exhibit 1009, reproduced below, which is a “buy page” from the website of a Digital River client, depicting the shopping cart functionality. Pet. 21.



As argued by Petitioner, and shown above, Exhibit 1009 is a composite web page providing “a link (i.e., selectable URL)” that “allows a user to *add* products to a shopping cart, *view* a shopping cart, *modify* a

shopping cart, and *check out*.” *Id.* (citing Ex. 1002 ¶ 102; Ex. 1009, 1). According to Petitioner’s expert, whose testimony is unrebutted on this point, a skilled artisan would have understood this shopping cart” functionality as “containing multiple product offerings” and involving “additional web pages.” Ex. 1002 ¶ 102. Indeed, Petitioner’s expert further testifies that “shopping cart functionality was a common approach to ecommerce Web page design at the time of the alleged invention, and a POSITA at the time of the alleged invention would have understood that the Digital River Publications would accommodate such functionality.” *Id.* ¶ 109.

I am uncertain as to what more the majority might expect from Petitioner to satisfy claim 3’s “hierarchical” limitation. The fact that the Digital River Publications disclose a composite web page having serially selectable URLs, which, in turn, take a buyer to webpages where they can “add to cart,” “view cart,” “modify cart,” and “check out” (Ex. 1009, 1) persuades me that Petitioner has fulfilled its burden of showing a “hierarchical set of additional webpages,” as required by claim 3. In my view, that limitation requires only that the selectable URLs be arranged to operate serially such that each URL link is subordinate to the one before it. That is the case with the buy page taught by the Digital River Publications. Certainly a shopper cannot “check out” until they “view” and “modify” the products in their cart; similarly, a shopper cannot “view” and “modify” the products in their cart until they “add” products to their cart; and, finally, a shopper cannot “add” products to their cart until they choose from the list of

product offerings. The second wherein clause of claim 3 requires nothing more.

Thus, I respectfully dissent from the majority's position that Petitioner fails to demonstrate the unpatentability of claim 3. Petitioner's evidence—which includes Exhibit 1009 and unrebutted testimony from its expert—persuades me that Petitioner has met its burden of showing that the Digital River Publications satisfy the limitations of claim 3.

The majority further finds that, because claim 4 depends from claim 3, “Petitioner's showing is accordingly similarly deficient.” Majority Op. *supra*, § II.D.4.b. I disagree. Given my opinion that Petitioner has met its burden with respect to claim 3, I would have also analyzed the sufficiency of Petitioner's case with respect to claim 4. Claim 4 recites a “search” function for the web page. Ex. 1001, 27:44–49. In satisfying that limitation, Petitioner provides web pages from Digital River clients, each of which depicts a search functionality. *See* Pet. 21–22 (citing Ex. 1007, 1; Ex. 1008, 1). Having reviewed that evidence, along with the accompanying expert testimony (Ex. 1002 ¶ 103), I find it persuasive. Thus, I also dissent from the majority's finding that Petitioner does not demonstrate unpatentability of claim 4. And because the parties' arguments and evidence for claims 13 and 14 are no different than those for claims 3 and 4, I would also find that Petitioner demonstrates unpatentability of claims 13 and 14. *See* Pet. 27; PO Resp. 46.

Claims 6, 7, 15, 16

Claim 6 recites “providing for receipt of *a commission based on the level of sales* made through activation of the URL as a result of a transaction

involving the commerce object displayed on the source [i.e., the host's] web page.” Ex. 1001, 27:59–63 (emphasis added). As discussed in the majority opinion, the proper construction of the term “commission” is “money paid to a party by or on behalf of a third-party seller *for facilitating the seller's sales of products*.” See Majority Op. *supra*, § II.C.2 (emphasis added).

At the outset, it should be noted that claim 6 depends from claim 1. I concur with the majority that Petitioner demonstrates that base claim 1 is unpatentable. See *id.*, § II.D.3. I disagree, however, with the majority's conclusion that Petitioner fails to demonstrate that dependent claim 6 is also unpatentable. See *id.*, § II.D.4.d.

My disagreement stems from the majority's isolated view of Petitioner's assertions with respect to claim 6. In that regard, the majority errs by failing to read Petitioner's assertions for claim 6 in the context of Petitioner's preceding arguments and evidence for base claim 1. As a result, in addressing Petitioner's case for claim 6, my colleagues make findings that are inconsistent with our earlier findings for base claim 1. In particular, the majority finds that Petitioner fails to meet its burden with respect to claim 6's “commission” limitation because, in their view, the Digital River Brochure's disclosure of paying clients for product sales refers only to sales of the merchant's *own* products, and not to product sales of other network members. See Majority Op. *supra*, § II.D.4.d. I view the evidence as showing otherwise, particularly in light of our earlier findings for base claim 1.

In arguing that dependent claim 4 is unpatentable, Petitioner asserts that the Digital River Brochure teaches “the outsource provider pays

network members (e.g., merchants who have ‘signed up’ for the services of the DR SSS) promptly for product sales.” Pet. 22–23 (citing Ex. 1002 ¶ 103; Ex. 1004, 2). That assertion follows from Petitioner’s preceding assertions for claim 1 of how the DR SSS (“Digital River Secure Sales System”) brings together a network of host merchants to facilitate product sales of *all* members of the network through so-called “bundled” sales of “compl[e]mentary” products. See Pet. 11, 18 (citing Ex. 1004, 3). More specifically, Petitioner explains that:

The [Digital River] Brochure describes how the DR SSS enables companies to utilize an outsource provider to increase sales and ease burdens of operating ecommerce websites. Ex. 1002, 71; Ex. 1004, 2–3. Specifically, “[a]s a client of Digital River, you will become part of the Digital River Network. Network members will be able to *link between each other’s sites so that complimentary [sic] products can be bundled*, and the consumer experience enhanced; not to mention the *added opportunity for sales revenue . . .*” Ex. 1002, 71; Ex. 1004, 2–3.

Pet. 13. According to Petitioner, a skilled artisan would have understood the DR SSS as “facilitating commercial interaction and *distribution of funds* with third parties on the Digital River network” by providing “Digital Network members [the ability] to link between each other’s sites in order to *increase sales.*” *Id.* at 14, 16, 18 (citing Ex. 1002 ¶¶ 76, 94; Ex. 1004, 3) (emphases added).

We found each of those arguments persuasive in holding that claim 1 is unpatentable. See Majority Op. *supra*, §§ II.D.1–3. Indeed, in support of those findings, we relied heavily on page 3 of the Digital River Brochure (Ex. 1004), which discloses that complimentary products of other network members “can be bundled” so as to provide Digital River clients “the added

opportunity for sales revenue.” *See id.*, §§ II.D.1, II.D.3 (citing “Ex. 1004, 3” no less than *nine times*). As such, we cannot now disregard those findings when assessing Petitioner’s arguments and evidence with respect to claim 6. When viewed in proper context, Petitioner’s arguments and evidence are clear—the Digital River Brochure teaches the payment of a commission because, as described in the Brochure, Digital River (the outsource provider) increases the sales revenue of network members by paying them for their “services” in facilitating bundled sales of other network members’ products. Pet. 24. That argument and evidence persuades me that the Digital River Brochure meets our construction of a “commission,” i.e., “money paid to a party by or on behalf of a third-party seller for facilitating the seller’s sales of products.”

Moreover, as Petitioner’s expert confirms, the concept of bundling products to facilitate online sales of other merchants’ products, as taught by the Digital River Publications, is “[c]ommonly known as affiliate marketing,” meaning that “[i]f website owner A sends a visitor from his website to the ecommerce site owned by website owner B, and if that visitor makes a purchase from B’s website, *then B pays A a commission on the sale.*” Ex. 1002 ¶ 16 (emphasis added). That testimony is unrebutted. *See* Ex. 2025 ¶ 47(a) (Patent Owner’s expert opining that the Digital River Publications teach only “a payment to Digital River [the outsource provider], not from Digital River to the Host [the network member]”). Nor could Patent Owner realistically rebut that testimony of Petitioner’s expert, for the ’825 patent itself admits that “affiliate” marketing was well-known and “commission-based.” Ex. 1001, 2:14–25.

Viewing Petitioner’s arguments and supporting evidence as a whole, I would find Petitioner reasonably demonstrates that a skilled artisan would have understood the Digital River Brochure’s disclosure of providing network members with the ability to “link between each other’s sites so that compl[e]mentary products can be bundled” and thereby achieve “added opportunity for sales revenue” suggests the payment of a commission from Digital River (the outsource provider) to the host member for any affiliate sales of the products of other network members. *See* Pet. 7, 11–12, 14–19, 24 (citing Ex. 1004, 2–3; Ex. 1002 ¶¶ 16–17, 71, 76, 93–98, 107–108).

That the majority finds that the Digital River Brochure refers only to “payment for filled orders” of the merchant’s *own* products, and not the products of other network members (*see* Majority Op. *supra*, § II.D.4.d), overlooks the very purpose of becoming a member of the Digital River NetworkSM, which is to maximize the sales potential of a member’s website by bundling their products with the complimentary products of other members—“Of course that is what it’s all about: making sure you [the client] make as much money as possible off your site.” Ex. 1004, 2; *see also id.* at 4 (“Decide how to spend the money from your *new* sales.”) (emphasis added). By ignoring the Digital River Brochure’s overall teaching of “bundled” sales, my colleagues make a finding with respect to claim 4 that stands in direct contrast to our prior findings with respect to base claims 1–3.

For instance, in the majority opinion, we find that claim 1’s recitation that “the URL correlates the source web page with a commerce object associated with at least one buying opportunity of a merchant” is met by the ability of members of the Digital River network “to link between each

other's sites" and "direct users to products of other members in Digital River's network." *See* Majority Op. *supra*, § II.D.3.a (citing Ex. 1004, 3). Indeed, we find this fact to be "not disputed by Patent Owner." *Id.* Having made those findings in holding base claim 1 unpatentable, we cannot now disregard them in our analysis of dependent claim 6.

Findings made in applying a prior art reference to a dependent claim must account for any predecessor findings made with respect to the base claims from which it stems. Here, in analyzing base claim 1, we expressly find that the product sales taught by the Digital River Publications relate to *bundled sales* of complimentary products of *both* the host member and other network members. From that finding, it follows that the payment from Digital River (the outsource provider) to its network members is for their services in bundling and selling other network members' products, and not simply for the sale of the host member's products alone, as the majority erroneously reasons in its analysis of claim 4. Thus, I respectfully dissent from my colleagues' conclusion that Petitioner fails to demonstrate the Digital River Publications meet the "commission" limitation of claim 6.

The majority further finds that, because claim 7 depends from claim 6, "Petitioner's showing is accordingly similarly deficient." Majority Op. *supra*, § II.D.4.d. I disagree. Given my opinion that Petitioner has met its burden with respect to claim 6, I would have also analyzed the sufficiency of Petitioner's case with respect to claim 7. Claim 7 recites "automatic payment of the commission to the owner of the source page, once the transaction is completed." Ex. 1001, 27:64–67. Patent Owner does not argue this claim, instead relying on its argument for claim 6. PO Resp. 46.

Having reviewed Petitioner's evidence in support of unpatentability of claim 6, including the accompanying expert testimony (Ex. 1002 ¶ 108), I find it persuasive. Pet. 25 (citing Ex. 1002 ¶ 108; Ex. 1004, 2–4; Ex. 1009, 1). Thus, I also dissent from the majority's finding that Petitioner does not demonstrate unpatentability of claim 7.

And because the parties' arguments and evidence for dependent claim 15 is no different than those for claims 6 and 7, I would also find that Petitioner demonstrates unpatentability of claim 15. With respect to claim 16, which depends from claim 15, it recites a "URL" associated with a "shopping cart" and "checkout" capability. Ex. 1001, 29:23–40. Patent Owner does not argue this claim. PO Resp. 45–46. After reviewing Petitioner's arguments and supporting evidence that claim 16 is unpatentable, I find it persuasive. Pet. 27–28 (citing Ex. 1002 ¶¶ 109, 113–114; Ex. 1004, 3–4; Ex. 1009, 1). Thus, I also dissent from the majority's finding that Petitioner does not demonstrate unpatentability of claim 16.

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