

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner,

v.

BLAZE MOBILE, INC.,
Patent Owner.

IPR2021-01500
Patent 10,339,556 B2

Before MIRIAM L. QUINN, NATHAN A. ENGELS, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

O'HANLON, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

Samsung Electronics Co., Ltd. (“Petitioner”) filed a Petition for *inter partes* review of claims 1–4, 6–13, 15–18, 20–31, and 33–36 (“the challenged claims”) of U.S. Patent No. 10,339,556 B2 (Ex. 1001, “the ’556 patent”). Paper 1 (“Pet.”), 1. Blaze Mobile, Inc. (“Patent Owner”) filed a Preliminary Response.¹ Paper 8 (“Prelim. Resp.”).

Institution of an *inter partes* review is authorized by statute only when “the information presented in the petition . . . and any response . . . 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) (2018). We have authority, acting on the designation of the Director, to determine whether to institute an *inter partes* review under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a). For the reasons set forth below, upon considering the Petition, Preliminary Response, and evidence of record, we conclude that the information presented in the Petition fails to establish a reasonable likelihood that Petitioner would prevail in showing the unpatentability of any of the challenged claims. Accordingly, we decline to institute *inter partes* review.

¹ Although Patent Owner indicates that Michelle Fisher owns the ’556 patent (*see* Prelim. Resp. 1), Office records indicate that Ms. Fisher assigned “the entire right, title and interest” in the ’556 patent to Blaze Mobile, Inc. *See* Ex. 1002, 234.

B. Real Parties in Interest

Petitioner identifies itself and Samsung Electronics America, Inc. as real parties in interest. Pet. 2.

Patent Owner identifies itself and Michelle Fisher as real parties in interest. Paper 4, 1; Paper 9, 1.

C. Related Matters

The parties indicate that the '556 patent is the subject of the following district court declaratory judgment action:

Samsung Electronics Co. Ltd. v. Blaze Mobile Inc., Case No. 21-cv-02989 (N.D. Cal. filed September 3, 2021).

Pet. 2; Paper 4, 1; Paper 9, 1. Petitioner states that the complaint for the declaratory judgment action seeks a judgment of non-infringement of the '556 patent and two patents related to the '556 patent: U.S. Patent Nos. 9,996,849 (“the '849 patent”) and 10,621,612 (“the '612 patent”). Pet. 2.

The parties note that Petitioner has challenged the '849 and '612 patents by filing petitions for *inter partes* review. Pet. 2; Paper 4, 1; Paper 9, 1. We note that the '849 patent is challenged in IPR2021-01499 and the '612 patent is challenged in IPR2021-01501.

D. The Challenged Patent

The '556 patent “relates to data communications and wireless devices.” Ex. 1001, 1:24–25. The '556 patent purports to provide an improved method of customizing a mobile application running on a mobile communications device. *Id.* at 1:55–57. The mobile application includes a user interface that is displayable on the mobile communication device. *Id.*

at 3:59–61. The user interface is generic, but can be customized based on one or more special interest groups (SIGs) that are affiliated with a user of the mobile communication device. *Id.* at 3:61–65. Figure 4 illustrates a communication system of the '556 patent and is reproduced below.

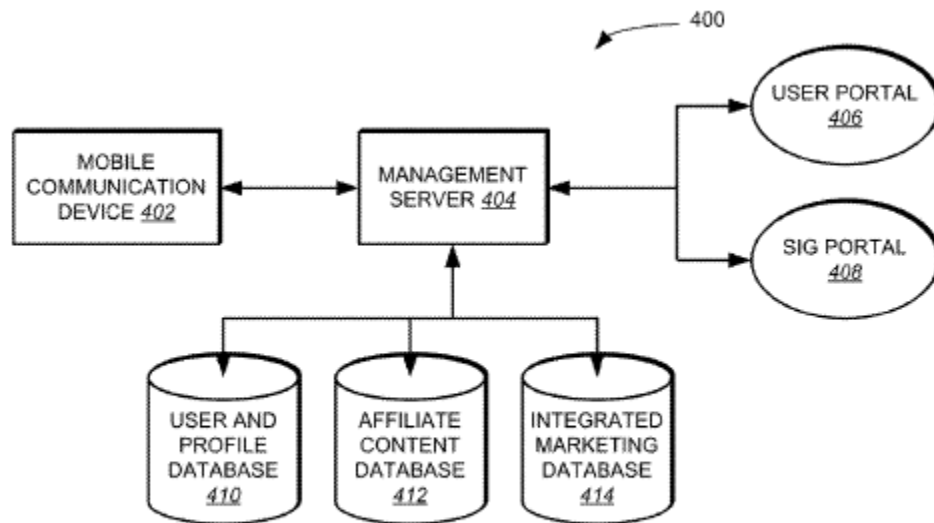


FIG. 4

Figure 4 illustrates communication system 400. *Id.* at 5:63–64. The system includes wireless communication device 402 and management server 404. *Id.* at 5:64–67. The management server is coupled to user and profile database 410, affiliate content database 412, and integrated marketing database 414. *Id.* at 5:67–6:3. The mobile application includes generic screens and can be customized to include additional screens that can be displayed to the user. *Id.* at 5:34–45, 6:12–24. For example, the user may register an affiliation with a SIG via user portal 406. *Id.* at 7:7–9. Upon initial login to the mobile application, the application queries management server 404, which determines the SIGs with which the user is affiliated (stored in affiliate content database 412) and sends customized screens to the application. *Id.* at 6:7–9, 7:9–19. One such screen is an advertisements

screen. *Id.* at 6:30–33. An advertisement manager application of management server 404 specifies specific advertisements (stored in integrated marking database 414) based on the user’s SIGs and displays the advertisements in the application. *Id.* at 6:9–11, 7:27–35.

E. The Challenged Claims

Petitioner challenges claims 1–4, 6–13, 15–18, 20–31, and 33–36 of the ’556 patent. Pet. 1, 6. Claims 1 and 16 are independent. Claim 1 is illustrative of the challenged claims and is reproduced below.

1. A method for delivering an advertisement, comprising:
maintaining, at a remote management server, the advertisement;
selecting, at the remote management server, the advertisement in response to user input from a non-browser based application, wherein the non-browser based application receives the user input via a mobile device display, wherein the non-browser based application is a non-browser based application with a graphical user interface including a graphical icon that is preinstalled or downloaded and installed on the mobile device, the mobile device comprising the mobile device display, a mobile device processor, and a mobile device wireless radio interface;
sending, from the remote management server, the advertisement to the non-browser based application running on a mobile device and further wherein the non-browser based application displays the advertisement within a specific non-browser based application generated screen, the specific non-browser based application generated screen corresponding to a specific screen or area of the non-browser based application.

Ex. 1001, 9:50–10:4.

F. Asserted Grounds of Unpatentability

The Petition relies on the following prior art references:

Name	Reference	Exhibit
Ramakrishna	WO 2006/114601 A2, published November 2, 2006	1005
Grossman	US 2006/0242267 A1, published October 26, 2006	1006
Hameen-Anttila	US 2009/0006180 A1, published January 1, 2009	1008
Griffin	US 2005/0190970 A1, published September 1, 2005	1009
Angelica	US 2007/0150601 A1, published June 28, 2007	1015
Shore	US 2002/0059100 A1, published May 16, 2002	1016

Petitioner asserts the following grounds of unpatentability:

Claim(s) Challenged	35 U.S.C. §	Reference(s)
1–4, 6–12, 15–18, 20–23, 27–30, 33	103(a) ²	Ramakrishna, Grossman
1–4, 6–12, 15–18, 20–23, 27–30, 33	103(a)	Ramakrishna, Grossman, Griffin
1–4, 6–12, 15–18, 20–23, 27–30, 33	103(a)	Ramakrishna, Grossman, Griffin, Angelica
13, 31	103(a)	Ramakrishna, Grossman, Hameen-Antilla
13, 31	103(a)	Ramakrishna, Grossman, Hameen-Antilla, Griffin

² The application resulting in the '556 patent claims priority to a date prior to when the Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112–29, 125 Stat. 284 (2011), took effect. Thus, we refer to the pre-AIA version of section 103.

Claim(s) Challenged	35 U.S.C. §	Reference(s)
13, 31	103(a)	Ramakrishna, Grossman, Hameen-Antilla, Angelica
13, 31	103(a)	Ramakrishna, Grossman, Hameen-Antilla, Griffin, Angelica
24–26, 34–36	103(a)	Ramakrishna, Grossman, Shore
24–26, 34–36	103(a)	Ramakrishna, Grossman, Shore, Griffin
24–26, 34–36	103(a)	Ramakrishna, Grossman, Shore, Angelica
24–26, 34–36	103(a)	Ramakrishna, Grossman, Shore, Griffin, Angelica

Pet. 6. Petitioner submits a declaration of Don Turnbull, Ph.D. (Ex. 1003) in support of its contentions.

II. ANALYSIS

A. Principles of Law

“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”)). Petitioner bears the burden of persuasion to prove unpatentability of each challenged claim by a preponderance of the evidence. 35 U.S.C. § 316(e). This burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). The Board may authorize an *inter*

partes review if we determine that the information presented in the Petition and Patent Owner’s Preliminary Response shows that there is a reasonable likelihood that Petitioner will prevail with respect to at least one of the claims challenged in the petition. 35 U.S.C. § 314(a).

A patent claim is unpatentable 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 the 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, any objective evidence of nonobviousness.³ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

The level of ordinary skill in the art is “a prism or lens” through which we view the prior art and the claimed invention. *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001). The person of ordinary skill in the art is a hypothetical person presumed to have known the relevant art at the time of the invention. *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995). In determining the level of ordinary skill in the art, we may consider certain factors, including the “type of problems encountered in the art; prior art

³ At this stage of the proceeding, the parties have not directed us to any such objective evidence.

solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *Id.* (internal quotation marks and citation omitted).

Petitioner contends that a person having ordinary skill in the art at the time of the invention would have had “a B.S. in Computer Engineering or a related field, or equivalent experience, and two or more years of industry or research experience in wireless devices and/or online advertisement delivery.” Pet. 18 (citing Ex. 1003 ¶¶ 54–57). Petitioner contends that “[a]dditional education might compensate for less experience, and vice-versa.” *Id.*

Patent Owner contends that a person having ordinary skill in the art at the time of the invention “would have a bachelor’s degree in computer engineering or similar discipline and approximately two years of experience designing mobile applications for wireless devices.” Prelim. Resp. 11.

The parties do not identify, and we do not discern, any material difference between the parties’ proposed definitions. For purposes of this decision and based on the record currently before us, we adopt Petitioner’s proposed definition of the level of ordinary skill. We note that we would reach the same conclusions under either proposed standard.

C. Claim Construction

In an *inter partes* review, claims are construed using the same claim construction standard that would be used to construe the claims in a civil action under 35 U.S.C. § 282(b), including construing the claims in accordance with the ordinary and customary meaning of such claims as understood by one of ordinary skill in the art and the prosecution history

pertaining to the patent. 37 C.F.R. § 42.100(b). Thus, we apply the claim construction standard as set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). In addition to the specification and prosecution history, we also consider use of the terms in other claims and extrinsic evidence including expert and inventor testimony, dictionaries, and learned treatises, although extrinsic evidence is less significant than the intrinsic record. *Id.* at 1312–17. Usually, the specification is dispositive, and it is the single best guide to the meaning of a disputed term. *Id.* at 1315.

The specification may reveal a special definition given to a claim term by the patentee, or the specification may reveal an intentional disclaimer or disavowal of claim scope by the inventor. *Phillips*, 415 F.3d at 1316. If an inventor acts as his or her own lexicographer, the definition must be set forth in the specification with reasonable clarity, deliberateness, and precision. *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249 (Fed. Cir. 1998). A disavowal, if any, can be effectuated by language in the specification or the prosecution history. *Poly-America, L.P. v. API Indus., Inc.*, 839 F.3d 1131, 1136 (Fed. Cir. 2016). “In either case, the standard for disavowal is exacting, requiring clear and unequivocal evidence that the claimed invention includes or does not include a particular feature.” *Id.* “Ambiguous language cannot support disavowal.” *Id.* (citing *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1324 (Fed. Cir. 2003)).

Only those terms that are in controversy need be construed, and only to the extent necessary to resolve the controversy. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (citing *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

1. “*non-browser based application*”

Petitioner contends that several statements made during prosecution of the application resulting in the ’556 patent and related applications inform the meaning of the term “non-browser based application.” Pet. 7 (citing Ex. 1003 ¶¶ 60–66). The Petition states that “[a]lthough Petitioner does not propose that the term must be construed in this proceeding, Petitioner discusses Applicant’s statements here and provides its claim-by-claim analysis in view of that file history.” *Id.* Petitioner argues that “[t]o the extent Applicant’s statements impose requirements on the ‘non-browser based application’ recited in the claims of the ’556 patent, those requirements are met by the prior art, as discussed in the claim-by-claim analysis presented below, so no construction is necessary.” *Id.* at 10. Petitioner further contends that “in the event the Board does construe the claims of the ’556 patent to include such requirements, the prior art still invalidates those claims as construed.” *Id.*

Patent Owner contends that Petitioner discusses the meaning of “non-browser based application” but merely raises certain statements made during prosecution without explicitly providing a construction. Prelim. Resp. 22. Patent Owner asserts that 37 C.F.R. § 42.104(b)(3) places a burden on Petitioner to set forth how a challenged claim is to be construed and adequately explain how the construed claim is unpatentable. *Id.* at 22–23. Patent Owner argues that Petitioner fails to identify how the challenged claims are to be construed, and, therefore, cannot satisfy its burden of showing a reasonable likelihood of prevailing in proving that at least one claims is unpatentable. *Id.* at 23 (citing *Orthopediatrics Corp. v. K2M, Inc.*, IPR2018-01548, Paper 9 (PTAB Mar. 1, 2019)).

Patent Owner further asserts that Petitioner's arguments regarding statements made during prosecution are an attempt to broaden the scope of the challenged claims to read upon the asserted prior art via disclaimer. Prelim. Resp. 23–24 (citing *Thorner v. Sony Comput. Entm't Am. LLC*, 669 F.3d 1362, 1367 (Fed. Cir. 2012)). Patent Owner contends that there has been no “‘clear and unmistakable’ disavowal of claim scope from the plain and ordinary meaning of the term ‘non-browser based application,’” and definitive examples of “non-browser based applications” were not provided during prosecution. *Id.* at 24. Instead, according to Patent Owner, the statements made during prosecution “merely distinguished the invention from web-based ‘browsers.’” *Id.* at 25. Patent Owner further argues that, “[b]ecause the prosecution history is nonlimiting, Petitioner cannot show that its alleged applications are ‘non-browser based applications’ merely because they meet some of the features discussed in the prosecution history.” *Id.* at 27. Patent Owner contends that the Petitioner cannot use the statements made during prosecution to argue that the asserted prior art teaches a “non-browser based application” when Petitioner has not construed the term to show that a “non-browser based application” possesses the “features described by the prosecution history.” *Id.*

Our determination of whether to institute review does not hinge on the appropriateness of Petitioner's contentions concerning the scope of “non-browser based application.” Nor do we decide whether prosecution history statements potentially narrow the scope of the term, as suggested by Petitioner. Rather, we determine that the plain and ordinary meaning of the claim language requires we evaluate the term “non-browser based application” in context of the surrounding claim language, which requires, as

will be described below in our analysis, that the “non-browser based application” must receive user input, receive the advertisement, and display the advertisement, as recited in the claims. *E.g.*, Ex. 1001, 9:50–10:4.

2. “*via [a/the] mobile device display*”

Petitioner asserts that “[c]laims 1, 16, and 24 require receiving user input ‘via [a/the] mobile device display.’” Pet. 10 (second alteration in original). Petitioner contends that this term does not require use of a touchscreen and that one of ordinary skill in the art would have understood the claims to “encompass, for example, input via buttons (*e.g.*, a keypad) to select elements of a graphical user interface shown on the device display.” *Id.* at 10–11 (citing Ex. 1003 ¶ 66).

Patent Owner does not address this term or Petitioner’s proposed construction. *See generally* Prelim. Resp.

Petitioner’s argument highlights its contention that the claims do not require touchscreen input. Pet. 10–11. In our determination of whether to institute review, we do not rely on Petitioner’s arguments regarding whether the mobile device display must include a keypad or a touchscreen. Accordingly, we decline to construe this term. *Nidec*, 868 F.3d at 1017.

3. “*remote management server*”

Petitioner argues that a construction of “remote management server” is not necessary but contends that, under its plain and ordinary meaning, a “remote management server” must maintain, select, and send the advertisement. Pet. 11 (citing *Creative Internet Advert. Corp. v. Yahoo!, Inc.*, 476 F. App’x 724, 728 (Fed. Cir. 2011)).

Patent Owner does not address this term or Petitioner's proposed construction. *See generally* Prelim. Resp.

In our determination of whether to institute review, we do not rely on Petitioner's arguments regarding the remote management server. Accordingly, we decline to construe this term. *Nidec*, 868 F.3d at 1017.

4. Indefiniteness

Petitioner asserts that “[t]he claims *may* be indefinite under 35 U.S.C. §112 in view of *IPXL Holdings, L.L.C. v. Amazon.com, Inc.*, because ‘it is unclear’ ‘when’ the claims are infringed.” Pet. 12 (emphasis added) (citing *IPXL Holdings, L.L.C. v. Amazon.com, Inc.*, 430 F.3d 1377, 1384 (Fed. Cir. 2005)). Petitioner argues that “certain claims are directed to a ‘remote management server,’ but recite method steps performed by a ‘mobile device.’” *Id.* Petitioner contends that it is therefore unclear whether a possible infringement would occur at the time of manufacturing the claimed server, at the time a system that includes both the claimed server and mobile device is created, or when the system is used to perform the claimed steps. *Id.*

Patent Owner does not address Petitioner's allegations of potential indefiniteness. *See generally* Prelim. Resp.

Petitioner's arguments regarding alleged indefiniteness have no bearing on our determination of whether to institute this proceeding. Accordingly, to the extent Petitioner's arguments seek for us to construe any claim term, we decline to do so.

D. Overview of the Asserted Prior Art

1. Ramakrishna

Ramakrishna discloses a system for delivering consumer-acceptable advertising to the user of a mobile device. Ex. 1005, 2–3.⁴ The system includes a software client that is installed on the mobile device. *Id.* at 9. As the user types a message in a messaging application, the data client reads the message contents and transmits the message contents to a central server. *Id.* at 9, 10. The central server recognizes keywords in the message contents, chooses a relevant advertisement from an advertisement database, and transmits the chosen advertisement to the data client. *Id.* at 10. The data client then displays the advertisement in an “adbar,” which occupies at least 15% of the screen space. *Id.* at 8, 10. In a similar manner, the data client also reads received messages and transmits the contents to the central server to receive an advertisement to display. *Id.* at 10.

2. Grossman

Grossman discloses a system and method for displaying content, such as advertisements, on a communications device. Ex. 1006 ¶ 3. The system includes a management platform that includes a number of embedded functions. *Id.* ¶¶ 24, 30. For example, a campaign manager software object may mine a database for users to target for an advertising campaign. *Id.* ¶ 31. The campaign manager may identify users to target by tracking users’ interests and purchases. *Id.* A billing manager software object may track user purchases and content providers’ billing records. *Id.* A delivery service

⁴ Citations to Ramakrishna refer to the pagination indicated in the added footer.

manager software object may manage the delivery of advertisements to a user's communications device. *Id.* As information about a user is collected, a customer profile may emerge, allowing the system to more effectively identify content to deliver to the customer. *Id.* ¶ 36. The display of the content on the user's communications device may be triggered by the user taking an action unrelated to the display of the content. *Id.* ¶ 40. Such actions may include launching a web browser or sending a text message. *Id.* ¶ 41.

3. *Hameen-Anttila*

Hameen-Anttila relates to advertising on mobile computing devices. Ex. 1008 ¶¶ 1, 32. Hameen-Anttila describes collecting usage information from two or more user applications on a mobile device to track exposure to advertising materials associated with the applications. *Id.* ¶ 7. A server issues a polling message at predetermined intervals and a per-application summary of the usage information is sent from the mobile device in response to the polling message. *Id.* Usage data may be collected when a device is offline, and the usage data may be reported when the device is back online. *Id.* ¶ 32. For example, Hameen-Anttila describes an ad engine that checks for connectivity/polling signals and sends relevant data to a server. *Id.* ¶ 72.

4. *Griffin*

Griffin relates to mobile electronic devices having text input. Ex. 1009 ¶ 1. Griffin recognizes that many mobile devices include functionality, such as writing text messages, that requires text input, and that existing methods of text input include using a stylus, a thumbboard, and nine

number keys. *Id.* ¶ 2. Griffin purports to improve upon known methods of text input by using a touch interface. *Id.* ¶ 4. The touch interface may be in the form of a touchpad separate from the device display (*id.* ¶¶ 25–26, Fig. 1) or a touchscreen that is in front of or behind the display (*id.* ¶¶ 27–28, Fig. 2). A predictive text software module is used to determine which of two adjacent letters the user intended to enter. *Id.* ¶¶ 30–31.

5. *Angelica*

Angelica discloses a “non-browser model for the processing of electronic transactions.” Ex. 1015 ¶ 9. Angelica describes a client system, which can be mobile or fixed via a wired network, establishing electronic communication with a server system. *Id.* ¶ 12. Preferably, the client system is a custom software program. *Id.* The client system identifies itself in a unique way to the server system and receives media content, which can be in the form of advertising offers, from the server system on a recurrent basis. *Id.* Updates to the media content can be driven either by the server system unilaterally or by the client system polling the server system periodically under the control of software that is provided by the server system. *Id.*

6. *Shore*

Shore describes a method of providing “retailers and service providers the ability to offer coupons, advertising, promotional offers, and communications on printed or electronic receipts such that the coupons are specifically oriented towards each particular customer’s buying habits, preferences and needs.” Ex. 1016 ¶ 2. Shore describes the use of a wireless hand held device to access and redeem vendor offers. *Id.* ¶ 30. When a new customer establishes an account with a vendor, the customer would be

offered a customer specific receipt advertising service. *Id.* ¶¶ 2, 32. The customer may sign-up for this service on the Internet or at a licensed service provider. *Id.* ¶ 35. The customer is then given a user name and personal identification number. *Id.* The advertising service receives information regarding the customer's transactions, creates offers specific to the customer and vendor, and sends the offer to the vendor for inclusion on the customer's receipt. *Id.* ¶ 56. The customer can later change the selected data use preferences by entering the user name and personal identification code to access the system. *Id.* ¶¶ 41–44. Biometric data can be used in place of the personal identification code. *Id.* ¶ 42.

E. Asserted Obviousness Based on Ramakrishna and Grossman

Petitioner argues that claims 1–4, 6–12, 15–18, 20–23, 27–30, and 33 would have been obvious over Ramakrishna and Grossman. Pet. 23–56. We have reviewed Petitioner's assertions and supporting evidence. For the reasons discussed below, and based on the record before us, we determine that Petitioner does not demonstrate a reasonable likelihood of prevailing in showing that at least one challenged claim would have been obvious over the combination of Ramakrishna and Grossman.

Each of independent claims 1 and 16 recites a “non-browser based application” that (1) receives user input, (2) receives an advertisement that is selected in response to the user input, and (3) displays the advertisement within a specific screen generated by the non-browser based application. Ex. 1001, 9:50–10:4, 10:64–11:19. Petitioner contends that “Ramakrishna's messaging application *and* adbar are both ‘non-browser based application[s].’” Pet. 26 (alteration in original) (emphasis added). For

instance, Petitioner argues that both of these applications receive user input, such as a user composing a text message. *Id.* at 32. Then Petitioner argues that “the ‘client software 30’” sends data to “the server” and the central or ad server transmits the advertisement to the “client software.” *Id.* at 32–33, 39. The Petition is vague as to whether the “client software” refers to *both* the messaging application and the adbar. Nevertheless, Petitioner relies on Figures 5A and 5B of Ramakrishna as showing that the advertisement is displayed within two different screens of the *messaging application*. *Id.* at 39–40. Ramakrishna describes Figures 5A and 5B as illustrating the “appearance of the mobile phone interface during message composition (a) and after sending (b).” Ex. 1005, 24. According to Petitioner, use of the adbar *also* results in “the advertisement . . . displayed in a specific area such that ‘[a]t least 15% of the screen space 10 (fig. 1) is taken over by the client application which can display images, banners, interactive applications etc all the time or at the time of its choosing.’” Pet. 40 (alteration in original).

Patent Owner challenges Petitioner’s contention that the messaging application *and* the adbar are *both* non-browser based applications on the basis that the messaging application and the adbar are separate applications. Prelim. Resp. 14. The adbar, according to Patent Owner, is a separate software download that can customize the graphical user interface by, for example, taking over 15% of the screen space to display ads. *Id.* at 15–16. In particular, Patent Owner points out that the adbar application is not part of the messaging application because it runs on its own, displaying ads on the services menu (shown in Figure 1 of Ramakrishna, reproduced below). *Id.* at 16–17 (citing Ex. 1005, Fig. 1).

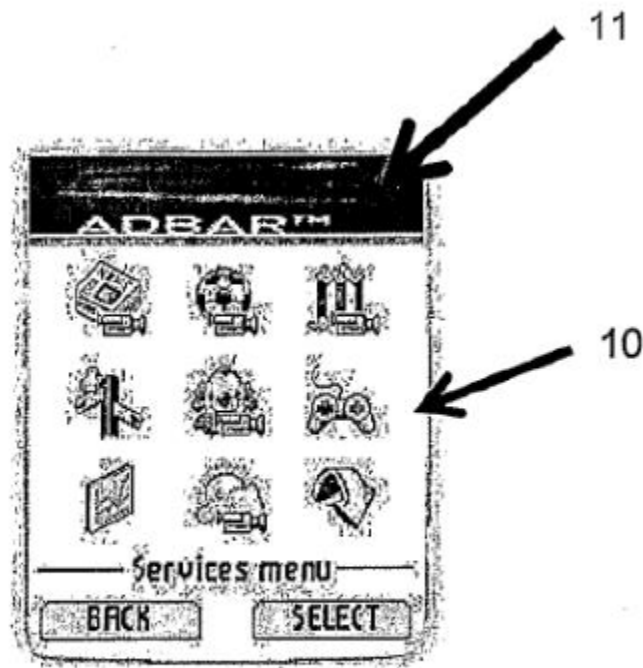


Fig.1

Figure 1 of Ramakrishna shows adbar 11 on screen space 10. Ex. 1005, 8. According to Ramakrishna, the adbar runs “non-intrusively in the background” and comes up (i.e., displays an ad) when the user is likely to be looking at the screen such as when sending and receiving electronic messages, looking at the phonebook or address book, modifying phone settings, modifying the calendar, and running other applications on the screen that require visual interaction. *Id.*

We agree with Patent Owner that Ramakrishna, at best, suggests that the messaging application and the adbar are separate applications that run independently of each other. As stated above, the adbar is designed to always run in the background regardless of which application is being used. Ex. 1005, 8. Further, Ramakrishna describes embodiments in which the user may turn the adbar functionality on and off. *Id.* at 24. For instance, the user

is given an option to send free electronic messages (thereby turning the adbar on) or sending regular electronic messages (thereby turning the adbar off). *Id.* at 24–25. Thus, Ramakrishna describes a downloadable adbar client that, if activated, enables advertisements to be displayed in an overlay on any screen on the phone, regardless of what application is running concurrently, but can also be turned off separately and distinct from the messaging application.

The Petition treats the messaging client and the adbar as if they were “both” the recited “non-browser based application.” The Petition is silent as to whether the messaging application and the adbar are coextensive with each other or part of the same application. The Petition also does not explain whether the claim language would encompass two applications comprising the recited “non-browser based application.”

However, we understand the claims to require that the recited application must perform all the recited functions noted above. The Petition fails to show that the *messaging application* receives advertisements and displays them—Ramakrishna explicitly attributes the receipt and display of advertisements to the adbar. *See, e.g.*, Ex. 1005, 6 (describing the advertising channel, read here the “adbar,” displayed on the dedicated portion of the screen and running in the background all the time, except when it is triggered to display by the likelihood of the user looking at the screen), 8 (describing the adbar specifically as displaying images, banners, and interactive applications all the time or at the time of its choosing), 10 (describing the “client for the adbar 20” separately and distinct from the “electronic message 21” function), 12–13 (describing that sending or receiving messages “trigger[s]” an ad-serving phase that checks

authorization and disconnects the client software from the server if not authorized, but the user continues using the SMS message), 24 (describing that when users turn the adbar on, they will be able to send discounted or free electronic messages, otherwise the phone behaves as usual). Thus, we see the Petition as failing to convey persuasively that Ramakrishna's messaging application displays the advertisements in a screen generated by the messaging application; i.e., the advertisements are generated and displayed by the adbar client.

As for the adbar equating to the non-browser based application, the Petition fails to link the recited functions to the adbar alone. As stated previously, the adbar runs in the background indiscriminately and without the use of any graphical icons for its activation. Ex. 1005, 8. The claims require, however, that the "non-browser based application" has a graphical user interface including a graphical icon. Ex. 1001, 9:57–60, 11:5–9. Although the Petition identifies a screen with icons from which the messaging application could be selected (Pet. 35), there is no showing in the Petition that the *adbar* has such an icon. Additionally, the claims require that the non-browser based application receives user input via a mobile device display. Ex. 1001, 9:55–57, 11:3–5. The Petition maps this recitation to Ramakrishna's messaging application, but does not provide a mapping to the adbar. Pet. 32.

Furthermore, the Petition does not convey, nor do we see Ramakrishna supporting the contention, that the messaging application and the adbar client are, according to the knowledge of a person of ordinary skill in the art, a unified application or that they constitute software modules that work as an entity, such that a person of ordinary skill in the art would

consider both “an application.” As argued by Patent Owner, and we agree, Ramakrishna’s messaging application is separate and distinct from the adbar client, and Petitioner has not made a persuasive showing, with factual support, that these two applications, *together*, form the recited “non-browser based application.” And as stated already, the Petition lacks explanation and support for the proposition that the term “non-browser based application” encompasses multiple, distinct applications.

Consequently, we are persuaded by Patent Owner’s arguments that the Petition does not demonstrate a reasonable likelihood of prevailing. This deficiency affects Petitioner’s contentions for independent claims 1 and 16. And no other reference is alleged to disclose the “non-browser based application” or to cure the deficiencies noted above. For instance, Petitioner relies on Grossman to provide additional teachings of using non-HTTP protocols and of mobile device components. Pet. 31–32, 37–39.

In conclusion, having reviewed the Petition and Patent Owner’s arguments in opposition, we determine that Petitioner has not shown a reasonable likelihood of prevailing on its assertion that claims 1 and 16 would have been unpatentable as obvious over Ramakrishna and Grossman. Because of their dependence from claims 1 and 16, we therefore determine that Petitioner has also failed to demonstrate a reasonable likelihood of prevailing on its assertion that claims 2–4, 6–12, 15, 17, 18, 20–23, 27–30, and 33 would have been unpatentable as obvious over Ramakrishna and Grossman.

F. Asserted Obviousness Based on Ramakrishna, Grossman, and Griffin

Petitioner argues that claims 1–4, 6–12, 15–18, 20–23, 27–30, and 33 would have been obvious over Ramakrishna, Grossman, and Griffin. Pet. 56–60. We have reviewed Petitioner’s assertions and supporting evidence. For the reasons discussed below, and based on the record before us, we determine that Petitioner does not demonstrate a reasonable likelihood of prevailing in showing that at least one challenged claim would have been obvious over the combination of Ramakrishna, Grossman, and Griffin.

This ground relies on Ramakrishna for the same “non-browser based application” contentions as presented for claims 1 and 16 in the challenge based on Ramakrishna and Grossman. *See* Pet. 56–60. Specifically, this ground asserts the contention that in the event the claims require a touchscreen display, Griffin provides a teaching of inputting data using a touchscreen. *Id.* Accordingly, this ground fails for the same reasons stated above, and we determine that Petitioner has not shown a reasonable likelihood of prevailing on its assertion that claims 1–4, 6–12, 15–18, 20–23, 27–30, and 33 would have been obvious over Ramakrishna, Grossman, and Griffin.

G. Asserted Obviousness Based on Ramakrishna, Grossman, Griffin, and Angelica

Petitioner argues that claims 1–4, 6–12, 15–18, 20–23, 27–30, and 33 would have been obvious over Ramakrishna, Grossman, Griffin, and Angelica. Pet. 60–63. We have reviewed Petitioner’s assertions and supporting evidence. For the reasons discussed below, and based on the

record before us, we determine that Petitioner does not demonstrate a reasonable likelihood of prevailing in showing that at least one challenged claim would have been obvious over the combination of Ramakrishna, Grossman, Griffin, and Angelica.

This ground relies on Ramakrishna for the same “non-browser based application” contentions as presented for claims 1 and 16 in the challenge based on Ramakrishna and Grossman, and additionally relies on Angelica for the proposition that a “client system” on a mobile device would not use a browser. Pet. 60–63. Accordingly, this ground fails for the same reasons stated above, and we determine that Petitioner has not shown a reasonable likelihood of prevailing on its assertion that claims 1–4, 6–12, 15–18, 20–23, 27–30, and 33 would have been obvious over Ramakrishna, Grossman, Griffin, and Angelica.

H. Remaining Obviousness Grounds

Petitioner asserts that claims 13 and 31 would have been obvious over Ramakrishna, Grossman, and Hameen-Anttila or over Ramakrishna, Grossman, Hameen-Anttila, and at least one of Griffin and Angelica. Pet. 63–66. Petitioner further asserts that claims 24–26 and 34–36 would have been obvious over Ramakrishna, Grossman, and Shore or over Ramakrishna, Grossman, Shore, and at least one of Griffin and Angelica. *Id.* at 67–73. None of these grounds addresses the deficiencies identified above with respect to the “non-browser based application” as identified in the Petition for claims 1 and 16. Accordingly, we determine that the remaining grounds, because they challenge claims that directly or indirectly depend

from claims 1 and 16, also fail to show the reasonable likelihood threshold of institution.

III. CONCLUSION

For the foregoing reasons, we are not persuaded that the Petition establishes a reasonable likelihood that Petitioner would prevail in any of its challenges to claims 1–4, 6–13, 15–18, 20–31, and 33–36 of the '556 patent.

IV. ORDER

In consideration of the foregoing, it is hereby ordered that the Petition is *denied*, and no trial is instituted.

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