

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ATLASSIAN, INC.,
Petitioner,

v.

PHOJI, INC.,
Patent Owner.

IPR2022-00210
Patent 9,565,149 B2

Before GARTH D. BAER, CHRISTOPHER L. OGDEN, and SCOTT
RAEVSKY, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

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

I. INTRODUCTION

Atlassian, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”), requesting an *inter partes* review of claims 1–13 of U.S. Patent No. 9,565,149 B2 (Ex. 1001, “the ’149 patent”). Phoji, LLC (“Patent Owner”) did not file a Preliminary Response to the Petition.

We have authority under 35 U.S.C. § 314 to determine whether to institute *inter partes* review. For the reasons discussed below, we institute *inter partes* review of the challenged claims.

II. BACKGROUND

A. RELATED MATTERS

The ’149 patent is at issue in *Phoji, LLC v. Atlassian, Inc.*, Case No. 6:21-cv-00888-ADA (W.D. Tex. filed Aug. 26, 2021). Pet. xi, Paper 4, 1.

B. THE ’149 PATENT

The ’149 patent is titled “Media Messaging Methods, Systems, and Devices.” Ex. 1001, code (54). It is directed to “the sending of a text message or email whereby the sender is able to include photographs, graphs, pie charts and the like within the flow of the actual word by word texting or email writing process, without depending on the traditional necessary step to ‘attach’ the photograph.” *Id.* at code (57). Figure 14 is reproduced below.

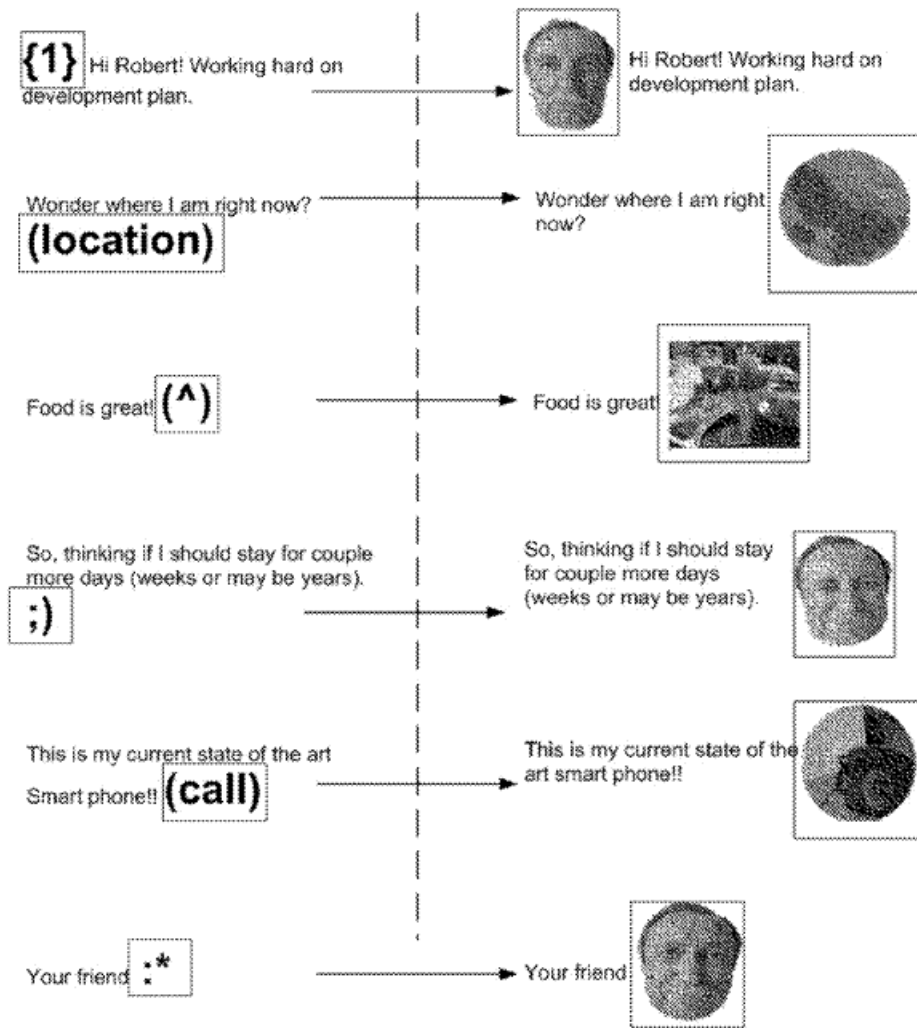


Fig. 14

Figure 14 depicts “plain text message[s] and subsequent conversion of the parsed and rendered message[s] incorporating Photocons.” *Id.* at 9:30–32.

C. THE CHALLENGED CLAIMS

Of the challenged claims, claims 1 and 10 are independent. Claim 1 is representative and reproduced below:

1. A communications system comprising:
 - a first user device presenting a first user interface;
 - a second user device presenting a second user interface;
 - a messaging cloud including:

at least one database of rich media data, and a semantic model, the semantic model configured to:

categorize a personalized image library based on contact data and emotional state data;

receive a contact data input from the first user device;

receive an emotional state data input from the first user device;

and

automatically select an image for insertion into a message from a plurality of images in the personalized image library based on the received contact data and received emotional state data, and

wherein the database is a Media Messaging Platform,

a messaging service configured to:

receive a message, the message including a rich media data request from the first user device,

retrieve the requested rich media data from the at least one database of rich media data, insert the retrieved rich media data into the message while maintaining text flow, and

present the message to the second user device via the second user interface; and

a network operably coupling the first user device, the second user device, and the messaging cloud,

wherein the message is originally formatted on the first user device via the first user interface such that the rich media data request is within the message.

Ex. 1001, 11:32–61.

D. ASSERTED GROUNDS OF UNPATENTABILITY

Petitioner asserts the following grounds of unpatentability. Pet. 1.

Reference(s)/Basis	35 U.S.C §	Challenged Claim(s)
Gura ¹	§ 103	1–13
Gura, Jensen ²	§ 103	1–13
Gura, Fifield ³	§ 103	1–13
Gura, Le Bodic ⁴	§ 103	7
Gura, Jensen, Le Bodic	§ 103	7
Gura, Fifield, Le Bodic	§ 103	7

Petitioner also relies on a declaration from Dr. Rajeev Surati (Ex. 1003).

III. ANALYSIS

A. LEVEL OF SKILL IN THE ART

Petitioner contends a person of ordinary skill in the art “would have had (i) an undergraduate degree (or equivalent) in electrical engineering, computer science, or a comparable subject and approximately three years of work experience in the field of mobile communication networks and applications, or (ii) an advanced degree (or equivalent) in electrical engineering, computer science, or a comparable subject and approximately one year of postgraduate research or work experience in the field.” Pet. 8 (citing Ex. 1003 ¶¶ 99–102). At this stage, Patent Owner does not provide a description of the level of ordinary skill.

¹ WO 2007/080570 A1, Pub. July 19, 2007 (Ex. 1004, “Gura”).

² Jensen, et al., “Multidimensional Databases and Data Warehousing” 2010 (Ex. 1005, “Jensen”).

³ US 2007/0033212 A1, Pub. Feb. 8, 2007 (Ex. 1006, “Fifield”).

⁴ Le Bodic, “Mobile Messaging Technologies and Services: SMS, EMS and MMS” 2d ed. 2005, (Ex. 1007, “Le Bodic”).

Petitioner’s description is supported by credible expert testimony. For the purpose of our decision, we adopt Petitioner’s description.

B. CLAIM CONSTRUCTION

For an *inter partes* review petition filed after November 13, 2018, we construe claim terms “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b).” 37 C.F.R. § 42.100(b) (2021).

Citing support from the ’149 patent and its expert, Petitioner asserts “media messaging platform,” as recited in claims 1 and 10, means “a cloud-based platform for modifying messaging or texting services by personalizing messages or texts with multimedia inserts.” Pet. 9–11 (citing Ex. 1001, 1:38–46, 4:18–28, 12:37–40, 11:47; Ex. 1003 ¶ 107). Petitioner further asserts, with relevant support from extrinsic sources and its expert, that “semantic model,” means “a manner of organizing a database based, at least in part, on the meaning of objects in the database.” *Id.* at 11–13 (citing Ex. 1001, 9:28–10:60, Figs. 3, 10, 14; Ex. 1003 ¶¶ 110, 111; Ex. 1017, 6; Ex. 1006 ¶ 40; Ex. 1018, 607; Ex. 1019, 962). For purposes of this decision, we agree with and adopt Petitioner’s constructions. To the extent that Patent Owner disagrees with these constructions, we will consider Patent Owner’s proposed alternative constructions and any supporting evidence at trial.

C. DESCRIPTION OF PRIMARY PRIOR ART REFERENCE

1. Gura (Ex. 1004)

Gura is titled “Image Insertion for Text Messaging.” Ex. 1004, code (54). Gura’s Figure 1a is reproduced below.

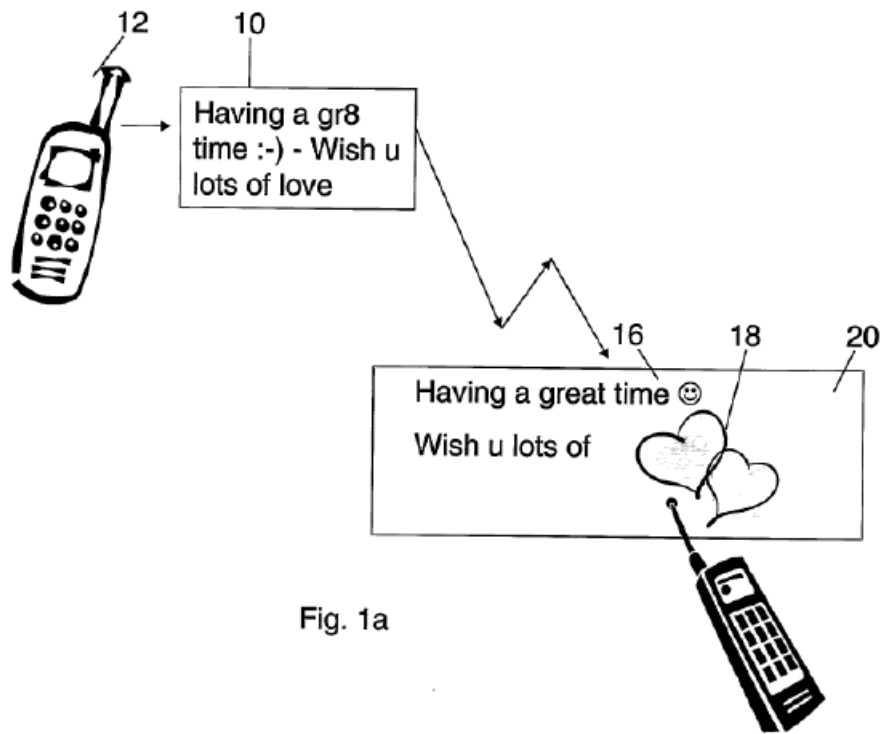


Figure 1a illustrates an enhanced text message. *Id.* at 4:1. In Figure 1a, “text message 10” is “enhanced by the addition of images 16 and 18 to form enhanced message 20.” *Id.* at 5:17–19.

D. UNPATENTABILITY ANALYSIS

1. Obviousness of Claim 1 based on Gura

Petitioner contends independent claim 1 would have been obvious over Gura. Pet. 20–47. Specifically, Petitioner corresponds the two telephones in Gura’s figure 1 to claim 1’s first and second user devices. *Id.* at 20–23 (citing Ex. 1004, 4:1–2, 5:15–22, 6:5–9, Figs. 1a, 1b). According to Petitioner, Gura’s figure 2 “illustrates . . . the [claimed] *messaging cloud*” because it depicts a “text message enhancement apparatus connected with the SMSC [Short Message Service Center] and MMSC [Multimedia Service Center] in the cellular network.” *Id.* at 24. Next, Petitioner explains that Gura teaches claim 1’s “database of rich media data” because Gura’s

“Figure 2 illustrates an ‘image database 30,’ which ‘stores images for insertion into the message.’” *Id.* at 25 (quoting Ex. 1004, 7:16). According to Petitioner, Gura also teaches the claimed “semantic model” because “Gura’s image database is indexed in a manner that associates keywords, key phrases, and the message’s context with images based, at least in part, on meaning—just as in the ’149 Patent.” *Id.* at 26.

Petitioner further explains that the image library in Gura’s image database is “personalized” as claim 1 requires because Gura teaches that a “user is ‘provided with a personalized web site to manage his accounts, set up new preferences for new recipients etc.’” *Id.* at 28 (quoting Ex. 1004, 9:20–21); *see id.* at 24–30 (further describing Gura’s personalization features including the ability to set preferences for “images/video/music . . . to be added to a text”). Next, according to Petitioner, Gura teaches claim 1’s “receiv[ing] a contact data input from the first user device” because “[i]n Gura, a ‘message interpreter 24 receives the SMS message’ from the first cellular telephone (i.e., *first user device*) and analyzes it for keywords and the ‘context of the message,’ which includes ‘the identity of the recipient’ (i.e., *contact data*).” *Id.* at 30 (quoting Ex. 1004, 6:15–21). Gura also teaches the claimed “receiv[ing] an emotional state data input from the first user device” because, according to Petitioner, “Gura explains that ‘[t]ext message users are well known for using emoticons, short combinations of punctuation marks that **indicate emotion** in a message.’” *Id.* at 31 (quoting Ex. 1004, 1:15–17).

Next, Petitioner explains that Gura includes claim 1’s automatic image selection/insertion feature because in Gura “a ‘simple text message is personalized by **automatically** including content reflecting the text meaning,

based on an analysis of the message text, context, and user preferences.” *Id.* at 32–33 (quoting Ex. 1004, 5:25–27). In addition, Petitioner notes, Gura’s text message enhancement apparatus 100 is the claimed “Media Messaging Platform” because it is “a cloud-based platform for modifying messaging or texting services by personalizing messages or texts with multimedia inserts.” *Id.* at 36; *see id.* at 34–37.

Petitioner goes on to explain that Gura’s messaging service receives a message from the first user device, retrieves/inserts requested rich media into the message, and presents the message to the second user device as claim 1 requires because “Gura’s enhanced messaging system uses keywords, key phrases, and the message’s context to identify and retrieve media items in the image database to enhance the received text message,” as depicted in Gura’s figures 2 and 3. *Id.* at 40; *see id.* at 38–40.

Petitioner asserts Gura teaches claim 1’s “network” coupling the user devices and messaging cloud because “Gura’s *messaging cloud* (i.e., text message enhancement apparatus, SMSC, and MMSC in the Fig. 2 embodiment) resides in the *network* connecting the message sender . . . and the message receiver.” *Id.* at 45 (citing Ex. 1004, code (57), 4:30–5:1, 5:17–19, 5:23–25; 6:10–15).

For claim 1’s terminal wherein clause—“wherein the message is originally formatted on the first user device via the first user interface such that the rich media data request is within the message”—Petitioner again relies on Gura’s figure 1a, which shows a message (i.e., text message 10) that is formatted on the first user’s device such that the rich media data request (i.e., “:-)”) is within the message. *Id.* at 46–47.

We have reviewed Petitioner’s arguments and the underlying evidence cited in support and are persuaded that, at this stage, Petitioner sufficiently demonstrates a reasonable likelihood of succeeding in its obviousness challenge to claim 1 based on Gura.

2. Obviousness of Claims 2–13 Based on Gura

Independent claim 10 recites a method that largely parallels claim 1’s apparatus. Claims 2–9 and 11–13 depend ultimately from either claim 1 or claim 10. Petitioner additionally asserts claims 2–13 would have been obvious over Gura. *Id.* at 47–68. As noted above, Patent Owner does not challenge Petitioner’s analysis at this stage. We have reviewed Petitioner’s arguments and the underlying evidence cited in support and are persuaded that, at this stage, Petitioner sufficiently demonstrates a reasonable likelihood of succeeding in its challenges to claims 2–13 based on Gura.

3. Additional Grounds

Petitioner additionally asserts claims 1–13 would have been obvious over Gura and Jensen (*id.* at 69–71) and claims 1–13 would have been obvious over Gura and Fifield (*id.* at 71–76). For these challenges, Petitioner adds Jensen and Fifield to address claim 1’s *semantic model* under more narrow constructions. *See id.* at 71, 76. Petitioner adds additional grounds with Le Bodic to address dependent claim 7’s additional limitation (i.e., pushing the message to the second user device when the second user device is offline) under a relatively narrow claim construction relevant to a related litigation. *See id.* at 76–78 (explaining that “[i]n the related litigation, Patent Owner contends that claim 7 covers a messaging feature that sends an offline recipient an email with a ‘view comment’ link letting

the recipient access the message including its multimedia items,” and describing how Le Bodic teaches that specific feature).

As noted above, Patent Owner does not challenge Petitioner’s analysis at this stage. We have reviewed Petitioner’s arguments and the underlying evidence cited in support and are persuaded that, at this stage, Petitioner sufficiently demonstrates a reasonable likelihood of succeeding in its additional challenges to claims 1–13 involving Gura along with Jensen, Fifield, and Le Bodic.

IV. CONCLUSION

For the foregoing reasons, we have determined that there is a reasonable likelihood that Petitioner would prevail with respect to at least one of the claims challenged in the Petition. We therefore institute trial as to all challenged claims on all grounds stated in the Petition.

V. ORDER

Accordingly, it is:

ORDERED that *inter partes* review of claims 1–13 of the ’149 patent is instituted on all grounds in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial will commence on the entry date of this decision.

IPR2022-00210
Patent 9,565,149 B2

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