

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUBSPOT, INC.,
Petitioner,

v.

TRIDENT HOLDINGS, INC.,
Patent Owner.

IPR2022-00907
Patent 6,236,977 B1

Before PATRICK R. SCANLON, NEIL T. POWELL, and
GEORGE R. HOSKINS, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

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

I. INTRODUCTION

HubSpot, Inc. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting an *inter partes* review of claims 1–4, 27–30, and 47 of U.S. Patent No. 6,236,977 B1 (Ex. 1001, “the ’977 patent”). Trident Holdings, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 5 (“Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2021). To institute an *inter partes* review, we must determine that the information presented in the Petition shows “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). For the reasons set forth below, we determine that Petitioner has not demonstrated a reasonable likelihood that it would prevail with respect to at least one challenged claim. Accordingly, we do not institute an *inter partes* review of any challenged claim on any asserted ground.

II. BACKGROUND

A. *Real Parties in Interest*

Petitioner identifies itself as the real party in interest. Pet. 71. Patent Owner identifies itself as the real party in interest. Paper 4, 1.

B. *Related Matters*

The parties identify *Trident Holdings, Inc. v. HubSpot, Inc.*, Case No. 1:21-cv-00401-CFC (D. Del.) as a related matter involving the ’977 patent. Pet. 71; Paper 4, 1.

C. *The ’977 Patent*

The ’977 patent is titled “Computer Implemented Marketing System” and “relates to an electronic commerce marketing system that automates and

optimizes the behavior of inbound and outbound marketing campaigns on behalf of each of several different parties seeking to exchange valuable resources.” Ex. 1001, code (54), 1:7–11.

Figure 1, reproduced below, is “a top-level entity relationship diagram depicting the system architecture of [one] embodiment of the marketing system.” *Id.* at 4:65–67.

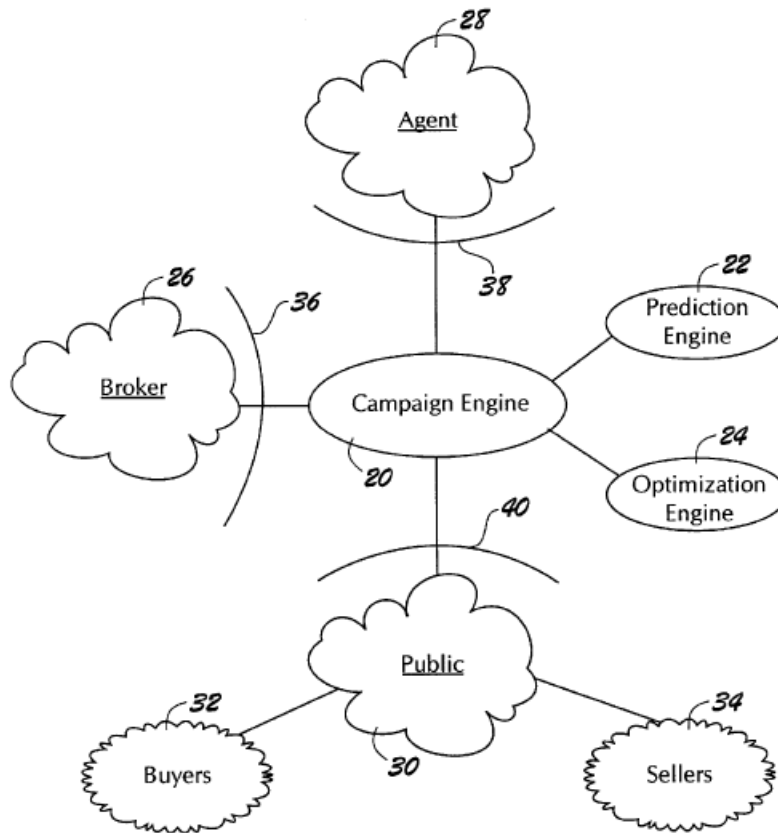


FIG. 1

Figure 1 is an entity relationship diagram showing major components of the marketing system. *Id.* at 5:55–56. “At the heart of the system is the campaign engine 20, which uses a prediction engine 22 and an optimization engine 24.” *Id.* at 5:57–59. Campaign engine 20 provides interfaces through which users—including broker population 26, agent population 28,

and public population 30—interact with the system. *Id.* at 5:59–64. In addition, the campaign engine selectively generates and stores a “campaign population,” which is “a plurality of individual marketing campaigns,” with each campaign being characterized by a plurality of campaign attributes. *Id.* at 2:25–28.

The optimization engine accesses campaign data, person data, property data, agent data and broker data and utilizes a scoring process for ordering the members of a particular population. *Id.* at 3:27–31. “The scoring process employs an adaptive scoring algorithm that alters the scores based upon relations among at least some of the campaign attributes and person, property, broker, or agent population member attributes.” *Id.* at 3:31–35. The scores are used to compete for resources such that the competition creates the desired optimization for the campaign. *Id.* at 3:35–38.

The prediction engine accesses data structures and issues predictions based on historical data. *Id.* at 3:58–60. In one embodiment, the prediction engine uses holographic neural net technology to enfold patterns of actual data to predict scores based on historical results. *Id.* at 7:18–20.

“The marketing system further includes a data store for storing a person population, property population, agent population and a broker population.” *Id.* at 2:55–57. The person population may include actual and potential customers. *Id.* at 2:57–59.

D. Challenged Claims

As noted above, Petitioner challenges claims 1–4, 27–30, and 47. Of these claims, claims 1, 27, and 47 are independent. Claim 1 is illustrative of the subject matter and reads as follows:

1. A computer-implemented self-optimizing marketing system comprising:
 - a campaign engine for selectively generating and storing a campaign population, said campaign population having members comprising stored first data representing a plurality of marketing campaigns each campaign characterized by a plurality of campaign attributes including a plurality of campaign activities;
 - said campaign engine having processing functionality to assemble campaign population members from said campaign activities;
 - a customer population data store for storing a customer population, said customer population having members comprising stored second data representing a plurality of customers and potential customers, characterized by a plurality of customer attributes; and
 - an optimization engine for accessing said first and second data to optimize at least one of said campaign population and said customer population,
 - said optimization engine including a scoring system for ordering the members of at least one of said campaign population and said customer population, said scoring system employing adaptive scoring process that alters said scoring process based upon relations among at least some of said campaign attributes and said customer attributes.

Ex. 1001, 22:26–52.

E. Asserted Grounds of Unpatentability

Petitioner contends that the challenged claims would have been unpatentable on the following grounds:¹

¹ The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended 35 U.S.C. § 103. Because the ’977 patent has an effective filing date before the effective date of the applicable AIA amendments, we apply the pre-AIA version of 35 U.S.C. § 103.

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1, 4, 27, 30	103(a)	Jones ²
2, 28, 47	103(a)	Jones, Brooks ³
3, 29	103(a)	Jones, Midgely ⁴
1, 4, 27, 30	103(a)	Grossman ⁵
2, 28, 47	103(a)	Grossman, Brooks
3, 29	103(a)	Grossman, Midgely

Pet. 2–3. Petitioner supports its challenge with the Declaration of Sandeep Chatterjee, Ph.D. (Ex. 1002).

III. ANALYSIS

A. Level of Ordinary Skill in the Art

In determining whether an invention would have been obvious at the time it was made, 35 U.S.C. § 103 requires us to resolve the level of ordinary skill in the pertinent art at the time of the invention. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). The person of ordinary skill in the art is a hypothetical person who is 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). Factors that may be considered in determining the level of ordinary skill in the art include, but are not limited to, the types of problems encountered in the art, the sophistication of the technology, and educational level of active workers in the field. *Id.* In a given case, one or more factors may predominate. *Id.*

Petitioner contends that a person having ordinary skill in the art “would have possessed at least a Bachelor’s degree in electrical engineering,

² US 6,925,441 B1, issued Aug. 2, 2005 (Ex. 1005).

³ US 5,825,869, issued Oct. 20, 1998 (Ex. 1007).

⁴ David F. Midgley, et al., *Breeding Competitive Strategies*, Mgmt. Science, vol. 43, no. 3, 257–75 (1997) (Ex. 1008).

⁵ US 5,889,799, issued Mar. 30, 1999 (Ex. 1006).

computer science, computer engineering or a similar discipline, and have at least two years of practical work or research experience with distributed computing software and systems.” Pet. 8 (citing Ex. 1002 ¶ 36).

Patent Owner contends that a person having ordinary skill in the art “would have been someone with a bachelor of science degree with computer science coursework, or equivalent experience, and at least two years of direct technical experience performing object-oriented programming or using a relational database management system.” Prelim. Resp. 7. Patent Owner argues that Petitioner’s proposed definition “improperly discriminates against qualified individuals who did not obtain a college degree, such as Mark Zuckerberg, David Karp, Evan Williams, Bill Gates, Steve Jobs, and Steve Wozniak.” *Id.*

Based on our review of the record before us, we find that Petitioner’s stated level of ordinary skill in the art is reasonable because it is consistent with the evidence of record, including the asserted prior art. Because the person of ordinary skill in the art is a *hypothetical* person, we are not persuaded by Patent Owner’s argument regarding actual individuals that allegedly are disqualified by Petitioner’s definition. Thus, for the purposes of this Decision, we adopt Petitioner’s definition. Our analysis would not differ, however, if we adopted Patent Owner’s proposed definition.

B. Claim Construction

In *inter partes* reviews, the Board interprets claim language using the district-court-type standard, as described in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). See 37 C.F.R. § 42.100(b) (2021). Under that standard, we generally give claim terms their ordinary and customary meaning, as would be understood by a person of ordinary skill in the art at the time of the invention, in light of the language of the claims, the

specification, and the prosecution history. *See Phillips*, 415 F.3d at 1313–14. Although extrinsic evidence, when available, may also be useful when construing claim terms under this standard, extrinsic evidence should be considered in the context of the intrinsic evidence. *See id.* at 1317–19.

Petitioner asserts that it is not “necessary for the Board to expressly construe any terms for purposes of this IPR proceeding.” Pet. 9 (citing *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)). Patent Owner disputes Petitioner’s position and proposes claim constructions for the terms “campaign,” “population,” “attributes,” “activities,” “relations,” “campaign sponsor,” and “agents.” Prelim. Resp. 8–9.

Regarding “campaign,” Patent Owner argues that this claim term should be construed as “a coordinated set of marketing activities.” *Id.* at 9. Patent Owner asserts that this

construction is consistent with the written description of the ’977 patent because it explicitly states that a “campaign is a coordinated set of activities that attempt to marshal resources in such a way as to maximize the chances of the campaign sponsor’s desires being met while minimizing the cost to do so.”

Id. (quoting Ex. 1001, 16:52–65).

An inventor is entitled to be his or her own lexicographer of patent claim terms by providing a definition of the term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). In this case, we are persuaded that the passage cited by Patent Owner exhibits a clear intent to define “campaign” and does so with the requisite clarity, deliberateness, and precision. We thus

determine that the Specification of the '977 patent provides an express lexicographic definition for the term. *See* Ex. 1001, 16:60–65.

Patent Owner, however, truncates the lexicographic definition for its proposed construction without explaining the basis for the truncation. We need not determine whether the alteration is appropriate because we see no meaningful difference between Patent Owner's proposed construction and the lexicographic definition vis-à-vis our analysis below. Accordingly, for the purpose of this Decision, we construe "campaign" as "a coordinated set of marketing activities."

We do not discern a need to construe explicitly any other claim term because doing so would not change the result of the analysis below. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) ("The Board is required to construe 'only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.'" (quoting *Vivid Techs.*, 200 F.3d at 803)).

C. Ground 1: Asserted Obviousness Based on Jones

Petitioner asserts that claims 1, 4, 27, and 30 of the '977 patent are unpatentable under 35 U.S.C. § 103(a) based on Jones. Pet. 9–32. Patent Owner provides arguments addressing this asserted ground of unpatentability. Prelim. Resp. 15–17. We first summarize Jones and then address the parties' contentions.

1. Jones

Jones relates to "a system and method for targeted marketing to specific consumers based upon the profile of the consumers, the channel of communicating the offer and the goods to be offered." Ex. 1005, 1:8–11. Jones discloses working interactively with content providers to develop and

package offers to consumers.⁶ *Id.* at 6:66–7:1. “For example, based upon multivariate analysis of buying trends of consumers, the present invention will create offer packages.” *Id.* at 7:1–4.

Jones uses a database that stores consumer information, such as information on the spending habits of a consumer and consumer income levels. *Id.* at 7:31–51. For example, an integrated database stores “demographic, credit, transactional, lifestyle preferences, and response-to-offers history of a wide variety of consumers.” *Id.* at 9:56–58. Jones uses consumer information “to establish a consumer rating which amounts to a probability number that will indicate how likely it is that a consumer will respond to a particular offer presented to the consumer by a particular channel of commerce.” *Id.* at 9:35–41.

The system includes application servers 65 that comprise customer/fulfillment server 67 and risk management servers 69. *Id.* at 11:18–21, Fig. 4. The application servers can access information from database 73 through a series of pre-defined stored procedures. *Id.* at 11:21–23, Fig. 4. Risk management server 69 interacts with database 73 “concerning individual customers and the propensity of that customer to accept an offer” such that “offers of greater value will be presented to the customer via the customer fulfillment server 67.” *Id.* at 11:38–44.

2. *Independent Claims 1 and 27*

Petitioner provides analysis purporting to show where the limitations of independent claims 1 and 27 are either disclosed by Jones or would have been obvious in view of Jones. Pet. 11–27, 28–32. Regarding the limitation

⁶ In Jones, a “content provider” is “[a] merchant or service provider that has an offer of goods or services to disseminate to potential customers.” Ex. 1005, 5:14–16.

“a campaign engine for selectively generating and storing a campaign population” (recited in both claims 1 and 27), Petitioner maps Jones’s application servers (i.e., customer/fulfillment server 67 and risk management servers 69) to the campaign engine. *Id.* at 12–13 (citing Ex. 1005, 11:18–21, Fig. 4). Petitioner also asserts that Jones discloses generating and storing offers (which Petitioner maps to “campaigns”) and an offer valuation process (which Petitioner maps to “selectively generating a campaign population”). *Id.* at 14–15 (citing Ex. 1005, 6:46–50, 6:66–7:1, 7:11–14, 14:45–50, 14:58–65, Fig. 10; Ex. 1002 ¶¶ 75, 114), 29 (citing Ex. 1005, 6:66–7:1).

Patent Owner disputes Petitioner’s assertion, arguing that an offer in Jones is not a coordinated set of marketing activities but only an expression to sell something. Prelim. Resp. 15. We agree with Patent Owner because Petitioner’s mapping of Jones’s offers to “campaigns” is inconsistent with our construction of “campaign” as “a coordinated set of marketing activities.” *See supra* § III.B. Petitioner does not identify any disclosure in Jones or provide any reasoning suggesting that an offer in Jones is a coordinated set of marketing activities. As such, Petitioner’s arguments do not persuade us that Jones discloses selectively generating and storing a campaign population.

Furthermore, even if we discounted the lexicographic definition, Petitioner does not explain adequately why an offer in Jones would be a “campaign” under the ordinary meaning of the term. Instead, Petitioner merely equates Jones’s offers to campaigns with repeated parenthetical references. Pet. 14–16. Petitioner argues that Jones discloses developing offers to be marketed to consumers (*id.* at 14 (citing Ex. 1005, 6:66–7:1)) and that the offers are “geared to an individual consumer and presented over

a channel of established communications” (*id.* at 16 (quoting Ex. 1005, 3:39–41)).⁷ These disclosures may indicate that Jones’s offers could be considered a form of marketing, but Petitioner still fails to explain sufficiently how an individual offer would comprise a marketing *campaign*. Accordingly, we are not persuaded that Jones discloses generating and storing a campaign population that comprises a plurality of marketing campaigns.

For the above reasons, we determine Petitioner has not met its burden to show a reasonable likelihood it would prevail with respect to the contention that claims 1 and 27 are unpatentable over Jones.

3. Dependent Claims 4 and 30

Claim 4 depends from claim 1 and, thus, contains all the limitations of claim 1; claim 30 depends from claim 27 and, thus, contains all the limitations of claim 27.

Petitioner’s challenges to dependent claims 4 and 30 do not overcome the deficiencies discussed above with respect to the challenge to independent claims 1 and 27. *See* Pet. 27–28, 32. Accordingly, for the same reasons discussed above in connection with claims 1 and 27, we find Petitioner has not met its burden to show a reasonable likelihood that claims 4 and 30 are unpatentable in view of Jones.

D. Grounds 2 and 3: Asserted Obviousness Based on Jones and Brooks or Midgely

Petitioner challenges claims 2, 28, and 47 as obvious under 35 U.S.C. § 103(a) over Jones and Brooks and claims 3 and 29 as obvious over Jones and Midgely. Pet. 32–43.

⁷ Although the Petition actually cites column 5 of Jones, this appears to be a typographical error as the quoted language is in lines 39–41 of column 3.

Claims 2, 3, 28, and 29 depend from either independent claim 1 or independent claim 27 and, thus, contain all the limitations thereof. Petitioner’s challenges to dependent claims 2, 3, 28, and 29 do not overcome the deficiencies discussed above with respect to the challenge to independent claims 1 and 27. *See id.*

Independent claim 47, like claims 1 and 27, recites “a campaign engine for selectively generating and storing a campaign population.” Ex. 1001, 27:1–2. Petitioner asserts that the “campaign engine” limitation of claim 47, among other limitations, would have been rendered obvious by Jones “for the same reasons described above with respect to claim 1.” Pet. 39 (citing Ex. 1002 ¶ 145).

Accordingly, each of these additional grounds suffers from the same deficiencies noted above (*see supra* § III.C.2) with respect to Jones. Therefore, for the same reasons discussed above, we determine that the information presented in the Petition fails to establish a reasonable likelihood that Petitioner would prevail in showing that claims 2, 28, and 47 would have been obvious over Jones and Brooks or claims 3 and 29 would have been obvious over Jones and Midgely.

E. Ground 4: Asserted Obviousness Based on Grossman

Petitioner asserts that claims 1, 4, 27, and 30 of the ’977 patent are unpatentable under 35 U.S.C. § 103(a) based on Grossman. Pet. 43–59. Patent Owner provides arguments addressing this asserted ground of unpatentability. Prelim. Resp. 17–18. We first summarize Grossman and then address the parties’ contentions.

1. Grossman

Grossman relates “to a system for the optimization of telephone contact campaigns by increasing the probability that an attempt to contact a

party will be successful.” Ex. 1006, 1:14–17. We reproduce Figure 1 below.

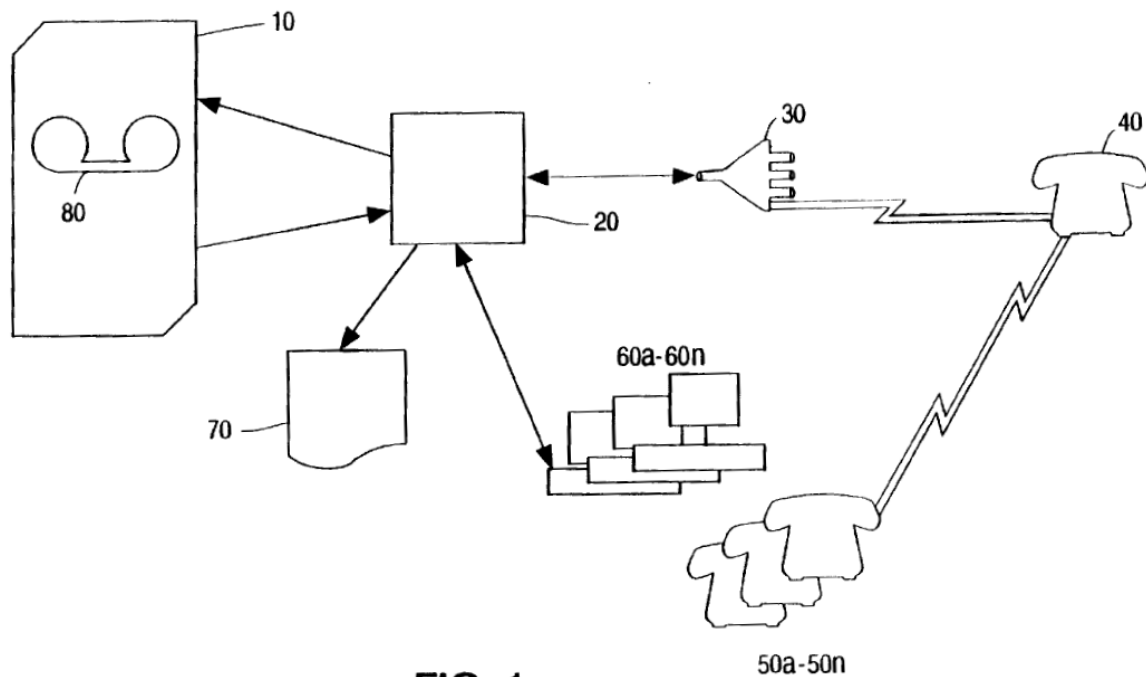


FIG. 1

Figure 1 is a schematic representation of Grossman’s system. *Id.* at 5:10–12. The system includes host computer 10 that “maintains a database 80 of account records and selectively downloads a set of account records for teleprocessing to campaign optimizer 20.” *Id.* at 5:41–44. Campaign optimizer 20 assesses the relative processing priorities of the downloaded account records and the account records are then grouped into priority bands corresponding to specified ranges of account processing priority values. *Id.* at 5:47–51. “The individual contact histories, in conjunction with behavior models, are used to generate telephone contact campaigns.” *Id.* at 5:52–54.

Dialer-downloads (i.e., campaigns) are transmitted to predictive dialer system 30 for teleprocessing. *Id.* at 5:61–64. “If a contact attempt made by predictive dialer system 30 results in a connection with remote telephone 40, the telecommunication line is transferred from predictive dialer system 30 to

one of local telephone operators arbitrarily labeled 50a-50n.” *Id.* at 6:5–9. Account information corresponding to the individual target at remote telephone 40 is displayed on computer terminal 60a–60n associated with the operator. *Id.* at 6:9–14. The operator is able to determine whether a right or wrong party contact has been made and proceeds accordingly. *Id.* at 6:14–18.

2. *Independent Claims 1 and 27*

Petitioner provides analysis purporting to show where the limitations of independent claims 1 and 27 are either disclosed by Grossman or would have been obvious in view of Grossman. Pet. 44–55, 57–59. Regarding the limitation “a campaign engine for selectively generating and storing a campaign population” (recited in both claims 1 and 27), Petitioner maps Grossman’s host computer 10 to the campaign engine. *Id.* at 46 (citing Ex. 1006, 5:41–46).

We are not persuaded, however, that Grossman’s host computer 10 selectively generates or stores a campaign population (i.e., a plurality of campaigns). Grossman discloses that host computer 10 maintains a database of account records and selectively downloads a set of account records to campaign optimizer 20. Ex. 1006, 5:41–44. Grossman then discloses that

relative processing priorities of the downloaded account records are assessed in *campaign optimizer 20* and the account records are then grouped into priority bands corresponding to specified ranges of account processing priority values. The prioritized account records are sorted and merged with individual contact history records. The individual contact histories, in conjunction with behavior models, are used to generate telephone contact campaigns.

Id. at 5:47–54 (emphasis added). This disclosure indicates that campaign optimizer 20—not host computer 10—generates the telephone contact

campaigns. This understanding is bolstered by Grossman's disclosure that the campaigns (also referred to as dialer-downloads in Grossman) are transmitted to predictive dialer system 30 for teleprocessing and to be run during a specific time interval. *Id.* at 5:61–64. Figure 1 of Grossman depicts predictive dialer system 30 as being in communication with campaign optimizer 20 but not host computer 10. This depiction indicates that the campaigns are transmitted from campaign optimizer 20, and, thus, suggests that the campaigns are generated by campaign optimizer 20. Furthermore, Grossman discloses that predictive dialer system 30 attempts to contact target individuals “at the times determined by campaign optimizer 20,” further suggesting that campaign optimizer 20 generates the campaigns. *See id.* at 6:1–4.

Petitioner contends that Grossman's host computer 10 “processes campaigns in order of priority based on ‘the processing priority parameters of campaign parameters 120,’” and “Grossman discloses generating campaigns, by using historical contact information, ‘in conjunction with behavior models, used to generate telephone contact campaigns.’” Pet. 46 (quoting Ex. 1006, 6:50–56).

We disagree that the cited disclosures pertain to processing performed by host computer 10. Grossman discloses that “[t]he processing priority *of the host-download accounts* is determined in accordance with the processing priority parameters of campaign parameters 120.” Ex. 1006, 6:48–51 (emphasis added). Grossman also discloses that the host-download accounts are processed into one or more campaigns. *Id.* at 6:45–46. The host-download accounts refer to the set of account records that have been downloaded from host computer 10 to campaign optimizer 20. *Id.* at 6:37–42 (“[T]he process of telephone contact campaign optimization begins when

a set of accounts are transmitted from host computer system 10. The transmitted accounts (host-download) are translated into a useable format, if necessary, and input to the campaign optimizer at input stage 100.”). In other words, the host-download accounts are processed *after* they have been downloaded from host computer 10 to campaign optimizer 20, such that the processing is performed by the campaign optimizer, not the host computer.

For the above reasons, we are not persuaded that host computer 10 generates a plurality of campaigns. In addition, Petitioner does not explain adequately how Grossman discloses that host computer 10 stores a plurality of campaigns.

Next, Petitioner maps Grossman’s master campaign file 140 to the campaign population. Pet. 47. According to Petitioner, Grossman teaches that master campaign file 140 includes a plurality of “separate campaigns” and it “is an intermediate step in the campaign optimization process wherein relative prioritization has been established but chronological scheduling has not yet been performed.” *Id.* (citing Ex. 1002 ¶ 169; quoting Ex. 1006, 7:1–4).

In response, Patent Owner argues that Grossman’s master campaign file 140 is not a plurality of campaigns. Prelim. Resp. 17. We agree with Patent Owner. The passage from Grossman quoted in the Petition refers to the master campaign file as “an intermediate step” and does not teach or suggest that it includes a plurality of Grossman’s telephone contact campaigns. *See* Ex. 1006, 7:1–4. Dr. Chatterjee cites additional disclosure in Grossman in testifying that master campaign file 140 includes a plurality of campaigns. Ex. 1002 ¶ 169 (citing Ex. 1006, 3:36–44). However, this disclosure discusses the account records downloaded from host computer 10, not the campaigns that are generated from the account records. We agree

with Patent Owner that the account records are not campaigns. *See* Prelim. Resp. 17. Indeed, Grossman discloses that “[t]he sorted and prioritized account records are then temporarily saved in a master campaign file *from which the separate campaigns will be generated.*” Ex. 1006, 3:42–44 (emphasis added). The fact that the campaigns *are generated* from the account records temporarily saved in the master campaign file indicates that the campaigns are distinct from the account records. Neither the Petition nor Dr. Chatterjee shows sufficiently that master campaign file 140 includes a plurality of campaigns.

In view of the above, we determine Petitioner has not met its burden to show a reasonable likelihood it would prevail with respect to the contention that claims 1 and 27 are unpatentable over Grossman.

3. Dependent Claims 4 and 30

Claim 4 depends from claim 1 and, thus, contains all the limitations of claim 1; claim 30 depends from claim 27 and, thus, contains all the limitations of claim 27.

Petitioner’s challenges to dependent claims 4 and 30 do not overcome the deficiencies discussed above with respect to the challenge to independent claims 1 and 27. *See* Pet. 55–57, 59. Accordingly, for the same reasons discussed above in connection with claims 1 and 27, we find Petitioner has not met its burden to show a reasonable likelihood that claims 4 and 30 are unpatentable in view of Grossman.

F. Grounds 5 and 6: Asserted Obviousness Based on Grossman and Brooks or Midgely

Petitioner challenges claims 2, 28, and 47 as obvious under 35 U.S.C. § 103(a) over Grossman and Brooks and claims 3 and 29 as obvious over Grossman and Midgely. Pet. 59–67.

Claims 2, 3, 28, and 29 depend from either independent claim 1 or independent claim 27 and, thus, contain all the limitations thereof. Petitioner's challenges to dependent claims 2, 3, 28, and 29 do not overcome the deficiencies discussed above with respect to the challenge to independent claims 1 and 27. *See id.*

Independent claim 47, like claims 1 and 27, recites “a campaign engine for selectively generating and storing a campaign population.” Ex. 1001, 27:1–2. Petitioner asserts that the “campaign engine” limitation of claim 47, among other limitations, would have been rendered obvious by Grossman “for the same reasons described above with respect to claim 1.” Pet. 64 (citing Ex. 1002 ¶¶ 222–223).

Accordingly, each of these additional grounds suffers from the same deficiencies noted above (*see supra* § III.E.2) with respect to Grossman. Therefore, for the same reasons discussed above, we determine that the information presented in the Petition fails to establish a reasonable likelihood that Petitioner would prevail in showing that claims 2, 28, and 47 would have been obvious over Grossman and Brooks or claims 3 and 29 would have been obvious over Grossman and Midgely.

IV. CONCLUSION

For the foregoing reasons, we do not institute *inter partes* review.

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is *denied* as to all challenged claims of the '977 patent; and

FURTHER ORDERED that no *inter partes* review is instituted.

IPR2022-00907
Patent 6,236,977 B1

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