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Paper 9
Entered: March 13, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

ALMONDNET, INC.,
Patent Owner.

IPR2022-01324
Patent 9,830,615 B2

Before KRISTEN L. DROESCH, AMANDA F. WIEKER, and SCOTT B. HOWARD, *Administrative Patent Judges.*

DROESCH, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

Microsoft Corporation ("Petitioner") filed a Petition requesting *inter partes* review of claims 9–12 of U.S. Patent No. 9,830,615 B2 (Ex. 1001, "the '615 Patent"). Paper 1 ("Pet."). Petitioner filed a Declaration of Don Turnbull, Ph.D., with its Petition. Ex. 1002. AlmondNet Inc. ("Patent Owner") filed a Preliminary Response. Paper 6 ("Prelim. Resp.").

We have authority to determine whether to institute review under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a). An *inter partes* review may not be instituted unless it is determined that "the information presented in the petition filed under section 311 and any response filed under section 313 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).

For the reasons provided below, we determine based on the record before us that there is not a reasonable likelihood Petitioner would prevail in showing at least one of the challenged claims is unpatentable.

B. Related Matters

The parties indicate the '615 Patent is or was the subject of the following proceedings:

AlmondNet, Inc., et al. v. Microsoft Corp., 6:21-cv-00897 (W.D. Tex.) *AlmondNet, Inc., et al. v. Meta Platforms, Inc.*, 6:21-cv-00896 (W.D. Tex.); and *AlmondNet, Inc., et al. v. Amazon.com, Inc.*, 6:21-cv-00898 (W.D. Tex.). Pet. 7; Paper 3, 1.

The '615 Patent is also the subject of *Meta Platforms, Inc. v. Almondnet, Inc.*, IPR2022-01064 (PTAB).

C. The '615 Patent (Ex. 1001)

The '615 Patent relates to "electronic advertisement placement based on expected profit from the placement." Ex. 1001, 1:30–32. Behavioral targeting companies ("BT companies") "specialize in targeting ads based on observed behavior of sites' visitors," achieved by placing "a cookie (or cookies) on the computers of visitors." *Id.* at 2:6–9. A BT company collects profile information about site visitors, such as behavioral information, demographic information, or user-provided information, and "target[s] ads to those visitors wherever found based on the collected profile information." *Id.* at 2:38–43. Alternately, a network ad server or a site's ad server "can place their own cookies on the computers of visitors that are redirected to them by the BT companies, for the purpose of later recognizing those visitors within their own ad space." *Id.* at 5:25–31. By this process, a second media property is able to recognize a first media property visitor, but the '615 Patent explains that this process is inefficient at least because: (1) media properties' ad space prices vary; (2) profiles of media properties' visitors are worth different amounts to advertisers depending on the profiles; and (3) the same person might have several profile attributes in his or her profile. *See id.* at 5:56–6:14.

Figure 3 of the '615 Patent is reproduced below.

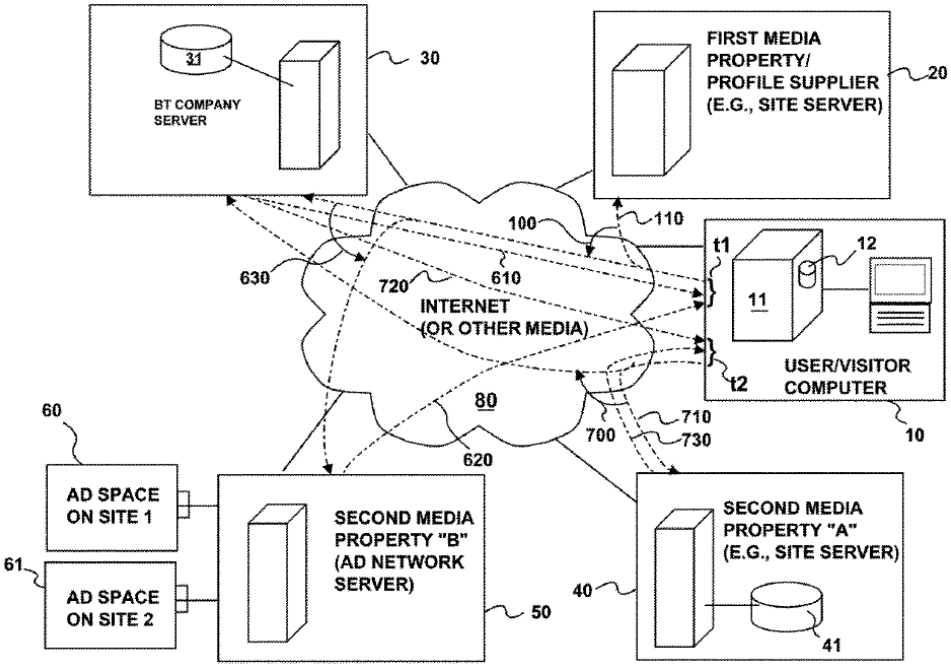

Figure 3 depicts entities and associated equipment used with an exemplary profit-based selection method. Ex. 1001, 6:58–60. To address the above-noted inefficiencies and to ensure that profile information is not transferred to the second media property, the '615 Patent describes the BT company as "simply ask[ing] the second media property . . . to tag the visitor as a BT company visitor or arrang[ing] for a tag to be placed (620) that is readable by the second media property 40 and that marks the visitor as a BT company visitor." *Id.* at 9:47–54. "The BT company 30 selects . . . media properties (e.g., 40) for the delivery of an advertisement based on a profile collected on a first media property 20." *Id.* at 8:48–50. In one embodiment, "[t]he BT company 30 makes the selection based on a calculated expected profit and then arranges for the visitor 10 to be tagged (610 or 620) with a tag readable by the selected media property 40." *Id.* at 8:50–54. When media property 40 recognizes a tagged visitor 10 (tagged previously, at time t1) at a later time (at time t2) visiting (710) its ad space, the media property 40 will

arrange for BT company 30 to serve an ad (720) to the visitor 10 (which will appear with the media content (730) requested by the visitor), by redirecting (700) the visitor to BT company 30. *See id.* at 9:16–22. When "BT company 30 buys ad space from the proprietor of the second media property 40 and delivers therein an ad based on the collected profile, the BT company 30 has no economic incentive to transfer the profile information itself . . . to the second media property." *Id.* at 9:54–59. Thus,

> [t]he second media company's proprietor is being paid for the ad space and therefore just needs to know that the visitor 10 has been profiled by the BT company 30, which will pay the second media property's proprietor for an opportunity to deliver an ad to this visitor 10 within the ad space of the second media property 40.

Id. at 9:59–65.

D. Illustrative Claim

Claim 9 is independent and claims 10–12 depend therefrom. *See* Ex. 1001, 14:7–57. Claim 9 is illustrative and reproduced below.

> A computer system controlled by a behavioral targeting company (BT company), which computer system (BT computer system) is comprised of one or more computers and is structured and programmed to perform a method of directing electronic advertisements, the method comprising:
>
> automatically with the BT computer system:
>
> (a) at a first time, arranging for a third party computer system controlling advertising space on a plurality of third party media properties to electronically tag a first computer of a first visitor visiting a first website, without transferring to the third party computer system any profile information related to the first visitor, which tag is readable by computers operating under a domain of the third party computer system and identifies the visitor computer as associated with the BT company;

> (b) recording, in a profile of the first visitor maintained by the BT computer system, profile information collected during the first computer's visit to the first website;
>
> (c) electronically transferring to the computer system a price cap that the BT company is willing to pay for allowing delivery of an advertisement within media property advertising space controlled by the third party computer system controlling advertising space on the plurality of third party media properties; and
>
> (d) at a second time, later than the first time, upon receiving a redirection of the first computer while the first computer is visiting one of the plurality of third party media properties, causing a selected advertisement to be served to the first computer, which advertisement is based on the profile information collected during the first computer's visit to the first website, which profile information is in the profile of the first visitor maintained by the BT computer system, in exchange for a price less than the price cap.

Ex. 1001, 14:7–40.

E. Evidence

Petitioner relies on the following patent evidence.

Name	Patent Document	Exhibit
Detering	US 2002/0116313 A1	1013
Narin	US 7,039,699 B1	1012
Beyda	US 9,928,522 B2	1011

F. Prior Art and Asserted Patentability Challenges

Petitioner asserts that claims 9–12 would have been unpatentable based on the following grounds (Pet. 9):

Claim(s) Challenged	35 U.S.C. §[1]	Reference(s)/Basis
9–12	102(a)	Beyda
9–12	103(a)	Beyda, Narin
9–12	103(a)	Beyda, Narin, Detering

II. ANALYSIS

A. Claim Construction

In an *inter partes* review proceeding, the Board applies the same claim construction standard as applied in federal courts in a civil action under 35 U.S.C. § 282(b), which is generally referred to as the *Phillips* standard. *See* 37 C.F.R. § 42.100(b) (2022); *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). Under the *Phillips* standard, "words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips*, 415 F.3d at 1312.

"BT company" and "Third Party Computer System"

"Petitioner asserts the preamble of claim 9 is limiting," and "requires that the computer system be 'controlled by a behavioral targeting company (BT company)' and steps 9(a) and 9(c) refer back to the BT company first used in the preamble." Pet. 22–23; *see also* Pet. 27 (reiterating that the preamble of claim 9 is limiting). Petitioner contends that the term "BT company" "means 'an entity that targets ads for placement in advertising space controlled by another party based on observed behavior of website visitors by arranging for placement of cookies.'" Pet. 22. According to Petitioner, "[a]t the district court, Patent Owner did not contest Petitioner's

[1] The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011), amended 35 U.S.C. §§ 102, 103 effective March 16, 2013. Because the '615 Patent issued from a chain of continuation applications ultimately having a filing date prior to March 16, 2013, we refer to the pre-AIA versions of §§ 102 and 103.

position that the preamble was limiting and agreed in part with Petitioner's proposed construction." *Id.* (citing Ex. 1015, 50–52). Petitioner asserts that "Patent Owner proposed that 'BT company' be construed as 'an entity that targets ads based on observed behavior of sites' visitors.'" *See id.* (citing Ex. 1015, 50). Petitioner further contends that the '615 Patent Specification supports Petitioner's proposed construction. *See* Pet. 23 (citing Ex. 1001, 2:7–22; Ex. 1002 ¶ 38).

Patent Owner does not challenge Petitioner's position that the preamble is limiting. *See* Prelim. Resp. For the purpose of determining whether to institute review, we adopt Petitioner's position that the preamble is limiting. Patent Owner also does not contend that "BT company" requires express construction. *See id.* at 6. Patent Owner, however, asserts that "the Board need only confirm that the claims require that the 'third party computer system' and the claimed 'BT computer system' must be operated by parties distinct from one another." *Id.* at 4. According to Patent Owner, "[t]he Petition acknowledges (and Patent Owner agrees) that in the challenged claims, the BT company that controls the claimed 'BT computer system' must be distinct from the entity operating the claimed 'third party computer system.'" *Id.* (quoting Pet. 19; Ex. 1004, 102)). Patent Owner further asserts that "[i]t is apparent from the claim language itself that the 'third party computer system' is 'third party' to (i.e., operated by an entity distinct from) the 'BT computer system' which the claim specifies arranges for the third party computer system to electronically tag a first computer of a first visitor visiting a first website." *Id.* at 5 (quoting Ex. 1001, claim 9). According to Patent Owner, "for purposes of institution, the parties agree (and the intrinsic record supports) that distinct entities operate the claimed 'BT computer system' as compared to the claimed 'third party computer

system,' and "no further construction of 'third party computer system' is necessary at this time." *Id.* In addressing patentability, Petitioner contends that "[a]t the district court, Patent Owner has argued that 'third party' in related patents is 'simply a distinct party from parties primarily involved in a situation.'" Pet. 33 (citing Ex. 1015, 44).

We need not provide an explicit construction for "BT company," nor an explicit construction for "third party computer system." The parties agree that the claimed "BT company" and the claimed "third party" are distinct entities, in other words, the BT computer system is controlled by a distinct entity from the entity that operates the third party computer system controlling advertising space. *See* Pet. 22 ("'**BT company**' . . . means '*an entity* that targets ads for placement in *advertising space controlled by another party* . . . .'" (italics added), Ex. 1001, 14:13–15 ("*a third party* computer system *controlling advertising space.*" (italics added)); Pet. 33 (citing Ex. 1015, 44). The prosecution history and '615 Patent Specification support the distinction between the BT company and third party. *See* Ex. 1001, 8:56–63, 9:23–46, 9:66–10:19; Ex. 1004, 102 (cited by Pet. 19).

"Automatically with the Computer System"

Petitioner also asserts that "automatically with the computer system" and the term "automatically" means "not manually" because "Patent Owner has agreed that the plain meaning of 'automatically' means 'not manually' in its briefing at the district court." Pet. 20–21 (citing Ex. 1015, 34). Petitioner further asserts that this interpretation is consistent with the term's plain meaning, and with how Patent Owner's previous use of "automatically" in other patents related to targeted advertising. Pet. 21–22 (quoting Ex. 1017, 18; citing Ex. 1002 ¶ 84). "Patent Owner does not contend that

['automatically'] in the challenged claims require[s] express construction." Prelim. Resp. 6.

As demonstrated in the analysis below, we need not construe "automatically with the computer system" or the term "automatically." *See, e.g.*, *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) ("[W]e need only construe terms 'that are in controversy, and only to the extent necessary to resolve the controversy.'" (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

B. The Level of Ordinary Skill in the Art

Petitioner asserts:

> [a] person of ordinary skill in the art ("POSITA") as of the claimed priority date for the '615 Patent would have possessed at least a bachelor's degree in computer science, computer engineering, electrical engineering, or the equivalent, and two or more years of experience with designing, programming, configuration, or analysis or research with Internet or similar network-related processes including, for example, user profile management and/or web-based targeted content delivery, or a related field. A person could have qualified with more formal education and less technical experience, or vice versa.

Pet. 20 (citing Ex. 1002 ¶¶ 8–13). "Patent Owner does not challenge that definition." Prelim. Resp. 4. For the purpose of institution, we adopt Petitioner's definition of a person of ordinary skill in the art because it is consistent with the level of skill reflected by the '615 Patent Specification and the asserted prior art.

C. Principles of Law

"Under 35 U.S.C. § 102 a claim is anticipated 'if each and every limitation is found either expressly or inherently in a single prior art

reference.'" *King Pharm., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1274 (Fed. Cir. 2010) (quoting *Celeritas Techs. Ltd. v. Rockwell Int'l Corp.*, 150 F.3d 1354, 1360 (Fed. Cir. 1998)). "Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim." *Therasense, Inc. v. Becton, Dickinson & Co.*, 593 F.3d 1325, 1332 (Fed. Cir. 2010). A reference inherently discloses an element of a claim "if that missing characteristic is necessarily present, or inherent, in the single anticipating reference." *Schering Corp. v. Geneva Pharms.*, 339 F.3d 1373, 1377 (Fed. Cir. 2003) (citation omitted) (emphasis added). "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Therasense*, 593 F.3d at 1332 (quoting *Cont'l Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264, 1269 (Fed. Cir. 1991)).

A claim is unpatentable under 35 U.S.C. § 103 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) if in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).[2]

[2] Neither Petitioner nor Patent Owner present evidence related to secondary considerations.

The obviousness inquiry includes the question of "whether the improvement is more than the predictable use of prior art elements according to their established functions." *KSR*, 550 U.S. at 417. And often it will be necessary "to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue." *Id.* at 418. The analysis should be made explicit to facilitate review of the obviousness determination. *Id.* (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Kahn*, 441 F.3d at 988. Yet, "the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR*, 550 U.S. at 418.

D. Challenge to Claims 9–12 based on Beyda

1. Overview of Beyda (Ex. 1011)

Beyda discloses a system for "audience targeting" by "matching an audience with deliverable content such as advertising." Ex. 1011, 1:23–25.

Figure 1 of Beyda is reproduced below.

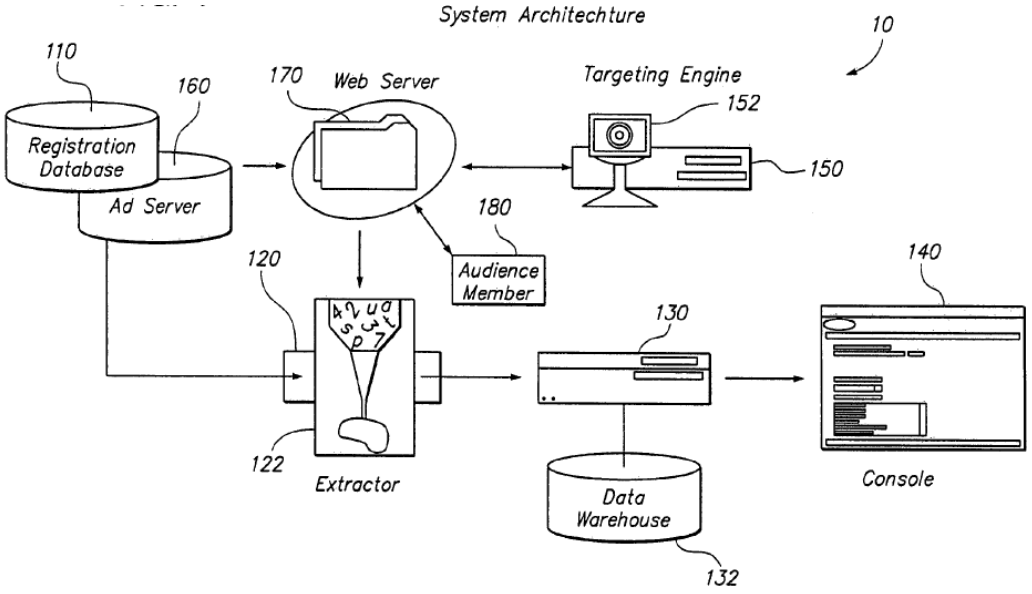

Figure 1 is a block diagram illustrating an example of a system for delivering content to an audience member. *See* Ex. 1011, 3:39–40, 4:40–41. System 10 includes first server 120, which hosts extractor program 122, and is operatively connected to one or more offline databases 110 and one or more external content servers 160, which, in turn, are operatively connected to one or more web servers 170. *See id.* at 4:41–47. Web server 170 provides website pages to audience member computer 180 and is operatively connected to targeting engine program 152 on second server 150. *See id.* at 4:47–51. First and second servers 120 and 150 are operatively connected to third server 130 which contains database 132 (referred to as the data warehouse) for storing audience member profile data. *See id.* at 4:51–54. Extractor program 122 on server 120 also is operatively connected to database 132 on server 130, and may routinely update the profile and segment affinity data in data warehouse 132, or may receive profile data directly from audience member computer 180 and/or targeting engine 152

that indicates the website pages visited, the web searches conducted, and the emails received by the audience member. *See id.* at 5:48–61.

2. Analysis of Independent Claim 9

Petitioner contends that the preamble is limiting "because it provides antecedent basis for 'BT company,'" and further asserts that "Beyda discloses the preamble of claim 9." Pet. 27 (citing Pet. 20–23; Ex. 1002 ¶¶ 71–85). As explained above in Section II.A, for the purpose of determining whether to institute review, we adopt Petitioner's position that the preamble is limiting. Petitioner contends "Beyda discloses computer systems that deliver advertisements to profiled audience members based on membership in a network segment and performance criteria." *Id.* (citing Ex. 1011, code (57), 2:48–58); *see id.* (citing Ex. 1011, 4:59–5:2). According to Petitioner, "[e]xamples of such systems include all or part of system 10 . . . and various embodiments of Audience Targeting System ('ATS') and an Audience Matching Network System ('AMN')." *Id.* (citing Ex. 1011, 4:40–58, Figs. 1, 8, 12, 14A, 14B, 15, 17, 19). Petitioner contends "Beyda discloses that each of the described systems are comprised of one or more computers, e.g., servers, programmed to implement methods of delivering targeted content, including advertisements." Pet. 28 (citing Ex. 1011, 4:40–58, 10:36–53, 19:41–55, 21:53–22:16; Ex. 1002 ¶¶ 72–73).

Petitioner also asserts that "[s]ystem 10 in Beyda provides the basic architecture of a system that could be used to implement the targeting advertising methods taught by Beyda." Pet. 28 (citing Ex. 1002 ¶ 74). Petitioner explains that Beyda's system 10 consists of three servers, first server 120 that hosts an extractor program, second server 150 that contains a targeting engine program to direct external content to audience members,

and third server 130 that contains a data warehouse where profile information is stored to be segmented and analyzed. *See* Pet. 28–29 (reproducing Ex. 1011, Fig. 1 (with annotations); citing Ex. 1002 ¶ 74; Ex. 1011, 4:40–58, 4:66–5:9). According to Petitioner, "[t]o a [person of ordinary skill in the art], the description of this functionality existing on multiple servers teaches that one or more parties **could** operate portions of what *Beyda* describes as system 10." Pet. 29 (citing Ex. 1002 ¶ 75) (bolding and underlining added). Petitioner further asserts "[t]hus the server containing the data warehouse (*i.e.*, third server 130 in FIG. 1) is itself a computer system comprised of one or more computers that meets the preamble limitations." *Id.* (citing Ex. 1002 ¶ 75).

Petitioner further asserts that Beyda discloses a method for delivering targeted content to an audience member based on the segment affinity data. *See* Pet. 29–30 (reproducing Ex. 1011, Fig. 6; citing Ex. 1011, 8:37–62). According to Petitioner, a person of ordinary skill in the art "would have understood *Beyda* to teach that its Figure 6 method for delivering targeted content could be programmed into any of the system embodiments disclosed by Beyda." Pet. 30 (Ex. 1002 ¶ 79); *see id.* (citing Ex. 1011, 1:23–25, 3:27–31; Ex. 1002 ¶ 79). Petitioner contends that Beyda identifies advertising as deliverable content that could be matched to an audience. *See* Pet. 30 (citing Ex. 1011, 1:23–25), 32 (citing Ex. 1011, 1:23–25). According to Petitioner, "*Beyda* teaches that an audience member may be targeted for the delivery of content within respective third party domains." Pet. 31 (citing Ex. 1011, 22:45–46; Ex. 1002 ¶ 81); *see id.* (citing Ex. 1011, 22:47–54, 24:17–32; Ex. 1002 ¶ 81). According to Petitioner, "[b]y matching advertisements to a particular audience and then causing delivery of those advertisements to that audience using computer systems, Beyda

teaches a method for directing electronic advertisements that the systems are structured and programmed to perform." Pet. 30–31 (citing Ex. 1002 ¶ 80), 31–32 (citing Ex. 1002 ¶ 82). Petitioner also contends that a person of ordinary skill in the art "would have further understood *Beyda* to teach that *Beyda's* system embodiments **could** be controlled by a behavioral targeting company." Pet. 32 (citing Ex. 1002 ¶ 83) (bolding and underlining added). Petitioner also asserts that the "the steps occur automatically in the computer-implemented processes of Beyda." *Id.* (quoting Ex. 1011, 8:26–27; citing Ex. 1002 ¶¶ 83–85).

As to the limitation "at a first time, arranging for a third party computer system controlling advertising space on a plurality of third party media properties to electronically tag a first computer of a first visitor visiting a first website . . . ," Petitioner asserts that "Beyda's Figure 1 discloses that offline databases 110 and external content servers 160 are operatively connected to one or more web servers 170, which web servers 170 are also operatively connected to a targeting engine program 152 (collectively comprising a **third party computer system**)." Pet. 32–33 (citing Ex. 1011, 4:45–49; Ex. 1002 ¶ 86). According to Petitioner, this system provides "website pages (**a plurality of third party media properties**) to an audience member computer 180." Pet. 33. Petitioner further asserts that "[i]n *Beyda*, the computer system that includes one or more of the external content servers 160, the web servers 170, and a targeting engine can be and is in some embodiments distinct from the computer system operating the data warehouse 130 where profile information is stored and segmentation occurs—that is therefore a **third-party computer system**." *See* Pet. 34 (citing Ex. 1002 ¶ 86). According to Petitioner, Beyda discloses that "various components and corresponding

functionality may be provided individually and separately if desired, such as by different servers or agents that are assigned to the functionality of one or more of the components," and, on this basis, Petitioner asserts that "Beyda teaches the claimed **third-party computer system**." *Id.* (quoting Ex. 1011, 28:56–64; citing Ex. 1002 ¶ 86). Petitioner further contends that Beyda discloses "website pages provided by external content servers would be provided by a party distinct from the party operating the data warehouse and, therefore, those website pages would be **third-party media properties**." *Id.* (citing Ex. 1002 ¶ 86).

In response, Patent Owner contends that the "computer system identified in the Petition cannot be a 'third party computer system' because Beyda provides no disclosure that the alleged 'third party computer system' is operated by any entity other than the entity operating the claimed BT computer system." Prelim. Resp. 8. Patent Owner asserts that "[t]he Petition identifies server 130 in Beyda's Figure 1 as being the relevant 'BT computer system . . . comprised of one or more computers.'" *Id.* at 9 (quoting Pet. 29; citing Pet. 34). According to Patent Owner, "the Petition's assertion that the system including Beyda's targeting engine 152 is a 'third-party computer system' is based entirely on a physical distinction between ***computer components*** performing the operations of Beyda's targeting engine and Beyda's data warehouse," and is not based on "a distinction between the ***entities controlling*** those computer components," as required by the claims. *Id.* Patent Owner contends that the Petition's assumption that the components of the third party computer system (i.e., external content servers 160, web server 170, and targeting engine 152) are distinct from server 130, namely, the alleged "BT computer system," "only relates to the ***servers*** being physically separate, not whether the ***parties operating those***

servers are distinct." *Id.* at 10. Patent Owner further contends that the Petition's quotation of "Beyda's teaching that 'various components and corresponding functionality may be provided individually and separately if desired, such as by different servers or agents that are assigned to the functionality of one or more of the components'" "remains silent as to any distinction between the ***entities*** controlling the operation of the various components." *Id.* at 10–11 (quoting Pet. 34). Patent Owner further contends that "Beyda repeatedly suggests that the 'server containing the data warehouse' 130 . . . is part of the ***same*** computer system as the 'targeting engine' 152," however, "the clear implication is that all components of the system are working together under control of a single entity." *Id.* at 12 (quoting Pet. 29, 33; citing Ex. 1011, Figs. 1, 8, 12, 15, 17, 19).

Based on the record before us, Petitioner does not set forth sufficient argument and evidence to demonstrate that Beyda discloses "[a] computer system controlled by a behavioral targeting company (BT company)," as recited in the preamble, and "a third party computer system controlling advertising space," as recited in the first limitation of claim 9. *See* Pet. 22–23, 27–39. As explained above in Section II.A., both parties agree that the BT company and third party are distinct entities. As highlighted above in Section II.A., Petitioner asserts that a "BT company" means "**an entity** that targets ads for placement in **advertising space controlled by another party**." Pet. 22–23 (emphasis added). Petitioner does not direct us to where Beyda discloses a computer system controlled by a first entity that is distinct from the third party (i.e., another party) operating the computer system controlling advertising space. *See* Pet. 27–39; Prelim. Resp. 10. We agree with Patent Owner that the Petition's assertion of a distinction between Beyda's data warehouse and Beyda's targeting engine, external content

servers, and web servers is based on a physical distinction between Beyda's computer components performing the operations of the targeting engine and the data warehouse. *See* Pet. 33–34; Prelim. Resp. 9–10. Therefore, the Petition does not establish that Beyda's data warehouse is controlled by a first entity that is distinct from the entity (i.e., another party, third party) operating Beyda's targeting engine, external content servers, and web servers controlling advertising space.

To the extent that the Petition asserts that Beyda inherently discloses "[a] computer system controlled by a behavioral targeting company (BT company)" and "a third party computer system controlling advertising space," we do not agree. The Petition's assertion that "[t]o a [person of ordinary skill in the art], the description of this functionality [(extractor program, targeting engine program, data warehouse)] existing on multiple servers teaches that one or more parties **could** operate portions of what *Beyda* describes as system 10" is insufficient because inherency cannot be established by possibilities and probabilities. Pet. 29 (bolding and underlining added); *see Therasense*, 593 F.3d at 1332. For these same reasons, we also find insufficient the Petition's assertion that a person of ordinary skill in the art "would have further understood *Beyda* to teach that *Beyda's* system embodiments **could** be controlled by a behavioral targeting company." Pet. 32 (bolding and underlining added).

We note that Petitioner also asserts that Beyda teaches that an audience member computer may request a website page from a site (i.e., "local" domain) within the network. *See* Pet. 35 (reproducing Ex. 1011, Fig. 4; citing Ex. 1002 ¶ 87; Ex. 1011, 6:55–61, 8:37–42, 22:1–2). Importantly, Petitioner contends that Beyda teaches that the local domains may each correspond to a separate publisher which may display online

advertisements on pages, which Petitioner parenthetically asserts corresponds to a "third party computer system controlling advertising space on a plurality of third party media properties." *See id.* (citing Ex. 1002 ¶ 87; Ex. 1011, 22:1–2). Petitioner, however, does not assert, nor sufficiently explain, that Beyda discloses that the publishers control advertising space on a plurality of third party media properties. *See* Pet. 31 (addressing third party domains), 35–37 (addressing the targeting engine placing cookies on an audience member's browser, and assigning a domain cookie to the browser). Moreover, Petitioner's assertion that Beyda's publishers disclose a "third party computer system controlling advertising space on a plurality of third party media properties" is contradicted by Petitioner's position that offline databases 110, external content servers 160, web servers 170, and targeting engine 152 is collectively "a third party computer system" and "may provide website pages (a plurality of third party media properties) to an audience member computer 180." Pet. 33; *see also* Pet. 34 (equating external content servers 160, web servers 170, and targeting engine 152 with a "third party computer system"), 35 (equating website pages with "third party media properties"). Finally, we note that Petitioner fails to show that Beyda discloses the data warehouse 130 (i.e., BT computer system) arranging for publishers (i.e., a third party computer system controlling advertising space on a plurality of third party media properties) "to electronically tag a first computer of a first visitor visiting a first website," as required by claim 9. Instead, Petitioner asserts that a targeting engine places cookies on an audience member's browser. *See* Pet. 35–38.

Accordingly, for all of the foregoing reasons, based on the record before us, there is not a reasonable likelihood that Petitioner would prevail in showing that claim 9 is unpatentable as anticipated by Beyda.

3. Analysis of Dependent Claims 10–12

Due to the dependency of claims 10–12 from claim 9, and for the same reasons as those addressing claim 9, Petitioner does not set forth sufficient argument and evidence to demonstrate that Beyda discloses the limitations of claims 10–12. Accordingly, there is not a reasonable likelihood that Petitioner would prevail in showing that dependent claims 10–12 are unpatentable as anticipated by Beyda.

E. Challenge to Claims 9–12 based on Beyda and Narin

As applied by Petitioner, the teachings of Narin do not remedy the deficiencies of Beyda discussed in Sections II.D.2. and II.D.3. addressing Petitioner's patentability challenge based on anticipation by Beyda. *See* Pet. 55–62. Therefore, for the same reasons as explained in Sections II.D.2. and II.D.3, there is not a reasonable likelihood Petitioner would prevail in showing claims 9–12 are unpatentable as obvious over Beyda and Narin.

F. Challenge to Claims 9–12 based on Beyda, Narin, and Detering

Petitioner primarily relies on the teachings of Detering to address limitations (c) and (d) of claim 9. *See* Pet. 62–66, 71–74. Petitioner, however, also asserts that "to the extent that Patent Owner argues certain other claim limitations are not met by the *Beyda* system or the combined *Beyda-Narin* system, *Detering* teaches many aspects of the Challenged Claims." Pet. 66. Petitioner asserts that Detering's Figure 1 discloses a computer system that is comprised of one or more computers, specifically unit 70, and is structured and programmed to perform a method of directing

electronic advertisements. *See* Pet. 66–67 (reproducing Ex. 1013, Fig. 1; citing Ex. 1002 ¶ 134; Ex. 1013 ¶¶ 20–23, 28, 29, Figs. 2–4). According to Petitioner, "Detering teaches that unit 70 could be operated by any number of entities, and that unit 70's function is to target ads for placement in advertising space controlled by another party (*e.g.*, the content provider 80)." Pet. 67 (citing Ex. 1013 ¶¶ 21, 29, Figs. 1, 4). Petitioner contends that Detering teaches placing ads "based on the observed behavior of website visitors by arranging for placement of one or more cookies." *Id.* (quoting Ex. 1013 ¶ 14; citing Ex. 1013 ¶ 29, Fig. 1: element 101, Fig. 4: step 403). According to Petitioner, "*Detering* thus teaches that its system embodiments could be **controlled by a behavioral targeting company**." *Id.* (citing Ex. 1002 ¶ 135).

Assuming, arguendo, that Detering teaches or suggests unit 70 could be operated by any number of entities, and content provider 80 is operated by another party (i.e., third party computer system) that controls advertising space, Petitioner does not provide sufficient reasons why one with ordinary skill in the art would have modified Beyda's data warehouse (i.e., BT computer system) and targeting engine, offline databases, content servers, and web servers (i.e., third party computer system) in view of Detering's teachings of unit 70 and content provider 80. Instead, Petitioner's reasons for combining the teachings of Beyda, Narin, and Detering concern the incorporation of Detering's bidding process. *See* Pet. 71–74.

Petitioner's remaining arguments addressing the combined teachings of Beyda, Narin, and Detering do not remedy the deficiencies of Beyda discussed in Sections II.D.2. and II.D.3, addressing Petitioner's patentability challenge based on anticipation by Beyda. *See* Pet. 62–66, 71–74.

Accordingly, for these reasons, as well as for the same reasons explained in Sections II.D.2. and II.D.3, there is not a reasonable likelihood Petitioner would prevail in showing claims 9–12 are unpatentable as obvious over Beyda, Narin and Detering.

III. CONCLUSION

For the foregoing reasons, we determine there is not a reasonable likelihood that Petitioner would prevail in showing at least one of the challenged claims of the '615 Patent is unpatentable.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), the Petition is denied, and no *inter partes* review is instituted.

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