

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

REVCONTENT, LLC,
Petitioner,

v.

INTEGRATED ADVERTISING LABS, LLC,
Patent Owner.

IPR2022-01511
Patent 10,147,121 B2

Before KEN B. BARRETT, ROBERT L. KINDER, and
ERIC C. JESCHKE, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. *Background and Summary*

Revcontent, LLC (“Petitioner”)¹ filed a Petition requesting *inter partes* review of U.S. Patent No. 10,147,121 B2 (“the ’121 patent,” Ex. 1001). Paper 2 (“Pet.”). The Petition challenges the patentability of claims 1–9 of the ’121 patent. Integrated Adverting Labs, LLC (“Patent Owner”)² filed a Preliminary Response to the Petition. Paper 7 (“Prelim. Resp.”). With our authorization, Petitioner filed a Reply to Patent Owner’s Preliminary Response (Paper 8, “Prelim. Reply”) and Patent Owner filed a Sur-reply to Petitioner’s Reply (Paper 9, “Prelim. Sur-reply”).

An *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . 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). Having considered the arguments and evidence presented by Petitioner and Patent Owner, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on at least one of the challenged claims of the ’121 patent. Accordingly, we do not institute an *inter partes* review of the challenged claims.

B. *Related Proceedings*

Both parties identify, as a matter involving or related to the ’121 patent, *Integrated Advertising Labs, LLC v. Revcontent, LCC*, No. 8:22-cv-

¹ Petitioner identifies Revcontent, LLC as the real party-in-interest. Pet. 1; Paper 6, 1.

² Patent Owner identifies Integrated Advertising Labs, LLC as the real party-in-interest. Paper 5, 2.

00487 (M.D. Fla.). Pet. 1; Paper 5, 1; Paper 6, 1. In that case, the District Court entered judgment of invalidity under 35 U.S.C. § 101 of the '121 patent, and an appeal has been docketed.³ Prelim. Reply. 1 n.2; Prelim. Sur-reply 2; Ex. 1044 (Notice of Docketing of Federal Circuit Docket No. 2023-1392, with the District Court's order and judgement attached).

C. The '121 Patent

The '121 patent pertains to online brand marketing and monitoring. Ex. 1001, 1:15–16. According to the '121 patent, “[g]lobal computer networks, such as the Internet, are increasingly being used for marketing and advertisements, encroaching into advertising markets traditionally reserved for printed media (e.g., newspapers and magazine) and/or television,” with online advertisements often appearing as banner ads or the like on World Wide Web pages. *Id.* at 1:20–26. The patent explains that “[t]here are also other web sites that are fan sites (or forum sites) utilized for discussing particular interests or hobbies” and that “[t]hese fan sites normally consist of message forums and other venues for disseminating information over the global computer networks.” *Id.* at 1:26–30. These fan forum sites can provide valuable feedback to advertisers. *Id.* at 1:28–33. “While this [fan site] market is highly desirable, the problem is that one needs to work through many different sites to reach the market.” *Id.* at 1:36–38. “Due to a generally large number of fan sites available for placing advertisements, it is

³ Because, for the reasons discussed below, we deny institution based on the merits of the Petition, we do not reach Patent Owner's argument that, in light of the District Court's ruling, the Board should discretionarily deny institution. *See, e.g.*, Prelim. Resp. 47–49 (“Because the district court . . . has already found the '121 Patent invalid, efficiency of the patent system is best served by denying institution.”).

often very difficult and time consuming to select those relatively few fan sites to run advertisements.” *Id.* at 1:48–51.

To address the problems, the ’121 patent offers “a press release distribution system [that] is used to provide press releases, other news, advertisements, messages and/or non-‘press’ events to the forum sites.” *Id.* at 2:54–57. The patent describes, as an exemplary embodiment:

[A] method of distributing a press release to one or more forum sites. . . . The method includes: receiving the press release from one or more advertisers; distributing the press release to the one or more forum sites over a network according to relatedness between the press release and the one or more forum sites; and posting the press release as a message at the one or more forum sites.

Id. at 3:21–28.

“The brand monitoring tools 200 are used for monitoring the user forums, fan sites, etc. to afford advertisers or manufacturers an insight into how their products and/or brands are received or perceived in the market, especially by the relevant online community.” *Id.* at 5:49–53. “The ad tracker 206, which may also be referred to as an ad tracking system, would enable advertisers to easily track a variety of data per ad or per placement.” *Id.* at 7:65–67. “Advertisers would be able to track information including contact form submissions, orders, number of shopping carts started, product pages viewed, and the like.” *Id.* at 7:67–8:3. “Advertisers would be able to set which factor they wish to use in evaluating effectiveness including click-thrus, orders, contact form submissions, and/or the like.” *Id.* at 8:18–21.

Figure 6 of the '121 patent is reproduced below.

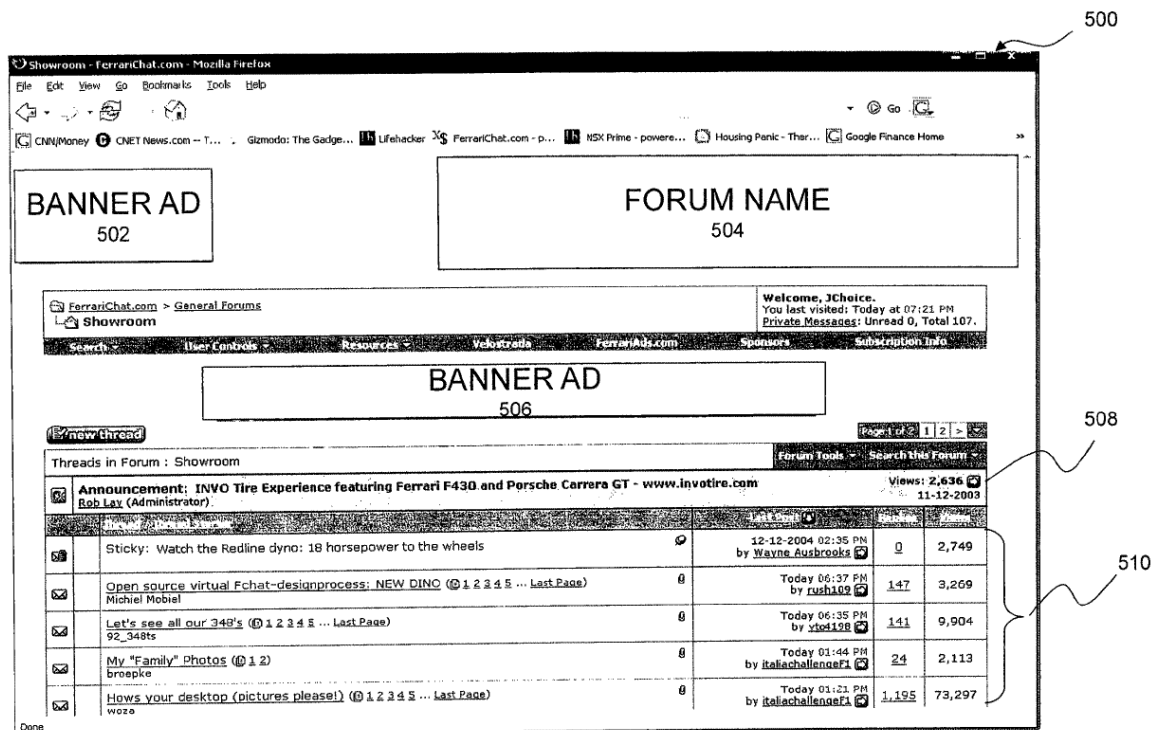


FIG. 6

Figure 6 is a schematic view of a screen shot of a forum site home page 500 and depicts forum name 504 and banner ads 502, 506. *Id.* at 13:44–47.

The home page typically displays one or more posts 510 posted by the members of the forum. . . . The home page 500 also displays a press release 508, which is displayed with a background color (e.g., red) different from that of the member posts 510. This way, press releases from the advertisers 403 can be brought to the immediate attention of the forum member. In other embodiments, the press release post (or the alert thereof) may be displayed with other background color, distinguishing font and/or text format (e.g., bold text) as those skilled in the art would appreciate. Such press releases can be viewed and referred to as ad units in the described embodiment, and may be effective advertisements directed at particular forum sites, and/or particular members or users. While the press release 508 is shown as an announcement in FIG. 6, the

press release 508 may be posted or inserted as a message in other embodiments.

Id. at 13:47–64.

D. Illustrative Claim

Of the challenged claims of the '121 patent, claim 1 is the only independent claim challenged. The remaining challenged claims depend directly or indirectly from claim 1. Claim 1, reproduced below with bracketed annotations⁴ inserted, is illustrative.

1. [Preamble] A method of displaying sponsored posts among a plurality of non-sponsored posts on one or more web pages, the method comprising:
 - [1A] electronically receiving one or more sponsored posts over a communications network, wherein the sponsored post is directed to a particular user or user type;
 - [1B] electronically displaying the sponsored post among the non-sponsored posts on the web page;
 - [1C] electronically tracking user data or activity with respect to the sponsored post, the data or activity comprising one or more of impressions, clicks, click-through rate, or user actions;
 - [1D] wherein the sponsored post is not a banner advertisement or a static header,
 - [1E] wherein when the sponsored post is displayed, it is displayed separately from any banner advertisement and contiguously together with at least some of the non-sponsored posts appearing on the web page to scroll together with the at least some of the non-sponsored post such that the sponsored post is in a fixed position relative to at least some of the contiguously displayed non-sponsored posts,
 - [1F] wherein the sponsored post includes at least one of video or image content;

⁴ We utilize Petitioner's annotations for claim 1. Patent Owner refers to the same annotations except that it uses lower case letters.

[1G] wherein a time period during which the sponsored post is posted is limited,

[1H] wherein a frequency at which the sponsored post is displayed for the user or user type is limited, and

[1I] wherein a plurality of features of the sponsored post are the same as a corresponding plurality of features of the contiguous non-sponsored posts, and at least one feature of the sponsored post differs from or is in addition to the corresponding feature of the non-sponsored posts in order to distinguish the sponsored posts from the non-sponsored posts.

Ex. 1001, 14:54–15:21.

E. Evidence

Petitioner relies on the following references:

Name	Reference	Exhibit(s)
Koeppel	US 6,477,575 B1; filed Sept. 12, 2000; issued Nov. 5, 2002	1005
Koeppel-II	US 7,567,916 B1; filed Sept. 12, 2000; issued July 28, 2009	1006
Haveliwala	US 2005/0222989 A1; filed June 24, 2004; published Oct. 6, 2005	1007
Bharat	US 2005/0131762 A1; filed Dec. 31, 2003; published June 16, 2005	1008

Petitioner also relies on the declaration of Dr. Bernard J. Jansen (Ex. 1003) in support of its arguments. The parties also rely on other exhibits as discussed below.

F. Asserted Grounds of Unpatentability

Petitioner asserts that the challenged claims are unpatentable on the following grounds⁵:

⁵ For purposes of this Decision, we assume the challenged claims have an effective filing date prior to March 16, 2013, the effective date of the relevant aspects of the Leahy-Smith America Invents Act, Pub. L. No. 112-

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–9	103(a)	Koeppel, Koeppel-II
1–9	103(a)	Haveliwala, Bharat

II. ANALYSIS

A. Principles of Law

Petitioner bears the burden of persuasion to prove unpatentability of the claims challenged in the Petition, and that burden never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

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 said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) any objective evidence of obviousness or non-obviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. The Level of Ordinary Skill in the Art

In determining the level of ordinary skill in the art, various factors may be considered, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are

29, 125 Stat. 284 (2011) (“AIA”), and we apply the pre-AIA version of 35 U.S.C. § 103.

made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (internal quotation marks and citation omitted).

Petitioner contends that:

[A] person of ordinary skill in the art (“POSITA”) would have had at least a bachelor’s degree in computer science or an equivalent, and at least two years of professional experience in the field of Internet design and operation, including a working knowledge of Internet-based advertising technologies.

Pet. 27 (citing Ex. 1003 ¶ 4). Patent Owner does not contest Petitioner’s definition for purposes of its Preliminary Response. Prelim. Resp. 19.

Petitioner’s definition is consistent with the level of ordinary skill reflected in the prior art references of record. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (recognizing that the prior art itself may reflect an appropriate level of skill in the art). For purposes of this decision, we apply Petitioner’s definition of the person of ordinary skill in the art.

C. Claim Construction

We apply the same claim construction standard used in district court actions under 35 U.S.C. § 282(b), namely that articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). *See* 37 C.F.R. § 42.100(b) (2021). In applying that standard, claim terms generally are given their ordinary and customary meaning as would have been understood by a person of ordinary skill in the art at the time of the invention and in the context of the entire patent disclosure. *Phillips*, 415 F.3d at 1312–13. “In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc.*

v. Medtronic Sofamor Danek, Inc., 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17).

Sponsored Posts and Non-Sponsored Posts

Independent claim 1 is directed to “[a] method of displaying sponsored posts among a plurality of non-sponsored posts on one or more web pages.” Ex. 1001, 14:54–55.

Petitioner contends that “[t]he terms ‘sponsored’ and ‘non-sponsored’ do not appear in the specification.” Pet. 30. Petitioner further contends that “[t]he specification, however, distinguishes between ‘press releases from the advertisers’ (element 508 in Fig. 6) and ‘posts . . . [from] members of the forum’ (elements 510 in Fig. 6).” *Id.* (alterations in original) (quoting Ex. 1001, 13:44–54; citing Ex. 1003 ¶ 105). Petitioner contends that “sponsored posts” means content from an advertiser. *Id.* (citing Ex. 1003 ¶¶ 106–107). Patent Owner does not dispute that proposed construction at this stage. Prelim. Resp. 19 (“For the limited purpose of this Preliminary Response, Patent Owner does not contest that construction. Should the Board institute trial, Patent Owner reserves the right to address Petitioner’s claim construction position on that term.”).

For purposes of this decision, we adopt Petitioner’s construction of “sponsored posts” as meaning content from an advertiser.

The “Claim Construction” section of the Petition does not contain a proposed construction for “non-sponsored posts.” *See* Pet. 29–31. However, in its articulation of the obviousness ground based on the Koeppel references, Petitioner implicitly construes “non-sponsored posts” as including “the regular content provided on the site.” *Id.* at 35 (“The provider content represents the ‘non-sponsored posts,’ *e.g.*, the regular content

provided on the site.”) (citing Ex. 1003 ¶¶ 125–126); *id.* at 36 (“A POSITA would understand that . . . the other content, including content 410, is the Web site’s regular content, *e.g.*, non-sponsored posts.”) (citing Ex. 1003 ¶¶ 130–133). As applied by Petitioner, that definition of “non-sponsored posts” seemingly would encompass advertising that is considered to be “regular content” provided on the site. *See id.* at 35–36.

Patent Owner, in addressing the Koeppel ground, impliedly construes “non-sponsored posts” as content that is not marketing and advertisements. *See* Prelim. Resp. 26 (Patent Owner arguing, “Ppetitioner argues that ‘sponsored posts’ means ‘content from an advertiser.’ . . . And because Koeppel only discloses marketing and advertisements, it cannot meet any of the limitations of the ’121 Patent that recite ‘non-sponsored posts.’”).

Patent Owner has the better claim construction position. The “non-” in “non-sponsored posts” indicates that the phrase means “not” or “other than” “sponsored posts.” *See* Ex. 3001 (<https://www.merriam-webster.com/dictionary/non-> (accessed March 21, 2023) (defining “non-” as “not: other than: reverse of: absence of”). In terms of Petitioner’s proposed construction for “sponsored posts,” “non-sponsored posts” are content *not* from an advertiser. Construing the phrases in terms of the content source rather than whether it is “regular” content, as Petitioner implies, is consistent with the Specification’s description of Figure 6. *See* Ex. 1001, 13:44–55. The Specification distinguishes post types based on source—posts by members of the forum and press release posts from the advertisers. *See id.*

On this record and for purposes of this decision, we determine that “non-sponsored posts” means content *not* from an advertiser.

We also determine that, for purposes of this decision, no other claim terms require express construction.

D. The Alleged Obviousness of Claims 1–9 Over Koeppel Alone or Koeppel in View of Koeppel-II

Petitioner alleges that claims 1–9 of the ’121 patent would have been obvious over Koeppel or, in the alternative, Koeppel in view of Koeppel-II. *See* Pet. 31–63 (addressing claim 1). Patent Owner argues, *inter alia*, that neither Koeppel nor Koeppel-II disclose the recited “non-sponsored posts.” Prelim. Resp. 30.

1. Koeppel (Ex. 1005)

Koeppel pertains to “Web-based content delivery systems and methods, including Web-based target advertising systems and Web-related marketing systems and methods.” Ex. 1005, 1:17–20. In the Summary of the Invention, Koeppel states that “it is . . . desirable to have a method and system for dynamically delivering and presenting content to users in a Web-based environment, such that the content provided by a Web site can be automatically adjusted based upon collected user responses, on a ‘real-time’ basis.” *Id.* at 4:7–12.

Koeppel discusses the value of tracking users’ online behavior.

Generally, users view the content delivered in the Web pages and may select hyperlinks to other sub pages of a Web site, or to entirely different Web sites. Providers associate the users “browsing” these Web pages as potential consumers for the products and services they provide. By simply providing a Web Server having information on a providers’ product and service offerings and a customer database, and linking the Web server to the Web, providers may track user interactions with the Web server including visits, sales, buying trends and product/service preferences—all at the user level. Providers

may then present or offer its customers with products and services they are most likely to buy-on an individual basis.

Id. at 2:32–44.

Koeppel further explains that:

The provider governing the Web server determines the types of content it wishes to market. The content may be, for example, versions of financial products, such as credit cards, offered from a financial institution. The different credit card versions may include, for example, various percentage rates, physical types of cards offered (images printed on the face of the credit card), and introductory offers associated with each card.

Id. at 8:3–10. Koeppel, in addition to credit cards, describes information associated with wireless phones offered by the provider as an example of provider content. *See id.* at 8:31–33. According to Koeppel, “as can be seen from the examples . . . the content selected by a provider may represent a plurality of types of content, wherein the content itself [m]ay represent alternate products or renderings of existing products or services offered by the provider.” *Id.* at 8:41–45.

2. *Koeppel-II (Ex. 1006)*

Koeppel-II pertains to “Web based marketing and, more particularly, to a method and system for monitoring and collecting user responses to Web based content provided by Web servers.” Ex. 1006, 1:17–20.

Like Koeppel, Koeppel-II states that “[t]he provider governing the Web server determines the types of content it wishes to market.” *Id.* at 9:46–47. “The content may be, for example, versions of financial products, such as credit cards, offered from a financial institution.” *Id.* at 9:47–49. “The content may also include various versions of the

information associated with each credit card offered by the financial institution.” *Id.* at 9:54–56.

Figure 4A is reproduced below.

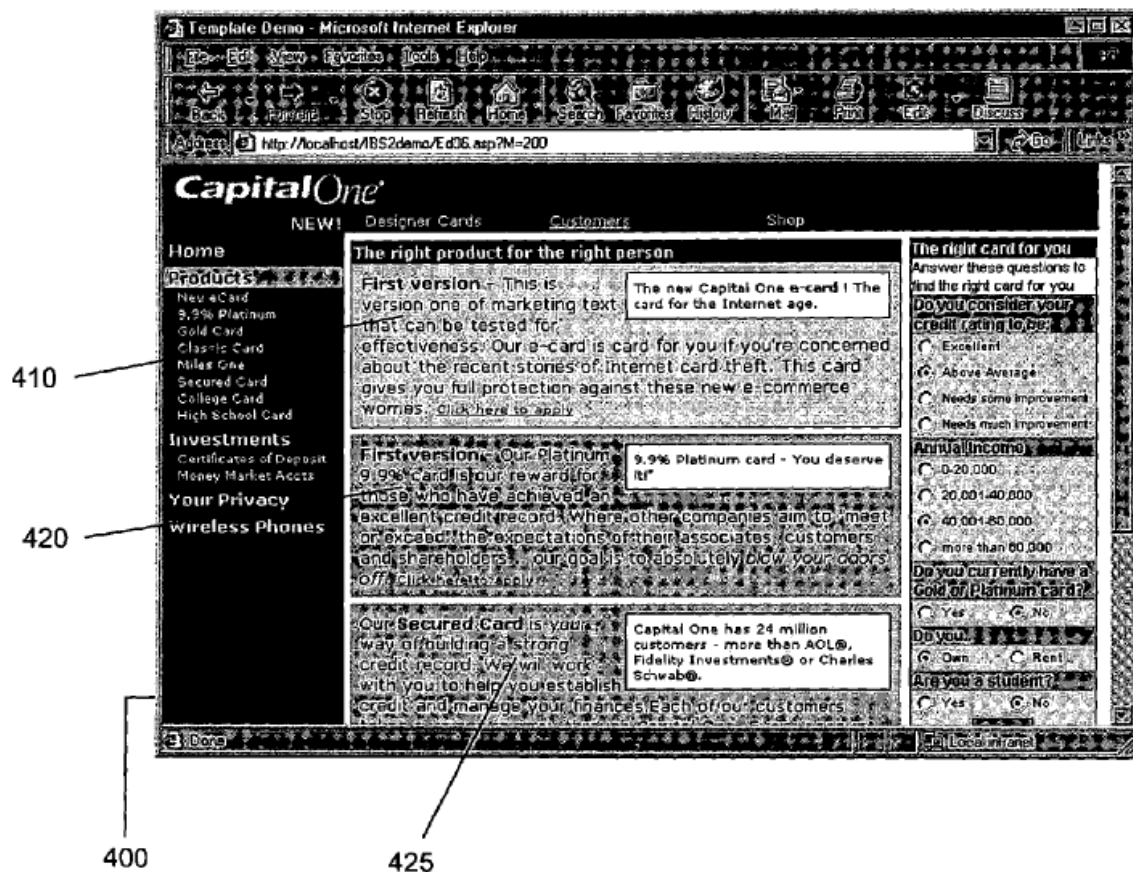


Figure 4A of Koeppel-II shows a “Web page rendering example[] of alternate versions of content representing credit card offers from a financial institution.” *Id.* at 9:56–58.

Web page 400 includes a first version 410 that shows first data that can describe customized information concerning one type of credit card available from the provider. First version 420 shows another credit card offered by the provider as well, while version 425 shows marketing information for another type of credit card.

Id. at 9:60–65.

Third-parties may include content in a Web page and Koeppel-II explains the fee structure for such third-party content. *See id.* at 21:48–51, 21:65–22:16.

[The] fee may be altered based on whether the third party content was fully in-view or partially in-view. For example, consider the Web page 400 illustrated in FIG. 4A. Window 425 is in partial view, while window 420 is in full view. Assume for purposes of this example that windows 420 and 425 are advertisement content provided by a third party entity 180 to be displayed in Web page 300 [sic, 400]. Web server 110 may charge the third party entity 180 a fee of “\$ X” for window 420 being displayed while only charging “\$½X” for window 425.

Id. at 22:5–14.

3. Discussion

For reasons discussed below, Petitioner has not shown a reasonable likelihood that it would prevail in establishing unpatentability of the challenged claims as obvious over Koeppel alone or in combination with Koeppel-II.⁶

Patent Owner argues that Koeppel and Koeppel-II disclose marketing and advertising content and do not disclose the claims’ recited “non-sponsored posts.” *See* Prelim. Resp. 26–30. Patent Owner further argues that, because of this failure, “Petitioner has not shown a reasonable likelihood to prevail for limitations 1[b], 1[e], 1[i], 3, and 9.” *Id.* at 30; *see also id.* (Patent Owner specifically addressing limitation 1B).

⁶ Petitioner contends that “Koeppel . . . incorporates by reference Koeppel-II,” Pet 34 (citing Ex. 1005, 1:7–12), and that “[a] POSITA would consider Koeppel and Koeppel-II to be directed to the same overall system, *id.* For purposes of this decision, we proceed with the understanding that the disclosures of the two Koeppel references are directed to the same system.

Limitation 1B recites: “electronically displaying the sponsored post among the non-sponsored posts on the web page.” Ex. 1001, 14:60–61. For this limitation, Petitioner relies on Figure 4A and the advertising fee structure disclosure of Koeppel-II. *See* Pet. 39–40 (citing Ex. 1006, 22:7–12, Fig. 4A; Ex. 1003 ¶¶ 144–147). Petitioner’s annotated version of Figure 4A of Koeppel-II is reproduced below.

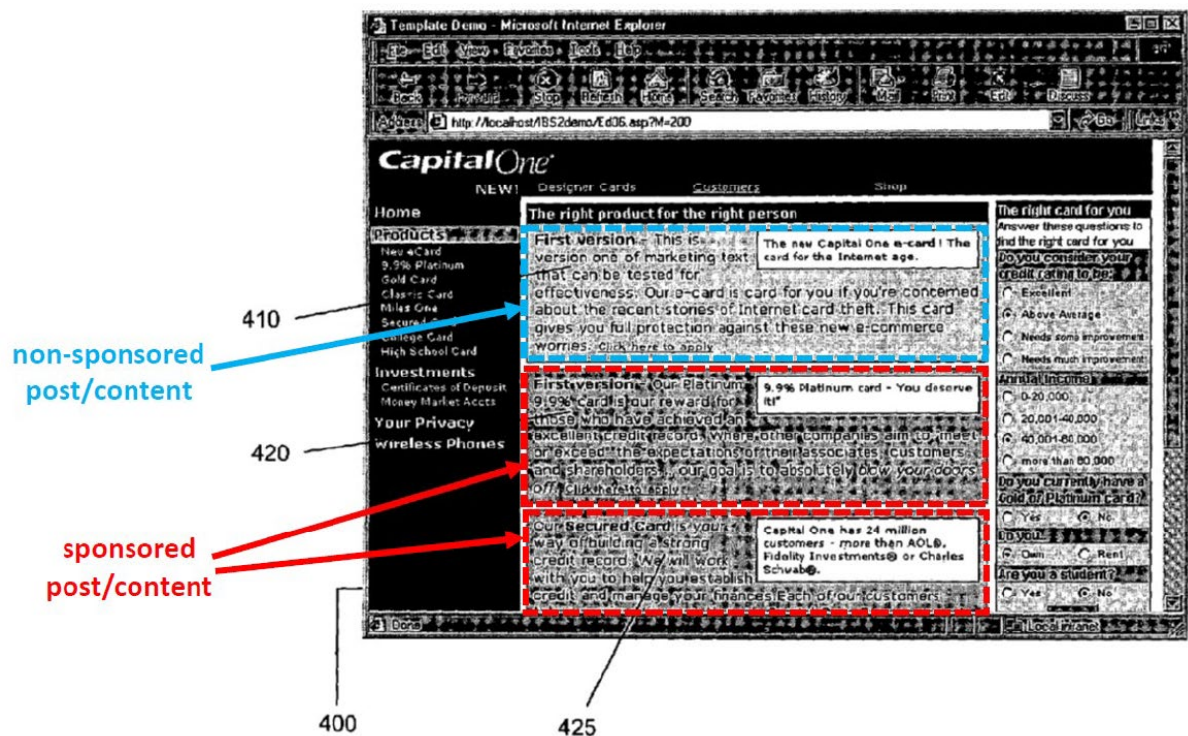


FIGURE 4A

Pet. 40. Above is Figure 4A of Koeppel-II, which is a “Web page rendering example[] of alternate versions of content representing credit card offers from a financial institution,” Ex. 1006, 9:56–58, with Petitioner’s contentions regarding a non-sponsored post shown in blue and sponsored posts in red.

Petitioner contends that, “[r]eferring to Fig. 4A, Koeppel-II provides an example of ‘sponsored posts’ (ads) displayed in 420, 425 among the

non-sponsored posts (the regular content such as in 410) on the Web page.”
Pet. 39.

Petitioner’s contentions are based in large part on the assertion that “[Koeppel’s] provider content represents the ‘non-sponsored posts,’ *e.g.*, the regular content provided on the site.” *Id.* at 35 (citing Ex. 1003 ¶¶ 125–126). As discussed above in the claim construction section, we do not adopt Petitioner’s implied claim construction position, and construe “non-sponsored posts” as content not from an advertiser, rather than simply regular content provided on the site. Both Koeppel references describe the “provider” as one that markets goods and services. *See, e.g.*, Ex. 1005 (Koeppel), 2:34–36 (“Providers associate the users ‘browsing’ these Web pages as potential consumers for the products and services they provide.”); Ex. 1006 (Koeppel-II), 9:46–47 (“The provider governing the Web server determines the types of content it wishes to market.”); *see also* Prelim. Resp. 26–27 (noting the Petition at page 35, in quoting Koeppel, utilizes ellipses to omit the explanation that the “content selected by a provider” “[m]ay represent alternate products or renderings of existing products or services offered by the provider” (Ex. 1005, 8:41–45)). Figure 4A is consistent with this understanding by depicting Capital One credit card marketing information in the boxes labeled 410, 420, and 425. *See* Ex. 1006, 9:60–65 (Koeppel-II describing elements 410, 420, and 425 as offers for credit cards offered by “the provider”). Thus, the provider content in Figure 4A—that which Petitioner characterizes as “regular content”—is marketing content, and Petitioner has not explained adequately how that is not content from an advertiser, *i.e.*, “non-sponsored posts.”

Petitioner's contention that elements 420 and 425 are sponsored posts and element 410 is a non-sponsored post also is based on the discussion in Koeppel-II of third party advertising fees. *See* Pet. 40 (citing Ex. 1006, 22:7–12; Ex. 1003 ¶¶ 144–147); *see also id.* at 36 (addressing the preamble). Koeppel-II utilizes windows 420 and 425 in Figure 4A as examples of different ad formats for determining how much to charge third party advertisers. Ex. 1006, 22:5–14 (“[The] fee may be altered based on whether the third party content was fully in-view or partially in-view. . . . Assume for purposes of this example that windows 420 and 425 are advertisement content provided by a third party entity 180.”). Koeppel-II is not distinguishing third party ads and non-sponsored content, as Petitioner implies. Pet. 36–37, 39–40; *cf. id.* at 35 (contending that “Koeppel discloses that ‘sponsored posts,’ or information from an advertiser, is included with the non-sponsored posts” but only identifying a sponsored post (in the form of a third party banner ad), and not identifying a non-sponsored post). Rather, Koeppel-II is distinguishing the amount of content viewable in the two windows for fee-setting purposes. Ex. 1006, 22:8–9 (“Window 425 is in partial view, while window 420 is in full view.”). Even if the Koeppel references were deemed to disclose third party advertisements inserted alongside Capital One's “regular” marketing content, the pre-existing nature of that “regular” marketing content does not convert it into non-sponsored posts.

We determine that Petitioner has not adequately explained how Koeppel, Koeppel-II, or the combination thereof discloses or suggests displaying a sponsored post among non-sponsored posts on a web page. Accordingly, Petitioner has not demonstrated a reasonable likelihood in

prevailing in its challenge to independent claim 1, or the remaining challenged claims depending therefrom, as being obvious over Koeppel alone or in light of Koeppel-II.

E. The Alleged Obviousness of Claims 1–9 Over Haveliwala and Bharat

Petitioner alleges that claims 1–9 of the '121 patent would have been obvious over Haveliwala and Bharat. *See* Pet. 71–91 (addressing claim 1). Patent Owner argues, *inter alia*, that “the Petition fails to articulate a meaningful reason to combine *Haveliwala* and *Bharat*.” Prelim. Resp. 1–2.

1. Haveliwala (Ex. 1007)

Haveliwala pertains to “providing advertisements to users of online search engines.” Ex. 1007 ¶ 2. Haveliwala describes a system in which “a user provides a search query to the system to search for documents relevant to the query.” *Id.* ¶ 7. The system obtains a user profile, with the user profile information “derived from any of prior searches by the user, prior search results, user activities in interacting with prior search results, user demographic, geographic, or psychographic information, expressed topic or category preferences, and Web-sites associated with the user.” *Id.*

The system executes the search query to obtain a set of relevant documents, and then uses the user profile to personalize the documents by reranking the documents in a manner that reflects their relevance to the user’s profile. The personalized search results are then analyzed to further determine a search profile, such as key words or topics that are descriptive of the documents therein. The search profile is used to select one or more advertisements, which advertisements will thus be relevant to the user’s interests. The selected advertisements and the personalized search results are combined and provided to the user.

Id.

2. *Bharat (Ex. 1008)*

Bharat pertains to online advertising and “concerns determining particularly relevant advertisements or advertisement creatives to serve for a user request, such as a search query or document request for example.”

Ex. 1008 ¶¶ 2, 13. Bharat discloses “determining user profile information and using such determined user profile information for ad serving.” *Id.* ¶ 32.

Ad consumers 130 may submit requests for ads to, accept ads responsive to their request from, and provide usage information to, the system 120. . . . [O]ther entities may provide usage information (e.g., whether or not a conversion or click through related to the ad occurred) to the system 120. This usage information may include measured or observed user behavior related to ads that have been served.

Id. ¶ 37. Bharat identifies ways in which user profile information may be inferred or determined. *See, e.g., id.* ¶¶ 17–19.

3. *Discussion*

Patent Owner argues that “Petitioner only provides insufficient and cursory ‘motivations to combine’” and that “[t]hose cursory arguments are not enough to show a motivation to combine *Haveliwala* and *Bharat*.” Prelim. Resp. 44 (citing Pet. 76–77). Patent Owner’s arguments are persuasive.

Petitioner first asserts that *Haveliwala* and *Bharat* both describe work by Google and were filed within months of each other, and contends that a person of ordinary skill in the art “reviewing *Haveliwala* would have naturally looked to other work done by Google engineers, such as *Bharat*, for further guidance and insight as to the work Google was doing around personalized Web advertising.” Pet. 76 (citing Ex. 1003 ¶ 259). Petitioner’s reasoning is too generalized. The existence of a common assignee or that a person of ordinary skill in the art might look to another reference in the same

broadly characterized field does not provide adequate reasoning as to *why* such a person would combine the specific relied-on teachings of the two references so as to arrive at the claimed subject matter. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (“[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine elements in the way the claimed new invention does.”).

Petitioner next contends:

The applications also share common subject matter and contain complementary teachings. Both are directed at improving personalized advertising. . . . Haveliwala teaches using user profiles to serve personalized ads to users. . . . A POSITA would have therefore looked to Bharat for further detail concerning the systems and methods for establishing user profiles such as those used in Haveliwala.

Pet. 76–77 (citations omitted). This reasoning, based on a broad characterization of the field, again is too generalized. *See Prelim. Resp.* 43 (“[S]imply because one reference provides greater detail on a specified subject matter than another is not a sufficient reason to combine those references for obviousness. Otherwise, all references in the same field would be obvious to combine, as one necessarily will have more detail than another on a specific subject matter.”).

Independent claim 1 is directed to “displaying sponsored posts among a plurality of non-sponsored posts on one or more web pages.” Ex. 1001, 14:54–55. Petitioner does not explain adequately how details concerning establishing user profiles pertain to any limitation of independent claim 1 or to Petitioner’s proposed combination of the references’ teachings. *See Pet. 76–77*. At most, Petitioner has offered a reason why a person of ordinary skill in the art might have turned to Bharat. But, necessary to Petitioner’s case is a reason why that person of ordinary skill in the art

would have combined Haveliwala's and Bharat's teachings in the manner proposed by Petitioner to arrive at the claimed subject matter. Petitioner has not provided such a reason.

For example, Petitioner, for limitation 1F, relies solely on the secondary reference, asserting that "Bharat discloses that the sponsored posts include 'image ads' and 'video ads.'" Pet. 87 (citing Ex. 1008 ¶ 0037; Ex. 1003 ¶ 298). Petitioner does not explain adequately how details concerning user profile creation relate to a reason to add image and video ads to Haveliwala's system. Similarly, Petitioner relies solely on Bharat for limitation 1G, "wherein a time period during which the sponsored post is posted is limited," without any adequate explanation as to how details concerning establishing user profiles pertains to the purported obviousness of this limitation.

Petitioner also contends that "the systems on which the inventions are employed are closely related, sharing common components," and a person of ordinary skill in the art "would have seen no technical barriers in combining the references' teachings and would have expected success in doing so." Pet. 77 (citing Ex. 1003 ¶ 263; Ex. 1007, Fig. 1; Ex. 1008, Fig. 3). This is a contention that the references' teachings *could* be combined, but is not an adequate reason *why* a person of ordinary skill in the art would make the combination. *See Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073 (Fed. Cir. 2015) ("[O]bviousness concerns whether a skilled artisan not only *could have made* but *would have been motivated to make* the combinations or modifications of prior art to arrive at the claimed invention.").

Petitioner has not demonstrated a reasonable likelihood in prevailing in its challenge to independent claim 1, or the remaining challenged claims depending therefrom, as being obvious over Haveliwala and Bharat.

III. CONCLUSION

Petitioner has not demonstrated that there is a reasonable likelihood of establishing the unpatentability of any of claims 1–9 of the '121 patent.

IV. ORDER

For the foregoing reasons, it is

ORDERED that the Petition is *denied* and no trial is instituted.

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PETITIONER:

Brian Ferguson
Christopher Gresalfi
WINSTON & STRAWN LLP
beferguson@winston.com
cgresalfi@winston.com

PATENT OWNER:

Justin Kimble
NELSON BUMGARDNER CONROY
justin@nelbum.com