

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BRIGHT DATA LTD.,
Petitioner,

v.

OXYLABS, UAB,
Patent Owner.¹

IPR2023-00185
Patent 9,503,498 B2

Before THOMAS L. GIANNETTI, STACEY G. WHITE, and
IFTIKHAR AHMED, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge*.

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

¹ The caption of this proceeding has been revised to reflect the current ownership of the challenged patent. *See infra*, Section II.A n.2.

I. INTRODUCTION

Bright Data Ltd. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–19 (“the challenged claims”) of U.S. Patent No. 9,503,498 B2 (Ex. 1001, “the ’498 patent”). Paper 1 (“Pet.”), 1. oxylabs, UAB (“Patent Owner”)² filed a Preliminary Response (Paper 7).

Under 35 U.S.C. § 314(a), 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.” For the reasons stated below, we determine that Petitioner has established a reasonable likelihood that it would prevail with respect to at least one challenged claim. In addition, for the reasons stated, we are not persuaded to exercise our discretion to deny the Petition under 35 U.S.C. § 314(a). We, therefore, institute *inter partes* review as to all of the challenged claims of the ’498 patent and all of the asserted grounds of unpatentability.

II. PRELIMINARY MATTERS

A. Related Matters

The parties indicate that the ’498 patent is involved in a district court infringement proceeding in the Eastern District of Texas styled as *Metacluster LT, UAB v. Bright Data Ltd.*, Case No. 2:22-cv-00011 (E.D.

² As set forth below, metacluster lt, UAB, now operates as oxylabs, UAB, and the ’498 patent has been assigned to oxylabs, UAB. Paper 4, 1. Accordingly, the caption of this proceeding has been revised to reflect this change.

Tex.) (“Texas Litigation”). Pet. 1; Paper 4, 1. Petitioner states that this case also involves U.S. Patent Nos. 10,601,948 and 9,516,091. Pet. 1.

The parties also indicate that Petitioner has challenged patents related to that ’498 patent in IPR2023-00186 (challenging U.S. Patent No. 9,516,091) and IPR2023-00187 (challenging U.S. Patent No. 8,924,457). Pet. 2; Paper 5, 2; Paper 4, 1.

Petitioner previously challenged related U.S. Patent No. 10,601,948, in IPR2021-00983, where institution was denied. Pet. 2.

Petitioner states that Patent Owner and other real parties-in-interest have filed petitions for *inter partes* review, post-grant review, and requests for *ex parte* reexamination with respect to a number of patents assigned to Petitioner. Pet. 2–4.

Petitioner further states that there are numerous other district court cases, *inter partes* reviews, post grant reviews, and reexaminations filed by Patent Owner or Patent Owner’s real parties-in-interest that involve, or have involved, patents assigned to Petitioner. Pet. 4–5.

B. Real Parties-in-Interest

Petitioner identifies itself, Bright Data Ltd., as the real party-in-interest. Pet. 1. Additionally, Petitioner contends that the following entities are real parties-in-interest, “[b]ased on the history of litigation between Petitioner and Patent Owner”: “Code200, UAB”; “Teso LT, UAB”; “Oxysales, UAB”; and “Coretech lt, UAB.” *Id.* at 2.

Patent Owner identifies oxylabs, UAB as the real party-in-interest. Paper 4, 1. Patent Owner also identifies “OXYLABS, UAB as successor in interest to metacluster lt, UAB.” Paper 4, 1. Patent Owner explains that

“oxysales, UAB and metacluster lt, UAB have been merged into Teso LT, UAB,” and that “[a]s of November 30, 2022, Teso LT, UAB will operate as oxylabs, UAB.” *Id.*

C. The '498 Patent

The '498 patent is titled “Web Page Script Management.” Ex. 1001, (54). The patent “relates to the management of network traffic by controlling the execution of embedded scripts in web pages.” *Id.* at 1:6–9.

According to the '498 patent, performing web analytics for tracking consumer interaction with websites may employ embedded scripts in web pages. *Id.* at 1:10–33. Some drawbacks to this approach, however, are that embedded scripts may be large and may cause delay in web page retrieval, and that “retrieval and execution of embedded scripts may be inconvenient or costly to visitors accessing the web page through networks with bandwidth-restrictive networks.” *Id.* at 1:33–40.

Figure 1 of the '489 patent follows.

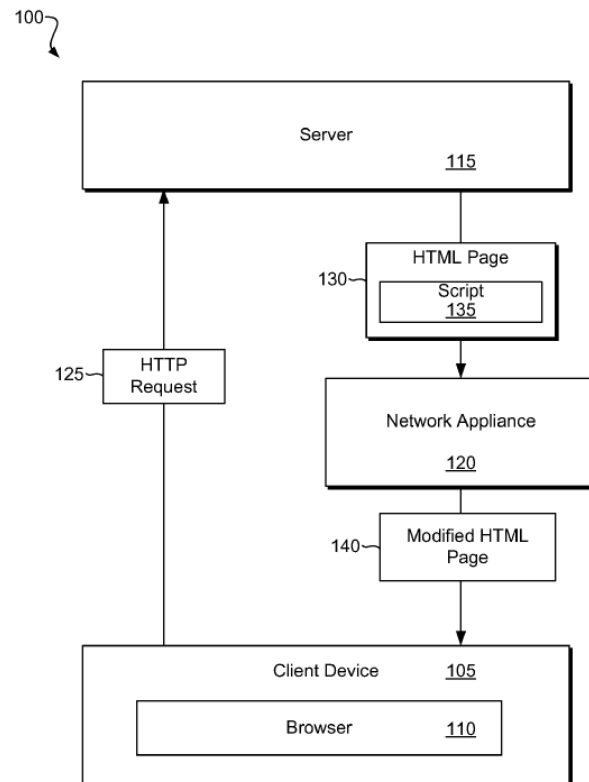


Fig. 1

Figure 1 depicts “a block diagram of an illustrative system for web page script management.” *Id.* at 2:36–37. This system “that may be used to manage the execution of embedded scripts in web pages.” *Id.* at 4:66–5:1. System 100 includes client device 105 implementing browser 110. *Id.* at 5:2–3. The system also implements server 115 and network appliance 120 disposed in a communication path between server 115 and client device 105. *Id.* at 5:3–5.

Server 115 is a web server and has access to stored web pages. *Id.* at 5:14–15. Server 115 responds to HTTP requests from client device 105, for example, by sending requested web page 130 with embedded script 135,

which may be “JavaScript with instructions for providing statistical information to an external web analytics service.” *Id.* at 5:15–28.

Network appliance 120 may intercept web page 130 to analyze its contents and determine whether any embedded scripts meet a predefined criterion, and if so, remove or replace such scripts. *Id.* at 5:29–46. If an embedded script is removed or replaced, network appliance 120 sends modified web page 140 that retains the original content of the web page, but without the embedded script. *Id.* at 5:47–55. According to the ’498 patent, executing embedded script 135 at network appliance 120, rather than client device 105, “poses significant advantages over prior solutions,” such as providing a reduced size modified web page and conserving processing resources of client device 105. *Id.* at 5:56–6:2.

Network appliance 120 may also “have access to additional information about the user of the client device,” making its execution of an embedded script more useful to the source of the embedded script than execution by browser 110 on client device 105. *Id.* at 6:5–26.

D. Illustrative Claim

Of the challenged claims, claims 1, 10, and 19 are independent. Claim 1 is illustrative:³

1. An apparatus, comprising:
 - [1a] at least one processor;
 - [1b] a memory communicatively coupled to the at least one processor, the memory storing executable code that, when

³ Reference numbers provided by Petitioner appear in brackets.

executed by the at least one processor, causes the at least one processor to implement a network appliance by:

[1c] intercepting a web page sent from a server and addressed to a client browser;

[1d] modifying the web page by removing an embedded script from the web page;

[1e] executing, by the network appliance, the removed embedded script; and

[1f] sending the modified web page to the client browser.

Ex. 1001, 11:34–47.

E. Prior Art and Other Evidence

Petitioner relies upon the references listed below (Pet. 7):

Name	Reference	Date	Exhibit No.
WebShield	WebShield: Enabling Various Web Defense Techniques without Client Side Modifications	Dec. 11, 2010	1008
Kothari	U.S. Patent App. Pub. No. 2007/0061700 A1	Mar. 15, 2007	1009
Hallak	U.S. Patent No. 8,464,318 B1	June 11, 2013	1011
Matthys	U.S. Patent App. Pub. No. 2008/0306816 A1	Dec. 11, 2008	1013
RFC 1812	Requirements for IP Version 4 Routers	June 1995	1015

Petitioner also relies on a Declaration of Dr. Tim Arthur Williams.

Ex. 1007 (“Williams Decl.”).

F. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability (Pet. 7):

Claims Challenged	35 U.S.C. §⁴	References
1, 10, 19	102(a) ⁵	WebShield
1, 10, 19	103(a)	WebShield, Knowledge of a person of ordinary skill in the art
1, 10, 19	103(a)	Kothari, WebShield
1, 10, 19	102(e) ⁶	Hallak
1–10, 14–19	103(a)	Hallak, Matthys
10–13	103(a)	Hallak, RFC 1812

⁴ For purposes of this decision, we assume the claims at issue have an effective filing date prior to March 16, 2013, the effective date of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), and we apply the pre-AIA versions of 35 U.S.C. §§ 102 and 103.

⁵ Petitioner asserts that “WebShield qualifies as prior art under pre-AIA 35 U.S.C. § 102(a).” Pet. 17. At this stage, Patent Owner does not challenge this assertion.

⁶ Petitioner asserts that “Hallak qualifies as prior art under pre-AIA 35 U.S.C. § 102(e), at least as pertaining to its nonprovisional filing date of November 23, 2009.” Pet. 25. At this stage, Patent Owner does not challenge this assertion.

III. DISCRETIONARY DENIAL

A. Request for Denial Based on Fintiv

Patent Owner contends the Board should deny the Petition under § 314(a) because “institution would be a highly inefficient use of the Board’s resources in view of the pending [Texas] Litigation, and the Petition does not present sufficient—much less compelling—grounds.” Prelim. Resp. 9.

The Board’s precedential decision in *Apple Inc. v. Fintiv Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”), identifies a non-exclusive list of factors we may consider when there is a related, parallel district court action to determine whether such action provides any basis for discretionary denial. *Fintiv*, Paper 11 at 5–16. Those factors include:

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision;
3. investment in the parallel proceeding by the court and the parties;
4. overlap between issues raised in the petition and in the parallel proceeding;
5. whether the petitioner and the defendant in the parallel proceeding are the same party; and
6. other circumstances that impact the Board’s exercise of discretion, including the merits.

Id. at 5–6. In evaluating the *Fintiv* factors, we take “a holistic view of whether efficiency and integrity of the system are best served by denying or instituting review,” recognizing that “there is some overlap among these

factors” and that “[s]ome facts may be relevant to more than one factor.” *Id.* at 6.

On June 21, 2022, the Director of the United States Patent and Trademark Office issued a Memorandum setting forth an “Interim Procedure for Discretionary Denials in AIA Post Grant Proceedings with Parallel District Court Litigation.” (“Guidance Memo”).⁷ The Director’s Guidance Memo states that “to benefit the patent system and the public good, the PTAB will not rely on the *Fintiv* factors to discretionarily deny institution in view of parallel district court litigation where a petition presents compelling evidence of unpatentability.” *Id.* at 2. “Compelling, meritorious challenges are those in which the evidence, if unrebutted in trial, would plainly lead to a conclusion that one or more claims are unpatentable by a preponderance of the evidence.” *Id.* at 4.

For the reasons that follow, although *Fintiv* factors 1–5 weigh in favor of denying institution, we determine that the Petition presents compelling merits, and on this record, we thus decline to exercise our discretion to deny the Petition. We first discuss application of the *Fintiv* factors to this case.

1. Factor 1 (Stay)

Petitioner has not requested a stay of the Texas Litigation based on the Petition. Prelim. Resp. 10 (citing Ex. 2003); Pet. 8. We agree with Patent Owner that given the advanced state of the litigation, a stay based on the outcome of our decision would be unlikely. *See* Prelim. Resp. 11–12.

⁷ Available at https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621.pdf.

However, *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 12 (PTAB May 13, 2020) (informative), cautions against speculating whether the district court would grant a stay if one were requested. Accordingly, this factor is neutral.

2. Factor 2 (Proximity of Trial Date)

The parties indicate that trial in the Texas Litigation is scheduled to begin on October 16, 2023. Pet. 9 (citing Ex. 1028); Prelim. Resp. 12 (citing Ex. 2005). Petitioner contends, however, that based on the most recent statistics, “the median time-to-trial for civil cases in E.D. Tex. is 24.5 months,” and so “the trial is expected to occur around January 2024.” Pet. 9 (citing Ex. 1029). Patent Owner, in its *Fintiv* analysis, uses the scheduled trial date. Prelim. Resp. 12. Under Patent Owner’s analysis, trial would precede the final written decision by nine months. *Id.*

We agree with Petitioner, however, that the median time-to-trial in the Eastern District of Texas is a more reasonable indicator of when a trial in the Texas Litigation would most likely begin. *See* Guidance Memo at 8–9 (“Parties may present evidence regarding the most recent statistics on median time-to-trial for civil actions in the district court in which the parallel litigation resides”). But even if we were to consider Petitioner’s timeframe for the trial, the due date for a final written decision in this proceeding, which is in July 2024, would still be about six months after Petitioner’s projected trial start date of January 2024.

Whether we accept Petitioner’s more plausible calculation or Patent Owner’s, the amount of time by which the court’s trial date precedes the Board’s projected statutory deadline for a final written decision is

significant. This factor strongly favors exercising our discretion to deny the Petition.

3. Factor 3 (Investment in the Texas Litigation)

Patent Owner contends with respect to the Texas Litigation that “the parties have already invested significant resources and will invest significantly more resources by the time an institution decision is reached.” Prelim. Resp. 13. In particular, Patent Owner asserts that “[c]laim construction briefing is complete and, by the time of an institution decision, the claim construction hearing will have been completed and the district court will have likely have issued its claim construction order,” and that “the parties are scheduled to have completed fact discovery and expert discovery, and to have filed all dispositive motions.” *Id.* (citing Ex. 2005).

Petitioner acknowledges the various scheduling deadlines for discovery and motions, but contends that “it is unlikely that a claim construction order will have been entered and fact discovery will still be ongoing,” and that “[o]pening expert reports are not due until 6/2/2023.” Pet. 10. Petitioner also asserts that, as of the filing of the Petition, “[t]here have been no substantive proceedings” in the Texas Litigation. *Id.* at 9. Further, Petitioner asserts that “as of the filing of this petition, the Court has not entered a decision on either of [Petitioner’s Motion to Dismiss or Rule 11 Motion],” and argues that “institution would serve the public interest in the event that the [Texas Litigation] is dismissed.” *Id.* at 10–11.

We have not been advised of any changes to the district court’s schedule. Thus, a *Markman* hearing has been held. *See* Ex. 1033, 1; Ex.

2005, 3.⁸ The district court has issued a claim construction order. Ex. 1033. The scheduled dates for completion of fact and expert discovery have passed. *See* Ex, 2005, 3. So also have the dates for filing dispositive motions and motions to strike expert testimony. *Id.* We, therefore, agree with Patent Owner that significant resources have already been invested in the Texas Litigation by the parties and the district court.

Given the substantial investment that has already been made in fact and expert discovery, as well as in claim construction, this factor favors exercising our discretion to deny the Petition.

4. Factor 4 (Overlap of Issues)

Patent Owner does not argue that the prior art before us overlaps with that being considered by the district court. Patent Owner contends, however, that Petitioner has taken inconsistent claim construction positions in district court and in the Petition, and this presents “significant risk of inefficient and inconsistent, parallel claim construction analyses and rulings by the Board and district court.” Prelim. Resp. 14–16. Patent Owner also contends that although dependent claims 2–5 and 13–18 are not at issue in the Texas Litigation, independent claims 1, 10, and 19, as well as dependent claims 6–9, 11, and 12, are at issue, and points out that the Board has denied institution where a district court case only involved a subset of the challenged claims. *Id.* at 17.

⁸ Unless otherwise specified, citations to exhibits use the page numbers assigned by the parties and not the original page numbers.

We are not persuaded at this stage that any differences in Petitioner’s approach to claim construction in the district court and in the Petition would produce inconsistent results. In particular, Patent Owner does not explain why Petitioner’s proposal that “all terms should have their plain and ordinary meaning” (Pet. 17) is “inconsistent” with the claim constructions Petitioner has advanced in the Texas Litigation (*see* Prelim. Resp. 14–15). In district court, Patent Owner itself asserted that several claim terms, including “network appliance,” “web page,” and embedded script,” should be given their “plain and ordinary meaning.” Ex. 2004, 5, 8, 11. As noted, the district court has now issued a claim construction order. Ex. 1033. The order reveals that the parties stipulated to constructions for “web page” and “embedded script” and, on the day before the claim construction hearing, agreed that several other terms be given their “plain and ordinary meaning.” *Id.* at 9–10. We, therefore, see no merit in Patent Owner’s argument that Petitioner’s reliance on “plain and ordinary meaning” will result in inconsistent rulings. Prelim. Resp. 15–16.

Nor are we persuaded by Petitioner’s argument that there is insufficient overlap in the claims asserted in the district court and those challenged here. Pet. 11. All claims of the ’498 patent are challenged in the Petition. Thus, there are no claims in the Texas Litigation that are not challenged here. And only a few challenged claims (all dependent) are not included in the Texas Litigation. Prelim. Resp. 17.

Anticipating a *Fintiv* challenge to institution, Petitioner “stipulates that, if instituted, the petitioner-defendant will not pursue the same grounds presented in this petition against the ’498 Patent in the [Texas] Litigation.” Pet. 11. We agree with Patent Owner (Prelim. Resp. 17) that Petitioner’s

proffered stipulation falls short of the more extensive *Sotera* stipulation cited approvingly in the Guidance Memo at 7 (citing *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12, at 18 (Dec. 1, 2020) (precedential)). Petitioner’s stipulation not to pursue only the specific grounds in the Petition leaves open the possibility of duplication of efforts in this proceeding and the Texas Litigation. *See* Prelim. Resp. 16–17; *see also* Guidance Memo at 7 (“[T]he PTAB will not discretionarily deny institution. . . . where a petitioner stipulates not to pursue in a parallel district court proceeding the same grounds as in the petition *or any grounds that could have reasonably been raised in the petition.*”) (emphasis added).

Accordingly, the overlap in issues with the district court weighs at least moderately in favor of exercising our discretion to deny the Petition.

5. *Factor 5 (Petitioner and Defendant are Same Party)*

“If a petitioner is unrelated to a defendant in an earlier court proceeding, the Board has weighed this fact against exercising discretion.” *Fintiv*, Paper 11 at 13–14. Petitioner concedes that this factor weighs in favor of a discretionary denial because Petitioner is the defendant in the Texas Litigation. Pet. 11.

6. *Factor 6 (Other Circumstances, Including the Merits)*

Under *CommScope Techs. LLC v. Dali Wireless, Inc.*, IPR2022-01242, Paper 23 (PTAB Feb. 27, 2023) (precedential), even if we determine that the other *Fintiv* factors favor discretionary denial, as they do here, we must also consider whether the Petition presents compelling merits. *Id.* at 5. As discussed *infra*, “[c]ompelling, meritorious challenges are those in which the evidence, if unrebutted in trial, would plainly lead to a conclusion that one or more claims are unpatentable by a preponderance of the evidence.”

Guidance Memo at 4. Accordingly, we first discuss the merits of the Petition. We then discuss our conclusion that the merits are compelling.

7. *Conclusion on Fintiv Factors*

In summary, the *Fintiv* factors weigh in favor of a discretionary denial in this proceeding. We now turn to an analysis of the challenges and consideration of whether the Petition presents compelling merits.

IV. CLAIM CONSTRUCTION

In an *inter partes* review, we construe a patent claim “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b).” 37 C.F.R. § 42.100(b) (2020). Under this standard, the words of a claim generally are given their “ordinary and customary meaning,” which is the meaning the term would have to a person of ordinary skill at the time of the invention, in the context of the entire patent including the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc).

Petitioner proposes that all terms should be given their plain and ordinary meaning. Pet. 17. Patent Owner responds that “[t]he ’498 Patent expressly defines a number of terms that are used in the claims,” namely, “web page,” “network appliance,” “browser,” and “embedded script.” Prelim. Resp. 7–8. Patent Owner contends that the Petition “fails to address the specification’s definitions of claim terms, much less demonstrate that the cited references disclose each claimed element according to its appropriate meaning.” *Id.* at 7.

Having considered the positions of the parties, we find that for the purpose of this decision, it is unnecessary expressly to construe any claim

terms. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (noting that “we 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))). We therefore do not agree that Petitioner’s alleged failure to address the meaning of claim terms should prevent us from instituting review as asserted by Patent Owner. *See, e.g.*, Prelim. Resp. 20–21.

Patent Owner’s arguments regarding the asserted grounds of unpatentability, however, do raise particular contentions regarding “modified web page” recited in each of the independent claims. We preliminarily address this issue *infra*, in our discussion of the asserted grounds of unpatentability.

V. ANALYSIS

A. Principles of Law

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). When evaluating a single prior art reference in the context of anticipation, the reference must be “considered together with the knowledge of one of ordinary skill in the pertinent art.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (citing *In re Samour*, 571 F.2d 559, 562 (CCPA 1978)).

A patent claim is unpatentable for obviousness 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 ordinary skill in the art; and (4) objective evidence of non-obviousness. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).⁹

B. 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 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) (quotation marks omitted).

Petitioner asserts that a person of ordinary skill in the art of the ’498 patent would have had “a Master’s Degree or higher in the field of electrical engineering, computer engineering, or computer science, or as of that time had a Bachelor’s Degree in the same fields and two or more years of experience in Internet Communications.” Pet. 16 (citing Ex. 1007 ¶¶ 30–

⁹ Neither party presents evidence or arguments regarding objective evidence of non-obviousness at this stage.

31). At this juncture, Patent Owner does not provide a description of an ordinarily skilled artisan.

For purposes of this decision, we adopt the level of ordinary skill as articulated by Petitioner. Based on the current record, this proposal is consistent with the '498 patent, the prior art of record, and is supported by the testimony of Dr. Williams. Williams Decl. ¶¶ 30–31.

C. Overview of the Prior Art

1. WebShield (Exhibit 1008)

WebShield describes “a general secure proxy for enabling deficient security protection mechanisms.” Ex. 1008 ¶ 1.2. WebShield is directed to defensive techniques for web attacks by employing “a general middlebox framework.” *Id.* In particular, WebShield “propose[s] to run *all* JavaScript from remote web servers *only* at *shadow browser* instances inside the middlebox, and only run our trusted JavaScript rendering agent at client browsers.” *Id.*

Figure 4 from WebShield shows the basic architecture and is reproduced below:

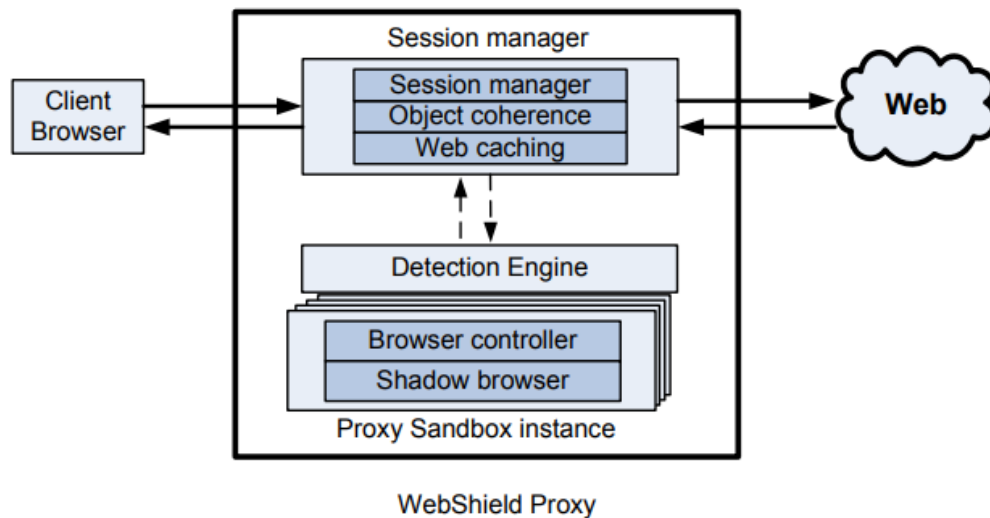


Figure 4. The framework of WebShield.

Figure 4 illustrates an architecture that enables the basic design scheme described in WebShield. *Id.* § 3.1. Within this architecture, “the session manager manages the web sessions, object coherence, and web caching.” *Id.* (emphasis omitted). For web page requests, “the session manager assigns a proxy sandbox instance for each client IP address,” and the shadow browser in the proxy sandbox renders the webpage. *Id.*

WebShield describes that “[t]he HTML page, embedded JavaScript files and embedded CSS files will be parsed and executed to create the DOM [Document Object Model] data structures of the webpage.” *Id.* § 3.3.1. The DOM data structures are encoded “as a list of transformed strings *S*.” *Id.*

WebShield describes that instead of transferring the HTML page, JavaScript and CSS files to the client browser, “we transfer an HTML page with our JavaScript rendering agent and *S*,” where “[o]ur JavaScript rendering agent will parse *S* and utilize the DOM data structures to render

the page.” *Id.* WebShield further describes the process of transforming the original HTML web page as follows:

If the original HTML page is R , we call the new HTML page we transfer to the client browser $T(R)$. T is the transforming function that transforms the original HTML page as well as its embedded JavaScript and CSS files to a form that includes the JavaScript rendering agent, and the encoded DOM data structures of the original page rendering result.

Id.

2. Kothari (Exhibit 1009)

Kothari describes a computing system where a “server simulates and executes a client-side script that generates the initial content of a Web page.”

Ex. 1009, (57). Figure 2 from Kothari is reproduced below:

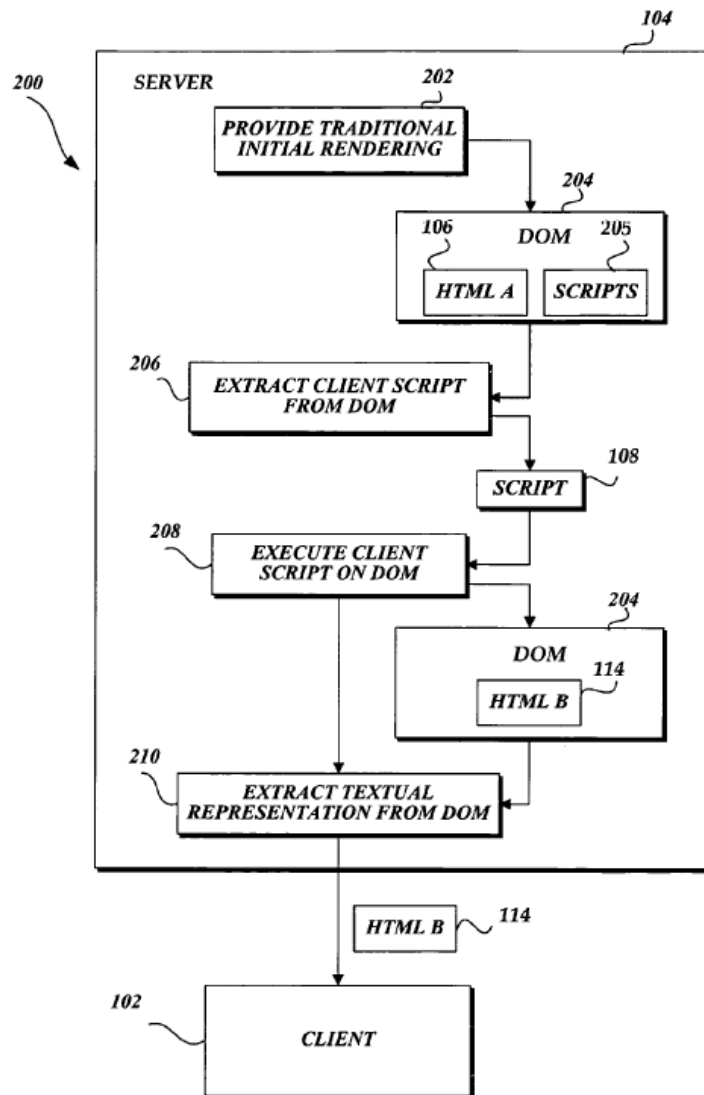


Fig.2.

Figure 2 is a diagram illustrating “an exemplary server-side rendering of initial content of a Web page.” *Id.* ¶ 14. As shown in Figure 2, “server 104 starts with a traditional initial rendering, i.e., providing HTML A (106) that contains layout information and static content of a Web page.” *Id.* ¶ 19. Kothari describes then generating DOM 204, which simulates HTML A. *Id.* Aside from “simulating layout information and static content of a Web page,

the DOM 204 also simulates scripts 205 for the Web page, including the script 108 for generating initial content of the Web page.” *Id.* ¶ 20.

The server extracts script 108, which was designed to be run on client 102, and executes the script on DOM 204. *Id.* ¶¶ 20–21. This modifies DOM 204 so that it “now contains both the layout information and the initial content for the Web page; i.e., the DOM 204 now simulates the HTML B (114).” *Id.* ¶ 23. “[S]erver 108 then extracts the text representation of the DOM 204 and sends it to the client 102,” where “[t]he text representation forms the HTML B (114).” *Id.* Thus, client 102 receives an initial rendering from server 104—HTML B—that contains the full initial content of the Web page. *Id.*

3. Hallak (Exhibit 1011)

Hallak relates to “securing a web client against malicious web attacks.” Ex. 1011, (57). Hallak describes a secure gateway in a web application environment that performs all client-side execution on behalf of a web client, such that “client code is typically executed in a ‘sandbox’ to secure the gateway.” *Id.* at 3:14–27.

Figure 2A from Hallak is reproduced below:

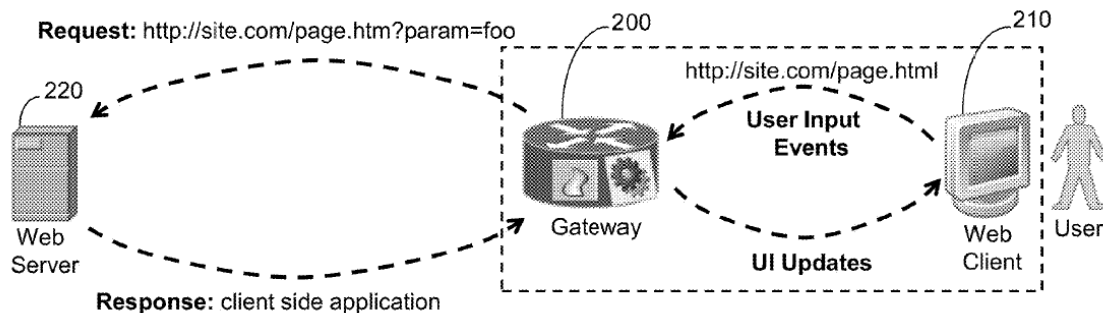


FIG. 2A

Figure 2A illustrates a deployment option for a secure gateway. *Id.* at 2:57–59. In the example shown in Figure 2A, execution of “client side application code of a web application by the secure gateway 200 (instead of by the client itself) provides protection against harmful attacks, thereby protecting the client 210.” *Id.* at 3:28–31. In this way, “the inherently insecure protocols of the Internet are now limited to run in a secure environment between the server 220 and the gateway 200.” *Id.* at 3:45–48. “In an ‘un-trusted zone’ between the gateway 200 and client 210, a secure gateway-client protocol is utilized,” which “uses harmless HTML constructs and accepts a limited set of user events.” *Id.* at 3:48–51.

Hallak discloses that “client 210 is physically split into two distributed entities: an execution entity which is the gateway 200, and a UI entity which may be a web browser of the client 210.” *Id.* at 4:46–49. “Updated UIs 380 are generated by the execution component in the gateway 200 and sent to the client 210, possibly in the form of static HTML (i.e., HTML code which does not include original scripts), and displayed to the user as UI updates 340.” *Id.* at 4:53–57. But “[e]ven when the code is executed by the gateway 200 there is no change in the user’s experience.” *Id.* at 4:65–67.

4. Matthys (Exhibit 1013)

Matthys relates to “replacing an advertisement in a webpage from a website with another advertisement.” Ex. 1013, (57). Matthys discloses that when a client machine requests to visit a website, a network device may intercept the request and the response for analysis. *Id.* ¶ 51. If it is determined that there are “one or more appropriate advertisements that may

be of high interest to the user,” such “advertisement is then placed in the response.” *Id.*

Matthys describes detecting whether a webpage sent in response to a request includes any advertisements based on “the presence of such an advertisement or a script thereof,” and determining “whether the advertisement is replaceable.” *Id.* ¶ 93. If so, “the original advertisement in the webpage is replaced by the preferable advertisement” such that “the original advertisement is either modified or replaced so that the webpage now carries a script including a link to the preferable advertisement,” and the webpage is then displayed on a client machine. *Id.* ¶ 96.

5. RFC 1812 (Exhibit 1015)

RFC 1812 “defines and discusses requirements for devices that perform the network layer forwarding function of the Internet protocol suite,” where “[t]he Internet community usually refers to such devices as IP routers or simply routers.” Ex. 1015, Introduction.

D. Anticipation by WebShield (Claims 1, 10, and 19)

Petitioner asserts that claims 1, 10, and 19 are unpatentable under 35 U.S.C. § 102 as anticipated by WebShield. Pet. 31–39. Petitioner provides supporting testimony from Dr. Williams. Williams Decl. ¶¶ 127–152.

Patent Owner responds that Petitioner “pursues inconsistent claim constructions,” and the Petition’s grounds “lack specificity.” *See* Prelim. Resp. 26–31. We discuss these assertions *infra*.

Upon consideration of Petitioner’s explanations and supporting evidence in this current record, and Patent Owner’s arguments, we are persuaded that Petitioner demonstrates a reasonable likelihood of prevailing

in proving that claims 1, 10, and 19 are anticipated by WebShield. Our analysis follows.

1. Claim 1

Petitioner asserts that each limitation of claim 1 is met by WebShield and provides an element-by-element analysis. Pet. 31–35; Williams Decl. ¶¶ 128–139. For example, Petitioner contends WebShield meets limitation 1a (“An apparatus, comprising . . . at least one processor”) by disclosing “a proxy positioned between a client browser and a remote web server.” Pet. 31. Similarly, Petitioner contends that limitation 1b (“a memory . . .”) is met by the 16 GB RAM in WebShield. *Id.* at 32. In similar fashion, Petitioner shows that the remaining limitations (claim elements 1c–1f) are met by WebShield. *Id.* at 33–35.

We have reviewed Petitioner’s contentions and supporting evidence in light of Patent Owner’s arguments and we find that Petitioner has made a sufficient showing for the purposes of institution. Patent Owner contests Petitioner’s analysis for only a few of claim 1’s limitations, and as discussed below, these arguments do not overcome Petitioner’s showing at this stage of the proceeding.

a. Claim Limitation 1f

Limitation 1f calls for “sending the modified web page to the client browser.” For this limitation, Petitioner cites the transformed web page T(R) in WebShield. Pet. 35. Citing testimony from Dr. Williams, Petitioner contends that “[t]he proxy of WebShield transmits the transformed webpage to the client, e.g., ‘we call the new HTML page we transfer to the client browser T(R).’” *Id.* (citing Ex. 1008, 6; Williams Decl. ¶ 138). As Dr.

Williams explains, “the encoded DOM data structures remove all the content of the <script>, <style>, and <link rel=stylesheet> nodes; and instead, include empty nodes solely for maintaining the DOM tree structure.”

Williams Decl. ¶ 138.

Patent Owner contends “neither the Petition nor Dr. William’s [sic] analyze whether the ‘transformed web page’ that is sent to the client is ‘web page’ as that term is defined in the specification—i.e., ‘a document written in a markup language that can be retrieved and rendered by a browser.’”

Prelim. Resp. 27. The crux of Patent Owner’s argument is that Petitioner has failed to show the transformed web page T(R) is a web page. On this record, we disagree. We first note that the claim calls for sending a “modified web page” to the client. In any event, WebShield itself refers to T(R) as “the new HTML page we transfer to the client browser.” Ex. 1007 § 3.3.2 (quoted *supra*). This is consistent with testimony from Dr. Williams. Williams Decl. ¶¶ 134–135. We, therefore, determine that at this stage, Patent Owner’s argument that T(R) is not a “modified web page” is unavailing.

b. Claim Limitation 1d

Similarly, we do not agree with Patent Owner’s argument that claim limitation 1d is not met by WebShield because “Petitioner appears to equate the modified web page to the WebShield DOM structure.” Prelim. Resp. 27. This argument is similar to the one previously addressed *supra*, in relation to claim element 1f. According to Patent Owner, “there is nothing in the record to suggest that these DOM structures are ‘a document written in a markup language that can be retrieved and rendered by a browser.’” *Id.* at

28. Patent Owner’s argument is ineffective for focusing on the DOM and not the transformed web page T(R). For the reasons given for claim element 1f, we determine that Patent Owner’s argument that WebShield does not disclose a “modified web page” is unavailing.

Patent Owner argues further that “the Petition does not explain how removing `<script>` or other ‘nodes’ during the encoding of the DOM discloses ‘removing an embedded script from the web page,; as required by claim 1.’” Prelim. Resp. 30. We do not agree. Dr. Williams explains that WebShield discloses this claim limitation in describing the removal of all the content of the `<script>`, `<style>`, and `<link rel=stylesheet>` nodes, and cites page 6 of WebShield.¹⁰ Williams Decl. ¶ 134. On that very page, WebShield refers to Figure 6 for further details on this implementation. *See* Ex. 1008, § 3.3.1. If more details are necessary, WebShield’s disclosure provides a sufficiently detailed description of this implementation. We determine that Petitioner has demonstrated sufficiently that WebShield teaches claim element 1d.

c. Claim Limitation 1b

Patent Owner argues for limitation 1b that the “Petition fails to bridge the gap between the code used to construct the sandbox, and code that allegedly ‘causes the at least one processor to implement a network appliance.’” Prelim. Resp. 30. Again, we disagree. WebShield describes implementing the “shadow browser” by “the addition of “6000 lines of C++

¹⁰ Unless otherwise specified, citations to pages of exhibits refer to the pages assigned by the parties and not the original page numbers.

code.” Ex. 1007, § 5.5. Dr. Williams testifies that “these many lines of executable code are therefore stored in the memory on the server, and implement the proxy server (i.e., a network appliance).” Williams Decl. ¶¶ 130–131. At this stage, we find this testimony from Dr. Williams is supported by the record and is credible on this issue. Patent Owner’s argument that Petitioner’s analysis of this element “lack[s] specificity,” on the other hand, is contradicted by the record, including Dr. Williams’s analysis. We therefore determine that Petitioner has demonstrated sufficiently that WebShield meets claim limitation 1b.

d. Compelling Merits

“Compelling, meritorious challenges are those in which the evidence, if unrebutted in trial, would plainly lead to a conclusion that one or more claims are unpatentable by a preponderance of the evidence.” Guidance Memo at 4. We determine that on this record, Petitioner’s anticipation challenge based on WebShield meets this standard. As set forth in the previous sections, Petitioner demonstrates at this stage that all elements of claim 1 are met by WebShield. If unrebutted at trial, we would conclude by a preponderance of the evidence that at least claim 1 is anticipated by WebShield.

At this stage, Patent Owner has not produced any persuasive rebuttal evidence. For most claim limitations, Patent Owner provides no rebuttal to Petitioner’s analysis. Patent Owner’s arguments directed to a few specific claim elements, summarized in the preceding section, are unsupported by the current record and not likely to succeed at trial absent additional supporting evidence.

Instead of addressing most specific claim limitations, Patent Owner relies on more general arguments in response to Petitioner's analysis. We do not find those arguments persuasive at this stage. For example, Patent Owner contends that "[t]he Petitioner selectively addresses certain definitions." Prelim. Resp. 20. We disagree. Patent Owner contends that Petitioner has failed to demonstrate that the "modified web page" limitation in claim 1 has been met and cites a definition from the specification. *See, e.g., id.* at 21. But we have considered Patent Owner's proposed constructions in our analysis, and using Patent Owner's definition, we have determined that Petitioner demonstrates that at this stage, WebShield meets this limitation. *See supra*, Section V.D.1.a. In short, we do not perceive that claim construction arguments from Petitioner or Patent Owner are relevant to our analysis, and for this reason we did not engage in claim construction. *See supra*, Section IV.

Patent Owner criticizes Dr. Williams's testimony on a number of other grounds, including an alleged failure to "cite to any additional evidence or provide any additional context or reasoning to the statements provided in the Petition." Prelim. Resp. 22. Again, we disagree. Throughout his testimony, Dr. Williams provides supporting cites and quotes from WebShield, itself an extremely detailed disclosure, and the other cited references. At this stage, we find Dr. Williams's testimony to be consistent with the record and credible.

Patent Owner contends all grounds in the Petition "lack clarity and particularity." *Id.* at 23. Patent Owner continues: "In addition to the Petition's and Dr. Williams' shared conclusory statements, neither provides a coherent explanation of how the cited references disclose the claimed

features.” *Id.* We do not see merit in this argument. Petitioner’s analysis and Dr. William’s testimony fully address each claim limitation and rely extensively on the detailed disclosures in WebShield and the other references. We do not perceive a lack of clarity or particularity in his testimony.

In short, we determine that Petitioner’s challenge to claim 1 meets the “compelling merits” standard as set forth in the Guidance Memo.

2. Claims 10 and 19

Claims 10 and 19 include limitations similar to claim 1. Petitioner provides a detailed element-by-element analysis of those claims in relation to WebShield. *See* Pet. 35–39; Williams Decl. ¶¶ 140–152. Patent Owner does not separately address these claims. For the reasons given by Petitioner, we determine that Petitioner has demonstrated a reasonable likelihood of prevailing on these challenges. Further, for the reasons given for claim 1, we determine that these challenges meet the “compelling merits” standard.

3. Conclusion on Anticipation by WebShield

Based on the evidence in the present record, we are persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing in showing that claims 1, 10, and 19 are anticipated by WebShield.

E. Obviousness over WebShield (Claims 1, 10, and 19)

Petitioner presents this ground as an alternative to its anticipation challenge based on WebShield. Pet. 39–40. Petitioner incorporates by reference its anticipation analysis and contends that if limitations in claim

elements 1c, 10d, or 19b are not met by WebShield, “then each such limitation would be common knowledge to a [person of ordinary skill in the art].” *Id.* (citing Williams Decl. ¶ 156). Patent Owner responds that this challenge fails “for the same reasons” as the WebShield anticipation ground. Prelim. Resp. 31.

For the reasons previously given, we are persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing in showing that claims 1, 10, and 19 would have been obvious over WebShield. Further, for the reasons previously given, we determine that these challenges meet the “compelling merits” standard.

F. Obviousness over Kothari and WebShield (Claims 1, 10, and 19)

Petitioner presents an element-by-element analysis for each challenged claim in this ground. Pet. 40–42; Williams Decl. ¶¶ 181–217. Petitioner also provides a rationale for combining the references. *See* Pet. Williams Decl. ¶¶ 173–180. Petitioner contends that Kothari discloses a server that simulates and “executes a client-side script that generates the initial content of a Web page.” Pet. 40 (citing Ex. 1009, (57)). Petitioner contends that “[i]n an embodiment, Kothari further discloses that server 104 intercepts and ‘then extracts the script 108 for the DOM 204.’” *Id.* (quoting Ex. 1009 ¶ 20). Petitioner contends it would have been obvious to combine Kothari’s teachings with the proxy server architecture of WebShield. *Id.* at 41.

Patent Owner responds that Petitioner’s “motivations for modifying Kothari and WebShield are deficient.” Prelim. Resp. 33–35. We disagree.

Dr. Williams testifies that a person of ordinary skill “would recognize that there are advantages to use a network appliance, such as a proxy server, to act as a gateway between a client device, *e.g.*, client 102, and a web server, *e.g.*, server 104” where “[a] network appliance may also serve as a firewall and filter for additional security, provide shared network connections, and cache data to speed up common requests.” Williams Decl. ¶ 175.

He testifies further that “it would have been obvious to adapt Kothari for use with other networking components, for example, to utilize the proxy server architecture of WebShield, where the proxy server is a separate component located between the client browser and the web.” *Id.* ¶ 177. He concludes that “[t]he use of a proxy server as suggested by WebShield into the Kothari architecture would have been an obvious implementation for a [person of ordinary skill] and would have also been done expecting success.” *Id.* Patent Owner does not provide any evidence in rebuttal, nor are Patent Owner’s arguments supported by the record. Prelim. Resp. 33–37. For example, we do not agree that Dr. Williams’s testimony is “a scattershot collection of conclusory statements.” *Id.* at 34. Instead, at this stage we determine that his testimony and the arguments based on his testimony are well-reasoned and consistent with the references themselves. We therefore determine that Petitioner has demonstrated a sufficient motivation to combine the references.

Patent Owner does not address directly Petitioner’s element-by-element analysis. Instead, Patent Owner asserts that is “unclear how precisely Petitioner intends to map the general features of Kothari’s system to the specific requirements of the identified limitation or explain with particularity how a [person of ordinary skill] would have understood that

some combination of Kothari’s features with WebShield’s features would teach these limitation [sic].” Prelim. Resp. 35–36. For the reasons given, we disagree that Petitioner’s analysis or Dr. Williams’s testimony are “unclear,” nor do we agree that Petitioner’s analysis “fails to provide any explanation as to how the two references are being utilized or what the proposed modification would have been.” *Id.* at 35–37. Petitioner’s analysis makes it clear that Petitioner relies on WebShield’s teaching of a proxy computing machine “if the Board finds Kothari does not disclose a network appliance.” Pet. 45 (citing Williams Decl. ¶ 187).

Patent Owner does contend that “it is not apparent how WebShield would result in the combination arriving at the claimed features.” Prelim. Resp. 40. We disagree. The element-by-element analysis provided by Petitioner associates each claim element with disclosures from Kothari or WebShield. *See* Pet. 42–54. Patent Owner’s argument that the Petition “fails to show how Kothari or Kothari in view of WebShield would disclose the claimed features recited in claim 1” (Prelim. Resp. 40) is unavailing.

In conclusion, for the reasons given, we are persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing in showing that claims 1, 10, and 19 would have been obvious over Kothari and WebShield. We do not express an opinion as to whether this challenge meets the compelling merits standard as we have already determined that the Petition presents compelling evidence of unpatentability. *See* Guidance Memo at 2.

G. Anticipation by Hallak (Claims 1, 10, and 19)

Petitioner asserts that each limitation of these claims is met by Hallak and provides an element-by-element analysis for this ground. Pet. 55–61;

Williams Decl. ¶¶ 218–243. Patent Owner responds that “Petitioner fails to show that Hallak’s disclosure is commensurate with the claimed ‘web page’ that is present in each limitation of claim 1.” Prelim. Resp. 41. Patent Owner points to claim element 1f, which recites “sending the modified web page to the client browser.” *Id.* Similar to its previous argument directed to WebShield, Patent Owner argues that “neither the Petition nor Dr. William’s [sic] analyze whether the data that is actually sent to the client [in Hallak] is ‘a document written in a markup language that can be retrieved and rendered by a browser.’” *Id.* at 41–42. We disagree with Patent Owner.

As noted previously, the claims call for a “modified web page.” Dr. Williams testifies that “Hallak further states that ‘[u]pdated UIs 380 are generated by the execution component in the gateway 200 and sent to the client 210, possibly in the form of static HTML (i.e., HTML code which does not include original scripts), and displayed to the user as UI updates 340.’” Williams Decl. ¶ 225 (quoting Ex. 1011, 4:53–57). He explains further that “Hallak discloses modifying the web page by removing an embedded script from the web page.” *Id.* He testifies further that Hallak sends this modified web page to the client. *Id.* ¶ 228. He reasons that “Hallak summarizes that ‘[i]n general, only the static visual parts of the HTML documents may be passed, leaving out all of the original scripts and references to such scripts.’” *Id.* (quoting Ex. 1011, 9:34–36) (alterations in original).

At this stage, we find Dr. William’s explanation to be credible and supported by his citations to Hallak, which describe passing HTML documents to the client. We therefore agree with Petitioner that Hallak discloses the claimed modified web page.

We do not see merit in Patent Owner’s “mix and match” argument. Prelim. Resp. 43–45. While Hallak may refer to different embodiments, in fact there is much overlap in its disclosure. This is evident from the description of the figures in Hallak. *See* Ex. 1011, 2:55–67. Thus, Figures 2A through 2G are referred to as “options.” *Id.* at 2:57–59. Similarly, both Figure 3 and 5 are described as illustrating “certain embodiments.” *Id.* at 60–62, 65–67. Thus, we are not convinced by Patent Owner’s analysis that a person of ordinary skill would not have looked to Hallak’s disclosure as a whole, rather than dissecting it as in Patent Owner’s “mix and match” argument.

For the reasons given, we are persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing in showing that claims 1, 10, and 19 are anticipated by Hallak. We do not express an opinion as to whether this challenge meets the compelling merits standard as we have already determined that the Petition presents compelling evidence of unpatentability. *See* Guidance Memo at 2.

H. Obviousness over Hallak and Matthys (Claims 1–10 and 14–19) and over Hallak and RFC 1812 (Claims 10–13)

Petitioner asserts that claims 1–10 and 14–19 would have been obvious over Hallak and Matthys and claims 10–13 would have been obvious over Hallak and RFC 1812. Pet. 61–77; Williams Decl. ¶¶ 244–301. Petitioner also provides a rationale for combining the references. Pet. 61–64 (Hallak and Matthys); 74–75 (Hallak and RFC 2616). *See also* Williams Decl. ¶¶ 244–252, 297–301.

1. Hallak and Matthys

Petitioner contends that “Hallak and Matthys are both directed to monitoring and intercepting web page traffic containing scripts.” Pet. 61. Petitioner asserts that Hallak discloses that “[a]ll client side processing (e.g., JavaScript execution, cookie manipulation, etc.) are performed on the trusted and sealed secure gateway 200.” *Id.* (quoting Ex. 1011, 3:23–25). Further, Hallak discloses “[i]n general, only the static visual parts of the HTML documents may be passed, leaving out all of the original scripts and references to such scripts.” *Id.* (quoting Ex. 1011, 9:34–36). In addition, Petitioner reasons that “[s]imilarly, Matthys discloses monitoring and intercepting a webpage in a network device ‘preferably at a data traffic point along a network.’” *Id.* (quoting Ex. 1013, (57)).

Similar to its previous contentions, Patent Owner argues that Petitioner’s motivation for combining Hallak and Matthys is “deficient.” Prelim. Resp. 47–49. We disagree. Dr. Williams testifies that Matthys “discusses the use of data filtering at the packet level.” Williams Decl. ¶ 248. He testifies that “a [person of ordinary skill] would recognize that there are advantages analyzing web page data, including metadata and packets to provide a more robust monitoring and filtering ability.” *Id.* ¶ 249.

Dr. Williams concludes that “it would have been obvious to adapt Hallak to utilize metadata and packet level analytics as disclosed in Matthys to produce more detailed filtering and detection in protecting web clients and web-based applications.” *Id.* ¶ 250. He continues, “[t]he use of metadata and data packet analytics as suggested by Matthys into the Hallak process would have been an obvious implementation for a [person of ordinary skill in the art] and would have also been done expecting success.” *Id.*

At this stage, we find this testimony is consistent with the references and credible, and we therefore do not agree with Patent Owner's argument that Petitioner's showing of a motivation to combine is "deficient," or that Petitioner "fails to articulate its combination." Prelim. Resp. 47–51.

Patent Owner does not address directly Petitioner's element-by-element analysis of these claims. Instead, Patent Owner refers back to its arguments directed to the challenge based on anticipation by Hallak, which we have addressed *supra*, in Section V.G. *See id.* at 51–52. For the reasons previously stated there, we are not persuaded by those arguments.

2. Hallak and RFC 1812

Similarly, Petitioner presents sufficient evidence of a motivation to combine Hallak and RFC 1812. Petitioner asserts that "Hallak is directed to deploying secure gateways in a network, including access to Internet communications." Dr. Williams testifies that "a [person of ordinary skill] would recognize the use of RFC 1812 standards in the use of gateways, routers, and Internet communications. RFC 1812 specifies standards track protocols for the Internet community as it describes how routers connect to and retrieve data from the Internet." Williams Decl. ¶ 298. He concludes that "it would have been obvious to adapt Hallak and Matthys to adhere to the RFC 1812 standards that entails network communications." *Id.* At this stage, we find this testimony is consistent with the references and therefore credible.

We are, therefore, not persuaded by Patent Owner's argument that this showing of motivation to combine is "deficient." Prelim. Resp. 53–54.

3. Summary

For the reasons given, we are persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing in showing that claims 1–10 and 14–19 would have been obvious over Hallak and Matthys and claims 10–13 would have been obvious over Hallak and RFC 1812. We do not express an opinion as to whether this challenge meets the compelling merits standard as we have already determined that the Petition presents compelling evidence of unpatentability. *See* Guidance Memo at 2.

VI. CONCLUSION

For the foregoing reasons, we determine that the information presented in the Petition establishes that there is a reasonable likelihood that Petitioner would prevail with respect to the challenged claims of the '498 patent.

VII. ORDER

For the foregoing reasons, it is

ORDERED that pursuant to 35 U.S.C. § 314(a), an *inter partes* review of the '498 patent is hereby instituted for all of the challenged claims on all of the asserted grounds;

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

FURTHER ORDERED that the caption for this proceeding has been revised to name oxylabs, UAB as Patent Owner. The parties will use this caption in all further filings.

IPR2023-00185
Patent 9,503,498 B2

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