

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BRIGHT DATA LTD.,
Petitioner,

v.

OXYLABS, UAB,
Patent Owner.¹

IPR2023-00186
Patent 9,516,091 B2

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

AHMED, *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.

I. INTRODUCTION

Petitioner, Bright Data Ltd., filed a Petition for *inter partes* review of claims 1–20 of U.S. Patent No. 9,516,091 B2 (Ex. 1003, “the ’091 patent”). Paper 1 (“Pet.”). Patent Owner, oxylabs, UAB,² filed a Preliminary Response. Paper 7 (“Prelim. Resp.”).

Under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a), we have authority to institute an *inter partes* review if “the information presented in the petition . . . and any response . . . 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). After considering the parties’ briefing and the evidence of record, we conclude the information presented shows there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one of the challenged claims of the ’162 patent. Accordingly, we institute an *inter partes* review as to the challenged claims on the grounds of unpatentability asserted in the Petition.

II. BACKGROUND

A. Real Parties in Interest

Petitioner identifies itself as the real party in interest. Pet. 1. Patent Owner identifies oxylabs, UAB as the real party in interest. Paper 4, 1. Patent Owner explains that “oxysales, UAB and metaccluster 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.*

² As set forth below, metaccluster lt, UAB, now operates as oxylabs, UAB, its successor in interest. Accordingly, the caption of this proceeding has been revised to reflect this change.

B. Related Matters

The parties indicate that the '091 patent is involved in the following proceeding: *Metacluster LT, UAB v. Bright Data Ltd.*, No. 2-22-cv-00011 (E.D. Tex.) (“Texas Litigation”). Pet. 1; Paper 4, 1; Paper 5, 2.

The parties also indicate that Petitioner has challenged patents related to that '091 patent in IPR2023-00185 (challenging U.S. Patent No. 9,503,498) and IPR2023-00187 (challenging U.S. Patent No. 8,924,457). Pet. 2; Paper 5, 2; Paper 4, 1.

C. Overview of the '091 Patent

The '091 patent relates to the management of web page scripts using a network appliance that intercepts the web page sent from a server to a client browser, modifies the web page by executing an embedded script, and sends the modified web page to the client browser. Ex. 1003, codes (54), (57). According to the '091 patent, performing web analytics for tracking consumer interaction with websites may employ embedded scripts in web pages. *Id.* at 1:21–44. 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 1:44–51.

Figure 1 of the '091 patent is reproduced below.

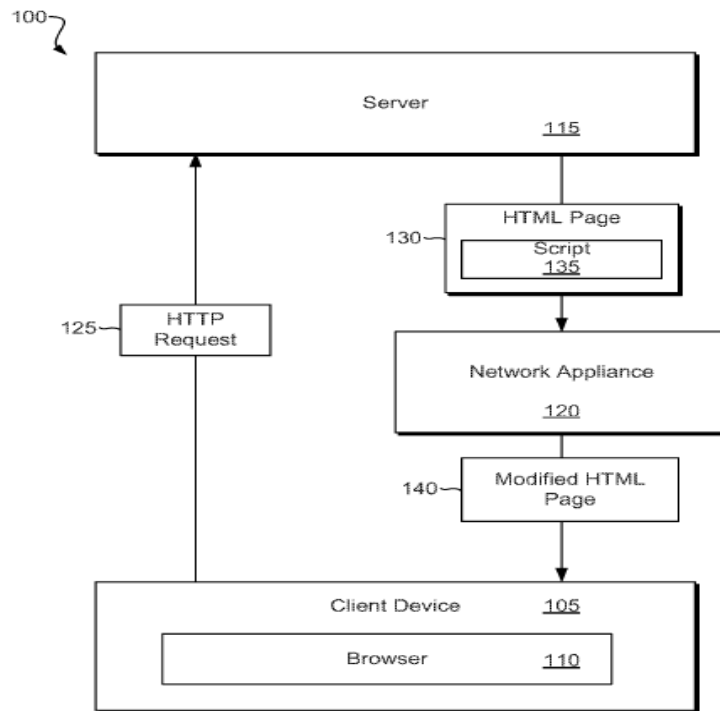


Fig. 1

Figure 1 show a block diagram of the '091 patent's system that is used to manage the execution of embedded scripts in web pages. *Id.* at 5:13–25. In response to receiving a HTTP request for a certain web page from client browser 110, server 115 may send a copy of web page 130 which may include an embedded script 135. *Id.* at 5:36–43. Network appliance 120 may intercept the web page and modify it by removing the embedded script. *Id.* at 5:44–55. The network appliance may execute a removed script and send the modified web page 140 to the client browser. *Id.* at 5:62–6:3. These steps are shown in Figure 5 of the '091 patent, reproduced below.

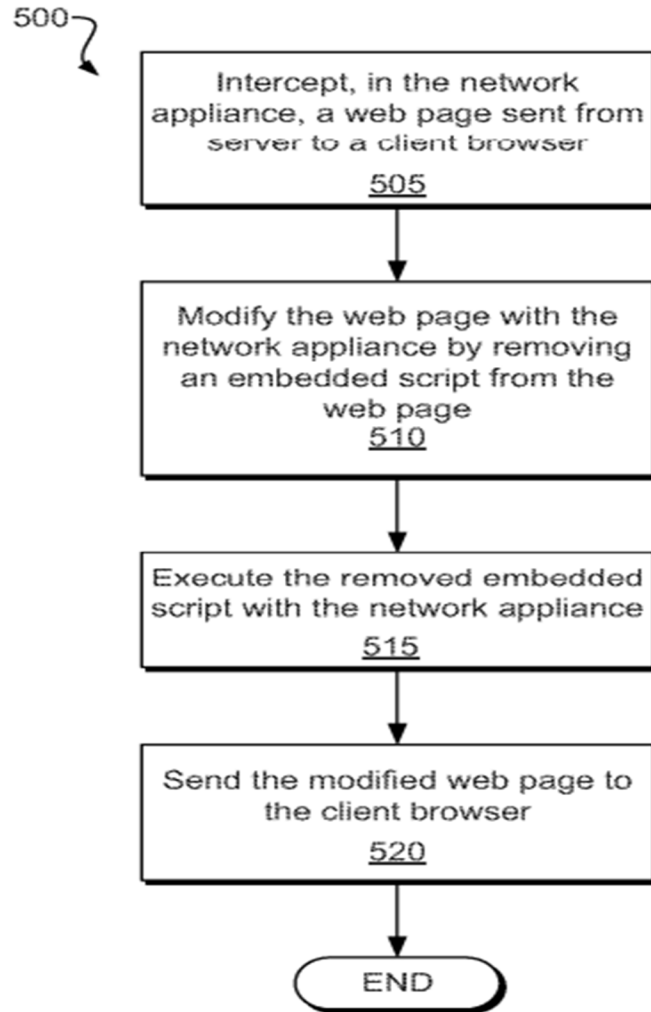


Fig. 5

Figure 6 of the '097 patent is reproduced below.

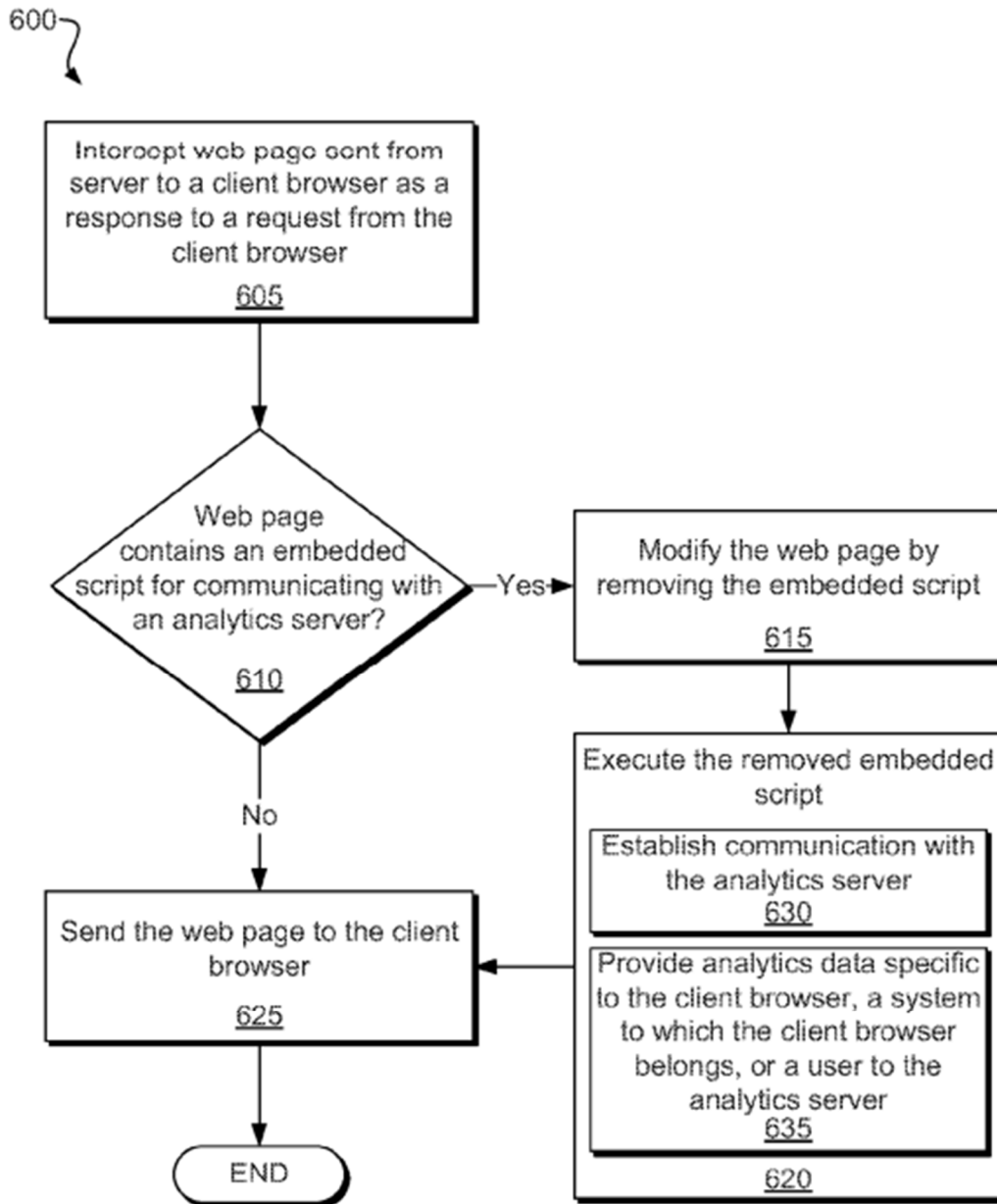


Fig. 6

Figure 6 is a flowchart showing another example of the web page script management method. *Id.* at 2:65–67. In this example, the network appliance also determines whether the intercepted web page contains an embedded script for communicating with an analytics server, and if so, the

web page is modified by removing and executing that embedded script, and establishing communication with the analytics server. *Id.* at 9:13–32. The network appliance provides information specific to the client browser, such as the client’s system and/or user information, to the analytics server. *Id.* at 9:33–41.

D. Illustrative Claim

Petitioner challenges claims 1–20 of the ’091 patent, of which claims 1, 13, and 19 are independent. Claims 1 and 13 are illustrative of the claimed subject matter and are reproduced below, with formatting and bracketed material added:

1. A machine-implemented method of web page script management, said method comprising:
 - [1a] in a network appliance implemented by at least one processor, intercepting a web page sent from a server and addressed to a client browser;
 - [1b] modifying the web page with the network appliance by removing an embedded script from the web page;
 - [1c] executing the removed embedded script with the network appliance; and
 - [1d] sending the modified web page from the network appliance to the client browser.

Ex. 1003, 11:49–51 (bracketed designations added (*see* Ex. 1031)).

13. A method of web page script management comprising:
 - [13a] with a network computing device:
 - [13b] intercepting a web page sent from a first server and addressed to a client browser;
 - [13c] modifying the web page by removing an embedded script from the web page;
 - [13d] establishing communication between the network computing device and a second server to transmit analytics information to the second server;

[13e] executing, by the network computing device, the removed embedded script;

[13f] sending the modified web page from the network computing device to the client browser; and

[13g] providing a second server with information specific to the client browser as embedded script results.

Ex. 1003, 12:31–45 (bracketed designations added (*see* Ex. 1031)).

E. Asserted Grounds of Unpatentability

Petitioner asserts that the challenged claims are unpatentable based on the following grounds (Pet. 7):

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1, 13, 19	102(e) ³	Scoda ⁴
1–20	103	Scoda, Matthys ⁵
1, 13, 19	102(e)	Hallak ⁶
1–20	103	Hallak, Matthys

Petitioner submits the declaration of Dr. Tim Arthur Williams (Ex. 1007) in support of the Petition.

³ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 285–88 (2011), amended 35 U.S.C. §§ 102, 103 effective March 16, 2013. Because it appears on the preliminary record, and the parties do not dispute, that the ’091 patent has an effective filing date earlier than March 16, 2013, we refer to the pre-AIA versions of §§ 102 and 103. *See* Ex. 1003, codes (22), (63).

⁴ U.S. Patent Publication No. 2011/0307238 A1, published on December 15, 2011 (Ex. 1016, “Scoda”).

⁵ U.S. Patent Publication No. 2008/0306816 A1, published on December 11, 2008 (Ex. 1013, “Matthys”).

⁶ U.S. Patent No. 8,464,318 B1, issued on June 11, 2013 (Ex. 1011, “Hallak”).

III. DISCUSSION

A. Discretion Under 35 U.S.C. § 314(a)

Patent Owner argues that we should exercise discretion to deny institution under § 314(a) in light of the co-pending district court litigation. Prelim. Resp. 9. Patent Owner contends that the factors identified in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”), weigh in favor of denying institution. *Id.* at 9–20.

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 U.S. Patent and Trademark Office (“USPTO”) issued a Memorandum⁷ titled Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation (“Memo”), which states, among other things, 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.” Memo 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. “This clarification strikes a balance among the competing concerns of avoiding potentially conflicting outcomes, avoiding overburdening patent owners, and strengthening the patent system by eliminating patents that are not robust and reliable.” *Id.* at 5.

For the reasons that follow, although we find that *Fintiv* factors 1–5 weigh in favor of denying institution in this case, we determine that the Petition presents compelling merits as to the challenged claims, and thus, we decline to exercise our discretion to deny the Petition.

1. Factor 1 (Stay)

Petitioner has not requested to stay the Texas Litigation based on the Petition. Prelim. Resp. 11 (citing Ex. 2003); Pet. 8. Although given the advanced state of the Texas Litigation, we agree with Patent Owner that a stay would be unlikely, it is speculative to consider whether a stay would be

⁷ Available at https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf.

granted if one were requested based on the outcome of our Decision. *See* Prelim. Resp. 11–12.

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 the 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).

Even if we agree with Petitioner that the median time-to-trial in the Eastern District of Texas is the proper indicator of when a trial in the Texas Litigation would likely begin (*see* Memo, at 8–9), the due date for a final written decision in this proceeding would still be about six months after Petitioner’s projected trial start date of January 2024. Because 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 favors exercising our discretion to deny the Petition.

3. Factor 3 (Investment in the Texas Litigation)

Patent Owner contends that, with respect to the Texas Litigation, “the parties have already invested significant resources and will invest significantly more resources by the time an institution decision is reached.” Prelim. Resp. 13 (citing Ex. 2005). 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 would have been entered or fact discovery completed prior to institution in this proceeding, and also notes that opening expert reports in the litigation are not due until June 2, 2023. Pet. 10. Petitioner also asserts that, as of the filing of the Petition, there have been no “substantive proceedings” in the Texas Litigation, and “as of the filing of this petition, the court has not entered a decision on Petitioner’s preliminary motion to dismiss. *Id.* at 9–11. Petitioner therefore contends that “institution would serve the public interest in the event that the [Texas Litigation] is dismissed.” *Id.*

We agree with Patent Owner that significant resources have already been invested in the Texas Litigation by the parties and the district court. Prelim. Resp. 13–14. Although the parties have not submitted more up-to-date information as to whether fact discovery and expert discovery were completed as scheduled, the fact that the respective deadlines were still set for May 30, 2023 and July 3, 2023, respectively, under the Amended Docket Control Order signed on March 8, 2023 (*see* Ex. 2005) indicates that much effort would have been expended by the parties in anticipation of meeting these deadlines. The district court has already held a *Markman* hearing and issued a claim construction order. Ex. 1033. Patent Owner further points out that following the filing of the Petition, the court denied Petitioner’s motion to dismiss and Rule 11 motion (*see id.* at 13 (citing Ex. 2002)),

rendering Petitioner’s argument about potential for dismissal of the litigation moot.

Given the substantial investment that has already been made at the district court in claim construction as well as discovery, 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 2–8, 10, and 12–20 are not at issue in the Texas Litigation, independent claims 1, 10, and 19, as well as dependent claims 1, 9, and 11 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.

Petitioner “stipulates that, if instituted, the petitioner-defendant will not pursue the same grounds presented in this petition against the ’091 Patent in the [Texas] Litigation.” Pet. 11.

We are not persuaded at this stage that any purported differences in Petitioner’s approach to claim construction in the district court and in the Petition risk producing inconsistent results. In particular, Patent Owner does not explain why Petitioner’s proposal that all terms should have their plain and ordinary meaning (Pet. 16) is “inconsistent” with any of the claim constructions positions Petitioner has advanced in the Texas Litigation (*see* Prelim. Resp. 14–15). In district court, Patent Owner itself asserted that

many of the claim terms, including “network appliance,” “web page,” and “embedded script,” that the ’091 patent specification appears to define, should be given their “plain and ordinary meaning.” *See* Ex. 2004, 5, 11. The district court has now issued a claim construction order. *See* 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.

We are also not persuaded that the partial overlap in the claims at issue in both proceedings, by itself, weighs either for or against exercising our discretion to deny.

We agree with Patent Owner, however, that Petitioner’s stipulation falls short of the more extensive stipulation the Board relied upon in the institution decision in *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12, at 18 (PTAB Dec. 1, 2020) (precedential), and thus unnecessarily leaves open the possibility of duplication of efforts in this proceeding and the Texas Litigation. *See* Prelim. Resp. 16–17; *see also* 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.”). Accordingly, this factor weighs 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 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 Merits

Petitioner contends that the Petition “presents compelling evidence of unpatentability,” and that “[i]nstitution would strengthen the patent system and serve the public interest.” Pet. 12 (citing Memo, at 5). Patent Owner argues that “the Petition fails to present a compelling unpatentability challenge for any of the claims of the ’091 Patent.” Prelim. Resp. 19. We agree with Petitioner that the Petition presents compelling merits at least as to anticipation of claim 1 by Scoda.

As part of our analysis below, we first discuss the merits of the Petition under the standard required for institution and then discuss our conclusion that the merits are compelling. *See infra* § III.F.1.

7. Conclusion

Under the Director’s guidance, we cannot “discretionarily deny institution in view of parallel district court litigation where a petition presents compelling evidence of unpatentability.” Memo, at 2. Because that is the case here, we determine that we should not exercise discretion to deny institution in this proceeding under 35 U.S.C. § 314(a).

B. Principles of Law

To establish anticipation, each and every element in a claim, arranged as recited in the claim, must be found in a single prior art reference. *See Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008); *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). A reference, however, can anticipate a claim even if it does not expressly spell out all the limitations arranged or combined as in the claim,

“if a person of skill in the art, reading the reference, would ‘at once envisage’ the claimed arrangement or combination.” *Kennametal, Inc. v. Ingersoll Cutting Tool Co.*, 780 F.3d 1376, 1381 (Fed. Cir. 2015); *see also Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1344 (Fed. Cir. 2016) (“[A] reference may still anticipate if that reference teaches that the disclosed components or functionalities may be combined and one of skill in the art would be able to implement the combination.”).

A claim is unpatentable under § 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) when in evidence, objective indicia of non-obviousness.⁸ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

C. 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).

⁸ With respect to the fourth *Graham* factor, the parties do not present arguments or evidence regarding objective indicia of non-obviousness. *See generally* Pet.; Prelim. Resp.

Petitioner asserts that a person of ordinary skill in the art at the time of the invention of the '091 patent would have had master's degree or higher in the field of electrical engineering, computer engineering, or computer science, or would have had a bachelor's degree in the same fields and two or more years of experience in internet communications. Pet. 15–16 (citing Ex. 1007 ¶¶ 30–31). Patent Owner does not dispute Petitioner's definition for a person of ordinary skill in the art. *See* Prelim. Resp.

For purposes of this Decision, we adopt the level of ordinary skill as articulated by Petitioner because, based on the current record, this proposal appears to be consistent with the '091 patent and the prior art of record and is supported by the testimony of Dr. Williams.

D. Claim Construction

In an *inter partes* review, we apply the same claim construction standard that would be used in a civil action under 35 U.S.C. § 282(b), following the standard articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). 37 C.F.R. § 42.100(b) (2022). In applying this standard, we generally give claim terms their ordinary and customary meaning, as would be understood by a person of ordinary skill in the art, at the time of the invention and in the context of the entire patent disclosure. *Phillips*, 415 F.3d at 1312–14.

Petitioner asserts that all claim terms should have their plain and ordinary meaning. Pet. 16.

Patent Owner states that the '091 patent expressly defines a number of claim terms including “web page,” “network appliance,” “browser,” and “embedded script.” Prelim. Resp. 7–8. Patent Owner further asserts that in the co-pending litigation, Petitioner addressed these definitions, as well as

several other claim terms. Prelim. Resp. 8, n.1 (citing Ex. 2004, 5–16); *see also id.* at 14–16 (discussing the above terms as well as “intercept a web page sent by a server and addressed to the client device” and “executing the removed embedded script”).

For purposes of this Decision, we determine that no claim terms require express construction. *See Realtime Data LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. Eng’g, Inc.*, 200 F.3d 795, 803) (Fed. Cir. 1999))).

E. Overview of the Asserted References

1. Scoda (Ex. 1016)

Scoda relates to proxy servers that utilize a JavaScript emulator to extract JavaScript instruction sets a web page and inserts a JavaScript field identifier into the web page to optimize it and provide it to the web client. Ex. 1016, code (57), ¶¶ 1, 7.

Figure 1 of Scoda is reproduced below.

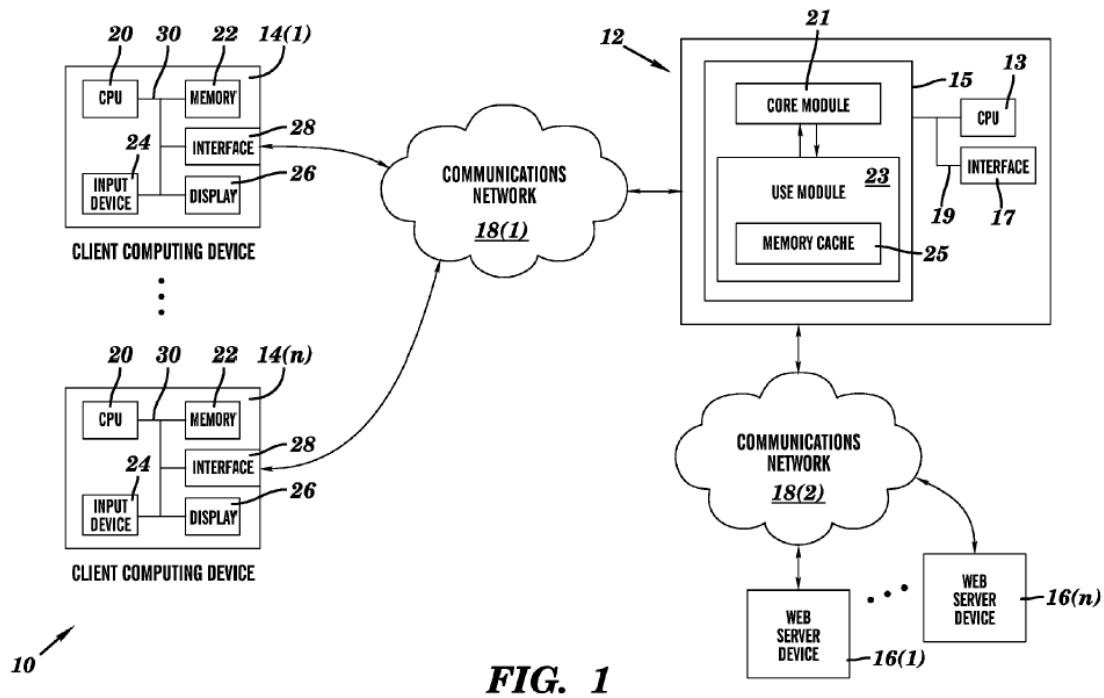


Figure 1 illustrates a block diagram of Scoda's system comprising an optimized web content proxy server 12 ("proxy server") with a JavaScript emulator. *Id.* ¶ 17. Scoda discloses that web server devices 16(1)–16(n) provide web pages to client devices 14(1)–14(n) via the proxy server. *Id.* ¶ 35.

Figure 8 of Scoda is reproduced below.

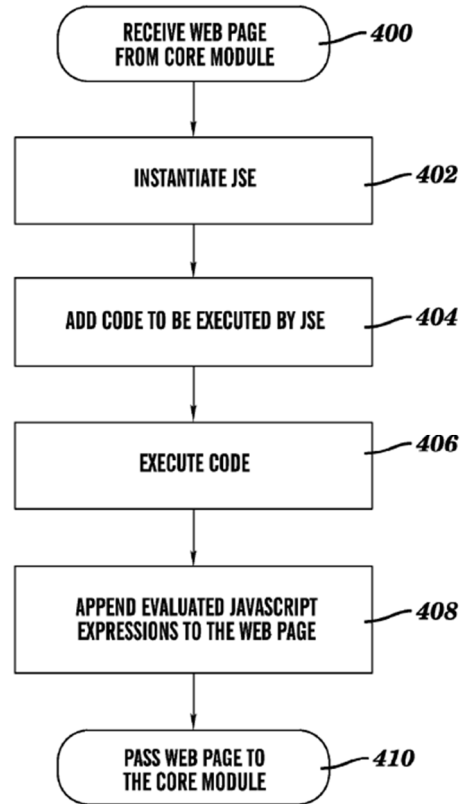


FIG. 8

Figure 8 is flow chart of a method for processing a received web page with a JavaScript instruction set at the proxy server with a JavaScript emulator. *Id.* ¶¶ 24, 59. Scoda discloses that when a web page with JavaScript code is received at the proxy server, the proxy server creates a document object model of the web page, adds the JavaScript code from the web page to the document object model, executes the JavaScript instruction set, and appends any obtained content in an “optimized version” of the received web page. *Id.* ¶¶ 60–64. The web page is then provided by the proxy server for use in a web browser on one of the client devices. *Id.* ¶ 65.

2. Hallak (Ex. 1011)

Hallak relates to “securing a web client against malicious web attacks. Ex. 1011, code (57). Hallak describes implementing 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 illustrates a deployment option for a secure gateway (*id.* at 2:57–59), and is reproduced below.

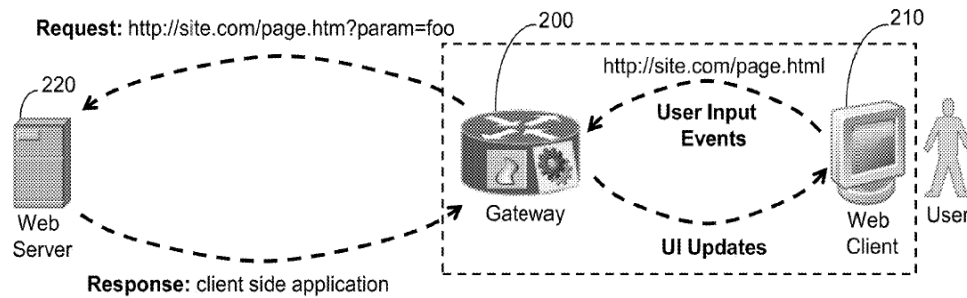


FIG. 2A

In the example shown in Figure 2A, execution of client-side application (CSA) 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. 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.

3. *Matthys (Ex. 1013)*

Matthys relates to “replacing an advertisement in a webpage from a website with another advertisement.” *Ex. 1013*, code (57). *Matthys* describes 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 an “advertisement is then placed in the response.” *Id.* Matthys describes detecting whether a web page 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 web page 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 web page is then displayed on a client machine. *Id.* ¶ 96.

F. Asserted Anticipation over Scoda

Petitioner contends that independent claims 1, 13, and 19 of the ’091 patent are unpatentable under 35 U.S.C. § 102(e) as anticipated by Scoda. Pet. 26–32. Patent Owner opposes. Prelim. Resp. 26–37. For the reasons set forth below, we find that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing that claim 1 is unpatentable on this ground.

1. Claim 1

a. Preamble

Petitioner asserts that Scoda discloses a “machine-implemented method of web page script management” as recited in the preamble because Scoda discloses a method of utilizing a JavaScript emulator in a proxy server, including loading with the proxy server a stored object model of an original web page which had at least a portion of one or more JavaScript instruction sets previously extracted to form an optimized web page. Pet. 23 (citing Ex. 1016 ¶ 10; Ex. 1007 ¶ 116). At this stage of the proceeding, Patent Owner does not dispute Petitioner’s contentions regarding the

preamble. Based on the current record, Petitioner’s contentions sufficiently demonstrate that Scoda discloses the preamble of claim 1.⁹

b. Limitation 1[a]: in a network appliance implemented by at least one processor, intercepting a web page sent from a server and addressed to a client browser;

Petitioner asserts that Scoda’s proxy server, having a central processing unit (CPU) or processor 13 that executes a program of stored instructions, discloses the “network appliance implemented by at least one processor” recited in claim element 1[a]. Pet. 23–24 (citing Ex. 1016 ¶¶ 8, 25, 26, Fig. 1; Ex. 1007 ¶¶ 116–118). Petitioner further asserts that Scoda’s proxy server intercepts a web page sent from a server and addressed to a client browser as required by claim element 1[a]. *Id.* at 25–26. Petitioner explains that Scoda discloses that its client devices 14(1)–14(n) request a web page from one or more websites hosted by web server devices 16(a)–16(n) via the proxy server. *Id.* at 25 (citing Ex. 1016 ¶ 35; Ex. 1007 ¶ 119). Petitioner asserts that Scoda discloses that the requested web page is addressed to the client browser because Scoda’s proxy server determines where to provide the response with the executed JavaScript functionality, such as to the web browser on client devices 14(1)–14(n). *Id.* at 26 (citing Ex. 1016 ¶ 55; Ex. 1007 ¶¶ 120–121).

Notwithstanding Patent Owner’s arguments, which we address below, we find that Petitioner’s contentions sufficiently demonstrate that Scoda discloses the recitations of claim element 1[a].

⁹ At this stage of the proceeding, we make no determination as to whether the preamble is limiting.

c. Limitation 1[b]: modifying the web page with the network appliance by removing an embedded script from the web page;

Petitioner asserts that Scoda discloses claim element 1[b] by stating that its proxy server removes at least one JavaScript instruction set (embedded script) from the web page to generate an optimized version of the received web page. Pet. 26 (citing Ex. 1016 ¶ 13; Ex. 1007 ¶ 122).

Petitioner further asserts that the proxy server executes the extracted JavaScript to obtain any content and append that content to the optimized version of the web page. *Id.* (citing Ex. 1016 ¶ 64). Notwithstanding Patent Owner's arguments, which we address below, we determine that Petitioner's contentions sufficiently demonstrate that Scoda discloses the recitations of claim element 1[b].

d. Limitation 1[c]: executing the removed embedded script with the network appliance; and

Petitioner asserts that Scoda discloses the limitations of claim element 1[c] by describing a method for processing a received web page at the proxy server with a JavaScript emulator for delivery to one of the client computing devices. Pet. 26–27 (citing Ex. 1016 ¶¶ 59–65; Ex. 1007 ¶ 123). With reference to Scoda's Figure 8, Petitioner explains that in Step 400, Scoda's proxy server 12 receives a web page containing a JavaScript instruction. *Id.* at 27 (citing Ex. 1016 ¶ 59). Petitioner further explains that in Steps 406 and 408, Scoda discloses that the embedded script is removed and executed by the proxy server because Step 406 discloses executing the JavaScript programmed instruction set in the document object model of the received web page to obtain the dynamic content and that Step 408 discloses executing a JavaScript module to append the obtained content in an optimized version of the received web page with the JavaScript programmed

instruction set extracted. *Id.* at 27 (citing Ex. 1016 ¶¶ 63–64; Ex. 1007 ¶¶ 123–24).

Patent Owner asserts that during the Texas Litigation, Petitioner argued that the term “executing the removed embedded script” should be construed as running the instructions for the embedded script *after* it has been removed from the web page.” Prelim. Resp. 15 (citing Ex. 2004, 15); *see also* Ex. 1033, 27–29. Patent Owner asserts that the Petition fails to address this order of operations or any temporal aspect regarding the claimed removal and extraction steps. Prelim. Resp. 15 (citing Pet. 23–78).

Patent Owner’s arguments are not persuasive at this stage of the proceeding. We understand Petitioner to argue that Scoda discloses first removing the embedded script to create a modified, optimized web page and then executing the modified web page. *See, e.g.*, Pet. 26–27; 1016 ¶¶ 59–65; Figs. 7, 8; *see also* Ex. 1016 ¶ 64 (stating in step 408, proxy server 12 executes JavaScript module 23 to append the obtained content in an optimized version of the received web page *with the JavaScript programmed set extracted*); *see also* Pet. 23 (citing Ex. 1016 ¶ 10 and stating that Scoda discloses a method for utilizing a JavaScript emulator including loading a stored object model of an original web page which had at least a portion of JavaScript instruction sets *previously* extracted to form an optimized web page).

Notwithstanding these arguments, and Patent Owner’s additional arguments that we address below, we find that Petitioner’s contentions sufficiently demonstrate that Scoda discloses the recitations of claim element 1[c].

e. Limitation 1[d]: sending the modified web page from the network appliance to the client browser.

Petitioner asserts that Scoda discloses transmitting the modified web page to the client browser by stating that in step 410 of Figure 8, the proxy server passes the optimized web page with the extracted JavaScript instruction set and appended dynamic content to core module 21. Pet. 27 (citing Ex. 1016 ¶ 65; Ex. 1007 ¶ 125). Petitioner asserts that core module 21 is then executed by the proxy server to determine where to provide the web page with the executed JavaScript functionality, e.g., to a web browser on one of client devices 14(1)–14(n). *Id.* (citing Ex. 1016 ¶ 65).

Notwithstanding Patent Owner’s arguments, which we address below, Petitioner’s contentions sufficiently demonstrate that Scoda discloses the recitations of claim element 1[d].

f. Patent Owner’s arguments

(i) Claim Construction

Patent Owner advances several arguments. First, Patent Owner argues that Petitioner fails to address the express definition of terms that are provided in the ’091 patent specification (Prelim. Resp. 20) or terms that Petitioner identified in its claim construction brief (*id.* at 21 (citing Ex. 2004)); *see also id.* at 26–27 (arguing that “Petitioner actively pursues inconsistent claim constructions in the Litigation and the current matter,” but also asserting that “Patent Owner disagrees with some of Petitioner’s Litigation constructions”). Patent Owner contends that when construction of a limitation is likely to be a focal point of an *inter partes* review proceeding, it is incumbent on a petitioner to substantively address that construction. *See id.* at 21. Patent Owner also asserts that Petitioner failed to reconcile its

proffered claim construction here with the different claim construction proffered in the district court.¹⁰ *Id.*

This argument is not persuasive at this stage of the proceeding. As noted above, we determine that no claim construction of any terms is required at this stage of the proceeding to resolve any issues in dispute for the purposes of institution. Patent Owner has not persuasively asserted, nor does it appear based on the present record, that there is any difference that is material to patentability between the plain and ordinary meanings and the claim constructions proffered by Petitioner or agreed to by the parties in the Texas Litigation. *Compare* Prelim. Resp. 14–16, 19–21, 26–27 with Ex. 1033.

(ii) Dr. Williams’ Declaration Fails to Provide Independent Support

Next, Patent Owner asserts that there is no material difference between the Petition and Dr. Williams’s declaration for the analysis of the challenged independent claims. Prelim. Resp. 21. Patent Owner contends that the Board should give little weight to Dr. Williams’s testimony because the testimony fails to provide any additional supporting evidence or reasoning beyond that set forth in the Petition. *Id.* at 21–23 (citing *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 12 at 5 (PTAB Feb. 10, 2023)).

We are not persuaded by this argument at this stage of the proceeding. Dr. Williams’s testimony, albeit using the same or similar language as

¹⁰ As discussed above, the district court notes in its claim construction order that the parties stipulated to constructions for several of the claim terms, and agreed to the definitions of terms provided in the ’091 patent specification or agreed that many of these claim terms be given their “plain and ordinary meaning.” *See* Ex. 1033, 9–10.

recited in the Petition, does cite throughout to the asserted art and provides support for its assertions that the art discloses the claim language. We, therefore, determine Dr. Williams's declaration is not without evidentiary support. *See* 37 C.F.R. § 42.63 ("Evidence consists of affidavits, declarations, transcripts of deposition, documents, and things."). At this stage, we give weight to Dr. Williams's testimony, which is the only testimony we have before us in this proceeding relating to the asserted art and how the art discloses the claim limitations.

In contrast to the situation presented here, neither the petition nor the declarant in *Xerox* provided sufficient evidence to support the asserted positions; rather, the petition merely cited to the declaration which merely repeated the unsupported, conclusory assertions set forth in the petition. *See Xerox Corp.*, IPR2022-00624, Paper 12 at 5 (stating the cited declaration testimony is conclusory and unsupported and adds little to the conclusory assertion for which it is offered to support); 37 C.F.R. § 42.65(a) ("Expert testimony that does not disclose the underlying facts or data on which the opinion is based is entitled to little or no weight"). That is not the case here. As noted above, however, the ultimate weight of Dr. Williams' testimony will be determined in light of the full record adduced during trial.

(iii) Lack of Clarity

Next, Patent Owner asserts that Petitioner's conclusions that the quoted portions of the cited references disclose the claim limitations fail to sufficiently set forth the "necessary inferences and logical steps required" to show unpatentability. *See* Prelim. Resp. 23–25. Patent Owner also asserts Petitioner fails to explain how the cited references meet the explicitly defined claim terms or how the references are being combined or modified. *See id.* at 24–25.

These arguments are also not persuasive at this stage of the proceeding. Based on the present record, Petitioner provides sufficient evidence that the cited references disclose the recited limitations of the independent claims. To the extent Patent Owner provides specific arguments, we address those in our analysis of each limitation. Any further arguments that Petitioner's contentions are insufficient may be more specifically addressed at trial on a full record.

(iv) Mix and Match Embodiments from Scoda

Lastly, Patent Owner asserts Petitioner improperly relies on multiple embodiments in Scoda to support its anticipation arguments. Prelim. Resp. 27–32. For example, Patent Owner asserts Petitioner relies on two different embodiments to shown in Figures 6 and 8 to disclose the different limitations recited in claim 1. *Id.* (citing Pet. 23–27). According to Patent Owner, Petitioner provides no explanation for how these two distinct embodiments are being utilized. *Id.* at 28 (citing Ex. 1016 ¶¶ 22, 24, 59, Figs. 6, 8). Patent Owner contends that “Petitioner cannot show anticipation of the claimed feature by citing to a first portion of Scoda that discloses a proxy can receive a web page and citing to a second, unrelated portion of Scoda that discloses the proxy can send a ‘response’ to a web browser of a client.” *Id.* at 29–31.

This argument is not persuasive at this stage of the proceeding. Scoda indicates that each of Figures 1–8 relate to a single exemplary environment for utilizing a JavaScript emulator in a proxy server. *See* Ex. 1016 ¶ 43 (stating an “exemplary method for utilizing a JavaScript emulator in a web content proxy server 12 in an exemplary environment 10 will now be described with reference to FIGS. 1–8”). We see no indication in Scoda that the different figures are directed to different embodiments in the manner

argued by Patent Owner. Thus, we are not convinced by Patent Owner’s analysis that a person of ordinary skill would not have looked to Scoda’s disclosure as a whole, rather than dissecting it as in Patent Owner’s “mix and match” argument. *See Kennametal*, 780 F.3d at 1381 (stating a reference can anticipate a claim even if it does not expressly spell out all the limitations arranged or combined as in the claim, “if a person of skill in the art, reading the reference, would ‘at once envisage’ the claimed arrangement or combination”); *see also Blue Calypso*, 815 F.3d at 1344.

Patent Owner also argues that because Petitioner relies on various portions of Scoda, Petitioner is unable to show how Scoda discloses claim limitation 1[a]. Prelim. Resp. 30–32 (discussing Scoda’s disclosure of its Figure 6). But Scoda discloses that “[e]ach of the client devices 14(1)–14(n) enables a user to request, get and interact with web pages from one or more web sites hosted by the web server devices 16(1)–16(n) through the web content proxy server 12.” Ex. 1016 ¶ 29, *see also id.* ¶ 35 (stating that the web server devices provide web pages to the client devices); Pet. 25 (citing Ex. 1007 ¶¶ 119–121). At this stage, we find this disclosure, considering Dr. Williams’s testimony, sufficient as to limitation 1[a].

g. Conclusion – Claim 1

Based on the evidence in this preliminary record, we determine that Petitioner has shown sufficiently, for purposes of instituting a trial, that Scoda discloses all of the limitations recited in claim 1. In light of the foregoing, we are persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing in showing that claim 1 is unpatentable as anticipated by Scoda.

h. 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.” Memo, at 4. We determine that Petitioner’s anticipation challenge as to claim 1 based on Scoda meets this standard. As set forth in the previous sections, Petitioner demonstrates that at this stage all elements of claim 1 are disclosed by Scoda. If unrebutted at trial, we would conclude by a preponderance of the evidence that at least claim 1 is anticipated by Scoda.

To begin, Scoda discloses a system and method that appear to *closely* mirror the ones disclosed in the ’091 patent and claimed in claim 1 of the ’091 patent. *Compare, e.g.,* Ex. 1003, claim 1 *with* Ex. 1016, code (57), Fig. 8. The ’091 patent is directed to managing web page scripts “in a network using a network appliance that intercepts a web page sent from a server and addressed to a client browser; modifies the web page by removing an embedded script from the web page; executes the removed embedded script; and sends the modified web page from the network appliance to the client browser.” Ex. 1003, code (57). Scoda relates to “utiliz[ing] a JavaScript emulator in a proxy server to create and store an object model of a web page which has one or more JavaScript instruction sets,” where “one of the one or more JavaScript instruction sets are extracted from the web page and a JavaScript field identifier is inserted into the web page to optimize the web page which is then provided.” Ex. 1016, code (57).

Petitioner relies on various portions of Scoda as teaching limitations of claim 1. *See* Pet. 23–28; Prelim. Resp. 27; *see also infra* § III.F.1 (detailing Petitioner’s arguments). 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 couple of claim elements, summarized in the preceding section, are unsupported by the current record.

Instead of addressing most claim limitations specifically, Patent Owner relies on more general arguments in response to Petitioner's analysis. We do not find those arguments persuasive at this stage. First, Patent Owner argues that Petitioner fails to address the express definition of terms that are provided in the '091 patent specification, or to address terms that Petitioner identified in its district court claim construction brief. *See* Prelim. Resp. 20–21, 26–27. Although Patent Owner identifies certain terms, Patent Owner never explains how any of those constructions render Scoda's disclosure deficient. As discussed above, we have considered Patent Owner's proposed constructions in our analysis, and even using Patent Owner's definitions, we have determined that Petitioner demonstrates that at this stage, Scoda discloses each of the limitations of claim 1. *See supra* Section III.F.1. For example, Patent Owner identifies “web page” as one of the claim terms defined in the '091 patent specification that Petitioner allegedly ignores. Prelim. Resp. 20. The specification explains that “the term ‘web page’ refers to a document written in a markup language that can be retrieved and rendered by a browser.”¹¹ Ex. 1003, 3:44–47. Scoda not only uses the exact

¹¹ Notably, although Patent Owner argues that Petitioner ignores definitions from the '091 patent specification and takes inconsistent claim construction positions between the two proceedings, it appears that Patent Owner itself sought to avoid the definition of terms such as “web page” and “embedded script” in the Texas Litigation. *See* Ex. 2004, 5, 11 (arguing for a plain and ordinary meaning for these terms); Ex. 1033, 9–10 (noting that the parties

same term (web page), but repeatedly refers to the use of HTML in web pages and discloses that its web pages are rendered on a web browser of its client devices. *See, e.g.*, Ex. 1016 ¶¶ 57, 65; Pet. 25–26. Similarly, Scoda clearly discloses an “embedded script” that meets the definition provided in the ’091 patent specification. *See* Ex. 1003, 3:34–43 (defining the term and specifically listing JavaScript incorporated in HTML web pages as an example of an “embedded script”); Ex. 1016 ¶ 13 (disclosing embedded JavaScript instruction sets); Pet. 26. Thus, Patent Owner has not presented, and we do not find, a claim construction dispute that is material to Scoda’s disclosure.

Next, Patent Owner faults Petitioner’s reliance on various portions of Scoda allegedly describing different embodiments to support Petitioner’s anticipation arguments. Prelim. Resp. 27–32 (discussing Petitioner’s reliance on Figures 6 and 8 of Scoda). But, as discussed above, Patent Owner’s argument is inconsistent with Scoda’s own statement that all of its figures relate to a *single* exemplary environment for utilizing a JavaScript emulator in a proxy server. *See* Ex. 1016 ¶ 43. What Patent Owner calls different embodiments are merely examples of how Scoda’s proxy server handles different types of web page processing. Moreover, Petitioner’s contentions as to an ordinarily skilled artisan’s view of Scoda’s disclosure are supported by Dr. Williams’s testimony, which is unrebutted at this stage. And, as discussed above (*infra* § III.F.1.f.(ii)), we disagree with Patent Owner’s arguments about Dr. Williams’s testimony (Prelim. Resp. 19–20)

stipulated to defined meanings of “web page” and “embedded script” before the *Markman* hearing).

and, at this stage, find Dr. Williams’s testimony to be consistent with the record and credible.

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

2. Claims 13 and 19

Independent claims 13 and 19 are method claims that recites certain limitations similar to those recited in claim 1 but claim 13 is directed to a “method of web page script management comprising” performing certain steps “with a network computing device.” Ex. 1003, 12:31–45, 13:1–19. Petitioner relies on its contentions for claim 1 for similar limitations recited in claims 13 and 19. Pet. 28–34.

Claim 13 and 19, however, recite additional limitations not recited in claim 1. For example, claim elements 13[d] and 19[d] require “establishing communication between the network computing device and a second server to transmit analytics information to the second server.” Ex. 1003, 12:37–39, 13:10–13. Further, claim element 13[g] requires “providing a second server with information specific to the client browser as embedded script results.” *Id.* at 12:44–45. Claim element 19[e] also requires “transmitting client analytics data as an embedded script to the second server.” *Id.* at 13:16–17.

Petitioner asserts that Scoda discloses these limitations because Scoda discloses transmitting certain form data from the client device back to a web server where the proxy server determines whether to print an error message or send the data from the form to the original web content server. Pet. 30–32 (citing Ex. 1016 ¶¶ 32, 58; Ex. 1007 ¶ 134); *Id.* at 34 (relying on arguments for claim 13 for corresponding arguments in claim 19). Petitioner explains that because Scoda discloses the use of any number of web servers, e.g., web

server devices 16(1)–16(n), that Scoda discloses a first and second server. *Id.* at 30.

Patent Owner responds that Scoda does not disclose the limitations relating to the second server because Scoda sends the form back to the *same* server (first server) where the web site originated, not to a second server. Prelim. Resp. 34–35. Patent Owner’s argument has merit. Although Scoda discusses use of multiple web server devices, it is not immediately clear based on the present record that Scoda sends the form back to a different server device.¹² Petitioner has therefore not set forth a reasonable likelihood that claims 13 or 19 are anticipated by Scoda.

G. Asserted Obviousness over Scoda and Matthys

Petitioner contends that claims 1–20 of the ’091 patent are unpatentable as obvious over Scoda or Scoda and Matthys.¹³ *See* Pet. 35–55. Patent Owner opposes. Prelim. Resp. 37–50. For the reasons discussed below, we conclude that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing that claims 1–20 are unpatentable on this asserted ground.

¹² We agree with Patent Owner that Petitioner’s contentions regarding U.S. Patent Publication No. 2008/0201206 (“Pokorney”) (*see* Pet. 30) are not persuasive because Petitioner does not rely upon Pokorney for this ground. *See* Prelim. Resp. 35.

¹³ Although Petitioner’s ground is listed as an obviousness ground based on the combination of Scoda and Matthys (Pet. 7), Petitioner contends, for each of the argued limitations, that “Scoda, or Scoda in view of the knowledge of a [person of ordinary skill in the art], or in the alternative, Scoda in view of Matthys discloses this limitation.” *See, e.g., id.* at 38.

1. Independent Claim 1

Petitioner relies upon its explanations and evidence for Ground 1 as to Scoda's disclosure of the limitations recited in claim 1. Pet. 38. Petitioner asserts that to the extent Scoda does not expressly disclose "intercepting a web page . . . addressed to a client browser," a person of ordinary skill in the art would have known that because Scoda's web server is responding to the original request sent by the client browser/device, the web server would have used the IP address of the client browser/device as the destination IP address. *Id.* (citing Ex. 1007 ¶ 170). Petitioner does not present any particularized arguments regarding Matthys in connection with claim 1. *Id.*

Other than the arguments addressed above, Patent Owner does not dispute Petitioner's contentions. *See* Prelim. Resp. 37–50.

We have reviewed Petitioner's arguments and evidence, and we determine, based on the preliminary record, that Petitioner has shown sufficiently, for purposes of institution, that claim 1 would have been obvious over Scoda.

2. Independent Claims 13 and 19

Claims 13 and 19 require "establishing communication between the network computing device and a second server to transmit analytics information to the second server." Ex. 1003, 12:37–39, 13:10–13.

Petitioner asserts that to the extent Scoda does not disclose transmitting analytic information, then Matthys does so. Pet. 38–40 (citing Ex. 1007 ¶¶ 176–79). In particular, Petitioner asserts that Matthys describes that "metadata is transported from the network device 200 of Fig. 2A," and describes that profiling engine 304 is configured to record, update, and analyze a profile of a user, transforming click-stream data into a meaningful behavioral profile for a user. *Id.* at 39 (citing Ex. 1013 ¶¶ 75, 84, Fig. 2A;

Ex. 1007 ¶ 177). Petitioner further contends that Matthys describes modifying a web page based on the interests of the user (*i.e.*, based on web analytics) and replacing advertisements in a web page with ones that are more meaningful to the user. *Id.* at 39–40 (citing Ex. 1013 ¶¶ 95–96, Fig. 6C; Ex. 1007 ¶ 178).

As to claim elements 13[g] and 19[e], Petitioner contends that Matthys discloses capturing and updating a user’s browser history to a server that analyzes the content and/or context of a request and updates browsing behavior of that particular user. *Id.* at 40–41 (citing Ex. 1013 ¶ 55; Ex. 1007 ¶ 183). Petitioner contends Matthys further discloses network device 104 providing intercepted information or metadata thereof to server 112. *Id.* at 41 (citing Ex. 1013 ¶ 52; Ex. 1007 ¶ 184).

Petitioner contends that “[i]t would have been obvious to adapt Scoda’s web content proxy server to utilize metadata and packet level analytics as disclosed in Matthys for more detailed user analysis.” *Id.* (citing Ex. 1007 ¶ 185); *see also id.* at 42–43 (citing Ex. 1007 ¶¶ 195–97). Petitioner contends that a person of ordinary skill in the art would have recognized that “there are advantages [to] analyzing web page data, including analytics such as metadata and the associated packets to provide a more robust monitoring and filtering ability.” *Id.* at 37 (citing Ex. 1007 ¶ 158). Petitioner argues that Scoda and Matthys provide a “motivation to combine Matthys’s metadata and packet analytics with the Scoda’s web content proxy approach for protecting web clients and web-based applications.” *Id.* (citing Ex. 1007 ¶ 160).

In addition to the arguments set forth with respect to claim 1, Patent Owner also argues that Petitioner has (1) failed to articulate a sufficient reason to combine the teachings of Scoda with Matthys, (2) failed to

sufficiently articulate its combination of Scoda and Matthys, and (3) failed to show that Matthys teaches the claimed “second server.” Prelim. Resp. 37–50. For the reasons discussed below, we do not find Patent Owner’s arguments persuasive.

(i) Reason to Combine the Teachings of Scoda with Matthys

We are persuaded by Petitioner’s contention that a person of ordinary skill in the art implementing the teachings of Scoda would have been motivated to consider adapting Scoda’s web content proxy server to utilize Matthys’s metadata and packet level analytics to provide a more detailed user analysis, providing the benefit of robust monitoring and filtering. Patent Owner argues that there is no additional discussion or explanation of Petitioner’s reason. Prelim. Resp. 40. However, Petitioner explains that Matthys discloses the use of data filtering at the packet level and routing certain types of data packets out of the device as relevant to monitoring and filtering. *See* Pet. 36 (citing Ex. 1013 ¶ 57; Ex. 1007 ¶ 157).

Patent Owner also contends that Petitioner’s motivation is based on a relative comparison of a “*more* detailed user analysis,” but provides no actual point of reference as to what a baseline “user analysis” would be. Prelim. Resp. 40–41. Patent Owner asserts that “[n]either the Petition nor Dr. Williams provide any explanation or detail as to what ‘more detailed user analysis’ would entail.” But the Petition does describe at some length the user analysis disclosed in Matthys that Petitioner contends would benefit Scoda’s system, which is the “baseline” system in Petitioner’s contentions. *See, e.g.*, Pet. 35–41. Moreover, it is not necessary to show that a combination is “the *best* option, only that it be a *suitable* option.” *See Intel Corp. v. Qualcomm Inc.*, 21 F.4th 784, 800 (Fed. Cir. 2021).

Patent Owner also argues “the Petition fails to tie its alleged motivation to any actual benefit of or reason to desire its combination.” Prelim. Resp. 41. However, as discussed above, Petitioner does provide benefits that a person of ordinary skill in the art would have recognized as resulting from such combination. *See* Pet. 36–37.

For purposes of deciding whether to institute trial, we determine Petitioner provides an adequate reason for one of ordinary skill in the art to have combined the teachings of Scoda with Matthys in the manner asserted by Petitioner. *See KSR*, 550 U.S. at 420 (“any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed”).

(ii) Combination of Scoda and Matthys

Patent Owner argues that Petitioner fails to provide “sufficient articulated reasoning to establish what components or processes of Scoda are being modified or how the disclosures of Scoda and Matthys are being combined.” Prelim. Resp. 42–46 (citing Pet. 38–41). Patent Owner contends that Petitioner “relies on entirely separate disclosures of Matthys” but “fails to explain how the disclosure of the quoted portions from seven different paragraphs of Matthys would be combined to arrive at two distinct limitations.” *Id.* at 45. According to Patent Owner, “[t]he Petition simply fails to provide any guidance as to how the two references are being utilized or what the proposed modification would have been.” *Id.* at 46.

We find Petitioner’s articulation sufficient for the purposes of institution. Petitioner relies on Matthys for its disclosure of compiling and transmitting analytics information. *See, e.g.,* Pet. 38. Petitioner asserts that “‘Web analytics’ in the ’091 patent refers to gathering and utilizing ‘statistical information . . . associated with individual visitors to a certain

web page,” and that Matthys discloses “incorporating such web analytics into its systems and methods.” *Id.* at 39 (citing Ex. 1003, 1:25–28).

Petitioner contends that from the metadata in Matthys that is transported from network device 200, Matthys’s “profiling engine 304 transforms click-stream data and subsequent transformation of that data into a meaningful behavioral profile for a user,” which “is continuously updated and enhanced as user click-stream data becomes available.” *Id.* (citing Ex. 1013 ¶ 75).

Petitioner contends that Matthys further describes modifying the web page, e.g., an advertisement in the web page, based on the interests of the user (i.e., based on web analytics) and that the “service provider may be in a position to request something else to be served.” *Id.* at 39–40. Based on this disclosure from Matthys when combined with Scoda’s disclosure of a proxy server, Petitioner contends that “Scoda in view of Matthys discloses establishing communication between the network computing device and a second server to transmit analytics information to the second server.” *Id.* at 40 (citing Ex. 1007 ¶ 178). We find these contentions sufficient to meet the particularity requirement under our rules. To the extent Patent Owner demands details on how the system of Matthys would be physically incorporated into the Scoda’s system, “[i]t is well-established that a determination of obviousness based on teachings from multiple references does not require an actual, physical substitution of elements.” *See In re Mouttet*, 686 F.3d 1322, 1332 (Fed. Cir. 2012). “Rather, the test for obviousness is what the combined teachings of the references would have suggested to those having ordinary skill in the art.” *Id.* at 1333.

(iii) Second Server Limitations

Patent Owner next argues that the Petition and Dr. Williams are silent on how the replacement of an advertisement in a web page via the network

device in Matthys discloses “establishing communication between the network computing device and a second server” that is *different* from a server that sent the web page. Prelim. Resp. 47–50. Patent Owner contends that although Matthys discloses that a “service provider may be in a position to request” that a different advertisement be served, there is nothing that discloses that this service provider is a server that is distinct from the web server. *Id.* at 49.

To the extent Patent Owner argues that Petitioner’s proposed combination fails because Matthys *itself* does not expressly disclose the entire claim limitation, “the test for obviousness is what the combined teachings of the references would have suggested to those having ordinary skill in the art.” *See In re Mouttet*, 686 F.3d at 1333 (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)). Here, Petitioner relies on the combined teachings of Scoda and Matthys as teaching the limitation. Pet. 38–41. Petitioner’s combination proposes adapting Scoda’s web content proxy server to utilize Matthys’s teachings. *Id.* at 41. As to Scoda, Petitioner contends “[t]he web server devices 16(1)–16(n) provide one or more pages from one or more web sites for use by one or more of the client devices 14(1)–14(n) via the web content proxy server 12.” *Id.* at 29 (citing Ex. 1016 ¶¶ 29, 35; Ex. 1007 ¶ 129); *id.* at 38 (incorporating *id.* §§ VI.A.1, VI.A.2). Petitioner contends that Scoda’s disclosure of *web server* devices 16(1)–16(n) teaches the use of multiple servers. *Id.* at 29; *see also* Ex. 1016 ¶ 63 (disclosing that Scoda’s proxy server may retrieve content one of the web server devices 16(1)–16(n)). When combined with Matthys’s teachings of a *service provider* requesting a different advertisement to be served based on Matthys’s behavioral user profile, we are persuaded at this stage that Petitioner’s proposed combination teaches a second server as claimed.

Lastly, Patent Owner contends that Petitioner’s combination fails to teach providing a second server with information specific to the client browser as embedded script results. Prelim. Resp. 49–50. Petitioner contends that Scoda teaches this limitation because it discloses transmitting the form data back to a web server where “[b]ased on the computed data, the core module 21 is executed by the web content proxy server 12 to determine whether to print an error message or send the data from the form to the original web content server.” Pet. 32 (citing Ex. 1016 ¶ 58). Scoda’s discussion of sending the data from the form to the server relates to the web page shown in Figure 2 of Scoda, which is validated by executing a JavaScript shown in Figure 3, and the information sent back includes the result of executing the JavaScript. *See* Ex. 1016 ¶¶ 56, 57. Dr. Williams testifies that the cited disclosure from Scoda teaches “providing a second server with information specific to the client browser as embedded script results.” *See* Ex. 1007 ¶¶ 138–139. In its obviousness ground, Petitioner combines Scoda’s teachings with Matthys’s teachings of “providing information specific to the client browser,” and as discussed above, a second server. Pet. 40–41; *id.* at 38 (incorporating *id.* §§ VI.A.1, VI.A.2). We are persuaded for the purposes of institution that Petitioner’s proposed combination teaches this claim limitation.

We have reviewed Petitioner’s arguments and evidence, and we determine, based on the preliminary record, including Dr. Williams’s testimony, that Petitioner has shown sufficiently, for purposes of institution, that claims 9 and 13 would have been obvious over Scoda and Matthys.

3. Claims 2–12, 14–18, and 20

Petitioner asserts that dependent claims 2–12, 14–18, and 20 are unpatentable as obvious over the combined teachings of Scoda and Matthys.

Pet. 43–55. Patent Owner relies on the arguments addressed above in §§ III.F, III.G.1–2, and does not set forth additional arguments for claims 2–12, 14–18, and 20 at this stage of the proceeding. *See* Prelim.

Resp. 37–50. We have reviewed Petitioner’s contentions and are sufficiently persuaded on this record that Petitioner has shown a reasonable likelihood of prevailing in its argument that claims 2–12, 14–18, and 20 are unpatentable as obvious over the combined teachings of Scoda and Matthys.

We do not express an opinion as to whether this ground meets the compelling merits standard as we have already determined that the Petition presents compelling evidence of unpatentability. *See supra* § III.F.1.

H. Asserted Anticipation over Hallak

Petitioner contends that independent claims 1, 13, and 19 of the ’091 patent are unpatentable under 35 U.S.C. § 102(e) as anticipated by Hallak. Pet. 56–65. Patent Owner opposes. Prelim. Resp. 50–59. For the reasons set forth below, we find that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing that claim 1 is unpatentable on this ground.

I. Claim 1

Preamble

Petitioner asserts that Hallak discloses a method for securing a web client against malicious web attacks using a secure gateway deployed between a web client and a web browser, and further discloses client-side application code (e.g., a script) that is generated by web server 220. Pet. 56 (citing Ex. 1011, 2:15–18, 3:39–41; Ex. 1007 ¶ 248). Patent Owner does not dispute Petitioner’s contentions at this stage of the proceeding. Based on the

current record, Petitioner's contentions sufficiently demonstrate that Hallak discloses the preamble of claim 1.

1[a] in a network appliance implemented by at least one processor, intercepting a web page sent from a server and addressed to a client browser;

Petitioner asserts that Hallak discloses a “secure gateway for securing a web client against malicious web attacks, the secure gateway is deployed between a web client and a web server, comprising: a processor for executing computer-executable instructions; a memory storing the instructions, accessible to the processor.” Pet. 56–57 (citing Ex. 1011, 12:40–42, 12:44–48, 13:41–45; Ex. 1007 ¶¶ 249–50). Referring to Hallak's Figure 4, Petitioner further asserts that Hallak discloses that server 220 responds to request 430 with web page 440 which includes both UI and execution sections, and its execution is emulated by execution component 411. *Id.* at 57 (citing Ex. 1011, 6:26-39). Petitioner contends that the emulation process includes loading of a document object model (DOM), executing appropriate scripts, and extracting relevant UI information which is later passed to the client 210 as UI updates 450 (*e.g.*, in the form of static HTML). *Id.* (citing Ex. 1011, 6:26-39; Ex. 1007 ¶ 251).

Notwithstanding Patent Owner's arguments, which we address below, we find that Petitioner's contentions sufficiently demonstrate that Hallak discloses the recitations of claim element 1[a].

1[b] modifying the web page with the network appliance by removing an embedded script from the web page;

Petitioner asserts that Hallak discloses claim element 1[b] by stating that its secure gateway (network appliance) performs all client-side processing (*e.g.*, JavaScript execution) and that only the static visual parts of the HTML documents may be passed to the client. Pet. 58 (citing Ex. 1011,

3:23–25, 9:34–36; Ex. 1007 ¶ 254). Petitioner further asserts that Hallak describes removing embedded scripts where “[a]n element such as <script type=“text/javascript”> may be completely omitted from the serialized document” and “[i]f the application contains VBScript elements or scripts in any other programming language, they may be omitted as well.” *Id.* at 58–59 (citing Ex. 1011 9:42–46, 4:53–57; Ex. 1007 ¶ 254).

Notwithstanding Patent Owner’s arguments, which we address below, we determine that Petitioner’s contentions sufficiently demonstrate that Hallak discloses the recitations of claim element 1[b].

*1[c] executing the removed embedded script with
the network appliance; and*

Petitioner asserts that Hallak discloses the limitations of claim element 1[c] by describing a method for “execut[ing] the execution component in a sandbox and generating a new CSA, consisting of UI components 380 of the original application, to be sent to the client 210.” Pet. 59 (citing Ex. 1011 2:23–24, 4:25–30; Ex. 1007 ¶ 255).

Notwithstanding Patent Owner’s arguments, which we address below, we determine that Petitioner’s contentions sufficiently demonstrate that Scoda discloses the recitations of claim element 1[c].

*1[d] sending the modified web page from the network appliance
to the client browser.*

Petitioner asserts that Hallak discloses transmitting the modified web page to the client and discloses that the web page’s “UI part is sent together with the minimal scripts generated by the gateway 200 used to handle user input events 330 and asynchronous UI updates 380, to the client 210 which updates the display on its browser.” Pet. 59–60 (citing Ex. 1011, 4:27–30, 5:8–12; Ex. 1007 ¶ 256). Petitioner asserts 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.* (citing Ex. 1011, 9:34–36; Ex. 1007 ¶ 256).

Patent Owner asserts that the ’091 patent defines that the term “web page” should be construed as “a document written in a markup language that can be retrieved and rendered by a browser.” Prelim. Resp. 15 (citing Ex. 1003, 3:44–47). Patent Owner argues that neither the Petition nor Dr. Williams analyzes whether the data that is actually sent to the client in Hallak meets this definition. *Id.* at 51–52 (citing Pet. 59–60). Patent Owner argues that Hallak’s execution component 810 uses a serialization process that creates a static document tree sent to UI component 820, and that “the Petition fails to show this static document tree (i.e., DOM) is a ‘web page’ as defined by the ’091 Patent.” *Id.* at 52 (citing Ex. 1011, 7:51–64, 7:66–8:2, 8:7–23, 8:16–23, 8:52–60; Ex. 2006, 1, 3; Ex. 2007, 1).

Patent Owner’s arguments are not persuasive at this stage of the proceeding. We do not understand Petitioner’s contentions to be limited to Hallak’s discussion of its Figure 5, which Patent Owner argues about. Pet. 59–60 (citing Ex. 1011, 4:27–30, 5:8–12); *see also* Ex. 1011, 7:32–40 (explaining that only certain applications such as DHTML web applications, Microsoft® WPF/Silverlight applications, and Adobe® Flex applications are based on the DOM architecture). Instead, Petitioner’s cited portion of Hallak relates to Hallak’s Figure 3 and states:

In the diagram shown in FIG. 3, the protection process begins at S301, where the user 211 enters an external URL 350 which is forwarded, by the gateway 200, to the server 220. The server 220 responds with a client side application 370 (*a new web page*), which causes the gateway 200 to generate and send the UI part of CSA 380. The UI part is sent together with the minimal scripts generated by the gateway 200 used to handle

user input events 330 and asynchronous UI updates 380, to the client 210 which *updates the display on its browser*.

Ex. 1011, 5:3–12 (emphasis added). Dr. Williams testifies that this disclosure teaches sending the modified “web page” to the client browser. *See* Ex. 1007 ¶¶ 256–57. In view of this evidence, we are persuaded at this stage that Hallak discloses the “web page” limitation as defined by the ’091 patent.

Notwithstanding these arguments, and Patent Owner’s additional arguments that we address below, we find that Petitioner’s contentions sufficiently demonstrate that Scoda discloses the recitations of element 1[d].

Patent Owner’s Remaining Arguments

We have addressed Patent Owner’s arguments directed generally to all of Petitioner’s grounds above and do not repeat those here. In addition, Patent Owner asserts Petitioner improperly relies on multiple embodiments in Hallak to support its anticipation arguments. Prelim. Resp. 53–55. For example, Patent Owner asserts each of Hallak’s figures describe different “embodiments” or deployment options that Hallak does not tie together. *Id.* at 54 (citing Ex. 1011, 2:55–68) (referring to Ex. 1011, Figs. 2A, 3, 4, and 5).¹⁴ According to Patent Owner, “neither of these embodiments disclose each and every element of claim 1, as it is arranged in the claim,” and the Petition fails to “provide any explanation or rationale as to how the various features of the distinct embodiments of Hallak would have been utilized to arrive at the claimed features.” *Id.* at 55 (citing Pet. 56–60).

This argument is not persuasive on the current record. Although we agree with Patent Owner that Hallak refers to its figures as showing “an

¹⁴ Patent Owner appears to inadvertently refer to Figures 3 and 4 of Hallak as Figures 3A and 4A, respectively. *See* Prelim. Resp. 54.

embodiment” or “certain embodiments” of its invention, it does not appear that the figures and related discussion relied on by Petitioner relate to “different systems [that] would have been combined.” *Id.* at 54–55. For example, Figure 2A illustrates one *deployment option* of Hallak’s secure gateway, while Figure 3 illustrates the *operation* of the secure gateway, and Figure 4 is a *block diagram* of the secure gateway. *See* Ex. 1011, 2:57–64. Each of these figures therefore relate to different aspects of the secure gateway of Hallak’s invention, and not different systems. 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.

Conclusion – Claim 1

Based on the evidence in this preliminary record, we determine that Petitioner has shown sufficiently, for purposes of instituting a trial, that Hallak discloses all of the limitations recited in claim 1. In light of the foregoing, we are persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing in showing that claim 1 is unpatentable as 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 supra* § III.F.1; Memo, at 2.

2. Claims 13 and 19

Petitioner asserts that Hallak discloses the additional limitations recited in independent claims 13 and 19 because Hallak discloses gateway 200 in communication with multiple web servers, and further discloses analytic information where elements of the DOM that are not visible to the user that “can be utilized to pass additional useful metadata (e.g., unique key

mentioned above, as well as information regarding what user actions must be relayed back to the execution component).” Pet. 61–62 (citing Ex. 1011, 3:66–4:2, 8:7–11; Ex. 1007 ¶¶ 262–63); *id.* at 65 (relying on arguments related to claim 13 for claim 19).

Patent Owner responds that Hallak does not disclose the limitations relating to the second server because Hallak’s teaching of multiple web servers is unrelated to the analytic information that Petitioner relies upon. Prelim. Resp. 56–57 (citing Pet. 61–62, 65). Patent Owner’s argument has merit. Although Hallak discusses use of multiple web server devices, it is not immediately clear based on the present record that Hallak discloses transmitting the purported analytics information or data back to a different web server.¹⁵ Petitioner has therefore not set forth a reasonable likelihood that claims 13 or 19 are anticipated by Hallak.

I. Asserted Obviousness over Hallak and Matthys

Petitioner contends that claims 1–20 of the ’091 patent are unpatentable under 35 U.S.C. § 103 as obvious over Hallak or over Hallak and Matthys. *See* Pet. 65–55. Patent Owner opposes. Prelim. Resp. 59–66. For the reasons discussed below, we conclude that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing that claims 1–12 are unpatentable on this asserted ground.

1. Independent Claim 1

Petitioner relies upon its explanations and evidence for Ground 3 as to how Hallak, in view of the knowledge of a person of ordinary skill in the art, teaches all of the limitations recited in claim 1. Pet. 68 (incorporating by

¹⁵ Petitioner’s contentions regarding Pokorney (Pet. 62) are not persuasive because Petitioner does not rely upon Pokorney for this ground.

reference *id.* § VI.C). Petitioner asserts that to the extent Hallak does not expressly disclose “intercepting a web page . . . addressed to a client browser” as recited in claim 1 that a person of ordinary skill in the art would have understood that Hallak’s web server 220 is responding to the original request 420 sent by the client browser/device, and the web server would have used the IP address of the client browser/device as the destination IP address. *Id.* at 69 (citing Ex. 1011 at 5:4–8; Ex. 1007 ¶¶ 293). Petitioner does not present any particularized arguments regarding Matthys in connection with claim 1. *See id.*

Other than the arguments addressed above, Patent Owner does not dispute Petitioner’s contentions. *See* Prelim. Resp. 59–66.

We have reviewed Petitioner’s arguments and evidence, and we determine, based on the preliminary record, that Petitioner has shown sufficiently, for purposes of institution, that claim 1 would have been unpatentable on this asserted ground.

2. Independent Claims 13 and 19

As to the additional limitations recited in claims 13 and 19, Petitioner asserts that to the extent Hallak does not disclose transmitting analytic information to a second server, then Matthys does so. Pet. 69 (citing Ex. 1007 ¶¶ 303–06, 319–21). Petitioner similarly asserts that to the extent Hallak does not disclose “providing a second server with information specific to the client browser as embedded script results,” Matthys does so. *Id.* at 69–70 (citing Ex. 1007 ¶¶ 309–312). Petitioner contends that “Matthys monitors data, also referred to as ‘an advertisement or a script including a link to the advertisement,’” and “discloses where an HTML page representing the webpage may be analyzed and a script may be embedded in

the web page.” *Id.* at 66 (citing Ex. 1013, code (57), ¶¶ 65–66, 82; Ex. 1007 ¶ 282). Petitioner further contends that Matthys also discloses performing its analysis at the metadata and packet level and that as “data packets inbound or outbound go through the network interface 202, metadata about some of the data packets is captured and transported to the server via the network interface 220.” *Id.* at 66–67 (citing Ex. 1013 ¶¶ 51, 55; Ex. 1007 ¶ 283). Petitioner contends that Matthys discloses the use of data filtering at the packet level and routing certain types of data packets out of the device. *Id.* at 67 (citing Ex. 1013 ¶ 57; Ex. 1007 ¶ 284). Petitioner further contends that a person of ordinary skill in the art would have recognized that “there are advantages analyzing web page data, including metadata and packets to provide a more robust monitoring and filtering ability.” *Id.* (citing Ex. 1007 ¶ 285). Petitioner argues that “[i]t 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 and the 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. *Id.* at 67–68 (citing Ex. 1007 ¶ 286).

Patent Owner responds that the Petition fails to provide any explanation or specific details on what “utiliz[ing] metadata and packet level analytics” would encompass and that the Petition’s mapping of claims 13 and 19 wholly fail to address either metadata or packet level analytics. Prelim. Resp. 63. Patent Owner contends that “for each of limitations [13d], [19d], and [13g], the Petition fails to discuss or cite to Matthys and simply concludes that Matthys discloses these limitations using the same generic conclusion.” *Id.* at 64 (citing Pet. 68–70). According to Patent Owner, it is

unclear what Petitioner relies on and insufficient to meet the particularity requirement of 35 U.S.C. § 312(a)(3). *Id.* at 64–65. Patent Owner argues that the Board has repeatedly held that a conclusory analysis cannot support an obviousness ground. *Id.* at 65 (citing Pet. 69).

We agree with Patent Owner that Petitioner’s contentions on this ground are unclear. Petitioner fails to articulate how the combination of Hallak and Matthys teaches transmitting analytics information to the second server as required by limitations [13d] and [19d], or teaches providing a second server with information specific to the client browser or client analytics data as embedded script results as required by limitations [13g] and [19e]. Petitioner’s contentions as to those limitations are limited to two paragraphs asserting that “Matthys, in the same field of monitoring and intercepting web page traffic containing scripts discloses such a limitation.” *Id.* at 69–70. But those contentions say nothing about how the combination of Hallak and Matthys teaches each of these claim limitations. Petitioner incorporates by reference its arguments related to the anticipation ground based on Hallak (*see id.* at 68 (citing *id.* VI.C)), but even considering those contentions together with the single sentence on Matthys, we are unable to decipher Petitioner’s mapping of the asserted combination to the two claims. For example, there is no contention in the Petition as to how a second server is taught by the combination of Hallak and Matthys, or how the combination teaches transmitting analytics information or other information specific to the client browser. We therefore find Petitioner’s contentions to be deficient as to these claims. Petitioner thus has not set forth a reasonable likelihood that claims 13 or 19 would have been obvious over Hallak and Matthys.

3. Claims 2–12, 14–18, and 20

Petitioner asserts that dependent claims 2–12, 14–18, and 20 are unpatentable as obvious over the combined teachings of Scoda and Matthys. Pet. 43–55. Patent Owner does not set forth additional arguments for claims 2–12, 14–18, and 20 at this stage of the proceeding. *See* Prelim. Resp. 59–66. We have reviewed Petitioner’s contentions and are sufficiently persuaded, on this record, that Petitioner has shown a reasonable likelihood of prevailing in its argument that claims 2–12 are unpatentable as obvious over the combined teachings of Hallak and Matthys. Because we find Petitioner’s contentions as to independent claims 13 and 19 deficient on the current record, we are not persuaded that Petitioner has not shown a reasonable likelihood of proving that dependent claims 14–18 and 20 are obvious over the combined teachings of Hallak and Matthys.

IV. CONCLUSION

After considering the parties’ evidence and arguments, we determine that the information presented shows a reasonable likelihood that Petitioner would prevail in establishing that at least one of the challenged claims of the ’091 patent is unpatentable.

V. ORDER

Accordingly, it is

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review is instituted for claims 1–20 of the ’091 patent on the unpatentability grounds asserted in the Petition;

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, which commences on the entry date of this decision; and

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

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