

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,

Petitioner,

v.

SAFECAST LIMITED LLC,

Patent Owner.

IPR2023-00652 (Patent No. 9,392,302)

PATENT OWNER'S RESPONSE

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I. INTRODUCTION

The Board should not cancel any Challenged claims 1-4,6-9 and 12-15 of U.S. Patent No. 9,392,302 (“the ’302 Patent”) because Petitioner does not demonstrate that any claim is unpatentable. Petitioner does not adequately explain how a person of ordinary skill in the art (“POSITA”) would approach the problems in the art solved by the ’302 Patent. Additionally, Petitioner has failed to demonstrate that the cited references render obvious every element of the Challenged Claims, including the requirements for “each advertisement having associated therewith a header comprising a first field related to a local broadcasting time regulation laid down by the broadcasting authority, which local broadcasting time regulation restricts the time of day at which said advertisement may be shown” and “control means arranged to read said first field and said clock signal and said rules database and to apply said local broadcasting time regulation to each advertisement before said advertisement is shown.”

Accordingly, Patent Owner requests that the Board find Petitioner has failed to demonstrate that the Challenged Claims are unpatentable.

II. OVERVIEW OF THE '302 PATENT

A. Brief Description

To address the deficiencies of prior recorded program systems, the '302 Patent provides a system for controlling which advertisements are played in a recorded program during later playback. Ex. 1001, at Abstract.

The system includes a PVR 60 with connections to a TV aerial 20, modem 22, the Internet 24, and viewer's TV set 68. Ex. 1001, 4:43–55. PVR 60 has an advertisement database 70, programme database 80, and rules database 90 for storing, respectively, advertisements, broadcast programme segments, and rules that apply to the advertisements. Ex. 1001, 4:57–62.

Each advertisement has a header which records the duration of the advert, any restriction on the time of day at which it may be viewed, and other information about its nature. Ex. 1001, 3:63–4:41.

PVR 60 ensures that advertisements shown with a recorded program are legally acceptable. Ex. 1001, 6:33–37. PVR 60 checks the Real Time of day signal, the rules database 90, and selects an advertisement. Ex. 1001, 6:40–53. PVR 60 reads the header information associated with the advertisement and checks for restrictions against playing the advertisement at the current time. Ex. 1001, 6:54–62. If there are time restrictions, PVR 60 selects the next advertisement in the database and checks that advertisement, repeating until a suitable advertisement is found. Once it finds a

suitable advertisement, PVR 60 checks other information from the advertisement header. Ex. 1001, 6:63–7:16. PVR 60 then shows the queued advertisements to the viewer and records button depressions from the viewer. Ex. 1001, 7:17–22.

B. Claim Construction

According to 37 C.F.R. §42.100(b), in an inter partes review, claim terms are construed using the same standard used in a civil action under 35 U.S.C. 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.

The ordinary and customary meaning of a term may be evidenced by a variety of sources, including the words of the claims themselves, the specification, drawings, and prior art. However, the best source for determining the meaning of a claim term is the specification – the greatest clarity is obtained when the specification serves as a glossary for the claim terms. The words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004).

Petitioner construes the claims in accordance with plain and ordinary meaning of the terms in Grounds 1. Petitioner contends that several terms that

include the word “means” “create[a] rebuttable presumption that they are means-plus function elements under 35 U.S.C. § 112 ¶ 6.” Petitioner identifies the closest disclosed structure in the ’302 Patent that relates to the recited function. Pet. 10-20. Patent Owner agrees that all “means” of the ’302 Patent have corresponding structures in the specification. Patent Owner reserves all rights to raise claim construction arguments in district court and in this proceeding.

In Ground 2, Petitioner claims to construe the claims based on how Patent Owner applied the claims in its Preliminary Infringement Contentions. (See Ex. 1022). Pet., 4.

III. THE ASSERTED PRIOR ART

A. Plotnick (Ex. 1005)

Plotnick describes a system of presenting viewers with an alternative brief version of a recorded advertisement when they choose to fast-forward through or skip (or any other trick play event) the recorded advertisement. The alternative advertisement may be displayed instead of or in conjunction with the recorded advertisement (i.e., fast-forwarding advertisement is displayed in one portion of the Screen (i.e., background or portion of a split Screen) and the alternative brief version is displayed in another portion). Ex.1005, Abstract.

Plotnick's system includes a "client-side STB ad targeting system 600," which is a "software application that may be integrated into a PVR-enabled set-top box (STB PVR)." Ex.1005., ¶134. Through the ad targeting system, "ads may be inserted into the program material at indicated points of 'avails' (through cue messages)." Ex.1005, ¶150. The "STB differentiates individual viewing habits, characterizes the current viewer based on current and historical viewing information, and selects advertising appropriate for the current view based on the characterization." Ex.1005, ¶154. To provide appropriate advertisements, the STB PVR receives "control data 1006," which is ad. metadata that "includes descriptions of the ad content, target audience, encoding attributes, delivery instructions, and contract limitations." Ex.1005, ¶154.

The PVR inserts the ads in the avails based on the ad queue. The ad queue is a list of the next ads that should be inserted. The ad queue may vary based on what subscriber is interacting with the TV, what time of day it is, what day of the week, what programs are on, and other criteria that would be well within the scope of the current invention. Ex.1005, ¶194.

B. Parekh (Ex. 1007)

Parekh discloses a "method of determining advertising content to be included in a broadcast." Ex-1007, Abstract. Parekh's advertisements have "inclusion

criterion used to determine both whether and how that item of advertising is to be included in a broadcast.” Ex-1007, 2:37-40.

Parekh describes a system for social broadcasting, the system includes a user interface coupled to social broadcasting server, which includes one or more database(s). Social broadcasting server may be coupled other third parties, such as content provider(s), regulator(s), promoter(s), and/or advertiser(s). Social broadcasting server is coupled to one or more media outlets, for example a broadcast platform and broadcast station and/or infrastructure 118. Ex-1007, 3:22-33.

Social broadcasting server couples with content providers, including content providers, content owners, content distributors, or syndicators, for content to be considered for broadcast on broadcast station(s). Regulators include non-governmental and governmental bodies, commissions or agencies such as the Federal Communications Commission ("FCC"), or enablers of laws such as the Digital Millenium Copyright Act ("DMCA") which provide regulatory and legal requirements to social broadcasting server for consideration when broadcasting on broadcast station(s) 118. Ex-1007, 4:4-14.

IV. PETITIONER FAILS TO DEMONSTRATE THAT ANY CHALLENGED CLAIM IS UNPATENTABLE

Petitioner has failed to carry its burden to show a prima facie case of obviousness under 35 U.S.C. § 103 by not properly addressing the Graham factors:

(1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) objective evidence of non-obviousness, i.e., secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

A. Petitioner Fails to Establish in Ground 1 that Challenged Claims 1–4, 6–9 and 12–15 are Obvious Over Plotnick and Parekh

1. Claim 1

Independent claim 1 has been divided into elements for consideration by the Petitioner as follows:

1[a] A system for automating compliance with local broadcasting regulations laid down by a broadcasting authority and applicable to advertisements, said advertisements being provided during time-shifted viewing/listening comprises:

1[b] programme supply means to supply broadcast digital video/audio programmes having therein periodic breaks for the insertion of advertisements;

1[c] advertisement supply means to supply advertisements within the periodic breaks,

1[c.1] each advertisement having associated therewith a header comprising a first field related to a local broadcasting time regulation laid down by the broadcasting authority, which local broadcasting time regulation restricts the time of day at which said advertisement may be shown,

1[c.2] and a second field related to the number of times said advertisement has previously been shown during time-shifted viewing;

1[d] rules database means containing rules relating to said local broadcasting time regulation;

1[e] clock means to supply a real-time clock signal; and

1[e.1] control means arranged to read said first field and said clock signal and said rules database and to apply said local broadcasting time regulation to each advertisement before said advertisement is shown;

1[f] wherein the control means is further arranged to update the second field in the header of said advertisement when said advertisement is again shown during time-shifted viewing.

A. Plotnick in combination of Parekh does not teach the limitation 1[c.1]

Plotnick and Parekh does not teach “a first field related to a local broadcasting time regulation laid down by the broadcasting authority, which local broadcasting time regulation restricts the time of day at which said advertisement may be shown.”

First, Petitioner tries to argue that Plotnick disclose “a first field related to a local broadcasting time regulation laid down by the broadcasting authority.” Petitioner contends that “Plotnick discloses that advertisements include ‘control data 1006,’ which is ‘ad metadata’ that ‘includes descriptions of the ad content, target

audience, encoding attributes, delivery instructions, and contract limitations.” Pet. 42 (citing Ex. 1005 ¶ 154). Petitioner also contends that “Plotnick discloses that ‘control data 1006’ is ‘processed [] to generate ad queue structures that are stored in an ad queue database 1018.’” Id. (citing Ex. 1005 ¶ 155). Petitioner relies on Plotnick’s teaching that “‘the ad queue and schedule may be generated based on ‘flight information, which indicates the networks and times for displaying the advertisement.’” Pet. 42 (quoting Ex. 1005 ¶ 169). Petitioner also asserts that Plotnick’s “ad queue may further vary based on ‘what subscriber 1260 is interacting with the TV, **what time of day it is**, [or] what day of the week’ it is.” Pet. 42, at 42–43 ¶ 194 (emphasis added).

In fact, Plotnick does not teach the limitation “a first field related to a local broadcasting time regulation laid down by the broadcasting authority.”

Although Plotnick depicted time restrictions of advertisements, for example, Plotnick’s “ad queue may further vary based on ‘what subscriber 1260 is interacting with the TV, **what time of day it is**, [or] what day of the week’ it is.” Ex. 1005, ¶ 194. the restrictions are entered by the sales force, not laid down by the local broadcasting authority. Plotnick discloses “The sales force enters requirements for viewership ratings, frequency of viewership by the target audience, and flight information, which indicates the networks and times for displaying the advertisement (ad campaign data 1152),” Ex. 1005 ¶ 169. Ad queue varying based

on time of day in Plotnick is to improve profitability, Plotnick never mentions the time regulations set by a local broadcasting authority.

Furthermore, regarding ‘header’ limitation, Petitioner asserts as follows: Metadata relating to times for displaying the advertisement would have been stored in a first field of the “control data 1006” header because, as well known by a POSITA, the purpose of a header is to set out required metadata information associated with the underlying data in various fields, so that the information can be retrieved in an organized and predictable way. Pet. 43 (citing Ex. 1002 ¶ 124).

The cited assertion shows that Petitioner equates ‘header’ to “control data 1006” of Plotnick. To the extent that the counterpart of ‘header’ is “control data 1006,” in Plotnick, “[t]he control data 1006 includes descriptions of the ad content, target audience, encoding attributes, delivery instructions, and contract limitations.” Ex. 1005, ¶ 154. That is, the “control data 1006” does not include “a local broadcasting time.”

Second, Petitioner tries to argue that the combination of Plotnick and Parekh teaches the limitation 1[c.1]. The Petitioner generally explains that Plotnick and Parekh pertain to similar systems for tracking the content of advertisements using metadata and controlling the ads based on similar criteria including time, regulations, and other criteria. See Pet. 27–31. According to Petitioner, it would have been obvious to combine the teachings of Plotnick and Parekh, where Parekh teaches

“details regarding implementing ad targeting and reporting . . . to ensure that targeted ads were in compliance with applicable laws and regulations as taught in Parekh.” Pet. 27–31. (citing Ex. 1002 ¶¶ 102, 109).

Petitioner also argues that “Plotnick selects and replaces ads in broadcast programs based on the time of day and specified ad schedules,” “Parekh teaches a similar method for selecting advertisements based on time of day regulations,” and “both disclose using metadata associated with each advertisement to control when and how the advertisement is played.” Pet. 47 (citing Ex-1005 ¶ 194; Ex. 1002 ¶ 129). Based on the combined teachings, Petitioner asserts that “[a]pplying the teachings of Plotnick and Parekh regarding adding metadata and associated rules to control ad timing in accordance with FCC regulations would have led to the expected result that an advertisement would only be selected for playback when permitted by such rules.” Pet. 47 (citing Ex. 1002 ¶ 129).

Although Parekh discloses a “rules engine” that controls “what [media items] are played on air” by applying “a combination of guidelines and rules, such as station policies and regulations from regulators 110.” Ex.1007, 11:14-20. Parekh also discloses that metadata is associated and transmitted, processed, and stored with each advertisement in a “media database 340.” Ex.1007, 10:32–37, 10:57, 11:11–13, 9:66–10:4. Parekh never mentions “metadata” including “a first field related to a local broadcasting time regulation laid down by the broadcasting authority.”

Parekh does not clearly define the relationship between “content of advertisement” and “metadata of the advertisement.” Parekh only describes that:

Media ingestion and metadata server 332, in part to take content from disparate sources and "ingest" or normalize format and content for a consistent broadcast, add, modify, or delete metadata about each content piece. Ex.1007,9:66-10:2.

In another embodiment, the system may simply reject any recognized commercial track (396). The content is analyzed for "airability" (386), analogous to rules interpreted and/or provided for by moderation server 316. This may involve automated, semi-automated and/or manual ways of rendering the content to analyze for airability. If (388) problems are detected, the content is rejected (396), otherwise the content is reviewed by a screener to find any content issues (390), such as illegal recordings or profanity. If (392) it fails the review, it is rejected (396), otherwise it is added to the media database 340 with the appropriate metadata (394). Ex.1007, 11:2-13.

The cited portion of Parekh shows that, regarding content issues such as illegal recordings or profanity, the content will be rejected before added to the media database with the appropriate metadata, which means the unrejected content can be broadcast at any time, there is no need that “metadata” including “a first field related to a local broadcasting time regulation laid down by the broadcasting authority.”

Parekh discloses using rule engine to insert advertisement based on business rules, “business rules include FCC regulations for content, including: that indecent and/or profane material may not be broadcast outside the FCC Safe Harbor.” Ex.1007, 11:24-31. Therefore, to the extent that Parekh discloses “a local broadcasting time regulation laid down by the broadcasting authority,” the local broadcasting time regulation is stored in the rule engine, not in the “metadata” of the advertisement.

Further, Parekh does not teach the limitation “said advertisements being provided during time-shifted viewing/listening.”

Regarding the term “time-shifted,” the ’302 Patent describes that

If a program is recorded and viewed at a different time of day, it contains all of the adverts which were originally broadcast, some of which may be unsuitable for that time. One result is that children may see inappropriate adverts, and another is that advertisers are at present not allowed to charge for the time-shifted viewing of adverts.

The cited portion of the ’302 Patent shows that “time-shifted” means that a program is recorded and viewed at a different time (than the broadcast) of day. The ’302 Patent need to determine advertising content to be compliance with local broadcasting regulations laid down by a broadcasting authority during “time-shifted” period. On the contrary, Parekh depicts a method of determining advertising content

to be included in a broadcast. Ex-1007, Abstract. Advertising content in Parekh needs to be compliance with local broadcasting regulations laid down by a broadcasting authority during broadcasting time, not during “time-shifted” period.

Parekh only discloses that advertising content needs to be compliance with local broadcasting regulations laid down by a broadcasting authority during broadcasting time (not during “time-shifted” period), and the local broadcasting regulations are stored in the rule engine, not in the “metadata” of the advertisement.

Plotnick discloses ad queue may vary based on what time of day it is during “time-shifted” period and but does not teach local broadcasting regulations, Plotnick also discloses “metadata,” but does not teach “metadata” includes regulations relating to time of day.

There is a gap between the combination of Plotnick, Parekh and the limitation 1[c.1]. Both Plotnick and Parekh do not teach: (1) local broadcasting time regulation restricts the time of day during “time-shifted” period. (2) the header includes “local broadcasting time regulation.” Petitioner has used hindsight to bridge the gap: the claimed invention is providing a roadmap that the element would have fit into the prior art. This is an exercise in impermissible hindsight analysis.

Therefore, Plotnick and Parekh do not teach the limitation “a first field related to a local broadcasting time regulation laid down by the broadcasting authority,

which local broadcasting time regulation restricts the time of day at which said advertisement may be shown.”

B. Plotnick in combination of Parekh does not teach the limitation

1[c.2]

Regarding the limitation 1[c.2], Petitioner contends that “Plotnick discloses that the processing component 1010 ‘updates the ad metadata 1006 based on ad delivery and user interaction.’” Pet. 47 (citing Ex. 1005 ¶ 156; Ex. 1002 ¶ 130). Petitioner also relies on Plotnick’s explanation that “[t]he traffic and billing system 712 tracks the insertion results and bills the advertiser based on the insertions.” Pet. 47 (quoting Ex. 1005 ¶ 170). Petitioner also contends that Plotnick explains that “viewer usage data is sent . . . ‘upstream.’” Pet. 47 (quoting Ex. 1005 ¶ 168). Therefore, a person of ordinary skill in the art “would have been motivated to implement this ‘upstream’ transmission of viewer delivery metadata using a second header field because the data would need to be stored and associated with the advertisement so that the required reports can be generated.” Pet. at 48–49 (citing Ex. 1002 ¶ 131).

In fact, in Plotnick, “[t]he control data 1006(ad. metadata) includes descriptions of the ad content, target audience, encoding attributes, delivery instructions, and contract limitations.” Ex. 1005, ¶ 154. That is, the “control data

1006” does not include “the number of times said advertisement has previously been shown during time-shifted viewing.”

Although “the processing component 10101 updates the ad metadata 1006 based on ad delivery and user interaction.” Ex. 1005, ¶ 154. “After presenting the ad to the viewer, the system updates the ad metadata and transmits an insertion report to the head-end.” Ex. 1005, ¶ 163. Since the ad metadata does not include the number of times said advertisement has previously been shown. “updates the ad metadata” will not include updating “the number of times said advertisement has previously been shown during time-shifted viewing.”

Plotnick discloses “updates the ad metadata 1006 based on ad delivery and user interaction.” “Ad delivery” means the ad is delivered from advertiser to PVC system. As to the “user interaction,” Plotnick indicates:

A user interface 628, typically implemented through on-screen graphics and a remote control or remote keyboard, facilitates all of the control and interactions with the television viewer. Some of the interactions will be used by the client side STB ad targeting system 600 to help build the viewer profiles necessary to do individual ad targeting.

Ex.1005, ¶140.

The user interface 628 supplies user events 1030 based on viewer interaction with the remote control and the front panel of the set-top box. These events 1030

include channel changes, Volume changes, and VCR-like controls of the PVR. Ex.1005, ¶160.

The cited portion of Plotnick shows that “user interaction” includes channel changes, Volume changes, and VCR-like controls of the PVR, not include “the number of times the ad was shown to the user.”

Although Plotnick discloses “[t]he traffic and billing system 712 tracks the insertion results and bills the advertiser based on the insertions.” The insertion is different from “the number of times the ad was shown to the user.” For example, in one aspect, an insertion is conduct, but the viewer does not view the inserted ad, in another aspect, an insertion is conduct, but the viewer views one the inserted ad for several times, since the ad is recorded in the PVR. To the extent that the traffic and billing system 712 tracks the number of times said advertisement has previously been shown, “the number of times” should be stored in the billing system 712, not in the metadata.

Therefore, Plotnick and Parekh do not teach the limitation “[the header comprising] a second field related to the number of times said advertisement has previously been shown during time-shifted viewing.”

C. Plotnick in combination of Parekh does not teach the limitation

1[e.1]

Regarding limitation 1[e.1], Petitioner contends that Plotnick discloses “processing component 1010[]” (or “processing 1010”), which acts as a control means within the PVR. (Citing Ex-1005, ¶¶154-156). Plotnick discloses that “[t]he ad queue 1420 is a list of the next ads 1410 that should be inserted” and “what time of day it is, what day of the week, ... and other criteria.” (Citing Ex-1005, ¶194). Furthermore, Plotnick and Parekh teach that each advertisement would have a header with a first field having metadata relating to a local broadcasting time regulation and a rules database with rules based on local broadcasting time regulations. Those fields would have been read so that the Plotnick system knows what constraints might apply to the associated advertisement. (Citing Ex-1002, ¶142). Pet., 53.

A POSITA would have understood that, to filter what advertisements are played based on “time of day,” the Plotnick system reads the first field metadata to know what restrictions apply, and then applies the correct restriction based on the real-time clock “time of day” information. And the rules applied would be the rules discussed in the rules database, relating to the local broadcasting regulation. Pet., 54.

As set forth in section IV.1.a, Plotnick and Parekh does not teach that each advertisement has a header with a first field having metadata relating to a local

broadcasting time regulation, therefore, Plotnick and Parekh does not teach “control means arranged to read said first field” in the limitation 1[e.1] .

D. Plotnick in combination with Parekh does not Render Claim 1

Obvious

Petitioner fails to undertake a Graham analysis, because Plotnick in combination of Parekh lacks evidence of crucial limitations of claim 1, such as the elements 1[c.1], 1[c.2], and 1[e.1]. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). Therefore, Plotnick in combination of Parekh does not render claim 1 obvious because it has not established its prima facie case, since “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003).

2. Claims 1–4, 6–9

Claims 2–4 and 6–9 depend from claim 1 and are not obvious over Plotnick in view of Parekh for at least the same reasons.

3. Claim 12

Independent claim 12 has been divided into elements for consideration by the Petitioner as follows:

12[a] A Personal Video Recorder (PVR) for use in a system for automating compliance with local broadcasting regulations laid down by a broadcasting

authority and applicable to advertisements, said advertisements being provided during time-shifted viewing/listening, the PVR comprising:

12[b] data storage means storing a programme episode database, an advertisement database, and a rules database,

12[c] each stored advertisement having associated therewith a header comprising a first field related to a local broadcasting time regulation laid down by the broadcasting authority, which local broadcasting time regulation restricts the time of day at which said advertisement may be shown,

12[d] and a second field related to the number of times said advertisement has previously been shown during time-shifted viewing, wherein the rules database contains rules relating to said local broadcasting time regulation, and wherein the stored programme episodes have periodic breaks for the insertion of advertisements;

12[e] input connection means for connection to a source of video/audio signals and a real-time clock signal;

12[f] output means for connection to a consumer's viewing/listening unit; and

12[g] control means arranged to read said first field and said clock signal and said rules database and to apply said local broadcasting time regulation to each advertisement before said advertisement is shown during one of the periodic breaks;

12[h] wherein the control means is further arranged to update the second field in the header of said advertisement when said advertisement is again shown during time-shifted viewing.

Claim 12 is directed to a Personal Video Recorder and contains similar elements as claim 1. Claim 12 includes “output means,” element 12[f], which is a connection between the PVR and television set.

As set forth above, Plotnick in combination of Parekh does not teach the limitation “automating compliance with local broadcasting regulations laid down by a broadcasting authority and applicable to advertisements,” Section IV.1. a., supra. Plotnick in combination of Parekh does not teach 1[c.1], 1[c.2], and 1[1e.1] as required by claim 1. Section IV.1, a-c., supra.

Similarly, Plotnick in combination of Parekh does not teach the above elements in 12[c], 12[d], and 12[g] as recited by claim 12.

Thus, Plotnick in View of Parekh does not teach all elements of claim 12 of the '302 Patent, petitioner fails to establish that challenged claim 12 is obvious over Plotnick and Parekh.

4. Claims 13-15

Claims 13-15 depend from claim 12 and are not obvious over Plotnick in view of Parekh for at least the same reasons.

B. Petitioner Fails to Establish in Ground 2 that Challenged Claims 1–4, 6–9 and 12–15 are Obvious Over Plotnick

In Ground 2, Petitioner construes the claims based on how Patent Owner appears to apply the claims in its Preliminary Infringement Contentions attached as Ex, 1022, 3-4. and Ex, 1023, 2-3. Pet., 73. It is obvious that claim construction In Ground 2 is not in compliance with the regulations of 37 C.F.R. §42.100(b). petitioner fails to establish in ground 2 that challenged claims 1–4, 6–9, and 12–15 are obvious over Plotnick since the arguments are based on false claim construction.

As explained in Section IV, in the case of claim construction being in compliance with the regulations of 37 C.F.R. §42.100(b), claims 1–4, 6–9 and 12–15 are not obvious over Plotnick in view of Parekh, Thus claims 1–4, 6–9 and 12–15 are not obvious over Plotnick alone. Particularly, Plotnick does not teach, 1[c.1], 1[c.2], and 1[e.1] as required by claim 1. Plotnick does not teach 12[c], 12[d], and 12[g] as required by claim 12. Claims 2–4 and 6–9 depend from claim 1, Claims 13–15 depend from claim 12, therefore, claims 1–4, 6–9 and 12–15 are not obvious over Plotnick.

V. CONCLUSION

For the reasons discussed above, Patent owner respectfully requests the Board confirm that the Challenged Claims of the '302 patent are patentable.

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Respectfully submitted,



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CERTIFICATION OF WORD NUMBER

Counsel for Patent Owner hereby certifies that the foregoing document contains 5012 words as calculated using the word count function of Microsoft Word, not including material excluded under 37 C.F.R. 42.24(a)(1).

Date: January 2, 2024

/Jacob B. Henry/
Jacob B. Henry

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have appeared in this case are being served on this day of January 2, 2024, with a copy of the foregoing via e-mail.

/Jacob B. Henry/
Jacob B. Henry