

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FOURSQUARE LABS, INC.,

Petitioner,

v.

BOARDACTIVE CORPORATION,

Patent Owner.

U.S. PATENT NO. 10,692,108 B1
Title: PLATFORM FOR LOCATION AND
TIME BASED ADVERTISING

IPR2023-00919

PATENT OWNER'S PRELIMINARY RESPONSE
UNDER 35 U.S.C. § 42.107

August 30, 2023

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Exhibit	Title
1001	U.S. Patent No. 10,692,108 to Pittman (“Pittman”)
1002	Declaration of Dr. Steven Goldberg, Ph.D.
1003	Petitioner’s Power of Attorney
1004	U.S. Patent Application Publication No. 2015/0095124 (“Verizon”)
1005	U.S. Patent Application Publication No. 2015/0262214 A1 (“Geer”)
1006	U.S. Patent Application Publication No. 2011/0171976 (“Creemer”)
1007	U.S. Patent No. 9,516,470 (“Scofield”)
1008	European Patent Publication No. 2424278 A1 (“Alcatel”)
2001	U.S. Patent No. 10,692,108, file history

I. INTRODUCTION

Patent Owner BoardActive Corporation (“BoardActive” or “Patent Owner”) submits the following Patent Owner’s Preliminary Response pursuant to 37 C.F.R. § 42.107(a). *See also* 37 C.F.R. § 42.107(b). Petitioner Foursquare Labs, Inc. (“Foursquare” or “Petitioner”) filed a Petition for *Inter Partes* Review of U.S. Patent No. 10,692,108 (the “’108 patent”) on May 9, 2023. (IPR2023-00919, Paper No. 1 (“Petition”).

Patent Owner respectfully requests that the Board deny the Petition because Foursquare failed to meet its burden to show a reasonable likelihood that at least one of the challenged claims is unpatentable. Specifically, Foursquare has not demonstrated a reasonable likelihood that any claim of the ’108 patent would be anticipated or rendered obvious by Verizon (Exh. 1004); rendered obvious by Verizon in view of Geer (Exh. 1005), Creemer (Exh. 1006) or Scofield (Exh. 1007); nor rendered obvious over Alcatel (Exh. 1008) in view of Verizon and Geer.

The ’108 patent is directed to a method of delivering media content associated with geolocation of, e.g., a billboard, where three rules related to (1) time, (2) profile data, and (3) course of travel must be met for content to be pushed to the consumer. When the consumer is within a geofence of the billboard, the consumer’s profile data is considered. The method then tracks the consumer to determine if the consumer has performed an action, such as traveling towards a store that is the subject of the

media content. When the consumer is at a second location, the method determines the course of travel of the consumer, based at least in part, on an analysis of the first location and the second location. After making these analyses, the method determines whether the consumer is eligible to receive a specific piece of content associated with the content distribution campaign.

Foursquare asserts one Ground of anticipation and six Grounds of obviousness. The Petition's first four obviousness Grounds contend that the claims would have been obvious over one primary reference, Verizon 2001 (Exh. 1004), and combinations of three secondary references Geer (Exh. 1005), Creemer (Exh. 1006), and Scofield (Exh. 1007). The last two obviousness Grounds have Alcatel (Exh. 1008) as a primary reference and either Verizon or Geer as the secondary reference. However, none of these references alone or in combination teach all of the claim elements of the '108 patent's challenged claims. As the Petition's arguments underscore, and contrary to the claims of the '108 Patent, Verizon describes consumer and non-consumer embodiments that are improperly combined when asserting consumer elements of the '108 Patent.

Further, for none of the combinations does Petitioner meet the burden for establishing a motivation to combine.

Thus, the Petition therefore has failed to demonstrate “a reasonable likelihood of success that the petitioner would prevail” as set forth in 35 U.S.C. § 314(a), and the Petition should be rejected.

II. MANDATORY NOTICES (37 C.F.R. § 42.8)

A. Real Party in Interest

Patent Owner BoardActive Corporation is the real party-in-interest.

B. Related Matters

There are two related matters. On May 3, 2022, BoardActive filed a litigation against Foursquare asserting five patents, one of which was the '108 patent. *BoardActive Corp. v. Foursquare Labs., Inc.*, 22-cv-00597 (D. Del. 2022). The case was dismissed without prejudice on May 5, 2023. Concurrent with this petition, Foursquare filed IPR2023-00918 challenging BoardActive's patent number 10,621,620.

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D. 37 C.F.R. § 42.28(b)(4): Service Information

BoardActive submitted Mandatory Notices, Paper 4, and Power of Attorney, Paper 5. BoardActive consents to electronic service directed to the following email address:

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III. BACKGROUND OF U.S. PATENT NO. 10,692,108

The '108 Patent, titled "Platform for Location and Time Based Advertising," issued on June 23, 2020, and is a continuation of application 15/950,019 filed on April 10, 2018, titled "Platform for Location and Time Based Advertising," which is a continuation-in-part of U.S. application 15/483,790, filed on April 10, 2017, titled "A Platform for Location and Time Based Advertising," which issued on December 31, 2019, as U.S. Patent 10,521,822. Exh. 1001, pp. 1–2.

The '108 patent generally relates to an online platform for managing geolocation and time-based advertising. Exh. 1001, 1:24-28. The platform can act as a standalone product or can be integrated with a company's existing software/applications. *Id.*, 11:47-12:6.

IV. PERSON OF ORDINARY SKILL IN THE ART

A person with ordinary skill in the relevant art at the time of invention—April 10, 2018—would have a bachelor's degree in computer science, electrical engineering, computer engineering, or an equivalent field and three years of experience working with digital advertising and geofencing. Additional education might compensate for less experience and vice-versa, but a bachelor's degree is required to be the minimum education.

V. CHALLENGED CLAIMS

Petitioner challenges claims 1-23 of the '108 patent, with claims 1, 13, and 20 being independent. Each of the claims recites the features distinguishing the '108 patent from the asserted prior art, either directly or via dependency.

VI. CLAIM CONSTRUCTION

In an *inter partes* review proceeding, “a claim of a patent ... shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b), 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.” 37 C.F.R. § 42.100(b).

A. The term “Consumer” should be construed as a “user or person to whom an advertisement is sent to elicit engagement.”

The Abstract of the ’108 patent itself uses the term “consumer” in reference to engagement:

iii) specify triggers for delivering the content and **target consumer profiles for receiving the content**; and iv) transmit content for **engaging the consumer at the right time and/or place**, with the targeted profile, and v) track **user engagement and provide analytics on consumer engagement**.

Exh. 1001, Abstract (emphasis added). The consumer is the user to whom the advertisements are directed and from whom an action is elicited.

This definition is further supported in the body of the patent:

The platform may enable a platform user (e.g., an Administrator or “Admin”) to interact with its target content **consumers** based on, for example, but not limited to, the location of the **consumer** in time and space, the actions the **consumer** takes within the time and space, the characteristics of the **consumer**, and the characteristics of their technical devices. Accordingly, the various embodiments disclosed herein provide a new medium of communication with **consumers**.

Exh. 1001, 8:35-57 (emphasis added). For example, the consumer is described as being a person who interfaces through a screen. *See* Exh. 1001, 9:41-44; 57-58; 11:56-58; 15:8-13 (voice commands implies a person speaking); 25:58-62. Notably, the patent does not include inorganic examples of “consumers,” such as a billboard, a bus with signage, or a truck with signage.

Further, in the file history of the ’108 Patent, the examiner, in the Notice of Allowance, found that “[t]he scope of the claims has been changed to that of an advertising distribution campaign with an added third rule specifying a course of travel associated with the consumer, and determining that consumer has complied with said plurality of rules and is eligible for receiving distribution campaign.” Ex. 2001, p.41. Hence, the reason for allowance explicitly referenced engagement with a consumer or user.

B. The claim term “Course of Travel” should be given its plain and ordinary meaning.

This construction is the plain and ordinary meaning a POSITA would ascribe to “course of travel” after reading the specification and prosecution history and as limited by the claims to being the course of travel of a consumer. First, in the Brief Overview of the ’108 patent, the specification notes that a “course of travel” is “associated with the consumer” and is determined “at least in part, on an analysis of the first location and the second location.” Exh. 1001, 2:60-3:2; *see also id.*, 3:41-43. This meaning is then carried into the claim language itself; for example, claim 1 notes that a “third rule

correspond[s] to a course of travel associated with the consumer,” and that the course of travel is determined based on a “first location” of the consumer and a “second location” of the consumer. *Id.*, 38:56-67. Claim 2 then narrows the second location of the consumer to the consumer’s destination, *id.*, 39:4-7, and claims 4 and 5 add limitations to specify that the location of the consumer is being tracked. *Id.*, 39:16-21.

Further, in the file history of the ’108 Patent, the examiner found that “[t]he scope of the claims has been changed to that of an advertising distribution campaign with an added third rule specifying a course of travel associated with the consumer, and determining that consumer has complied with said plurality of rules and is eligible for receiving distribution campaign.” Ex. 2001, p.41.

C. The Petition waived any claim construction arguments

Rather than propose its own claim constructions, Petitioner improperly attempts to reserve the right to challenge claim terms at a later time under 35 U.S.C. § 112(b). Pet. at p.4, n.5. To the extent Petitioner states that no express construction is required and then later advocates for a specific interpretation during the course of any instituted IPR, Petitioner’s reservation would be contrary to federal regulation, this Board’s guidelines, and settled law. 37 C.F.R. § 41.104(b)(3) (“The statement [of relief requested] must identify ... [h]ow the challenged claim is to be construed.”); *Microsoft Corp. v. Uniloc*, IPR2019-01188, Paper 27 (Decision) at 19 (P.T.A.B. Nov. 4, 2020) (on reply, petitioner “cannot raise new claim construction issues that were not

previously raised in its petition”) (quoting Consolidated Trial Practice Guide 44-45 (Nov. 2019) *available at* <https://www.uspto.gov/TrialPracticeGuide>).

Moreover, the Petition seems to suggest that it may apply a claim construction approach that is contrary to law: “Petitioner believes that the constructions of terms can be appreciated from their overall discussion herein and application of the prior art” Pet., 3. However, claims must be construed “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.*” 37 C.F.R. § 42.100(b) (emphasis added) (citing 35 U.S.C. § 282(b)).

Hence, all other claim terms should be given their plain and ordinary meaning as used in the ’108 patent specification and file history. If the Board does construe any other claim terms, Patent Owner reserves the right to provide constructions for those terms or other terms, if they become material to the Board’s decision.

VII. OVERVIEW OF THE PRIOR ART

A. Verizon (Exh. 1004)

Verizon—a patent application that was published on April 2, 2015 and subsequently was abandoned in 2017—is directed to systems and methods “for displaying marketing content at a predetermined location and at a predetermined time.” Exh. 1004, Abstract. Unlike the ’108 patent, Verizon is not concerned with delivering personalized content to a consumer and evaluating the efficacy of that

content, which the '108 patent does. Instead, Verizon provides advertising content based solely on characteristics concerning the advertisement itself (particular location or time of day) and a potential customer's proximity to the advertisement. *Id.* at [0018].

Verizon also describes two distinct embodiments to delivering content, and as described below, the Petition selectively, and improperly, cherry picks components from both embodiments when it suits Petitioner to do so. For example, one embodiment in Verizon sends advertising content to non-consumers such as billboards, vehicular displays, subway cars, trolley cars, and signs. *Id.* at [0021]. Such systems do not involve delivering advertisements to “consumers” as required by the '108 patent.

A second embodiment sends advertising content directly to a consumer's mobile device. *See, e.g., id.* at [0044]. However, in this embodiment, rather than target a user based on their course of travel or their previously known preferences, a consumer receives content solely because of their proximity to a display (e.g., a billboard or a vehicular display). *Id.*

Further, there is nothing in either of Verizon's that would permit a company to evaluate the efficacy of its advertising content.

B. Geer (Exh. 1005)

Geer, patent application publication number US 2015/0262214, claims priority to March 2014, and is directed to a system for social networking at a specific event or venue. Exh. 1005, ¶2. For example, fans attending a sporting event can use an application on a cellular phone to message each other. *Id.*, ¶6. The users of Geer’s system are already present at an event or venue. *See id.*, ¶¶6–7; *see also id.*, ¶50 (“After the start [], fan [] registers ... to participate in the FNS [] at the event.”). Thus, unlike the ’108 patent, the system of Geer is not attempting to direct users to a certain destination, nor is it evaluating or providing analytics on its efficacy in doing so. In short, Geer is only tenuously related to the field of advertising, and it is wholly unrelated to the invention disclosed in the ’108 patent.

C. Creemer (Exh. 1006)

Creemer, patent application publication number US 2011/0171976, claims priority way back to 2001. Exh. 1006. Although Creemer discusses using position information to track a user’s rate and direction of travel, Exh. 1006, ¶¶10–15, it focuses on determining a user’s likely mode of transportation (e.g., walking, driving, or riding on a train). *See, e.g., id.*, ¶¶62–68. And while Creemer mentions the possibility of “targeting” a service or advertisement based on a user’s direction of travel, *see id.*, ¶15, apropos of its claim of priority to 2001, there is no concrete discussion in Creemer on how to achieve that targeted advertising. For example,

unlike in the '108 patent, there is no discussion in Creemer of comparing the location and direction of travel of a user to nearby billboards or digital signage, nor is there any mention of further comparing that information to the location of related stores that may be in or near the user's expected course of travel.

D. Scolfield (Exh. 1007)

Scolfield is a patent that issued in 2016 but was originally filed way back in 2007. Exh. 1007. At the time the application was filed, text messaging was just becoming widespread, *id.* at 1:30-37, and mobile phones were only “recently” being used for tracking and collecting location data via GPS and triangulation. *Id.* at 1:47-56.

Relevant to the time it was filed, when cellular phone tracking technology was in its infancy, Scolfield discusses tracking a user's movements and location and delivering position-relevant advertising, but in the context of a closed or semi-closed environment like a shopping mall or sports venue, and based on prior traffic patterns of the user. *Id.*, 2:8-44. For example, if a user arrives at a mall she has previously visited, stored data would allow the system to predict that the user may return to a specific store, and thus the system delivers a coupon or advertisement for that store. *Id.*, 4:8-41. What Scolfield does not do—and what is key to the invention of the '108 patent—is track a user's location in real-time, in relation to advertisements (such as billboards) and related stores, and send digital advertisements to the user in

an effort to influence her direction of travel. And in addition, nothing in Scolfield discloses tracking the efficacy of digital advertisements sent to the user.

E. Alcatel (Exh. 1008)

Alcatel is a European patent application that claims priority back to 2010. Exh. 1008. Like Scolfield, Alcatel relies on storing and using “the mobility history” of a mobile device. *Id.*, Abstract & ¶6. When a user passes by a “base station,” and has opted to receive content delivery, the system sends a message like “Road X closed for construction....” *Id.*, ¶¶15-18. Nothing in Alcatel discloses tracking multiple positions of a user, or comparing those positions to a predicted course of travel. Moreover, while Alcatel mentions that the content may be advertisements, *id.* at ¶16, there is no disclosure of personalizing the content based on the user’s expected course of travel or their proximity to a specific billboard or store. Nor is there any mention of evaluating the effectiveness of any advertisement sent to the user.

VIII. RESPONSE TO SPECIFIC IPR GROUNDS

The Petition should be denied for failing to show that there is a reasonable likelihood that any of the challenged claims are unpatentable.

F. GROUND I & II: Anticipation under 35 U.S.C. § 102 by Verizon & single reference Obviousness under 35 U.S.C. § 103 over Verizon.

1. Failure of Anticipation

For anticipation, a prior art reference must show each and every element of the claimed invention, arranged as in the claim. *See Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983). Thus, a rejection based on anticipation is overcome by pointing out at least one difference between the claimed invention and the prior art reference. Here, Petitioner has failed to show that every element of the challenged claims is present in Verizon.

2. Failure of Obviousness

A patent is obvious only if the differences between the prior art and the patented claims “are such that the claimed invention as a whole would have been obvious [at the time of the invention] to a person having ordinary skill in the art....” 35 U.S.C. § 103. A single prior art reference can render a patent obvious “if it would have been obvious to modify that reference to arrive at the patented invention.” *Arendi S.A.R.L. v. Apple Inc.*, 832 F.3d 1355, 1361 (Fed. Cir. 2016). However, the challenger must show “a suggestion or motivation to modify the teachings of that reference to the claimed invention....” *SIBIA Neurosciences, Inc. v. Cadus Pharm. Corp.*, 225 F.3d 1349, 1356 (Fed. Cir. 2000) (citation omitted). Thus, the test is not whether a single reference can be modified, but rather whether there is a suggestion or motivation to make that modification to achieve the claimed invention.

Similarly, when an obviousness challenge involves more than one piece of prior art, the test for motivation to combine is whether ““a skilled artisan would have been motivated to combine the teachings of the prior art references to achieve *the claimed invention*””—**not** whether a POSITA would have combined the references for some reason unrelated to the claims of the patent. *Axonics, Inc. v. Medtronic, Inc.*, 73 F. 4th 950, 957 (Fed. Cir. 2023) (citations omitted). Here, Petitioner fails to show both that every limitation is found in one of the prior art references, and that a POSITA would have been motivated to combine the references to achieve the claimed invention.

3. Cherry Picking Between Embodiments is Improper

Verizon’s first embodiment delivers content to a consumer, and the second embodiment delivers content to a non-consumer. The Petition cherry-picks elements from the two distinct approaches while ignoring the actual teachings and description contained in Verizon. *See BlephEx, LLC v. Myco Indus., Inc.*, 24 F.4th 1391, 1400–02 (Fed. Cir. 2022) (“[I]t is not enough that the prior art reference includes multiple, distinct teachings that the artisan might somehow combine to achieve the claimed invention to show anticipation.”). Yet, even if the combination of embodiments were proper, Petitioner still fails to show that all the required claim elements are met by Verizon. Moreover, the Petition and supporting declaration, Exh. 1002, make

only conclusory statements about the knowledge of a POSITA, and they fail to identify the motivation to modify the teachings of Verizon.

4. Independent Claim 1—“A method comprising:”

- a. “specifying a content distribution campaign, the content distribution campaign comprising;**

[a, i] a geolocation, and

[a, ii] media content associated with the geolocation”

A “content distribution campaign” is not described in the Verizon reference. Instead, Verizon paragraph 0028 describes sending categorized media content to be stored in an ads bank. *See* Exh. 1004, ¶0028. While the paragraph mentions “deliver[ing] the marketing content to various mobile units or mobile devices,” this is describing little more than sending an advertisement and not a content distribution campaign. Further, later paragraphs, such as 0034 and 0051, clarify that the content is stored on the mobile unit 124 or mobile device 120. *Id.*, ¶ 0034 (referencing Fig. 2A and specifying that the storage module 214 is part of mobile unit 124); 0051 (the “marketing content may be stored in storage module 514 for use by mobile device 120”). Thus, no “content distribution campaign” is described in Petitioner’s cited paragraphs.

Petitioners rely on Verizon paragraph 0054 for allegedly showing content rules for stored content that include predetermined time or intervals. Pet. 7 (citing

Exh. 1004, ¶0054). But, paragraph 0054 does not describe rules for sending content during predetermined time intervals, rather, it describes content that is already downloaded and resident on mobile device 120. *See id.* (“Such selection of marketing content may be made by a decision module on ad server 107 or mobile unit 124, or on mobile device 120 itself ***if the marketing content is already within storage module 514 of the mobile device 120***” (emphasis added)). Verizon’s disclosed time period is only for displaying the already distributed and resident content. *Id.* (“The type of ‘queued’ content may also be determined by user of mobile device 120, such as by placing particular content in categories of content, in user’s ‘wishlist.’”). Thus, Petitioner has misinterpreted the claim language to ignore that the “content distribution campaign” is to a consumer who is associated with profile data. *See* Exh. 1001, 38:54-55.

Therefore, Petitioner has failed to meet its burden of establishing that this element is present in Verizon, and thus claim 1 is not anticipated by Verizon. In addition, the Petition provides no evidence that a POSITA would modify the teachings of Verizon to arrive at the claimed invention, *see* Pet. 5-6, so no showing of obviousness has been made.

- b. “specifying a plurality of rules for the content distribution campaign, wherein specifying the plurality of rules comprises:**
 - [b, i]specifying a first rule corresponding to a period of time,**
 - [b, ii] specifying a second rule corresponding to at least one element of profile data associated with a consumer,**
 - [b, iii] specifying a third rule corresponding to a course of travel associated with the consumer;”**

This element of claim 1 of the '108 patent requires three rules to be present for the content distribution campaign; however, the Petition jumbles the three separate requirements together. Pet. 6-7. Moreover, the Petition seeks to satisfy its burden of showing the three rules with a series of lengthy string cites with no explanations. *Id.* at 7. For this reason alone, the Petition has failed to meet its burdens under 35 U.S.C. § 312(a)(3) and 37 C.F.R. § 41.104(b). *See, e.g., Trading Techs. Int’l, Inc. v. IBG LLC*, 921 F.3d 1378, 1385 (Fed. Cir. 2019) (holding that a conclusory assertion with no analysis was not adequately developed); *Novartis AG v. Torrent Pharms.*, 853 F.3d 1316, 1326 n.2 (Fed. Cir. 2017) (finding that an argument presented in one conclusory sentence and a string cite was “far from sufficient to raise a meaningful challenge” and “amount[ed] to little more than a request that the Board peruse the cited evidence and piece together a coherent argument on Novartis’ behalf”); *Apple Inc. v. Qualcomm Inc.*, IPR2018-01276, Paper No. 32, 2020 Pat. App. LEXIS 7895, *15-16 (P.T.A.B. Feb. 3, 2020) (“a

string citation lacking any explanation whatsoever is imprecise and vague” and judges “‘are not like pigs, hunting for truffles buried in briefs’; nor will [judges] hunt for truffles buried in string citations, offered in briefs”) (citing *Anderson v. Eppstein*, 59 U.S.P.Q.2d 1280, 1287 (B.P.A.I. 2001) and *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)).

When claim element 1(b) is actually broken down into its component parts, the first rule relates to a period of time, the second rule relates to an element of profile data associated with a consumer, and the third rule corresponds to a course of travel associated with the consumer. Even if some of these individual rules were to be found in Verizon, Verizon does not teach or suggest the combination of these three rules.

Further, a course of travel associated with the consumer is neither disclosed nor taught in Verizon. “Course of travel” as required by the claims is determined using, at least in part, **a first location and a second location**. Exh. 1001, 38:65-67. Indeed, the Brief Overview in the specification of the ’108 patent notes that a “course of travel” is “associated with the consumer” and is determined “at least in part, on an analysis of the first location and the second location.” Exh. 1001, 2:60-3:2; *see also id.*, 3:41-43. Claim 2 then narrows the second location of the consumer to the consumer’s destination, *id.*, 39:4-7, and claims 4 and 5 add limitations to specify that the location of the consumer is being tracked. *Id.*, 39:16-21. Further, in the file history of the ’108

Patent, the examiner found that “[t]he scope of the claims has been changed to that of an advertising distribution campaign with an added third rule specifying a course of travel associated with the consumer, and determining that consumer has complied with said plurality of rules and is eligible for receiving distribution campaign.” Ex. 2001, p.41

Petitioner’s expert declaration states that “a POSITA would appreciate that Verizon’s disclosure regarding speed, direction, proximity, and manner of travel all constitute ‘course of travel’ indicators.” Exh. 1002, ¶245. But the claim term is not “course of travel indicators.” The indicators of Verizon are all associated with movement at a point in time rather than at two different locations. Further compounding its errors, the Petition incorrectly mixes advertising devices such as “network clients” 116 (automobile), 122 (bus), 124 (van, semitruck, trolley, etc.), and display 114 (billboard) with a mobile or consumer device 120 used by the consumer.

Accordingly, Petitioner has failed to meet its burden of establishing that this requirement for a plurality of rules for the content distribution campaign element is present in Verizon, and there is no evidence that a POSITA would modify the teachings of Verizon to arrive at the required “course of travel” claimed invention.

c. “receiving a first indication that the consumer is at a first location within a radius of the geolocation”

The Petition states, “Verizon discloses receiving a first indication as recited, by proximity to the geolocation.” Petition, p.10. Claim 1 of the ’108 patent, however, does not include a first *proximity* to the geolocation. Petitioner’s argument misreads and fails to address the actual claim language. The Petition states without explanation that “Verizon’s examples of traveling near geolocations, such as Newark airport, illustrate receiving a first indication of the consumer within the *proximity* of the geolocation, and receiving media content such as advertisements.” *Id.* (emphasis added) (citing four paragraphs of Verizon and four paragraphs of the expert declaration without analysis). *See Apple*, IPR2018-01276, 2020 Pat. App. LEXIS 7895, *15-16 (judges “are not like pigs, hunting for truffles buried in briefs”).

Compounding the lack of clarity in the Petition, Dr. Goldberg provides no additional insight, stating what he “understands” and then citing multiple paragraphs of Verizon without explanation. Exh. 1002, ¶¶258-59. Such conclusory statements are insufficient. *See Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper No. 12, at 4 (PTAB Feb. 10, 2023) (the expert declaration “merely repeats, *verbatim*, the conclusory assertion for which it is offered to support” and therefore it is “entitled to little weight”) (citing 37 C.F.R. § 42.65(a)). Later in paragraph 260, Dr. Goldberg admits that “to the extent Verizon does not elaborately describe such aspects in exact

terms of the claim, a POSITA ... would have appreciated that the system of Verizon must receive some type of ‘indication,’” but Dr. Goldberg never describes how a POSITA would understand “proximity to a geolocation,” i.e., how somewhere around the outside of the geolocation could be equated to the claim requirement of “within the radius of the geolocation.” Exh. 1001, claim 1.

Paragraph 0036 of Verizon states, “Proximity data may comprise a radius around a mobile unit 124 or display 114. ... Proximity may be dependent on multiple factors including specifics of the ad providing unit (e.g. type, size, location, speed of the mobile unit/display) and other nearby ad providing units, of the receiving unit (e.g. speed/direction of travel of the mobile device, specifics of the mobile device user).” Exh. 1004, ¶0036. Thus, the mobile unit 124 or display 114 are in the center of the radius. Further, “[d]isplaying particular marketing content on mobile unit 124, and/or display 124 while in the area of a mobile device 120, another mobile unit 124, and/or display 114, which may also display the same, coordinated, or complementary marketing content (or related content), allows a sponsor of the marketing content to temporarily fill the marketing scene at that particular location as well as locations near particular displays.” *Id.* What is being described in this paragraph 0036 of Verizon is a radius defined around a non-consumer that if a mobile device is detected in results in the non-consumer device displaying and ad. It is noted that the paragraph does mention “viewers that see the marketing content

multiple times – on mobile unit 124, on their mobile device 120, and/or on a display 114.” *Id.* But there is no discussion of how mobile device 120 received that marketing content.

Furthermore, Verizon notes “[a]dditional network clients located in vehicles 122, 124, 116 or in display 114,” Exh. 1004, ¶0026, which means moving advertisements on trucks, buses, and the like. *See id.*, Fig. 1. These additional network clients are not consumers on mobile devices, such as 120. *See* ¶0025. The specification in Verizon defines these as separate types of devices. Mobile devices are personal to a consumer, while additional network clients are located in vehicles delivering the advertisement—which means the vehicles are not “consumers.” The Petition ignores this distinction.

Paragraph 0044 of Verizon describes mobile unit 124 (not a consumer) distributing via a network, marketing content to nearby mobile devices 120 (consumer devices). “Users within 200’, 100’, 50’, or 10’, for example, of a mobile unit 124 [not a consumer] or display 114, may receive the same or similar marketing content on their mobile devices 120 that is being displayed on mobile unit 124.” Exh. 1004, ¶0044. There is only a mention of distance, not of geofencing. Paragraph 0036 of Verizon describes the geofencing and that the geofence is around the user device 120 (consumer, *see id.* at ¶0036) and not a first indication that the consumer is at a first location *within* a radius of the geolocation used for distributing the

marketing campaign, because the claimed geofence is not around the consumer it is around the location. Only an indication of the non-consumer mobile unit 124 being at a location in the consumer's radius of the geolocation is generated. There are similar descriptions in paragraphs 0046, 0052, and 0055.

Paragraph 0071 does not describe a radius of the geolocation, but rather “GPS coordinates, zip codes...IP addresses associated with a geolocation location... and a local access and transport area (LATA) or a Numbering Plan Area (NPA) code associated with a geographic location, for example.” Exh. 1004, ¶0071. Hence, Paragraph 0072 only describes non-geofencing (radius around a geolocation) approaches to determining a consumer's position.

Verizon paragraphs 0041-0044 do not describe a consumer embodiment. Rather, Figure 3 depicts a moving advertisement (van 124). As previously explained, this is not a consumer as required by claim 1 of the '108 patent.

The sophistry of the expert declaration ¶¶257-260 cannot change what is described and taught in the cited paragraphs of Verizon. For example, the Declaration applies the same faulty language as the Petition, interpreting the claim requirement of “receiving a first indication that the consumer is at a first location within a radius of the geolocation” as “receiving such first indication by describing *proximity* to the geolocation.” *Compare* Exh. 1002, ¶257 with Exh. 1001, 38:58-59. Paragraph 260 of the declaration relies on paragraphs 0041-0044 of Verizon and

states that the mobile device being discussed is “mobile unit 124.” Exh. 1002, ¶ 260. However, mobile unit 124 is a van with signage—not a consumer or consumer device. *See* Exh. 1004, Fig. 3. Thus, the Declaration uses a definition of “consumer” not supported by the ’108 patent.

As the cited paragraphs in the Petition fail to teach or describe the element of “receiving a first indication that the consumer is at a first location within a radius of the geolocation” of claim 1, there has been no showing of anticipation. As to obviousness, the Declaration opines that “to the extent that Verizon does not elaborately describe such aspects in exact terms of the claim, *a POSITA, such as, for example myself*, would have appreciated that the system of Verizon must receive some type of “indication,” such as instructions, a GPS ping on an internal map, or the like when the mobile unit 124 reaches ‘location 1’, ‘location 2’, etc.” Exh. 1002, ¶260 (emphasis added). There are two problems with this assertion.

First, mobile unit 124 is not a consumer or consumer device. Second, what is obvious, in hindsight, to a person having a Ph.D. in electrical engineering and forty years of experience as an engineer, *see* Exh. 1002, ¶¶4-5, is significantly greater than what would have been obvious to a person of ordinary skill in 2017 or 2018. Third, Dr. Goldberg must support his conclusions with evidence rather than unsupported assertions. *See Bytemark*, IPR2022-00624, Paper No. 12, at 4. Consequently, the

Petition has failed to show how this element of claim 1 is anticipated or rendered obvious by Verizon.

d. “assessing, in response to the first indication, the at least one element of profile data associated with the consumer;”

As discussed above, the required “first indication” of the previous element has not been taught or described in Verizon. Further, “assessing...the at least one element of profile data associated with the consumer” is not taught or described in Verizon paragraphs 0042-0043. As used in claim 1, this language requires profile data associated with the consumer to be accessed “*in response to the first indication*,” and as noted above, this indication has to do with the positioning of the consumer.

Verizon, on the other hand, focuses on mobile units (124) that are not consumers or consumer devices. For example, paragraphs 0042-0043 discuss mobile unit 124, which is a moving advertisement, not a consumer or consumer device. See Exh. 1004, ¶¶0042-0043. As shown in Figure 5 and described in paragraphs 50 and 51, mobile units (124), which are vehicles (vans or buses) or billboards that are part of the network element 110 and display ads, and they are distinct from mobile devices (120) belonging to consumers. These vans (124) are used to “monitor the location of mobile unit 124, mobile devices 120 [i.e., consumer devices], or displays 114, and may also monitor clock, calendar, forecasted

weather,” etc. Exh. 1004, ¶46. According to paragraph 0040, “the decision module may take into account user profiles and/or user settings before distributing marketing content to various mobile device 120.” *Id.* at ¶0040. The mobile unit 124 (not a consumer or consumer device (120)) is described in paragraph 0039 as:

Mobile unit **124** may also comprise a management module **210** which manages the display and/or distribution of marketing content.... A primary component of the management module **210** may include decision module **212**. The decision module **212** may determine whether to display marketing content.... The decision module **212** may take into account variables such as the categorizations and criteria of the marketing content, location and/or proximity of the mobile unit **124** to other mobile units, mobile devices **120**, or displays **114**, the time of day, day of the week, month, or year, and the current, or forecasted weather, for example.

Exh. 1004, ¶0039. Therefore, contrary to petitioner’s unsupported assertion, paragraph 0040 only describes a decision module 212 in the van or bus 124 as explained in paragraph 0039 of Verizon, which is not a consumer or consumer device. Paragraph 0050 of Verizon further supports that mobile unit 124 (a non-consumer device) is the device being used to determine if the content is to be displayed:

Additionally, all or a portion of the marketing content displayed on mobile units **124** [non consumer device] or displays **114**, near mobile device **120** (e.g., within viewing distance of), may be distributed to mobile device **120** in an unobtrusive manner, such as being displayed in a rolling list of marketing content within an application on mobile device **120**.

Exh. 1004, ¶0050. The content that is selected and displayed on the non-consumer device 124 may be distributed to mobile device 120 in *an unobtrusive manner*.

The Expert declaration fails to make a distinction between a consumer mobile device 120 and non-consumer devices, such as mobile unit 124. *See* Exh. 1002, ¶¶261-263. For example, in paragraph 263, Dr. Goldberg testifies that Verizon is responsive to profile data “to avoid irrelevant information” being sent to unit 124. Exh. 1002, ¶263. However, contrary to Dr. Goldberg’s testimony, Verizon does not “assess profile data” to determine whether to deliver content to mobile unit 124 because mobile unit 124 is part of the advertising network. Mobile unit 124 is not possessed by a consumer and so there is no profile data associated with mobile unit 124. *See, e.g.*, Exh. 1004, ¶0038 (noting a mobile unit 124 may have a “user profile comparator” but not a profile itself).

Petitioner has failed to meet its burden of establishing that this element is present in Verizon, and Petitioner has provided no evidence that a POSITA would

modify the teachings of Verizon to arrive at this limitation. Therefore, the Petition has not shown that this claim limitation is anticipated or obvious.

e. “receiving a second indication that the consumer is at a second location;”

Once again, the Petition conflates elements and then proclaims its own misinterpretation is found in the prior art: “Verizon discloses receiving a second indication and determining the course of travel.” Pet. at 11 (citing Verizon ¶¶0036, 0042-0043, 0045, 0053, 0058-0060). But this assertion, supported by yet more unexplained string cites, is also completely wrong. First, Verizon paragraph 0036 only states that:

Proximity may be dependent on multiple factors including specifics of the ad providing unit (e.g., type, size, location, speed of the mobile unit/display) and other nearby ad providing units, of the ad receiving unit (e.g., speed/direction of travel of the mobile device, specifics of the mobile device user), and of environmental conditions (e.g., rain, high smog day).

Exh. 1004, ¶0036. No second consumer location is received. Further, as previously described, paragraphs 0036, 0042-0042, and 0045 refer to the mobile unit 124 (van with adds) and not a consumer or mobile device 120. Paragraph 0053 discusses “[a]pplication module 510...used for storing, displaying, and searching marketing content.” Exh. 1004, ¶0053. No mention of a second

location or course of travel can be found in that paragraph. Paragraph 0058 mentions a rate of travel as a speed but fails to teach “a second indication that the consumer is at a second location” as required by in claim 1. Verizon paragraphs 0058-0060 also do not mention a second indication that the consumer is at a second location.

Petitioner’s Declaration at paragraphs 264 and 265 makes only a conclusory statement that Verizon discloses receiving a second indication, referring to the above paragraphs of Verizon, without explanation. *See* Exh. 1002, ¶¶264-265; *see also* *Bytemark*, IPR2022-00624, Paper No. 12, at 4 (conclusory expert opinions are entitled to little weight). The truth is that no second indication is found in Verizon, and no identification is provided in the Declaration. Moreover, no evidence is provided in the Declaration that a POSITA would find this element to be obvious or would modify Verizon to arrive at this element.

Therefore, Petitioner has failed to meet its burden of establishing this element is present in Verizon, and claim 1 is therefore not anticipated nor rendered obvious by Verizon.

f. “determining the course of travel based, at least in part, on an analysis of the first location and the second location”

The Petition and Declaration cite Verizon’s speed/direction of travel and proximity to various businesses as allegedly satisfying this limitation. *See* Petition

pp.11-12; Exh. 1002, ¶¶264-268. Yet, at least because the “course of travel” in this element is specifically defined as “based, at least in part, on an analysis of the first location and the second location,” Petitioner’s argument fails. First, Petitioner’s declaration superficially relies on Verizon paragraphs 0058 and 0047 to satisfy this limitation; however, those paragraphs discuss “manner of travel,” i.e., walking, driving. *See* Exh. 1002, ¶267; *see also* Exh. 1002, ¶¶0047, 0058. Yet, “manner of travel” is not claimed in this element. What is claimed is a course of travel based, at least in part, on an analysis of the first location and the second location.

Petitioner’s expert admits this limitation is missing when he states that “I understand that, to the extent Verizon does not disclose its tracking to include comparison of first and second locations, a POSITA would have appreciated Verizon’s implicit disclosure of speed and location tracking via known technologies such as GPS to disclose this detail.” Exh. 1002, ¶268. Implicit disclosure of speed and location does not address the course of travel using a first and second location, as required by the claims. The first location and second location are further defined in claim 1 as being specific to a location that a consumer is at when a first indication is received and a second location when a second indication is received. Exh. 1001, claim 1.

The Petition and Declaration have improperly reduced the claimed first location and second location to just whenever a GPS signal occurs, or whenever a

direction and speed are indicated by a GPS, which ignores the “first” and “second” limitations of the claim.

The Declaration states in paragraph 245 that course of travel “indicators” were being discussed, which may be interpreted as parameters used to determine a course of travel, but they are not the actual “course of travel.” *See* Exh. 1002, ¶245. That is, these indicators are not a first location and a second location. Even if indicators at a point and time may be used to determine a course of travel, no explanation is provided as to what knowledge a POSITA would need to have to enable determining a “course of travel” for a consumer. Finally, as with previous claim elements, the discussion in paragraph 263 of the Declaration again refers to the mobile unit 124 (a van with advertisements), not a consumer or mobile device 120. *See* Exh. 1002, ¶263.

Petitioner has failed to meet its burden of establishing this element is anticipated or rendered obvious by Verizon.

g. “establishing that the consumer is eligible for the content distribution campaign when the plurality of rules is satisfied”

The element is not disclosed because there is no content distribution campaign, there is only delivery of content in Verizon. *See* § VIII.A.4(a-b), *supra*.

5. Dependent Claims 2-12

Claims 2-12 depend from independent claim 1, and the limitations of claim 1 are part of the dependent claims. Petitioner failed to establish its burden of showing that every element of claim 1 is taught or described by Verizon or is rendered obvious by Verizon. Petitioner, therefore, has failed to show that every element of the dependent claims 2-12 are taught or described by Verizon or are obvious in view of Verizon.

6. Independent Claim 13: “A method comprising:”

- a. **“specifying a content distribution campaign comprising media content associated with a geolocation;**
- b. **specifying a plurality of rules for the content distribution campaign, wherein specifying the plurality of rules comprises:**
 - [b, i] specifying the geolocation,**
 - [b, ii] specifying a period of time, and**
 - [b, iii] specifying at least one action to be performed by a consumer;”**

Petitioner acknowledges that its claim element 13(b) has sub-elements 13(b)i-13(b)iii. *See* Pet., Appendix of Claims, p.vi. However, the Petition fails to specifically address these sub-elements and leaves it up to the Board to hunt for them in Verizon. Pet., 21–22. These unexplained string cites, again, are inadequate to meet the burdens of 35 U.S.C. § 312(a)(3) and 37 C.F.R. § 42.104(b). *See Bytemark*,

IPR2022-00624, Paper No. 12, at 4 (conclusory expert opinions are entitled to little weight).

Further, the Petition states that “[i]n comparison to claim 1, claim 13 recites specifying the geolocation as a sub-feature of specifying rules rather than the campaign itself. [According to Petitioner] [t]he difference does not appear to have a meaningful distinction in the claims and is not directly explained within the specification.” Pet., p.21. Thus, despite noting that this particular language of claim 13 is different from claim 1, the Petition erroneously asserts to the Board that the difference is meaningless. *CAE Screenplates, Inc. v. Henrich Fiedler GmbH & Co.*, 224 F.3d 1308, 1317 (Fed. Cir. 2000) (“In the absence of any evidence to the contrary, we must presume that the use of these different terms connotes different meanings”).

One of the three rules in claim 13 that is required to be met **prior to** distributing the content is [b, iii] “specifying at least one action to be performed by a consumer.” See Exh. 1001, 40:4-6. The Petition claims that “Verizon discloses a content distribution campaign rule including specifying an action by the consumer as recited, at least by disclosing communications based on how/whether the consumer ‘acted upon’ the content.” Pet. pp. 21-22. However, claim 13 requires the consumer act **before** the consumer is determined to be eligible for the content distribution campaign. Exh. 1001, 39:59-65 (specifying that a consumer action is one of the

required rules); 40:4-6 (specifying that the consumer is eligible for the distribution campaign “when the plurality of rules is satisfied”). Petitioner fails to identify where the claimed three rules are defined in Verizon, and it fails to show how Verizon’s alleged consumer action occurs *before* content delivery to the consumer.

The Petition and Declaration fail to provide any evidence that a POSITA would understand anything beyond what is provided within the four corners of Verizon, and the reference itself fails to teach or suggest the claim elements of specifying the geolocation, specifying a period of time, and specifying at least one action to be performed by the consumer. *See* Exh. 1002, ¶¶302-304. Further, no evidence is provided for what knowledge a POSITA would inherently know regarding all three rules set forth in claim 13.

c. “receiving a first indication that the consumer is within a radius of the geolocation;

The only evidence provided in the Declaration that a POSITA would find the claim element obvious is if the POSITA is an Expert. *See* Exh. 1002, ¶157 (“a POSITA, such as for example, myself”). Providing evidence that a POSITA must have forty years of experience and a Ph.D. in Electrical Engineering (*see* Exh. 1002 ¶4-5) is an application of an improper POSITA obviousness standard applied to the description and teachings of Verizon. Furthermore, the discussion provided in paragraph 260 of the Declaration, as well as in the Petition, refers to the mobile unit 124, not a consumer or mobile device 120.

Petitioner has failed to meet its burden of establishing that this element is present in Verizon, and claim 13 is therefore not anticipated by Verizon. Moreover, no evidence is provided in the Petition or Declaration (Exh. 1002) that a POSITA would modify the teachings of Verizon to arrive at the claimed invention; thus, the claimed element is not obvious over Verizon.

- d. Tracking the consumer in response to receiving the first indication to determine whether the consumer has performed the at least one action; and**

See § VIII.A.6(c), *supra*.

- e. “establishing that the consumer is eligible for the content distribution campaign when the plurality of rules is satisfied.**

See § VIII.A.6(a-b), *supra*.

The Petition and Declaration (*see* Exh. 1002, ¶307) provide no evidence that Verizon teaches this element, nor do they provide evidence it would have been obvious to a POSITA to modify Verizon to arrive at this claim element. Consequently, the Petition has failed to show that this element is anticipated or rendered obvious by Verizon.

7. Dependent Claims 14-19

Claims 14-19 depend from independent claim 13, and the limitations of claim 13 are part of the dependent claims. Petitioner failed to establish its burden of showing every element of claim 13 is taught or described by Verizon or obvious in view of Verizon. Petitioner, therefore, has failed to show every element of the

dependent claims is taught or described by Verizon or obvious in view of Verizon, as the dependent claims incorporate all the elements of the independent claim from which they depend.

Petitioner has failed to meet its burden of establishing this element is obvious or present in Verizon, and claims 14-19 are therefore not obvious or anticipated by Verizon.

8. Independent Claim 20: “A method comprising:”

- a. “defining at least one of the following for a registered asset:**

[a, i] a physical asset, and

[a, ii] virtual asset;”

The claim element requires that a registered asset must be a physical or virtual asset. However, the Petition ignores the word “registered”; nothing in the Petition describes where the “billboard, display” are registered to become registered assets, nor does it describe how an asset becomes registered in the cited prior art.

Further, Petitioner asserts that digital content shown on a display is a virtual asset. But this interpretation conflates “media content” with “registered asset,” both of which are limitations in claim 20. Therefore, Petitioner improperly asserts that two different claim elements have the same meaning as used in Verizon. *See Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2010) (“Where a claim lists elements separately, ‘the clear implication of the claim

language’ is that those elements are ‘distinct components’ of the patented invention.” (quoting *Gaus v. Conair Corp.*, 363 F.3d 1284, 1288 (Fed. Cir. 2004)).

The Petition and Declaration also fail to provide any evidence that a POSITA would understand anything beyond what was provided within the four corners of Verizon, see Exh. 1002, ¶318, regarding the claim 20 elements of “defining at least one of the following for a registered asset: (a) a physical asset, and (b) a virtual asset.” Exh. 1001, 40:32-34. Further, no evidence is provided that a POSITA viewing Verizon would find registering obvious. As a result, the Petition has failed to show that claim 20 is anticipated or rendered obvious by Verizon (Exh. 1004).

b. “defining a media content associated with the registered asset, the media content comprising a first message and a second message;”

The Petition has not addressed this element of claim 20. Rather, Petitioner asserts that the Verizon discloses (1) “defining media content to include first and second messages, such as subsequent ads of different types (e.g., wholly different businesses concerting the same asset (e.g., ¶[0042] airport, hotels, restaurants)); (2) small updates to original ads referring to different locations of the same business (e.g., ¶[0043] (minor modifications)); (3) updating different promotions for the same business, or different locations of a franchise (¶[0043]); or (4) a different frame of an advertisement (¶[0038]).

First, paragraphs 0038, 0042, and 0043 of Verizon are directed toward a non-consumer mobile unit 124. Paragraph 0038 does not mention mobile device 120 or consumers at all. *See* Exh. 1004, ¶0038. The paragraphs around paragraph 0038 must be read for context. What is described is mobile unit 124 or displays 114, not a mobile device 120 that is associated with a consumer. Verizon differentiates between the different devices and their operation. A moving billboard on a truck or signage on a bus displaying content differs from a consumer's personal experience. Paragraphs 0042 and 0043 of Verizon explicitly call out mobile unit 124 and do not describe mobile device 120 (i.e., the consumer). *Id.* at 0043-0044.

The element requires media content comprising a first message and a second message. However, the Petition fails to properly apply other elements' limitations on the first and second messages. The other elements require a set of rules for providing the media content to the consumer audience segment. Exh. 1001, 40: 40-43. Yet two other elements require associating the first message/second message with the consumer. Exh. 1001, 40:51-52, 55-56. The media content must be associated with the consumer.

Regarding (1), the first and second messages relied on by Petitioner are simply different ads for different businesses that are sent not to consumers or consumer segments but to a mobile unit 124. With regard to (2) and (3), there is only one message. Modifying a message results in only a change in the original message, not

a new one. Nothing in Verizon teaches or describes a modified message having different rules applied than the original message (i.e., fixing a grammatical error in a message does not change how that message is processed). Regarding (4), simply sending a message based upon the location of a media unit 124 does not establish more than one rule is being applied. The rule is to display the business's ad when close to the business. The Petitioner in the Partition has the burden of identifying to the Patent Owner and the Board, where the elements are specifically shown. Citing paragraphs without explanation does not meet the Petitioner's burden.

The Petition and Declaration also fails to provide any evidence that a POSITA would understand anything beyond what was provided within the four corners of Verizon, see Exh. 1002, ¶319, regarding the claim 20 element of “defining a media content associated with the registered asset, the media content comprising a first message and a second message.” Exh. 1001, 40:35-37.

Simply put, the Petition fails to show that Verizon anticipates or renders obvious this element of claim 20.

c. “defining a consumer audience segment to be delivered the media content”

This element requires a consumer audience segment to be defined, not verification of a characteristic in a user profile, before sending media content. User selection applies to an individual, but the claim term requires “a consumer audience segment.” The Declaration asserts that an individual user's selection somehow

defines an audience segment. Exh. 1002, ¶320. Yet aside from some more string cites that are unaccompanied by any parenthetical explanations, the Declaration—and the Petition—makes no effort to explain how one user setting could define an audience segment. *See Bytemark*, IPR2022-00624, Paper No. 12, at 4 (conclusory expert opinions are entitled to little weight).

d. “defining a set of rules for providing the media content to the consumer audience segment, the set of rules comprising:

i. a first rule corresponding a consumer’s location in association with the registered asset, and

See § VIII.A.8(a), *supra*. The Petition and Declaration provide no evidence as to what would be obvious to a POSITA.

Petitioner has failed to meet its burden of establishing this element is present in Verizon, and claim 20 is therefore not anticipated by Verizon. No evidence that a POSITA would modify the teachings of Verizon to arrive at the claimed invention is provided in the Petition or Declaration (Exh. 1002), and the claimed element is not obvious over Verizon.

ii. a second rule corresponding a consumer’s location in association with the registered asset, and

See § VIII.A.8(a), *supra*. The only indication of what a POSITA would understand is “that Verizon also teaches that action may include the user’s travel itself, from one location to another.” Exh. 1002, ¶322. But the claimed action cannot

be simply the user's travel itself; such a definition would conflate two claim limitations, because at **least one action is performed by a consumer during a course of travel**. Therefore, the Petition has failed to meet its burden of establishing that this element is present in Verizon, or that it would have been obvious to a POSITA.

e. receiving a first determination that the first rule has been satisfied;

The Petition and Declaration fail to distinguish between Verizon's consumer/mobile device 120 and mobile units 124. Mobile unit 124 is erroneously used for consumer elements. The Petition and Declaration also cites portions of Verizon with little or no explanation. *See* Pet., 29-30; Exh. 1002, ¶ 324. Further, no evidence of what a POSITA would find obvious is provided for this element.

f. associating the first message with the consumer upon the first rule being satisfied;

The Petition and Declaration fail to distinguish between Verizon's consumer/mobile device 120 and mobile unit 124. Mobile unit 124 is erroneously used for consumer elements. The Petition and Declaration also cites portions of Verizon with little or no explanation. *See* Pet., 29-30; Exh. 1002, ¶ 324. Further, no evidence of what a POSITA would find obvious is provided for this element.

g. receiving a second determination that the second rule has been satisfied; and

The Petition and Declaration fail to distinguish between Verizon's consumer/mobile device 120 and mobile unit 124. Mobile unit 124 is erroneously used for consumer elements. The Petition and Declaration also cites portions of Verizon with little or no explanation. *See* Pet., 29-30; Exh. 1002, ¶ 324. Further, no evidence of what a POSITA would find obvious is provided for this element.

h. associating the second message with the consumer upon the second rule being satisfied.

The Petition and Declaration fail to distinguish between Verizon's consumer/mobile device 120 and mobile unit 124. Mobile unit 124 is erroneously used for consumer elements. Further, an assertion is made that a POSITA would understand from Verizon's disclosure that updating in the form of "minor modifications" to earlier advertisements constitutes a second message. *See* Exh. 1002, ¶325. This makes little sense as there is only one message that is modified. Such an interpretation would result in an absurd outcome in patent law, where a device is non-infringing because it has only one message, but if an update to that message ever occurs, there are now two messages. Or infringers do not infringe because they do not send only one message in response to something because an error in that message has been corrected, and it is now a second message being sent.

It is also improper to cite paragraphs in the Petition while avoiding identifying what teachings or disclosures are being relied on in those paragraphs to teach or describe the claim element.

Petitioner has failed to meet its burden of establishing this element is present in Verizon, and claim 20 is therefore not anticipated by Verizon. No evidence that a POSITA would modify the teachings of Verizon to arrive at the claimed invention is provided in the Petition or Declaration (Exh. 1002), and the claimed element is not obvious over Verizon.

9. Dependent Claims 21-23

Claims 21-23 depend from independent claim 20, and the limitations of claim 20 are part of the dependent claims. Petitioner failed to establish its burden of showing every element of claim 20 is taught or described by Verizon or obvious in view of Verizon. Petitioner, therefore, has failed to show every element of the dependent claims is taught or described by Verizon or obvious in view of Verizon as the dependent claims incorporate all of the elements of the independent claim from which they depend.

Petitioner has failed to meet its burden of establishing this element is obvious or present in Verizon, and claims 21-23 are therefore not obvious or anticipated by Verizon.

G. GROUNDS III-V: Obviousness under 35 U.S.C. § 103 over Verizon in view of Geer, in view of Creemer or Scofield, in view of Creemer or Scofield and Geer.

The Petition fails to address any motivation to combine Verizon with Geer, or Creemer, or Scofield.¹ Instead, it is left up to the Patent Owner and Board to search through the Petition and Declaration to attempt to piece together such motivation from general statements and general cites. This failure alone negates the arguments in Grounds III, IV, and V. *See Axonics*, 73 F. 4th at 957 (noting the Board in an IPR must look to “whether the relevant artisan would be motivated to make the combination to arrive at the claims’ actual limitations”); *Apple*, 2020 Pat. App. LEXIS 7895, *15-16 (judges “are not like pigs, hunting for truffles buried in briefs”).

Making this undertaking even more difficult, Grounds 3-5 are all lumped together with no direction as to where the different references are being relied on. The Patent Owner or the Board should not have to use word search on a document to find where a reference is being used to discern a motivation to combine references.

1. Motivation to Combine

a. No motivation to combine Verizon and Geer (Ground III).

Geer is a “fan networking system (FNS)” that can be installed on portable smart devices (like smartphones) and offers event-customized services to fans at

¹ The same is true for Alcatel in Ground VI-VII. *See infra*.

events or venues, “such as messaging, fan groups, friends networking, mementos, coupons, and contests.” Exh. 1005, Abstract & ¶6. The field of the invention is described as “social networking at an event in a venue.” *Id.*, ¶2.

Thus, the first issue undermining a motivation to combine is that the Petition did not address why Geer, a patent directed at social media, would be utilized by a POSITA to develop a personalized, location-based advertising campaign, nor is there any explanation as to whether the teachings of Geer could even be successfully combined with Verizon. *See generally* Petition & Exh. 1002, ¶338. Indeed, Geer deals with a situation where like-minded people are already at an event, while Verizon attempts to influence purchases; there is no reason to combine the references.

Second, Petitioner asserts that “Geer discloses responsive activation of high-resolution tracking (“HIRES”)...to activate HIRES when a user crosses a geofence boundary for increased precision near the location of interest, while reducing phone battery consumption further away from the location.” Pet., p.34. However, many of Verizon’s devices (114, 112, 124 of FIG. 1) are non-consumer devices, and the Petition provides no evidence that battery power was an issue in Verizon. Nor is conserving battery power an issue in the ’108 patent. *See Axonics*, 73 F. 4th at 957 (motivation to combine must focus on achieving the claimed invention, not on combining references for some reason unrelated to the claims).

Third, no evidence is provided that precision was lacking in Verizon or that combining Geer's teachings to it would result in a different or improved result.

Fourth, a fan/user in Geer is at an event and has a general predetermined location. Because the general location is known, higher resolution could be helpful. In Verizon, mobile units and mobile devices are moving around a city or state, so their locations are changing. No explanation is provided as to why, when passing through a geofence, it would be advantageous in Verizon to reduce the power to save battery life using Geer's teachings when that geofence area is not the destination. The mobile device or mobile unit would be affected when in a geofenced area that is not the final destination if the approach of Geer was incorporated into Verizon.

For at least these reasons, a POSITA would not have been motivated to combine the teachings of Verizon with Geer to arrive at the claimed invention in the '108 patent, nor would a POSITA have any reasonable expectation of success if Verizon were combined with Geer.

Additionally, Verizon fails to teach or describe all the elements of the '108 patent claims 1, 13, and 20, as multiple elements are missing. *See* § VIII.A, *supra*. Geer only allegedly provides one element of independent claim 13, "a direct response to the first indication." Pet., p.34. If the combined references fail to teach or describe all the elements of independent claims, there can be no motivation to combine. *Univ. of Strathclyde v. Clear-Vu Lighting LLC*, 17 F.4th 155, 160-62 (Fed.

Cir. 2021) (reversing Board’s finding that claims were unpatentable for obviousness when the prior art failed to disclose or suggest a key limitation).

b. No motivation to combine Verizon and Creemer (Ground IV).

The Petition alleges that Creemer discloses “targeted-content delivery including rules corresponding to a consumer’s course of travel by consideration of the user’s path of travel” and that Creemer “also considers ‘estimated future positions’ in providing content.” Pet., p.8. The only motivation for combining Verizon and Creemer in the Petition is a word-for-word regurgitation from the Declaration. After hunting through the numerous paragraphs cited in the Declaration on page 9, discussion of a motivation to combine Creemer with Verizon was found in paragraph 252:

A POSITA would have been motivated to implement Creemer’s more complete consideration of the consumer’s path of travel into Verizon to promote precision, consideration of user circumstances, refinement of information, and/or otherwise to improve accuracy, reduce noise, and/or promote efficiency in targeted communications.

Exh.1002, ¶252. There are several issues with this conclusory argument.

First, the only discussion provided in the Declaration is what Creemer discloses in general and then what Creemer’s Abstract states. *See* Exh. 1002, ¶¶247-253,

270-273, 276. Cramer is only to be relied on, “to the extent that Verizon’s rules for speed/direction, proximity, and/or manner of travel do not disclose a course of travel.

Second, the Petition only relies on Creemer with respect to claim 1, and no mention is made concerning independent claims 13 and 20.

Third, Verizon mentions speed three times: speed of the mobile unit/display, speed/direction of travel of the mobile device, and mobile unit 124 being stopped or traveling at very low speeds. Exh. 1004, ¶¶0036, 0045. Thus, a POSITA looking at speed and direction would utilize Verizon’s teachings and would have no reason to review Creemer—in particular paragraphs 0062-0064 cited in the Declaration, Exh. 1002, ¶¶247-49—to determine how to make use of speed and direction.

Fourth, the Declaration also asserts that Creemer discloses consideration of mode of transportation and estimated future position. Exh. 1002, ¶¶250-251. But the Declaration fails to explain why a POSITA would consider mode of transportation and estimated future position relevant to Verizon. It appears that the Petition is merely relying on a portion of Creemer’s Abstract—*see* Declaration, ¶52 (citing Exh. 1006, Abstract, ll. 10-15) to supply a motivation to combine, but this brief reference is a conclusory motivation at best.

Additionally, Verizon fails to teach or describe all the elements of the ’108 patent claims 1, 13, and 20, as multiple elements are missing. *See* § VIII.A, *supra*.

If the combined references fail to teach or describe all the elements of independent claims 1, 13, and 20, there can be no motivation to combine. *Univ. of Strathclyde*, 17 F.4th at 160-62.

c. No motivation to combine Verizon and Scofield (Ground IV).

The Petition references Scofield for its “rule of course of travel through traffic patterns, navigational paths, and/or user trails to provide content.” Pet., p.9. To support this claim, the Petition provides a plethora of string cites with little or no explanation as to why each portion was selected, and the same string cites are duplicated in the Declaration without explanation. *Compare* Pet., p. 9 with Dec., ¶¶253-56. The Petition then asserts that a “POSITA would have modified Verizon by Scofield’s express course of travel to increase accuracy, reduce noise and/or otherwise promote efficiency in targeted communications. Pet, p. 9 (citing Dec., ¶¶253-56). After hunting through the multitude of string cites, there is nothing Patent Owner could find in Scofield that mentions or insinuates how to “increase accuracy, reduce noise and/or otherwise promote efficiency in targeted communications.” Nonetheless, this same flawed claim of motivation to combine is repeated in paragraphs 273 and 276 of the Declaration (Exh. 1002).

Simply citing example implementations and making unsupported assertions about the benefits of a reference fails to identify why a POSITA would look to that reference, how the alleged benefits would occur, and whether it would even be

practical or possible to make such a combination. It is not for the Patent Owner or the Board to identify a motivation to combine; rather, the Petitioner has the burden.

Additionally, Verizon fails to teach or describe all the elements of the '108 claims 1, 13, and 20 as multiple elements are missing, *see* § VIII.A, *supra*, and Scofield does not shore up those deficiencies. If the combined references fail to teach or describe all the elements of independent claims 1, 13, and 20, there can be no motivation to combine. *Univ. of Strathclyde*, 17 F.4th at 160-62.

d. No motivation to combine Verizon, Creemer, and Geer (Ground V)

See §§VIII.B.1(a) and VIII.B.1(b), *supra*.

2. Expert made no assertions in his Declaration regarding claim elements being taught or described by Creemer or Scofield in claims 13, 15-19, 20, and 22-23.

The Petition and Declaration do not rely on Creemer or Scofield to teach any element of independent claims 13 and 20, nor any elements of dependent claims 15-19 and 22-23. Therefore, it is improper to include claims 13, 15-19, and 20, 22-23 in Ground 4, as the arguments are the same as they are in Ground II based on Verizon.

Similarly, claims 13 and 15-19 in Ground 5 (Verizon, and Creemer or Scofield, further view of Geer) do not rely on Creemer or Scofield. Therefore, it is improper to include claims 13, 15-19 in Ground 5, as the arguments are the same as they are in Ground III.

3. Claims 1-23 Grounds III-V Obviousness

As the Petitioner has failed to meet its burden of establishing a motivation to combine the references contained in Grounds III-V, Patent Owner sees no need to address the alleged specific teachings of the combined references at this time.

H. GROUND VI-VII: Obvious under 35 U.S.C. § 103 over Alcatel in view of Verizon, and further in view of Geer.

1. Lack of Motivation to Combine.

a. No Motivation to combine Alcatel and Verizon

Once again, the Patent Owner and the Board must search through the Petition and Declaration to discern a motivation to combine. *See* Pet., pp. 38, 39, 41, 50-53. Combing through the citations on those pages results in the following statement, repeated multiple times in the Declaration:

POSITA would have...to increase accuracy, reduce noise, promote efficiency, and/or better recognize a desirable venue in communication tailored content.

See Exh. 1002, ¶¶343, 350, 373, 373, 406, and 412.

But the claims of the '108 patent have nothing to do with “better recogniz[ing] a desirable venue in communication tailored content.” *See Axonics*, 73 F. 4th at 957 (motivation to combine must focus on achieving the claimed invention, not on combining references for some reason unrelated to the claims). Nor is there any suggestion or mention in Verizon or Alcatel of a need or method to improve

accuracy or reduce “noise.” Simply put, the Petition does not establish a motivation to combine Alcatel with Verizon or with Geer.

b. Motivation to combine Alcatel, Verizon, and Geer

See § VIII.B.1(a), *supra*.

2. Claims 1-23 Grounds VI-VII Obviousness

As Petitioner has failed to meet its burden of establishing a motivation to combine the references contained in Grounds VI-VII, the Patent Owner sees no need to address the alleged specific teachings of the combined references at this time.

IX. SECONDARY CONSIDERATIONS

As the Petitioner has failed to meet its burden of establishing a *prima facie* case for any of the claims of the ’108 patent, much less a motivation to modify Verizon in Ground I, or a motivation to combine the references contained in Grounds III-VII, Patent Owner reserves the right to address secondary considerations, if needed, later in these proceedings.

CONCLUSION

Petitioner Foursquare has failed to establish that any of the at-issue claims are anticipated by Verizon or rendered obvious by any combination of the asserted prior art references. Therefore, institution by the Board of *inter partes* review is not appropriate, and the Board should deny the Petition.

August 30, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies service of Patent Owner BoardActive served this Patent Owner's Preliminary Response on the counsel of record for Petitioner Foursquare, Inc. by filing this document through the P-TACTS, as well as delivering a copy via electronic mail to the following:

Date: August 30, 2023

By: /s/ *Meredith Martin Addy*
Meredith Martin Addy

CERTIFICATE OF COMPLIANCE

This Petition complies with the type-volume limitations as mandated in 37 C.F.R. § 42.24, totaling 11,874 words. Counsel has relied upon the word count feature provided in Microsoft® Word for Mac Version 16.661.

Dated: August 30, 2023

By: /s/ Meredith Martin Addy