

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STODGE, INC. D/B/A POSTSCRIPT

Petitioner,

v.

ATTENTIVE MOBILE INC.,

Patent Owner.

Case IPR2023-01338
Patent No. 11,416,887

PATENT OWNER'S PRELIMINARY RESPONSE

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<i>Commscope Techs. v. Dali Wireless, Inc.</i> , IPR 2022-01242, Paper 23 (PTAB Feb. 27, 2023).....	9
<i>Crocs, Inc. v. U.S. Int’l Trade Comm’n</i> , 598 F.3d 1294 (Fed. Cir. 2010)	48
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<i>Lectrosonics, Inc. v. Zaxcom, Inc.</i> , IPR2018-01129, Paper 33 (PTAB Jan. 24, 2020)	60
<i>Leo Pharm. Products, Ltd. v. Rea</i> , 726 F.3d 1346 (Fed. Cir. 2013)	59
<i>Liberty Mutual Ins. Co. v. Progressive Cas. Ins. Co.</i> , CBM2012-00003 Paper 8 (PTAB Oct. 25, 2012)	26
<i>Lowe’s Home Centers, LLC v. Epistar Corp.</i> , IPR2018-00932, Paper 7 (PTAB Nov. 1, 2018).....	23
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<i>Sotera Wireless, Inc. v. Masimo Corp.</i> , IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020)	8
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<i>Vizio, Inc. v. Maxell, Ltd.</i> , IPR2022-01459, Paper 7 (PTAB Apr. 11, 2023)	8
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Ashley A. Bolt, <i>Combating Hindsight Reconstruction in Patent Prosecution</i> , 64 EMORY LAW J. 1137 (2015).....	34, 41, 48
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EXHIBIT LIST

Exhibit	Description
2001	Declaration Of Sam Malek, Ph.D.
2002	<i>Curriculum Vitae</i> of Sam Malek, Ph.D.
2003	Lex Machina, Motion Metrics Report for 543 orders issued by Magistrate Judge Christopher J Burke (CJB)
2004	<i>Attentive Mobile Inc., v. 317 Labs, Inc. d/b/a Emotive</i> , Case No. 1:22-cv-01163-CJB, Scheduling Order, Dkt. 29 (D. Del. Feb. 24, 2023)
2005	<i>Attentive Mobile Inc., v. Stodge Inc., d/b/a/ Postscript</i> , Case No. 1:23-cv-00087-CJB, Defendant Stodge Inc., d/b/a Postscript's Amended Answer and Counterclaims to Plaintiff's Complaint for Patent Infringement, Dkt. 50 (D. Del. Aug. 25, 2023)
2006	<i>Attentive Mobile Inc., v. Stodge Inc., d/b/a/ Postscript</i> , Case No. 1:23-cv-00087-CJB, Stipulation and Order Amending Schedule For Patent Infringement Counterclaim, Dkt. 74 (D. Del. Oct. 19, 2023)
2007	Lex Machina, U.S. District Court for the District of Delaware, cases between 2013-11-01 and 2023-11-07
2008	<i>Attentive Mobile Inc., v. Stodge Inc., d/b/a/ Postscript</i> , Case No. 1:23-cv-00087-CJB, Scheduling Order, Dkt. 20 (D. Del. Mar. 28, 2023)
2009	<i>Attentive Mobile Inc., v. 317 Labs, Inc. d/b/a Emotive et al.</i> , Case No. 1:22-cv-01163-CJB, Stipulation and [Proposed] Order to Modify Rule 16 Scheduling Order, Dkt. 52 (D. Del. Aug. 31, 2023)
2010	<i>Attentive Mobile Inc., v. Stodge Inc., d/b/a/ Postscript</i> , Case No. 1:23-cv-00087-CJB, Stodge Inc. d/b/a/ Postscript's Initial Invalidity Contentions (D. Del. July 27, 2023)

Exhibit	Description
2011	<i>Attentive Mobile Inc., v. 317 Labs, Inc. d/b/a Emotive</i> , Case No. 1:22-cv-01163-CJB, Defendant's Initial Invalidity Contentions (D. Del. June 28, 2023)
2012	<i>Attentive Mobile Inc., v. 317 Labs, Inc. d/b/a Emotive et al.</i> , Case No. 1:22-cv-01163-CJB, Joint Claim Construction, Dkt. 66 (D. Del. Oct. 13, 2023)
2013	Press Release PR Newswire, <i>Attentive Co-Founder & CEO, Brian Long, Recognized as DMN 2019 40UNDER40 Award, Winner</i> (Aug. 6, 2019), https://markets.businessinsider.com/news/stocks/attentive-co-founder-ceo-brian-long-recognized-as-a-dmn-2019-40under40-award-winner-1028421503
2014	Sacra.com, <i>Attentive is a marketing tool for mobile messaging</i> , https://sacra.com/c/attentive/
2015	Eric Lambert, <i>Demystifying Text Marketing, Text-Based Support and "Double Opt-In"</i> , https://www.linkedin.com/pulse/demystifying-text-marketing-text-based-support-double-eric-lambert
2016	Michael Scheiner, <i>Attentive Gets the Message Out</i> (Feb. 27, 2020); https://crm.org/news/attentive-gets-the-message-out
2017	Patrice Hendriksen, <i>Attentive's Compliance Features and Two-Tap Validated by Florida Federal Court</i> (Sept. 16, 2022), https://www.attentive.com/blog/attentives-compliance-florida-federal-court
2018	Abby Miller, <i>"DMN 2018 Award Winners"</i> (Jan. 25, 2019); https://www.dmnnews.com/dmn-2018-award-winners/
2019	2021 Glossy Awards, <i>Best Use of SMS, Attentive and Supergoop!</i>

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2020	The Tech Tribune, <i>2023 Best Tech Startups in NYC</i> , https://thetechtribune.com/10-best-tech-startups-in-nyc/
2021	Attentive Reviews & Product Details, https://www.g2.com/products/attentive/reviews
2022	Business Wire, <i>Attentive Ranks #6 World's Best Software for 2023</i> ”, (Sept. 27, 2023); https://www.businesswire.com/news/home/20230927658818/en/Attentive-Ranks-6-World%E2%80%99s-Best-Software-for-2023
2023	PRNewswire, <i>Attentive Ranked #8 on LinkedIn's 2020 Top Startups List in the United States</i> , (Sept. 22, 2020)
2024	The Cloud 100 (Aug. 8, 2023); https://www.forbes.com/lists/cloud100/?sh=6a9a510e7d9c
2025	G2 Fastest Growing Products for 2022, https://www.g2.com/best-software-companies/2022/fastest-growing?rank=23
2026	<i>Attentive's 2022 Year to Date</i> , https://www.attentive.com/year-to-date-2022
2027	BusinessWire, <i>Attentive Named to the 2023 Deloitte Technology Fast 500™</i> (Nov. 8, 2023); https://www.businesswire.com/news/home/20231108028698/en/Attentive-Named-to-the-2023-Deloitte-Technology-Fast-500%E2%84%A2?blaid=5291542
2028	Forbes, <i>Buying Soap Was Just the Start, Now The Company Wants to Text You, Too</i> (Apr. 29, 2022); https://www.forbes.com/sites/laurendebter/2022/04/29/buying-soap-was-just-the-start-now-the-company-wants-to-text-you-too/?sh=2f7416521073
2029	Attentive, <i>Convert visitors into subscribers</i> ; https://www.attentive.com/growth

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Exhibit	Description
2030	Patent information for Attentive Mobile Inc., https://www.attentive.com/legal/patents
2031	Attentive Debuts Signature "Two-Tap" Sign-Up Technology Within Instagram Stories; https://www.attentive.com/blog/attentive-instagram-stories
2032	Why SMS Marketing is The Way of The Future (plus, a spotlight on our friends at attentive®); https://www.sama-labs.com/why-sms-marketing-is-the-way-of-the-future-plus-a-spotlight-on-our-friends-at-attentive/
2033	Barry Levine, <i>Led by TapCommerce founders, startup Attentive launches SMS/MMS marketing platform</i> ; https://martech.org/led-tapcommerce-founders-startup-attentive-launches-smsmms-marketing-platform/
2034	Weetech Solution, <i>TapCommerce's founders are back with Attentive, a messaging startup that's raised \$13M</i> (Apr. 27, 2022); https://www.weetechsolution.com/blog/tapcommerce-founders-are-back-with-attentive
2035	U.S. Patent 10,366,400, <i>Reducing Un-Subscription Rates for Electronic Marketing Communications</i> , to Stephane Moreau et al., issued July 30, 2019
2036	U.S. Patent Appl., 2016/0140627 A1, <i>Generating High Quality Leads For Marketing Campaigns</i> , to Stephanie Moreau, et al., issued May 19, 2016
2037	Attentive, <i>Rethinking messaging-based customer communications</i>
2038	Attentive, <i>Text Message Marketing</i> , https://info.attentive.com/10x-revenue-email-marketing/

Attentive Mobile Inc. (“Patent Owner” or “Attentive”) submits this Preliminary Response to the Petition of Stodge, Inc. d/b/a Postscript (“Petitioner” or “Stodge”) seeking *inter partes* review of U.S. Patent No. 11,416,887 (“the ’887 patent”).

I. INTRODUCTION

The Board should deny institution for two reasons: (1) discretionary denial under *Fintiv* is appropriate, because the ’887 patent is challenged in two parallel litigations, one of which is scheduled for trial before a final written decision; and (2) the petition is not likely to succeed on the merits because it improperly uses hindsight to construct three- and four-reference combinations which still do not render obvious the challenged claims.

The sole ground asserted against the solitary independent claim relies on a hodge-podge of prior art disclosures, cherry-picked from three distinct references, and Petitioner fails to adequately articulate the resulting combination of teachings on which it relies. Even then, the cited prior art disclosures and purported combination still fail to disclose or render obvious key claim limitations, including a uniform resource identifier that deeplinks to a messaging application to auto-populate a message with the claimed information. Rather, the cited prior art, Khanna, discloses URLs that deeplink to web-based landing pages to display a product—a

feature that would be unnecessary and non-obvious to include in the non-webpage-based system disclosed in the primary prior art reference, Haggerty. None of the cited art discloses or suggests the challenged claims.

Petitioner's reliance on hindsight and the lack of motivation to combine are confirmed by extensive evidence supporting secondary considerations of non-obviousness. Patent Owner's "two-tap" sign-up technology satisfied a long-felt need upon its release, received extensive industry praise, and enjoys tremendous commercial success as a direct result of implementing the patented invention. This evidence demonstrates that a person of ordinary skill in the art would not have disassembled and reconstructed the prior art references contrary to their stated purposes to arrive at the claimed invention.

II. THE BOARD SHOULD EXERCISE ITS DISCRETION TO DENY INSTITUTION UNDER 35 U.S.C. § 314(a)

Because Congress's goal in enacting post-grant proceedings like IPRs was "to ... limit unnecessary and counterproductive litigation costs," Director Vidal has instructed the Board not to institute IPRs that would "increase, rather than limit, litigation costs." Director's Memo, *Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation* ("Guidance") at 1 (June 21, 2022).

The '887 patent is one of three patents asserted against Petitioner and one of two patents asserted against third party Emotive, in two different competitor litigations in the District of Delaware. Institution of a parallel IPR proceeding would needlessly increase the cost of resolving the '887 patent's validity, and the Board should exercise its discretionary authority to deny institution.

A. Factor 1: The District Court Has Not Granted A Stay

The first *Fintiv* factor asks “whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted.” *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6 (PTAB Mar. 20, 2020) (*precedential*). Here, the undisputed answer to both questions is **no**: Petitioner acknowledges no stay has been entered or requested in the parallel litigation (Petition 74), and Petitioner has identified no evidence that one will (or even might) be. To the contrary, evidence indicates that a stay is unlikely, particularly where there are two multi-patent cases against two different competitors. (EX-2003 (indicating Judge Burke has historically granted only 57% of motions to stay pending a PTAB proceeding); *SenoRX Inc. v. Hologic Inc.*, No. 12-0173-CJB, 2013 WL 144255, *9 (D. Del. Jan. 11, 2013) (denying a stay because the pending IPR and reexamination did not cover all asserted claims and the parties were competitors).)

Even where no stay has been requested, the Board has found Factor 1 to favor discretionary denial where “Petitioner present[ed] no evidence that it has requested a stay [] or that a stay is likely.” *Luxshare Precision Industry v. Amphenol Corp.*, IPR2022-00132, Paper 10 at 9 (PTAB May 3, 2022). Factor 1 weighs in favor of discretionary denial. *Samsung Elecs. Co., Ltd. v. Clear Imaging Research, LLC*, IPR2020-01399, Paper 13 at 11-12 (PTAB Feb. 3, 2021).

B. Factor 2: A First District Court Trial Is Expected Before The Statutory Deadline And A Second District Court Trial Is Expected Just After The Statutory Deadline

Factor 2—the implications of the district court and IPR schedules—also weighs for denial. *Fintiv*, IPR2020-00019, Paper 15 at 11-12, 17 (PTAB May 13, 2020) (*informative*); Guidance at 1.

Here, an IPR would overlap entirely with the district court litigations. Judge Burke has scheduled trial against Emotive for February 3, 2025 and final pretrial briefs are due January 3, 2025. (EX-2004 16-18.) Contrary to Petitioner’s assertion (at 75), Judge Burke has scheduled trial against Petitioner for April 7, 2025, and final pretrial briefs are due March 14, 2025. (EX-1027, 16, 18.) Furthermore, Petitioner asserted a counterclaim of patent infringement in district court, which will be decided at the same April 7, 2025 trial. (EX-2005 52; EX-2006 4.)

Should the Board institute, its final written decision deadline would be February 28, 2025—almost one month *after* the Emotive trial and just over one month before the trial against Petitioner, when all substantive work for trial is all but complete.

While Petitioner cites a 36-month median time-to-trial in Delaware, the District's median time-to-trial in patent cases is 27 months (or 842 days). (EX-2007 2.) Thus, trial against Emotive would be expected in December 2024, before the scheduled trial date of February 3, 2025. (EX-2004 18.) And trial against Petitioner would be expected in May 2025, consistent with the scheduled trial date of April 7, 2025. (EX-2008 18.)

That is, applying either the scheduled trial dates or the median time-to-trial, IPR would not be complete until the parties have duplicated most of the validity efforts and expended significant resources in litigating the validity of the '887 patent on three fronts—one at the PTAB and two in Delaware. If instituted, the IPR proceedings would not produce a result until *after* the first Delaware trial and *just before* the second Delaware trial, and the parties would spend a year expending precisely the “duplicative,” “unnecessary[,] and counterproductive litigation costs” that the AIA was designed to avoid. *Fintiv*, IPR2020-00019, Paper 11 at 5.

Accordingly, factor two heavily favors discretionary denial.

C. Factor 3: The Parties Will Have Invested Significant Resources In The Parallel Proceedings

Factor 3—the resources invested in parallel proceedings—favors denial “if, at the time of the institution decision [Feb. 28, 2024], the district court has issued substantive orders related to the patent,” such as “claim construction orders.” *Fintiv* at 9-10, n.16 (collecting cases).

The parties have invested significant resources in the parallel litigation against Petitioner over the last eleven months and against Emotive for the last fifteen months. Patent Owner has exchanged infringement and invalidity contentions with both Emotive (in May 2023 and June 2023 respectively) and Petitioner (in June 2023 and July 2023 respectively). (EX-2004 4; EX-2008 4.) Fact discovery is underway in both proceedings, and initial expert reports will be due in both cases just 2-3 months after the Board's institution decision. (EX-2004 5; EX-2008 5.)

The two Delaware litigations have consolidated only the claim construction hearing, scheduled for January 9, 2024. (EX-2009 2-3.) The court intends to issue its claim construction order within 60 days of the hearing—no later than March 9, 2024. (EX-2008 13.) By the time the Board reaches an institution decision, the Delaware court will very likely have issued its claim construction order or at least completed substantial work on the order.

In light of the overlapping schedules here and the redundant resources that *will be* wasted should IPR be instituted, this factor favors discretionary denial. *Fintiv* at 6; *NXP USA, Inc. v. Impinj, Inc.*, PGR2022-00005, Paper 20 at 7 (PTAB Aug. 25, 2022) (Board should consider “the duplicative efforts that will occur during the [] duration of [IPR]”); *Regeneron Pharmas. Inc. v. Novartis Pharma AG*, IPR2020-01317, Paper 15 at 17 (PTAB Jan. 15, 2021).

D. Factor 4: The Issues Overlap

Factor 4—the degree of overlap between the issues in the petition and those before the district court—also strongly supports denial. “[C]oncerns of inefficiency and the possibility of conflicting decisions [are] particularly strong” where “the Board [is] presented with substantially identical prior art arguments.” *Fintiv*, IPR2020-00019, Paper 11 at 12.

Here, both Petitioner and Emotive assert identical prior art in the district court—Haggerty, Demsey, and Khanna—against the ’887 patent. (EX-2010 11, 18-19; EX-2011 6.) On November 22, 2023, less than a week before Patent Owner’s preliminary response is due, Petitioner provided lead counsel in the district court litigation with a letter stipulating not to pursue “invalidity based on the same grounds set forth in the aforementioned petitions, nor any grounds that could have reasonably been raised in the aforementioned petitions.” The effect of such letter is unclear,

given that it was neither contained in the petition, nor filed with the district court. Regardless, Petitioner's stipulation under the circumstances here carries no weight, because it does not bar Emotive from litigating the very same invalidity challenges before the district court and does not "mitigate[] any concerns of duplicative efforts between the district court and the Board" or "of potentially conflicting decisions." *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 19 (PTAB Dec. 1, 2020).

The validity of the '887 patent in view of Haggerty, Demsey, and Khanna will be litigated in parallel proceedings. Because institution would multiply burden and create the possibility of inconsistent decisions, Factor 4 weighs in favor of discretionary denial.

E. Factor 5: Both Parties Are Parties In The Parallel Litigation

Factor 5 weighs in favor of denial because Petitioner is a defendant in the parallel litigation and, as such, will have a full, fair opportunity to litigate its invalidity contentions. *See Vizio, Inc. v. Maxell, Ltd.*, IPR2022-01459, Paper 7 at 21-22 (PTAB Apr. 11, 2023); *Nokia of Am. Corp. v. Godo Kaisha IP Bridge*, IPR2022-00755, Paper 9 at 13 (PTAB Nov. 2, 2022).

F. Factor 6: The Petition Does Not Present Compelling Evidence Of Unpatentability

Factor 6—the merits of the petition—also weighs against institution because, as detailed below, the petition fails to show even a “reasonable likelihood” that Petitioner would prevail on any challenged claim. *See* Section VI, *infra*. The petition certainly does not pass the higher threshold of a “compelling” unpatentability challenge that could preclude discretionary denial, which requires a determination that Petitioner is “highly likely” to succeed on the merits. Guidance at 4; *Commscope Techs. v. Dali Wireless, Inc.*, IPR 2022-01242, Paper 23, 3-4 (PTAB Feb. 27, 2023).

* * *

As all six factors weigh for discretionary denial, Patent Owner respectfully requests that the Board exercise its discretion to deny institution.

III. INADEQUACY OF THE PRIOR ART & THE NEED FOR IMPROVED ENGAGEMENT OF PROMOTIONAL CUSTOMERS ON MOBILE DEVICES

With the advent of Internet-connected mobile devices, vendors acquired new ways of engaging users. (EX-2001 ¶21; EX-1001 1:36-39.) Before the ’887 patent, users could open a vendor’s application or website on a mobile device to select a product or subscribe to promotions. (EX-1001 1:36-38.) For example, the user could provide payment information via the vendor’s application or website to complete a transaction. (*Id.* 1:38-40.)

However, these methods often involved pausing the user's current activity to redirect the user to the vendor's application or website. (*Id.* 1:40-45.) Excessive user input, e.g., clicking or tapping the screen, was necessary to complete not only this redirection but also any transaction or subscription. (*Id.*; EX-2001 ¶21.) These methods caused delay and placed additional burden on the user, often causing the user to leave the transaction/subscription before it was complete and depriving the vendor of a customer. (EX-1001 1:45-47.)

Accordingly, there was a need for an improved method for transitioning a user from one interface to another interface on a mobile device to complete, for example, an enrollment. (EX-1001, 1:48-52, cl. 1.)

IV. THE '887 PATENT'S NEW TECHNOLOGY PLATFORM FOR MESSAGING-BASED SUBSCRIPTIONS AND PAYMENTS FROM A MOBILE DEVICE

A. Overview

The '887 patent discloses an improved technology platform and method for completing messaging-based subscriptions, communications, and/or purchases that a user initiates from a website viewed on a mobile device. (EX-1001, 2:55-65, 1:30-35; EX-2001 §IV(A).)

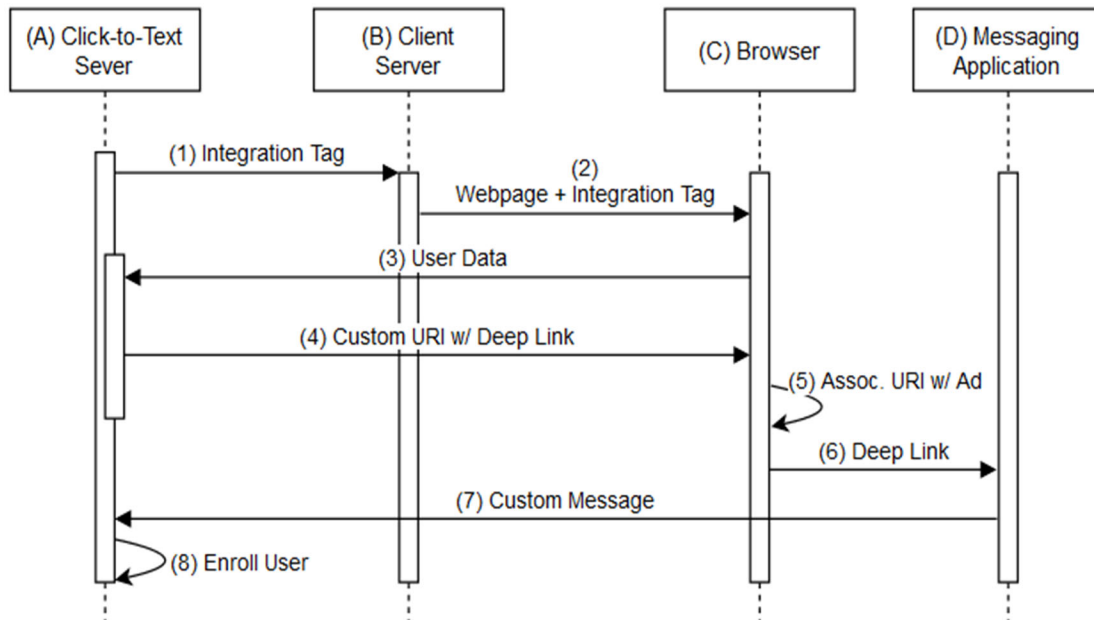
The '887 patented invention relies on a "custom-generated mobile deeplink." (EX-1001 3:8-23.) It claims defining and sending a "uniform resource identifier

(URI)” to a mobile device, capable of deeplinking to a messaging application, automatically transitioning the user from a first application to the messaging application when the user engages with a client’s web-based promotional message, and automatically populating a custom message using certain data in order to send that message to a server and enroll the device in a promotion without the user having to provide any additional information. (*E.g.*, EX-1001 cl. 1.) By doing so, the ’887 patent improved a user’s experience while shopping and interacting with a client’s webpage on their mobile device and increased user engagement with the client’s promotional messaging and marketing efforts. (EX-1001 20:32-37.)

The ’887 patent’s platform is implemented between three parties connected via a network: a click-to-text server—e.g., a server for executing a click-to-text process (EX-1001, Fig. 1, 4:52-61, 5:26-38); a client server hosting a webpage (*id.*, cl. 1, 12:64-67); and a user’s mobile device loading the client’s webpage (*id.*). The click-to-text server sends an “integration tag,” e.g., code representing integrator instructions configured to be served with a webpage, to the client server. (EX-1001 5:35-38, 11:59-12:14, cl. 1.) When a user’s mobile device loads the webpage in a mobile application, e.g., a browser, the integration tag may be executed and cause the mobile device to send user data to either the client server or the click-to-text server. (EX-1001 8:14-25, 12:22-32, cl. 1.)

In response to the mobile device executing the integration tag, the click-to-text server defines and sends a uniform resource identifier (URI) to the mobile device. (EX-1001 4:11-27, 10:16-36, cl. 1.) When the user interacts with a promotion message associated with the webpage, the URI deeplinks to a messaging application, causing the device to automatically transition to a messaging application. (EX-1001 9:4-17, cl. 1.) The URI also causes the device to auto-populate a custom message that includes (a) an address associated with the click-to-text server, and (b) a message body having an identifier associated with the webpage or the user data. (EX-1001 cl. 1, 9:4-17, 15:14-18.)

When the user taps the send button of the messaging application, the mobile device sends the custom message to the click-to-text server. (EX-1001 3:36-42, cl. 1.) And upon receiving the custom message, the click-to-text server—without receiving additional information from the mobile device—enrolls the device in the associated promotion. (EX-1001 3:43-53, cl. 1.) This process is illustrated in the sequence diagram below:



(EX-2001 ¶28.)

In this way, the patented technology platform may be used to implement a “two-tap” enrollment. (EX-1001, 3:3-7 cl. 1; EX-2001 ¶27.) In doing so, the platform may avoid the need for the user to interact with a vendor-specific interface through which a subscription or sign-up is traditionally made. (EX-1001, 20:23-28.) But more importantly, the click-to-text process provides dynamic application deeplinking, such that the user’s interaction with a client via a first interface continues seamlessly to a second user interface at the mobile device and facilitates a completed enrollment without the need for additional information, time, or engagement from the mobile device. (EX-1001, 20:28-32, cl. 1; EX-2001 ¶29.) By doing so, the ’887 patent improved a user’s experience while interacting with a

client's webpage on a mobile device and increased user engagement with the client's promotional messaging and marketing efforts. (EX-1001 20:32-37; EX-2001 ¶29.)

During prosecution, the examiner specifically noted novel improvements over the prior art. The examiner found that, while references in isolation disclosed click-to-text servers, integration tags, or deep links, "none of these, alone or if combined, teach or suggest every limitation of the claims of the present invention, and particularly the interaction of the tag and user causing an enrollment with a *de minimis* amount of information having been provided, in combination with the other elements of the claims of the present invention." (EX-1004 41.)

B. Claim Construction

Petitioner takes conflicting claim construction positions between the parallel proceedings. Here, Petitioner contends the Board need not construe any claim terms. (Petition 19.) In the district court litigation, Petitioner has proposed constructions for *six* claim terms. (See EX-2012 3-13.)

Due to Petitioner's decision not to raise these issues in its petition, Patent Owner presumes Petitioner agrees the terms of the '887 patent do not require construction, as their plain and ordinary meaning is easily understood. Accordingly, Patent Owner and its expert apply the plain and ordinary meaning of all claim terms. (EX-2001 §IV(B).)

C. Level of Ordinary Skill in the Art

A POSITA at the time of the invention of the '887 patent (May 2017) would have had a bachelor's degree in an accredited program of computer science, computer engineering, electrical engineering, or a similar discipline, and have 2-3 years of practical work or research experience in mobile and web application programming. More advanced degrees and/or training in a related discipline can compensate for shorter work experience. (EX-2001 §IV(C).)

V. OVERVIEW OF THE PRIOR ART¹

Petitioner relies on a cobbled-together compilation of prior art references much like those the examiner found to be deficient during the prosecution history. Specifically, in Ground 1, Petitioner alleges that elements of the claimed invention were known in the prior art and that a POSITA would have been motivated to combine the teachings of Haggerty, Demsey, and Khanna. (Petition 9-17.)

¹ Petitioner's Grounds 2-4 rely on Ground 1's three-reference combination as allegedly rendering obvious the sole independent claim. Because Petitioner has not shown a reasonable likelihood of success as to Ground 1, all grounds fail for similar reasons, and there is no need to address the additional prior art raised in Grounds 2-4, here.

However, these references are implemented in distinct advertising mediums and environments, employ very different and unrelated techniques, and pursue discrete goals.

A. Overview of Haggerty

Haggerty discloses a method for integrating 2D barcodes or links embedded in electronic reading material with a call center. (EX-1007, Title, 1:53-57, cls. 1, 6; EX-2001 §V(A).) While use of 2D barcodes and links were often used for linking to web sites or electronic media, Haggerty sought to “furnish other capabilities that provide a more personalized response for information requests that involve, for example, accessing a call center.” (EX-1007 1:53-57.)

Haggerty's first embodiment applies to links embedded in electronic reading material. (EX-1007 10:59-65, Fig. 2; EX-2001 ¶¶40-41, 44.) Haggerty discloses a publisher of electronic reading material that communicates with a call center. (EX-1007 8:9-11.) Exemplary publishers include Amazon, Apple, and Barnes & Noble, which routinely provide electronic versions of books, newsprint, and periodicals. (EX-1007 8:11-21.) Users—e.g., subscribers with the publisher—download instances of electronic reading material to a proprietary device, like an Amazon Kindle or Barnes & Noble Nook. (EX-1007 8:16-24.) When users select an embedded link, the system “may gather additional information from the reader such

as a telephone number [] the reader may be contacted at,” (*id.* 11:7-10, 14:64-15:1), or a message is sent to the publisher to retrieve this information from its stored subscription data (*id.* 14:52-54, 15:5-35). The publisher forwards this contact information to a call center agent, who initiates further contact. (EX-1007 15:5-35.)

Haggerty's second embodiment applies to 2D barcodes, e.g., a quick response (QR) code, presented in mailers, newspapers, magazines, billboards, etc. (EX-1007 9:9-11, 10:7-17; EX-2001 ¶¶42-44.) When a user uses a mobile device's camera or application to “read” the QR code, an action is initiated, such as providing contact information, defining a calendar event, indicating an email address or phone number, sending a SMS message, initiating a call, etc. (EX-1007 9:26-38.) Such action may be directed to a call center to prompt follow-up by a call center agent. (*E.g.*, EX-1007 Figs. 4A-4F; EX-2001 ¶¶42-44.)

Thus, Haggerty discloses a method for integrating 2D barcodes or embedded links with a call center, allowing an agent to follow-up with the user to provide information on a good or service. (EX-1007 1:53-57, cls. 1, 6.)

B. Overview of Demsey

Demsey discloses a system and method for cross-browser advertising ID synchronization—*i.e.*, facilitating the selection of advertisements for a user based on

historical user data collected across multiple of the user's browsers and internet devices. (EX-1005, Title, [0009]; EX-2001 §V(B).)

Demsey explains that ad networks typically have hundreds or thousands of partners that publish online content along with "ad tags" provided by their partner ad network. (EX-1005 [0005].) The ad network's ad tag on each site may access cookie data to learn more about a user's browsing history across its network. (*Id.*) But most users access the Internet from more than one device. (EX-1005 [0007].) Existing cookies stored advertising identifiers specific to a single device or browser. (EX-1005 [0007]-[0008], [0021].)

Accordingly, Demsey discloses a method for synchronizing user IDs across devices and browsers to support internet-based advertising. (EX-1005 [0038].) When a user visits a webpage hosted by the publisher's server, the publisher sends an ad request to an ad server that includes a unique ID assigned to the user. (EX-1005 [0039], Fig. 2.)

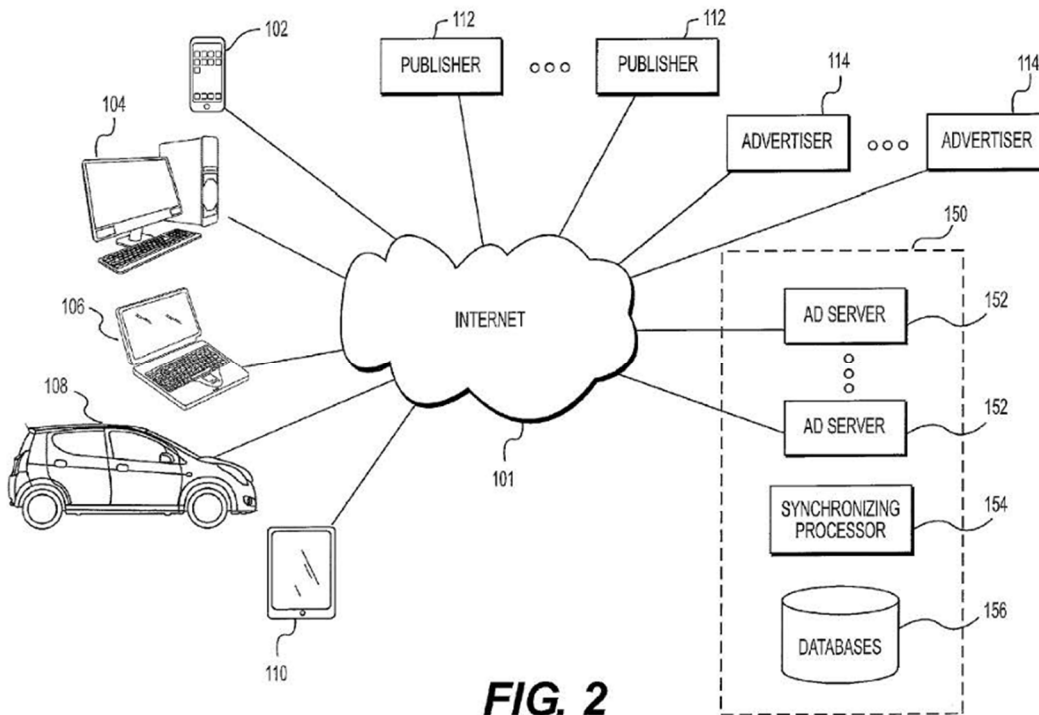


FIG. 2

Demographics or browsing history information generated from the user's use of the device is provided to an ad server and/or synchronizing server. (EX-1005 [0040]; EX-2001 ¶¶47-49.)

When a user subsequently uses a browser from a different device, and an ad request is received, an ad server and/or synchronizing server may look up demographic and/or browsing history information generated from the user's use of the first device. (EX-1005 [0040]-[0042]; EX-2001 ¶50.) Based on this information, the server determines an appropriate advertisement to display to the user. (EX-1005 [0041]-[0042].)

C. Overview of Khanna

Khanna discloses a method and system for launching an application from a webpage to display a product landing page. (EX-1006, Title, Abstract, cl. 1; EX-2001 §V(C).) Specifically, Khanna discloses specialized “content items”—i.e., data provided over a network which contains two “data elements.” (EX-1006 [0029], [0005], cl. 1.) The first data element identifies an application, and the second data element identifies a product. (EX-1006 [0005], cl. 1.)

Khanna notes that its method allows publishers or advertisers to create content items that “deep-link directly to the content within their applications.” (EX-1006 [0025].) Khanna defines “deep-linking” as “making a hyperlink that points to a specific content (e.g., a webpage or image) on a destination website, instead of that website’s main or home page.” (EX-1006 [0030].) When a user selects the content item, the method checks to see if the specified application is installed, transmits a request containing the first data element to a server to install the application, and launches the application with the second data element as an input, such that the first content displayed by the application relates to the product. (EX-1006 Abstract, cl. 1, [0026]-[0027]; EX-2001 ¶¶53-56.)

Users may be presented with multiple applications capable of handling the landing page, allowing them to select their preferred application. (EX-1006 [0063].)

Users may also be presented with a single option and required to input their permission to launch the application. (*Id.*) Thus, Khanna discloses a method for launching an application from a webpage to display a product's landing page. (EX-1006, Title, Abstract, cl. 1.)

The '887 patent acknowledges known prior art methods similar to Khanna—e.g., methods which “allow a user to open a vendor's application or a vendor's website on a mobile device,” where the user had the option of completing a transaction. (EX-1001 1:36-40.) The '887 patent explains that the disadvantage of such methods is that they typically involve further user input (clicks or screen taps) to provide information or payment to complete the transaction. (EX-1001 1:40-45.) “This time-consuming and burdensome process results in many users leaving the purchase before the transaction is complete.” (EX-1001 1:45-47.)

**VI. THE BOARD SHOULD DENY INSTITUTION BECAUSE
PETITIONER IS NOT REASONABLY LIKELY TO PREVAIL ON
ANY CLAIM**

The Board should deny institution because the petition fails to show a reasonable likelihood of success on any claim. “In an *inter partes* review, the burden of persuasion is on the petitioner. . . . Failure to prove the matter as required by the applicable standard means that the party with the burden of persuasion loses on that point—thus, if the fact trier of the issue is left uncertain, the party with the burden

loses.” *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378-79 (Fed. Cir. 2015); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (Petitioner has the “burden from the onset to show with particularity why the patent it challenges is unpatentable.”).

The petition presents four grounds:

Ground 1	Section 103(a)	Obvious over Haggerty in view of Demsey and Khanna	Claims 1-2, 13-14
Ground 2	Section 103(a)	Obvious over Ground 1 and Rakavy	Claims 1-4, 6-10, 13-14, 19
Ground 3	Section 103(a)	Obvious over Ground 1 and <i>Ad Serving Technology</i>	Claims 1-2, 5, 13-18
Ground 4	Section 103(a)	Obvious over Ground 1 and Molinet	Claims 1-2, 11-14, 20

Petitioner’s grounds—all of which rely on Ground 1 as allegedly rendering obvious the sole independent claim 1—suffer from two critical deficiencies. First, Petitioner cherry-picks disclosures from three incompatible prior art references, while failing to adequately articulate how the resulting combination would work and/or why a POSITA would be motivated to combine the chosen disclosures. Second, Petitioner’s three-reference combination fails to disclose key limitations of the ’887 patent, and no POSITA would have been motivated to modify or combine the references to overcome these deficiencies.

A. Petitioner Does Not Explain How The Combination of Haggerty, Demsey, and Khanna Renders Obvious The Independent Claim

“It [i]s Petitioner’s ‘burden to explain to the Board how’ the combination of references ‘rendered the challenged claims unpatentable.’” *TikTok Inc. v. Advanced Coding Techs. LLC*, IPR2022-01546, Paper 9 at 7 (PTAB June 15, 2023) (citing *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016)). Petitioner fails to meet this burden.

1. Petitioner does not adequately articulate a combination of the prior art.

Petitioner selects disassociated disclosures from three references, reciting what each reference purportedly teaches *individually* but failing to assert a consistent argument of “what the *combined teachings* of those references would have suggested to those of ordinary skill in the art.”² *In re: Keller*, 642 F.2d 413, 425 (CCPA 1981).

“It is Petitioner’s burden to explain specifically how the references would be combined to produce the claimed invention.” *Lowe’s Home Centers, LLC v. Epistar Corp.*, IPR2018-00932, Paper 7 at 19 (PTAB Nov. 1, 2018) (citing *TriVascular, Inc. v. Samuels*, 812 F.3d 1056, 1066 (Fed. Cir. 2016); *In re Magnum Oil Tools Int’l*,

² All emphasis supplied, unless noted otherwise.

Ltd., 829 F.3d 1364, 1380 (Fed. Cir. 2016)). While the features of a secondary reference need not be bodily incorporated into the structure of the primary reference, “[a] clear, evidence-supported account *of the contemplated workings of the combination is a prerequisite* to adequately explaining and supporting a conclusion that a relevant skilled artisan would have been motivated to make the combination and reasonably expect success in doing so.” *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017) (overturning a decision where “the Board nowhere clearly explained, or cited evidence showing, *how* the combination of the two references was supposed to work”).

Petitioner attempts to address the prior art combination and alleged motivation to combine up front, at Section III(C). Then the petition makes extremely brief mentions of the purported combination within individual limitations. (E.g., Petition 36 (limitation 1[a](b)), 38-39 (limitation 1[b]), 43-44 (limitation 1[d](b).) But neither the general motivation-to-combine section nor the cursory mentions of a combination in certain limitations meets Petitioner's burden to explain “the contemplated workings of the combination.” *Pers. Web Techs.*, 848 F.3d at 994. Petitioner fails to acknowledge or address the modifications necessary to combine the cited prior art teachings and is inconsistent in describing how the teachings will purportedly be combined.

When attempting to combine Haggerty's and Demsey's teachings, Petitioner contradicts itself on how each reference should be modified and fails to articulate the contemplated workings of the resulting combination. Petitioner alternates between suggesting that a POSITA would use Demsey's technique to carry out Haggerty's method (Petition 28, 43-44, 46) and suggesting that a POSITA would use Haggerty's call center to implement Demsey's method. (Petition 38-39, 45, 48.) Petitioner further alternates between suggesting the combined teachings would be carried out within the context of Haggerty's environment—i.e., users interacting with electronic reading material and a call center (Petition 46, 49-51)—and/or Demsey's environment—i.e., users interacting with web-based ads, webpage-hosting servers, and ad servers (Petition 40-41, 45).

The addition of Khanna's teachings only further complicates Petitioner's lack of clarity. Petitioner asserts a POSITA would have been motivated to use Khanna's techniques to carry out Haggerty's method. (Petition 28, 31.) But once again, Petitioner alternates between suggesting that Khanna's teachings regarding a content item would be implemented within Demsey's web-based advertisements and associated environment (Petition 29, 42, 44-45) and/or Haggerty's electronic reading material and associated environment (Petition 43-44, 46). Thus, Petitioner never clearly articulates any resulting combination of the three references' teachings.

As a result, Petitioner leaves it up to the Board (and Patent Owner) to interpret what the combined teachings might suggest to a POSITA or how the resulting combination might function. “It is not the Board’s job to cobble together assertions from different sections of a petition or citations of various exhibits in order to infer every possible permutation of a petitioner’s arguments,” and such an approach is insufficient to meet Petitioner’s burden. *Microsoft Corp. v. FG SRC, LLC*, 860 Fed. Appx. 708, 713 (Fed. Cir. 2021); *Liberty Mutual Ins. Co. v. Progressive Cas. Ins. Co.*, CBM2012-00003 Paper 8 at 14 (PTAB Oct. 25, 2012).

Moreover, institution on this petition would be prejudicial to Patent Owner. Because Patent Owner is unable to discern the manner in which Petitioner suggests Haggerty, Demsey, and Khanna should be combined, Patent Owner is limited in its ability to address some unspecified combination of teachings. *T-Mobile US, Inc. v. TracBeam LLC*, IPR2015-01687, Paper 10 at 20 (Feb. 12, 2016) (“[w]e will not...improperly shift the burden of deciphering the arguments onto the Patent Owner”). Additionally, institution would enable Petitioner to develop arguments not initially presented in the petition. *ADT LLC v. Vivint, Inc.*, IPR2022-00642, Paper 7 at 13-14 (PTAB Oct. 4, 2022).

Because Petitioner does not clearly articulate “*the contemplated workings of the combination*,” Petitioner’s grounds cannot succeed. *Pers. Web Techs.*, 848 F.3d at 994.

2. Petitioner does not articulate sufficient motivation to combine the teachings of Haggerty, Demsey, and Khanna.

Petitioner’s combination of three different methods, implemented in dissimilar environments with unrelated goals, is unsupported by any rationale sufficiently demonstrating a POSITA’s motivation to combine these references. (EX-2001 §VI(A).)

“[A] patent composed of several elements *is not proved obvious by merely demonstrating that each of its elements was, independently, known in the prior art*....[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Petitioner must put forward some “explanation as to how or why the references would be combined to arrive at the claimed invention...[otherwise] hindsight bias [becomes] the thread that stitches together prior art patches into something that is the claimed invention.” *Metalcraft of Mayville, Inc. v. The Toro Co.*, 848 F.3d 1358, 1367 (Fed. Cir. 2017) (citation omitted). Hindsight reconstruction of the claimed invention must be carefully guarded against. *KSR*, 550 U.S. at 418.

Petitioner describes Demsey and Khanna as both having a “natural technological relationship” and being “intended for use with web-based advertising.” (Petition 29-30.) But a “cursory assertion that the references are drawn from the same broadly characterized field” is insufficient to meet Petitioner’s burden. *Securus Techs., Inc. v. Global Tel*Link Corp.*, IPR2015-00155, Paper 30 at 17 (PTAB Apr. 7, 2016).

Petitioner then asserts that a POSITA would have found it obvious to implement Haggerty’s method using these “web-based advertising” techniques of Demsey and Khanna. (Petition 29-30.) But Haggerty does not disclose web-based advertising, and Petitioner neither acknowledges this nor explains how or why a POSITA would have looked to web-based techniques. (EX-2001 ¶¶63-66.)

As explained, Haggerty discloses a method for integrating QR codes or links embedded in electronic reading material with a call center. (Section V(A), *supra*.) Haggerty’s innovation was using such links to “provide a more personalized response for information requests that involve, for example, accessing a call center.” (EX-1007 1:53-57, Title, cl. 1; EX-2001 ¶64.)

However, Haggerty does not disclose a webpage, a webpage-based advertisement, and/or any method that involves a user device loading a webpage in a browser, making its method and goals quite distinct from those of Demsey and

Khanna. (EX-2001 ¶¶65-66.) Where a subscriber downloads a digital book to their Amazon Kindle, selects an embedded link they came across when reading, and initiates Haggerty's integration to then message their publisher and receive a follow-up call from the call center, there is no need to load a webpage in a browser, and there is no web-based advertisement. (EX-2001 ¶65; Section V(A), *supra*.)

Petitioner does not address this critical distinction between Haggerty and Demsey/Khanna or explain why a POSITA would have been motivated to apply techniques "intended for use with web-based advertising" (Petition 29) to implement a non-web-based integration method. As Haggerty does not disclose a user device loading a webpage, there would be no reason to incorporate Demsey's purported disclosure of serving ads to webpages. (EX-2001 ¶67.) And there would further be no reason to incorporate Khanna's method for launching a vendor's application from a content item in a webpage to display a product landing page. (EX-2001 ¶71.)

While Petitioner asserts that "Haggerty further teaches that its links can be incorporated into electronic advertising," Petitioner still does not address the distinction between Haggerty's non-web-based links and Demsey/Khanna's techniques for web-based content. (Petition 30 (citing EX-1007 14:41-49).) Furthermore, the cited portion of Haggerty does not support such a broad conclusion.

Rather, Haggerty teaches applying its teachings to electronic reading material that must be downloaded to a proprietary reading device to be viewed. (*E.g.*, EX-1007, 10:62-65, 17:64-68, cls. 1, 6, 11.) Haggerty gives examples of “electronic reading material”—e.g., a digitized book, newsprint, or periodical. (EX-1007 14:41-49.) The fact that the material is electronic or that it may contain a link does not inherently disclose a webpage or web-based advertisements. (EX-2001 ¶¶66.) For example, a downloaded pdf-format document is electronic and may contain embedded links, but such a document is not a webpage. (*Id.*) Petitioner, itself, seeks a construction of “webpage” in the district court that requires “a specific page within a website,” which Haggerty does not disclose. (EX-2012 12.)

With respect to Demsey, Petitioner asserts a POSITA would use Demsey’s internet ad technique to increase the reach of Haggerty’s marketing efforts “to better target advertisements to particular users.” (Petition 30-31.) But Demsey’s technique specifically “leverag[ed] modern browsers” to offer “the ability to synchronize storage across browsers linked to a single user.” (EX-1005 [0021].) Where Haggerty’s “efforts” were geared towards expanding the capabilities of non-web-based embedded links or barcodes and not web-based content, a POSITA would have no reason to implement Demsey’s browser-reliant technique. (EX-2001 ¶¶68-70.)

Thus, a combination of Demsey's web-based advertising techniques and Haggerty's integration method "would require a substantial reconstruction and redesign" of at least one of these references and a change in its principles of operation, further supporting that such a combination is the result of hindsight bias. *See In re Ratti*, 270 F.2d 810, 813 (CCPA 1959). Again, Petitioner does not acknowledge this distinction or explain how (or why) a POSITA might have modified Demsey's teachings or Haggerty's teachings to combine them.

As for Khanna, Petitioner asserts a POSITA would have used Khanna's internet ad technique to increase the reach of Haggerty's marketing efforts "and to account for conversions of deeplinks." (Petition 30-31.) First, Khanna's method relies on web-based content items containing the data elements necessary to deeplink to an application landing page. (Section V(C), *supra*; EX-2001 ¶72.) Yet Petitioner does not explain how a POSITA would apply Khanna's teachings to Haggerty's method, which does not involve a web-based content item, or how Khanna's teachings might be modified to be applicable to Haggerty.

Second, it is unclear what Petitioner means by "account for conversions" of deeplinks. To the extent Petitioner refers to Khanna's teaching of transmitting conversion tracking information (e.g., information on how many users engaged with an advertisement) (EX-1006 [0042], [0044]), Petitioner never actually argues that

such a teaching would be implemented within the resulting combination of Haggerty/Demsey/Khanna or how it might be implemented. Furthermore, this purported benefit could be achieved from any inclusion of Khanna's specialized web-based content item (since the content item contains the data element for conversion tracking)—without necessarily deeplinking and certainly without deeplinking to a messaging application. (*See* EX-1006 [0044]; EX-2001 ¶¶73-74.) Thus, even this alleged benefit does not explain why it would have been obvious to a POSITA to modify Khanna's deeplinking technology and implement it within Haggerty's method.

Petitioner also asserts a POSITA would have found it obvious that Haggerty's alleged disclosure of opening a text-messaging application is “exactly the kind of function that Khanna's deeplinks provide.” (Petition 30.) But Khanna does not teach or suggest opening a messaging application at all—rather, Khanna's technique is limited to launching an application that may be directed to product landing pages. (EX-1006 [0030]; EX-2001 ¶75.) In fact, Khanna specifically teaches launching a vendor-specific shopping application (EX-1006 [0015], [0027], [0045]-[0046])—one of the prior art techniques criticized by the '887 patent. (EX-1001 1:36-47.) But more importantly, Khanna's techniques rely on the data elements of the web-based content item to launch the application from a webpage. (Section V(C), *supra*.) And

Petitioner fails to explain why a POSITA would implement Khanna's web-based technique in Haggerty's method or how a POSITA would maintain Khanna's functionality without a web-based content item.

These methods operate across different digital mediums, at different points of time in the advertising process, and with distinct goals—none of which Petitioner accounts for in its analysis. (EX-2001 ¶80.) Petitioner's single sentence analysis under *KSR* falls well short of acknowledging and addressing the critical distinctions between the references. (Petition 31.) First, Demsey is not being used for its known function in Petitioner's proposed combination—i.e., Petitioner does not assert (or explain) that the resulting combination is capable of synchronizing browser-based data to serve more targeted web-based advertising. (EX-2001 ¶70.) Second, Khanna is not being used for its known function in Petitioner's proposed combination—i.e., Khanna does not disclose deeplinking to a messaging application. (EX-2001 ¶75.) Third, it is not clear in what way Haggerty is being improved. (Petition 31.) Rather, it would appear that the purported combination would strip Haggerty of its inventive aspect—integrating existing barcodes or advertising links in downloaded electronic reading materials with a call center—by replacing that method with Demsey's and Khanna's unrelated web-based advertising techniques. (EX-2001 ¶80.) Thus, Petitioner's solitary *KSR* rationale is inapplicable.

Finally, Petitioner's generic argument that a POSITA would combine the functionalities of all three references into a single server (Petition 31), merely because Demsey and Khanna both disclose "server-based software techniques" is plainly insufficient motivation. *See KSR*, 550 U.S. at 415-421; *Securus*, IPR2015-00155, Paper 30 at 17. Furthermore, it still does not address the distinctions between Haggerty's call center and Demsey's/Khanna's server environments and does not address how or why a POSITA would have combined Demsey's and Khanna's webpage-based techniques with Haggerty's distinct, non-webpage-based method (EX-2001 ¶¶76-79.)

When Petitioner's lack of motivation to combine is considered against the backdrop of the references' many distinctions, it is clear that Petitioner's generic assertion that a POSITA would have combined functionalities of all three references into a single server uses impermissible hindsight bias to select and combine the references. *KSR*, 550 U.S. at 418; Ashley A. Bolt, *Combating Hindsight Reconstruction in Patent Prosecution*, 64 EMORY LAW J. 1137, 1158 (2015) (citing *KSR Int'l Co.*, 550 U.S. at 418) ("[I]f the reasoning [to combine] is not clearly presented in a sensible manner, or if the reasoning is merely conclusory, this suggests the use of impermissible hindsight in the selection and combination of the

references. If the combination cannot be explained, it seems likely that, in truth, the combination was derived using the applicant's specification as a roadmap.”).

Reliance on “isolated teachings of the prior art without considering the overall context within which those teachings are presented” is improper and should be considered when determining the use of impermissible hindsight. *In re Mercier*, 515 F.2d 1161, 1166 (CCPA 1975); *see generally In re Whiton*, 420 F.2d 1082 (C.C.P.A. 1970) (finding no evidence to support the assertion that a POSITA would have thought to combine the known prior art elements).

Accordingly, Petitioner fails to articulate sufficient motivation to combine the teachings of Haggerty, Demsey, and Khanna.

B. Ground 1: The Combination of Haggerty, Demsey, and Khanna Does Not Render Obvious Independent Claim 1

Despite cherry-picking disclosures from three references, Petitioner still fails to demonstrate that the combination of their teachings renders obvious key limitations of the sole independent claim. (EX-2001 §VI(B).) *First*, the combination does not render obvious a webpage hosted by a client server or an integration tag that causes the mobile device to send user data. *Second*, no reference discloses defining and sending a URI deeplinking to a messaging application and the combination does not render such a limitation obvious. *Third*, the combination does

not render obvious a message that includes an identifier associated with a webpage or user data.

1. The combination fails to disclose or render obvious a webpage hosted by a client server or an integration tag that causes the mobile device to send user data.

Petitioner's combination does not disclose or suggest a "*webpage hosted by the client server*" or an "*integration tag configured to cause a mobile device loading the webpage via a first application to send user data to at least one of the client server or the click-to-text server.*" (EX-1001, Limitations 1[b], 1[c]; EX-2001 §VI(B).) First, Petitioner fails to explain how the resulting combination of Haggerty's and Demsey's teachings render obvious a webpage hosted by a client server or a mobile device loading a webpage. Second, Petitioner fails to explain why a POSITA would have been motivated to modify Haggerty's method according to Demsey's teachings to include sending a request for web-based advertising content to Haggerty's call center when Haggerty does not disclose a webpage.

i. Petitioner fails to articulate a combination of Haggerty's and Demsey's teachings that renders obvious a webpage hosted by the client server or a mobile device loading the webpage.

As discussed above, Petitioner cherry-picks discrete disclosures from the three prior art references for each limitation, while failing to articulate the contemplated workings of the combination. Section VI(A), *supra*. Because of this,

Petitioner does not describe a combination of Haggerty's and Demsey's teachings that render obvious a webpage that is hosted by a client server and loaded by a mobile device.

The '887 patent recites a click-to-text server that sends, to a client server, an integration tag, which is served with a webpage hosted by the client server. (EX-1001, cl. 1, limitation 1[b].) The integration tag causes a mobile device that is loading the webpage via a first application (e.g., a browser) to send user data to at least one of the client server or the click-to-text server. (EX-1001, cl. 1, limitation 1[c].)

Petitioner fails to articulate a combination that renders obvious either of these limitations. Petitioner asserts that Demsey discloses ad networks, which work with thousands of partners often referred to as "publishers," who publish online content along with ad tags. (Petition 36-37.) These ad tags might be served by advertiser servers and/or publisher servers. (EX-1005 [0030].) Petitioner asserts it would have been obvious "to implement the sending of the integration tag by the click-to-text server [i.e., Haggerty's call center]...to the client server [i.e., Demsey's publisher's server]." (Petition 37-38.) Petitioner alleges that Demsey's ad tag corresponds to an integration tag and that Demsey discloses a client server (i.e., the publisher server) hosting a webpage loaded by a user's mobile device. (Petition 36-37, 40.)

But Petitioner never describes or explains a combination of Haggerty's and Demsey's teachings that would implement a client server or a webpage or require that the mobile device load a webpage. As previously discussed in Section VI(A), *supra*, Petitioner alternates between suggesting that a POSITA would use Demsey's techniques "to implement Haggerty's method" and suggesting that a POSITA would replace Demsey's ad server with Haggerty's call center. (*Compare* Petition 28, 43-44, 46 *with id.* 38-39, 45, 48.)

If Petitioner indeed relies on Demsey's technique to implement Haggerty's method, then there is no intuitive combination of Haggerty's and Demsey's teachings in which a POSITA preserves both Haggerty's method for integrating non-web-based links with a call center and Demsey's web-based environment. (EX-2001 ¶¶84-88.) Haggerty discloses a method for integrating non-web-based links in downloaded, digital reading material with a call center (Section V(A), *supra*), whereas Demsey discloses a method for synchronizing user information across web browsers to better select webpage-based advertisements (Section V(B), *supra*). If a POSITA were to implement Demsey's disclosed ad tag within Haggerty's call center, the ad tag would serve no purpose, because Haggerty's call center does not interface with a web-hosting client server and there is no webpage being loaded by a device for which an ad tag would be useful. (EX-2001 ¶¶89-90.)

Thus, the resulting combination of teachings would not disclose or render obvious a “*webpage hosted by the client server,*” a “*mobile device loading the webpage,*” or an “*integration tag*” that causes the mobile device to send user data to the client server or the click-to-text server. (EX-1001, Limitations 1[b], 1[c].)

If Petitioner instead relies on its assertion that Haggerty's call center would be used in place of Demsey's central server (and somehow combined with the still-necessary functionality of Demsey's central server, which Petitioner does not explain), then Petitioner's argument fails because, in other limitations, Petitioner reverts to relying on Haggerty's alleged “business method” and, more specifically, Haggerty's teachings regarding integration of non-web-based links with a call center. (*E.g.*, Petition 46, limitation [1f] (“The combination renders this limitation obvious by carrying out Haggerty's business method using the functionality of Demsey and Khanna.”).)

Accordingly, Petitioner fails to articulate a combination of Haggerty's and Demsey's teachings that discloses or renders obvious a “*webpage hosted by the client server*” or an “*integration tag configured to cause a mobile device loading the webpage via a first application to send user data to at least one of the client server or the click-to-text server.*” (EX-1001, Limitations 1[b], 1[c].)

ii. Petitioner fails to articulate sufficient motivation to combine Haggerty's and Demsey's teachings.

In addition to its failure to articulate the contemplated workings of the combination, which “*is a prerequisite* to adequately explaining and supporting a conclusion that a relevant skilled artisan would have been motivated to make the combination and reasonably expect success in doing so,” Petitioner also fails to explain why a POSITA would have been motivated to combine Haggerty's call-center-based teachings and Demsey's central-server-based teachings to allegedly practice this limitation. *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017).

Patent Owner has responded to Petitioner's generalized assertions regarding motivation to combine, above, in Section VI(A)(2), *supra*. In summary, Petitioner fails to acknowledge the critical distinctions between Haggerty's and Demsey's teachings, explain the modifications necessary to combine such teachings, or articulate why a POSITA would have been motivated to make the necessary modifications and purported combination. (Section VI(A)(2), *supra*.)

With respect to limitation [1b] (reciting the sending of an integration tag, and a server-hosted webpage), Petitioner does not address motivation to combine, instead making only conclusory statements that it would have been obvious “to implement the sending of the integration tag by the click-to-text server,” i.e.,

Haggerty's call center. (Petition 38, 39.) Petitioner merely assumes that Haggerty's call center "in the combination performs the function of Demsey's central server," without adequately explaining the resulting combination or why a POSITA would replace Demsey's central server with Haggerty's call center. (*See id.*) While Petitioner addresses why it would be beneficial to have any central server send the ad tag (as opposed to Demsey's publishers obtaining the tag in some other way), Petitioner still does not explain why a POSITA would have specifically replaced Demsey's disclosure of an already existing central server (including ad servers and synchronization servers) with Haggerty's disclosure of a call center. (Petition 39; EX-2001 ¶¶91-92.)

With respect to limitation [1c] (reciting the integration tag's effect on a device loading the webpage), Petitioner does not address motivation to combine at all. (Petition 40-41.) Petitioner merely concludes, without explanation, that Demsey's ad tag would "cause a unique ID to be passed to the central server (i.e., the click-to-text server in the combination)." (Petition 40, 41; EX-2001 ¶¶93-94.)

Again, Petitioner's lack of specific motivation to combine the prior art teachings demonstrates its impermissible reliance on hindsight bias. *KSR*, 550 U.S. at 418; Bolt, 64 EMORY LAW J. at 1158. Accordingly, Petitioner fails to articulate a sufficient motivation to combine the prior art teachings.

2. The combination fails to disclose or render obvious a URI deeplinking to a messaging application.

Petitioner's combination does not disclose or suggest a "*uniform resource identifier (URI)*" "*deeplinking to a messaging application different from the first application and configured to cause the mobile device to (1) automatically transition from the first application to the messaging application in response to the mobile device detecting a user interaction with a promotional message associated with the webpage...and (2) automatically populate a custom message in the messaging application.*" (EX-1001, Limitations 1[d], 1[e], 1[f]; EX-2001 §VI(C).) Petitioner relies on a convoluted combination of the references' teachings in its attempt to reconstruct these URI-related limitations. (EX-2001 ¶¶95-96.)

But Petitioner's purported combination suffers from three critical deficiencies. First, none of the cited prior art references disclose a URI deeplinking to a messaging application. (EX-1001, limitation [1d].) Second, Petitioner fails to explain why a POSITA would have been motivated to combine and modify the prior art's teachings, and indeed, a POSITA would not have been motivated to combine or modify such teachings. And third, Petitioner fails to explain how the resulting combination of prior art teachings renders obvious a promotional message associated with the webpage. (EX-1001, limitation [1e].)

i. None of the cited prior art references discloses or suggests a URI deeplinking to a messaging application different from the first application.

None of the cited prior art references discloses or suggests a URI that deeplinks to a messaging application different from the first application loading a webpage. (EX-1001, limitations [1d]-[1f].) Petitioner relies on a combination of all three references, arguing that Demsey discloses a mobile device that executes an integration tag and loads a webpage's advertisement, Khanna discloses a URI that deeplinks to an application, and Haggerty discloses a pre-populated text message. (Petition 42-44.)

Petitioner characterizes Khanna as generally disclosing an alleged URI that deeplinks to any application different from the first application (Petition 42), but Khanna discloses only a specific URL that deeplinks to a vendor's web-based landing page for a product. (EX-1006 [0030]; EX-2001 ¶¶98-102.) As explained in detail above, Khanna discloses specialized content items containing two data elements, which specify an application and identify a product, respectively. (Section V(C), *supra*; EX-1006 [0029], [0005], cl. 1.) When a user selects this specialized content item, the system transmits a request containing the first data element to a server to install the specified application and launches the application with the second data element (the product) as an input, such that the first content displayed

by the application relates to the product. (EX-1006 Abstract, cl. 1, Fig. 2, [0055]-[0063].) Khanna notes that this method allows publishers or advertisers to create content items that “deeplink” or “mak[e] a hyperlink that points to a specific content (e.g., a webpage or image) on a destination website, instead of that website’s main or home page.” (EX-1006 [0030]; *see also id.* [0063].) For example, when users select the specialized content item, they are redirected to the product’s landing page in a shopping application. (EX-1006 [0026]-[0027].)

Thus, Khanna’s teachings are limited to specialized content items that allow deeplinking from a webpage to a product’s web-based landing page. (EX-2001 ¶¶98-102.) Khanna does not disclose a URL that deeplinks to a messaging application, causes a mobile device to transition to a messaging application, or auto-populates a custom message in the messaging application. (EX-2001 ¶101.) Petitioner does not allege that Demsey or Haggerty discloses a URI that deeplinks to a messaging application different from a first application and, indeed, neither does. (EX-2001 ¶¶103-104.) Demsey has no teachings related to transitioning away from web-based advertisements. And while Haggerty discloses transitioning from non-web-based links to a pre-populated message, Haggerty does not disclose a “first application” loading a webpage, defining or sending a URI, transitioning from a

web-based advertisement to the messaging application, or by what mechanism the pre-populated message is launched.

While failing to address motivation to combine (addressed below), Petitioner asserts it would have been obvious “to use the concepts of Demsey and Khanna to implement the business method of Haggerty, wherein the deeplinking technology of Khanna is used to open a pre-populated text message in a text messaging application.” (Petition 43-44.) But none of the references teach such a step and nothing in the prior art suggests the modifications necessary to obtain such a result.

For example, a POSITA would have to modify Khanna's teachings in two ways to achieve the alleged result which Petitioner asserts—i.e., applying this technique to a non-web-based content item instead of Khanna's specialized content item and deeplinking to a pre-populated text message in a messaging application instead of a product's web-based landing page. (EX-2001 ¶¶105-107.) Petitioner does not address whether a non-web-based content item, such as those disclosed in Haggerty's electronic reading materials could accomplish the same deeplinking as Khanna's specialized content item, which contains the two data elements critical to launching an application. Petitioner also does not address whether Khanna's data elements (which specify an application and a product) would need to be modified to

achieve a different kind of deeplink that does not redirect the user to a product-specific landing page.

Alternatively, a POSITA would have to modify Haggerty, such that Haggerty's call center method is applied in a web-based environment similar to Demsey's or Khanna's (thereby sacrificing Haggerty's inventive aspect, as explained in Section VI(B)(2), above), and modify Khanna's deeplinking technique to launch a messaging application and point to a pre-populated message instead of redirecting to a product landing page of a website. (EX-2001 ¶¶108-109.) Again, Petitioner neither acknowledges nor addresses the drastic modifications necessary to achieve such a result and does not explain what might have prompted a POSITA to make them. Accordingly, the prior art neither discloses nor suggests a URI deeplinking to a messaging application that is different from a first application (limitation [1d]) or a URI that causes a mobile device to transition from a first application to a messaging application and pre-populate a text message in the messaging application (limitations [1e], [1f]).

ii. Petitioner fails to articulate sufficient motivation to combine and modify the prior art teachings.

Petitioner does not establish a reasonable likelihood of success in combining the teachings of Haggerty, Demsey, and Khanna to render obvious the URI-related limitations. (EX-2001 ¶¶110-111.)

As explained immediately above, Petitioner asserts that a combination of the prior art teachings renders obvious a URI that deeplinks to a messaging application different from a first application and which causes a mobile device to pre-populate a text message. (Petition 42-44.) But in its entire analysis of the collective URI-related limitations, Petitioner makes only single-sentence, conclusory statements that it would have been obvious to: (1) use Khanna's deeplinking (Petition 42); (2) "use the concepts of Demsey and Khanna to implement the business method of Haggerty" (Petition 43); or (3) cause a user click on an ad link in Demsey to launch a text messaging application (Petition 45). Petitioner provides no limitation-specific discussion of why or how a POSITA would have ended up at the asserted combination of teachings.

For example, while cross-referencing only its general analysis of motivation to combine, Petitioner repeatedly assumes the operation of the combination, for example, asserting that "[i]n the combination, the URI deeplinks to a messaging application different from the first application." (Petition 43; *see also id.* 45 ("In the combination, the app that is automatically opened is a messaging application per Haggerty.")) That is, despite the fact that none of the references disclose a URI that deeplinks to a messaging application different from the first application (Section

VI(B)(2)(i), *supra*), Petitioner fails to explain why it would have been obvious to a POSITA to modify and combine their teachings in this way.

There is a distinction between combining known prior art elements A and B when each would have been expected to contribute its own known properties to the final product (obvious) and combining prior art elements to achieve a new, unexpected benefit (non-obvious). *See In re Omeprazole*, 536 F.3d 1361 (Fed. Cir. 2008); *Crocs, Inc. v. U.S. Int'l Trade Comm'n*, 598 F.3d 1294 (Fed. Cir. 2010). Here, Petitioner does not rely on Khanna to contribute its own known properties to Haggerty's method—rather, Petitioner attempts to rely on a greatly modified version of Khanna's techniques while failing to acknowledge the necessary modifications or whether they could be accomplished. (EX-2001 ¶¶106-107.) Again, this lack of specific motivation to combine demonstrates Petitioner's reliance on hindsight bias and its use of the '887 patent as a roadmap to impermissibly reconstruct the claimed invention. *See KSR*, 550 U.S. at 418; Bolt, 64 EMORY LAW J. at 1158.

Even if Petitioner's generalized discussion of motivation to combine were appropriate (which it is not), Petitioner's generalized reasons still do not explain why a POSITA would have been motivated to modify the prior art teachings to result in a URI that deeplinks to a messaging application different from the first application.

(Petition 28-31.) And Patent Owner has specifically addressed why Petitioner's generalized assertions are incorrect. (Section VI(A)(2), *supra*.)

Accordingly, Petitioner fails to articulate sufficient motivation to modify and combine the prior art teachings and, indeed, a POSITA would not have found all elements of the URI-related limitations obvious in view of Haggerty, Demsey, and Khanna.

iii. Petitioner fails to articulate a combination of Haggerty's and Demsey's teachings that renders obvious a promotional message associated with the webpage.

Amongst these URI-related limitations, Petitioner also fails to describe a combination of the prior art teachings that renders obvious transitioning to a messaging application "*in response to...a user interaction with a promotional message associated with the webpage.*" (EX-1001, Limitation [1e].)

As discussed above, *see* Section VI(A)(1), *supra*, Petitioner selects discrete disclosures from the three prior art references for each limitation, while failing to articulate the contemplated workings of the combination. Because of this, Petitioner does not describe a combination of the prior art that discloses or renders obvious this limitation.

Petitioner inconsistently identifies two different promotional messages. (EX-2001 ¶¶113-115.) First, Petitioner alleges that Khanna discloses launching an

application when the mobile device detects a user interaction with Khanna's specialized content item (alleged promotional message), which is associated with a webpage. (Petition 44-45.) Petitioner then also asserts that Demsey discloses an advertising link (alleged promotional message), which is associated with a webpage. (Petition 45.) Petitioner then concludes, while citing only its general motivation to combine section, that it would have been obvious "to cause a user click on an advertising link in Demsey (i.e., a promotional message) to launch a text messaging application, as taught by Haggerty, for the reasons provided above under the section entitled 'Rationale (Motivation) for the Combination'." (Petition 45.)

As explained in detail above, in addressing early limitations of the independent claim, Petitioner fails to identify a combination of Haggerty's and the other references' teachings that renders obvious the use of a webpage, a web-based advertisement, or a user device loading said webpage. (Section VI(B)(2)(i), *supra*.) This failure permeates multiple limitations, including this one.

For example, it is unclear whether a POSITA is allegedly implementing Khanna's and Haggerty's teachings to modify what happens in Demsey's method when a user clicks an advertising link? (*See, e.g.*, Petition 45 ("It would further have been obvious to cause a user click on an advertising link in Demsey...to launch a text messaging application, as taught by Haggerty....").) Or is a POSITA allegedly

implementing Demsey's and Khanna's teachings within Haggerty's method? (*See, e.g.,* Petition 43-44 (“[I]t would have been obvious to use the concepts of Demsey and Khanna to implement the business method of Haggerty...wherein the deeplinking technology of Khanna is used to open a pre-populated text message in a text messaging application.”).)

Rather than articulate a particular combination of the prior art's teachings, Petitioner alters the combination in inconsistent ways for each new limitation, depending on which reference's disclosure or method fits that limitation in isolation. As a result of these inconsistencies, it is impossible to infer Petitioner's asserted combination to determine whether the resulting combination of teachings would actually be applied by a POSITA in a web-based environment, such that it discloses or suggests the launch of an application upon a user interacting with a promotional message associated with the webpage.

Accordingly, Petitioner fails to articulate a combination of the prior teachings that renders obvious transitioning to a messaging application in response to a user interacting with a promotional message associated with a webpage.

3. The combination fails to disclose or render obvious a message that includes an identifier associated with a webpage or user data.

Petitioner's combination does not disclose or suggest a URI "*configured to cause the mobile device to...(2) automatically populate a custom message in the messaging application that includes...a message body that includes an identifier associated with at least one of the webpage or the user data.*" (EX-1001, Limitation 1[f]; Section VI(D).) First, none of the cited prior art references disclose a URI that causes a mobile device to automatically populate a custom message in the messaging application that includes an identifier associated with at least one of the webpage or the user data. Second, Petitioner fails to explain why a POSITA would have been motivated to combine and modify the prior art's teachings, and indeed, a POSITA would not have been motivated to combine or modify such teachings.

i. None of the cited prior art discloses a URI configured to cause the mobile device to automatically populate a custom message with an identifier associated with at least one of the webpage or the user data.

Petitioner continues to press an undefined combination of the prior art, pointing to several alternative arguments with respect to this limitation, each of which fails to disclose or render obvious the entirety of this limitation.

As mentioned previously, Petitioner asserts that Khanna discloses a URI link and that it would have been obvious to "arrange a link using Khanna that would (per Haggerty) initiate a pre-populated text message" "using the automatic transition and passing of data of Khanna." (Petition 46-47.) Petitioner points to several alternative

disclosures as allegedly disclosing the claimed “*identifier associated with at least one of the webpage or the user data*”: (1) Haggerty’s teaching that the body of the message may include a telephone number at which the reader may be reached (Petition 47); (2) Haggerty’s teaching that the body of the message may include a product name or alphanumeric “campaign identifier” associated with the webpage (Petition 48-49); or (3) Demsey’s disclosure of a unique device identifier (Petition 48). The petition contains only a cursory analysis of each of these arguments and fails to establish that the entirety of the claimed limitation is met by the resulting combination of teachings.

First, while Haggerty discloses the potential inclusion of a user’s telephone number in the body of its message, that particular embodiment of Haggerty requires that the advertisement first request that information from the user before being able to incorporate it into the message. (EX-1007 14:60-15:4 (“[T]he advertisement ***may request a telephone number*** at which the reader may be reached.”); *see also id.* 11:4-10 (“[A]ction may result in the initiation of some type of data and/or voice communication....[or] in particular embodiments, the advertisement [] may gather additional information from the reader such as a telephone number.”).) That is, in the cited embodiment, Haggerty does not teach causing a mobile device to “***automatically populate a custom message***” with a telephone number. (EX-2001

¶¶120-122.) This is particularly true when one considers the remainder of the '887 claim language—i.e., enrolling the device in a promotion “*without receiving any additional information from the mobile device.*” (EX-1001, cl. 1.) And neither Demsey nor Khanna contain any teachings related to automatically generating a custom message, nor does Petitioner assert otherwise.

Second, while Haggerty teaches that the message body may be populated with a product name or campaign identifier and asserts that both are associated with the webpage, Petitioner merely assumes and does not explain how either is an “*identifier associated with...the webpage.*” (Petition 48-49.) As previously explained, Haggerty discloses a method that is applied to advertisements found in downloaded, electronic reading material—not a webpage. (Section VI(A), *supra*; EX-1007 1:36-40, 8:9-32, 10:62-65, 17:64-67, cl. 1.) Thus, even if the message body identifies the product or campaign contained in the electronic reading material, neither is associated with a webpage. (EX-2001 ¶¶123-124.) Petitioner does not address this deficiency or explain what modifications a POSITA may or may not have been motivated to make to Haggerty. (Petition 48-49.) As neither Demsey nor Khanna relate to advertisements contained in downloaded reading material or automatically populating a message, they would not suggest modifications to these steps in Haggerty's existing method. (EX-2001 ¶124.)

Third, while Demsey discloses a unique identifier (specific to the user) or instance identifier (specific to the device), it does not disclose automatically populating this identifier in a custom message and Petitioner fails to explain how the alleged combination of Haggerty and Demsey render this obvious. (Petition 48.) Demsey teaches that its method relies on the capabilities of modern browsers—specifically their ability to store information and synchronize that storage across browsers linked to a single user. (EX-1005 [0021].) Demsey teaches the creation of a sandboxed storage, registered to an advertising system or network, creating a unique identifier for the user within the sandbox, and then using the browser's “cross-browser synchronization feature to replicate the data created within the sandbox to all of the user's connected browsers.” (EX-1005 [0022].) Employing such a method, one is able to achieve Demsey's goal of synchronizing browser history data for a particular user across a variety of devices. (EX-1005 [0035]-[0036], [0007]-[0008].)

Petitioner asserts that it would have been obvious based on Haggerty “to incorporate information about the user that is already available, such as the unique identifier...from Demsey.” (Petition 48.) But Petitioner fails to explain how such an identifier would have been “already available” to Haggerty's system when Demsey's technique for incorporating an identifier necessarily relies on browser

capabilities and Haggerty does not disclose a browser. (*See* EX-1005 [0021]-[0022]; EX-2001 ¶¶125-126.) And Petitioner does not address how the references might be modified by a POSITA to combine these teachings. Again, Petitioner fails to articulate a combination of Haggerty's and Demsey's teachings in which both references' critical steps may be preserved. Accordingly, Petitioner has failed to show that the combination of Haggerty and Demsey renders obvious automatically populating a custom message with an identifier associated with at least one of the user data or the webpage.

Thus, none of Haggerty, Demsey, or Khanna disclose or suggest automatically populating a custom message with an identifier associated with at least one of the user data or the webpage and Petitioner has failed to show that the combination of their teachings would render obvious this limitation.

ii. Petitioner fails to articulate sufficient motivation to combine and modify the prior art's teachings.

Petitioner does not establish a reasonable likelihood of success in combining the teachings of Haggerty, Demsey, and Khanna to render obvious a URI that causes the mobile device to automatically populate a custom message in the messaging application that includes the claimed contents. (EX-2001 ¶¶127-130.)

As explained immediately above, Petitioner relies on several different alternative disclosures as allegedly disclosing the claimed contents of a custom

message, two of which rely on a combination of Haggerty's and/or Demsey's teachings with Khanna's teachings. (Section VI(B)(4)(i), *supra*; Petition 47-48.) Specifically, Petitioner asserts that a user would automatically populate the custom message in Haggerty with the identifier disclosed in Haggerty or Demsey using Khanna's "method to pass such data to a target application in a deeplink." (Petition 47.)

But Khanna's technique for passing data through to a target application necessarily relies on its specialized content item, and Petitioner has not articulated a combination of Haggerty's, Demsey's, and Khanna's teachings that preserves this capability or why a POSITA would have been motivated to make such a combination. (See Petition 46-48.) Khanna teaches that publishers or advertisers may use Khanna's method for creating a specialized content item in order to deeplink to a landing page for a product. (EX-1006 [0025], [0030].) The specialized content item contains two data elements—a first which identifies an application and a second which identifies a product. (EX-1006 [0029], [0005].) But Khanna teaches that only the second data element (specifying a product) is passed through as input to direct the application to a particular landing page associated with the product. (EX-1006 Abstract, cl. 1.)

That is, for Petitioner's obviousness arguments to succeed, it would be necessary for a POSITA to modify the advertisements contained within Haggerty and/or Demsey to implement an advertiser-generated content item with the necessary data elements and further modify Khanna's data elements in some undisclosed way to interface with a custom message in a messaging application rather than a product landing page. (EX-2001 ¶¶128-130.) Petitioner's analysis (in addition to not articulating the resulting combination, discussed above in Section VI(A)(1)), does not even acknowledge these necessary modifications or explain how or why a POSITA would be motivated to make those modifications. (*See* Petition 46-48.)

As Petitioner does not merely rely on Khanna's technique to perform the same function it does within Khanna's method, the asserted ground does not merely combine prior art elements according to known methods to yield predictable results. (EX-2001 ¶129; *see* Petition 31-32.) Accordingly, Petitioner fails to articulate sufficient motivation to combine the teachings of Haggerty, Demsey, and Khanna.

C. Ground 1-4: The Combination of Haggerty, Demsey, and Khanna Does Not Render Obvious Any Dependent Claim

Because Petitioner has failed to establish that Ground 1 renders obvious all limitations of the independent claim, Petitioner cannot show that Ground 1 renders obvious any dependent claim. And because Grounds 2-4 rely on Ground 1 as

allegedly rendering obvious the sole independent claim, Grounds 2-4 cannot succeed.

D. Other Limitations Not Addressed

At this preliminary stage, Patent Owner addresses those deficiencies which clearly show a lack of reasonable likelihood of the petition's success. Patent Owner's decision not to address certain limitations at this stage in no way reflects a lack of dispute.

VII. SECONDARY CONSIDERATIONS

When assessing obviousness of the claimed invention, objective evidence of secondary considerations pertaining to nonobviousness must be considered, including long-felt but unsolved needs, industry praise, commercial success, etc. *In re Huang*, 100 F.3d 135, 139 (Fed. Cir. 1996). These indicia constitute "the most probative evidence of nonobviousness," "crucial in avoiding the trap of hindsight when reviewing, what otherwise seems like, a combination of known elements." *Leo Pharm. Products, Ltd. v. Rea*, 726 F.3d 1346, 1358 (Fed. Cir. 2013); *Pentec, Inc. v. Graphic Controls Corp.*, 776 F.2d 309, 315 (Fed. Cir. 1985). Such evidence "may often establish that an invention appearing to have been obvious in light of the prior art was not." *Transocean Offshore Deepwater Drilling, Inc. v. Maersk Drilling USA, Inc.*, 699 F.3d 1340, 1349 (Fed. Cir. 2012).

A patentee is entitled to a presumption of nexus “when the patentee shows that the asserted objective evidence is tied to a specific product and that product embodies the claimed features, and is coextensive with them.” *Lectrosonics, Inc. v. Zaxcom, Inc.*, IPR2018-01129, Paper 33 at 32 (PTAB Jan. 24, 2020) (*precedential*). Even where this presumption is not established, nexus may be shown where “the evidence of secondary considerations is the direct result of the unique characteristics of the claimed invention.” *Id.* at 33.

A. The Claimed Invention Satisfied a Long-Felt Need by Recognizing a Problem in the Prior Art

Objective evidence that there was a recognized problem which existed in the prior art for a long period of time without a solution demonstrates long-felt need. *In re Gershon*, 372 F.2d 535, 538-39 (CCPA 1967); *Newell Cos., Inc. v. Kenney Mfg. Co.*, 864 F.2d 757, 768 (Fed. Cir. 1988).

Prior to the claimed invention, the primary medium for direct marketing to customers was through emails. (EX-2035 1:15-31; EX-2036 [0021].) While SMS messaging was widely adopted and used throughout the world, direct marketing to customers through SMS was rarely used and sign-up rates were very low. (*See* EX-2013 1 (referring to Patent Owner's platform as helping “businesses create and scale *a new revenue channel: mobile messaging*”).)

As discussed above, known prior art methods suffered from user burden and time-consuming processes, e.g., the need for excessive user input through clicks or screen taps. (Section III, *supra*; EX-1001 1:36-52.) In the case of SMS messages, specifically, consumers had to manually enter their ten-digit phone number, wait to receive a text message, and then reply with the required key phrase (e.g., “Yes” or “Join”). There seemed to be no alternative to this prior art SMS signup process, particularly as “SMS marketing is highly regulated,” with numerous legal and carrier restrictions. (EX-2014 12; *see also* EX-2015 2-4 (summarizing various regulatory roadblocks for automated SMS messaging).) For example, the Telephone Consumer Protection Act (“TCPA”) placed strict regulatory requirements on automated telephone messages (including SMS), e.g., by requiring affirmative consent. 47 U.S.C. § 227; EX-1001 7:25-29.

Thus, there was a long-felt need for an SMS signup solution, without the onerous friction presented by prior art solutions, that still complied with governing regulations. (EX-1001 1:48-52, 7:25-29, Title.) The inventors realized that if the friction could be removed, while also meeting regulatory requirements, the solution would become the direct-to-consumer marketing channel of the future, which, as will be discussed further below, Patent Owner’s “two-tap” technology has become.

The inventors recognized this long-felt but unmet problem and were able to develop an elegant solution that greatly simplified the sign-up process, while satisfying demanding regulatory requirements. (EX-2001 ¶¶133-134.) Specifically, the patented invention developed an SMS sign-up solution that improved the user process by (1) eliminating the need for manual phone number entry and (2) reducing the time and effort necessary for enrollment by removing a double opt-in's confirmatory message, while still complying with applicable regulations. The inventors' solution—claimed by the '887 patent and embodied in Patent Owner's “two-tap” technology—enabled an SMS sign-up solution in two simple taps: one tap to interact with a call-to-action button, which deeplinks from one application to a messaging application with a recipient phone number and/or message body prefilled, and one tap to interact with the send button of the messaging application:

At the core of Attentive patent-pending technology is what the company calls the “two-tap” sign-up. The point of this novel feature is to allow brands to lay out the shortest possible path between piquing a user's interest in the brand, to having them sign up for a regular flow of marketing texts.

(EX-2016 1.) An example of the “Two-Tap” Product is depicted below:



(EX-2017 3.) The patented two-tap solution resolved the problems present in the prior art, eliminating the need for manual entry and double opt-in and making SMS messaging signup extremely simple for users.

The inventors were the first to recognize that deeplinking technology could not only be used to transfer a user from one application to another, but that it could be used specifically to transfer a user to a messaging application and pre-populate a message as means for complying with regulatory requirements. The patented claims expressly contemplate and claim the means for doing so—i.e., using “*an integration tag*” to collect “*user data*” (Claim 1) and to “*authenticate*” the mobile device, for example, “*based on the user data*” (e.g., Claim 6).

The authentication aspect of the claimed invention—against the backdrop of the TCPA—was particularly important in terms of solving the prior art problem. The inventors' solution presented not only a user-friendly solution, but also the new gold standard for compliance.³ The restrictions put in place by the TCPA, telecom carriers, and best practices, such as double opt-in also served to teach away from the inventors' two-tap solution. (*E.g.*, EX-2015 4 (recommending double opt-in as a “best practice”).) Simply put, the claimed invention enabled direct-to-consumer marketing through SMS messaging, as a result of the claimed technological advancements.

B. The Claimed Invention Received Industry Praise

Industry praise for an invention evidences nonobviousness where the industry praise is linked to the claimed invention.

Patent Owner released its embodying “two-tap” technology in 2017. This platform for completing messaging-based enrollments initiated from a website on a mobile device received significant industry praise. In 2018, Patent Owner was named “Mobile Marketing Company” of the year by Digital Marketing News

³ For example, a federal court in Florida validated Attentive's compliance features and templates, including its two-tap technology. (EX-2017 2.)

("DMN"). (EX-2018 5.) In 2019, DMN awarded named inventor and co-founder, Brian Long, its 40UNDER40 Award, including for his achievement in creating "a new revenue channel: mobile messaging." (EX-2013 1.) In 2021, Patent Owner was awarded Glossy's "Best Use of SMS," including for its use of "an easy opt-in system and device-agnostic sign-up creatives" that prioritized "convenience and automation." (Ex-2019 8.) In 2023, The Tech Tribune ranked Patent Owner #10 "Best Tech Startup[] in NYC," including for "reinventing business-to-consumer communications" as a result of its "SMS-first software platform." (EX-2020 11.) Customers of Patent Owner's "two-tap" sign-up specifically recognized the platform's "[o]ne click opt-in" as the "Gold Standard, often imitated." (EX-2021 11 (Nov. 10, 2023 review), 12 (Dec. 13, 2022 review).)

Other praise for Patent Owner's software includes: Businesswire's "#6 World's Best Software" (EX-2022 1); LinkedIn's #8 U.S. Startup (EX-2023 1-2); Forbes's #14 "Cloud 100" (EX-2024 7); and G2's #63 Fastest Growing Products (EX-2025 8).

C. Patent Owner's "Two-Tap" Product Enjoys Substantial Commercial Success as a Result of the Significant Benefits the Claimed Invention Provides Over the Prior Art

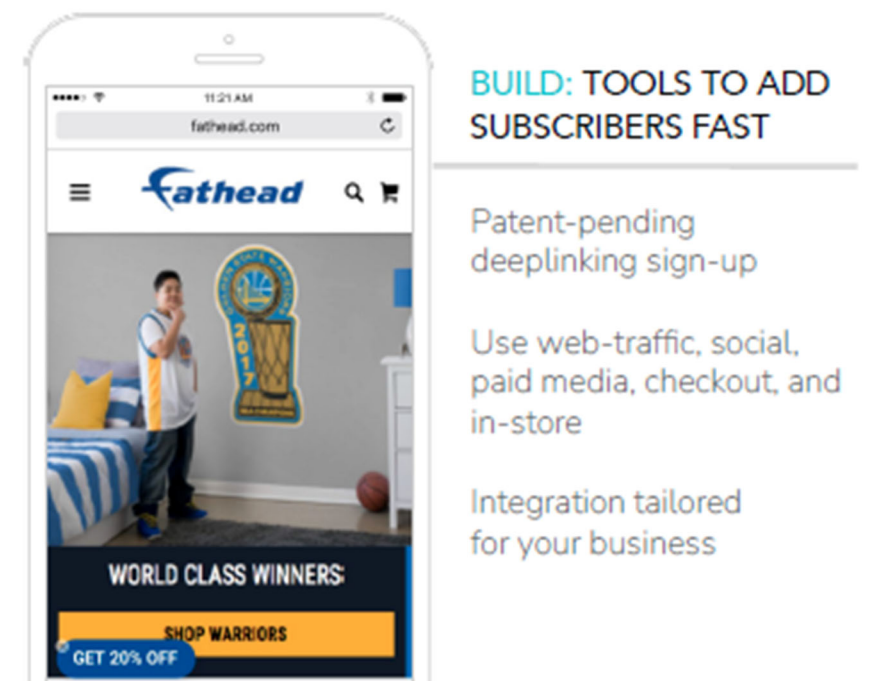
A patentee demonstrates commercial success by showing significant sales of the patented product in a relevant market and nexus between the patented invention

and the commercial success. *J.T. Eaton & Co. v. Atlantic Paste & Glue Co.*, 106 F.3d 1563 (Fed. Cir. 1997); *Ormco Corp. v. Align Technology, Inc.*, 463 F.3d 1299, 1311-12 (Fed. Cir. 2006). Advertising the benefits of the claimed invention links the invention to commercial success. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579 (Fed. Cir. 1997); *Wm. Wrigley Jr. Co. v. Cadbury Adams USA LLC*, 683 F.3d 1356, 1369 (Fed. Cir. 2012). Also, statements that a product was successful due to the patented features support a finding of nexus. *See Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.*, 711 F.3d 1348, 1368 (Fed. Cir. 2013).

As evidenced below, Patent Owner implemented the claimed invention of the '887 patent in its "two-tap" technology to meet the growing demand for improved user experience and engagement when interacting with web-based advertisements using a mobile device. Patent Owner was founded in 2016; its first offering, which remains its primary offering, is its "two-tap" technology. The "two-tap" technology has resulted in significant commercial success not only for Patent Owner, but also for its customers. In addition to Patent Owner's own revenue, its "two-tap" technology has generated **"\$13+ billion in SMS revenue"** in 2022, alone, for its customers from the sending of **"21.8 billion text messages."** (EX-2026 2.) Patent Owner's "two-tap" technology also yields significant return on investment for its

customers, with them “making an average of \$55 dollars for every \$1 spent.” (EX-2028 3.) Patent Owner was also recently named to the Deloitte Fast 500 list, which highlighted Patent Owner’s **1,259% growth rate** from 2019-2022. (EX-2027 1.) As a direct result of “two-tap” technology, Patent Owner has become “the #1 conversational marketing platform” (*id.*) and “[t]he biggest company in the space.” (EX-2028 3). There can be no doubt that Patent Owner’s “two-tap” technology is extremely valuable and commercially successful.

Patent Owner advertised its implementation of the ’887 patent (and its benefits) in its “two-tap” technology:



(EX-2037 13.) Patent Owner marketed its patented technology as “[p]owered by Attentive [d]eeplinking” and “[e]asily integrated with existing ad solutions and partners.” (*Id.* 14, 17.)



(EX-2029 3.) Additionally, Patent Owner virtually marks its “two-tap” technology as practicing the challenged claims. (EX-2030 1.)

Moreover, the extensive promotion by Patent Owner of the improved user experience and enrollment results underscores how such technology drives demand and commercial success of such products. For example, Patent Owner boasts that its embodying product yields significantly higher click-through rates and return on investment:



Drive incremental revenue with:

Text Message Marketing

- ✓ Collect email and SMS subscribers together
- ✓ 50%+ of top 1,000 online retailers use text
- ✓ 30%+ CTRs and 25x+ ROI
- ✓ 10x more revenue per message vs. email

(EX-2038 1.) When Patent Owner implemented its “two-tap” sign-up technology on Instagram, it boasted of its immediate success. (EX-2031 2.)

Other industry leaders have similarly commented on the importance of Patent Owner’s “two-tap” technology—specifically, the user experience and ease of use in completing enrollments in promotional activities. For example, Sacra’s corporate report on Patent Owner states the following:

Attentive is a SMS platform that creates personalized messages by leveraging consumer behavior data. Its main feature is “two-tap” sign-up, which lets brands minimize the path between catching a user’s interest and convincing them to agree to a regular flow of marketing

texts. First, the user notices something on a brand's website that causes them to click on a call to action to opt in. Via Attentive's tech, the user's text message app automatically displays a pre-written sign-up request, which gets sent to the brand's designated phone number.

(EX-2014 5.) Sama Labs recognized the invention's simplicity as the key to profitability:

Another is with Attentive's patent-pending "two-tap" method on mobile websites. A user taps the pop-up on a brand's mobile site to sign up for SMS. Then, a message giving the brand permission to opt the user in is pre-populated in the user's native text messaging app. The user simply presses send and is opted in to begin receiving messages. Simplicity is key – that's what makes SMS Marketing so profitable.

(EX-2032 2-3; *see also* EX-2033 2; EX-2016 1.) "Attentive has made a big achievement which is worth appreciating." (EX-2034 1.)

This evidence shows that the patented, improved method for enrolling users from web-based advertisements and the ability to minimize taps which Patent Owner implemented in its "two-tap" technology was a substantial factor in the commercial success of the embodying product. It has been well-recognized in the industry that user engagement (i.e., experience and ease-of-use) is critical to obtaining enrollment in promotional activities. (EX-1001 1:30-52.) Patent Owner implemented the claimed invention to accomplish the very objectives of that invention—to improve

user experience and engagement when interacting with web-based advertisements using a mobile device. (EX-2001 ¶¶135-139.)

* * *

Accordingly, Patent Owner's "two-tap" technology, which implemented the patented method, was commercially successful and received widespread industry praise as a direct result of the claimed invention. The evidence supporting these secondary considerations constitutes strong objective evidence that the claims are nonobvious and confirms Petitioner's reliance on hindsight in constructing its deficient grounds.

VIII. CONCLUSION

Accordingly, the Board should decline to institute the petition.

Date: November 28, 2023

Respectfully submitted,

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CERTIFICATION OF WORD COUNT

The undersigned hereby certifies that the portions of the above-captioned PATENT OWNER'S PRELIMINARY RESPONSE specified in 37 C.F.R. § 42.24 includes 13,886 words and therefore complies with the 14,000-word limit set forth in 37 C.F.R. § 42.24. This word count was prepared using Microsoft Word 365 v.2022.

Date: November 28, 2023

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **PATENT OWNER'S PRELIMINARY RESPONSE** and all supporting **EXHIBITS 2001-2038** were served by filing the documents through the Patent Trial and Appeal Case Tracking System (P-TACTS) as well sent via Federal Express on November 28, 2023 and courtesy copies were also served via electronic mail, in their entirety on the following:

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