

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.

IPR2024-00069
Patent 11,416,897 B1

Before HUBERT C. LORIN, LYNNE H. BROWNE, and
SCOTT A. DANIELS, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
35 U.S.C. § 314, 37 C.F.R. § 42.4

I. INTRODUCTION

Stodge, Inc. d/b/a Postscript (“Petitioner”) filed a Petition (Paper 1 (“Pet.”)) requesting institution of an *inter partes* review of claims 15–30 of U.S. Patent No. 11,416,897 B1 (Ex. 1001, “the ’897 Patent”). Attentive Mobile Inc. (“Patent Owner”) timely filed a Preliminary Response. Paper 6 (“Prelim. Resp.”).

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the Petition and any response thereto shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a) (2018).

Upon consideration of the arguments and evidence presented by Petitioner, we deny Petitioner’s request to institute an *inter partes* review as to the challenged claims of the ’897 patent on the grounds of unpatentability presented.

A. *Real Parties in Interest*

Petitioner identifies itself, “Stodge, Inc. d/b/a Postscript,” as the only real party in interest. Pet. 7. Patent Owner identifies itself, “Attentive Mobile Inc.,” as the only real party in interest. Paper 4, 1.

B. *Related Matters*

The parties identify the following as related district court matters: *Attentive Mobile Inc. v. 317 Labs, Inc. d/b/a Emotive*, No. 1-22-cv-01163 (D. Del), and *Attentive Mobile Inc. v. Stodge Inc. d/b/a Postscript*, No. 1-23-cv-00087 (D. Del.) (“District Court Actions”). Pet. 7; Paper 4, 1.

Patent Owner also identifies the following proceedings as related matters involving patents related to the ’897 Patent: *Stodge, Inc. d/b/a*

Postscript v. Attentive Mobile, Inc., IPR2023-01338 (PTAB), and *Stodge, Inc. d/b/a Postscript v. Attentive Mobile, Inc.*, IPR2024-00129 (PTAB).
Paper 4, 1–2.

C. The '897 Patent

The '897 Patent for “Methods and Apparatus for Mobile Device Messaging-Based Communications Using Custom-Generated Deeplinks and Based on the Hyper Text Transfer Protocol (HTTP)” relates to vendor applications and websites opened on mobile devices. Ex. 1001, code (54), 1:30–32.

The '897 Patent explains that “[k]nown methods allow a user to open a vendor’s application or a vendor’s website on a mobile device to select a product or service,” and then “provide payment information via the vendor’s application or website to complete a transaction with the vendor.” Ex. 1001, 1:30–34.

According to the '897 Patent, “[w]ith these known methods . . . the user often pauses its previous activities . . . on the mobile device and is redirected to the vendor’s application or website to purchase the products and services via many user input[s].” Ex. 1001, 1:34–39. Thus, the '897 Patent asserts that “a need exists for methods and apparatus for dynamic application deeplinking to transition from one user interface to another user interface at a mobile device for continued and improved user experience and engagement when interacting with the mobile device.” *Id.* at 1:42–46.

To that end, the '897 Patent discloses providing an input in a webpage for a first user interface being executed at a mobile device, and deeplinking to a second user interface “to cause the second user interface to be rendered at the mobile device with the purchase information pre-populated in an input

field of a text message for the user to initiate a purchase via the text message.” Ex. 1001, 2:16–19. This is depicted in Figures 2A and 2B of the ’897 patent, reproduced below.

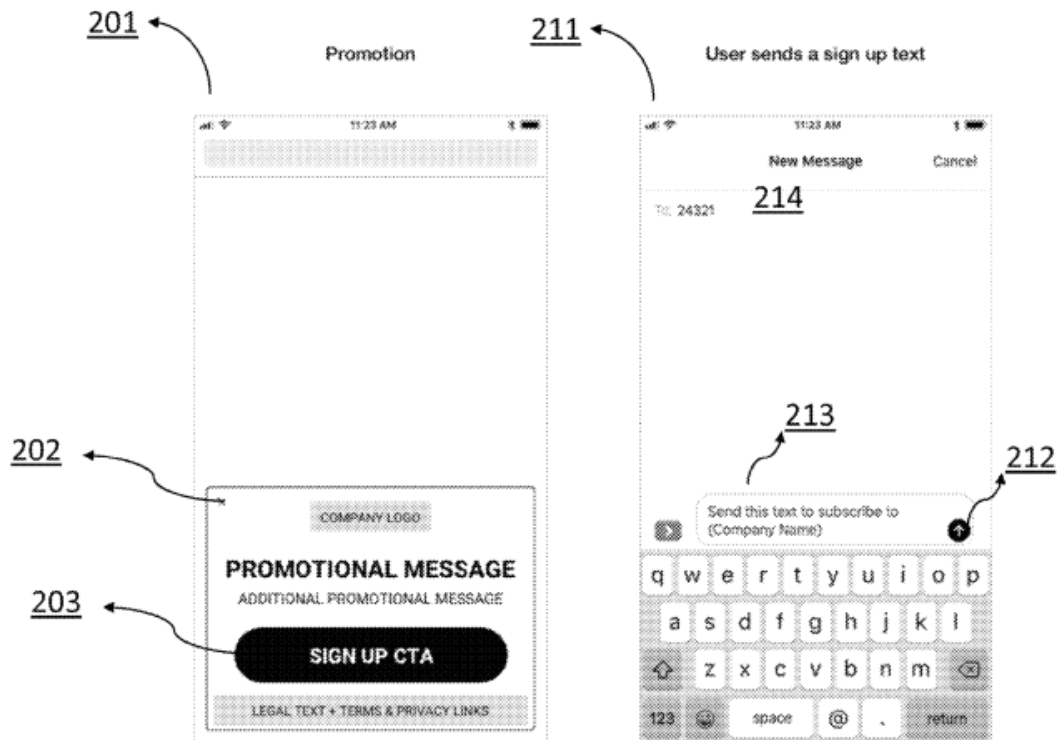


FIG. 2A

FIG. 2B

Figs. 2A and 2B of the ’897 Patent (Ex. 1001) show “screenshots of user interfaces at a user mobile device in a click-to-text subscription process.” Ex. 1001, 2:30–32. First user interface (201) depicted in Fig. 2A “displays a promotional message 202 . . . at the user mobile device and provides a ‘sign-up’ link 203, when selected, clicked or tapped by the user, initiating a second user interface 211 at the user mobile device.” Ex. 1001, 7:28–33. Second user interface (211) depicted in Fig. 2B is “within or part of a messaging application” and “[i]n response to user selections, clicks or taps at the ‘sign up’ link 203, the second user interface 211 of a mobile application

. . . opens with a message pre-populated with a subscription request 213.”
Id. at 7:42–46.

D. Challenged Claims

Petitioner challenges claims 15–30. Pet. 8. Independent claim 15, reproduced below with Petitioner’s identifiers included, is illustrative of the claims at issue in this proceeding. Ex. 1001, 24:39–60.

15. [a] A non-transitory processor-readable medium storing code configured to be executed by a processor, the code including instructions configured to cause the processor to:

[15b] send, from at least one server and to a mobile device requesting and/or a webpage, means for displaying an invitation to subscribe to a text messaging subscription service via a first application;

[15c] send, from the at least one server and to the mobile device, means for causing (1) the mobile device to transition from the first application to a second application different from the first application in response to the mobile device detecting a first interaction with the invitation, the second application being a messaging application, and [15d] (2) the second application to automatically populate a custom text message based on the user data;

[15e] receive, from the mobile device, the custom text message in response to the mobile device detecting a second interaction with the messaging application; and

[15f] deliver an installment of the text messaging subscription service without receiving an opt-in communication after receiving the custom text message.

Id. at 24:39–60.

E. Asserted Grounds of Unpatentability

Petitioner asserts that claims 15–30 would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
15–19, 21–30	103	Oliver, ¹ Agrawal, ² Molinet ³
15–30	103	Oliver, Agrawal, Molinet, Ad Serving Technology ⁴

Pet. 8.

F. Evidence

Petitioner supports its challenge with the Declaration of Henry Houh, Ph.D. (Ex. 1002). Patent Owner supports its response with the Declaration of Sam Malek, Ph.D. (Ex. 2001).

II. ANALYSIS

A. Principles of Law

A patent claim is unpatentable under 35 U.S.C. § 103 if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, “would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) when in evidence, objective

¹ Oliver et al., U.S. Pat. Appl. Pub. 2015/0178784 A1, published June 25, 2015 (Ex. 1011) (“Oliver”).

² Agrawal et al., U.S. Patent No. 8,015,615 B1, issued Sept. 6, 2011 (Ex. 1005) (“Agrawal”).

³ Molinet et al., U.S. Pat. Appl. Pub. 2016/0142858 A1, published May 19, 2016 (Ex. 1009) (“Molinet”).

⁴ GREGORY CRISTAL, AD SERVING TECHNOLOGY: UNDERSTAND THE MARKETING REVELATION THAT COMMERCIALIZED THE INTERNET (2014) (Ex. 1012) (“Ad Serving Technology”).

evidence of nonobviousness.⁵ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

“An obviousness determination requires finding that a person of ordinary skill in the art would have been motivated to combine or modify the teachings in the prior art and would have had a reasonable expectation of success in doing so.” *Regents of Univ. of Cal. v. Broad Inst., Inc.*, 903 F.3d 1286, 1291 (Fed. Cir. 2018).

“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Technology, Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)). This burden of persuasion never shifts to Patent Owner. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing the burden of proof in *inter partes* review).

B. Level of Ordinary Skill in the Art

In determining the level of skill in the art, we consider the type of problems encountered in the art, the prior art solutions to those problems, the rapidity with which innovations are made, the sophistication of the technology, and the educational level of active workers in the field. *Custom Accessories, Inc. v. Jeffrey-Allan Indus. Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986); *Orthopedic Equip. Co. v. U.S.*, 702 F.2d 1005, 1011 (Fed. Cir. 1983).

⁵ Patent Owner presents objective evidence of nonobviousness at this stage of the proceeding. Prelim. Resp. 59–72.

Petitioner contends that “[t]he level of ordinary skill encompassed a person having a Bachelor’s Degree in computer science and three years of experience in Web-based programming methods, where a higher level of education may substitute for experience and vice-versa.” Pet. 32 (citing Ex. 1002 ¶ 70) (emphasis omitted).

Patent Owner contends that a person of ordinary skill in the art “at the time of the invention of the ’897 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,” and “[m]ore advanced degrees and/or training in a related discipline can compensate for shorter work experience.” Prelim. Resp. 23–24 (citing Ex. 2001 ¶¶ 33–37).

The parties propose similar definitions of a person of ordinary skill in the art. Petitioner’s definition appears reasonable, and we determine that the level reflected in the prior art is consistent with Petitioner’s definition. Accordingly, for the purposes of this Decision, we adopt Petitioner’s proposal regarding the level of one of ordinary skill in the art.

C. Claim Construction

We apply the claim construction standard articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc), and its progeny. Only terms that are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Matal*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (in the context of an *inter partes* review, applying *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

Petitioner provides claim construction for the means-plus-function terms “means for displaying” and “means for causing” in independent claim 15. Pet. 19–20. Specifically, Petitioner asserts that the corresponding structure for “means for displaying” is “an integration tag configured to cause performance of the claimed functions” and that the corresponding structure for “means for causing” is “a URI deeplinking application . . . configured to cause performance of the claimed functions.” *Id.* (emphasis omitted).

Patent Owner disagrees. According to Patent Owner, the corresponding structure for “means for displaying” is “a tag configured to cause the claimed functions” and the corresponding structure for “means for causing” is “a link configured to cause the claimed functions.” Prelim. Resp. 18–19.

Our determination in this proceeding is based on the lack of rational underpinning for Petitioner’s reasoning in support of the proposed combination as discussed in Section II.E.1 below. Our determination would be the same regardless of the claim construction applied to these means-plus-function terms. As such, the construction of these terms does not affect our analysis and decision and we do not construe them.

D. Overview of the Prior Art References

1. Oliver (Ex. 1011)

Oliver is a U.S. Patent application for a lead generation tool published June 25, 2015. Ex. 1011, codes (19), (12), (43). Oliver discloses “systems and related methods of a Lead Generation Tool that create a passive entity, such as a QR code or NFC tag associated with a promotion, and that generate a prepopulated message on a user’s communications device when

the passive entity is scanned, read, or information therefrom is otherwise input to activate the passive entity.” Ex. 1011 ¶ 7.

Oliver defines a “passive entity” “to include images, codes, tags, or any other unique identifiers that may be encoded with uniquely identifying information.” *Id.* According to Oliver, “[u]sing the Lead Generation Tool, a person opts-in when the passive entity is activated with a response to the promotion, and the user is rewarded for such activation.” *Id.* ¶ 9. For example, “when the user scans the passive entity, a message is automatically generated to the user that encourages the user to tap SEND to obtain something that may be of value to the user.” *Id.* ¶ 7. Oliver describes “streamlin[ing] the response process by simply requiring only two actions by the user: the scan or other means of activating the passive entity, and the action of sending the prepopulated message generated by the activation of the passive entity.” *Id.* ¶ 9.

Figure 7 of Oliver is reproduced below.

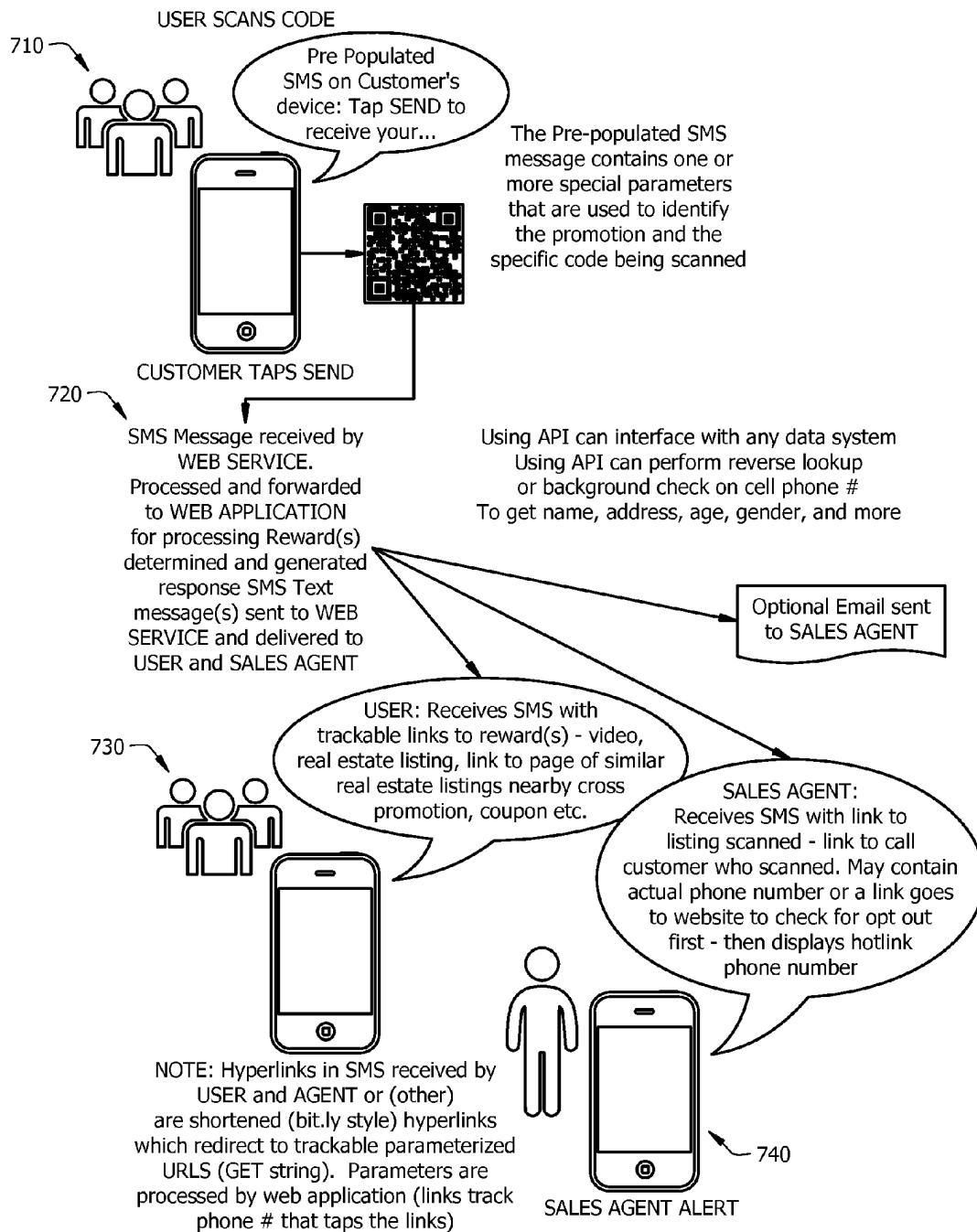


FIG. 7

Figure 7 illustrates an exemplary process 700 beginning at a step 710 with a user scanning a QR code and sending the prepopulated SMS text message. Ex. 1011 ¶ 49. At step 720, the SMS text message is sent to the web

application. *Id.* ¶ 50. At step 730, the web application generates and sends to the user a reply SMS text message including reward(s). *Id.* According to Oliver, at step 740, “the web application may also generate a SMS text message and deliver it to an agent of the distributors (here, a Sales Agent) using the same method providing a sales lead to the Sales Agent.” *Id.*

2. *Agrawal (Ex. 1005)*

Agrawal is a U.S. Patent for a system for determining advertising activity that issued September 6, 2011. Ex. 1005, codes (12), (45). In particular, Agrawal concerns the detection of illegitimate advertising-related activity. *Id.* code (57).

According to Agrawal, “selection of an advertising link by a user is commonly referred to as a ‘click,’” and “an on-line advertising system may calculate a charge based, at least in part, on the clicks that an advertising link receives.” Ex. 1005, 1:25–30. Noting that “[o]n-line advertising systems may charge companies a predetermined fee for each click or impression associated with the companies’ advertisements” Agrawal states that “[t]hese types of fee approaches are vulnerable to attacks where malicious individuals inflate a company’s advertising link click count or impression count” and “a company may be charged for clicks or impressions that do not correspond to actual (or real) users.” *Id.* at 1:34–36, 1:39–42, 1:51–53.

Agrawal’s invention relates to a system “obtain[ing] a first group of information when an advertising link is requested and a second group of information when the advertising link is selected” and “further detect[ing] illegitimate advertising-related activity based on the first group of information and the second group of information.” Ex. 1005, code (57); *see also id.* at 1:62–2:40.

According to Agrawal, “information may be obtained in connection with the advertisement query request and advertisement click request.” Ex. 1005, 3:26–29.

For example, browser information, client information, and/or user information may be collected with both the advertisement query request and the advertisement click request. The information collected with the advertisement query request may be compared to the information collected with the advertisement click request. If the information collected with the advertisement query request matches the information collected with the advertisement click request, this may indicate that the advertising activity is legitimate (i.e., that the advertising link may have been selected by a legitimate user). Alternatively, if the information collected with the advertisement query request does not match the information collected with the advertisement click request, this may indicate that the advertising activity is illegitimate (e.g., the selection of the advertising link may have been performed by a click-bot). In this way, illegitimate advertising link selections may be detected.

Id. at 3:29–45.

Figure 4 of Agrawal is reproduced below.

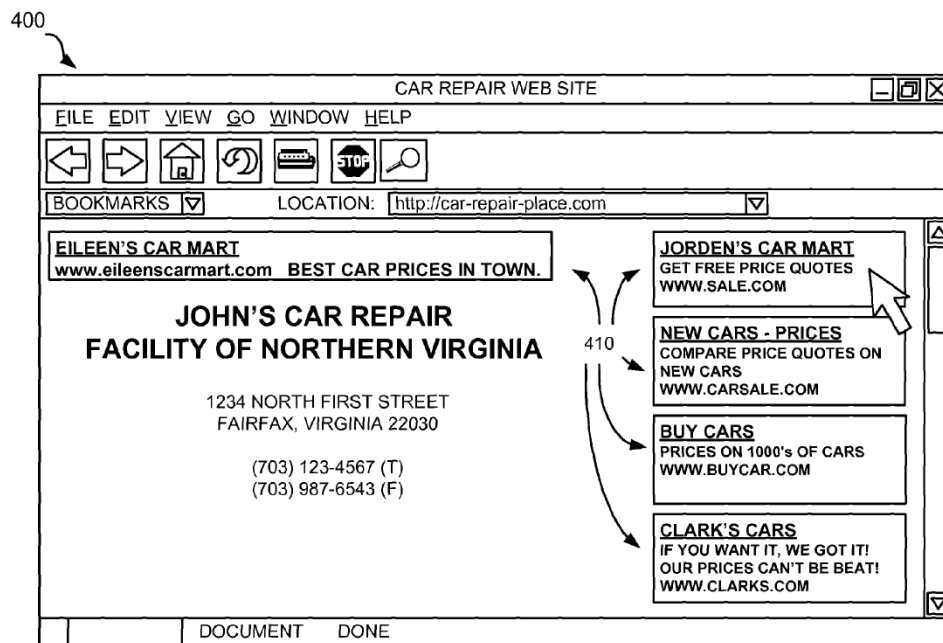


FIG. 4

Figure 4 illustrates a document 400 relating to car repair, which may be “accessed, for example, by typing in the uniform resource locator (URL) ‘car-repair-place.com’ or in response to a search query.” Ex. 1005, 8:15–19. According to Agrawal, “when the user requests access to document 400, an advertisement query request may be generated to retrieve advertising links 410 for document 400.” *Id.* at 8:28–30. Agrawal further describes that “a combination of browser information, client information, and/or user information may be collected.” *Id.* at 8:30–32. According to Agrawal, “[w]hen an advertising link 410 is selected, an advertising click request may be generated to report the selection of the advertising link.” *Id.* at 8:38–40. Agrawal further describes that “the same type of browser information, client information, and/or user information that was collected in relation to the user requesting access to document 400 may again be collected when the user selects an advertising link 410.” *Id.* at 8:40–44. Agrawal explains that these “two sets of browser information, client information, and/or user information

may be compared,” and “[i]f the two sets do not match, then it may be determined that illegitimate advertising activity is present.” *Id.* at 8:50–53. On the other hand, “it may be determined that legitimate advertising activity may be present since the browser/client/user information collected when the user requested access to document 400 matches the browser/client/user information collected when the user selected an advertising link 410.” *Id.* at 9:16–22.

3. *Molinet (Ex. 1009)*

Molinet is a U.S. Patent application for a method for providing contextual deep linking of applications published May 19, 2016. Ex. 1009, codes (19), (12), (43). Molinet’s invention relates to “contextual deep linking of mobile applications.” Ex. 1009 ¶ 3.

Molinet explains that “[t]he development of application ecosystems on client devices (such as the ecosystem associated with ‘application stores’ on smartphones) has created a system where users can easily install new applications and immediately add new functionality to their client devices,” but recognizes that “what was lacking was a method of easily directing users to sections within applications and passing data to applications, regardless of the type of client device . . . and whether the application is installed on the client device.” *Id.* ¶ 5.

Figure 1 of Molinet is reproduced below.

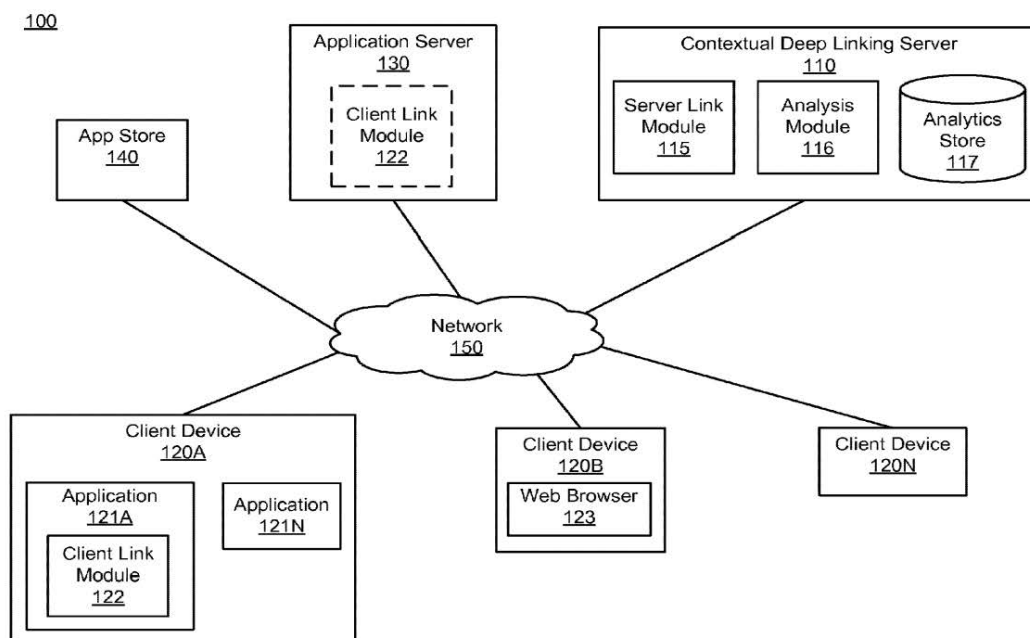


FIG. 1

Figure 1 illustrates “system 100 capable of contextual deep linking,” including “one or more client devices 120, an application store 140, an application server 130, and a contextual deep linking server 110.” Ex. 1009 ¶ 19. Molinet’s “application store 140 is a component in an application ecosystem (e.g., a mobile application ecosystem) that provides a centralized location for client devices to submit requests for applications to be installed on the client device 120.” *Id.* ¶ 21. According to Molinet, “one or more applications 121 support contextual deep links,” where “[a] contextual deep link indicates a particular configuration for an application 121.” *Id.* ¶ 24.

Molinet explains that “when a client device 120 makes a request associated with a contextual deep link for the application 121, the client device 120 receives from the contextual deep linking server 110 a response that is based on the contextual information of the client device 120,” such as “the platform of the client device 120 (e.g., mobile or desktop), the type and version of the operating system executing on the client device 120, whether

the application 121 is installed on client device 120 already, and so on.” Ex. 1009 ¶ 25.

As an example, Molinet describes “a contextual deep link [that] may be a URL in the format of ‘http://link-provider.com/[application identifier]/[unique identifier],’” where “‘link-provider.com’ is the domain name associated with the entity performing the operations coordinating the contextual deep linking.” Ex. 1009 ¶ 26. Molinet explains that “[t]he ‘[application identifier]’ is a unique character string identifier that identifies the application in question,” and “[t]he ‘[unique identifier]’ is another unique character string identifier that identifies the particular link.” *Id.* Molinet explains further that “[w]hen a user clicks (or interacts) with the contextual deep link, a request is made to the ‘link-provider.com’ server which receives the unique identifiers and is able to send a contextually valid response to the client device 120 of the user.” *Id.* In Molinet, when “the user is using a mobile device that supports a mobile application ecosystem, the server may detect this contextual information and respond with a redirection to the application store on the user’s client device 120 if the user does not have installed the application referenced in the link.” *Id.*

According to Molinet, the client device 120 may include a web browser 123 that can transmit requests associated with contextual deep links in the form of a Hypertext Markup Language (HTML) hyperlink. Ex. 1009 ¶ 33. Molinet describes that “if a user clicks, taps, or interacts with the hyperlink, the web browser 123 submits a request to the contextual deep linking server 110 indicated by the hyperlink,” and “then receives a response based on the context of the client device 120 that is executing the web browser 123.” *Id.*

Figure 5 of Molinet is reproduced below.

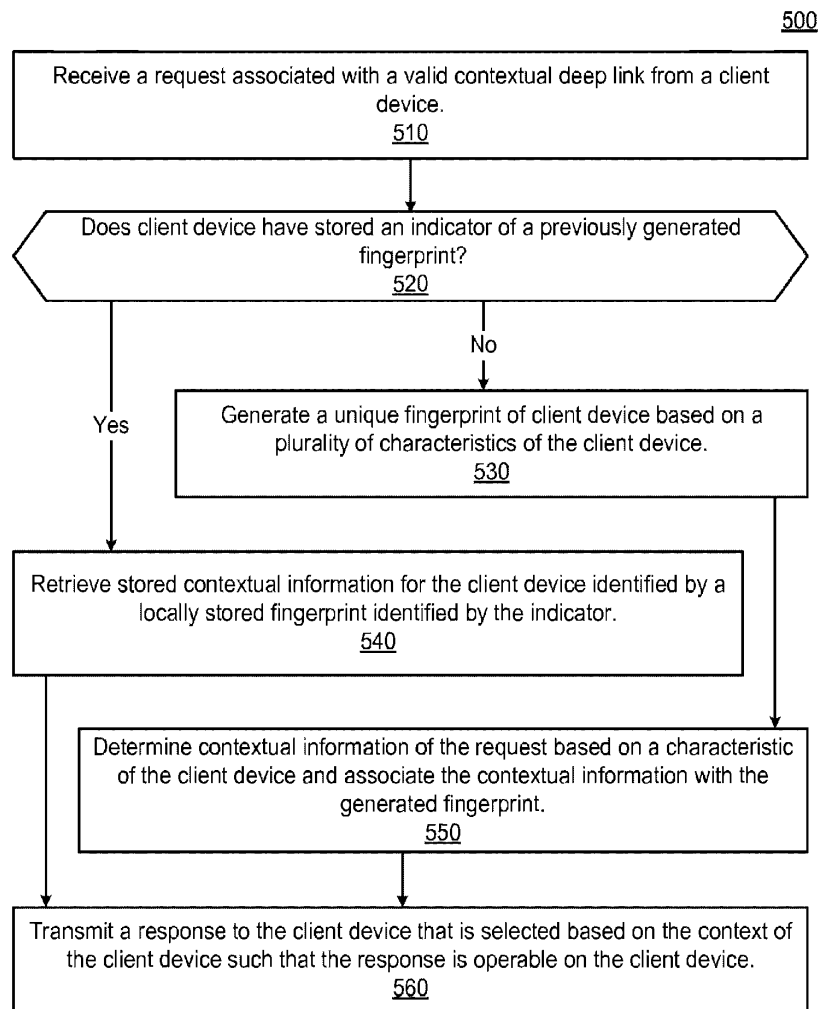


FIG. 5

Figure 5 is “a flow chart illustrating an exemplary method 500 for responding to a request associated with a contextual deep link with a context based response.” Ex. 1009 ¶ 101. At step 510, “[t]he contextual deep linking server 110 receives . . . a request associated with a valid contextual deep link from a client device 120.” *Id.* ¶ 102. At step 520, “[t]he

contextual deep linking server 110 determines . . . if the client device 120 has stored an indicator of a previously generated fingerprint,” which “was previously generated by the contextual deep linking server 110 during a previous encounter with the client device 120” and “may be stored in a cookie on the client device 120.” *Id.* ¶ 103. In Molinet’s method “[i]f the client device 120 does have a previously stored fingerprint, then at step 540, “the contextual deep linking server 110 retrieves . . . stored contextual information for the client device 120 identified by a locally stored fingerprint matching the previously generated fingerprint.” *Id.* ¶ 106. On the other hand, if the client device 120 does not have an indicator of a previously stored fingerprint, then at step 530, “the contextual deep linking server 110 generates . . . a unique fingerprint of client device based on a plurality of characteristics of the client device.” *Id.* ¶ 104. At step 550, “the contextual deep linking server 110 determines . . . contextual information of the request based on a characteristic of the client device 120 and associates the contextual information with the generated fingerprint.” *Id.* ¶ 105. At step 560, “[t]he contextual deep linking server 110 transmits . . . a response to the client device that is selected based on the context of the client device such that the response is operable on the client device 120.” *Id.* ¶ 107.

4. *Ad Serving Technology (Ex. 1012)*

Ad Serving Technology is a book titled “Ad Serving Technology” with the subtitle “Understand the marketing revelation that commercialized the Internet” and the copyright year of 2014. Ex. 1012, 1, 4.⁶ Ad Serving Technology is directed to “Digital Marketing, Online Advertising and third

⁶ Citations to the pages of Ad Serving Technology are made with reference to the page numbering added by Petitioner to Exhibit 1012.

party ad serving.” Ex. 1012, 27. Ad Serving Technology defines “[a] third party ad server is a business to business machine or system that does a specific service.” *Id.* at 32.

According to Ad Serving Technology, “[t]hird party ad serving core ‘customers’ are Media Agencies and Advertisers,” who “pay to have access to be able to log into the third party ad serving interface.” *Id.* Ad Serving Technology states that “[c]ustomers of third party ad servers pay initially for the ad space and then pay a tiny fee on top for each advert.” *Id.*

Ad Serving Technology teaches that “‘HTML’ (Hyper-Text Mark-up Language)” is “the language of ‘tags’ and when we refer to ‘tags’ in third party ad serving, we are talking about a few lines of HTML code.” *Id.* at 52. Ad Serving Technology explains “in most instances, the HTML is used to house a more complex request which occurs in JavaScript,” which “does the fetching, carrying and calculating of the content.” *Id.* at 53; *see also id.* at Figure 1.5.

According to Ad Serving Technology, “JavaScript is the most common method of ad delivery that third party ad servers use.” *Id.* at 54. JavaScript “runs or ‘executes’ in the user’s browser and allows for a whole host of important web page tricks such as popup windows and browser manipulation (like a command to print something on the page).” *Id.* at 53. Ad Serving Technology explains that “JavaScript can gather and send a user’s information and to a remote server so that the server is capable of responding by sending out a new piece of information (like making a previously hidden part of the website, suddenly appear).” *Id.* at 53–54. Ad Serving Technology explains further that “JavaScript can do interesting things like work out what time it is, or find out what browser the user is

using: information like this can be passed back into the ad server when the ad loads allowing for some impressive customization inside the ad itself.”

Id. at 54. Ad Serving Technology describes that “JavaScript returns one of four remote entities”—“Image files, Flash files, text links and video files”—“from the ad server and pulls them into the web page as the page loads.” *Id.*

E. Ground 1: Alleged Obviousness of Claims 15–19 and 21–30 over Oliver, Agrawal, and Molinet

Petitioner asserts that claims 15–19 and 21–30 are unpatentable over the combined teachings of Oliver, Agrawal, and Molinet. Pet. 20. Petitioner addresses each limitation of claims 15–19 and 21–30 and articulates reasoning in support of the proposed combination. Pet. 28–70; Ex. 1002 ¶¶ 77–170.

1. Petitioner’s Reasoning in Support of the Proposed Combination of Oliver, Agrawal, and Molinet

Petitioner sets forth its reasoning in support of the proposed combination for all claims challenged under Ground 1 in Section III.C. As our determination that Petitioner’s reasoning lacks rational underpinning is dispositive as to all claims challenged under this ground, we do not discuss each claim individually.

a) Alleged Advantage of Combining Oliver and Agrawal

Petitioner asserts that “[i]t would have been obvious to implement Oliver’s business method by presenting Web links in Internet ads, using an ad system such as Agrawal’s, and to augment such an ad system with Molinet’s techniques to deeplink to mobile applications.” Pet. 28 (citing Ex. 1002 ¶ 90).

First, Petitioner asserts that “Oliver’s method would have appealed to businesses seeking a streamlined method for acquiring the contact information of potential customers, and for acquiring the potential customer’s consent to receive marketing communications and proof of possession of the mobile device.” Pet. 28 (citing Ex. 1011 ¶¶ 4–6, 9; Ex. 1002 ¶ 91). Petitioner asserts further that a person of skill in the art “would have desired to enhance the reach of Oliver’s ads by using a Web advertising system such as Agrawal’s, which allows ads to be targeted at users likely to find the subject matter appealing.” *Id.* at 28–29 (citing Ex. 1005, 5:45–63; Ex. 1002 ¶ 92). Petitioner asserts that a person of skill in the art “would have found it obvious to use the concept of mobile app deeplinks that pre-populated text messages (like Oliver’s) as links (*e.g.*, links 410) in Agrawal’s web ads,” because Oliver suggest this in its statement that “the ‘passive entity’ that contains the link can be essentially anything with which a mobile device can interact.” *Id.* at 29 (citing Ex. 1005, 8:20–44; Ex. 1011 ¶¶ 7, 27–29, 33, 35, 48; Ex. 1002 ¶ 92). In addition, Petitioner asserts that a person of ordinary skill in the art “would have found Agrawal’s authentication system advantageous to carry out Oliver’s express desire to authenticate the user and impose limits on the user’s access to promotions.” *Id.* (citing Ex. 1011 ¶ 47; Ex. 1002 ¶ 92).

Petitioner, however, does not explain how Agrawal’s web advertising system for identifying illegitimate advertising link request activity would have enhanced the reach of Oliver’s promotions. Oliver’s lead generation tool presents promotions to users via passive entities such as QR codes and enables users to respond to these promotions via text message. As Petitioner notes, Oliver discloses that its “passive entities can be incorporated into

advertising” and “can be incorporated into ‘electronic visual media’ on the Internet.” Pet. 29 (citing Ex. 1011 ¶ 34). Petitioner does not adequately explain why Agrawal’s use web advertising system is better than Oliver’s use of passive entities. Pet 28 (citing Ex. 1005, 5:45–63; Ex. 1002 ¶ 92).

Petitioner argues that Agrawal “allows ads to be targeted at users likely to find the subject matter appealing.” *Id.* at 28–29. Yet the fact that Agrawal discloses retrieving advertising links relevant to a user’s search query, does not explain how or why that user is more “targeted” than another user who scans a passive entity such as a QR code as in Oliver. *See* Ex. 1005, 5:57–58 (Agrawal discloses “using the keyword to select the appropriate advertising links.”), *see also* Ex. 1011 (Oliver teaching to “create a passive entity, such as a QR code or NFC tag associated with a promotion.”).

In addition, Petitioner does not adequately explain how Agrawal’s method of determining if advertising activity is legitimate, i.e., only an interested or “real” user as compared to a “click” bot, could be used with Oliver’s method, let alone how extrapolating site data that results in more accurate advertising fees would enhance the reach of Oliver’s promotions to more users. *See id.* at 1:47–54 (Agrawal explaining that “click-bots can be configured to mimic real network traffic by specifying parameters . . . result[ing] in inaccurate fees being charged for advertising services.”).

Petitioner’s reliance on Dr. Houh’s testimony doesn’t cure these deficiencies in Petitioner’s reasoning as that testimony simply repeats the assertions in the Petition without further elaboration. *Cf.* Pet. 28–29, *with* Ex. 1002 ¶ 92). Moreover, Oliver’s promotions are already targeted to users who are interested in Oliver’s products by virtue of the fact that the users are

responding to passive entities in advertisements for those products by opting in.

b) Alleged Added Benefits of Combining Molinet with the Oliver/Agrawal Combination

Petitioner asserts that “Agrawal and Molinet are similar and fit easily together: both use Web-based technologies and communications with a central server to dynamically alter a user’s Web experience.” Pet. 30 (citing Ex. 1005, 5:29–63, 7:54–58; Ex. 1009 ¶¶ 72–82, 101–107; Ex. 1002 ¶ 94). Even if we assume, however, that Petitioner’s assertions above that Agrawal and Molinet fit together are correct, Molinet doesn’t cure the deficiencies in Petitioner’s reasoning in support of the proposed combination of Oliver and Agrawal. Moreover, we agree with Patent Owner that “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.” Prelim. Resp. 34 (quoting *KSR*, 550 U.S. at 418).

Petitioner also asserts that “it would have been obvious to carry out the server-based software techniques of Oliver and Molinet at Agrawal’s Advertising System 120” “to obtain the benefits of each system.” Pet. 31 (citing Ex. 1002 ¶ 95). Petitioner’s reasoning does not adequately explain why a person of ordinary skill in the art would make the proposed modifications and instead appears to be based on improper hindsight reasoning. Specifically, Petitioner does not adequately address which benefits of each system a person of skill in the art would be motivated to combine and what the advantages of combining functionalities of the references into a single server would be.

c) Known Techniques for Their Known Functions

Petitioner argues that “[t]he combination further would have been obvious under [*KSR*], as the application of known techniques (Molinet and Oliver), for their known functions, in order to improve Agrawal, with no unpredictable results.” Pet. 31–32 (citing Ex. 1002 ¶¶ 95–96).

We agree with Patent Owner that “Petitioner’s single-sentence analysis under *KSR* falls well short of acknowledging and addressing the critical distinctions between the references.” Prelim. Resp. 40 (citing Pet. 31–32; Ex. 2001 ¶¶ 80–81). Agrawal teaches a system for determining if advertising “click” activity is illegitimate. Ex. 1005, code (57). Petitioner does not adequately explain what known techniques from Oliver and Molinet would be applied and what improvements to Agrawal would be obtained. Simply put, Petitioner does not adequately explain why one of ordinary skill in the art would have looked to Molinet or Oliver to improve Agrawal’s method.

d) Conclusion Re Petitioner’s Reasoning in Support of the Proposed Combination

For the reasons discussed above, we determine that Petitioner’s reasoning in support of the proposed combination lacks rational underpinning. Specifically, we find that Petitioner has not adequately explained why one skill in the art would be motivated to combine Oliver, Agrawal, and Molinet as proposed. We further find that Petitioner’s reasoning is based on improper hindsight reasoning and that Petitioner’s reasoning is not supported by the concept that applying known techniques for their known functions—per *KSR*—provides sufficient rationale for the proposed combination.

2. *Conclusion Re Ground 1*

Having determined that Petitioner’s reasoning in support of the proposed modification for all claims challenged in Ground 1 lacks rational underpinning, we further determine that Petitioner fails to show a reasonable likelihood of prevailing on this ground.

F. Ground 2: Alleged Obviousness of Claims 15–30 over Oliver, Agrawal, Molinet, and Ad Serving Technology

Petitioner asserts that claims 15–30 are unpatentable over the combined teachings of Oliver, Agrawal, Molinet, and *Ad Serving Technology*. Pet. 71. Petitioner does not articulate reasoning in support of the proposed combination other than its statement that “*Ad Serving Technology* . . . teaches that ad tags were well-known to contain JavaScript that could determine whether or not to display the ad, and thus motivates the combination.” *Id.* (citing Ex. 1012, 54 (using Petitioner’s pagination); Ex. 1002 ¶ 172). Thus, we understand Petitioner to rely on its reasons for combining Oliver, Agrawal, and Molinet as set forth in Ground 1 for Ground 2 as well. As we have determined that this reasoning lacks rational underpinning and nothing in Ground 2 cures the deficiencies in Petitioner’s reasoning, we determine that Petitioner fails to show a reasonable likelihood of prevailing for Ground 2.

G. Discretion under 35 U.S.C. § 325(d) and 35 U.S.C. § 314(a)

Patent Owner requests that we exercise our discretion to deny institution under §§ 325(d) and 314(a). Prelim. Resp. 74–77. For the reasons discussed above, we decline to institute *inter partes* review. Because we base our denial of institution on the merits of this case, it is

unnecessary for us to analyze whether we should also discretionarily deny institution under 35 U.S.C. §§ 325(d) or 314(a).

III. CONCLUSION

We determine that the Petitioner has not satisfied its burden from the onset to show with particularity why the patent it challenges is unpatentable. 35 U.S.C. § 312(a)(3). Therefore, Petitioner has not demonstrated a reasonable likelihood that it would prevail in showing the unpatentability of any of claims 15–30 of the '897 patent under the asserted grounds.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), *inter partes* review of claims 15–30 of the '897 patent is denied, and no trial is instituted.

IPR2024-00069
Patent 11,416,897 B1

FOR PETITIONER:

Matthew A. Smith
Andrew S. Baluch
SMITH BALUCH LLP
smith@smithbaluch.com
baluch@smithbaluch.com

FOR PATENT OWNER:

Mikaela Stone
Brian Eutermoser
KING & SPALDING LLP
mikaela.stone@kslaw.com
beutermoser@kslaw.com