

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

J&H WEB TECHNOLOGIES, LLC,
Patent Owner.

IPR2024-00108
U.S. Patent No.: 8,935,342
Issued: January 13, 2015
Application No.: 13/417,174
Filed: March 9, 2012

Title: METHOD FOR DETECTING AND UNSUBSCRIBING
AN ADDRESS FROM A SERIES OF SUBSCRIPTIONS

PETITION FOR
INTER PARTES REVIEW OF U.S. PATENT NO. 8,935,342

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LIST OF EXHIBITS

No.	Description
1001	U.S. Patent No. 8,935,342 (“ the ’342 patent ”)
1002	File History of U.S. Patent No. 8,935,342
1003	Declaration of Loren Terveen, dated November 9, 2023
1004	U.S. Patent No. 7,831,707 (“ Bardsley ”)
1005	U.S. Patent No. 7,620,690 (“ Castelli ”)
1006	LashBack website excerpts, captured Jan. 25, 2009-Feb. 13, 2009, and Dec. 15, 2006 (“ LashBack ”)
1007	U.S. Patent No. 7,873,996 (“ Emigh ”)
1008	U.S. Patent No. 6,029,192 (“ Hill ”)
1009	Return Path Research Study, <i>Keeping the Subscriber Experience Positive After “Unsubscribe Me,”</i> 2008 (“ Return Path ”)
1010	Constant Contact: Email List Management, captured Jan. 2, 2011
1011	Chang, Ming-Wei; Yih, Wen-Tau; and McCann, Robert, <i>Personalized Spam Filtering for Gray Mail</i> , Proceedings of the 5th Conference on Email and Anti-Spam, Aug. 2008
1012	Yih, Wen-Tau; McCann, Robert; and Kolcz, Aleksander, <i>Improving Spam Filtering By Detecting Gray Mail</i> , CEAS 2007 – Fourth Conference on Email and Anti-Spam, Aug. 2-3, 2007
1013	Dietrich, Christian and Rossow, Christian, “ <i>Empirical research on IP blacklisting</i> ,” Fifth Conference on Email and Anti-Spam, CEAS 2008 (“ Dietrich ”)
1014	Affidavit of Nathaniel E. Frank-White

No.	Description
1015	Neufeld, G. and Nisto, Baer, J., “ <i>The Use of URLs as Meta-Syntax For Core Mail List Commands and their Transport through Message Header Fields</i> ,” Network Working Group Request for Comments: 2369, July 1998
1016	Duerst, M.; Masinter, L., and Zawinski, J., “ <i>The ‘mailto’ URI Scheme</i> ,” Internet Engineering Task Force Request for Comments: 6068, Oct. 2010
1017	U.S. Patent No. 7,644,126
1018	Unsubcentral.com: Suppression List, captured Jan. 4, 2011
1019	Jenkins, Simms, <i>The Truth About Email Marketing</i> , Pearson Education, Inc., 2009
1020	Interspire.com Email Marketer User Guide, 2008
1021	J&H Web Technologies, LLC’s Sur-Reply in Opposition to Motion to Dismiss, ECF 33, <i>J&H Web Techs., LLC v. Vade Retro Tech., Inc.</i> , no. 4:17-cv-00119 (S.D. Tex.), Apr. 21, 2017
1022	Tittel, Ed and James, Steve, <i>HTML for Dummies</i> , 2nd Ed., IDG Books Worldwide, Inc., 1996
1023	Designing, Coding & Delivering HTML Email: A beginners survival guide from MailChimp, 2009
1024	Bannan, Karen, “ <i>When They Say You Are a Spammer</i> ,” New York Times, May 24, 2007
1025	Dictionary of Computing,” 4 th ed., Peter Collin Publishing, 2002 (excerpt)
1026	Newton’s Telecom Dictionary, 25 th Updated and Expanded Anniversary Ed., 2009 (excerpt)
1027	Email Marketing Stats, Facts and Metrics – Metrics 2.0 Quick Pack, Metrics 2.0 Blog, Nov. 7, 2006

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1028	Abrams, Alan; Chaudhary, Tarun, and Deane, Jason, “A <i>multi-industry, longitudinal analysis of the email marketing habits of the largest United States franchise chains</i> ,” Journal of Direct and Digital Marketing Practice, Vol. 11, No. 3, pp. 187-197
1029	Singaraju, Gautam; Moss, Jeff, and Kang, Brent ByungHoon, “ <i>Tracking Email Reputation for Authenticated Sender Identities</i> ,” 5th Conference on Email and Anti-Spam, CEAS 2008
1030	Hoffman, P.; Masinter, L.; and Zawinski, J., “ <i>The mailto URL scheme</i> ,” Network Working Group Request for Comments: 2368, July 1998
1031	Docket Control Order, ECF 31, <i>J&H Web Techs., LLC v. Microsoft Corp.</i> , no. 2:23-cv-00277 (E.D. Tex.), Oct. 23, 2023

MANDATORY NOTICES UNDER 37 C.F.R. § 42.8

1. Real Party-In-Interest

Microsoft Corporation is the sole real party-in-interest.

2. Related Matters

The '342 patent (EX1001) is currently being asserted in the following litigations:

- J&H Web Technologies, LLC v. Microsoft Corporation, Case No. 2:23-cv-00277 (E.D. Tex.), filed June 15, 2023;
- J&H Web Technologies, LLC v. Bloop SRL, Case No. 2:23-cv-00278 (E.D. Tex.), filed June 16, 2023; and
- J&H Web Technologies, LLC v. Square Cat Software Limited, Case No. 2:23-cv-00279 (E.D. Tex.), filed June 16, 2023.

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Petitioner consents to service via email at the above email addresses.

Pursuant to 37 C.F.R. § 42.10(b), concurrently filed with this Petition is a Power of Attorney executed by Petitioner and appointing the above counsel.

I. INTRODUCTION

Microsoft Corporation (“Petitioner”) respectfully requests *inter partes* review (“IPR”) of claims 1-17 (the “challenged claims”) of U.S. Patent No. 8,935,342 (“’342 patent”) (EX1001), allegedly assigned to J&H Web Technologies, LLC.

For the reasons set forth below, these claims should be found unpatentable and cancelled.

II. GROUNDS FOR STANDING PER SECTION 42.104(a)

Petitioner certifies that the ’342 patent is available for IPR and that Petitioner is not barred or estopped from requesting an IPR involving the grounds in this petition.

III. IDENTIFICATION OF CHALLENGE

A. Statement Of The Precise Relief Requested / Statutory Grounds

Petitioner requests *inter partes* review of the challenged claims of the ’342 patent on the following grounds:

	Reference(s)	Basis	Claims
Ground 1	U.S. Pat. No. 7,831,707 (“Bardsley”) (EX1004) + U.S. Pat. No. 7,873,996 (“Emigh”) (EX1007)	35 U.S.C. § 103	1-3, 6-9, 13, 14, 16

Ground 2	Bardsley + Emigh + Dietrich (EX1013)	35 U.S.C. § 103	4
Ground 3	Bardsley + Emigh + Hill U.S. Pat. No. 6,029,192 (“Hill”) (EX1008)	35 U.S.C. § 103	5
Ground 4	Bardsley + Emigh + Return Path (EX1009)	35 U.S.C. § 103	10-12, 15, 17
Ground 5	U.S. Patent No. 7,620,690 (“Castelli”) (EX1005) + LashBack (EX1006)	35 U.S.C. § 103	1, 3-4, 6- 9, 13, 14, 16
Ground 6	Castelli + LashBack + Emigh	35 U.S.C. § 103	2
Ground 7	Castelli + LashBack + Hill	35 U.S.C. § 103	5
Ground 8	Castelli + LashBack + Return Path	35 U.S.C. § 103	10-12, 15, 17

For each ground, in sections VII-XIV below, the petition presents evidence of unpatentability and establishes a reasonable likelihood that the Petitioner will prevail in establishing that each challenged claim is unpatentable.

With the filing of this petition, an electronic payment of \$41,500 for the requisite fees is being charged to deposit account no. 02-4550. 37 C.F.R. § 42.15(a). Any fee adjustments may be debited/credited to the deposit account.

B. The Board Should Not Use Its Discretion To Deny This Petition

Neither “the same [n]or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d). None of the relied-upon references was cited during prosecution. Each primary reference teaches examining an email’s body for unsubscribe methods—the feature found lacking in the primary reference during examination (U.S. Publication No. 2010/0205259). EX1002, 51. The teachings in these primary references, in combination with secondary references, show that the challenged claims are unpatentable as obvious. Because these key teachings in the prior art were not previously considered by the Office, this petition should not be denied under Section 325(d).

Further, Patent Owner (“PO”) asserts the ’342 patent against Petitioner in a district court litigation filed in the Eastern District of Texas on June 15, 2023. The District Court has set a trial date of May 2025. EX1031. Petitioner stipulates that, if the Board institutes IPR, it will not pursue in the parallel proceeding the grounds it “raised or reasonably could have raised” in this petition as to the challenged claims. When a petitioner presents such a stipulation, “the PTAB will not discretionarily deny institution in view of parallel district court litigation.” USPTO Director’s

Memorandum On Interim Procedure For Discretionary Denials In AIA Post-Grant Proceedings With Parallel District Court Litigation at 3, 7 (June 21, 2022). Accordingly, the Board should not discretionarily deny institution in view of the parallel district court litigation. This is the first post-grant proceeding to challenge the '342 patent. To the extent PO makes any arguments regarding discretionary denial, Petitioner reserves the right to further address them.

IV. THE '342 PATENT

The '342 patent issued on January 13, 2015, from U.S. Patent Application No. 13/417,174, filed on March 9, 2012. EX1001.

The '342 patent relates to systems that address the known problem of email mailboxes becoming overwhelmed with unwanted messages from mailing lists, including those that appear to be SPAM messages. EX1001, 1:57-63. The patent uses the term “subscriptions” to “describe[] the inclusions of a specific email address in an electronic mailing list.” *Id.*, 1:22-24. The specification discloses identifying subscription emails and presenting a list of them to a user. *Id.*, 3:4-7. Then, the user selects any subscriptions she would like to unsubscribe from, and the appropriate unsubscribe method is performed. *Id.*, 3:7-4:50; EX1003, ¶¶ 24-29.

V. CLAIM CONSTRUCTION

For *inter partes* review, claim terms are given the ordinary meaning that they would have to a person of ordinary skill in the art on the earliest effective filing date,

in view of the specification and file history. 83 Fed. Reg. 51340; *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc).

Unless otherwise expressly discussed, Petitioner applies the plain and ordinary meaning of claim terms. Petitioner does not waive any argument in any litigation that claim terms are indefinite or otherwise invalid. Petitioner does not waive its right to raise additional claim construction issues in any litigation.

Petitioner has identified terms relevant to the issues in this IPR. *See, e.g., Aurobindo Pharma USA, Inc. v. Andrx Corp.*, 2018 WL 6828873, at *5 (P.T.A.B. Dec. 28, 2018) (“We address the construction of only certain claim terms raised by the parties, and . . . only to the extent necessary to determine whether Petitioner has demonstrated unpatentability by a preponderance of the evidence.”) (citation omitted). Construction of other claim terms may be relevant to issues in the parallel district court litigation, e.g., as part of resolving non-infringement. *See, e.g., O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008).

Petitioner proposes the following constructions, which are pertinent because the prior art discloses the elements of the challenged claims under the proposed constructions.

“**Subscription list**” should be construed as “email mailing list.” The ’342 patent recites that “subscriptions, as the term is utilized in this application, describes

the inclusions of a specific email address in an electronic mailing list.” EX1001, 1:22-24. The patent explains that “[a]n electronic mailing list is a special usage of email that allows for widespread distribution of information to many Internet users.” *Id.*, 1:24-26. Additionally, the patent explains that “‘electronic mailing list’ may refer to one of four things, the list of email addresses (‘List’), the people (‘Subscribers’) receiving mail at those addresses, the publications (‘Email Messages’ or ‘Messages’) sent to those addresses, and the target email address (the ‘Reflector’).” *Id.*, 1:29-34. Thus, a POSITA would understand that “subscription list” is used interchangeably with “email mailing list.” *See also id.*, 1:22-2:18; EX1003, ¶ 73.

“List-unsubscribe headers in [a/the] message header” should be construed as “list-unsubscribe fields in [a/the] message header.” EX1001, Fig. 2 at 211 (referencing “standard ‘List-Unsubscribe’ header field”). A POSITA would have known that list-unsubscribe fields were often located in email message headers and would have understood this recitation of a header within a header to mean a field in a header. A POSITA would further understand that the recited “list-unsubscribe headers” in this context refer to the “list-unsubscribe fields” defined in Internet standard RFC 2369. EX1002, 80; EX1003, ¶¶ 74-75 (discussing RFC 2369); EX1015.

“**List servers**” would be understood by a POSITA to refer to automated mailing list systems. EX1003, ¶ 76. Although the ’342 patent does not define list servers, the Abstract describes examining emails and “determining if they are from a subscription/automated mailing/list server by examining the [email].” EX1001, Abstract; *see also, e.g., id.*, 2:41-57; EX1026, 3 (defining “list server” as “[a]n automated mailing list distribution system”).

“**[P]rocessing, at least a subset of the email messages**” would be understood by a POSITA to mean processing one or more email messages. EX1003, ¶ 77; *see also* EX1025, 345 (defining “subset”). The specification explains, “[t]o scan a mailbox for Subscriptions is a complex process which starts (200) by examining the emails individually (201).” EX1001, 4:38-41; *see also* Figs. 2-3 (depicting emails processed individually, *e.g.*, “[s]elect next email” at step 202). Further, the specification teaches that processing only stops “[o]nce all emails have been processed,” meaning that processing will occur as long as there are one or more emails in the queue. *Id.*, 6:5-8; *see also* Fig. 2 (indicating processing proceeds beyond step 201 as long as there is a non-zero amount of emails—*i.e.*, one or more).

VI. LEVEL OF SKILL IN THE ART, AND STATE OF THE ART

A. Person Of Ordinary Skill In The Art

The person of ordinary skill in the art as of March 2012 (“POSITA”) would have possessed at least a bachelor’s degree in computer science, and two years of

work experience in the design and implementation of electronic messaging and management systems. The POSITA would have been familiar with techniques for unsubscribing to electronic mailing lists as part of her education, work, or personal experience. A person would also have qualified as a POSITA with some combination of (1) more formal education (such as a Master of Science degree) and less technical experience; or (2) less formal education and more technical or professional experience in the fields listed above. EX1003, ¶ 30.

B. State Of The Art

Upon receiving emailed advertisements from a retailer or service provider they had previously purchased from or used, or newsletters that they had previously subscribed to, some people considered such emails to be unwanted spam. EX1011; EX1012; EX1003, ¶ 31.

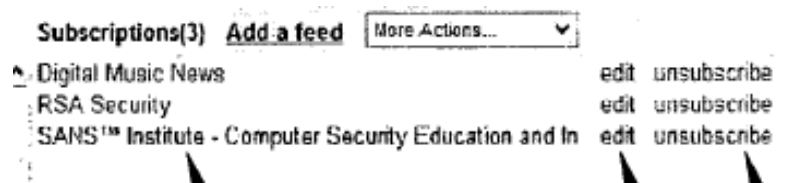
Robust systems for managing such subscription messages, including helping users minimize receiving unwanted messages by helping them unsubscribe from subscriptions were patented years before 2011. EX1003, ¶ 37. Each of the references relied on herein was published prior to March 9, 2011, therefore qualifying as prior art under pre-AIA Section 102(b).

1. Bardsley

U.S. Patent No. 7,831,707 (“Bardsley”), titled “Methods, Systems, And Computer Program Products For Managing Electronic Subscriptions, issued on

November 9, 2010. EX1004. Bardsley discloses techniques for managing electronic subscriptions. *Id.*, Abstract. Bardsley explains that a “user may subscribe to more electronic content than the user has time to read,” which can result in the user receiving redundant content and electronic messages that are never opened or read, and consume a significant amount of memory of the user’s device. *Id.*, 1:29-54. The inventions disclosed in Bardsley provide users with tools for managing such unwanted and redundant content, including mechanisms for unsubscribing from subscriptions. EX1003, ¶ 38.

Bardsley discloses an electronic subscription client, including a means for monitoring the receipt of subscription messages associated with electronic subscriptions. EX1004, 2:51-60, 4:50-57, 25:1-7. Bardsley’s electronic subscription client also includes a means for presenting a prompt allowing the user to unsubscribe from selected subscriptions. *Id.*, 5:16-60. For example, Figure 10 illustrates presenting to the user subscriptions from which the user can unsubscribe:



Id., Fig. 10 (excerpted).

Further, Bardsley discloses that its unsubscribe function “may identify unsubscribe information in a message,” and that it “may determine one of an address,

a URI, and a link associated with the electronic subscription for use in unsubscribing.” *Id.*, 6:13-39. Bardsley discloses that its unsubscribe function “may identify text in one or more subscription messages indicating information for unsubscribing,” and that “[e]xamples of text associated with unsubscribing includes one or more of subscribe text, mailing list text, and unsubscribe text.” *Id.*; EX1003, ¶¶ 39-40.

2. Castelli And LashBack

U.S. Patent No. 7,620,690 (“Castelli”)¹, titled “Privacy Control System For Electronic Communication,” issued on November 17, 2009. EX1005. Castelli discloses a system “for managing unsubscribe requests to unsolicited communications.” *Id.*, Abstract, 1:14-18. Castelli relates to a commercial system known as “LashBack,” and explains that the disclosed system is “known as LASHBACK™.” *Id.*, 2:62-67. Figure 1 illustrates the flow of its components.

¹ A certificate of correction issued in 2012. This certificate is irrelevant, as the Petition cites to Castelli as it issued in 2009.

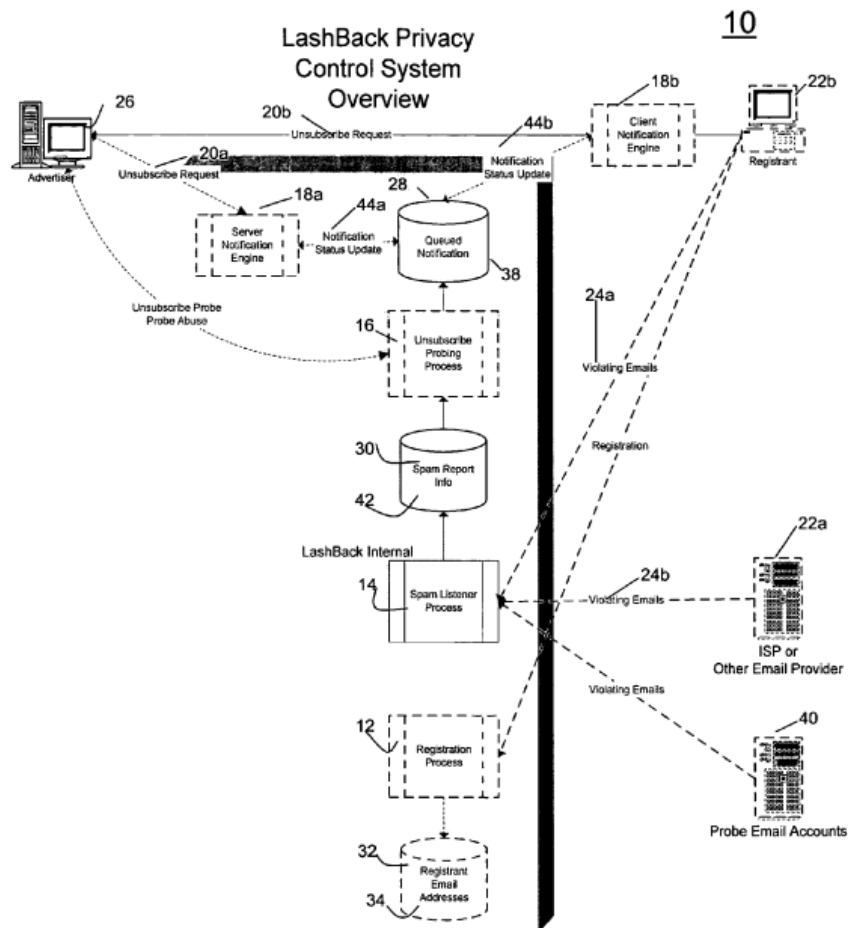


FIGURE 1

Id., Fig. 1; EX1003, ¶ 41.

For example, Castelli discloses a “notification engine” that parses email messages in search of an opt-out (unsubscribe) mechanism. EX1005, 4:6-12. The notification engine may be downloaded to and run on a subscriber’s computer or run on a centralized system, or a combination thereof. *Id.*, 4:12-20. The system determines spam “based on key attributes of email messages,” identifies the

unsubscribe mechanism, and then automatically handles the unsubscribe process. EX1005, 5:3-10, 6:22-37, 7:3-17, 7:31-36; EX1003, ¶ 42.

Excerpts from the 2009 version of LashBack’s website provide additional pertinent disclosure, explaining that LashBack offered a toolbar for MICROSOFT OUTLOOK® that allowed users to identify unwanted email messages as spam.² It. EX1006, 1-3. LashBack would then automatically unsubscribe the user from email lists identified as spam. *Id.*; EX1003, ¶¶ 43-46.

3. **Emigh**

U.S. Patent No. 7,873,996 (“Emigh”), titled “Messaging Enhancements And Anti-Spam,” issued on January 18, 2011. EX1007. Emigh discloses methods

² The LashBack exhibit (EX1006) comprises pages from the LashBack website that were captured by the Internet Archive in January and February 2009, and 2006, indicating public availability via the LashBack website (EX1014 (1-3, 53-71, 75-76, 472-478; EX1024), and is “a collection of webpages that describe a single [system], from a single source, and may properly be regarded as being a single printed publication.” *MacSports, Inc. v. Idea Nuevo, Inc.*, No. IPR2018-01006, 2018 WL 5928385, at *4 (P.T.A.B. Nov. 13, 2018). As inter-linked pages of the same website all describing related products and systems, it would have been obvious to a POSITA to combine the webpages’ disclosures. EX1003, ¶ 43.

improving electronic messaging management. *Id.*, 1:23-31. Emigh recognizes that “[u]nsolicited commercial electronic messages and other unwanted messages can inundate users.” *Id.*, 1:25-28. Emigh discloses, among other things, a subscription subsystem for analyzing email messages to determine whether the message may be spam or non-spam. *Id.*, 3:48-4:10; EX1003, ¶ 47.

**VII. GROUND 1: CLAIMS 1-3, 6-9, 13-14,
AND 16 ARE OBVIOUS OVER BARDSLEY AND EMIGH**

Claims 1-3, 6-9, 13-14, and 16 are unpatentable as obvious over Bardsley in view of Emigh. EX1003, ¶ 78.

A. Bardsley And Emigh

Like the '342 patent, Bardsley and Emigh each relates to methods of managing emails from mailing lists. A POSITA implementing Bardsley would have been motivated to look to Emigh for techniques that aid in accurately identifying and managing subscription emails. *Id.*, ¶ 79. Indeed, a POSITA would have understood that Bardsley’s system would be less effective if it only was able to identify a small fraction of subscription emails, or if it frequently misidentified non-subscription emails. *Id.* Examining emails for features indicating whether an email originated with a mailing list, as taught by Emigh, would improve the Bardsley system by providing additional tools for identifying email subscriptions and assisting users to unsubscribe from unwanted messages. *Id.*, ¶ 80.

B. Claim 1

[1.1]³ A method of processing subscriptions comprising:

Bardsley discloses this by, for example, disclosing monitoring subscription messages and utilizing unsubscribe methods. *See* EX1004, 4:57-63 (“Examples of subscription message monitoring include determining arrival of a subscription message, determining whether the subscription message is confirmation of a new subscription, determining subscription identification information in the subscription message, and determining information for unsubscribing to an electronic subscription.”); *see also id.*, Abstract, 1:7-10, 2:3-21, 4:28-30, 4:50-57, 5:43-14:40, 23:49-60, 24:50-26: 33, Figs. 1-9B, 14-17; *cf.* EX1001, 4:17-18; EX1003, ¶ 81.

[1.2] identifying one or more email accounts;

A POSITA would have found it obvious that Bardsley’s disclosures includes identifying email accounts. Bardsley discloses monitoring the receipt of subscription messages of an electronic subscription client, such as an email client like MICROSOFT OUTLOOK®. EX1004, 2:51-60, 1:26-27, 4:57-63, 6:40-46, 25:1-7. Bardsley also discloses that it is interaction *by a given user* that is being monitored (EX1004, 2:15-16), and that a given user may be presented with a prompt to unsubscribe from a subscription list. *Id.*, 2:28-31, 5:16-42. A POSITA would have

³ Reference numbers [claim#.element#] are added throughout for ease of reference.

understood the user to have an associated email account, which would have to be identified in order to process subscriptions associated with that email account. EX1003, ¶ 82.

[1.3] accessing the mailboxes associated with the email accounts;

A POSITA would have found it obvious that Bardsley's disclosures includes accessing the mailboxes associated with the email accounts. EX1003, ¶ 83. For example, Bardsley discloses an automated process for monitoring and processing email content that involves accessing the mailboxes associated with the email accounts. Bardsley recites "monitoring, at an electronic subscription client, receipt of one or more subscription messages associated with an electronic subscription." EX1004, 6:43-46; *see also id.*, Fig. 2 (Block 200: "AT AN ELECTRONIC SUBSCRIPTION CLIENT, MONITOR RECEIPT OF ONE OR MORE SUBSCRIPTION MESSAGES"), 2:51-53 ("[T]he term 'electronic subscription client' refers to functionality for receiving and accessing subscription content."), 4:57-63 ("Examples of subscription message monitoring include determining arrival of a subscription message, determining whether the subscription message is confirmation of a new subscription, determining subscription identification information in the subscription message, and determining information for unsubscribing to an electronic subscription."); *see also id.*, 1:7-10, 2:3-21, 4:28-30, 4:50-5:4, 23:49-60, 24:50-67, 26:22-33; [1.1], [1.2]. Bardsley teaches that the

“electronic subscription client” receiving subscription messages could be a local email client, such as MICROSOFT OUTLOOK®, installed on a desktop or laptop computer. EX1004, 2:51-59. A POSITA would understand that such email clients provide mailboxes associated with email accounts to receive, organize, and manage incoming subscription messages, and that monitoring such a client for subscription messages involves accessing those mailboxes. EX1003, ¶ 84.

[1.4] processing, at least a subset of the email messages in the mailboxes to identify those originating with a subscription list;

Bardsley discloses processing one or more email messages (“processing, at least a subset of the email messages”) received in mailboxes provided by a local email client, such as MICROSOFT OUTLOOK®, running on a desktop or laptop computer. EX1004, 2:51-59, 4:50-63, 6:43-46, Fig. 2 (Block 200); EX1003, ¶ 85. Bardsley discloses its subscription messages include an organization sending, for example, newsletter emails. EX1004, 2:39-47. If a message is a “subscription message,” then a POSITA would understand the message originates with a subscription list. EX1003, ¶ 86.

Thus, Bardsley discloses determining in the user’s locally maintained and managed mailboxes whether the message is confirmation of a new subscription, determining identification information in the message, and determining information for unsubscribing. EX1004, 4:50-63, 7:7-33; EX1003, ¶¶ 48-49, 64-71, 85-86; *see*

also EX1004, Figs. 10-13, 12:63-14:31, 15:42-49 (unsubscribe action “removes the subscribers address from a subscription list”).

Bardsley further discloses processing a group of messages (more than one) to identify subscription messages. EX1003, ¶ 87. For example, Bardsley determines “whether a received subscription message is redundant based on at least one of an identifier for the subscription message or content” *Id.*, 8:25-67. Bardsley discloses that such redundancy can be determined by comparing a group of subscription messages by, for example, using group identifiers such as sports or news. *Id.*, 21:47-56; EX1003, ¶¶ 87-88.

[1.5] processing, at least one email message associated with a subscription list to identify methods of unsubscribing from the subscription;

Bardsley discloses processing at least one email message associated with a subscription list and using an unsubscribe function to identify methods of unsubscribing:

Unsubscribe function 116 may be configured to determine instructions or process information for unsubscribing a user from receiving future subscription messages associated with an electronic subscription. *For example, unsubscribe function 116 may identify unsubscribe information in a message carrying subscription content or confirming a subscription. In this example, a control or process in unsubscribe actions 118 can be configured to*

unsubscribe based on the identified unsubscribe information. . . . In one example, unsubscribe function 116 may determine one of an address, a URI, and a link associated with the electronic subscription for use in unsubscribing.

EX1004, 6:13-25 (emphasis added); *see also, e.g., id.*, 6:25-39, 5:29-32, 15:42-49; EX1003, ¶¶ 89-90.

[1.6] wherein identifying methods of unsubscribing from the subscriptions further comprises: identifying list-unsubscribe headers in a message header; or

Although Bardsley does not expressly disclose list-unsubscribe headers, a POSITA would have known that subscription emails often included a list-unsubscribe field in a message header that would be used to unsubscribe from the subscription and a POSITA would be motivated to ensure such headers are recognized. EX1003, ¶ 91. The '342 patent admits such headers were known in the art. EX1001, 3:45-48, 2:1-4. Additionally, the Applicant admitted during prosecution that a POSITA was “aware that the list-unsubscribe header is an optional field.” EX1002, 80.

Furthermore, Emigh taught identifying messages from a mailing list by examining the list-unsubscribe header field. EX1007, 7:30-35 (“[M]essage header lines such . . . ‘List-Unsubscribe’ may indicate use of a mailing list.”). A POSITA implementing Bardsley would have been motivated to look to email filtering

methods disclosed by Emigh, including using the list-unsubscribe header field to ensure that the system would identify subscription messages, including identifying such headers as unsubscribe methods, and use the headers to unsubscribe. A POSITA seeking to help users unsubscribe from emails would have been motivated to identify any and all unsubscription methods anywhere they were located; *see also* EX1005, 6:22-67 (disclosing identifying unsubscribe mechanisms in message body and headers). Moreover, a POSITA would have had a reasonable expectation of success in combining the teachings of Emigh with Bardsley as doing so would have been trivial, taking merely ordinary skill. *Id.* EX1003, ¶¶ 50-55, 92-94.⁴

[1.7] identifying unsubscribe methods within the message body;

Bardsley teaches reviewing “text of the . . . body of an e-mail message for key words, such as ‘subscribe’ . . . for determining that the message is a new subscription confirmation message.” EX1004, 14:25-30; *see also id.*, 6:16-18 [1.6]; *cf.* EX1001, 2:4-6.

⁴ As the claim recites “or,” prior art disclosing either alternative satisfies the claim. *Brown v. 3M*, 265 F.3d 1349, 1353 (Fed. Cir. 2001). If the Board finds that the prior art teaches element [1.6], it need not find that the prior art teaches elements [1.7], [1.10], and [1.11], as those all correspond to the alternative to [1.6].

Bardsley elaborates that such information includes “a link associated with the electronic subscription for use in unsubscribing” or “text in one or more messages.” EX1004, 6:23-25, 6:29-33. Thus, a POSITA would understand that Bardsley’s unsubscribe function includes identifying unsubscribe methods within the message body. EX1003, ¶¶ 95-97.

[1.8] presenting to the user the subscriptions previously identified: and

Bardsley describes that the “unsubscribe function 116 may present a prompt with a control configured for unsubscribing the user from receiving a future subscription message associated with the electronic subscription.” EX1004, 7:62-65; *see also id.*, 5:16-56, Fig. 10, Abstract, 4:67-5:4, 7:62-8:9, 13:24-14:39, 17:34-56, 22:49-23:18, 23:49-26:33, 2:18-21. Bardsley provides an example of presenting the user with an opportunity to unsubscribe from identified subscriptions:

The following subscriptions contain much of the same information. Would you like to unsubscribe from one of them?	
Subscription Name	Unsubscribe (Check One)
Microsoft Security Newsletter	☐
Security Focus Newsletter	☐

Id., 20:1-15; EX1003, ¶ 98.

[1.9] unsubscribing from, at least a single subscription in response to a user requests;

Bardsley discloses this element:

Unsubscribe function 116 may be configured to unsubscribe a user from receiving future subscription messages associated with an electronic subscription *in response to receiving an input responsive to a prompt with a control for unsubscribing the user from receiving future subscription messages associated with the electronic subscription.*

EX1004, 5:50-56 (emphasis added); *see also id.*, Abstract, 2:18-21, 5:24-29, 5:43-60, 6:16-31, 15:42-16:23; EX1003, ¶ 99.

[1.10] wherein identifying unsubscribe methods within the message body further comprises: collecting unsubscribe hyperlinks from the message body; and

Bardsley’s “unsubscribe function” satisfies this element:

unsubscribe function 116 may identify unsubscribe information in a message. ... In one example, *unsubscribe function 116 may determine one of an address, a URI, and a link* associated with the electronic subscription for use in unsubscribing.

EX1004, 6:16-25 (emphasis added). A POSITA would understand this to teach identifying unsubscribe information in an email, such as hyperlinks, to use for unsubscribing. EX1003, ¶¶ 100-101; *see also* [1.5], [1.7]. Bardsley explains that its unsubscribe process “can be configured to unsubscribe based on the address, the URI, or the link, and the address, the URI, or the link may be stored in database

120.” EX1004, 6:25-31. A POSITA would understand storing found unsubscribe links in a database to mean “collecting” links.” EX1003, ¶ 101.

[1.11] identifying those hyperlinks as potential unsubscription methods.

As discussed at [1.7] and [1.10], Bardsley discloses identifying unsubscribe hyperlinks in email messages and determining that they were unsubscribe methods. EX1004, 6:16-35 (“[U]nsubscribe function 116 may determine one of an address, a URI, and a link associated with the electronic subscription for use in unsubscribing.”). A POSITA would understand this to disclose identifying hyperlinks as potential unsubscription methods. EX1003, ¶ 102.

Additionally, this element lacks patentable weight, as no functional relationship exists between “identifying” the hyperlinks and the rest of the claim. *See, e.g., King Pharms., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1278-80 (Fed. Cir. 2010) (finding that “informing” and “labeling” steps lacked patentable weight); *Facebook, Inc. v. Palo Alto Research Center LLC*, IPR2021-01472, 2023 WL 2600581, at *6 (P.T.A.B. Mar. 2, 2023) (noting that claimed information appeared to not be functionally related to the claimed process because no other limitations required use of it).

C. Claim 2

[2.1] A method, as described in claim 1 wherein processing email messages further comprises: identifying non-subscriptions by text prepended to subjects; and/or

Dependent claim 2 requires “identifying non-subscriptions.”⁵ “Non-subscriptions” is not defined in the ’342 patent. However, its plain and ordinary meaning in the context of the ’342 patent is email messages that are not subscription messages, i.e., that are not from an email mailing list. EX1003, ¶ 103. As the ’342 patent does not describe anything being done with identified non-subscriptions, claim 2 lacks patentable weight.

Nonetheless, one of Bardsley’s first steps is checking for new subscription messages at step 302. EX1004, 7:1-9, Fig. 3A; *see* [1.4]. If the answer is no, the system goes back to the start. Fig. 3A. Bardsley does not disclose details regarding non-subscriptions. However, a POSITA implementing Bardsley would be motivated to look to other references for details regarding identifying non-subscriptions, which would aid in being able to accurately distinguish between messages that are and are not subscription messages. EX1003, ¶ 104.

⁵ As the claim recites “and/or,” prior art disclosing either alternative satisfies the claim. *Brown v. 3M*, 265 F.3d 1349, 1353 (Fed. Cir. 2001).

One known method for identifying non-subscriptions was to look at text prepended to subjects. For example, a POSITA would have known that “Re” and “Fw:” were commonly prepended to subjects to indicate that emails were replies or forwards. EX1003, ¶ 105 (citing EX1017 for background information). As a result, a POSITA would know that such prepended text was a way to identify non-subscriptions. EX1003, ¶ 106.

Moreover, a POSITA would have been motivated to look to Emigh for additional techniques for identifying whether messages were subscriptions. Emigh taught examining the subject line of emails for text prepended to subjects as part of identifying non-subscriptions and subscriptions. For example, a POSITA would have understood Emigh’s teachings about determining “whether a reply message is a reply to an actual message sent by a message recipient” as taking into consideration the “Re:” component of a subject line when identifying messages that were or were not spam. EX1007, 3:44-54; *see also id.*, 7:49-52 (teaching that subject lines prepended with “LIST-ID” indicated a mailing list email); EX1003, ¶¶ 107-109. Further, incorporating such teachings from Emigh about examining messages into Bardsley to identify non-subscriptions would have taken merely ordinary skill, providing a POSITA with a reasonable expectation of success. *Id.*, ¶¶ 49-55, 110.

[2.2] identifying non-subscriptions by user address.

Because the '342 patent consistently refers to an email recipient as the “user,” a POSITA would have understood this claim as covering using the recipient’s address to identify non-subscriptions. EX1003, ¶¶ 111-112. The '342 patent discloses identifying non-subscriptions based on the recipient’s email address’s location in the email header (“CC” or “BCC” vs. “TO”). EX1001, 4:51-55. A POSITA would have known mailing list senders routinely included recipients in the “TO” field, and that the presence of a recipient’s address in the “CC” or “BCC” field would have suggested that the email was a non-subscription. EX1003, ¶ 113 (citing EX1023 for background information).

Additionally, Emigh taught considering the address of a message recipient in determining whether a message originated from a mailing list. For example, Emigh teaches that “[e]xamples of other indications that a message was processed by a mailing list include a message ID originated from a domain other than that of the sender (for example, *the domain of the message addressee*), a precedence of ‘bulk,’ and the presence of *the recipient’s domain* early in the delivery path.” EX1007, 7:35-40; (emphasis added), *see also id.*, 7:46-8:52. A POSITA would have understood that the combination of Emigh’s teachings with Bardsley would result in identifying messages that did not originate with a mailing list (non-subscriptions). Incorporating these teachings from Emigh into Bardsley would have taken merely ordinary skill,

providing a POSITA with a reasonable expectation of success. EX1003, ¶¶ 114-115, 120.

To the extent PO argues this element should be interpreted to refer to identifying non-subscriptions by a sender's address, a POSITA would have known that using whitelists of known non-spam senders was well known in the art. *See, e.g.*, EX1001, 4:51-5:32; EX1003, ¶¶ 116-117. Emigh, for example, discloses using a whitelist, which it describes as a list of known senders EX1007, 2:66-3:8. A POSITA would have understood that if a sender's address was on a whitelist, that the sender was likely to send non-subscription messages as opposed to subscription messages. EX1003, ¶¶ 117-119. Thus, regardless of how the claim is interpreted, it would have been obvious over Bardsley in view of Emigh.

D. Claim 3

3. A method, as described in claim 1 wherein processing email messages to identify those originating with a subscription list further comprises: identifying subscriptions by the inclusion of list-unsubscribe headers in the email header.

As discussed at [1.6], a POSITA would have been motivated by Emigh's disclosure of list-unsubscribe headers to include the presence of such headers as a method of identifying subscriptions. Thus, this claim is obvious over Bardsley in view of Emigh. EX1003, ¶¶ 121-122.

E. Claim 6

[6.1] A method, as described in claim 1 wherein identifying unsubscribe methods within the message body further comprise: collecting hyperlinks which are associated with images; and

Although Bardsley and Emigh do not expressly disclose hyperlinks associated with images, a POSITA would understand that Bardsley's disclosure of collecting unsubscribe hyperlinks would include collecting such hyperlinks. EX1003, ¶ 123. Associating hyperlinks with images dates back to the early days of HTML. For example, "HTML FOR DUMMIES" is a background reference reflecting a POSITA's basic understanding of hypertext markup language (HTML) which details how any hyperlink can have an associated image. EX1022, 186-91, EX1003, ¶¶ 56-61, 124; A POSITA also knew that advertisers and other senders did sometimes send unsubscribe links in images, and that it would therefore be useful for a system that monitors such messages to be able to recognize links in images. EX1003, ¶¶ 125-126; EX1019 (recognizing the possibility of using images as unsubscribe hyperlinks, while discouraging doing so to avoid image suppression)⁶. Since Bardsley discloses collecting unsubscribe methods, including hyperlinks, within the message body (*see*

⁶ That EX1019 suggests advertisers avoid using image unsubscribe links does not undermine this element's obviousness because a POSITA would be motivated to design the user-side monitoring system to accommodate all possible techniques.

[1.7], [1.10]), a POSITA would understand that Bardsley would recognize image links as a known type of link and the HTML would be not need to change regardless of the type of link found in the message. EX1003, ¶¶ 59, 127.

Notably, the '342 patent does not disclose an example of an image associated with an unsubscribe hyperlink, although it acknowledges that “[m]any images contain unsubscribe hyperlinks . . . hidden behind the image.” EX1001, 6:61-66.

[6.2] identifying those hyperlinks as potential unsubscription methods.

Bardsley discloses identifying any unsubscribe information in an email, regardless of type. See [1.7]. A POSITA would understand Bardsley’s storing and use of unsubscribe hyperlinks as also identifying them as potential unsubscription methods, and this would apply to hyperlinks associated with images as well. EX1003, ¶ 128. Additionally, this element lacks patentable weight.

F. Claim 7

7. A method, as described in claim 1 wherein unsubscribing from a subscription comprises: sending unsubscribe emails to sending email of subscription messages.

Bardsley satisfies the added element of claim 7 as it discloses sending unsubscribe emails to subscription sources as an unsubscribe action:

One exemplary unsubscribe action for an e-mail subscription client includes sending an e-mail to an

electronic message subscription source with an
appropriate unsubscribe subject line.

EX1004, 15:42-49; EX1003, ¶ 129.

G. Claim 8

8. A method, as described in claim 1 wherein unsubscribing from a subscription comprises: sending unsubscribe emails to mailto: address found in a list-unsubscribe header.

As discussed above, Emigh taught that subscription emails sometimes had a list-unsubscribe header. EX1007, 7:32-35. A POSITA would have understood that a list-unsubscribe header sometimes included a “mailto” portion specifying an email address to receive an unsubscribe request. EX1003, ¶ 130 (discussing RFCs and the list-unsubscribe field which could include a “mailto” link allowing an email recipient to unsubscribe by clicking the link and sending an email); *see also* EX1004, 6:4-11; [1.6]; EX1014, 1-3, 31-40)⁷. A POSITA would have been motivated to ensure that the system could accommodate common methods for unsubscribing, including using “mailto” addresses, which would have been trivial, requiring ordinary skill. EX1003, ¶ 131; *cf.*, claim 7.

⁷ EX1014 is an affidavit from the Internet Archive establishing public accessibility of archived webpages referred to throughout.

H. Claim 9

9. A method, as described in claim 1 wherein unsubscribing from a subscription comprises: processing one or more URLs found in a message to unsubscribe from subscriptions.

As discussed above at [1.10], Bardsley discloses collecting unsubscribe information from email messages, including unsubscribe URLs, and processing the URLs to unsubscribe. For example, Bardsley discloses that one “unsubscribe action for an e-mail subscription client includes opening a web link contained in a subscription confirmation message that removes the subscribers address from a subscription list when the HTML of the web link is loaded.” EX1004, 15:45-49; see also *id.*, 6:13-28, 15:54-16:23. Thus, a POSITA would understand Bardsley to disclose the added element of claim 9. EX1003, ¶¶ 132-135.

I. Claim 13

13. A method, as described in claim 9 wherein processing a URL comprises: opening a browser; navigating to the URL; downloading the webpage located at the URL; presenting the webpage to the user for manual unsubscription from the subscription.

A POSITA would have understood the added element of claim 13 as referring to hyperlinks that unsubscribed a recipient in part by activating the link. EX1001, 7:13-21. Bardsley discloses the type of unsubscribe URL processing and webpages addressed in this element as discussed above at claim 9. EX1004, 15:45-49; EX1003, ¶ 136.

A POSITA would understand that activating the unsubscribe links disclosed in Bardsley would trigger a series of steps, including opening a browser on the user's computer capable of interpreting and executing the URL pursuant to the http protocol. EX1003, ¶¶ 62-63, 135 (discussing EX1022 regarding URL navigation). The browser sends an http request for the webpage identified in the URL, and then downloads that webpage. EX1003, ¶ 135.

Additionally, a POSITA would have known that not all unsubscribe web forms could be entirely automated, such as those with a CAPTCHA, and that as a result, some forms would need to be presented to a user for manual unsubscription. EX1003, ¶ 137; EX1020, 215 (depicting an unsubscribe form that required entering a CAPTCHA). Indeed, Bardsley expressly discloses that manual unsubscription may be necessary:

In one embodiment, an unsubscribe function may present unsubscribe notification and steps for an unsubscribe action if unsubscribe actions cannot be generated by the unsubscribe function or a user, or unsubscribe actions are not stored. The user may manually implement the presented unsubscribe actions for unsubscribing to an electronic subscription.

EX1004, 23:1-6. Thus, a POSITA would understand the added elements of claim 13 to be disclosed by Bardsley. EX1003, ¶ 138.

J. Claim 14

[14.1] A computing system configured to process subscriptions to list servers, said configuration comprised of:

As discussed above, a POSITA would understand “list servers” to mean automated mailing list systems. Bardsley discloses that its electronic subscriptions refer to newsletter emails, daily horoscopes, etc., which a POSITA would understand to be distributed from automated mailing list systems (list servers). EX1004, 2:39-50, 4:41-49, 13:20-24; EX1003, ¶ 138.

Bardsley discloses a computing system for processing such subscriptions; specifically, an “[e]lectronic subscription client” that includes means for processing subscription messages. EX1004, 6:40-52. A POSITA would understand the “electronic subscription client” to correspond to the claimed computing system. EX1003, ¶ 139; *see also* EX1004, 4:28-30 (“The subject matter described herein includes methods, systems, and computer program products for managing electronic subscriptions.”).

Bardsley and Emigh disclose the remaining elements of claim 14 as follows:

[14.2] identifying one or more email accounts;

[14.3] accessing the mailboxes associated with the email accounts; and

[14.4] processing, at least a subset of the email messages in the mailboxes to identify those originating with a subscription list;

Bardsley discloses elements [14.2]-[14.4] for the same reasons discussed at [1.2]-[1.4]. EX1003, ¶¶ 140-141.

[14.5] processing the body text of at least one email message associated with a subscription list to identify mailto: and URLs to utilize to unsubscribe from the subscription;

As discussed at [1.7] and [1.10], Bardsley discloses processing emails to identify hyperlinks (URLs) in the body text to use to unsubscribe. As discussed at claim 8, a POSITA understood that a list-unsubscribe header (as disclosed by Emigh) may include a mailto: link. A POSITA would also have known that mailto: links could be included in the email body. EX1003, ¶¶ 130-131; EX1006, 8; EX1009, 2. A POSITA would have been motivated to incorporate such teachings into Bardsley to identify such links, as doing so would allow it to process emails more effectively. EX1003, ¶¶ 142-143.

[14.6] presenting to a user the subscriptions previously identified; and

[14.7] unsubscribing from, at least a single subscription in response to a user request;

[14.8] presenting to the user the subscriptions previously identified; and

[14.9] unsubscribing from, at least a single subscription in response to a user requests;

[14.10] wherein identifying unsubscribe methods within the message body further comprises: collecting unsubscribe hyperlinks from the message body; and

[14.11] identifying those hyperlinks as potential unsubscribe methods.

Bardsley discloses elements [14.6]-[14.11] for the same reasons as discussed at [1.8]-[1.11].

Elements [14.8] and [14.9] appear to be duplications of [14.6] and [14.7]. To the extent this repetition requires these steps to occur twice, a POSITA would understand that the presentation and subsequent unsubscribing would likely need to occur more than once over time, as, for example, new subscription emails would likely continue to arrive as time passed. EX1003, ¶¶ 144-145.

K. Claim 16

Bardsley renders obvious claim 16 in combination with Emigh, as follows:

[16.1] A computing apparatus for processing subscriptions to list servers,
[16.2] wherein said apparatus: identifies one or more email accounts;
[16.3] accesses the mailboxes associated with the email accounts
[16.4] and processes, at least a subset of the email messages in the mailboxes to identify those originating with a subscription list;
[16.5] processes the body text of at least one email message associated with a subscription list to identify mailto: and URLs to utilize to unsubscribe from the subscription;
[16.6] presents to the user the subscriptions previously identified; and

Bardsley discloses elements [16.1]-[16.6] for the same reasons as discussed above at [14.1]-[14.6]. EX1003, ¶¶ 146-147.

[16.7] in response to an initiation command from a user, automatically unsubscribes from, at least a single subscription;

A POSITA would understand “initiation command from a user” in [16.7] to mean the same thing as “a user request[,]” which is recited in [1.9], [14.7], [14.9], and [16.9]. Neither claim phrase is found in the specification, but the plain meaning of these phrases refer to a user selecting which subscription(s) she wants to unsubscribe from. *E.g.*, EX1001, 3:6-13, 4:4-15. A POSITA would understand Bardsley’s disclosure of effectuating the unsubscription in response to the user’s input (initiation command) to occur automatically. EX1003, ¶ 148; EX1004, 5:24-56 (“[U]nsubscribe function 116 may be configured to present a prompt with a control ... that allows the user to automatically unsubscribe”).

[16.8] presenting to the user the subscriptions previously identified; and
--

[16.9] unsubscribing from, at least a single subscription in response to a user requests;

[16.10] wherein identifying unsubscribe methods within the message body further comprises: collecting unsubscribe hyperlinks from the message body; and

[16.11] identifying those hyperlinks as potential unsubscription methods.

Bardsley discloses elements [16.8]-[16.11] for the same reasons as discussed above at [14.8]-[14.11]. EX1003, ¶ 149.

VIII. GROUND 2: CLAIM 4 IS OBVIOUS OVER BARDSLEY AND EMIGH IN VIEW OF DIETRICH

A. Claim 4

Claim 4 is unpatentable as obvious over Bardsley and Emigh in view of “Empirical research on IP blacklisting” (“Dietrich”). Dietrich is an article from the

Fifth Conference on Email and Anti-Spam, held August 21-22, 2008.⁸ EX1013; EX1014, 1-3, 440-448; EX1003, ¶ 150.

4. A method, as described in claim 1 wherein processing email messages to identify those originating with a subscription list further comprises: verifying senders are not included in an Unsubscribe Blacklist.

A POSITA would understand “Unsubscribe Blacklist,” in the context of the ’342 patent, to refer to a list of Internet Protocol addresses known to be senders of harmful or malicious emails. EX1001, 5:4-15; EX1003, ¶¶ 152-153.

Although Bardsley and Emigh do not expressly disclose an Unsubscribe Blacklist, using negative screening lists or blacklists, as taught by Dietrich, was known to a POSITA. EX1013, 1. Dietrich explains that “IP blacklisting in the context of anti-spam describes collecting IP addresses in a list and prohibit[ing] any email communication attempts initiated from these addresses.” EX1013, 1; EX1003, ¶ 153.

A POSITA implementing Bardsley and Emigh would have been motivated to incorporate Dietrich’s teachings about blacklists to help determine whether using an unsubscribe method in an email would be effective to unsubscribe or would instead

⁸ The Internet Archive affidavit includes webpages about the conference that were publicly available in 2008, including a link to Dietrich, which provide additional evidence of publication. EX1014, 1-3, 41-48, 438-439.

result in a user receiving more unwanted messages. If a sender was on a blacklist, then the user would not want to send an unsubscribe request to the sender. A POSITA would have understood that any engagement with a blacklist sender could result in harm. A POSITA would have had a reasonable expectation of success in comparing senders of messages received by a user with those on a blacklist, as it would have taken ordinary skill to do so. EX1003, ¶¶ 49-55, 64-71, 154.

**IX. GROUND 3: CLAIM 5 IS OBVIOUS OVER
BARDSLEY IN VIEW OF EMIGH AND HILL**

A. Claim 5

Claim 5 is unpatentable as obvious over Bardsley and Emigh in view of U.S. Patent No. 6,029,192 (“Hill”). Hill, titled “System and Method For Locating Resources On A Network Using Resource Evaluations Derived From Electronic Messages,” issued on February 22, 2000. EX1008. Hill discloses inventions related to searching electronic messages to locate and evaluate network resources, including methods for identifying hyperlinks in electronic messages. EX1003, ¶ 155; *see, e.g.*, EX1008, 4:58-64, 12:1-28.

[5.1] A method, as described in claim 1 wherein identifying unsubscribe methods within the message body further comprises: searching for unsubscribe text in a message body;

Bardsley teaches its “unsubscribe function 116 may identify text in one or more subscription messages indicating information for unsubscribing. Examples of

text associated with unsubscribing includes one or more of subscribe text, mailing list text, and unsubscribe text.” EX1004, 6:31-35.

A POSITA would understand “unsubscribe text” to mean words such as “unsubscribe” or “opt out.” EX1001, 6:21-42. A POSITA would have known that sometimes such unsubscribe text would be in the message body. EX1003, ¶¶ 156-157; *see also* [1.5], [1.7].

[5.2] collecting hyperlinks which begin within a threshold amount after the unsubscribe text; and

A POSITA would have understood “a threshold amount” as meaning that a hyperlink needed to occur within a certain number of characters of unsubscribe text. EX1001, 6:19-59. A POSITA would have known that one way to locate potential unsubscribe hyperlinks would be to look for hyperlinks that occurred after unsubscribe text, within a threshold. EX1003, ¶¶ 158-159.

Although Bardsley does not expressly disclose “a threshold amount after the unsubscribe text,” a POSITA would have been motivated to incorporate Hill’s teachings as part of identifying unsubscribe methods, to identify such methods more accurately. For example, Hill discloses identifying hyperlinks in electronic messages by looking for certain text within a certain threshold of a hyperlink:

The text of the message within from *one to fifty characters of the occurrence of the URL* includes at least one case-insensitive string from the group of you; check, find; see;

visit; try; look and recommend 72. If any of the conditions of this second set of conditions is true, then the URL mention is classified as an evaluation.

EX1008, 7:55-61 (emphasis added); EX1003, ¶ 160.

A POSITA would have been motivated to look to Hill as a way to aid in determining whether a hyperlink is an unsubscribe hyperlink, by incorporating Hill's disclosure regarding how close certain text is to a URL. A POSITA would know that a URL located within a few words of text like "unsubscribe" would likely be an unsubscribe hyperlink. Incorporating such a technique would have taken ordinary skill; thus, a POSITA would have had a reasonable expectation of success in doing so. EX1003, ¶¶ 49-55, 161-163. *See also* [1.10].

[5.3] identifying those hyperlinks as potential unsubscription methods.

A POSITA would understand Bardsley's storing and use of unsubscribe hyperlinks as also identifying them as potential unsubscription methods, and that this would apply to hyperlinks within a threshold amount. EX1003, ¶ 164. Additionally, this element lacks patentable weight.

**X. GROUND 4: CLAIMS 10-12, 15, AND 17 ARE OBVIOUS
OVER BARDSLEY IN VIEW OF EMIGH AND RETURN PATH**

Claims 10-12, 15, and 17 are unpatentable as obvious over Bardsley in view of Emigh and Return Path. These claims recite additional features related to processing unsubscribe URLs, including navigating to and opening the unsubscribe

webpage and examining the webpage for user selection options. EX1001. Although the '342 patent does not provide specific examples of unsubscribe webpages, it explains that “form elements” include “checkboxes, radio buttons, input boxes, etc.” *Id.*, 7:15-17; EX1003, ¶ 165.

Like the '342 patent, Bardsley and Emigh do not expressly illustrate specific examples of unsubscribe webpages and any associated form elements. Return Path was a 2008 study that provided examples of webpages reached by activating unsubscribe hyperlinks—called unsubscribe landing pages—including pages that simply confirm unsubscription and pages having clickable button form elements. EX1009. Return Path was publicly available to a POSITA through the Return Path website before 2011. *See, e.g.*, EX1014, 1-3, 51-52, 465-471; EX1027; EX1028; EX1029.

A POSITA implementing Bardsley would have been motivated to investigate what types of unsubscribe landing pages were common—such as those shown in Return Path—to more effectively configure Bardsley’s “process . . . to unsubscribe based on [a] link.” EX1004, 6:23-28. A POSITA implementing Bardsley’s automatic unsubscribing system would have recognized that the system would need to accommodate itself to existing unsubscription processes. EX1003, ¶ 166. A POSITA would have had a reasonable expectation of success in identifying and implementing the steps needed for its system to interact with various types of

unsubscribe landing pages so that the system could unsubscribe users who received emails including links to unsubscribe landing pages as doing so would be trivial, taking merely ordinary skill. *Id.*, ¶¶ 62-63, 167-172.

A. Claim 10

10. A method, as described in claim 9 wherein processing a URL comprises: opening a browser; navigating to the URL; downloading the webpage located at the URL; identifying a lack of form elements on the webpage.

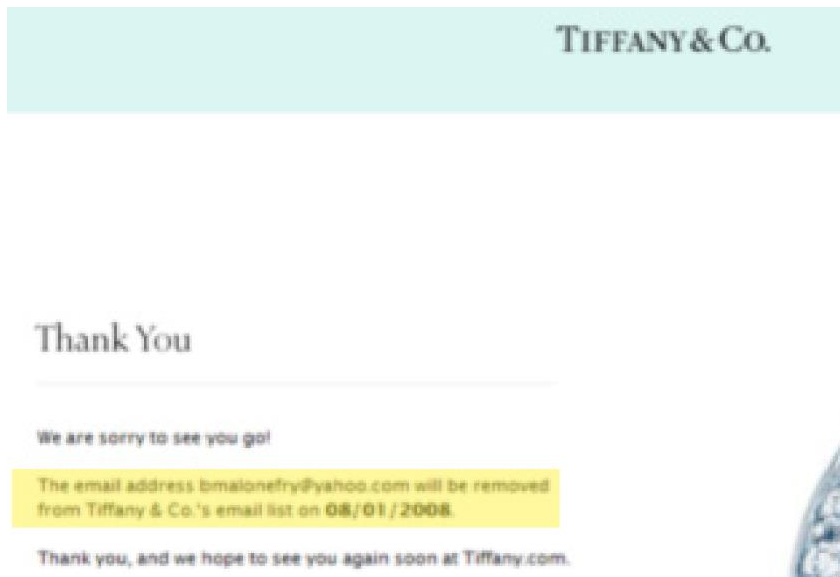
A POSITA would understand that activating the unsubscribe links disclosed in Bardsley would trigger a series of steps, including opening a browser on the user's computer capable of interpreting and executing the URL pursuant to the http protocol. EX1003, ¶ 173 (discussing EX1022 regarding URL navigation). The browser sends an http request for the webpage identified in the URL, and then downloads that webpage. EX1003, ¶ 173.

Bardsley discloses the type of unsubscribe landing page addressed in this element:

Another exemplary unsubscribe action for an e-mail subscription client includes opening a web link contained in a subscription confirmation message that removes the subscribers address from a subscription list when the HTML of the web link is loaded.

EX1004, 15:45-49; EX1003, ¶ 174.

A POSITA would have understood this claim and Bardsley's teaching above as referring to hyperlinks that unsubscribed a recipient by activating the link. EX1001, 7:13-21. As Return Path describes, such a link would open a webpage with no form elements that often confirmed a user's unsubscription. EX1009, 2 (depicting a Tiffany & Co. unsubscribe landing page); EX1003, ¶ 175.

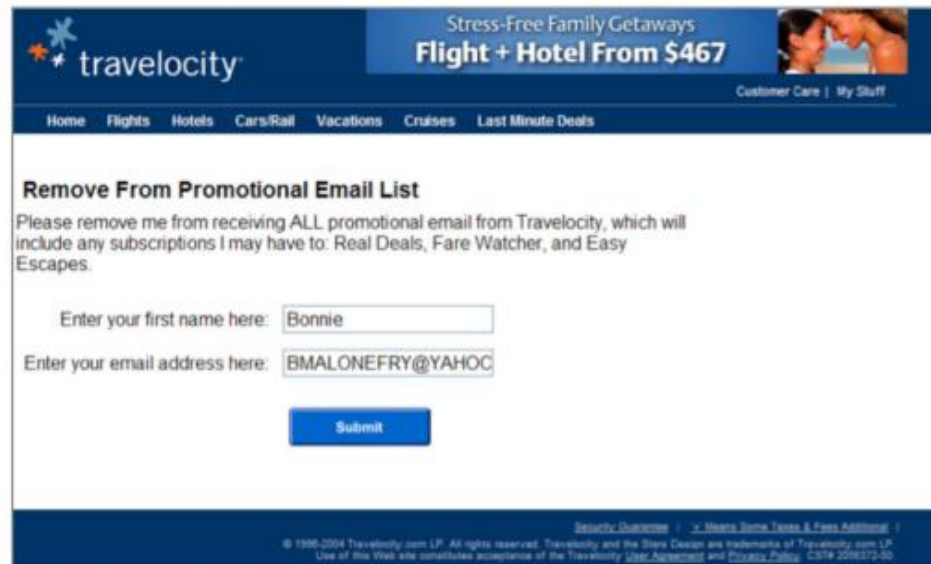


A POSITA would further understand that processing such URLs would include the system identifying a lack of form elements as the webpage has no elements allowing user selection or input. EX1003, ¶¶ 176-179.

B. Claim 11

11. A method, as described in claim 9 wherein processing a URL comprises: opening a browser; navigating to the URL; downloading the webpage located at the URL; identifying only a single button element on the webpage; and executing the button on the webpage.

A POSITA would have known that sometimes a webpage reached by an unsubscribe hyperlink would include a form having a single button to confirm that she wanted to unsubscribe. *Id.*, ¶ 180. Return Path depicts an example form pre-populated with a recipient's information that included a single button ("Submit") requiring a user to confirm unsubscribing:

A screenshot of a web page from Travelocity. The page has a blue header with the Travelocity logo on the left and a promotional banner on the right that says "Stress-Free Family Getaways Flight + Hotel From \$467" with a small image of a family. Below the header is a navigation bar with links: Home, Flights, Hotels, Cars/Rail, Vacations, Cruises, and Last Minute Deals. The main content area is titled "Remove From Promotional Email List" and contains the text: "Please remove me from receiving ALL promotional email from Travelocity, which will include any subscriptions I may have to: Real Deals, Fare Watcher, and Easy Escapes." Below this text are two input fields: "Enter your first name here:" with the value "Bonnie" and "Enter your email address here:" with the value "BMALONEFRY@YAHOC". A blue "Submit" button is centered below the input fields. At the bottom of the page, there is a footer with small text including "Security Guidelines", "Terms & Conditions", "Privacy Policy", and copyright information for 1999-2004 Travelocity.com LP.

EX1009, 2; EX1003, ¶ 181-182.

As discussed at [16.7] and claims 1, 9, and 10, Bardsley discloses collecting unsubscribe links from messages and presenting them to the user for unsubscription, and automatically unsubscribing in response to the user's input. A POSITA implementing Bardsley would be aware of webpages such as those shown above and would be motivated to configure the system to accommodate such webpages by determining if a page had a single button, and, if so, executing it. EX1003, ¶ 183;

see also claims 9 and 10 (discussing obviousness of opening a browser; navigating to the URL; downloading the webpage located at the URL).

C. Claim 12

12. A method, as described in claim 9 wherein processing a URL comprises: opening a browser; navigating to the URL; downloading the webpage located at the URL; identifying only two button elements on the webpage; determining the unsubscribe button; and executing the unsubscribe button on the webpage.

A POSITA would have known that sometimes a webpage reached by an unsubscribe hyperlink would include a form having two buttons, one of which asks the user to confirm unsubscribing. While Return Path does not depict an unsubscribe landing page with exactly two buttons, it depicts landing pages with 0, 1, 4, and 5 buttons. EX1009, 2, 5. Return Path's Sears example depicts two radio buttons, and SUBMIT and CANCEL buttons:



The image is a screenshot of a web form for unsubscribing from Sears email communications. At the top is the Sears logo with the tagline "where it begins™". Below the logo, a message states: "We're sorry to see you go! If you have arrived at this unsubscribe page by accident, please [click here](#)." This is followed by the text: "You'll be missing out on many money-saving offers, including:". A bulleted list follows, containing: "• advance notice of sales", "• email-exclusive discounts", "• new and online-only merchandise", and "• store and site updates". Below the list, it says "Subscribed e-mail address: bmaloney@yahoo.com". Then, it instructs: "Please choose one and click 'SUBMIT' to unsubscribe." There are two radio button options: the first is selected and reads "Remove me from Sears promotional e-mail communications", and the second is unselected and reads "Remove me from ALL Sears e-mail communications". At the bottom are two buttons labeled "SUBMIT" and "CANCEL".

Id., 5; EX1003, ¶ 184.

A POSITA would have understood that two-button forms were an obvious option. *See* EX1010, 2-3 (depicting a two-button unsubscribe form). For example, upon identifying only two buttons on a webpage, a system might examine each button and identify one as a “Submit” button and the other as a “Reset” button. *Id.*; EX1003, ¶ 185.

A POSITA implementing Bardsley would be motivated to configure the system to handle these types of unsubscribe links by examining the webpage’s two buttons and executing the unsubscribe button to unsubscribe the user. EX1003, ¶ 186; *see also* claims 1, 9, and 10-11.

D. Claim 15

15. A system, as described in claim 14 wherein unsubscribing from, at least a single subscription further comprises: sending unsubscribe emails to sending emails of subscription messages; sending unsubscribe emails to mailto: address found in a list-unsubscribe header; processing one or more URLs found in a message to unsubscribe from subscriptions, wherein said processing comprises: retrieving the contents of a webpage associated with the URL; identifying a lack of form elements on the webpage; or identifying only a single button element on the webpage; and executing the button on the webpage; identifying only two button elements on the webpage; determining the unsubscribe button; and executing the unsubscribe button on the webpage; or presenting the webpage to the user for manual unsubscription from the subscription.

Claim 15 adds to claim 14 the added elements of dependent claims 7-13, separated by “or.” Prior art disclosing any of these alternatives satisfies the claim. *Brown v. 3M*, 265 F.3d 1349, 1353 (Fed. Cir. 2001). Bardsley and Emigh in view of Return Path disclose each alternative as discussed at Ground 1, claims 7-9, 13-14, and Ground 4, claims 10-12; EX1003, ¶ 187.⁹

E. Claim 17

17. An apparatus as described in claim 16 wherein automatically unsubscribing from, at least a single subscription in response to a user request further comprises: sending unsubscribe emails to sending emails of subscription messages; sending unsubscribe emails to mailto: address found in a list-unsubscribe header; processing one or more URLs found in a message to

⁹ Claim 15’s and claim 17’s “retrieving the contents of a webpage associated with the URL” is equivalent to claim 10’s “downloading the webpage located at the URL.” EX1003, ¶ 187.

unsubscribe from subscriptions, wherein said processing comprises: retrieving the contents of a webpage associated with the URL; identifying a lack of form elements on the webpage; or identifying only a single button element on the webpage; and executing the button on the webpage; identifying only two button elements on the webpage; determining the unsubscribe button; and executing the unsubscribe button on the webpage; or presenting the webpage to the user for manual unsubscription from the subscription.

Claim 17 adds to claim 16 the added elements of dependent claims 7-13. Bardsley and Emigh and further in view of Return Path disclose each alternative as discussed at Ground 1, claims 7-9, 13-14, 16, and Ground 4, claims 10-12. EX1003, ¶ 188.

**XI. GROUND 5: CLAIMS 1, 3-4, 6-9, 13-14, AND 16
ARE OBVIOUS OVER CASTELLI AND LASHBACK**

Claims 1, 3-4, 6-9, 13-14, and 16 are unpatentable as obvious over Castelli alone. To the extent that PO argues that Castelli does not render obvious any of these claims, LashBack provides additional disclosure consistent with Castelli's teachings that further support unpatentability as set forth below. EX1003, ¶ 189.

A. Castelli + LashBack

Castelli, assigned to LashBack, LLC, names the system it describes as "LASHBACK™." EX1005, 2:61-63, Fig. 1. A POSITA seeking to implement Castelli's teachings would have been motivated to look to LashBack's website to learn additional details about the system discussed in the patent. EX1003, ¶¶ 190-191; EX1005; EX1006. A POSITA would have had a reasonable expectation of

success in combining their teachings, as they relate to the same system and combining them would take merely ordinary skill. EX1003, ¶ 192.

B. Claim 1

[1.1] A method of processing subscriptions comprising:

Castelli teaches “a centralized process for managing unsubscribe requests.” EX1005, Abstract. Its “system can unsubscribe an individual or group of individuals through the centralized process.” *Id.*; *see also id.* 1:14-17, 5:3-10, 6:22-37, 7:3-17; EX1003, ¶ 193.

A POSITA would have understood that the emails that Castelli and LashBack each describe as “spam” would include “subscriptions.” EX1003, ¶ 194. A POSITA would have understood that no firm boundary exists between emails that are and are not “spam.” *Id.*, ¶ 32. A POSITA would understand that while not all emails received from subscription lists are spam, that subscription lists are often used to generate spam, and that sometimes people lose interest in a subscription list they subscribed to and then consider its emails spam. The ’342 patent’s Background section addresses this blurry line, describing how “many people subscribe without realizing it,” and how a user may not have “intend[ed] to subscribe.” EX1001, 1:38-63; EX1003, ¶¶ 33-35, 195.

LashBack defines spam as “unwanted email,” and describes its toolbar as unsubscribing people from “unwanted junk email.” EX1006, 1-3. Castelli explains

that “spam is a general reference to unsolicited bulk communications.” EX1005, 3:46-47.¹⁰ Castelli describes that some senders of “spam” honor unsubscribe requests, indicating that they are not all “unscrupulous spammers.” *E.g., id.*, 3:63-4:5; 1:20-29; 1:56-2:2. A POSITA would understand that Castelli and LashBack spam emails included emails that originated as a subscription, with no technical distinction between them. EX1003, ¶ 196.

[1.2] identifying one or more email accounts;

Castelli discloses that participants sign up to use the system by providing “the email address . . . for which unsubscribe requests are to be processed.” EX1005, 3:25-29; *see also id.*, 5:3-10. Although Castelli discloses this element alone, LashBack further discloses that users can download an OUTLOOK® toolbar. EX1006, 1-3, 16-17; A POSITA would understand Castelli and LashBack users have associated email accounts, which would have to be identified in order to process subscriptions associated with that email account. *Id.*, EX1003, ¶ 197.

[1.3] accessing the mailboxes associated with the email accounts;

Castelli discloses that an application may be “installed with the user’s email client” that “automatically filters and determines spam based on key attributes of

¹⁰ PO has previously asserted that the challenged claims are “directed at the automatic processing of bulk email.” EX1021, 6.

email messages.” EX1005, 5:3-10. Castelli discloses that such an application may automatically forward a copy of some emails which the user receives. *Id.* Castelli also recites that “[s]ome have proposed offering programs that tie into the email client that provide[] the option of automatically deleting spam and unsubscribing from the source.” *Id.*, 2:3-5, *see also id.*, 3:48-55, 4:59-67; EX1006, 1-3. A POSITA would understand such functionality to include “accessing the mailboxes associated with the email accounts.” EX1003, ¶ 198; *see also* Ground 1, [1.3] (managing email clients’ subscription messages involves accessing mailboxes).

[1.4] processing, at least a subset of the email messages in the mailboxes to identify those originating with a subscription list;

Castelli discloses that participants register with the system to identify and process unsubscribe requests. EX1005, 3:25-37. Castelli discloses a spam listener process that records information used to identify unsolicited emails. *Id.*, 3:48-55. The process parses spam messages to determine a spam report that includes, among other things, hyperlinks and identification information in the message. *Id.*, 4:32-58. Castelli further discloses that it processes multiple messages together. Specifically, Castelli provides “[t]his process may be performed real time as reports or made, or requests could be queued and sent on a batch basis.” *Id.*, 4:67-5:2. Castelli further discloses that it “automatically filters and determines spam based on key attributes of email messages” at the user’s email client. *Id.*, 5:3-10; EX1003, ¶ 199.

Castelli discloses a “notification engine” that parses emails to identify messages having an “opt-out mechanism” (i.e., subscription messages that can be unsubscribed from) and further that the “notification engine” can be downloaded and executed at the user’s local client. EX1005, 4:6-20, 5:62-6:9; EX1003, ¶ 200. “The notification engine 8 retrieves queued requests 38 to unsubscribe from a centralized location through [a] centralized process and/or a client-based process.” EX1005, 6:10-12; *see also* EX1006, 1-3, 17-24; EX1003, ¶ 200.

Thus, a POSITA would understand Castelli discloses this element. EX1003, ¶ 202.

[1.5] processing, at least one email message associated with a subscription list to identify methods of unsubscribing from the subscription;

Castelli discloses parsing received messages associated with a subscription list (spam) to identify unsubscription methods. EX1005, 6:20-21; *see also, e.g., id.*, 5:62-6:9, 4:6-8, 4:47-58, 3:48-55; [1.1]; *see also* EX1006, 8; EX1003, ¶ 203.

Castelli lists several types of searches in the email message or spam report—which is a compilation of information parsed from the email message—that “can be performed to determine the unsubscribe mechanism.” EX1005, 6:22-37, 4:32-36. For example, Castelli lists “searching for an email address that accepts unsubscribe requests.” *Id.*, 6:22-24. Castelli explains that “[i]f an email address is provided in the spam message along with key indicators in the email, this may be assumed to be an

opt-out mechanism.” *Id.*, 6:38-40; *see also, e.g., id.*, 6:47-67 (providing further details).

Although Castelli discloses this element alone, LashBack recommends senders use a list-unsubscribe header or the word “unsubscribe” in unsubscribe email addresses or links to help “ensure LashBack is able to find [their] unsubscribe link.” EX1006, 8. Thus, a POSITA would understand Castelli and LashBack disclose this element. EX1003, ¶ 204.

[1.6] wherein identifying methods of unsubscribing from the subscriptions further comprises: identifying list-unsubscribe headers in a message header; or¹¹

Castelli discloses both searching within a message for an email address or webpage that accepts unsubscribe requests, and that some unsubscribe methods would be “embedded in the headers of email.” EX1005, 6:22--67; *see also* EX1006, 8; EX1003, ¶ 205.

A POSITA would have known that the only unsubscribe method—or at least the only commonly known one—embedded in email headers was list-unsubscribe headers. EX1003, ¶¶ 206-209. Thus, a POSITA would understand Castelli discloses this element. *Id.*, ¶ 210.

[1.7] identifying unsubscribe methods within the message body;

¹¹ *See supra*, note 4, p. 19.

Castelli discloses that *sometimes* unsubscribe mechanisms would be found in email headers, indicating that sometimes they would be found in the email body. EX1005, 6:22-67. Similarly, Castelli discusses parsing spam emails in search of “an opt-out email address, form, or other mechanism . . . in the email or on the web pages referenced in the email.” *Id.*, 4:6-10, 3:48-55. A POSITA would understand such “parsing” as connoting processing the entire email and not just the headers, as, for example, a “form . . . in the email” or “web pages referenced in the email” would be in the message body. EX1003, ¶ 212. Although Castelli discloses this element alone, LashBack further instructs email senders using unsubscribe links “in the body of the email message” to use the word “unsubscribe” in their links or email addresses to ensure LashBack can find them. EX1006, 8; *see also* [1.5], Ground 1, [1.7]. Thus, a POSITA would understand Castelli and LashBack disclose this element. EX1003, ¶¶ 211, 213.

[1.8] presenting to the user the subscriptions previously identified: and

Castelli and LashBack disclose multiple ways of presenting subscriptions to users, including allowing users to choose subscriptions to unsubscribe from:

[A] service or application could allow users to see a list of the stored spam attributes[such as] the email address of known spammers, the URLs of known products or advertisers, or other unique identifiers of spam. The user

could then choose which advertisers or senders they want to post unsubscribe requests for based on this information.

EX1005, 7:27-36; *see also* [1.4]. Castelli’s references to “advertisers or senders” from which the user can “unsubscribe” makes it clear that these “advertisers or senders” were the sources of subscriptions. EX1003, ¶ 214.

Although Castelli discloses this element alone, LashBack further teaches offering an unsubscribe button that consumers can click to unsubscribe from spam emails, with a “Toggled” option that will present the button to users when the software determines that the user can safely unsubscribe from the message. EX1006, 1-3, 17-24. Thus, a POSITA would understand Castelli and LashBack disclose this element. EX1003, ¶ 215.

[1.9] unsubscribing from, at least a single subscription in response to a user requests;

Castelli discloses that a “notification engine posts [an] unsubscribe request” based on a user’s choice of “which advertisers or senders they want to post unsubscribe requests for.” EX1005, 7:27-36. Castelli also discloses that a user’s request to unsubscribe from a subscription may be determined by presenting a user with a list of options to choose from, (*id.*), or by the user flagging a specific email for unsubscription, (*e.g., id.*, 3:48-64, 4:6-24). Castelli teaches at least five different ways that its system can unsubscribe a user. *Id.*, 7:3-17; EX1003, ¶ 216.

Although Castelli discloses this element alone, LashBack further teaches that its toolbar unsubscribes users from “unwanted junk email” when they click the “LashBack” button. EX1006, 1-3. Thus, a POSITA would understand Castelli and LashBack disclose this element. EX1003, ¶ 217.

[1.10] wherein identifying unsubscribe methods within the message body further comprises: collecting unsubscribe hyperlinks from the message body; and

Castelli recites that “[e]ach Uniform Resource Indicator (URI) for each hyperlink in the reported message is determined, logged, and associated with the spam report by parsing the actual text of the message.” EX1005, 4:47-50; *see also id.*, 4:50-53. Castelli then explains that “each URL listed in the email is examined” as part of identifying mechanisms for unsubscribing, and that each corresponding webpage is examined, “searching for opt-out mechanisms.” *Id.*, 6:47-49. Similarly, Castelli teaches that the spam emails are parsed to determine whether “an op-out email address, form, or other mechanism is found . . . on the web pages referenced in the email.” *Id.*, 4:6-10; EX1003, ¶ 218.

Although Castelli discloses this element alone, LashBack further discloses searching for unsubscribe links “in the body of the email message.” EX1006, 8. Thus, a POSITA would understand Castelli and LashBack disclose this element. EX1003, ¶ 219; *see also* [1.7].

[1.11] identifying those hyperlinks as potential unsubscribe methods.

Castelli discloses examining “each URL listed in the email” as part of identifying mechanisms for unsubscribing, and examining each corresponding web page for opt-out mechanisms.” EX1005, 6:47-49. LashBack teaches that some links are unsubscribe methods or ways to reach an unsubscribe method. EX1006, 8-10. Thus, a POSITA would understand Castelli and LashBack disclose this element. EX1003, ¶ 220; *see also* Ground 1, [1.11] (element lacking patentable weight).

C. Claim 3

3. A method, as described in claim 1 wherein processing email messages to identify those originating with a subscription list further comprises: identifying subscriptions by the inclusion of list-unsubscribe headers in the email header.

Castelli teaches determining spam “based on key attributes of email messages,” and that some unsubscribe methods would be “embedded in the headers of emails.” EX1005, 5:3-10; 6:22-67. A POSITA would have understood this to disclose that one method of identifying subscription emails was using a list-unsubscribe header. EX1003, ¶¶ 221-222; *see also* [1.6].

D. Claim 4

4. A method, as described in claim 1 wherein processing email messages to identify those originating with a subscription list further comprises: verifying senders are not included in an Unsubscribe Blacklist.

Castelli describes determining which parties abuse unsubscribe requests and “suppressing unsubscribe requests for users from being made to these mechanisms.” EX1005, 3:63-4:5; EX1003, ¶¶ 223-224. A POSITA would have known that one way to identify unwanted emails would have been to use a negative screening list or blacklist, as taught by LashBack. EX1006, 13-16; EX1003, ¶ 225.

LashBack taught that “[s]ome spammers make fake unsubscribe buttons/links and use clicks to determine which email addresses are valid – so that they can continue to spam them.” EX1006, 3. LashBack maintained an “Unsubscribe Blacklist” listing “unsubscribe abusers” who “send email to addresses which have been harvested from suppression lists.” *Id.*, 13. A POSITA would have understood a suppression list referred to a list of unsubscribe requests. EX1003, ¶ 226; EX1018.

A POSITA implementing Castelli would have been motivated to incorporate LashBack’s “Unsubscribe Blacklist” to help determine whether using an email’s unsubscribe method would be effective to unsubscribe or would instead result in more unwanted messages. EX1006, 3-4. A POSITA would have had a reasonable expectation of success in incorporating an Unsubscribe Blacklist into Castelli as it would have been trivial, taking merely ordinary skill. EX1003, ¶ 227.

E. Claim 6

[6.1] A method, as described in claim 1 wherein identifying unsubscribe methods within the message body further comprise: collecting hyperlinks which are associated with images; and

Although Castelli and LashBack do not disclose hyperlinks associated with images, this element would have been obvious over Castelli. Since Castelli discloses collecting unsubscribe methods, including hyperlinks, within the message body (see [1.7], [1.10]), a POSITA would understand that Castelli would recognize image links as a known type of link and the HTML would be not need to change regardless of the type of link found in the message. EX1003, ¶¶ 59, 233; *see also* Ground 1, [6.1] (discussing using images as hyperlinks).

[6.2] identifying those hyperlinks as potential unsubscription methods.

Castelli and LashBack disclose identifying any unsubscribe information in an email, regardless of type. *See* [1.7]. A POSITA would understand Castelli and LashBack’s use of unsubscribe hyperlinks as also identifying them as potential unsubscription methods. EX1003, ¶ 234. Additionally, as discussed above, this element lacks patentable weight.

F. Claim 7

7. A method, as described in claim 1 wherein unsubscribing from a subscription comprises: sending unsubscribe emails to sending email of subscription messages.

Castelli satisfies the added element of claim 7 as it discloses that one way of unsubscribing is “sending an email on the behalf of the reporting email address to the email address determined in the mechanism search process.” EX1005, 7:5-7; *see*

also, *e.g.*, 6:25-26 (“searching for key attributes indicative that a reply action to the initial sending email address is required for unsubscribe”), 6:38-46, 6:60-7:2; EX1003, ¶ 235.

G. Claim 8

8. A method, as described in claim 1 wherein unsubscribing from a subscription comprises: sending unsubscribe emails to mailto: address found in a list-unsubscribe header.

Castelli discloses searching for an email address accepting unsubscribe requests, and that some unsubscribe methods would be “embedded in the headers of emails.” EX1005, 6:22-67. As discussed at [1.6], a POSITA would have known that the only or most common unsubscribe method embedded in email headers was a list-unsubscribe header and that they sometimes included a “mailto” link specifying an email address to receive an unsubscribe request. EX1003, ¶ 236. Castelli also teaches that one way of unsubscribing would be “sending an email on the behalf of the reporting email address to the email address determined in the mechanism search process.” *Id.*, 7:5-7; *see also, e.g., id.*, 4:47-53, 6:38-49, 6:60-7:2.

H. Claim 9

9. A method, as described in claim 1 wherein unsubscribing from a subscription comprises: processing one or more URLs found in a message to unsubscribe from subscriptions.

Castelli discloses that “[i]f an opt-out . . . form, or other mechanism is found . . . on the web pages referenced in the email, then an opt-out request can be submitted for each user through the mechanism provided by the advertiser.” EX1005, 4:8-12. Castelli teaches at least three ways of automatically unsubscribing a user by processing URLs:

- posting an email address to a web-based removal form . . . ;
- navigating an email preference web page or sequence of web pages and performing actions . . . ; and
- navigating to a specific hyperlink in the message, which completely handles the unsubscribe process without additional variable input.

Id., 7:3-17. Castelli teaches that an “automated web crawling process can be used for determining complex unsubscribe processes that do not require input of an email address, but the setting of email preferences through a web site.” *Id.*, 6:56-59; EX1003, ¶ 237.

I. Claim 13

13. A method, as described in claim 9 wherein processing a URL comprises: opening a browser; navigating to the URL; downloading the webpage located at the URL; presenting the webpage to the user for manual unsubscription from the subscription.

As discussed at claim 13 in Ground 1, a POSITA would understand that activating unsubscribe links would trigger a series of steps, including opening a

browser and downloading the webpage pursuant to the http protocol. EX1003, ¶¶ 62-63, 238. A POSITA would further understand that some unsubscribe forms would require manual unsubscription. *Id.* Indeed, Castelli teaches that [p]referably, a computer program automatically determines the unsubscribe function, although the function could also be determined manually.” EX1005, 7:20-22. Thus, a POSITA would find the added elements of claim 13 obvious over Castelli. EX1003, ¶ 238; *see also* Ground 5, claim 9, and Ground 1, Claim 13.

J. Claim 14

[14.1] A computing system configured to process subscriptions to list servers, said configuration comprised of:

Castelli discloses that its subscription messages (spam) originate from advertisers, which a POSITA would understand are processed via automated distribution systems (list servers). EX1005, Fig. 1, Item 26, 2:60-3:34; EX1003, ¶ 239.

Castelli further teaches a computing system configured to process subscriptions. Specifically, Castelli discloses a notification engine located on a user’s computer or a centralized system including one or more servers. EX1005, 4:6-20, 5:62-6:9. Castelli teaches that “[p]referably a computer program automatically determines the unsubscribe function.” *Id.*, 7:20-21; *see also id.*, 3:48-62, Fig. 1 (depicting computers and servers); EX1003, ¶ 240.

Castelli (with or without LashBack) discloses the remaining elements of claim 14 as follows:

[14.2] identifying one or more email accounts;

[14.3] accessing the mailboxes associated with the email accounts; and

[14.4] processing, at least a subset of the email messages in the mailboxes to identify those originating with a subscription list;

Castelli (with or without LashBack) discloses elements [14.2]-[14.4] for the same reasons discussed at [1.2]-[1.4]. EX1003, ¶¶ 241-242.

[14.5] processing the body text of at least one email message associated with a subscription list to identify mailto: and URLs to utilize to unsubscribe from the subscription;

As discussed at [1.7] and [1.10], Castelli (with or without LashBack) discloses identifying hyperlinks (URLs) in the body of emails to use to unsubscribe. As discussed at claim 8, a POSITA understood that a list-unsubscribe header sometimes included a mailto: link. A POSITA also would have known that mailto: links could be included in the email body. *E.g.*, EX1006, 8; EX1009, 2. A POSITA would have been motivated to identify any unsubscribe mechanisms, so it could better assist users in unsubscribing. EX1003, ¶ 243.

[14.6] presenting to a user the subscriptions previously identified; and

[14.7] unsubscribing from, at least a single subscription in response to a user request;

[14.8] presenting to the user the subscriptions previously identified; and

[14.9] unsubscribing from, at least a single subscription in response to a user requests;

[14.10] wherein identifying unsubscribe methods within the message body further comprises: collecting unsubscribe hyperlinks from the message body; and

[14.11] identifying those hyperlinks as potential unsubscription methods.

Castelli (with or without LashBack) discloses elements [14.6]-[14.11] for the same reasons as discussed at [1.8]-[1.11]. EX1003, ¶ 244.

K. Claim 16

[16.1] A computing apparatus for processing subscriptions to list servers,

[16.2] wherein said apparatus: identifies one or more email accounts;

[16.3] accesses the mailboxes associated with the email accounts

[16.4] and processes, at least a subset of the email messages in the mailboxes to identify those originating with a subscription list;

[16.5] processes the body text of at least one email message associated with a subscription list to identify mailto: and URLs to utilize to unsubscribe from the subscription;

[16.6] presents to the user the subscriptions previously identified; and

Castelli (with or without LashBack) discloses elements [16.1]-[16.6] for the same reasons as discussed above at [14.1]-[14.6]. EX1003, ¶¶ 245-247.

[16.7] in response to an initiation command from a user, automatically unsubscribes from, at least a single subscription;

Castelli (with or without LashBack) discloses this element for the same reasons as discussed above at [1.9]. A POSITA would understand Castelli's and LashBack's disclosures of effectuating the unsubscription in response to the user's

input (initiation command) to occur automatically. EX1003, ¶ 248; EX1005, 2:26-29 (disclosing “process for automatically performing unsubscribe actions”), 3:48-62, 4:6-24, 7:27-36; EX1006, 1-3.

[16.8] presenting to the user the subscriptions previously identified; and
--

[16.9] unsubscribing from, at least a single subscription in response to a user requests;

[16.10] wherein identifying unsubscribe methods within the message body further comprises: collecting unsubscribe hyperlinks from the message body; and

[16.11] identifying those hyperlinks as potential unsubscription methods.

Castelli (with or without LashBack) discloses elements [16.8]-[16.11] for the same reasons as discussed above at [14.8]-[14.11]. EX1003, ¶ 249.

XII. GROUND 6: CLAIM 2 IS OBVIOUS OVER CASTELLI AND LASHBACK IN VIEW OF EMIGH

A. Claim 2

Claim 2 is unpatentable as obvious over Castelli and optionally LashBack in view of Emigh.

Castelli, LashBack, and Emigh would have been a natural combination because they all relate to methods of managing electronic messages from mailing lists. EX1003, ¶¶ 250-251. Because Castelli and LashBack teach automatically processing mailing list emails, the ability to accurately identify such emails would be important to a POSITA. *Id.* A POSITA implementing Castelli (with or without LashBack) would have been motivated to look to other references, such as Emigh,

for details regarding identifying non-subscriptions. Because an important aspect of Castelli is identifying subscription messages, a POSITA would have been motivated to also identify non-subscriptions, as a POSITA would have known that email messages that are not subscription messages would be non-subscriptions.. *Id.*; see also Ground 1, claim 2.

[2.1] A method, as described in claim 1 wherein processing email messages further comprises: identifying non-subscriptions by text prepended to subjects;

[2.2] and/or identifying non-subscriptions by user address.

Castelli and LashBack teach distinguishing between messages that are and are not subscriptions, but do not disclose precisely how. As discussed above, Emigh discloses the elements added in [2.1] and [2.2]. For example, a POSITA would have understood Emigh's teachings about determining "whether a reply message is a reply to an actual message sent by a message recipient" as taking into consideration the "RE:" component of a subject line when identifying messages that were or were not spam. EX1007, 3:44-54; *see also id.*, 7:49-52 (teaching that subject lines prepended with "LIST-ID" indicated a mailing list email). EX1003, ¶¶ 252-267. Additionally, as noted above, Emigh taught considering the address of a message recipient in determining whether a message originated from a mailing list. See EX1007, 7:35-40, 7:46-8:52; EX1003, ¶¶ 251-266. Incorporating such teachings

from Emigh into Castelli to identify non-subscriptions would have been trivial, taking merely ordinary skill. *Id.*, ¶¶ 49-55, 252-267.

**XIII. GROUND 7: CLAIM 5 IS OBVIOUS OVER
CASTELLI AND LASHBACK IN VIEW OF HILL**

A. Claim 5

Claim 5 is unpatentable as obvious over Castelli and optionally LashBack in view of Hill. EX1003, ¶¶ 268-282.

[5.1] A method, as described in claim 1 wherein identifying unsubscribe methods within the message body further comprises: searching for unsubscribe text in a message body;

A POSITA would have understood that Castelli’s parsing of an email message to identify unsubscribe methods included looking for “unsubscribe text.” EX1003, ¶¶ 269-270. Castelli states that “[i]f an email address is provided in the spam message *along with key indicators in the email*, this may be assumed to be an opt-out mechanism.” EX1005, 6:38-40 (emphasis added). Castelli’s reference to an “opt-out mechanism” means an unsubscribe method. Both the email address and key indicators satisfy the claimed “unsubscribe text.” For example, a POSITA would have known that one “key indicator” would be unsubscribe text such as the word “unsubscribe.” EX1003, ¶¶ 49-55, 272; *see also* [1.5], [1.7].

[5.2] collecting hyperlinks which begin within a threshold amount after the unsubscribe text; and

Although Castelli and LashBack disclose collecting hyperlinks as discussed at Ground 5, [1.10], they do not disclose doing so after a threshold amount. Hill does, however, as discussed at Ground 3. EX1003, ¶¶ 273-280. Castelli’s disclosure that the email address is provided “along with” the key indicators suggests that the two types of information would have been associated by their proximity to each other. *Id.*, ¶ 275; EX1006, 8-9. A POSITA implementing Castelli would have been motivated to incorporate Hill’s teachings regarding analyzing text within one to fifty characters of a URL as a part of identifying unsubscribe methods, in order to identify such methods more accurately. EX1003, ¶¶ 276-280; *see* Ground 3. Incorporating Hill’s teachings into Castelli would have been trivial, taking merely ordinary skill. EX1003, ¶ 280.

[5.3] identifying those hyperlinks as potential unsubscription methods.

A POSITA would understand Castelli’s collecting and use of unsubscribe hyperlinks as also identifying them as potential unsubscription methods, and that this would apply to hyperlinks within a threshold amount. EX1003, ¶¶ 281-282. This element also lacks patentable weight.

**XIV. GROUND 8: CLAIMS 10-12, 15, AND 17 ARE OBVIOUS
OVER CASTELLI AND LASHBACK IN VIEW OF RETURN PATH**

Petitioner omits the language of claims 10-12, 15, and 17 previously recited in Ground 4. Castelli and optionally LashBack render obvious claims 10-12, 15, and

17 in combination with Return Path. See Ground 5, claim 9 and Ground 4, claims 10-12, 15, 17.

A POSITA implementing Castelli would have been motivated to investigate examples of common unsubscribe landing pages such that Castelli’s system would be able to, for example, “navigat[e] an email preference web page or sequence of web pages and perform[] actions” to unsubscribe someone. EX1005, 7:10-13. A POSITA seeking to implement an automatic unsubscribing system as described in Castelli would have recognized that the system would need to accommodate itself to existing unsubscription processes. EX1003, ¶¶ 283-293. As discussed at Ground 4, Return Path provides examples of unsubscribe webpages. Incorporating Return Path’s teachings into Castelli would have been trivial, taking merely ordinary skill. *Id.*, ¶¶ 62-63, 293.

A. Claim 10

A POSITA would have understood both this claim and Castelli’s teaching of “navigating to a specific hyperlink in the message, which completely handles the unsubscribe process without additional variable input” as referring to the same type of unsubscribe links. EX1005, 7:13-15; EX1003, ¶¶ 295, 298-299; *see also*, Ground 5, claim 9. A POSITA would understand that activating the unsubscribe links disclosed in Castelli would trigger the same steps regarding URL processing discussed at Ground 4, claim 10. EX1003, ¶¶ 296-297.

As discussed at Ground 4, Return Path describes unsubscribe confirmation landing pages that lacked form elements. *Id.*, ¶¶ 295-301; *see also* Ground 4 (discussing pertinent disclosures of Return Path).

As discussed at [16.7] and claims 1 and 9, Castelli discloses collecting unsubscribe links from messages and automatically unsubscribing in response to the user's input. A POSITA would have been aware of unsubscribe webpages and would be motivated to configure the system to accommodate them by, for example, determining if a page had a single button, and if so, executing it. This way, once the user chooses to unsubscribe, the user does not have to view the page herself and execute the relevant button. EX1003, ¶¶ 300-302.

B. Claim 11

Castelli teaches “navigating an email preference web page . . . and performing actions as determined by the mechanism search process on behalf of the reporting user.” EX1005, 7:10-13; EX1003, ¶ 303; *see also* Ground 5, claim 9, Ground 4, claim 11, Ground 8, claim 10.

Although Castelli and LashBack do not describe executing a single button on an unsubscribe webpage, as noted above, a POSITA would have been motivated to look to Return Path's examples discussed at Ground 4, including an unsubscribe webpage requiring a user to execute one button to unsubscribe. Thus, claim 11 is

obvious over Castelli (with or without LashBack) in view of Return Path. EX1003, ¶¶ 304-308.

C. Claim 12

Although Castelli and LashBack do not illustrate identifying two buttons on an unsubscribe webpage and executing the unsubscribe button, a POSITA would have been motivated to look to Return Path's examples discussed at Ground 4, including multiple button elements on unsubscribe webpages. Thus, claim 12 is obvious over Castelli (with or without LashBack) in view of Return Path. EX1003, ¶¶ 309-314; *see also* claims 1, 9, 10, Ground 4, claim 12, Ground 5, claim 9, and Ground 8, claim 11.

D. Claim 15

Castelli (with or without LashBack) in view of Return Path discloses each alternative recited in claim 15 as discussed at Ground 5, claims 7-9, 13-14, and Ground 8, claims 10-12. EX1003, ¶ 315; *see also* Ground 4, claim 15.

E. Claim 17

As noted in Ground 4, claim 17 adds to claim 16 the added elements of dependent claims 7-13. Castelli (with or without LashBack) in view of Return Path discloses each alternative recited in claim 17 as discussed at Ground 5, claims 7-9, 13, 16; and Ground 8, claims 10-12. EX1003, ¶ 316.

XV. NO OBJECTIVE INDICIA OF NON-OBVIOUSNESS

Petitioner is unaware of any objective indicia of non-obviousness as to any challenged claim.

XVI. CONCLUSION

Petitioner requests institution for claims 1-17 on the grounds specified in this petition.

Respectfully submitted,

Dated: November 10, 2023

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CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATION PURSUANT TO 37 C.F.R. § 42.24

This brief complies with the type-volume limitation of 37 C.F.R. § 42.24(a)(1)(i).

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CERTIFICATE OF SERVICE
IN COMPLIANCE WITH 37 C.F.R. § 42.6(e)(4)

The undersigned certifies that the **Petition for *Inter Partes* Review of U.S. Patent No. 8,935,342 and Exhibits 1001 – 1031** were served on November 10, 2023, via **Express Mail** on the Patent Owner at the following address of record as listed on the USPTO Patent Center:

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A copy of the **Petition for *Inter Partes* Review of U.S. Patent No. 8,935,342** only was served on litigation counsel for Patent Owner via email to:

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