

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

META PLATFORMS, INC.,
Petitioner,

v.

MOBILE DATA TECHNOLOGIES LLC,
Patent Owner.

Case IPR2024-00251
Patent 10,839,427

PATENT OWNER'S PRELIMINARY RESPONSE
35 U.S.C. §313, and 37 C.F.R. §42.107(a)

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U.S. Patent No. 10,839,427

EXHIBIT LIST

Ex.	Description
2001	Declaration of Kevin C. Almeroth, Ph.D. (“Almeroth”)
2002	<i>Curriculum Vitae</i> of Kevin C. Almeroth, Ph.D.

Patent Owner Mobile Data Technologies, LLC (“MDT”) submits this Preliminary Response to the Petition (Paper 2, “Pet.”) for *inter partes* review (“IPR”) of claims 1-9 of U.S. Patent No. 10,839,427 (“’427 Patent”, EX1001) filed by Meta Platforms, Inc. (“Petitioner”).

I. INTRODUCTION

A. Summary

Institution of an IPR is discretionary, and is authorized when, first, “the same or substantially the same prior art” was not previously present to the U.S. Patent and Trademark Office (35 U.S.C. §325(d)), and second, “the information presented in the petition ... and any response ... shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition” (35 U.S.C. §314(a)).

Institution should be denied because Petitioner does not satisfy the threshold for institution of this IPR because it presents the same or substantially similar prior art previously before the Office and considered by the examiner during the pendency of the original examination of the challenged claims of the ‘039 Patent, and Petitioner has failed to articulate any material error permitting reconsideration of the previously considered prior art. If the Board declines to deny institution in view of the previously considered prior art, institution should be denied because Petitioner’s obviousness arguments are deficient as they have not shown there is a reasonable

likelihood that it would prevail in establishing the unpatentability of at least one challenged claim. Petitioner fails to address the differences between the claimed subject matter and the prior art, and provide a reasoned analysis of how and why a person of ordinary skill in the art (“POSITA”) would combine the prior art lacking claimed features in view of the knowledge of a POSITA, and show they would have had a reasonable expectation of success. At least due to the weak showing of invalidity in view of the same or substantially the same prior art, institution of this IPR should be denied.

B. ‘427 Patent

The 427 Patent is titled “Method, Apparatus and System for Management of Information Content for Enhanced Accessibility Over Wireless Communication Networks” and was issued by the U.S. Patent & Trademark Office on November 17, 2020. EX1001.

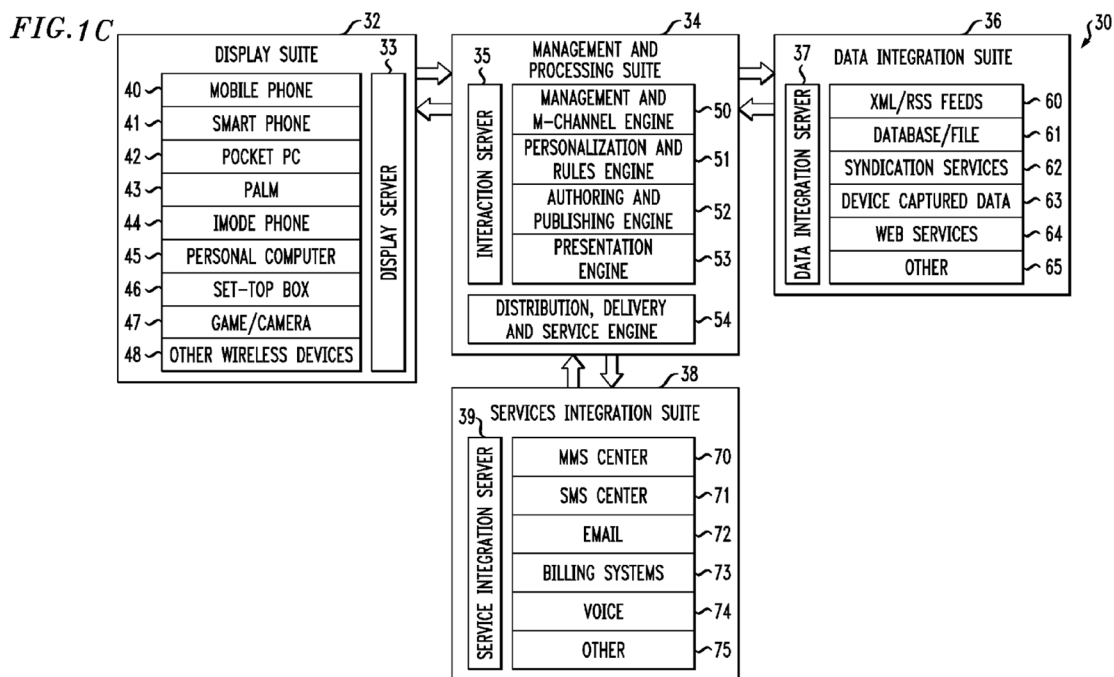
1. The ‘427 Patent discloses and claims a novel and nonobvious method for management of information content for enhanced accessibility over wireless communication networks.

The ‘427 Patent is directed to a collaborative web-based information content management system, involving situations where “mobile device users link to and take further action on a persistent version of a given set of shared information content.” ‘427, 1:66-2:1. The patent is focused on the two-way functionality of the

system, which it describes as “a mechanism that facilitates uniform, action-driven content access and associated user interaction via wireless networks.” *Id.*, 2:1-4.

To that end, “[t]he system is configured to operate independently of the user device operating system or other user device configuration parameters, such that a given user may author, create, publish, send, convey, share, receive, respond to, subscribe to, collaborate with, track, transact, maintain and manage personalized messaging content from any type of user device running any operating system.” *Id.*, 19:11-17.

The '427 Patent claims focus on the functionality of and interaction between various sets of servers in the system. The '427 Patent describes a number of such servers in an exemplary embodiment, shown in overview form Fig. 1C:



The '427 Patent describes the above exemplary servers as: 1) an interaction server, which manages and processes content to be displayed on mobile devices; 2) a data integration server, which provides various sources of data to the interaction server for processing; 3) a service integration server, which controls integration of information related to various wireless networking functionalities of the mobile devices (SMS, MMS, email, etc.); and 4) a display server, which controls the presentation of data assembled by and sent from the interaction server on the various user devices. '427 9:13-10:8.

Claim 1 is representative, and the only independent challenged claim:

1. A method for managing information content in a data communication network, the method comprising the steps of:
providing content management resources at a first uniform resource locator hosted at a first set of one or more servers and accessible to a user of the data communication network, the content management resources being configured to permit the user to designate data from one or more data sources external to the first set of one or more servers;
uploading external data to a second set of one or more servers for use in the data communication network;
reformatting the external data for mobile device use; and
automatically generating mobile resources at a location different from the first uniform resource locator, the mobile resources being accessible independent of the content management resources via one

or more mobile devices, the mobile resources automatically including the reformatted external data from a third set of one or more servers in the data communication network.

C. Prior Art and Asserted Grounds

Petitioner asserts the challenged claims are unpatentable based on the following grounds:

Ground	Challenged Claim(s)	Reference(s)/Basis
1	1-3, 5-9	Neibauer (EX1003), Cheng (EX1005)
2	4	Ground 1 + Balabine (EX1015)
3	1-3, 5-9	Ground 1 + Yates (EX1016)
4	4	Ground 3 + Balabine

II. THE PETITION IS GROUNDED IN ART THAT WAS ALREADY BEFORE THE EXAMINER, AND THUS INSTITUTION SHOULD BE DENIED UNDER § 325(D)

Petitioner's cursory 35 U.S.C. § 325(d) analysis both minimizes the extent of the problem caused by Petitioner's conscious choice of art, and makes no real effort to deal with that problem. As discussed in detail below, the key references presented in the Petition are the same as those previously considered by the Examiner, and, as explained below, the remainder need not be considered to decide institution.

Petitioner voices the words “materially erred” but does not actually identify any tangible error beyond the circularity of the Examiner not having used Petitioner’s references to reject the claims. Instead of explaining the supposed error, Petitioner merely appeals to its petitioned grounds and darkly alludes to an adverse reexamination result for a predecessor patent with significantly different claims—differences Petitioner makes no effort to address or even acknowledge. This level of handwaving has oft been rejected by the Board in the past, and there is no basis here for the Board to second-guess the Examiner’s representation that he considered the very references Petition now bases its grounds on, and apparently did not see the same significance in them as Petitioner now alleges.¹ Patent Owner thus respectfully requests that the Board exercise its discretion to deny review under § 325(d).

A. Relevant Legal Principles

The Board may deny institution of a proceeding if the petitioner challenges the patent on matters previously presented to the Office. *Advanced Bionics, LLC v. Med-EL Elektromedizinische Gerate GMBH*, IPR2019-01469, Paper 6 at 7 (PTAB Feb. 13, 2020) (precedential). Denial is proper if (1) the petitioner presents the same, or substantially the same, prior art or arguments previously presented to the Office,

¹ The ’427 Patent was assigned to the same Examiner that examined all earlier patents in the family, including the one subject to reexamination.

and (2) the petitioner fails to demonstrate that the Office erred in a manner material to the patentability of the challenged claims. *See id.* at 8. Under this framework, the Board may determine whether the *Advanced Bionics* test is satisfied by looking to the non-exclusive list of factors listed in *Becton, Dickinson and Co. v. B. Braun Melsungen AG*, IPR2017–01586, Paper 8 (PTAB Dec. 15, 2017) (precedential in part). *See Advanced Bionics*, Paper 6 at 9, n.10; *see also Becton, Dickinson*, Paper 8 at 17–18 (listing factors):

- (a) the similarities and material differences between the asserted art and the prior art involved during examination;
- (b) the cumulative nature of the asserted art and the prior art evaluated during examination;
- (c) the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection;
- (d) the extent of the overlap between the arguments made during examination and the manner in which petitioner relies on the prior art;
- (e) whether petitioner has pointed out sufficiently how the examiner erred in its evaluation of the asserted prior art; and
- (f) the extent to which additional evidence and facts presented in the petition warrant reconsideration of the prior art or arguments.

For Part 1 of the *Advanced Bionics* framework, the Board first evaluates *Becton, Dickinson* factors (a), (b), and (d). *Advanced Bionics* at 10. If it is determined that the same or substantially the same art or arguments were previously presented to the USPTO, then under Part 2 Board considers factors (c), (e), and (f)

to assess “whether the petitioner has demonstrated a material error by the Office” in its prior consideration of that art or arguments. *Id.*

The Board defers to “previous Office evaluations of the evidence of record unless material error is shown.” *Id.* at 9. A showing of material error is a high threshold: “[i]f reasonable minds can disagree regarding the purported treatment of the art or arguments, it cannot be said that the Office erred in a manner material to patentability.” *Id.* at 9.

B. All Petitioned Art Was Previously Presented, Substantially Similar, or Cumulative

All of the petitioned grounds are nearly entirely based on Neibauer and Cheng. Pet. 9-10. Petitioner correctly acknowledges that these references were considered and made of record by the Examiner, and indeed they appear in IDS forms in entries that were not lined through, as well as on the face of the ’427 Patent. EX1022, pp. 289, 325, 302.²

² The page ranges for Neibauer that Petitioner relies on here have minor additions and subtractions from those listed in the IDS entries, and the Petition does occasionally refer to the added page ranges for, e.g., a secondary theory or additional support for a motivation to combine. But Petitioner’s principal theories in the petitioned grounds all rely on pages that were previously presented, which

The rest of the references are, in Petitioner’s words, “cited primarily for ancillary features or to account for potential claim construction positions that may arise.” Pet. 10. Petitioner states without explanation or support that “*Advanced Bionics* does not apply” to these references (Pet. 3-4), but that misstates the Board’s precedent. *Advanced Bionics* applies to “the same ***or substantially the same*** prior art” (*Advanced Bionics*, Paper 6 at 8) (emphasis added), and *Becton, Dickinson* factors (a) and (b) explicitly contemplate asserted art that is not exactly the same as that previously considered during prosecution.

The Board routinely finds art not itself expressly considered to be substantially similar to art that was. See, e.g., *Advanced Bionics*, Paper 6 at 19 (finding that prior art not actually considered nonetheless “disclose[s] information already considered by the Office”); *Biocon Pharma Ltd, v. Novartis Pharmaceuticals Corporation*, IPR2020-01263, Paper 12 at 10-11 (PTAB Feb. 16, 2001) (“Thus, we agree with Patent Owner that [petitioned references not previously considered] do not provide any additional information relevant to the claim limitation at issue that was not already presented to, and considered by the Office.”); *Google LLC v. Kewazinga Corp.*, IPR2021-00524 Paper 17 at 16 (PTAB Aug. 24,

presumably is why Petitioner concedes without caveat that Neibauer was considered by the Examiner.

2021) (finding art initialed in an IDS “cumulative of [petitioned art] for the teachings upon which Petitioner relies”); *BMW of North America, LLC v. Stragent*, LLC, IPR2021-00418 Paper 12 at 9-10 (PTAB Jul. 19, 2021) (finding part 1 of *Advanced Bionics* satisfied because key art had been previously presented to the Office, even though some secondary references had not been).

The same is true here. It is undisputed that Petitioner’s key art, Neibauer and Cheng, was previously presented to the Office, and Petitioner’s secondary references cannot cure the deficiencies in Neibauer and Cheng:

Balabine (EX1015): Petitioner relies on Balabine in a single dependent claim, for the straightforward notion of an external data source comprising a database. Pet. 46. Petitioner does not allege that the Examiner would not have allowed the claims had he considered Balabine, and in any event relying on Balabine’s disclosure of a database system cannot cure the deficiencies in Neibauer and Cheng described herein.

Yates (EX1017): Petitioner states that Yates is added to a second, parallel set of grounds “solely to account for a potential narrow construction of a limitation recited in limitation [d] of claim 1. (EX1002, ¶¶74, 143.) If the Board chooses not to adopt that construction here, it need not consider Grounds 3-4.” Pet. 10. But Petitioner also represents to the Board in its Claim Construction section that “for purposes of this IPR, express constructions are not required.” Pet. 9. As explained

below, MDT agrees Petitioner's anticipated construction is not required at this stage, and thus that the Board need not consider Petitioner's parallel grounds 3-4 relying on Yates. And in any event, Petitioner does not rely on Yates for the limitations that are missing from Neibauer and Cheng as discussed in Section III.D.3 below.

Thus, all art necessary to decide institution is the same or substantially similar to art presented to and considered by the Examiner. Because of this, the Board need not reach the question of whether the same or substantially the same arguments were previously presented to the Office, and may proceed to the second part of the *Advanced Bionics* framework. *Advanced Bionics*, Paper 6 at 20.

C. Petitioner Does Not Show the Examiner Materially Erred

Though Petitioner purports to show material error by the Board, it does not identify any purported error that does not simply collapse into the Examiner not having rejected the claims over the grounds in the Petition. In essence, Petitioner simply walks through the prosecution history, identifies one or more limitations the Examiner said were not present in certain art, and then directs the Board to its petitioned grounds. This approach is inadequate under *Becton*, *Dickinson* factors c, e, and f, which Petitioner does not even mention much less satisfy.

Simply appealing to the petitioned grounds does not suffice, as the Board has held: "Petitioner's alleged grounds of unpatentability cannot establish material error *per se* under our binding precedent. . . . Otherwise, the reasonable likelihood

standard of § 314(a) and the second part of the *Advanced Bionics* framework (‘material error’) would collapse into one.” *Vital Connect, Inc. v. Bardy Diagnostics, Inc.*, IPR2023-00381, Paper 7, 20 (PTAB July 11, 2023).

Petitioner appeals to the Examiner’s characterization of the “closest prior art” (Pet. 4-5), but omits that the applicant expressly responded: “To the extent such concessions may be interpreted as implying that other limitations of the claims are conventional or otherwise fail to distinguish over the prior art, Applicant respectfully traverses.” EX1022, p.382. Thus, Petitioner’s apparent theory—that simply applying Neibauer and Cheng to Chow (the Examiner’s cited “closest art”) would have resulted in the claims not having issued—is unsupported speculation. And in any event, as discussed in greater detail in Section III.D.3 below, all of Petitioner’s grounds are deficient at least with respect to “uploading external data to a second set of one or more servers for use in the data communication network,” one of the limitations the Examiner expressly found lacking in Chow. *Id.*, p.357.

And to the extent Petitioner implies the Examiner should have picked and chosen from the references in the petitioned grounds in combination with other art the Examiner cited, that cannot show material error either. Such an approach would have required the Examiner to combine Petitioner’s references with his own, and Petitioner does not say a word about what that combination would be or why a

POSITA would have made it. This is inadequate under *Becton, Dickinson* factors e and f.

Petitioner makes one final invitation to the Board to connect the dots on its behalf by ominously stating that “the PTO cited and relied on both Neibauer and Cheng in the successful reexamination of the earlier ’801 patent” (a predecessor to the series of MDT patents Meta has petitioned). Pet. 5. Setting aside Petitioner’s gentle exaggeration (the PTAB affirmed the Examiner’s rejection on grounds not involving Cheng (EX1024 at 14)), Petitioner’s apparent inference—that the reexamination result somehow shows that not rejecting the ’427 claims over Neibauer was material error—is belied by the vast differences between the claims (emphasis added):

US8,135,801	’427 Patent
1. A method for managing information content in a network-based communication system, the method comprising the steps of:	1. A method for managing information content in a data communication network, the method comprising the steps of:
providing a first web-based interface accessible to a first user, the first web-based interface being configured to permit the first user to designate a plurality of other users that will share access to content with the first user, in accordance with accessibility rules established by the first user; and	providing content management resources at a first uniform resource locator hosted at a first set of one or more servers and accessible to a user of the data communication network, the content management resources being configured to permit the user to designate data from one or more

	data sources external to the first set of one or more servers;
generating a second web-based interface wherein access to the content via the second web-based interface is controlled in accordance with the accessibility rules established by the first user via the first web-based interface.	uploading external data to a second set of one or more servers for use in the data communication network;
	reformatting the external data for mobile device use; and
	automatically generating mobile resources at a location different from the first uniform resource locator, the mobile resources being accessible independent of the content management resources via one or more mobile devices, the mobile resources automatically including the reformatted external data from a third set of one or more servers in the data communication network.

And what is more, the Examiner of the '427 Patent not only was the same Examiner of the predecessor '801 Patent that was reexamined, but *considered that reexamination decision while examining the '427 Patent.* EX1022, p.332. Petitioner grapples with none of this.

In sum, Petitioner's reluctance to shoulder its burden and perform any substantive analysis should be fatal to its vague allusions of error. The Board has ample grounds to exercise its discretion to decline review.

III. PETITIONER HAS FAILED TO ESTABLISH A REASONABLE LIKELIHOOD THAT ANY CLAIM IS UNPATENTABLE

Petitioner asserts four obviousness grounds of unpatentability. Pet. 3. For the purpose of institution, the Board need only consider the validity of independent claim 1 of Grounds 1 and 3. As shown below, the Petition fails to establish a reasonable likelihood that Petitioner will prevail. A trial therefore should not be instituted.

A. Relevant Legal Principles

Review cannot be instituted unless the Petition demonstrates a reasonable likelihood that at least one of the challenged claims is unpatentable. 35 U.S.C. §314(a); 37 C.F.R. §42.108(c). Under §314, the Board is required to make “a binary choice – either institute review or don’t.” *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348, 1355 (2018).

It is Petitioner’s burden to show why the challenged claims are unpatentable. *Harmonic Inc. v Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir 2016). The Board “will not take on the role of advocate for a party, trying to make out a case the party has not adequately stated.” Standing Order ¶121.5.2 (B.P.A.I. Mar. 8, 2011). Rather, it is Petitioner’s duty to provide sufficient grounds for the institution of a review “focus[ing] on concise, well organized, easy-to-follow arguments supported by

readily identifiable evidence of record.” *Cisco Sys., Inc. v. C-Cation Tech, LLC*, IPR2014-00454, Paper No. 12 at 11 (PTAB Aug. 29, 2014).

The ultimate determination of obviousness under 35 U.S.C. §103 is a question of law based on underlying factual findings. *In re Baxter Int’l, Inc.*, 678 F.3d 1357, 1362 (Fed. Cir. 2012) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1996)). “To satisfy its burden of proving obviousness, a petitioner cannot employ merely conclusory statements. The petitioner must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380-81 (Fed. Cir. 2016). The “factual inquiry” into the reasons for “combin[ing] references must be thorough and searching, and the need for specificity pervades.” *In re NuVasive, Inc.*, 842 F.3d 1376, 1381-82 (Fed. Cir. 2016) (internal quotations and citations omitted). The specific reasoning must include some rational underpinning to combine the prior art elements as claimed to support the conclusion of obviousness. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). It is Petitioner’s burden to demonstrate a motivation to combine, and a reasonable expectation of success. *See In re Magnum Oil Tools*, 829 F.3d at 1381. Mere conclusory statements are insufficient. *Id.*, at 1380.

B. Person of Ordinary Skill in the Art

For purposes of this Response, MDT applies Petitioner's characterization of a POSITA. EX2001 ¶¶42-44.

C. Claim Construction

For purposes of this Response, MDT submits no express constructions are required, and that the ordinary and customary meanings of the claim terms apply. EX2001 ¶¶32-35.

D. Non-Obviousness of Grounds Based on Neibauer and Cheng (Claims 1, 6-11, 13-18, 21-27)

All four grounds challenging claims 1-3 and 5-9 rely on unpatentability over at least Neibauer, in view of Cheng under 35 U.S.C. §103, citing the declaration of Vijay K. Madiseti, Ph.D. (EX1002), as support. Pet. 9-10.³

³ A comparison of Dr. Madiseti's declaration with the Petition shows they are nearly carbon copies of each other. Many of Petitioner's conclusory arguments are supported only by a citation to nearly identical text in Dr. Madiseti's declaration, which itself is conclusory and unsupported. The Board thus should give little weight to Dr. Madiseti's opinions. *Xerox Corp. et al. v. Bytemark, Inc.* IPR2022-00624, Paper 9 at 15 (PTAB Aug. 24, 2022) (precedential)

Ground 1 challenges claims 1-3 and 5-9 in the '427 Patent as being obvious under Section 103 based upon Neibauer, How to Do Everything with Yahoo! ("Neibauer") (EX1004) in view of Cheng, U.S. Patent No. 7,574,486 ("Cheng") (EX1005).

Claim 1 recites, in part, "providing content management resources" at a first set of servers that are "configured to permit the user to designate data from one or more data sources external to the first set of one or more servers," and "***uploading external data to a second set of one or more servers*** for use in the data communication network." EX1001, Claim 1.

Petitioner's obviousness arguments for these limitations depend upon combining functionality of Yahoo! Clubs and related services discussed by Neibauer, which were not possible on mobile devices at the time, with the functionality of a proxy server as disclosed by Cheng. The Petition fails to account for all of the claim limitations as arranged in the claim, and the technological limitations of the one-way functionality of the prior art disclosures. The Petition merely identifies where the claim limitations are found in the prior art, and as Kevin C. Almeroth, Ph.D. explains, fails to convincingly address how the prior art would be combined and why, and that there would be a reasonable expectation of success. EX2001, ¶94.

1. Neibauer

The 2000 book titled *How to Do Everything with Yahoo!*, by Alan Neibauer, explains how the Internet portal called Yahoo! is a place on the Internet that offers users services, such as access to the Internet, and as a repository of and a conduit of user content and Yahoo! services for registered users. Neibauer, pp. xv, 4.

Petitioner acknowledges this content from Neibauer was considered by the Examiner in granting the claims of the '427 Patent. Pet. 4 (citing EX1022, Pages 00289 (covering Neibauer, pp. 467-491) and 00325 (covering Neibauer, pp. 115-180)).

According to Neibauer, all someone at the time needed was a computer with a “dial-up connection” and they could access the Yahoo! service. *Id.*, 4. Neibauer describes aspects of the Yahoo! service from a user’s perspective in a “how-to” type of format. EX2001, ¶52.

Two chapters of Neibauer, addressing separate aspects of the Yahoo! services, are of primary interest to, and are referenced by, Petitioner in asserting invalidity of the challenged claims. The first is Chapter 7 titled “Your Yahoo! Home Away from Home” (pp. 155-180), and the second is Chapter 21 titled “Communicating with Clubs, Message Boards, Personals, and More” (pp. 467-491). EX2001, ¶53.

Chapter 7 discusses the Yahoo! Briefcase functionality that is limited to allowing a user to store and access files at the Yahoo! software platform (p. 156),

and the one-way Yahoo! Mobile functionality that that is limited to allowing a user to view Yahoo! services and Yahoo! generated and stored content sent to a user's mobile device (p. 166-167):

Using Briefcase, you can store your files online and access them from any computer that is connected to the Internet. With Yahoo! Mobile, you can get your e-mail, view your calendar, and even be alerted about news, financial information, and weather conditions from a pager or other mobile device.

Neibauer, p. 156.

Chapter 21 discusses various functionalities of the Yahoo! service where users with a Yahoo! account can use services such as message boards, and clubs. *Id.*, pp. 468-476. Club messages are posted to and accessed at a “private message board” at the club page. *Id.*, p. 477. Photos are posted to, viewable at, and stored in albums at the club page, and are maintained by the club at the Yahoo! software platform. *Id.* Club chats are conducted on the club page. *Id.*, p. 479. None of the services of Chapter 21 permit or contemplate a first user designating data via a first set of servers, and uploading external data to a second set of servers. The Petition fails to provide evidence and analysis that overcome this deficiency.

2. Cheng

Cheng is a U.S. patent describing a method by which a proxy server can access a web site and reformat its visual elements so they can be viewed by a mobile device.

Cheng, Abstract. Cheng's method starts when the proxy server receives a request from a mobile device to view a particular web page. *Id.* The proxy server subsequently extracts images and text data from the requested web page and re-formats the data so that it can be viewed properly by the mobile device that made the initial request. *Id.*

Cheng contemplates a type of universal website translation service that operates in the form of a go-between proxy server for one-way conversion of conventional websites into a format viewable on mobile devices at the time. EX2001, ¶¶70, 72, 75. Cheng's proxy server purports to operate by receiving (or retrieving a cached copy of) a website, and then applying an operator-specified series of transformations to the website content that Cheng calls "SW-Transforms," which could be specified on a global basis (for all recipients) or on a device-specific basis (based on a recipient's specific mobile device). Cheng, 4:56-5:10; and col. 17-22; EX2001, ¶71. Cheng's SW-Transforms include the capability of adding, replacing, or removing HTML tags and/or text from the source web page to attempt to format it for the destination mobile device. *Id.*

From Dr. Almeroth's experience, given capabilities of website technology available in 2002, such as HTML, Java, Javascript, and Flash, and the small screens, limited memory, and very limited low-bandwidth, non-audio functionality of mobile phones and PDAs at the time, the prophetic universal website translation

functionality of Cheng was not technically feasible in 2002, and there is no evidence it was ever commercialized. EX2001, ¶¶70, 72.

At that time, successful deployment of the solution contemplated by Cheng is co-dependent upon the design and characteristics of the conventional website, and the capabilities of each mobile phone. *Id.* ¶¶73-74. Further, the technology of Cheng is limited to the transfer of data one-way, from the conventional website, through the proxy server translator, to the mobile device. *Id.* ¶75.

A POSITA would understand that the flow of data from conventional web server to proxy server to client is notoriously well-known as downloading. *Id.* Cheng itself uses the term consistently with a POSITA's understanding: "Users can therefore access web sites they need without the inconvenience of waiting online for graphics to **download** onto their mobile devices 108." EX1005, 5:39-41 (emphasis added); EX2001, ¶101.

3. The Neibauer-Cheng combination does not disclose "uploading external data to a second set of one or more servers for use in the data communication network"

In applying its proposed combination of Neibauer and Cheng, Petitioner advances an interpretation of this claim that is not in conformance with the literal language of independent claim 1, the description in the '427 Patent, or the usage of the language in the art. EX2001, ¶99. In applying the cited art, Petitioner without

comment deviates from the well-understood meaning of “uploading”: sending data from a client to a server. *Id.*

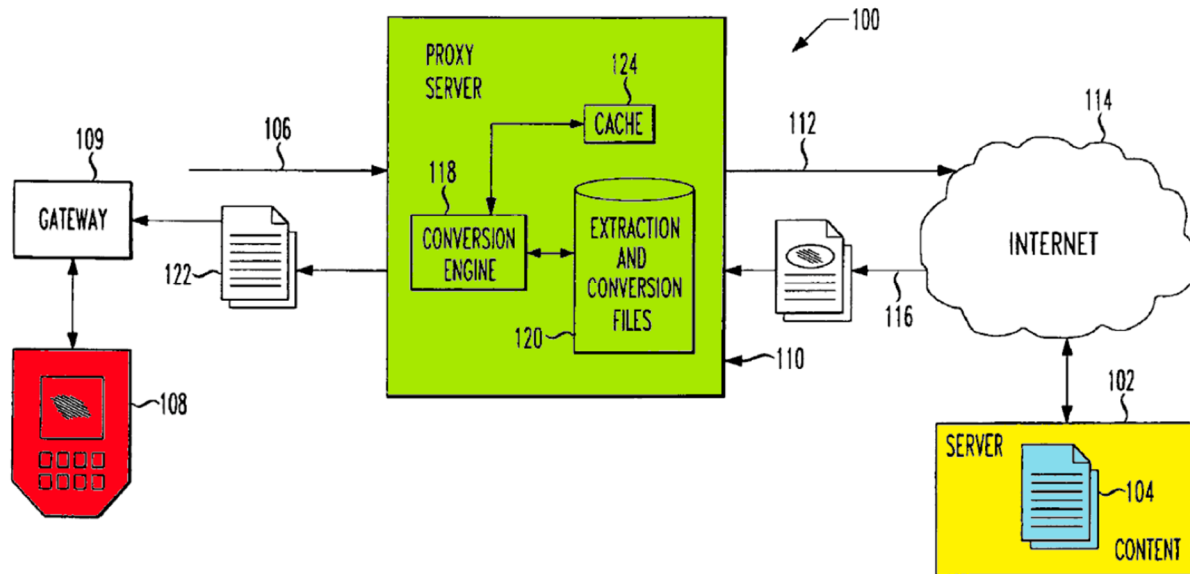
When using the term conversationally elsewhere in the petition, Petitioner does so according to that well-understood meaning. For example, in discussing dependent claim 8, Petitioner argues that Neibauer discloses a Windows user uploading a file to a server:

An ordinarily skilled artisan would have recognized the “Browse...” button as a well-known and familiar file selection dialog box that ***allows a user to select a file to upload to the server.*** . . . Neibauer discloses an example of the familiar Choose File dialog box when uploading a file when using a Microsoft Windows-based computer . . . The “Choose File” dialog box would have been familiar not only to ordinarily skilled artisans, but to laypersons who had ever used a browser to upload a file to a website or remote server.

Pet. 44 (emphasis added); EX2001, ¶100

Yet when discussing Cheng, Petitioner turns this well-understood meaning on its head in an attempt to make its Neibauer-Cheng combination read on the claims. Figure 1 of Cheng, as annotated by Petitioner (e.g. Pet. 24), is instructive:

FIG. 1



As Petitioner admits, Cheng's proxy server 110: 1) receives a request from mobile device 108 for a web page 104 at origin web server 102; 2) obtains the code for the requested web page from origin web server 102; 3) attempts to reformat the web page code in a way that can be displayed by mobile device 108, resulting in reformatted web page 122; and 4) sends reformatted web page 122 to mobile device 108. Pet. 25-26.

A POSITA would understand this data flow to be a "download" of web page 104 from origin web server 102 by requesting proxy server 110, and a further "download" of reformatted web page 122 by requesting mobile device 108. EX2001, ¶103. Again, Cheng itself uses the term "download" consistently with this understanding, when referring to data sent *from the proxy server to the requesting mobile device*. EX1005, 5:39-41; EX2001, ¶101.

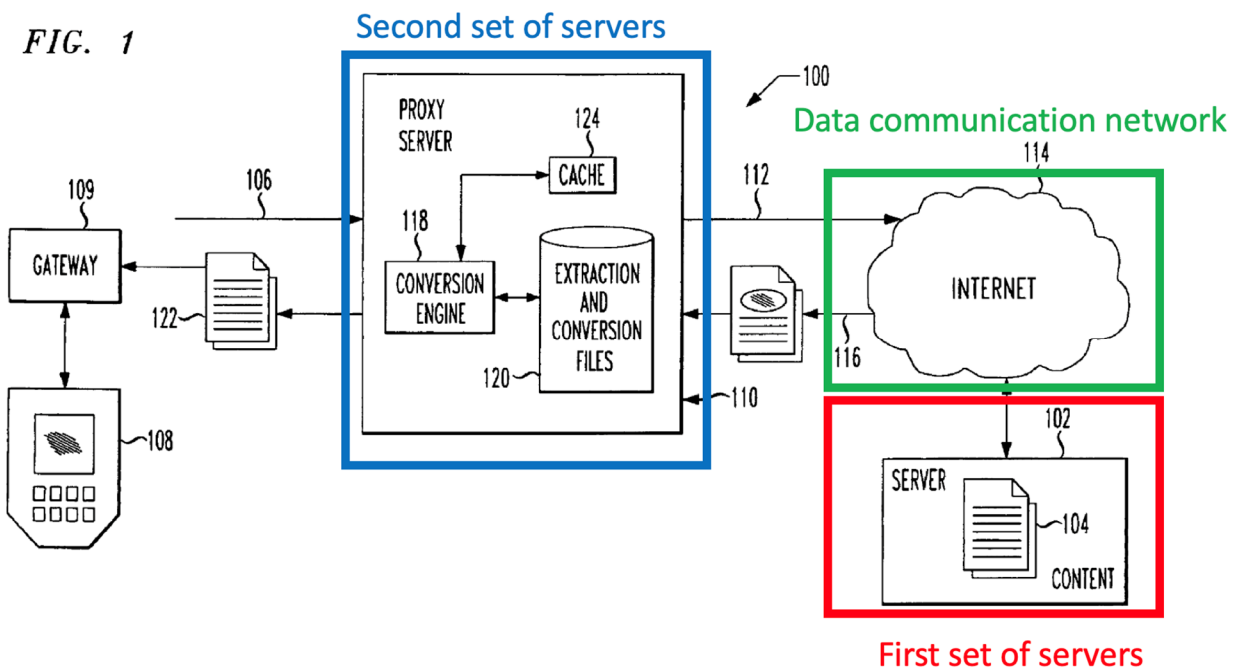
Consistent with this, in other contexts Petitioner approvingly cites to Neibauer's disclosure of "uploading" describing the flow of data from a user to the server(s) hosting Neibauer's website, which as discussed in more detail below Petitioner maps to Cheng's origin web server 102 in the Neibauer-Cheng combination. Pet. 17; EX2001, ¶100. And the '427 Patent's disclosure is consistent as well, describing data sent from a server to a client as a "download" and data sent from a client to a server as an "upload." *Id.* ¶102.

Yet Petitioner's entire invalidity theory rests on its unsupported and backwards characterization of the data flow in Cheng: Petitioner characterizes Cheng's origin web server 102, *in response to a request* from proxy server 110, *uploading* web page 104 to proxy server 110. Pet. 27-28. As stated above, a POSITA would understand the delivery of *requested* data *from* a remote server to be *downloading*. EX2001, ¶103. And a POSITA would not view uploading vs. downloading as simply alternatives or substitutes: there are other well-known techniques such as "mirroring" that could be used to provide proxy server 110 with a copy of data from origin web server 102. EX2001, ¶104.

Setting the proper understanding of "uploading" aside, Petitioner's mapping of this claim element is inadequate for an independent reason. The claim limitation requires "uploading *external data* to a second set of one or more servers *for use in the data communication network*" (emphasis added). In other words, *data external*

to the data communications network must be uploaded to a second set of one or more servers *for use in the data communication network*. EX2001, ¶105.

Petitioner's mapping of the claim elements to its Neibauer/Cheng combination does not satisfy these claim elements, as explained below in reference to this annotated copy of Chang Fig. 1:



First, Petitioner states in its mapping of the preamble that the “data communications network” is simply the Internet (annotated in green above). Pet. 12; EX2001, ¶¶95-96.

For limitation 1[a], Petitioner states that the “first set of one or more servers accessible to a user of the data communication network” corresponds in Neibauer to certain “Yahoo! servers accessible to users via the Internet.” Pet. 17. And in the

Neibauer-Cheng combination, Petitioner states that web pages providing the services of Neibauer correspond to Chang's origin web server 102 (annotated in red above). Pet 24; EX2001, ¶97.

Petitioner next maps the claim limitation "uploading external data to a second set of one or more servers for use in the data communication network" to the act of origin web server 102 transferring a requested Yahoo! web page over the Internet to proxy server 110 (annotated in blue above). Pet. 27-28; EX2001, ¶98. Petitioner's mapping creates multiple logical and grammatical problems with the claim language.

First, as discussed above, the transfer of data is from the origin web server, and is provided to proxy server 110 in response to its request and thus is a download, not an upload.

Second, Petitioner declares the data to be "external" simply because it is not yet in the second set of servers. But under Petitioner's interpretation, that is by definition true for **any** data uploaded to the second set of servers: it is being uploaded precisely because it is not yet there. EX2001, ¶109. Petitioner's interpretation thus effectively reads "external" out of the claim, which is presumptively improper and Petitioner offers no reason to overcome that presumption. *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1119 (Fed. Cir. 2004) ("Furthermore, we observe that Safari's interpretation largely reads the term

‘operatively’ out of the phrase ‘operatively connected.’ While not an absolute rule, all claim terms are presumed to have meaning in a claim.”).

Third, the claim requires the external data to be uploaded “for use in the data communication network,” which, again, Petitioner has mapped to the Internet. But that is not what Cheng discloses. In Cheng, requested data is returned from origin web server 102 over the Internet 114 to proxy server 110 for conversion, but after conversion Cheng only discloses the translated data being returned directly from proxy server 110 to requesting mobile device 108, or returned via gateway 109. Cheng at 5:42-49; 3:32-36. Cheng thus does not disclose that the data sent to proxy server 110—uploaded or no—is sent “for use in the data communication network” (mapped by Petitioner to the Internet).

Petitioner seems to anticipate this weakness, and quietly tries to work around it by reading the claim as requiring the *second set of one or more servers* to be “for use in the data communication network,” not the *external data*. Pet. 27. This reading is unnatural, and its only apparent purpose is to try to align the Neibauer-Cheng combination with the claim language. It is far more sensible to read the claim that the *external data* is being uploaded “for use in the data communication network”—the data is being uploaded for use in the network because it is external to the network. EX2001, ¶106-108.

Petitioner's strained read begs the question of what it means for proxy server 110 to be "for use in the data communication network" (which, again, Petitioner has mapped to the Internet). If Petitioner is suggesting that proxy server 110 is actually part of the Internet and thus is "for use in the [Internet]," Cheng does not disclose that. If Petitioner is suggesting that proxy server 110 is "for use in the [Internet]" because it is *connected to* the Internet, Petitioner makes no effort to reconcile this claim language with the earlier recited "first set of one or more servers *accessible to a user of the data communication network*" (which Petitioner maps to Internet connected servers such as origin web server 102). Pet. 17, 24; EX2001, ¶108,

Thus, in the context of the claim as a whole, a POSITA would understand "for use in the data communication network" to refer to the external data, not the second set of servers. EX2001, ¶110. Petitioner therefore has not met its burden to show that the Neibauer-Cheng combination satisfies this claim limitation.

In sum, Petitioner's mapping of the Neibauer-Cheng combination is rife with structural and logical problems, and Petitioner's various attempts to paper over those problems are not well taken. Because all grounds rely on the same foundation of Neibauer and Cheng, the issues discussed here provide yet more independent basis for the Board to deny institution.

Petitioner has thus failed to establish that independent claim 1 or claim 2, 3 and 5-9, which depend from independent claim 1 are obvious when viewed in light of the combination of Neibauer and Cheng.

E. Petitioner's Motivation to Combine Neibauer and Cheng is Deficient

Even if the Board were to conclude that the combination of Neibauer and Cheng actually satisfies the claim limitation discussed above, a POSITA would not have been motivated to combine Neibauer and Cheng in any event. All of Petitioner's grounds rest on the combination of Neibauer's disclosure of Yahoo! Clubs ("Clubs") with Cheng's proxy server. Pet. 9. Petitioner argues that a POSITA would have been motivated to make this combination to allow a user to make use of the relied-on functionality in Clubs on a mobile device. Pet. 9; 22-32.

But an unspoken, basic fallacy pervades Petitioner's entire argument: that mobile devices available at the time of the invention were capable of receiving and displaying complex websites such as those shown in Neibauer at all, much less capable of supporting the internal functionality needed for the interactive features of Clubs Petitioner relies on.

Absent any such evidence that a POSITA actually *could* have achieved such a combination, Petitioner's arguments that a POSITA *would* have sought to do so amount to nothing more than anachronistic, impermissible hindsight.

For these reasons and others explained in detail below, Petitioner's theories are conclusory, aspirational, and not tethered to record evidence, and thus do not satisfy Petitioner's burden to show a motivation to combine and a reasonable expectation of success.

1. Petitioner's motivations to combine are conclusory, internally inconsistent, and contradicted by record evidence

Petitioner first argues that it would have been obvious to make Clubs available for use on a mobile device because Yahoo! itself made certain other services available for use on personal digital assistants ("PDAs") through its Yahoo! Mobile and Yahoo! To Go services (such as in the PDA screens from p.171 of Neibauer that are set forth below). Pet. 30-31. But the primitive Yahoo! services available on a PDA via Yahoo! Mobile and Yahoo! To Go reflected the "limited memory, slow data transmission, and small screens" the experts agree were available on mobile devices at the time. EX2001, ¶¶ 64, 70; EX1002 ¶113 (citing EX1012 p.320); see also EX1003, 171:



All these examples are designed to only fill the width of the PDA screen and are text only, with no images at all. Again, this is not surprising: memory, bandwidth, and screen space at the time were at a premium. EX2001, ¶¶61-64. Compare these minimalist renditions to desktop browser views of some of the Clubs functionality Petitioner relies on:

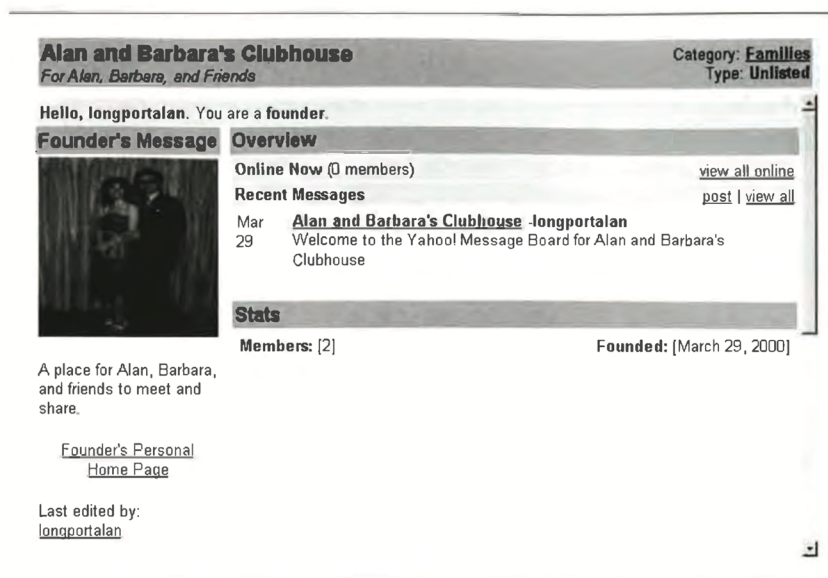


FIGURE 21-13 A Personal club

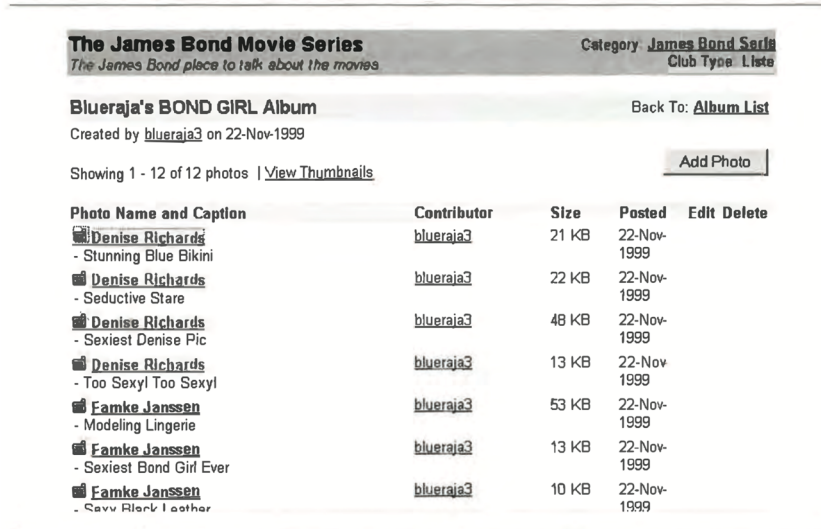


FIGURE 21-14 Club photo album

EX1003, p. 483 (Figure 21-13, club home page), p. 478 (Figure 21-10, club photo album).

Of particular note is that Petitioner relies on the two-way sharing of photos with mobile devices: both mobile devices being able to receive and view the main club picture uploaded by the founder (first image, below “Founder’s Message” in Figure 21-13), and uploading of additional pictures to club photo albums by mobile device users (second image, “Add Photo” button in Figure 21-10). Pet. 15, 21. Neibauer’s Yahoo! Mobile and Yahoo! To Go examples do not show any comparable functionality, and Petitioner does not allege otherwise.

With that in mind, Petitioner’s bare assertion that it would have been obvious to combine Neibauer and Cheng to provide Clubs through Yahoo! Mobile and/or Yahoo! To Go (Pet. 30) is purely conclusory and unsupported by record evidence. EX2001, ¶¶77, 53-66. Petitioner argues that a POSITA would have been motivated by market forces (Pet. 31), but this too is conclusory and unsupported, and does not even attempt to explain what these supposed market forces would be that Yahoo!, one of the leading Internet portals at the time, was not already subject to. Indeed, the story told by the record evidence is that Yahoo! did not already provide Clubs functionality through Yahoo! Mobile and Yahoo! To Go was because contemporaneous mobile devices were incapable of supporting it. EX2001, ¶¶58, 61-66.

Petitioner presents Cheng as a universal solution “capable of converting and reformatting any existing HTML-based web page into a format suitable for display on a mobile device” (Pet. 29), but that careful language elides the fact that Cheng’s conversion process applied not only to the *format* of a web page, but also to its *content* and *capabilities*. Indeed, Cheng freely acknowledges that its aspirational goal of a universal website translator for mobile devices was practically and perhaps significantly limited by the capabilities of those devices. EX2001, ¶¶ 73-74. To this end, Cheng provides six columns of exemplary “SW-Transforms” that might be used to convert, downscale, and/or completely delete content from an original website such that the remainder might be successfully displayed on a mobile device (*id.*), but again Petitioner offers no evidence of the capabilities required by the Clubs webpages shown in Neibauer beyond conclusory, unsupported statements cut-and-pasted by its expert. Thus, there is no record evidence if and how Cheng’s translation tool could have been successfully applied to the Clubs webpages for any mobile devices available at the time, and, if so, whether the functionalities Petitioner relies on still would have worked.

Petitioner argues as an additional motivation to combine Neibauer and Cheng that transcoding proxy servers for mobile devices were known and in commercial use (Pet. 32), but again this both cuts against Petitioner’s motivation to combine and amplifies its lack of supporting evidence. If such transcoding proxy servers were

already in commercial use, there would have been no need and thus no motivation for a POSITA to start over with Cheng rather than just using an already-available proxy—if indeed a POSITA would have seen a transcoding proxy server as a viable solution at all.

Furthermore, if transcoding proxy servers at the time actually were capable of converting the Clubs websites into a form usable by contemporaneous mobile devices, certainly some fraction of Yahoo!’s millions of users actually would have done so and Petitioner could have dramatically simplified its petitions by simply bringing forth such evidence.

Additionally, Petitioner’s theory is expressly based on applying Cheng in its entirety as “bolt-on” functionality to a likewise unmodified Neibauer, and even argues a single entity could operate both the Neibauer web server and Cheng proxy. Pet. 29. Again, this theory appears to be results-oriented and conclusory, ignoring the real-world ramifications of such a choice and why they would actually steer a POSITA away from it. EX2001, ¶88.

A proxy server such as Cheng’s is designed to be transparent to the web server: to the web server, the proxy server appears to be the client. EX2001, ¶87. But the converse is not true: the proxy server is not at all transparent to the *client*. EX2001, ¶89. Indeed, Cheng acknowledges only two ways for a mobile device to route requests through its proxy server: either through a permanent connection

between the client and proxy server via a device configuration (which would route any and all traffic through that proxy), or a “decorated URL” (e.g., `www.proxyserver.com/?url=http://www.originalwebserver.com`). *Id.*

Either possibility would be awkward for a mobile device user wanting to view a website of an enterprise that employed Petitioner’s Neibauer-Cheng combination: either the user would have to manually reconfigure the proxy server in their mobile device to point to the Neibauer-Cheng proxy server every time they wanted to view the enterprise’s web pages (and then remove or change their proxy connection for other web pages), or the user would have to enter a “decorated URL” in the ponderous form shown above every time they wanted to view the enterprise’s web pages. *Id.* ¶90, These unnecessary contortions would be unacceptable to a user, and would discourage a POSITA from designing a mobile-capable website by crudely “bolting on” a Neibauer web server and Cheng proxy server as Petitioner suggests. *Id.*

2. Petitioner does not show a reasonable expectation of success

Petitioner’s “bolt-on” approach to Cheng’s proxy server glosses over the level of experimentation that would be required to program that proxy server to translate a specific website such as Yahoo! Clubs to work on a specific mobile device available at the time. EX2001, ¶¶91. Petitioner treats Cheng like a mythical “babel fish” that automatically and magically converts any website for use on any device,

when in reality Cheng merely discloses a *framework* for *attempting* to do so: an exemplary set of “SW-Transforms” that attempt to alter the content of an original website to make the remainder viewable on a given mobile device. EX2001, ¶¶91-93.

Cheng discloses SW-Transforms that can be applied on a device-specific basis (to conform all web pages to some specific constraint of a certain mobile device) and a site-specific basis (to adapt the contents of a certain web page or group of pages on a web site for all mobile devices). *See, e.g.*, EX1004, 11:45-62; 12:25-31; EX2001, ¶93. Cheng states: “The number of possible conversions is virtually infinite.” *Id.*

Cheng thus discloses a methodology for conversion and a decidedly finite number of exemplary SW-Transforms (EX1004, cols. 17-22), but beyond that leaves a POSITA on their own to determine what might be required to make a specific website work on a specific device. EX2001, ¶93.

Thus, a POSITA examining Cheng would have no idea whether its disclosed system would work at all to translate the Clubs web pages to form viewable on a mobile device available at the time—much less with all of the functionality usable that Petitioner relies on—and would have to engage in undue experimentation to determine which of Cheng’s SW-Transforms might work, or whether the POSITA

would have to develop new ones from Cheng’s “virtually infinite” set of possibilities. *Id.*

This sort of blue-sky exploration does not rise to a reasonable expectation of success. *See Medichem, S.A. v. Rolabo, SL*, 437 F.3d 1157, 1165 (Fed. Cir. 2006) (“to have a reasonable expectation of success, one must be motivated to do more than merely to vary all parameters or try each of numerous possible choices until one possibly arrived at a successful result”).

F. The Additional References in Grounds 2-4 Do Not Cure the Deficiencies in Neibauer and Cheng

Ground 2, which challenges only claim 4, simply adds Balabine, U.S. Patent No. 5,937,406 (EX1015) for the straightforward notion of an external data source comprising a database. Pet. 46. Petitioner does not use Balabine for any other purpose, and thus Balabine does not cure the deficiencies in the Neibauer-Cheng combination discussed above.

Grounds 3 and 4 parallel Grounds 1 and 2, simply adding Yates “solely to account for a potential narrow construction of a limitation recited in limitation [d] of claim 1. (EX1002, ¶¶74, 143.) If the Board chooses not to adopt that construction here, it need not consider Grounds 3-4.” Pet. 10. Petitioner later explains the construction issue, arguing that dependent claim 2 recites that the “third set of one or more servers” recited in limitation 1[d] are the same as the “second set of one or

more servers” recited in limitation 1[b] and thus independent claim 1 must also include that scope. Pet. 40-41. MDT agrees Petitioner’s anticipated construction is not required at this stage, and thus that the Board need not consider Petitioner’s parallel grounds 3-4 relying on Yates. And in any event, Petitioner does not rely on Yates for the limitations that are missing from Neibauer and Cheng as discussed in Section III.D.3 above, and thus the addition of Yates solely for the notion of a third set of servers different from the second set of servers does not cure the deficiencies in the Neibauer-Cheng combination.

As a result, the question of institution for all petitioned claims and grounds rises and falls with the Neibauer-Cheng deficiencies identified for claim 1. MDT respectfully requests that the Board thus deny institution.

IV. CONCLUSION

For the foregoing reasons, institution of this IPR should be denied.

IPR2024-00251

U.S. Patent No. 10,839,427

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. §42.24(d), the undersigned hereby certifies that the foregoing Patent Owner's Preliminary Response contains 8,164 words using the word count feature of Microsoft Word.

Dated: March 13, 2024

/Kevin S. Tuttle/

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR 42.6, the undersigned hereby certifies that the above-captioned Mobile Data Technologies LLC's Preliminary Response of U.S. Patent No. 10,839,427 was served via electronic mail on March 13, 2024, as authorized by Petitioner's Mandatory Notices dated December 6, 2023 Paper 2 at 2), to the following e-mail correspondence of record:

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