

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FREEWHEEL MEDIA, INC.,

Petitioner,

v.

INTENT IQ, LLC,

Patent Owner.

IPR2024-00422

Patent 7,861,260 B2

PATENT OWNER'S SUR-REPLY

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Patent Owner's Exhibit List for IPR2024-00421

Pursuant to 37 C.F.R. § 42.63(e), Patent Owner Intent IQ, LLC hereby submits its exhibit list associated with the above-captioned *inter partes* review of U.S. Patent No. 7,861,260.

Exhibit No.	Description
2001	Declaration of Erik de la Iglesia in support of Patent Owner's Response
2002	<i>Curriculum vitae</i> of Erik de la Iglesia
2003	December 19, 2024 deposition transcript of David Lett
2004	August 1, 2025 deposition transcript of David Lett

I. Introduction

Petitioner acknowledges that the Baig reference, standing alone, does not disclose or render obvious any challenged claims of the '260 Patent. Baig discloses a VCSP server (“vicinity-based community service provider”) server which provides a VCSP website, a type of social media website that groups together electronic visitors to the website based on whether they are at the same public WiFi hotspot.

Baig also discloses public establishments (such as a coffee shop) would offer a WiFi hotspot to its visitors, and the visitors would use their own individual devices to browse to the website hosted by Baig’s VCSP server.

The disputed modification to Baig’s disclosure is *not* a modification to how Baig’s VCSP server or social media website would operate. Instead, Petitioner proposes that a POSITA would modify operation of the *publish establishment* (e.g., coffee shop) providing a public WiFi hotspot would operate. Specifically, the Petition proposed that the public establishment would not only provide WiFi services to users, but would *also* (1) provide an Internet-connected television with a set-top box (“STB”) at the public establishment, *and* (2) instead of displaying television content on the television set, display Baig’s social media website. *See* Pet. 12 (alleging that a public establishment would “beneficially provide [Baig’s] content for display via a television or other display”).

As Patent Owner's Response pointed out, even if it were obvious to include a television at a public establishment, Petitioner still needed to explain why a POSITA would have been motivated to use the television to display Baig's VCSP website instead of television content.

In Reply, Petitioner largely ignores this question, focusing primarily on the obviousness of adding a television to a public establishment. *See* Reply at 7–15 (eight pages discussing obviousness of adding a television to a public establishment); *see also* Reply at 15–17 (less than two pages discussing obviousness of a public establishment displaying Baig's VCSP / social media website).

As explained herein, there is no evidence any POSITA with the means to modify the behavior of any public establishment offering Wi-Fi service would have found it obvious to display Baig's social media website, as opposed to, for example, televised content such as sports or the morning news. Indeed, Petitioner's motivations to add a STB to the public establishment in the first place ***confirm*** that an important motivation would be to display ***televised content***, which Baig's social media website does not provide. *See* Reply 8–9 (alleging that “a POSA would have been motivated to include a set-top box at Baig's access point 106 so that individuals... would have access to services ***such as televised content*** available via the set-top box.”); Ex. 1063 ¶21 (explaining the benefits of adding a television set to public establishments which involved providing ***television programming*** such as

“NFL/MLB/NBA games at bars” or the “morning news” for customers “waiting in line for a morning cup of coffee”).

Other than conclusory testimony offered with the benefit, Petitioner provides *no* evidence that a POSITA would have found it desirable to display ***Baig’s social media website***, as opposed to television programming, at a public Wi-Fi hotspot. Indeed, Petitioner’s expert, despite testifying that he had “personal experience with set-top boxes,” designed them, and was “familiar with how set-top boxes are used in public establishments,” was not able to identify a *single instance* of any public establishment using a TV to display “a social media website,” “an auction website,” a file-sharing website, or indeed “*any website*.” Ex. 2004 45:1-14; 61:15–65:.

II. The Petition fails to show obviousness of any independent claim.

A. The Petition presents no competent motivation to use a STB at a coffee shop (or any other public location) to display Baig’s website.

In Patent Owner’s Response, Patent Owner made clear that Petitioner had not set forth evidence establishing the obviousness of using a television at a public establishment (such as a coffee shop) *for the purpose of displaying Baig’s VCSP website*, which provides, *inter alia*, social media (e.g., chat service), auction, and file-sharing. Baig’s website does *not* provide television programming. *See* Ex. 2001 ¶34; Ex. 1002 ¶663 (“A POSA would recognize that the systems of Baig would

operate independently of a television service provider, as no details of such as television service provider are described in Baig.”).

In Reply, Petitioner does not seriously defend the obviousness of displaying *Baig’s website* on a TV at a public hotspot. Instead, Petitioner attacks Petitioner’s own mischaracterization of Patent Owner’s argument, in asserting that “Patent Owner’s position [is] that any television in a public hotspot environment would be used *only* for ‘television service,’”¹ (Reply at 15), and defends the position that a POSITA might have found it obvious to display *something* other than television

¹ Patent Owner has never taken such an extreme position; instead, Patent Owner argued that Petitioner failed to establish the obviousness of navigating a TV at a public hotspot to *Baig’s website* in particular. *See* POR at 2 (“Baig’s website provides services such as file-sharing, online chat, and auction services, and the Petition provides no evidence that anyone would have found it obvious to display *a website providing these services* at a coffee shop....”); *id.* at 11 (“[T]here is no reason why the controller of that STB (presumably, the coffee shop itself) would navigate to *Baig’s VCSP website* which does not provide television service or streaming service.”); *id.* at 12 (explaining the undesirability of a user controlling a TV displaying *Baig’s website* due to specific privacy concerns with features of that website being displayed to other visitors to the public establishment).

programming on a TV (even if not Baig’s website specifically). *See generally* Reply 15-17 (defending “the obviousness and motivation for a television to display web content,” and providing no motivation to display **Baig’s** web content other than a motivation for the advertiser which as discussed below is insufficient).

Of course, however, Petitioner must show the obviousness of ***its proposed modification*** to the prior art, not some other modification. Petitioner has never alleged that it is sufficient for invalidity of any ’260 Patent claims to merely show the obviousness of ***some*** non-television programming on a TV at a public establishment. For example, Petitioner has not alleged that the ’260 Patent claims would be practiced if a public establishment used a television to display a website that displayed stock market updates and news headlines (content not present on Baig’s website), Petitioner render result in any claims of the ’260 Patent being practiced.

Thus, Petitioner must show that it would have been obvious to display **Baig’s website** in particular on a TV at a public hotspot. Petitioner’s expert confirmed that he does not have the opinion that it would be obvious to display literally ***any*** website content (even content analogous to the Baig website) at a coffee shop, because he declined to offer any opinion regarding whether it would have been obvious for the proprietor of a coffee shop to navigate a publicly displayed television set to either

eBay.com (an auction website) or Facebook.com (a social media website). Ex. 2004 at 61:6-13 (“I have no opinion on that.... I don’t have an opinion on that.”).

Petitioner fails to show the obviousness of navigating to *Baig’s website* using a television displayed at a public establishment. Petitioner’s Reply sets forth only two purported motivations to do so. One of which, that “by providing Baig’s advertisements to a STB for presentation on a television, such advertisements constitute ‘television advertisements’ as defined by the ’260 Patent” (Reply at 16, quoting Pet. 27–28) is not an obviousness rationale at all, but is merely a rationale as to why *Petitioner chose* the proposed combination that it did (i.e., with the hindsight goal of arriving at the “television advertisements” limitation that is not disclosed by either Baig nor Costa).

Petitioner’s only rationale that even arguably goes to a motivation for a public establishment to display *Baig’s* web content specifically, rather than *other* content, is the assertion that it would be obvious to “display[] Baig’s website *advertisements* on a television” because an “advertiser would wish to direct a hotspot-targeted advertisement to devices which would reach the widest possible audience at the hotspot.” Reply at 15–16. But as a general matter, the *advertiser* to Baig’s VCSP website is not the proprietor of the establishment that a user is using to direct ads. For example, Baig discloses “a bidding system for advertisers” (Ex. 1007, [0054]), such that different advertisers *compete* with one another for advertising space.

Thus, while it might be *possible* for, e.g., a Starbucks to use a television displaying Baig's website to advertise to users already visiting that Starbucks, Starbucks would need compete with other advertisers (which would include competing coffee shops) to display the ad on Baig's website. Ex. 2004 at 35:3-36:12 (Mr. Lett testifying that he is not offering "any opinions that Baig's website gives its advertising away for free"); *id.* at 36:20-25 (Mr. Lett testifying that "Baig's disclosure does not preclude" that if Starbucks wanted to advertise to its own customers using a TV displaying Baig's website, a neighboring Coffee Bean would be able to outbid Starbucks for that ad space in an attempt to poach Starbucks' customers); *id.* at 39:21-40:40 (Mr. Lett unable to identify nothing that would give the proprietor of a coffee shop any confidence that "if I were to install a TV in my coffee shop and navigate it to Baig's website, that other coffee shops wouldn't be able to display advertisements to my customers").

If a coffee shop wanted to advertise to users already visiting that coffee shop, it could simply put up a chalkboard, announce any specials verbally, or even install a TV or monitor running a PowerPoint slide or the like to reach those visitors without the use of Baig's website. As a matter of common sense, this would be vastly preferable to Petitioner's proposal that the coffee shop would utilize a TV to display advertising *via Baig's website*, because advertisements via Baig's website would be

subject to competition by competing advertisers, and would cost the coffee shop money.

The remaining arguments Petitioner presents are unavailing. For example, Petitioner contends that “it was common to use television (displays) for more than just ‘television service.’” Pet. 15–16 (quoting Ex. 1063 ¶31, and citing Ex. 1064–1068). But even assuming this assertion to be true, that does not establish it would have been obvious to display a website *like Baig’s website on a television at a public WiFi hotspot*. None of Petitioner’s evidence even arguably discloses such a configuration. For instance, Mr. Lett alleges that “television could and would be used to display websites” (Ex. 1063 ¶20, citing Exs. 1064–68), but he does not even allege that any of his cited evidence shows the obviousness of using a television *at a public establishment*² to display any website even arguably analogous to Baig’s website.

² Neither Petitioner nor Mr. Lett provide pin-cites for their citations to Exs. 1064–1068, but from a cursory review of each of those references appears to disclose *home* usage of TVs, not usage of TVs at public establishments such as coffee shops. *See, e.g.*, Ex. 1064 at 1:35-55 (describing a need for cheaper “Internet access systems” similar to (but cheaper than) the “WebTV system [which] provides a set-top box that connects to a user’s television,” and providing no mention of webpages displayed on a TV at a public hotspot); Ex. 1065 at FIG. 1 (showing content being provided to a STB using a “*Residential* Gateway” 130); Ex. 1066 at Title (“System and Method for *Home Monitoring* Using a Set Top Box”), 2:10-12 (“FIG. 1 is an illustration of a *home* using a set top box security system”); Ex. 1067 (no mention of any techniques being used in a public

This was not an accidental oversight by Petitioner or Mr. Lett. At his deposition, Mr. Lett claimed to be “familiar with how set-top boxes are used in public establishments” because he has “personal experience with set-top boxes” and has “design[ed] set-top boxes.” Ex. 2004 at 45:1-12. However, when pressed on the matter, Mr. Lett was unable to identify *any* public establishment that has *ever* used a TV to display a social media website, an auction website, or indeed *any* website.

Q. Are you aware of any public establishment that has ever included a TV that used that TV to display a social media website?

MR. HOLT: Objection to form and scope.

THE WITNESS: I don't have an opinion on that.

...

establishment rather than a user's own home); Ex. 1068 (discussing a network-based system for displaying ads on displays in retail stores, which does not involve the display of any website, much less a social media website like Baig's where the proprietor of the establishment would not have control over whether competitors' ads are displayed).

Are you aware of any public establishments that existed before the priority date of the 260 patent that used a TV to display any website?

MR. HOLT: Same objections.

THE WITNESS: I believe there were but I can't recall specifically what they were.

BY MR. MILKEY:

Q. And are you aware of any public establishments that existed after the priority date of the 260 patent that used a TV to display any website?

A. I believe there are but I don't recall specifically which ones they are.

Ex. 2004 at 62:15-65:14.

In short, Petitioner introduces no competent evidence that a coffee shop (or any other public establishment) would be motivated to direct a television set to Baig's website to display ads to the coffee shop's customers, when numerous commonly known alternatives exist that would not involve the coffee shop having to *pay* for advertisements and would not subject the coffee shop's patrons to advertisements submitted by competing establishments.

Notably, the oddity of Petition’s proposed combination, which requires a social media website to be displayed at a multitude of televisions at a multitude of public WiFi hotspots, is distinctly different from the approach the inventor of the ’260 Patent took. Specifically, the ’260 Patent contemplates that the television advertisements would be displayed to a user *at their home*, not at a public establishment. *See, e.g.*, Ex. 1001, 18:45–58 (discussing “a common scenario where a laptop, used both at home and in the office, is linked to a *home STB* as a result of it being used at home,” such that “*when the laptop user returns home and turns on the TV, the user will see the mortgage-related TV ad*”); *id.* at 18:59-19:28 (discussing ads directed to a “home STB”); *id.* at 20:26-40 (discussing “default mode” of how STBs operate in conjunction with “residential or home office network routers”). In a hindsight-motivated effort to arrive at the challenged claims, Petitioner proposes a solution that there is no objective evidence that *anyone* (even the inventor of the ’260 Patent) would have found desirable or otherwise obvious.

B. Petitioner’s reliance on *KSR* fails.

The Petition’s failure to motivate its proposed modification deficiency cannot be salvaged by Petitioner’s reliance on *KSR*. *See* Reply at 10. *KSR* explicitly warned *against* hindsight reconstruction of the sort that Petitioner is engaging in, because “inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of

what, in some sense, is already known.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418–19 (2007). What is important, therefore, is to “identify a **reason** that would have prompted a person of ordinary skill in the art to combine the elements in the way the claimed new invention does.” *Id.* at 418.

Here, there is no “mere substitution of one element for another known in the field” that “yield[s] a predictable result” as Petitioner implies. *See KSR*, 416. While it may have been well known that STBs could be added to a WiFi network, but what was **not** well known was adding a STB to a **public hotspot** for public display, and then navigating that STB to a social media website providing auction and file-sharing content, as the Petition proposes. This is not a simple substitution of elements, it is an invention of Petitioner’s making to arrive at the claims of the ’260 Patent with the benefit of hindsight.

The fact that the combination is not merely “combin[ing] known prior art elements according to known methods to yield predictable results” is emphasized by the fact that Mr. Lett was unable to identify **any** instances of when **any** website (much less a website similar to Baig’s VCSP / social media website) was ever displayed at a public establishment using a public WiFi hotspot, despite his extensive experience designing STBs and purporting to know how his customers used them.

This is not a “combination of familiar elements according to known methods.” *See KSR*, 550 U.S. at 416. Indeed, even setting aside this issue of **why** a coffee shop

might want to allow its television to display Baig's website (as opposed to other types of content), Petitioner fails to present any plausible theory regarding *how* the TV set would be controlled. Baig's website is *interactive*, and Petitioner never explains how the website would be controlled in a public environment such as a coffee shop. Would the proprietor of the coffee shop, e.g., be using the chat and file-sharing functionality? Would that control be given to an individual user? If so, how would that user be selected? What if the user searched for inappropriate content using Baig's "Website Search" link 726? *See* Ex. 1007, FIG. 7.

Nor does Petitioner address how privacy concerns would be addressed. Petitioner asserts that there would be no privacy concerns because "Baig teaches that its user profile does not include personally-identifiable information." Reply at 16 (citing Ex. 1002, ¶¶264-265). But Baig's "user profile" is what is provided to *advertisers*, not what is displayed *on Baig's website* as a user is using it. Baig itself makes clear that private information can and will be shown as part of typical website usage, as shown by FIG. 5 (as just one example):

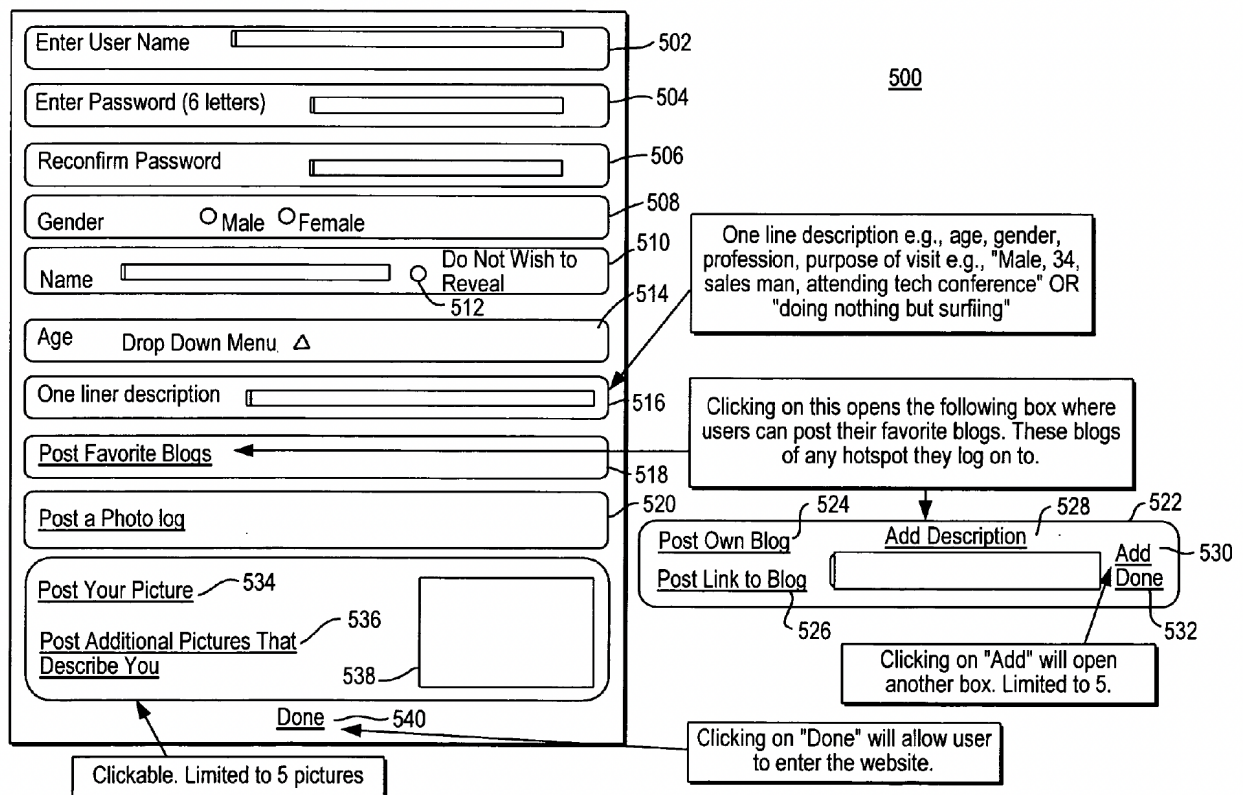


FIG. 5

Ex. 1007, FIG. 5. As shown above, the user's full name will be entered on the website during the account creation process. While there is a "Do Not Wish to Reveal" button next to the name field, this is of little help when the user's usage of the website is *displayed on a public television for all patrons of the establishment to see*. Furthermore, if a user attempts to purchase a product using Baig's "Buy/Sell or Barter" functionality (e.g., Ex. 1007 at FIG. 8), they would presumably need to enter credit card or similar data. These are not the type of features that would be obvious to use at a television at a public establishment, which is presumably why Petitioner

identifies no real-world or documentary evidence of anyone finding this approach to be an obvious one.

None of the techniques for implementing any sensible control for Petitioner's combination (much less one that would address these privacy concerns) is even hinted at in Petitioner's analysis; it cannot be swept away by reliance on the same case that cautioned factfinders about the "distortion caused by hindsight bias and... arguments reliant upon ex post reasoning." *Id.* at 421.

For instance, this is not a scenario where it was common for a television at a coffee shop to display social media websites such as Facebook, and Petitioner is proposing substituting one social media website for another (e.g., using Baig's social media website instead of Facebook). That is the sort of predictable substitution *KSR* is was discussing. Here, there is no evidence that **any** public establishment ever displayed **any** website on a TV in a way even arguably analogous to what Petitioner is alleging. For Petitioner to claim that it and its expert know the mind of a POSITA better than actual POSITAs (who have never even allegedly performed the type of modification the Petition is proposing) is a telltale sign of improper hindsight reasoning.

Indeed, the Federal Circuit failure to provide evidence of a proposed modification, long after the relevant prior art was available to the public. For instance, in *Insite Vision Inc. v. Sandoz, Inc.*, 783 F.3d 853 (Fed. Cir. 2015) the

Federal Circuit agreed that the patent challenger's "expert's contemporaneous failure to use [the prior art in the proposed manner] to the '411 invention as evidence of non-obviousness," where the prior art had been available for many years. *Insite*, 783 F.3d at 861. Here, Baig claims priority to 2007, and Costa claims priority to 2004. But from 2007 until modern day, Petitioner's expert is not aware of ***anyone ever*** having implemented the type of combination he is proposing, where a website like Baig's would be displayed on a TV at a public establishment.

In *Orexo*, the Federal Circuit (quoting portions of oral argument) provided similar reasoning:

The Court: ***If both of those things are really well known, then one would think that ... you could have found some reference that used it.*** ... Your expert didn't even testify that he was familiar with this industry and that citric acid was routinely used as a carrier particle in interactive mixtures. He just said it was the right size and it could be used.

Actavis Counsel: Well. You're right Your Honor in terms of your characterization of the record. There was not citric acid used as a carrier particle that was in the record.

Orexo AB v. Actavis Elizabeth LLC, 903 F.3d 1265, 1272 (Fed. Cir. 2018). Thus, the Federal Circuit has made clear that factfinders should look with extreme skepticism as to assertions of obviousness that are not supported by real-world or documentary evidence, long after the date when obviousness is alleged.

Nor does Petitioner identify any problem that would be solved by navigating to Baig's website using a public set-top box, such that "ordinary artisans would not have thought to try at all because they would not have recognized the problem." *Leo Pharm. Prods., Ltd. v. Rea*, 726 F.3d 1346, 1357 (Fed. Cir. 2013).

In short, Petitioner proposes combining Baig with Costa in ways neither reference contemplates. Neither reference suggests or discloses a set-top box at a public hotspot displaying a website, much less a website like Baig's. This portion of Petitioner's proposed combination is purely the invention of Petitioner and its expert, and Petitioner offers no documentary evidence, or any legally sufficient rationale, that would have motivated a POSITA to actually implement Petitioner's proposal.

C. Petitioner's contention that conclusory expert testimony should be rejected is fatal to Petitioner's theory.

Petitioner asserts that the testimony of Patent Owner's expert, opining that Petitioner failed to meet its burden of establishing obviousness, should be disregarded because allegedly, documentary evidence (rather than expert testimony) is necessary to support allegations regarding what a POSITA would have understood or found obvious. *See Reply* at 17–18.

It is *Petitioner*, however, who bears the burden of proof in an IPR. And Petitioner, *even in Reply*, presents no *documentary* evidence (separate from the conclusory assertions of its expert) that a POSITA would have found it obvious to

display a website similar to Baig's at any public establishment using a STB on a WiFi hotspot. As noted above, despite purporting to understand how set top boxes are used at public establishments, Petitioner's expert was unable to identify *any* public establishments (before *or* after the '260 Patent's priority date) who did so. Ex. 2004 at 62:15–65:14. Petitioner's expert also does not even allege that displaying Facebook or eBay (similar to the chat and auction services provided by Baig's website) on a TV at a coffee shop would have been obvious. *Id.* at 61:15-20.

In short, the *only* evidence of record that Petitioner's proposed combination would have been obvious is the conclusory testimony of Petitioner's expert, whose opinions are belied by the fact that even though he purports to be knowledgeable about how public establishments used set-top boxes, was unable to identify *any* objective evidence of *anyone ever* displaying a website like Baig's on a set-top box at a public establishment. This opinion is far more conclusory than the testimony of Patent Owner's expert, who pointed out common sense concerns with the evidence Petitioner had provided, and because it is Petitioner who bears the burden of proof, Petitioner's over-reliance on conclusory expert testimony is fatal to the Petition.

D. The Petition's theory should be rejected for failing to identify where each element is present in the prior art.

The Board's regulations require that the Petition sets forth "where *each* element of the claim is found *in the prior art patents or printed publications relied*

upon.” 37 CFR 42.104(b)(4). Expert testimony cannot bridge this gap. *See* July 31, 2025 Memorandum of Acting Director Coke Morgan Stewart, *available at* https://www.uspto.gov/sites/default/files/documents/aapa_memo_final_signed.pdf (“As a practical matter, enforcement of Rule 104(b)(4) means that... expert testimony... and other evidence that is not ‘prior art consisting of patents or printed publications’... may not be used to supply a missing claim limitation.”).

However, Petitioner’s expert admitted that neither Baig *nor* Costa discloses a “television advertisement,” such that their combination cannot disclose as much. Ex. 2004 at 19:19-23:1 (offering no opinions on whether Baig or Costa, individually, disclose a television advertisement). Accordingly, Petitioner’s theory cannot support a finding of obviousness in an *inter partes* review proceeding, because contrary to the Board’s regulations, it fails to establish “where each element of the claim is found in the prior art.”

III. Petitioner additionally fails to show obviousness of dependent claims 121 and 146.

Claims 121 and 146 recite “contract[ing] to display a TV ad.” But in Petitioner’s proposed combination of Baig with Costa, TV ads are displayed *incidentally* to any contract to display an ad on Baig’s website. The contract is not for a “TV ad,” it is for an ad on Baig’s website.

For instance, if one contracts with a radio station to deliver a radio at 7am, this might reach any number of individuals. It is a contract to display the radio ad on the given radio station. If the Acting Director of the PTAB happens to hear the radio ad, that is an incidental result of the contract—the contract was not a “contract *to deliver a radio ad to the Acting Director.*” Petitioner presents no evidence that any *contract* would be *to display a TV ad*, as opposed to just a contract to display an ad on Baig’s website, regardless of whether or not it was a “TV ad” as claimed.

IV. Conclusion

For the reasons set forth above, Patent Owner respectfully requests that the Board find all challenged claims not unpatentable.

Date: August 11, 2025

Respectfully submitted,

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CERTIFICATION REGARDING WORD COUNT

Pursuant to 37 C.F.R. §42.24(d), Patent Owner hereby certifies, in accordance with and reliance on the word count provided by the word-processing system used to prepare this **PATENT OWNER'S SUR-REPLY**, that the amount of words in this paper is 4,381. Pursuant to 37 C.F.R. § 42.24, this word count is in compliance with the word limit set forth in 37 C.F.R. § 42.24(b) excluding the portions exempted under 37 C.F.R. § 42.24(a)(1).

Date: August 11, 2025

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e)(1))

The undersigned hereby certifies that the above document was served on August 11, 2025, by filing this document through the Patent Trial and Appeal Case Tracking System as well as delivering a copy via electronic mail upon the following attorneys of record for the Petitioners:

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