

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIANT TECHNOLOGY LLC,
Petitioner,

v.

INTENT IQ, LLC,
Patent Owner.

IPR2024-00422
Patent 7,861,260¹

**PATENT OWNER’S OPENING SUPPLEMENTAL BRIEF REGARDING
“CONTRACTED TO...” LIMITATIONS OF CLAIMS 121 AND 146**

¹ Viant Technology LLC was joined as a party to this proceeding via a Motion for Joinder in IPR2025-00129.

Claims 34 and 42 both require that the entity performing the method “automatically receiv[e] a revenue amount as a result of direction of the first television advertisement.” Ex. 1001, claims 34 and 42. Claims 121 and 146 depend from claims 34 and 42 respectively, and further recite:

- 121. The method of claim 34 wherein *the revenue amount is received from an **advertiser that has contracted to display a TV ad** to persons who have characteristics contained in the user profile information.*
- 146. The method of claim 42 wherein *the revenue amount is received from **an advertiser that has contracted to display a TV ad** to an audience of an Internet site.*

Ex. 1001, claims 121 and 146.

In other words, claims 121 and 146 require that whatever revenue be received is received as a result of direction of a TV ad from an advertiser that specifically contracted to display a TV ad to a specific target audience. Petitioner did not propose an express construction for any terms, including “contracted to display a TV ad.”²

² Petitioner also did not expressly construe “TV ad” standing alone. As Patent Owner made clear at the hearing, Petitioner’s invalidity theory required a “TV ad” to actually be displayed on a TV. *See generally* Ex. 2006 at 50–52 (collecting citations). However, the construction of “TV ad” standing alone is beyond the

Accordingly, Petitioner acknowledged that the plain meaning of the term applies. *See generally* 37 C.F.R. §42.104(b)(3) (requiring the petition to identify “[h]ow the challenged claim is to be construed”).

At the oral hearing, despite offering a belated new construction of the term “TV ad” standing alone, Petitioner made clear that the theory presented in Petitioner’s briefing was that the relevant limitations were satisfied because the TV ad merely needed to be presented as an *incidental result* of the contract, *regardless of* whether the parties actually intended a TV ad to be displayed. *See, e.g.*, Pet. at 50–51 (arguing that the contracting limitation of claim 146 is satisfied if “the advertisement... would be displayed on a television”); Reply at 17 (affirmatively arguing that the contract could be “completely agnostic as to whether any TV ads were displayed,” because an interpretation to the contrary would supposedly “read[] additional limitations into the claims”).

As explained below, Petitioner’s interpretation is inconsistent with the plain claim language (further supported by the specification), which requires a meeting of the minds between the contracting parties that a TV ad would be displayed.

scope of this supplemental briefing, because the “briefing before the hearing” (*see* Paper No. 38 at 2) was limited to Petitioner’s theory that TV ads are ads actually displayed on a TV (not merely suitable for display on a TV). *See* Ex. 2006, 50–52.

I. The plain claim language supports a meeting of the minds requirement.

Petitioner did not propose an express construction for any terms, including “contracted to display a TV ad.” Accordingly, Petitioner acknowledged that the plain meaning of the term applies. *See generally* 37 C.F.R. §42.104(b)(3) (requiring the petition to identify “[h]ow the challenged claim is to be construed”).

As Petitioner made clear in its Reply brief, Petitioner’s theory is that the “contract[ing]” contemplated by claims 121 and 146 may be “completely agnostic as to whether any TV ads were displayed,” arguing that an interpretation to the contrary would “read[] additional limitations into the claims.” Reply at 17. Thus, under Petitioner’s interpretation, an advertiser’s contract to display an advertisement (which ad incidentally happens to end up on a TV) is a contract to display a TV ad, even if the advertiser never intended there to be a TV ad under Petitioner’s invalidity theory where TV ads are advertisements actually displayed on a television.

Petitioner, however, did not explain how its interpretation is consistent with plain meaning. Petitioner’s interpretation is ***inconsistent*** with plain meaning because under the plain meaning of “contract[ing] to” do something, the thing being contracted for must actually be contemplated by the contracting parties ***at the time of the agreement***. *See, e.g., Comrie v. Enterasys Networks, Inc.*, 837 A.2d 1, 13 (Del. Ch. 2003) (“The primary goal of contract interpretation is to attempt to fulfill, to the extent possible, the reasonable shared expectations of the parties ***at the time they***

contracted.”); *SAS Inst., Inc. v. Breitenfeld*, 167 S.W.3d 840, 841 (Tex. 2005) (“The intent of a contract is not changed simply because the circumstances do not precisely match the scenarios anticipated by the contract.”).

By way of example, one might contract to arrive in Washington D.C. from Dallas *before noon* on July 4 after buying a ticket for a flight scheduled to land at 11am. The incidental result of that contract may be that the plane actually landed later, at 2pm. Even though the *incidental result* of the contract was an arrival after noon, one would never refer to the purchaser of the ticket as having “contracted to arrive *after* noon on July 4”—the contract was actually a contract to arrive *before* noon on July 4, and the plane only incidentally happened to arrive after noon.

However, under Petitioner’s interpretation, the purchase of the ticket for a flight scheduled to arrive *at 11am* on July 4 would have “contract[ed] to arrive *after noon* on July 4,” because the flight did in fact arrive after noon. This creates a scenario where the nature of the contract is unknowable at the time of the contract; under Petitioner’s interpretation, the contract must actually *be completed* to know whether any given contract is a “contract to” do a particular thing. For instance, a contract for advertisements might not be a “contract to display a TV ad” when it is entered into (if it did not contemplate TV ads being displayed), but perhaps several days later a TV ad is incidentally displayed pursuant to the contract. Of course, the

nature of the contract itself does not change, but *under Petitioner's theory*, the contract would transform into a “contract to display a TV ad” days after execution.

II. The specification provides support for the plain meaning.

The specification of the '260 patent expressly discloses receiving revenue pursuant to contracts that *intentionally* (rather than incidentally) cause advertisements to be displayed on TVs via STBs. For example, in discussing how the central ad server (“CAS”) obtains revenue, the patent provides an example of a “profile provider” advertiser who is “*interested in delivering TV ads* to people that visited its online site,” such that it “*request[s] that the CAS direct an advertisement to the user's STB*” and resulting in the central ad server (“CAS”) “receiv[ing] a payment from the profile provider” advertiser. Ex. 1001, 21:56–67; *see also id.*, 22:23–25 (discussing “[selling] an amount of television advertising space”); *id.*, 21:19–26 (discussing “television advertisements” being “requested by” advertisers).

These requests to deliver ads on televisions in exchange for revenue are contracts for delivery of a TV ad under Petitioner's contention regarding how “TV ads” are satisfied. These discussions do not purport to *define* the term “contracted to display a TV ad,” but they do provide explicit written description support for the plain meaning understanding that there must be a meeting of the minds regarding display of a TV ad, contrary to Petitioner's theory that the contract could be “completely agnostic to whether any TV ads were displayed.” *See Reply*, 17.

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Respectfully submitted,

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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 September 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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