

Case Numbers: IPR2024-00528, IPR2024-00612

EXPERT REPORT OF DR. AVIEL D. RUBIN

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I. INTRODUCTION	2
II. QUALIFICATIONS	2
III. PERSON OF ORDINARY SKILL IN THE ART (POSITA).....	6
IV. SUMMARY OF PATENT	6
V. OVERVIEW OF THE ALLEGED PRIOR ART	7
A. Carlson	7
B. Amidon	8
C. Shahine.....	9
D. Lundy	9
E. Roskind	10
F. Walsh	10
G. Jones.....	10
VI. THE 932 PATENT CLAIMS ARE VALID OVER THE INSTITUTED GROUNDS AND ART.....	11
A. CARLSON DOES NOT TEACH OR SUGGEST THE LIMITATIONS OF THE 932 PATENT CLAIMS	11
1. SHAHINE DOES NOT REMEDY THE DEFICIENCIES OF CARLSON	13
2. LUNDY DOES NOT REMEDY THE DEFICIENCIES OF CARLSON ALONE AND/OR IN COMBINATION WITH SHAHINE.....	13
B. AMIDON DOES NOT TEACH OR SUGGEST THE LIMITATIONS OF THE 932 PATENT CLAIMS	14
1. WALSH DOES NOT REMEDY THE DEFICIENCIES OF AMIDON.....	17
2. SHAHINE DOES NOT REMEDY THE DEFICIENCIES OF AMIDON ALONE AND/OR IN COMBINATION WITH WALSH.....	17
3. JONES DOES NOT REMEDY THE DEFICIENCIES OF AMIDON ALONE AND/OR IN COMBINATION WITH WALSH AND/OR IN COMBINATION WITH SHAHINE.....	18

I. INTRODUCTION

1. My name is Aviel D. Rubin. I have been retained as an expert witness to provide my independent opinion in regard to the matters at issue in inter partes review of U.S. Patent No. 8,249,932 (“the 932 patent”) in IPR2024-00528 and IPR2024-00612. I have been retained by Sitnet, LLC (“Sitnet”), the Patent Owner in this proceeding. Petitioner is Meta Platforms Inc. (“Meta” or “Petitioner”).

2. I am being compensated \$925 per hour for my time spent working in connection with this case. My compensation is in no way related to the outcome of this litigation. If called as a witness, I would testify as to the statements and opinions contained in this report.

3. I am not a legal expert and offer no opinions on the law. However, I have been informed by counsel of the various legal standards that apply, and I have applied those standards in arriving at my conclusions.

II. QUALIFICATIONS

4. I have more than 30 years of experience in the fields of computer science and applied cryptography. My professional career has been dedicated to issues relating to software, networks, and computer systems more generally.

5. I received a Bachelor of Science in Computer Science with Honors from the University of Michigan in 1989, a Master of Science in Computer Science and Engineering from the University of Michigan in 1991, and a Ph.D. in Computer Science and Engineering from the University of Michigan in 1994. My Ph.D. dissertation was titled “Nonmonotonic Cryptographic Protocols” and concerned authentication in long-running network operations.

6. I am a Professor Emeritus in Computer Science at Johns Hopkins University (the “University”). I joined the Computer Science faculty at the University in 2003 and was promoted

to full professor with tenure in April 2004. As a member of the faculty, I perform research, teach graduate and undergraduate courses in computer science and related subjects, advise undergraduate and Masters students, and supervise the research of Ph.D. candidates and other students. I have taught courses including Networking, Security and Privacy in Computing, Cryptography, and Advanced Topics in Computer Security. In September 2023, I was appointed Professor Emeritus.

7. I also served as the Technical Director of the University's Information Security Institute ("ISI"). The ISI is the University's focal point for research and education in information security, assurance, and privacy. The University, through the ISI's leadership, has been designated as a Center of Academic Excellence in Information Assurance by the National Security Agency and leading experts in the field.

8. I also have significant industry experience. Since 2011, I have served as the founder and chief scientist of Harbor Labs, a software and networking consulting firm specializing in data security and privacy. Previously, from 2005 to 2011, I served as the founder and President of Independent Security Evaluators ("ISE"), a computer security consulting firm. In that capacity, I guided ISE through the qualification process to become an independent testing laboratory for Consumer Union, which produces the Consumer Reports magazine. ISE provided consulting services to various companies on potential security flaws and weaknesses in products and systems. These companies included Fortify Software, Verdasys, and Security First Corp. As an independent testing laboratory for Consumer Union, I managed an annual project where we tested popular anti-virus products. Our results were published in Consumer Reports each year for three consecutive years.

9. In addition, I came to the University from AT&T Labs, Secure Systems Research Department, where I spent six years focused on Internet and computer security. Prior to AT&T Labs, I spent two years at Bellcore in its Cryptography and Network Security Research group, also focusing on Internet and computer security issues. I also interned at IBM in 1989. During my time there, I worked on the IBM System/360 family of mainframe computer systems.

10. I am the author or co-author of five books regarding information security issues: Brave New Ballot, Random House, 2006; Firewalls and Internet Security (second edition), Addison Wesley, 2003; White-Hat Security Arsenal, Addison Wesley, 2001; Peer-to-Peer, O'Reilly, 2001; and Web Security Sourcebook, John Wiley & Sons, 1997.

11. I have received numerous awards for my work and research in the field of computer security, including:

12. In 2020, I received the Distinguished Service Award from the Institute of Electrical and Electronics Engineers ("IEEE") Computer Society Technical Committee on Security and Privacy;

13. In 2010, I received a Fulbright Scholarship to serve as a Visiting Professor at Tel Aviv University in Israel;

14. In 2009, I received a Google Research Award for my work on securing medical records on smartphones;

15. In 2007, I received the Privacy Enhancing Technologies Award for Outstanding Research for my work on a security analysis of a cryptographically enabled RFID device;

16. In 2004, I was named Baltimorean of the Year by Baltimore Magazine for my work in safeguarding the election process;

17. In 2004, I received the Electronic Frontiers Foundation Pioneer Award; and

18. In 2000, I received the Best Paper Award at the 9th USENIX Security Symposium.

19. I serve, or have served, on several technical and editorial advisory boards. For example, I served on the Editorial and Advisory Board for the International Journal of Information and Computer Security. I also served on the Editorial Board for the Journal of Privacy Technology. In addition, I have been Associate Editor of the IEEE Security and Privacy Magazine and served as Associate Editor of the Association for Computing Machinery's ("ACM") Transactions on Internet Technology. I also served as Associate Editor of the journal Communications of the ACM, and I was an Advisory Board Member of Springer's Information Security and Cryptography Book Series. I also have served in the past as a member of the Defense Advanced Research Projects Agency's Information Science and Technology Study Group, a member of the Government Infosec Science and Technology Study Group of Malicious Code, a member of the AT&T Intellectual Property Review Team, Associate Editor of the Electronic Commerce Research Journal, Co-editor of the Electronic Newsletter of the IEEE Technical Committee on Security and Privacy, a member of the board of directors of the USENIX Association (the leading academic computing systems society), and a member of the editorial board of the Bellcore Security Update Newsletter.

20. I have spoken on information security and electronic privacy issues at more than 50 seminars and symposia. For example, I presented keynote addresses on the topics "Security of Electronic Voting" to Computer Security 2004 Mexico in Mexico City, Mexico, in May 2004; "Electronic Voting" to the Secure Trusted Systems Consortium 5th Annual Symposium in Washington, D.C., in December 2003; "Security Problems on the Web" to the AT&T EUA Customer Conference in March 2000; and "Security on the Internet" to the AT&T Security

Workshop in June 1997. I also presented a talk about hacking devices at the TEDx conference in October 2011 and another TEDx talk on the same topic in September 2015.

21. I am a named inventor on 10 United States patents, including U.S. Patent Nos. 5,638,446 (“Method for the Secure Distribution of Electronic Files in a Distributed Environment”) and 5,809,140 (“Session Key Distribution Using Smart Cards”).

22. A detailed record of my professional qualifications is set forth in the attached Exhibit A, which is my curriculum vitae, including a list of publications, awards, research grants, and professional activities. My curriculum vitae also lists the matters in which I have served as an expert.

III. PERSON OF ORDINARY SKILL IN THE ART (POSITA)

23. In my opinion, a person of ordinary skill in the art at the time of the invention would have a bachelor’s degree in computer science (or an equivalent degree) with at least three years of experience in the field of computer science (or an equivalent). This level of skill is approximate, and more experience would compensate for less formal education, and vice versa.

IV. SUMMARY OF PATENT

A. The 932 Patent

24. The 932 Patent discloses a method of presenting targeted advertising in a situational network. 932 Patent, Abstract. The method creates a situational network, shown in Figure 2, in which a situational authority 207 can create a situational network 3000 of identified users 250 to an event 3011 that is controlled by the situational authority 207. When a situational authority creates a situational network, the users 250 form connections with the event node 3011 through a network 900 and can form connections with other users connected to the event node. 932 Patent, 3: 46-58, 14:28-34.

25. Figure 28 shows an example of a situational authority 207 creating an event node 3000 due to the snowstorm 3005. Users 3026 and 3029 discover the situational network by seeking out information on the snowstorm. Users 3027 and 3028 are invited to the situational network by the event node identifying them to be affected by the situation 3005. 932 Patent, 23:10-40.

26. The situational network can be implemented in a multi-dimensional social network (NDSN) that allows multiple connections between individual nodes. 932 Patent, 5:51-58. Projections of the NDSN take a subset of the connections subject to criteria to create a smaller and more relevant network. 932 Patent, 16:8-12. Nodes within an NDSN can query their neighbors to discover new nodes that meet a criterion to initiate a connection. 932 Patent, 17:38-44. Thus, users within a situational network can identify other users within the situational network to connect with.

B. Relevant Definition

27. Social Network (Personal Information Network) – Traditionally, a social network is a network that consists of individuals who are interconnected by various personal information and social metrics such as interests, location, demographics, community, and more. For example, a “link” could be when users “become friends” or a user subscribes or “likes” a page or “follows” an influencer. However, social networks have evolved to also include incorporating businesses, organizations, groups, and other entities into the interconnections of users as their own nodes in the network. As such, these entities can often masquerade in social networks as individual users and appear to users as such.

V. OVERVIEW OF THE ALLEGED PRIOR ART

A. *Carlson*

28. Carlson describes a method for incorporating advertisements with alerts that a user has requested. This entails a “server-side alert delivery system [that] can be used by a partner

server, client device, or other server to deliver an alert to a user about some event the user has requested” (Carlson Abstract). After a user subscribes to an event, the alert server will “maintain access to user settings” and “manage alert subscriptions” with actions such as “confirm[ing] a user has subscribed to an event” (§ 29). A content provider will detect an event and determine the users to receive the alert by “access a database or mailing list” (§ 57). It will then forward the event data and user data to an ad service. The ad service determines the relevant ad based on “user account data for a mail provider service, user contact lists, user alert subscription information, user instant messaging account information, user mobile device account information, and other data.” (§ 30). It will also use “event data, including the time of day, location of the user, and content of the event data.” (§ 31) and returns the ad to the content provider. The content provider then forwards the ad, event, and user data to an alert server. The alert server confirms the user is subscribed to the event. Then by using user preference, it will route the alert and ad to a messenger server (e.g., instant messaging app or email), which will then deliver the message to the user (§ 25).

B. Amidon

29. Amidon teaches computer-based systems and methods that provide management options for members of a network whereby the members can define and participate in conferences, with the extent of the participation and messaging within such conferences is based on the structure of the underlying network(s). (Amidon, Abstract). The present disclosure also refers to the relay of communicated data over a network such as the Internet but may operate over other network types (e.g., dial-in networks, LANs, WANs, PSTNs, or intranets) (6:11-17). This system primarily involves communications via instant messaging (IM) and short message service (SMS) messages, which are messaging protocols commonly employed by chat apps.

30. This system includes servers that access instructions stored in a database(s), and the instructions configure the servers to provide network conferencing functionality (8:4-11). Conferencing clients (i.e., one or more computing devices each accessing instructions that configure the client to provide messaging functionality) interface with this system (8:15-16). The networking and conference functionality may be modularly decoupled or combined in a single application (8:23-35).

C. Shahine

31. Shahine discloses a method for advertisers to target specific calendar users with the advertisers' events. When uploading information for an advertisement to a service provider system, the advertiser provides targeting criteria along with advertisement content. The targeting criteria are compared against user data stored about the user within one or more databases in the service provider system to select targeted recipients that meet the targeting criteria. The advertised events are then downloaded for display alongside a user's calendar interface, where users may add the event to their calendars. Shahine, Abstract.

D. Lundy

32. Lundy teaches a method for "creating an advertisement that includes real-time information related to [] dynamic content within a predetermined range of the location of the [] user and presenting the advertisement to the user" (Lundy Abstract). A user, using a browser, connects to a content provider. The content provider, "in response to the request, constructs a web page [] and adds ad tags" (§ 44). The dynamic content alert server (DCA) determines if the user is within a predetermined range of an event. If it does, the DCA will send an automatic insertion order to the ad server which will then use the ad tags and insertion order to generate an advertisement and event message associated with the dynamic content identified.

E. Roskind

33. Roskind teaches a method for “regulating a communications pathway” (Claim 1.C) between two users where “implicit trust” can be established by checking the contact lists of both users. Each user of a messaging application will have a user list of contacts. As such, a POSITA could determine implicit trust by checking if both users appear in the other’s contact list. A “communication application” (Abstract) can facilitate automatic connections due to the implicit trust.

F. Walsh

34. Walsh discloses a system and method for generating a profile of communication sessions that involves generating ratings for a selected set of messages and metadata associated with content items that are shared by a network user participating in a communication session. Ratings may be based on keyword scores which may then be adjusted based on user participation parameters, network characterization parameters, and user-selected options. Generated profiles may be stored, frequently retrieved, or used in applications. Walsh, Abstract.

G. Jones

35. Jones teaches “[a] system and method of electronic advertisement and commerce, wherein commercial advertisements are electronically mailed to a prospective and/or current consumer via a global networking system (§ Abstract).” The advertisements are created by a business entity (i.e., an organization and/or industry seeking to advertise any of its current products and/or services, upcoming products and/or services, upcoming events, promotional offerings, etc.) (§ 24). The business entity may gather email addresses (e.g., mailing lists, newsgroups, user groups, public list serves, public subscription groups, digital bulletin board systems, online

voluntary email Submittal processes, Voluntary email submittal processes, etc.) to distribute advertisements (§ 26).

36. A live chat room is sponsored by and/or maintained by the business entity (§ 30). In the chat room, the advertisement recipient may discuss the advertised products/services with sales representatives associated with the business entity (§ 30). The “e[]mail recipient may request additional product/service information, make transactional requests or place purchase orders [], request consumer surveys and/or product/ service ratings, request sample products or services [], request an in-person conference with local representatives of business entity 20, and the like (§ 30).” Alternatively, an email recipient may utilize a live chat room to discuss with other consumers/email recipients also in receipt of the advertisement (§ 31).

VI. THE 932 PATENT CLAIMS ARE VALID OVER THE INSTITUTED GROUNDS AND ART

37. In my opinion, Meta Platforms Inc. has failed to disclose and/or render obvious any of the 932 Patent claims in light of all alleged prior art. For the reasons detailed below, the alleged prior art and combinations do not disclose the claimed invention of the 932 Patent.

A. CARLSON DOES NOT TEACH OR SUGGEST THE LIMITATIONS OF THE 932 PATENT CLAIMS

38. Carlson does not disclose and/or render obvious the claims of the 932 Patent as Carlson does not teach a situational network. A situational network, as taught by the 932 Patent, is created when an event or situation “causes connections to be established between, within or among participants [that] allows the participants [] to interact and exchange information [] to or through a computer network” (3:46-53). The IPR claims that Carlson teaches this because “the alerts and advertisements sent in response to a situation are sent over connections to a computer

network” (IPR2024-00528 petition at p.10), but this wrongly characterizes the connections of the 932 Patent. First, Carlson does not teach that connections are created *in response to* the event. Carlson discloses that “[u]ser data store 128 stores data and other information for users . . . The stored information can include data such as user account data for a mail provider service, user contact lists, ***user alert subscription information*** [].” Carlson, ¶ [0030] (emphasis added). The

stored data thus includes a user’s subscription to receive alert notifications. Carlson teaches an alert is delivered to a user “about some event ***the user has requested.***” Carlson, Abstract (emphasis added).

39. Subscribing to a service and/or indicating a preference requires establishing a connection with the service *prior to* the occurrence or expected occurrence of an event or situation. Thus connections are created by the user subscribing to an event are not in response to the event.

40. Second, as the Petition recognizes, Carlson discloses that computing devices may “operate in a networked environment using logical connections to one or more remote computers” such as over the network 180. IPR2024-00528 petition at p.10. Logical connections permitting computers to exchange data over the internet and the like are completely different from the connections forming and defining a social network. While a social networking service would require the use of a logical connection transmitting data for access, that sort of access network should not be confused with the social network itself, as the Petition has done.

41. Therefore, for the reasons outlined above, Carlson does not teach a situational network. Thus, it is my opinion that the 932 Patent and Carlson operate on different technology and therefore, Carlson does not disclose and/or render obvious the limitations of the 932 Patent.

**1. SHAHINE DOES NOT REMEDY THE DEFICIENCIES OF
CARLSON**

42. The IPR combines Shahine with Carlson attempting to show that advertising content is received from advertisers but fails to address the deficiencies of Carlson. Shahine does not teach a situational network that is created in response to a situation or event. Shahine allows users to “enter an event via [the] calendar interface” (4:38). This does not constitute a situational network. Thus, Shahine does not teach a situational network, and Carlson in view of Shahine does not teach or suggest a situation network.

**2. LUNDY DOES NOT REMEDY THE DEFICIENCIES OF CARLSON
ALONE AND/OR IN COMBINATION WITH SHAHINE**

43. Lundy describes a “method for distributing Dynamic Content Alerts (DCA) to end users that are consuming IP-enabled content” (¶ 3) and fails to operate over a situational network. The combination of Carlson-Shahine-Lundy does not allow a user to connect with other users and fails to constitute a situational network. Therefore, it is my opinion that Lundy or Carlson-Shahine-Lundy do not teach or suggest a situational network.

**3. ROSKIND DOES NOT REMEDY THE DEFICIENCIES OF CARLSON
ALONE AND/OR IN COMBINATION WITH SHAHINE**

44. The IPR also combines Roskind with Carlson-Shahine-Lundy in an attempt to suggest obviousness of Claim 5 but fails to remedy the deficiencies of Carlson-Shahine-Lundy.

45. Roskind does not teach or suggest a situational network. Roskind teaches “regulating a communications pathway between a first client device associated with the first user and a second client device associated with the second user” (Roskind, Claim 1), but does not disclose creating a situational network in response to the situation or event. Therefore, it is my

opinion that Carlson-Shahine-Lundy in view of Roskind does not teach or suggest a situational network.

B. *AMIDON DOES NOT TEACH OR SUGGEST THE LIMITATIONS OF THE 932 PATENT CLAIMS*

46. In my opinion, Amidon fails to disclose and/or render obvious the claims of the 932 Patent. There are several unique attributes taught by the 932 Patent that are not disclosed by Amidon, nor would such disclosures have been made obvious to a POSITA.

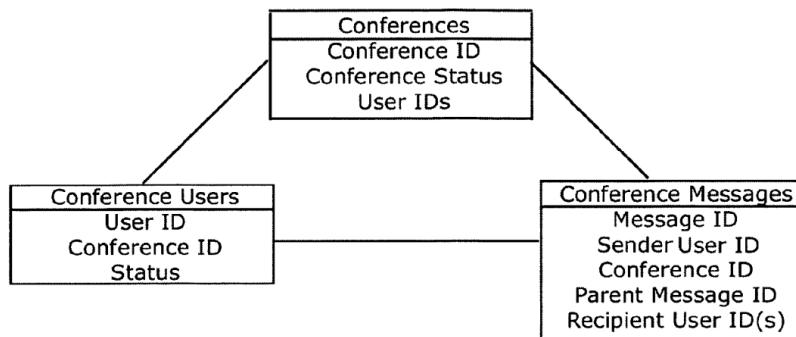
47. Firstly, Amidon fails to disclose a “situational network.” The 932 Patent discloses that a situational network comprises connections newly created *in response to* an event or situation. 932 Patent, 3:46-58. Amidon’s architecture does not create new connections but instead creates chatrooms, referred to as “conferences”. The chatrooms are created using existing social networks to determine the participants in a chatroom (i.e., conference). Unlike the 932 Patent, these chatrooms are not created *in response to* an event or situation.

48. Further, in contrast to the situational network disclosed in the 932 Patent, the chatrooms described in Amidon are not situation specific. While a chatroom can be created based on topics of interest, the chatroom will live on after a “situation” has occurred. More specifically, when an alleged event ends in Amidon, the chat does not have to be closed and can continue indefinitely. That is not possible in the disclosures of the 932 Patent, as the situational network is created temporarily while the situation is occurring and relevant. 932 Patent, 20:15-16. Thus, Amidon discloses “systems and methods for users to conduct online conferences based on underlying social network structures” (Amidon, 2:55-56) and does not create a situational network in response to an event or situation.

49. In addition, Amidon does not disclose an event node. An “event node” as described in the 932 Patent is a node on a personal information network that corresponds to an event or situation. 932 Patent, 7:31-33. The node is created by an event node server, and it is disclosed that “users may automatically be invited to connect to the event node corresponding to the event.” 932 Patent, 19:58-60. This provides the technical solution of incorporating into a social graph the concept of transmitting an invitation to establish a link with the event node to the devices corresponding to each node in the projection (situational network). As such, the event node taught by the 932 Patent operates as a member of a social network, that communicates with an event node server.

50. The disclosures of Amidon do not describe such an event node. The IPR petition claims that the social network conferences (i.e., each chatroom) and the underlying databases described in Amidon is the event node (IPR2024-00528 petition at pp.77-79), however, this is not an event node and simply a multi-party chatroom. The IPR petition also claims that the chatroom can have a specific event (i.e., situation) as the subject that the chatroom was created on (*Id.* at p.57), but this is not sufficient in showing that it is an “event node” like is described in the 932 Patent. The chatroom itself is not a node on a situational network, is not generated by an event node server, and is not a node corresponding to the situation or event.

51. Further, Amidon’s failure to disclose and/or render obvious an event node is confirmed in its FIG. 3. Amidon’s FIG. 3 (reproduced below) shows “a plurality of exemplary data structures suitable for use in defining and tracking social network conferences.” Amidon, 5:24-26.



52. As shown in the above FIG. 3, “conferences may be defined by a data base record including a *conference ID and list of users by user ID.*” Amidon, 15:10-12. The database record defining a conference includes a list of users, but not a listing or other entry for the event or situation underlying the conference. The database record cannot correspond to a situation or event without providing entry for the event or situation, because without such a field, the conference could not be queried based on the event or situation. The failure to include an event in the database record defining a conference further indicates that Amidon’s network conferences lack an “event node” corresponding to the underlying event or situation, and necessarily, does not disclose or suggest an “event node.”

53. In addition to not disclosing an event node, Amidon does not teach an event node server. The IPR petition claims the situation authority is Amidon’s messaging server (IPR2024-00528 petition at p.71), but this does not meet the language disclosed in the 932 Patent. The 932 Patent teaches that an event node server establishes an event node for communication to users in a situational network. 932 Patent, 19:39-42. However, Amidon’s messaging server does not create an event node as there is no event node disclosed by Amidon. Even if an event node was disclosed by Amidon, which it is not, there is no evidence that a messaging server would be able to create one and use it for the facilitation of communication between end users. Furthermore, the

information that is conveyed in Amidon's conference chats does not have to be about the situation because it is an open messaging platform. This is not an uncommon occurrence and is commonly

seen in practice where chats formed on specific topics can become unrelated or off-topic.

54. Therefore, it is my opinion that Amidon does not disclose and/or render obvious any of the Claims of the 932 Patent.

1. WALSH DOES NOT REMEDY THE DEFICIENCIES OF AMIDON

55. In my opinion, Walsh in combination with Amidon fails to disclose and/or render obvious the claims of the 932 Patent. As Walsh is a patent that is directly related to the Amidon patent with the same inventors and builds off the system taught by Amidon (IPR2024-00528 petition at pp.51, 53), all the above-discussed Amidon arguments apply to Walsh. Specifically, the IPR petition states that Walsh improves Amidon's "situational network" (IPR2024-00528 petition at p.58), which we show that Amidon does not create a situational network. Additionally, there are several unique attributes taught by the 932 Patent that are not disclosed by Walsh, nor would such disclosures have been made obvious to a POSITA.

2. SHAHINE DOES NOT REMEDY THE DEFICIENCIES OF AMIDON ALONE AND/OR IN COMBINATION WITH WALSH

56. Shahine describes a "method ... for advertisers to target specific calendar users with the advertiser's events" (Shahine, Abstract) and the IPR petition combines Shahine with Amidon-Walsh to combat the lack of a plurality of advertising entities. IPR2024-00528 petition at p.55. In my opinion, Shahine, alone, or in combination with Amidon, or in combination with Walsh and Amidon fails to disclose and/or render obvious the claims of the 932 Patent.

57. Firstly, Shahine does not teach a social network, let alone a situational network. Through this alone, Shahine does not teach or suggest the limitations of the 932 Patent claims.

Secondly, the scenario of users interacting/communicating about a specific topic, as taught by Shahine, is a similar scenario to the conference chatroom from Amidon where users join a conference to discuss a commonly agreed upon topic. Thus, Shahine would have the same deficiencies as Amidon-Walsh as defined above.

58. Combining Shahine with Amidon, or Amidon-Walsh does not remedy the deficiencies of Amidon or Amidon-Walsh. The IPR petition adds Shahine as alleged prior art for the express purpose of creating a database of advertisements. IPR2024-00528 petition at p.55. Simply adding storage space for multiple advertising entities into the Amidon-Walsh methodologies does not help Amidon-Walsh teach or suggest a situational network, an event node, or an event node server.

***3. JONES DOES NOT REMEDY THE DEFICIENCIES OF AMIDON
ALONE AND/OR IN COMBINATION WITH WALSH AND/OR IN
COMBINATION WITH SHAHINE***

59. It is further my opinion that Jones does not remedy the deficiencies of Amidon alone and/or in combination with Walsh and/or in combination with Shahine.

60. Jones teaches “[a] system and method of electronic advertisement and commerce, wherein commercial advertisements are electronically mailed to a prospective and/or current consumer via a global networking system. Jones, Abstract. The IPR petition combines Jones with Amidon-Walsh-Shahine to explicitly cover the missed argument of “wherein the situation is a weather phenomenon.” IPR2024-00528 petition at pp.81-82. However, it is my opinion that, through this, Jones does not remedy the deficiencies of Amidon, Amidon-Walsh, or Amidon-Walsh-Shahine.

61. Jones is a system that is built upon email and email distributions (Jones at ¶ 26) and like Amidon fails to teach or suggest a situational network taught by the 932 Patent. There are no event nodes, event node servers, situations, or situational authorities taught by Jones. Thus, through this, Jones does not teach or suggest the limitations of the 932 Patent claims. To the extent that a POSITA would attempt to combine Jones with Amidon-Walsh-Shahine, this combination would not result in rendering the 932 Patent claims being disclosed and/or rendered obvious.