UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.

AND

MICROSOFT CORPORATION

Petitioners

v.

ALMONDNET, INC.
Patent Owner

Patent No. 8,244,582

PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,244,582

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5. Claim 14 - The data storage medium of claim 13 wherein the computer system determines that the received partial

profile and the maintained profile are related to the same user computer by automatically reading a cookie on the user computer. 44

6. Claim 15 - The data storage medium of claim 11 wherein the indicia of instructions instruct the processor to perform a method that further comprises: automatically with the computer system electronically maintaining an electronic record of which unaffiliated third party contributed, to the maintained profile, the profile attributes used in targeting the advertisements. 48

7. Claim 19 - The data storage medium of claim 11 wherein the indicia of instructions instruct the processor to perform a method that further comprises: automatically with the computer system selecting profile attributes from the maintained profile based on the source thereof. 52

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I. INTRODUCTION

Samsung Electronics Co., Ltd. and Microsoft Corporation ("Petitioners") request *inter partes* review of claims 1, 9, 11, 13-16, 19 and 20 ("challenged claims") of U.S. Patent No. 8,244,582 ("the '582 patent") (Ex. 1001) assigned to AlmondNet, Inc. and Intent IQ, LLC (collectively, "Patent Owner" or "PO"). For the reasons below, the challenged claims should be found unpatentable and canceled.

II. MANDATORY NOTICES

Real Parties-in-Interest: Petitioners identify the following as the real parties-in-interest: Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Microsoft Corporation.

Related Matters: The '582 patent is at issue in the following matters:

- *AlmondNet, Inc. et al. v. Samsung Electronics Co., Ltd. et al.*, Case No. 6-21-cv-00891 (WDTX) (filed Aug. 26, 2021);
- *AlmondNet, Inc. and Intent IQ, LLC v. Microsoft Corp.*, Case No. 6:21-cv-00897-ADA (WDTX) (filed August 27, 2021)
- *Roku, Inc. v. AlmondNet, Inc. et al.*, Case No. 1-21-cv-01035 (DDE) (filed Jul. 15, 2021);
- *AlmondNet, Inc. et al. v. Roku, Inc.*, Case No. 6-21-cv-00731 (WDTX) (filed Jul. 15, 2021).

Counsel and Service Information:

Petitioners identify the following lead and backup counsel and Petitioners each consents and requests that all service and correspondence to them respectively and/or collectively in this matter be electronically provided at the below-provided e-mail addresses.

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Service information: Jackson Walker LLP, 100 Congress Ave., Suite 1100, Austin, TX 78701, Tel. 512-236-2000, Fax: 512-236-2268, email: **agollwitzer@jw.com**.

III. PAYMENT OF FEES

The PTO is authorized to charge any fees due during this proceeding to Deposit Account No. 50-2613.

IV. GROUNDS FOR STANDING

Petitioners certify that the '582 patent is available for review and Petitioners are not barred or estopped from requesting review on the grounds identified herein.

V. PRECISE RELIEF REQUESTED

Claims 1, 9, 11, 13-16, 19 and 20 should be canceled as unpatentable based on the following grounds:

Ground 1: Claims 1, 9, 11, 13-15, 19, and 20 are unpatentable under pre-AIA 35 U.S.C. § 103(a) as being obvious over *Philyaw* in view of *Merriman*.

Ground 2: Claim 16 is unpatentable under pre-AIA 35 U.S.C. § 103(a) as being obvious over *Philyaw* in view of *Merriman* further in view of *Easty*.

The application for the '582 patent was filed on May 25, 2011, and claims priority through a number of U.S. applications the earliest of which was filed on June 14, 2000, and a foreign application filed December 13, 1999. (Ex. 1001, Cover.) For purposes of this proceeding, and without conceding the challenged

claims are so entitled, Petitioners assume the effective priority date of the '582 patent encompasses either June 14, 2000 or December 13, 1999. (Ex. 1002, ¶¶17-19.)[1] In either case, as explained herein, the challenged claims are obvious. (*Id.*; *id.*, 21.)

Philyaw issued from an application filed August 24, 1999, *Merriman* issued from an application filed October 29, 1996, and *Easty* issued from an application filed on April 3, 1998, thus each qualifies as prior art at least under § 102(e) under the above assumed priority dates.

None of these references were considered during prosecution. (*See* Ex. 1004.)

VI. LEVEL OF ORDINARY SKILL

A person of ordinary skill in the art as of the claimed priority date of the '582 patent ("POSITA") would have had at least a bachelor's degree in computer science, computer engineering, electrical engineering, or the equivalent, and two or more years of experience with designing, programming, configuration, and/or analysis/research with Internet or similar network-related processes including, for example, user/entity profile management and/or web-based targeted content delivery, or a related field. (Ex. 1002, ¶¶20-21.) More education can supplement practical experience and vice versa. (*Id.*)

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[1] Petitioners submit the declaration of Dr. Dan Schonfeld (Ex. 1002), an expert in the field of the '582 patent. (Ex. 1002, ¶¶1-14; Ex. 1003.)

VII. THE '582 PATENT

The challenged claims of the '582 patent recite processes relating to collecting profiles of Internet-using entities used in targeting third-party advertisements to a user computer. (*E.g.,* Ex. 1001, 16:42-67.) However, the features recited in the claims were known in the art, and as explained below, are demonstrably obvious. (*See infra* §IX; Ex. 1002, ¶¶22-34, 60-181; *see also id.*, ¶¶36-59; Exs. 1005, 1008-1009, 1011-1015.)

VIII. CLAIM CONSTRUCTION

The Board only construes the claims when necessary to resolve the underlying controversy. *Toyota Motor Corp. v. Cellport Systems, Inc.*, IPR2015-00633, Paper No. 11 at 16 (Aug. 14, 2015) (citing *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)). For purposes of this proceeding, Petitioners believe that no special constructions are necessary to assess whether the challenged claims are unpatentable over the asserted prior art.[2] (Ex. 1002, ¶35.)

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[2] Petitioners each respectively reserves all rights to raise claim construction and other arguments, including challenges under 35 U.S.C. §§ 101 and 112, in district court as relevant to those proceedings. *See, e.g.*, *Target Corp. v. Proxicom Wireless, LLC*, IPR2020-00904, Paper 11 at 11–13 (Nov. 10, 2020). A comparison of the claims to any accused products in litigation may raise controversies that are not

IX. DETAILED EXPLANATION OF GROUNDS

A. Ground 1: Claims 1, 9, 11, 13-15, 19 and 20 are Obvious Over *Philyaw* in View of *Merriman*

1. Claim 1

a) An automated method of collecting profiles of Internet-using entities, the method comprising:

To the extent limiting, *Philyaw* discloses this preamble. (Ex. 1002, ¶¶61-73.) *Philyaw* describes various configurations that provide processes for, e.g., collecting profile information and providing targeted content to entities. (*See e.g., id.*, FIGS. 1-24, *generally* 4:33-25:23 (advertising control of user's PC (*e.g.*, 6:34-44), obtaining product information (*e.g.*, 9:34-38, 16:27-62), providing user profile information using cookie type software (*e.g.*, 12:26-42), and targeted advertising (*e.g.*, 25:5-23). (Ex. 1002, ¶62.)

Regarding FIGS. 25-28, *Philyaw* discloses configurations for collecting profiles of Internet-using entities like that claimed. (*Id.*, 25:24-28:30; *see also id.*, Abstract, 2:27-31, 3:15-26.) As explained (*infra* §§IXA.1(b)-(f)), the computer-based elements of *Philyaw*'s system perform processes that use, *inter alia*, software

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presented here given the similarities between the references and the patent. (*See* Ex. 1016, 24-34; Ex. 1017, 23-40, Ex. 1018, 12-18; Ex. 1019, 25-35; Ex. 1020, 23-40; Ex. 1021, 13-19.)

installed on a user PC 302 that "tracks the user profile and habits when accessing various sites on a [global communication network] GCN 306." (*Id.*, 25:24-28, FIGS. 25-28.) (Ex. 1002, ¶63.)

For example, *Philyaw*'s system performs processes that associates a unique ID with the software and user profile information (e.g., name address and "other personal information"). (Ex. 1005, 25:28-24.) The PC 302 "automatically connects, under control of the software" to GCN 306 to a "central registration server 2500 (CRS)," which has a CRS database 2502 that "stores the user profile information and the unique user IDs associated with each user profile." (*Id.*, 25:34-41.) A registration process is performed where the unique ID for the user is provided from CRS 2500 to user PC 302 for "tracking the user's efforts and interests as he or she visits the various web sites on the GCN" (*id.*, 25:43-51; *see also id.*, 26:1-7), which can be transparent to the user during "web activity" (*id.*, 25:54-58). The unique ID "provides the reference in the CRS database 2502 to the user's associations and profile." (*Id.*, 25:51-54.) (Ex. 1002, ¶¶64-65.)

As shown in FIG. 25 (below), following registration, the user is "free to access any web servers on the GCN 306 (e.g., web server/site 2504), which results in the software on PC 302 to pass the unique ID to the web server 2504. (Ex. 1005, 26:4-10.) Website server 2504 recognizes the user ID as associated with CRS 2500 and thus requests and obtains user profile information from CRS 2500 that it uses to

provide targeted advertising content to the user PC 302. (*Id.*, 26:20-38.) User search information is logged and transmitted back to CRS 2500 to "update the user profile as to interests and activities which occurred while visiting the vendor server 2504" in database 2502 for subsequent use when the user accesses a different vendor website on GCN 306. (*Id.*, 26:39-47.) This allows automatic on-going updates to the user profile in CRS database 2502 that are shared with subsequent website servers visited by the user to facilitate similar targeted content provisioning. (*Id.*, 26:47-56.) (Ex. 1002, ¶¶66-67.)

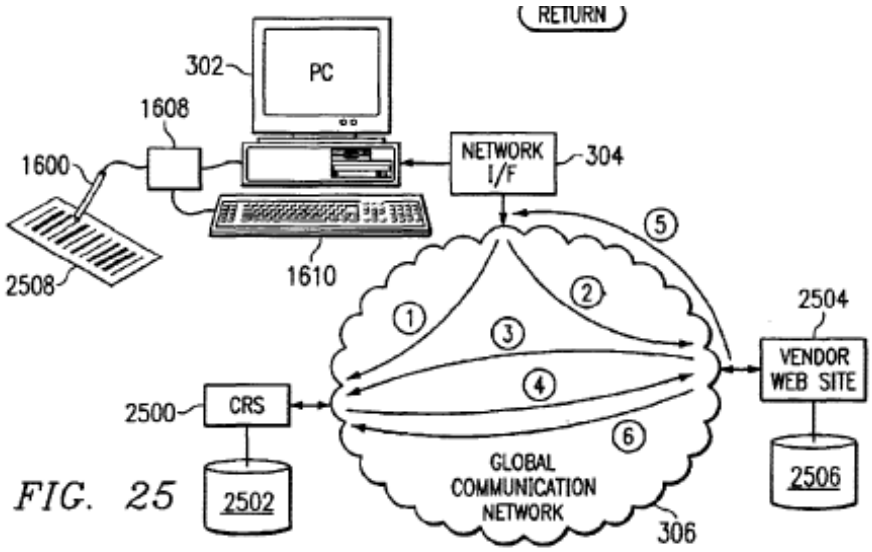
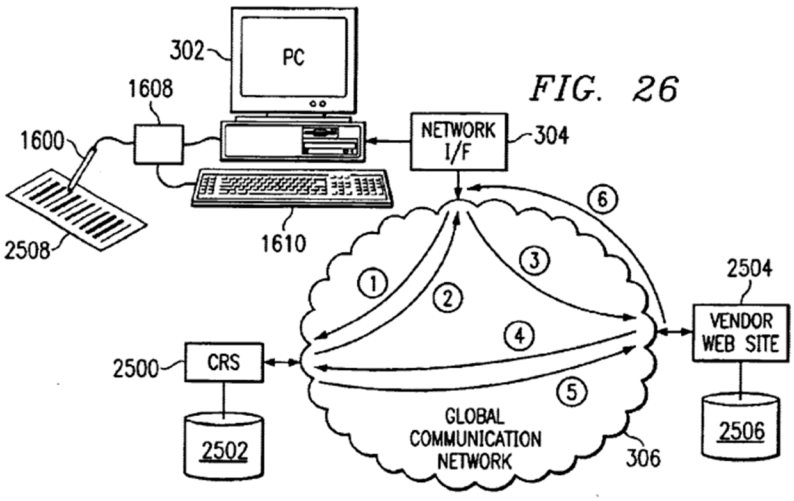


FIG. 25

(Ex. 1005, FIGS. 25; Ex. 1002, ¶63.)

FIG. 26 (below) describes the "system of FIG. 25 incorporating an alternative registration process." (Ex. 1005, 26:57-58; *id.*, 26:59-27:21; Ex. 1002, ¶68.) This process allows the user to complete a profile sheet provided electronically by CRS 2500 after the user PC launches the software. (Ex. 1005, 26:59-66.) Similar to the

process of FIG. 25, CRS 2500 transmits a unique user ID to PC 302 after the profile sheet is completed, which is eventually passed to a vendor website 2504 for use to access CRS 2500 for obtaining user profile information in CRS database 2502. (*Id.*, 26:67-27:8.) The vendor website uses the received profile information for "targeting advertising stored on vendor database 2506." (*Id.*, 27:8-12.) Thus, as the user access various websites on GCN 306, such activity is logged and passed to CRS database 2502 "to obtain the most recent user profile information," and "updating the user profile" to facilitate targeted advertising. (*Id.*, 27:13-21; *id.*, FIGS. 27-28, 27:22-28:30 (discussing processes for registration and use of unique ID to track user profile information on GCN 306).) (Ex. 1002, ¶¶69-71.)



(Ex. 1005, FIGS. 26; Ex. 1002, ¶68.)

Philyaw describes "global communication network" (GCN) as the "'Internet'" or "'Web'." (Ex. 1005, 5:15-18; *id.*, 5:47-67.) A POSITA would have

understood that this description of a GCN is applicable to *Philyaw*'s description of a GCN in other disclosed configurations, including FIGS. 25-26 (GCN 306). (Ex. 1002, ¶72.) Thus, in the features described in connection with FIGs 25-28, the users operating respective PCs 302 visiting websites (and related servers) are "Internet-using entities," from which profiles are collected. (*Id.*; Ex. 1005, 26:10-16 (CRS database 2502 stores "all user unique IDs and associated user profiles obtained during the registration process"); *see also* Ex. 1001, 2:36 (describing a profile as a collection of attributes that describe a ***person*** or an ***organization*** or any other ***entity***…"), 1:58-61 (a user can be "any ***entity***" or "could be a web site" or "an organization"); *infra* §§IX.A.1(b)-(f); Ex. 1002, ¶73.)

b) electronically receiving at a programmed computer system coupled to a global computer network, from at least one server controlled by one of a plurality of unaffiliated third parties, a partial profile of an entity that uses a user computer coupled to the global computer network and accessing a website, which partial profile is available to one of the third parties and contains at least one profile attribute related to the entity, and automatically with the computer system storing the received partial profile;

Philyaw discloses this limitation. (Ex. 1002, ¶¶74-85.) To begin, *Philyaw*'s system discussed for limitation 1(a) discloses "**a programmed computer system**" (*e.g.*, Ex. 1005, FIGS. 25-26 (CRS 2500)) that is "**coupled to a global computer network**" (e.g., GCN 306). (*Id.*, FIGS. 25-26 (annotated below showing two-way

communication between CRS 2500 (red) and the GCN 306 (blue), 25:34-39;26:57-65; 27:14-17; *supra* §IX.A.1(a).)

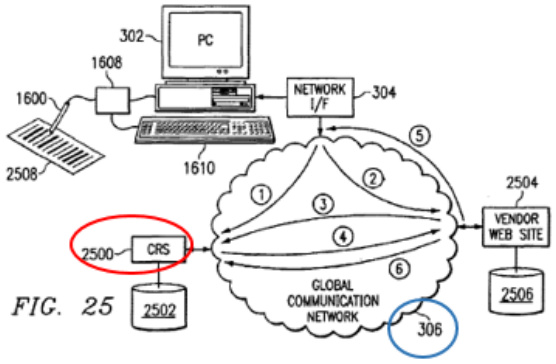


FIG. 25

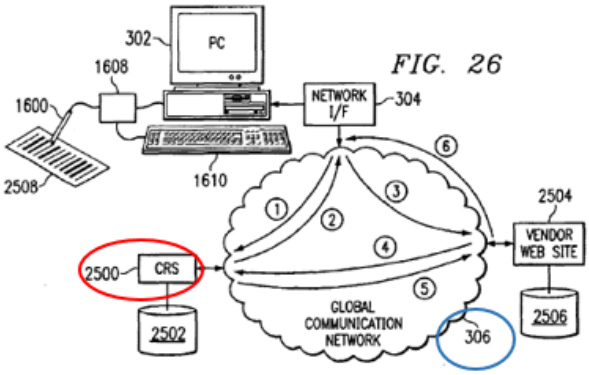


FIG. 26

(Ex. 1005, FIGS. 25-26 (annotated); Ex. 1002, ¶74.)

Philyaw also discloses "**at least one server controlled by one of a plurality of unaffiliated third parties**" and "**an entity that uses a user computer coupled to the global computer network and accessing a website**." For example, *Philyaw* describes a vendor website server 2504 ("**at least one server**"), which is accessed by a user ("**entity**") using PC 302 ("**user computer**") coupled to GCN 306 ("**global computer network**") to view a website ("**accessing a website**"). (Ex. 1005, 26:4-9 (user free to access any website servers on the GCN 306, including website [server] 2504), 27:52-55 ("user access a web site disposed on a GCN 306"), FIGS. 25-26 (annotated below showing server/website (green), access (yellow)); Ex. 1002, ¶75; *supra* §IX.A.1(a).)

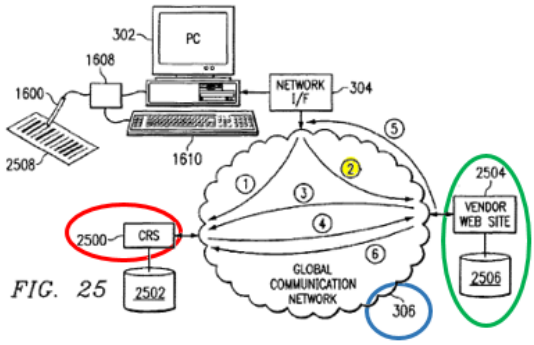


FIG. 25

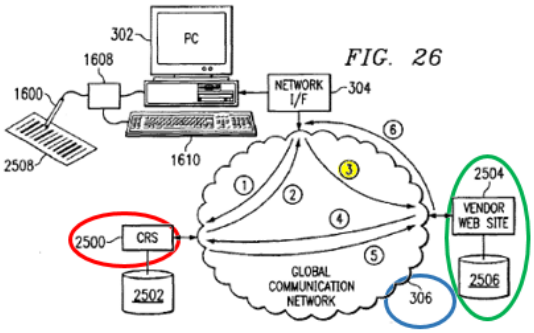


FIG. 26

Vendor website server 2504 is "**controlled by one of a plurality of unaffiliated third parties**." (Ex. 1002, ¶76.) While the'582 patent provides no discussion of an "unaffiliated" third party (Ex. 1001, Abstract, 1:1-16:40), during prosecution, the applicant explained the claimed "'unaffiliated third party' may be a website operator or another third party that has access to the partial profile information collected on a website." (Ex.1004 at 106.) Thus, website server 2504 is controlled by an "unaffiliated third party" in a manner consistent with that as explained by the applicant/PO because, e.g., the vendor is a "website operator" and also because it has access to the "partial profile information collected on a website" (as explained below). (Ex. 1002, ¶¶76-78.) Moreover, vendor website server 2504 is controlled by an "unaffiliated third party" like that claimed since *Philyaw* does not disclose or require that the website server controlled by the vendor has any affiliation with either the user PC or CRS 2500 (server 2504 is not controlled by CRS 2500 or the user). Indeed, *Philyaw* explains that "the user is then free to access **any** web site servers on the GCN 306" (Ex. 1005, 26:6-7), some (if not most) of which were

controlled by third party entities and not the user or the CRS entity given the GCN includes the Internet (2:35-36, 3:9-26, 5:15-67) (Ex. 1002, ¶¶78-79.)[3]

Philyaw also discloses "**a partial profile of the entity"** where "**the partial profile is available to one of the third parties and contains at least one profile attribute related to the entity**."[4] As explained for limitation 1(a), *Philyaw* discloses

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[3] Petitioners do not concede that a POSITA could reasonably ascertain the scope of the claims in light of how the "unaffiliated third part[y]/[ies]" is recited in claims 1 and 11 (and their dependent claims). For purposes of analysis here, Petitioners have assumed that the term encompass that explained in the prosecution history as noted above, or in the alternative, in context of "affiliation" encompassing a close relationship, such as ownership, subsidiary-type relationship, controlling relationship or the like. Under either assumption, the prior art teaches "unaffiliated third part[y]/[ies]," as claimed. Indeed, while server 2504 exchanges profile and ID information with the user PC 302 and CRS 2500, those network communications do not establish an affiliation between entities and/or the user associated with those components under such assumptions. (Ex. 1002, ¶__.)

[4] Petitioners do not concede that a POSITA could reasonably ascertain the scope of the claims in light of how the "partial profile" is recited in the claims in light of the

that CRS 2500 maintains in CRS database 2502 user profile information for specific users associated with respective unique user IDs. (*Supra* §IA.1(a); Ex. 1005, 25:34-41 (CRS database 2502 "stores the user profile information and the unique user IDs associated with each user profile"), 25:51-54, 26:1-6, 26:10-16, 26:16-19, 27:5-8, 27:22-49, 27:57-65); Ex. 1002, ¶80.) *Philyaw* also explains when a user accesses a website at vendor website server 2504, and after obtaining the profile information from CRS 2500 and presenting targeted content to the user's PC 302, server 2504 collects information associated with the user's activities on vendor website 2504, which is sent back to CRS 2500 to "update the user profile as to interests and activities which occurred while visiting the vendor server 2504." (*Id.*, 26:39-44, 26:44-56 (information concerning user interest and activities at vendor website 2504 are used to update "the information appended to the user profile located on CRS database 2502"), 27:13-21 (user website accesses are "logged and passed back to the CRS database 2502 for updating the user profile"), 28:9-15.) (Ex. 1002, ¶¶81-82.) Thus, the user ("**entity**") search information, interests, and other activities logged by vendor website 2504 is a "**partial profile of the entity**" that "**contains at least one**

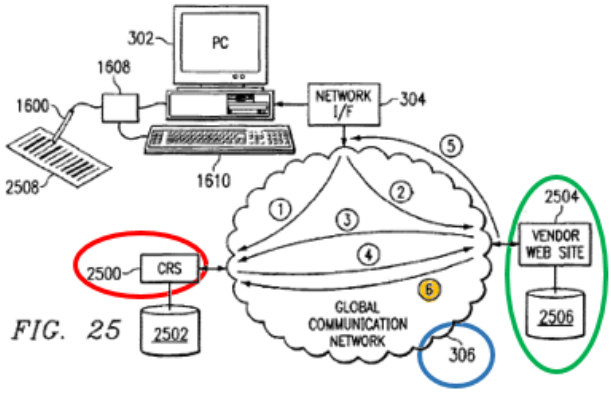
'582 patent. For purposes of analysis here, Petitioners have assumed that the term encompasses at least the examples provided in the specification, which the prior art teaches under as explained herein.

profile attribute related to the entity." (Ex. 1002, ¶83.) Any of the logged information (e.g., search information, activity information etc.) is a profile attribute that is part of the partial profile of the user given that information is used to update the full user profile stored in CRS database 2502. (*Id.*) Further, that vendor website 2504 collects such information during the user's website visit, the collected "partial profile" information is available to the vendor controlling the vendor website 2504 ("**available to one of the third parties**"). (*Id.*)

Philyaw's disclosures are consistent with examples provided in the '582 patent's description of a partial profile. (Ex. 1001, 2:35-57 (profile as a collection of attributes (e.g., person's gender, age, "**interests as reflected in his behavior**", "URL," "cookie" and "information learned about the entity described by the profile…such as the information learned about the visitor to a website from its http header"), 4:2-3, 7:24-29, 7:43-46 ("profiles are, by definition, partial"); Ex. 1005, 11:4-23 (partial profile containing commercial, demographic, and/or behavioral attributes), 12:19-36 (profiles including search/surfing habits or behavioral characteristics of visitor to a website, 12:47-49.) (Ex. 1002, ¶84.)

With this backdrop, *Philyaw* disclosed method includes the process of "**electronically receiving … a partial profile**") and "**automatically with the computer system storing the received partial profile**," as claimed. Namely, *Philyaw*'s system performs processes without user intervention that allows CRS

2500 ("**programmed computer**") to electronically receive from vendor website server 2504 ("**at least one server…**"), via GCN 306, updated user search, activity, interest, and related information regarding the user's activities at the vendor website 2504 ("**partial profile**"), and to automatically store that information by updating the user profile stored in CRS database 2502 without user intervention so that the database maintains "the most recent user profile information" to "target the user with associated advertising" on subsequent user website visits ("**automatically with the computer system storing the received partial profile**"). (Ex., 1005, 26:39-56, 27:31-21, 28:9-20, FIGS. 25-26 (below); Ex. 1002, ¶85.)



(Ex. 1005, FIG. 25 (annotated showing CRS 2500 (red) receiving partial profile (orange) from server 2504 (green)); Ex. 1002, ¶81.)

c) wherein receiving the partial profile is achieved as a result of automatic electronic URL redirection from a portion of a page of the website accessed by the user computer;

Philyaw in view of *Merriman* discloses and/or suggests this limitation. (Ex. 1002, ¶¶86-104.) *Philyaw* discloses receiving the partial profile from the vendor

website server 2504. (*Supra* §§IX.A.1(a)-(b).) *Philyaw* also explains that "upon the user exiting that site, the vendor server transmits the user activity information back to the CRS 2500" so that the user profile can be updated on CRS database 2502. (Ex. 1005, 28:9-15.) A POSITA would have understood that *Philyaw* does not limit (or provide further details) as to how or why a user would exit the vendor website 2504. (Ex. 1005, 28:7-12; *id.*, 26:39-44; Ex. 1002, ¶¶86-87.) A POSITA contemplating the implementation of *Philyaw's* systems/process would have had reason to consider known technologies/techniques relating to user (user computer/browser) exits of websites to ensure the collected user activity information is provided to CRS 2500 in a manner consistent with the goals and processes of *Philyaw*. (Ex. 1002, ¶87; Ex. 1005, Abstract, 3:16-26.)

Indeed, *Philyaw* discloses the use of known Internet-related features, such as URLs (*id.*, 5:15-46, 6:59-65, 7:22-36, 8:15-43, 8:63-66). For example, *Philyaw* discusses processes where URL information for other servers (e.g., URLs of advertiser server) is provided by to a user PC in response to the user PC submitting an initial URL in a manner consistent with URL redirection known at the time. (*Id.*, 5:34-11:9; *e.g.,* 10:46-11:9, FIGS. 5-8); Ex. 1002, ¶88.)

Thus, while *Philyaw* does not expressly describe in connection with the FIGs 25-28 configuration, CRS 2500 receiving the "partial profile" as a result of automatic electronic URL redirection from the website accessed by the user PC 302,

it would have been obvious to configure *Philyaw*'s system/process to implement such features in light of *Philyaw*'s disclosures and the state of art knowledge of a POSITA at the time, such as that provided by *Merriman*. (Ex. 1002, ¶89.) A POSITA would have been motivated to implement such a modification to compliment the way *Philyaw*'s process triggers the transmission of the user activity information ("**partial profile**") to CRS 2500 by ensuring such updates are provided when the user leaves the vendor's webpage 2504 for various reasons, including those caused by automatic URL redirection, which was a well-known and common operation/technique in Internet website browsing sessions at the time (as suggested by *Philyaw* and demonstrated by *Merriman*). (*Id.*, ¶¶89-90.) Accordingly, such a modification would have been no more than the predictable use of known technologies and techniques (URL redirection) according to their established functions, which would have led to the predictable result of *Philyaw*'s user profile tracking system triggering user profile updates for various ways a user exits a current webpage or website session. (*Id.*) *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007).)

A POSITA would have thus had reasons to consider teachings in the art relating to user exits from a webpage, and thus found *Merriman* a viable source of such guidance and teachings. (Ex. 1002, ¶90.) *Merriman* discloses methods and systems for "targeting the delivery of advertisements over a network such as the

Internet" (Ex. 1008, Abstract, 1:7-11, 1:64-2:44) using, among other things, user profile information (e.g., user ID, user IP address information, cookie information) (*id.*, 6:60-7:2, 7:45-47, 8:26-29, 8:51-56), which is similar to the features and objects contemplated by *Philyaw* (Ex. 1005, Abstract, 2:26-31, 3:15-26, 23:8-16 (profile information to target that particular user with products and services which identify with that user profile), 26:24-38, 27:2-21). Accordingly, *Merriman* is in the same field of endeavor as *Philyaw* and the '582 patent (*see e.g.,* Ex. 1005, 2:25-31; *supra* IX.A.1(a)-(b); Ex. 1001, Title, 1:62-2:7, 8:18-22, 8:44-47, 8:52-56, 25-30; Ex. 1002, ¶91), such as targeted content delivery (e.g., targeted advertising) and/or network activity monitoring (e.g., user profile generation/management), and thus the two are analogous art.[5] Thus, a POSITA would have had reason to consider the teachings/suggestions of *Merriman* when considering the implementation of the processes disclosed by *Philyaw*. (Ex. 1002, ¶91.)

A POSITA would have appreciated that *Merriman* describes Internet-based techniques for providing advertising content via web pages, such as the conventional use of banner advertisements, which were known to be provided on a portion of a web page that direct a user's computer to a different website using an associated

[5] The connection between *Merriman* and *Philyaw* is further substantiated by the fact that *Merriamn* appears on the face of *Philyaw*. (Ex. 1005, Cover.)

URL address upon selection of the banner. (Ex. 1008, 1:28-44; Ex. 1002, ¶92.) A POSITA would have also appreciated that *Merriman* recognized the need for processes to "provide targeting of advertising over networks such as the Internet" and "gather[ing] information about recipients of the advertisement." (Ex. 1008, 1:64-2:3; *id.*, 2:9-45.)

To address that need, *Merriman* discloses use of an advertising server process that provides advertisement objects, such as a banner advertisement, to a user's computer executing a browser to display a web page from a website. (*Id.*, 3:5-17.) *Merriman* explains that when a user browser 16 accesses a website 12, the website 12 sends a message 22 back to the browser that include information available at the site, "except for one or more advertising objects such as banner advertisements." (*Id.*, 3:24-33.) Instead, the website server 12 sends a link with an IP address for the computer running the advertiser server process 19, and information about the page on which the advertisement will be displayed. (*Id.*, 3:35-40.) In response, the user browser 16 transmits a message using the IP address to the advertising server process 19, including the user's IP address, a cookie (storing cookie information) and information indicating the web page that will embed the advertisement, and browser and user computer identification information. (*Id.*, 3:41-52.) Advertising server process 19 determines which advertisement to provide to the user's browser and provides a message containing the object and a unique ID for the advertiser's web

page appropriate for the advertisement. The object is then displayed on a portion of the web page on the user's browser. (*Id.*, 3:52-63.) (Ex. 1002, ¶93.)

When the user's selects the banner advertisement/object, the user's browser sends a message to advertising server process 19, which notes the address of the user computer (or other ID, such as a cookie or signature), and ***transmits back the URL of the advertiser's web page*** so that the user's web browser generates ***a message 26 to contact the advertiser's website 18***. (*Id.*, 3:64-4:8.) As explained by *Merriman*, this process ensures the advertisement server process where "know where to ***redirect the user's browser***." (*Id.*, 4:8-11.) (*Id.*, 7:15-26 (describing similar process where selection of banner advertisement results in server 19 receiving user profile information (e.g., cookie, digital signature, user ID, etc.) as a result of a redirection from a portion of the web page of the website accessed by the user browser to the advertiser's website for the selected banner.) (Ex. 1002, ¶94.)

Accordingly, a POSITA would have understood that *Merriman*'s above-discussed redirection processes describes an **automatic electronic URL redirection from a portion of a web page of the website accessed by a user computer** (e.g., selection of banner ad results in a first message to the URL of the node hosting the advertising server process 19, followed by a subsequent redirection to the URL of the server for the advertiser's website 18 for the appropriate advertisement). (Ex. 1002, ¶95.) Further, a POSITA would have understood by such

redirection, the user exits the existing web page being viewed (web page visited with banner ad) to provide for the subsequent display of the content provided by the website the user computer has been redirected (e.g., merchant website). (Ex. 1002, ¶96.)

The features disclosed by *Merriman* are consistent with URL redirection processes known at the time. (*See e.g.,* Ex. 1002, ¶97.) For instance, state of art reference *Messer* (Ex. 1006) demonstrates a POSITA's knowledge of Internet-related features in a tracking and content providing system.[6] (Ex. 1006, 1:16-2:9 (web browsers, web searching, and commerce use on the web).) *Messer* also explains the conventional use of banner advertisement(s), which were known to be provided on a web page and direct a user's computer to another website upon selection of the banner. (*Id.*, 2:21-42.) *Messer* further exemplifies such web pages were known to include articles on current events, business news, sports, personal finance, etc." and that on such a "web page, a banner ad (text link or icon) block 25, is displayed to the user promoting for example sneakers at an attractively discounted price." (Ex. 1006, 5:19-23; Ex. 1002, ¶97.) *Messer* also discloses methods that are performed by its data processing system where a user's browser is linked to a site owner via site location (HTTP) entered into the browser, where the site provides a

[6] Ex. 1006 is cited to demonstrate a POSITA's state of art knowledge at the time.

banner advertisement. (Ex. 1006, 8:44-51, FIG. 6.) Upon selection of the banner ad, the site program inputs into a user command line "the HTTP address for the Clearinghouse" and a query string of code that provides source information. (*Id.*, 8:52-57.) This process causes the user access to be "directed to the Clearinghouse server," which stores information such as the site ID, banner ID, and user. (*Id.*, 8:57-60.) "Immediately after, the Clearinghouse server places onto the USER command line, the address for the Merchant (HTTP) directing USER control to the Merchant's web page." (*Id.*, 8:61-64.) Thus, information about the product in the banner ad is "now displayed to the USER." (*Id.*, 8:64-67.) User identification information (e.g., profile information) is collected in the process of redirecting the user's web browser session. For example, clearinghouse server stores user information ("USER (X)") as a result of automatically inputting onto the USER command line the HTTP address for the Clearinghouse (Ex. 1006, 8:53-58; Ex. 1002, ¶98.)

In light of *Philyaw*, *Merriman*, and a POSITA's state of the art knowledge, a POSITA would have been motivated, and found obvious, to configure *Philyaw*'s system/process to implement the above modifications including use of known banner advertisement and associated automatic URL redirection techniques and technologies to provide more versatility to *Philyaw*'s system. For example, a POSITA would have been motivated to provide predictable ways for users to gain access to interested content, such as products and services via advertising banners

that a user can select as was known at the time (as demonstrated by *Merriman* and the state of the art (e.g., Ex. 1006)). (Ex. 1002, ¶99.) Upon recognizing and appreciating the use of such known techniques/technologies, and their relationship to user exits from a web page (to another), a POSITA contemplating *Philyaw*'s system/process, would have been motivated to trigger the sending of the user activity information ("partial profile") to CRS 2500 (and thus receiving it) in response to a user "exit" from the vendor web page caused by a URL redirection via (for example) a banner ad selection on a portion of the web page. (*Id.*) As demonstrated by *Merriman*, a banner ad was known to reside in a portion of a web page, and thus a POSITA would have appreciated and had reason to implement such features in a similar fashion to enable the vendor website 2504 to maintain the ability to promote and provide its vendor content, while also providing an avenue for achieving benefits from potential revenue that was known to be associated with hosting banner ads like that known in the art (*see e.g., Merriman* and *Messer* (Ex. 1006, FIG. 1, 5:20-25). (Ex. 1002, ¶¶99-101.)

Such a modification would have been a foreseeable way to implement known web page exits like those contemplated by *Philyaw* and resulted in performing the claimed "receiving" limitation. (Ex. 1005, 28:7-12; Ex. 1002, ¶¶102-104.) Indeed, as demonstrated above, a POSITA would have been aware of the various ways web page exits can occur, and recognized that *Philyaw* does not provide details as to how

such exits are provided or induced, or limits how they can be provided or caused. (Ex. 1002, ¶102.) Thus, a POSITA would have understood complimenting *Philyaw's* system with automatic URL redirection to another URL, as one of various ways a user exits a viewed web page being viewed to facilitate sending the partial profile information to the CRS 2500. (*Id.*) This knowledge coupled with the understanding of known URL redirections techniques via, e.g., banner advertisement technologies/processes that result in such a web page exit, would have guided and motivated a POSITA to consider and implement processes that consider and use URL redirection via, e.g., banner advertisement techniques, as a contemplated cause of a web page "exit" that results in CRS 2500 receiving the "partial profile" information from the vendor web server 2504. (*Id.*)

A POSITA would have found it obvious to configure *Philyaw*'s system as discussed above because the use of URL redirection techniques to cause an exit from a currently accessed vendor web page was one of a finite number of available and known techniques/technologies for implementing *Philyaw*'s website "exit" that triggers the sending of the "partial profile" information to CRS 2500 in order to update the user profile in the CRS database, which would have operated according to their known functionalities. (Ex. 1002, ¶103.) *KSR*, 550 U.S. at 421. Indeed, a POSITA would have appreciated *Philyaw*'s guidance via the disclosures of processes in other embodiments where URL information for other servers is

provided to a user PC in response to the user PC submitting an initial URL in a manner consistent with URL redirection, like that described by *Merriman*. (Ex. 1002, ¶103.)

Such a modification would have been within the capabilities and experience of a POSITA at the time. (*Id.*, ¶104.) A POSITA at the time would have been skilled to program and/or configure *Philyaw*'s system/process to provide such features, especially where such techniques and technologies were known and used in the art at the time (as demonstrated by *Merriman*, *Philyaw*, and the state of art (Ex. 1006)). (*Id.*) Such a straightforward implementation of known technologies/techniques (e.g., URL redirection via banner advertisement or similar partial web page links to other URL locations) to the user profile tracking system/process of *Philyaw* would have thus led a POSITA to have a reasonable expectation of success in implementing such features as discussed above. (*Id.*) *KSR*, 550 U.S. at 416.

d) automatically with the computer system electronically adding the received partial profile to a maintained profile believed to be related to the same entity;

The above-modified *Philyaw* process/system discloses and/or suggests this limitation. (Ex. 1002, ¶¶105-107.) *Philyaw* discloses "a maintained profile." For example, "the PC 302 automatically connects…through a network interface 304 to the GCN 306" to CRS 2500 that "has associated therewith a CRS database 2502 which stores the user profile information and the unique user IDS associated with

each user profile," without user intervention. (Ex. 1005, 25:34-42; *supra* §§IX.A.1(a)-(c); Ex. 1002, ¶105.)

Philyaw also discloses "… **a maintained profile believed to be related to the same entity**," as claimed. For instance, *Philyaw* discloses that each profile of a user has a "unique ID which is associated with … [the] user profile." (Ex. 1005, 25:29-34; Ex. 1002, ¶106.) The unique ID is provided to the vender server 2504, which recognizes the unique user ID as one "which is associated with the CRS 2500" to allow it to access CRS 2500 to "obtain the user profile information stored in a CRS database 2502." (Ex. 1005, 26:4-14.) CRS database 2502 "stor[es] all unique IDs and ***associated*** user profiles" (*id.*, 26:14-16) and CRS 2500 performs a matching operation in the database 2502 using the unique ID information from the vendor website 2504, to "obtain the user profile information" (*id.*, 26:16-18). The "partial profile" information (explained above) is transmitted back to CRS 2500 to "***update the user profile***," which is stored in the database 2502 for subsequent use "the next time ***the user*** accesses a different vendor website located on the GCN 306," without user intervention. (*Id.*, 26:39-46; *id,* 26:47-52.) Thus, a POSITA would have understood that the unique ID is used by the CRS 2500 to recognize the maintained profile to be related to the entity (e.g., user / user computer (PC 302) that accessed the vendor website that resulted in the partial profile to be created/collected and sent

to the CRS 2500 for updating the user profile for that user in database 2502. (Ex. 1002, ¶106.)

A POSITA would have understood that the above features described in *Philyaw* would have been implemented in the combined *Philyaw-Merriman* system/process for reasons similar to those discussed for limitation 1(c). (*Supra* §IX.A.1(c); Ex. 1002, ¶107.)

e) automatically with the computer system generating and storing an electronic record of which of the plurality of unaffiliated third parties contributed to the maintained profile particular profile attributes;[7]

The *Philyaw-Merriman* combination discloses and/or suggest this limitation. (Ex. 1002, ¶¶108-119.) As explained, *Philyaw* discloses when the user exits the website, the CRS 2500 receives "the user activity information" and "updates the user profile associated with that particular user ID/bar code and stores that information on CRS database 2502." (Ex. 1005, 28:7-15.) For instance, "***search information***" logged by vendor website 2504 is logged and sent back to CRS 2500 "to update the user profile as to ***interests and activities which occurred while visiting the vendor***

[7] For purposes of this proceeding, Petitioners assume "maintained profile particular profile attributes" encompasses the "maintained profile" recited in limitation 1(d). Petitioners each reserves the right to challenge the definiteness of this phrase (and written description support) in other proceedings.

server 2504," and "[t]hat information is then stored in the CRS database 2502 for subsequent use the next time the user access a different vendor web site." (*Id.*, 26:39-47.) This allows "user interests and activities" to be "stored" at CRS database 2502 on an "on-going basis, such that as the ***user's activities and interest change***, so does the information appended to the user profiled located on CRS database 2502, and these changes are provide to any subsequent web site servers" searched by the user. (*Id.*, 26:47-56.) (Ex. 1002, ¶108.)

Although *Philyaw* does not expressly state that in updating the user profile in CRS database 2502, CRS 2500 "**automatically … generat[es] and stor[es] an electronic record of which of the plurality of unaffiliated third parties contributed to the maintained profile particular profile attributes**," it would have been obvious to configure *Philyaw*'s system to provide such functionalities in the combined *Philyaw-Merriman* system/process discussed above. (Ex. 1002, ¶109.) *Merriman* discloses in response to the user selecting the banner advertisement in a visited web page, advertisement server 19 "sends the redirect message causing the user's browser to receive the URL for the advertiser's website based upon data stored in the server," which it has "[s]ince [it] previously recorded which advertisement was sent to that IP address [of the user computer]." (Ex. 1008, 7:15-26.) *Merriman* describes logging that the advertisement was selected (based on the IP address) and "***the page on which the advertisement was seen based upon the click through***,"

which can be logged in a later process. (*Id.*, 7:26-31.) Indeed, as explained for limitation 1(c), *Merriman* discloses that website server 12 sends a link with an IP address for the computer running the advertiser server process 19, and ***information about the page on which the advertisement will be displayed***. (*Id.*, 3:35-40.) In response, the ***user browser 16 transmits a message*** using the IP address ***to the advertising server process 19, including the user's IP address, a cookie (storing cookie information) and information indicating the web page that will embed the advertisement***, and browser and user computer identification information. (*Id.*, 3:41-52.) (Ex. 1002, ¶¶110-111.)

Merriman also discloses that various processes of the advertising server process 19 are performed based on the information stored about users and their online activities on database 54. (*Id.,* 5:4-9.) For instance, *Merriman* explains that database 54 may comprises of multiple databases such as databases 3A-3C as shown in FIGS. 3A-3C. (Ex. 1008, FIGS. 3A-3C.) (Ex. 1002, ¶111.)

FIGS. 3A-3B (below) of *Merriman* describes that the structure of database 3A including information related to a user, the user's computer (e.g. IP address), and the user online activities (e.g. ads that the user clicked on) are stored (*e.g.*, Ex. 1008, FIGS. 3A-3B (annotated below showing ads clicked on (*e.g.* user attributes) (red) and PAGES ADS SEEN ON ("record of third part(ies) that provided the ads") (blue), 4:43-64.)

FIG. 3A

USER ID	IP ADDRESS	DOMAIN TYPE	TIME ZONE	LOCATION	SIC	ADS SEEN	ADS CLICKED ON	PAGES ADS SEEN ON

FIG. 3B

AD ID	START DATE	END DATE	TOTAL VIEWED	SIC's	TARGET NO.	PRIOR CLICKED ON's	PAGES ADS SEEN ON

(Ex. 1008, FIGS. 3A-3B (annotated); Ex. 1002, ¶112.)

Merriman thus describes processes where advertisement server 19 stores information of which web page (and thus necessarily the website) that contributed to the updating of profile information (received via the cookie information and user IP address) at advertising server 19 via the message sent from the user browser 19. (Ex. 1002, ¶113.)

In light of *Merriman* in the context of *Philyaw*'s teachings, e.g., for reasons similar to those above for limitation 1(c), a POSITA would have been motivated and found obvious to modify the *Merriman-Philyaw* combined system/process (*see* §IX.A.1(c)) such that CRS 2500 automatically generates and stores an electronic record in CRS database 2502 identifying the vendor ("**unaffiliated third party**") that controlled vendor website 2504 that provided the updated user profile information ("**partial profile**") that was used to update the user profile ("**maintained profile**") in CRS 2502, without user intervention. (Ex. 1002, ¶114.)

A POSITA would have appreciated that such a modification would have allowed CRS 2500 to maintain a record of the websites visited by the user and associated entities hosting/controlling those sites, which would complement *Philyaw*'s features of maintaining "the most recent user profile information from which it can extract…to target the user with associated advertising" (Ex. 1005, 27, 13-21) "as the user visits various web sites" on GCN 306 (*id.*, 28:12-20). (*See also id.*, 26:44-54.) (Ex. 1002, ¶115.) Such a modification would have assisted and/or complimented the targeted advertising features of *Philyaw* because the vendor and website information would have provided additional information describing the user activities and interests during website visits and searches (e.g., user interests in particular vendor(s) and products/services offered, such as a computer monitor vendor (Ex. 1005, 26:28-3) or a travel services vendor (*id.*, 26:34-38.) A POSITA would have understood that this additional information would have assisted *Philyaw*'s processes/system to refine the user profile used by CRS 2500 that is used to assist in targeted advertisements/promotions. (*Id.*, 26:22-38, 27:16-21; Ex. 1002, ¶115.)

Therefore, a POSITA would have been motivated by the teachings of *Philyaw* and *Merriman* to modify the system/process so that vendor website 2504 sends identification information of the vendor, vendor website/page visited by the user when providing the user activity information to CRS 2500. (Ex. 1002, ¶116.) Such

a modification would have been a known and foreseeable way to implement the user profile features disclosed by *Philyaw.* (*Id*.) Indeed, as demonstrated by *Merriman*, a POSITA would have been aware of processes to share web page/site information with user profile data (e.g., via the cookie, signature, user ID) for facilitating targeted advertising (*e.g.*, Ex. 1008, 7:15-31), which would complement the types of information *Philyaw*'s vendor website 2504 provides to CRS 2500 for use in maintaining current user profile data for targeted advertising. (Ex. 1002, ¶117.)

Accordingly, a POSITA would have found it obvious to configure *Philyaw*'s system as discussed above because including additional information (e.g., vendor identification) with the user activity data provided to CRS 2500 would assist in understanding the online behavior of a user (e.g., website visits, interests in product/services providers). (Ex. 1002, ¶118.) Moreover, a POSITA would have appreciated that such a modification would have been a predictable way of designing and implementing the user profile and target advertising features provided by *Philyaw*'s system/process that would have been well within the capabilities and experience of a POSITA at the time. (*Id.*, ¶119.) The skills of a POSITA at the time would have enabled such a person to program and/or configure *Philyaw*'s system/process to provide such features, especially where such techniques and technologies were known and used in the art at the time (as demonstrated by *Merriman* and *Philyaw*). (*Id.*) A POSITA would have thus found such a modification

to be a straightforward implementation of known technologies and techniques (e.g., tracking visited websites and associated vendor information providing the website/page) to the user profile tracking system/process of *Philyaw*. Thus, for these additional reasons, a POSITA would have had a reasonable expectation of success in implementing such a modification. (*Id.*) *KSR*, 550 U.S. at 416.

f) wherein the maintained profile, including the added partial profile, comprises data used in targeting third-party advertisements to the user computer over the global computer network.

The *Philyaw-Merriman* combination discloses and/or suggests this limitation. (Ex. 1002, ¶¶120-121.) As explained above, *Philyaw* discloses that the user profile stored in CRS 2504 and updated with user activity information (and, as modified in view of *Merriman* in limitation 1(e)) is used in targeted advertising to be used in "any subsequent visits by the user to another web site." (*See supra* §§IX.A.1(a)-(e); Ex. 1005, 26:22-38, 26:44-54, 27:13-21.) *Philyaw* makes clear that such "various web sites [are] disposed on the networks 306" (*i.e.*, GCN 306 ("**global computer network**")). (*Id.*, 27:15-18.) A POSITA would have understood in context of *Philyaw*'s disclosures, and consistent with that discussed above for limitation 1(b), the subsequent websites would be similar to vendor website 2504 in that they would be operated and controlled by third party entities and would target advertisements to the user in the same manner as that described by *Philyaw*'s processes (*see e.g., id.*, 26:1-28:30, FIGS. 25-28; Ex. 1002, ¶121.) Thus, a POSITA would have been

motivated to implement within the *Philyaw-Merriman* combined system/process features/processes that used the maintained user profile data (including the added "partial profile" and vendor identification information provided by vendor website 2504 (*supra* §§IXA.1(d)-(e)), in targeting third-party advertisements (subsequent vendor targeted website advertising) to the user computer (PC 302) over the global computer network (GCN 306), like that claimed. And for reasons above and those similar to that explained above for limitations 1(c)-(e), such a skilled person would have had a similar motivation and reasonable expectation of success in implementing such a modification. (Ex. 1002, ¶121.)

2. Claim 9 – The method of claim 1 further comprising automatically with the computer system selecting profile attributes from the maintained profile based on the source thereof.[8]

The *Philyaw-Merriman* combination discloses and/or suggests the limitations of claim 9 and renders the claim obvious. (Ex. 1002, ¶¶122-127.) *Philyaw* explains:

> The CRS 2500, upon receiving the unique ID information from the vendor web site 2504, performs a ***matching operation in the database 2502 to obtain the user profile information***. … Upon receiving the user profile information from CRS 2500, the

[8] Petitioners each reserves the right to challenge the definiteness and other issues of this claim in other proceedings. For purposes of this proceeding, Petitioners assume "the source thereof" encompasses the source of the profile attributes.

> vendor web site server 2504 processes the information ***to extract that user profile information which it deems useful for targeting that individual with various advertisements or promotions***.

(Ex. 1005, 26:15-28.) (*See also id.*, 27:60-63 ("The CRS 2500 performs a ***matching operation*** with the CRS database 2502 to obtain a ***match between the unique user ID/bar code and the user profile information*** stored therein").) And as explained for claim 1, *Philyaw* describes updating the user profile on an on-going basis to facilitate targeted advertising as the user visits subsequent websites on GCN 306. (*See* §§IX.A.1(b), IX.A.1(e)-(f); Ex. 1002, ¶123.)

Philyaw discloses automatically with a computer system (e.g. CRS 2500) selecting profile attributes from the maintained profile where the CRS 2500 obtains profile information of a user from the CRS database 2502 and provides that information to the vendor's web server for targeted advertisement without user intervention. (Ex. 1005, 26:1-28, 27:2-21; Ex. 1002, ¶124.) The stored user profile is continuously updated based on user activity information provided by a vendor website server visited by the user. (*Id.* 26:39-56, 27:13-21.) As discussed above (*See* IX.A.1.e), a POSITA would have been motivated to maintain a record of which of plurality of unaffiliated third parties (e.g. vendor website server) contributed to the stored maintained profile. (*See* IX.A.1.e; Ex. 1002, ¶124.) A POSITA would have understood in context of *Philyaw*'s disclosures, and consistent with that discussed

above, a user would have been able to, and could visit the same website, which previously contributed to the user profile, at a later time. (Ex. 1002, ¶125.) Moreover, *Merriman* discloses maintaining a database including information regarding which "advertisements a user has expressed interest in and which pages the user was viewing when the user clicked through along with other information" for facilitating target advertising. (Ex. 1008, 4:43-55.) Thus, for reasons similar to those discussed for claim 1, a POSITA would have been motivated, and found obvious, to configure the combined *Philyaw-Merriman* system/process to automatically select the user profile information (e.g. profile attributes included in the stored user profile) for subsequent sending to a requesting vendor website based on the source of profile attributes in the user profile (e.g., the vendor website that previously provided one or more profile attributes that resulted in the updated profile). (Ex. 1002, ¶125.) A POSITA would have appreciated that such a modification would have been a predictable way of enabling CRS 2500 to further tailor the profile information that it provides the vendor's web server 2504 in *Philyaw*'s system/process for targeted advertising. (*Id.*, ¶¶125-126) Such a design and configuration would have been well within the capabilities and experience of a POSITA at the time. (*Id.*)

In addition, to the extent the "source" in this claim limitation is interpreted to encompass the user or user computer that provided the profile attributes, the

Philyaw-Merriman combination discloses and/or suggests the limitation. (Ex. 1002, ¶127.) *Philyaw* discloses that the user provides personal information and a POSITA would have understood such information is used to form the user's profile (including the user ID which is associated with the user and the user PC operated by the user) (e.g., Ex. 1005, 25:24-34) and throughout the process, the user activities that are used to generate the user activity information (profile attributes) are provided by the vendor website server 2504 to CRS 2500 for updating the stored profile (*id*., 26:39-56, 27:2-21; Ex. 1002, ¶127.) A POSITA would have understood the user/user PC is a "source" of profile attributes, from which the user entity has provided the user information (including user ID) that are part of, and are associated with, the user profile that is updated with the user activity information when visited a webpage. (Ex. 1002, ¶127.) Thus, a POSITA would have understood where CRS 2500 uses the unique ID associated with a user to identify the user profile stored in CRS 2502 and send user attributes back to the vendor for targeted advertisement, CRS 2500 automatically selecting profile attributes based on the source of the attributes, like that claimed (*Id.*)

3. Claim 11

a) A tangible, non-transitory data storage medium comprising indicia of instructions for a processor to perform a method of collecting profiles of Internet-using

entities, the method comprising:[9]

To the extent limiting, *Philyaw* discloses the preamble of claim 11. (Ex. 1002, ¶¶128-138.) The analysis for claim 1 above, and claim 11 below, explain how *Philyaw* discloses a method including steps as recited in claims 1 and 11. (*Supra* §§IX.A.1.a-f; *infra* §§IX.A.3.b-f.)[10] *Philyaw*'s processes are performed by a computer-based system including processor(s) that execute software to perform the disclosed processes. (Ex. 1005, Figs. 3, 13, 25-28 (showing computer-based components such as PC 302, CRS 2500, etc.), 25:24-28:30, Abstract, 2:27-31, 3:15-26 (describing system of Figs. 25-26 in terms of software applications, processors, memory, etc.).) *Philyaw* further explains that its processes may be implemented as instructions stored using machine-readable media (e.g., suitable forms of volatile or non-volatile memory), which may be read/executed by one or more processors. (Ex.

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[9] Petitioners do not concede that a POSITA could reasonably ascertain the scope of the claims in light of how the "indicia of instructions" is recited in the claims. For purposes of analysis here, Petitioners have assumed that this limitation encompasses a non-transitory data storage medium comprising instructions for a processor to perform the method as recited, which the prior art teaches as explained herein.

[10] PO cross-references its infringement contentions regarding claim 1's limitations in its contentions for claim 11. (Ex. 1010, 36-37.)

1005, 26:57-65, 27:22-45.) *Philyaw* system includes a personal computer device (e.g., user PC 302, vendor's site/server 2504 (Figs. 25-26)) that can interoperate with a remotely located computing device (e.g., CRS 2500), which can provide features (discussed further in connection with the programmed computer system), such as a user profile (relating to the user online activities and interests (Figs. 25-28)). (§§IX.A.1.b, IX.A.3.b; Ex. 1002, ¶¶129-130.) A POSITA would have understood the memory associated with CRS 2500 would be a "non-transitory computer-readable storage medium" that stores instructions executed by one or more processors in the server to perform the process as described above for claim 1 and below for claim 11. (Ex. 1002, ¶131.) (*See supra* §IX.A.1; *infra* §§IX.A.3.b-f.) Further, to the extent not disclosed, a POSITA would have been motivated (And found obvious) to implement in CRS 2500 a memory having computer-executable instructions that perform the processes discussed for claim 1 (and claim 11 below). (Ex. 1002, ¶132.) A POSITA would have had reasons to implement such features with a reasonable expectation of success given it would have been predictably achieved through the use of known computer-based design skills and technologies, consistent with the discussions in *Philyaw* and the '582 patent. (Ex. 1002, ¶¶132-133; *supra* §IX.A.1; *infra* §§IX.A.3.b-f; Ex. 1001, 6:4-7:19.)

b) electronically receiving at a programmed computer system coupled to a global computer network, from at least one server controlled by one of a plurality of

unaffiliated third parties, a partial profile of an entity that uses a user computer coupled to the global computer network and accessing a website, which partial profile is available to one of the third parties and contains at least one profile attribute related to the entity, and automatically with the computer system storing the received partial profile;

Philyaw discloses this limitation for the same reasons above for limitations 1.b and 11.a. (*Supra* §§IX.A.1.b, IX.A.3.a; Ex. 1002, ¶134.)

c) wherein receiving the partial profile is achieved as a result of automatic electronic URL redirection from a portion of a page of the website accessed by the user computer;

Philyaw in view of *Merriman* discloses and/or suggests this limitation for the same reasons above for limitations 1.c and 11.a-b. (*Supra* §§IX.A.1.c, IX.A.3.a-b; Ex. 1002, ¶135.) For reasons similar to those explained for limitation 1.c, a POSITA would have been motivated to configure *Philyaw-Merriman* to configure the software instructions executed by CRS 2500 to perform the processes discussed for limitation 1.c. (§IX.A.1.c; Ex. 1002, ¶135.)

d) automatically with the computer system electronically adding the received partial profile to a maintained profile believed to be related to the same entity;

Philyaw in view of *Merriman* discloses and/or suggests this limitation for the same reasons above for limitations 1.d and 11.a-c. (*Supra* §§IX.A.1.d, IX.A.3.a-c; Ex. 1002, ¶136.)

e) automatically with the computer system generating and storing an electronic record of which of the plurality of unaffiliated third parties contributed to the maintained profile particular profile attributes;

Philyaw in view of *Merriman* discloses and/or suggests this limitation for the same reasons above for limitations 1.e and 11.a-d. (*Supra* §§IX.A.1.e, IX.A.3.a-d; Ex. 1002, ¶137.)

f) wherein the maintained profile, including the added partial profile, comprises data used in targeting third-party advertisements to the user computer over the global computer network.

Philyaw in view of *Merriman* discloses and/or suggests this limitation for the same reasons above for limitations 1.f and 11.a-e. (*Supra* §§IX.A.1.f, IX.A.3.a-e; Ex. 1002, ¶138.)

4. Claim 13 - The data storage medium of claim 11 wherein the computer system electronically adding the received partial profile to a maintained profile believed to be related to the same entity comprises the computer system adding the received partial profile to a maintained profile believed related to the same entity on account of the received partial profile and the maintained profile being related to the same user computer.

Philyaw in view of *Merriman* discloses and/or suggests this limitation. (Ex. 1002, ¶¶139-142.)

Philyaw discloses a user at PC 302 installs software that tracks the user's habits when accessing websites on GCN 306. (Ex. 1005, 25:25-28.) "When initially

configuring the software on PC 302, the user keys in…information such as the user name, address, and other personal information which uniquely identifies the user with the software," and thus "a unique ID [] is associated with the particular software that is loaded on the PC 302." (Ex. 1005, 25:28-34; 14:1-12; Ex. 1002, ¶140.)

CRS database 2502 stores the user profile information and associated unique user ID(s), which is a "maintained profile" of a user. (Ex. 1005, 25:40-42; Ex. 1002, ¶141.) (*Supra* §§IX.A.1, IX.A.3.) Upon connecting to the vendor's web server 2504, the user PC provides the vender's web server with the unique ID, which the vendor web server recognizes as one "which is associated with the CRS 2500." Server 2504 uses the ID to request the profile information for the user stored in the CRS database 2052. (Ex. 1005, 26:9-14.) CRS 2500 "performs a ***matching*** operation in the database 2502 to obtain the user profile information." (*Id.*, 26:15-19.) The profile information is provided by to server 2504 where it is used "for targeting that individual with various advertisements." (*Id.*, 26:20-27.) User search information while visiting the vendor's website 2504 are logged and sent back to CRS 2500 for subsequently updating the user profile stored in database 2505 as to the user's interests and activities which occurred while visited the vendor server 2405. (*Id.,* 26:38-56). The unique ID associated with the user profile in database 2502 (**maintained profile**), the unique ID used by CRS 2500 to recognize the stored profile in the "matching operation," and the unique ID associated with the updated

user activity/interest/search information (**partial profile**) relate to the same user PC, and thus the partial profile is added to the maintained profile for the user in CRS 2502 on account the two profile information relates to the "**same user computer**" as claimed. (*Id.,* 26:20-21, 26:39-56; §§IX.A.1(d), IX.A.3(d); Ex. 1002, ¶141.)

The above-noted features would have been implemented in the combined *Philyaw-Merriman* system/process for reasons similar to those discussed for limitations 1(c)-1(d) (and 11(c)-(d)) (*Supra* §IX.A.1.c; §IX.A.3.c; Ex. 1002, ¶142) so that upon receiving the "partial profile" from the vendor website server for a given user, the CRS 2500 perform processes to use the unique ID information to determine the user profile which corresponds to the user PC 302 in order to update the profile in a manner consistent with the described by *Philyaw* "on account" that both partial profile and the maintained profile belongs to the same user/user PC. (Ex. 1002, ¶142.)

5. Claim 14 - The data storage medium of claim 13 wherein the computer system determines that the received partial profile and the maintained profile are related to the same user computer by automatically reading a cookie on the user computer.

As discussed above (*supra* §IX.A.1), *Philyaw*'s system performs processes that associate a unique ID with the software stored on the user computer and user profile information (e.g., name address and "other personal information") which "stores the user profile information and the unique user IDs associated with each

user profile" on the CRS database 2502. (Ex. 1005, 25:28-24; 34-41.) *Philyaw* further describes that the user online activities at an accessed vendor website are logged and transmitted back to the CRS 2500 to "update the user profile as to interests and activities which occurred while visiting the vendor server 2504" to be stored on database 2502. (*Id*., 26:39-47.) (Ex. 1002, ¶144.)

While *Philyaw* does not expressly disclose the CRS 2500 determining that the received partial profile and the maintained profile are related to the same user computer by automatically reading a cookie on the user computer, it would have been obvious to implement such features like those claimed. A POSITA would have been motivated and found obvious to modify the *Philyaw-Merriman* combined system/process such that CRS 2500 is configured to determine the received partial profile and maintained profile are related to the same user computer by automatically reading a cookie on the user computer, like that claimed. (Ex. 1002, ¶143.)

For example, a POSITA would have been motivated in light of *Philyaw* and *Merriman* (and state of art knowledge at the time) to modify the combined system/process such that CRS 2500 uses cookie technology to facilitate placement of, and subsequent use of, a cookie on the user PC 305 to help facilitate verification of the partial profile information collected from the vendor website with the user profile information stored in database 2502 (*see* §IAX.A.3) to ensure correct updated profile information is attributed to the right/proper user in CRS 2500, which would

help ensure accurate/effective target advertisement processes, and do so without user intervention. (Ex. 1002, ¶145.)

A POSITA would have been motivated to implement such features in light of *Philyaw*'s goals of providing accurate and updated profile information to promote meaningful targeted advertising (Ex. 1005, 26:20-56, 27:8-21) and the well-known use of cookies in the art. Indeed, while *Philyaw* does not explicitly discuss the CRS 2500 reading cookies stored on the user PC, *Philyaw* does describe features where the user is provided with a unique ID that is stored on the user PC (e.g. Ex. 1005, 12:34-37) and accessible "by a remote location as a 'cookie' which is information that is stored in the PC" and "accessible location is actually accessible by the remote program running on a remote node." (*Id.* 12:37-42.) (*See also id.*, 14:1-6 (send ID of computer of user to the host, which is "basically, as described hereinabove, a cookie in the computer which is accessed by the program when transmitting to the host).) Moreover, as mentioned, *Merriman* also describes the known use of cookies in a targeted advertisement system. For instance, *Merriman* discloses methods and systems for "targeting the delivery of advertisements over a network such as the Internet" (Ex. 1008, Abstract, 1:7-11, 1:64-2:44) using, among other things, user profile information (e.g., user ID, user IP address information, cookie information). (*Id.*, 6:60-7:2, 7:45-47, 8:26-29, 8:51-56.) (*Id.*, 5:10-32 ("If a cookie was detected, then the cookie contains the user's identification number that can be accessed in the

database"); Ex. 1002, ¶146.) A POSITA would have thus appreciated that *Merriman* describes processes to "provide targeting of advertising over networks such as the Internet" and "gather[ing] information about recipients of the advertisement" such as the information stored on a cookie stored on a user PC. (Ex. 1008, 1:64-2:3, 2:9-45; Ex. 1002, ¶147.) Indeed, *Merriman* explains when a user clicks through an advertisement presented on a website, the user's browser 16, transmits a message 23, which typically includes the user's IP address, a cookie if the browser 16 is cookie enabled, and stored cookie information, to the server 19. (Ex. 1008, 3:41-46.) (Ex. 1002, ¶147; *see also* Ex. 1001, 2:63-3:1.)

In light of *Philyaw-Merriman*, a POSITA would have been motivated, and found obvious, to configure *Philyaw-Merriman*'s system/process to allow CRS 2500 to provide a cookie to the user PC 302 that enables CRS 2500 to later access automatically to verify that user's identity in connection with the stored user profile and the received partial profile(s) associated with the user visiting a vendor's website, as explained above. (Ex. 1002, ¶138.) In doing so, a POSITA would have been motivated to configure the modified *Philyaw-Merriman* system/process to determine without user intervention that the user partial profile information received and the stored information for a user profile belong to the same user by accessing a cookie stored on the user PC (provided by CRS 2500). Doing so would have provided an efficient way, using known techniques and technologies, for CRS 2500

to confirm that the updated profile information for the user relates to the same user (and associated profile), thus improving the accuracy of the profile information stored in the CRS database for that user, which facilitates the use of relevant targeted advertisements to that user. (Ex. 1002, ¶149.)

Such a modification would have been a straightforward implementation of known technologies and techniques (e.g., use of cookies to obtain identification information regarding the user/PC 302) for verifying information pertaining to the same user for updating the user profile in a manner consistent with the tracking system/process of the above-discussed *Philyaw-Merriman* system. The use of such known processes/technologies would have been within the capabilities/knowledge of a POSITA at the time, especially since *Philyaw* and *Merriman* disclose the use of cookies for obtaining PC/user-related information for access by a remote node. (Ex. 1005, 12:34-42; Ex. 1008, 3:41-46). Thus, a POSITA would have had a reasonable expectation of success in implementing such a modification. (*Id*.) (Ex. 1002, ¶¶150-151.) *KSR*, 550 U.S. at 416.

6. Claim 15 - The data storage medium of claim 11 wherein the indicia of instructions instruct the processor to perform a method that further comprises: automatically with the computer system electronically maintaining an electronic record of which unaffiliated third party contributed, to the

maintained profile, the profile attributes used in targeting the advertisements.

Philyaw in view of *Merriman* discloses and/or suggests this limitation. (Ex. 1002, ¶¶152-158.) As explained, *Merriman* discloses maintaining an electronic record of web pages where a user saw the ads, and/or the user clicked on. (*Supra* §IX.A.1(e); Ex. 1008, FIGS. 3A-B; *id.*, 4:44-64; Ex. 1002, ¶153.) *Merriman* also discloses that various processes of the advertising server process 19 are performed based on the information stored about users and their online activities on database 54. (*Id.,* 5:4-9.) For instance, *Merriman* explains that database 54 may comprises of multiple databases such as databases 3A-3C as shown in FIGS. 3A-3C. (Ex. 1008, FIGS. 3A-3C.) In connection with FIGS. 3A-3B, *Merriman* describes that the structure of database 3A including information related to a user, the user's computer (e.g. IP address), and the user online activities (e.g. ads that the user clicked on) are stored (*e.g.*, Ex. 1008, FIGS. 3A-3B (annotated for limitation 1(e) (*supra* §IX.A.1(e)) showing ads clicked on (*e.g.* user attributes) (red) and PAGES ADS SEEN ON ("record of third part(ies) that provided the ads") (blue), 4:43-64; Ex.1002, ¶154.) Accordingly, *Merriman* describes processes where advertisement server 19 stores information of which web page (and thus necessarily the website) that contributed to the updating of profile information. (Ex. 1002, ¶154.)

Thus, a POSITA would have been motivated and found obvious to modify the *Philyaw-Merriman* combined system/process (*see* §IX.A.3(c)) such that CRS 2500

automatically generates and stores an electronic record in CRS database 2502 without user intervention that identify the vendor ("**unaffiliated third party**") that controlled the vendor website 2504 that provided the updated user profile information ("**partial profile**") that was used to update the user profile ("**maintained profile**") in CRS 2502. (Ex. 1002, ¶155.)

A POSITA would have appreciated a modification would have allowed CRS 2500 to maintain a record of the websites visited by the user and associated entities hosting/controlling those sites, which would facilitate and complement *Philyaw*'s goal of maintaining "the most recent user profile information from which it can extract…to target the user with associated advertising" (Ex. 1005, 27, 13-21) "as the user visits various web sites" on GCN 306 (*id.*, 28:12-20). (*See also id.*, 26:44-54.) (Ex. 1002, ¶156.) Such a modification would assist and/or improve the targeted advertising features of *Philyaw* because the vendor and website information would have been additional information describing the user activities and interests during website visits and searches (e.g., user interests in particular vendor(s) and products/services offered, such as a computer monitor vendor (Ex. 1005, 26:28-3) or a travel services vendor (*id.*, 26:34-38.) (Ex. 1002, ¶157.) A POSITA would have understood that this additional information would help refine user profile used by CRS 2500 that is used to assist in targeted advertisements/promotions. (*Id.*, 26:22-38, 27:16-21.). Thus, for reasons above, and those explained for limitation 1(e)

(§IX.A.1(e)), a POSITA would have found it obvious to configure *Philyaw*'s system as discussed above because including additional information (e.g., vendor identification) with the user activity data provided to CRS 2500 would assist in understanding the online behavior of a user (e.g., website visits, interests in product/services providers). (Ex. 1002, ¶157.) Moreover, a POSITA would have appreciated that such a modification would have been a predictable way of designing and implementing the user profile and target advertising features provided by *Philyaw*'s system/process that would have been well within the capabilities and experience of a POSITA at the time. (*Id.*, ¶158.) The skills of a POSITA at the time would have enabled such a person to program and/or configure *Philyaw*'s system/process to provide such features, especially where such techniques and technologies were known and used in the art at the time (as demonstrated by *Merriman* and *Philyaw*). (*Id.*) A POSITA would have thus found such a modification to be a straightforward implementation of known technologies and techniques (e.g., tracking visited websites and associated vendor information providing the website/page) to the user profile tracking system/process of *Philyaw*. Thus, for these additional reasons, a POSITA would have had a reasonable expectation of success in implementing such a modification. (*Id.*) *KSR*, 550 U.S. at 416.

7. Claim 19 - The data storage medium of claim 11 wherein the indicia of instructions instruct the processor to perform a method that further comprises: automatically with the computer system selecting profile attributes from the maintained profile based on the source thereof. [11]

Philyaw in view of *Merriman* discloses and/or suggests the limitations of claim 19 for the same reasons above for claims 9 and 11. (*Supra* §§IX.A.2, IX.A.3; Ex. 1002, ¶159.)

8. Claim 20 - The data storage medium of claim 11 wherein the indicia of instructions instruct the processor to perform a method that further comprises: automatically with the computer system electronically reading a cookie previously stored on the entity's computer, as a result of the URL redirection.

Philyaw-Merriman discloses and/or suggests this limitation. While *Philyaw* does not expressly disclose CRS 2500 automatically reading a cookie previously stored on the user PC 302 ("**entity's computer**") as a result of the URL redirection (as discussed above for limitation 11(c)), a POSITA would have been motivated (and found obvious) to modify the *Philyaw-Merriman* combined system/process to implement such features like that claimed in claim 20. (Ex. 1002, ¶¶160-168.)

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[11] Petitioners each reserves the right to challenge the definiteness and other issues of this claim in other proceedings. For purposes of this proceeding, Petitioners assumes "the source thereof" encompasses the source of the profile attributes.

First, a POSITA would have been motivated for reasons similar to those described above for claim 14, to configure the *Philyaw-Merriman* combined system/process to allow CRS 2500 to provide a cookie on the user PC 302 for subsequent access for identification/verification purposes without user intervention. (*See supra* §IX.A.5; Ex. 1002, ¶161.) As explained, both *Philyaw* and *Merriman* describe the known use of cookies for collecting information from a user computer by a remote node in target advertisement-related systems/applications. (Ex. 1008, Abstract, 3:24-63, 1:7-11, 1:64-2:45, 3:41-46, 6:60-7:2, 7:45-47, 8:26-29, 8:51-56; Ex. 1005, Abstract, 2:26-31, 3:15-26, 12:32-42, 14:1-6, 23:8-16, 26:24-38, 27:2-21.)

Further, the analysis for claim limitations 1(c), 11(c) explain why it would have been obvious to a POSITA to configure the *Philyaw* process/system in light of *Merriman* to implement process to receive the partial profile from the vendor website server as a result of automatic electronic URL redirection from a portion of the page of the website that is accessed by the user PC 302. (*Supra* §§IX.A.1(c), IX.A.3(c); Ex. 1002, ¶162.) As explained, a POSITA would have appreciated that *Philyaw* discloses processes where URL information for other servers (e.g., URLs of advertiser server) is provided to a user PC in response to the user PC submitting an initial URL in a manner consistent with URL redirection. (*Id.*; Ex. 1005, 5:34-11:9; *e.g.,* 10:46-11:9, FIGS. 5-8); Ex. 1002, ¶162.)

Although *Philyaw* does not expressly describe in connection with the Figure 25-28 configurations that CRS 2500 receives the "partial profile" from the vendor website server as a result of automatic electronic URL redirection, it would have been obvious to configure the *Philyaw-Merriman* system/process to implement such features in light of *Philyaw*'s and *Merriman*'s disclosures and the state of art knowledge of a POSITA at the time. (Ex. 1002, ¶163.)

For example, for reasons similar to those explained for claims 14 and limitations 1(c), 11(c), a POSITA would have appreciated the well-known uses and benefits of installing a cookie on user computers, and thus done so with user PC 302 for subsequently and automatic access by CRS 2500 to obtain user identification information for confirmation that the user/PC 302 who/that accessed the web page/site is associated with the updated partial profile information that was provided by the vendor website in response to such access (as explained for claims 1 and 11). (*Supra* §§IX.A.1, IX.A.3, IX.A.5; Ex. 1002, ¶164.) As further explained for claim 14, a POSITA would have found advantages in using common technologies (e.g., cookie technologies) to provide CRS 2500 access to such information from the user PC 302 in such a manner because it would have complemented *Philyaw*'s goal of maintaining "the most recent user profile information from which it can extract user information to target the user with associated advertising" (Ex. 1005, 27:13-21) "as the user visits various web sites" on GCN 306 (*id.*, 28:12-20). (*See also id.*, 26:44-

54.) (Ex. 1002, ¶165.) A POSITA would have understood that CRS 2500, as a remote node, would have been configured to access the cookie it previously placed on the user computer as was known. Moreover, a POSITA would have had reason to configure the combined process to perform such processes in response to the URL redirection features implemented in the *Philyaw-Merriman* combined process (as discussed above for limitations 1(c), 11(c)) in order to initiate automatic verification processes as noted. Doing so would have allowed CRS 2500 to access the unique ID assigned to the user for verifying/matching the identity of the user with the user profile information to ensure accurate updating of the profile information stored in CRS database 2502 for that particular user/PC 302. (Ex. 1002, ¶165.)

A POSITA would have been motivated to implement such features for reasons similar to those discussed above for limitations 1(c), 11(c) and claim 14. Indeed, a POSITA would have appreciated such a configuration would have provided *Philyaw*'s process with the added assurance that CRS 2500 provides accurate profile information for a respective user to the vendor website 2504. Such features would ensure "pertinent" information "for targeted advertising" is extracted and used to effectively target the user while visiting the vendor's website, and do so through use of known automatically initiated operations (e.g., URL redirection and cookie processing). (Ex. 1002, ¶165; Ex. 1005, 27:2-21.) A POSITA would have recognized that this in turn, would have led to improved updated profile information

given the user's activities in response to the targeted advertisements and actions taken at the vendor's page would also be tracked and subsequently submitted back to CRS 2500 for further updating of the user profile information in CRS database 2502, consistent with goals contemplated by *Philyaw*. (Ex. 1002, ¶165.) Moreover, *Merriman* discloses known cookie reading processes that would have further guided a POSITA contemplating the combined *Philyaw-Merriman* combined system. (Ex. 1008, 3:24-63; Ex. 1002, ¶166.)

Armed with such guidance, teachings, suggestions, and motivations as noted above, it would have been obvious to a POSITA to configure the *Philyaw-Merriman* system/process to automatically read the cookie stored on the user PC (as explained above) for verification purposes in response to the URL redirection that would have occurred as explained above for limitations 1(c) and 11(c). (Ex. 1002, ¶¶164-166.) A POSITA would have had the skills and knowledge to consider and implement such features, especially given the guidance provided by *Philyaw* and *Merriman* (as explained above and for limitations 1(c), 11(c) and claim 14), and thus done so with a reasonable expectation of success. (*Id.*, ¶167.) *KSR*, 550 U.S. at 416.

Moreover, such a skilled person would have considered the tradeoffs associated with the additional resources and time used to allow CRS 2500 to use the PC 302 cookie after receiving the updated profile information from vendor website server 2504 (which provides additional verification and accuracy in the updating for

profile information). In doing so, a POSITA would have had reason to take advantage of the added benefit of maintaining more accurate profile information for each user, given such features would have further complimented *Philyaw*'s goals for maintaining current profile information to facilitate meaningful targeted advertising for the user. (Ex. 1002, ¶168.) Indeed, a POSITA would have been able to design and program the modified system to ensure efficient implementation of such features, while leveraging use of common and known technologies such as redirection and cookie technologies known to a POSITA at the time. (*Id.*)

B. Ground 2: Claim 16 is Obvious Over *Philyaw*, *Merriman* and *Easty*

1. Claim 16 - The data storage medium of claim 11 wherein the indicia of instructions instruct the processor to perform a method that further comprises: automatically with the computer system electronically determining whether the received partial profile contains any profile attributes about the entity that were not previously contained in a maintained profile.

Philyaw in view of *Merriman* and *Easty* disclose and/or suggest this limitation. (Ex. 1002, ¶¶169-181.)

Philyaw describes using a user profile containing user information (*e.g.,* user's name, address, and other personal information that uniquely identifies the user) for targeting the individual with advertisements/promotions. (Ex. 1005, 25:24-42, 26:26-28, 26:29-38; *supra* §IX.A.3; Ex. 1002, ¶170.) Furthermore, *Philyaw* discusses receiving new information about a user's online activity (e.g., user search

information via vendor's website), which is logged and transmitted back to CRS 2500 by vendor website server. (Ex. 1005, 26:39-44 (vendor website 2504 logs and transmits user search activities and interest information to CRS 2500 along path (6) for storage in CRS database 2502 and subsequent use the next time the user accesses another vendor website on GCN 306), FIGS. 25-26); Ex. 1002, ¶171; *supra* §§IX.A.1, IX.A.3.)

While *Philyaw* does not expressly describe CRS 2500 automatically determining whether the received profile contains any profile attributes about the entity that were not previously contained in a maintained profile, it would have been obvious to modify the *Philyaw-Merriman* combined system/process (discussed above) to implement such automated features in light of *Easty* and the state of art knowledge of a POSITA at the time. (Ex. 1002, ¶172.)

Merriman discloses process for selecting an advertising object based on whether criteria matches the user, such as how many times the user has seen the advertisement. (Ex. 1008, 12-16 (describing that an advertisement is retained if threshold views is not met, or discarded as a possible candidate if it is exceeded).) These disclosed features were consistent with known processes in the art. For example, *Easty* discloses methods and systems for dynamically managing digital content of endpoint servers based on aggregate profile information reflecting the preferences of the user. (Ex. 1009, Abstract, 1:5-11, 2:36-44.) The selection of the

presented digital content is managed using, among other things, user profile information (e.g., user ID, user's name, demographic information, user habits and preference) (*id.*, 4:19-21, 4:24-28), which is similar to features/objects contemplated by *Philyaw* (Ex. 1005, Abstract, 2:26-31, 3:15-26, 23:8-16, 26:24-38, 27:2-21) and by *Merriman*. (Ex. 1008, Abstract, 2:26-30, 3:64-4:11, 4:44-55 (stored statistics on individual users and networks used to determine appropriate advertisement for a particular user).) (Ex. 1002, ¶173.) Accordingly, *Easty* is in the same field of endeavor as *Philyaw*, *Merriman,* and the '582 patent (*see e.g.,* Ex. 1005, 2:25-31; Ex. 1008, 3:64-4:11; *supra* §IX.A.3; Ex. 1001, Title, 1:62-2:7, 8:18-22, 8:44-47, 8:52-56, 25-30; Ex. 1002, ¶174), such as targeted content delivery (e.g., targeted advertising) and/or network activity monitoring (e.g., user profile generation/management). Thus, a POSITA would have had reasons to consider the teachings/suggestions of *Easty* when implementing and configuring the combined *Philyaw-Merriman* system/process as explained for claim 11. (Ex. 1002, ¶174.)

Easty discloses an endpoint server that stores and updates user profiles with only new information in real time. (Ex. 1009, 4:66-5:2.) For example, *Easty* explains that an end user or client 16 (*e.g.,* PC) running client software connects to an endpoint server 13 via a communication network 15. (*Id.,* FIGS. 1-2; 3:36-46, 4:12-14.) Endpoint server 13 includes an agenting section 13a which cooperates with a client agenting section 16a of the client software 16 on the user's PC that, for

example, recommends content to the user based on a user profile reflecting the user's habits and preferences. (*Id.* 4:15-20.) Each endpoint server 13 is connected to an endpoint database 14, which stores digital information/content available for delivery to the subscribers of endpoint server. (*Id.* 4:7-13.) (Ex. 1002, ¶175.)

Agenting section 13a generates and continuously updates a user profile based on the information obtained. (Ex. 1009, 4:22-24.) The user profile can be generated based on user-provided information (*e.g.,* user's name, age, sex, locality or other demographic information) or based on information transmitted by client 16 relating to the user's affinity information (e.g., online activities reflecting the habits and preferences, such contents requested or purchased, products or services purchased, etc.). (*Id.* 4:22-35.) User profiles maintained on endpoint server 13 are updated in real time by agenting section 13 using affinity information. (*Id.* 6:40-51, 6:63-65, 7:7-16.) *Easty* further discloses that each individual user profile generated by the agenting section is associated with a unique ID that is assigned to a particular human to allow for more specific and accurate profiles. (*Id.* 5:16-21.) (Ex. 1002, ¶176.)

When a client submits a request, agenting section 13a of endpoint server 13 "***parses the new information***" and updates the user profiles that are stored on the endpoint server 13 accordingly. (Ex. 1009, 4:66-5:3.) As discussed above, when agenting section 13a makes content selection recommendations for an individual user, the agenting section uses the updated user profile to recommend content from

an endpoint database 14 that match the user's preferences. (*Id.* 5:3-9.) A POSITA would have understood *Easty*'s disclosures in this regard, and in context of *Easty*'s system/processes, describe features that identify ***new*** information for updating user profiles that is not already maintained in the user profile for subsequent storage in the database. (Ex. 1002, ¶177.)

A POSITA would have thus been motivated to configure CRS 2500 in the *Philyaw-Merriman* combined system/process to automatically determine whether the received partial profile information from the vendor website server 2504 contains any new profile attributes about the user that are/were not previously stored in the user profile maintained in CRS database 2502, without user intervention. (Ex. 1002, ¶178.) A POSITA would have appreciated that such a configuration would benefit *Philyaw's* modified system by allowing CRS 2500 to efficiently manage user information stored in in database 2502 by reducing redundant information and minimizing the processes needed for storing such redundant information in the database. (*Id.*) A POSITA would have understood and thus been guided by the predictable benefits of parsing information to eliminate redundant data thus ensuring CRS 2500 stores only newly obtained information about the user's interest and online activities, such as saving storage space, minimizing operational resources (used to store redundant data and subsequent transmission of user profile

information to the vendor website 2504 for subsequent target advertising assessment and delivery. (*Id.*, ¶179.)

Updating a user profile stored on CRS database 2502 with the most recent non-redundant profile information would have been a predictable way of designing/implementing CRS 2500 that would have been well within a POSITA's capabilities/skills at the time, especially where such techniques and technologies were known and used in the art at the time (e.g., minimizing memory storage space for same/similar data using known data parsing and database techniques/technologies, e.g., similar to that described by *Easty*, *Merriman*, and *Philyaw*). (*Id.*, ¶180.) A POSITA would have thus found such a modification to be a straightforward implementation of known processes and components to the user profile tracking system/process of *Philyaw-Merriman*, and thus would have had a reasonable expectation of success in implementing the above-discussed modification. (*Id.*, ¶181.) *KSR*, 550 U.S. at 416.

X. DISCRETIONARY DENIAL IS NOT APPROPRIATE HERE

No basis exists to deny institution under 35 U.S.C. §§ 314(a) or 325(d). Because the '582 patent has not been previously challenged and the petition does not rely on the same or substantially the same art or arguments presented during prosecution, the *General Plastic* factors are not applicable. *See General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*. *See* IPR2016-01357, Paper No. 19 at 3, 8, 15-19 (Sept. 6, 2017).

Additionally, Petitioners each stipulates that, if instituted, Petitioner will not pursue an invalidity defense in the parallel district court action (*see supra* §II) based on the same grounds as in this petition or any grounds that could have reasonably been raised before the PTAB. This mitigates concerns of potentially conflicting decisions and duplicative efforts between the district court and the PTAB. *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 18-19 (Dec. 1, 2020) (precedential as to §II.A); Memorandum from Director Vidal, at 3 (June 21, 2022) ("Consistent with *Sotera Wireless, Inc.*, the PTAB **will not** discretionarily deny institution in view of parallel district court litigation where a petitioner presents a stipulation not to pursue in a parallel proceeding the same grounds or any grounds that could have reasonably been raised before the PTAB.").

XI. CONCLUSION

Petitioners request institution of IPR for the challenged claims based on the specified grounds.

Respectfully submitted,

Dated: July 19, 2022

By: /Joseph E. Palys/
Joseph E. Palys (Reg. No. 46,508)
Lead Counsel

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that the foregoing Petition for *Inter Partes* Review of U.S. Patent No. 8,244,582 contains, as measured by the word-processing system used to prepare this paper, 13,931 words. This word count does not include the items excluded by 37 C.F.R. § 42.24 as not counting towards the word limit.

Respectfully submitted,

Dated: July 19, 2022

By: /Joseph E. Palys/
Joseph E. Palys (Reg. No. 46,508)

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2022, I caused a true and correct copy of the foregoing Petition for *Inter Partes* Review of U.S. Patent No. 8,244,582 and supporting exhibits to be served via express mail on the Patent Owner at the following correspondence address of record as listed on PAIR:

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By: /Joseph E. Palys/
Joseph E. Palys (Reg. No. 46,508)

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD. AND MICROSOFT CORPORATION,
Petitioners,

v.

ALMONDNET, INC.,
Patent Owner.

Case IPR2022-01260
U.S. Patent No. 8,244,582

PATENT OWNER'S PRELIMINARY RESPONSE

Patent Owner's Exhibit List for IPR2022-01260

Pursuant to 37 C.F.R. § 42.63(e), Patent Owner AlmondNet, Inc. hereby submits its exhibit list associated with the above-captioned *inter partes* review of U.S. Patent No. 8,244,582.

Exhibit No.	Description
2001	Patent Owner's Preliminary Response, *Yahoo! Inc. v. AlmondNet, Inc.*, CBM2017-00052, Paper 7 (P.T.A.B. Sept. 6, 2017)

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I. INTRODUCTION

The Petition fails to demonstrate a reasonable likelihood of prevailing in its challenge to any claim of the ’582 patent. All challenged claims require “electronically receiving at a programmed computer system . . . a partial profile of an entity that uses a user computer coupled to the global computer network and accessing a website . . . ***wherein receiving the partial profile is achieved as a result of automatic electronic URL redirection from a portion of a page of the website accessed by the user computer***.” To satisfy this requirement, the Petition relies on combining Philyaw with Merriman, with the latter reference allegedly supplying the “as a result of automatic URL redirection from a portion of a page of the website” limitation that the Petition concedes is missing from Philyaw.

The Petition fails to articulate a non-conclusory rationale for why a POSITA would be motivated to combine one reference with the other. For instance, the Petition provides no explanation for ***why*** a POSITA would see Philyaw as deficient in a way that supports combining it with Merriman. Neither does the Petition attempt to explain ***how*** a POSITA would accomplish the combination, which is a critical failure because the challenged claims use URL redirection in a manner other than its conventional purpose. For at least these reasons, and as discussed further below, the Board should deny institution as to any claim of the ’582 patent.

II. BACKGROUND

A. Samsung and Microsoft's Petition

Petitioners Samsung Electronics Co., Ltd. and Microsoft Corporation (collectively, "Petitioners") challenge claims 1, 9, 11, 13-16, 19, and 20 of U.S. Patent No. 8,244,582 (the "'582 patent"), of which claims 1 and 11 are the only independent claims. The Petition structures its two asserted grounds for unpatentability as follows:

- Ground 1: Alleged obviousness of 1, 9, 11, 13-15, 19, and 20 over Philyaw in view of Merriman.
- Ground 2: Alleged obviousness of claim 16 over Philyaw in view of Merriman in further view of Easty.

See Pet. at 3. All challenged dependent claims across both grounds depend from either independent claim 1 or independent claim 11. This Preliminary Response addresses only certain of the Petition's arguments concerning claims 1 and 11, which the Petition treats identically for purposes of the arguments raised in this Response. Because the Petition does not show that the prior art discloses or renders obvious at least one limitation of each of claims 1 and 11, the Petition does not demonstrate that it has a reasonable likelihood of prevailing on at least one of the challenged claims.

B. The ’582 Patent

The ’582 patent discloses that its claimed invention relates generally to “a mercantile method directed to brokerage of attributes of information.” Ex. 1001 at 1:29-31. According to the ’582 patent, “[a]dvances in database technology have given rise to commerce in records, files and databases, per se. For example, paying for a database credit check for an individual or buying a mailing list have become common practice.” *Id.* at 1:35-38. The ’582 patent further discloses that “[u]nfortunately, the current state of information commerce is focused on the sales of whole databases, whole records, or evaluations based on single or clusters of records.” *Id.* at 1:57-59. The ’582 patent indicates this is a problem because “[i]n commercial applications where specific attributes of information strongly affect the value of evaluations, there is a need in the art for commerce in such attributes. For example, in targeted advertising, every attribute, which substantially affects the probability of that advertisement’s success, innately has a discrete economic value.” *Id.* at 1:59-65.

The ’582 patent solves this problem by utilizing “a descriptive-profile mercantile method, for use at a juncture in a data communications topology having associated therewith a maintained databank of partial profiles.” *Id.* at 3:30-33. The ’582 patent teaches that those maintained profiles may be updated by combining maintained profile information with profile information obtained as a result of

redirection from a portion of a third party's website page; for example: "By redirecting a portion of the visitor's page to the server, the visitor's browser reports to the server a cookie the server put on the visitor's computer in the past, if any." *Id.* at 4:5-8.

Independent claim 1, which is exemplary for purposes of this Response, recites as follows:

> 1. An automated method of collecting profiles of Internet-using entities, the method comprising:
>
> > (a) electronically receiving at a programmed computer system coupled to a global computer network, from at least one server controlled by one of a plurality of unaffiliated third parties, a partial profile of an entity that uses a user computer coupled to the global computer network and accessing a website, which partial profile is available to one of the third parties and contains at least one profile attribute related to the entity, and automatically with the computer system storing the received partial profile;
> >
> > (b) ***wherein receiving the partial profile is achieved as a result of automatic electronic URL redirection from a portion of a page of the website accessed by the user computer***;
> >
> > (c) automatically with the computer system electronically adding the received partial profile to a maintained profile believed to be related to the same entity;

> (d) automatically with the computer system generating and storing an electronic record of which of the plurality of unaffiliated third parties contributed to the maintained profile particular profile attributes;
>
> (e) wherein the maintained profile, including the added partial profile, comprises data used in targeting third-party advertisements to the user computer over the global computer network.

Id. at claim 1 (emphasis added). Independent claim 11 of the '582 patent is a *Beauregard* claim with similar limitations as claim 1, including Limitation (b), which is the focus of this Preliminary Response. *See id.* at claims 1 and 11.

C. Yahoo!'s Covered Business Method Review of the '582 Patent

Previously, a different company, Yahoo! Inc., petitioned for Covered Business Method review of the '582 patent, in CBM2017-00052. The Board denied institution that the -00052 CBM, finding that—among other things—that the petitioner Yahoo failed to show that the challenged claims of the '582 patent were directed to "financial activity" elements and therefore eligible for CBM review.

III. LEVEL OF ORDINARY SKILL IN THE ART

The Petition proposes that a person of ordinary skill in the art in the field of the '582 patent "would have had at least a bachelor's degree in computer science, computer engineering, electrical engineering, or the equivalent, and two or more

years of experience with designing, programming, configuration, and/or analysis/research with Internet or similar network-related processes including, for example, user/entity profile management and/or web-based targeted content delivery, or a related field. More education can supplement practical experience and vice versa." Pet. at 4 (internal citation omitted). For purposes of this Preliminary Response, Patent Owner does not challenge that definition.

IV. CLAIM CONSTRUCTION

The Federal Circuit has held that "only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy." *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). This principle applies equally to IPR proceedings. *See, e.g.*, *Apple Inc. v. Uniloc Luxembourg S.A.,* IPR2018-00420, Paper 7 at 8 (PTAB, Aug. 6, 2018).

Petitioners state, for this IPR proceeding, that they do not believe that Board needs to construe any claim terms or phrases of the '582 patent. Pet. at 5. Patent Owner agrees that, for the purposes of this Response, no claim construction is necessary. Patent Owner reserves its right to subsequently identify terms requiring construction in the event this IPR is instituted.

V. APPLICABLE LEGAL STANDARDS

The petitioner has the burden to "demonstrate that there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable."

37 C.F.R. § 42.108. A petition challenging a claim on grounds of obviousness must sufficiently explain (1) "how specific references could be combined," (2) "which combination(s) of elements in specific references would yield a predictable result," and (3) "how any specific combination would operate or read on" the claims. *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312, 1327-28 (Fed. Cir. 2012).

Moreover, a petitioner may not rely on the Board to, and the Board cannot, substitute its own reasoning to remedy the deficiencies in a petition. *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016) (rejecting the Board's reliance on obviousness arguments that "could have been included" in the petition but were not, and holding that the Board may not "raise, address, and decide unpatentability theories never presented by the petitioner and not supported by the record evidence"); *Ariosa Diagnostics v. Verinata Health, Inc*., 805 F.3d 1359, 1367 (Fed. Cir. 2015) (holding that "a challenge can fail even if different evidence and arguments might have led to success"). Nor may the petitioner remedy the deficiencies in a reply brief. *Wasica Finance GMBH v. Continental Auto. Sys.*, 853 F.3d 1272, 1286 (Fed. Cir. 2017) ("Rather than explaining how its original petition was correct, Continental's subsequent arguments amount to an entirely new theory of prima facie obviousness absent from the petition. Shifting arguments in this

fashion is foreclosed by statute, our precedent, and Board guidelines.") (internal citations omitted).

VI. THE PETITION FAILS TO ESTABLISH A REASONABLE LIKELHOOD OF *PRIMA FACIE* CASE OF OBVIOUSNESS

The Petition challenges independent claims 1 and 11 of the '582 patent. As noted above, the limitations of claim 1 parallel those of claim 11; claim 1 is a method claim and claim 11 is a *Beauregard* claim.[1] For both claims 1 and 11, Limitation (b) requires, among other things, that "receiving the partial profile [at a programmed computer system]"[2] is "achieved as a result of automatic electronic URL redirection

---

[1] The Petition does not provide independent analysis for claim 11 over what they provide for claim 1. *See, e.g.*, Pet. at 38-42 (for claim 11, citing to sections addressing parallel limitations in claim 1). Thus, the arguments in this Preliminary Response apply equally to the Petition's theories with respect to both claims 1 and 11.

[2] Limitation (a) of claims 1 and 11 recites "electrically receiving at a programmed computer system . . . a partial profile . . .," whereas Limitation (b) further states: "wherein receiving the partial profile is achieved as a result of automatic URL redirection . . . ."

from a portion of a page of the website accessed by the user computer."[3] The Petition concedes that its primary reference, Philyaw, does not expressly disclose Limitation (b). *See* Pet. at 16-17 (acknowledging that "Philyaw does not expressly describe in connection with the FIGs 25-28 configuration, CRS 2500 receiving the 'partial profile' as a result of automatic URL redirection from the website accessed by the user PC 302").

The Petition concedes that its primary reference, Philyaw, does not expressly disclose Limitation (b). *See* Pet. at 16-17 (acknowledging that "Philyaw does not expressly describe in connection with the FIGs 25-28 configuration, CRS 2500 receiving the 'partial profile' as a result of automatic URL redirection from the website accessed by the user PC 302"). In an attempt to fill the gap in Philyaw as to Limitation (b), the Petition asserts:

---

[3] Though both of the challenged independent claims of the '582 patent specifically label this "automatic URL redirection" limitation as "(b)" in the claim language, the Petition confusingly denotes this limitation as "c)" in its arguments. *Compare* Pet. at 16 *with* Ex. 1001 at claim elements 1(b) and 11(b). Unless otherwise noted, this Preliminary Response uses the labeling set forth in the claims instead of the Petition's ad hoc labeling.

> A POSITA contemplating the implementation of Philyaw's systems/process would have had reason to consider known technologies/techniques relating to user (user computer/browser) exits of websites to ensure the collected user activity information is provided to CRS 2500 in a manner consistent with the goals and processes of Philyaw.

Pet. at 17. The Petition then points to Merriman for its teaching of "automatic URL redirection," which the Petition alleges "was a well-known and common operation/technique in Internet website browsing sessions at the time." *Id.* at 18. Merriman contains, the Petition continues, "teachings in the art relating to user exits from a webpage" that a POSITA would seek. *Id.* This is because, allegedly, a "POSITA would have understood that *Philyaw* does not limit (or provide further details) as to how or why a user would exit the vendor website 2504." *Id.* at 17.

Philyaw's supposed "lack of detail" about "web page exits," according to the Petition, forms the basis of an alleged motivation of a POSITA to combine Philyaw with Merriman for Limitation (b). *See, e.g.*, *id.* at 24 ("Such a modification would have been a foreseeable way to implement known web page exits like those contemplated by Philyaw and resulted in performing the claimed 'receiving' limitation."). A POSITA would have used Merriman's "automatic URL redirection" teaching, the Petition says, to "trigge[r] user profile updates for various ways a user

exist a current webpage or website session," and thus allegedly arrive at Limitation (b). *See id.* at 16-24.

The Petition's combination of Philyaw's system with Merriman's "automatic URL redirection" teachings fails because it is unsupported by any articulated, non-conclusory reasoning or rational underpinning. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007). The Petition's argument relies on the fundamentally specious assertion that a POSITA would discern a supposed deficiency in Philyaw as to its discussion of "web page exits." But the Petition cites nothing referring to "detail" about "web page exits" (or how they are accomplished) as a deficiency or a problem that would be recognized by a POSITA. The Petition also fails to show that the system resulting from adding Merriman would have, on net, any beneficial or desirable advantages over Philyaw's original configurations. And the Petition never shows ***how*** a POSITA, starting with Philyaw's system, would implement Merriman's URL redirection teachings into Philyaw's vendor web site. For each of those reasons, discussed in turn in the subsections following, the Petition fails.

A. The Petition Fails to Establish a Deficiency in Philyaw that Would Have Motivated the Proposed Combination.

The Petition sets forth three purported motivations to combine Philyaw with Merriman to make use of Merriman's URL redirection: (1) Philyaw does not provide enough "detail" about "web page exits" and thus "would have had reason to consider known technologies/techniques relating to user (user computer/browser) exits of

websites" (Pet. at 17-18, 24-25); (2) URL redirection could "compliment" [sic] Philyaw's system because URL redirection is "one of various ways a user exits a viewed web page" (*id.* at 18, 25); and (3) Philyaw is not "limited" to certain types of "web page exits" (*id.* at 17). The Petition further alleges that incorporating banner ads in Philyaw's system would (4) "enable the vendor website 2504 to maintain the ability to promote and provide its vendor content." Each of these purported motivations fails.

Regarding the Petition's first theory—that a lack of "detail" regarding "user . . . exits of websites" would have prompted a POSITA to look to other references for additional details regarding user exits of websites (Pet. at 17-18)—the Petition fails to provide any evidence that a POSITA would have believed Philyaw to lack any important detail (or contain any other deficiency) with respect to user exits of websites. Nor could the Petition make such a showing, because exiting a website is an immediately understandable, basic concept. Indeed, even a lay person readily understands how a user may exit a website, such as by navigating to a new website or closing the web browser. Certainly, a person of ordinary skill—which the Petition alleges includes "at least a bachelor's degree in computer science, computer engineering, electrical engineering, or the equivalent, and two or more years of experience with designing, programming, configuration, and/or analysis/research with Internet or similar network-related processes"—would not view Philyaw's

teachings to be deficient simply because Philyaw does not spell out in rudimentary detail the precise means by which a user may exit a website. Accordingly, the Petition has failed to show that a POSITA would have viewed Philyaw's teachings as deficient in any respect, and thus cannot show that any purported deficiency would have motivated a POSITA to search out other "web page exit" schemes and incorporate the teachings of Merriman as a result.

The Petition's failure in this respect is further shown by the Petition's admission that Philyaw does not teach any limits on how a user might exit a vendor web page. *Id.* ("A POSITA would have understood that Philyaw does not limit (or provide further details) as to how or why a user would exit the vendor website 2504."). Although the Petition presumably makes the "no limits" statement to support its choice of Merriman, the statement actually rebuts the Petition's central thesis on this point: If Philyaw does not disclose or suggest any problem or deficiency in its teachings regarding how websites are exited, as the Petition says, the Petition cannot demonstrate why a POSITA would be motivated to use something other than the use known, conventional approaches in Philyaw's system, like where a user "exits" a site simply by following a link to another site. Furthermore, there would be no reason apparent from the Petition why a POSITA would find and apply Merriman's "URL redirection" banner ads specifically.

For similar reasons, the Petition's second theory—that Merriman's URL redirection would "compl[e]ment" Philyaw's teachings—is also unsupported. *See* Pet. at 18, 25. As explained above, a skilled artisan would have readily understood how websites are exited, and would not have viewed Philyaw's teachings as deficient such that the POSITA would have needed to search out other references for supposedly complementary teachings regarding website exits.

The defect in the Petition here is thus similar to what the Board observed in the Final Written Decision in *Apple Inc. v. Voip-Pal.com, Inc.*, IPR2016-01198 Paper 53 (PTAB Nov. 20, 2017) ("*Voip-Pal*"). There, the Board found that the petitioner had failed to provide "underlying evidentiary support for the proposition that one of ordinary skill in the art would have regarded [primary reference's] Chu '684's teachings as deficient." *Id.* at 19. The *Voip-Pal* IPR petitioner built its case for motivation based on the primary reference itself, which admittedly taught "all the infrastructure" needed for a VOIP system but could be modified to allow users "to place calls as if they were dialing form a standard PSTN [public switched telephone network] phone," which supposedly made the system more "intuitive" and "user-friendly." *Id.* at 18-19. But, the Board found, nothing in "Chu '684 itself would have suggested deficiency and a need for improvement" leading to the proposed modification, and so the petitioner's theory was "incongruent with the content of [the] reference." *Id.* at 19.

Moreover, like in *Voip-Pal*, the Petition fails to explain why a POSITA would recognize that Philyaw has any deficiency as to "details" about exiting web pages and any related updates to Philyaw's CRS database upon such an exit. Philyaw already teaches that CRS database updates can (and should) be made in a flexible manner. For example, Philyaw teaches that CRS database updates may be performed with user activity information logged at the user computer using Philyaw's specific and specialized software. Ex. 1005 at 25:26-28, 26:54-56; 28:15-20. Philyaw also teaches that updates may be performed using user activity logged at the website. *Id.* at 26:39-44. Moreover, updates to the CRS database may occur ***while the user is browsing the website*** or at any time ***after*** the user has left the vendor web site. *Id.* at 26:39-44. The "while" and "after" possibilities taught by Philyaw are significant because they make clear that CRS database updates need not be triggered by "web page exits" as the Petition presumes.

Put another way, in Philyaw's disclosed configurations, updates to the CRS database based on user activity on a vendor website already occur in a satisfactory manner from the perspective of a POSITA. That is apparent even just starting with, as a POSITA would, what Philyaw actually says:

> the disclosed embodiment provides a mechanism whereby the user's interests and activities are logged and stored at the CRS database **2502** on an on-going basis, such that as the user's activities

> and interests change, so does the information appended to the user profile located on CRS database **2502**, and these changes are provided to any subsequent web site servers associated with the program installed on the PC **302**.

Ex. 1005 at 26:46-56. That is, presumably, why the Petition myopically focuses on the alleged "lack of detail" about "web page exits" in Philyaw and says only that URL redirection would "compliment" [sic] Philyaw. But saying that there is a "lack of detail" in Philyaw about "web page exits" does not establish a motivation to combine.

In addition, the Petition fails to explain why its proposed combination would be seen as preferable to or offer any advantages over what Philyaw already teaches. *See, e.g.*, *Samsung Electronics Co. v. Dynamics Inc.,* IPR2020-00499, Paper 63 at 34 (PTAB Aug. 10, 2021) ("*Samsung*") ("But neither the Petition nor its declarant, explain why altering either Gutman or Shoemaker would improve the functionality over what is expressly disclosed in each reference. Nor does the Petitioner or the declarant explain with how the combination of teachings would be more commercially convenient for card users over what is disclosed originally in each reference.").

Even reading the Petition charitably, the closest it comes to articulating a ***benefit*** of the proposed combination is to say that the combination "ensur[es] such

[CRS] updates are provided when the user leaves the vendor's webpage 2504 for various reasons." Pet., at 18. But that statement is equally true for the approach taught by Philyaw directly: "As the user searches through the vendor web site 2504, or even after the user has exited the vendor web site 2504, that search information can be logged and transmitted back to the CRS 2500 … to update the user profile as to interests and activities which occurred while visiting the vendor server 2504." Ex. 1005 at 26:39-44. In other words, Philyaw already offers the Petitioner's alleged "benefit."

The Petition's third theory—that Philyaw is not "limited" to certain types of "web page exits" (Pet. at 17)—also does not establish a motivation to combine. With regard to this theory, the Petition seems to suggest that Philyaw's disclosures not being limited in a particular way shows that Philyaw might be ***compatible*** with Merriman's URL redirection web page exit. *See id.* This theory fails, because at its core, it is an assertion only that "one of ordinary skill in the art *could* combine these references, not that they *would* have been motivated to do so," as the Petition must show. *InTouch Techs., Inc. v. VGO Commc'ns, Inc.*, 751 F.3d 1327, 1352 (Fed. Cir. 2014) (emphasis in original).

The Petition's fourth theory—that a POSITA "would have appreciated and had reason to implement" banner ads in Philyaw's system because it would "enable the vendor website 2504 to maintain the ability to promote and provide its vendor

content, while also providing an avenue for achieving benefits from potential revenue that was known to be associated with hosting banner ads" (Pet. at 24)—is also unpersuasive. First, this allegation says nothing about a motivation to use a banner ad making use of ***URL redirection*** as the purported web page exit, and thus look to Merriman for its teaching in this regard. Furthermore, the Petition fails to explain why the advertisements at the vendor web site already disclosed by Philyaw would have been thought deficient or otherwise ripe for improvement, let alone in the specific way alleged by the Petition.

To summarize, the Petition relies on Merriman for its general banner ad and URL redirection teachings in support of an alleged combination that is alleged to precisely meet the challenged claims. But the absence of any articulated reasoning supporting its obviousness theory leads to the conclusion that Petitioners are "us[ing] the challenged patent as a roadmap to reconstruct the claimed invention using disparate elements from the prior art—*i.e.*, the impermissible ex post reasoning and hindsight bias that *KSR* warned against." *TQ Delta, LLC v. CISCO Sys., Inc.*, 942 F.3d 1352, 1361 (Fed. Cir. 2019).

B. The Petition Fails to Demonstrate *How* a POSITA would Implement the Proposed Combination.

Further evidencing an improper and hindsight-infected approach to obviousness, the Petition provides scant evidence or detail for ***how*** a POSITA, starting with Philyaw, would cause reception of a "partial profile" to be "achieved

as a result of automatic URL redirection *from* a portion of a page of the website accessed by the user computer," as required by Limitation (b). As Patent Owner explained in a previous proceeding before the Board, this limitation does not recite the use of URL redirection for its conventional purpose in the field of targeted advertising (i.e., to send an ad to the webpage); instead, the patent uses URL redirection ***from*** a portion of a webpage to deliver partial profile information to the computer system of the claims, where it is added to maintained profile data. *See* Ex. 2001 at 26 ("[T]he patent does not use URL redirection for its conventional purpose in the field of targeted advertising (to send an ad to the webpage); instead, the patent uses URL redirection *from* the webpage to deliver partial profile information, and the partial profile information eventually makes it way to the computer system of the claims, where it is consolidated with other profile data.") (emphasis in original).

How then, does the Petition allege that a POSITA would use the URL redirection teachings in Merriman to "trigger[] the transmission of the user activity information ... to CRS 2500" (*id.* at 18)? The Petition asserts only that it would have been a "straightforward implementation of known technologies/techniques (e.g., URL redirection via banner advertisement or similar partial web page links to other URL locations)." *Id.* at 26. This assertion simply assumes without support that all URL redirection techniques would have been "known" and "straightforward," and fails to actually explain ***how*** a POSITA at the time of the invention would

supposedly have implemented URL redirection to achieve the claimed invention (or explain why a POSITA would have had a reasonable expectation of success in using URL redirection for other than its conventional purpose). *See Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017) (vacating Board's finding of obviousness where the decision "nowhere clearly explained, or cited evidence showing, *how* the combination of the two references was supposed to work," and explaining that such explanation "is a prerequisite" to a finding of motivation to combine and reasonable expectation of success).

VII. CONCLUSION

For the reasons set forth above, Patent Owner respectfully requests that the Board deny institution of the Petition.

Date: November 9, 2022

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CERTIFICATION REGARDING WORD COUNT

Pursuant to 37 C.F.R. §42.24(d), Patent Owner certifies that there are 4,074 words in the paper excluding the portions exempted under 37 C.F.R. §42.24(a)(1).

Dated: November 9, 2022

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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 November 9, 2022, by filing this document through the Patent Trial and Appeal Board End to End System as well as delivering a copy via electronic mail upon the following attorneys of record for the Petitioners:

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Paper 10
Entered: February 7, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD., and
MICROSOFT CORPORATION,
Petitioner,

v.

ALMONDNET, INC.,
Patent Owner.

IPR2022-01260
Patent 8,244,582 B2

Before THOMAS L. GIANNETTI, LYNNE H. BROWNE, and CHARLES J. BOUDREAU, *Administrative Patent Judges.*

BROWNE, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

Petitioner, Samsung Electronics Co., Ltd. and Microsoft Corporation, filed a Petition (Paper 3, "Pet.") requesting *inter partes* review of claims 1, 9, 11, 13–16, 19, and 20 of U.S. Patent No. 8,244,582 B2 (Ex. 1001, "the '582 patent"). Patent Owner, AlmondNet, Inc., filed a Preliminary Response (Paper 7, "Prelim. Resp.").

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the Petition and any response thereto shows "there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." Considering the Petition, the arguments presented in the Preliminary Response, as well as all supporting evidence, we determine that Petitioner does not demonstrate a reasonable likelihood of prevailing for any of the challenged claims. Accordingly, we do not institute *inter partes* review.

A. *Real Parties in Interest*

Petitioner identifies Samsung Electronics Co., Ltd., Microsoft Corporation, and Samsung Electronics America, Inc. as real parties-in-interest in this proceeding. Pet. 1. Patent Owner identifies itself as the real party-in-interest. Paper 4, 1.

B. Related Matters

The parties identify *AlmondNet, Inc., et al. v. Microsoft Corporation*, 6:21-cv-00897 (WDTX); *AlmondNet, Inc., et al. v. Amazon.com, Inc., et al.*, 6:21-cv-00898 (WDTX); *AlmondNet, Inc. v. Roku, Inc.*, 1:22-cv-01540 (DDE); *AlmondNet, Inc. et al. v. Meta Platforms, Inc.,* 4:22-cv-08911 (NDCA); and *AlmondNet, Inc. et al. v. Samsung Electronics Co., Ltd. et al.*, 3:22-cv- 07515 (NDCA) as civil litigation involving the '582 patent. Pet. 1; Paper 8, 1. The parties also identify *Meta Platforms, Inc. v. AlmondNet, Inc.*

and Intent IQ, LLC, IPR2022-01436 (PTAB) and *Amazon.com, Inc. et al. v. AlmondNet, Inc.*, IPR2022-01455 (PTAB) as involving the '582 patent. *Id.*

C. The '582 patent

The '582 patent relates to a mercantile method directed to brokerage of attributes of information. Ex. 1001, 1:29–31.

> The method includes the steps of: from a user, receiving a transaction having therein a first partial profile; using the first partial profile, searching a databank having a plurality of second partial profiles, wherein is included in said data bank at least one null profile so that said searching will always yield at least one proximate second partial profile to the first partial profile; and between the user and the databank, contracting: (I) for the databank to own or represent a right to a first mutually agreed portion of the first partial profile, and substantially thereafter said databank incorporating the agreed portion of the first profile into at least one second partial profile; or (II) for the user to own or represent a right to a second mutually agreed portion of at least one said proximate second partial profile, and substantially thereafter the databank transmitting to the user the second mutually agreed portion of the second profile.

Id. at code (57).

D. Illustrative Claim

Petitioner challenges claims 1, 9, 11, 13–16, 19, and 20. Pet. 1. Claims 1and 11 are independent claims. Ex. 1001, 16:42–76, 17:45–18:8.

Claim 1 is reproduced below.

> 1. An automated method of collecting profiles of Internet-using entities, the method comprising:
>
> (a) electronically receiving at a programmed computer system coupled to a global computer network, from at least one server controlled by one of a plurality of unaffiliated third parties, a partial profile of an entity that uses a user computer coupled to the global computer network and accessing a website, which partial profile is available to one of the third parties and contains at least one profile attribute related to the entity, and

automatically with the computer system storing the received partial profile;

(b) wherein receiving the partial profile is achieved as a result of automatic electronic URL redirection from a portion of a page of the website accessed by the user computer;

(c) automatically with the computer system electronically adding the received partial profile to a maintained profile believed to be related to the same entity;

(d) automatically with the computer system generating and storing an electronic record of which of the plurality of unaffiliated third parties contributed to the maintained profile particular profile attributes;

(e) wherein the maintained profile, including the added partial profile, comprises data used in targeting third-party advertisements to the user computer over the global computer network.

Ex. 1001, 16:42–67.

E. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1, 9, 11, 13–15, 19, 20	103	Philyaw,[1] Merriman[2]
16	103	Philyaw, Merriman, Easty[3]

Pet. 13. In addition to the references listed above, Petitioner relies on the Declaration of Dan Schonfeld, Ph.D. (Ex. 1002).

[1] Philyaw et al., U.S. Patent No. 6,836,799 B1, issued Dec. 28, 2004 (Ex. 1005) ("Philyaw").
[2] Merriman et al., U.S. Patent No. 5,948,061, issued Sept. 7, 1999 (Ex. 1008) ("Merriman").
[3] Easty et al., U.S. Patent No. 6,189,008 B1, issued Feb. 13, 2001 (Ex. 1009) ("Easty").

II. ANALYSIS

A. Level of Ordinary Skill in the Art

In determining the level of skill in the art, we consider the type of problems encountered in the art, the prior art solutions to those problems, the rapidity with which innovations are made, the sophistication of the technology, and the educational level of active workers in the field. *Custom Accessories, Inc. v. Jeffrey-Allan Indus. Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986); *Orthopedic Equip. Co. v. U.S.*, 702 F.2d 1005, 1011 (Fed. Cir. 1983).

Petitioner contends that a person of ordinary skill in the art at the time of the invention of the '582 patent would have had "at least a bachelor's degree in computer science, computer engineering, electrical engineering, or the equivalent, and two or more years of experience with designing, programming, configuration, and/or analysis/research with Internet or similar network-related processes including, for example, user/entity profile management and/or web-based targeted content delivery, or a related field." Pet. 4 (citing Ex. 1002 ¶¶ 20–21). Petitioner asserts further that "[m]ore education can supplement practical experience and vice versa." *Id.* Patent Owner does not challenge this definition of the level of skill at this time. Prelim. Resp. 6.

For purposes of this Decision, we also adopt Petitioner's proposal as reasonable and consistent with the prior art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art may reflect an appropriate level of skill in the art).

B. Claim Construction

For petitions filed on or after November 13, 2018, the "broadest reasonable interpretation" standard has been replaced with the federal court claim construction standard that is used to construe a claim in a civil action

under 35 U.S.C. § 282(b). This is the same claim construction standard articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc), and its progeny.

Petitioner and Patent Owner agree that for purposes of this proceeding "no claim construction is necessary." *See* Pet. 5 (citing Ex. 1002 ¶ 35); Prelim. Resp. 6. At this stage of this proceeding we determine that no claim terms require express construction in order to determine whether or not to institute *inter partes* review because doing so would have no effect on the analysis below. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) ("[W]e need only construe terms 'that are in controversy, and only to the extent necessary to resolve the controversy.'" (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

C. Overview of the Asserted Prior art

1. Philyaw

Philyaw is a U.S. Patent for a "Method and Apparatus for Tracking User Profile and Habits on a Global Network" that issued December 28, 2004. Ex. 1005, codes (45), (54). Philyaw describes "a method of tracking computer user interests and habits during on-line activity, and more particularly for passing a unique ID/bar code to a visited web server during access of the server to log user activity while visiting the server." *Id.* at 2:28–32. Philyaw's method is performed by the system shown in Figure 25 reproduced below:

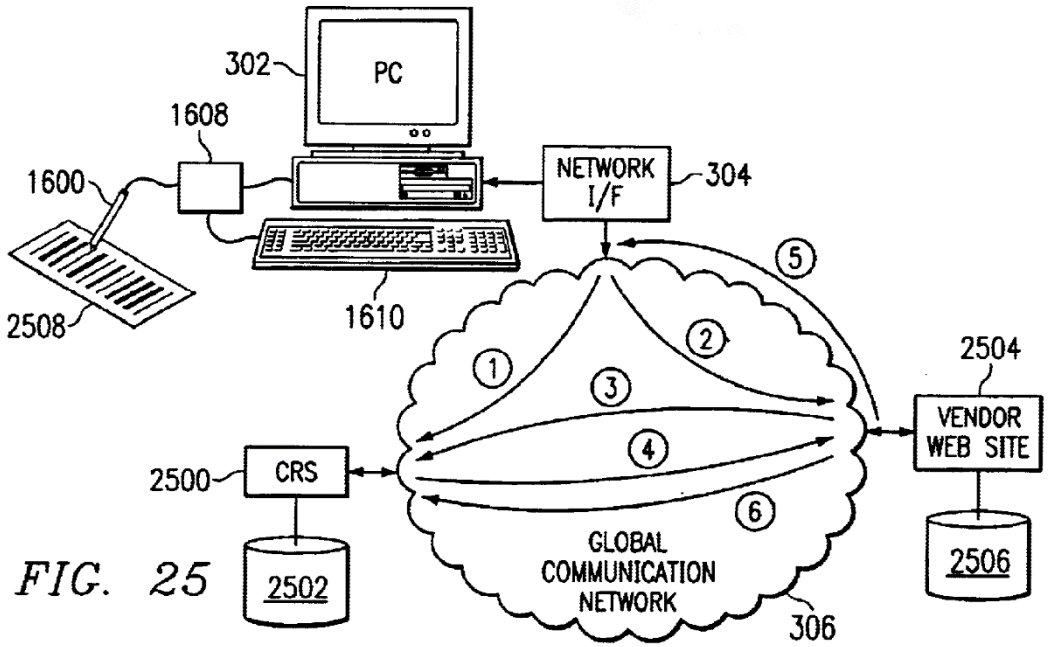

FIG. 25

Figure 25 shows personal computer system ("PC") 302 automatically connected, under the control of software, via network interface 304 to global communication network 306, which in turn, is automatically connected, under control of the software, to central registration server ("CRS") 2500. Ex. 1005, 25:35–39. CRS 2500 is associated with CRS database 2502 "which stores the user profile information and the unique user IDs associated with each user profile." *Id.* at 25:40–42. Global communication network ("GCN") 306 is also connected with vendor web site 2504 with associated vendor database 2506. *See id.* at 26:1–7. Figure 25 further shows interface 1608, keyboard 1610, and scanner 1600 connected to PC 302. *Id.* at 25:62–67.

Philyaw explains that the software installed by a user on PC 302 "tracks the user profile and habits when accessing various sites on the GCN 306." Ex. 1005, 25:26–28. Once the user enters personal information into the software it automatically connects PC 302 to CRS 2500, which

issues a unique ID which is passed back to the user in the form of a barcode 2508. Ex. 1005, 25:43–45. In Philyaw "[t]he barcode 2508 provides the unique and trackable digital ID for the user, specifically for tracking the user's efforts and interests as he or she visits the various web sites on the GCN 306" and "[t]here is only one bar code 2508 generated for the user having the unique digital ID, and bar code 2508 and/or digital ID provides the reference in the CRS database 2502 to the user's associations and profile." *Id.* at 25:47–54.

2. Merriman

Merriman is a U.S. Patent for a "Method of Delivery, Targeting, and Measuring Advertising Over Networks" that issued September 7, 1999. Ex. 1008, codes (45), (54). Merriman describes "methods of delivery of advertisements and measuring responses to those delivered advertisements and in particular relates to the targeting of advertisements delivered over networks such as the Internet." *Id.* at 1:8–11.

Merriman describes a system wherein "[w]hen a user browsing on the Internet accesses an affiliate's web site 12, the user's browser generates an HTTP message 20 to get the information for the desired web page" and "[t]he affiliate's web site in response to the message 20 transmits one or more messages back 22 containing the information to be displayed by the user's browser." Ex. 1008, 3:6–12. In Merriman's system "an advertising server process 19 will [also] provide additional information comprising one or more objects such as banner advertisements to be displayed with the information provided from the affiliate web site." *Id.* at 3:12–15. Merriman explains that "[u]pon clicking through or otherwise selecting the advertisement object, which may be an image such as an advertisement banner, an icon, or a video or an audio clip, the browser ends up being

connected to the advertiser's server or web site 18 for that advertisement object." *Id.* at 3:18–23.

In Merriman, "ad server process 19 also notes that a 'click through' for an advertisement has occurred and updates the various databases . . . [and] ad sever process must remember which advertisement was sent to the user's browser in order to know where to redirect the user's browser." *Id.* at 4:5–11.

3. Easty

Easty is a U.S. Patent for a "Dynamic Digital Asset Management" that issued on February 13, 2001. Ex. 1009, codes (45), (54). Easty describes "a system for distributing digital content from a central server to a plurality of endpoint servers for further distribution to end users." *Id.* at 1:5–7. Easty describes its endpoint servers 13 as each being "connected to an endpoint database 14, which stores all digital information contents available for delivery to subscribers by that endpoint server." Ex. 1009, 4:8–10. Easty explains that "[w]hen a content delivery request is received from a user, the server 13 retrieves the requested content from the endpoint database 14 and delivers it to the requesting user via the communications network 15." *Id.* at 4:11–14.

In Easty "endpoint server 13 also includes an agenting section 13a which cooperates with a client agenting section 16a of the client software 16 on a user's PC to act as a 'personal assistant' for the user." Ex. 1009, 4:15–19. Easty's "assistant may, for example, recommend contents to the user based on a user profile which reflects the user's habits and preferences, and allow a user to submit feedback information to the server, such as the user's rating of the delivered contents" and "[t]he user profile is generated and

continuously updated based on user information acquired by the agenting section 13a." *Id.* at 4:18–24.

D. Principles of Law

A petition must show how the construed claims are unpatentable under the statutory grounds it identifies. 37 C.F.R. § 42.104(b)(4). Petitioner bears the burden of demonstrating a reasonable likelihood that it would prevail with respect to at least one challenged claim for a petition to be granted. 35 U.S.C. § 314(a).

A claim is unpatentable under § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) when in evidence, objective indicia of non-obviousness (i.e., secondary considerations).[4] *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). Secondary considerations may include long-felt but unsolved need, failure of others, unexpected results, commercial success, copying, licensing, and praise. *See id.* at 17–18; *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). We analyze the asserted grounds with these principles in mind.

[4] Patent Owner does not present any objective evidence of nonobviousness at this stage of the proceeding.

E. Obviousness under 35 U.S.C. § 103

1. Obviousness of Claims 1, 9, 11, 13–15, 19, and 20 Over Philyaw and Merriman

Petitioner contends that claims 1, 9, 11, 13–15, 19 and 20 are unpatentable over the combined teachings of Philyaw and Merriman. Pet. 6–57. Patent Owner disputes Petitioner's contentions. Prelim. Resp. 8–20.

a. Independent Claims 1 and 11

Petitioner asserts that Philyaw discloses the preamble and limitations a), c), and e) of claim 1. Pet. 6–16, 26–27, 34–35. Petitioner asserts that the combined teachings of Philyaw and Merriman render limitations b) and d) obvious. *Id.* at 16–26, 28–34. For claim 11, Petitioner refers back to its assertions regarding the corresponding limitations of claim 1. Pet. 38–42.

Patent Owner does not contest specific limitations of claims 1 and 11. Rather, Patent Owner's arguments pertain to Petitioner's reasoning in support of the proposed combination. PO Resp. 8–20. We focus our discussion on Patent Owner's arguments regarding the lack of a motivation for the proposed combination as they are dispositive.

Independent claim 1 requires *inter alia* an automated method of collecting profiles of Internet-using entities, including the steps of electronically "receiving at a programmed computer system coupled to a global computer network, from at least one server controlled by one of a plurality of unaffiliated third parties, a partial profile of an entity that uses a user computer coupled to the global computer network and accessing a website," "wherein receiving the partial profile is achieved as a result of automatic electronic URL redirection from a portion of a page of the website

accessed by the user computer." Ex. 1001, 16:44–56. Independent claim 11 is directed to "[a] tangible, non-transitory data storage medium comprising indicia of instructions for a processor to perform a method of collecting profiles of Internet-using entities," where the method recites limitations similar to the limitations of claim 1. Ex. 1001, 17:45–61.

Petitioner asserts that Philyaw discloses these limitations except that "*Philyaw* does not expressly describe . . . CRS 2500 [(i.e. a programmed computer system)] receiving the 'partial profile' as a result of automatic electronic URL redirection from the website accessed by the user PC 302 [(i.e. user computer)]." Pet. 17. Noting that Philyaw "explains that 'upon the user exiting [the vendor] site, the vendor server transmits the user activity information back to the CRS 2500' so that the user profile can be updated on CRS database 2502," Petitioner asserts that "*Philyaw* does not limit (or provide further details) as to how or why a user would exit the vendor website 2504." *Id*. (Ex. 1005, 28:7-15, 26:39–44; Ex. 1002 ¶¶ 86–87). Petitioner then reasons that "[a] POSITA[5] contemplating the implementation of *Philyaw's* systems/process would have had reason to consider known technologies/techniques relating to user (user computer/browser) exits of websites to ensure the collected user activity information is provided to CRS 2500 in a manner consistent with the goals and processes of *Philyaw*." *Id.* (citing Ex. 1002 ¶ 87; Ex. 1005, code (57), 3:16–26.)

Petitioner asserts that "it would have been obvious to configure *Philyaw*'s system/process to implement such features in light of *Philyaw*'s disclosures and the state of art knowledge of a POSITA at the time, such as

[5] Person of ordinary skill in the art.

that provided by *Merriman*." *Id.* at 18 (citing Ex. 1002 ¶ 89). Petitioner asserts that

> such a modification would have been no more than the predictable use of known technologies and techniques (URL redirection) according to their established functions, which would have led to the predictable result of *Philyaw*'s user profile tracking system triggering user profile updates for various ways a user exits a current webpage or website session.

Id. (citing *KSR*, 550 U.S. at 417). According to Petitioner, Merriman discloses receiving a partial profile as a result of automatic electronic URL redirection from a website accessed by a user of a PC. Pet. 20–21.

Petitioner provides further reasoning in support of the proposed combination. For example, Petitioner reasons that a person of ordinary skill in the art "would have been motivated, and found [it] obvious, to configure *Philyaw*'s system/process to implement . . . modifications including use of known banner advertisement and associated automatic URL redirection techniques and technologies [such as those disclosed by Merriman] to provide more versatility to *Philyaw*'s system." Pet. 23. Petitioner asserts further that "[s]uch a modification would have . . . resulted in performing the claimed 'receiving' limitation" and that a person of ordinary skill in the art "would have understood complimenting *Philyaw's* system with automatic URL redirection to another URL, as one of various ways a user exits a viewed web page being viewed to facilitate sending the partial profile information to the CRS 2500." Pet. 24–25 (citing Ex. 1005, 28:7–12; Ex. 1002 ¶¶ 102–104). According to Petitioner, "[t]his knowledge coupled with the understanding of known URL redirections techniques . . . would have guided and motivated a [person of ordinary skill in the art] to consider

and implement processes that consider and use URL redirection." *Id.* at 25 (citing Ex. 1005, 28:7–12; Ex. 1002 ¶¶ 102–104).

Patent Owner contends that "[t]he Petition's combination of Philyaw's system with Merriman's 'automatic URL redirection' teachings fails because it is unsupported by any articulated, nonconclusory reasoning or rational underpinning." PO Resp. 11 (citing *KSR*, 550 U.S. at 418). We agree with Patent Owner that Petitioner's reasoning in support of the proposed combination lacks rational underpinning. PO. Resp. 11.

Specifically, we agree that there is no motivation to add Merriman's URL redirection to Philyaw's system. *See* PO Resp. 11. We further agree with Patent Owner that Petitioner "fails to provide any evidence that a POSITA would have believed Philyaw to lack any important detail (or contain any other deficiency) with respect to user exits of websites" that would prompt a person of ordinary skill in the art to look to other references such as Merriman. PO Resp. 12. Rather, as discussed in detail below, Philyaw specifically addresses what happens when a user exits a vendor website. Ex. 1005, 26:39–44.

In Philyaw, the user installs software on their PC to create a barcode that includes information, entered by the user, about their preferences (i.e. a "partial profile"). Ex. 1005, 25:25–34. Philyaw's barcode includes a digital ID "for tracking the user's efforts and interests as he or she visits various websites on the GCN." *Id.* at 25:49–50. In Philyaw "[w]hen the user visits a web site server 2504, the unique ID is passed off to the web site server 2504 such that the user's activities are tracked and any interests or other activities are logged." *Id.* at 26:1–4. In addition, in Philyaw

> As the user searches through the vendor web site 2504, or even *after the user has exited the vendor web site* 2504, that search

> information [i.e. partial profile] can be logged and transmitted back to the CRS 2500 along a path 6 to update the user profile as to interests and activities which occurred while visiting the vendor server 2504.

Id. at 26:39–44 (emphasis added). In other words, in Philyaw, partial profile information is automatically received from a website accessed by the user's computer and passed to CRS 2500 where the profile is updated. *Id.* Because Philyaw describes what happens when a user exits a vendor website, there is no reason for a person of ordinary skill in the art to have considered teachings regarding website exits. *Id.* Consequently, Petitioner's articulated reasoning lacks rational underpinning because it is based on the incorrect premise that Philyaw does not address what happens when a user exits a website.[6]

For these reasons, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing for claims 1 and 11.

a. Dependent Claims 9, 13–15, 19, and 20

Claim 9 depends from claim 1, and claims 13–16, 19, and 20 depend from claim 11. Ex. 1001, 17:38–40, 18:21–39, 18:53–63. Having failed to demonstrate a reasonable likelihood of prevailing for independent claims 1 and 11, the Petitioner also fails to demonstrate a reasonable likelihood of prevailing for these claims.

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[6] To the extent that Petitioner's position is that Philyaw does not teach how a user exits a website (*see* Pet. 17), we agree with Patent Owner that this is a "specious assertion" in that a person of ordinary skill in the art would know how to exit a website (e.g. by navigating to a different webpage or closing the browser) and would not look to a teaching about URL redirection to address this alleged lack of disclosure in Philyaw (PO Resp. 11–12).

2. Obviousness of Claim 16 Over Philyaw, Merriman, and Easty

Claim 16 depends from claim 11. Petitioner's challenge to claim 16 suffers from the same deficiencies as its challenge to claim 11 discussed above. Petitioner does not assert that Easty cures these deficiencies. Thus, Petitioner fails to demonstrate a reasonable likelihood of prevailing for claim 16 as it does for claim 11.

III. CONCLUSION

After considering the evidence and arguments presented in the Petition and the Preliminary Response, we determine that Petitioner does not demonstrate a reasonable likelihood of prevailing with respect to any of the challenged claims, and thus, we do not institute an *inter partes* review.

IV. ORDER

In consideration of the foregoing, it is hereby

ORDERED that the Petition is *denied* as to all challenged claims, and no trial is instituted.

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