

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

Rocket Media, LLC d/b/a Launch Labs,

Petitioner,

v.

Fullthrottle Technologies, LLC,

Patent Owner.

Case No. 2025-00148

U.S. Patent 11,556,947

Patent No. 11,556,947 to Waishampayan *et al.* IPR Case No.: IPR2025-00148

PATENT OWNER'S PRELIMINARY RESPONSE TO
PETITION FOR *INTER PARTES* REVIEW OF
CLAIMS 1-20 OF U.S. PATENT 11,556,947

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EXHIBIT LIST

Exhibit	Description
2001	Safari Privacy Overview – Learn how the Safari web browser protects your privacy (Nov. 2019) (available at https://www.apple.com/safari/docs/Safari_White_Paper_Nov_2019.pdf)
2002	The next step toward phasing out third-party cookies in Chrome (Dec. 14, 2023) (available at https://blog.google/products/chrome/privacy-sandbox-tracking-protection/)
2003	Third-party cookies restricted by default for 1% of Chrome users (Jan. 1, 2024) (available at https://debox.blog/cookie-countdown-2024jan)
2004	Thriving in the Post-Third-Party Cookie Era (Feb. 2, 2024) (available at https://www.launchlabs.ai/post/post-third-party-cookie-era)
2005	Tracking and Privacy Changes for Local Business: Capitalizing on the loss of third-party cookies (available at https://www.launchlabs.ai/ebook)
2006	fullthrottle.ai – Audience Generation (available at https://www.fullthrottle.ai/audience-generation/)
2007	Launch Labs – Automotive (available at https://www.fullthrottle.ai/automotive/)
2008	Launch Labs – Geolocation Marketing Demystified (available at https://www.launchlabs.ai/post/geolocation-marketing-demystified)
2009	fullthrottle.ai – Home Page (available at https://www.fullthrottle.ai/)
2010	<i>Fullthrottle Technologies, LLC v. Rocket Media, LLC (d/b/a Launch Labs)</i> , No. 1:24-cv-00314 (M.D.N.C.), Dkt. Report as of March 12, 2025
2011	<i>Fullthrottle Technologies, LLC v. Rocket Media, LLC (d/b/a Launch Labs)</i> , No. 1:24-cv-00314 (M.D.N.C.), Dkt. 24 (“FAC”)

I. Introduction

Fullthrottle Technologies, LLC (“Patent Owner” or “Fullthrottle”) preliminarily responds to Petitioner Rocker Media, LLC’s (“Petitioner”) petition for *inter partes review* of Claims 1-20 (“the Challenged Claims”) of U.S. Patent No 11,556,947 (Ex-1001 (“the ’947 Patent”)). Petitioner’s petition should be denied because the applied prior art is missing limitations and is not combinable to form the claimed inventions. Petitioner itself recognizes that the references do not teach the claimed inventions and attempts to use an expert to fill in the gaps even though it did not identify expert evidence as a ground in its petition. Moreover, Petitioner’s petition should be discretionarily denied because of related district court litigation and a related asserted patent for which no post grant proceeding has been requested, which could potentially lead to inconsistent rulings.

II. Background

A. The Parties

Fullthrottle is an award winning, data-powered artificial intelligence (AI) company that helps consumers connect with retailers and educational institutions without third-party cookies (Ex-2011, ¶22; Ex-2009; *see also* Ex-2006; Ex-2007). Fullthrottle’s platform is known as Shoppersuite (Ex-2011, ¶48). Petitioner competes with Fullthrottle for the software services sales under the trade name Ignite

(Ex-2011, ¶72).

B. Related Matters

Fullthrottle filed suit against Petitioner in April 2024 (*Fullthrottle Technologies, LLC v. Rocket Media LLC*, No. 12:24-cv-00314 (M.D. N.C.)). That case is pending. In that action, Fullthrottle asserts the '947 patent and U.S. Patent Nos. 11,823,219 ("the '219 patent") and 12,051,083 ("the '083 patent") (Ex-2011, pp. 1-2). The '947, '219, and '083 patents are related by a claim of priority (Ex-1005, "Related U.S. Application Data"). Petitioner filed a motion to dismiss in that action.

Petitioner also petitioned to institute an *inter partes* review of the '219 patent in IPR2025-0149. Petitioner has not petitioned for a post grant review or *inter partes* review of the '083 patent.

C. The Technical Background

Computer cookies are small data files that websites save on a device that can be used for a variety of purposes, including storing information for tracking a user (Ex-2001, p. 4; Ex. 2005, p. 4). Computer cookies include two types: first-party cookies and third-party cookies (Ex-2001, p. 4; Ex. 2005, pp. 4-5). A "first-party cookie" is a computer cookie from a first-party website that is saved to a user's device by a web page the user has visited (Ex-2001, p. 4; Ex. 2005, p. 4). A "third-

party cookie” is saved to the device by another site or service, often for cross-site tracking (Ex-2001, p. 4; *see also* Ex. 2005, p. 5). According to Petitioner, “third-party cookies form the backbone of online display” and are “crucial for business to stay compliant and competitive” (Ex-2005, p. 3). Petitioner itself recognizes these principles (Ex. 2005, pp. 4-5).

A worldwide technical problem was recognized when governments and companies started banning third-party cookies due to privacy concerns (Ex-2011, ¶19; Ex-2003; Ex-2002). With third-party cookies restricted, website owners had no technical way to identify a user, each time the user visits the same web page, the number of times a user visits a web page, or to determine that it was the same user accessing the internet from different devices (*e.g.*, a laptop and a mobile phone). The technical problem included how to develop new software that facilitates web site user-website host interaction while still meeting certain technical constraints (*e.g.*, being persistent across multiple internet browsing sessions), while meeting the privacy concerns associated with third-party cookies and not slowing the internet user's browsing experience.

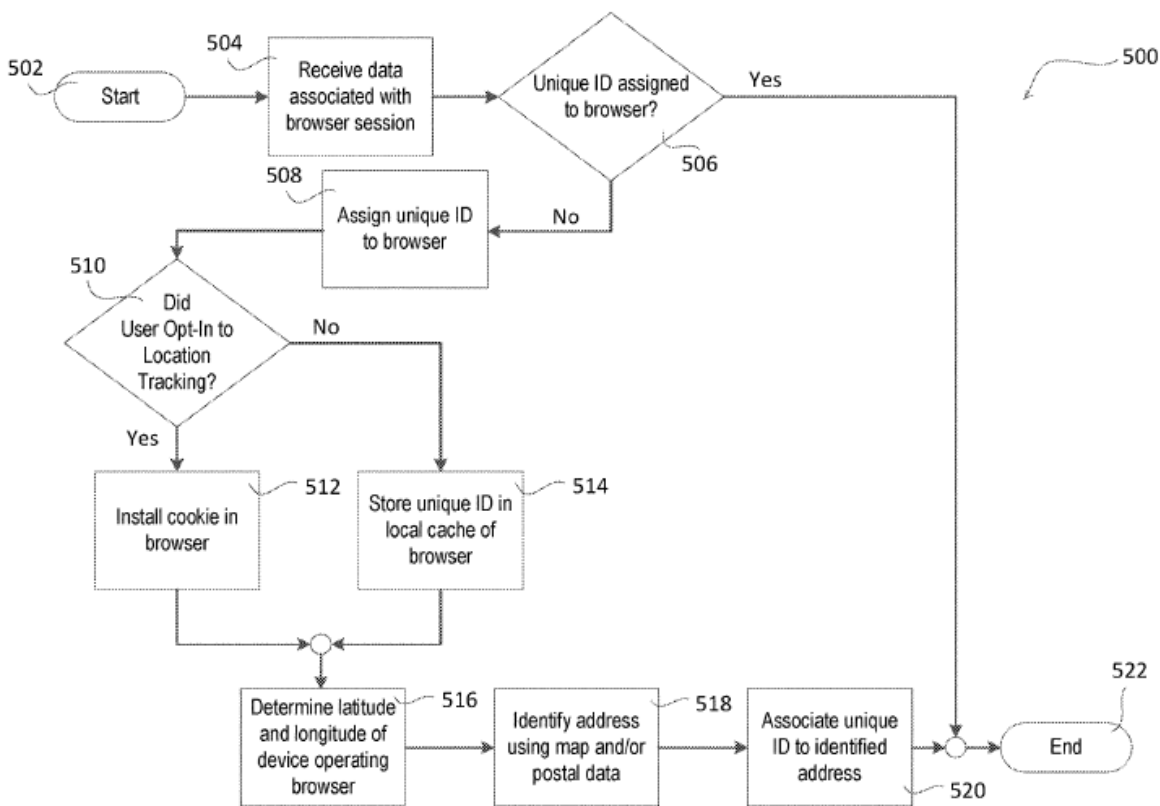
Both Apple and Google recognized this problem (*see* Exs-2001, 2002, 2003). In addition, Petitioner itself recognized the problem stating that the elimination of third-party cookies is causing the “digital landscape” to “undergo[] a seismic shift”

and this “change will impact everyone” (Ex-2004). In fact, Petitioner’s entire business is directed to solving this technical problem (*id.*; Ex-2005). Petitioner itself recognizes many of these technical problems and alleges to have an “innovative approach” (Ex-2008).

D. The '947 Patent

The '947 patent solves this problem. Figure 5 is helpful to focus on for purposes of this motion. Figure 5 describes computer processing in a flow chart.

Fullthrottle Patent Figure 5



At 504, a computing device receives browsing session data from a user such

as “anonymous data (*e.g.*, data that includes no personally identifiable information associated with the user)” (Ex-1001, 11:50-51). Examples of such anonymous data are time, date, webpage URL, browser type, language, IP address, and location (Ex-1001, 11:52-54). After receipt of the anonymous data, the computing device determines at 506 whether there is a “unique identifier that is associated with the user” (Ex-1001, 12:8-11). The '947 patent describes that this determination may be made by determining whether the computing device database has a unique identifier assigned to the anonymous data (*e.g.*, “location data”) (Ex-1001, 12:8-14). If there is an assigned unique identifier in the database, this means that the computing system stored the unique identifier in the user's browser cache after determining that the user had opted out of location tracking/third-party cookies (Ex-1001, 12:18-27).

Alternatively or additionally, the computing device may determine that there is a “tracker (*e.g.*, cookie)” installed in the browser application on the user computing device and a unique identifier associated with that “tracker (*e.g.*, cookie)” from visiting another website (Ex-1001, 12:18-26). The “tracker (*e.g.*, cookie)” may have been installed when a user opted-in to location tracking when visiting a third-party site (Ex-1001, 12:39-40).

At 508, if the computing device determines that no unique identifier has been assigned based on the browsing session data, the computing device generates a

unique identifier for that user (Ex-1001, 12:28-31).

The computing device determines at 510 whether the user opted-in to location tracking (Ex-1001, 12:39-40). If the user opted-in to location tracking, there is a “tracker (*e.g.*, cookie)” in the browser application” (Ex-1001, 12:44-46). The tracker (*e.g.*, cookie) may be in the HTTP header sent from the user to the computing device (Ex-1001, 12:64-66). If there is no “tracker (*e.g.*, cookie)” in the browser application, the computing device stores the generated unique identifier in the user's local cache (Ex-1001, 13:11-16). The assigned unique identifier stored in the local browser cache enables the computing device to recognize return visits by the user when using the same browsing application (Ex-1001, 13:17-19). This respects privacy because only the system assigning the unique identifier knows that the unique identifier is correlated to the user (*see* Ex-1001, 13:11-16 describing use of the unique identifier when “full cookies” are not permitted).

The computing device determines the user's latitude and longitude from the browsing session data (516) (Ex-1001, 13:40-44). At step 518, the computing device determines a physical address (*e.g.*, postal address) for the browsing session by correlating the browsing session location data with information (*e.g.*, map information) using an automated programming interface (API) (Ex-1001, 13:50-58). The computing device associates the unique identifier with the physical address

(520) (Ex-1001, 14:14-17).

E. The Challenged Claims

Petitioner challenges claims 1-20 on only two obviousness grounds. Petitioner argues that claims 1-20 are obvious over (i) U.S. Patent No. 8,898,074 (“Doughty”) in view of European Patent Publication No. 2,938,045 (“Van Boucq”) (Ex-1009) (Ground I); and (ii) Doughty in view of Van Boucq and U.S. Patent No. 10,311,465 (“Maginnis”) (Ground II).

Claim 1 is a method claim (Ex-1001, 47:44-48:35). Claim 1 and an identifier for each limitation is set forth below.

Claim Limitation Identifier	Claim Limitation
1[pre]	A method comprising:
1[a]	receiving first anonymous data associated with a first browser session initialized by a user via a browser on a user computing device, wherein the first anonymous data comprises one or more of a time, a date, one or more uniform resource locators (URLs), a referring URL, a browser type, a language, an internet protocol (IP) address, or location data;
1[b]	determining that the user accessed a URL during the first browser session;
1[c]	determining that the user has not been assigned a unique identifier based on a lack of stored location data for the user computing device;
1[d]	assigning the unique identifier to the user;
1[e]	determining whether the user opted-in to or out of location tracking, based on whether a location tracker is installed on the user computing device;

1[f]	sending, upon determining that the user opted-out of location tracking, the unique identifier to the user computing device for storage in a local browser cache;
1[g]	determining a latitude coordinate and a longitude coordinate of the user computing device, during the first browser session, wherein the latitude coordinate and the longitude coordinate are determined based on the first anonymous data upon determining that the user opted-out of location tracking, and wherein the latitude coordinate and the longitude coordinate are determined based on geo-location data retrieved from the user computing device upon determining that the user opted-in to location tracking;
1[h]	identifying a physical address for the user based on the determined latitude coordinate and the determined longitude coordinate using a map application programming interface (API);
1[i]	associating the unique identifier to the physical address;
1[j]	generating a user profile for the user using the unique identifier and physical address, the user profile comprising profile information that comprises one or more URLs the user has accessed, a frequency with which the user accessed the URL(s), demographics associated with the user, the physical address(es) associated with the user, or devices associated with the user;
1[k]	updating the profile information based on second anonymous data associated with a second browser session initialized on the user computing device or another user computing device associated with the physical address;
1[l]	identifying a second visit to the URL during the second browser session using the unique identifier stored in the local browser cache; determining, using the updated profile information, a confidence

	rating for the user, the confidence rating indicating a quantifiable measure of the user's interest in a product;
1[m]	generating one or more notifications based on one or more of the updated profile information or the confidence rating; and
1[n]	determining when to send the one or more notifications to the user.

Claim 11 is an independent non-transitory, medium claim that corresponds to claim 1 (Ex-1001, 49:16-50:8). Claims 2-10 depend from claim 1 and in some instances other dependent claims (Ex-1001, 48:37-49:15). Claims 12-20 depend from claim 11 and in some instances other dependent claims (Ex-1001, 50:9-50:66).

F. Overview of the Applied Art

Doughty and Van Boucq are discussed below. As Petitioner's petition can be denied without addressing Maginnis, Fullthrottle does not address Maginnis.

1. Doughty

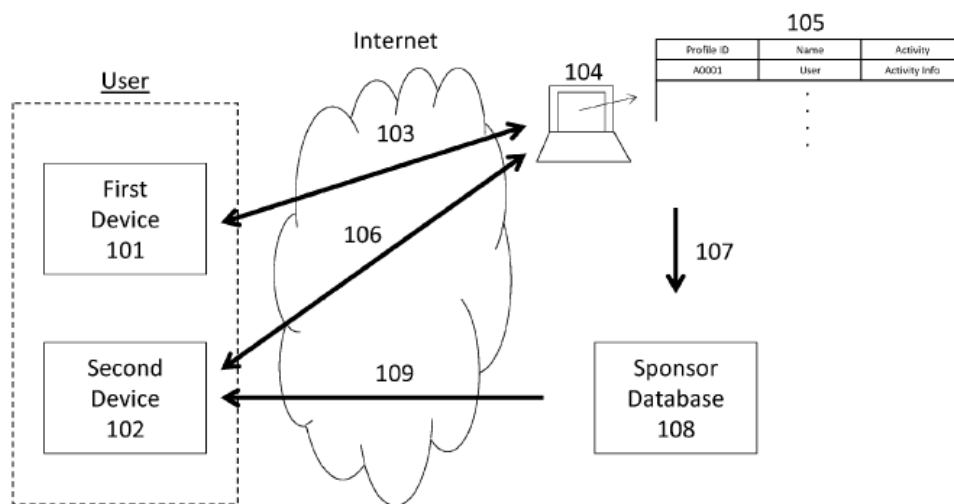
Doughty focuses on assigning a unique identifier to each device, determining whether the devices are associated with the same user based on user activity, and then linking the assigned identifiers (Ex-1008, 11:37-39).

Doughty identifies that an internet user of a stationary device can be sent advertising on the stationary device (Ex-1008, 5:33-58, 9:32-63). According to Doughty, there was "no efficient way to optimally target the same user across all the devices he may use" including for example, cellular phones, smart phones,

televisions, and gaming devices (Ex-1008, 5:35-53, 9:64-10:11). Doughty focuses on using “user activity” to identify that two devices are associated with the same user (Ex-1008, 11:37-39).

Doughty discloses a “server 104” (Fig. 1) that communicates with a “first device 101” and a “second device 102” (Ex-1008, 10:34-36, 10:54-57).

Doughty Figure 1



Doughty's “server 104 communicates with first device 101 to receive information relating to the user's activity on first device 101” (Ex-1008, 11:34-36). Upon receiving the “user's activity information, server 104 assigns a unique identifier” and “stores the assigned unique identifier, user information, and activity information in table 105” (Ex-1008, 1:45-50). According to Doughty, the server 104 can receive the user activity through a communication signal 103 and can be “transmitted based on a request from server 104, a periodic transmission by first

device 101, or a triggering event on the part of the first device 101” (Ex-1008, 10:42-45). The “user activity can be continually or periodically updated” (Ex-1008, 10:41-42). Doughty discloses that the server 104 can identify second device 102 “through a server request from server 104, a periodic transmission by the second device 102, or a triggering event on the part of the [sic] first device 102” (Ex-1008, 10:54-57).

The “user’s activity may be [sic] behavioral pattern, viewing habits, usage information, duration on each application, geographic location, proximity to other locations” (Ex-1008, 11:36-39). Doughty further describes receiving data corresponding to a first plurality of web page visits; and a second plurality of web page visits (Ex-1008, 6:1-12). As a more specific example, Doughty describes the “user’s activities” as recording of the user checking basketball scores on ESPN, stock prices on Yahoo Finance and looking for the nearest restaurant on Yelp” (Ex-1008, 11:4-8). Doughty does not mention communicating these data compilations through browser session data.

Doughty discloses various other information for determining that the user of the first device is the user of the second device for “linking” the two devices by: (i) “identifying that the first plurality of web page visits” from the first device is “substantially the same as the second plurality of web page visits” from the second device; (ii) “receiving first data” that corresponds to a “location of a first

communication device operated by a user and a time of day at which the first communication device is situated at the location” and second data “that corresponds to a “location of a first communication device operated by a user and a time of day at which the second communication device is situated at the location” a (iii) using a “predetermined number of times” for determining that the user of two devices are the same; (iv) identifying that a first route associated with the first device is substantially the same as a second route taken with the second device; (v) identifying that a first application use-pattern is the same as a second application use-pattern; (vi) identifying at least some data contained in a first profile associated with a first user of a first communication device corresponds with data in a second profile associated with a second user of a first communication device; and (vii) identifying that the first user managed asset is the same as a second user-managed asset (Ex-1008, 6:12-16; 6:47-49; 7:3-6; 7:21-24; 7:47-49; 7:67-8:1).

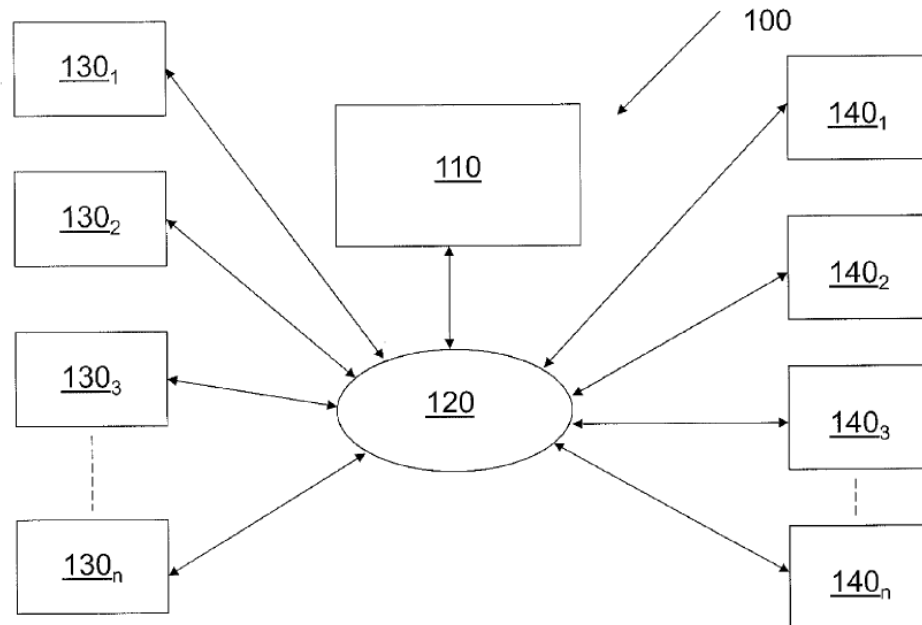
The server 104 can request that an ad database transmit an advertisement to the second user 102 through the ad database 108 based on the user's usage on the first device 101 (Ex-1008, 11:26-29). Also, the server can store a user profile associated with a device based on the device's browsing activity (Ex-1008, 12:30-34).

2. Van Boucq

Van Boucq focuses on the alleged problem of locating an internet user based on an IP address and sending advertisements to the user based on the IP address. Using an IP address is problematic according to Van Boucq because IP addresses may be temporarily assigned, are imprecise in identifying exact location, may not be associated with the device's geographic location, and can change (Ex-1009, ¶¶[0005], [0010]). Also, many users may refuse to be “geolocated by their browsers,” their browser's geolocation services, and to specify their location (Ex-1009, ¶[0009]). Thus, a “purpose of the present invention” of Van Boucq was “to provide a geolocation method enabling a precise geolocation to be assigned to an Internet user whose IP address is known, but who is not geolocated by any geolocation method other than geolocation via the user's IP address (Ex-1009, ¶[0013]).

Van Boucq discloses a “communication system 100” (Fig. 1) comprising “an internet service provider 100” that is the interface with the internet 120 for internet users 140_{1-n} and services providers and advertisers 1301-n (Ex-1009, ¶[0056]). The internet providers 1301-n preferably provide the internet users local information relating to a specific geographic area defined by geographic coordinates “longitude and latitude” predetermined by each Internet user 140_{1-n} (Ex-1009, ¶[0056]).

Van Boucq Figure 1



Van Boucq describes an “ad window 300” (Fig. 3) comprising an advertiser’s or service provider’s ad 310, a reference to the Internet user’s location 302, and a link 330 for modifying the Internet user’s location, and a link 370 for viewing the location of the ad’s advertiser or service (Ex-1009, ¶[0072]).

Van Boucq Figure 3

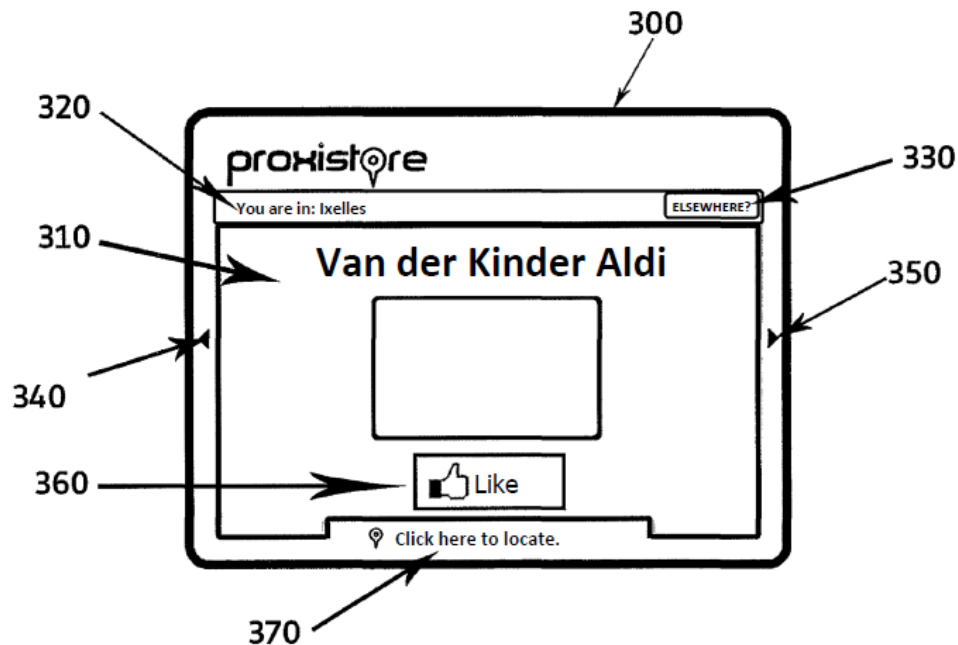
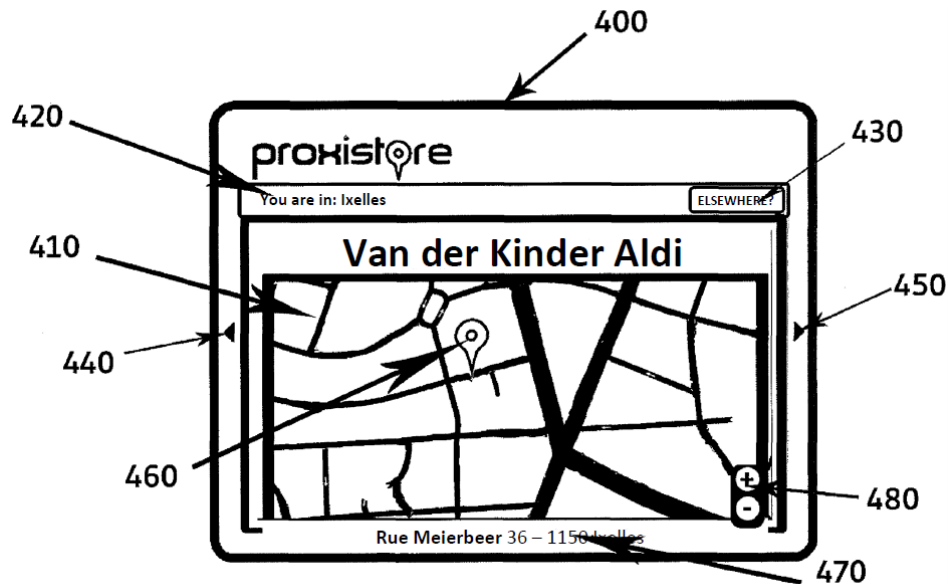


Figure 4 illustrates an “ad window 400” that appears from clicking on link 370 so the internet user can view the advertiser’s geolocation (Ex-1009, ¶[0074]). The ad window 400 has a link 430 for modifying the Internet’s user’s geolocation 420, where the internet user can specify the user’s location (Ex-1009, ¶[0074]).

Van Boucq Figure 4



Van Boucq describes three approaches using these ad windows to the problem of just using a user's IP address for advertising. First, Van Boucq describes that when an ad window "is called up on the website consulted by the Internet user, the HTTP (hypertext transfer protocol) communication protocol 220 is verified by the web browser to determine whether the Internet user has already previously geolocated him/herself and already has a cookie (connection cookie), which makes it possible to determine whether the geolocation of said Internet user has already been stored in a browsing device" (Ex-1009, ¶[0060]).

In a second approach, Van Boucq describes that an ad window 210 is called up (Ex-1009, ¶[0063]). If the user has not been previously located and therefore the user's geolocation is not yet known to the Web browser, the Web browser sends a

pop-up message 270 asking the user if the user wants to be geolocated (Ex-1009, ¶[0063]). If the user refuses to be geolocated or ignores the pop-up, the communication system will locate the user according to the IP address of that user's connection to a computer network, resulting in the creation of a cookie whose lifespan varies according to the browsing device (Ex-1009, ¶[0063]).

In a third approach, if the Internet user has not previously geolocated and therefore the user's geolocation is not yet known to the Web browser, an ad window 210 is called up from the advertiser (Ex-1009, ¶[0067]). The Web browser will send a pop-up message 270 asking the user if the user wants to be geolocated (Ex-1009, ¶[0067]). If the user agrees to be geolocated, the user is geolocated via the Web browser geolocation service, which results in the creation of a connection cookie (Ex-1009, ¶[0068]).

Optionally, following the display of local ad 240, if the user chooses, the user can click on an "other geolocation" button that takes the user to a platform where the user can modify the existing cookie and specify a precise address or zip code (Ex-1009, ¶¶[0061], [0070]).

III. Person Having an Ordinary Skill in the Art ("POSITA")

For purposes of resolving Petitioner's petition, Fullthrottle does not contest Petitioner's POSITA definition.

IV. Claim Construction

Patent Owner adopts Petitioner's proposed constructions for purposes of this petition. Patent Owner agrees with Petitioner's comment that the construction of "Term 2,"—"upon determining that the user opted-out of location tracking"—refers back to the construction of "location tracker," meaning that the "tracker, *e.g.*, cookie" in term (2) is the "location tracker" defined in Term 1.

Patent Owner does not contend that any other claim terms need to be construed in order to resolve Petitioner's petition.

V. Petitioner's Petition Fails to Meet the Requirements for Institution

Petitioner's two obviousness combinations fail to meet the institution standard for similar reasons. Petitioner limits its arguments here to those that are sufficient to show that Petitioner has failed to satisfy the institution standard.

A. Ground I: Petitioner's Two-Way Obviousness Combination Fails to Meet the Institution Standard

Petitioner's two-way obviousness combination fails to meet the institution standard because the references fail to disclose and render obvious at least limitations 1[c], 1[e], 1[f] and 1[l], and there is no motivation to combine the references in such a way as to form the claimed invention.

1. Doughty and Van Boucq Fail to Disclose Limitation 1[c]

Claim limitation 1[c] is "determining that the user has not been assigned a

unique identifier based on a lack of stored location data for the user computing device.” Petitioner incorrectly alleges that both Doughty and Van Boucq disclose this limitation. The agreed construction of 1[c] is “a ‘unique identifier’ that was not previously assigned when it was previously determined that the user had opted out of location tracking” (Petition, p. 15). Petitioner fails to discuss this construction in its assertion of Doughty or Van Boucq (Petition, pp. 24-26). Instead, Petitioner addresses another construction for the claim term “determining whether the user opted-in to or out of location tracking” (Petition, p. 27). For at least this reason, Petitioner fails to show that Doughty or Van Boucq teach each limitation of step 1[c] because Petitioner did not apply Petitioner’s construction. However, the additional deficiencies of Doughty and Van Boucq are provided below with regard to limitation 1[c].

Doughty Petitioner incorrectly alleges that Doughty discloses limitation 1[c] by citing portions of Doughty that disclose determining whether a universal profile has been created for a device (Petition, p. 24). But the cited Doughty excerpts are determining whether a universal profile for first and second devices have been created (Ex-1008, 6:25-30). Creating a universal profile says nothing about taking actions based on “a lack of stored location data” (Ex-1008, 6:25-30). In fact, Doughty does not disclose this limitation because Doughty’s server 104 “assigns a

unique identifier” upon receiving the “user’s activity,” not based on a lack of stored location data (Ex-1008, 1:45-50).

Further, Doughty does not determine whether a unique identifier was previously assigned based on “a lack of stored location data.” Rather, Doughty discloses determining whether a user of a first device and a user of a second device are associated by comparing user activity (Ex-1008, 6:12-16, 6:47-49, 7:3-6, 7:21-24, 7:47-49, 7:67-8:1). But Doughty never discloses limitation 1[c].

Petitioner all but admits that Doughty does not teach limitation 1[c], as Petitioner resorts to arguing the limitation is obvious by trying to fill in the gaps with an expert (Petition, pp. 24-25). According to Petitioner’s expert, limitation 1[c] is obvious over Doughty because it would have been obvious for Doughty to check whether Doughty previously stored a user’s unique identifier by checking for a cookie or other file (Petition, pp. 24-25; Ex-1007 ¶150). However, this argument fails because this is not actually disclosed anywhere in Doughty and the expert’s assertion is even contrary to Doughty’s teachings. Doughty teaches assigning a unique identifier if a unique identifier was not assigned (Ex-1008, 1:45-50), as opposed to assigning a unique identifier after determining that a “unique identifier was not previously assigned when it was previously determined that the user had opted out of location tracking,” as claimed. In fact, it would be contrary to Doughty

to determine a unique identifier has not been assigned based on a lack of stored location data, because Doughty's objective is to assign each device a unique identifier and then to try and correlate devices that are associated with the unique identifier (Ex-1008, 6:1-19). In other words, Doughty's goal is not to assign an identifier based on location data, but rather to assign all devices a unique identifier and then correlate them to particular users based on the user activity, not to assign an identifier based on lack of location data (*see* Ex-1009, 10:12-14).

Van Boucq Petitioner also alleges that Van Boucq discloses limitation 1[c], citing to paragraph [0060] (Petition, p. 26). But Petitioner is incorrect. In the cited excerpt, Van Boucq only describes determining that the Internet user has already previously geolocated him/herself and already has a cookie (connection cookie), which makes it possible to determine whether the geolocation of said Internet user has already been stored in a browsing device (Ex-1009, ¶[0060]). The cited Van Boucq excerpt, however, says nothing about “determining that the user has not been assigned a unique identifier based on a lack of stored location data for the user computing device” or as construed “a ‘unique identifier’ that was not previously assigned when it was previously determined that the user had opted out of location tracking” (Petition, p. 15). Rather, the cited excerpt only checks for the presence of the “cookie (connection cookie),” which Petitioner alleges is the “unique identifier.”

Moreover, Van Boucq does not teach the limitation under Petitioner's constructions. Petitioner's construction requires "a 'unique identifier' that was not previously assigned when it was previously determined that the user had opted out of location tracking" (*e.g.*, lack of a third-party tracking cookie) (Petition, p. 15). Van Boucq does not satisfy this construction because Van Boucq's "connection cookie" is a first-party cookie, not a third-party cookie (Ex-1009, ¶[0060]). As described in Van Boucq, an "ad window" is called up in a web browser and "[i]f the Internet user has not previously geolocated and therefore the user's geolocation is not yet known to the Web browser," the advertiser will geolocate the user "resulting in the creation of a cookie" (connection cookie) (Ex-1009, ¶¶ [0063], [0067], and [0121]). When the "ad window" is later called up in the web browser, the advertiser verifies, via HTTP communications with the web browser, that the user has already previously been geolocated and has a cookie (connection cookie) (Ex-1009, ¶[0060]). Thus, Van Boucq discloses an advertiser communicating with an ad window executed in a web browser generates and stores a cookie (connection cookie)—that is used in response to the ad window being subsequently executed in the web browser—for determining whether the user geolocated themselves (Ex-1009, ¶[0060]). This means that Van Boucq's "connection cookie" is a first-party location cookie, not a third-party tracking cookie, because the advertiser stores and

communicates with its own generated connection cookie at the web browser upon execution of the ad window, as opposed to using a third-party cookie to track a user (*see, supra* Response, pp. 2-3 citing to Ex-2001, p. 4; Ex. 2005, pp. 4-5 for description of “first-party cookie” including Petitioner’s discussion of “first-party cookie”). Van Boucq’s advertiser does not look for a cookie in the web browser that was created by a third-party.

Additionally, with regard to Van Boucq, Petitioner inconsistently argues that Van Boucq’s “cookie (connection cookie)” can be used for teaching the claimed “unique identifier” of step 1[c], as well as the claimed “location tracker” of step 1[e] below (Petition, pp. 25-26), which is improper because Van Boucq’s “connection cookie” cannot be both the “unique identifier and the “location tracker.”

Doughty + Van Boucq Limitation 1[c] is not obvious over Doughty and Van Boucq because neither discloses the limitation. Moreover, Doughty is concerned only with whether a unique identifier has been assigned. Further, Van Boucq teaches checking for the presence of a first-party cookie. Therefore, contrary to Petitioner’s suggestion, even if Doughty and Van Boucq were to be combined, Doughty and Van Boucq would only check for Van Boucq’s connection cookie. Thus, the combination nowhere suggests or discloses limitation 1[c].

Petitioner’s Comments Regarding “Patent Owner’s Construction”

Petitioner's arguments regarding limitation 1[c] ignored Petitioner's proposed constructions. Petitioner purports to address the construction Petitioner proposed in the section "Patent's Owner's Construction," meaning that its prior arguments were irrelevant. In that section, Petitioner references its discussion in section 1[e] (Petition, p. 27). Under 37 C.F.R. § 42.104(b)(4), however, Petitioner was required to identify how the claims are unpatentable under the statutory grounds on which the petitioner challenges the claims and to specify where each element of the claim is found in the relied-upon prior art. *Adaptics Ltd. v. Perfect Co.*, IPR2018-01596, Paper 20 at 22-24 (Mar. 6, 2019) (informative); *Amazon Web Servs., Inc. v. Saint Regis Mohawk Tribe*, IPR2019-00103, Paper 22 at 15-19 (May 10, 2019). "[I]t is Petitioner's burden to demonstrate sufficiently in the Petition that [the prior art] renders the challenged claims unpatentable, including showing that the Petition's contentions are supported by the evidence." *SIMO Holdings Inc. v. Hong Kong uCloudlink Network Tech. Ltd.*, IPR2019-01504, Paper 17 at 4-5 (May 19, 2020) (citing 35 U.S.C. § 314(a)); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) ("In an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.") (citing 35 U.S.C. § 312(a)(3)); *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (requiring "the initial petition identify 'with particularity' the

‘evidence that supports the grounds for the challenge to each claim’”). Petitioner has failed to meet these standards because Petitioner has ignored Petitioner’s proposed construction and only provided a conclusory assertion to another section of its petition after making its arguments. To the extent that Petitioner’s argument is to be considered, Petitioner’s arguments should be rejected for the reasons set forth above and below with reference to limitation 1[e].

2. Doughty and Van Boucq Fail to Disclose Limitation 1[e]

Claim limitation 1[e] is “determining whether the user opted-in to or out of location tracking, based on whether a location tracker is installed on the user computing device.” Limitation 1[e] recites the term “location tracker,” which has been agreed to be construed as “third-party tracking cookie described in the patent specification” (Ex-1001, 47:58-60; Petition, p. 15).

Doughty With regard to Doughty, Petitioner admits that Doughty does not disclose this limitation (Petition, pp. 28-29). Instead, Petitioner argues that this limitation is obvious over Doughty merely because Doughty recognizes that “users can turn off browser cookies” (Petition, pp. 28-29, citing Ex-1008, 17:26-28). But Petitioner is incorrect that the claim limitation is obvious based on Doughty. Doughty teaches that “pixel tags,” not third-party cookies, can be used to “monitor the activity of a site” (Ex-1008, 17:20-22). Doughty further teaches that if a user

turns off “browser cookies,” this prevents using “pixel tags” to monitor the user’s activity (Ex-1008, 17:24-26). Thus, Doughty teaches using “pixel tags” for monitoring, not using third-party tracking cookies. In fact, Petitioner states that “pixel tags . . . are not third-party cookies” (Petition, p. 32). Accordingly, Doughty does not determine whether the user opted-in to or out of location tracking, based on whether a location tracker (*i.e.*, third-party cookie) is installed on the user computing device because in the cited sections Doughty determines whether “pixel tags” can be used for monitoring.

Moreover, Doughty records a user where pixel tags are not available as an “anonymous visit” (Ex-1008, 17:26-27). Doughty teaches that an “advertising network may uniquely identify a user by creating a hashed (*e.g.*, anonymized) email address” (Ex-1008, 17:28-33). Accordingly, Doughty teaches a technique for identifying the user that is different than that claimed. Further, Doughty teaches techniques for mapping unidentified user devices to other devices, which is the purpose of Doughty (*e.g.*, Ex-1008, 11:1-25). Thus, there is no discussion or suggestion in Doughty to make the claimed determination in limitation 1[e].

Moreover, Petitioner’s argument lack merit because Petitioner argues, *in the absence of any teaching in Doughty*, that it would have been obvious for a POSITA to query the user’s browser to determine whether the user has allowed location

sharing, and to check whether the browser has enabled third-party cookies (Petition, p. 29). But the actual teachings of Doughty merely discloses that users can turn off browser cookies at the browser device (Ex-1008, 17:24-26) and is entirely silent as to the additional “determination” regarding location tracking, let alone location tracking based on whether a location tracker (*i.e.*, a third-party tracking cookie) is installed on a computing device. In the absence of any additional disclosure, a POSITA would not have been motivated to read the additional claim limitations into Doughty, as suggested by the Petitioner because, as described above, Doughty discloses using a hashed email to identify a user (Ex-1008, 17:28-33).

Doughty over Van Boucq Petitioner also incorrectly argues that Van Boucq discloses limitation 1[e] by incorrectly asserting that the disclosed “cookie” in Van Boucq is a “third-party tracking cookie” (Petition, p. 30). Van Boucq’s “connection cookie” is a first-party cookie, not a third-party tracking cookie as claimed (Ex-1009, ¶[0060]). Notably, Van Boucq refers to the disclosed “cookie” as a “connection cookie,” not a “tracking/third-party cookie” (Ex-1009, ¶¶ [0060], [0063], [0067]). Moreover, Van Boucq discloses a “first-party” cookie, not a “third-party cookie,” because an advertiser stores and communicates with its own generated connection cookie at the web browser upon execution of the ad window (Ex-1009, ¶¶ [0063], [0067]). As described in Van Boucq, an “ad window” is called up in a web browser

and “[i]f the Internet user has not previously geolocated and therefore the user’s geolocation is not yet known to the Web browser,” the advertiser will geolocate the user “resulting in the creation of a cookie” (connection cookie) (Ex-1009, ¶¶ [0063], [0067], and [0121]). When the “ad window” is later called up in the web browser, the advertiser verifies, via HTTP communications with the web browser, that the user has already previously been geolocated and has a cookie (connection cookie) (Ex-1009, ¶[0060]). Thus, Van Boucq discloses an advertiser communicating with an ad window executed in a web browser generates and stores a cookie (connection cookie) -- that is used in response to the ad window being subsequently executed in the web browser -- for determining whether the user geolocated themselves (Ex-1009, ¶[0060]). This disclosure confirms that Van Boucq’s “connection cookie” is a first-party cookie, not a third-party tracking cookie, because the advertiser stores and communicates with its own generated “connection cookie” at the web browser upon execution of the ad window, as opposed to using a third-party cookie to track a user (*see, supra* Response, pp. 2-3 citing to Ex-2001, p. 4; Ex. 2005, pp. 4-5 for description of “first-party cookie” including Petitioner’s discussion of “first-party cookie”). Van Boucq’s advertiser does not look for a cookie in the web browser that was created by a third-party.

Additionally, as indicated previously with regard to step 1[c], Petitioner is not

consistent with regard to the teaching of the claimed “unique identifier” and the claimed “location tracker” and the applied references. For example, with regard to step 1[c] analysis, Petitioner argues that the claimed “unique identifier” is taught by the “cookie (*i.e.*, connection cookie)” of Van Boucq. In Petitioner’s limitation 1[e] analysis, Petitioner argues that the claimed “location tracker” is also taught by the “cookie (*i.e.*, connection cookie)” of Van Boucq. For at least this reason, Van Boucq does not disclose limitations 1[c] and 1[e].

Petitioner’s argument that the combination of Doughty and Van Boucq renders limitation 1[e] obvious has no merit because neither reference teaches limitation 1[e]. Petitioner argues that this limitation is obvious because Doughty recognizes that “users can turn off browser cookies” (Petition, p. 31). But it would not have been obvious because Doughty discloses a solution to identify the user with email (Ex-1008, 17:29-32) and Van Boucq does not disclose the claim limitation.

3. Doughty and Van Boucq Fail to Disclose Limitation 1[f]

Claim limitation 1[f] is “sending, upon determining that the user opted-out of location tracking, the unique identifier to the user computing device for storage in a local browser cache.” This limitation implicates three of Petitioner’s constructions. Petitioner construed “unique identifier” as “unique to the user and whose correlation to the user is known by the assignor” (Petition, p. 15). Petitioner construed “upon

determining that the user opted-out of location tracking” as “upon determining that the user opted-out of location tracking by the lack of a (‘tracker (*e.g.*, cookie)’)” and construed “location tracker” as “the third-party tracking cookie described in the patent specification (‘tracker (*e.g.*, cookie)’)” (Petition, p. 15).

“Upon determining that the user opted-out of location tracking” as claimed in limitation 1[f] is not disclosed by Doughty, Van Boucq, or their combination. Nor is limitation 1[f] obvious over Doughty and Van Boucq. In addressing this part of limitation 1[f], Petitioner relies on its arguments set forth for limitation 1[e] (Petition, p. 31). But as described with reference to limitation 1[e], neither Doughty, Van Boucq, nor their combination disclose the limitation “upon determining that the user opted-out of location tracking” because neither disclose nor suggest determining that a user opted-out of location tracking by determining that the third-party cookies were opted out of.

Petitioner further argues that Van Boucq discloses “upon determining that the user opted-out of geolocation, the system “result[s] in the creation of a cookie” (Petition, p. 31) But Petitioner is incorrect because under the Petitioner’s construction limitation 1[f] means “upon determining that the user opted-out of location tracking by the lack of a (‘tracker (*e.g.*, cookie)’)” and “location tracker” means “the third-party tracking cookie described in the patent specification (‘tracker

(*e.g.*, cookie)')” (Petition, p. 15). As described above, Van Boucq does not determine opting-out of third-party cookies.

Moreover, Petitioner fails to show that “sending . . . the unique identifier to the user computing device for storage in a local browser cache” as set forth in limitation 1[f]. In fact, Van Boucq does not disclose saving the “connection cookie”—the alleged identifier—in local browser cache. Rather, Van Boucq discloses that the connection cookie is stored in the “browsing device” with no reference to “local browser cache” (Ex-1009, ¶ [0060]). Contrary to Petitioner’s argument, without citation that a POSITA would have understood a unique identifier is stored in browser cache, neither Van Boucq nor Doughty teach sending an identifier to a computing device for storage in local browser cache, as there are other locations for storing identifiers at a user computing device (*e.g.*, browser sandboxes, local storage, *etc.*). Further, Doughty fails to disclose “sending . . . the unique identifier to the user computing device for storage in a local browser cache” because Doughty discloses using an email to identify the user when pixel tags are not available (Ex-1009, 17:28-33), not saving an identifier in local browser cache.

Petitioner’s obviousness arguments likewise fail because neither reference teaches the claim limitations. Contrary to Petitioner’s argument, Doughty does not disclose sending a first-party cookie or a pixel tag – an alleged identifier – for saving

in local browser cache (Petition, p. 32). Doughty does not even disclose that a pixel tag is saved in local browser cache. Rather, Doughty describes that the “pixel tag is usually a transparent graphic image . . . placed on a webpage or an email,” not in local browser cache (Ex-1008, 17:11-15). While Doughty discloses a first-party cookie that can be turned off, Doughty does not disclose sending a new first-party cookie (Ex-1008, 17:24-26). Rather, Doughty discloses using hashed email address to identify a user (Ex-1008, 17:28-32). Moreover, Doughty discloses that “[t]urning off the browser’s cookies will prevent pixel tags from tracking the user’s activity” and “the user’s unique information will not be recorded” (Ex-1008, 17:24-27). Further, Petitioner’s argument makes no sense because it would not be obvious to send a cookie—the alleged identifier—to a user that turned cookies off.

4. Doughty Fails to Disclose Limitation 1[I]

Claim limitation 1[I] is “identifying a second visit to the URL during the second browser session using the unique identifier stored in the local browser cache.” Petitioner incorrectly cites Doughty for teaching this limitation.

Petitioner’s citation to Doughty concerns a back-end server linking saved universal profiles for two devices by comparing location information to the user behavior data (Petition, pp. 39-40 (citing Ex-1008, 6:19-25)). In this citation to Doughty, Doughty does not disclose identifying a second visit to the URL during the

second browsing session, much less “identifying . . . using the unique identifier stored in the local browser cache” as claimed. Rather, this citation to Doughty discusses the information that the system receives and saves from the user to evaluate user activity (Ex-1008, 6:19-25). Doughty at 16:19-25 does not discuss any use of a unique identifier, much less during a second browsing session.

Petitioner further argues that Doughty's disclosure of a remotely saved profile satisfies limitation 1[l] (Petition, pp. 39-40). But Petitioner is incorrect because Petition fails to show how the remotely saved profile is used to satisfy the claim limitation “identifying a second visit to the URL during the second browser session using the unique identifier stored in the local browser cache.” For example, Mr. Williams cites to Doughty 16:28-50 (Ex-1007, ¶ 182). But Doughty 16:28-50 just discloses that a created universal profile may be “dynamic” and collapsing profiles to one profile. Mr. Williams also cites to Doughty 7:35-36 (Ex-1007, ¶ 182). However, Doughty 7:35-36 merely discloses that remotely determined use patterns may be based on locations. Similarly, Mr. Williams cites to Doughty 15:18-48, which merely discusses attempting to correlate two users based on certain data. Contrary to Petitioner's argument, this disclosure indicated that Doughty does not disclose ““identifying a second visit to the URL during the second browser session using the unique identifier stored in the local browser cache” because Doughty

discusses trying to correlate users based on for example “behavioral data,” not a unique identifier (Ex-1008, 15:30-38).

B. Petitioner Fails to Show a Motivation to Combine Doughty with Van Boucq

Petitioner fails to provide a motivation to combine Doughty and Van Boucq. Doughty is focused on identifying *different devices* and monitoring information, such as patterns or user activity, on the devices for “linking” those devices to a common user, allowing an advertising system to provide similar advertisements to the same user across devices (Ex-1008, 6:1-19; 10:7-14). The invention of Doughty is directed towards monitoring information, such as patterns or user activity, on different devices, because the devices are not otherwise “linked” in the advertising system (Ex-1008, 10:7-14). Van Boucq is directed to geolocating an Internet user via a browsing device to determine whether *the same browsing device has been previously geolocated* for delivering relevant advertisements in the location (Ex-1009, ¶¶[0004], [0060], [0063], [0067]). Thus, a POSITA would not have been motivated to combine Doughty and Van Boucq because one invention is directed to linking different devices to the same user based on monitored information at each device, while the other invention is directed to geolocating a single device.

C. Secondary Considerations

Patent Owner does not submit secondary considerations at this juncture.

D. Claims 2-20 are Likewise not Obvious

Claims 2-10 depend from claim 1 and therefore are not obvious for the same reasons as set forth above at least due to their dependency from claim 1. Claim 11 recites a “machine-readable storage device” claim with substantially similar limitations to the above-referenced method steps of claim 1. For at least the reasons stated in the above-referenced analysis of claim 1, the applied prior art references for Ground I fail to teach at least the following limitations of claim 11. Claims 12-20 depend from claim 11. Therefore, claims 12-20 are not obvious for the same reasons as set forth herein at least due to their dependency from claim 11.

Claim	Reference to Analysis
11[c]: “determine that the user has not been assigned a unique identifier based on a lack of stored location data for the user computing device;”	<i>See above analysis related to 1[c]</i>
11[e]: “determine whether the user opted-in to or out of location tracking, based on whether a location tracker is installed on the user computing device;”	<i>See above analysis related to 1[e]</i>
11[f]: “send, upon determining that the user opted-out of location tracking, the unique identifier to the user computing device for storage in a local browser cache;”	<i>See above analysis related to 1[f]</i>
11[l]: “identify a second visit to the URL during the second browser session using the unique identifier stored in the local browser cache;”	<i>See above analysis related to 1[l]</i>

E. Ground II: Petitioner's Three-Way Obviousness Combination Fails to Meet the Institution Standards

Petitioner's Ground II is a three-way obviousness combination based on Doughty, Van Boucq, and Maginnis. Petitioner's Ground II fails to meet the institution standard because the references fail to disclose at least limitations 1[c], 1[e], 1[f] and 1[l] and there is no motivation to combine the references in such a way as to form the claimed invention. The only difference between Ground I and Ground II is that Petitioner argues for Ground II that Maginnis discloses limitation 1[h] (Petition, pp. 57-58). Thus, adding Maginnis to the mix does not cure the deficiencies of the teachings of Doughty and Van Boucq with respect to limitations 1[c], 1[e], 1[f] and 1[l].

VI. The PTAB Should Use its Discretion to Deny the Petition

Factors considered under 35 U.S.C. § 314(a) related to parallel district court litigations weigh in favor of denying institution. Each of factors set forth in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (March 20, 2020) (precedential) are addressed below:

1. **District Court Stay:** Favors Denying Institution. Petitioner has not requested a stay. Thus, the District Court litigation is being conducted in parallel.
2. **Proximity of Trial Date:** Favors Denying Institution. No trial date has

been scheduled (Ex-2010). In fact, there is no schedule in the District Court (Ex-2010).

3. **Investment in Parallel Proceedings:** Favors Denying Institution. A motion to dismiss has been briefed and is pending (Ex-2010). Thus, the parties and the Court have made a substantial investment in the District Court proceedings.
4. **Overlap in Issues:** Favors Denying Institution. Petitioner is likely to assert prior art defenses in the pending litigation that overlap with those asserted in this petition.
5. **Same Party:** Favors Denying Institution. The parties are the same in the parallel proceeding.
6. **Other Circumstances:** Favors Denying Institution. Fullthrottle has asserted the '083 Patent (Ex-1005) in the parallel proceeding (Ex-2011). The '083 Patent is related to the '947 Patent (Ex-1005, Related U.S. Application Data). Petitioner has not filed any post grant proceedings against the '083 Patent. Thus, the District Court will have to assess the '083 Patent and efficiency makes sense for one tribunal to address Petitioner's prior art allegations against the patent family.

VII. Certification of Word Count Under 37 C.F.R. § 42.24(d)

Petitioner certifies that the word count in this Petition is 7,665 words, as counted by the word-processing program (Microsoft Word for Office 365) used to generate this Petition, where such word count excludes the table of contents, table of authorities, mandatory notices, certificate of service, table of exhibits, and this certificate of word count. This Petition is in compliance with the 14,000 word limit set forth in 37 C.F.R. §42.24(b).

VIII. Conclusion

Patent Owner respectfully requests that Petitioner's request for *inter partes* review of the '947 patent be denied, as Petitioner failed to establish a reasonable likelihood of prevailing with respect to the Challenged Claims.

Respectfully submitted,

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Patent Owner's Preliminary Response

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Certificate Of Service

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on March 12, 2025, a copy of the PATENT OWNER PRELIMINARY RESPONSE AND EXHIBITS 2001-2011, have been served electronically via email to the following counsel of record for Petitioner:

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