

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.

No. IPR2025-00148
U.S. Patent No. 11,556,947

Patent Owner's Sur-Reply

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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”)
2012	Declaration of Oded Gottesman, Sep. 9, 2025.
2013	Curriculum Vitae of Oded Gottesman
2014	Internet Engineering Task Force, RFC 6265
2015	Internet Engineering Task Force, RFC 9110
2016	Internet Engineering Task Force, RFC 9111

Exhibit	Description
2017	Gregory Fleischer, <i>Implementing Web Tracking</i> , available at https://media.blackhat.com/bh-us-12/Briefings/Fleischer/BH_US_12_Fleischer_Implementing_Web_Tracking_gfleischer_WP.pdf .
2018	Transcript of Deposition of David Hilliard Williams, Aug. 29, 2025
2019	James F. Kurose & Keith W. Ross, COMPUTER NETWORKING, A TOP-DOWN APPROACH (7th ed. 2013).
2020	Internet Engineering Task Force, RFC 7234, HTTP/1.1: Caching (June 2014).
2021	Onetrust, <i>The Ultimate Cookie Handbook for Privacy Professionals</i> , Nov. 2020.

Table of Authorities

Cases

<i>Revvo Techs. Inc. v. Cerebrum Sensor Techs., Inc.</i> , IPR2025-00632, Paper 20 (PTAB Nov. 3, 2025) (precedential)	24
<i>Schering Corp. v. Geneva Pharms., Inc.</i> , 339 F.3d 1373 (Fed. Cir. 2003)	7
<i>Smartrend Mf’g Group, Inc. v. Opti-LUXX Inc.</i> , 159 F.4th 1322 (Fed. Cir. 2025)	2

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I. Introduction

Fullthrottle Technologies, LLC (“Patent Owner”) submits this sur-reply to Petitioner Rocket Media, LLC’s corrected reply (Paper 16, “Reply”) in further support of Patent Owner’s response (Paper 12, “POR”) and in opposition to the petition for *inter partes* review (Paper 2, “Petition”) of Claims 1-20 (“Challenged Claims”) of U.S. Patent No 11,556,947 (Ex-1001, “’947 Patent”). Claim 1 is exemplary.

Petitioner’s Reply confirms that the cited references do not teach or render obvious multiple claim limitations. Because the references are deficient, Petitioner resorts to more conclusory, expert, gap-filling arguments and improperly applies the claims contrary to their plain meaning. No amount of misdirection can overcome Petitioner’s deficient references.

II. Limitations 1[c] & 1[d] are Not Taught or Obvious

Petitioner asserts that the Doughty-van Boucq combination renders limitation 1[c] obvious because: (i) limitation 1[c] allegedly covers the Unique Identifier/Tracker Embodiment (“Claim Construction Argument”); (ii) the limitation is obvious over the Doughty-van Boucq combination; and (iii) limitation 1[c] is obvious over Doughty alone. Each argument is flawed.

A. Claim Construction Argument

Petitioner's argument that limitation 1[c] covers the "Unique Identifier/Tracker Embodiment" and the Doughty-van Boucq combination cookie check renders limitation 1[c] obvious (Reply 13-15) is contrary to the claim's plain language. Limitation 1[c] recites "determining" "based on a lack of stored location data for the user computing device," not based on the lack of a location tracker. Thus, Petitioner's argument is erroneous as it is contrary to the plain claim language.¹ The '947 Patent specification supports Patent Owner's plain meaning application (POR 7-10). Moreover, Petitioner did not ask for limitation 1[c] to be construed, so Petitioner should be precluded from applying limitation 1[c] in a manner that is contrary to the claim language.

Petitioner correctly recognizes that the '947 Patent discloses that the Unique Identifier/Tracker Embodiment may be performed "[a]dditionally or alternatively" to the Unique Identifier/Stored Location Data embodiment (Reply 12 (citing Ex-1001, 9:52-59); POR 8-9, 27 (explaining embodiments)). However, because limitation 1[c] requires that the determination be made "based on a lack of stored location data" (*i.e.*

¹ *Smartrend Mfg Group, Inc. v. Opti-LUXX Inc.*, 159 F.4th 1322, 1330 (Fed. Cir. 2025) (reversing construction of "transparency" as including "translucent" as contrary to the claim language and intrinsic record).

the Unique Identifier/Stored Location Data embodiment), the “Unique Identifier/Tracker Embodiment” is not claimed in limitation 1[c].

Petitioner is likewise correct that limitation 1[c] does not “preclude also checking for a cookie” (Reply 12) because claim 1 is a “comprising” claim. However, that assertion is irrelevant.

Petitioner improperly attempts to construe limitation 1[c] contrary to its plain language by asserting that Patent Owner took three inconsistent positions in the District Court and in this proceeding.

Petitioner first contends that in District Court Patent Owner identified a check for a location tracker as satisfying limitation 1[c] (Reply 8-9, citing Ex-1031 24). But Petitioner is incorrect because Patent Owner's cited prior statements concerned limitations 1[e] and 1[f], not limitation 1[c] (Ex-1031 24-25).

Petitioner also incoherently argues that Patent Owner stated that the limitation 1[c] determining step happens at 1608 in Figure 16 and inexplicably concludes from this allegation that Figure 16 does not describe the “Unique Identifier/Lack of Stored Location Data Embodiment” (Reply 10-11). But Patent Owner correctly stated that the limitation 1[c]'s “determining” is exemplified at 1606 by citing to Ex-1001, 43:52-55, which explains 1606 (POR 8). Petitioner agrees, as Petitioner cites to the same passage stating that the claimed determining happens at 1606 (Reply 10, citing

Ex-1001, 43:49-52). Further, Petitioner mis-parses the quoted passage from the POR, as the cited paragraph explains that the unique identifier is generated at 1608 based on the condition stated in the “if” clause, which occurred at 1606 (Reply 10, citing POR 9). Petitioner’s 1606 v. 1608 citation issue is much ado about nothing because Petitioner’s conclusion that Figure 16 does not describe the “Unique Identifier/Lack of Stored Location Data Embodiment does not flow from its argument and is contrary to the patent specification. The specification expressly describes that at 1606 the computing device “may determine that there is no unique identifier associated with the user computing device when there is no location data stored for the user computing device and this determination may be made via “access to a database” (Ex-1001, 47:45-56; 43:49-55 (Ex-1001, Fig. 16, 43:49-58). Petitioner agrees, so its argument is illogical nonsense.

Petitioner further incorrectly asserts that Patent Owner’s explanation of recognizing return visits amounts to an admission that the “claimed system does not check for a lack of stored location data to determine if the user has been assigned a unique identifier” (Reply 11). Petitioner’s argument, however, reflects a misunderstanding of the ’947 Patent. Limitations 1[c]-1[f] are associated with a first browser session (Ex-1001 47:45-63). Limitation 1[l] is associated with a “second browser session” where the “unique identifier stored in the local browser cache” from

limitation 1[f] is identified (Ex1001, 47:45-63; 48:24-26). Thus, conducting the 1[c] determination and sending the unique ID for storage in the local browser cache at 1[f] are entirely consistent with recognizing return visits at limitation 1[l] “using the unique identifier stored in the local browser cache.”

Patent Owner has applied the plain meaning of the claim. In contrast, Petitioner has not provided any explanation for how “determining” “based on a lack of stored location data for the user computing device,” should be construed to mean based on the lack of a location tracker. Petitioner cites no claim language. Petitioner provides no coherent specification argument. Accordingly, Petitioner's proposed rewriting of limitation 1[c] to effectively delete “based on a lack of stored location data for the user computing device” should be rejected.

B. Van Boucq+Doughty Fails to Render Limitation 1[c] Obvious Under the Proper Construction

Van Boucq's cookie check alone or in combination with Doughty cannot satisfy limitation 1[c] because it is akin to the unclaimed Unique ID / Tracker embodiment (POR 27, 31).

Under Petitioner's construction, Petitioner presents shifting, obtuse theories of whether the asserted combination is the van Boucq cookie check, the Doughty table 105 query, the van Boucq pop-up, or some combination thereof. None of these positions has merit (POR 30-33). Petitioner's only reply was to make an illogical

application of limitation 1[c] and to argue motivation to combine. Neither argument has merit.

Petitioner purportedly appeals to common sense to justify inverting the logic of limitation 1[c]—that determining based on stored location data is the same as determining based on the lack of stored location data (Reply 13). But a statement and its inverse are not equivalent. For example, just because the statement, “if the ground is not wet, then it was not raining,” may be true does not mean that its inverse is also true (“if the ground is wet, then it was raining”) because the ground could be wet from sprinklers, hoses, or other sources of water. As a matter of logic and common sense, the determination of limitation 1[c] is not the same as its inverse.

This is consistent with the specification. The invention of the '947 Patent is focused on location as exemplified by its title, “Location Determination Using Anonymous Browsing Data” (*see also, e.g.*, Ex-1001, 7:7-10 (explaining that location from “IP address and/or router location” may not be accurate enough), 7:16-18 (describing determining “a physical address”), 8:8-18 (using location to determine that connection is from “the same user and/or user household”). Consistent with this focus, the specification describes a determination “that there is no unique identifier associated with the user computing device when there is no location data stored for the user computing device” (Ex-1001, 43:52-55). That determination, of block 1606

of Figure 16, is part of the Unique ID/Lack of Stored Location Data embodiment as recited in limitation 1[c] (*see* POR 8-9, 27 (explaining embodiments)). This determination is not the same as or equivalent to its inverse—that if there is stored location data, then the user has been assigned a unique identifier.

There is no motivation to combine van Boucq and Doughty to form the claimed invention because Petitioner and its expert recognize that the van Boucq+Doughty combination would yield incorrect results when cookies are cleared from the user's browser (Reply 14; Ex-1066 ¶42; *see also* POR 32). A POSITA would further not be motivated to combine van Boucq and Doughty to form the claimed invention for the reasons stated below regarding Doughty alone (*see infra* § II.B).

Tellingly, Petitioner cites a case regarding anticipation in arguing that the claims do not require perfection (Reply 14, citing *Schering Corp. v. Geneva Pharms., Inc.*, 339 F.3d 1373, 1381 (Fed. Cir. 2003)). Petitioner's theory is obviousness, not anticipation, and its case does not apply.

Mr. Williams states in his Rely Declaration that the “the system may present the user with a pop-up to request geolocation consent, e.g. disclosing the 1[c] check” (Ex-1066 ¶52 (discussing limitation 1[e])). It is unclear whether Petitioner advances this theory (*see* Reply 18 (discussing limitation 1[e])). But in discussing limitation 1[c], Petitioner confirms that that van Boucq's pop-up is irrelevant to the

determination recited in limitation 1[c] (*compare* Petition 27 with Reply 15), stating that van Boucq's disclosure of "creating a connection cookie regardless of whether the user opts into or out of location tracking...is irrelevant because the claim recites making the determination based on a lack of stored location data, not whether the user opted into or out of location tracking" (Reply 15, citing Ex-1066, ¶ 43). In any event, van Boucq's pop-up does not teach limitation 1[c] (POR 33).

C. Doughty Alone Fails to Render 1[c] Obvious

Regardless of how limitation 1[c] is construed, Doughty alone does not render limitation 1[c] obvious for the reasons stated in POR (POR, 26-30). On reply, Petitioner provides a single argument regarding its Doughty alone obviousness theory—that a "POSITA would have been motivated to query [Doughty's] table 105 to see if the user already has a unique ID" (Reply 12-13 (citing EX1066 ¶38)). But checking "to see if the user already has a unique ID" (Reply 13) is not what limitation 1[c] requires. Thus, Petitioner's proposed combination merely checks for the presence of a unique ID—it does not determine "that the user has not been assigned a unique identifier based on a lack of stored location data for the user computing device" as recited in limitation 1[c]. Petitioner's argument improperly reads out the "based on" language in limitation 1[c].

Moreover, contrary to Petitioner's assertions, a POSITA would not have been motivated to modify Doughty to perform an analysis that would yield an incorrect

result (*see* POR 29-30; Ex-2012 ¶122).² Doughty's "activity information," which is stored in table 105, may or may not include "geographic location information," and it also may or may not include a variety of other information such as "behavioral pattern, viewing habits, usage information," among others (Ex-1008, 10:36-39). Entries in Doughty's table 105 thus may or may not have location data. Accordingly, a POSITA would not have been motivated to modify Doughty to query table 105 to determine whether a unique ID was not assigned based on the lack of stored location data, as recited in limitation 1[c], because Doughty assigns a Profile ID irrespective of whether "geographic location information" is included. Accordingly, checking Doughty's table 105 for a lack of stored location data would yield incorrect results in cases where a Profile ID is present without any location data.

III. Element 1[e] Not Taught or Obvious

Petitioner originally asserted that limitation 1[e] was obvious over Doughty alone or Doughty+van Boucq due to van Boucq's "cookie check." Petitioner appears to have abandoned its theory that Doughty alone renders obvious limitation 1[e]

² Petitioner argues that Doughty's Profile ID could be an alphanumeric symbol (Reply 4). Patent Owner agrees. But this has no bearing on what the 1[c] determination is based on and does not change the fact that Doughty teaches that its Profile ID is assigned "[u]pon receiving the user's activity information" (Ex-1008, 10:45-50; *see* POR 28-29).

(*compare* Petition 28-29 (Doughty alone theory), with Reply 16-22 (solely arguing Doughty-van Boucq combination)).

Patent Owner showed that van Boucq failed to disclose or render obvious limitation 1[e] because: (i) van Boucq does not disclose or suggest a “location tracker,” (ii) van Boucq’s checking for a “connection cookie” does not determine if a user opted in or out of location tracking; and (iii) Petitioner was improperly reading both limitations 1[c] and 1[e] on van Boucq’s cookie check.

Petitioner responds by erroneously arguing that: (i) van Boucq discloses a “location tracker” because “tracker” should be construed to mean not tracking; (ii) determining the absence of a van Boucq’s “connection cookie” discloses limitation 1[e] even though Petitioner recognizes that this is not logically correct; (iii) van Boucq has multiple cookie checks, one of which satisfies limitation 1[c] and another of which satisfies limitation 1[e]; (iv) Patent Owner took an inconsistent position in a District Court Complaint; and (v) there is motivation to combine Doughty and van Boucq as claimed. None of Petitioner’s arguments have merit.

Notably, Petitioner and Mr. Williams acknowledge that van Boucq’s pop-up cannot satisfy limitation 1[e], instead stating that they rely on van Boucq’s pop-up for the 1[c] check (Ex-1066 ¶52; *see* Reply 18), which Petitioner does not discuss in its limitation 1[c] section.

A. Patent Owner Cannot Apply Limitation 1[e] Contrary to the Claim Language

Petitioner's response to Patent Owner showing that van Boucq does not disclose the claimed "location tracker" is to accuse Patent Owner of advancing a "brand-new claim construction" (Reply 19-20). Patent Owner, however, simply applied the plain meaning of "location tracker." Petitioner basically admits that van Boucq only discloses a single saved location (Reply 19). A single saved location at one point in time that is not updated is not a "location tracker." There is no tracking. No person would say that they were tracking their child's location because they knew where the child was ten months ago at a single point in time. As Petitioner offers no claim construction arguments for construing "location tracker" to mean not tracking location, as Petitioner posits, Petitioner has all but acknowledged that van Boucq does not disclose limitation 1[e] regardless of how many cookie checks van Boucq discloses.

Petitioner incorrectly suggests that because a cookie could be static data and a cookie does not itself execute code, van Boucq discloses the claimed "location tracker." But Petitioner is wrong because the claims do not require that a location tracker must "update itself" or "execute code" (Reply 19-20), nor do they preclude the use of a cookie as the tracker. Indeed, as Petitioner notes, the specification refers to a "tracker (e.g., cookie)," thus confirming that a cookie could potentially be an

example of a tracker. Van Boucq, however, fails to teach, disclose, or describe a “location tracker” as explained in the POR (POR 37-38). Instead, van Boucq’s cookie at best is associated with a single location on an initial connection, with no provisions to update or change that associated location (POR 37-38). The fact that van Boucq’s cookie may expire does not convert the cookie into a location tracker (*see* Reply 20). Far from teaching the use of the cookie for location tracking, van Boucq teaches not to re-determine or otherwise track the user’s location, so long as the cookie remains in place.

Recognizing that van Boucq fails to teach limitation 1[e], Petitioner attempts to fill in the gap yet again with a single-sentence argument based on Mr. Williams that a POSITA would have understood that van Boucq’s “browser updates the cookie on subsequent uses because the user opted in” (Reply 20, citing Ex-1066 ¶60). But the cited portion of Mr. Williams’ declaration states nothing about how van Boucq discloses a “location tracker” (Ex-1066 ¶60). Nor could Mr. Williams, as van Boucq teaches saving a static location (POR 39, citing Ex-1009 ¶¶[0060], [0063], [0067]-[0068], Ex-2012 ¶1410).

B. van Boucq’s “Connection Cookie Check” Does not Disclose Limitation 1[e]

As Patent Owner explained, even if van Boucq’s connection cookie could be considered a location tracker, van Boucq’s “connection cookie” does not disclose

limitation 1[e] because the presence of van Boucq's "connection cookie" indicates only that the user either agreed to the pop up, declined the pop-up, or ignored the pop-up (POR 39-40). Indeed, Petitioner admits that van Boucq's "cookie is created when the user opts out of location tracking" (Reply 20; *see* Ex-1066 ¶59). The absence of van Boucq's "connection cookie" indicates only that the user never connected to the service, the user cleared cookies, or the user disabled cookies (POR 39-40). Thus, regardless of how many cookie checks van Boucq discloses, none teach limitation 1[e].

Petitioner responds by tacitly acknowledging this to be true but argues that perfection is not required; and that if the "connection cookie" expires, determining the absence of the connection cookie satisfies limitation 1[e] (Reply 18-19, Ex1066, ¶53). But Petitioner is wrong because in this expired-cookie scenario, the absence of van Boucq's cookie at step 220 means either: (1) it is the user's first visit; (2) the prior cookie was cleared or expired; or (3) the user disabled cookies (POR 39-40). Determining that an answer could be A, B, or C is not determining the answer is C. Petitioner thus has failed to identify any teaching, suggestion, or motivation to use van Boucq's cookie check 220 to make any inference or determination about opting into or out of location tracking.

C. van Boucq Does not Disclose Multiple Connection Cookie Checks that Satisfy Limitation 1[e]

Petitioner now points to two alleged van Boucq cookie checks as satisfying limitation 1[e]. Petitioner's alleged second cookie checks cannot satisfy limitation 1[e] for the reasons stated above. Moreover, Petitioner fails to show there is a second van Boucq cookie check that could even potentially satisfy limitation 1[e].

Van Boucq's cookie check occurs before the pop-up in a communication session. Van Boucq explains that the "when the ad window 210 is called up on the website...the HTTP communication protocol 220 is verified...to determine whether the Internet User...has a connection cookie" (Ex-1009 ¶[0063]). This cookie check is what Petitioner now alleges satisfies limitation 1[c]. Petitioner now relies on an alleged cookie check "right after" the pop-up if the user opts out or ignores the pop-up for 1[e] (Reply 18 (citing Ex-1066 ¶52)).

However, van Boucq discloses no such "separate" cookie check "right after" the pop-up, and Petitioner cites to no disclosure of one. For example, in accordance with the before-pop-up cookie check disclosed in van Boucq ¶[0063], van Boucq's Figure 2 only shows that van Boucq's cookie check 220 occurs before pop-up 270, not after the pop-up (Ex-1009 Fig. 2, ¶¶[0060], [0063], [0067]).

As further evidence of Petitioner's misreading of van Boucq, Petitioner incorrectly states that, in van Boucq, "[i]f the user opted out or ignored the pop-up,

the cookie will not be there” (Reply 18). This is not true. As indicated above, van Boucq states that if “said Internet user refuses to be geolocated or ignores the pop-up, the communication system will still locate the Internet user according to the IP address 290...resulting in the creation of a cookie” (Reply 18 (citing Ex-1009 ¶¶0063]; *see* Petition 29-30; Ex-2007 ¶¶162-63)).

Petitioner seems to alternatively assert that the same van Boucq cookie check 220 satisfies limitation 1[c] and 1[e] when the cookie check happens in different browser sessions (Reply 18). This is incorrect because limitations 1[c] and 1[e] are associated with the “first browser session” while limitation 1[l] is associated with a “second browser session” (Ex1001, 47:45-60; 48:24-27).

D. No Motivation to Combine

Petitioner attempts to wave away its conflicting motivations to combine (POR 40-41) by raising a new one—that van Boucq could be added to Doughty to resolve concerns with third-party cookies (Reply 21-22). This new purported motivation, however, is not based on any teaching of the cited references and instead rests solely on Petitioner's conclusory expert assertions (Reply 21-22 (citing Ex-1066 ¶¶61)). Regardless, the Doughty-van Boucq combination fails to lead to limitation 1[e] for all the reasons stated above and in the POR (POR 40-41).

E. Patent Owner's Positions Are Consistent

Petitioner attempts to conflate limitations 1[c] and 1[e] by relying on positions Patent Owner allegedly took in district court. In particular, Petitioner relies on the agreed construction to argue that the 1[c] determination “uses the determination that the user opted out of location tracking”—*i.e.* the 1[e] determination (Reply 17; *see also* Petition 15). This construction does not conflate or equate limitations 1[c] and 1[e]. To the contrary, it clarifies that the same unique ID is used to recognize the user across different browser sessions. It does not mean that the 1[c] determination is a cookie check or is satisfied by the 1[e] determination.

Petitioner contends Patent Owner relied on “the exact same pop-ups disclosed in *van Boucq*” for limitation 1[e] in the related district court case (Reply 17). Petitioner's assertion and implication that limitation 1[e] covers *van Boucq*'s pop-up is irrelevant because, as Petitioner recognizes, *van Boucq*'s pop-up does not satisfy limitation 1[e] (Reply 18 (citing Ex-1066 ¶52)). Nevertheless, Petitioner mis-states Patent Owner's District Court position. Patent Owner's cited statements did not indicate that a certain pop-up alone, much less *van Boucq*'s pop-up, satisfies limitation 1[e]. Rather, Patent Owner's cited statements are evidence in support of the Complaint allegations that Launch Labs' “back-end platform ‘determin[es] whether the user opted-in to or out of location tracking, based on whether a location tracker is installed on the user computing device,’ as claimed in the '947 Patent” (Ex-

1026 ¶82). How Launch Labs' back-end performs the functionality is in Launch Labs' undisclosed, confidential source code.

Petitioner appears to argue that a third-party tracking cookie cannot be a "location tracker" as recited in limitation 1[e] (Reply 19-20). This is incorrect. As explained above, a cookie is one embodiment of the location tracker disclosed in the specification (*see* Ex-1001, 12:44-46 ("When the user opts-in to location tracking, the computing device may install, at 510 a tracker (e.g., a cookie) in the browser application on the user computing device.")).

IV. Element 1[f] Not Taught or Obvious

Petitioner's arguments confirm that the Doughty-van Boucq combination does not teach or render obvious limitation 1[f]. Petitioner appears to have abandoned its theory for limitation 1[f] based on an "other tracking mechanism" or "similar files" (*see* POR 41, 49-50, 51). Instead, on reply, Petitioner asserts that limitation 1[f]: (i) is taught by van Boucq because cookie storage is the claimed "local browser cache;" (ii) even if cookie storage is not the claimed "local browser cache," limitation 1[f] is obvious over van Boucq or Doughty's pixel tag teachings; (iii) Doughty renders limitation 1[f] obvious because Doughty teaches two "consistent, combinable embodiments;" and (iv) limitation 1[f]'s "upon determining" is taught. Each of Petitioner's arguments fail.

A. The Claim's Plain Language is "Local Browser Cache"

Limitation 1[f]'s plain language is "local browser cache." The record is that a POSITA understands that "cookie storage" is not "local browser cache." Neither Petitioner nor Mr. Williams rebuts or addresses Dr. Gottesman's explanation that "local browser cache" and cookie storage are distinct as recognized in the relevant standards regarding cookie storage and browser cache (Ex-2012 ¶¶55-69) or based on their technical differences (Ex-2012 ¶¶149-56; POR 42-48). Petitioner has thus failed to establish that cookie storage is "local browser cache" and that the art teaches or renders obvious limitation 1[f] (POR 42-48; Ex-2012 ¶¶ 149-56).

Petitioner offers no claim construction arguments for "local browser cache." Rather, Petitioner argues that "local browser cache" should be read contrary to its plain meaning because Patent Owner allegedly asserted in a District Court Complaint that a cookie store is the claimed "local browser cache" (Reply 22-23). Petitioner, however, misinterprets Patent Owner's complaint. Petitioner's cited paragraph of the complaint states: "The annotated excerpt from Launch Labs' JavaScript code reproduced below also evidences that the Launch Labs back-end platform sends unique identifiers that are stored in a local browser cache" (Ex-1026 ¶ 83). Thus, Patent Owner never stated that a cookie store is "local browser cache." The cited statement merely signifies that, for purposes of notice pleading under Federal Rules of Civil Procedure, the cited evidence sufficiently suggests that Petitioner's system

performs the recited limitation. *See* Fed. R. Civ. P. 8(a)(2) (requiring “short and plain statement of the claim showing that the pleader is entitled to relief”).

B. van Boucq does not Disclose or Render Obvious Limitation 1[f]

Petitioner argues that van Boucq teaches limitation 1[f] if “local browser cache” is incorrectly construed to mean “cookie storage” (Reply 23). This argument fails, however, for the reasons stated in POR (POR 48).

Petitioner suggests that the cookie store may be a “browser cache” because van Boucq discloses that cookies “may be only stored temporarily” (Reply 23 (citing Ex-1066 ¶65)). This argument is supported only by the conclusory opinions of Petitioner’s expert and is contrary to the technical evidence (POR Ex-2012 ¶¶149-56; POR 42-48). While the HTTP cookie standard provides for expiration of cookies (Ex-2014, 11), the standards do not suggest that clearing or deleting cookies somehow converts the cookie store into a cache.

Alternatively, Petitioner argues that limitation 1[f] is obvious over van Boucq because a POSITA would have been motivated to store van Boucq’s cookie in browser cache because “users may clear cookies” or if the “user disabled all cookies” (Reply 24). This theory is only supported by the conclusory declaration of Petitioner’s expert and finds no basis in the cited references (*see* Reply 24 (citing Ex-1066 ¶68)). Dr. Gottesman’s testimony that there are ways “to force the browser to

store the cookie outside of the cookie store” (Reply 24 (citing Ex-1067, 80:7-9)) further confirms the non-obviousness of the claimed invention. For example, Doughty recognized limitations on cookies, including that they may be disabled, yet did not suggest addressing those limitations by sending a unique identifier for storage in the local browser cache. To the contrary, Doughty taught that if cookies were disabled, then only “anonymous” data visits could be recorded (Ex-1008, 17:24-27). Communication protocols are designed to create uniformity and define that cookies are saved in cookie storage, so Petitioner’s gap-filling theory that it would be obvious to save a cookie somewhere else makes no sense. Moreover, a user can likewise clear local browser cache (*see, e.g.*, Ex-2012 ¶¶69, 152; Ex-2018, 26:7-20), so Petitioner’s hindsight argument that a POSITA would be motivated to save a cookie in another location that can be cleared is nonsensical.

C. Petitioner’s Doughty Pixel Tag Theory Is Wrong

Petitioner argues that limitation 1[f] is obvious because Doughty’s “pixel tags” might be used to “store information in the browser cache, including ‘previously set cookie values’” and the claimed “unique identifier” (Reply 23 (quoting Ex-1008, 17:11-19)). But Petitioner does not address Patent Owner’s reasons why Doughty’s pixel tags cannot satisfy limitation 1[f] (POR 49-52). For example, Petitioner identifies no portion of Doughty that teaches or suggests storing any unique identifier within a pixel tag. To the contrary, Doughty teaches that pixel tags are entirely

dependent on cookies for storing information (POR 51). Rather than storing an identifier in a pixel tag, Doughty teaches that a pixel tag “enables a cookie to be served” (Ex-1008, 16:62-65). It is the cookie that stores information, not Doughty’s pixel tag. When the pixel tag is loaded, the user device may pass along “previously set cookie values” (Ex-1008, 17:16-20), but Doughty does not teach passing along any values stored in the pixel tag itself. Accordingly, Doughty teaches that when cookies are disabled, the “pixel tag will still account for an anonymous visit, but the user’s unique information will not be recorded” (Ex-1008, 17:24-27).

Patent Owner pointed out that Doughty teaches sending its pixel tag “in response to a MKP communication with a user device, not based on the claimed determination” (POR 51). Petitioner has failed to address this deficiency.

D. Doughty’s Embodiments Are Separate

Petitioner relies on a generalized argument that Doughty’s embodiments are “consistent” and “combinable” in an effort to justify its mix-and-match approach to the various identifiers discussed in Doughty (Reply 25; POR 51-53). This is not sufficient to establish a motivation to combine Doughty’s different embodiments and identifiers in such a way as to arrive at the claim.

Petitioner argues that Doughty’s embodiments are the same embodiment (Reply 2-4), but Petitioner’s argument reveals how different Doughty’s embodiments actually are. Petitioner’s table attempting to link Doughty’s Profile-ID Embodiment

with its “MKP Embodiment” (Reply 3) highlights these differences. The identifier in the Profile-ID Embodiment is assigned based on the user’s “activity information” (Ex-1008, 10:46-48), whereas the identifier in the MKP embodiment is assigned based on a “hashed email address” (Ex-1008, 17:28-30). The MKP embodiment thus requires logged-in users, while the Profile-ID Embodiment does not (*See, e.g.*, Ex-1008, 16:59-60 (regarding MKP Embodiment, an “advertising network ID is set when a user logs into a publisher or application (a ‘matchkey provider’ (MKP)).”). Regarding the universal profile, the Profile-ID embodiment involves different components than the MKP Embodiment—a server and sponsor database (*e.g.*, Ex-1008, Fig. 1, 10:15-25; Ex-2012 ¶¶96) versus a match key provider / publisher and an ad network (Ex-1008, 16:38-41, 16:51-52, 16:59-60; Ex-2012 ¶¶99-100).

Petitioner’s citation to one mention of the MKP Embodiment within Doughty’s discussion of the Profile-ID embodiment only further confirms that these are separate embodiments (Reply 2-3). In particular, after discussing the flow chart of Figure 2 in connection with the Profile-ID embodiment, Doughty explains that “[i]f a log-in is available, the advertising network will seek to gain access to match keys and make additional links...” (Ex-1008, 12:24-27). Far from teaching that the MKP Embodiment is the same as or an example of the Profile-ID embodiment, this discussion shows the possibility that Doughty’s different embodiments might be used

together. The MKP Embodiment may only be used if “a log-in is available”—otherwise no hashed email could be generated (*see* Ex-1008, 12:24-27, 16:59-60, 17:28-30). Petitioner has not, however, identified any teaching or suggestion in Doughty to justify mixing and matching the different identifiers from Doughty's embodiments.

E. Limitation 1[f]'s Upon Determining is not Taught

Contrary to Petitioner's assertions (Reply 25), limitation 1[f]'s “upon determining” is not taught for the reasons stated in POR and regarding limitation 1[e] above (POR 48, 51-55).

V. Element 1[l]

Petitioner's arguments on limitation 1[l] refer to earlier arguments (*see* Reply 25) and fail for the reasons stated above and in the POR (POR 53-55). Patent Owner pointed out that the only portion of Doughty cited by either Petitioner or its expert for limitation 1[l] (*i.e.*, Ex-1008, 6:19-25) is irrelevant to limitation 1[l] (POR 54). Petitioner does not rely on van Boucq for limitation 1[l] at all. In reply, Petitioner has failed to address this argument or explain how the cited portion of Doughty teaches or suggests limitation 1[l]. This failure of proof alone is fatal to Petitioner's challenge (*see* Reply 26; Petition 40 (citing Ex-1007 ¶187)).

VI. Claim Construction

Petitioner accuses Patent Owner of presenting “new claim constructions” (Reply 1), yet Petitioner advances no competing claim construction of its own. Instead, as it did in the Petition, Petitioner simply purports to apply Patent Owner’s constructions (*see* Petition 14-16, 27, 29, 30; Reply 1, 8, 11-12, 23). It is Petitioner’s burden to identify how the claims should be construed and Petitioner has failed to satisfy this burden by asserting non plain meaning constructions/applications for which it presented no construction. *See* 37 C.F.R. § 42.104(b)(3) (requiring petition to identify “[h]ow the challenged claim is to be construed”); *Revvo Techs. Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (PTAB Nov. 3, 2025) (precedential) (“Simply noting that the petitioner is adopting a patent owner's claim construction proposals from district court, however, is not a sufficient reason for advancing different positions in the two forums.”)).

Patent Owner disagrees that is has advanced “new” claim constructions. Patent Owner applies the plain meaning of the claim terms, including as outlined in the Petition at 14-16.

Petitioner’s discussion of “the challenged limitations” (Reply 5-7) presents a confusing mélange of the ’947 Patent specification, the disclosures of the prior art, and the scope of the claims. It is further unclear whether Petitioner is proposing constructions for the claims or presenting what it regards as Patent Owner’s

constructions. To the extent certain claim limitations specify storage locations of some data (e.g., limitation 1[e] (“location tracker...installed on the user computing device”); limitation 1[f] (“unique identifier...for storage in a local browser cache”)), Patent Owner has addressed these in applying the plain meaning of the specific limitations to the cited art and combinations. Patent Owner maintains its position that no explicit constructions are necessary.

VII. Conclusion

Patent Owner respectfully requests that the Board find all Challenged Claims of the '947 Patent to be patentable for all the reasons stated above.

VIII. Word Count Certification

Petitioner certifies Under 37 C.F.R. § 42.24(d) that the word count in this Petition is 5,431 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, certificate of service, table of exhibits, and this certificate of word count. This sur-reply is in compliance with the 5,600-word limit set forth in 37 C.F.R. §42.24(c)(4).

Respectfully submitted,

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Certificate Of Service

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on January 21, 2026, a copy of Patent Owner's Sur-Reply has been served electronically via email to the following counsel of record for Petitioner:

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