

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

IPR2025-00148
Patent 11,556,947 B2

Record of Oral Hearing
Held: March 11, 2026

Before KEVIN W. CHERRY, ARTHUR M. PESLAK, and SEAN P.
O'HANLON, *Administrative Patent Judges*.

IPR2025-00148
Patent 11,556,947 B2

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P R O C E E D I N G S

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JUDGE CHERRY: Good morning. Please be seated. I'm Judge Cherry. With me in the room here is Judge O'Hanlon, and on the line, we have Judge Peslak. This is the oral hearing in IPR2025-00148, concerning U.S. patent 11,556,947, Rocket Media, LLC, doing business as Launch Labs versus Fullthrottle Technologies, LLC. Will the parties please make their appearances?

MR. IWAHASHI: Morning, Your Honors. Ryan Iwahashi on behalf of Petitioner Launch Labs.

JUDGE CHERRY: Welcome.

MR. BRADER: And I'm Derek Brader from Flaster Greenberg on behalf of the Patent Owner Fullthrottle. And with me is Ross Alexander.

JUDGE CHERRY: Welcome. We've allotted 45 minutes for this oral hearing per side. The Petitioner will go first as they have the burden of proof, and you can reserve time for rebuttal. And then we'll proceed to the Patent Owner's case. And you can also reserve time for a surrebuttal, and then we'll return to the Petitioner for its rebuttal. And then the Patent Owner goes last with its surrebuttal. Mr. Iwahashi, how much time do you want to reserve?

MR. IWAHASHI: About 15 minutes.

JUDGE CHERRY: Okay. All right. And you can begin whenever you want to.

MR. IWAHASHI: Morning, Your Honors. Ryan Iwahashi on behalf of Petitioner Launch Labs. The patent we're talking about here today

1 is the '947 patent. At a very high level, this patent is just about tracking
2 visitors to a website and using anonymous information about the web -- the
3 user, including location data, and sending targeted advertisements. Here
4 those ads are called notifications. You can see that at the end of the Claim.

5 You send personalized notifications to the visitors. There's also a
6 step where you determine the location of the user. And there are a bunch of
7 other specific limitations here. All of these are covering well-known things
8 like internet browsers, unique identifiers, APIs, et cetera. So there are really
9 only four limitations at issue here today.

10 And those are all covered in the prior art we're going to talk about
11 which are Doughty, which discloses a system for targeted advertising. This
12 one, Doughty, discloses creating a universal profile that has a unique
13 identifier. And that unique identifier can be used to help track the user
14 across multiple devices. The profile is going to include the user's location
15 amongst other demographic information about the user.

16 And you're going to store all that information in a database. And
17 you're going to use cookies and pixel tags and other things to help track the
18 user. Second reference at issue today is Van Boucq. Van Boucq is also in
19 the space of targeted advertising, and it discloses a specific means to help
20 track the user's location. And they use this technique called connection
21 cookies, and allows the user to opt in or opt out and still determine the user's
22 location. Not sure what happened to the slides, but --

23 JUDGE CHERRY: We have them up on our --

24 MR. IWAHASHI: Okay, great. Great. I'm going to have to try to
25 refer to slide numbers. Then so on Slide 4, after the Board instituted IPR, in
26 this case the Patent Owner seemingly abandoned its positions in the

1 preliminary response and also at the District Court. And they came up with
2 this new theory that sort of pervades all of their current arguments.

3 So in sum, they argue that there are two separate embodiments,
4 only one of which is claimed in this '947 Patent. They cite to this one
5 passage in the '947 Patent as disclosing these two embodiments, they call
6 them the unique ID and lack of stored location data embodiment, and the
7 unique ID tracker embodiment. Unique identifiers obviously call into both
8 of those names, so I probably am going to refer to them shorthand.

9 In the lack of stored location data embodiment, the system will
10 supposedly search a database or other storage location for the lack of storage
11 -- lack of stored location data. And in making that, they're trying to
12 determine if the user has a unique ID or not. So they're not querying the
13 database using the unique ID, they're trying to figure out if that unique ID
14 exists.

15 You are also specifically not checking the cookie -- a cookie or a
16 tracker cookie because that is in the second embodiment, and that's the
17 tracker embodiment. So in the second embodiment that's supposedly
18 unclaimed that the Patent Owner says it's unclaimed, the computing device
19 can check the device for a location tracker to determine if the user has a
20 unique ID, and that tracker may include location data as well.

21 So I want to walk through the implications of this position. We
22 laid it out in our reply how this is inconsistent with what they said in the
23 District Court, but I want to focus just on what this actually means to the
24 scope of the Claims. Because it was really confusing to me at first. And
25 there are three different components that need to be stored based on the
26 Claims.

1 Those three components are, one, the stored location data, it's right
2 there in the name, it says, has to be stored. That's highlighted here in
3 orange. There's the location tracker that needs to be installed --

4 JUDGE PESLAK: Counsel, can you just call out the slide
5 numbers you're on because I don't see anything on my feed here. So when
6 you change slides, just call out the number, that'll be helpful.

7 MR. IWAHASHI: Yes, Your Honor. This is Slide 5. Thank you.

8 JUDGE PESLAK: Okay, thank you.

9 MR. IWAHASHI: And then so the location tracker is highlighted
10 in green, that's installed on the computing device. And then the unique
11 identifier, which is in pink, and that needs to be stored in the local browser
12 cache, right? So based on Patent Owner's position, these all need to be
13 stored in different locations.

14 So going to Slide 6, starting with the stored location data in orange,
15 based upon Patent Owner's position, this must be stored in the database or
16 other storage location. And importantly that's not the cookie, it's not the
17 location tracker, which could be a cookie stored in the cookie store, which
18 we're going to get into shortly. So the next piece of -- or the next component
19 here is the location tracker, and that is a cookie.

20 And so that's stored in the cookie store under Patent Owner's
21 position. And then finally the unique ID in pink has to be stored in the local
22 browser cache, which under Patent Owner's position is separate and distinct
23 from the cookie store. So three different locations for these three
24 components.

25 We're talking about the stored location data in the database or other
26 stored location, which is not the cookie, the location tracker, which is in the

1 cookie store, which again, is not part of the local browser for cache, and the
2 unique identifier, which is in the local browser cache.

3 JUDGE CHERRY: Oh, and this is Slide 9.

4 MR. IWAHASHI: Slide 9.

5 JUDGE CHERRY: It's for Judge Peslak.

6 MR. IWAHASHI: Sorry about that.

7 JUDGE CHERRY: That's okay.

8 MR. IWAHASHI: So there are some problems that arise from this
9 position, not least of which is just the inherent inefficiency of storing data in
10 three different locations, all of which are supposed to be associated with the
11 user. But there's also the problem that there are inconsistent checks for the
12 unique identifier in the Claims. So the first limitation we're talking about
13 here has to be -- has to do with determining that the user has not been
14 assigned a unique identifier.

15 JUDGE CHERRY: Mr. Iwahashi, is there anything in the spec
16 about a cookie store?

17 MR. IWAHASHI: No, not that I saw, Your Honor. So the first --

18 JUDGE PESLAK: Counsel.

19 MR. IWAHASHI: Yes.

20 JUDGE PESLAK: So if I'm looking at Slide 9, so you agree -- do
21 you -- does Petitioner agree with Patent Owner that a cookie store is not part
22 of the local browser cache?

23 MR. IWAHASHI: I think that would require a specific
24 construction of local browser cache. The way that we understood local
25 browser cache would just be storage associated with the browser. That
26 could be temporary.

1 JUDGE PESLAK: So the cookie store could be part of the local
2 browser is what you're saying?

3 MR. IWAHASHI: I think it could be considered part of the local
4 browser cache. Like I said, I think that if we wanted local browser cache to
5 be confined to the specific folder within the browser called the browser
6 cache, I think we would've had to seek a narrowing construction.

7 JUDGE PESLAK: Okay, I understand.

8 JUDGE CHERRY: So you understand it as a cache associated
9 with the browser on the local computer?

10 MR. IWAHASHI: That's how I understood it when I read the
11 term. If I had thought it meant the specific folder, I think I would've had to
12 come in here and say -- ask for a specific construction of that term. That's
13 how I viewed it.

14 JUDGE CHERRY: Yes.

15 MR. IWAHASHI: So just to sort of recap there, there's this
16 determining step where you're checking a database for a lack of stored
17 location data, and that's to help determine whether the user has a unique ID.
18 But there's also this identifying step that's at the end here, where you're
19 identifying the unique identifier stored in the local browser cache.

20 So there are two potential places where you can check for this
21 unique identifier. One's in the local browser cache, the other's in this
22 database. And from a programming perspective, you're just going to start
23 executing steps and you don't know which one you're going to find. The
24 system's not going to know whether it's a first browser session or a second
25 browser session to know where to look.

26 So just getting into the limitations at issue here, the first one we

1 call limitations 1C and 1D. Those have to do with determining that the user
2 has not been assigned a unique ID based upon the lack of stored location
3 data. These limitations are fully disclosed in the prior art. Doughty
4 discloses a unique ID, Van Boucq discloses checking a connection cookie to
5 see if the user has already been geolocated themselves.

6 And as part of that checking for location data, which would be
7 stored in that connection cookie. And as we explained in our petition, a
8 person of skill would've found it obvious to store the unique ID from
9 Doughty within that connection cookie, because you obviously want to
10 identify the user again. The motivation to combine here was very, very
11 straightforward.

12 Both Doughty and Van Boucq are in the context of targeted
13 advertising systems. Doughty discloses unique identifiers and tracking and
14 using location data. Van Boucq provides more specifics about how that
15 location data can be stored and tracked. And again, both in the context of
16 targeted advertising. So after the petition was instituted, there were a couple
17 new arguments raised by Patent Owner.

18 These arguments contradicted Patent Owner's previous argument
19 where they said that the unique identifier was assigned based upon whether
20 or not the third-party cookie was present. But moving on to Slide 12, even
21 under Patent Owners' new Claim construction of where there are two
22 separate embodiments, these same prior art references still render the
23 limitation obvious.

24 And that's because as shown here, Doughty discloses storing all of
25 this information about the user in a database. And that database is depicted
26 here in the red box. There's a sponsored database, it's going to have a whole

1 bunch of information about the user, including location data. And the server
2 can be queried in the same way disclosed in the '947 Patent.

3 Doughty actually specifically discloses using the location as part of
4 that query to try to figure out who the user is, and try to figure out if they
5 already have a unique identifier associated with them. It would've been
6 obvious to check that database to see if the cookie is not present because
7 Doughty discloses you want to consolidate these profiles across the different
8 devices.

9 So if the unique identifier is not in a cookie, you'd want to try to
10 consolidate that profile with another one that you already have if possible.
11 So moving on to Slide 13. One of Patent Owner's arguments here is that
12 Doughty only discloses that the database may include geographic data. So
13 querying the database isn't a check for a lack of stored location data.

14 But that exact same permissive language also appears in '947
15 where location data may appeared in the database. And the fact that it may
16 not be stored doesn't mean that it -- doesn't mean that this limitation is not
17 rendered obvious here. So moving on to Slide 15 -- or sorry, 14. The same
18 separate embodiment issue pervades this argument as well.

19 What Patent Owner argues here is that checking the database for a
20 presence of stored location data is not the same as checking a database for a
21 lack of stored location data. Their argument is a positive determination is
22 not a negative determination. This is just not true in this context. As an
23 initial matter shows a fundamental misunderstanding of how databases
24 actually work.

25 All databases need some sort of key so you can uniquely identify
26 data within it. That is sort of day one of databases 101. You have to have

1 this key because you have to uniquely identify data within it, right? So
2 location data is not unique. Like they talk about in the '947 Patent itself, it
3 talks about locations being apartments. They talk about margin of error or a
4 level of accuracy.

5 So there is inherent ambiguity in location. And so querying based
6 on location data is just not really feasible, but even if it were, the presence of
7 location data in a database is a binary determination. It's either in the
8 database or it's not in the database. It's one or the other. It can't be both,
9 right? There's no ambiguity here. What Patent Owner's analogy in their
10 brief was, was that if the ground is wet, you don't know that it's raining.

11 Well, that's not the analogy here. We don't care why data is in the
12 database. We don't care why the location data is in the database. We just
13 care if it's there or not. We don't care why the ground is wet, we just care if
14 it's wet or not.

15 Patent Owner also made an argument that the Doughty-Van Boucq
16 combination may get the incorrect result if cookies are cleared. That's also
17 true with the '947 Patent if, for example, the location data is cleared or is
18 stale. So the exact same thing is present here. If we move to Slide 15, one
19 of the arguments they made --

20 JUDGE CHERRY: I did have a -- I do have a -- when I looked
21 through the spec, it seemed like the patent recognized -- it didn't offer a
22 solution for that problem. I mean, it seemed to recognize that problem of
23 clearing the cache, but it didn't seem to offer a solution to that. Is that
24 correct?

25 MR. IWAHASHI: Are you talking about the '947?

26 JUDGE CHERRY: Yes, the '947 Patent.

1 MR. IWAHASHI: I didn't see a solution offered there. So one of
2 Patent Owner's other arguments here on Slide 15 was that the case law we
3 cited for the premise that the prior system may not be perfect was in the
4 anticipation context, not the obviousness context. But as the federal circuit
5 has told many times, the disclosure of that anticipates also renders obvious.

6 I was going to move on to the second limitation now, which is
7 called 1E. This limitation is determining whether the user opted in or out of
8 location tracking based upon whether a location tracker is installed on the
9 computing device. Now, in the petition, we laid out how Doughty discloses
10 storing a user's location as part of a profile.

11 And Van Boucq discloses one method of using a location tracker,
12 connection cookie, and that connection cookie from Van Boucq is based on
13 whether the user opts into or out of location tracking. The motivation to
14 combine here is very simple as well, it's based -- it's essentially the same as
15 we talked about for the previous limitation.

16 Doughty and Van Boucq both disclose using location for targeted
17 ads and Van Boucq discloses specifically how to do that, including taking
18 into account whether the user opted into or out of location tracking. So now
19 on Slide 17, Patent Owner makes three arguments as to why this limitation is
20 not disclosed. The first thing they do is they argue that Van Boucq only
21 discloses a static location, not dynamic location.

22 That isn't true. Van Boucq does disclose dynamic location. It
23 discloses that when the user opts out of location determination, that the
24 cookie may need to be removed after a certain lifespan so that it can be
25 updated. And Van Boucq also says that for mobile browsers, mobile
26 browsing devices, you're going to make that lifespan shorter so you can

1 update that location. That is dynamic location tracking.

2 Also, the fact that Van Boucq discloses that this only needs to be
3 removed in the context of when the user opts out, means that the location,
4 when the user opts in, gets updated by the system itself. That's fully
5 supported by both common sense and our expert whose testimony is
6 un rebutted on that point.

7 So relatedly Patent Owner tries to argue that it's not really a
8 location tracker if you knew a child's location 10 months ago as opposed to
9 right now. That argument creates a lot of ambiguity as to what it means to
10 be a dynamic location tracker. Like if it's one hour ago, is that sufficient?
11 Like there's no guidance in the spec as to how often something needs to be
12 updated for it to be considered a location tracker.

13 That sort of leads the Claims towards being indefinite, which is
14 obviously not a preferred result. Moving on to Slide 18. Patent Owner's
15 second argument here is that the check for the location tracker is necessarily
16 the same as the check in 1C for determining that the user -- whether or not
17 the user had a unique ID.

18 Sort of as an initial matter, like the Claims aren't actually reciting a
19 check, they're reciting a determination, which are not necessarily the same
20 thing. A single check can lead to what? Multiple determinations. For
21 example, a check to whether or not a cookie is stored with location data can
22 lead to two different determinations. One that the user has a unique ID, and
23 two, that the user opted into location tracking.

24 These are cookies, they store a lot of different data, they can store
25 multiple things. And this is also contrary to their District Court filing, where
26 they say that the location tracker is the third-party cookie. And if the

1 cookie's not present, then a unique ID is then sent. Which is again,
2 consistent with our argument here.

3 Even if you did need this separate check that is also rendered
4 obvious by that same prior art, you can see right here in Van Boucq the
5 determination is based on whether the user previously geo-located herself,
6 opted in, and already has a cookie. So there are two checks here and two
7 determinations.

8 And also Van Boucq recognizes that the location in the cookie may
9 be stale and may need to be regenerated specifically in the case when the
10 user opts out. Moving on to Slide 19. Patent Owner's third argument for
11 this limitation is that this is not actually a check to see whether the cookie
12 opted into or out of location tracking, because Van Boucq discloses creating
13 a connection cookie even if the user opts out.

14 Well, this is wrong for three different reasons. First, as we just
15 saw, there actually is a check to determine if the internet user has already
16 geolocated themselves and has a cookie separate. Second, Van Boucq
17 already, as we talked about, Van Boucq discloses removing the cookie when
18 the user opts out, giving them the limited lifespan.

19 So a subsequent check after that lifespan has expired will inform
20 the system that the user opted out of location tracking, the cookie will no
21 longer be there. And third, Van Boucq discloses sending a pop-up to the
22 user to opt into or out of location tracking. This is consistent with Patent
23 Owner's theory of infringement. It's also consistent with the disclosure in
24 the '947 Patent.

25 But Van Boucq importantly discloses that the user can ignore the
26 popup. And this is important because when the system sends the popup to

1 the user, they're not just going to sit around and wait to see if they respond
2 and wait for that response. They're going to asynchronously, do a whole
3 bunch of other stuff and determine later whether or not the user opted into or
4 out of the system.

5 That's just normal common-sense programming. Like you prompt
6 the user, the user can opt in. If they opt in, they're going to put a connection
7 cookie there. If they opt out or wait, you're going to have to later determine
8 that the user -- determine the user's location using their IP address. That's
9 what the Claims say, and that's what the -- and that's what Van Boucq says
10 as well.

11 So if the user opted in, the cookie will be generated and the system
12 will know, ah, I don't need to actually generate the location using an IP
13 address. But if the user opts out or ignores the popup, they're going to later
14 determine, oh, okay, now I need to generate that user's IP address -- or
15 generate that user's location using IP address.

16 And that is a separate check here. That is not the one we're talking
17 about in 1C, and that is specifically determining whether the user opted into
18 or out of location tracking. Now, as we said in our brief, like that may only
19 happen once, it may only happen when the user is actually prompted. But
20 that's all that needs to happen for it to render obvious to these Claims.

21 All right. Moving on to Slide 20, and then the next limitation 1F.
22 This one is sending upon determining that the user opted out of location
23 tracking the unique identifier to the user computing device for storage in a
24 local browser cache. Now, Doughty discloses that the server sends
25 information about the user, including the unique ID in the form of either a
26 pixel tag or a cookie.

1 And Van Boucq discloses storing information in connection with
2 the connection cookie. Our expert explained that it would've been obvious
3 to store the unique ID as part of that cookie. And this is a very common
4 thing for cookies to do. They store IDs, they store information about the
5 user. Cookies are to maintain state, and a good way to maintain that state is
6 to identify that user, right?

7 So all very common sense, and the motivation to combine is
8 straightforward just as it has been in the previous limitations. So moving on
9 to Slide 21. The Patent Owner makes two arguments as to why this
10 limitation is not met. First, they argue that the cookies are stored in a special
11 area called the cookie store. We touched upon this a little bit earlier on.

12 To me, local browser cache and the Claims, like if I wanted it to
13 refer to the folder called the browser cache within Google Chrome, I
14 would've had to come here and seek a special construction for that. Like
15 that's just not how it read to me under the plain and ordinary meaning.

16 That's also not how the Patent Owner construed it at the District
17 Court where they said that that third party cookie not present in the local
18 browser cache -- that was one part of one of the constructions they offered at
19 the District Court. They also rely on cookies in setting the UID in the
20 cookies as part of their infringement theory in their complaint.

21 But moving on to Slide 22, even under that, their construction
22 about local browser cache being very narrow in the context of this patent,
23 that's really just an implementation detail. And it's also fully disclosed by
24 the prior art because Doughty discloses that the server may store information
25 in a pixel tag, which is stored in the user's local browser cache, even under
26 that narrow construction.

1 So that pixel tag stores information about the user. And it
2 would've been really, really obvious to a person of skill that that unique ID
3 should be part of that. It happens all the time where you store information in
4 a URL or a header, HTML header about the user, so you can identify that
5 user later. One of Patent Owner's arguments is that information won't be set
6 if cookies are sent by the pixel tag if cookies are disabled.

7 That's actually helpful for us for in terms of motivation to combine
8 because you're going to want to store that profile ID at least in that pixel tag
9 so you can later identify the user. Everything about both the '947 Patent and
10 the prior art is about trying to identify these users over and over and over
11 again so that you can combine information and send targeted ads for that
12 user using as much data as you can.

13 Also, the fact that Van Boucq discloses that in certain cases
14 cookies may have a limited lifespan and therefore may be cleared, would
15 make -- would motivate a person of skill to add that profile or add that
16 unique ID to the pixel tag so that you don't -- you can still identify that user
17 if the cookie is cleared because it will still be in that local browser cache.

18 Patent Owner's second argument here has to do with the allegation
19 that Doughty disclosed separate incompatible embodiments. The Patent
20 Owner labeled these, the profile ID embodiment and the MKP embodiment,
21 I'm just going to use that terminology for the sake of convenience, not
22 because I agree with it in any way.

23 The notion that these are not compatible is just not true. Both of
24 these allegedly separate embodiments involve an advertising network. See
25 that there? That is indeed the entire point of Doughty to send targeted ads
26 over the network. So the marketing embodiment, the MKP embodiment

1 being in the context of advertisers using it is just -- like that's expressly
2 contemplated within Doughty.

3 Both embodiments require a unique ID, both require a universal
4 profile, and both disclose consolidating profile information for a user across
5 different devices or different types of traffic. So basically, discloses that the
6 so-called MKP embodiment is just a specific implementation of the user ID
7 -- or the profile ID embodiment. So here we get into all the specifics.

8 Doughty in the profile ID embodiment discloses assigning a
9 unique identifier. They say the unique identifier can be anything. Can be
10 alphabetical, numerical symbols, whatever. In the MKP embodiment, you're
11 specifically saying, oh, let's use a hash on an email address so we can
12 anonymize the email address. That's just a specific example of how to create
13 a unique identifier.

14 A hash is by design supposed to be unique. Both embodiments
15 disclose creating a universal profile. It's even called a universal profile in
16 both embodiments. Both embodiments contemplate the user logging in. So
17 one of Patent Owners' bigger arguments is that MKP embodiment requires a
18 user login.

19 Well, in the profile ID embodiment, you are contemplating that the
20 user can log in. And by the way, Doughty expressly states that all of its
21 embodiments are compatible. The last limitation to address here is
22 limitation 1L, which we actually touched upon briefly earlier on. This one is
23 identifying a second visit to the URL during a second browser session using
24 the unique identifier stored in the local browser cache.

25 The same arguments here really apply to the other limitations. So
26 the unique identifier stored in the local browser cache for the same reasons

1 it's disclosed -- or it's stored in the local browser cache in connection with
2 limitation 1F. I mean, that's what you're going to go back to. Like that's
3 how a program is going to work.

4 And the second visit as a matter of programming, you're going to
5 do the same logic as you did the first time. You're going to check for a
6 unique identifier, right? And it doesn't really matter if it's the first visit or
7 second visit, the first visit or the second visit. All of the same things that we
8 talked about in the previous limitations still apply here.

9 That is actually the entire point. Like you want to check to see if
10 the unique identifier is -- if the user that's browsing already has a unique
11 identifier. And here we're checking the local browser cache because that's
12 where we stored it earlier. And that's the entire point. So with that, unless
13 the panel has any questions, I'm happy to reserve my time.

14 JUDGE CHERRY: No questions. Thank you.

15 MR. IWAHASHI: Thank you.

16 JUDGE CHERRY: Mr. Brader, how much time do you want to
17 reserve?

18 MR. BRADER: Could I reserve 10 minutes?

19 JUDGE CHERRY: Sure. I also was a little late in starting the
20 thing, so I'll give you two minutes. Sorry. Sorry, Mr. Iwahashi.

21 MR. IWAHASHI: All right. Thanks.

22 JUDGE CHERRY: I started a little late, so I'll -- but I'll even it out
23 here. Okay.

24 MR. BRADER: All right. Thank you, Your Honors.

25 JUDGE CHERRY: You can begin whenever you want.

26 MR. BRADER: Are you ready?

1 JUDGE CHERRY: Yes.

2 MR. BRADER: All right. Thank you. I'm Derek Brader, I'm
3 representing Patent Owner Fullthrottle. I'm going to present a brief
4 overview of the '947 Patent, then we'll discuss the various limitations that
5 are at issue here. As you'll see, we have several limitations that are not
6 taught by the prior art.

7 And the Petitioner is seeking to gap fill using expert testimony and
8 inferences to bridge the gap between these multiple limitations and the
9 asserted Claims. Of course, under the Graham framework, the Board has to
10 assess all the differences between the prior art and the Claim in order to
11 make that assessment of obviousness.

12 In this case, we submit there's simply too many differences to
13 bridge that gap with expert testimony. The '947 Patent discloses a specific
14 novel technique that solves challenges presented by restrictions on cookies.
15 And both experts have addressed this in their respective declarations, that
16 over time there have been increasing restrictions on cookies in browsers for
17 privacy reasons and other reasons.

18 And it's been a challenge for targeted advertising. And so this
19 invention addresses that issue. And it's been a serious challenge in that the
20 way to do it is a series of specific steps including many of the limitations
21 we'll talk about today. So, turning to the Claims here, I have a few slides.
22 I'm sorry, I'm on now on Slide 4 which is just the Claim language I've
23 highlighted the elements that are at issue here.

24 The Petitioner is now contending that the Patent Owner is
25 advancing Claim constructions. We don't believe that's true. We are simply
26 applying the plain meaning of these terms as they're written. So we're not

1 advocating for any particular construction. I know the Board found in the
2 decision on institution that no explicit constructions were necessary in this
3 case, and we think that's the right result.

4 And that the Claims can (INDISCERNIBLE) according their
5 Claim meaning. Another thing that the Petitioner has argued is that the
6 unique ID location data and tracker, which are terms recited in the Claims
7 have to be stored in specific locations. We don't agree with the locations
8 that the Petitioner has proposed.

9 Instead, the locations where those terms, those elements must be
10 stored, those are specified in the plain language of the Claim. So for
11 example, the stored location data does not actually have a required location
12 at all. The unique ID must be sent for storage in the local browser cache.
13 And the tracker is installed on the user computing device.

14 JUDGE CHERRY: So the stored location data does not have to be
15 in a database?

16 MR. BRADER: Correct.

17 JUDGE CHERRY: Okay.

18 MR. BRADER: Of course it could be, and that's an embodiment
19 of the patent, but we are not advancing a construction of that type. So
20 turning to limitations 1C --

21 JUDGE CHERRY: If it doesn't have to be in the database, then
22 how are -- then how does that support your argument that somehow the
23 Claims have like limited, have disclaimed an embodiment of the invention?

24 MR. BRADER: Yes, so that is with respect to limitation 1C,
25 which I'm turning to now here on Slide 7 is limitation 1C, which is
26 determining that the user has not been assigned a unique identifier based on

1 a lack of stored location data.

2 JUDGE CHERRY: So, but that stored -- that lack of stored
3 location data could be a lack of a cookie?

4 MR. BRADER: That could be a potential embodiment, but none
5 of the references teach that. So let me --

6 JUDGE CHERRY: I thought that was the combination.

7 MR. BRADER: Well, let me explain. So what we have here is
8 that this limitation 1C is determining that the user has not been assigned a
9 unique identifier based on a lack of stored location data. So there has to be a
10 connection there between the unique identifier, the lack of an identifier, and
11 the stored location data.

12 We have the references do teach unique identifiers and they do
13 teach location data, but they haven't connected the two of those in the way
14 that's recited here in limitation 1C. So here on Slide 8, we have -- first of all,
15 everyone agrees that this --

16 JUDGE CHERRY: I mean I'm going to ask some questions
17 because the way I understood your response, the argument that you were
18 making was that there are two embodiments of the invention, and that one is
19 that you query this database, that you receive browsing information from the
20 user, and then based on that browsing information that's received, there's a
21 query of the database. And you were saying that that was different than this
22 cookie embodiment. Is that not correct?

23 MR. BRADER: That is correct.

24 JUDGE CHERRY: So but you agree that -- you just said that the
25 stored location data can be stored locally?

26 MR. BRADER: So it's not precluded by the plain language of the

1 Claim, but that's not what's taught by the references.

2 JUDGE CHERRY: Oh, okay.

3 MR. BRADER: And that's not the preferred embodiment.

4 JUDGE CHERRY: But I guess the reason that I'm getting
5 confused is because you said that this looking for the cookie was a totally
6 different embodiment and that was not claimed. Right? But you're saying
7 now that it could be the looking for the cookie.

8 MR. BRADER: So looking for the location tracker.

9 JUDGE CHERRY: Looking for the location tracker.

10 MR. BRADER: A location tracker which could be a cookie.

11 JUDGE CHERRY: So that's still covered by the Claims.

12 MR. BRADER: So no, the looking for a location tracker is
13 -- they're comprising Claims, right? So it's something that could occur and
14 fall within the scope. But what's required by the limitation is this
15 determination based upon a lack of storage.

16 JUDGE CHERRY: But you said that -- but in your Patent Owner's
17 response, you told us that this would -- that the looking for a cookie was an
18 unclaimed embodiment. So but you're saying that it is claimed by this
19 Claim? That it is covered by this Claim still?

20 You're just saying that -- I guess I'm trying to tease out what do
21 you mean by -- so you're saying that determination has -- I guess then how
22 does the determination have to be made if it's not this cookie looking, the
23 location tracker? I mean, I should bring up column -- I'm talking about the
24 statement in Column 7 that we've been talking about. You know what
25 column slide --

26 MR. BRADER: Column 7 of the -- I think, yes, it appears I have it

1 here on -- I think I have it here on Slide 12. This is a portion of it from
2 Column 43 --

3 JUDGE CHERRY: Okay. It's repeated in this spec.

4 MR. BRADER: Yes.

5 JUDGE CHERRY: That's fine. Yes, this is it.

6 MR. BRADER: Right. So if you -- and this lines up that language
7 against the Claims. So the Claim is determining that the user has not been
8 assigned a unique identifier based on the lack of stored location data. And
9 here on the left you have specification, which discloses these two
10 embodiments, one of which is looking for the presence of a location tracker
11 installed on the browser application.

12 And the other of which is determining that there's no unique
13 identifier when there is no location data stored for the user computing
14 device.

15 JUDGE CHERRY: So I think that's where we're getting -- I think
16 that's where the Petitioner's understanding that it has to be stored on the user
17 -- oh, so you're saying no location data stored for -- that's for the user
18 computing device, but that's on the computing device, right? That's the
19 server?

20 MR. BRADER: The computing device is the server, correct.

21 JUDGE CHERRY: Yes. So I think that's why they're saying that
22 their understanding was that you were saying that it had to be stored on the
23 server on the computing device. But you're saying that it still covers this
24 additionally.

25 And alternatively, the computing device may determine whether
26 there's a unique identifier for associated with the user based on the presence

1 of a tracker installed in the browser application on the user computing
2 device? You're saying that's not the determination?

3 MR. BRADER: That alone would not satisfy the Claim. That's
4 right.

5 JUDGE CHERRY: But you agree that the tracking cookie is
6 stored location data?

7 MR. BRADER: That would depend on the implementation. A
8 tracking cookie may or may not save location data.

9 JUDGE CHERRY: Oops. I think we lost Judge Peslak.

10 MR. BRADER: Should I pause or --

11 JUDGE CHERRY: Let me see. Yes, pause. Sorry. Gregory, is
12 he -- it looks like Judge Peslak froze, but they're reconnecting him. There he
13 is, he's back.

14 JUDGE PESLAK: I'm back. Yes, sorry.

15 JUDGE CHERRY: Sorry about that, Mr. Brader. Well, we were
16 just discussing Slide 12, Judge Peslak, and the -- and where the stored
17 location data is stored. So you're saying that the cookie could be location
18 data, stored location data, the tracked location --

19 MR. BRADER: A cookie may or may not include location data
20 within the cookie itself, yes.

21 JUDGE CHERRY: But here it's talking about a location tracker
22 and that would have stored location data, right?

23 MR. BRADER: It may. It could also have other information that
24 can be referenced back to location data on the server side.

25 JUDGE CHERRY: So wait, so the location tracker may not track
26 location?

1 MR. BRADER: It definitely has to track location. But that doesn't
2 mean that the data within that tracker itself must be location data.

3 JUDGE CHERRY: Okay. So I get that. Well, I guess that's
4 confusing maybe because we talked -- I mean, I think one of your other
5 arguments is that this location tracker has to be updated. If the location
6 tracker doesn't have to have location data, then what's being updated?

7 MR. BRADER: Right. So there has to be tracking. It has to be
8 -- it has to have a --- it's a functional limitation, so it has to be used for
9 tracking the user.

10 JUDGE CHERRY: Wait, so wait it's a functional location? Oops,
11 we just lost him again.

12 MR. BRADER: Yes. We lost Judge Peslak.

13 JUDGE PESLAK: Okay. I'm back again. Can you hear me?

14 JUDGE CHERRY: Yes.

15 JUDGE PESLAK: Okay.

16 JUDGE CHERRY: Sorry, Mr. Brader. So it performs the function
17 of tracking, but it doesn't have to have location data in it? Is that your
18 argument?

19 MR. BRADER: That's correct. That's correct. So --

20 JUDGE CHERRY: So what is dynamic then in the location
21 tracker?

22 MR. BRADER: What's dynamic is the update of the location. So
23 that each time the user comes and interacts with the web server, that the
24 user's location is being determined and is being updated, which could
25 happen in the database. It could be saved into the tracker itself. That would
26 be implementation specific. But to be a tracker there has to actually be

1 tracking of the user's location.

2 JUDGE CHERRY: So wait, I mean, I think your argument was
3 that, so that the location tracker itself doesn't have to do the tracking, it has
4 to be -- it could be just like a -- I don't know, like a license plate where we
5 keep track of -- where we have a reference to you and then we have some
6 other thing that actually has the location data in it.

7 MR. BRADER: Well, so the server system, much of this
8 functionality is going to be implemented on the server, and the server is
9 going to send code, cookies, other information to the user device. So the
10 user device and the information stored there works in conjunction with the
11 server to implement the functionality.

12 JUDGE CHERRY: So, okay. So again, so the -- so when you're
13 talking about the location tracker has to be updated, then the cookie doesn't
14 have to be updated?

15 MR. BRADER: The location tracker has to track location. I think
16 that's all that we're saying.

17 JUDGE CHERRY: Okay.

18 MR. BRADER: And Van Boucq -- and so this actually doesn't
19 relate to 1C, this is --

20 JUDGE CHERRY: No. Well, I'm just --

21 MR. BRADER: -- getting ahead, jumping ahead to 1E.

22 JUDGE CHERRY: Well, I mean, I feel like there's some tension
23 there in the argument, right? That's what is causing me some concern is
24 we're kind of -- it feels like we're pulling at different parts of this, right?
25 Through this argument.

26 MR. BRADER: I'm trying to understand where you're seeing the

1 tension because I mean, I -- what we're trying to do is just apply the plain
2 meaning of the Claims and these different limitations as they're written.

3 JUDGE CHERRY: Well, it seems like the plain meaning could be
4 -- is broader though. It seems like you are trying to -- I guess I'm -- it's a
5 little nebulous what exactly we're constricting, but it does feel like we're
6 kind of constricting a little bit, right? I mean, my initial understanding from
7 reading your brief was that these were two different embodiments, that you
8 were saying that this only pertains to this first sentence that's highlighted on
9 Slide 12.

10 About the -- where the location data is stored on the server side.
11 But now you're telling me that it's not, so that's why I'm kind of having some
12 trouble, because I would -- it felt like from your brief, I got a different
13 understanding of what the argument was.

14 MR. BRADER: I mean, the preferred embodiment is certainly that
15 it's stored on the server. And --

16 JUDGE CHERRY: But it's not limited to that is what you're
17 telling me?

18 MR. BRADER: Correct.

19 JUDGE CHERRY: Okay. All right. Sorry. You can continue. I
20 don't want to take up -- you've got a lot to cover.

21 MR. BRADER: Yeah, thank you. It's all right. So I'll try to spin
22 quickly through the rest of 1C. So Petitioner has two theories on 1C and 1D,
23 one is Doughty's profile ID check. And then the other two are a
24 combination of Doughty with a cookie check, either the expert as a single
25 reference theory or the Van Boucq cookie. Turning to Slide 9, Doughty's
26 profile ID check does not disclose any determination based of a lack of user

1 ID based on a lack of stored location data.

2 So here's a couple of the passages from -- that the Petitioner has
3 cited. Doughty discloses determining that a preexisting universal profile has
4 not been created, but it doesn't disclose doing that based on a lack of stored
5 location data. It does that based on a lack of profile data.

6 And then on the right-hand side of Slide 9, we have Doughty's
7 explanation that the user -- the unique ID is assigned upon receiving the
8 user's activity information. So it's not a -- it's not discussing a determination
9 based on a lack of stored location data.

10 Turning to Slide 10, we have Doughty's Figure 1, and this shows
11 the Table 105, which has the profile IDs on the server, that 104 is the server
12 there. The query for the profile ID though is not the 1C determination. The
13 Petitioner has said that a POSITA would've been motivated to query Table
14 105 to see if the user already has a unique ID. That's in the reply at 12 to 13.
15 But that is not based on a lack of stored location data.

16 The cookie checks likewise, turning to Slide 11 one based on Van
17 Boucq and another based on a combination with Petitioner's expert, likewise
18 don't teach this limitation. We've discussed the unique tracker embodiment
19 issue. The issue here I see as one of a motivation to combine. So on Slide
20 13 is another version of -- annotated version of Doughty's Figure 1.

21 On the server, that's 104, we have the profile IDs, the cookies
22 reside on the user device. If the motivation to modify Doughty to arrive at
23 1C is to look to the user device for a cookie, that combination actually
24 doesn't make any sense. The profile database is on the server.

25 And the Petitioner hasn't explained why you would go and look to
26 location information stored on the user device in order to make an inference

1 about whether there is a unique ID that has been assigned on the server at
2 Table 105. And that is a related but separate argument from the two
3 embodiments.

4 JUDGE CHERRY: Wasn't there argument that the location -- that
5 they're kind of construing the -- they're mapping the location data to the
6 cookie, right?

7 MR. BRADER: Correct.

8 JUDGE CHERRY: And in that location data is all kinds of stuff
9 that you can use to help locate the person, right? Help identify the person. I
10 mean, I guess -- I mean, it's kind of like if somebody calls to -- if I call like
11 the appliance repair store, they ask me, were you already -- their first
12 question is, have you ever called us before? And isn't that what the
13 motivation is?

14 I mean, if I contact a server and -- wouldn't the server kind of
15 -- wouldn't it be kind of natural to kind of ask the user computer, have we
16 interacted before? And then they say, oh, look, there's this cookie that
17 shows that they did. So that just kind of shortcuts a lot of -- and it provides
18 a more accurate like search, right?

19 MR. BRADER: I think that makes a lot of sense. But I think what
20 you're describing is a check for a user ID, not a check based on a lack of
21 stored location data.

22 JUDGE CHERRY: But isn't the -- but I mean, they're mapping the
23 cookie to the location data. So you're saying it has to be the actual latitude
24 and longitude information? That that's --

25 MR. BRADER: It could be coordinates would be an example of
26 location data. But yes, it would have to be a determination based on a lack

1 of stored location data. And so a check just for an ID alone is not --

2 JUDGE CHERRY: Well, I mean, isn't it -- but I think they're
3 saying they're checking for the cookie, right? And the cookie includes the
4 ID, includes location, includes the latitude longitude. And isn't that -- I
5 mean, why wouldn't the cookie be -- couldn't be construed as location data?

6 MR. BRADER: So cookies can have a lot of different information
7 in them. And I mean, I think everyone agrees that they typically do have
8 some kind of identifier in them, whether it's -- what identifier it is may vary,
9 but some kind of identifier. And if all the server is doing is checking for that
10 identifier, that's not limitation 1C.

11 The determination would have to be based on a lack of stored
12 location data. And the references just don't disclose that. Turning to Slide
13 14, Van Boucq is checking for the presence of the connection cookie. The
14 absence of that cookie is not the 1C determination, this is the logic argument
15 that I think Mr. Iwahashi was referring to.

16 And the problem with this is that in Van Boucq when the cookie is
17 absent, it could be absent for any number of reasons. It could be because it
18 was expired, cleared, and disabled. There's not that connection to a lack of a
19 unique ID.

20 Turning to Slide 15 and this is another point related to motivation
21 to combine. Petitioner's expert acknowledges that the -- using the cookie
22 check in the combination in the way that the Petitioner is advocating would
23 lead to incorrect results. Our argument on that is simply that because of that,
24 there's no motivation to combine in a way to arrive at 1C.

25 Petitioner now seems to be advancing an anticipation theory on
26 this element. We haven't perceived there to be an anticipation theory in the

1 petition. So this is simply an issue of motivation to combine. And that there
2 is no motivation to look to the cookie when what you're trying to determine
3 is the lack of a stored ID in a table on the server.

4 Turning now to limitation 1E, which is determining whether the
5 user opted into or out of location tracker based on whether a location tracker
6 is installed on the computing device. So turning to Slide 17, Petitioner
7 appears to have moved away from its theory of modifying Doughty as a
8 single reference theory, and is instead combining Doughty with Van Boucq's
9 cookie check.

10 Turning to Slide 18, the Petitioner's expert acknowledges that
11 there's no explicit disclosure in Doughty about how to determine an opt out
12 of location tracking. And that makes sense. Slide 19 is just a summary that
13 Doughty does not disclose tracking location without cookies. It doesn't track
14 -- check for any tracker to determine location consent.

15 And in fact, Doughty does not disclose determining location
16 consent at all. That all comes from Van Boucq. But Van Boucq does not
17 fill the gap for limitation 1E. Turning to Slide 20. We've discussed the
18 issue of Van Boucq's cookie not being location tracker. Also, Van Boucq's
19 cookie check, and these are independent arguments. Each of these three on
20 limitation 1E.

21 Even if Van Boucq's cookie were a location tracker, the cookie
22 check still doesn't determine location consent. And finally, Petitioner is
23 relying on the same cookie check for both limitations 1C and 1E. So turning
24 to -- I think unless the Board has any further questions, I think we've
25 discussed the location tracker issue. The next point is that the check for Van
26 Boucq's cookie does not actually perform the recited determination.

1 So turning to Slide 23, this is Van Boucq's Figure 2, which
2 although it is only labeled with numbers is I think very important in
3 understanding how Van Boucq's process works. So Van Boucq's popup for
4 location consent occurs at box 270. And then the yes or no is the response to
5 the popup.

6 And in box 280 and 290, that's where the user is located, and that's
7 where the connection cookie is created. So if we turn to Slide 24, this is the
8 portions of Van Boucq's specification that discuss this operation. So on the
9 left hand side, we have box 290, which is where the user refuses to be
10 geolocated or ignores the popup.

11 And in that case, user is located according to their IP address in
12 block 290, resulting in a creation of a cookie. Box 280 is the acceptance of
13 location tracking, the affirmative response to the popup. And that case also
14 results in creation of a connection cookie. So the next browser session,
15 when the user comes back --

16 JUDGE CHERRY: I do have a question here, because you know
17 -- I mean, you're -- this goes back to the location tracker. And I mean, Van
18 Boucq teaches that the cookie whose -- and Mr. Iwahashi highlighted this
19 before, that the cookie whose lifespan varies according to the browsing
20 device.

21 I mean, I guess why isn't that tracking? If I have a desktop
22 computer, I mean I'm not -- I'm generally not carrying that around or moving
23 it. So there's nothing to track. But it's if I have a mobile device, then the
24 lifespan will be shorter. Right? And I guess why isn't that tracking?

25 MR. BRADER: Well, the problem is that deleting or expiring the
26 cookie isn't actually tracking the user. That's forgetting the user. Right?

1 Once the --

2 JUDGE CHERRY: But it's updating it, right?

3 MR. BRADER: Well, if the cookie expires it's -- my
4 understanding is it's removed from the client device. And then the next time
5 the client connects, there will be no cookie, no ID, no location data, and the
6 process starts again. So --

7 JUDGE CHERRY: But this is being combined with Doughty,
8 right? Where Doughty has its universal profile that it's keeping, right?

9 MR. BRADER: Right. But we're still not -- it's different because
10 you're keeping the cookie for the lifetime of the cookie. I suppose if you set
11 a very short expiration time, you might say -- I mean, none of the references
12 really disclosed this. I mean, I don't see the references as contemplating
13 repeatedly deleting cookies in order to track location.

14 Doesn't seem to be something that's really contemplated by either
15 of the references. They're storing the cookie in order to maintain -- I mean,
16 Van Boucq is storing that cookie in order to retain the location, not to track
17 the location.

18 JUDGE CHERRY: Okay.

19 MR. BRADER: But even if the cookie is a location tracker, still
20 the cookie check does not perform the limitation 1E because 1E is, here on
21 Slide 16, determining whether the user opted into or out of location tracking
22 based on whether a location tracker is installed.

23 And as we just saw, because Van Boucq installs the cookie in
24 either box 280 or 290 regardless of the response to the popup, the next
25 browser session, if that cookie is there, then the user may have opted in or
26 may have opted out or may have ignored the popup. You don't know. And

1 if the cookie is not there, then the user may -- it may be the first visit, the
2 cookie may have expired, the cookie may have been cleared.

3 You don't know based on the presence or absence of that cookie,
4 whether the user opted into or out of location tracking. Finally, the
5 Petitioner is relying on the same cookie check for limitations 1C and 1E.
6 Here on Slide 25 compares the portions of the petition regarding limitation
7 1C and 1E, both of which are pointing to Van Boucq's cookie check.

8 Similarly in Petitioner's demonstrative Slide 10, cites Van Boucq's
9 cookie check for limitation 1C. Slide 16 cites Van Boucq's cookie check for
10 limitation 1E.

11 JUDGE CHERRY: I guess what is the problem with that if we're
12 checking for the cookie, but it's not relying on the same determination, right?
13 They're saying that that's a separate determination. Why can't the same
14 action give rise to two separate determinations by the system?

15 MR. BRADER: I mean, there's separate limitations of the Claim --

16 JUDGE CHERRY: Mm-hm.

17 MR. BRADER: -- and separate steps of the method.

18 JUDGE CHERRY: Mm-hm.

19 MR. BRADER: So we've just been reading them as separate. I
20 guess you're saying, could there be an implementation in which somehow
21 there were two separate checks based on the same data? Like if one part of
22 the cookie is checked for one thing and another part of the cookie is checked
23 for something else.

24 JUDGE CHERRY: Sure.

25 MR. BRADER: That's not anything that's taught in the references
26 or I think that's been asserted in the petition or any of -- anything in the

1 record. That might be a possible limitation, but I would submit that's yet
2 another difference between the Claims and the prior art that would need to
3 be accounted for with a motivation to combine, which we don't have in the
4 record.

5 JUDGE CHERRY: Okay.

6 MR. BRADER: Finally, the Petitioner has suggested that Van
7 Boucq actually has multiple cookie checks, which we really don't think is
8 right. Again, on Slide 26, we have Van Boucq's Figure 2. The cookie check
9 occurs at box 220, and that's the only place that there is a cookie check.
10 After the popup, there's no second cookie check. There's the cookie
11 creation, which occurs at box 280 and 290.

12 So just from the language and disclosures of Van Boucq I'm not
13 seeing the second cookie check. On Slide 27 we have some different aspects
14 of the disclosure in Van Boucq regarding the cookie check at 220 on the left
15 and then creation of the cookie in blocks 280 and 290 on the right. There's
16 just not a discussion of a second cookie check.

17 And finally, the Petitioner has advanced conflicting motivations to
18 modify Doughty. And one of them -- together they really are -- reflect some
19 dissonance. There's a motivation because cookies may be turned off or
20 unavailable, and the location tracking is important. But then on the other
21 hand, if that's true, if there may be problems with cookies and Doughty, that
22 doesn't provide a motivation to look for a cookie reference like Van Boucq.

23 Because Van Boucq is a -- it discusses a mechanism involving
24 cookies. So if the problem is that we need a way to deal with restrictions on
25 cookies, Van Boucq doesn't provide that solution because it's a cookie
26 reference. Limitation 1F Slide 29 is sending upon determining the user

1 opted out of location tracking, the unique ID to the user computing device
2 for storage in a local browser cache.

3 So Petitioner is relying on Van Boucq's cookie and Doughty's pixel
4 tags, neither of which satisfied a limitation. Turning to Slide 31, this is a
5 bullet list of evidence that is in the record regarding the distinction between
6 a cookie store and the browser cache. Petitioner says that the Patent Owner
7 is advancing a claim construction here. We disagree.

8 The plain language of the Claim refers to the local browser cache
9 and the intrinsic record, the specifications, Dr. Gottesman's testimony all
10 demonstrate how there's a recognized difference between those two
11 mechanisms. They're different standards in the HTTP protocol, they're used
12 for different purposes. They're stored in different locations, and they should
13 be considered as different.

14 On Slide 32, we have Figure 16 of the '947 Patent, which shows
15 these two different locations. Here in boxes 1612 and 1614, if the user opts
16 into location tracking, the system installs a cookie in the browser. And if the
17 user opts out, then the system stores the unique ID in the local cache of the
18 browser. So this distinction is right here in the specification, and it's in the
19 Claims as well.

20 And this evidence as far as we can tell is unrefuted. The
21 Petitioner's expert did not dispute that this is a proper reading of the
22 standards or that these are somehow equivalent mechanisms. So we believe
23 that's a distinction that hasn't been addressed. Doughty's pixel tags is the
24 other thing that Petitioner relies on for sending the unique ID for storage in
25 the browser cache.

26 But Doughty's pixel tag mechanism is entirely dependent on

1 cookies. And we've put in evidence on this. Most compellingly is this
2 statement in Doughty turning off browser cookies will prevent pixel tags
3 from tracking the user's activity. The pixel tag will still account for an
4 anonymous visit, but the user's unique information will not be recorded.

5 This shows that the Doughty's pixel tags mechanism is entirely
6 dependent on cookies. On Slide 34, we have a sequence diagram that Dr.
7 Gottesman provided trying to interpret and understand Doughty's pixel tags
8 embodiment, which can be a bit confusing.

9 So on Slide 35, Petitioner is attempting to gap fill here with
10 hindsight expert testimony of modifying pixel tags to store an ID in cache,
11 which Doughty does not disclose. Or modifying Van Boucq to use cache
12 instead of cookies, which Van Boucq also does not disclose. On Slide 36,
13 Petitioner mixes and matches different identifiers and embodiments from
14 Doughty.

15 Petitioner at one point has argued that Doughty discloses one big
16 embodiment. Now, Petitioner has said that Doughty's embodiments are
17 merely compatible. Regardless, they're different embodiments and require
18 motivation to combine them if they're to be combined. And finally --

19 JUDGE CHERRY: Doesn't the motivation come from Doughty
20 itself where it tells us that we can combine them?

21 MR. BRADER: So I mean, Petitioner relies on some boilerplate
22 saving language at the end of Doughty that seems to be designed to support
23 maybe written description or enablement support for different kind of
24 claims. But it's broad and generic and doesn't explain any particular
25 combination in which they would be combined.

26 And in fact, Doughty explains they may be used together. That

1 after doing the profile ID embodiment, if a login is available, we may also
2 look for match keys and do the match key embodiments. They may be used
3 together, but it doesn't teach a way to combine different aspects of those two
4 mechanisms together into a single method.

5 JUDGE CHERRY: So wait, it would -- you're saying it would
6 have to explain how to bodily combine them?

7 MR. BRADER: I wouldn't say it's a bodily combination, but the
8 -- I mean, there needs to be a motivation to modify the references in such a
9 way as to arrive at the Claims. And we don't believe that's been shown.
10 And the Petitioner is relying on pixel tags in combination with the profile ID
11 embodiment in a way that simply is not recited, explained, or motivated by
12 the reference itself. In fact, the fact that Doughty recognizes that pixels may
13 be turned off and yet doesn't propose any solution to that suggests a non-
14 obviousness, because --

15 JUDGE CHERRY: I just wanted to let you know we're two
16 minutes into your rebuttal.

17 MR. BRADER: I am finishing momentarily. I'll just --

18 JUDGE CHERRY: Sorry, just wanted to --

19 MR. BRADER: I'll just very briefly mention limitation 1L on
20 which we believe is a failure of proof. On Slide 39, shows limitation 1L and
21 shows the sole passage the petition cites to support it. And it just does not
22 disclose that claim language. So with that, I'll reserve my time unless the
23 Board has further questions.

24 JUDGE CHERRY: No, I don't have any. Doesn't look like that
25 -- so we'll give you back two minutes. So you have about nine minutes of
26 rebuttal time now.

1 MR. BRADER: All right. Thank you.

2 JUDGE CHERRY: No problem. Petitioner. You may begin.

3 MR. IWAHASHI: Thank you, Your Honor. I'm just going to start
4 at the beginning, unless you have immediate questions for me. The first
5 thing I wanted to address is the fact that Patent Owner got up and said that
6 one of the things this '947 Patent does is address the challenges with cookies.
7 The problem with that statement is that these Claims still encompass
8 cookies, including third party cookies based on Patent Owner's own position.

9 So they don't address the challenge. They use the cookies, which
10 are in the prior art. Second, when we get into limitations 1C and 1D, I think
11 what I just heard Patent Owner get up here and say is that the tracker
12 embodiment is not actually unclaimed.

13 Your Honors were right to point out that there is some tension
14 between the limitations of 1C and 1E here, particularly because you're
15 supposed to use the presence of the location data to help determine whether
16 or not there's a unique ID or not.

17 But if that location is updating constantly or needs to be updated
18 constantly, it's like what are you using to detect whether or not it's there or
19 not? And if in fact the Tracker embodiment is still encompassed by the
20 Claims, Doughty over Van Boucq rendered this obvious for the same
21 reasons we set forth in this petition, and the exact same reasons that were
22 found in the initial determination.

23 Doughty discloses sending a cookie, that cookie's going to have
24 information from the server. It would've been obvious, incredibly obvious
25 just to send that unique identifier with it so you can re-identify that user.
26 That is the easiest way to identify a user again. Your Honor gave a great

1 example about maintenance and whether he'd been here before or it's -- I
2 went to the Apple store the other day because my watch broke.

3 And they asked for my phone number so they can identify me in
4 the system, right? They ask for email addresses, this happens all the time.
5 And checking for that connection cookie, that connection cookie has
6 location data. So you're checking for the presence, whether or not there is a
7 lack of stored location data to know if they have an ID.

8 The fact that cookies can be cleared by users does not mean there's
9 a lack of motivation to combine. Or else nobody would ever be motivated to
10 use cookies. We still use cookies today. One of the things that we talked
11 about was the -- both parties talked about in the briefs was the difference
12 between third party cookies and first party cookies.

13 There are third party cookies that can be used by any website.
14 There are more privacy concerns around those versus first party cookies,
15 which can only be reused by the website that implemented it. So first party
16 cookies are still used widely. Some browsers are starting to ban third party
17 cookies, which makes sense for privacy concerns.

18 But when we're talking about first party cookies, we still use some.
19 And by the way, I wouldn't want to use internet without first party cookies.
20 I don't clear my cookies because I want my address and name and
21 everything to be filled in automatically so I don't have to do that manually
22 for every single time. So cookies just maintain the state, that's all they do.

23 And unique IDs are commonly used in those. So moving on to
24 limitation 1E. I'm on Slide 18. Trying to be on Slide 18. So for this
25 limitation, determining whether the user opted into or out of location
26 tracking, the Claims again do not recite a check. They do not recite a check,

1 they recite a determination. So there can be multiple determinations from
2 the same check.

3 And here in Van Boucq, they actually disclose multiple checks,
4 multiple determinations. Whether the user has already been previously
5 geolocated and whether there's a cookie. So that's whether they opted into or
6 out to, and whether there's location, there are two -- it's a two-fold
7 determination and it's based at least in part on whether there's a location
8 tracker installed there. That is separate for whether or not there is just
9 location data.

10 JUDGE CHERRY: That's --

11 MR. IWAHASHI: I'm going to just move on to limitation 1F. So
12 for this limitation we're talking about sending upon determining the user
13 opted out of location tracking, the unique identifier to the user computing
14 device. So here a lot of the conversation is centered around the difference
15 between -- or the difference between the location, the local browser cache,
16 and the cookie store.

17 I just want to again, point out that in Patent Owner's District Court
18 filings, they said that third party cookie is in the local browser cache as far
19 as their construction. So this isn't me just making things up. This is me
20 taking what was alleged in the District Court and figuring out like, okay,
21 what is actually encompassed by the Claims?

22 We could have like -- if they hadn't alleged this, maybe we
23 would've had a different understanding. But I knew that in District Court at
24 least, which is the same standard for claim instruction, I would've had to go
25 in and seek a narrowing construction if I wanted a local browser cache to be
26 limited to just the literal folder called Browser Cache.

1 JUDGE PESLAK: Counsel.

2 MR. IWAHASHI: Yes.

3 JUDGE PESLAK: If I'm looking at your Slide 20 --

4 MR. IWAHASHI: Yes.

5 JUDGE PESLAK: -- what in Doughty or Van Boucq do you have
6 here that shows the identifier is in a local browser cache?

7 MR. IWAHASHI: So it's the combination between Doughty and
8 Van Boucq, Your Honor. It's Doughty discloses the universal ID, which is
9 used across all profiles, all users. And as we explained in combination with
10 1C and 1D, it would've been obvious to send that -- or send that unique
11 identifier as part of the cookie or the pixel tag that Doughty discloses
12 sending, and store that within the cookie, the same cookie disclosed in Van
13 Boucq and/or the pixel tag disclosed in Doughty because those are stored in
14 separate locations. So it's not a single disclosure within Doughty or Van
15 Boucq, it's the combination of those two.

16 JUDGE PESLAK: Okay. And where do you say that exactly in
17 the petition? What page of the petition do you say that?

18 MR. IWAHASHI: So Your Honor, in -- starting on page 25 of the
19 petition, we talk about the combination of Doughty and Van Boucq, where
20 the determination of whether or not the user has a profile and the unique ID
21 may be done by checking the internet user already has a geolocation cookie
22 because the POSITA would've been motivated to send over that unique ID
23 as part of that cookie and store it in that connection cookie with Van Boucq.

24 So that continues on to page 26 as well of the petition. And then
25 also on page 31 through 33, we talk about how a POSITA would've
26 understood that cookies are typically stored in the local browser cache. We

1 already talked about the potential difference between a cookie store and the
2 local browser cache.

3 But we continued that it would've been obvious to store that unique
4 ID within that cookie. And in the reply, which again, because of the position
5 Patent Owner took at District Court, we didn't necessarily address
6 specifically the difference between the cookie store and the local browser
7 cache.

8 But in the reply, we also talked specifically about why the pixel tag
9 would've been stored (INDISCERNIBLE). So Your Honor, I want to just
10 conclude by addressing a little bit the alleged distinction between the unique
11 IDs within Doughty. Doughty discloses that there is a unique ID for each
12 user. They try to match users based off of their usage activity to the extent
13 they have different devices.

14 So what Doughty discloses is you send a cookie after you assign a
15 universal profile ID to that device. And then if you see a different device
16 that isn't already associated with the universal ID, you can try to match user
17 activity to a user profile. So you can combine their information to universal
18 profile. That information includes location data.

19 So in essence, it is explicitly disclosed to actually search for a user
20 using location data in the database, even if we're talking about like the
21 separate database embodiment only. But again, it sounds like that's no
22 longer being disclaimed based off of what I just heard from Patent Owner.
23 Unless the panel has any other questions, I'm happy to yield the rest of my
24 time.

25 JUDGE CHERRY: No, I don't have any questions. Thank you
26 very much.

1 MR. BRADER: Your Honors, may I proceed?

2 JUDGE CHERRY: Yeah, you have nine minutes and you can
3 proceed when you're ready.

4 MR. BRADER: Let me get my presentation going here. I want to
5 turn back to the two embodiments argument on limitation 1C. Petitioner
6 argues that cookies are ubiquitous. Everybody knew about cookies and
7 they're used to save state. That's true. You even see in the RFC standards
8 that we submitted, the standard for cookies is called HTTP State
9 Management. The Claims here avoid relying on that state mechanism.

10 They avoid the need to rely on state by applying a location first
11 approach. We look first in 1C, we look first to the location data. We look
12 for a lack of stored location data. We're not looking whether there's an ID
13 assigned. I mean, we're determining there's no ID assigned based on the
14 lack of stored location data, not based on a pre-existing ID.

15 So for example, if the user shows up at a new location, and that
16 location is not yet known to the system, the user will get a new unique ID
17 because that location data, there is no stored location data there if the system
18 has not yet observed the user at that location.

19 So in this way -- and that's very different than the tracker
20 embodiment, which does involve some kind of state mechanism. And that's
21 the only point I would raise unless the Board has any further questions on
22 anything.

23 JUDGE CHERRY: No, I don't have any further questions. No, it
24 doesn't look -- thank you very much.

25 MR. BRADER: All right. Thank you.

26 JUDGE CHERRY: Thank you both for your very fine

1 presentations. They were very helpful. Thank you. Thank you for coming
2 here today. And with that, the case is submitted.

3 (Whereupon the above-entitled matter went off the record at 11:27
4 a.m.)

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