

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

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

Petitioner,

v.

Fullthrottle Technologies, LLC,

Patent Owner.

Case No. 2025-00149

U.S. Patent 11,823,219

Patent No. 11,823,219 to Waishampayan *et al.* IPR Case No.: IPR2025-00149

PATENT OWNER'S PRELIMINARY RESPONSE TO
PETITION FOR *INTER PARTES* REVIEW OF
CLAIMS 1-36 OF U.S. PATENT 11,823,219

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<i>SIMO Holdings Inc. v. Hong Kong uCloudlink Network Tech. Ltd.</i> , IPR2019-01504, Paper 17 (May 19, 2020)	26
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EXHIBIT LIST

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

I. Introduction

Fullthrottle Technologies, LLC (“Patent Owner” or “Fullthrottle”) preliminarily responds to Petitioner Rocket Media, LLC’s (“Petitioner”) petition for *inter partes review* of Claims 1-36 (“the Challenged Claims”) of U.S. Patent No 11,823,219 (Ex-1003 (“the ’219 Patent”)). Petitioner challenges Claims 1-36 based on a three-way obviousness combination and a four-way obviousness combination. Petitioner’s petition should be denied because the applied prior art is missing limitations and is not combinable to form the claimed inventions. Petitioner itself recognizes that the references do not teach the claimed inventions and attempts to use an expert to fill in the gaps even though it did not identify expert evidence as a ground in its petition. Moreover, Petitioner’s petition should be discretionarily denied because of related district court litigation and a related asserted patent for which no post grant proceeding has been requested, which could potentially lead to inconsistent rulings.

II. Background

A. The Parties

Fullthrottle is an award winning, data-powered artificial intelligence (AI) company that helps consumers connect with retailers and educational institutions without third-party cookies (Ex-2011, ¶22; Ex-2009; *see also* Ex-2006; Ex-2007).

Fullthrottle's platform is known as Shoppersuite (Ex-2011, ¶48). Petitioner competes with Fullthrottle for the software services sales under the trade name Ignite (Ex-2011, ¶72).

B. Related Matters

Fullthrottle filed suit against Petitioner in April 2024 (*Fullthrottle Technologies, LLC v. Rocket Media LLC*, No. 12:24-cv-00314 (M.D. N.C.)). That case is pending. In that action, Fullthrottle asserts the '219 patent and U.S. Patent Nos. 11,556,947 ("the '947 patent") and 12,051,083 ("the '083 patent") (Ex-2011, pp. 1-2). The '219, '947, and '083 patents are related by a claim of priority (Ex-1005, "Related U.S. Application Data"). Petitioner filed a motion to dismiss in that action.

Petitioner also petitioned to institute an *inter partes* review of the '947 patent in IPR2025-0148. Petitioner has not petitioned for a post grant review or *inter partes* review of the '083 patent.

C. The Technical Background

Computer cookies are small data files that websites save on a device that can be used for a variety of purposes, including storing information for tracking a user (Ex-2001, p. 4; Ex. 2005, p. 4). Computer cookies include two types: first-party cookies and third-party cookies (Ex-2001, p. 4; Ex. 2005, pp. 4-5). A "first-party

cookie” is a computer cookie from a first-party website that is saved to a user’s device by a web page the user has visited (Ex-2001, p. 4; Ex. 2005, p. 4). A “third-party cookie” is saved to the device by another site or service, often for cross-site tracking (Ex-2001, p. 4; *see also* Ex. 2005, p. 5). According to Petitioner, “third-party cookies form the backbone of online display” and are “crucial for business to stay compliant and competitive” (Ex-2005, p. 3). Petitioner itself recognizes these principles (Ex. 2005, pp. 4-5).

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

Both Apple and Google recognized this problem (*see* Exs-2001, 2002, 2003).

In addition, Petitioner itself recognized the problem stating that the elimination of third-party cookies is causing the “digital landscape” to “undergo[] a seismic shift” and this “change will impact everyone” (Ex-2004). In fact, Petitioner’s entire business is directed to solving this technical problem (*id.*; Ex-2005). Petitioner itself recognizes many of these technical problems and alleges to have an “innovative approach” (Ex-2008).

D. The '219 Patent

The '219 patent solves the third-party cookie problem in the context of “campaign data.” Campaign data may be one or messages/media that share a theme (Ex-1003, 24:1-2). Without third-party cookies, the entity generating the campaign may not be able to determine what devices are responding to the campaign (*see*, Ex-2001).

Figure 15 is helpful to focus on for purposes of this motion. Figure 15 describes computer processing in a flow chart.

Fullthrottle Patent Figure 15

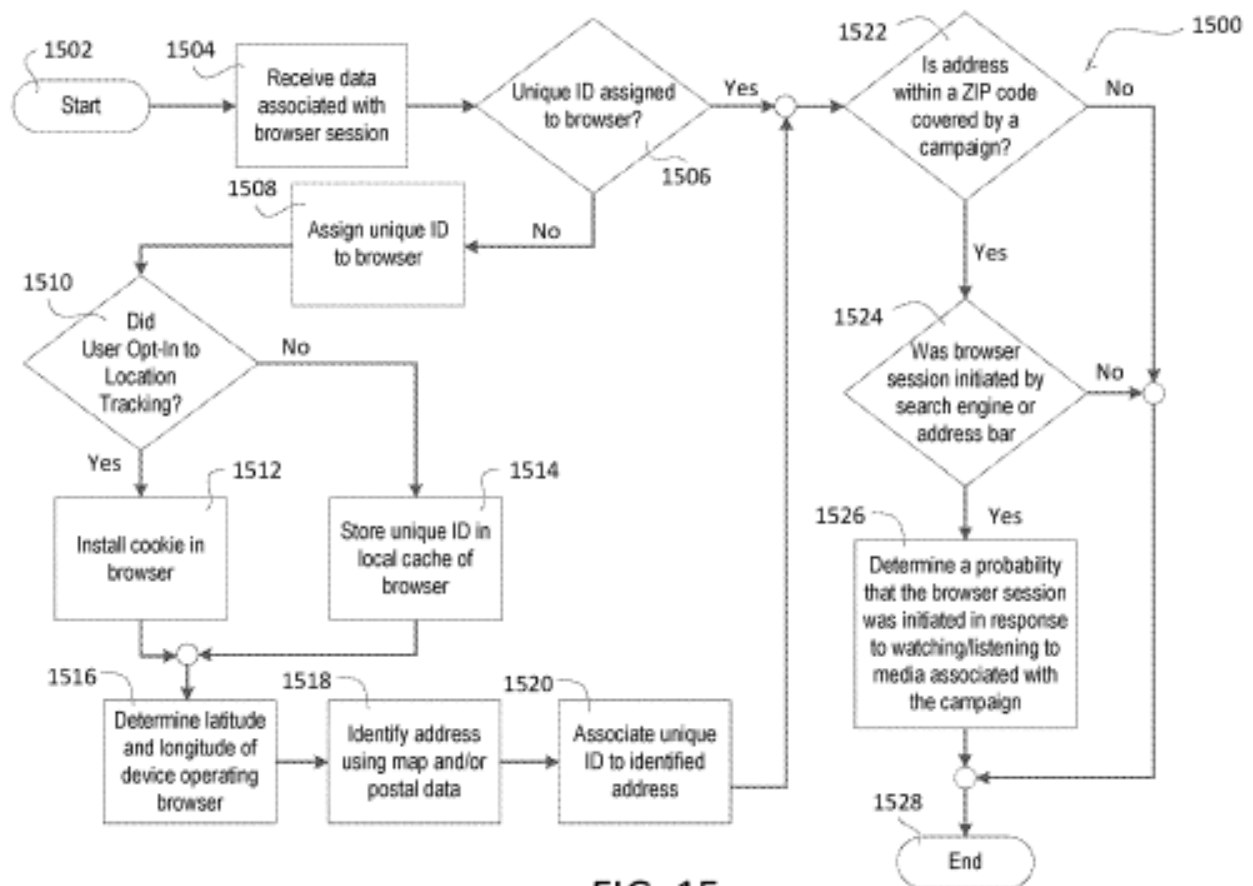


FIG. 15

At 1504, a computing device receives browsing session data from a user such as “anonymous data” (Ex-1003, 38:55-39:5). “Anonymous data” is “data that includes no personally identifiable information associated with the user” (Ex-1003, 6:46-48). Examples of such anonymous data are time, date, webpage URL, browser type, language, IP address, and location (Ex-1003, 6:46-50; 38:66-39-2). After receipt of the anonymous data, the computing device determines at 1506 whether there is a “unique identifier that is associated with the user” (Ex-1003, 39:22-25). The

'219 patent describes that this determination may be made by determining whether the computing device database has a unique identifier assigned to the anonymous data (*e.g.*, "location data") (Ex-1003, 39:22-24). If there is an assigned unique identifier in the database, this means that the computing system stored the unique identifier in the user's browser cache after determining that the user had opted out of location tracking/third-party cookies (*see* Ex-1003, 39:27-33; 40:29-35).

Alternatively or additionally, the computing device may determine that there is a "tracker (*e.g.*, cookie)" installed in the browser application on the user computing device and a unique identifier associated with that "tracker (*e.g.*, cookie)" from visiting another website (Ex-1003, 39:32-36). The "tracker (*e.g.*, cookie)" may have been installed when a user opted-in to location tracking when visiting a third-party site (Ex-1003, 39:37-41).

At 1508, if the computing device determines that no unique identifier has been assigned based on the browsing session data, the computing device generates a unique identifier for that user (Ex-1003, 39:45-49).

The computing device determines at 1510 whether the user opted-in to location tracking (Ex-1003, 39:45-48). If the user opted-in to location tracking, there is a "tracker (*e.g.*, cookie)" in the browser application" (Ex-1003, 39:61-63). The tracker (*e.g.* cookie) may be in the HTTP header sent from the user to the computing device

(Ex-1003, 40:15-17). If there is no “tracker (*e.g.*, cookie)” in the browser application, the computing device stores the generated unique identifier in the user's local cache (Ex-1003, 40:29-32). The assigned unique identifier stored in the local browser cache enables the computing device to recognize return visits by the user when using the same browsing application (Ex-1003, 40:35-37).

The computing device determines the user's latitude and longitude from the browsing session data (1516) (Ex-1003, 40:58-67). At step 1518, the computing device determines a physical address (*e.g.*, postal address) for the browsing session by correlating the browsing session location data with information (*e.g.*, map information) using an automated programming interface (API) (Ex-1003, 41:5-9). The computing device associates the unique identifier with the physical address (1520) (Ex-1003, 41:9-11).

At step 1522, the computing device may determine whether the address associated with the unique ID is within a ZIP code covered by the campaign (Ex-1003, 41:58-61). For example, the campaign may cover (*e.g.*, target) one or more zip codes and/or each campaign may uniquely identify a set of ZIP codes (Ex-1003, 41:60-64). When the computing device determines, at 1522, that the address is within a ZIP code not covered by the campaign, the method ends 1528 (Ex-1003, 42:7-10). However, if it is determined that the address is within a zip code covered by the

campaign, the computing device may determine (1524) whether a user initiated the browsing session with a search engine or address bar (*e.g.*, entering a URL into a browser address bar) (Ex-1003, 42:11-15). Initiating a browser session via a search engine is referred to as organic traffic (Ex-1003, 42:14-15). Initiating a browser session via an address is direct traffic (Ex-1003, 42:15-16). Organic traffic and direct traffic may indicate that a user initiated the browser session with the intent to visit a specific website or a website associated with a specific product or brand (Ex-1003, 42:16-19).

If the computing devices determined that a user initiated the browsing session with a search engine or address bar, the method (1524) determines a probability that the browsing session was initiated in response to watching and/or listening to media associated with the campaign by using campaign level data (Ex-1003, 42:23-31). Campaign level-data is described as impression data including the number of impressions over a period of time (*e.g.*, number of daily impressions) and the number of impressions associated with a particular media (Ex-1003, 10:18-30).

The probability may be calculated using the equation:

$$\text{probability} = \text{average}(\text{date proportion}, \text{daypart proportion}) * \text{daypart factor}$$

(Ex-1003, 30:43-48). The date proportion indicates a proportion of campaign impressions associated with the date the browsing session was initiated (Ex-1003,

30:13-15). For example, the computing device may analyze the campaign level data (*e.g.*, the daily impression data) to determine the date proportion for the date the browsing session was initiated (Ex-1003, 30:15-18). The daypart proportion indicates a proportion of campaign impressions associated with the time of day (*e.g.*, daypart) associated with the date the browsing session was initiated (Ex-1003, 30:22-24). The computing device may analyze the campaign level data (*e.g.*, the daypart blueprint data) to identify the daypart proportion for the time of day the browsing session was initiated (Ex-1003, 30:24-27). The daypart proportions may provide an overall approximation of general streaming habits (*e.g.*, when users are most likely to stream audio and/or video (Ex-1003, 30:28-31). Each of the daypart proportions may be have a daypart factor based on the associated proportion (Ex-1003, 30:39-42). The probably can be determined using the above equation by averaging the date proportion and the daypart proportion and multiplying this average by the daypart factor (Ex-1003, 30:49-51).

E. The Challenged Claims

Petitioner challenges claims 1-36 on two obviousness grounds. Petitioner argues that claims 1-36 are obvious over (i) U.S. Patent No. 8,898,074 (“Doughty”) (Ex-1008) in view of European Patent Publication No. 2,938,045 (“Van Boucq”) (Ex-1009); and U.S. Patent No. 8,862,714 (“Smith”) (Ex-1032); and (ii) Doughty in view of Van Boucq, Smith, and U.S. Patent No. 10,311,465 (“Maginnis”).

Claim 1 is a method claim (Ex-1003, 47:50-48:13). Claim 1 and an identifier for each limitation is set forth below.

Claim Limitation Identifier	Claim Limitation
1[pre]	A method comprising:
1[a]	receiving campaign level data associated with a campaign;
1[b]	receiving anonymous data associated with a browser session initialized by a user via a browser on a user computing device;
1[c]	determining that the user accessed a uniform resource locator (URL) during the browser session;
1[d]	determining a latitude coordinate and a longitude coordinate of the user computing device, during the browser session, wherein the latitude coordinate and the longitude coordinate are determined based on the anonymous data upon determining that the user opted-out of location tracking, and wherein the latitude coordinate and the longitude coordinate are determined based on geo-location data retrieved from the user computing device upon determining that the user opted-in to location tracking;
1[e]	identifying a physical address for the user based on the determined latitude coordinate and the determined longitude coordinate using a map application programming interface (API);
1[f]	determining that the physical address is within a ZIP code covered by the campaign;
1[g]	determining that the browser session was initiated by the user with an intent to visit the URL; and
1[h]	determining a probability that the browser session was initiated in response to watching or listening to media associated with the campaign using the campaign level data.

Claim 19 is an independent non-transitory, medium claim that corresponds to

claim 1 (Ex-1003, 49:11-41). Claims 2-19 depend from claim 1 and in some instances other dependent claims (Ex-1003, 48:13-49:41). Claims 20-36 depend from claim 19 and in some instances other dependent claims (Ex-1003, 49:42-50:58). Dependent claims 2-19 and 20-36 have limitations relating to, *inter alia*, the campaign and determining/determine the probability that the browser session was initiated in response to watching listening to media associated with the campaign and using campaign level data (Ex-1003, 48:13-49:41, 49:42-50:58).

F. Overview of the Applied Art

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

1. Doughty

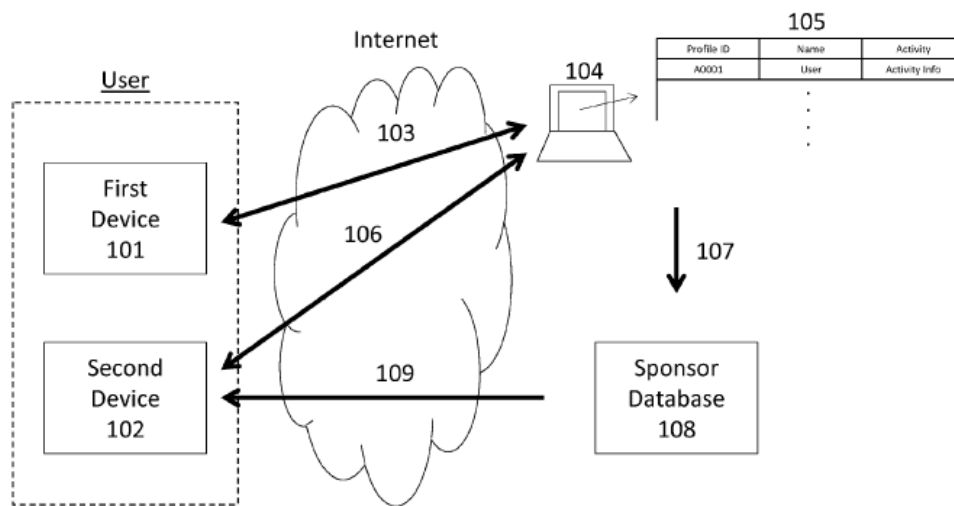
Doughty focuses on assigning a unique identifier to each device, determining whether the devices are associated with the same user based on user activity, and then linking the assigned identifiers (Ex-1008, 11:37-39).

Doughty identifies that an internet user of a stationary device can be sent advertising on the stationary device (Ex-1008, 5:33-58, 9:32-63). According to Doughty, there was "no efficient way to optimally target the same user across all the devices he may use" including for example, cellular phones, smart phones, televisions, and gaming devices (Ex-1008, 5:35-53, 9:64-10:11). Doughty focuses

on using “user activity” to identify that two devices are associated with the same user (Ex-1008, 11:37-39).

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

Doughty Figure 1



Doughty’s “server 104 communicates with first device 101 to receive information relating to the user’s activity on first device 101” (Ex-1008, 11:34-36). Upon receiving the “user’s activity information, server 104 assigns a unique identifier” and “stores the assigned unique identifier, user information, and activity information in table 105” (Ex-1008, 1:45-50). According to Doughty, the server 104 can receive the user activity through a communication signal 103 and can be “transmitted based on a request from server 104, a periodic transmission by first device 101, or a triggering event on the part of the first device 101” (Ex-1008, 10:42-

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

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

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

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

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

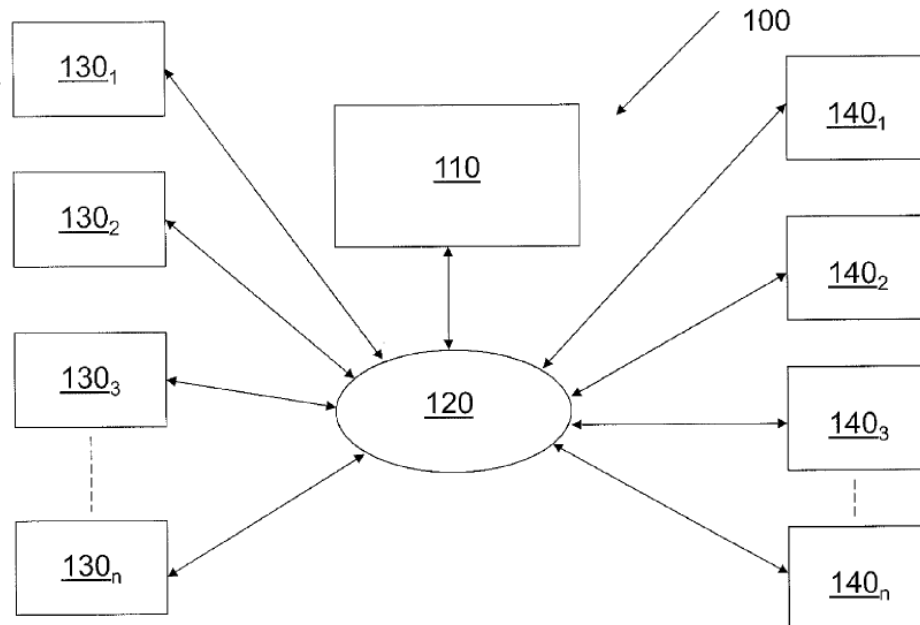
2. Van Boucq

Van Boucq focuses on the alleged problem of locating an internet user based

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

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

Van Boucq Figure 1



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

Van Boucq Figure 3

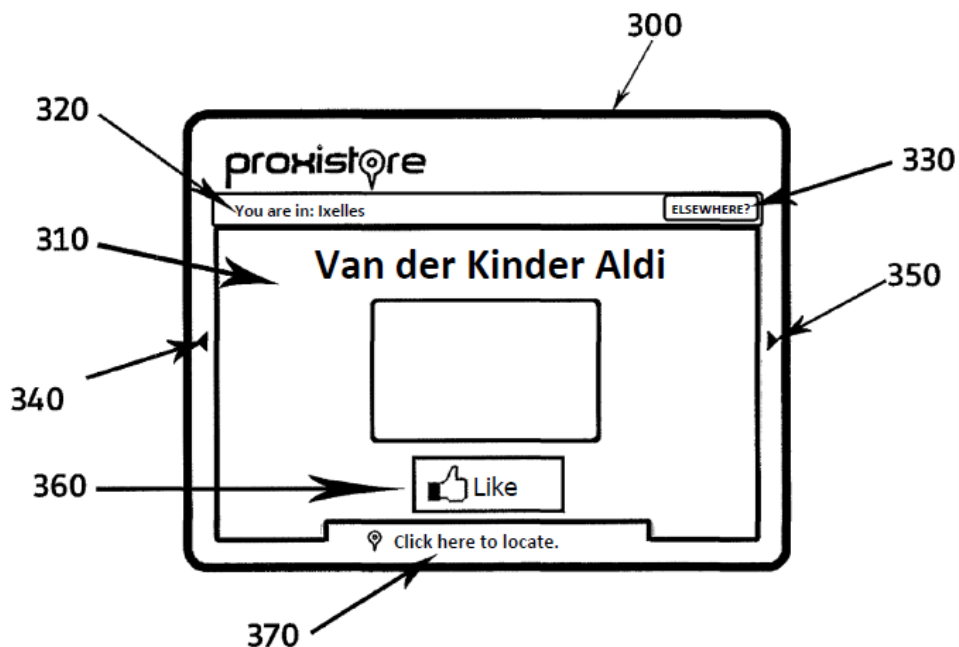
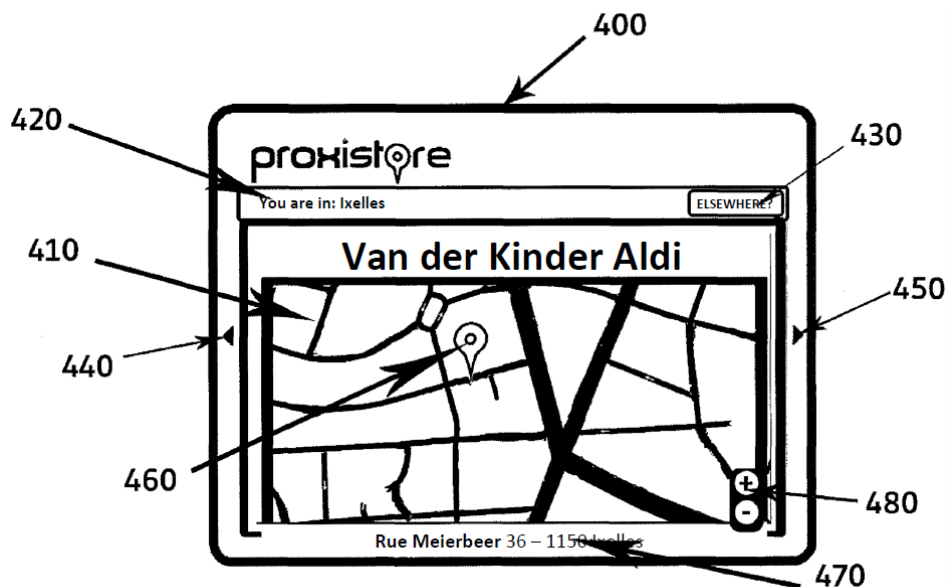


Figure 4 illustrates an “ad window 400” that appears from clicking on link 370 so the internet user can view the advertiser’s geolocation (Ex-1009, ¶[0074]). The ad window 400 has a link 430 for modifying the Internet’s user’s geolocation 420, where the internet user can specify the user’s location (Ex-1009,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

Van Boucq Figure 4



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

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

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

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

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

3. Smith

Smith focuses on determining the effectiveness of promotions at specific physical locations, such as billboards, in-store advertisements, store-front banners,

presentations and the like" (Ex-1032, 1:51-53). Smith discloses in Figure 3 an exemplary location (e.g., promotion) assessment system 100'' that includes a web analytics system 300, content providers 302a, 302b, and client device 304 (Ex-1032, 7:56-63). Client device 304 communicates with each of the analytics system 300 and the content providers 302a, 302b over network 308 (Ex-1032, 7:61-63). Web analytics system 304 communicates with the content providers 302a, 302b

Smith Fig. 3

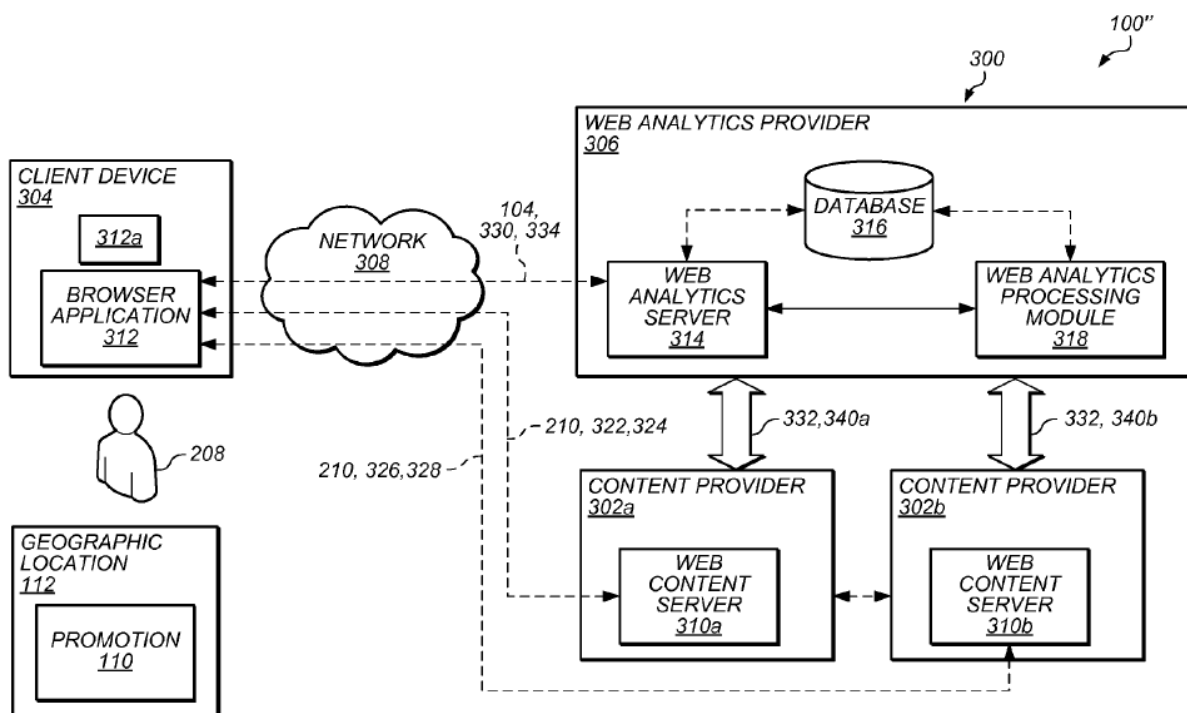


FIG. 3

The web analytics provider 306 includes web analytics processing module 318 (Ex-1032, 10:11-13). Web analytics processing module 318 may include an effectiveness processing module 318 to assess a promotion's effectiveness (Ex-1032,

10:22-24). Smith's effectiveness index is used to determine whether to continue, expand, reduce, duplicate, terminate, and/or maintain a promotion (Ex-1032, 12:48-53). Smith provides an example of determining Smith's effectiveness index for a road-side billboard 100 suggesting the use of the website "www.vendor.com" at promotion location 112 having certain latitude and longitude coordinates (Ex-1032, 13:26-31). Smith describes that a positive high-level of effectiveness is where the website activity is in close proximity (*e.g.*, 1 mile) to the promotion location, and a low level of effectiveness is where the website activity is not proximate to the promotion location (Ex-1032, 16:4-33).

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

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

IV. Claim Construction

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

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

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

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

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

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

1. The Cited Art Fails to Disclose Limitation 1[d]

Petitioner incorrectly alleges that Doughty in combination with Van Boucq disclose limitation 1[d], which states "determining a latitude coordinate and a longitude coordinate of the user computing device, during the browser session, wherein the latitude coordinate and the longitude coordinate are determined based on the anonymous data upon determining that the user opted-out of location tracking, and wherein the latitude coordinate and the longitude coordinate are determined based on geo-location data retrieved from the user computing device upon determining that the user opted-in to location tracking."

Limitation 1[d] implicates two of Petitioner's constructions. Petitioner

construed “upon determining that the user opted-out of location tracking” as “upon determining that the user opted-out of location tracking by the lack of a (‘tracker (*e.g.*, cookie)’)” and construed “location tracker” as “the third-party tracking cookie described in the patent specification (‘tracker (*e.g.*, cookie)’)” (Petition, pp. 13-14).

Doughty Petitioner admits that Doughty fails to teach any determination of the latitude and longitude coordinates “upon determining that the user opted-out of location tracking” or “upon determining that the user opted-in to location tracking” (Petition, p. 30). Petitioner only states that Doughty allegedly discloses “tracking anonymous information, including URLs accessed and location data, during a first browser session” which states nothing about the limitations in 1[d]. Instead, Petitioner relies on Van Boucq for such subject matter.

Van Boucq Van Boucq does not teach the above limitation under Petitioner's constructions. Petitioner's construction requires “upon determining that the user opted-out of location tracking by the lack of a (‘tracker (*e.g.*, cookie)’)” (*e.g.*, lack of a third-party tracking cookie) (Petition, pp. 13-14). Van Boucq does not satisfy this construction because Van Boucq's “connection cookie” is a first-party cookie, not a third-party cookie (Ex-1009, ¶[0060]). Notably, Van Boucq refers to the disclosed “cookie” as a “connection cookie,” not a “tracking/third-party cookie” (Ex-1009, ¶¶ [0060], [0063], [0067]). Moreover, Van Boucq discloses a “first-party” cookie, not

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

does not look for a cookie in the web browser that was created by a third-party.

In addition, Petitioner points to Van Boucq ¶ [0063] for disclosing that the user can be geolocated using an IP address “when the system determines the user opted-out” and using a geolocation service or cookie “when the system determines the user opted-in” (Petition, pp. 30-31). Petitioner's citation fails because Petitioner fails to apply Petitioner's constructions. Petitioner's construction requires “determining that the user opted-out of location tracking by the lack of a third-party tracker cookie” (Petition, pp. 14-15). Van Boucq fails to disclose geolocating a user using either an IP address or a geolocation service based on a presence or lack of a third-party tracker cookie. Instead, Van Boucq discloses that the user can be geolocated using an IP address or a geolocation service when a cookie (connection cookie), not a third-party tracking cookie (Ex-1009, ¶[0063]). Thus, in Van Boucq, the geolocation of the user is unrelated to the presence or absence of a third-party tracker cookie.

Further, Petitioner improperly reads claimed conditions out of limitation 1[d] without showing any actual teaching in Van Boucq. Specifically, the features of limitation 1[d] state different determinations of the latitude and longitude coordinates “upon determining that the user opted-out of location tracking” and “upon determining that the user opted-in to location tracking.” When Petitioner describes the teachings of Van Bouc, Petitioner improperly assumes that “the system

determines the user opted-in” (*i.e.*, “**Opt-in**. When the system determines the user opted-in, Van Boucq explains...”)) and also improperly assumes the “system determines the user opted-out” (*i.e.*, “**Opt-out**. When the system determines the user opted-out, Van Boucq explains...”)) without any showing in the asserted references for what qualifies for such determinations (Petition, p. 30). As these conditions are merely assumed, Petitioner fails to show they are taught by Van Boucq.

Under 37 C.F.R. § 42.104(b)(4), Petitioner was required to identify how the claims are unpatentable under the statutory grounds on which the petitioner challenges the claims and to specify where each element of the claim is found in the relied-upon prior art. *Adaptics Ltd. v. Perfect Co.*, IPR2018-01596, Paper 20 at 22-24 (Mar. 6, 2019) (informative); *Amazon Web Servs., Inc. v. Saint Regis Mohawk Tribe*, IPR2019-00103, Paper 22 at 15-19 (May 10, 2019). “[I]t is Petitioner’s burden to demonstrate sufficiently in the Petition that [the prior art] renders the challenged claims unpatentable, including showing that the Petition’s contentions are supported by the evidence.” *SIMO Holdings Inc. v. Hong Kong uCloudlink Network Tech. Ltd.*, IPR2019-01504, Paper 17 at 4-5 (May 19, 2020) (citing 35 U.S.C. § 314(a)); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (“In an IPR, the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.”) (citing 35 U.S.C. §

312(a)(3)); *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (requiring “the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim’”). Petitioner’s assumptions fails to meet these standards.

Footnote 2 Petitioner cites in footnote 2 to its arguments regarding limitation 3[c] (Petition, p. 30). It is unclear what Petitioner’s footnote argument means because Petitioner was required to apply Petitioner’s asserted constructions to claim 1. To the extent that Petitioner did not, Petitioner’s petition fails to meet 37 C.F.R. § 42.104(b)(4)’s petition standards.

Nevertheless, Petitioner’s arguments regarding limitation 3[c] fail to show that limitation 1[c] is disclosed or obvious over Doughty and Van Boucq. Petitioner admits that Doughty does not disclose limitation 3[c] as Petitioner only asserts obviousness over Doughty alone or Doughty plus Van Boucq (Petition, pp. 42-44).

Doughty alone Petitioner’s argument fails because Petitioner once again fails to apply its own constructions. Limitation 3[c] recites the “location tracker,” (Petition, p. 42), which Petitioner construed as “the third-party tracking cookie described in the patent specification (‘tracker (*e.g.*, cookie)’)” (Petition, p. 13). Petitioner fails to identify any third-party tracking cookie in its analysis, and therefore its argument over Doughty alone has no merit.

Petitioner's obviousness argument further lacks merit because Petitioner argues that because Doughty discloses that a user may turn off cookies there is some unexplained logical leap to the limitations of claims 3[c] (Petition, p. 42). But Petitioner is incorrect that the claim limitation 3[c] is obvious based on Doughty. Doughty teaches that "pixel tags," not third-party cookies, can be used to "monitor the activity of a site" (Ex-1008, 17:20-22). Doughty further teaches that if a user turns off "browser cookies," this prevents using "pixel tags" to monitor the user's activity (Ex-1008, 17:24-26). Thus, Doughty teaches using "pixel tags" for monitoring, not using third-party tracking cookies. In fact, Petitioner states that "pixel tags . . . are not third-party cookies" (Petition, p. 32). Accordingly, Doughty does not determine whether the user opted-in to or out of location tracking, based on whether a location tracker (*i.e.*, third-party cookie) is installed on the user computing device because Doughty determines whether "pixel tags" can be used for monitoring.

Moreover, Doughty records a user where pixel tags are not available as an "anonymous visit" (Ex-1008, 17:26-27). Doughty teaches that an "advertising network may uniquely identify a user by creating a hashed (*e.g.*, anonymized) email address" (Ex-1008, 17:28-33). Accordingly, Doughty teaches a technique for identifying the user that is different than that claimed. Thus, contrary to Petitioner's assertions, limitation 3[c] is not obvious because Doughty discloses using email to

identify a user when pixel tags are not available.

Further, Doughty teaches techniques for mapping unidentified user devices to other devices, which is the purpose of Doughty (*e.g.*, Ex-1008, 11:1-25). Thus, there is no discussion or suggestion in Doughty that renders limitation 3[c] obvious.

Doughty over Van Boucq In arguing limitation 3[c] is obvious over Doughty and Van Boucq, Petitioner again fails to apply Petitioner's own construction. Limitation 3[c] recites that the "location tracker," (Petition, p. 42), which Petitioner construed as "the third-party tracking cookie described in the patent specification ('tracker (*e.g.*, cookie)')'" (Petition, p. 13). Petitioner fails to identify any third-party tracking cookie in its analysis, and therefore its argument over Doughty and Van Boucq has no merit. Moreover, Petitioner's arguments fail for the reasons described above regarding Van Boucq and Doughty.

2. The Cited Art Fails to Disclose Limitation 1[g]

Limitation 1[g] recites "determine a probability that the browser session was initiated in response to watching or listening to media associated with the campaign using the campaign level data" (Ex-1003, 48:9-12). Petitioner asserts that "Doughty/Van Boucq with Smith render this limitation obvious" (Petition, p. 35). But Petitioner provides no discussion, much less proof, that Doughty/Van Boucq teach limitation 1[g] (Petition, pp. 35-37). Therefore, Petitioner's petition fails to

the extent that Petitioner was relying on Doughty/Van Boucq for this limitation as Petitioner failed to provide any analysis.

Petitioner's argument for this limitation is focused entirely on Smith (Petition, pp. 35-36). Although Petitioner argues that Smith discloses this limitation, Petitioner recognizes the weakness in this argument and tries to fill in the gaps by arguing that the limitation is obvious. But both of Petitioner's arguments are problematic.

Argument 1: Petitioner first argues that in calculating an effectiveness index Smith discloses assigning weight based on user proximity to a promotion's physical location (Petition, p. 36 (citing Ex-1032, 17:27-47)). Smith describes "user activity that occurs closer to promotion location 112 may be assigned more weight than user activity that occurs farther way from promotion location 112" (Ex-1032, 17:31-34). The "promotion location" is the latitude and longitude of the promotion, *e.g.*, the physical billboard (Ex-1032, 6:53-57).

Petitioner argues a POSITA would either understand, or it would have been obvious, that Smith's weighting was based upon the claimed "probability" (Petition p. 36). According to Petitioner, the "closer" the website user is to the "advertisement (using campaign level data), the higher the probably that the user initiated the browsing session in response to the ad" (Petition, p. 36). However, Petitioner's assertion that limitation 1[g] is disclosed or obvious in view of this disclosure is

incorrect for several reasons. First, limitation 1[g] requires “watching or listening to media associated with the campaign” (Ex-1003, 48:11). Seeing a physical promotion, such as billboard, is not “watching or listening to media associated with the campaign.” A physical billboard is not “watched or listened to.” Moreover, a “physical billboard” is not “media associated with the campaign.” Rather, in the context of the '219 patent “media associated with the campaign” is media watched or listened to with a computing device, not in person (Ex-1003, 24:1-15). The '219 patent has no description of watching or listening to in person media as part of the invention.

Second, contrary to Petitioner's assertion, an advertisement is not “campaign level data.” The claim distinguishes between “media” that is “watched or listened to” and “campaign level data” (Ex-1003, 48:1-13). As the '219 patent describes, “campaign level data” is “impression data,” not the advertisement itself (Ex-1003, 24:18-19).

Third, Smith discloses “weights” that are “assigned ... index values,” not “determining a probability” (Ex-1003, 17:35-42). Smith discloses that the “assigned” weights are based on the user's distance from the physical promotion (Ex. 1003, 17:25-42). “Assigning” is not determining, much less determining the claimed “probability.” As described, Smith discloses arbitrary assignment of weights based

the user's distance from the physical advertisement, not determining a probability, much less determining the claimed "probability" with "campaign level data."

Argument 2: Petitioner alternatively argues that a POSITA would have understood, it would have been obvious to use a weighting scheme for elapsed time since the user saw a presentation/advertisement, such as visiting a website (Petition, p. 37). Petition cites to Smith 17:27-47 for this argument (Petition, p. 37; Ex-1007, ¶270 (both citing Ex-1032, 17:27-27)). But Smith does not disclose using "elapsed time" for "weighting" in the citation. Rather, Smith discloses assigning an index value based on physical locations (Ex-1021, 17:34-42). Thus, Smith does not disclose what Petitioner alleges is disclosed.

As Smith does not disclose this limitation in the cited excerpts, Petitioner's argument is nothing more than using an expert testimony to fill in the prior art gaps by alleging the limitation is obvious in view of Smith. However, Petitioner's argument fails to show that the limitation is obvious in view of Smith. Petitioner's obviousness argument has no grounding in Smith's citations. As described, Smith discloses "weights" that are "assigned ... index values," not "determining a probability" (Ex-1003, 17:35-42). In fact, Petitioner only argues that Smith renders it obvious to "assign," probably (weight) based on "elapsed time," as opposed to making "determinations" (Petition, p. 37). Second, Petitioner essentially makes up

its argument out of nothing as Smith does not disclose in the citations using “elapsed time” since “visiting a website” to assign index values. Rather, Smith’s entire purpose was to provide a “technique for determining an effectiveness of promotions at specific geographic locations, such as billboards, in-store advertisements, store front banners, presentations, and the like” (Ex-1032, 1:51-54; *see also* 1:58-2:26). To do this, Smith describes determining a promotion’s “effective index” based on a user’s response distance from the physical advertisement. Thus, Smith does not teach or suggest making the claimed determination based on elapsed time since a website visit.

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

Petitioner fails to provide a motivation to combine Doughty and Van Boucq. Doughty is focused on identifying *different devices* and monitoring information, such as patterns or user activity, on the devices for “linking” those devices to a common user, allowing an advertising system to provide similar advertisements to the same user across devices (Ex-1008, 6:1-19; 10:7-14). The invention of Doughty is directed towards monitoring information, such as patterns or user activity, on different devices, because the devices are not otherwise “linked” in the advertising system (Ex-1008, 10:7-14). Van Boucq is directed to geolocating an Internet user via a browsing device to determine whether *the same browsing device has been*

previously geolocated for delivering relevant advertisements in the location (Ex-1009, ¶¶[0004], [0060], [0063], [0067]). Thus, a POSITA would not have been motivated to combine Doughty and Van Boucq because one invention is directed to linking different devices to the same user based on monitored information at each device, while the other invention is directed to geolocating a single device.

C. Secondary Considerations

Patent Owner does not submit secondary considerations at this juncture.

D. Claims 2-36 are Likewise not Obvious

Claims 2-18 depend from claim 1 and therefore are not obvious for the same reasons as set forth above at least due to their dependency from claim 1. Claim 19 recites a “machine-readable storage device” claim with substantially similar limitations to the above-referenced method steps of claim 1. For at least the reasons stated in the above-referenced analysis of claim 1, the applied prior art references fail to teach at least the following limitations of claim 11. Claims 20-36 depend from claim 11 and therefore are not obvious for the same reasons as set forth herein at least due to their dependency from claim 11.

Claim	Reference to Analysis
19[c]: “determine that the user has not been assigned a unique identifier based on a lack of stored location data for the user computing device;”	<i>See above analysis related to 1[c]</i>
11[e]: “determine whether the user opted-in to or out of location tracking,	<i>See above analysis related to 1[e]</i>

based on whether a location tracker is installed on the user computing device;”	
11[f]: “send, upon determining that the user opted-out of location tracking, the unique identifier to the user computing device for storage in a local browser cache;”	<i>See above analysis related to 1[f]</i>
11[l]: “identify a second visit to the URL during the second browser session using the unique identifier stored in the local browser cache;”	<i>See above analysis related to 1[l]</i>

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

Petitioner's Ground II is a four-way obviousness combination. Petitioner's Ground II fails to meet the institution standard because the references fail to disclose at least limitations 1[d] and 1[g] and there is no motivation to combine the references in such a way as to form the claimed invention. The only difference between Petitioner's three-way and four-way obviousness combinations is that Petitioner argues for the four-way combination that Maginnis discloses limitation 1[e]. Thus, adding Maginnis to the mix does not cure the deficiencies of the teachings of Doughty, Van Boucq, and Smith with respect to limitations 1[d] and 1[g].

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

Factors considered under 35 U.S.C. § 314(a) related to parallel district court litigations weigh in favor of denying institution. Each of factors set forth in *Apple*

Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11 (March 20, 2020) (precedential) are addressed below:

1. **District Court Stay:** Favors Denying Institution. Petitioner has not requested a stay. Thus, the District Court litigation is being conducted in parallel.
2. **Proximity of Trial Date:** Favors Denying Institution. No trial date has been scheduled (Ex-2010). In fact, there is no schedule in the District Court case (Ex-2010).
3. **Investment in Parallel Proceedings:** Favors Denying Institution. A motion to dismiss has been briefed and is pending (Ex-2010). Thus, the parties and the Court have made a substantial investment in the District Court proceedings.
4. **Overlap in Issues:** Favors Denying Institution. Petitioner is likely to assert prior art defenses in the pending litigation that overlap with those asserted in this petition.
5. **Same Party:** Favors Denying Institution. The parties are the same in the parallel proceeding.
6. **Other Circumstances:** Favors Denying Institution. Fullthrottle has asserted the '083 Patent (Ex-1005) in the parallel proceeding (Ex-2011).

The '083 Patent is related to the '219 Patent (Ex-1005, Related U.S. Application Data). Petitioner has not filed any post grant proceedings against the '083 Patent. Thus, the District Court will have to assess the '083 Patent and efficiency makes sense for one tribunal to address Petitioner's prior art allegations against the patent family.

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

Petitioner certifies that the word count in this Petition is 7,140 words, as counted by the word-processing program (Microsoft Word for Office 365) used to generate this Petition, where such word count excludes the table of contents, table of authorities, mandatory notices, certificate of service, table of exhibits, and this certificate of word count. This Petition is in compliance with the 14,000 word limit set forth in 37 C.F.R. §42.24(b).

VIII. Conclusion

Patent Owner respectfully requests that Petitioner's request for *inter partes* review of the '219 patent be denied, as Petitioner failed to establish a reasonable likelihood of prevailing with respect to the Challenged Claims.

Respectfully submitted,

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Date: March 12, 2025

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Certificate Of Service

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

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