

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.

IPR2025-00149
Patent 11,823,219 B2

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

PESLAK, *Administrative Patent Judge*.

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

I. INTRODUCTION

Rocket Media, LLC d/b/a Launch Labs (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–36 (“the Challenged Claims”) of U.S. Patent No. 11,823,219 B2 (Ex. 1003, “the ’219 patent”). Paper 2 (“Pet.”). Fullthrottle Technologies, LLC (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”).

We have authority, acting on the designation of the Director, to determine whether to institute an *inter partes* review under 35 U.S.C. § 314(a). *See* 37 C.F.R. § 42.4(a) (2024) (“The Board institutes the trial on behalf of the Director.”). Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the Petition shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Considering the Petition and the Preliminary Response, as well as all supporting evidence, we determine that Petitioner fails to establish a reasonable likelihood that it would prevail with respect to at least one Challenged Claim. Pursuant to 35 U.S.C. § 314, we do not institute an *inter partes* review of the Challenged Claims.

A. *Related Matters*

Petitioner states “[t]he ’219 patent is asserted against Petitioner in *Fullthrottle Technologies, LLC v. Rocket Media, LLC (d/b/a Launch Labs)*, No. 1:24-cv-00314 (M.D.N.C.).” Pet. 67. Patent Owner also identifies the petition in IPR2025-00148 challenging related U.S. Patent No. 11,556,947. Paper 4, 1; Prelim. Resp. 2.

B. *Real Parties-in-Interest*

Petitioner identifies itself as the sole real party-in-interest. Pet. 67. Patent Owner identifies itself as the real party-in-interest, and indicates that

“Stream Companies Holdings, LLC, Cavalier Enterprise Holdings Inc., Hawk Enterprises Holdings, Inc., and SCP IV AIV V, LP have various ownership interests in Fullthrottle Technologies, LLC and may be considered real parties-in-interest.” Paper 4, 1.

C. Summary of the '219 Patent

The '219 patent is titled “Location Determination Using Anonymous Browser Data.” Ex. 1003, code (54). The '219 patent’s application, No. 17/984,418, was filed November 10, 2022. *Id.* at codes (21), (22). The '219 patent also identifies a related application No. 17/687,992, which issued as Patent No. 11,556,947, filed on March 7, 2022, and a provisional application, No. 63/208,275, filed on June 8, 2021. *Id.* at codes (60), (63).

The '219 patent describes systems, methods, and apparatus for “determining a location from anonymous data” (Ex. 1003, 1:40–41) and “determining a probability that a browsing session was initiated in response to watching and/or listening to media associated with a campaign” (*id.* at 2:26–29).

Figure 5 is reproduced below:

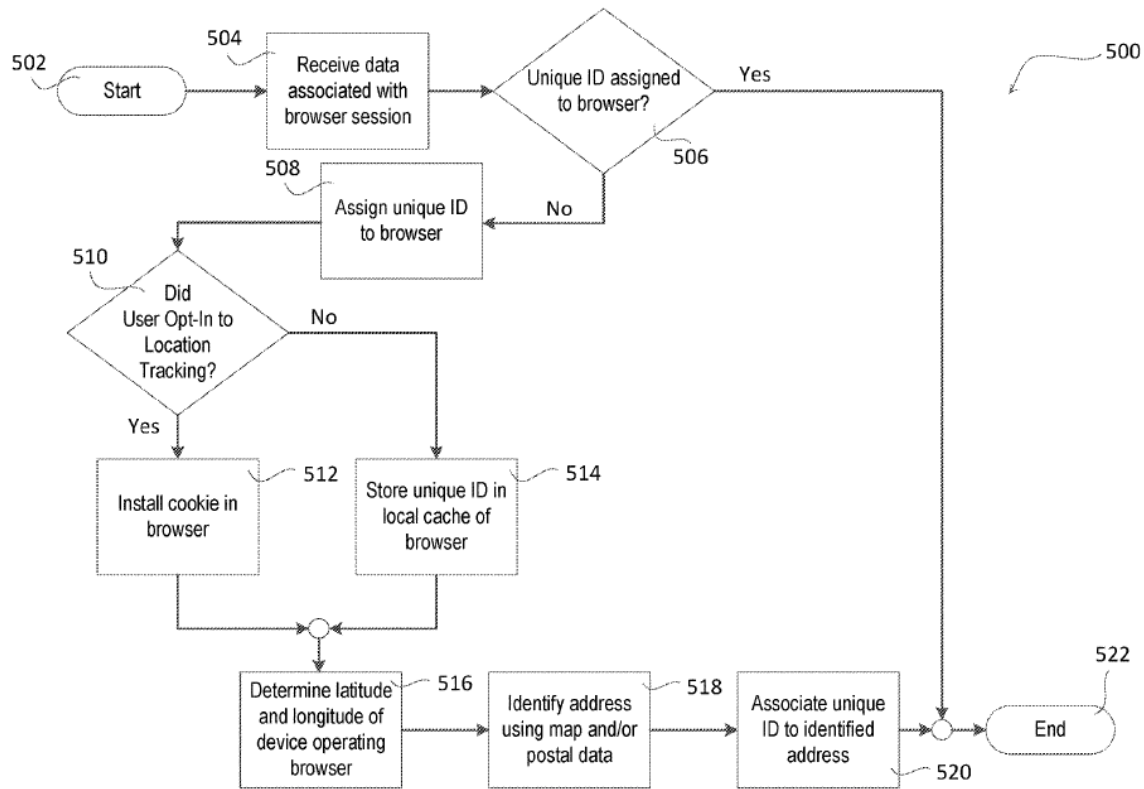


FIG. 5

Figure 5 “is a flow diagram illustrating an example method for associating a unique identifier with a physical address of a user.” Ex. 1003, 3:9–11.

In Figure 5, method 500 starts at step 502, when a user computing device accesses a URL, such as by navigating to the URL within a browser application using a browser session. Ex. 1003, 11:40–45. At step 504, a computing device, such as a server that administers and/or manages a resource associated with the URL, receives data from the browser session on the user computing device. *Id.* at 11:46–49. The data may be associated with the user, the user computing device, and/or the browser application associated with the browser session. *Id.* at 11:52–54. The data may be anonymous data (e.g., data that includes no personally identifiable information associated with the user). *Id.* at 11:55–56. The anonymous data may include a time, a date, a webpage URL, a referring URL, a browser

type, a language, an IP address, and/or location data. *Id.* at 11:57–59. At step 506, the computing device determines whether there is a unique identifier that is associated with the user (e.g., the user computing device, the browser, and/or the browser session) stored on the computing device. *Id.* at 12:13–16. The computing device may determine whether there is a unique identifier associated with the user based on presence of a tracker (e.g., cookie) installed in the browser application on the user computing device. *Id.* at 12:23–27.

When the computing device determines that there is no unique identifier assigned to the user, the computing device may be configured to generate, at step 508, a unique identifier for the user. *Id.* at 12:33–36. At step 510, the computing device determines whether the user opted-in to location tracking, such as by responding to a prompt. *Id.* at 12:44–48. When the user opts-in to location tracking, the computing device may install, at step 510, a tracker (e.g., a cookie) in the browser application on the user computing device. *Id.* at 12:49–51. The cookie may be configured to enable the computing device to retrieve geo-location data from the user computing device or to recognize return visits by the user computing device. *Id.* at 12:51–55. The cookie (e.g., a tracking cookie, browser cookie, HTTP cookie, etc.) may include a small string or segment of text that may be transmitted to the user computing device and stored at the user computing device by a browser application. *Id.* at 12:55–59.

When the user opts-out of location tracking, the computing device may store, at step 514, a unique ID (e.g., the unique ID assigned at step 508) in a local cache of the user computing device (e.g., of the browser). *Id.* at 13:16–19. At step 516, the computing device determines a latitude coordinate and a longitude coordinate of the user computing device. *Id.* at

13:45–46. At step 518, the computing device determines a physical address (e.g., a postal address) for the browser session using the location data. At step 520, the computing device may associate the generated unique identifier with the determined location data. *Id.* at 14:19–20. For example, the computing device may map, at step 520, the unique identifier to the location data (e.g., physical address). *Id.* at 14:20–22. The mapping between the unique identifier and the location data may enable identification of future visits to the URL by the user and may also enable an administrative user to identify who is accessing specific URLs, for example, with or without the use of cookies. *Id.* at 14:22–28.

D. Illustrative Claim

Claim 1 is reproduced below with Petitioner’s annotations¹:

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

¹ We use Petitioner’s annotations herein for ease of reference.

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.

Ex. 1003, 47:50–48:12.

E. Asserted Grounds of Unpatentability

Petitioner, supported by the declaration of David Hilliard Williams (Ex. 1007), asserts two grounds of unpatentability (Pet. 18):²

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–36	103	Doughty, ³ van Boucq, ⁴ Smith ⁵
1–36	103	Doughty, van Boucq, Smith, Maginnis ⁶

² The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112–29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. § 103. Because the ’219 patent claims priority only to applications filed after March 16, 2013 (the effective date of the amendments), the AIA version of § 103 applies. *See* Ex. 1003, codes (60), (63).

³ Doughty et al., U.S. Pat. No. 8,898,074 B2, issued Nov. 25, 2014 (Ex. 1008, “Doughty”).

⁴ van Boucq, European Patent Pub. No. 2,938,045 A1 (Ex. 1009, “van Boucq”).

⁵ Smith et al., U.S. Pat. No. 8,682,714 B2, issued Mar. 25, 2014 (Ex. 1032, “Smith”).

⁶ Maginnis, U.S. Pat. No. 10,311,465 B2, issued June 4, 2019 (Ex. 1010, “Maginnis”).

II. ANALYSIS

A. Overview

A claim is unpatentable under § 103 if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious before the effective filing date to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) when in evidence, objective indicia of non-obviousness (i.e., secondary considerations).⁷ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

The Supreme Court explained in *KSR* that

[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (alteration in original))).

⁷ No evidence of secondary considerations has been presented at this stage of the proceeding.

“Whether an ordinarily skilled artisan would have been motivated to modify the teachings of a reference is a question of fact.” *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1327 (Fed. Cir. 2016) (citations omitted).

“[W]here a party argues a skilled artisan would have been motivated to combine references, it must show the artisan ‘would have had a reasonable expectation of success from doing so.’” *Arctic Cat Inc. v. Bombardier Recreational Prods. Inc.*, 876 F.3d 1350, 1360–61 (Fed. Cir. 2017) (quoting *In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litig.*, 676 F.3d 1063, 1068–69 (Fed. Cir. 2012)).

B. Level of Ordinary Skill in the Art

In order to determine whether an invention would have been obvious at the time the application was filed, we consider the level of ordinary skill in the pertinent art. *Graham*, 383 U.S.at 17. The resolution of this question is important because it allows us to “maintain[] objectivity in the obviousness inquiry.” *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 718 (Fed. Cir. 1991). In assessing the level of ordinary skill in the art, various factors may be considered, including the “type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field.” *In re GPAC, Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (quotation omitted).

Petitioner asserts a person having ordinary skill in the art on the priority date of the ’219 patent:

would have been an individual with either (1) at least a bachelor’s degree in computer science, computer engineering, electrical engineering, or an equivalent field plus at least one year of experience working on computer networking, or (2) at least 3

years of experience working on computer networking, even without a formal degree.

Pet. 13.

Patent Owner does not contest Petitioner's definition. *See*

Prelim. Resp. 21.

For the purposes of this Decision, we apply Petitioner's uncontested definition because it appears consistent with the problems addressed in the '219 patent and the prior art.

C. Claim Construction

In an *inter partes* review proceeding, a patent claim shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b). 37 C.F.R.

§ 42.100(b) (2024). Our rule, thus, aligns with the claim construction standard used by Article III federal courts, which follow *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc), and its progeny. Under this standard, the words of a claim are generally given their "ordinary and customary meaning," which is the meaning the term would have to a person of ordinary skill at the time of the invention. *See Phillips*, 415 F.3d at 1312–13. In construing claims in accordance with their ordinary and customary meaning, we take into account the specification and prosecution history. *Id.* at 1315–17.

Petitioner states that "[a]ll terms of the '219 patent should be given their plain and ordinary meaning for purposes of this proceeding." Pet. 13. Petitioner provides Patent Owner's proposed construction of four claim terms from the parties' co-pending district court proceeding. *Id.* at 13–14. Because the resolution of the present controversy does not require the construction of any claim term, we do not address Patent Owner's proposed

constructions or construe any claim term. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

D. Ground 1 – Challenging Claims 1–36 as Unpatentable Over Doughty, van Boucq, and Smith

Petitioner, supported by the Declaration of Mr. Williams, provides a limitation-by-limitation analysis of the Challenged Claims and reasons why a person of ordinary skill in the art would have purportedly been motivated to combine the teachings of Doughty, van Boucq, and Smith. Pet. 18–59. Patent Owner disputes certain of Petitioner’s contentions. Prelim. Resp. 22–35.

We begin with a brief summary of Doughty, van Boucq, and Smith, and then address the parties’ contentions.

1. Summary of Doughty (Ex. 1008)

Doughty is titled “Creation of a Universal Profile of a User by Identifying Similar User-Managed Assets on a Plurality of Devices of the User.” Ex. 1008, code (54). The disclosure “relates to the field of mobile communications and more particularly to improved methods and systems directed to targeting advertising to mobile and non-mobile communication facilities accessed by the same user.” *Id.* at 5:27–30.

Doughty’s Figure 1 is reproduced below:

FIG. 1

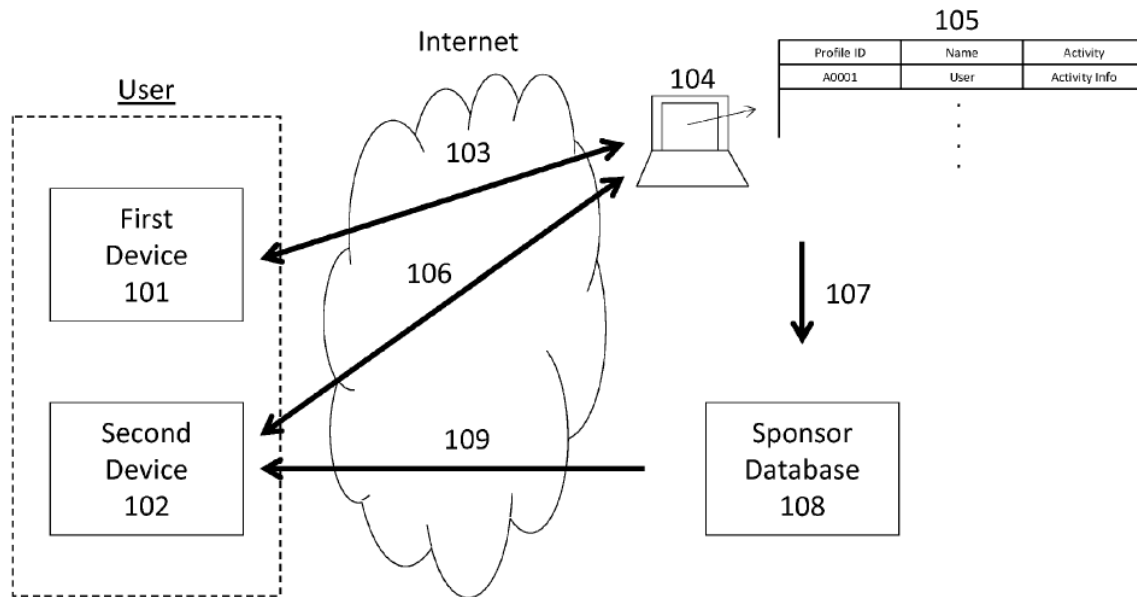


Figure 1 “depicts a wireless [system] for providing advertisements to multiple communication devices accessed by a user.” Ex. 1008, 10:15–16. “The wireless [system] includes a first device 101, a second device 102, a server 104, and a sponsor database 108.” *Id.* at 10:16–18. Doughty teaches that “server 104 communicates with first device 101 to receive information relating to the user’s activity on first device 101.” *Id.* at 10:34–36. “A user’s activity may be behavioral pattern, viewing habits, usage information, duration on each application, geographic location information, proximity to other locations, etc.” *Id.* at 10:36–39. “[S]erver 104 assigns a unique identifier, which could be alphabetical, numerical, alphanumerical, or symbols to first device 101 and stores the assigned unique identifier, user information and activity information into table 105.” *Id.* at 10:46–50. “[S]erver 1[0]4 may identify second device 102 through a request from server 104, a periodic transmission by the second device 102, or a triggering event on the part of first device 101.” *Id.* at 10:54–57. “Once server 104 makes sure first device 101 and second device 102 are both used by the

same user, server 104 informs sponsor database 108 through communication signal 107 and asks sponsor database 108 to transmit an advertisement to second device 102 through communication signal 109.” *Id.* at 10:57–63.

2. *Summary of van Boucq (Ex. 1009)*⁸

van Boucq is titled “Geolocation Method.” Ex. 1009, code (54). The disclosure “relates to a geolocation method” and, more specifically, “to a geolocation method for delivering advertisements.” *Id.* ¶ 1.

van Boucq’s Figure 1 is reproduced below:

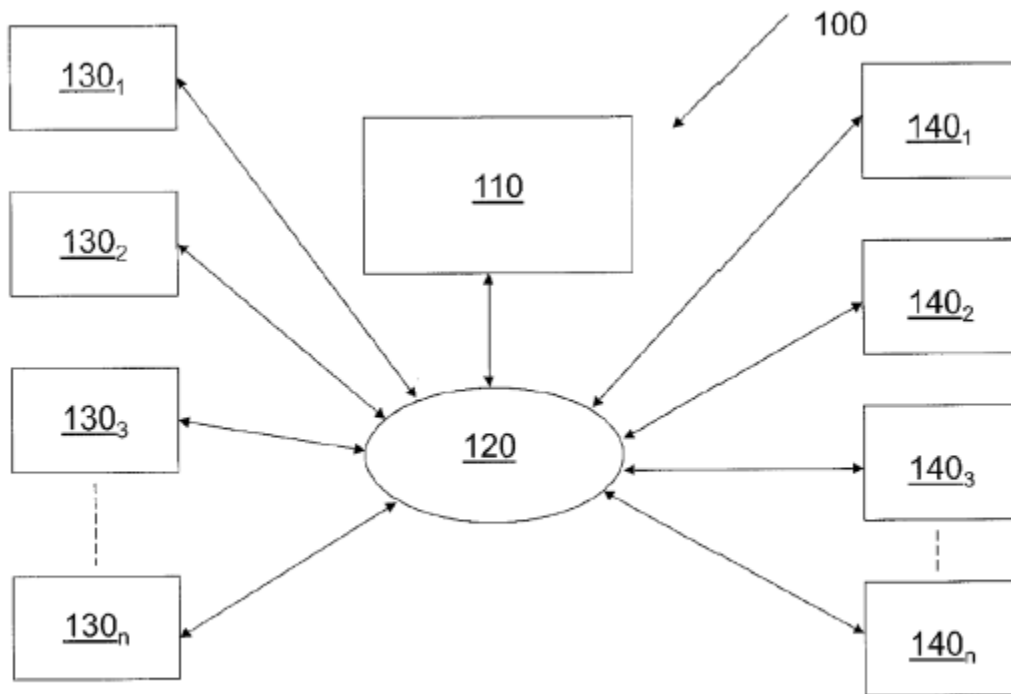


Fig. 1

“Figure 1 illustrates a communication system 100” which comprises “a platform of an Internet service provider 110 that constitutes the interface with the Internet 120 to provide a platform (not illustrated) with which a multitude of service providers and advertisers 130₁, 130₂, 130₃, ..., 130_n (the

⁸ We refer to the English translation starting at page 33 of Exhibit 1009.

letter n can be any integer) can interact.” Ex. 1009 ¶ 56. “A multitude of Internet users 140₁, 140₂, 140₃, ..., 140_n (the letter n can be any integer) surfing and using the Internet 120 can access the information ‘posted’ by a service provider or an advertiser 130₁, 130₂, 130₃, ..., 130_n on the various partner sites via the Internet 120.” *Id.* “The ‘posted’ information preferably comprises local information which is information relating to a specific geographic area defined by geographic coordinates (longitude and latitude) predetermined by each Internet user 140₁, 140₂, 140₃, ..., 140_n.” *Id.* “Depending on the geolocation of each Internet user 140₁, 140₂, 140₃, ..., 140_n, various information can be provided by the Internet service provider 110 according to the subscription conditions to which each service provider or advertiser 130₁, 130₂, 130₃, ..., 130_n has subscribed.” *Id.*

3. *Summary of Smith (Ex. 1032)*

Smith is titled “Location Analytics Systems and Methods.” Ex. 1032, code (54). The disclosure relates to “methods and apparatus for assessing effectiveness of geographic locations and/or physical things (e.g., promotions) at given locations.” *Id.* at 1:58–60. “[T]he geographic location may include or otherwise be associated with a promotion (e.g., promotional advertisements, promotional presentations, and the like).” *Id.* at 3:14–16. “[F]or example, a user’s website visit is associated with a roadside billboard based on the user’s physical proximity to the billboard at the time of the website visit and/or the content accessed by the user during the web-site visit.” *Id.* at 3:24–28.

4. *Claim 1*

We focus our analysis on limitations 1[g] and 1[h], which are dispositive of the present dispute.

1[g]: determining that the browser session was initiated by the user with an intent to visit the URL;

For this limitation, Petitioner relies on Smith’s “‘effectiveness processing module’ that ‘assess[es] an effectiveness of a promotion 110 at a geographic location (e.g., promotion location) 112.’” Pet. 34 (citing Ex. 1032, 4:32–42). Petitioner further contends that Smith “determin[es] whether the user initiated a browser session with an intent to visit the website based upon their location being near the advertisement,” and that an ordinarily skilled artisan “would have understood this to mean that Smith discloses determining that a browser session was initiated by the user with an intent to visit that specific URL, such as the website advertised on the billboard in this example.” *Id.* (citing Ex. 1007 ¶¶ 264–265).

Petitioner alternately contends that Smith “discloses that the effectiveness module can assess whether the browser session was initiated with an intent to visit a website based upon whether the visit occurred ‘within a given time period (e.g., five minutes)’” after viewing the advertisement. Pet. 35 (citing Ex. 1032, 3:57–64); Ex. 1007 ¶ 266.

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.

Petitioner contends that Smith’s “effectiveness processing module” assigns “weight to the effectiveness index score based upon how far the user is from the advertisement.” Pet. 36 (citing Ex. 1032, 17:27–47). Petitioner further contends that an ordinarily skilled artisan “would have understood, or it would have been obvious, that the weighting was based upon the probability that the user’s browser session was initiated in response to watching or listening to media associated with the campaign—e.g., seeing a

billboard, which could be a digital billboard.” *Id.* (citing Ex. 1007 ¶ 269). According to Petitioner, “the closer to the advertisement (using campaign level data), the higher the probability that the user initiated the browser session in response to the ad and, accordingly, the visit is assigned a higher weight and effectiveness index.” *Id.* (citing Ex. 1007 ¶ 269). Petitioner makes a similar argument for using “elapsed time since the user saw a presentation/advertisement” to assign a weight in the “effectiveness processing module.” *Id.* at 37 (citing Ex. 1007 ¶ 270; Ex. 1032, 17:27–47).

Patent Owner’s Contentions

Patent Owner contends that Smith’s “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.’” Prelim. Resp. 33 (citing Ex. 1032, 1:51–54, 1:58–2:26). Referring to Smith’s “effectiveness processing module,” Patent Owner contends that “Smith discloses that the ‘assigned’ weights are based on the user’s distance from the physical promotion.” *Id.* at 31 (citing Ex. 1032,⁹ 17:25–42). According to Patent Owner, “[a]ssigning’ is not determining, much less determining the claimed ‘probability’” and “Smith discloses arbitrary assignment of weights based [on] the user’s distance from the physical advertisement, not determining a probability, much less determining the claimed ‘probability’ with ‘campaign level data.’” *Id.* at 31–32. Patent Owner further contends that Smith does not disclose limitation 1[h] and Petitioner is attempting to use expert testimony to fill in a gap in the prior art disclosures. *Id.* at 32.

⁹ Patent Owner refers to Exhibit 1003, the challenged patent, in this citation, which appears to be a typographical error.

Analysis

For the following reasons, we determine that Petitioner does not establish a reasonable likelihood of showing that Smith discloses, teaches, or suggests limitations 1[g] or 1[h].

The '219 patent describes that “[i]nitiating a browser session via a search engine may be referred to as organic traffic. Initiating a browser session via address bar may be referred to as direct traffic.” Ex. 1003, 42:14–16. Both 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.” *Id.* at 42:17–19. From the foregoing, it appears that the '219 patent determines “intent to visit” a specific website based, at least in part, on a specific action taken by the user to access the website.

Further, the '219 patent describes that, when “the browsing session was initiated by a search engine or address bar, the computing device may determine . . . a probability that the browsing session was initiated in response to watching and/or listening to media associated with the campaign.” Ex. 1003, 42:23–28. The '219 patent also describes a method for determining such probability. *Id.* at 30:32–54.

Smith discloses a “technique for determining an effectiveness of promotions at specific geographic locations, such as billboard, in-store advertisements, storefront banners, presentations and the like.” Ex. 1032, 1:51–54. In connection with this technique, Smith discloses an “effectiveness processing module” described as follows:

Effectiveness processing module 102 may receive and/or process analytics data 104 (e.g., activity data 106 and/or location data 108) to assess an effectiveness of a promotion 110 at geographic location (e.g., promotion location) 112.

Activity data 106 may include data that is indicative of behavior/activity undertaken by one or more users. In some embodiments, activity data may be indicative of a user's access to content via a content site (e.g., website, FTP site, or other source of content accessible via an electronic network) . . . For example, activity data may include information regarding webpages visited, links selected, and/or purchases made during a user's navigation through a website. In some embodiments, activity data 106 may be indicative of a user's access to content associated with a given promotion. . . .

Location data 108 may be indicative of a location of user. In some embodiments, location data 108 may be indicative of a geographic location of a user and/or a device used to access content. For example, location data 108 may include geographic coordinates (e.g., latitude and longitude) of a user and/or device associated with the user.

Ex. 1032, 4:38–67.

Smith further discloses an “effectiveness index metric that represents an effectiveness of a promotion based on analytics data 104 received” and is generated by filtering “a large web analytics dataset to identify relevant analytics data that meets a specified criteria (e.g., includes website visits to one or more specified websites, that include a specified type of activity, that occurred within a specified time period, and/or that occurred within a specified geographical region).” *Id.* at 12:33–41. One example of the use of effectiveness processing module 102 to calculate a “user activity's impact on effectiveness index 610” is to assign a weight to the activity based on the proximity of the user's activity to promotion location 112. *Id.* at 17:27–31.

Smith's effectiveness processing module, thus, filters a large amount of data during the course of a promotion in order to assign weights to user activity that Petitioner contends corresponds to the requirements of limitations 1[g] and 1[h].

Claim 1 is directed to “a browser session initialized by a user via a browser.” Ex. 1003, 47:53–54. In order to establish that limitation 1[g] is taught by Smith, Petitioner must show that Smith discloses determining that a specific user initiated a browser session “with an intent to visit the URL.” *Id.* at 48:8. For limitation 1[h], Petitioner must show that Smith discloses “determining a probability” that the specific browser session “was initiated in response to watching or listening to media.” *Id.* at 48:9–11.

For limitation 1[g], Petitioner directs us to Smith’s disclosure at column 3, lines 40–45 and column 4, lines 32–43. Pet. 34. At column 3, Smith discusses in general terms that a roadside billboard “may be viewed as effective (or at least more effective) where analytics data indicates a large number [of] user[] visits to a website advertised by the billboard, and the users are in close proximity to the billboard at or near the time of initiating the website visit.” Ex. 1032, 3:40–45. Likewise, at column 4, Smith further discloses using analytics data to assess the effectiveness of a promotion at a geographic location. *Id.* at 4:32–43. The cited portions of Smith, thus, disclose processing data from a large number of users to judge the effectiveness of the overall campaign. Petitioner does not direct us to any disclosure in Smith that the effectiveness processing module uses a specific action taken by a specific user, as taught by the ’219 patent, in *determining* that a particular browser session was initiated by a user with an intent to visit the URL.

Mr. Williams testifies, based on the foregoing cited disclosure, that “it is my opinion that Smith discloses determining whether the user initiated a browser session with an intent to visit the website based upon how close the user’s location is to an ad,” and “[i]n my opinion a [person of ordinary skill in the art] would have understood that Smith discloses determining that a

browser session was initiated by the user with an intent to visit that specific URL, such as a URL on the billboard.” Ex. 1007 ¶ 265. Mr. Williams’s opinion testimony that Smith discloses “determining” the intent of a specific user is conclusory because it is not supported by the cited disclosure of Smith or any other evidence. *See id.* His testimony on this point is, thus, entitled to little, if any, weight. *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9, 15 (PTAB Aug. 24, 2022) (precedential).

Petitioner alternately argues that “Smith also discloses that the effectiveness module can assess whether the browser session was initiated with an intent to visit a website based upon whether the visit occurred ‘within a given time period (e.g., five minutes).’” Pet. 35 (citing Ex. 1032, 3:57–64). Petitioner further argues that an ordinarily skilled artisan “would have been motivated to apply the same effectiveness module determination for all types of advertisements, including ‘presentations and the like,’ as contemplated by Smith.” *Id.* (citing Ex. 1007 ¶ 266; Ex. 1032, 1:51–54). Relying on the same disclosure from Smith, Mr. Williams testifies “[i]t is therefore my opinion that it would have been obvious that, if the user visits a website within a specified time period after viewing an ad, it would have been more likely that the user initiated the browser session in response to the ad.” Ex. 1007 ¶ 266.

As with Petitioner’s first argument, the cited portions of Smith do not teach *determining* that any particular browser session was initiated by a user with an intent to visit the URL. Likewise, Mr. Williams does not testify that Smith discloses “determining” the intent of a specific user, but rather “it would have been obvious that, if the user visits a website within a specified time period after viewing an ad, it would have been more likely that the user initiated the browser session in response to the ad.” Ex. 1007 ¶ 266. Even if

Smith discloses that it was more likely that the user initiated the browser session in response to the advertisement, that fact would not establish “determining . . . an intent to visit the URL” as required by limitation 1[g]. Consequently, Mr. Williams’s testimony on this point is entitled to little, if any, weight.

For the foregoing reasons, Petitioner does not persuade us that Smith discloses limitation 1[g].

Petitioner’s showing for limitation 1[h] is also deficient. Petitioner relies on Smith’s disclosure of assigning a weight to the effectiveness index based on, *inter alia*, “how far the user is from the advertisement” or based on “the elapsed time since the user saw a presentation/advertisement.” Pet. 36–37 (citing Ex. 1007 ¶¶ 269–270; Ex. 1032, 17:27–47). Petitioner argues that “according to Smith, the closer to the advertisement (using campaign level data), the higher the probability that the user initiated the browser session in response to the ad and, accordingly, the visit is assigned a higher weight and effectiveness index” and “the more quickly the user visited a website after seeing the advertisement . . . the higher the probability that the user initiated the browser session in response to the ad.” *Id.* (citing Ex. 1032, 17:27–47; Ex. 1007 ¶¶ 269–270).

We first note that the cited portion of Smith relied on by Petitioner and Mr. Williams does not mention the word “probability” let alone *determining* a probability. *See* Ex. 1032, 17:27–47. Further, as discussed above, the effectiveness processing module is based on filtering “a large web analytics dataset to identify relevant analytics data that meets a specified criteria.” Ex. 1032, 12:36–38. Petitioner does not direct us to any disclosure in Smith that addresses the probability of a specific user initiating a specific browser session. *See* Pet. 18–37.

Mr. Williams testifies that “[i]t is my opinion that it would have been obvious to a [person of ordinary skill in the art] that [Smith’s assigned] weight is based on the probability that the user’s browser session was initiated in response to watching or listening to media tied to the campaign.” Ex. 1007 ¶ 269. He further testifies that “[a]s Smith explains, the closer to the advertisement (based upon the campaign level data), the higher the probability that the user initiated the browser session in response to the ad” and “the system will assign a higher effectiveness index.” *Id.* (citing Ex. 1032, 17:27–47); *see also id.* ¶ 270 (testifying that “the system will assign a higher effectiveness index or weight/probability” based on elapsed time (citing Ex. 1032, 17:27–47)). Mr. Williams’s opinion testimony that it would have been obvious Smith’s assigning a weight is “based on the probability that the user’s browser session was initiated in response to watching or listening to media” is not supported by the cited disclosure in Smith or any other evidence and is therefore conclusory. *See id.* ¶ 269. His testimony on this point is entitled to little, if any, weight.

For the foregoing reasons, Petitioner does not persuade us that Smith discloses limitation 1[h].

Conclusion – Claim 1

For the foregoing reasons, Petitioner does not establish a reasonable likelihood that claim 1 would have been obvious over Doughty, van Boucq, and Smith.

5. Claims 2–36

Claims 2–18 depend directly or indirectly from claim 1. Ex. 1003, 48:14–49:10. Petitioner provides additional evidence and argument concerning the additional limitations set forth in these dependent claims. Pet. 37–56. We have reviewed the additional evidence and argument and

determine that it does not cure the deficiencies in the challenge to claim 1. Consequently, Petitioner does not establish a reasonable likelihood that claims 2–18 would have been obvious over Doughty, van Boucq, and Smith.

Independent claim 19 contains limitations identified by Petitioner as 19[g] and 19[h] that are identical to limitations 1[g] and 1[h]. Pet. 58. For limitations 19[g] and 19[h], Petitioner relies on its evidence and arguments for limitations 1[g] and 1[h]. *Id.* Consequently, for the same reasons discussed above for claim 1, Petitioner does not establish a reasonable likelihood that claim 19 would have been obvious over Doughty, van Boucq, and Smith.

Claims 20–36 depend directly or indirectly from claim 19. Ex. 1003, 49:41–50:58. For these claims, Petitioner relies on the same evidence and argument as for claims 2–18. Pet. 58–59. Consequently, Petitioner does not establish a reasonable likelihood that claims 20–36 would have been obvious over Doughty, van Boucq, and Smith.

E. Ground 2 – Challenging Claims 1–36 as Unpatentable Over Doughty, van Boucq, Smith, and Maginnis

In this alternate ground, Petitioner relies on Maginnis for limitation 1[e], but not for limitations 1[g] or 1[h]. Pet. 60–64. The deficiencies in the combination of Doughty, van Boucq, and Smith discussed in connection with Ground 1 are not cured by Petitioner’s reliance on Maginnis in this ground. Consequently, Petitioner does not establish a reasonable likelihood that claims 1–36 would have been obvious over Doughty, van Boucq, Smith, and Maginnis.

III. CONCLUSION

For all the foregoing reasons, we determine that Petitioner does not demonstrate a reasonable likelihood that it would prevail in establishing that

at least one Challenged Claim of the '219 patent would have been unpatentable. We, thus, do not institute an *inter partes* review of the Challenged Claims.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, the Petition is *denied* and no trial is instituted.

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