Trials@uspto.gov
571-272-7822

Paper: 12
Dated: June 2, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HIGHLEVEL, INC,
Petitioner,

v.

ETISON LLC d/b/a CLICKFUNNELS,
Patent Owner.

IPR2025-00234
Patent 10,846,357 B2

Before GEORGIANNA W. BRADEN, MATTHEW J. McNEILL, and JASON M. REPKO, *Administrative Patent Judges*.

REPKO, *Administrative Patent Judge.*

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

I. INTRODUCTION

HighLevel, Inc. ("Petitioner") filed a petition requesting *inter partes* review of claims 1–20 of U.S. Patent No. 10,846,357 B2 (Ex. 1001, "the '357 patent"). Paper 2 ("Pet."). Etison LLC d/b/a ClickFunnels ("Patent Owner") filed a Preliminary Response. Paper 6 ("Prelim. Resp.").

The Board granted Petitioner's unopposed request to file a five-page preliminary reply to Patent Owner's preliminary response. Ex. 1033; Paper 7. Petitioner's reply was limited to responding to the § 325(d) arguments raised in Patent Owner's preliminary response. Ex. 1033. The Board authorized Patent Owner to file a five-page preliminary sur-reply. Paper 8.

The Board granted additional briefing to address the District Court's opinion and order in the parallel litigation. *See* Paper 9 ("PO Brief"); Paper 10 ("Pet. Brief").

Institution of *inter partes* review is discretionary. *See Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) ("[T]he PTO is permitted, but never compelled, to institute an IPR proceeding."). Because the District Court already found the claims invalid under 35 U.S.C. § 101 in the parallel litigation, we deny institution of *inter partes* review.

A. Related Matters

The parties have identified *Etison LLC d/b/a ClickFunnels v. HighLevel, Inc.*, 1:24-cv-00502 (D. Del., Apr. 22, 2024) as a related case. Pet. 2; Paper 5, 2 (Mandatory Notices).

B. The ' 357 Patent

The '357 patent generally relates to a website-creation system. Ex. 1001, 4:25–28. With the system, the user can automatically generate a generic website by selecting a website type from a series of webpages. *Id.*

at 16:48–54. The user can then edit the generic website to customize it. *Id.* at 17:1–25.

In one embodiment, the website-creation system allows the user to create a series of "directional web-pages." *Id.* at 4:38–48. According to the '357 patent, directional web-pages are designed to elicit a particular user interaction with the website. *Id.* For example, directional web-pages may entice the user to provide their contact information, opt in to receive website communications, complete a purchase, add something to their cart, interact with a selectable element, or share the website. *Id.*

C. Claims

Of those challenged, claims 1, 12, and 16 are independent. Claim 1 is reproduced below:

> A method, comprising:
>
> providing, to a user for display on a client device, via a website creation system, a user dashboard comprising a selectable option to create a website;
>
> receiving a selection of the selectable option to create a website;
>
> in response to receiving the selection of the selectable option to create a website, providing, to the user for display on the client device, a plurality of website types for selection;
>
> receiving a selection of a website type of the plurality of website types,
>
> wherein each website type of the plurality of website types comprises a series of directional webpages configured to cause an end user interaction with a website,
>
> wherein the series of directional webpages of each website type of the plurality of websites types comprises a unique plurality of sequential webpages configured to be provided sequentially one after another;

in response to receiving the selection of a website type of the plurality of website types, providing, to the user for display on the client device, a plurality of website templates for selection, the plurality of website templates being particular to the selected website type;

receiving a selection of a website template of the plurality of website templates and the series of directional webpages of the selected website type;

in response to receiving the selection of a website template, generating and launching a generic website based on the selected website type and selected website template and providing, to the user for display on the client device, a website editor graphical user interface, the website editor graphical user interface comprising a plurality of webpage tabs, each webpage tab of the plurality of webpage tabs representing a webpage of the series of directional webpages;

receiving at least one indication of a user interaction editing at least one webpage of the series of directional webpages; and

in response to receiving the at least one indication of a user interaction editing at least one webpage of the series of directional webpages, editing the launched generic website to create a customized website.

Ex. 1001, 35:51–36:27.

D. Evidence

Name	Reference	Exhibit No.
Coursol	US Patent No. 9,147,004 B2, issued Sept. 29, 2015	1005
Karidi	US Patent Application Publication US 2007/0061412 A1, published Mar. 15, 2007	1006
Lyon	US Patent Application Publication US 2014/0282049 A1, published Sept. 18, 2014	1007
Thomas	US Patent Application Publication US 2011/0288924 A1, published Nov. 24, 2011	1008
Sayed	US Patent No. 7,610,219 B2, issued Oct. 27, 2009	1009

E. Asserted Grounds

Petitioner asserts that claims 1–20 are unpatentable on the following grounds. Pet. 4.

Claims Challenged	35 U.S.C. §	Reference(s)/Basis
1, 2, 6, 7, 11–17, 19, 20	103	Coursol, Karidi
1, 2, 6, 7, 9–17, 19, 20	103	Coursol, Karidi, Sayed
3–5, 18	103	Coursol, Karidi, Sayed, Lyon
7, 8, 20	103	Coursol, Karidi, Sayed, Thomas

II. ANALYSIS

The District Court in the parallel litigation found the claims of the ’357 patent invalid because they are directed to patent-ineligible subject matter under 35 U.S.C. § 101. Ex. 2007.

Patent Owner argues that the Board should exercise its discretion to deny the Petition because the district court has already found the claims invalid and the “efficiency and integrity of the patent system is best served by denying institution” in such cases. PO Brief. 1 (quoting *Hulu, LLC v. Piranha Media Distrib., LLC*, IPR2024-01252, Paper 27 at 3 (Stewart Apr. 17, 2025) (informative)).

Petitioner argues that, under Federal Circuit precedent, the Board can perform its review even though the challenged patent has been held invalid. Pet. Brief 2–5 (citing *Cochlear Bone Anchored Solutions AB v. Oticon Med. AB*, 958 F.3d 1348, 1359–60 (Fed. Cir. 2020); *Samsung Elecs. Am., Inc. v. Prisua Eng’g Corp.*, 948 F.3d 1342, 1355 (Fed. Cir. 2020); *Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 813–14 (Fed. Cir. 2021)). In Petitioner’s view, the fact that *Hulu* has been designated informative has left the Board discretion to decline to apply it here. *Id.* at 5. According to Petitioner,

discretionary denial would be severely prejudicial because it would prevent Petitioner from being able to pursue another IPR challenge. *Id.* at 1–5.

"An informative decision provides Board norms on recurring issues, guidance on issues of first impression to the Board, guidance on Board rules and practices, and guidance on issues that may develop through analysis of recurring issues in many cases." Patent Trial and Appeal Board, Standard Operating Procedure 2 (Revision 11).[1] We see no reason to deviate from the informative decision here. The relevant facts in this case are indistinguishable from those at issue in *Hulu.* In that case, "Petitioner filed a motion to dismiss under Rule 12(b)(6), asserting that the claims challenged in [that] proceeding are invalid as reciting ineligible subject matter under § 101," and "[t]he district court agreed with Petitioner and issued a decision granting Petitioner's motion to dismiss and dismissing with prejudice Patent Owner's infringement claim." *Hulu*, IPR2024-01252, Paper 27 at 2. According to *Hulu*, "Because the patent claims already stand invalid, it is unnecessary to institute another proceeding to review them for patentability under other grounds." *Id.* That is the case before us (Ex. 2007), and we reach the same conclusion: "the efficiency and integrity of the patent system is best served by denying institution." *Hulu*, IPR2024-01252, Paper 27 at 3.

Petitioner argues that the Board would resolve this IPR, if instituted, before any remand of the District Court's decision. Pet. Brief. 1. According to Petitioner, this "will further the AIA's goal of providing a 'just, speedy, and inexpensive resolution' of the parties' disputes." *Id.* at 2 (citing

[1] Available at https://www.uspto.gov/sites/default/files/documents/20230724_ptab_sop2_rev11_.pdf.

37 C.F.R. § 42.1(b)). But the reasoning set forth in *Hulu* is clear on this point:

> In the event the Federal Circuit reverses the district court's decision, Petitioner may raise such invalidity arguments in the district court on remand. Under these circumstances, that is the better and more efficient approach.

Hulu, IPR2024-01252, Paper 27 at 2–3.

Because the District Court already found the claims invalid under 35 U.S.C. § 101 in the parallel litigation, we deny institution of *inter partes* review. *See id.*

III. ORDER

It is

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

FOR PETITIONER:

William Fink
Ben Haber
O'MELVENY & MYERS LLP
tfink@omm.com
bhaber@omm.com

FOR PATENT OWNER:

Jeffri kaminski
Justin Oliver
VENABLE LLP
jakaminski@venable.com
joliver@venable.com