

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC.,
AMAZON.COM SERVICES LLC,
AMAZON WEB SERVICES, INC., and
TWITCH INTERACTIVE, INC.,
Petitioners,

v.

NL GIKEN INC.,
Patent Owner.

Case No. IPR2025-00407
Patent No. 8,677,391

PATENT OWNER'S PRELIMINARY RESPONSE

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TABLE OF AUTHORITIES

CASES

<i>IOEngine, LLC v. Ingenico Inc.</i> , 100 F.4th 1395 (Fed. Cir. 2024).....	14
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LISTING OF EXHIBITS

Exhibit	Description
2001	Declaration of Gerald B. Hrycyszyn
2002	Defendants' Initial Invalidity Contentions, NL Giken Inc. v. Amazon.com, Inc. et al., Case No. 1:24-cv-00028-MN (D. Del. Nov. 15, 2024)
2003	Disclaimer in Patent Under 37 CFR 1.321(a)
2004	RESERVED
2005	Oral Order Re Motion to Stay Pending Inter Partes Review, <i>PayRange, Inc. v. CSC Serviceworks, Inc.</i> , Case No. 1-23-CV-00278, D.I. 61 (D. Del., Feb. 26, 2024)
2006	Plaintiff's Opposition to Motion to Stay Pending IPR, <i>PayRange, Inc. v. CSC Serviceworks, Inc.</i> , Case No. 1-23-CV-00278, D.I. 59 (D. Del., Feb. 23, 2024)
2007	Official Transcript of Discovery Dispute, <i>Exact Sciences Corporation v. Geneoscopy, Inc.</i> , Case No. 1-23-CV-01319, D.I. 168 (D. Del., Nov. 1, 2024)

I. INTRODUCTION

U.S. Patent No. 8,677,391 (“the ’391 Patent”) is directed to a “value exchange” between users, advertisers, and content providers. The exchange tracks users to ensure they view advertisements in exchange for access to streamed content. In operation, an advertiser issues “electric data” (also referred to as a “coupon”) to a user in exchange for the user consuming/watching an advertisement. The user presents the coupon to a content provider in exchange for access to content, such as a television program. The content provider reports receipt of the coupon to the advertiser to receive payment for providing the content. Advertisers can thus ensure that they are paying only for actual advertisement consumption.

The petition grounds rely on Ray and Nolan, neither of which teach an operation remotely like the value exchange recited in the ’391 Patent’s claims. Ray and Nolan, alone or in combination, fail to meet multiple claim limitations. The petition grounds fail¹.

¹ Pursuant to the Director’s March 26, 2025 memorandum regarding Interim Processes for PTAB Workload Management (“March 26, 2025 Memo”), Patent Owner separately filed a request that the Director exercise her discretion to issue a decision discretionarily denying institution of the Petition. That paper was filed on April 4, 2025. *See* Paper No. 9.

II. '391 PATENT

The '391 Patent discloses an innovative approach to retaining advertising revenue streams for program content providers and return on investment for advertisers for streamed content similar to that enjoyed for conventional broadcast television programming. '391 Patent, 1:14-2:34. FIG. 3 (annotated below) illustrates an exemplary system using “electric data,” which the patent also refers to as “coupons” issued in exchange for a user watching advertisements in exchange for program content and payment. *Id.*, 10:65-12:5.

The block diagram of FIG. 3 shows an exemplary embodiment of the claimed transmission and value exchange. The coupons are exchanged between advertisers 14 and 21, user computer 11 (*e.g.*, the user's set top box/television set), and a content provider (*e.g.*, television station 3) in exchange for something of value (shown by arrows shaded **blue**). As shown, advertiser 14 issues a coupon (shown as the arrow shaded **red**) to user computer 11 in exchange for the user viewing an advertisement. *Id.*, 8:27-38, 10:14-26, 11:24-35. Similarly, advertiser 21 issues a coupon (shown as the arrow shaded **green**) to user computer 11 for the user viewing another advertisement. *Id.*, 11:24-41. In this way, a user can accumulate coupons issued from different advertisers, each coupon identifying its origin. *Id.* The user can exchange these coupons, independent of origin, for content provided by a content provider, as shown by the coupon (shown as the arrow shaded **purple**) transmitted from user

computer 11 to content provider television station computer 3 in exchange for access to a content the user is interested in viewing. *Id.*

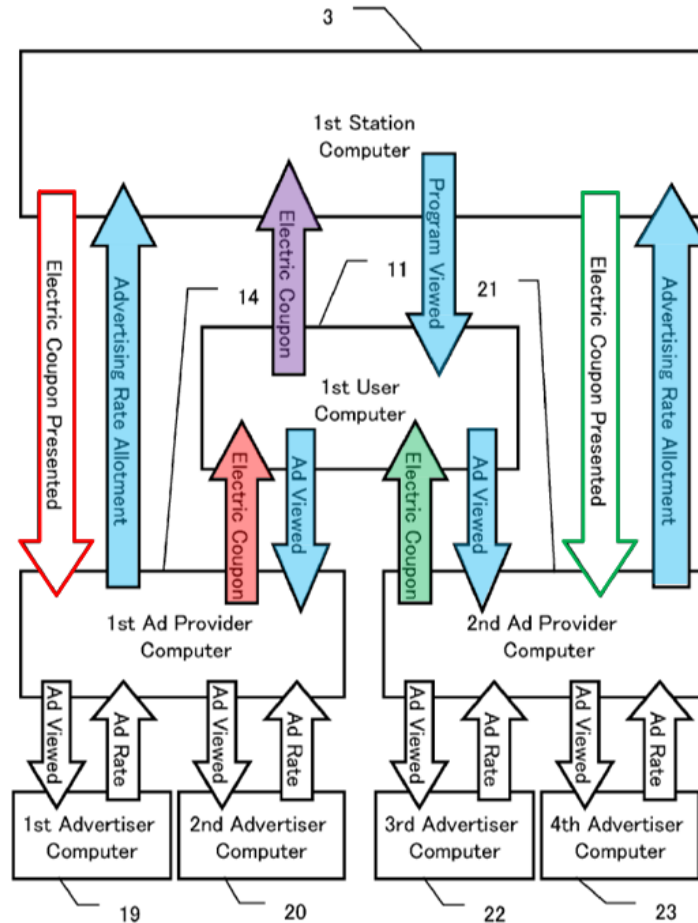


Fig. 3

To receive payment for providing content, the content provider (*e.g.*, television station 3) transmits a report indicating receipt of coupons to the advertiser that issued them. Because the content provider may have received coupons issued by multiple advertisers, the content provider separates the coupons and provides a report to each advertiser indicating receipt of the coupons issued by that advertiser, as shown by the arrow outlined in **red** for received coupons issued by advertiser 14

and the arrow outlined in **green** for received coupons issued by advertiser 21. *Id.*, 10:47-64, 11:42-53. Thus, advertisers only provide payment for coupons that the advertiser issued. *Id.*

Claim 1 is reproduced below in relevant portions employing the Petition's labeling with claim 10's corresponding limitation indicated in parentheses. Claim 1 recites "a moving image data delivery system" (referred to below as the "program delivery system" for simplicity) comprising, *inter alia*:

[1.b.i] a first controller adapted to electrically provide one of the digital moving image data of television programs to one of the moving image viewing apparatuses for allowing to display the television program in exchange of a presentation of an electric data denoting a right of viewing the television program (see also [10.b.ii]).

Claim 1 requires that the "electric data" (*e.g.*, a "coupon") exchanged for the content is issued to the "moving image viewing apparatus" (*e.g.*, the user's "television set") by the "advertising image data delivery system" (referred to as the "advertisement delivery system" for simplicity) after the user watches a commercial message received from the advertisement delivery system:

[1.b.ii] the electric data having been issued to the moving image viewing apparatus, without intermediary of the moving image data delivery system, by the advertising image data delivery system in exchange of a commercial message view by the moving image viewing

apparatus, provided by the advertising image data delivery system (see also [10.b.i]).

The content delivery system then receives compensation (“electric payment”) from the advertisement delivery system upon presenting a report to the advertisement delivery system that issued the electric data demonstrating that the electric data was received was from the user’s viewing apparatus in exchange for delivering the content:

[1.c] a second controller adapted to receive an electric payment from the advertising image data delivery system in exchange of a presentation of a report from the moving image data delivery system to the advertising image data delivery system, the report indicating that the moving image data delivery system is presented with the electric data (see also [10.d]).

The Petition fails to demonstrate that the grounds relied upon disclose or suggests that: (1) electric data is issued to the user’s viewing apparatus from an advertisement delivery system (limitations [1.b.ii] and [10.b.i]) or (2) the program delivery system presents a report indicating that electric data was received from the user’s viewing apparatus, or presents any report to the advertisement delivery system in exchange for electric payment (limitations [1.c] and [10.d]).

III. PERSON OF ORDINARY SKILL IN THE ART

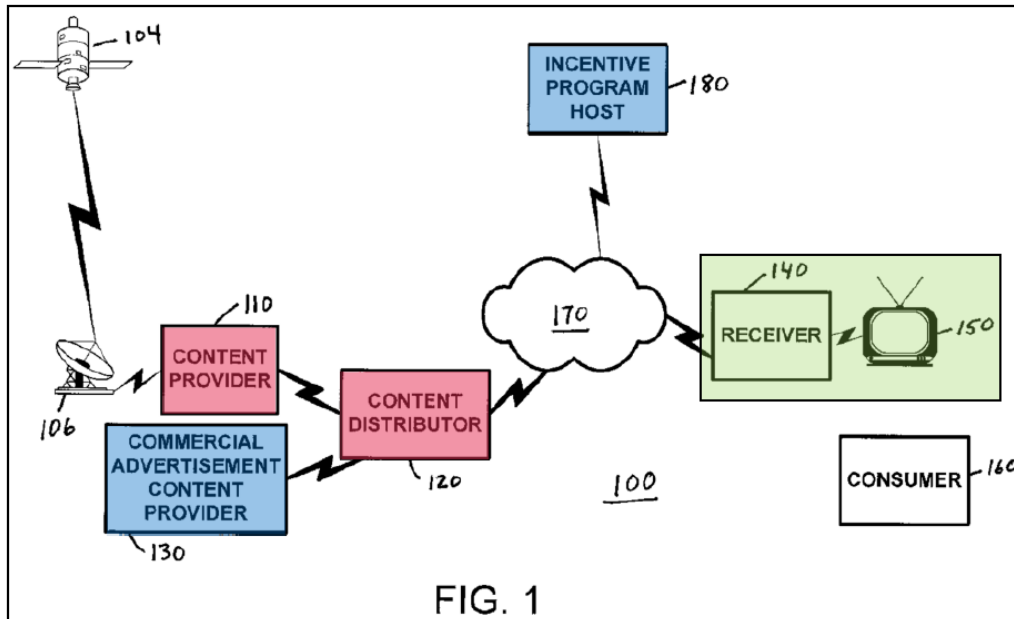
For purposes of this POPR only, Patent Owner does not challenge Petitioner's POSITA definition (Petition, 3) because the Petition fails even if Petitioner's POSITA definition is adopted.

IV. CLAIM CONSTRUCTION

Patent Owner does not challenge Petitioners' claim constructions because the Petition fails even if Petitioner's constructions are adopted. Patent Owner reserves the right to challenge these constructions as necessary should this IPR move to trial, or in different forums.

V. GROUND 1: THE PETITION FAILS TO ESTABLISH THAT THE PRIOR ART TEACHES MULTIPLE LIMITATIONS OF THE CLAIMED ELECTRIC DATA EXCHANGE

Ground 1 relies on the alleged mapping of Ray to the claim elements as shown in the Petition's color-coded annotations to Ray's FIG. 1 reproduced below. Petition, 12. The Petition alleges that (1) Ray's "content provider 110" and "content distributor 120" (shaded **red**) together meet the claimed "moving image data delivery system," (2) Ray's "commercial advertisement content provider 130" and "incentive program host 180" (shaded **blue**) together meet the claimed "advertising image data delivery system," and (3) Ray's "receiver 140" and "television 150" (shaded **green**) together meet the claimed "moving image viewing apparatus," as shown in the Petition's annotated FIG. 1 copied below. Petition, 12-14.



The Petition’s alleged mapping fails to meet multiple claim limitations for multiple independent reasons.

First, Petitioner alleges that “credits/points” (alleged to meet the claimed “electric data”) are “*issued* by incentive program host 180.” Petition, 21 (emphasis original). But the Petition neither establishes that Ray’s incentive program host 180 meets the claimed “advertising image data delivery system” that issues the electric data, nor that Ray’s incentive program host 180 issues credits/points to Ray’s receiver 140 or television 150 (*i.e.*, the Petition’s alleged “moving image viewing apparatus”). Thus, the Petition fails to establish that limitation [1.b.ii] (claim 1) and limitation [10.b.i] (claim 10) are met for at least these two independent reasons.

Second, the Petition fails to identify any “report” (1) that is presented by Ray’s content distributor 120 (*i.e.*, the Petition’s alleged “a moving image data delivery

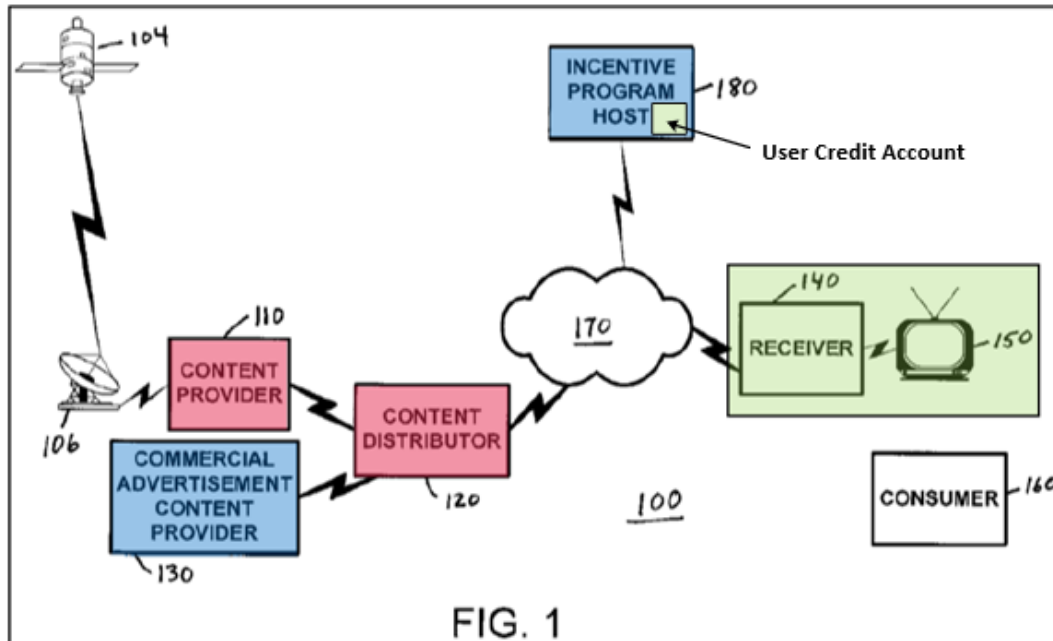
system”), (2) that indicates that the electric data was received from Ray’s receiver 140, nor (3) that is exchanged for electric payment. Nolan does not cure any of these deficiencies, nor would a person of ordinary skill have had reason to modify Ray in view of Nolan. Thus, the Petition also fails to establish that limitation [1.c] (claim 1) and limitation [10.d] (claim 10) are met for these multiple independent reasons.

A. The Petition fails to establish that “electric data” is “issued to the image data viewing apparatus”

Ray does not disclose (nor does Petitioner allege) that credits/points earned when a user watches advertisements are issued to either Ray’s receiver 140 or television 150 that Petition alleges are “collectively, *a plurality of moving image viewing apparatuses*.” Petition, 14. Instead, incentive program host 180 credits points to the corresponding consumer account stored and maintained by the host 180, as Petitioner acknowledges. Petition, 21 (citing Ray ¶¶ 29, 33, 97).

Faced with the fact that Ray cannot meet the claim under its own mapping (see Petition, 12-14), Petitioner “identifies” the consumer’s “incentive program account” as part of the “moving image viewing apparatus.” Petition, 21. Petitioner acknowledges that consumer incentive accounts are stored and maintained by host 180, not by receiver 140 or television 150—Ppetitioner merely “identifies” it as such to fit a square peg in a round hole. Patent Owner further annotates the Petition’s annotated FIG. 1 of Ray (see Petition, 12) below to show the Petition’s carve-out of

customer credit accounts from Ray's program host 180 as allegedly being "part of the *moving image viewing apparatus*." Petition, 21.



Petitioner's rationale for "identifying" customer credit account stored and managed by host 180 as being part of the claimed moving image viewing apparatus is because users use their receiver 140 and television 150 to redeem the account's points. Petition, 21. But that does not make it part of receiver 140 or television 150 any more than using receiver 140/television 150 to request and obtain program content from content distributor 120 would make content distributor 120 (or any portion thereof) part of the moving image viewing apparatus.

Recognizing that Ray does not in fact disclose that customer credit accounts are part of receiver 140 or television 150 in any sense, Petitioner alleges that "it [] would have been obvious to a POSITA to have the consumer's account be part of

the moving image viewing apparatus” by storing the account on receiver 140. Petition, 21-22. This modification is allegedly motivated by the fact that the account is “tied to the consumer, who earns points for the account and redeems them.” Petition, 22.

But Petition’s proposed modification is nonsensical. The modification would wholly disrupt Ray’s principle of operation. Every receiver 140 would have to be aware of and understand the incentives on offer and each would have to be updated each time an incentive program was added, changed or removed. And the host would be subjecting such accounts to tampering at individual devices.

Thus, Petitioner hedges and alleges that it also would have been obvious to “at least keep a copy of the account on the consumer’s equipment for ease of at least display and access.” Petition, 22. But Petitioners do not allege any access or display deficiencies in Ray’s Program Host access. Apart from whether this would in fact ease display and access (it would not at least because the receiver 140 would need to continuously sync to ensure the information is not stale for no good reason), even were a “copy of the account” stored on the consumer’s equipment, the electric data would still be “issued” to the account maintained by host 180, not to the “copy” that would allegedly be stored by the receiver 140 for convenience. The Petition does not allege otherwise, or explain why a POSITA would do any such thing other than to try to somehow arrive at the Patent Owner’s claims in hindsight.

Thus, the Petition fails to establish that Ray meets either the requirement that the advertisement delivery system issues the electric data, nor the requirement that the electric data is issued to the user's viewing apparatus, as recited in limitations [1.b.ii] and [10.b.i].

B. The Petition fails to establish that Ray and Nolan render the “report” limitations obvious

The claims require that the “moving image data delivery system” present a “report indicating that the moving image data delivery system is presented with the electric data” in exchange for “an electric payment from the advertising image data delivery system” (limitations [1.c] and [10.d])—which is how the moving image data delivery system is compensated for delivering content to the user.

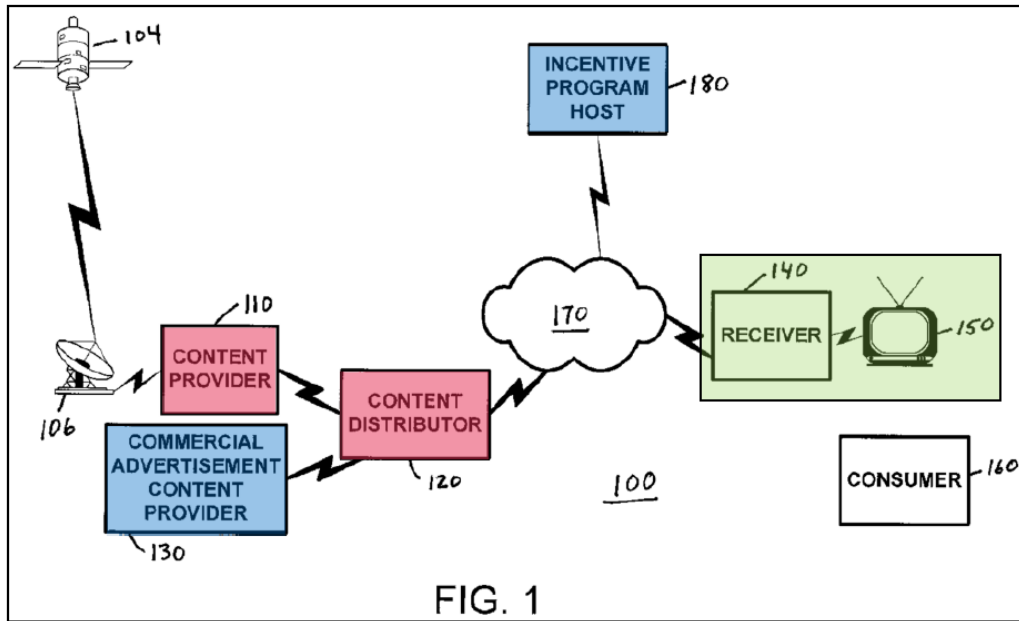
By contrast, neither Ray's broadcaster 120 nor Nolan's Provider 102 are compensated by the advertiser based on credits/points earned by watching advertisement. Ray's “reports” relied on in the Petition are generated from the consumers' feedback and do not include any indication of credits/points received by broadcaster 120 or otherwise and are presented for reasons having nothing to do with compensating the broadcaster. Ray, ¶¶ 45-46. The “capture information” provided by Nolan's Provider 102 that the Petition points to likewise does not indicate anything about credits/points (the capture information is provided before a customer's account is credited), nor does Nolan's Provider 102 receive payment in exchange for presenting the capture information. There is simply no combination of

Ray and Nolan, which both describe compensation systems that are wholly different from the claims and from each other, that renders this limitation obvious.

1. The Petition fails to establish that Ray discloses any of the requirements of limitation [1.c] and [1.d]

The Petition relies on Ray's reports generated by incentive program host 180 from consumers' feedback that advertisers can review to assess the effectiveness of their advertising campaigns to meet limitation [1.c] (see Petition, 30), which requires that claim 1's "moving image data delivery system" comprises (1) "a second controller adapted to receive an electric payment from the advertising image data delivery system," (2) "in exchange of a presentation of a report from the moving image data delivery system to the image data delivery system," and (3) "the report indicating that the moving image data delivery system is presented with the electric data." The Petition fails to establish that Ray's reports meet *any* of these limitations.

First, Ray's reports are not generated by nor presented from either content provider 110 or content distributor 120 that the Petition alleges together meet the claimed "moving image data delivery system" (i.e., the components shaded red in the Petition's annotated version of Ray's FIG. 1 copied below). See Petition, 12-13. Ray's reports are generated by incentive program host 180 and Petitioner does not allege otherwise. Thus, the Petition fails to establish—or even allege—that Ray meets "a presentation of a report from the moving image data delivery system to the image data delivery," as required by limitation [1.c].



Second, Ray’s reports do not “indicat[e] that the moving image data delivery system is presented with the electric data” and Petitioner does not even attempt to allege that they do. Instead, Petitioner argues that it need not establish that this limitation is met because the report’s content is allegedly “printed matter” and thus not entitled to patentable weight. Petition, 30 (citing *In re Distefano*). Other than quoting language from *In re Distefano*, the Petition provides no analysis or explanation establishing that the “printed matter” doctrine applies to the claimed reports. Nor could it, as the report (as claimed) triggers payment (i.e., is plainly functional descriptive material regardless of printed matter); “*a second controller adapted to receive an electric payment from the advertising image data delivery system in exchange of a presentation of a report from the moving image data delivery system to the advertising image data delivery system.*” Thus, Petitioners

attempt to side-step this feature as printed matter of non-functional descriptive material is baseless. *See generally IOEngine, LLC v. Ingenico Inc.*, 100 F.4th 1395, 1404 (Fed. Cir. 2024).

Third. Ray does not disclose that Ray’s reports are exchanged for “electric payment from the advertising image data delivery system,” nor that Ray’s broadcaster 120 receives electric payment based on presentation of the reports. Ray’s broadcaster 120 is not compensated based on credits/points it receives from consumers, so Ray’s broadcaster would have no need to generate or present a report that indicates receipt of credits/coupons even had Ray or Nolan disclosed any such report.

Claim 10’s limitation [10.d] recites that “electric payment” received from the advertiser is allotted to “the moving image data delivery system in exchange of a presentation of a report from the moving image data delivery system to the advertising image data delivery system, the report indicating that the moving image data delivery system is presented with the electric data” and thus has the same requirements as [1.c].

The Petition’s challenge relies on Ray’s reports which fail to meet limitations [1.c] and [10.d] for at least three independent reasons: Ray’s reports (1) are not exchanged between the “moving image data delivery system” and the “advertising image data delivery system,” (2) do not indicate that the claimed electric data was

received by the “moving image data delivery system,” (3) are not exchanged for electric payment, let alone electric payment to the “moving image data delivery system.”

That Ray fails to meet any of the requirements of the claimed “report” is not surprising. Ray’s broadcaster 120 is not compensated based on receipt of credits/points and would not therefore present such a report for payment. Nolan’s Provider 102 is also not compensated based on receipt of credits/points—it does not receive credits/points at all, let alone in exchange for providing content. There is simply no combination of Ray and Nolan that would meet limitations [1.c] and [10.d].

Contrary to Petitioner’s assertion Nolan’s Facilitator 101 and Provider 102 are “akin” to Ray’s host 180 and broadcaster 120, they are wholly dissimilar in every way in which Petitioner relies on them. Nolan describes yet another different system for compensating program providers and advertisers. The Petition provides no reason to modify Ray in view of Nolan beyond the bare assertion that Nolan discloses components that are allegedly “akin” to those disclosed in Ray.

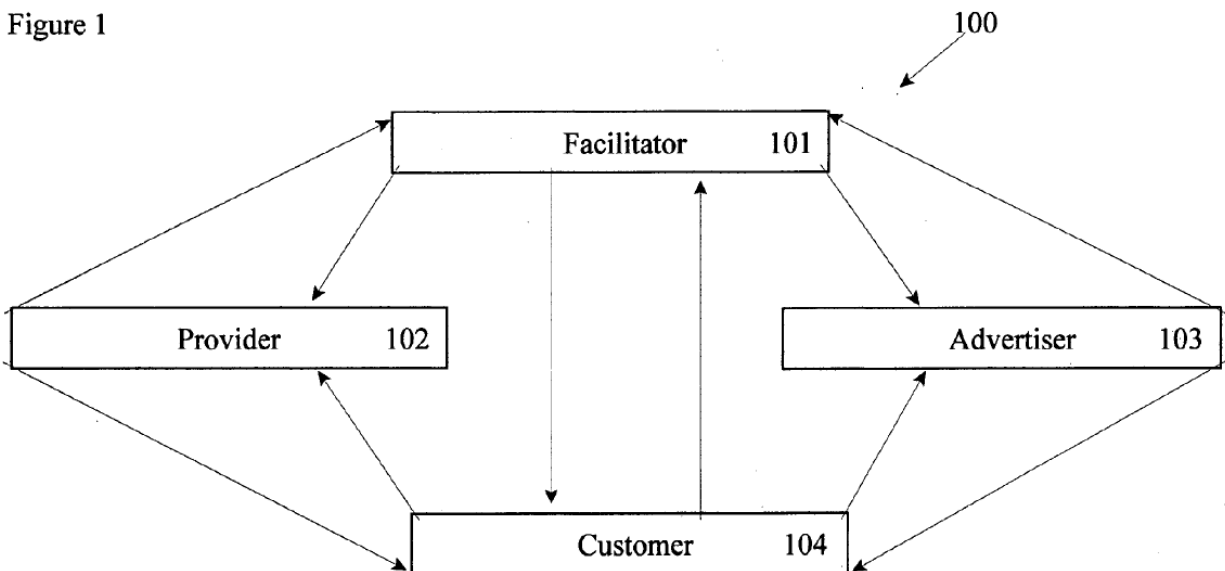
2. The Petition fails to demonstrate how any of Ray’s deficiencies would be remedied by Nolan.

a. Overview of Nolan

Nolan describes an “approach for setting up an enterprise” in which a Facilitator 101 “acts as a middleman between the contracting parties meaning the

Provider 102 and the Customer 104.” Nolan, ¶ 77, 90, FIG. 1 (below). Facilitator 101 charges Advertiser 103 for interactive advertising sent to Customer 104 who is given credit for viewing the advertising. *Id.* Facilitator 101 pays Provider 102 for the media product delivered to Customer 104. *Id.* Facilitator 101 also supplies Provider 102 with the advertising content from Advertiser 103 and the software programming for collecting “information that needs to be collected by the Provider 102 and returned to the Facilitator 101.” Nolan, ¶ 78.

Figure 1



Facilitator 101 contracts with Customer 104 to receive selected service from Provider 102 that Facilitator 101 pays for on the customer’s behalf. Nolan, ¶¶ 78, 106. Thus, Customer 104 has a “billing obligation” (Nolan, ¶ 112) to Facilitator 101 that can be offset by viewing interactive advertising (and/or responding to questions provided therein)—*i.e.*, Facilitator 101 credits Customer 104’s viewing of

interactive advertisements towards the costs the customer owes Facilitator 101. Nolan, ¶¶ 78, 106, 109, 112-113.

The software programming given to Provider 102 by Facilitator 101 collects the information the Facilitator 101 needs and “Facilitator 101 receives the capture information from the Provider 102 that summarizes the information pertinent to the Customers 104 reached, the results of the interactive communication, and other relevant data.” Nolan, ¶¶ 80, 78, 107. Facilitator 101 passes this information on to the Advertiser 103 and the advertiser compensates Facilitator 101 according to their contractual agreement. Nolan, ¶¶ 80, 90, 106-107. The Petition fails to establish any reason to modify Ray in view of Nolan, nor would any combination of Ray or Nolan meet the requirements of limitations [1.c] and [10.d].

b. Neither Ray nor Nolan discloses a “report” that indicates receipt of the claimed “electric data”

The claimed report indicating receipt of the claimed “electric data” is nowhere to be found in Ray or Nolan—Petitioner does not dispute that fact. Ray’s reports do not indicate receipt of any “credits/points” (*i.e.*, the Petition’s alleged “electric data”), nor does Petitioner allege that they do. Nor does Nolan’s “capture information” that the Petition identifies as a “report” indicate receipt of any credits/points, nor does Petitioner allege that either.

Instead, the Petition alleges that because Nolan’s Provider 102 provides capture information to Nolan’s Facilitator 101 (Petition, 30-31), it would have been

obvious for Ray's broadcaster 120 to present to host 180 "a *report indicating* that broadcaster 102 was presented with credits/points (*electric data*)" (Petition, 31-32 citing nothing), despite neither Ray nor Nolan teaching any report indicating receipt of any credits/points that were presented to any component. The Petition does not explain how any combination of Ray and Nolan teaches a limitation that neither reference discloses.

The claimed "report" is the mechanism by which the "moving image data delivery system" receives payment from the "advertising image data delivery system" so it is unsurprising that neither Ray nor Nolan (which describe different compensation and value exchanges, both from the claims and from each other) do not disclose it. This is also why the Petition's reason for modifying Ray's broadcaster 120 to provide a report that neither Ray nor Nolan discloses or suggests fails. Apart from assertions that a POSITA *could* have modified broadcaster 120 to provide the claimed report (Petition, 32), the only reason the Petition provides as to why a POSITA *would* have done so is to "report to the host 180 the credits it received from the consumers in order to seek compensation from host 180." Petition, 33.

But Ray's broadcaster 120 is *not* compensated by host 180 (yet another significant difference between Ray host 180 and Facilitator 101), nor is Ray's broadcaster 120 compensated by presenting a report of any credits it received. Ray's broadcaster 120 charges advertisers either a "flat fee" or "pay by views" (Ray-

Provisional (EX1005), 16), neither of which need reporting that credits/points were presented to broadcaster 120 (see *infra* § V.B.2.d).

The Petition’s alleged motivation to have broadcaster 120 provide a report that neither Ray nor Nolan teaches is based on a compensation system that is also not taught by Ray (nor Nolan²)—it is purely hindsight. Moreover, Petitioner’s proposed modification (in addition to finding no basis in Ray or Nolan) would still fail to meet the limitation [1.c] because it relies on Petitioner’s mistaken identification of host 180 as part of the “advertising moving image delivery system” to which limitation [1.c] requires presentation of the report.

Thus, the Petition fails to establish that Ray and Nolan, alone or in any combination, meets the claimed “report indicating that the moving image data delivery system is presented with the electric data” recited in limitations [1.c] and [10.d].

² Nolan’s Provider 102 is paid for its services by Facilitator 101 full stop. Provider 102 is not paid based on any credits/points it receives (it doesn’t receive any), nor is Provider 102’s compensation impacted by customers viewing advertisements.

c. The Petition fails to establish motivation to modify Ray's broadcaster to provide a report to Ray's incentive program host

Because Petitioner needs Ray's broadcaster 120 to provide a report to the advertising delivery system (which the Petition erroneously alleges Ray's host 180 is part of) to meet the requirements of limitations [1.c] and [10.d], Petitioner alleges that it would have been obvious for Ray's broadcaster 120 to present a report to host 180 like Nolan's Provider 102 provides "capture information" to Facilitator 101 because Nolan's Facilitator 101 is allegedly "akin" to Ray's incentive program host 180 and Ray's Nolan's Provider 102 is allegedly "akin" to broadcaster 120. But Ray's host 180 is nothing like Nolan's Facilitator 101 and Petitioner points to *no* similarities that would motivate having broadcaster 120 present a report to host 180.

Indeed, *none* of the actions the Petition cites Facilitator 101 as performing is performed by Ray's host 180 Petition, 31 (citing Nolan, ¶¶ 78, 107, 109)—i.e., Ray's host 180 does not provide advertisements to broadcaster 120, it does not instruct broadcaster 120 which advertisements to provide or over which channel, nor does it participate in the delivery of advertisements. To the extent that Nolan's Provider 102 is in any way "akin" to Ray's broadcaster 120, it is not so in any way relevant to Petitioner's proposed modification.

Nolan's Provider 102 provides the "capture information" to Nolan's Facilitator 101 because Provider 102 collects that information; Ray's broadcaster

120 does not, nor is there any reason for broadcaster 120 to do so. Ray's reports that Petition points to (Petition, 30) are "generated from the consumers' feedback" (Ray, ¶ 46), which Ray discloses can be obtained by "coupling the consumer's receiver or personal video recorder to an open network, such as the internet" (Ray, ¶ 45) and receiving user feedback via "a graphical user interface that queries the consumer about the user's reaction to the advertisement" (*id.*). Ray further discloses that the "incentive program can be utilized to obtain feedback about particular commercials from consumers" and that the feedback can be "reported to interested parties." *Id.*

That is, Ray's incentive program host 180 already collects the feedback in Ray's reports directly and has no reason to receive any report from Ray's broadcaster 120. Petitioner provides no reason why a POSITA would modify broadcaster 120 to collect consumer feedback just to send it to Ray's host 180 that already collects that information. The naked assertion that Ray's broadcast 120 is "akin" to Nolan's Provider 102 and Ray's host 180 is "akin" to Nolan's Facilitator 101 is the sole rationale the Petition provides for modifying Ray's broadcaster 120 to collect information that it does not need (and that broadcaster 120 is not configured to obtain) and then provide a report to host 180 with the same information host 180 also collected. Petition, 30-32. The Petition does not allege that the proposed modification would provide any benefit to Ray's system because it would not—it is entirely superfluous and wasteful. As discussed *supra* § V.B.2.b, even if Ray's

broadcaster 120 were modified to provide a report based on the teaching of Nolan, that report would still not indicate the receipt of any credits/points.

d. The Petition fails to establish that Ray’s broadcaster would present a report in exchange for electric payment

In alleging a motivation to modify Ray’s broadcaster 120 to provide a report indicating that credits/points were presented to the broadcaster by the consumer, the Petition points to “Ray’s disclosure that consumers redeem credits/points for premium content.” Petition, 32-33 (citing EX1005, 16). According to Petitioner, the “credits/points presented by the consumer have no value to the broadcaster 120 except to the extent that broadcaster uses them to seek reimbursement from the entity that issued the points” (which the Petition alleges is Ray’s host 180). This is plainly incorrect. As discussed *supra* § V.B.2.b, Ray’s host 180 simply does not pay broadcaster 120 for delivering content (or for delivering advertising) and so broadcaster 120 would not seek reimbursement from Ray’s host 180 for providing “premium content”—that is not how broadcaster 120 gets paid.

Ray’s broadcaster 120 gets paid by charging the advertiser in two ways: (1) a “flat fee”; and (2) “pay by views.” Ray-Provisional (EX1005), 16. In neither payment model does the broadcaster get paid based on reporting the redemption of credits/points, nor would there be a need for the broadcaster to do so. The broadcaster 120 plainly does not report on credits/points received to be compensated

under the “flat fee” arrangement. Under the “pay by views” arrangement, the broadcaster 120 is compensated for the number of views an advertisement receives and that is the only thing that the broadcaster would have to report to the adviser to be compensated. Ray-Provisional, 14-16.

Contrary to Petitioner’s allegation, the “credits/points” have value to broadcaster 120 quite apart from reporting on them to seek reimbursement as a tool to increase the number of views an advertisement receives, as Ray explicitly states: “When a customer does something the broadcaster wants (i.e. watch commercials) then they get something they want (i.e. premium content).” Ray-Provisional, 14. Ray’s broadcaster delivers “premium content” to increase advertisement views because that is how the broadcaster gets paid, not by reporting on any credit/point is receives.

Ray’s broadcaster 120 has no need or reason to provide a report indicating that it received any credits/points because that is not is not how broadcaster 120 gets paid. Petitioner’s assertion that broadcaster 120 would generate and provide reports that Ray nowhere discloses to engage in a compensation system that Ray nowhere describes is nothing but hindsight.

VI. CONCLUSION

Petitioners fail to meet their burden to demonstrate a likelihood of showing that any Challenged Claim is unpatentable. The Board should deny institution.

Respectfully submitted,
NL Giken Inc.

Date: April 29, 2025

/Scott A. McKeown /

Scott A. McKeown, Reg. No. 42,866
WOLF, GREENFIELD & SACKS, P.C

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24, the undersigned certifies that the foregoing **PATENT OWNER'S PRELIMINARY RESPONSE** contains 4,818 words excluding; a table of contents, a table of authorities, a certificate of service or word count, or appendix of exhibits or claim listing. Patent Owner has relied on the word count feature of the word processing system used to create this paper in making this certification.

Date: April 29, 2025

/MacAulay Rush/
MacAulay Rush
Paralegal
WOLF, GREENFIELD & SACKS, P.C.

CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6 (e)(4)

I certify that on April 29, 2025, a copy of the foregoing document, including any exhibits filed therewith, is being served via electronic mail, as previously consented to by Petitioner, upon the following:

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