

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

BRODTI INC.,
Patent Owner.

IPR2025-00472
Patent 11,416,898 B2

Before FRANCES L. IPPOLITO, STEPHEN E. BELISLE, and
BRIAN P. MURPHY, *Administrative Patent Judges*.

BELISLE, *Administrative Patent Judge*.

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

I. INTRODUCTION

Google LLC (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting an *inter partes* review of claims 1–20 (“Challenged Claims”) of U.S. Patent No. 11,416,898 B2 (Ex. 1001, “the ’898 patent”). BrodTi Inc. (“Patent Owner”) did not file a Preliminary Response.¹ Paper 12 (“Patent Owner waives the filing of a Preliminary Response.”); Paper 10 (Patent Owner’s Mandatory Notices).

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314(b) (2024); 37 C.F.R. § 42.4(a) (2024). We may not institute an *inter partes* review “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). The “reasonable likelihood” standard is “a higher standard than mere notice pleading” but “lower than the ‘preponderance’ standard to prevail in a final written decision.” *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (precedential). When instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim. 37 C.F.R. § 42.108(a).

¹ Patent Owner and Petitioner filed discretionary denial briefs (Paper 11; Paper 15), and Patent Owner’s request for discretionary denial was denied (Paper 19). We do not consider papers filed by the parties relating to discretionary considerations in determining whether to institute *inter partes* review. See FAQs for Interim Processes for PTAB Workload Management, FAQ 12 (“Procedures/processes”), available at <https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management>.

Applying those standards, and based on the record before us, we determine that Petitioner has demonstrated a reasonable likelihood of success in proving that at least one of the Challenged Claims is unpatentable. Accordingly, we institute an *inter partes* review as to all Challenged Claims of the '898 patent on all grounds raised in the Petition.

II. BACKGROUND

A. *Real Parties in Interest*

Petitioner identifies itself as a real party in interest. Pet. 1.

Patent Owner identifies itself as a real party in interest. Paper 10.

B. *Related Matters*

Petitioner identifies the following district court actions as related matters: (1) *BrodTi Inc. v. Google LLC*, No. 1:24-cv-00173-JCB (D. Del.), which is pending; and (2) *BrodTi Inc. v. Google LLC*, No. 6:24-cv-00058-RP (W.D. Tex.), which was voluntarily dismissed. Pet. 1; Paper 10.

Patent Owner also submits that the '898 patent claims the benefit of U.S. Patent No. 10,325,290 B2, issued June 18, 2019, and U.S. Patent Application No. 11/274,706 (abandoned). Paper 10.

C. *The '898 Patent*

The '898 patent is titled “Methods, Systems, and Apparatus For Financing Projects,” and issued August 16, 2022, from U.S. Application No. 16/422,106, filed May 24, 2019. Ex. 1001, codes (10), (21), (22), (45), (54). The '898 patent claims priority through various continuation applications to U.S. Provisional Application No. 60/626,933, filed November 12, 2004. *Id.* at codes (60), (63). Petitioner submits that “[it] does not concede that the claims are entitled to this priority date, but the relied-upon prior art references nevertheless predate it,” and the “relied-upon

references qualify as prior art under both pre-AIA and AIA rules.” Pet. 8 n.2.

The '898 patent relates to “a process that allows advertisers to finance media productions through advertising media buys while eliminating the risk of normal event financing speculative investment.” Ex. 1001, 1:22–26.

Figure 1 of the '898 patent is reproduced below.

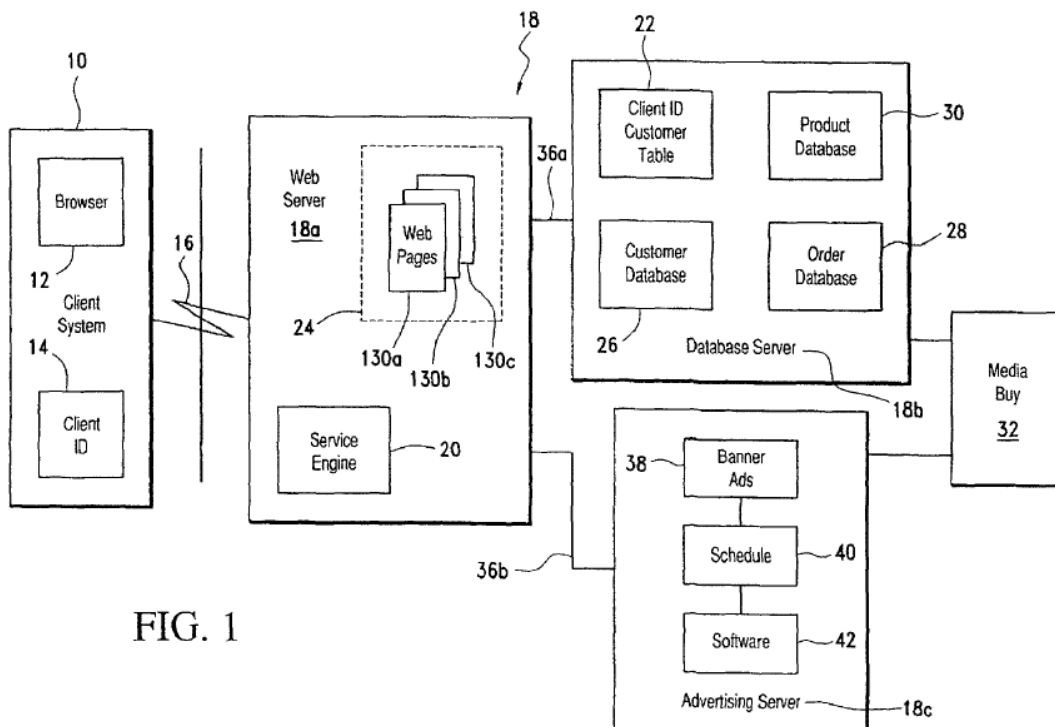


Figure 1 depicts a functional block diagram showing how a user's browser and a server of the website to be accessed by the user's browser are connected to and by a communication link to each other.

Id. at 3:15–18, Fig. 1.

As illustrated in Figure 1, a browser or user (client) uses client system 10 to access server system 18 by exchanging messages over communication link 16, such as the Internet. Ex. 1001, 3:26–30. Server system 18 comprises web server 18a, data base server 18b, and advertising

server 18c. *Id.* at 3:46–48. Advertising server 18c is programmed “to regulate the advertisements to be seen by the users,” which is done “by storing the advertisement materials in the form of acceptable internet standards, i.e. banner ads, pop-ups, text ads and rich media, in corresponding databases 38, 40 and 42,” and is programmed “to run the ads based on predetermined impressions, length of contract with the advertiser.” *Id.* at 3:51–58.

The ’899 patent states:

Advertising on the [I]nternet is created by and through the media property and content on the web property. The web property is marketed to a target audience who visits the web property to view the content provided. Every time an individual visits the web property, he/she creates an *impression*.

Ex. 1001, 4:30–34 (emphasis added). “These impressions create a commodity in the advertising community and are packaged by the sales team to be sold . . . to an advertiser.” *Id.* at 5:17–21. An advertiser wanting to market itself to the target audience purchases “targeted impressions” at a predetermined media buy in order to place advertising materials on a screen of the property. *Id.* at 5:22–30. Once the media buy is fulfilled, the advertiser is invoiced. *Id.* at 5:38–41. The advertiser pays the invoice, and the revenue generated is placed into a fund, such as a bank account. *Id.* at 5:41–45. According to the ’898 patent, such funds may then be used, for example, “to finance the development of [a] screenplay into a finished production media.” *Id.* at 5:47–49.

D. Illustrative Claim

The ’898 patent includes twenty claims, including independent claims 1, 10, and 19, all of which are challenged. Independent claim 1 is

illustrative of the claimed subject matter and is reproduced below with labels, such as “1[a],” added to limitations in the same manner as used by Petitioner.

1. [pre] A computer-implemented method comprising:
 - [a] receiving, by one or more processors, from a given client, over an Internet-based communication link from a browsing application executed on the given client processor to the one or more processors, a message comprising data, the data comprising advertising material to populate on one or more websites;
 - [b] identifying, by the one or more processors, the given client, based on receiving the message, an identifier, wherein the message comprises the identifier;
 - [c] based on a message provided by a given client, generating, by the one or more processors, a webpage, wherein the generating comprises providing, via a graphical user interface of the webpage, a plurality of advertising buy options for selection by a given client accessing said webpage;
 - [d] obtaining, by the one or more processors, via an input in the graphical user interface, a selection of one or more of the advertising buy options, wherein the selected one or more advertising buy options comprise at least one website of the respective websites and a predetermined number of impressions of the advertising material for users visiting the at least one website;
 - [e] generating, by the one or more processors, on a database accessible to the one or more processors, a repository for advertising revenue based on the selection;
 - [f] based on obtaining the selection, populating, by the one or more processors, the advertising material on the at least one website, wherein the populating comprises placing the advertising material within web property content of the at least one website;

- [g] monitoring, by the one or more processors, a number of impressions of the advertising material provided to users accessing the web property content displayed on the at least one website;
- [h] determining, by the one or more processors, whether an impression of the advertising material is valid, wherein the impression is valid based on a predetermined impression tracking system;
- [i] determining, by the one or more processors, that the number of valid impressions is greater than or equal to the predetermined number of impressions;
- [j] upon determining a number of valid impressions are met, ceasing, by the one or more processors, the populating of the advertising material on the at least one website; and
- [k] based on determining a number of valid impressions are met, electronically collecting, by the one or more processors, a share of the advertising revenue to be transmitted to the web property content owner.

Ex. 1001, 10:29–11:11.

E. Evidence of Record

Petitioner relies on the following evidence. Pet. 3.

Name	Patent Document	Exhibit
Nicholas	U.S. Patent Appl. Pub. No. 2004/0054589 A1, published March 18, 2004	1003
Laidlaw	U.S. Patent Appl. Pub. No. 2004/0128547 A1, published July 1, 2004	1004
Mayadas	U.S. Patent Appl. Pub. No. 2001/0039515 A1, published November 8, 2001	1005
Yasnovsky	U.S. Patent Appl. Pub. No. 2005/0027594 A1, published February 3, 2005	1006
Error	U.S. Patent No. 8,156,216 B1, issued April 10, 2012	1007
Manowitz	WO 01/59653 A1	1015

Petitioner also relies upon the Declaration of Mark Crovella, Ph.D. (Ex. 1002).

F. Asserted Challenges to Patentability

Petitioner challenges the patentability of the Challenged Claims on the following grounds. Pet. 3.

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–6, 9–15, 18, 19	103 ²	Nicholas, Laidlaw, Mayadas, Error
7, 8, 16, 17, 20	103	Nicholas, Laidlaw, Mayadas, Error, Yasnovsky
1–6, 9–15, 18, 19	103	Nicholas, Laidlaw, Mayadas, Error, Manowitz
7, 8, 16, 17, 20	103	Nicholas, Laidlaw, Mayadas, Error, Yasnovsky, Manowitz

III. PATENTABILITY

A. Applicable Law

Petitioner challenges the patentability of claims 1–20 of the '898 patent on grounds that the claims would have been obvious under 35 U.S.C. § 103 in light of various references, namely Nicholas, Laidlaw, Mayadas, Error, Yasnovsky, and Manowitz. “In an [*inter partes* review], the petitioner has the burden from the onset to show *with particularity* why

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 '898 patent was effectively filed before March 16, 2013, the effective date of the relevant amendment, we preliminarily apply the pre-AIA version of § 103. *See* Ex. 1001, code (60). Neither party argues that the outcome of this case would differ based on applying the pre-AIA or post-AIA versions of these laws.

the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)) (emphasis added). This burden never shifts to Patent Owner. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

A claim is unpatentable under 35 U.S.C. § 103 if “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made 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 of record, objective evidence of obviousness or non-obviousness, i.e., secondary considerations. *Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 17–18 (1966). Secondary considerations may include the following: “commercial success, long felt but unsolved needs, failure of others, etc.”³ *Id.* The totality of the evidence submitted may show that the challenged claims would not have been obvious to one of ordinary skill in the art. *In re Piasecki*, 745 F.2d 1468, 1471–72 (Fed. Cir. 1984). When evaluating a combination of teachings, we must also “determine whether there was an apparent reason to combine the

³ At this stage of the proceeding, Patent Owner has not presented objective evidence of non-obviousness.

known elements in the fashion claimed by the patent at issue.” *KSR*, 550 U.S. at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

The Supreme Court has made clear that we apply “an expansive and flexible approach” to the question of obviousness. *Id.* at 415. Whether a patent claiming a combination of prior art elements would have been obvious is determined by whether the improvement is more than the predictable use of prior art elements according to their established functions. *Id.* at 417. To reach this conclusion, however, “requires more than a mere showing that the prior art includes separate references covering each separate limitation in a claim under examination.” *Unigene Labs., Inc. v. Apotex, Inc.*, 655 F.3d 1352, 1360 (Fed. Cir. 2011). Rather, obviousness requires the additional showing that a person of ordinary skill at the time of the invention would have selected and combined those prior art elements in the normal course of research and development to yield the claimed invention. *Id.* “To satisfy its burden of proving obviousness, a petitioner cannot employ mere conclusory statements. The petitioner must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.” *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1380 (Fed. Cir. 2016).

We analyze the challenges presented in the Petition in accordance with the above-stated principles.

B. Level of Ordinary Skill in the Art

Petitioner contends that a person of ordinary skill in the art, at the time of the invention of the ’898 patent:

would have possessed a bachelor’s degree in electrical engineering, computer science, or similar field, with at least two years of experience in developing and implementing network-

based computer systems, such as systems for sending and receiving information over the Internet and/or the Web. A person could also have qualified with more formal education and less technical experience, or vice versa.

Pet. 4 (citing Ex. 1002 ¶¶ 9–12).

Patent Owner did not file a Preliminary Response, and thus does not present an alternative definition at this stage of the proceeding.

In determining 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) (citation omitted). Considering the subject matter of the ’898 patent, the background technical field, the prior art, and Petitioner’s proposed and unopposed definition of the skilled artisan (Ex. 1002 ¶¶ 9–12), we apply the level of skill set forth above.

C. Claim Construction

We construe claims “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), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. § 42.100(b); *see also Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc).

In this context, claim terms “are generally given their ordinary and customary meaning” as understood by a person of ordinary skill in the art in question at the time of the invention. *Phillips*, 415 F.3d at 1312–13;

see CCS Fitness, Inc. v. Brunswick Corp., 288 F.3d 1359, 1366 (Fed. Cir. 2002) (There is “a ‘heavy presumption’ that a claim term carries its ordinary and customary meaning.”). “In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17). Extrinsic evidence is “less significant than the intrinsic record in determining ‘the legally operative meaning of claim language.’” *Phillips*, 415 F.3d at 1317.

Petitioner submits that all terms in the Challenged Claims should be given their plain and ordinary meaning in this proceeding, and that no specific construction of any claim term is required to resolve this case. Pet. 6 (“Petitioner does not believe express claim construction is necessary to resolve this Petition.”). Patent Owner has not submitted a preliminary response, and thus does not propose any terms for construction at this stage. In determining that Petitioner has demonstrated a reasonable likelihood of establishing unpatentability of at least one Challenged Claim, we need not and do not construe expressly any claim terms. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (stating that “we need only construe 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. Alleged Obviousness of Independent Claims 1, 10, and 19 over Nicholas, Laidlaw, Mayadas, and Error

Petitioner contends independent claims 1, 10, and 19 would have been unpatentable under 35 U.S.C. § 103 as obvious over the combination of Nicholas (Ex. 1003), Laidlaw (Ex. 1004), Mayadas (Ex. 1005), and Error (Ex. 1007). Pet. 6–51, 60–61. As previously noted, Patent Owner did not file a Preliminary Response, but the burden remains on Petitioner to demonstrate unpatentability. *See Dynamic Drinkware*, 800 F.3d at 1378. Based on our review of the record before us, we determine that Petitioner has established a reasonable likelihood that it would prevail in showing that claims 1, 10, and 19 would have been unpatentable under 35 U.S.C. § 103 as obvious over the combination of Nicholas, Laidlaw, Mayadas, and Error, as discussed below. We turn first to an overview of these four references.

1. Overview of Nicholas (Ex. 1003)

Nicholas is a published U.S. patent application titled “Method and System for Providing Network Based Target Advertising and Encapsulation.” Ex. 1003, code (54). Nicholas was filed on September 8, 2003, and published on March 18, 2004. *Id.* at codes (22), (43). Petitioner contends Nicholas is prior art under 35 U.S.C. §§ 102(a) and 102(e). Pet. 8.

Nicholas relates to “the targeted distribution of advertisements over a network,” as shown, for example, in Figure 1, reproduced below. Ex. 1003 ¶ 2.

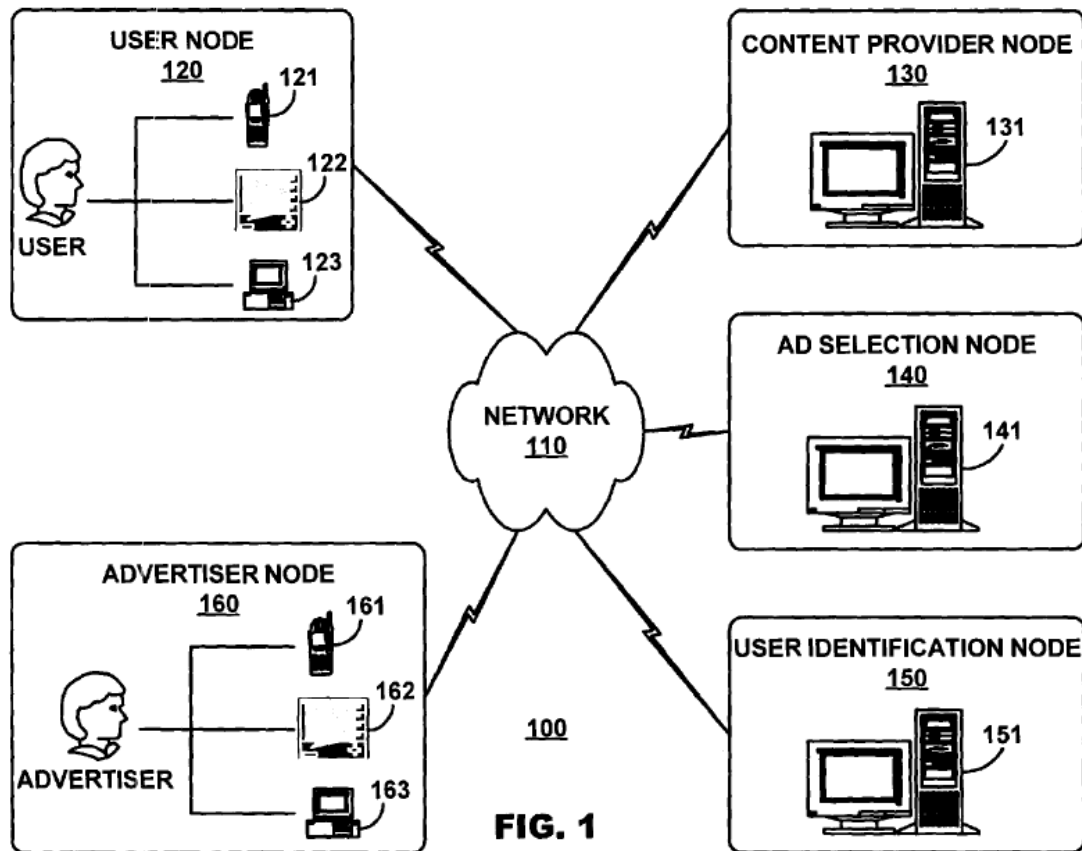


Figure 1 depicts a telecommunication system for the targeted distribution of online advertisements.

Id. ¶ 4, Fig. 1.

As shown above in Figure 1, telecommunication system 100 comprises (1) user node 120, which “operates to facilitate communications of requested information in audio form and/or visual form between a user of user node 120 and one of the other nodes of telecommunication system 100” (Ex. 1003 ¶ 44); (2) content provider node 130, which communicates advertisements to user node 120 as directed by ad selection node 140 (*Id.* ¶¶ 45–46); (3) ad selection node 140, which includes targeted ad server 141a and an associated database “for managing a selection of which advertisement or advertisements are to be communicated with the requested

information from content provider node 131 to user node 120” (*Id.* ¶ 47); (4) user identification node 150, which includes conventional geographic location server 151a and associated database “for providing information indicative of a geographic location of the user to ad selection node 140 (*Id.* ¶ 51); and (5) advertiser node 160, which “facilitate[s] communications of advertisements in audio form and/or visual form between an advertiser and ad selection node 140” (*Id.* ¶ 52).

Nicholas describes the operation of its online advertising telecommunications system 100 as follows:

A telecommunication system implements a method for providing a targeted online advertisement to a user accessing a content provider node of the system. The system further comprises an ad selection node and a user identification node. A generic advertiser provides a generic ad request. Geo-target availability is provided based on a number of requested impressions for the generic ad request and a web site designation. Geographically targeted ad requests are received from one or more child advertisers. A media buy output is determined based on the received information.

Ex. 1003, code (57).

We further discuss below the disclosures of Nicholas in connection with Petitioner’s arguments.

2. *Overview of Laidlaw (Ex. 1004)*

Laidlaw is a published U.S. patent application titled “Method and System for Modular Authentication and Session Management.” Ex. 1004, code (54). Laidlaw was filed on December 31, 2002, and published on July 1, 2004. *Id.* at codes (22), (43). Petitioner contends Laidlaw is prior art under 35 U.S.C. §§ 102(a) and 102(e). Pet. 8.

Laidlaw relates to “managing computer systems, and more particularly, to a method and system for modular authentication and session management.” Ex. 1004 ¶ 1. Laidlaw describes the operation of its online user authentication system as follows:

A computing system received a request to perform a task from a user. The computing system forwards the request to a module that is configured to authenticate the user. The authentication module verifies the identity of the user, using one of a variety of different methods. The authentication module may supply a session token indicative of the verification. Thereafter, the pre-determined permissions of the user are determined in one of a number of manners, such as accessing a database. After it is determined that the user has permission to perform the requested task, the requested task is then performed. The permissions may be stored in an access control list that contains data regarding the identity and privileges of the user.

Id. ¶ 9. Laidlaw further explains that “[w]hen the user authenticates at a login screen, the session token is placed into a cookie. When a subsequent request is received from the same client system, the session token is extracted from the cookie, and the token is obtained from a session table that is keyed by session token.” *Id.* ¶ 16. This session table “contains information that may be used in determining the authorization level of the user.” *Id.* ¶ 31.

We further discuss below the disclosures of Laidlaw in connection with Petitioner’s arguments.

3. *Overview of Mayadas (Ex. 1005)*

Mayadas is a published U.S. patent application titled “System and Method for Payment for Targeted Messaging Over a Network.” Ex. 1005, code (54). Mayadas was filed on May 2, 2001, and published on

November 8, 2001. *Id.* at codes (22), (43). Petitioner contends Mayadas is prior art under 35 U.S.C. § 102(b). Pet. 8.

Mayadas relates to “payments to a plurality of parties for targeted advertising and for user profile aggregation over the Internet,” as shown, for example, in Figure 1, reproduced below. Ex. 1005 ¶ 2.

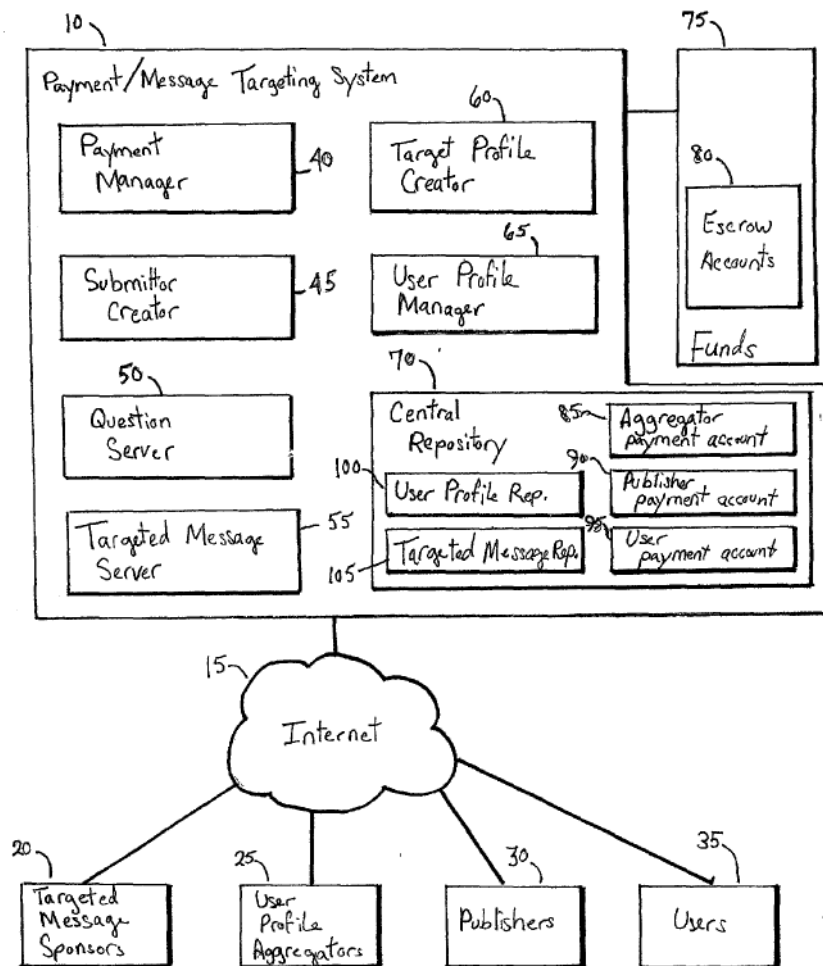


FIG. 1

Figure 1 depicts a block diagram of Mayadas' targeted advertising payments system.

Ex. 1005 ¶ 18, Fig. 1.

Mayadas describes its payment method for targeted online advertising as follows:

[T]argeted message sponsors such as advertisers pay in to the system to have the targeted message distributed according to specified parameters. Users of the system, who view the targeted messages, are compensated for interacting with the targeted message. The user data is stored in user profiles maintained by the system. Targeted message publishers are compensated for publishing the targeted messages. Data aggregators, who gather data about users for the user profiles, are compensated for the data gathered.

Ex. 1005 ¶ 14. Mayadas further describes the operation of its payment system as follows:

[A] targeted message sponsor provides a targeted message, such as an advertisement, to the system for distribution. The targeted message sponsor specifies the parameters of distribution of the targeted message including the users to which the message is to be distributed. The targeted message sponsor pays in to an escrow account held by the system. The targeted message is published on one or more publishers, according to the parameters set by the message sponsor. Also, the message is published to selected users when they interact with one of the selected publishers. When a user interacts with a targeted message, such as clicking on the targeted message display, the publisher, the user, and any data aggregator involved in targeting the message are compensated from the escrow account.

Id. ¶ 15.

We further discuss below the disclosures of Mayadas in connection with Petitioner's arguments.

4. Overview of Error (Ex. 1007)

Error is a U.S. patent titled "Distributed Data Collection and Aggregation." Ex. 1007, code (54). Error was filed on January 30, 2003,

and issued on April 10, 2012. *Id.* at codes (22), (45). Petitioner contends Error is prior art under 35 U.S.C. § 102(e). Pet. 8.

Error relates to “website traffic data collection, and more specifically to improved techniques for collecting traffic data from multiple sources and aggregating the collected data.” Ex. 1007, 1:15–18. As background, Error describes a “single-pixel” image technique for determining that an impression is valid:

One commonly used technique for third-party collection of usage data is to include, in each web page to be tracked, a small image, such as a single-pixel image that is not intended to be noticed by the user. Normally, images in web pages are served from the content provider’s server, along with other content. The single-pixel image, however, which is specifically included in web pages for tracking purposes and normally does not contain any meaningful content, is served from a tracking server operated by the third-party traffic statistics service. In most cases, the single-pixel image is transparent, so as to be as unobtrusive as possible.

When a user navigates to a web page, the web page’s HTML code causes the user’s browser to send a request for the single-pixel image. The tracking server receives the request and logs the request as a user visit to the web page. It is known in the art to embed identifier codes within the image requests, so that the tracking server can detect individual users and discern additional identifying information about each user.

Id. at 1:36–54; *see id.* at 2:6–21 (explaining that when the tracking server receives a request for the single-pixel image, “tracking server 106 records the occurrence of a ‘hit’ to the web page”).

We further discuss below the disclosures of Error in connection with Petitioner’s arguments.

5. *Independent Claim 1*

Independent claim 1, reproduced above in Section II.D, is directed to a computer-implemented project funding method using online targeted advertising, and includes eleven delineated steps (1[a]–1[k]) spanning almost 400 words. Ex. 1001, 10:29–11:11. Petitioner presents evidence over 44 pages of briefing that the combination of Nicholas, Laidlaw, Mayadas, and Error would have taught or at least fairly suggested to the skilled artisan the limitations of claim 1 as a whole. Pet. 8–51; *see id.* at 6–7. For efficiency’s sake, we do not repeat herein all of Petitioner’s arguments merely to respond that we find them sufficiently persuasive on the record before us. Instead, we summarize below our understanding of Petitioner’s application of the combination of Nicholas, Laidlaw, Mayadas, and Error to independent claim 1.

Petitioner argues in sum:

(1) Nicholas teaches “a self-service targeted advertising system similar to the ’898 patent in which advertisers, through a web-based user interface, specify parameters for an advertising campaign including the targeted websites and the desired number of advertising impressions,” and that Nicholas teaches “the majority of the limitations of the challenged claims.” Pet. 6 (citing Ex. 1003, Figs. 6, 8; Ex. 1002 ¶¶ 42–50); *see* Ex. 1003, Fig. 1.

(2) Mayadas teaches “a similar self-service targeted Internet advertising system,” and contributes more specific teachings on “collecting funds from advertisers and paying websites for displaying advertisements,” including the use of “escrow account[s]” or funds to do so. Pet. 6–7 (citing Ex. 1002 ¶¶ 57–59); Ex. 1002 ¶ 59; Ex. 1005 ¶¶ 15, 38.

(3) Laidlaw and Error further teach certain “standard features of web-based systems that, although not expressly described in Nicholas, were well-known.” Pet. 7. For example, Petitioner argues that Laidlaw teaches the use of “cookies” (or “identifiers”), which according to Petitioner, was (and still is) “a technology employed by hundreds of millions of websites to identify users and track their activities.” Pet. 7 (citing Ex. 1002 ¶¶ 51–55).

Similarly, Petitioner argues that Error teaches “web beacons in which a single-pixel image file can be embedded in a webpage to record when users view the page,” and that this technique was “a known tracking system used to determine whether or not a webpage was in fact delivered and displayed to a user.” Pet. 7 (citing Ex. 1002 ¶¶ 61–64); Ex. 1002 ¶ 62. Petitioner argues that “[t]he monitoring techniques in Laidlaw and Error were well-known in the art.” Pet. 7 (citing Ex. 1002 ¶¶ 92–98, 133–138).

Together, Petitioner argues these references would have taught or at least fairly suggested to the skilled artisan all of the features of the eleven delineated steps (1[a]–1[k]) in claim 1, and cites substantial expert testimony in support thereof. Pet. 8–51.

Petitioner argues the skilled artisan would have had various rational reasons for combining the teachings of these four references, and would have had a reasonable expectation of success in doing so. *See, e.g.*, Pet. 18–21 (discussing reasons to combine Nicholas and Laidlaw and expectation of success in doing so), 33–37 (discussing reasons to combine Nicholas and Mayadas and expectation of success in doing so), 44–45 (discussing reasons to combine Nicholas, Laidlaw, Mayadas, and Error and expectation of success in doing so).

Based on the record before us, we find Petitioner sufficiently shows that the combination of Nicholas, Laidlaw, Mayadas, and Error would have taught or at least fairly suggested to the skilled artisan the limitations of claim 1.⁴ Thus, for the reasons stated in the Petition (Pet. 8–51), we determine that Petitioner has established a reasonable likelihood that it would prevail in showing that independent claim 1 would have been unpatentable as obvious over the combination of Nicholas, Laidlaw, Mayadas, and Error.

6. *Independent Claims 10 and 19*

Independent claims 10 and 19 recite limitations commensurate in scope with independent claim 1, except claim 10 is directed to a “computer program product” that uses “a computer readable storage medium readable by one or more processors and storing instructions for execution by the processor for performing [the method of claim 1],” and claim 19 is directed to a “system” using memory, processors, and program instructions to perform the method of claim 1. *Compare* Ex. 1001, 10:29–11:11, *with id.* at 11:52–12:37, *and id.* at 13:9–14:26. Petitioner persuasively addresses these minor variants of claim 1. *See* Pet. 60–61. As discussed above, we are persuaded that the cited evidence sufficiently supports Petitioner’s contention that independent claim 1 would have been unpatentable as

⁴ “When considering obviousness of a claimed invention, the Supreme Court has emphasized that the ‘person of ordinary skill is also a person of ordinary creativity, not an automaton.’” *Fleming v. Cirrus Design Corp.*, 28 F.4th 1214, 1223 (Fed. Cir. 2022). We assume the skilled artisan is a person of ordinary creativity with common sense, common wisdom, and common knowledge. *Id.* (citing *Randall Mfg. v. Rea*, 733 F.3d 1355, 1362 (Fed. Cir. 2013); *KSR*, 550 U.S. at 421).

obvious over the combination of Nicholas, Laidlaw, Mayadas, and Error. For the reasons set forth in the Petition (Pet. 60–61), we also are persuaded that the current record sufficiently supports Petitioner’s challenges to independent claims 10 and 19 over the combination of Nicholas, Laidlaw, Mayadas, and Error for purposes of institution.

E. Alleged Obviousness of (i) Claims 2–6, 9, 11–15, and 18 over Nicholas, Laidlaw, Mayadas, and Error; (ii) Claims 7, 8, 16, 17, and 20 over Nicholas, Laidlaw, Mayadas, Error, and Yasnovsky; (iii) Claims 1–6, 9–15, 18, and 19 over Nicholas, Laidlaw, Mayadas, Error, and Manowitz; and (iv) Claims 7, 8, 16, 17, and 20 over Nicholas, Laidlaw, Mayadas, Error, Yasnovsky, and Manowitz

Petitioner contends that the following sets of claims also would have been unpatentable under 35 U.S.C. § 103 as obvious: (i) Claims 2–6, 9, 11–15, and 18 over Nicholas, Laidlaw, Mayadas, and Error; (ii) Claims 7, 8, 16, 17, and 20 over Nicholas, Laidlaw, Mayadas, Error, and Yasnovsky; (iii) Claims 1–6, 9–15, 18, and 19 over Nicholas, Laidlaw, Mayadas, Error, and Manowitz; and (iv) Claims 7, 8, 16, 17, and 20 over Nicholas, Laidlaw, Mayadas, Error, Yasnovsky, and Manowitz. Patent Owner did not file a Preliminary Response and, therefore, does not challenge Petitioner’s showing at this stage.

At this stage of the proceeding, we need not provide a detailed assessment of these additional challenges. A decision to institute under 35 U.S.C. § 314 may not institute review on fewer than all claims and all challenges in the Petition. 37 C.F.R. § 42.108(a). Because we determine that Petitioner has established a reasonable likelihood that it would prevail in showing that at least one of the Challenged Claims is unpatentable as obvious over the combination of Nicholas, Laidlaw, Mayadas, and Error (*see*

supra § III.D), we also determine that it is appropriate to institute *inter partes* review based on these additional challenges.

IV. CONCLUSION

Based on the evidence before us, we determine that Petitioner has established a reasonable likelihood that at least one of claims 1–20 of the '898 patent is unpatentable. Accordingly, we institute trial on all challenges in the Petition.

We base our factual findings and conclusions at this stage of the proceeding on the evidentiary record developed so far. This is not a final decision as to the construction of any claim term or the patentability of any claim. Any final decision shall be based on the full trial record, including any response timely filed by Patent Owner. Any arguments not raised by Patent Owner in a timely filed response may be deemed waived.

V. ORDER

Upon consideration of the record before us, it is:

ORDERED that, pursuant to 35 U.S.C. § 314(a), an *inter partes* review of claims 1–20 of U.S. Patent No. 11,416,898 B2 is instituted with respect to all grounds set forth in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), *inter partes* review of the '898 patent shall commence on the entry date of this Order, and notice is hereby given of the institution of a trial.

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Patent 11,416,898 B2

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