UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner

v.

BRODTI INC.,
Patent Owner.

Case IPR2025-00472
Patent 11,416,898 B2

REPLY DECLARATION OF MARK CROVELLA, PH.D. IN SUPPORT OF PETITION FOR *INTER PARTES* REVIEW

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Reply Declaration of Mark Crovella, Ph.D.

I, Mark Crovella, Ph.D., declare as follows:

1. I have been asked to respond to the "Declaration of Harley Myler, Ph.D., P.E.," dated November 3, 2025 ("Myler Declaration") and filed as **Exhibit 2009**. Citations to "(EX2009, ¶__)" below refer to the numbered paragraphs in the Myler Declaration. This Reply Declaration will focus on portions of the Myler Declaration that present new facts and/or analysis to which a response is warranted. To the extent other portions of the Myler Declaration state general disagreements with conclusions in my opening declaration, or fail to provide evidence or analysis that warrants a response, I adhere to my opening declaration (**EX1002**).[1]

I. RESPONSE DR. MYLER'S ARGUMENTS ABOUT THE DEFINITION OF A PERSON OF ORDINARY SKILL IN THE ART

2. Dr. Myler provides a slightly different formulation of a person of ordinary skill in the art (POSITA) from the one presented in my opening declaration, but as I will explain below, the differences are immaterial. More specifically, Paragraph 47 of the Myler Declaration states:

> [A] POSITA in the field of art of the '898 patent would have had at least a bachelor's degree, or the equivalent degree, in electrical engineering, computer science, computer engineering, or a related field, and at least two years of experience in internet-based technologies,

[1] Dr. Myler incorrectly states that I did not indicate in my declaration that I reviewed the prosecution history of the '898 patent. (EX2009, ¶41.) This is inaccurate as my opening declaration clearly stated that I had done so. (EX1002, ¶8.)

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> including web interfaces and web-based media, or a related field, and with related systems, hardware, software, and firmware, or equivalent experience. A person with less education but more relevant practical experience, or more education and less experience, may also meet this standard.

(EX2009, ¶47.) Dr. Myler further states that:

> [A] POSITA would have known and had the skills necessary to design, implement, and/or utilize computer and networking systems, HTML, impression tracking technology, user interface devices (e.g., personal computers, PDAs, smart phones, etc.), online gateways, routers, modems, etc., Internet Protocols, dynamic host configuration protocol (DHCP), network address translation (NAT) and local area networks (LAN) (wired and wireless), and wide area networks (such as the Internet).

(EX2009, ¶48.)

3. I do not believe Dr. Myler's formulation is materially different from the one provided in my opening declaration. Both formulations include a bachelor's degree in electrical engineering or computer science, and both include at least two years of experience. The experience specified by Dr. Myler includes "internet-based technologies, including web interfaces and web-based media, or a related field, and with related systems, hardware, software, and firmware, or equivalent experience" (EX2009, ¶47), whereas the experience articulated by my formulation included "developing and implementing network-based computer systems, such as systems for sending and receiving information over the Internet and/or the Web." (EX1002,

¶12.) I also agree with Dr. Myler's opinions in Paragraph 48 quoted above (EX2009, ¶48) in which he provides a more detailed list of the types of skills that a person of ordinary skill in the art would have possessed. Those skills are consistent with the skills that would commonly have been utilized, under my opening declaration formulation, to "develop[] and implement[] network-based computer systems, such as systems for sending and receiving information over the Internet and/or the Web." (EX1002, ¶12.) In any case, for purposes of the '898 patent, I do not believe the slight differences between these two formulations would change the obviousness analysis. Accordingly, my opinions regarding the obviousness of the challenged claims of the '898 patent would remain the same regardless of whether I applied Dr. Myler's formulation or the one provided in my opening declaration.

II. RESPONSE TO DR. MYLER'S ARGUMENTS ABOUT CLAIM CONSTRUCTION

4. Dr. Myler states in his declaration that he "generally agree[s] that the terms of the challenged claims have their plain and ordinary meaning and that no express constructions are necessary to consider the Grounds." (EX2009, ¶54.) But then he proceeds to provide arguments about what he believes to be the proper interpretation of "**placing the advertising material within web property content of the at least one website**," as well as separate interpretations of constituent terms within this phrase including "**web property content**," "**content**," and "**website**." (EX2009, ¶¶57-73.) Dr. Myler further states in a footnote that to the extent his

understanding of the phrase and the constituent terms "is considered an express construction," he adopts it. (EX2009, ¶57 n.4.) I will therefore respond to the Myler Declaration as advancing express constructions of these terms notwithstanding his earlier statements suggesting the contrary, and will respond to his arguments below.

A. "web property content" / "content"

5. I will start with "**web property content**," as Dr. Myler's interpretation of this term is key to most of his other claim interpretation arguments. He states that this term would have been understood as "a discrete user-accessible file on a website for which revenue is being sought." (EX2009, ¶61.) He further states that web property content "cannot be… a webpage or website generally." (EX2009, ¶62.) In my opinion, Dr. Myler's interpretation of web property content is unsupported.

6. The written description makes clear that the term "**web property content**," as the term implies, simply refers to content of a web property:

> The World Wide Web is especially adapted to conducting electronic commerce and advertising. In an illustrated embodiment of this invention, the primary focus is on the advertising of the internet, which is a 5 billion dollar per quarter industry.
>
> Advertising on the internet 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.

('898, 4:25-34 (emphasis added).) The quoted passage above explains that a target

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audience "visits the web property," which in the context of the World Wide Web in the '898 patent, obviously includes visiting a website. (*See also* '898, *e.g.*, 5:17-19 ("In particular, an impression is a visitor to the website through access to the World Wide Web that visits a screen of the media property.").)

7. Thus, to the extent any construction is required, a person of ordinary skill in the art would have understood "**web property**" as including a website, and thus would have understood "**web property content**" as including content of a website. A person of ordinary skill in the art – and laypersons who had used the Web – would have further understood that "**content**" of a website, of course, can include one or more webpages. ('898, 3:66-4:2 ("The WWW [World Wide Web] service allows a server computer system (i.e., Web server or Web site) to send graphical Web pages or screens of information such as the advertising materials to a remote client computer system **10**.") (emphasis added).)

8. Dr. Myler's opinion that "**web property content**" refers to "a discrete user-accessible file" (EX2009, ¶61) is unsupported. Nothing in the written description or claims refers to web property content as a "file" (let alone a "discrete and user-accessible" one). In fact, the word "file" appears only once in the entire patent, in the wholly unrelated context of explaining how a client identifier "cookie" is stored on a client system. ('898, 3:31-34.) The terms "discrete" and "user-accessible" appear nowhere in the patent.

9. Dr. Myler's argument that "**web property content**" cannot include a webpage, moreover, is internally inconsistent and contradictory with his other arguments. In attempting to distinguish "**web property content**" from a webpage, he states that "'[c]ontent' is specified by claim 1 (and claims 10 and 19) to be capable of (among other things) being placed ***on a website*** and being ***accessible to a user on the website***." (EX2009, ¶62 (emphasis in original).) But this argument undermines Dr. Myler's argument because a webpage was (and remains today) the single most common example of content that is "placed on a website" and that is "accessible to a user" who visits the website.

10. Although I do not believe Dr. Myler's construction is supported, as I will explain in **Part IV** below, his construction would not impact my obviousness opinions. This is because, as discussed in more detail below, an HTML webpage sent from a server to a web browser as disclosed in Nicholas qualifies as a "discrete and user-accessible file," a fact that Dr. Myler admitted during his deposition.

11. Finally, there is no basis to include the final clause of Dr. Myler's construction, "for which revenue is being sought," into a construction of web property content. This phrase is unnecessary as the challenged claims already specify that a share of advertising revenue is collected and transmitted to the web property content owner. ('898, 11:8-11 (Claim 1**[k]**).)

B. "website"

12. Dr. Myler also appears to provide an express definition of "**website**," which he contends would have been understood as "used to describe a particular definable webpage (e.g., www.espn.com) or a group of webpages at a particular domain (e.g., www.espn.com, www.espn.com/nba, www.espn.com/nfl, www.espn.com/nhl)." (EX2009, ¶68.) It is not clear why Dr. Myler is offering an opinion on the meaning of "**website**," as his declaration acknowledges that the prior art cited in my opening declaration, including Nicholas, Yasnovsky, and Manowitz, all describe websites in a manner consistent with the '898 patent. (EX2009, ¶¶69-70.) Dr. Myler further admitted in his deposition that these references disclose websites that satisfy his proposed definition. (EX1027 (Myler Depo.), 31:21-32:2.)

13. In any case, to the extent any construction of "**website**" is warranted, it should not be construed as narrowly as Dr. Myler suggests. It is true that the term "website" (or "web site") has been used casually and by laypersons to refer to specific content such as one or more webpages as displayed to the end user. But persons of ordinary skill in the art who have had a more detailed technical understanding of web technologies would have understood that a "**website**" in the context of the patent includes the computer system (such as a web server on the Web) that provides web pages to client computers. This is expressly recognized in the '898 patent, which treats the term "Web site" as synonymous with a server

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computer system that provides webpages. ('898, 3:66-4:2 ("The WWW service allows a server computer system (i.e., Web server or Web site) to send graphical Web pages or screens of information such as the advertising materials to a remote client computer system **10**.") (underlining added).) This is also consistent with contemporaneous technical dictionaries, including the one below expressly calling out Dr. Myler's layperson usage of website as "common but technically inaccurate":

> **Web site** **1.** In common but technically inaccurate usage, a Web page. **2.** In technically correct usage, one or more computers that are associated with a fully qualified domain name and make content available on the Web. See *fully qualified domain name (FQDN)*.

(*Webster's New World Computer Dictionary* (2003), p.402 (**EX1028**).) The second definition is consistent with a more accurate understanding of what "**website**" means to persons of ordinary skill in the art, and is consistent with the '898 patent as noted above. ('898, 3:66-4:2.) This is also consistent with the term "web **site**," with the term "site" referring to the server(s) or computer(s) that provide the webpages for the site. Accordingly, it was common for persons of ordinary skill in the art to refer to situations in which a user "accesses" or "visits" a website, and which skilled artisan would have understood in the context of the patent as referring to the acts of connecting to the computer or server on the World Wide Web (*e.g.* over the Internet)

to request one or more webpages.

14. In fact, Dr. Myler expressly admits that "the scope of 'website' as used in the art can include, in some instances, the server that hosts the 'website,'" and that "[t]his usage is also mentioned in passing in the '898 Patent's specification," quoting the passage that I discussed above. (EX2009, ¶72 (citing '898, 3:66-4:4).) Although Dr. Myler attempts to brush off the explicit usage of website in the '898 patent as "in passing," he cites nothing in the specification description to support his alternative definition that omits a server. In fact, Dr. Myler testified in deposition that while some people might consider the displayable content and the URL to be a website, "if you dig deeper, you find out there is a server somewhere, and basically, the server is simply serving up a file." (*Id.* at 33:24-34:2.) "And so the server that serves up the file is sometimes called the website because it's an actual physical location somewhere out in the internet." (*Id.* at 34:3-6.) When asked about how a person of ordinary skill in the art would understand "website," he explained that such a person, who is not "just any old person," should "understand these hardware mechanisms in the background." (*Id.* at 35:14-36:7.)

15. Dr. Myler further claims that a server cannot itself perform a number of functions such as "allow[ing] advertisements to be populated on it," and "show[ing] options that are selectable by a client," but this argument misses the point. (EX2009, ¶73.) To be clear, I am not saying that the term "**website**" cannot

be understood as also including webpage content provided by a server that can be displayed to a user. But I disagree that a correct definition of "**website**" in the context of the patent omits a server, as Dr. Myler appears to suggest. That server makes the website content accessible to users by sending one or more web pages (in the form of HTML documents) to user computers for display via their web browsers, as the '898 patent confirms. ('898, 4:19-24 ("When a user indicates to the browser **12** to display a Web page, the browser sends a request to the server computer system an HTML document that defines the Web page. When the requested HTML Document is received by the client computer system, the browser **12** displays the Web page or screen.").) A website cannot exist without the server or computer that provides its webpages – another point expressly conceded by Dr. Myler. (EX1027 (Myler Depo.), 36:8-20.) To the extent any construction of "**website**" is warranted for the '898 patent, therefore, the term should be understood as including at least a server and one or more webpages that may be provided by the server for display in a web browser. ('898, 3:66-4:2.)

C. "placing the advertising material within web property content of the at least one website"

16. Most of Dr. Myler's arguments about this broader phrase were addressed in my discussion of the constituent terms "**web property content**" and "**website**," above. One aspect of Dr. Myler's construction of this phrase that I did

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not separately address above was his proposal to replace "placing" with "inserting." (EX2009, ¶¶57, 63.) It is not clear if there is any difference between "inserting" and "placing" the advertising material as claimed. This issue was discussed extensively during the deposition of Dr. Myler, which suggests there might be some difference in meaning, although Dr. Myler was not clear as to precisely what that difference would be. (EX1027 (Myler Depo.), 23:24-30:7.) In any case, to the extent Dr. Myler intended "inserting" to carry a different meaning than "placing," I find no support for his attempt to change the plain language of the claims. The words "insert" or "inserting" appear nowhere in the '898 patent. The written description of the '898 patent consistently uses the term "place" or "placing" when referring to advertising material, consistent with the claim language. ('898, 5:28-30 ("The advertiser determines in step **72** the cost of the impressions and in step **78** creates and places the advertising materials on a screen of the media project."), 9:21-24 (same) (emphasis added).)

III. RESPONSE TO DR. MYLER'S ARGUMENTS ABOUT CLAIM ELEMENTS [C] AND [D]

17. Dr. Myler next contends that the prior art does not disclose limitations **[c]** and **[d]** of the independent claims, which are directed to providing a plurality of advertising buy options to a client, and obtaining a selection of one or more advertising buy options from the client. Dr. Myler specifically focuses the portion of these limitations relating to a "**selection**" of one or more advertising buy options

that comprise "**a predetermined number of impressions of the advertising material**." (EX2009, ¶¶84-88.)[2]

18. More specifically, Dr. Myler asserts that Nicholas does not disclose selection of a predetermined number of impressions because the user interface shown in Figure 8 shows a text box in which the client can enter its desired number of impressions to purchase. (EX2009, ¶¶85-88; Nicholas, Fig. 8.) Dr. Myler appears to interpret limitations **[c]** and **[d]** as requiring that the client be presented with a webpage listing of a number of different possible numbers of impressions, from which the client can choose. (EX2009, ¶79.) For example, he states that the advertising buy options could include "a list of numbers of impressions (*e.g.*, 10,000, 100,000, 1,000,000, etc.) from which a particular number of impressions can be selected." (*Id.*)[3] Based on this assumption, Dr. Myler argues that "[e]ntering a value

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[2] Dr. Myler also summarizes the prior art disclosures relating selection of advertising buy options that comprise "**at least one website of the respective websites**," he does not appear to present any opinions in his declaration disputing that the prior art discloses this aspect of the claim. (EX2009, ¶¶82-83.) During his deposition, Dr. Myler suggested that he may have opinions that that limitation is not satisfied, but he acknowledged that he had not expressed such opinions in his declaration. (EX1027 (Myler Depo.), 42:6-45:8.) Because Dr. Myler has not provided opinions or analysis on this aspect of the claim (beyond summarizing the analysis in my opening declaration), there is nothing for me to address.

[3] Dr. Myler appears to have backtracked somewhat from this example during his deposition by testifying that limitations **[c]** and **[d]** do not require selection from a group of possible values because "there could be only one selection and that's the

is not selecting a displayed option," and "[n]or is entering a value in real-time selecting a predetermined option." (EX2009, ¶87.)

19. I disagree with Dr. Myler's analysis in several respects.

20. To begin with, Dr. Myler's analysis is inconsistent with the plain claim language, which does not prescribe any user interface details for providing the "**advertising buy options**" to the client, or receiving input from the client. For example, limitation **[c]** merely recites a webpage for "**providing**, **via a graphical user interface of the webpage, a plurality of advertising buy options for selection by a given client accessing said webpage**." Nothing in this claim language imposes restrictions on the structure, organization or functionality of the claimed graphical user interface, let alone specifies how the claimed "**advertising buy options**" must be visually presented to a client via that user interface.

21. As explained in my opening declaration, this limitation is satisfied in Nicholas when the ad selection node **140** generates one or more webpages for the

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one you select." (EX1027 (Myler Depo.), 58:4-11.) This argument appears to undermine his other arguments about the claimed "**selection**" because it is unclear how a user could make any "selection" with respect to the number of impressions if the user has no choice as to the number. Moreover, it is also not clear if even the example in Dr. Myler's declaration (described in the text) would meet limitations **[c]** and **[d]** under his own interpretation, as he could not answer a question during deposition asking how the user interface of Nicholas could be redesigned to satisfy those limitations under his interpretation. (EX1027 (Myler Depo), 49:6-23.)

client providing the "**advertising buy options**," such as the time period, the number of impressions, and the websites for display of the advertisement. (EX1002, ¶¶102-104, 106-107; Nicholas, ¶¶0061-0062, Figs. 8-9.) Nothing in the claim language requires that these advertising buy options be presented in any particular form, for example, as a selectable list.

22. Moving next to limitation **[d]**, it merely recites (in relevant part) "**obtaining… 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… a predetermined number of impressions of the advertising material for users visiting the at least one website**." This limitation likewise does not limit the mechanism by which a selection of the predetermined number of impressions is obtained. It merely recites "**an input in the graphical user interface**," which does not require input in any particular form such as selection from a displayed list. Textual entry of a desired number of impressions as shown in Nicholas provides an example of "**an input**" that provides "**a selection of one or more of the advertising buy options**," *i.e.*, a selection of the number of impressions (an option presented in Figure 8) that the advertiser previously determined was appropriate for the advertisement. (EX1002, ¶109.)

23. Dr. Myler makes much of the fact that limitation **[c]** recites obtaining "**a selection**," but nothing in the claim requires selection from a displayed list of

possibilities. An advertiser who types "1,000" into the text box in Figure 8 of Nicholas is no less making a "**selection**" of a predetermined number of advertising impressions, than an advertiser who selects that same number from a displayed list. This is consistent with Nicholas itself, which uses the word "select" to describe the user's entry of the number of advertising impressions. (Nicholas, ¶0061 ("In one embodiment the user may **select** both the number of impressions and the start and end times. In this embodiment, should the advertisement be served up to the number of impressions prior to the end time, it may automatically stop being served.") (emphasis added).) Dr. Myler expressly admitted that Nicholas discloses making such a selection. (EX1027 (Myler Depo.), 46:24-47:2 ("Q. So you would agree that Nicholas discloses that the user can select the number of impressions for the advertisement; correct? A. Yes.") (emphasis added).)

24. Dr. Myler also attempts to distort use of the word "**predetermined**" in limitation **[d]** by arguing that "entering a value in real-time [is not] selecting a predetermined option." (EX2009, ¶87.) But the claim does not require display or selection of a "predetermined option." The word "**predetermined**" appears only in limitation **[d]**, not in limitation **[c]** in which the advertising buy options are provided to the client via a graphical user interface. Limitation **[d]** merely recites obtaining "**a selection of one or more of the advertising buy options**," comprising "**a predetermined number of impressions**…" That occurs in Nicholas when an

advertiser, through the graphical user interface shown in Figure 8, inputs its selection of the maximum number of impressions for the advertisement. (EX1002, ¶109; Nicholas, ¶0061.) My opening declaration explained that the selection was "**predetermined**" because the number was chosen by the advertiser before it provided it to ad selection node **104**, and further noted that the selection could have been based on a number of factors such as the relevance of the selected websites. (EX1002, ¶¶109, 106 ("For example, if an advertiser selects websites for its advertisement that are highly relevant to its desired target market, the advertiser may wish to increase the number of impressions.").)

25. This is consistent with the written description of the '898 patent, which indicates that "**predetermined**" as used in limitation **[d]** has nothing to do with how the desired number of impressions is obtained from the advertiser via a graphical user interface. It instead refers to the number of impressions specified in the "media buy" provided to the server for the advertising run. ('898, 3:56-59 ("The advertising server **18***c* is programmed to run the ads based on predetermined impressions, length of contract with the advertiser. This data is back ended, i.e. this data is input to the server system **18** via a media buy block **32**.") (emphasis added).) A person of ordinary skill in the art would have understood "**predetermined**" in the context of limitation **[d]** as referring to a number of impressions that the advertiser previously determined for its advertisement. (EX1002, ¶109.) There is nothing in the patent

suggesting that "**predetermined**" has anything to do with the specifics of the graphical user interface that obtains the desired number of impressions.

26. The fact that Nicholas discloses "**selection**" of a predetermined number of impressions is further supported by the fact that the advertiser is not even required to select a specific number of impressions for its advertisement. Nicholas discloses one embodiment in which an advertiser specifies only the start and end time for the advertisement and does not enter a number of impressions. (Nicholas, ¶0061 ("In one embodiment the user may specify only a start and end time during which an ad will be broadcast. In one embodiment the user may select both the number of impressions and the start and end times.") (underlining added).) Under this embodiment, the number of impressions would not be "**predetermined**" because the number of times the advertisement was presented would have been governed instead by the specified duration. But when the advertiser affirmatively chooses to enter a desired number of impressions – the scenario relied upon in my opening declaration – the advertiser has clearly made a selection of advertising buy options that includes "**a predetermined number of impressions**" for the advertisement. (EX1002, ¶¶102, 104, 109.) Nothing more is required by the claims.

27. In a footnote, Dr. Myler also claims that his understanding reflects the ordinary meanings of the words "select" and "option," citing to general dictionaries but providing no further explanation. (EX2009, ¶79 n.7 (citing EX2007, 2008).) In

my opinion, these general dictionaries provide little if any useful guidance in interpreting the language of limitations **[c]** and **[d]**, and if anything, they undermine Dr. Myler's interpretations. For example, EX2007 provides a definition of "option" as "a thing that is or may be chosen." (EX2007, 000003.) This definition does not suggest that an "option" must be chosen from a finite list of previously presented options; the example usage presented is "choose the cheapest options for supplying energy," without regard to whether those options were previously presented to the one doing the choosing. That dictionary shows other exemplary uses of the term, such as "keep (or leave) one's options open" (EX2007, 000003), which confirm that "option" is not limited to closed-end selection from a list of previously presented possibilities. (*See also* EX2008, 000003 (defining "option" as "an act of choosing : exercise of the power of choice").) EX0007 similarly "select" as "carefully choose as being the best or most suitable," with example usages including "students must select their own program." (EX2007, 000004.) Nothing in this definition requires a choice from a previously presented list of possibilities. (*See also* EX2008, 00006 (defining "selection" as "the act or process of selecting : the state of being selected").) Although the words "option" and "select" would include the concept of choosing from a list of previously presented possibilities, this is not a requirement of these words in every usage.

28. A person of ordinary skill in the art may also have found the user

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interface requirements suggested by Dr. Myler less desirable than Nicholas. As noted, Dr. Myler provides an example in which the advertising buy options could include "a list of numbers of impressions (*e.g.*, 10,000, 100,000, 1,000,000, etc.) from which a particular number of impressions can be selected." (EX2009, ¶79.) But this approach limits the flexibility of the system by constraining the advertiser to a fixed set of values chosen by the system designer, regardless of whether those values align with the needs of the advertiser's campaign. For example, Dr. Myler's interpretation would prevent the advertiser from selecting quantities that fall between, exceed, or otherwise differ from the displayed values, even when such quantities are desired by the advertiser. I find nothing in the '898 patent suggesting any attempt to limit the flexibility of the advertiser in such a way. The embodiment in Nicholas, on the other hand, permits the advertiser to select the exact number of impressions for its advertisement.

29. Finally, Dr. Myler does not cite anything in the written description that supports his narrow interpretation of limitations **[c]** and **[d]**. My own review of the written description revealed no such support, as the patent does not disclose any exemplary web pages or provide any detail about any user interface for obtaining input of a number of impressions. The written description merely states that a "media buy" is input to a server based on predetermined impressions, without specifying how the media buy was constructed or how the advertiser's preference as

to the number of impressions was obtained for inclusion in the media buy. ('898, 3:56-59 ("The advertising server **18***c* is programmed to run the ads based on predetermined impressions, length of contract with the advertiser. This data is back ended, i.e. this data is input to the server system **18** via a media buy block **32**.") (emphasis added).) During his deposition, in fact, Dr. Myler agreed the specification did not disclose any exemplary web pages or otherwise disclose the mechanics of how the predetermined number of impressions are obtained from the client. (EX1027 (Myler Depo.), 37:7-38:16.) Dr. Myler's declaration cites to column 6, lines 16-23 of the '898 patent (EX2009, ¶78), but this passage provides no insight into the details (or even existence) of any graphical user interface for obtaining the specific number of impressions from the client. Dr. Myler admitted as much in deposition. (EX1027 (Myler Depo.), 40:5-9 ("Q. Going back to the end of Paragraph 78, you're referring to column 6, line 16 to 23. Does that passage describe how the user interface for presenting the advertising buy options should be designed? A. Oh, it doesn't give specifics of the design.").) That passage has nothing to do with the selection recited in limitation **[d]** because the passage merely discusses a sales team of a media property (such as a website) marketing advertising impressions to potential advertisers. ('898, 5:17-25, 6:19-23.) That has nothing to do with the mechanics of how *advertisers* make selections about presentation of their advertisements on websites, such as selection of the websites on which their

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advertisements may be placed and the desired number of impressions.

IV. RESPONSE TO DR. MYLER'S ARGUMENTS ABOUT CLAIM ELEMENT [F]

30. Dr. Myler next argues that the prior art does not disclose limitation **[f]**, and many his arguments largely rely on his erroneous proposed constructions of "**placing the advertising material within web property content of the at least one website**," and the constituent terms "**web property content**" and "**website**." (EX2009, ¶¶92, 98.) Because these constructions are incorrect for the reasons stated in **Part II** above, Dr. Myler's arguments relying on them should be rejected.

31. Dr. Myler's arguments about limitation **[f]** also mischaracterize my opening declaration. Dr. Myler suggests that, in applying the prior art, I limited the "**at least one website**" of limitation **[f]** to include only content provider node **130** in Nicholas. (EX2009, ¶95.) Even if this accurately depicted my mapping of the prior art (it does not), for the reasons explained in **Part II** above, this would not distinguish Nicholas. This is because, as explained, "**website**" properly interpreted includes the server or computer that provides the webpages for the site. Nicholas makes clear that content provider node **130** "includes one or more servers **131** for conventionally communicating with the other nodes of telecommunication system **100**," and can provide information in a number of forms "such as, for example, a static or dynamic web page," among others. (EX1002, ¶46 (quoting Nicholas, ¶0045).)

32. In any event, my analysis of limitation **[f]** did not limit the claimed

website to only content provider node **130**. My analysis cited to content provider node **130** because it is responsible for providing the HTML for the webpage, including the HTML that causes placement of advertising material to appear on a webpage of the website. (EX1002, ¶¶125-126.) To the extent Dr. Myler suggests that I did not rely on displayed content of the website, he is plainly incorrect. In the same section of my declaration cited by Dr. Myler, I explained that "[t]he advertising material will then be populated within the web property (e.g., banner advertisement location on the webpage) by being presented to the user when the website is displayed." (EX1002, ¶126 (emphasis added).) I then pointed to and reproduced Figure 3 from the Nicholas '297 provisional, and explained that it "shows an example website page populated with advertising material (305, an ad for Best Buy) within the site's web property content." (EX1002, ¶126; *see also id.* ("FIG. 3 [of Nicholas] illustrates one embodiment of an advertising being served into the consumer web site of the FIG. 2 advertisement.") (quoting EX1013, 004:11-12) (emphasis added).) I also noted this at my deposition. (EX2004, 58:1-59:8.) My opening declaration thus described the claimed "**website**" in Nicholas by reference not only to content provider node **130**, but also by reference to the webpage displayed to the user on which the advertisement is placed. (EX1002, ¶126.)

33. Dr. Myler next argues that my analysis did not tie the claimed "**the at least one website**" in limitation **[f]** to the "**at least one website**" selected in

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limitation **[d]**. (EX2009, ¶96.) But this is incorrect; my opening declaration made clear that the at least one website selected for display in limitation **[f]** would have been based on the websites previously selected as part of the "**advertising buy options**" in limitation **[d]**. (EX1002, ¶127.) As I explained in connection with both limitations **[d]** and **[f]**, Nicholas discloses that the advertiser selects "the web sites or other network channels over which the advertisement may be displayed." (Nicholas, ¶0062 (quoted in EX1002, ¶¶108, 127) (emphasis added).)

34. Dr. Myler next argues, in reliance on his erroneous construction of "**web property content**" addressed in **Part II** above, that Figure 3 of the Nicholas provisional does not teach "an advertisement placed 'within web property content of the at least one website' as required by claim element **[f]**." (EX2009, ¶98.) But as explained in **Part II**, "**web property content**" includes a webpage, and Figure 3 of the Nicholas provisional plainly shows an advertisement **305** for Best Buy placed on a webpage of the Green Bay Packers website (http://www.packers.com/index.html). (EX1013, 0037 (Fig. 3).)[4] The provisional further explains that "FIG. 3 is an

[4] The webpage shown in Nicholas Figure 3 is identified as "index.html" as shown in the browser address bar. "index.html" was widely recognized as the default filename for the home page of a website. (*See also* EX1027 (Myler Depo.), 33:21-34:6 ("But if you dig deeper, you find out there is a server somewhere, and basically, the server is simply serving up a file. And that this is – the default is indexed on HTML [sic; index.html] so that file gets served up.").)

example of one possible implementation of the ad serving mechanism… detailing the interaction between a consumer web site 300, and an ad request 305. Consumer web site 300 is a standard web site made up of HTML pages accessible on the Internet by web browsers such as those commercially available by Netscape, Microsoft, and Opera." (EX1013, 0010, 8:17-21 (emphasis added).)

35. Finally, even if Dr. Myler's erroneous constructions were adopted, they would not distinguish the prior art. As noted, he interpreted "**web property content**" as "a discrete user-accessible file on a website for which revenue is being sought." (EX2009, ¶61.) A person of ordinary skill in the art would have appreciated that each webpage in Nicholas on which an advertisement is displayed qualifies as "a discrete user-accessible file on a website." This is because each webpage on a website includes at least an HTML file that defines the structure of the page, and which is accessible to a user through its web browser. Dr. Myler agreed on this point in deposition. (EX1027 (Myler Depo.), 19:18-23 ("Q. [Y]ou're aware that web pages are typically presented to a user as HTML files; correct? THE WITNESS: Yes. Per the interpretation of an HTML file.") (objection omitted).) This is further supported by Figure 3 of the incorporated Nicholas provisional, which shows a browser displaying the "index.html" file through the URL <http://www.packers.com/index.html> in the address bar of the user's web browser. (EX1013, 0037 (Fig. 3).) The webpage in Nicholas therefore provides "a discrete

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user-accessible file on a website," under Dr. Myler's construction – a point Dr. Myler himself does not dispute. (EX1027 (Myler Depo.), 20:17-19 ("Q. And is an HTML web page file, is that a discrete file? A. Yes."), 18:9-14 ("Q. So if they have a URL for the file and they can access it via a web browser, that would be a user-accessible file; correct? A. Yes. As opposed to one that isn't accessible.") (objection omitted).) And finally, the webpage in the prior art is "for which revenue is being sought," under Dr. Myler's construction, because when the webpage displays the advertisement, it generates an impression that can result in revenue being provided to the web property content owner, as explained in my opening declaration. (EX1002, ¶¶129, 144-146.)

V. RESPONSE TO DR. MYLER'S ARGUMENTS ABOUT CLAIM ELEMENTS [G] AND [H]

36. Dr. Myler next argues that the prior art does not disclose limitations **[g]** and **[h]**, and his arguments begin by relying on the erroneous constructions of "**web property content**" and "**website**," addressed in **Part II** above, and on his erroneous assumption that my declaration limited the claimed "**website**" to only content provider node **130**, addressed in **Part IV** above. (EX2009, ¶¶104, 105.) Because these arguments are incorrect for the reasons stated above, Dr. Myler's reliance on them for limitations **[g]** and **[h]** should be rejected.

37. Dr. Myler next argues that my declaration cites only to a "general teaching of impression tracking," but does not show how the tracking would be

applied "on a content-specific basis." (EX2009, ¶106.) This argument is incorrect; my discussion about limitation **[g]** quoted from multiple passages in Nicholas to demonstrate that impressions being monitored were specifically for impressions of the advertising material. (EX1002, ¶¶129-131 (citing Nicholas, ¶¶0061-0062, 0114, 0124).) Dr. Myler does not discuss any of those disclosures.

38. Dr. Myler next attacks the combination of Nicholas with Error (EX2009, ¶107), but he makes no attempt to address the detailed description of the Nicholas-Error combination set forth in my opening declaration, or the numerous motivations to combine provided therein. (EX1002, ¶¶133-138.) He also appears to be arguing that the prior art only tracks impressions of a webpage generally and not advertising material on the webpage. (EX2009, ¶107 ("Impressions of a webpage may be obtained when the webpage is loaded into a user's browser, while impressions of content on the webpage may not be obtained until the content is loaded separately from the webpage. These are different concepts.").) But this ignores the analysis in my opening declaration explaining that, under the Nicholas-Error combination, the advertisement selected by ad selection node **140** would have included a single-pixel tracking image <u>in the advertisement itself</u>, which would have been used to determine that <u>the advertisement impression itself</u> was valid. (EX1002, ¶136.)

39. Dr. Myler also contends that I did not explain how the Nicholas-Error

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combination would improve the content selection node **130** of Nicholas. (EX2009, ¶107.) But this argument is inapposite because it is ad selection node **140** in Nicholas – not content provider node **130** – that selects the advertisement placed on the web property content of the website, as I clearly explained in my opening declaration. (EX1002, ¶¶125, 136.) My opening declaration nevertheless explained that the combination with Error "would have improved the system by ensuring that advertisers only pay for ads that are actually delivered to end users." (EX1002, ¶138 (emphasis in original).) Dr. Myler does not address, let alone dispute, this or any of the other motivations to combine in my opening declaration.

VI. RESPONSE TO DR. MYLER'S ARGUMENTS ABOUT CLAIM ELEMENT [K]

40. Dr. Myler's arguments about limitation **[k]** attempt to rewrite the claim language to change "**a number of valid impressions**" to "**a plurality of valid impressions**." (EX2009, ¶114.) But Dr. Myler cites to nothing in the claim or written description of the '898 patent suggesting that "a number of valid impressions" cannot be a single valid impression.

41. The claim plainly recites "**a number of valid impressions**," and one (1) is obviously "a number." (EX1002, ¶156.) I agree that "**a number**" could include more than one impression, but this is not a requirement. Had the patentee intended to require a plurality of valid impressions, he would have said so in the claims. For example, limitation **[c]** recites "**a plurality of buy options**," and the

word "plurality" appears more than nine times in the written description in reference to "a plurality of advertising buys," a "plurality of advertisers," and a "plurality of client systems." ('898, Abstract, 3:34-38.) The fact that patentee did not recite a "plurality of valid impressions," despite clearly knowing how to specify a "plurality" of something, is powerful evidence that limitation **[k]** should not be interpreted to require a plurality of impressions. Dr. Myler's attempt to rewrite the claim should be rejected.

42. Dr. Myler also does not persuasively address my alternative argument that it would have been obvious to adapt the Nicholas-Mayadas combination to perform the electronically collecting step of limitation **[k]** after a larger number of impressions, such as a group of 1,000 impressions or after all impressions have been delivered. (EX1002, ¶¶147-150.) Dr. Myler claims that such an adaptation would have been incompatible with Mayadas because "its payment-per-ad-service is an important feature to reduce risk." (EX2009, ¶117.) He cites Paragraph 0038 of Mayadas for this proposition, which discusses use of an escrow account that allows an advertiser to recover unused funds if the advertisement campaign is not going as planned. (Mayadas, ¶0038.) But this risk minimizing feature is provided through use of the escrow account – which is unrelated to the frequency of revenue collection. The escrow in Mayadas reduces risk to the advertiser by separating its funds so they are not transferred to publishers until after advertisements are run.

That protection exists regardless of whether revenue is deducted from the escrow account after each impression or after a larger block of impressions (*e.g.* after each 1,000 impressions or after all impressions selected by the advertiser). If anything, collecting revenue less frequently than after each impression (for example, after each 1,000 impressions or after completion of all impressions have been delivered) would have improved the risk reducing feature of the escrow account in Mayadas by leaving money in the escrow account for a longer period of time. For example, if there was an issue as to whether previous advertising impressions were validly delivered, the advertiser would have greater recourse because fewer funds may have been withdrawn from the escrow account at the time the issue was discovered on account of the reduced collection frequency.

43. Dr. Myler also says that I did not cite "a single additional reference that teaches payment based on a larger number of valid impressions." (EX2009, ¶117.) But he ignores my citations to Nicholas, which discloses that advertising impressions are priced and packaged based on well-known CPM (cost-per-thousand ("mille")) model. (EX1002, ¶¶147-149; Nicholas, ¶¶0087, 0122.) The '898 patent itself confirms that CPM pricing was known. ('898, 6:16-18 ("On the internet, the impression cost is based on guaranteeing/providing to the user on per thousand impressions or CPM.").) CPM is not simply a pricing framework, it defines a commercial unit in the delivery of Internet advertising impressions. It thus would

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have been obvious for collection of revenue to attach to delivery of 1,000 ads, rather than collection based on some lesser fractional progress. (EX1002, ¶¶147-149.) As I also explained, it would also have been obvious to collect revenue after all impressions were delivered. (EX1002, ¶148 ("These two intervals would have been among a small number of potential times when the electronic collection from the advertiser would naturally have been expected to occur, and would have beneficially reduced the multiple billing and collection steps required to collect revenue after delivery of each impression.").)

44. Dr. Myler did not address these arguments. I note that while Dr. Myler has technical experience relating to aspects of Internet technologies, he admitted in deposition that he had no experience with Internet advertising prior to his work on this case, other than as an end user. (EX1027 (Myler Depo.), 9:18-10:5.) It is thus not clear to me that he has sufficient qualifications to opine on whether it would have been obvious to adapt the Nicholas-Mayadas system to collect revenue at different intervals, such as based on CPM or after the advertising run is complete.

VII. RESPONSE TO DR. MYLER'S ARGUMENTS ABOUT CLAIM 8

45. Dr. Myler attacks the combination of Nicholas and Yasnovsky by referring back to his arguments about limitation **[d]** of the independent claim, which relate to whether Nicholas discloses selection of advertising buy options comprising a "**predetermined number of impressions**." (EX2009, ¶121.) Because Dr.

Myler's opinions about limitation **[d]** are incorrect, this argument fails.

46. Dr. Myler also provides a single sentence argument that Yasnovsky "teaches only editing a campaign budget, not impressions, let alone seeking an increase of impressions offered to an advertiser." (EX2009, ¶121.) But I fully addressed this issue in my opening declaration and explained in detail why it presented no meaningful difference for obviousness purposes (for example, because budget and the number of impressions for an advertising campaign are often correlated). (EX1002, ¶178.) Dr. Myler does not address any of these arguments.

V. CONCLUSION

47. In signing this Declaration, I recognize that the Declaration will be filed as evidence in a contested case before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I also recognize that I may be subject to cross-examination in this proceeding. If required, I will appear for cross-examination at the appropriate time. I reserve the right to offer opinions relevant to the invalidity of the challenged claims at issue and/or offer testimony in support of this Declaration.

48. I hereby declare that all statements made herein of my own knowledge are true and that all statements are made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or

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both, under 18 U.S.C. § 1001.

Dated: February 2, 2026

Respectfully submitted,



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