

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner

v.

BRODTI INC,
Patent Owner

Case No. IPR2025-00472
Patent No. 11,416,898

**PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW
UNDER 37 C.F.R. § 42.75**

TABLE OF CONTENTS

I. INTRODUCTION	1
II. THE BOARD MISCONSTRUED CLAIM ELEMENTS 1(C) AND 1(D).....	2
A. The Claims Require Selection of Advertising Buy Options that Were Previously Provided by the Processors.	2
B. Nicholas Does Not Provide a Predetermined Impression Option for Selection.	5
III. THE BOARD’S ALTERNATIVE BASIS RELIES ON A NEW AND UNSUPPORTED OBVIOUSNESS THEORY.....	6
A. The Petition Did Not Propose Replacing Nicholas’s Unrestricted Field with Preset Impression Quantities.	6
B. The Board Identified Technical Capability, Not a Supported Motivation, and Petitioner’s Evidence Weighs Against the Board’s Proposed Modification of the Prior Art.	7
C. Under the Correct Construction, the Board’s New Theory Is the Only Asserted Basis for Curing Nicholas’s Deficiency.	8
IV. THE BOARD ERRED IN FINDING THAT MAYADAS SATISFIES LIMITATION 1(K)	9
A. The Correct Construction of “a Number of Valid Impressions” Requires More Than One Impression.	9
B. Mayadas Collects Revenue After Each Qualifying Action, Not After a Number of Valid Impressions Is Met As Required by 1(k).	12
V. THE ALTERNATIVE OBVIOUSNESS THEORY FOR ELEMENT 1(k) THAT THE BOARD ACCEPTED IS LEGALLY DEFICIENT.	13
A. The Board’s Obviousness Theory Relied on Pricing Units Rather than Intervals for Collection of Advertising Revenue.	13
B. The Generalized Efficiency Rationale Does Not Support Changing Mayadas’s Express Collection Operation.	14
VI. CONCLUSION.....	15

TABLE OF AUTHORITIES

CASES

In re Magnum Oil Tools Int'l, Ltd.,
829 F.3d 1364 (Fed. Cir. 2016) 6

KSR International Co. v. Teleflex Inc.,
550 U.S. 398 (2007) 8

REGULATIONS

35 U.S.C. § 316(e) 6

I. INTRODUCTION

Patent Owner requests Director Review because the Board misconstrued two claim elements and relied on unsupported modifications of the prior art. The challenged claims are directed to methods, programs, and systems for offering website advertising buys with predetermined impression quantities, monitoring valid impressions, and collecting advertising revenue when the predetermined quantity is reached. The Board erred with respect to two groups of claim elements: (A) elements 1(c) and 1(d), and (B) element 1(k).

The Board first erred by construing *elements 1(c) and 1(d)* to cover an advertiser's manual entry of a value into a blank field as selection of a system-generated advertising buy option. The Board compounded its error by introducing its own alternative obviousness theory to satisfy the correct construction, and the record lacks a reasoned and supported motivation for the proposed change.

The Board also erred in its construction and application of *element 1(k)*. The Board misconstrued element 1(k) to permit collection after one impression, while the claimed sequence confirms revenue must be collected after multiple impressions. The Board then relied on an alternative obviousness theory aimed at satisfying the correct construction that conflated standard pricing options with the timing of advertising revenue collection, and the record lacks evidence showing a POSA would have been motivated to make the changes to the prior art necessary to arrive

at the claimed invention.

Either of the element 1(c)/1(d) and element 1(k) errors is dispositive and warrants Director Review.¹

II. THE BOARD MISCONSTRUED CLAIM ELEMENTS 1(C) AND 1(D).

A. The Claims Require Selection of Advertising Buy Options that Were Previously Provided by the Processors.

The Board erred in construing the claims to cover an advertising buyer's mental step of deciding how many impressions to purchase and manually entering that value into a blank field. Final Written Decision (FWD), Paper 49, 37. That construction ignores the interplay of limitations 1(c) and 1(d). Limitations 1(c) and 1(d) recite two successive operations:

[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***

¹ While only claim 1 is addressed herein, the arguments equally apply to claims 10 and 19 (and all dependents) due to their commensurate limitations. FWD at 50-51.

predetermined number of impressions of the advertising material for users visiting the at least one website.

Each limitation requires the processors to perform distinct steps. Under 1(c), the processors generate a webpage that provides “a plurality of advertising buy options for selection.” Under 1(d), the processors obtain the client’s “selection” of the one or more advertising buy options. Thus, the options selected under 1(d) must be options that the processors provided for selection under 1(c). *See* Ex. 2009 ¶¶ 78–80; Patent Owner Response (POR), Paper 35, 22–23; PO Sur-reply, Paper 45, 3–5.

Element 1(d) further defines what the selected one or more advertising buy options collectively must comprise: a predetermined number of impressions. The placement of that feature in 1(d) does not sever the element’s relationship to 1(c) or permit the selected options to differ from the advertising buy options generated and provided under 1(c). Rather, 1(d) recites required content of the “selected” options.

This construction gives effect to each part of the claim. The processor(s) present multiple advertising buy options for selection; the client selects from among the plurality of options presented by the processor(s); and the processors obtain that selection through the graphical user interface. An interpretation that permits the client to create a material term of the provided options by filling in a blank field to identify its desired number of impressions before selecting that option collapses the separately recited acts of elements 1(c) and 1(d) and deprives “the advertising buy

options” of its antecedent function.

This construction does not require a particular interface, such as a dropdown menu or radio buttons. The distinction is between selecting an option provided by the processors versus creating a new option through unrestricted user entry.

The specification also confirms the sequence required by the claim language. It explains that “[a] sales team of the company then markets the impressions on the website to the advertiser for a set number of impressions and cost in a media buy,” which “sets the terms and cost of the advertising provided by the media property to the advertiser.” Ex. 1001 at 6:16–23. Thus, the disclosed media buy—including its set number of impressions—is defined and offered before the advertiser purchases it just as required by elements 1(c) and 1(d). *See* Ex. 2009 ¶¶ 21–28, 88.

The Board characterized Patent Owner’s construction as imposing additional requirements concerning “who” must predetermine the impression quantity and “why” it must be predetermined. FWD at 36–37. That is not the construction Patent Owner advances. The claims do not require the web property content owner personally to determine the quantities or require that the options guarantee any particular fundraising result. They require *the processors* to generate a webpage that provides advertising buy options for selection and then obtain the advertiser’s selection of “the advertising buy options,” with the selected one or more options comprising a predetermined number of impressions. Thus, regardless of “who”

initially supplies the parameters to the processors, the system must generate and provide advertising buy options that include the predetermined number of impressions before the advertiser selects them.

B. Nicholas Does Not Provide a Predetermined Impression Option for Selection.

Nicholas does not disclose the sequence required by limitations 1(c) and 1(d). Figure 8 presents a blank field labeled “Enter the Number of Impressions Purchased.” Ex. 1003, Fig. 8. Nicholas explains that “[t]he user may specify the number of impressions in form input 221.” *Id.* ¶ 61. It does not disclose that the system generates advertising buy options with a predetermined number of impressions for the advertiser to select. Instead, the advertiser performs the mental step of deciding the number of impressions it wants to purchase, which it then manually enters into the blank field and submits to the system.

Petitioner’s own expert confirmed this operation. Dr. Crovella explained that the number is supposedly “predetermined” because it “was determined by the advertiser” and entered through the user interface before the system obtained the advertiser’s selection. Ex. 1002 ¶ 109; Petition (Pet.), Paper 2, 27. Thus, according to Petitioner, the value that allegedly satisfies 1(d) comes from the advertiser’s mental determination and unrestricted entry—not from the advertising buy options generated and provided under 1(c). But the claims do not merely require an advertiser to choose a number. The claims require the processor(s) to generate a

webpage that provides an advertising buy option for selection under 1(c), which is then selected under 1(d). Therefore, Nicholas’s disclosure of the entry of advertiser-defined campaign data does not satisfy the requirement for selection of a system-generated advertising buy option comprising a predetermined impression quantity.

III. THE BOARD’S ALTERNATIVE BASIS RELIES ON A NEW AND UNSUPPORTED OBVIOUSNESS THEORY.

To backstop its obviousness ruling, the Board offered an alternative theory. But that theory (A) was advanced by the Board rather than Petitioner; (B) lacked a supported motivation; and (C) was contradicted by Petitioner’s own evidence.

A. The Petition Did Not Propose Replacing Nicholas’s Unrestricted Field with Preset Impression Quantities.

As an alternative basis for its decision, the Board proposed a modification of Nicholas that Petitioner never offered or argued. The Board held that, even under Patent Owner’s construction, “presenting an advertising client with pre-populated options for impression numbers (rather than text-entry field(s) for such numbers)” would have been obvious. FWD at 38–39. But *Petitioner never advanced that theory*—it was introduced by the Board in the FWD. It was improper for the Board to propose and adopt a new obviousness theory that Petitioner never offered. *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016) (explaining that “the Board must base its decision on arguments” advanced by Petitioner and to which Patent Owner had a chance to respond); 35 U.S.C. § 316(e). Because the

Petitioner never advanced the modification adopted by the Board, Patent Owner received neither the notice nor the opportunity to respond required by the statutory framework, and the Board’s alternative basis was improper.

B. The Board Identified Technical Capability, Not a Supported Motivation, and Petitioner’s Evidence Weighs Against the Board’s Proposed Modification of the Prior Art.

The Board reasoned that “pre-populated options for impression numbers” would have been obvious because Nicholas uses dropdown menus, radio buttons, and prepopulated options for dates, times, websites, and content categories. FWD at 38–39. That evidence shows only that a POSA could have displayed preset impression quantities. It does not explain why a POSA would replace Nicholas’s unrestricted entry field with preset quantities.

Petitioner’s own evidence weighs against that modification. In response to Dr. Myler’s example of preset impression quantities, Dr. Crovella explained that the claimed approach “limits the flexibility of the system by constraining the advertiser to a fixed set of values chosen by the system designer,” which could prevent advertisers from selecting the quantities they desire. Ex. 1026 ¶ 28. The Board nevertheless adopted the very modification Petitioner’s expert criticized, without identifying any problem it would solve, any technical or commercial benefit it would provide, or any reason a POSA would sacrifice Nicholas’s flexibility.

The availability of dropdown menus and radio buttons cannot supply the

missing motivation. Obviousness requires “some articulated reasoning with some rational underpinning” connecting the evidence to the proposed modification. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). The Board established that preset impression quantities were technically feasible, but not why a POSA would have modified Nicholas to use them despite their identified disadvantage. The Board’s alternative theory therefore cannot sustain the unpatentability determination.

C. Under the Correct Construction, the Board’s New Theory Is the Only Asserted Basis for Curing Nicholas’s Deficiency.

The Board’s new theory was not incidental to its decision. Under the proper construction, Nicholas’s unrestricted field does not satisfy limitations 1(c) and 1(d) because it permits the advertiser to create an impression quantity rather than select an advertising buy option generated and provided by the system. Petitioner’s express-disclosure theory therefore fails.

The Petition’s alternative modification does not cure that deficiency. It proposed placing Nicholas’s existing website-selection options and impression-entry field on a single webpage. Pet. 25–26. Consolidating those fields would leave the relevant operation unchanged: the advertiser would still determine any desired impression quantity and enter it into an unrestricted field. The system still would not generate and provide advertising buy options collectively comprising a predetermined impression quantity for the advertiser to select.

That is why the Board developed a new obviousness theory built upon a different modification—replacing Nicholas’s text-entry field with “pre-populated options for impression numbers.” FWD at 38–39. Because the Petition neither advanced that modification nor established a reason to make it, and Petitioner’s own evidence identified a reason not to make it, the Board’s alternative theory cannot sustain the determination that the challenged claims are unpatentable.

IV. THE BOARD ERRED IN FINDING THAT MAYADAS SATISFIES LIMITATION 1(K)

A. The Correct Construction of “a Number of Valid Impressions” Requires More Than One Impression.

The Board construed limitation 1(k)’s requirement that advertising revenue be collected “based on determining a number of valid impressions are met” to encompass collection after detection of a single valid impression. FWD at 46–47. That construction considers the word “number” divorced from the rest of the language of element 1(k) and the sequence of operations recited in elements 1(g)–1(k) and improperly ignores the use of the plural form of “impressions” in the claim. Those elements distinguish determining the validity of an individual impression from monitoring and acting upon an accumulated number of valid impressions.

First, element 1(k) uses the word “impressions” in its plural form. A plain reading of the word “impressions” is that it means more than one. POR at 35–36; Ex. 2009 ¶ 114.

Second, the surrounding claim language confirms that more than one impression must be counted before advertising revenue is collected. Element 1(g) requires “monitoring . . . a number of impressions.” Element 1(h) then requires “determining . . . whether an impression . . . is valid.” After the validity of individual impressions has been determined, element 1(i) requires “determining . . . that the number of valid impressions is greater than or equal to the predetermined number of impressions” referenced in element 1(d). Limitations 1(j) and 1(k) then require the processors to cease populating the advertising material and collect revenue based on determining that “a number of valid impressions are met.” This sequence establishes two distinct operations: determining whether an individual impression is valid and tracking the resulting number of valid impressions to determine when the required number has been “met.”

As Patent Owner explained, “if the system were meant to operate based on the detection of a single impression, there would be no need to track a number as a direct action could be taken based on the detection of a single impression.” POR at 35–36; Ex. 2009 ¶ 114; *see also* PO Sur-reply at 24–25. The Board’s effort to read the claims onto Mayadas improperly disconnects the collection step from the accumulated-count determination recited in the neighboring limitations. Under the Board’s construction, the same event used to determine under 1(h) that a single impression is valid can trigger collection under 1(k), without using the accumulated

count to determine that “a number of valid impressions are met.”

The Board’s construction also disconnects element 1(k) from the predetermined number introduced in element 1(d) and used in element 1(i). Element 1(i) requires determining when the number of valid impressions has reached the predetermined number selected for the campaign. The Board’s construction nevertheless permits the collection determination under element 1(k) to be based on a single valid impression rather than the accumulated count compared with the predetermined number under element 1(i). For a campaign involving 1,000 predetermined impressions, for example, element 1(i) determines whether 1,000 valid impressions have accumulated, while the Board treats one impression as the relevant “number” for collection under element 1(k). That construction improperly treats the two successive determinations as involving unrelated numbers.

The Board’s analysis in support of its construction involves consideration of phrases that appear nowhere in the claims. For example, the Board reasoned that one is “a number” and the phrases “one of the valid impressions” and “two of the valid impressions” both use the plural phrase, purportedly demonstrating that “valid impressions” can refer to a single impression. FWD at 47. But those examples employ language that (1) does not appear in the claims, and (2) performs a different function. The Board’s hypothetical phrase “one of the valid impressions” serves to identify a single member of a larger group; it does not mean that “a number of valid

impressions are met” when a single impression occurs. This interpretation also ignores the context offered by preceding elements 1(d) and 1(g)–1(j).

The Board also incorrectly found that Patent Owner contradicted itself by acknowledging that the hypothetical phrase “one or more valid impressions” uses the plural form of “impressions” and still includes one. *See* FWD 47 at n.7. The phrase “one or more”—which the claims never use to quantify impressions—would expressly indicate that “one” is all that is required. Element 1(k) does not use that phrase; instead, it requires determining that “a number of valid impressions are met.” Conversely, the claims do use “one or more” in other elements where one is sufficient, further demonstrating that element 1(k) requires the determined “number of valid impressions” to be more than one.

Read in the context of the claim as a whole, “determining a number of valid impressions are met” requires a determination based on multiple valid impressions.

B. Mayadas Collects Revenue After Each Qualifying Action, Not After a Number of Valid Impressions Is Met As Required by 1(k).

Under the correct construction, Mayadas does not satisfy element 1(k). Mayadas states that “[a]n amount from the escrow account is paid out *each time* an advertisement is served.” Ex. 1005 ¶ 38 (emphasis added). It further explains that “[*e]ach time* the advertisement is served and the specified action is taken by the consumer, the advertiser’s escrow account is debited for the one action.” *Id.* ¶ 43 (emphasis added). The publisher is likewise remitted payment for successfully

serving that particular advertisement to a member of the target audience. *Id.* ¶ 37. Mayadas therefore triggers collection and payment in response to each individual qualifying action.

Mayadas does not disclose accumulating multiple valid impressions, determining a threshold has been met, or collecting revenue based on that determination. Instead, Mayadas takes direct action after each qualifying event. POR at 35–36; Ex. 2009 ¶¶ 114–115. Under the correct construction, Mayadas’s transaction-by-transaction operation does not satisfy the claim.

V. THE ALTERNATIVE OBVIOUSNESS THEORY FOR ELEMENT 1(k) THAT THE BOARD ACCEPTED IS LEGALLY DEFICIENT.

A. The Board’s Obviousness Theory Relied on Pricing Units Rather than Intervals for Collection of Advertising Revenue.

The Board alternatively found it would have been obvious to modify Mayadas to collect revenue after 1,000 valid impressions because cost per thousand impressions, or “CPM,” was a known pricing metric. FWD at 46, 48–49. The Board reasoned that CPM “defines a commercial unit in the delivery of Internet advertising impressions,” thereby making it obvious to collect revenue after delivery of 1,000 impressions. *Id.* at 48–49. But that reasoning conflates the unit used to calculate price with the event that triggers collection of advertising revenue.

Nothing in Nicholas states that funds are collected only after delivery of each set of one thousand impressions. A CPM rate can be used to tabulate charges while

payment is collected after each impression. The pricing unit does not dictate the collection interval, as shown by Mayadas’s express teaching of collecting revenue after each qualifying action despite CPM allegedly being commonly known. Ex. 1005 ¶¶ 38, 43. Mayadas therefore distinguishes the volume defining the campaign from the event triggering collection.

As Patent Owner explained, “just because ads are priced on a volume basis does not make it obvious that a separate payment will not be made until a particular number of valid impressions has been reached.” POR at 36–37; Ex. 2009 ¶ 117; *see also* PO Sur-reply at 25–26. CPM pricing does not supply a reason to replace Mayadas’s per-action collection operation with deferred collection after a larger number of impressions, and this theory fails to support obviousness.

B. The Generalized Efficiency Rationale Does Not Support Changing Mayadas’s Express Collection Operation.

The Petition asserted that collecting after every 1,000 impressions—or after all purchased impressions were delivered—would “improve the performance and simplify the system by reducing the number of times the collection step must be performed.” Pet. 51; Ex. 1002 ¶¶ 148–149. But the generalized proposition—untethered to Mayadas’s teachings—that fewer transactions may simplify a system does not explain why a POSA would change the collection operation selected by Mayadas. Petitioner identified no technical problem caused by Mayadas’s per-action operation and provided no evidence that transaction frequency impaired

performance or connecting CPM pricing with deferred collection.

The Board also credited Petitioner's Reply argument that less frequent collection might leave a larger balance in escrow and increase the amount the advertiser could recover if something went wrong. FWD at 48. But a larger balance temporarily remaining in escrow is merely a consequence of delaying collection; it does not explain why a POSA would select that delay or choose either of Petitioner's proposed collection intervals. The same logic would favor postponing every payment indefinitely. It also considers only the advertiser's remaining balance while ignoring that Mayadas deliberately compensates the publisher, consumer, and data aggregators in connection with each qualifying action. Ex. 1005 ¶¶ 37, 38, 43.

At most, Petitioner established that deferred collection was technically possible and would reduce the number of collection transactions. It did not provide a sufficiently supported reason for a POSA to replace Mayadas's express per-action collection operation with collection after 1,000 impressions or completion of the campaign. The Board's alternative theory therefore cannot sustain its finding that element 1(k) would have been obvious.

VI. CONCLUSION

Each of these materially affected the Board's ultimate determination of unpatentability, and warrant Director Review to vacate the FWD and enter judgment that Petitioner failed to prove any challenged claim unpatentable.

Date: August 6, 2026

Respectfully submitted,

AVANTECH LAW, LLP
80 S 8th St, Suite 900
Minneapolis, MN 55402
(312) 487-2185

/Eric A. Zelepugas/
Eric A. Zelepugas
Registration No. 73,302
Lead Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW UNDER 37 C.F.R. § 42.75** was served electronically via e-mail on August 6, 2026, in its entirety on the following counsel of record for Petitioner:

Heidi Keefe (Lead Counsel)
Andrew Mace (Backup Counsel)
Mark Weinstein (Backup Counsel)
Reuben Chen (Backup Counsel)
hkeefe@cooley.com
amac@cooley.com
mweinstein@cooley.com
rchen@cooley.com

Date: August 6, 2026

Respectfully submitted,
AVANTECH LAW, LLP
80 S 8th St, Suite 900
Minneapolis, MN 55402
(312) 487-2185

/Eric A. Zelepugas/
Eric A. Zelepugas
Registration No. 73,302
Lead Counsel for Patent Owner