

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DATABRICKS, INC.,
Petitioner,

v.

BYTEWEAVER, LLC,
Patent Owner.

Case No. IPR2025-00715
U.S. Patent No. 7,949,752

Petition for *Inter Partes* Review of U.S. Patent No. 7,949,752

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PETITIONER' EXHIBIT LIST

Exhibit	Description
1001	U.S. Patent No. 7,949,752 (“’752 patent”)
1002	File History of ’752 Patent
1003	Declaration of Darrell Long, Ph.D.
1004	U.S. Patent No. 6,029,175 (“Chow”)
1005	U.S. Patent No. 5,603,031 (“White”)
1006	RESERVED
1007	Complaint in <i>Byteweavr, LLC v. Databricks, Inc.</i> , No. 2:24-cv-00162-JRG-RSP (E.D. Tex.)
1008	F. Cheong, <i>Internet Agents</i> (1996)
1009	D.B. Lange, M. Oshima, G. Karjoth, K. Kosaka, “Aglets: Programming mobile agents in Java” (March 1997)
1010	S. Fünfroeken, “How to Integrate Mobile Agents into Web Servers” (June 1997)
1011	P. Dömel, A. Lingnau, O. Drobniak, “Mobile Agent Interaction in Heterogeneous Environments” (April 1997)
1012	Guideware Agent System for Java - Customer Support, October 17, 1997 Web Archive
1013	Guideware Agent System for Java – Agent Facts, October 17, 1997 Web Archive
1014	Guideware Agent System for Java – Sample Agents, October 17, 1997 Web Archive
1015	Y. Aridor, M. Oshima, “Infrastructure for Mobile Agents: Requirements and Design” (September 1998)
1016	ACM Transactions on Computer Systems (TOCS) 2.1 (1984): 39-59
1017	IPR2020-00470, Paper 1 (Petition)
1018	IPR2020-00470, Paper 7 (Patent Owner Preliminary Response)
1019	IPR2020-00470, Paper 13 (Institution Decision)
1020	IPR2020-00470, Paper 18 (Patent Owner Response)

Exhibit	Description
1021	Claim Construction Order, <i>Intellectual Ventures I, LLC et al. v. VMware, Inc.</i> , No. 1:19-cv-01075 (W.D. Tex) June 10, 2020, Dkt. 92.
1022	Joint Claim Construction and Prehearing Statement and Exhibits thereto in <i>Byteweavr, LLC v. Databricks, Inc.</i> , No. 2:24-cv-00162-JRG-RSP (E.D. Tex.) (dkt. entry 55)
1023	U.S. Patent No. 6,839,733
1024	U.S. Patent No. 6,163,794
1025	As-Filed Application of U.S. Patent No. 6,163,794
1026	Report and Recommendation, <i>Intellectual Ventures I, LLC et al. v. HCC Insurance Holdings, Inc. et al.</i> , No. 6:15-CV-660 (E.D. Tex)
1027	Docket Control Order in <i>Byteweavr, LLC v. Databricks, Inc.</i> , No. 2:24-cv-00162-JRG-RSP (E.D. Tex.)
1028	U.S. Patent No. 7,043,532 (“Humpleman”)
1029	U.S. Patent No. 6,247,056 (“Chou”)
1030	U.S. Patent No. 5,740,231 (“Cohn”)
1031	IETF RFC 1808 (June 1995)
1032	IETF RFC 1738
1033	archived 1/13/91 comp.sources.d newsgroup post
1034	Docket in <i>Byteweavr, LLC v. Databricks, Inc.</i> , No. 2:24-cv-00162-JRG-RSP (E.D. Tex.) (retrieved March 13, 2025)

MANDATORY NOTICES

A. Real Parties-in-Interest [37 C.F.R. § 42.8(b)(1)]

The real party-in-interest is Petitioner Databricks, Inc. (“Petitioner” or “Databricks”). No entity not named above is funding, controlling, or directing this Petition, or otherwise has had an opportunity to control or direct this Petition or Petitioner’s participation in any resulting IPR.

B. Related Matters [37 C.F.R. § 42.8(b)(2)]

The ’752 patent that is the subject of this Petition is currently the subject of a patent litigation suit brought by Patent Owner Byteweaver, LLC, *Byteweavr, LLC v. Databricks, Inc.*, No. 2:24-cv-00162-JRG-RSP (E.D. Tex.) (Ex. 1007). The ’752 patent was previously asserted by Patent Owner Byteweavr against Cloudera, Inc., in *Byteweavr, LLC v. Cloudera, Inc.*, (Case No. 1:24-cv-00261 (W.D. Tex.)). The ’752 patent was also previously asserted by prior assignee Intellectual Ventures I LLC against VMWare, Inc. (Case. No. 6:19-cv-00449 (W.D. Tex.)) and HCC Insurance Holdings, Inc. (Case No. 6:15-cv-00660 (E.D. Tex.)).

Inter partes review of the ’752 patent was previously instituted by the Board in *VMware, Inc. v. Intellectual Ventures I LLC*, IPR2020-00470. The IPR was terminated prior to the issuance of a final written decision due to settlement. IPR2020-00470, Paper 24 at 1. A petition for *inter partes* review of the ’752 patent was also filed in *HCC Insurance Holdings Inc. v. Intellectual Ventures I LLC*, IPR2016-01431. The petition was dismissed prior to an institution decision after

petitioner HCC Insurance Holdings Inc. was dismissed with prejudice from the co-pending district court litigation. IPR2016-01431, Paper 8 at 2.

C. Lead and Back-Up Counsel [37 C.F.R. § 42.8(b)(3)]

Pursuant to 37 C.F.R. §§ 42.8(b)(3), 42.8(b)(4), and 42.10(a), Petitioner provide the following designation of counsel:

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A Power of Attorney accompanies this Petition in accordance with 37 C.F.R. § 42.10(b).

D. Service Information [37 C.F.R. § 42.8(b)(4)]

Please address all correspondence to the lead and back-up counsel as shown above. Petitioners consent to electronic service by e-mail at the e-mail addresses provided above.

I. INTRODUCTION

Pursuant to 35 U.S.C. § 311, Petitioner hereby petitions for IPR of U.S. Patent No. 7,949,752 (“the ’752 patent”) (Ex. 1001) and seeks cancellation of claims 24–25 (“the Challenged Claims”) as unpatentable under 35 U.S.C. § 103. During prosecution, the examiner located every element of the Challenged Claims in the prior art, except for one minor limitation about a “uniform resource locator” (“URL”). In this Petition, Petitioner presents a reference—unknown to the examiner—that discloses this missing element. Petitioner further shows that a person of ordinary skill in the art would have been motivated to combine references, resulting in the claimed invention. Because all elements of the claims are in the prior art, Petitioner requests IPR of claims 24–25 of the ’752 patent.

Notably, the Board previously instituted IPR of the ’752 patent (including claims 24–25) on the same ground presented herein. *See VMware, Inc. v. Intellectual Ventures I LLC*, IPR2020-00470, Paper 13 at 27–39 (P.T.A.B. Aug. 18, 2020) (Ex. 1019). While the prior IPR was terminated prior to a final written decision on the merits after settlement between VMware and Intellectual Ventures, ownership of the ’752 patent has since transferred to Byteweaver, and Byteweaver has asserted the ’752 patent against Petitioner. Petitioner therefore requests that the Board institute IPR again on the ’752 patent and finally hold claims 24–25 as unpatentable.

II. REQUIREMENTS OF *INTER PARTES* REVIEW

A. Standing

Pursuant to 37 C.F.R. § 42.104(a), Petitioner certifies that the '752 patent is available for IPR and that Petitioner is not barred or estopped from requesting an IPR on the grounds identified herein.

B. Identification of Challenge and Relief Requested

Pursuant to 37 C.F.R. § 42.104(b), Petitioner requests that the Board institute IPR of claims 24–25 of the '752 patent under pre-AIA 35 U.S.C. § 103.

The '752 patent issued from an application filed November 24, 2004, which claims priority to a provisional application filed October 23, 1998. For purposes of this Petition, Petitioner does not challenge whether the claims are entitled to that priority date.

The precise relief requested by Petitioner is that claims 24–25 be canceled based on the grounds below:

Ground	Claims	Basis for Rejection¹
1	24–25	Obviousness over Chow and White

The above challenge is made in view of the following prior art references:

¹ All obviousness grounds include the knowledge of a person of ordinary skill in the art.

1. U.S. Patent No. 6,029,175 (“Chow”) (Ex. 1004)

U.S. Patent No. 6,029,175, titled “Automatic Retrieval of Changed Files by a Network Software Agent,” issued on February 22, 2000, from a provisional application filed on October 26, 1995. The non-provisional application was filed on June 7, 1996. Chow therefore qualifies as prior art to the ’752 patent under pre-AIA 35 U.S.C. § 102(e). Chow was not applied in any Office Actions during prosecution of the ’752 patent or discussed by the Examiner or Applicant.

2. U.S. Patent No. 5,603,031 (“White”) (Ex. 1005)

U.S. Patent No. 5,603,031, titled “System and Method for Distributed Computation Based Upon the Movement, Execution and Interaction of processes in a Network,” issued on February 11, 1997, from a non-provisional application filed on July 8, 1993. White therefore qualifies as prior art to the ’752 patent under pre-AIA 35 U.S.C. § 102(b). White was not applied in any Office Actions during prosecution of the ’752 patent or discussed by the Examiner or Applicant.

C. How the Challenged Claims Are to Be Construed Under 37 C.F.R. § 42.104(b)(3)

A claim subject to IPR shall be construed using the same standard as in a civil action. 37 C.F.R. § 42.100(b). The Board need only construe terms “to the extent necessary to resolve the controversy.” *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017). As explained below, the Board has previously construed a claim term. Without taking a position on the merits

of the prior construction, and without waiving its right to seek a different construction in the corresponding district court litigation, this Petition applies the constructions from the prior Institution Decision.

Specifically, in the previously instituted IPR in *VMware, Inc. v. Intellectual Ventures I LLC*, IPR2020-00470 (“*VMWare* IPR”), the Board construed “agent” as “a process that occupies a place and that is mobile, i.e., can move from a first place to a second place.” IPR2020-00470, Paper 13 (Ex. 1019) at 13. The Board explained that this construction was based on lexicography because the ’752 patent incorporates the text of White (Ex. 1001, 5:27–31) and White includes a glossary specifically defining “agent” as “a process that occupies a place and that is mobile, i.e., can move from a first place to a second place” (Ex. 1005, 16:65–67). The Board also noted that “[t]his definition also is consistent with the embodiments described in the Specification of the ’752 patent.” IPR2020-00470, Paper 13 (Ex. 1019) at 13.

Petitioner therefore proposes that, for purposes of this IPR, “agent” be construed as “a process that occupies a place and that is mobile, i.e., can move from a first place to a second place.”

In the pending litigation against Petitioner, Patent Owner proposes that “agent” be construed as “a software application, program, or process responsible for performing a task on behalf of a user.” Ex. 1022. This Petition applies both constructions and the prior art invalidates under either construction.

D. How the Challenged Claims Are Unpatentable Under 37 C.F.R. § 42.104(b)(4)

An explanation of how the Challenged Claims are unpatentable under the statutory grounds identified above, including the identification of where each element of the claim is found in the prior art patents or printed publications, is provided below.

E. Supporting Evidence Under 37 C.F.R. § 42.104(b)(5)

The exhibit numbers of the supporting evidence relied upon and the relevance of the evidence to the Challenged Claims, including an identification of specific portions of the evidence that support the challenge, are provided below. A list of exhibits with the exhibit number and a brief description of each exhibit is also included in this Petition pursuant to 37 C.F.R. § 42.63(e). The technical information and grounds for rejection explained in this Petition are further supported by the Declaration of Darrell Long, Ph.D. (Ex. 1003).

III. TECHNICAL BACKGROUND

The '752 patent generally relates to software agents, which have been described as “personal software assistants with authority delegated from their users.” Ex. 1008, 21. But software agents were not new when the '752 patent was filed. Teachings of software agents go back to at least 1970. *Id* (citing the work of “early visionaries” from 1970, 1984, and 1989). By 1996, there were many existing agent systems. *See id.*, 21–50 (describing twenty-two existing agent systems in

introductory chapter). Many of these agents interacted with the Internet and the world wide web. For example, “WebWalker” was an agent that maintained links in a webpage and “WebShopper” was an agent that crawled the web for low-price audio compact discs. *Id.*, 169–97, 309–61.

Two prior art agent systems are relevant to this petition: Chow and White. Chow—filed three years before the earliest application for the ’752 patent—teaches an agent system that monitors a webpage for any updates and provides those updates to a user. Ex. 1004, 3:60–63. White—filed five years before the earliest application for the ’752 patent—teaches an agent system where the agent process can execute on one computer and then move to a second computer to continue its execution. Ex. 1005, 8:27–41. Notably, the ’752 patent refers to White as disclosing “[a]n exemplary construction for an agent system” and incorporates its disclosure by reference. Ex. 1001, 5:27–31.

A. Alleged Invention of the ’752 Patent

The ’752 patent describes a purported problem with services such as email, voice mail, electronic organizers, and on-line databases. Ex. 1001, 1:56–60, 2:5–6. The problem was that the software applications supporting those services were “often developed with a broad spectrum of subscribers in mind.” *Id.*, 2:6–7. This meant the applications “address[ed] the generalized needs of many subscribers, but not the specialized needs of any one particular subscriber or group of subscribers.”

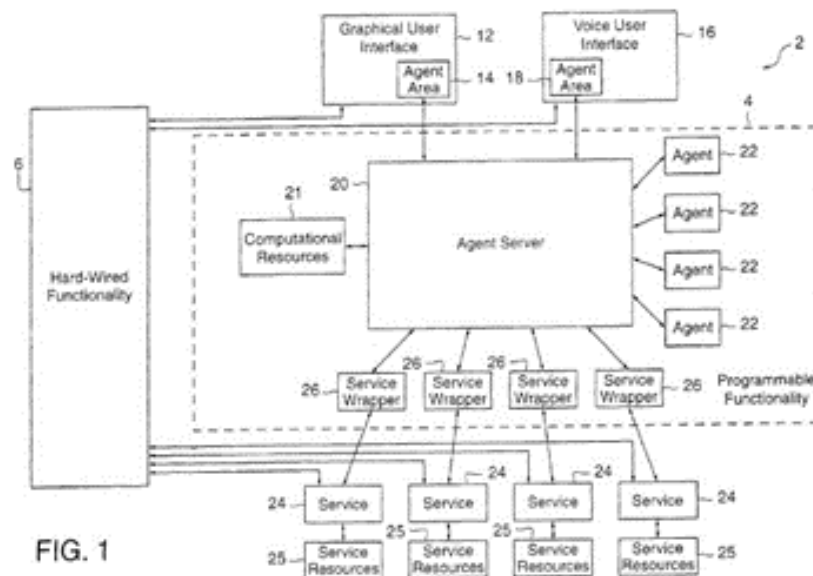
Id., 2:7–11. For a subscriber to obtain modified software to address the subscriber’s specialized needs, the subscriber would have to convince the service provider to bear costs of developing, testing, and maintaining the modified software. *Id.*, 2:12–34.

The solution discussed as the “present invention” in the “Summary of the Invention” of the ’752 patent is to make the network system “extensible (e.g. programmable) by ‘end-users.’” Ex. 1001, 2:42–44. This is accomplished by augmenting the network system with an agent system. *Id.*, 2:54–55. This augmentation was made possible by programmatically exposing capabilities of the network through services, service resources, and service wrappers, which software agents could use to modify the services. *Id.*, 2:55–59.

Reading these portions of the ’752 patent specification, one might get the impression that the applicants invented agent systems, or at the very least invented *extensible* agent systems. But, as explained herein and in the Declaration of Darrell Long, Ph.D. (Ex. 1003), this is not the case. By October 1998, extensible network software agents were known in the art. And the claims at issue do not even recite that idea, anyway. As discussed below, after a long prosecution, the claims only emerged from prosecution after being narrowly amended to include one specific aspect of the disclosed embodiment: invoking a network-based agent via a URL.

The disclosed embodiment was implemented in the network system (2) of Figure 1 (reproduced below). Ex. 1001, 5:23–25. The network system had two main

parts: “programmable functionality component” (4) and “hard-wired functionality component” (6). *Id.*, 5:55–56. The programmable functionality component comprised an agent system, including an agent server (20) and agents (22). *Id.*, 5:63–67, Fig. 1. The network system also included graphical and voice user interfaces (12 and 16), through which users interacted with the network system. *Id.*, 6:5–6, 6:16–19, 6:49–52. And, finally, the network system also included one or more services (24) with associated service wrappers (26) and service resources (25). *Id.*, Fig. 1.



The agents were “implemented as a software application, program, or process” that ran on behalf of an affiliated user or “principal.” Ex. 1001, 8:26–29, 8:31–34. Agents were “responsible for performing a particular task or set of tasks on behalf of the respective principal.” *Id.*, 8:56–58. Such tasks included using services (24). *Id.*, 10:19–21. Examples included an agent placing or receiving calls

or voice mails with a service that supported call processing or an agent retrieving documents, such as electronic periodicals, from an on-line data retrieval service. *Id.*, 10:21–25, 10:41–45.

In performing tasks like these, agents consumed computational resources (21) and service resources (25). Ex. 1001, 9:31–36. According to the '752 patent, computational resources were “resources provided or supported by a computer-based system,” with examples including “processing time, memory storage space, and the like.” *Id.*, 8:15–21. Service resources, relatedly, “enable a service to be performed.” *Id.*, 10:61–63. For example, in an on-line data retrieval service, service resources could have “include[d] a telephony connection, a modem for on-line communication, an on-line database provider services, etc.” *Id.*, 10:66–11:2. Furthermore, some service resources might have “comprise[d] discrete units which [were] ‘consumed’ during utilization of the respective resource by an agent 22,” and which could be exhausted. *Id.*, 11:6–8, 25:31–34. For example, a service resource related to telephony services might have comprised units of long-distance calling time that were consumed and exhausted by placing a call. *Id.*, 11:8–12.

The '752 patent also describes the operation of the “agent server” in the system. Agents executed on the “agent server,” which “control[led], coordinate[d], and otherwise manage[d] the overall operation of [the] programmable functionality component.” *Id.*, 7:51–53. The agent server could be used to “invoke, initiate, or

execute various routines, processes, objects, and the like,” including agents, and also controlled the consumption of computational resources and service resources. *Id.*, 7:53–55, 7:61–65. The agent server also communicated (*e.g.*, exchanged information) with the graphical and voice user interfaces. *Id.*, 7:48–51.

In operation, agents were executed upon the occurrence of “events.” *Id.*, 10:9–11, 15:23–26. Events might include “the lapse of a predetermined amount of time (*e.g.*, 24 hours)[,] the occurrence of a specified time (*e.g.*, 6:00 a.m.),” or the “delivery of an e-mail message.” *Id.*, 15:26–28, 18:27–28. An agent would learn of an event via a “uniform resource locator (URL) which expresse[d] or provide[d] an address for a web page.” *Id.*, 18:29–31. “The URL specifie[d] both the event’s type and the agent 22 which is [the] event’s intended recipient.” *Id.*, 18:31–32.

B. Prosecution History of the ’752 Patent

The ’752 patent took a long and winding road to issuance, including multiple restriction, rejection, and response milestones. In each response, the applicants added aspects of the disclosed embodiment to the claims, one by one, until the examiner finally relented and allowed the claims. The final limitation that the examiner could not find in the disclosed prior art was “receiving a URL defining a type of event and identifying the network-based agent.”

Prosecution began with a restriction requirement and election followed by a first Office Action on the merits, which rejected all of the pending claims as

anticipated by U.S. Patent No. 7,043,532 to Humpleman (Ex. 1028). Ex. 1002, 511–16, 518–25, 533–37. In response, the applicants amended the pending claims and added new claims 107–110. *Id.*, 567–68. The amendments added limitations that the service resources were “configured to be consumed by the agent.” *Id.*, 562, 564, 568. The applicants argued that Humpleman’s teaching of a server, which included “hardware as a resource,” differed from the recited service resources that were “configured to be consumed by the agent.” *Id.*, 570.

The next Office Action made the rejection final. Ex. 1002, 584–90. It maintained all of the existing rejections and rejected the new claims over Humpleman too. *Id.* In response to the applicants’ arguments, the Office Action noted that “all resources can be considered to be ‘configured to be consumed,’” and therefore the applicants failed to distinguish the claims from Humpleman. *Id.*, 585.

The applicants responded with a request for continued examination and a supplemental claim amendment that amended the prior claims and added new claims 111–119. *Id.*, 602–633. After the amendments all independent claims recited that “the service resource is exhausted after it is consumed by the agent.” *Id.*, 604, 606, 609, 610. Applicants argued that Humpleman’s teaching of a server, which included “hardware as a resource,” differed from the recited service resources that were “configured to be consumed by the agent . . . wherein the service resource is exhausted after it is consumed by the agent.” *Id.*, 612, 630.

Continued prosecution began with another restriction requirement and election followed by an Office Action on the merits. Ex. 1002, 641–47, 650–58. The Office Action rejected all the claims for lack of written description for “‘exhausting’ a resource” and also rejected all the claims as anticipated by or obvious in view of U.S. Patent No. 6,247,056 to Chou (Ex. 1029). Ex. 1002, 665–72. With respect to the written description rejection, the Office Action pointed out that the specification described “Computational Resources” being “consumed” or “used up,” but that these were “situations where an agent may be ‘using up’ a resource, but not necessarily ‘exhausting’ it.” *Id.*, 667. The specification, therefore, did not provide written description support for “exhausting a resource.” *Id.*

The applicants responded by cancelling one claim, amending the remaining claims, and adding new dependent claims 137–140. Ex. 1002, 691–706. After amendment all claims now recited that “an amount of the service resource is exhausted after it is consumed by the agent” or “a discrete unit of the service resource is exhausted upon being consumed by the agent” to remedy the written description rejection. *Id.*, 692–94, 699–701 (emphasis in original). In response to the rejections over the Chou reference, applicants argued that Chou did not teach a service resource that was exhausted upon being consumed. *Id.*, 703. The examiner had pointed to “cartridges” (software modules) that were “reused” by the agent. *Id.*, 703; *see* Ex. 1029, 5:58–67 (Chou’s teaching of “cartridges”). The applicants argued that a

reusable service resource was “*the exact opposite*” of “[a] . . . resource [that] is exhausted upon being consumed” as recited in the claims. Ex. 1002, 703 (emphasis added).

The next Office Action made the rejection final. Ex. 1002, 711–17. The Office Action found applicants’ argument about Chou “misleading” because in the applicant’s invention “resources are reused” too. *Id.*, 713. The Office Action points out that in the specification, “resources are defined as including processing time, memory storage space, and the like.” *Id.* “While these resources may be at full capacity at any given time, the [*sic*] can always be reused later when they are not at full capacity.” *Id.* Even so, the Office Action now rejected all the claims (including the new claims) as anticipated by a different reference—U.S. Patent No. 5,740,231 to Cohn (Ex. 1030). Ex. 1002, 713–715. The particular teachings of Cohn relied on by the examiner for the “exhausted” limitation taught consumption of services with associated monetary costs. *Id.* (citing Ex. 1030 (Cohn) at 34:6–57). In other words, Cohn taught that the consumption of these services associated with monetary costs were “exhausted” because money cannot be reused once it is spent. But the Office Action notes that claim 135 would be allowable if it were rewritten in independent form. Ex. 1002, 715. The limitation recited in dependent claim 135 was “identifying the predetermined event by a URL, wherein the URL defines a type of the predetermined event and a recipient network based agent.” *Id.*, 697.

The applicants responded by amending all of the pending independent claims to include “invoking, in response to receiving a URL defining a type of the predetermined event and identifying the network-based agent, an execution of the network-based agent,” which was similar to the limitation in claim 135 that the Office Action had found allowable. Ex. 1002, 737–39, 741 (emphasis in original). The applicants noted that the claims all now recited limitations like claim 135 and requested reconsideration of the rejections. *Id.*, 745–47. The examiner agreed, issuing a notice of allowance in response. *Id.*, 752–53.

As noted above, the only limitation the examiner found not to be present in the prior art was invoking an agent via a URL defining a type of event and identifying the agent. As discussed below, this limitation was taught in Chow—a reference of which the examiner was unaware.

C. Effective Filing Date and Date of Invention

October 23, 1998, is the effective filing date of the ’752 patent. The application for the ’752 patent was filed on November 24, 2004, as a continuation of application no. 09/712,712, which was itself a continuation of application no. 09/178,366, which was filed on October 23, 1998. Likewise, October 23, 1998, is the date of invention of the ’752 patent used in this petition. Petitioner is unaware of any attempt by Patent Owner or its predecessors-in-interest of asserting that the ’752

patent is entitled to an earlier invention date. Petitioner is likewise unaware of any evidence that the '752 patent is entitled to an earlier invention date.

D. Person of Ordinary Skill in the Art

Around October 1998 (at the time of the '752 patent's effective filing date), a person of ordinary skill in the art (or "POSITA") would have been someone with a bachelor's degree in electrical engineering, computer science, or computer engineering (or a like discipline) and at least two years of experience in networked computer software systems. Ex. 1003, ¶ 18-22. This level of skill in the art is reflected by the references cited in this Petition, the state of the art, and the experience of Professor Darrell Long as described in his declaration. In this Petition, references to a POSITA refers to a person with these or similar qualifications.

E. Prior Instituted IPR on the '752 Patent

The '752 patent, including challenged claims 24 and 25, was the subject of a prior instituted IPR that ultimately terminated prior to issuance of a final written decision.

On February 10, 2020, Petitioner VMware, Inc. petitioned for IPR of claims 1–4, 6, 9–11, 13–14, and 22–26 of the '752 patent. At the time, the '752 patent was assigned to Intellectual Ventures I LLC ("IV"). VMware presented alternate grounds based on two different potential constructions of "agent"—one in which "agent" is not limited to mobile agents and another in which "agent" is construed as

a mobile agent according to the lexicography in White. Ex. 1017, 16–17. The invalidity grounds under the “mobile agent” construction were based on Chow and White—the same ground presented in the present Petition. *Id.*, 56–60.

On May 20, 2023, IV filed a Preliminary Response, first arguing that “agent” must be construed according to the lexicography in White as a *mobile* agent, and thus the grounds based on the broader construction of agent were insufficient. Ex. 1018, 19. IV then argued, under the narrower interpretation of “agent,” that VMware did not show that a POSITA would have been motivated to combine Chow and White, or how it would have been appropriate to modify Chow to include the mobile agent of White. *Id.*, 20–25. Finally, IV also argued that VMware had failed to demonstrate how the art teaches that “the service resource is exhausted upon being consumed by the network-based agent.” *Id.*, 25–26. According to IV, money was not a “service resource,” as claimed. *Id.* The Board rejected IV’s arguments on motivation to combine and “service resource,” and instituted IPR of the ’752 patent. Ex. 1019, 2.²

² The PTAB construed “agent” as “a process that occupies a place and that is mobile, i.e., can move from a first place to a second place,” based on the lexicography in White. Ex. 1019, 13.

The IPR was terminated due to settlement prior to the issuance of a final written decision. This Petition requests that the Board institute IPR again on the '752 patent, on claims 24 and 25 only, on the same ground in the VMware IPR.

IV. GROUNDS OF UNPATENTABILITY

A. Ground 1: Chow Renders Claims 24 and 25 Obvious in View of White

Claims 24 and 25 are invalid under 35 U.S.C. § 103 over Chow in view of White. As explained below, Chow discloses a software agent for providing updated copies of documents, like webpages, where the agent was invoked by receiving a URL and where obtaining updated copies of documents consumed discrete monetary resources. The only limitation not expressly disclosed in Chow is the use of a *mobile* agent.³ But White, which is admitted prior art in the '752 patent, discloses a mobile agent system. For the reasons explained below, a POSITA considering the teachings of Chow and White would have found the claimed subject matter obvious.

1. Overview of Ground and Prior Art

(a) Chow

Chow relates to “[a]n intelligent network agent” for “information retrieval from a local or remote server in a data network.” Ex. 1004, Abstract, 1:13–15. In

³ As noted above, “agent” in the '752 patent is “a process that occupies a place and that is mobile, i.e., can move from a first place to a second place.”

its “Background of the Invention,” Chow recognized a problem with the display of webpages. The identified problem was that after a client browser downloaded a webpage there was no way for a web server to inform the client browser when there was an updated version of the webpage available for download. *Id.*, 3:48–53. This was because web servers were “stateless and connectionless, so it [was] impossible for servers to maintain clients’ states.” *Id.*

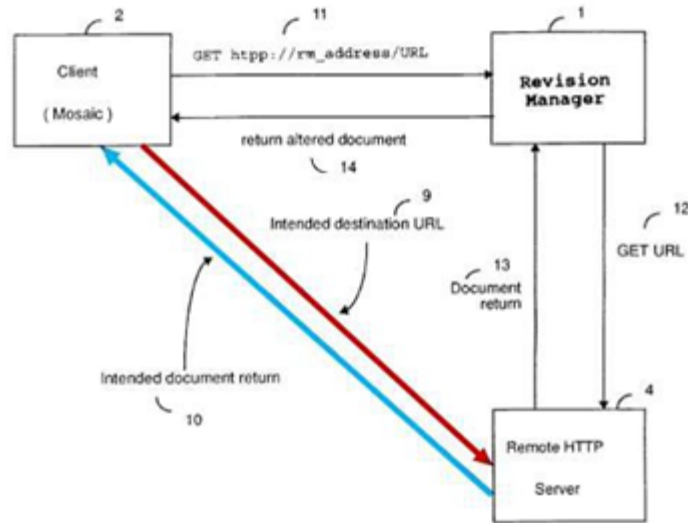
Chow’s solution to this problem was “to provide a software agent for automatically retrieving changed documents previously accessed from network and internetwork servers.” *Id.*, 3:60–63. Chow christened this intelligent network agent as the “Revision Manager.” *Id.*, 3:63–64.

The Revision Manager of Chow has two phases of operation: “start-up” and “continuing use.” *Id.*, 4:54–57. In the start-up phase, the user accesses the Revision Manager to complete a form that identified a resource object the Revision Manager should retrieve. *Id.*, 4:57–64. In the continuing use phase, the Revision Manager alters the URLs of the retrieved object and provides the altered object to the user. *Id.*, 4:64–5:1, 5:13–14. The URLs are altered so that they point to the Resource Manager instead of the original resource. *Id.*, 5:5–8, 10:9–22, 16:48–51. In this mode, if the user activates one of the altered URL hyperlinks, the Revision Manager (and not the original resource) receives the request and decides whether to provide

the requested object from the Revision Manager's cache or to direct the request to another server. *Id.*, 5:8–12, 16:17–26.

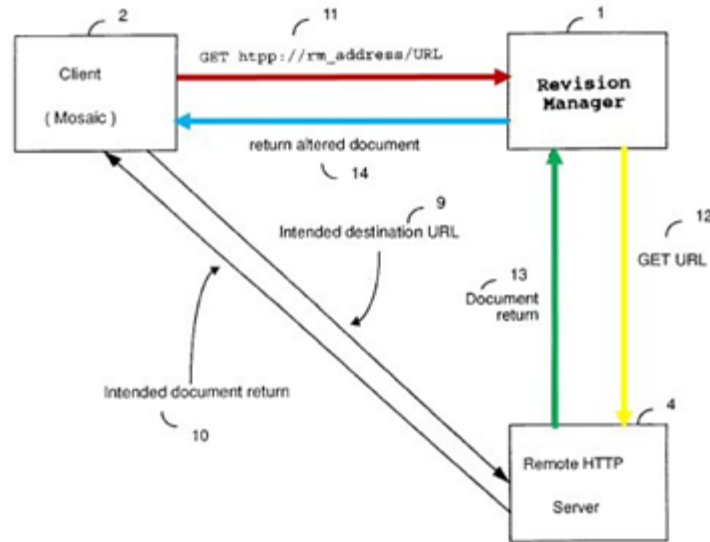
One example URL translation described in Chow changed the URL “http://www.tekknowledge.com/company/Patent.html” to the URL “http://SomeRevisionManager.CompanyName.com:8042/http://www.tekknowledge.com/company/Patent.html.” *Id.*, 10:13–22. Where SomeRevisionManager.CompanyName.com” identified a computer on which a Revision Manager agent was running, and “8042” was the port number used by the Revision Manager. *Id.*

Figure 3 demonstrates how to obtain a webpage both with and without Chow's Revision Manager. Without the Revision Manager, it is a two-step process. In the first step (9), a client sends a request to an HTTP server for a document identified by a URL. In the second step (10), the HTTP server responds by sending the document. *Id.*, 9:52–58. In the annotated version of Figure 3 below, step one is shown in red and step two is shown in blue.



Id., Fig. 3 (annotated).

With the Revision Manager, however, it is a four-step process. In step one (11), the client sends the request to the Revision Manager. In step two (12), the Revision Manager forwards the request to the HTTP server. In step three (13), the HTTP server provides the requested webpage to the Revision Manager. And in step four (14), the Revision Manager returns an altered version of the requested webpage to the client. *Id.*, 9:59–10:30. In the annotated version of Figure 3 below, step one is shown in red, step two is shown in yellow, step three is shown in green, and step four is shown in blue.



Id., Fig. 3 (annotated).

Upon returning the altered webpage, the Revision Manager activates a “polling daemon” process which checked whether the target webpage was updated and whether the client was due for an update. *See id.*, 17:44–20:64, Figs. 18–22. If there is an update and the client is due for an update, the Revision Manager sends a command to the client (“CCI ‘GET’ command”), which tells the client to get the updated document from the Revision Manager. *Id.*, 20:17–25. That CCI command includes a URL, and after the client receives that CCI command, the client sends a HTTP GET command to the Revision Manager identified in the URL in order to get the updated webpage from the Revision Manager. *Id.*, 20:19–47. The URL points to a CGI script running on the Revision Manager and includes two parameters to be passed to the CGI script: the “client’s port number” and an “update” flag. *Id.*, 20:34–40.

Another feature of Chow's Revision Manager is that it considers whether there are enough resources to access the requested webpage. For example, the Revision Manager can consider the monetary cost of retrieving the document "(such as communication charges, server charges, and copyright holder charges)" and only obtains the document "[i]f the cost would not exceed an acceptable level." *Id.*, 25:65–26:5.

(b) White

White is incorporated by reference into the '752 patent as disclosing "[a]n exemplary construction for an agent system." Ex. 1001, 5:23–31. White includes a glossary which defines "agent" as "a process which occupies a place and which is mobile, i.e. can move from a first place to a second place." Ex. 1005, 16:65–67.

White discloses mobile agents as an alternative to the prior art. Specifically, White explains that, in the prior art, "[m]any computer communication systems implement what is called 'remote procedure calling.'" *Id.*, 2:66–67. According to White, "[i]n remote procedure calling, a client process, which is executing on a first computer system and which seeks to manipulate data on a second computer system, requests action through a server process, which is executing on the second computer system and which manipulates data in response to requests from the client process." *Id.*, 3:1–6. The drawback of remote procedure calling, however, is that the second computer system can only "perform[] any of an inevitably finite list of operations on

behalf of the client process,” and it may often be the case that the “precise function requested by the client process is not among the particular operations performed by the server processes.” *Id.*, 3:6–10.

White thus teaches an alternative to the prior art “remote procedure calling” called “remote programming.” *Id.*, 4:22–31. In remote programming, a first process on a client computer, sends a list of instructions to a second process on a server computer which then executes the list of instructions. *Id.* An advantage of remote programming is that it requires fewer uses of network communication media and also allows client processes to use server operations not explicitly provided for by the developers of the server processes. *Id.*, 5:17–25. Remote programming relies on the movement of agents “from a first place process in a first computer system to a second place process”—*i.e.*, a mobile “agent” as claimed in the ’752 patent. *Id.*, 9:26–29; *see also id.*, 23:50–52 (“Agents of the present invention therefore represent a significant improvement over the known prior art processes.”).

White also explains that its remote programming is an improvement over existing remote programming processes. *Id.*, 5:26–39. For example, White acknowledges two prior attempts to implement remote programming: Wolfson and Tsichritzis. *Id.*, 5:41–6:67. But White criticizes Wolfson and Tsichritzis for their inefficiencies and lack of sufficient security measures. *Id.*, 5:51–6:2, 6:41–7:11.

White's improved remote programming comprises "agent" and "place" classes. *Id.*, 8:27–29. The agent class could be used to form an "agent process" (or "agent") that could "(i) examine and modify itself, (ii) transport itself from a first place process ... in the network to a second place process in the network, and (iii) interact with other agents found at the second place process." *Id.*, 8:29–38. This allowed an agent to "travel from a first computer system to a second computer system." *Id.*, 8:40–41. Thus, White teaches a mobile agent system (remote programming) that solves the shortcomings of the prior art. *See generally id.*, 8:51–13:22.

2. A POSITA Would Have Been Motivated to Combine Chow and White

Prior to the filing of the '752 patent, a POSITA would have recognized that Chow implements remote procedure calling, and a POSITA would have been motivated to modify Chow's remote procedure calling with White's improved remote programming. Ex. 1003, ¶ 89-101. As discussed below, this modification would have resulted in significant benefits as discussed in White. *Id.*

Specifically, as noted above, Chow implements remote procedure calling. For example, in Chow, the "polling daemon" process of the Revision Manager, which determines whether the web page hosted by a remote web server had been updated, is a "remote procedure calling" process. Ex. 1003, ¶ 90, 95 (citing Ex. 1004, 17:44–20:64, Figs. 18–22). As a remote procedure calling process, the polling daemon is

limited to performing a “finite list of operations.” Ex. 1005, 3:6–10; Ex. 1003, ¶ 95. Moreover, remote procedure calling processes can require “substantial use of communications media which in turn involves considerable expense and time.” Ex. 1005, 3:6–15.

To overcome these drawbacks to remote procedure calling, a POSITA would have been motivated to modify Chow to implement the “remote programming” process using mobile agents as taught in White. *See id.*, 5:17–25. Indeed, given the teaching in White that its remote programming was preferable to remote procedure calling (as well as preferable to other remote programming implementations), a POSITA would have been motivated to modify the remote procedure calling agent process in Chow with the remote programming agent process in White. Ex. 1003, ¶ 96. This combination would be the simple substitution of one known technique (remote programming) for another (remote procedure calling) and would have obtained predictable results. *Id.* ¶ 97. Because White solved some of the issues with prior art remote programming systems, as well as improved remote programming systems themselves, a POSITA would have preferred to use White’s remote programming implementation over Chow’s more limited remote procedure calling. *Id.* For example, White identifies several benefits of its remote programming, which could be achieved in the system of Chow:

Remote programming improves upon remote procedure calling by (i) enabling processes to interact without communicating across network communications

media and (ii) improving the performance of the interactions between processes by eliminating communication across network communications media which often has high-latency.

Ex. 1005, 9:19–25. In other words, the potential improvements described in White—remote programming using mobile agents instead of remote procedure calling using stationary agents—would have motivated a POSITA to combine the references. Ex. 1003, ¶ 96-97.

For example, as explained above, Chow’s “polling daemon” is limited to performing a finite list of operations. Ex. 1003, ¶ 95. A POSITA would have been motivated to expand the capabilities of the polling daemon by allowing remote programming of new capabilities, as taught in White. *Id.* ¶ 97. The expanded capabilities of the polling daemon could have included performing additional operations on documents of interest. *Id.*

In its Institution Decision in the *VMware* IPR, the Board rejected the then-patent owner’s argument that “Petitioner fails to adequately support the combination of Chow and White.” Ex. 1019, 31–32. Petitioner here identifies the same motivations as included in the prior petition. Thus, as the Board explained in the Institution Decision, “the potential improvements stated by White reasonably would have motivated the combination of Chow and White.” *Id.*, 32.

Additionally, a POSITA would have understood that Chow expressly contemplates, or at the very least strongly suggests, use of mobile agent and/or

mobile code technology. Ex. 1003, ¶ 89, 98; Ex. 1004, 26:51-60 (“[A] client could have interest in a financial document, and could send to the Revision Manager a computer program that would monitor the price of certain stocks and bonds, and notify the client of the price trends for the last week when the price of any one of these stocks and bonds would change by more than five percent over a weekly interval.”), 22:13-24. Chow also suggests that it may be desirable to “further reduce latency and communication costs” and a POSITA would have recognized that implementing mobile agents in Chow’s revision management system would do just that. Ex. 1003, ¶ 100 (citing Ex. 1004, 22:13-24). A POSITA would have found it obvious and been motivated to implement mobile agent technology in Chow’s Revision Manager considering Chow’s disclosures. Ex. 1003, ¶ 98.

A POSITA would also have been motivated to take advantage of the well-known benefits of mobile agents used in the same or similar contexts. Ex. 1003, ¶ 101; Ex. 1009, 11 ((1) “The client can search and monitor the Web even while it is disconnected, and monitoring of Web sites does not require a continuous network connection” and (2) “For Web sites, it means that interested readers are automatically and instantaneously notified of important updates.”); Ex. 1011, 5 (“The mobility of agents can help to do this [search the Internet, monitor changes of Web pages, etc.] more efficiently by avoiding network traffic whenever great amounts of data have to be processed.”). Indeed, use of mobile agent technology,

including for use with Web servers, for information retrieval, and even in the specific context of website monitoring, was well-known to a POSITA by October 1998. Ex. 1003, ¶ 99-101, 32-38 (citing, in part, Ex. 1009, Ex. 1011, Ex. 1010). And, a POSITA would have known that implementing mobile agent technology on a web server did not require the code of the Web servers to change. Ex. 1003, ¶ 99, 33 (citing Ex. 1010). Accordingly, a POSITA would have had a reasonable expectation of success in combining Chow and White. Ex. 1003, ¶ 99.

For these reasons, a POSITA would have been motivated to modify Chow to include mobile agents as taught in White. Ex. 1003, ¶ 94-101.

3. Element-by-Element Analysis

a. Element 24[pre]

“A method comprising”

To the extent that the preamble is limiting, Chow discloses Element 24[pre]. Ex. 1003, ¶ 84. Specifically, Chow taught computer processes (*i.e.*, methods) for obtaining updated copies of an internet webpage specified by a user. Ex. 1004, 3:60–64; *see also id.*, Figs. 7–22, 33, 35–46, 10:40–20:64, 22:58–36:57. The sub-sections below identify each of the steps of the “method” set forth in claim 24 of the ’752 patent. Therefore, a POSITA would have understood that Chow teaches the claimed “method.”

b. Element 24[a]

**“receiving, using a computing device, data for creating
a network-based agent”**

Chow in view of White discloses “receiving, using a computer device, data for creating a network-based agent.” Ex. 1003, ¶ 85-101.

For example, Chow teaches that the Revision Manager program (the network-based agent) was initiated by reading command line arguments and a server configuration file to reflect the configuration of the host system. Ex. 1004, 11:35–40. Chow further teaches that the Revision Manager was “a programmed digital computer linked by standard internet connections . . . to other nodes in the data network.” *Id.*, 9:26–29; *see also id.*, 25:15–19 (Revision Manager 301 includes a network interface); Figure 34 (same). A POSITA thus would have understood that Chow taught that the Revision Manager received data, such as the command line arguments, for creating a network-based agent and that this data could be received via a communication line connected to the network interface of the Revision Manager. Ex. 1003, ¶ 86-87. Chow’s Revision Manager is a software application, program, or process responsible for automatically retrieving changed documents for a user and is therefore an “agent” under Patent Owner’s proposed co-pending litigation construction. *See, e.g.*, Ex. 1004, at Abstract, 3:60–64, 1:13-15; Ex. 1003, ¶ 88.

As explained above, White discloses mobile agents. Ex. 1005, 16:65–67. Indeed, White (which is incorporated by reference in the '752 patent) is the source of the Petitioner's construction of "agent." Therefore, a POSITA would have understood that Chow in view of White taught "receiving, using a computer device, data for creating a network-based agent." Ex. 1003, ¶ 85-101. For the reasons discussed in Section IV.A.2, a POSITA would have found it obvious and been motivated to modify Chow to include mobile agents as taught by White.

c. Element 24[b][1]

"invoking, using the computing device, and in response to receiving a URL defining a type of event and identifying the network-based agent, execution of the network-based agent"

Chow in view of White discloses "invoking, using the computing device, and in response to receiving a URL defining a type of event and identifying the network-based agent, execution of the network-based agent." Ex. 1003, ¶ 102-110.

For example, Chow teaches that one way for a client browser to invoke the Revision Manager program (the network-based agent under Patent Owner's proposed co-pending litigation construction) was by receiving a URL and sending an HTTP command to the Revision Manager identified in that URL. Ex. 1004, 20:17–47, Fig. 22. Chow further teaches that the Revision Manager was "a programmed digital computer linked by standard internet connections . . . to other nodes in the data network." *Id.*, 9:26–29; *see also* 25:15–19 (Revision Manager 301

includes a network interface); Figure 34 (same). Chow also describes the Revision Manager as a “server.” *Id.*, 4:57–59. From these teachings, a POSITA would have understood that Chow teaches invoking execution of a network-based agent (Revision Manager program) in response to receiving a URL on a server (programmed digital computer processing the Revision Manager program). Ex. 1003, ¶¶ 103-104. Activating a URL is precisely how the ’752 patent describes passing an event to an agent: “A standard web browser can send an event to an agent 22 by fetching the web page identified by the URL for the event.” Ex. 1001, 18:38–40.

As an example, as shown below, the URL in the HTTP command identified the network-based agent (green) and defined a type of event (yellow):

```
http://SomeRevisionManager.CompanyName.com:8042/  
cgi-bin/RM_cacheParse.pl?port_number8080+update/  
http://www.teknowledge.com/
```

Ex. 1004, 20:17–47. Chow further explains the content of this URL:

The first address is the Revision Manager's address. "RM-- cacheParse.pl" is the CGI script to be executed to process this request, "port-- number" is the client's port number and is used to identify which client is sending the request. "update" is a flag to tell "RM-- cacheParse.pl" that this is an updating request and is used to represent a client's state. This flag enables "RM-- cacheParse.pl" to attach the correct short form with a message stating that this is an updated page to the browser's user. After a browser receives this "GET" command, it

will issue a "GET" command to the Revision Manager Daemon, pass the provided query information (port number and update flag) to the Revision Manager Daemon, and receive and display the updated page.

Id., 20:33–47. Importantly, Chow’s teachings include two URLs: the URL to which the user would like to subscribe (here, “http://www.teknowledge.com”), and the URL in the HTTP command that invokes the network agent (here, http://SomeRevisionManager.CompanyName.com:8042/cgi-bin/RM_cacheParse.pl?port_number8080+update/http://www.teknowledge.com/). As mapped, it is this latter URL that defines the type of event and identifies the agent, and in response to which execution of the network agent is invoked.

Moreover, a person of ordinary skill in the art would have recognized that the process of sending (and receiving) a URL in order to receive a document as analogous to an exemplary “event” described in the ’752 patent. Ex. 1003, ¶ 105. For example, invoking a URL was precisely how the ’752 patent described passing the event to the agent: “A standard web browser can send an event to an agent 22 by fetching the web page identified by the URL for the event.” Ex. 1001, 18:38–40.

In the district court litigation, Petitioner has proposed that “type of event” be construed as “a predetermined condition that triggers execution of the network-based agent,” while Patent Owner has proposed that “type of event” be construed according to its plain and ordinary meaning. Chow’s “update” is a “type of event” according to either construction. First, the update of the webpage requested by the

user is a “predetermined condition” (the user, when making the request, pre-determines a condition) that “triggers execution of the network-based agent” (when the document changes significantly, the Polling Agent will notice and inform subscribing users). *See* Ex. 1004 at 21:38-40, 10:60-11:3, and 10:26-30 (“A user uses the attached short form to enable the automatic updating service, which will make the browser automatically display the changed document in a new window after the document has been updated at the remote server site.”). Second, updating of a webpage is a “type of event” under the plain and ordinary meaning of the term. Ex. 1003, ¶ 104-106.

Additionally, or alternatively, Chow describes how the HTTP POST message to the Revision Manager server upon a user registering to receive updates for a particular document of interest includes, among other things, “url_get” (indicating the URL absolute address to get from the remote server) and “update_interval” (indicating the requested update interval). Ex. 1004, 11:63-12:24. A POSITA would have understood that Chow’s Revision Manager server receives a URL (the “url_get”) and that, in Chow’s specific implementation, this URL defines a type of event (e.g., that a user wants updates of a particular web page). Ex. 1003, ¶ 107. In the combined Chow-White system, the URL also identifies a mobile agent at least because each web page of interest is monitored by its own mobile agent. *Id.* Accordingly, in the combined Chow-White system, the Revision Manager server

invokes execution of the polling daemon mobile agent in response to receiving the URL in the `url_get`. *Id.*

In the district court litigation, neither Petitioner nor Patent Owner has proposed a construction for “URL.” *See* Ex. 1022. However, Patent Owner’s infringement theories appear to contemplate a URL as including either the anchor text for a URL (i.e., the visible text of a link) or the entire HTTP exchange in response to a user clicking on a hyperlink that includes a URL. *See* Ex. 1007 at p. 19 (characterizing the “Run Now” portion of the hyperlink as the “URL”); p. 20 (where the type of event is defined “in response to receiving” this URL). Petitioner does not agree that a POSITA would understand either of these to fall within the plain and ordinary meaning of a URL. *See* Ex. 1003, ¶ 47 (describing a POSITA’s understanding of a URL). However, to the extent that Patent Owner contends that a URL, as used in the challenged claims, can include other data involved in the HTTP exchange, Petitioner reserves the right to argue that other data present in Chow’s HTTP exchange additionally identify the network-based agent and/or define a type of event. In particular, Chow describes how the HTTP exchange includes parameters provided by the user when registering for update notifications for a given page, including “`url_poll`” (indicating whether the requested document requires the updating service), and “`update_interval`” (indicating the requested update interval), in addition to “`url_get`.” Ex. 1004, 11:63-12:24. To the extent that Patent Owner

contends these parameters to be part of the URL, the “update_interval” parameter indicates both a type of event under the plain and ordinary meaning of that term (the update) and a predetermined condition (the expiration of a period of time) that triggers the execution of the network-based agent under Petitioner’s construction in the district court litigation.

Finally, Chow teaches that the user may provide procedures, facts, or rules to use in determining whether changes in a document of interest are significant enough to require notification (e.g., duration of time since the last update). Ex. 1004, 24:13-16, 33:2-20. It would have been obvious to a POSITA to implement the combined Chow-White system such that the “url_get” parameter received by the Revision Manager server defines the requested URL (which is an identification of the mobile agent in the combined system as discussed above) and also provides an indication for the mobile agent to send updates from the remote server to the Revision Manager only when there has been a significant change or upon elapse of an update interval (a predetermined condition that triggers execution of the network-based agent). Ex. 1003, ¶ 108-110. A POSITA would have been motivated to implement the combined Chow-White system to utilize URLs to control remote agents as this type of implementation was well-known prior to October 1998. *Id.*, (citing Ex. 1011 at 5-7, Fig. 2; Ex. 1013 at 2; Ex. 1015). Additionally, a POSITA would have known that “the ubiquity of Web browsers makes them perfect client tools for creating and

communicating with remote agents” and would have been motivated to obtain the well-known benefit of using HTTP messaging, including that HTTP messaging is “a very lightweight mechanism” and “it is applicable to a broad range of client devices.” Ex. 1003, ¶ 110 (citing Ex. 1015 at 10).

Chow’s URL, therefore, “identif[ies] the network-based agent” (“SomeRevisionManager.CompanyName.com”) and “defin[es] a type of event” (“update”) as recited in the claims. Thus, under Patent Owner’s proposed construction of “agent” (“a software application, program, or process responsible for performing a task on behalf of a user”) and “type of event” (plain and ordinary meaning), Chow teaches “invoking, using the computing device, and in response to receiving a URL defining a type of event and identifying the network-based agent, execution of the network-based agent.” Under Petitioner’s proposed construction and the Board’s prior construction of “agent” (“a process that occupies a place and that is mobile, i.e., can move from a first place to a second place,”), Chow in view of White also teaches “invoking, using the computing device, and in response to receiving a URL defining a type of event and identifying the network-based agent, execution of the network-based agent.” For the reasons discussed above, a POSITA would have found it obvious and been motivated to modify Chow’s Revision Manager to include mobile agent technology in view of the teachings of White. Ex. 1003, ¶ 109.

d. Element 24[b][2]

“wherein the invoking comprises using a service and a service resource configured to be consumed by the network-based agent for performing the operation, and wherein a discrete unit of the service resource is exhausted upon being consumed by the network-based agent; and”

Chow in view of White discloses “wherein the invoking comprises using a service and a service resource configured to be consumed by the network-based agent for performing the operation, and wherein a discrete unit of the service resource is exhausted upon being consumed by the network-based agent.” Ex. 1003, ¶ 111-117.

For example, as explained above, Chow in view of White teaches that the Revision Manager program (the network-based “agent” under Patent Owner’s proposed co-pending litigation construction) retrieves documents and webpages from a source (an online service) and would only retrieve the documents or webpages if the monetary costs (consumed units of a service resource) associated with that retrieval did not exceed a “certain acceptable cost.” Ex. 1004, 25:65–26:5, 29:60–30:6. A POSITA would have understood that a cost (monetary or otherwise) constitutes a resource which enables a service to be performed and is a service resource within the meaning of the ’752 patent. *See* Ex. 1003, ¶ 51-54; *see also* Ex. 1023 at 26:14-44; Ex. 1024 at 26:11-43; Ex. 1025 at pg. 91 (claim 16). A POSITA would have thus understood that the “invoking” operation in Chow comprises using

a service (e.g., an on-line database) and a service resource (e.g., monetary costs) configured to be consumed by the network-based agent (Revision Manager). Ex. 1003, ¶ 112.

In addition, for similar reasons, Chow teaches the “wherein a discrete unit of the service resource is exhausted upon being consumed by the network-based agent” limitation of this element. A POSITA would have understood that money can be spent only once and therefore spending this money would have exhausted a service resource. Ex. 1003, ¶ 112. For example, consumed monetary resources are “exhausted” because they are not available for reuse. *See id.*

In the *VMware* IPR, over the prior patent owner’s objections, the Board found that “Chow . . . describes the exhaustion of resources upon the consumption of those resources when a cost is paid to obtain an object, e.g., a document.” Ex. 1019, 35. For example, the Board credited the prior petitioner’s argument that “Chow describes a ‘cost associated with retrieving the document from the source (such as communication charges, server charges, and copyright holder charges),’” and further explained that “Chow subsequently describes ‘obtain[ing] the object,’ i.e., document, ‘from [a] source having the minimum value of [a] cost-benefit function.” *Id.* The Board thus concluded that “[o]btaining a document for some cost in resources, exhausts whatever resources are required upon payment of the cost.” *Id.* In the district court litigation, Petitioner has proposed that “exhausted” be

construed as “used up to the allotted or predetermined amount,” while Patent Owner has proposed that “exhausted” be construed according to its plain and ordinary meaning. Chow’s resources are exhausted under either construction. First, as described above, the Board previously agreed that Chow teaches “exhaustion of resources” when costs are paid to obtain a document. Ex. 1019 at 34-35; *see also* Ex. 1003, ¶ 112 (Dr. Long agreeing that Chow teaches that resources are exhausted under the plain and ordinary meaning). Chow further teaches that the source is acceptable (and that the costs would therefore be paid) only “[i]f the cost would not exceed an acceptable level” (i.e., costs are paid up to the allotted or predetermined amount.). Ex. 1004, 26:3-4. As such, Chow teaches that the resources are exhausted under Petitioner’s proposed construction as well. Ex. 1003, ¶ 112. For these reasons, Chow discloses that “a discrete unit of the service resource is exhausted upon being consumed by the network-based agent.”

Finally, in prior district court litigation for the ’752 patent, “consume” was construed to mean “used,” and “service resource” was construed to mean “a resource that enables a service to be performed.” Ex. 1026 29-31; 26-28. A POSITA would understand that Chow teaches “using a service and a service resource configured to be consumed by the network-based agent” under this construction as well, at least since the agent (i.e., the Revisions Manager) uses resources (such as the cache) and services (e.g., the network-based functionality). Ex. 1003, ¶ 115.

Additionally, or alternatively, White teaches using a “permit” to “limit[] the amount of processing resources the agent can consume and the time at which the agent expires.” Ex. 1005, 8:51-57; *see also id.*, 50:58-51:25, Abstract. White notes: “The principal purpose of permits is, as far as possible, to prevent processes from consuming computer and communication resources in unintended amounts. This benefits users, who create the processes and may have to pay for them, but also providers, who must provide the resources that the processes consume.” *Id.*, 124:19-24. White’s “permit grants capabilities in certain defined dimensions and amounts” such as “grant[ing] a process a certain age, size, charges, priority, or authenticity.” *Id.*, 124:29-30, 124:31-36; *see also id.*, 34:36-40, 191:5-192:35, 148:58-149:8, 124:12-126:12. According to White, “[a] process ‘exhausts’ its permit by allowing the process’ actual age, charges, or size to reach the age, charges, or size, respectively, that the process’ effective permit would grant the process if none of the process’ temporary permits were in force. Exhausting one’s permit initiates one’s termination.” *Id.*, 125:16-20; *see also id.*, 125:64-126:12, 124:52-56. In view of these teachings, a POSITA would have understood that White teaches that when a resource is “exhausted” under either proposed construction. Ex. 1003, ¶ 114.

A POSITA would have found it obvious and been motivated to implement the combined Chow-White system such that each mobile agent has an associated permit as expressly taught in White. In this implementation, invoking execution of the

Chow-White mobile agent as discussed in 24[b][1] comprises using a service (retrieving updated documents from a Web server) and a service resource (cost, network access, etc.) that is configured to be consumed by the agent or mobile agent when retrieving updated documents. Ex. 1003, ¶ 113-115. Additionally, a discrete unit of the service resource (age, charges, size) is exhausted upon being consumed by the Chow-White mobile agent. *Id.*

White expressly teaches, suggests, and motivates the combination. Ex. 1003, ¶ 116; Ex. 1005, 8:51-57, 50:58-51:25, Abstract (White teaching the importance of limiting the amount of processing resources that a mobile agent can consume and the time at which the agent expires); 124:19-24 (use of permits with mobile agents (“to prevent processes from consuming computer and communication resources in unintended amounts. This benefits users, who create the processes and may have to pay for them, but also providers, who must provide the resources that the processes consume.”)). A POSITA would have recognized that use of a permit system in mobile agent systems was a common and necessary requirement, and such implementations were well-known prior to 1998. Ex. 1003, ¶ 117 (citing Ex. 1010, 5 (“[e]very agent system offers critical system resources like CPU cycles, main memory, disk space, and network access to foreign agents. Because of this, agent systems have to take care about system resources and monitor their usage to avoid misuse”))).

e. Element 24[c]

“communicating, using the computing device, a result of the operation over a network communication link.”

Chow in view of White discloses “communicating using the computing device, a result of the operation over a network communication link.” Ex. 1003, ¶ 118-121.

Chow teaches that the Revision Manager program (the network-based agent) provides updated copies of documents or webpages to clients who request updates. Ex. 1004, 9:59–10:30, 20:17–47; Figure 3 (step 14). Chow also teaches that the Revision Manager is “a programmed digital computer linked by standard internet connections . . . to other nodes in the data network.” *Id.*, 9:26–29; *see also* 25:15–19 (Revision Manager 301 includes a network interface); Figure 34 (same). A POSITA would have thus understood that Chow taught that the Revision Manager communicated data, such as updated copies of webpages, and that this data could be communicated via a communication line connected to the network interface of the Revision Manager. Ex. 1003, ¶ 120.

f. Claim 25

“The method of claim 24, wherein invoking execution of the network-based agent comprises using an event handler.”

Chow in view of White discloses “[t]he method of claim 24, wherein invoking execution of the network-based agent comprises using an event handler.” As shown

above, claim 24 would have been obvious over Chow in view of White. The additional element recited in claim 25 would have likewise been obvious over Chow in view of White.

Chow teaches that the Revision Manager includes an “HTTPD server” process and a “Polling Daemon” process. Ex. 1004, 11:43–45. The HTTPD server process ran a software process that listened for requests from client browsers. *Id.*, 11:49–54; Figure 8 (steps 33–37). When a request comes in, the process creates a child process to handle the request. *Id.* The operation of that child process is described in Figures 9–17 and 11:55–17:43. In particular, each time a request is received by the HTTPD process, a dedicated child process is “forked” (i.e., created) to handle the incoming request, while the HTTPD process returns to listen for further requests. It is this child process that parses the request, determines what type of request is being made, and, if necessary, invokes the Revision Manager to handle the request. FIG. 9, rn. 39; FIG. 12, rn 85.; FIG. 13, pn. 97. From these teachings, a POSITA would have recognized that this software process included an event handler because it invoked execution of the Revision Manager (network-based agent) upon the occurrence of an event to handle that event. Ex. 1003, ¶ 124. Claim 25, therefore, would have been obvious to a person of ordinary skill in the art in view of Chow. *Id.*, ¶ 123-125.

This conclusion would be the same under any prior proposed construction of “event handler.” For example, in a prior IPR filed by HCC Insurance Holdings (IPR2016-01431), HCC proposed that an “event handler” is “a software routine in an agent for handling an occurrence of an event comprising instructions and data.” Under the construction, the software process of Chow is an “event handler” because it handles the occurrence of an event and comprises instructions and data. Ex. 1003, ¶ 124. In that IPR, the prior patent owner (IV) proposed that an “event handler” is “one or more executable instructions in an agent for handling an event.” Under this construction, too, the software process of Chow comprise one or more instructions in an agent that handled an event. *Id.* ¶ 124.

V. ENABLEMENT AND SECONDARY CONSIDERATIONS

The prior art references relied upon in this Petition are enabled. Ex. 1003, ¶ 57-81.

Petitioner is not aware of any secondary considerations of non-obviousness tied to the Challenged Claims. To the extent Patent Owner alleges that any secondary considerations of non-obviousness are tied to the Challenged Claims, Petitioner may request leave to file a reply to respond to any such allegations. In any event, any attempt by Patent Owner to rely on alleged secondary considerations of non-obviousness cannot overcome the strong showing of obviousness detailed above. Where, as here, there is a strong showing of obviousness, the Federal Circuit

has held that even relevant secondary considerations supported by substantial evidence do not dislodge the primary conclusion of obviousness. *Ohio Willow Wood Co. v. Alps South, LLC*, 735 F.3d 1333, 1344 (Fed. Cir. 2013) (“[W]here a claimed invention represents no more than the predictable use of prior art elements according to established functions, as here, evidence of secondary indicia are frequently deemed inadequate to establish non-obviousness.”).

VI. PTAB DISCRETION SHOULD NOT PRECLUDE INSTITUTION

A. Fintiv Analysis

Discretionary denial under *Fintiv* is not warranted. Although there is currently a district court case in which the ’752 patent is asserted, the six-factor test set forth in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5–6 (P.T.A.B. Mar. 20, 2020) (precedential), favors institution. Ultimately, given the evidence of unpatentability described above, the *Fintiv* factors should not lead the Board to discretionarily deny institution.

Factor 1. Petitioner has filed a Motion to Transfer Venue to the Northern District of California. Ex. 1034. “Given NDCA’s high stay rates, NDCA may well stay [Petitioner’s] case ... pending IPR.” *Google LLC v. Parus Holdings, Inc.*, IPR2020-00847, Paper 9 at 12 (P.T.A.B. Oct. 21, 2020) (holding Factor 1 neutral where a similar motion was pending). Regardless of the venue, Petitioner intends to

file a motion to stay the Current Litigation pending resolution of this IPR should this Petition be instituted. As such, this factor is neutral.

Factor 2. Trial in the Current Litigation is currently scheduled to begin on November 17, 2025. Ex. 1027, dkt. entry 28 (setting Jury Selection for 11/17/2025). However, as described above, Petitioner have moved to transfer the venue to the Northern District of California, which would, in all likelihood, result in trial being delayed past the date of any Final Written Decision in an IPR instituted based on the current Petition. Accordingly, any currently scheduled trial date is highly speculative. Thus, this factor remains neutral.

Factor 3. The Current Litigation is still in its early stages: the parties only recently filed their joint claim construction statement, only limited discovery requests have been served, and expert discovery remains far on the horizon. Ex. 1027 at 3. Although the parties have exchanged initial infringement and invalidity contentions, “this investment is not significant.” *Vudu*, IPR2020-01688, Paper 16 at 12. This factor thus weighs against the Board exercising its discretion to deny the Petition.

Factor 4. There is minimal risk of overlap with arguments made in the district court because Petitioner hereby stipulates that, if IPR is instituted, Petitioner will not pursue in the district court litigation any ground for invalidity that was raised in the instituted IPR. PTAB case law holds that such a stipulation “mitigates to some

degree the concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions.” *Sand Revolution II, LLC v. Continental Intermodal Group-Trucking LLC*, IPR2019-01393, Paper 24 (P.T.A.B. June 16, 2020) (informative). This factor thus weighs against denying the Petition.

Factor 5. This factor has no weight because the Petitioner and Patent Owner are the same parties as in the district court. *Weatherford U.S. v. Enventure Global Tech., Inc.*, IPR2020-01684, Paper 16 at 11–13 (P.T.A.B. Apr. 14, 2021) (holding only that “this factor does not weigh against exercising discretion to deny institution” where the Petitioner and Patent Owner are, respectively, the defendant and complainant in the parallel district court proceeding).

Factor 6. The prior art presented in this Petition renders the Challenged Claims unpatentable as obvious. The merits of Petitioner’s arguments are extremely compelling because they lead to a strong conclusion that one or more claims are unpatentable by a preponderance of the evidence. In the previous IPR challenging the same claims on the basis of the same prior art, the Board held that there was “a strong case for the obviousness of the challenged claims” and that “the prior art references cited in the Petition teach or suggest all limitations of the challenged claims.” This factor therefore weighs strongly against discretionary denial. In totality, the *Fintiv* factors weigh strongly in favor of institution.

B. General Plastics Analysis

The factors set forth in General Plastic do not support discretionary denial here because Petitioner has not previously submitted any petitions for IPR on the '752 patent—i.e., this is not a “follow-on petition.” *General Plastic Indus. Co., Ltd. v. Kaisha*, IPR2016-01357, Paper 19 at 8–9 (P.T.A.B. Sept. 6, 2017) (precedential) (summarizing factors for exercising discretion to deny “follow-on petitions”). While it is true that there have been petitions with these references before, those petitions were filed by different petitioners (VMware and HCC Insurance Holdings) against a different Patent Owner (Intellectual Ventures), none of which are party to the current litigation between Byteweavr and Databricks. *See* Ex. 1007. As such, there is no “significant relationship” between Petitioner and the petitioners in the previously filed petition. *See Valve Corp. v. Elec. Scripting Prods., Inc.*, IPR2019-00062, Paper 11 at 10 (PTAB Apr. 2, 2019) (precedential) (finding a “significant relationship” only because the two petitions were filed by co-defendants in the same litigation related to the same technology).

“Under USPTO policy and precedent, General Plastic has not been extended to any cases in which the first and second petitioners do not have a significant relationship.” *Videndum Prod. Sol., Inc. v. Rotolight Ltd.*, IPR2023-01218, Paper 12 at 6 (PTO-Ofc. of Dir., Apr. 19, 2024). Accordingly, “where ... the first and second petitioners are neither the same party, nor possess a significant relationship under

Valve, General Plastic factor one necessarily outweighs the other General Plastic factors.” *Id.* Accordingly, the Board should therefore not exercise its discretion to deny institution under *General Plastics*.

C. §325(d): Advanced Bionics

Under *Advanced Bionics* and applying the *Becton Dickinson* factors, the Board should not deny institution under §325(d). Here, *Advanced Bionics*, Part 1, is not satisfied because the same or substantially the same art or arguments have not been “previously...presented to the Office[]” under 35 U.S.C. §325(d). During the original prosecution of the ’752 Patent, the primary reference upon which this Petition is based, Chow, was not cited or relied upon by the Examiner. *See* Ex. 1002. The secondary reference, White, is applicant-admitted prior art relied upon for the same for which applicant incorporated it by reference. Ex. 1001, 5:23–31. White was not applied in any Office Actions during prosecution of the ’752 patent or discussed by the Examiner or Applicant. *See* Ex. 1002. Although the ’752 has previously been subject to IPR based on the art presented herein, the previous IPRs were terminated after institution but prior to final written decision. IPR2020-00470, Paper 24 at 1. Accordingly, the art and arguments from the prior IPR are not considered to have been “previously...presented to the Office[]” under 35 U.S.C. §325(d). *Alivacor, Inc. v. Apple, Inc.*, IPR2023-00950, Paper 12 at 50-52 (PTAB Jan. 9, 2024) (declining to discretionarily deny institution where Petitioner was relying on prior

art for which an IPR had been instituted but for which no final written decision had been issued).

VII. CONCLUSION

Petitioner has established a reasonable likelihood that the Challenged Claims are unpatentable. Petitioner therefore respectfully requests that IPR be instituted and that all Challenged Claims be found unpatentable.

DATED: March 13, 2025

Respectfully Submitted,

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CERTIFICATION UNDER 37 C.F.R. § 42.24(d)

The undersigned certifies pursuant to 37 C.F.R. §42.24 that the foregoing Petition for *Inter Partes* Review, excluding any table of contents, mandatory notices under 37 C.F.R. §42.8, certificates of service or word count, or appendix of exhibits, contains 11187 words according to the word-processing program used to prepare this document (Microsoft Word).

DATED: March 13, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies service pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(a), (b) on the Patent Owner via FedEx overnight mail of a copy of this Petition for *Inter Partes* Review and supporting materials at the Patent Owner at the correspondence address of record for the '752 patent:

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Further, a courtesy copy of this Petition for *Inter Partes* Review was sent via email to Patent Owner's litigation counsel:

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APPENDIX: CHALLENGED CLAIM LISTING

No.	Limitation
24[pre]	A method comprising:
24[a]	receiving, using a computing device, data for creating a network-based agent;
24[b][1]	invoking, using the computing device, and in response to receiving a URL defining a type of event and identifying the network-based agent, execution of the network-based agent,
24[b][2]	wherein the invoking comprises using a service and a service resource configured to be consumed by the network-based agent for performing the operation, and wherein a discrete unit of the service resource is exhausted upon being consumed by the network-based agent; and
24[c]	communicating, using the computing device, a result of the operation over a network communication link.
25	The method of claim 24, wherein invoking execution of the network-based agent comprises using an event handler.