

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC., AMAZON WEB SERVICES, INC., and
AMAZON.COM SERVICES LLC,
Petitioner,

v.

DATONICS LLC,
Patent Owner.

IPR2025-00873
Patent 10,984,445

Before KEN B. BARRETT, WILLIAM V. SAINDON, and
DAVID COTTA, *Administrative Patent Judges*.

COTTA, *Administrative Patent Judge*.

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

I. INTRODUCTION

On April 18, 2025, Petitioner Amazon.com, Inc., Amazon Web Services, Inc., and Amazon.com Services LLC (“Petitioner”)¹ filed a Petition to institute *inter partes* review of claims 1–14 of U.S. Patent No. 10,984,445 (Ex. 1001, “the ’445 patent”). Paper 2 (“Pet.” or “Petition”). Datonics LLC (“Patent Owner”)² did not file a Preliminary Response.

Under 35 U.S.C. § 314(a), *inter partes* review may not be instituted unless the Petition “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Petitioner has established a reasonable likelihood of prevailing on at least one challenged claim is unpatentable. Thus, for reasons explained below, we institute *inter partes* review of claims 1–14 of the ’445 patent.

A. Related Matters

The parties identify the following matters as related to this proceeding: *AlmondNet, Inc. and Datonics LLC v. Amazon.com, Inc. et al.*, No. 6:24-cv-00234 (W.D. Tex.); *Datonics LLC v. Oracle Corp.*, No. 7:25-cv-00059 (W.D. Tex.); and *AlmondNet, Inc., Intent IQ, LLC, and Datonics LLC v. LiveIntent, Inc.*, No. 1:24-cv-00831 (D. Del.). Pet. 73–74; Paper 3, 1.

Petitioner further identifies the following matters as related to this proceeding: *AlmondNet, Inc. v. Lotame Solutions Inc.*, No. 1:24-cv-00376 (D. Del.); and *AlmondNet, Inc. v. Oath Holdings Inc. and Yahoo Inc.*, No.

¹ Petitioner identifies itself as the real party-in-interest. Pet. 73.

² Patent Owner identifies itself as the real party-in-interest. Paper 3, 1.

1:19-cv-00247 (D. Del.). Pet. 74.

Patent Owner also identifies the following matters as related to this proceeding: *AlmondNet, Inc. and Datonics LLC v. Zeta Global Corp. and Zeta Global Holdings Corp.*, 1:25-cv-00579 (D. Del.); *Datonics LLC v. Adobe Inc.*, 7:25-cv-00180 (W.D. Tex.) Paper 3, 1.

In addition, we note that the '445 patent is challenged in IPR2025-01318, filed by LiveIntent, Inc.

B. The '445 Patent

The '445 patent relates to “profile-based behavioral targeting advertisement placement services,” and more specifically “to improving monetization of electronic advertisement placement.” Ex. 1001, 1:19–22. The '445 patent describes an “automatic system” for “identifying media properties interested in having a collected profile made available to them” by “recognizing a collected profile as one that a media property has previously requested or one that is within a category that a media property has previously requested.” *Id.* at 7:19–26. “Using information received from the media property, the PO company [profile owner company] . . . records usage of the profile by the media property” and “determines which profile supplier will be credited for the media property’s usage of the profile (i.e., the one that provided the databank with the profile that was used) and records the credit.” *Id.* at 7:29–35. “[W]hen a media property uses a profile, the media property transfers the visitor, along with the profile it is using, to the PO company’s system, to let the PO company know which kind of profile was used.” *Id.* at 7:36–39.

The '445 patent describes that “collected profiles are made available by accepting information about desired profiles or profile categories from a media property, identifying an electronic visitor as fitting into the profile category, and arranging for that visitor to be tagged.” *Id.* at 8:9–13. The '445 patent also describes “automatically electronically recording electronic visits by tagged visitors to a media property, determining which profile supplier will be credited for the recorded electronic visit, and crediting that profile supplier.” *Id.* at 8:14–18.

C. Challenged Claims

The '445 patent includes 14 claims, all of which are challenged in the Petition. Claim 1 is the only independent claim and reads as follows:

1. A method of causing delivery of electronic advertisements based on provided profiles comprising:
 - (a) with a computer system automatically storing, in a central database associated with the computer system, profile information associated with a visitor, as a result of electronic receipt from a profile owner computer of indicia of the profile information, which profile information associated with the visitor matches a profile or kind of profiles requested by an entity controlling the computer system, wherein a tag associated with a visitor device serves as a link to the profile information associated with the visitor;
 - (b) wherein the profile owner computer is programmed:
 - (i) to automatically select a media property entity of a plurality of media property entities based on a comparison of (A) profile information about a visitor who electronically accessed electronic apparatus of a profile supplier with (B) a plurality of stored requests from the plurality of media property entities, one of which media property entities is the entity controlling the computer system, each stored request being for requested

profiles or kinds of profiles, which plurality of stored requests includes the profile or kind of profiles requested by the entity controlling the computer system, and

(ii) when the media property entity is the entity controlling the computer system, to automatically arrange for electronic storage of a requested profile linked to the tag that is associated with the visitor device, the tag being readable by equipment that is part of the computer system of part (a); and

(c) later, when the visitor device is available to receive an advertisement, with the computer system,

(i) using the tag of part (a) that is associated with the visitor device to access the profile information stored in the central database, and

(ii) using the profile information linked to the tag of part (a) to automatically cause delivery of an electronic advertisement to the visitor device, wherein the electronic advertisement is dependent on the profile information associated with the visitor.

Ex. 1001, 14:60–15:28 (formatting modified for readability).

D. Asserted Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability in this Petition (Pet. 13):

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1, 8–11, 13	103(a) ³	Gilmour ⁴ , Merriman ⁵ , Frauenhofer ⁶
12	103(a)	Gilmour, Merriman, Frauenhofer, POSITA knowledge
2–7, 14	103(a)	Gilmour, Merriman, Frauenhofer, Julia ⁷

Petitioner relies on the declaration of Dr. Henry Houh, among other evidence. Ex. 1002.

II. PATENTABILITY ANALYSIS

A. Principles of Law

“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed.

³ The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended 35 U.S.C. § 103, effective March 16, 2013. Based on the claimed priority date of the ’445 patent, we apply the pre-AIA version of § 103(a). *See* Ex. 1001, code (60), Pet. 10–11.

⁴ Gilmour et al., U.S. Publication No. US 2004/0068477 A1, published Apr. 8, 2004 (Ex. 1012, “Gilmour”).

⁵ Merriman et al., U.S. Patent No. US 8,566,154 B2, issued Oct. 22, 2013, filed Feb. 26, 2002 (Ex. 1013, “Merriman”).

⁶ Frauenhofer et al., U.S. Patent No. US 6,236,991 B1, issued May 22, 2001 (Ex. 1014, “Frauenhofer”).

⁷ Julia et al., U.S. Patent No. US 8,880,677 B2, issued Nov. 4, 2014, filed Jan. 3, 2006 (Ex. 1015, “Julia”).

Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)).

A claim is unpatentable under 35 U.S.C. § 103 if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which that subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) objective indicia of nonobviousness when presented.⁸ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

B. Person of Ordinary Skill in the Art (“POSA”)

In determining the level of skill in the art, we consider the problems encountered in the art, the art’s solutions to those problems, the rapidity with which innovations are made, the sophistication of the technology, and the educational level of active workers in the field. *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986).

Petitioner contends that a person of ordinary skill in the art “would have experience in online advertising and computer science.” Pet. 19 (citing

⁸ The current record in this proceeding does not include any argument or evidence directed to objective indicia of nonobviousness.

Ex. 1002 ¶¶ 30–34). Petitioner asserts that the POSA’s education “could include a bachelor’s degree in business or economics, with an emphasis on the use of technology in marketing or advertising” or “similar knowledge gained through actual work experience.” *Id.* Alternatively, the POSA’s education could include “a bachelor’s degree in computer science or equivalent industry experience, and work with a team that includes software engineers.” *Id.* According to Petitioner, the POSA “could also have qualified with more formal education and less technical experience, or vice versa.” *Id.*

Petitioner’s definition appears to be consistent with the field of the invention reflected in the prior art of record and the disclosure of the ’445 patent. Accordingly, for purposes of this Decision, we adopt Petitioner’s proposed definition of the person of ordinary skill in the art.

C. Claim Construction

We interpret a claim “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b).” 37 C.F.R. § 42.100(b) (2020). Under this standard, we construe the claim “in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” *Id.*

Petitioner “applies plain-and-ordinary meaning to all terms.” Pet. 20.

We determine that no terms require express construction at this stage. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy,

and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

D. Overview of Asserted Prior Art Relevant to Disputed Issues

1. Gilmour

Gilmour is a U.S. Patent Application published on April 8, 2004. Ex. 1012, code (43). Petitioner contends that Gilmour is prior art under 35 U.S.C. § 102(b). Pet. 14. Gilmour relates to “manag[ing] access to descriptive profiles of users in a manner that [e]nsures the privacy of the profiles” and also “provides meaningful access thereto.” Ex. 1012 ¶ 2. Gilmour discloses “constructing a first profile utilizing first information concerning a target entity, wherein the first information is provided by the target entity,” and constructing a second profile “utilizing second information concerning the target entity, wherein the second information is provided by a further entity.” *Id.* ¶ 8. Gilmour describes that a “profile search is performed against both the first and second profiles, and a search result is processed according to a publication policy specified by the target entity.” *Id.*

2. Merriman

Merriman is a U.S. Patent filed on February 26, 2002. Ex. 1013, code (22). It issued on October 22, 2013. *Id.* at code (45). Petitioner contends that Merriman is prior art under 35 U.S.C. § 102(e). Pet. 16. Merriman relates to “delivery of advertisements and measuring responses to those delivered advertisements,” and “to the targeting of advertisements delivered over networks such as the internet.” Ex. 1013, 1:20–23. Merriman is

directed to “re-targeted advertising,” which “uses the past responses of the present viewer to select a present ad” and is “history specific to the present user.” *Id.* at 3:20–25. Merriman discloses “a system whereby a new follow up (re-targeted) advertisement from a specific advertiser who targeted that viewer previously, is selected for that viewer based on the viewer’s own past behavior at that specific advertiser’s web site.” *Id.* at 3:29–34.

3. Frauenhofer

Frauenhofer is a U.S. Patent issued on May 22, 2001. Ex. 1014, code (45). Petitioner contends that Frauenhofer is prior art under 35 U.S.C. § 102(b). Pet. 18. Frauenhofer relates to “gathering related content from internet and intranet sources and providing access to same in response to user requests.” Ex. 1014, 1:8–10. Frauenhofer is directed to “gathering, categorizing, and delivering electronic content to users in response to user requests,” “gathering content from both inside (i.e., intranet) and outside (i.e., internet) sources and categorizing same for provision in response to customized user requests,” and “provid[ing] a customer with the ability to embed user interest and delivery mechanisms into customer applications.” *Id.* at 2:8–18. Frauenhofer discloses “a system for collecting and categorizing metadata about content provided via the internet or intranet; for gathering user interest information and creating a user profile for matching to collected and categorized content information; and for matching and delivering categorized information tailored to customized user profiles.” *Id.* at 2:21–27.

4. Julia

Julia is a U.S. Patent filed on Jan 3, 2006. Ex. 1015, code (22). It issued on November 4, 2014. *Id.* at code (45). Petitioner contends that Julia is prior art under 35 U.S.C. § 102(e). Pet. 18. Julia relates to “delivering content to users on a network.” *Id.* at 1:15–17. Julia is directed to “providing more appealing content to the viewing audience, but at the same time, maintaining privacy of any user in the audience.” *Id.* at 2:7–11. Julia discloses that “content is targeted to a user or a group of users” such that “information about the user remains private, while at the same time enabling programmatic selections of advertisements and other contents to be made for the designated system or network for purpose of targeting the particular user based on his demographic and/or preferences.” *Id.* at 2:16–31.

*E. Obviousness over Gilmour, Merriman, and Fraunhofer
(Ground 1)*

Petitioner asserts that claims 1, 8–11, and 13 would have been obvious over Gilmour, Merriman, and Fraunhofer, and sets forth an element-by-element comparison of the challenged claims to the asserted art. Pet. 20–63. At this stage, Patent Owner does not contest Petitioner’s assertions. We discuss Petitioner’s assertions below.

1. Independent Claim 1

Petitioner addresses each limitation of claim 1. Pet. 20–54. Patent Owner does not dispute Petitioner’s assertions for each limitation. Below, we address each limitation of claim 1.

a. Preamble

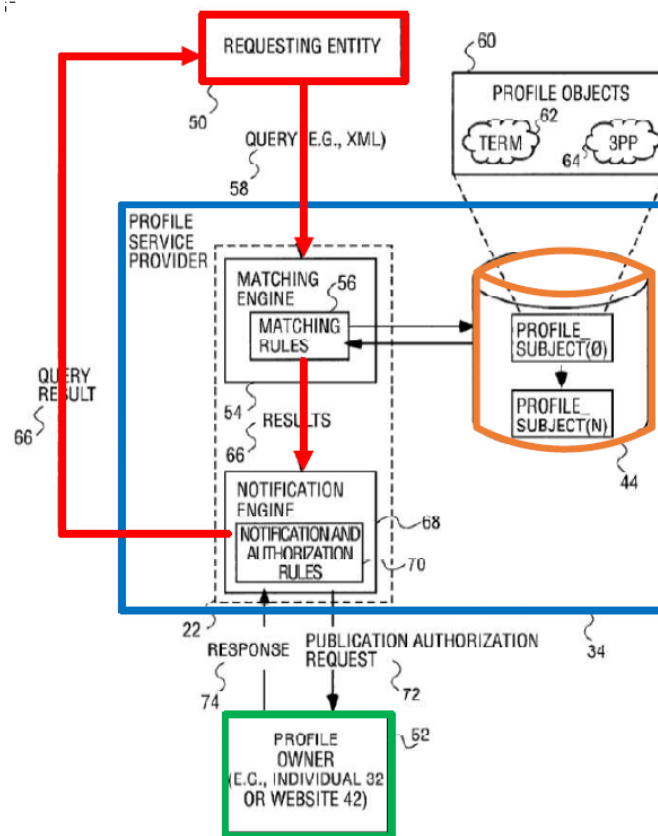
The preamble of claim 1 recites “[a] method of causing delivery of electronic advertisements based on provided profiles.” Ex. 1001, 14:60–61. Petitioner contends that Gilmour discloses the preamble. Pet. 20 (citing Ex. 1012, Abstr., ¶¶ 2, 4, 8, 9, 22, 34, 39, 50–61, 72–105). In particular, Petitioner points the Gilmour’s example disclosing that “a requesting entity can identify a profile subject who is ‘a candidate for the purchase of a digital camera’ and deliver to that subject ‘an offer to sell a camera at a very favorable purchase price.’” *Id.* (citing Ex. 1012 ¶ 84; Ex. 1002 ¶¶ 99–101).

b. “With a computer system automatically storing. . .”

Claim 1 recites:

with a computer system automatically storing, in a central database associated with the computer system, profile information associated with a visitor, as a result of electronic receipt from a profile owner computer of indicia of the profile information, which profile information associated with the visitor matches a profile or kind of profiles requested by an entity controlling the computer system, wherein a tag associated with a visitor device serves as a link to the profile information associated with the visitor.

Ex. 1001, 14:61–15:3. Petitioner contends that “Gilmour alone and combined with Merriman discloses this limitation.” Pet. 21. Petitioner points to Figure 3 of Gilmour, reproduced below (as annotated by Petitioner).



Pet. 31. Figure 3 is a “diagrammatic representation of the architecture of a profile service provider, according to [Gilmour’s] invention.” Ex. 1012 ¶ 13. Gilmour’s profile service provider includes requesting entity 50 (annotated in a red box by Petitioner), profile service provider 34 (annotated in a blue box by Petitioner), and profile owner 52, (annotated in a green box by Petitioner). Ex. 1012 ¶ 50, Fig. 3. Profile owner 52 may be, for example, an individual 32 or a website 42. *Id.* at Fig. 3. As shown in Figure 3, the

profile service provider 34 maintains user profiles 44, which are based on the activities of individuals 32 at websites 42. *Id.* ¶¶ 33–44, Fig. 3. A requesting entity 50 may send a query 58 to a matching engine 56 in the profile service provider 34. *Id.* ¶¶ 50, 56, 57, 61. In response, matching engine 56 sends the result to notification engine 68, which sends the query result 66 to requesting entity 50. *Id.*

Petitioner contends that Gilmour’s requesting entity 50 corresponds to the claimed “computer system” and profile service provider 34 corresponds to the claimed “profile owner.” Pet. 23. According to Petitioner, profile service provider 34 stores profiles 44 that describe what visitors did at websites 42 and that may include demographic information. *Id.* at 25 (citing Ex. 1012 ¶¶ 33–35, 37–44, 50, 54, 55; Ex. 1002 ¶¶ 109, 110). Petitioner asserts that in response to a query 58, Gilmour’s profile service provider provides a query result 66 to requesting entity 50 that comprises a collection of information retrieved from profiles 44. *Id.* at 26–27 (citing Ex. 1012 ¶¶ 50, 56, 57, 61, 80, 82; Ex. 1002 ¶¶ 111–113). According to Petitioner, the query result 66 provided to requesting entity 50 matches the profile or kind of profiles requested by the requesting entity. *Id.* at 30–33 (citing Ex. 1012 ¶¶ 50, 56; Ex. 1002 ¶¶ 125–127).

Petitioner acknowledges that Gilmour does not expressly state that the requesting entity automatically stores the query result in a central database, but argues:

it would have been obvious for Gilmour’s requesting entity computer system to store the profile information it receives from the profile service provider computer in a central database associated with the computer system. It also would have been

obvious for the requesting entity to store the profile information in the database “automatically” because this is how computers operate.

Pet. 28 (citing Ex. 1002 ¶¶ 118–119). Petitioner further argues that the requesting entity computer would store the query results because “it is beneficial to store profile information for later use.” *Id.*

In addition, Petitioner contends that to the extent Gilmour alone does not render it obvious to automatically store the query results in a central database, it would have been obvious to do so in view of Merriman. Pet. 29. According to Petitioner, Merriman discloses an advertising server that stores profile information received from websites in an associated central database. *Id.* (citing Ex. 1013, Fig. 1, 3:44–46, 4:34–36, 5:22–24, 5:49–54, 5:61–63; Ex. 1002 ¶ 121). Petitioner argues that it would have been obvious to “modify Gilmour in view of Merriman to have the requesting entity computer system use Merriman’s central database to automatically store profile information as a result of electronic receipt of indicia of the profile information from the profile service provider so the requesting entity could easily retain, access, and use the profile information.” *Id.* (citing Ex. 1002 ¶ 122).

With respect to the claimed “tag associated with a visitor device,” Petitioner contends that any unique identifier, including, for example, a cookie, meets this limitation. Pet. 34. According to Petitioner, Merriman discloses using a cookie in the manner recited in the claim. *Id.* at 34 (citing Ex. 1013, 4:34–36, 4:39–41, 5:56–57). Petitioner argues that it would have been obvious to “use a cookie associated with a visitor device to serve as a link to the profile information associated with the visitor as taught by

Merriman” because doing so would “allow[] Gilmour’s requesting entity computer system to recognize a visitor and access the visitor’s profile information stored in a database for targeted advertising purposes.” *Id.* at 35 (citing Ex. 1012 ¶ 39; Ex 1013, 3:34–41, 5:56–57; Ex. 1002 ¶ 131).

c. “The profile owner computer is programmed . . . to automatically select . . .”

Claim 1 recites:

the profile owner computer is programmed: (i) to automatically select a media property entity of a plurality of media property entities based on a comparison of (A) profile information about a visitor who electronically accessed electronic apparatus of a profile supplier with (B) a plurality of stored requests from the plurality of media property entities, one of which media property entities is the entity controlling the computer system, each stored request being for requested profiles or kinds of profiles, which plurality of stored requests includes the profile or kind of profiles requested by the entity controlling the computer system.

Ex. 1001, 15:3–14.

Petitioner recognizes that during prosecution of United States Patent Application No. 17/401,052 (“the ’052 application”), a grandchild application of the application that resulted in the ’445 patent, the Board found that “there [was] no disclosure of selecting one of a plurality of entities for a given profile information, as claimed, in Gilmour.” Pet. 36 (citing Ex. 1009, 564 (prosecution history of the ’502 application)). Rather, the Board determined that in Gilmour “profile information is sent to the requesting entity based on a policy set by the profile owner and not by the claimed comparison process.” Ex. 1009, 565. The Board reversed the

Examiner's rejection concluding that "the Examiner does not explain how one of ordinary skill in the art would have known to cause [Gilmour's] policy to be 'based on a comparison of (A) profile information about a visitor who electronically accessed electronic apparatus of a profile supplier using a first visitor device, with (B) a plurality of stored requests from the plurality of media property entities.'" *Id.*

Petitioner contends that "[t]he Gilmour-Merriman-Frauenhofer combination remedies the deficiencies the Board noted for Gilmour." Pet. 36. Petitioner asserts that "Gilmour's profile service provider compares the profile information with a request from a requesting entity." *Id.* at 39. Petitioner acknowledges, however, that "Gilmour does not explicitly disclose that the requesting entity is a media property entity." *Id.* at 39. To address this deficiency, Petitioner asserts that Merriman discloses an advertising server 14 that controls an ad space 20 on an affiliate website 14, thus qualifying as a "media property entity." Pet. 40–41 (citing Ex. 1013, Fig. 1, 2:30–45, 2:58–62, 4:29–36, 5:9–32, 6:5–11). Petitioner further asserts that Merriman teaches that there may be a plurality of advertising servers. *Id.* at 42 (citing Ex. 1013, 2:58–62). Petitioner argues that it would have been obvious "to use Merriman's ad server as one or more requesting entities within Gilmour's system because an ad server could use the received profile information to better target advertisements in the ad spaces it controls." *Id.* at 41 (citing Ex. 1012 ¶ 84; Ex. 1013, 1:27–29, 1:62–67; Ex. 1002 ¶¶ 145–146).

Petitioner recognizes that the combination of Gilmour and Merriman alone "does not disclose that the profile owner computer automatically

selects a media property entity of a plurality of media property entities based on a comparison of the profile information with a plurality of stored requests from the plurality of media property entities.” *Id.* at 42. To address this deficiency, Petitioner asserts that Fraunhofer “discloses automatically selecting a user of a plurality of users based on a comparison of content with the plurality of stored requests from the users.” Pet. 44 (citing Ex. 1014, 3:12–19). Petitioner argues that it would have been obvious to combine Fraunhofer’s teachings with those of Gilmour and Merriman to arrive at the claimed method. *Id.* According to Petitioner a POSA “would have been motivated to make this combination because it would conveniently allow Gilmour’s requesting entities (which are media property entities) to make initial requests to the profile service provider, and then automatically receive profiles matching the requests on an ongoing or periodic basis.” *Id.* at 45. (citing Ex. 1010, 41; Ex. 1011, 39–40, 51; Ex. 1012 ¶ 25; Ex. 1013, 3:20–23; Ex. 1002 ¶ 155).

*d. “The profile owner computer is programmed . . .
automatically arrange for electronic storage . . .”*

Claim 1 recites:

the profile owner is programmed to: . . . (ii) when the media property entity is the entity controlling the computer system, to automatically arrange for electronic storage of a requested profile linked to the tag that is associated with the visitor device, the tag being readable by equipment that is part of the computer system of part (a).

Ex. 1001, 15:15–20. Petitioner contends that “Gilmour’s profile service provider (the profile owner computer) is programmed ‘to automatically arrange for electronic storage of a requested profile.’” Pet. 50 (citing Ex.

1012 ¶¶ 47, 56, 58, 61, 80, 81, 91; Ex. 1002 ¶ 167). And Petitioner asserts that Merriman discloses a first server (Merriman’s advertiser website 16) linking a profile to a cookie associated with a visitor device, where the cookie is readable by a second server (Merriman’s advertising server 14). Pet. 50–51 (Ex. 1013, 5:43–51, 5:56–57, Ex. 1006, 701; Ex. 1002 ¶¶ 168, 174). According to Petitioner, “[i]n combination, Gilmour’s profile service provider computer system redirects a website visitor having a requested profile to the server of the requesting entity computer system using the technique taught in Merriman.” *Id.* at 51–52 (citing Ex. 1002 ¶ 172). Petitioner argues that the POSA “would have been motivated to combine the references in this way because it conveniently allows the requesting entity to identify visitors with matching profiles and provide them with targeted advertising.” *Id.* at 52 (citing Ex. 1012 ¶¶ 39, 42–44, 58, 84, 86, 91; Ex. 1013, 5:56–67).

e. “Later, when the visitor device is available to receive an advertisement, with the computer system, (i) using the tag of part (a) . . .”

Claim 1 recites “(c) later, when the visitor device is available to receive an advertisement, with the computer system, (i) using the tag of part (a) that is associated with the visitor device to access the profile information stored in the central database.” Ex. 1001, 15:20–24.

Petitioner asserts that in Merriman, when the visitor device is available to receive an advertisement, “[t]he ad space from the affiliate website redirects the visitor’s browser to the advertising server to obtain the ad” and “the advertising server receives the redirected request and uses the

tag of part (a) associated with the visitor device (cookie) to access the profile information stored in the central database per limitation.” Pet. 53–54 (citing Ex. 1013, 2:31–45, 4:5–10, 5:9–32, 5:56–59, 6:5–11; Ex. 1001, 1:47–50; Ex. 1002 ¶ 177).

f. “Later, when the visitor device is available to receive an advertisement, with the computer system, . . . using the profile information linked to the tag of part (a) . . .”

Claim 1 recites:

(c) later, when the visitor device is available to receive an advertisement, with the computer system, . . . (ii) using the profile information linked to the tag of part (a) to automatically cause delivery of an electronic advertisement to the visitor device, wherein the electronic advertisement is dependent on the profile information associated with the visitor.

Ex. 1001, 15:23–28. Petitioner contends that “Merriman’s advertising server uses the profile information linked to the tag (cookie) to select an electronic advertisement targeted to the visitor” and “automatically causes delivery of the selected ad to the visitor device.” Pet. 54 (citing Ex. 1013, 4:5–10, 5:22–25, 6:13–19; Ex. 1002 ¶ 178).

g. Conclusion with respect to Claim 1

Having reviewed the arguments and evidence included in the Petition, including the Houh Declaration, which are not substantively challenged by Patent Owner at this stage, we are persuaded that Petitioner sufficiently demonstrates, for purposes of this Decision, that the combination of Gilmour, Merriman, and Fraunhofer teaches or suggests each of the limitations of claim 1. Accordingly, we determine that, based on the current record, there is a reasonable likelihood that Petitioner will prevail in

demonstrating that claim 1 is unpatentable as obvious over the combination of Gilmour, Merriman, and Frauenhofer.

2. Dependent Claims 8–11 and 13

Because Petitioner demonstrates a reasonable likelihood of success in proving that at least one claim of the '445 patent is unpatentable, we institute on all grounds and all claims raised in the Petition. *See* 37 C.F.R. § 42.108(a).

F. Remaining Grounds

Petitioner asserts that claim 12 would have been obvious over the combination of Gilmour, Merriman, Frauenhofer and the knowledge of a POSA and that claims 2–7, and 14 would have been obvious over the combination Gilmour, Merriman, Frauenhofer, and Julia. Pet. 63–72. Because Petitioner demonstrates a reasonable likelihood of success in proving that at least one claim of the '445 patent is unpatentable, we institute on all grounds and all claims raised in the Petition. *See* 37 C.F.R. § 42.108(a).

III. CONCLUSION

On this preliminary record, Petitioner has established a reasonable likelihood of prevailing in showing that at least one of the challenged claims is unpatentable based on the grounds advanced in the Petition.

IV. NOTICES

The Board may deem waived any issue not raised by Patent Owner in a timely response to the Petition or as permitted in another manner during trial, even if the issue was discussed in this Decision.

Nothing in this Decision authorizes Petitioner, in a manner not otherwise permitted by the Board's rules or controlling precedent, to supplement the information supporting any ground advanced in the Petition.

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is granted, and we institute *inter partes* review of claims 1–14 based on the grounds asserted in this Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is given of the institution of trial, which will commence on the entry date of this Decision.

IPR2025-00873
Patent 10,984,445

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