

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LINKEDIN CORPORATION,
Petitioner,

v.

DISTEFANO PATENT TRUST III, LLC,
Patent Owner.

IPR2019-00419
U.S. Patent No.: 8,768,760
Issued: July 1, 2014
Application No.: 14/191,746
Filed: Feb. 27, 2014

Title: Reciprocal Linking Arrangement Between Web Pages

PETITION FOR
INTER PARTES REVIEW OF U.S. PATENT NO. 8,768,760

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LIST OF EXHIBITS

No.	Description
1001	U.S. Patent No. 8,768,760 (“the ’760 Patent”)
1002	Prosecution History of U.S. Patent No. 8,768,760
1003	U.S. Patent No. 7,996,259 (“DiStefano (’259)”)
1004	Prosecution History for U.S. Patent No. 7,996,259
1005	U.S. Patent Application No. 13/206,483 (“2011 Application”)
1006	U.S. Patent Application No. 13/669,027 (“2012 Application”)
1007	U.S. Patent Application No. 13/763,128 (“2013 Application”)
1008	U.S. Patent No. 5,995,099 (“Horstmann”)
1009	Declaration of Loren Terveen (“Terveen”)
1010	Excerpts of HTML & CGI UNLEASHED, December, John, et al., Sams.net Publishing (1995)
1011	Prosecution History for U.S. Patent Application No. 13/946,461 (“’461 Application”)
1012	<i>DiStefano Patent Trust III, LLC v. LinkedIn Corporation</i> , Case No. 1:17-cv-01798-LPS-CJB, Dkt. No. 11, Amended Complaint, dated February 22, 2018
1013	<i>DiStefano Patent Trust III, LLC v. LinkedIn Corporation</i> , Case No. 1:17-cv-01798-LPS-CJB, Dkt. No. 16, Plaintiff DiStefano Patent Trust III, LLC’s Opposition to LinkedIn Corporation’s Motion to Dismiss for Failure to State a Claim Under 35 U.S.C. § 101, dated April 5, 2018

1014	<i>DiStefano Patent Trust III, LLC v. LinkedIn Corporation</i> , Case No. 1:17-cv-01798-LPS-CJB, Dkt. No. 28, Memorandum Opinion, dated September 28, 2018
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MANDATORY NOTICES UNDER 37 C.F.R. § 42.8

1. Real Party-In-Interest

LinkedIn Corporation is the sole real party-in-interest.

2. Related Matters

The '760 Patent (Ex. 1001) is asserted in the following litigation: *DiStefano Patent Trust III, LLC v. LinkedIn Corporation*, Civil Action No. 1:17-cv-01798 (District of Delaware), filed December 14, 2017, and currently on appeal at the Court of Appeals for the Federal Circuit, Case No. 19-1210 (docketed November 16, 2018).

3. Lead And Back-Up Counsel, And Service Information

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Pursuant to 37 C.F.R. § 42.10(b), concurrently filed with this Petition is a Power of Attorney executed by Petitioner and appointing the above counsel.

I. INTRODUCTION

LinkedIn Corporation (“Petitioner”) respectfully requests *inter partes* review (“IPR”) of claims 1-20 of U.S. Patent No. 8,768,760 (“’760 Patent”) (Ex. 1001), allegedly assigned to DiStefano Patent Trust III, LLC (“Patent Owner”). The ’760 Patent issued from U.S. Patent Application No. 14/191,746, filed in 2014 (“2014 Application”), but claims priority through a series of applications to an application filed in 2000. Under governing law, there is no presumption of entitlement to priority.

Here, the scope of the claims—claims which were not drafted until years after the initial application and the creation of the LinkedIn system accused of infringement—changed so significantly and became so divorced from the application’s specification over the 14-year prosecution history that the priority chain for the 2014 Application was broken. As detailed below, the Applicant’s own intervening prior art renders claims 1-20 of the ’760 Patent unpatentable and they should be cancelled.

II. GROUNDS FOR STANDING PER SECTION 42.104(A)

Petitioner certifies that the ’760 Patent is available for IPR and that Petitioner is not barred or estopped from requesting an IPR challenging the patent claims on the grounds identified in this petition.

III. IDENTIFICATION OF CHALLENGE

A. Statement Of The Precise Relief Requested

Petitioner requests *inter partes* review of claims 1-20 (each a “Challenged Claim,” and collectively the “Challenged Claims”) of the ’760 Patent under 35 U.S.C. § 103. This petition presents evidence of unpatentability and establishes a reasonable likelihood that the Petitioner will prevail in establishing that each Challenged Claim is unpatentable.

An electronic payment in the amount of \$33,500 for the fee specified by 37 C.F.R. § 42.15(a) is being paid at the time of filing this petition, charged to deposit account no. 02-4550. Any adjustments in the fee may be debited/credited to the deposit account.

B. Statutory Grounds For Challenge

This petition presents the following statutory ground for unpatentability of the Challenged Claims:

	Reference(s)	Basis	Claims
Ground 1	U.S. Patent No. 7,996,259 (“DiStefano (’259)”)	35 U.S.C. § 103	1-20

As detailed here, the petition demonstrates at least a reasonable likelihood that each Challenged Claim is unpatentable.

C. No Examiner Addressed These Unpatentability Grounds

Neither “the same or substantially the same prior art or arguments previously were presented to the Office” during prosecution of the ’760 Patent. *See* 35 U.S.C. § 325(d).

No Examiner addressed whether U.S. Patent No. 7,996,259 (“DiStefano (’259)”) qualifies as prior art to the Challenged Claims, or, if prior art, would render them obvious. No Examiner expressly addressed whether the Challenged Claims have written description support in U.S. Patent Application No. 09/589,551 or U.S. Patent Application No. 13/206,483. Applicant did not, in the prosecution of the ’760 Patent, address the arguments set forth herein (or arguments substantially identical thereto) regarding why the Challenged Claims are not entitled to an ancestor application’s effective filing date. Nor did the Patent Office consider Petitioner’s additional evidence, including the Declaration of Loren G. Terveen, Ph.D. Ex. 1009.

Thus, no unpatentability ground asserted herein has been previously presented to the Patent Office.

IV. THE CHALLENGED CLAIMS’ 14-YEAR PROSECUTION

The ’760 Patent, titled “Reciprocal Linking Arrangement Between Web Pages” issued on July 1, 2014. The ’760 Patent issued from U.S. Application Ser. No. 14/191,746, filed on February 27, 2014 (“2014 Application”), which is a continuation of U.S. Application Ser. No. 13/763,128, filed on Feb. 8, 2013 (“2013 Application”),

which is a continuation of U.S. Application Ser. No. 13/669,027 (now U.S. Pat. No. 8,423,399), filed on Nov. 5, 2012 (“2012 Application”), which is a continuation of U.S. Application Ser. No. 13/206,483 (now U.S. Pat. No. 8,335,713), filed on Aug. 9, 2011 (“2011 Application”), which is a continuation of U.S. Application Ser. No. 09/589,551 (now U.S. Pat. No. 7,996,259), filed on June 7, 2000 (“2000 Application”). Ex. 1001, p. 1. This claimed priority chain is illustrated in the following table.

U.S. Pat. Appln. No.	Date Filed	Issued Pat. No.	Date Issued
14/191,746 (“2014 Application”)	2/27/2014	8,768,760	7/1/2014
13/763,128 (“2013 Application”)	2/8/2013	8,996,398	3/31/2015
13/669,027 (“2012 Application”)	11/5/2012	8,423,399	4/16/2013
13/206,483 (“2011 Application”)	8/9/2011	8,335,713	12/18/2012
09/589,551 (“2000 Application”)	6/7/2000	7,996,259	8/9/2011

A. The 2000 Application And Its 11-Year Prosecution History

The ’760 Patent claims ultimate priority to an application filed nearly 14 years before the filing of the 2014 Application that led to the Challenged Claims. The 2000 Application (and its prosecution) was focused on different subject matter than what is claimed by the Challenged Claims, namely website design of a single website prior to the website being activated. Ex. 1004. In contrast, and as discussed in greater detail below, the Challenged Claims recite a reciprocal linking arrangement that requires, among other things, adding reciprocal links to two preexisting web pages associated

with two different parties, as well as establishing the reciprocal linking arrangement within a database.

As filed, the 2000 Application was titled “Method For Developing Electronic Documents Providing E-Commerce Tools,” and included an abstract directed at “[a] method of assisting a website designer in establishing an arrangement between a first website *being designed by the website designer* and a second website in order to market the first website at the second website upon the activation of the first website on the internet”—that is, the uni-directional marketing of the first website at a second website. *Id.*, pp. 711-712/717 (emphasis added); *see also id.*, p. 648/717 (Summary of Invention). For example, original Claim 1 from the 2000 Application is set forth below:

1. A method of assisting a website designer in establishing an arrangement between a first website being designed by the website designer and a second website in order to market the first website at the second website upon the activation of the first website on the internet, the method comprising:

during design of the first website receiving information at a user interface indicating a type of an element for marketing that is to be displayed at the second website, and information specifying the second website at which the element is to be displayed,

saving the information at a first database that is coupled to the user interface;

obtaining the element for marketing of the type indicated; and

causing the display of the element for marketing at the second website when the first website is activated with respect to the internet,

wherein the element for marketing includes at least one of a banner ad concerning the first website and a link to the first website.

Ex. 1004, p. 700/717 (emphasis added).

In November 2003, the Examiner rejected all claims then pending in the 2000 Application. *Id.*, p. 494/717. In response, the Applicant argued that the cited prior art (Wexler) “is silent with respect to the notion that information is received during the design of the first website as explicitly stated by claim 1.” *Id.*, p. 483/717 (emphasis in original). The Applicant further argued that the cited prior art (Hess) failed “to teach that the selected e-commerce feature is displayed on a website when that website is activated on the internet.” *Id.*, p. 486/717 (emphasis in original).

In November 2004, the Examiner again rejected all claims then pending. *Id.*, p. 449/717. In addition to the Wexler and Hess prior art, the Examiner relied on a new prior art reference, U.S. Patent No. 6,330,575 (“Moore”). The Applicant attempted to distinguish Moore by arguing that “Moore further fails to teach the step of causing the display of the element for marketing at the second Web site when the first Web site is activated with respect to the Internet.” *Id.*, p. 441/717 (emphasis in original). The Examiner maintained his rejection, and the Applicant ultimately appealed the rejection to the Board of Patent Appeals and Interferences.

On June 15, 2009, the Board affirmed the Examiner's rejection as to 18 of the 21 pending claims, but did not sustain the Examiner's rejection of the remaining three claims (claims 4-6) due to the Examiner's improper claim construction. *Id.*, pp. 65-81/717. The Applicant then requested rehearing of the Board's decision, which the Board denied on September 13, 2009. *Id.*, pp. 154-161/717.

After the Board's decision, the Applicant amended claims 4-6 (*id.*, p. 145-146/717), and added ten new claims (*id.*, pp. 118-122/717 (claims 22-31)). The Examiner rejected all thirteen then-pending claims, relying on U.S. Patent No. 6,629,135 ("Ross") in addition to Moore and U.S. Patent No. 6,401,075 ("Mason"). *Id.*, pp. 102-109/717. The Applicant ultimately cancelled six of the rejected claims. *Id.*, pp. 56-62/717. After 11 years of prosecution, the Examiner finally allowed the claims, finding that the closest prior art references "do not teach determining whether a reciprocal site for the display of at least one marketing element of a third party website exists in the first website being designed and creating the reciprocal site for the display of the at least one marketing element of the third party website when the reciprocal site does not yet exist in the first website being designed." *Id.*, pp. 23-24/717 (emphasis added).

B. The 2011, 2012, And 2013 Applications

The 2011 Application was filed on August 9, 2011, the same day the 2000 Application finally issued as DiStefano ('259). Ex. 1005, p. 1/105; Ex. 1003, p.1. The

Applicant submitted the same 21 claims originally filed with the 2000 Application. Ex. 1005, pp. 94-104/105. As noted above, none pertained to creating reciprocal linking arrangements in existing web pages. *Id.*

On November 5, 2012, the Applicant filed the 2012 Application. Ex. 1006. Accompanying the 2012 Application was a Preliminary Amendment that amended the title to “Third Party Payments In Reciprocal Link System.” *Id.*, pp. 114-122/124. The Preliminary Amendment also cancelled the original 21 claims filed with the 2000 Application and added new claims 22-39. *Id.*, pp. 117-122/124. In addition to changing completely the claims and the title, the Preliminary Amendment also included a new Abstract. *Id.*, p. 116/124.

On February 8, 2013, the Applicant filed another application, including another Preliminary Amendment that cancelled the original 21 claims, added new claims 22-38. Ex. 1007, pp. 116-119/128. Like the 2012 Application, it further amended the title and abstract. *Id.*, pp. 114-115/128.

C. The 2014 Application And The Challenged Claims

As noted above, the application that led to the Challenged Claims was filed on February 27, 2014. Ex. 1002, p. 557/558. The 2014 Application included a Preliminary Amendment, which added new claims 22-41, and amended—yet again—the title and abstract. *Id.*, pp. 548-555/558. The title was changed to recite “Reciprocal Linking Arrangement Between Web Pages.” *Id.*, p. 549/558.

The Abstract was also substantially amended to be directed at the concept of establishing a reciprocal linking arrangement between existing web pages as follows (new subject matter not disclosed in 2011 Application underlined):

A method, within and by a computer hardware system configured to serve a first web page associated with a first user and a second web page associated with a second user includes the following. A first indication to opt into a reciprocal linking arrangement is received from a first computer associated with the first user. A second indication to opt into the reciprocal linking arrangement is received from a second computer associated with the second user. The reciprocal linking arrangement is established based upon both the first and second users opting to participate in the reciprocal linking arrangement. Based upon the reciprocal linking arrangement, second and first functional identification elements, respectively associated with the first and second entities, are respectively included within the second and first web pages. The reciprocal linking arrangement is established within a database associated with the computer hardware system.

Id., p. 550/558.

The Examiner rejected the claims on April 15, 2014, due to non-statutory double patenting. *Id.*, p. 268/558. The Applicant responding by filing a terminal

disclaimer. *Id.*, p. 47/558. The Examiner then allowed the Challenged Claims to issue. *Id.*, p. 15/558.

The Challenged Claims are directed at the features recited in the Abstract as amended in February 2014 that is set forth above. Claim 1 and Claim 11, the only independent claims, are reproduced below:

Claim 1

A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

receiving, from a first computer associated with the first user, a first indication to opt into a reciprocal linking arrangement;

receiving, from a second computer associated with the second user, a second indication to opt into the reciprocal linking arrangement;

establishing, within a database associated with the computer hardware system, the reciprocal linking arrangement based upon both the first and second users opting to participate in the reciprocal linking arrangement;

including, within the second web page and based upon the reciprocal linking arrangement, a second functional identification element associated with the first user; and

including, within the first web page and based upon the reciprocal linking arrangement, a first functional identification element associated with the second user,

wherein the second functional identification element includes a link to the first web page, and the first

functional identification element includes a link to the second web page.

Claim 11 claims essentially the same features as Claim 1, except Claim 11 is written as an apparatus (server system) claim instead of a method claim.

Claim 11

A webpage implementation server system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

- a database storing information associated with the first and second web pages;

- a computer hardware system configured to perform:

- receiving, from a first computer associated with the first user, a first indication to opt into a reciprocal linking arrangement;

- receiving, from a second computer associated with the second user, a second indication to opt into the reciprocal linking arrangement;

- establishing, within the database, the reciprocal linking arrangement based upon both the first and second users opting to participate in the reciprocal linking arrangement;

- including, within the second web page and based upon the reciprocal linking arrangement, a second functional identification element associated with the first user; and

- including, within the first web page and based upon the reciprocal linking arrangement, a first functional identification element associated with the second user, wherein

- the second functional identification element includes a link to the first web page, and the first functional

identification element includes a link to the second web page.

V. CLAIM CONSTRUCTION

As noted above, the Challenged Claims claim priority to a series of ancestor applications, namely the 2013 Application, 2012 Application, 2011 Application, and 2000 Application (collectively the “Priority Applications”). But, “[i]n order for a patent to be entitled to priority based on an earlier application or chain of applications, each previous application in the chain must comply with the written description requirement of 35 U.S.C. § 112(a).” *L.A. Biomed. Research Inst. at Harbor-UCLA Med. Ctr. v. Eli Lilly and Co.*, 849 F.3d 1049, 1057 (Fed. Cir. 2017). In order to determine what appropriately qualifies as prior art to the Challenged Claims, Petitioner challenges whether the Priority Applications, in particular the 2011 Application, adequately support the full scope of the Challenged Claims.

Before the Board can determine whether the written description supports the full scope of the Challenged Claims, it must properly construe them. *See, e.g., X2Y Attenuators, LLC v. Int’l Trade Comm’n*, 757 F.3d 1358, 1365 (Fed. Cir. 2014). For example, in *Sitrick v. Dreamworks, LLC*, 516 F.3d 993, 996 (Fed. Cir. 2008), the court construed the claims’ full scope as encompassing performing the claim-recited actions and functions for both movies and video games. It then determined that the claims were not enabled because the specification enabled the claimed actions and

functions only for video games. *Id.* at 1000-01.

Each claim “shall be construed using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b), including construing the claim in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. § 42.100(b). The Federal Circuit has “made clear [] that the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Here, the Board should construe each Challenged Claim as requiring at least the following three features, which are material to whether the Challenged Claims are entitled to the filing date of the 2011 Application.

Two Users Each Opting Into A Common Reciprocal Linking Arrangement:

As shown above by the underlined red text, each Challenged Claim explicitly requires two users each opting into a bi-directional “reciprocal linking arrangement” where the claimed system receives “a first indication to opt into a reciprocal linking arrangement,” and “a second indication to opt into the” same reciprocal linking

arrangement.¹ Specifically, the pertinent claim language required by each Challenged Claim is “a first indication to opt into a reciprocal linking arrangement,” and “a second indication to opt into **the** reciprocal linking arrangement.” See Ex. 1001, Claim 1 (emphasis added). The claim term “**the**” dictates the existence of a single, common, “reciprocal linking arrangement” because the “second indication to opt into” references “the reciprocal linking arrangement,” which the claim previously identified in connection with the “first indication to opt into” *Phillips*, 415 F.3d at 1314 (“In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.”). Ex. 1009, ¶ 45.

Reciprocal Linking Arrangement Database: As shown above by the underlined blue text, each Challenged Claim explicitly requires establishing the “reciprocal linking arrangement” within a database. Specifically, each Challenged Claim recites “establishing, within a database associated with the computer hardware system, the reciprocal linking arrangement based upon both the first and second users

¹ Patent Owner’s infringement allegations filed in a pending lawsuit suggest that indications of opting-into a reciprocal linking arrangement are received by each user at each user’s computer, respectively. Ex. 1012. Regardless of whether it is the computer hardware system configured to serve the web pages or an individual user that is the entity that receives the opt-in indication, there is no support in the Priority Applications for the claim language.

[opting to participate in the reciprocal linking arrangement.](#)” See Ex. 1001, Claim 1.

This language means that the claimed database includes, that is, stores, the previously identified “reciprocal linking arrangement.” Consistent with their express language, the Challenged Claims should be construed as requiring establishing the “reciprocal linking arrangement” within the database. Ex. 1009, ¶ 46.

Bi-Directional, Linked Web Pages: As shown above by the underlined green text, each Challenged Claim explicitly requires two web pages, each associated with a separate user, wherein each of the two web pages includes a hyperlink to the other web page. Specifically, the pertinent language required by each Challenged Claim is [“including, within the second web page ... a second functional identification element ... and including, within the first web page ... a first functional identification element ... wherein the second functional identification element includes a link to the first web page, and the first functional identification element includes a link to the second web page.”](#) See Ex. 1001, Claim 1. This language explicitly requires that the first web page includes a link to the second web page, and further that the second web page includes a link to the first web page. Ex. 1009, ¶ 47. Thus, the scope of each claim should be construed according to these clear requirements recited in the claim language itself.

**VI. NO CHALLENGED CLAIM IS ENTITLED TO AN
EFFECTIVE FILING DATE OF AUGUST 9, 2011, OR EARLIER**

No Challenged Claim is entitled to claim priority to the August 9, 2011, filing date of the 2011 Application, or earlier, because that application lacks the required written description to support the full scope of the Challenged Claims. *See* 35 U.S.C. §§ 112(a), 120.

Here, a priority date of at least earlier than the November 5, 2012 filing date of the 2012 Application is needed; otherwise, the challenged patent's ancestor patent (DiStefano ('259)) with the same written description will be § 102 prior art² to the Challenged Claims, as would the LinkedIn system Patent Owner accuses of infringement.³ (Section VII below demonstrates how DiStefano ('259) is prior art to the Challenged Claims.) To antedate DiStefano ('259), Patent Owner will need to show that the Challenged Claims are entitled to the filing date of at least the 2011 Application. Patent Owner cannot do so.

² DiStefano ('259) qualifies as § 102(a)(1) (post-AIA) prior art if the Challenged Claims are not entitled to an effective filing date before February 27, 2014, and would also qualify as § 102(b) (pre-AIA) prior art if the Challenged Claims are entitled to an effective filing date of either the 2012 or 2013 Application because DiStefano ('259) issued (and was published) more than one year before either. As discussed herein, the Challenged Claims are not entitled to the August 9, 2011 filing date of the 2011 Application.

³ Petitioner does not concede that its accused system reads on, or otherwise infringes any properly construed Challenged Claim. Nevertheless, Patent Owner has asserted that LinkedIn's accused website technology that it accuses of infringing the claims of the '760 Patent was launched May 5, 2003. Ex. 1013, p. 17/20.

As shown below, Patent Owner cannot show that the 2011 Application provides the required written description for *each* of the three above-listed features required by each Challenged Claim. If Patent Owner meets that burden of production, then the burden of production shifts to Petitioner (who has the burden of persuasion on unpatentability) to show the absence of such support in that application for at least one of those three claimed features. Petitioner’s evidence and arguments herein show both that Patent Owner cannot meet its burden of production and also that even if Patent Owner met its initial burden, Petitioner has met its resulting burden to show that the claims are not entitled to claim priority to the 2011 Application.⁴

**A. The Written Description Requirement Demands A
Showing That An Applicant Possessed The Claimed Invention**

Under the written description requirement, the patent specification must “reasonably convey[] to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc); *D Three Enterprises, LLC v. SunModo Corp.*, 890 F.3d 1042, 1050 (Fed. Cir. 2018) (“adequate written description does not ask what is permissible, rather, it asks what is disclosed.”). The requirements for showing written description support—as required by § 112 (and § 120)—are

⁴ This Petition also shows that Petitioner has met its burden of showing that the Challenged Claims are not entitled to claim priority to any Priority Application earlier than the 2014 Application.

demanding. The application’s disclosure of the claimed methods and systems must be: (1) express or necessarily present, *Tronzo v. Biomet, Inc.*, 156 F.3d 1154, 1159 (Fed. Cir. 1998); (2) complete, *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1995); (3) unambiguous, *Hyatt v. Boone*, 146 F.3d 1348, 1354 (Fed. Cir. 1998); (4) specific, *Purdue Pharma L.P. v. F.H. Faulding and Co.*, 230 F.3d 1320, 1326–27 (Fed. Cir. 2000); and (5) as broad as the claim, *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 1478-80 (Fed. Cir. 1998).

The breadth requirement means that the disclosure must support the “full scope” of the claim. *Atl. Research Mktg. Sys., Inc. v. Troy*, 659 F.3d 1345, 1355 (Fed. Cir. 2011) (claims invalid because they “exceed in scope the subject matter that [applicant] chose to disclose to the public in the written description”); *Synthes USA, LLC v. Spinal Kinetics, Inc.*, 734 F.3d 1332, 1341-45 (Fed. Cir. 2013) (affirming jury verdict of invalidity for lack of written description support where claim construed to cover “openings” in an implant, but specification disclosed only grooves not slots or channels); *cf. Nintendo of Am. Inc. v. iLife Techs., Inc.*, 717 F. App’x 996, 1001-02 (Fed. Cir. 2017) (non-precedential) (ancestor application’s disclosures showed that applicant “possessed the full scope of communication devices in exemplary claim 1, including telephones and personal computers”).

**B. Patent Owner Has The Burden Of Production
To Show That The Challenged Claims Have Written
Description Support In The Asserted Priority Application**

A patent application claiming priority to an ancestor application is not presumed to be entitled to such priority claim. Indeed, although a patent challenger generally has the burden of showing an ancestor application's lack of adequate disclosure for a claim, once the challenger identifies an intervening prior art reference, the Patent Owner then bears the burden of coming "forward with evidence to prove entitlement to claim priority to an earlier filing date." *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1305-06 (Fed. Cir. 2008); *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1327 (Fed. Cir. 2008); *D Three*, 890 F.3d at 1049 (aff'g Summ. J. invalidity by stipulation because patent owner failed to show claims entitled to priority date; "a 'patentee bears the burden of establishing that its claimed invention is entitled to an earlier priority date than an asserted prior art reference.'" (quoting *In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1376 (Fed. Cir. 2016))).

This burden-shifting rule applies even if the later applications are designated "continuation" applications. *Research Corp. Tech., Inc. v. Microsoft Corp.*, 627 F.3d 859, 871 (Fed. Cir. 2010). It applies in Patent Office proceedings. See *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1379-80 (Fed. Cir. 2015) (discussing burdens in *inter partes* review to show entitlement to provisional filing dates); *In re NTP, Inc.*, 654 F.3d 1268, 1276 (Fed. Cir. 2011) (on appeal from a

reexamination, noting that “for a patent’s claims to be entitled to an earlier priority date, the patentee must demonstrate that the claims meet the requirements of 35 U.S.C. § 120”); *Amazon.com, Inc. v. Personalized Media Commc’n, LLC*, IPR2014-01527, 2016 WL 7047090 (Aug. 31, 2016) (holding that burden of production was on Patent Owner to show entitlement to ancestor’s filing date antedating asserted reference). In short, each claim’s actual filing date presumptively is its effective filing date, absent a contrary showing by Patent Owner.

**C. The 2011 Application Does Not Show Possession
Of At Least Three Elements Of The Claimed Invention**

The deficiencies with the Priority Applications can be illustrated by examining the 2011 Application. The 2011 Application is critical because if the Challenged Claims are not entitled to that filing date, then, as shown below at Section VII, the Applicant’s own intervening prior art renders the claims unpatentable. The 2011 Application lacks support for the Challenged Claims for at least the following reasons.

**1. The 2011 Application Does Not Describe Two Users Opting
Into A Reciprocal Linking Arrangement With One Another**

Each of the Challenged Claims requires a “reciprocal linking arrangement” and more specifically, requires the claimed system to receive two separate “indication[s] to opt into” the same “reciprocal linking arrangement” from two separate computers associated with two separate users. *Supra*, pp. 13-14; *cf.* Ex. 1012, pp. 6-7/22 (Patent

Owner describing scope of Challenged Claims in District Court Complaint). These two “opt into” the “reciprocal linking arrangement” claim features, are not supported by the Priority Applications.

First, the claim phrases “*indication to opt into*” and “*reciprocal linking arrangement*” do not appear in the 2011 Application, nor any of the other Priority Applications.⁵ The first time the Applicant explicitly referred to these claim limitations was in the Preliminary Amendment filed with the 2014 Application. Ex. 1002, pp. 550-555/558.⁶

⁵ Applicant did refer to “users opting to participate in the reciprocal arrangement” in a July 19, 2013, Preliminary Amendment filed with U.S. Patent Application No. 13/946,461 (the “’461 Application”). Ex. 1011, p. 603/732. However, the ’760 Patent does not claim priority to the ’461 Application.

⁶ That the Applicant added a claim reciting a “reciprocal arrangement” in a 2010 amendment (Ex. 1004, p. 118/717) during prosecution of the 2000 Application does nothing to impact the priority date analysis under 35 U.S.C. § 120, which is directed at subject matter existing in a priority application, not an amendment. *See Anascape, Ltd. v. Nintendo of Am. Inc.*, 601 F.3d 1333, 1337 (Fed. Cir. 2010) (“Anascape points to some of the issued claims of the ’525 patent, which recite an ‘input member moveable on at least two axes,’ and argues that this adequately describes, for priority purposes [the ultimate claim term at issue]. We need not decide the significance of the words ‘at least two,’ for, as Nintendo points out, this text was not part of the specification and claims as filed in 1996, but was added to the claims by amendment in August 2000.”); *see also PowerOasis*, 522 F.3d at 1305 (“[T]o satisfy the written description requirement, ‘the missing descriptive matter must necessarily be present in the [original] application’s specification such that one skilled in the art would recognize such a disclosure.’” (quoting *Tronzo*, 156 F.3d at 1159 (alteration in the original); *Lockwood*, 107 F.3d at 1571 (“In order to gain the benefit of the filing date of an earlier application under 35 U.S.C. § 120, each application in the chain leading back to the earlier application must comply with the written description requirement of 35 U.S.C. § 112.”); *cf. In re Reiffin Family Trust*, 340 Fed. Appx. 651, 658-59

Second, as properly construed, the Challenged Claims require a single, common, “reciprocal linking arrangement.” Although the 2011 Application refers to a “**reciprocal link site**,” the description thereof is in a significantly different context than the later-claimed “**reciprocal linking arrangement**.” See Ex. 1005, p. 86/105, lines 12-24; p. 26/105, Fig. 20, items 2022, 2034 (describing a “reciprocal link site” in part as something that is “created in the registered user’s website, for displaying links to other websites”); *id.*, p. 87/105, line 14–p. 88/105, line 2 (describing a “reciprocal banner ad site” in part as something that is “created on [a] registered user’s website, so that banner ads from other websites can be displayed on [a] registered user’s website once it is activated”); *id.*, p. 26/105, Fig. 20, items 2022, 2034. The 2011 Application uses the word “**reciprocal**” in conjunction with the word “site,” but it does so in a way merely to indicate a location on one website where other websites will be marketed. Ex. 1009, ¶ 52. It does not disclose the existence of, or establishing, a two-way linking relationship between two such sites. *Id.*

Third, the deficiencies of the 2011 Application are further illustrated in connection with the “**indication to opt into**” feature. Each Challenged Claim explicitly requires a first and a second user to each convey an “**indication to opt into**” the same “**reciprocal linking arrangement**.” *E.g.*, Challenged Claim 1 (“receiving,

(2009) (“Patent Owner created a break in the chain of disclosures, which cannot be cured by amendment.”).

from a first computer associated with the first user, a first indication to opt into **a** reciprocal linking arrangement”; “receiving, from a second computer associated with the second user, a second indication to opt into **the** reciprocal linking arrangement”); *see also* Ex. 1011, p. 56/732 (Patent Owner conceded the necessity that two entities expressly agree to opt into a **particular** arrangement with each other when attempting to distinguish prior art⁷ in a related prosecution involving similar claims).

The following passage contains the only disclosure of a user “opt[ing] into” anything:

By completing these steps relating to the create links option 1240 and/or the banner ad rotations option 1250, the registered user causes its website to participate in linking and/or banner ad display functions with other websites that also were created using the system 100 by registered users who **opted** to participate in these linking and/or banner ad display functions. Once the design of the new website by the registered user is completed and the new website is posted/activated, the system 100 causes the selected websites of other registered users (i.e., the websites selected during the design of the new website) to display a

⁷ Patent Owner attempted to distinguish the Horstmann reference as involving a “scheme” whereby participants could agree to link in the future to any number of unknown sites. The claim language at issue was “reciprocal arrangement,” which Patent Owner informed the Patent Office necessarily requires that each user know the identity of the other website before she “opted to participate” in the “particular reciprocal arrangement.” Ex. 1011, p. 55-56/732.

link and/or banner ad concerning the new website. In the preferred embodiment, each website that is developed by a registered user who **opts** to participate in the linking functions can display unlimited links to other registered users' websites. If the number of links to be displayed exceeds the available display space on the display screen, links can be rotated on and off the screen. Each website that is developed by a registered user who **opts** to participate in the banner ad display functions can rotate an unlimited number of banner ads for other registered users' websites. The banner ads can be shown sequentially over a period of time at the registered user's website.

Ex. 1005, p. 69/105, lines 5-21.

The passage falls short of disclosing the claimed subject matter. It does not describe how a first user is supposed to “**opt into**” a reciprocal linking arrangement with a particular second user. Instead, it merely recites that users may “**opt[] to participate**” in the linking and/or banner ad display functions. That does not describe a “**reciprocal linking arrangement**,” nor does it describe how a user “**opts into**” a particular arrangement with another user, nor does it describe how the system “**receive[s] an indication**” from a first or, more importantly, a second user “**to opt into**” that particular arrangement. Ex. 1009, ¶¶ 53-54.

**2. The 2011 Application Does Not Describe The
Claimed Reciprocal Linking Arrangement Database**

As noted above, each Challenged Claim requires establishing the particular “reciprocal linking arrangement” into which each of the two separate users have opted within the database. Although the 2011 Application discloses certain types of databases, it does not disclose the claimed database for storing information regarding a particular “reciprocal linking arrangement,” nor do any of the other Priority Applications convey to a PHOSITA that the Applicant was in possession of such a database prior to filing the 2014 Application. Ex. 1009, ¶¶ 55-58. Nor does any Priority Application describe storing reciprocal arrangement information in any database.

In its Summary of Invention section, the 2011 Application recites that the alleged invention includes a database that stores the type of a marketing element (banner ad, text link) and the location to display the marketing element on a third-party website:

The method includes, during design of the first website, receiving information at a user interface indicating a type of an element for marketing that is to be displayed at the second website, and information specifying the second website at which the element is to be displayed. ...

The steps further include saving the information at a first database that is coupled to the user interface, obtaining the

element for marketing of the type indicated, and causing the display of the element for marketing at the second website when the first website is activated with respect to the internet.

Ex. 1005, pp. 42-43/105. But the 2011 Application says nothing about this database storing information related to a “reciprocal linking arrangement” into which two separate entities have each opted.

The 2011 Application’s Detailed Description discloses only the following databases (Ex. 1005, p. 49/105):

- “a third party user database 160”;
- “a web assets database 170”; and
- “a programming database 190”.

The 2011 Application defines the “third party user database” as including “a listing of all third party users registered to access the server computer,” “information provided during the log in process by registered users,” such as Name, Address, E-Mail, Phone #, Interests, Hobbies, Businesses, Identification, and Password, “information regarding websites that have been or are being designed by registered users,” and “a listing of third party authors who have uploaded web assets to the web assets database.” *Id.*, p. 49/105; p. 17 (Fig. 11).

The web assets database “stores a catalog of web assets uploaded by third party authors,” and may also “include web assets that are derived from other sources, such as web assets designed by the operator of the server computer.” *Id.*, p. 49/105.

Finally, the 2011 Application discloses a “programming database” that stores the programming (software) required to operate the disclosed graphical user interface. *Id.*, p. 50/105.

None of these three databases shows possession of establishing the claimed reciprocal linking arrangement within the database. Indeed, the United States District Court for the District of Delaware recently noted the absence of any description supporting the reciprocal linking arrangement database: “Nowhere do the claims (or ***specification***) explain how opt-ins are received, how the database works or what type of database is actually used, or how links and identification elements are created or added to the web pages.” Ex. 1014, p. 12/15 (emphasis added).

Thus, the 2011 Application discloses no database that contains information about particular “reciprocal linking arrangements” that have been “opted into” by two different users. Ex. 1009, ¶¶ 55-58. This is not surprising, given that the 2011 Application did not contemplate either the reciprocal linking arrangements or reciprocal opt-in process ultimately claimed in the ’760 Patent.

That using a database to store such information may have been obvious to a PHOSITA is not the test. The test is whether the application specifically and

unambiguously conveys that the applicant was “in possession” of the claimed invention, not whether a PHOSITA would have found it obvious. *See Lockwood*, 107 F.3d at 1572 (“One shows that one is ‘in possession’ of the invention by describing the invention, with all its claimed limitations, not that which makes it obvious.”); *Hyatt*, 146 F.3d at 1352.

3. The 2011 Application Does Not Describe The Claimed Bi-Directional, Linked Web Pages

Each Challenged Claim requires two web pages, each associated with a different user, wherein each page provides a hyperlink to the other. However, the 2011 Application does not disclose such bi-directional linked web pages. At most, it discloses a system that creates a web site of links, or banner ads, that essentially serve as one-directional links. That is, it discloses what the specification refers to as reciprocal link **sites** and reciprocal banner ad **sites** “for displaying links to other websites.” Ex. 1005, p. 86/105. But nothing in the 2011 Application discloses actually requiring links back to the specific webpage hosting the reciprocal link site and/or reciprocal banner ad site. For example, the specification recites the following:

Upon activation of the registered user’s website, the registered user’s website can display an unlimited number of banner ads from other websites on its reciprocal banner ad site, and the system 100 also displays the registered user’s banner ad at the marketing locations (websites) that the registered user specified at step 2030.

Id., pp. 87-88/105.

Nothing in the above excerpt describes or requires that each of the “unlimited number of” websites displayed on the registered user’s site reciprocal banner ad site, also **link back** to the registered user’s site. Moreover, nothing in the above excerpt, or anywhere in the specification discloses bi-directional, linked web **pages** as required by the Challenged Claims. Ex. 1009, ¶¶ 59-60.

Once again, that a PHOSITA would recognize that two web pages from two different web sites could reciprocally link to one another or that a system could be designed to facilitate that process is not the test for entitlement to an earlier priority date. The test is whether the application conveys that the *applicant* was “in possession” of the invention ultimately claimed years later in the ’760 Patent, not whether a PHOSITA would have found it obvious. *See Lockwood*, 107 F.3d at 1572; *Hyatt*, 146 F.3d at 1352.

Consequently, because the 2011 Application provides no written description support for the claims of the ’760 Patent for at least the three required claim elements discussed above, the ’760 Patent’s priority claim fails. As a result, and as discussed below, Patent Owner’s own intervening prior art renders each claim of the ’760 Patent invalid.

VII. THE CHALLENGED CLAIMS ARE UNPATENTABLE

A. DiStefano ('259)

DiStefano ('259) issued on August 9, 2011 (ex. 2003), which is more than one year before the November 5, 2012, filing date of the 2012 Application, and more than two years before the 2014 Application, which led to the issuance of the Challenged Claims. Therefore, DiStefano ('259) qualifies as § 102 publication prior art (to which no exception applies) to any claim not entitled to the August 9, 2011, filing date of the 2011 Application. The 2000 Application and 2012 Application were not co-pending, so the claims cannot benefit from the filing date of the 2000 Application unless they are adequately supported by the intervening 2011 Application.

B. The Same Disclosure May Anticipate Or Render Obvious A Patent Claim, But Fail To Support It Under § 112(a)

Because the prior art reference DiStefano ('259) contains the same figures and written description as the '760 Patent, Patent Owner might argue that the same ancestor application's disclosure cannot both fail to disclose the claimed subject matter (under § 112(a)) and also (when treated as prior art) render that same claimed subject matter unpatentable (under § 102 or § 103). But the law long has been well-settled to the contrary. The standard to establish written description support (as discussed above) is demanding. It differs from the standards to establish anticipation or obviousness. *See, e.g., Lockwood*, 107 F.3d at 1572 (patent claims held anticipated

by foreign counterpart to an ancestor patent even though the claimed invention was distinct from the invention disclosed in that ancestor's specification); *Chester v. Miller*, 906 F.2d 1574, 1577 (Fed. Cir. 1990) (there is "no impermissible anomaly or logical inconsistency" in holding patent claims anticipated by a published parent patent application, even though those claims were not supported by that parent disclosure under § 112, ¶ 1); see *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1562 (Fed. Cir. 1991).

For example, in *In re Lukach*, the court held that a U.S. "grandparent" application did not sufficiently describe the later-claimed invention, but that an intervening foreign counterpart to that grandparent application nevertheless anticipated the claimed subject matter. "[T]he description of a single embodiment of broadly claimed subject matter constitutes a description of the invention for anticipation purposes ..., whereas the same information in a specification might not alone be enough to provide a description of that invention for purposes of adequate disclosure." 442 F.2d 967, 970 (C.C.P.A. 1971) (citations omitted).

**C. Ground 1: Claims 1-20 Are
Unpatentable As Obvious Over DiStefano ('259)**

DiStefano ('259) renders the Challenged Claims unpatentable for obviousness under 35 U.S.C. § 103⁸. Patent Owner is not expected to deny obviousness of any

⁸ The Challenged Claims are unpatentable as obvious under both pre-AIA and post-AIA versions of 35 U.S.C. § 103.

Challenged Claim if DiStefano ('259) qualifies as prior art. (And the LinkedIn system Patent Owner accuses of infringement would also be prior art if the Challenged Claims are not entitled to an earlier effective filing date; as noted above, Patent Owner itself contends the accused LinkedIn system launched in 2003.) The only substantive differences between DiStefano ('259) and the 2000 Application, as well as the 2011 Application, are the issued claims of DiStefano ('259), which were added by amendment and vary significantly from the claims filed with each of the 2000 Application and the 2011 Application.

As discussed above in Section VI, the Challenged Claims are not entitled to the 2011 Application's (August 9, 2011) filing date because the 2011 Application lacks the required written description of the full scope of the Challenged Claims and fail to show that the Applicant "possessed" at least the three claimed features listed above prior to filing the 2014 Application. Ex. 1009, ¶¶ 48-60. For example, no reciprocal linking arrangement is disclosed in the specification of the 2011 Application in which two web pages of two different web sites link to each other. The 2011 Application also fails to disclose two different users "opting into" the same "reciprocal linking arrangement," as well as storing reciprocal linking arrangement-related information in a database.

Notwithstanding that the Challenged Claims are not entitled to be backdated to 2011 (or earlier), the Challenged Claims would nonetheless have been obvious to a PHOSITA over DiStefano ('259) as detailed below.

1. Claim 1

[1.1] A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:

To the extent the preamble is limiting, DiStefano ('259) teaches a method in which a computer hardware system is configured to serve a first web page associated with a first user and a second web page associated with a second user. For example, DiStefano ('259) expressly claims, among other things, “[a] method, within a computer hardware website implementation system, of establishing a reciprocal arrangement between a first website and a preexisting second website, comprising” Ex. 1003, Claim 4.⁹ DiStefano ('259) also explains that the system is designed to serve multiple web pages of multiple websites, each of which can be comprised of multiple pages. *Id.* at 11:44-55. Ex. 1009, ¶ 63.

⁹ Claim 4 of DiStefano ('259) was not included with the 2000 Application, but was added by amendment during prosecution of the 2000 Application. Also, Claim 4 was not included with the 2011 Application. That said, Claim 4, and the other issued claims are pertinent to the obviousness analysis because they were published with the issued patent, which is prior art to the Challenged Claims.

[1.2] receiving, from a first computer associated with the first user, a first indication to opt into a reciprocal linking arrangement; receiving, from a second computer associated with the second user, a second indication to opt into the reciprocal linking arrangement;

This limitation would have been obvious to a PHOSITA over DiStefano ('259). For example, DiStefano ('259) expressly claims:

registering the second website with the website implementation system;

receiving, by the website implementation system, a request by a first user to implement the first website;

receiving, by the website implementation system, a selection by the first user as to a second functional marketing element to be activated on the second website;

establishing, by the website implementation system, a reciprocal site in the first website for a first functional marketing element; and

upon the first website being activated with respect to the internet, the computer website implementation system implementing the reciprocal arrangement by causing

(i) the first website to implement the first functional marketing element, and

(ii) the second website to implement the second functional marketing element,

wherein the first functional marketing element directs, via the internet, a second user of the first functional marketing element to the second website, and the second functional marketing element directs, via the internet, a third user of the second functional marketing element to the first website.

Id., Claim 4¹⁰; Ex. 1009, ¶ 64.

Although DiStefano ('259) does not explicitly recite opting into a reciprocal *linking arrangement* between two users and their associated websites, it would have been obvious to a PHOSITA in view of Claim 4. Ex. 1009, ¶¶ 65-72. A PHOSITA would have understood that it would have been common sense for the system to receive an indication of the first user's agreement (opt in) to participate in a reciprocal linking arrangement with the second website. *Id.* Specifically, a PHOSITA would understand that modifications to a user's web page would not be made without that user's permission, and it would be natural for a user to assent to changes that resulted in broader marketing exposure through reciprocal links. *Id.* Similarly, although DiStefano ('259) does not explicitly disclose a second indication to opt into a

¹⁰ As indicated above, Claim 4 of DiStefano ('259) was not included with the 2000 Application, but was added by amendment during prosecution of the 2000 Application. Also, Claim 4 was not included with the 2011 Application.

reciprocal linking arrangement from a second user, doing so would have been obvious to a PHOSITA in view of the teachings of DiStefano ('259) and the knowledge of a PHOSITA. *Id.*

Modifying DiStefano ('259) to require and track explicit opting into a reciprocal linking arrangement between multiple users would have been a simple implementation of routine and ordinary website functionality. *Id.* A PHOSITA would have been motivated to modify DiStefano ('259) to allow for the second user to confirm participation into the reciprocal linking arrangement with the first user and for the system to receive that second user's indication to opt in. *Id.* Indeed, a PHOSITA would have appreciated that some links/websites are undesirable. For example, Horstmann¹¹, a cited reference, discloses a method of establishing "reciprocal page links between pages on the Internet," using a bike-shop website and a bookstore website as the two exemplary websites. Ex. 1008 at 1:60-61; 2:55-3:26. Horstmann explicitly discloses a process where one entity (bike shop) must approve reciprocally linking with the other website (bookstore). *Id.* at 5:17-21 ("The bike-shop owner can then approve the page by, for example, selecting a 'page approved' button (step 56), in which case the software will update the server to include the new page (step 57). Alternately, in step 56 the bike-shop owner could elect not to approve

¹¹ Petitioner cites Horstmann as information regarding the state of the art and in support of why a PHOSITA would be motivated to modify DiStefano ('259).

the new links page, in which case the method would return to step 51 in which a form solicits links-page layout data.”). Horstmann goes on to explain that certain links may be “undesirable” and provides the user with techniques for removing (i.e., rejecting) “undesirable” links. *Id.* at 6:4-6 (“In step 64, the owner is able to edit the links page, typically by adding additional links or deleting undesirable links.”).

Thus, a PHOSITA would have found this limitation obvious in view of DiStefano ('259). Ex. 1009, ¶¶ 64-72.

[1.3] establishing, within a database associated with the computer hardware system, the reciprocal linking arrangement based upon both the first and second users opting to participate in the reciprocal linking arrangement;

This limitation would have been obvious to a PHOSITA over DiStefano ('259). For example, DiStefano ('259) expressly recites three different databases—a “third party user database 160,” a “web assets database 170;” and a “programming database 190.” Ex. 1003 at 5:65-66. Further, DiStefano ('259) claims “saving the information at a first database that is coupled to the user interface,” and “a “database of registered websites.” *Id.* at Claims 1, 6. In view of these teachings, it would have been obvious to a PHOSITA to modify DiStefano ('259) such that one of the disclosed databases stores information regarding the reciprocal linking arrangement entered into by the two users discussed above at [1.2].

For example, a PHOSITA would have been motivated to make this modification so that the system could ensure that all agreed-upon arrangements were honored. Ex. 1009, ¶ 73. It would have also allowed the system to track the success of its “reciprocal linking arrangements” and to distinguish arrangements entered into through the disclosed mechanism from other such arrangements entered into without the disclosed mechanism. *Id.* The modified system would help with the marketing and monetization of the websites, and improve the efficiency thereof. *Id.* Further, since the system would be hosting both sites to the arrangement, the system would be able to track the act of following a link from one site in an arrangement to the other site, and because it had recorded that this link had been created through its mechanism (as opposed to being created by the site owners without any facilitation by the system), it would be able to charge a fee for doing so. *Id.* Additionally, making such a modification would have been trivial, requiring merely ordinary skill to do so. *Id.*

[1.4] including, within the second web page and based upon the reciprocal linking arrangement, a second functional identification element associated with the first user; and including, within the first web page and based upon the reciprocal linking arrangement, a first functional identification element associated with the second user,

This limitation would have been obvious to a PHOSITA over DiStefano ('259). For example, DiStefano ('259) expressly claims a first website and a first

functional marketing element associated with a first user, as well as a second website and a second functional marketing element associated with a second user:

upon the first website being activated with respect to the internet, the computer website implementation system implementing the reciprocal arrangement by causing

(i) the first website to implement the first functional marketing element, and

(ii) the second website to implement the second functional marketing element, wherein

the first functional marketing element directs, via the internet, a second user of the first functional marketing element to the second website, and the second functional marketing element directs, via the internet, a third user of the second functional marketing element to the first website.

Ex. 1003, Claim 4.

Although DiStefano ('259) does not explicitly disclose adding these linking elements “based upon the reciprocal linking arrangement,” it would have been obvious to a PHOSITA to modify DiStefano ('259) to incorporate the reciprocal *linking arrangement* functionality as discussed above at [1.2], which would further render obvious limitation [1.4] in view of DiStefano ('259) and the knowledge of a PHOSITA. Ex. 1009, ¶¶ 74-75.

[1.5] wherein the second functional identification element includes a link to the first web page, and the first functional identification element includes a link to the second web page.

DiStefano ('259) discloses this limitation as discussed above at [1.4]. Furthermore, the Applicant expressly identified a “link” as an example of a “functional identification element” during the prosecution of the '760 Patent. (See Ex. 1002, pp. 3-4/558.) Thus, Claim 1 would have been obvious to a PHOSITA over DiStefano ('259). Ex. 1009, ¶ 76.

2. Claim 2

2. The method of claim 1, wherein the first and second users are both registered users with the computer hardware system.

DiStefano '259 discloses the added limitation that “the first and second users are both registered users with the computer hardware system” in that it explicitly discloses multiple registered uses of a computer hardware system.

By completing these steps relating to the create links option **1240** and/or the banner ad rotations option **1250**, the *registered user* causes its website to participate in linking and/or banner ad display functions with other websites that also were created using the system **100** by *registered users* who opted to participate in these linking and/or banner ad display functions. Once the design of the new website by

the registered user is completed and the new website is posted/activated, the system **100** causes the selected websites of other registered users (i.e., the websites selected during the design of the new website) to display a link and/or banner ad concerning the new website.

Ex. 1003 at 15:51-62 (emphasis added); *see id.* Claim 6; Ex. 1009, ¶ 77.

3. Claim 3

3. The method of claim 1, wherein the first indication identifies the second web page of the second user.

DiStefano ('259) discloses the added limitation that the first indication identifies the second web page of the second user. It would have been obvious to a PHOSITA to modify DiStefano ('259) such that the first indication to opt in discussed above at [1.2] would have identified the second web page of the second user. Ex. 1009, ¶ 78. Indeed, DiStefano ('259), Claim 4 discloses the first user selecting a second functional marketing element to be activated on the second website. A PHOSITA would understand this to be a way of identifying the second web page of the second user. *Id.*; *see id.* Claim 1 (“receiving information at a user interface indicating a type of an element for marketing that is to be displayed at the second website, and **information specifying the second website at which the element is to be displayed**” (emphasis added)).

4. Claim 4

4. The method of claim 1, further comprising receiving, from a third user, a request for the first web page; dynamically generating the first web page; and serving, to the third user, the dynamically-generated first web page.

DiStefano ('259) discloses third-party client computers requesting delivery of a web page from a server computer, which server delivers the web page content to the third-party client computer. “A browser is a software application, located on a client computer, which requests, via the internet, a web page from a server computer. After receiving the web page, the browser displays the web page on the client computer's monitor. A server computer is a computer which stores web page information, retrieves that information in response to a browser's request, and sends the information, via the internet, to the client computer.” 1:37-45. *See also* Claim 4 (“[T]he second functional marketing element directs, via the internet, a third user of the second functional marketing element to the first website.”).

Although DiStefano ('259) does not explicitly disclose the added limitation of claim 4 pertaining to dynamic generation, it would have been obvious to a PHOSITA that third parties could access the web pages discussed above, and that the system would be designed to dynamically generate web pages in response thereto. Indeed, the dynamic creation of webpages was commonplace in 2000, let alone in 2011. *Id.*, ¶¶ 79-82 (Terveen explaining dynamically generating web pages as commonly

understood by the late 1990s involving ordinary skill, including discussing the HTML & CGI book incorporated by reference into Horstmann prior art reference); Ex. 1010¹², p. 118/187.

5. Claim 5

5. The method of claim 1, wherein the first web page includes one or more web pages.

Claim 5 adds the limitation of wherein the first web page includes one or more web pages. It would have been obvious to a PHOSITA that the first webpage of the first user's website disclosed by DiStefano ('259) could include one or more web pages. *See* Claim 1 above; Ex. 1009, ¶¶ 83-84. Performing the same method disclosed in Claim 1 so that multiple web pages are served does not save an otherwise obvious claim. *Cf. Perfect Web Techs., Inc. v. InfoUSA, Inc.*, 587 F.3d 1324, 1330 (Fed. Cir. 2009) (holding that claims requiring “repetition of a known procedure” were obvious).

¹² Petitioner cites HTML & CGI as information regarding the state of the art and in support of why a PHOSITA would be motivated to modify DiStefano ('259).

6. Claim 6

6. The method of claim 1, further comprising including, within the first web page, a web asset provided by a third party separate from the computer hardware system.

DiStefano ('259) discloses the added limitation that a third party web asset is included in the first web page. DiStefano ('259) discloses using third party web assets:

Finally, third party authors who contribute web assets for use in web pages created by registered users can access the server computer **140**, from one or more third party author computers **120**, for the limited purpose of uploading web assets to the server computer for distribution. Registered users computers **180**, third party potential customers computers **110** and third party authors computers **120** are home computers or other interface devices (not necessarily complete computers) that are capable of accessing the server computer **140** through the internet **130** using standard web-browsers, well-known in the art.

Ex. 1003 at 5:53-63; Ex. 1009, ¶ 85.

7. Claim 7

7. The method of claim 6, wherein the web asset is a functional application.

DiStefano ('259) discloses the added limitation that the web asset is a functional application.

When displayed for a registered user who has logged into the system **100** (as discussed with reference to FIG. **11**), the web assets are interactive, i.e., information can be exchanged between the registered user and the system **100** via the web assets.

Id. at 7:20-24.

Furthermore, the Applicant expressly identified a “link” as an example of a “functional identification element” during the prosecution of the '760 Patent. *See* Ex. 1002, pp. 3-4/558; Ex. 1009, ¶¶ 86-87.

8. Claim 8

8. The method of claim 1, further comprising providing, to the first user, a plurality of recommended web pages associated with the computer hardware system.

DiStefano ('259) discloses the added limitation of claim 8. For example, DiStefano ('259) was largely directed at using websites for marketing, and a PHOSITA would have been motivated to expand the audience of the website. Indeed, DiStefano ('259) discloses that the system “determines the best possible places to market” a user’s website:

When the registered user selects suggested marketing locations option **1230**, the server computer **140** determines the best possible places to market the registered user's website on the internet. That is, the server computer **140** determines other websites on which it would be most beneficial to display a link to, or banner concerning, the registered user's website. The server computer **140** makes this determination based upon the information provided by the registered user during the log in process, particularly the information provided in fields **1160** as described with reference to FIG. **11**. Using this information, the server computer **140** searches the information stored in third party user database **160** to identify other websites on which it would be desirable to market the registered user's website. Server computer **140** can utilize any one of a number of search engines that are currently well known in the art to identify such websites using the log in information provided by the registered user. In alternate embodiments, server computer **140** can also access other information other than that within third party user database **160**, including information concerning websites or other marketing locations that were not developed through the use of the system **100**. Upon determining desirable marketing locations, the system **100** can display the identified marketing locations to the registered user.

Ex. 1003 at 14:47-15:3.

Thus, it would have been obvious to a PHOSITA that these “best possible places to market the registered user’s website” would serve as appropriate “recommendations” for the “registered user”. Ex. 1009, ¶¶ 88-89. Moreover, it would also have been obvious based on the ’259 patent to “provide” these “recommendations” to the registered user:

Upon selection by the registered user of the create links option 1240, *the GUI provides a location selection menu 1260*, in which the registered user can identify addresses for websites to which the registered user desires its website to be linked. In the preferred embodiment, the websites can be selected from among the websites that have been created by other registered users using the system 100. Location selection menu 1260 includes several open fields 1270 in which the registered user can specify desired websites. Further, *location selection menu 1260 lists the suggested websites that were identified in the search performed by server computer upon selection of the suggested marketing locations option 1230*.

Ex. 1003 at 15:4-16 (emphasis added).

Thus, claim 8 would have been obvious to a PHOSITA over DiStefano (’259).

Ex. 1009, ¶¶ 88-91.

9. Claim 9

9. The method of claim 8, wherein the first indication identifies one of the plurality of recommended web pages.

Claim 9 adds the limitation where the first indication identifies one of the plurality of recommended web pages.

Although DiStefano ('259) does not explicitly disclose the added limitation of claim 9, it would have been obvious to a PHOSITA to design the system such that the indications to opt into the reciprocal linking arrangement would identify one of the plurality of recommended web pages as discussed above at [1.2] and Claim 8. Indeed, DiStefano ('259) does disclose that when a user selects the “create links option” that she can also identify a marketing location that was one of the suggested marketing locations. Thus, this limitation would have been obvious to a PHOSITA. Ex. 1009, ¶¶ 92-93. See Ex. 1003 at Claim 4 (“receiving, by the website implementation system, a selection by the first user as to a second functional marketing element to be activated on the second website”) & 15:12-16 (“Further, location selection menu **1260** lists the suggested websites that were identified in the search performed by server computer **140** upon selection of the suggested marketing locations option **1230**.”).

10. Claim 10

10. The method of claim 1, wherein the second functional identification element includes an image.

DiStefano ('259) discloses the added limitation that the second functional identification element is an image: “[i]n general, web assets are graphic images, including text and related color, sound and animation features, which can be displayed on a website.” Ex. 1003 at 7:18-20; Ex. 1009, ¶ 94. DiStefano ('259) further teaches that including an image as the “second functional identification element” would have been understood by a PHOSITA: “the second functional marketing element directs, via the internet, a third user of the second functional marketing element to the first website.” (Ex. 1003, 26:46-48); Ex. 1009, ¶ 94. The “second functional marketing element” of the '259 claim language discloses the “second functional identification” limitation of the Challenged Claims: both direct a user from one website to another. Ex. 1009, ¶ 94. Further, the mechanism for directing a user from one site to another on the World Wide Web is a hyperlink. *Id.* Additionally, it would have been obvious to a PHOSITA that a hyperlink can include an image. *Id.* For example, HTM & CGI includes an entire chapter describing using an image as a hyperlink; i.e., a “functional identification element. HTML & CGI also includes a code snippet (ex. 1010, p. 133/187) to illustrate the well-known fact as understood

by a PHOSITA that any image can easily be made into a “hotspot” (link; functional identification element). Ex. 1009, ¶¶ 94-95.

11. Claims 11-20

Independent Claim 11 would have been obvious over DiStefano (’259) for the same reasons Claim 1 is rendered obvious discussed above. The below table illustrates that Claim 11 is essentially identical to Claim 1 except that Claim 1 is a method claim and Claim 11 is rewritten as a system claim. Dependent Claims 12-20 all depend on independent Claim 11, and add the same limitations that dependent Claims 2-10 add to independent Claim 1, and which were discussed above. Thus, Claims 11-20 are rendered obvious for the same reasons as discussed above with respect to Claims 1-10.

Claims 1-10	Claims 11-20
[1.1] A method, within and by a computer hardware system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:	[11.1] A webpage implementation server system that is configured to serve a first web page associated with a first user and a second web page associated with a second user, comprising:
	[11.2] a database storing information associated with the first and second web pages;

<p>[1.2] receiving, from a first computer associated with the first user, a first indication to opt into a reciprocal linking arrangement; receiving, from a second computer associated with the second user, a second indication to opt into the reciprocal linking arrangement;</p>	<p>[11.3] a computer hardware system configured to perform: receiving, from a first computer associated with the first user, a first indication to opt into a reciprocal linking arrangement; receiving, from a second computer associated with the second user, a second indication to opt into the reciprocal linking arrangement;</p>
<p>[1.3] establishing, within a database associated with the computer hardware system, the reciprocal linking arrangement based upon both the first and second users opting to participate in the reciprocal linking arrangement;</p>	<p>[11.4] establishing, within the database, the reciprocal linking arrangement based upon both the first and second users opting to participate in the reciprocal linking arrangement;</p>
<p>[1.4] including, within the second web page and based upon the reciprocal linking arrangement, a second functional identification element associated with the first user; and including, within the first web page and based upon the reciprocal linking arrangement, a first functional identification element associated with the second user,</p>	<p>[11.5] including, within the second web page and based upon the reciprocal linking arrangement, a second functional identification element associated with the first user; and including, within the first web page and based upon the reciprocal linking arrangement, a first functional identification element associated with the second user,</p>

[1.5] wherein the second functional identification element includes a link to the first web page, and the first functional identification element includes a link to the second web page.	[11.6] wherein the second functional identification element includes a link to the first web page, and the first functional identification element includes a link to the second web page.
2. The method of claim 1, wherein the first and second users are both registered users with the computer hardware system.	12. The server system of claim 11, wherein the first and second users are both registered users with the computer hardware system.
3. The method of claim 1, wherein the first indication identifies the second web page of the second user.	13. The server system of claim 11, wherein the first indication identifies the second web page of the second user.
4. The method of claim 1, further comprising receiving, from a third user, a request for the first web page; dynamically generating the first web page; and serving, to the third user, the dynamically-generated first web page.	14. The server system of claim 11, wherein the computer hardware system is further configured to perform receiving, from a third user, a request for the first web page; dynamically generating the first web page; and serving, to the third user, the dynamically-generated first web page.
5. The method of claim 1, wherein the first web page includes one or more web pages.	15. The server system of claim 11, wherein the first web page includes one or more web pages.
6. The method of claim 1, further comprising including, within the first web page, a web asset provided by a	16. The server system of claim 11, further comprising including, within the first web page, a web asset provided by

third party separate from the computer hardware system.	a third party separate from the computer hardware system.
7. The method of claim 6, wherein the web asset is a functional application.	17. The server system of claim 16, wherein the web asset is a functional application.
8. The method of claim 1, further comprising providing, to the first user, a plurality of recommended web pages associated with the computer hardware system.	18. The server system of claim 11, wherein the computer hardware system is further configured to perform providing, to the first user, a plurality of recommended web pages associated with the computer hardware system.
9. The method of claim 8, wherein the first indication identifies one of the plurality of recommended web pages.	19. The server system of claim 18, wherein the first indication identifies one of the plurality of recommended web pages.
10. The method of claim 1, wherein the second functional identification element includes an image.	20. The server system of claim 11, wherein the second functional identification element includes an image.

As seen by the above table, the only limitation in Claim 11 that lacks a mirroring limitation in Claim 1 is limitation [11.2]. However, the scope of limitation [11.2] would have been obvious to a PHOSITA. Ex. 1009, ¶¶ 96-97. For example, DiStefano ('259) Claim 6 claims a database of registered websites (ex. 1003), which in combination with the discussion above for limitation [1.3] regarding “establishing,

within the database, the reciprocal linking arrangement based upon both the first and second users opting to participate in the reciprocal linking arrangement” teaches database storing information associated with the first and second web pages. Ex. 1009, ¶¶ 96-97.

Thus, claims 11-20 would have been obvious over DiStefano ('259) for the same reasons as discussed above for claims 1-10.

VIII. CONCLUSION

As shown above, the Challenged Claims are not entitled to claim priority to the 2011 Application. As also shown above, the prior art relied on herein teaches the limitations of the Challenged Claims and renders them unpatentable as obvious. Petitioner is unaware of any secondary considerations of non-obviousness that would refute the showing of obviousness set forth above. See Ex. 1009, ¶ 22. Petitioner requests institution for claims 1-20 on the Ground specified in this petition.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH
TYPE-VOLUME LIMITATION PURSUANT TO 37 C.F.R. § 42.24**

This brief complies with the type-volume limitation of 37 C.F.R. § 42.24(a)(1)(i).

The brief contains 12,125 words, excluding the parts of the brief exempted by 37 C.F.R. § 42.24(a).

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CERTIFICATE OF SERVICE
IN COMPLIANCE WITH 37 C.F.R. § 42.6(e)(4)

The undersigned certifies that the **Petition for *Inter Partes* Review of Claims 1-20 of U.S. Patent No. U.S. Patent No. 8,768,760 and Exhibits 1001 – 1014** were served on December 14, 2018, via Federal Express on the Patent Owner at the following address of record as listed on PAIR:

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