

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.

ALMONDNET, INC.,
Patent Owner.

Case IPR2025-00545
Patent 8,494,904

PATENT OWNER'S RESPONSE

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Cases

Apple Inc. v. Uniloc Luxembourg S.A.,
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Patent Owner’s Exhibit List for IPR2025-00545

Pursuant to 37 C.F.R. § 42.63(e), Patent Owner Intent IQ, LLC hereby submits its exhibit list associated with the above-captioned *inter partes* review of U.S. Patent No. 8,494,904.

Exhibit No.	Description
2001	Declaration of Erik de la Iglesia in support of Patent Owner’s Response (“de la Iglesia Decl.”)
2002	<i>Curriculum vitae</i> of Erik de la Iglesia
2003	File history for U.S. App. No. 12/186,918 (U.S. Patent No. 7,979,307, grandparent to U.S. Patent No. 8,494,904)
2004	January 9, 2026 deposition transcript of Henry Houh, Ph.D.
2005	Tom Lawrence, Independent, <i>Evening Internet “Rush-Hour” Affects Broadband Users</i> (November 16, 2011), available at https://www.the-independent.com/tech/evening-internet-rushhour-affects-broadband-users-6262838.html

I. Introduction

The Petition asserts obviousness against all claims of U.S. Patent No. 8,494,904 (the “’904 patent”) based on two primary combinations of references. However, the Petition’s combinations are not obvious, and even if they are, fail to meet certain claim limitations.

The Petition’s Ground 1 involves a combination of the “Jaye” and “Merriman061” references, alleging that in combination, an “affiliate website” would send certain data to an “ad server.” But even if a POSITA *would* have found it obvious to combine the two references in the manner the Petition proposes (something the Petition fails to show), the combination still would not meet the claim requirements, because the Petition fails to show that the profile attributes stored by the ad server are the same as the attributes that would be allegedly sent from the affiliate website to the ad server would be stored by the ad server and used to target third-party advertisements, as the claims require.

The Petition’s Ground 2 proposes modifying the “Rosenberg” reference in view of “Merriman154” to eliminate Rosenberg’s teaching that profile data should be transferred from one server to another server in bulk, during off-peak hours, such that data would instead be transmitted in real time the moment any new data is available using Merriman154’s “spotlight tag.” But this proposed modification

inconsistent with Rosenberg’s teaching away from inefficient data transfer, and it is also inconsistent with the purpose of Merriman154’s spotlight tag, which is to transfer information to an ad server so that the transferor (rather than other participating servers) can make use of the data.

The Petition’s challenges to claim 5 also fail. The Petition acknowledges a potential interpretation of claim 5’s requirement of “maintaining an electronic record of which unaffiliated third party contributed... the profile attributes used in targeting the advertisements” as requiring “maintaining a record of which unaffiliated third party contributed... the profile attributes *that were actually used* to target the advertisements.” Pet. 39 (emphasis original). In other words, the Petition acknowledges that claim 5 can mean what it says—that “attributes used” are “attributes [actually] used,” rather than attributes that may or may not be used. And the Petition does not argue that this understanding of the claim language is incorrect. However, both the Petition’s Grounds 1 and 2 fail to show the obviousness of this limitation as correctly understood; Petitioner’s Ground 1 fails to show the obviousness of maintaining this information, and Petitioner’s Ground 2 fails to show that the allegedly maintained information (even under Petitioner’s proposed modification) would ever be used to target the claimed advertisements (which claim 1 specifies are “third-party” advertisements—i.e., advertisements where “the profile

data used in targeting the advertisement is not simply information from the advertiser itself” as the file history defines that limitation).

Accordingly, all challenged claims should be found not unpatentable.

II. Background of the '904 Patent

The challenged claims of the '904 Patent (claims 1-30) are directed to systems and methods for, e.g., collecting profiles of Internet users and allowing those profiles to be used to target advertisements across the Internet. Ex. 2001, ¶¶29–30. The invention, at a high level, allows disjoint parties to effectively transfer information for advertising purposes in the specified manner. *E.g.*, Ex. 1001, 8:24–29.

The Petition treats claim 1 as representative of all the independent claims (claims 1, 11, 21) challenged in the Petition. Claim 1 recites:

1. An automated method of collecting profiles of Internet-using entities, the method comprising:

(a) electronically receiving at a programmed computer system coupled to a global computer network, from at least one server controlled by one of a plurality of unaffiliated third parties, an electronically URL-redirectioned partial profile of an entity that uses a user computer coupled to the global computer network to access a website, which partial profile is available to one of the third parties and contains at least one profile attribute related to the entity, which partial profile is received along with an identification of the one of the third parties that contributed the partial profile, and automatically with the computer system storing the received partial profile;

(b) automatically with the computer system electronically adding the received partial profile to a maintained profile believed to be related to the same entity;

(c) automatically with the computer system generating and storing an electronic record of which of the plurality of unaffiliated third parties contributed to the maintained profile particular profile attributes; and

(d) wherein the maintained profile, including the added partial profile, comprises data used in targeting third-party advertisements to the user computer over the global computer network.

Ex. 1001, claim 1.

III. Claim Construction

The Federal Circuit has held that “only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.” *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). This principle applies equally to IPR proceedings. *See, e.g., Apple Inc. v. Uniloc Luxembourg S.A.*, IPR2018-00420, Paper 7 at 8 (PTAB, Aug. 6, 2018).

The Petition incorrectly applies claim scope for at least two terms, the proper interpretation of which is discussed below to address the apparent controversies between the parties with respect to claim scope

A. “third-party advertisements” (claim 1)

The intrinsic record of the '904 patent (which includes the file history of the '904 patent's grandparent application) makes clear that "third-party" was added in prosecution in the limitation "third-party advertisements" in order to "make clear that the profile data used in targeting the advertisement is not simply information from the advertiser itself." Ex. 2003 at 30; Ex. 2001, ¶32. A POSITA would thus understand based on this clear disclaimer in the intrinsic record that, at very least, third-party advertisements do not include an advertisement where the profile data used in targeting the advertisement is simply information from the advertiser itself (i.e., advertisements for which the advertiser supplied the profile data used to target the advertisement). Ex. 2001, ¶32.

B. "maintaining an electronic record of which unaffiliated third party contributed, to the maintained profile, the profile attributes used in targeting the advertisements" (claim 5)

Claim 5 depends from claim 1. Independent claim 1 recites, in relevant part, "(c) automatically with the computer system generating and storing an electronic record of which of the plurality of unaffiliated third parties contributed to the maintained profile particular profile attributes; and (d) wherein the maintained profile, including the added partial profile, comprises data used in targeting third-party advertisements to the user computer over the global computer network." Ex. 1001, claim 1.

Claim 5 additionally recites: “The method of claim 1 further comprising automatically with the computer system electronically maintaining an electronic record of which unaffiliated third party contributed, to the maintained profile, the profile attributes used in targeting the advertisements.” Ex. 1001, claim 5.

A POSITA would understand that claim 5 differentiates itself from claim 1 by making clear that the system must maintain records not only of which parties contributed profile attributes stored in the maintained profile, but must *further* maintain records of which parties contributed “the profile attributes *used* in targeting the advertisements.” Ex. 2001, ¶¶33–37. Without requiring maintaining records of which parties contributed profile attributes actually used (such as the Petition’s theories wherein the system only tracks which parties contributed the profiles that “may be used”—e.g., Pet. 38, 62), there would be no substantive distinction over claim 1. *See id.*

This understanding is further supported by the specification of the ’904 patent, that by tracking which parties (or “users” in the parlance of the specification) contributed profile attributes actually *used* within its system, “a user designated micro payment royalty (or credit) is assigned to the user for each purchase of that attribute by another user.” Ex. 1001, 4:21–34. Thus, in the scenario where the usage of the attribute is for targeting an advertisement (as required by claim 5), the party

that provided the attribute can be compensated on a per-advertisement basis. Ex. 2001, ¶35.

This understanding that the claim requires maintaining a record of which parties contributed profile attributes *that are actually used* to target advertisements is important because the Petition raises a theory wherein the system merely tracks profile attributes that “*may be used* in targeting advertisements.” See Pet. 38, 62 (emphasis added). The Petition provides no claim construction argument supporting that theory, or any justification for why the claim could be read so broadly.

IV. The Petition’s Ground 1 fails.

The Petition’s Ground 1 is based on a combination of “Merriman061” (Ex. 1004) and “Jaye” (Ex. 1005). As explained below, the Petition fails to show that, even if a POSITA would have combined Merriman061 and Jaye in the way the Petition alleges would be done, the resulting combination would still not meet the requirement of claim 1. See Ex. 2001, ¶¶38-61. Furthermore, for claim 5, the Petition fails to establish that a POSITA would have been motivated to modify Merriman061 to maintain a record of which parties contributed profile attributes that are *actually* (as opposed to just *potentially*) used to target advertisements, as the claim requires. See Ex. 2001, ¶¶62–67.

A. Overview of the Petition’s Combination

For claim 1, the Petition proposes that Merriman061 would be modified such that a “local_server_id” and a “local identifier of the user” would be sent from Merriman061’s affiliate website to Merriman061’s ad server. *See* Pet. 28 (alleging that the “local_server_id” and “client_information” would be redirected from the affiliate website, where “‘local_server_id’ is the identifier of the local server visited by the user and ‘client_information’ is additional information about the user, such as the local identifier of the user.”) Pet. 28–29. The Petition alleges that this information would be stored in a data structure of Merriman061’s ad server in the form of the “USER ID” and “PAGES ADS SEEN ON” information, as shown in the Petition’s annotation of Merriman’s FIG. 3A below.

FIG. 3A

USER ID	IP ADDRESS	DOMAIN TYPE	TIME ZONE	LOCATION	SIC	ADS SEEN	ADS CLICKED ON	PAGES ADS SEEN ON
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Pet. 30 (Petition’s annotation of Ex. 1004, FIG. 3A); *id.* (“Merriman061 discloses the ad server stores this type of profile information [i.e., local server ID and local user ID] in a database” as allegedly evidenced by Merriman061’s FIG. 3A).

As explained in further detail below, the Petition fails to show the obviousness of the claim requirements based on its proposal of modifying Merriman061 to have an affiliate website transfer a local user ID and the local server ID to Merriman’s ad server.

B. The Petition’s “local server ID” theory fails to show the obviousness of claim 1.

The Petition alleges that the “pages ads seen on” information stored in the database in Merriman061 is used to target third-party advertisements. *See* Pet. 30 (highlighting “PAGES ADS SEEN ON” in Merriman-61’s FIG. 3A and stating that “Merriman061 discloses the ad server stores this type of profile information in a database”). And Merriman061 makes clear that this profile information used to target ads is not merely any page on which the user was observed to have visited, but is instead the *specific* pages on which particular advertisements are ultimately displayed. *See* Ex. 1004, 7:26–31 (“[T]he [ad] server logs that the advertisement was clicked through, which user selected the advertisements..., and the page on which the advertisement was seen based upon the click through.”); Ex. 2001, ¶41.

In other words, the “partial profile” stored in Merriman061’s database includes information that the user *viewed a specific advertisement* on a particular website, not that the user merely visited any particular website. The claim requires that this “partial profile” stored in Merriman’s database must be the *same* “partial profile” received from the affiliate website, because the “partial profile” that is stored is the “received partial profile.” *See* claim 1(a) (“electronically receiving... from at least one server controlled by one of a plurality of unaffiliated third parties,

an electronically URL-redirectioned partial profile..., and automatically with the computer system storing the received partial profile”); Ex. 2001, ¶42.

The Petition further alleges that in the proposed combination, “Merriman061’s affiliate website” would use “Jaye’s special URL to append” the local server ID “to the URL that redirects the user’s browser to the ad server.” Pet. 28. In doing so, the Petition implies that the local server ID that would be sent in this proposed modification is the *same* profile information as the profile information stored in Merriman061’s database, such that transmitting the local server ID is the same “type of profile information” that Merriman061’s “ad server stores” in its database. *See* Pet. 30 (alleging that “Merriman061 discloses the ad server stores this type of profile information [i.e., Jaye’s local server ID] in a database”).

The problem with the Petition’s theory, however, is that even *if* the affiliate webpage provided the “local server ID” as the Petition proposes, it would not (and *could* not) be providing the “pages seen on” profile information to Merriman061’s ad server (i.e., the partial profile that is ultimately stored), because Merriman061’s affiliate webpage does not even know what ads were seen on what webpages. Specifically, a POSITA would understand that Merriman061’s affiliate website doesn’t have information about which advertisements were seen on its pages, because the ad serving process is handled by Merriman061’s ad server, not the affiliate website. *See* Ex. 2001, ¶¶43–44.

The Petition attempts to overcome this deficiency by implying the alleged partial profile information of a local server ID is equivalent to the “pages ads seen on” partial profile information that is stored in Merriman061’s ad server database. *See* Pet. 30 (alleging that “Merriman061 discloses the ad server stores this type of profile information in a database,” highlighting the “PAGES ADS SEEN ON FIELD” and implying that this is equivalent to the local server ID information provided by Jaye’s local servers). But Merriman061 teaches that Merriman061’s database (including the “pages seen on” profile information) does not include the identity of all affiliate web pages the user was observed at, but rather only those affiliate web pages that the user actually saw particular advertisements on. This is clear because in Merriman061’s disclosed operation, the message to the advertising server includes “a substring key indicating the page in which the advertisement to be provided from the server is to be embedded.” Ex. 1004, 3:47–49; Ex. 2001, ¶45. Notably, when this “substring key” is provided, no advertisement has yet been selected, and it is entirely possible that an advertisement will *not* be selected. *See id.* at 3:52–57 (noting that an “advertisement or other object” is selected only *after* receiving the substring key information). Ex. 2001, ¶45.

Merriman061 further teaches that its maintained profile of the user (the database containing the “pages ads seen on” partial profile information) is updated only “[a]fter delivery of the advertisement to the user.” *Id.* at 6:60–65 (“After

delivery of the advertisement to the user, additional processing needs to be done both for tracking the exposure of the advertisement and for having more information about the user,” including “stor[ing] the fact that the advertisement as sent to the user by storing that information in the database based on the user ID.”). This is not partial profile information that the affiliate webpage itself could have provided, because when the substring key identifying the webpage was sent, the relevant advertisement *had not yet been selected* by the ad server, such that the affiliate webpage could not possibly have known at that point in time that the advertisement would be shown on that webpage. Ex. 2001, ¶46.

Furthermore, it is this “pages ads seen on” information that the Petition alleges would be used to target advertisements. Specifically, in the Petition’s analysis of limitation [1.d]—which requires “wherein the maintained profile, including the added partial profile, comprises data used in targeting third-party advertisements”—the Petition alleges only that “*Merriman061* discloses this limitation,” with no allegation that Merriman061 as modified by Jaye would practice this limitation. In other words, the Petition alleges only that the information in Merriman061’s database would be used for targeting third-party advertisements, with no allegation or explanation of how Jaye’s local server ID would be used to target third-party advertisements. Ex. 2001, ¶47. Nor does the Petition provide any explanation for how its proposed modification would actually provide more information to

Merriman061's server. *Id.*, ¶48. Because the affiliate web page's transmission of a local server ID (under the Petition's proposed combination) cannot disclose providing the "pages ads seen on" partial profile information as discussed above, that transmission of the local server ID does not constitute transmitting a "partial profile" that "comprises data used in targeting third-party advertisements" under the Petition's theory.

C. The Petition's theory with respect to Jaye's "local user ID" also fails.

The Petition alleges that in combination with Jaye, it would have been obvious for Merriman061's affiliate website to transfer "client_information" including "the local identifier of the user" to Merriman061's ad server. This theory fails for at least two reasons: First, it would not have been obvious to transmit a *local* identifier to Merriman061's ad server, and second, even if a local identifier were transmitted, the Petition presents no plausible theory as to how a local identifier (as opposed to a global identifier) would be used to target third-party advertisements. *See* Ex. 2001, ¶¶49-61. An overview of Jaye's local user ID (and how it differs from Jaye's global user ID and Merriman's user ID, which is analogous to Jaye's global user ID) is provided below, followed by an explanation of why the Petition's theory with respect to the local user ID does not render the challenged claims obvious.

By way of background, Jaye discloses both (1) a local user ID and (2) a global user ID. Under the Petition's combination, Merriman061's affiliate webpage would transfer the local user ID (not the global user ID) via URL redirection, so it is necessary to understand the difference between Jaye's local and global user IDs (and how they relate to Merriman061's user ID).

Jaye teaches that each participating "local server" (roughly analogous to Merriman061's affiliate websites) "establishes a local ID for the user and communicates to the enterprise server the local ID of the user." Ex. 1005, 22:21–24; *id.* at 5:49–51 ("In the exemplary embodiment, each of the local servers 15 and 17 assign their own unique persistent state information to the client 12 in the form of a local ID."); Ex. 2001, ¶51. Separately, the "enterprise server" (i.e., the server which stores profile information from each participating local server in a database so that the profile information can be distributed to the participating local servers) "assigns a secret persistent state information to the client 12 in the form of a 'global' ID and correlates the global ID with each of the unique local ID's assigned by each of the local servers 5 and 17." Ex. 1005 at 5:51–55; Ex. 2001, ¶51.

The purpose of maintaining separate local and global user IDs in Jaye is to assist with privacy and anonymity. *See* Ex. 2001, ¶52. In Jaye, each participating local server might know "the true identity of the user," but they do not real that "true identity... to the enterprise server." *Id.* at 6:3–4. Instead, the local servers only reveal

the local ID, and the enterprise server is able to “map different local ID’s for the same user to the single, secret, global ID.” *Id.* at 6:5–6. In this way, the enterprise server “is in a unique position to correlate cross-server information about users while the local servers 15 and 17 can not directly cross-correlate cross-server information because neither of the local servers 15 and 17 possesses the secret global identifier assigned by the enterprise server 16.” *Id.* at 6:6–11; Ex. 2001, ¶52.

When the local servers in Jaye transfer the local user ID to the enterprise server, the purpose is merely to match the local user ID to the enterprise server’s global user ID so that the enterprise server can “form a global interest profile of the client based on local interest profiles compiled [and submitted] by the local server[s].” *Id.* at 3:38–40 Ex. 2001, ¶53.

In other words, Jaye’s local user ID is specific to each participating local server. In Jaye’s system, the local server cannot provide the global user ID to the enterprise server because the local server does not know the global user ID, and instead only knows the local user ID. But the global user ID is the most critical identifier within the system, because it ties together all of the disparate profile information received from each local server. Without the global user ID, the local user IDs (and any profile information associated with such local user IDs) would be relatively useless to the enterprise server. Ex. 2001, ¶54.

In contrast to Jaye, which discloses a two-ID solution (a “secret” global user ID that is assigned by and known only to the enterprise server, and numerous local user IDs assigned by each participating local server), Merriman061 teaches a single user ID assigned by the ad server and unknown to the affiliate websites. *See* Merriman061 at 5:9–49 (describing how “a user identification is determined” as being an “Advertising Server Process[]” involving the advertising server attempting to “read” or “write a cookie containing that unique identification number”); Ex. 2001, ¶55. This ID, which is not specific to any affiliate website and is kept “secret” from the affiliate websites, is thus analogous to Jaye’s secret global ID. Ex. 2001, ¶55.

In Merriman061, when the user’s browser visits an affiliate webpage on which an advertisement will potentially be displayed, the user’s browser transmits a message containing the cookie to Merriman061’s ad server. *See* Ex. 1004, 3:41–50. The ad server then uses this cookie information to “determine[] which advertisement or other object to provide to [the] user’s browser.” *Id.* at 3:52–57; Ex. 2001, ¶56.

Because Merriman061 teaches that the user’s web browser transmits the cookie to the ad server (which cookie includes Merriman061’s user ID, which is equivalent to Jaye’s global user ID), there is no need (or desire) for the affiliate webpage to send the equivalent of Jaye’s local user ID to the ad server. Indeed, Merriman061 does not even disclose the concept of a cookie-based “local user ID”

such as the one taught by Jaye. Ex. 2001, ¶57. And the Petition provides no rationale how Jaye’s local user ID would be “useful for targeted advertising” *in the scheme taught by Merriman061*. See Pet. 30; Ex. 2001, ¶57.

Instead, the Petition presents two rationales for its proposed modification. The first rationale is that “Merriman061 discloses the ad server stores this type of profile information in a database.” Pet. 30. But as explained above, a POSITA would have understood that this type of alleged profile information—a local user ID—is *not* disclosed by Merriman061 as being stored in a database. Instead, Merriman061 stores its own user ID assigned by the ad server in a database, equivalent to Jaye’s *global* user ID. Ex. 2001, ¶58.

The Petition also contends that its “modification is a combination of prior art elements... according to known methods to yield predictable results,” and that a “POSITA would have had a reasonable expectation of success” in making this modification. Pet. 30–31. But nowhere does the Petition explain how transferring Jaye’s *local* user ID would work within the context of Merriman061’s disclosure, which already teaches that the ad server is provided with the *global* user ID set by the ad server. The Petition does not even allege any plausible beneficial use for the local server ID in this context. Instead, the Petition’s theory appears to be based solely on hindsight: Jaye discloses the use of a local user ID, so it should therefore be applied to Merriman061 in a system that has no need for such a local user ID and

would not even allegedly benefit from using such a local user ID. Ex. 2001, ¶59. The Petition also fails to show that this is a simple and predictable straightforward of prior art elements, and tellingly even the Petition itself (with the benefit of hindsight) fails to articulate how Jaye's local user ID would be used in the context of Merriman061's disclosure in any predictable (much less beneficial) manner that a POSITA would have found obvious. *Id.*

The Petition also fails to explain how, even if it *would* have been obvious for a local user ID to be added to Merriman061's system and transmitted to Merriman061's ad server via URL redirection, this alleged partial profile information would be "used in targeting third-party advertisements to the user computer" as required by limitation [1.d]. *See* Pet. 35; Ex. 2001, ¶60. Indeed, the Petition alleges only that "Merriman061 discloses this limitation" (*id.*), with no allegation that (much less explanation as to how) the Petition's *proposed combination of Merriman061 with Jaye* would practice the limitation at issue. For example, in the context of Merriman061, even if a local user ID *were* somehow used to derive a global user ID, there is no articulated reason why the local user ID would be stored in the ad server's database as required or used to target advertisements to the user computer. Instead, Merriman061 makes clear that the user ID set by the *ad server* (analogous to Jaye's *global* user ID rather than Jaye's local user ID) is used to target advertisements to the user computer. Ex. 2001, ¶60. Nor does the Petition

provide any explanation for how its proposed modification would actually provide more useful information to Merriman061's server. Ex. 2001, ¶61. The Petition's failure to disclose how Merriman061 would actually *use* the local user ID *to target advertisements* (as opposed to simply using the local user ID to determine the relevant global user ID in order to update the ad server's database) is fatal to the Petition's theory in this regard.

D. The Petition's theory with respect to claim 5 also fails.

Claim 5 recites: "The method of claim 1 further comprising automatically with the computer system electronically maintaining an electronic record of which unaffiliated third party contributed, to the maintained profile, the profile attributes used in targeting the advertisements." As explained above in Section III.B, the claim language means what it says

The Petition acknowledges that this can be understood to require "maintaining an electronic record of which unaffiliated third party contributed... the profile attributes used in targeting the advertisements" as requiring "maintaining a record of which unaffiliated third party contributed... the profile attributes *that were actually used* to target the advertisements." Pet. 39 (emphasis original). In other words, the Petition acknowledges that claim 5 can mean what it says—that "attributes used" are "attributes [actually] used," rather than attributes that may or may not be used.

A POSITA would understand that claim 5 must require tracking profile attributes that were used (rather than just potentially used), because claim 1 itself already recites “generating and storing an electronic record of which of the unaffiliated third parties contributed to the maintained profile particular profile attributes.” Ex. 1001, claim 1(c). These profile attributes are potentially used in targeting advertisements because they are stored in a maintained profile for that purpose. Thus, under an overly broad interpretation where the additional limitation of claim 5 only requires tracking the profile attributes that “may be used in targeting advertisements” (*see* Pet. 38), this requirement is already inherent in claim limitation [1.c]. *See* Ex. 2001, ¶¶33-37. Indeed, in addressing how this broader interpretation (which the Petition declines to support with any claim construction position) is satisfied, the Petition relies on the evidence “as discussed above for limitation [1.c],” further highlighting how an overly broad interpretation of claim 5 is inconsistent with the principle of claim differentiation.

Thus, a POSITA would understand that claim 5 means what it says: maintaining an electronic record of which party contributed “the profile attributes *used* in targeting the advertisements,” not merely maintaining an electronic record of which party contributed the profile attributes that “may be used in targeting advertisements” (*see* Pet. 38). Ex. 2001, ¶¶33–37.

Under the correct understanding of the claim 5 requirement, the Petition fails to establish the obviousness of maintaining such an electronic record. Ex. 2001, ¶¶63-67. The Petition does not allege that either Merriman061 or Jaye discloses this limitation; instead the Petition alleges that it would be “obvious for Merriman061’s ad server to automatically maintain electronic records of which [party] contributed... the profile attributes that were actually used to target the advertisements.” Pet. 39. The Petition alleges the following motivation for doing so: “A POSITA would have been motivated to maintain these records for reporting and financial reasons, e.g., to charge subscription and ad targeting fees to advertisers and to compensate the party that provided the profile information.” Pet. 40. This is really two distinct motivations: (1) “to charge subscription and ad targeting fees to advertisers,” and (2) “to compensate the party that provided the profile information.” Each of these theories fails.

First, there is no competent evidence that maintaining a record of which parties contributed which profile attributes that were actually used to target advertisements would be helpful to “charge subscription and ad targeting fees to advertisers.” Ex. 2001, ¶64. As a matter of common sense, a system can charge subscription and ad targeting fees to advertisers *without* maintaining a record of which parties contributed which profile attributes actually used to target advertisements, and the Petition fails to provide any explanation of how maintaining

the claimed record would be beneficial in charging subscription and ad targeting fees. *Id.*

The Petition's second motivation *assumes* a desire to "compensate the party that provided the profile information [that was actually used to target advertisements]," such that maintaining a record of which party contributed the profile information actually used to target advertisements would be helpful to achieving that goal. The problem with the Petition's theory, however, is that the Petition never establishes that a POSITA *would have* desired to compensate parties for providing profile information actually used to target advertisements. For instance, a POSITA would not have understood compensating parties for their profile information in the proposed manner to be desirable because Merriman061 and related systems were able to obtain their profile information without compensating parties in the proposed manner. Ex. 2001, ¶65. For example, in Merriman061 (assigned to DoubleClick), a POSITA would understand that the financial arrangement between the affiliate and the ad server is that the ad server pays the affiliates "a fee" for "permit[ting] third party advertisements to be displayed on their websites." Ex. 1004, 2:62–65. Based on this arrangement, the ad sever already has access to information from the user's visit to the affiliate website, and the Petition fails to articulate any reason a POSITA would have found it obvious for

Merriman061's ad server to pay even more money to the affiliate website for profile attributes that were used to target advertisements. Ex. 2001, ¶65.

Fundamentally, a POSITA running Merriman061's ad server would not have been motivated to compensate parties for providing profile information actually used to target advertisements unless they would have seen some benefit to doing so, because compensating parties for this information would have imposed a cost on the ad server. Ex. 2001, ¶¶65–67. The Petition provides no evidence that there would have been any benefit to providing this compensation, and in fact provides no evidence that anyone compensated providers of profile information for providing profile attributes that were actually used to target advertisements.

Accordingly, because the Petition fails to establish that maintaining the record as required by claim 5 would have been useful to charge subscription and ad targeting fees to advertisers, and also fails to establish that it would be obvious to compensate parties for providing profile information used to target ads (*see* Pet. 40), the Petition fails to show the obviousness of claim 5.

V. The Petition's Ground 2

For Ground 2, the Petition relies on a combination of Rosenberg with Merriman154 to arrive at claim 1 and claim 5. As explained below, the Petition fails to motivate its proposed combination in a manner that would satisfy the claim requirements. Ex. 2001, ¶¶68-87.

A. The Petition fails to establish the obviousness of using Merriman154's spotlight tags to transfer web browsing activity from Rosenberg's web servers to Rosenberg's database server.

The Petition contends that it would be “obvious to modify Rosenberg based on the teaching of Merriman154 to cause the database server to receive partial profiles including web browsing activity and demographic information from the web servers via electronic URL-redirection.” Pet. 49. In order to understand the Petition’s modification to Rosenberg’s transfer of partial profiles in view of Merriman154 (and why that modification would not have been obvious), it is first necessary to understand Rosenberg’s own teachings regarding how partial profiles should be transferred.

Rosenberg teaches that a user’s web browsing activity from a web server is transmitted to the database server using a scheduled bulk transfer exchange, in order to avoid excessive data transfers and in order to avoid having to transfer significant amounts of data during peak data usage hours:

FIG. 3 illustrates a data structure that may be used to store information regarding the interaction between a browser 34 and a server 24. Typically, the information associated with this data structure is stored in the access logs of each server computer 24. This information is then passed from the access logs of the server computers 24 to

the database 25, typically at the end of a day or at other times when network traffic is light.

Ex. 1006, 5:55-62. Rosenberg further makes clear that the data structure in Figure 3 is simplified, and in actuality there would be “more specific entries regarding content requests” such that a significantly higher quantity of data would be transferred to the database server than illustrated in Rosenberg’s Figure 3. *Id.*, 6:6-9; Ex. 2001, ¶¶68-69.

Rather than transfer this data in bulk (to minimize transfers and to enable avoiding hours of peak network traffic), the Petition alleges that a POSITA would have found it obvious to take the fundamentally different approach of transferring this data immediately using spotlight tags as the data is created, regardless of whether network traffic is light. But as a POSITA would have recognized understood this real-time transfer of data (i.e., transfer of the data as it is created) would predominantly involve transfer of data during hours of peak network activity, because most web activity that generates data to transfer is generated during hours of peak activity (rather than during “times when network traffic is light”—i.e., the time periods that Rosenberg teaches would be used for transfer of data relating to a user’s web browsing activity). Ex. 2001, ¶70. This approach would not have been obvious, and a POSITA would have in fact understood Rosenberg to teach away from the Petition’s proposed combination. Ex. 2001, ¶70.

As explained by Patent Owner's expert (and as evidenced by Rosenberg itself), a POSITA would have understood that time of day had a significant impact on data transfer speeds. *See* Ex. 2001, ¶71. Even as late as 2011, data transfer speeds were reduced by an average of approximately 33% during peak hours (i.e., between 7–9pm) (*see* Ex. 2005), and a POSITA would have understood that this effect would have been even more pronounced and problematic as of December 1999, the priority date of the '904 patent, given the limited capacity of dial-up Internet services and the much slower data transfer rates that existed at that time. Thus, a POSITA would have been motivated to avoid real-time, piecemeal transfers of large amounts of data in the context of Rosenberg's teachings, which explicitly place an emphasis on reducing data transfers during peak usage hours, and would not have found it obvious to make this modification. Ex. 2001, ¶¶71–77.

Nor does the Petition's combination represent the combination of prior art techniques according to known methods (*see* Pet. 52), because the combination fundamentally changes the nature of both Rosenberg's data transfer and Merriman154's spotlight tags. Ex. 2001, ¶75. As previously noted, Rosenberg's data transfer is intended to transfer the profile data in bulk during periods where network traffic is at its lowest, whereas the Petition's proposed combination would achieve the contradictory result of transferring the information in real-time, primarily at times when network traffic is at its highest. Additionally, Merriman154 teaches

using spotlight tags to transfer information for use in retargeting (i.e., to transfer profile information to target ads where the advertiser itself was the sole provider of the profile information targeting the advertisement) rather than to transfer information to a database that would be accessible to numerous other participating servers to use as they see fit (as taught by Rosenberg—*see* Ex. 1006 at 3:28–30 (“the invention allows all cooperating servers to share information via a database”); *id.* at 7:43–55 (“each server can access the information in the database that is set by other servers”)).¹

Thus, this is not a simple substitution of prior art elements (*see* Pet. 52), because the element allegedly being substituted for Rosenberg’s data transfer protocol is significantly different from directly contrary to Rosenberg’s teachings. Ex. 2001, ¶76. It also contradicts the purpose of Merriman154’s spotlight tags, which are not to share data with unaffiliated third parties (including potential competitors), but rather to allow the advertiser providing the profile information via the spotlight tags to target advertisements to the user on different websites, such that the Petition’s proposed modification is also contrary to the purpose of Merriman154’s spotlight tags. Ex. 2001, ¶76.

¹ As described in more detail in regarding claim 5 below, a transferring profile information for use in retargeting would fail to satisfy the “third-party advertisements” requirement of claim 1.

Furthermore, Rosenberg teaches that when redirection is used to transfer even relatively small pieces of information (such as the “unique identification information”), there is a possibility that such “information does not reach other servers in the network,” which “may occur if the instruction to pass the unique identification information to other servers is defeated by programming instructions associated with the client computer 22, or the instructions to pass the unique identification information to other servers is defeated by some network interruption.” Ex. 1006, 6:10-22. Thus, Rosenberg teaches a protocol for ensuring that a user can be identified even if the unique identification information is not successfully transmitted to participating servers in the network. Ex. 1006, 6:23-58. A POSITA would thus understand that failures are possible in the type of redirection taught in Rosenberg, particularly during peak hours when “network interruption” is more likely. While a POSITA would have found this to be acceptable for Rosenberg’s unique identifier (because Rosenberg teaches a redundancy mechanism for identifiers—Ex. 1006, 6:23-58), a POSITA reading Rosenberg would have avoided transferring substantive web browsing data via the type of redirection disclosed in Rosenberg. Ex. 2001, ¶77.

B. The Petition fails to establish that limitations [1.a(iii)] and [1.c] are obvious under its proposed combination.

The Petition alleges that “a POSITA would have found it obvious that the data structure stores an electronic record of which of the plurality of unaffiliated third parties contributed to the maintained profile particular profile attributes.” Pet. 59. However, the only “profile attribute” that would even allegedly be sent via URL redirection (absent the use of Merriman154’s spotlight tags to transfer web browsing activity, which would not be obvious as discussed above) is the Cookie ID #. And Rosenberg does not disclose maintaining a record of which party contributed the Cookie ID # to any given maintained profile.

The fact that Rosenberg does not disclose maintaining a record of which party contributed the Cookie ID # is clear from the structure of Rosenberg’s database. See Ex. 2001 ¶¶78-79. The Petition’s annotation of Rosenberg’s Figure 3 is reproduced below:

Cookie ID #	Last Visit to Server_A	Content Requested			Last Visit to Server_B	Content Requested		
		News	Product Info	Feature Story		News	Product Info	Feature Story
123	4-9-96;18:25	2	5	0	7-4-96;16:23	1	7	3

Pet. 59 (Petition’s annotation of Rosenberg’s FIG. 3). As shown in the annotated figure above, a *single* “Cookie ID #” is associated with both Server_A and Server_B information, such that Rosenberg’s data structure provides no indication of which unaffiliated third party (the party associated with Server_A or Server_B) contributed the Cookie ID # to the maintained profile. Thus, Rosenberg’s data

structure does *not* include a record of which third party contributed the Cookie ID # to the maintained profile. Ex. 2001, ¶79.

The Petition further argues that “the data structure stores a record indicating that Server_A contributed a profile attribute indicating that the user with Cookie ID # 123 last visited Server_A on April 9, 1996.” Pet. 59. But this profile attribute (the date on which a user last visited Server_A) would not have been “an electronically URL-redirected partial profile” as limitation [1.a(i)] requires, absent the Petition’s proposed modification to use Merriman154’s spotlight tag to transfer web browsing activity; as discussed above, that modification would not have been obvious. Ex. 2001, ¶80.

For the same reasons, Petition likewise fails to show that limitation [1.a(iii)] would have been obvious. The Petition fails to allege (or provide evidence that) Rosenberg teaches that the Cookie ID # is received by the database sever “along with an identification of the one of the third parties that contributed the [Cookie ID #],” as the Petition’s theory would require absent the proposed combination with Merriman154. Ex. 2001, ¶81. And because the Petition’s proposed combination with Merriman154 would not have been obvious as discussed above, the Petition fails to show that Rosenberg (alone or in combination with Merriman154) discloses or renders obvious this claim requirement.

C. The Petition also fails to establish the obviousness of Claim 5.

The Petition asserts that claim 5 would be obvious based on Rosenberg in combination with Merriman154. As noted above in Section III.B., claim 5 requires “maintaining an electronic record of which unaffiliated third party contributed, to the maintained profile, the profile attributes used in targeting the advertisements,” not merely keeping a record of which party contributed the profile attributes *potentially* used in targeting the advertisements.

As an initial matter, even under the Petition’s broader interpretation of claim 5, Rosenberg alone does not disclose this limitation because Rosenberg does not disclose maintaining a record of which party contributed the Cookie ID #, for the reason set forth above for claim 1. And because the spotlight tag combination with Merriman154 would not have been obvious to a POSITA as further discussed above, maintaining a record of which party provided information about a user’s web browsing activity would not satisfy the other claim requirements, because that information would not have been redirected as required. *See* Ex. 2001, ¶¶82-83.

The Petition additionally fails to show how Rosenberg and Merriman154 render obvious the claim under the correct interpretation, which requires maintaining an electronic record of which party contributed the profile attributes *actually* used in targeting the advertisements. The Petition’s sole theory as to this claim requirement is that it “would have been obvious to use re-targeted ads in the combination of Rosenberg and Merriman154,” which Amazon acknowledges deviates from its

theory for claim 1 because “Rosenberg’s web servers use re-targeted ads as the ‘customized responses to browser inquiries.’” Pet. 63. The Petition specifically alleges that these retargeted advertisements would be based on Merriman154’s disclosure of “re-targeted ads in which an advertiser targets an ad to a user based on the user’s ‘own past behavior at that specific advertiser’s web site.’” Pet. 63 (citing Ex. 1007, 3:20-4:10, 5:60-6:16).

These retargeted advertisements, however, are precisely the type of advertisements the patentee disclaimed as *not* being “third-party advertisements” in the file history of the ’904 patent’s grandparent application. Ex. 2001, ¶¶85-87. Specifically, as discussed above in Section III.A, the applicant made clear that “third-party” was added in to the limitation “third-party advertisements” in order to “make clear that the profile data used in targeting the advertisement is not simply information from the advertiser itself.” Ex. 2003 at 30. Thus, at very least, third-party advertisements do not include an advertisement where the profile data used in targeting the advertisement is simply information from the advertiser itself (i.e., advertisements for which the advertiser supplied the profile information used to target the advertisement).

Furthermore, a POSITA would have understood that in the retargeted advertisements that the Petition relies on from Merriman154, it is “simply information from the advertiser itself” that is used to target the advertisements. *See*

Pet. 63 (the Petition acknowledging that it is the user’s “own past behavior at that specific advertiser’s web site” which is used to target retargeted advertisements); Ex. 2001, ¶86. And Merriman¹⁵⁴ likewise makes clear that it is the user profile data provided by the advertiser itself that is used to target the retargeted advertisements, rather than other information. Ex. 1007, 3:29–34 (in discussion of “Re-Targeted Advertising” explaining that “the present invention is embodied in 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*”) (emphasis added).

Thus, the Petition’s proposed modification to Rosenberg in an attempt to satisfy the requirements of claim 5 is inconsistent with claim 1’s requirement that “the advertisements” provided are “third-party advertisements.” Accordingly, even if a POSITA *would have* found it obvious to modify Rosenberg as the Petition alleges in its claim 5 theory, claims 1 and 5 would not be obvious under that theory. Ex. 2001, ¶¶82-87.

VI. Conclusion

For the reasons set forth above, the Petition fails to show the obviousness of claims 1 and 5. The Petition’s deficiencies as to claim 1 apply equally to the only other independent claims (11 and 21), and thus apply to all challenged claims. And the Petition’s deficiencies regarding claim 5 also apply to challenged claims 15 and

25, which the Petition treats as substantively equivalent. *See* Pet. 65–67. Accordingly, Patent Owner respectfully requests that the Board find all challenged claims not unpatentable.

Date: January 20, 2026

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CERTIFICATION REGARDING WORD COUNT

Pursuant to 37 C.F.R. §42.24(d), Patent Owner hereby certifies, in accordance with and reliance on the word count provided by the word-processing system used to prepare this **PATENT OWNER'S RESPONSE**, that the amount of words in this paper is 7,617. Pursuant to 37 C.F.R. § 42.24, this word count is in compliance with the word limit set forth in 37 C.F.R. § 42.24(b)(2) excluding the portions exempted under 37 C.F.R. § 42.24(a)(1).

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e)(1))

The undersigned hereby certifies that the above document was served on January 20, 2026, by filing this document through the Patent Trial and Appeal Case Tracking System as well as delivering a copy via electronic mail upon the following attorneys of record for the Petitioners:

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