UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Facebook, Inc.
Petitioner

v.

Rembrandt Social Media, L.P.
Patent Owner

IPR2014-00415
Patent 6,415,316

PATENT OWNER REMBRANDT SOCIAL MEDIA, L.P.'S PRELIMINARY RESPONSE

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TABLE OF AUTHORITIES

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Statutes

Other Authorities

EXHIBITS

EXHIBIT NO.	DESCRIPTION
REMBRANDT 2001	Summons in a Civil Action, *Rembrandt Social Media, LP v. Facebook, Inc. and AddThis, Inc.*, No. 1:13-cv-158 TSE/TRJ (E. D. Virginia)
REMBRANDT 2002	Solomon, M.B., USPS formally launches new "Priority Mail" product with next-day delivery window, DCVelocity, August 14, 2013
REMBRANDT 2003	USPS PCC Insider, July 2013
REMBRANDT 2004	USPS Priority Mail Express
REMBRANDT 2005	USPS Location finder: Menlo Park, CA
REMBRANDT 2006	FedEx Tracking for No. 797846335373 (February 6, 2014 - February 10, 2014)
REMBRANDT 2007	FedEx Service Guide September 2013
REMBRANDT 2008	FedEx Transit Times from Palo Alto, CA to Atlanta, GA
REMBRANDT 2009	FedEx Value-Added Options, Saturday Delivery
REMBRANDT 2010	FedEx Rates and Transit Times

I. INTRODUCTION

The Petition for Inter Partes review should be denied for at least three reasons.

First, the Petition was not effectively filed within the one year statutory limitation period because timely service was not effected under Rule 42.105.

Second, the Petition does not establish even prima facie obviousness of claims 1, 4, 17, 18, 20 and 26—all the claims at issue—because none of the prior art meets the claimed requirement that privacy level information be sent from the diary server to the user system. Accordingly, even if the art were to be combined as the Petition argues, the combination would fall short of all claims at issue.

Third, it would not have been obvious to combine the Salas, Parker, Tittel, and Angles prior art to meet the advertising requirement of claim 20.

II. FACEBOOK'S FAILURE TO COMPLY WITH THE ONE-YEAR STATUTORY DEADLINE

Under 35 U.S.C. § 315(b), Facebook had one year to file the instant Petition after being served with the complaint in the related district court case. Facebook waited until the last day, February 6, 2014,[1] to submit the Petition, but failed to effect timely service of the Petition in accordance with Rule 42.105 and so has not

[1] Rembrandt served the complaint on February 6, 2013. (*See* Ex. 2001 and Petition at 1.)

qualified for a filing date under Rule 42.106. Rule 42.105 provides three acceptable forms of service: personal service by hand, electronic service, and mail service that meets a minimum threshold of delivery speed and reliability. Facebook did not serve the Petition by hand or electronically, instead electing to serve the Petition using a mail service that failed to effect delivery until February 10, four days after the filing deadline.

With respect to mail service, Rule 42.105(b) states "[s]ervice may be by EXPRESS MAIL® or by means at least as fast and reliable as EXPRESS MAIL®." Facebook did not use Express Mail, which is now called "Priority Mail Express,"[2] but instead used a FedEx service that was not as fast as Priority Mail Express. The basic Priority Mail Express service guarantees overnight delivery, including overnight Saturday delivery, to all customers at no additional charge.[3] Had Facebook used Priority Mail Express, the Petition would have been delivered

[2] In July 2013, the Post Office changed the name of its overnight delivery service from "Express Mail" to "Priority Mail Express." (*See* Exs. 2002 and 2003.)

[3] See Ex. 2004, noting that for "Priority Mail Express" service there are "[n]o surcharges for fuel or Saturday, residential, and rural delivery[.]"

by Saturday, February 8, at the latest.[4] By contrast, the Facebook Petition was not delivered until Monday, February 10.

Here is how Facebook served the Petition. Well after the Post Office closed in Menlo Park on Thursday, February 6, 2014,[5] Facebook dropped off the Petition at a Menlo Park FedEx location. The FedEx tracking record notes that the Petition was dropped off at 8:01 p.m. PST and notes that this was "after FedEx cutoff[.]" (Ex. 2006.) As such, FedEx treated the Petition as if it had been received by FedEx the next day, February 7,[6] which was a Friday.

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[4] Had Facebook provided the package to the Priority Mail Express service during regular hours on Thursday, February 6, it would have been delivered the next day on Friday, February 7. Had Facebook provided the package after hours on Thursday, it would have been delivered on Saturday, February 8.

[5] The Post Office at the in Menlo Park closes at 5:00 pm Pacific Time. (Ex. 2005.)

[6] Ex. 2007, at 18 ("FedEx cut-off times refer to the latest time you may call FedEx to have a shipment picked up in order for it to be shipped on the same day. Shipments received after the cut-off time will be shipped on the following day."); *see also* Ex. 2008 at 1 ("The [transit time] results are valid only if your

By dropping the Petition off at FedEx late on Thursday February 6, Facebook had for all practical purposes given the Petition to FedEx on Friday. Despite that, Facebook still could have ensured delivery the day after that (February 8), by opting for Saturday delivery, for an additional fee[7]—steps that would have been unnecessary had Facebook simply used the basic Priority Mail Express in the first place. Had Facebook properly opted for Saturday delivery using FedEx, service would have occurred by Saturday, February 8. But Facebook failed to select Saturday delivery.[8] These failures, in combination with Facebook's decision to drop off the package on a Thursday evening "after FedEx cutoff" without requesting and paying for Saturday delivery, rendered its form of service not "as fast . . . as EXPRESS MAIL®," and caused delivery to the correspondence

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shipment is prepared and provided to FedEx by the latest published cut-off time[.]")

[7] "A special handling fee applies for Saturday delivery[.]" (Ex. 2009, at 4.) *See also* Ex. 2010, showing the shipping options and corresponding additional charges for Saturday delivery for a package shipped from zip code 94304 to 30329 on Friday, April 4, 2014.

[8] *See* Ex. 2006, where the tracking document for Facebook's package states at the bottom, for the "Special handling section": "Deliver Weekday."

address of record in Georgia to be delayed until Monday, February 10, 2014. (Ex. 2006.)

Simply put, since an IPR petition "will not be accorded a filing date ***until*** . . . service of the petition" is effected pursuant Rule 42.105—which has not happened yet as explained above—the filing date of the Petition is necessarily after February 6, 2014, and thus more than one year after Facebook was served with the related complaint. 37 C.F.R. § 42.106(a) (emphasis added).

Given this, the Notice of Filing Date is wrong, but by no fault of the clerk. Facebook's failure to comply with the service rules could not be discerned by the clerk from the Petition itself.[9] And while Rule 42.106(b) allows a party to complete an incomplete petition within one month from a notice of an incomplete petition,[10] the petition is then accorded a filing date as of the day of completion.

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[9] The clerk could not have been aware of the service defect because it was not apparent from either the Petition itself or from the associated certificate of service. Indeed, the certificate of service included with the Petition simply states that the Petition and related documents "are being served via Federal Express on the 6th day of February, 2014." (Petition COS at 1.)

[10] 37 C.F.R. § 42.106(b) ("Where a party files an incomplete petition, no filing date will be accorded, and the Office will dismiss the petition if the deficiency

See CMI Corp. v. Hirakata Yoshiharu, IPR 2013-00066, Paper No. 3 (refusing to accord a filing date because the petition was served on the wrong address the day the petition was electronically submitted); *Id.* Paper No. 6 (according a filing date two days after electronic submission, which was the day that the service defect was corrected.) Here, because the proper filing date is necessarily more than one year after Facebook was served with the complaint, and thus too late, the IPR "may not be instituted," and the Petition should be dismissed. 35 U.S.C. § 315(b).

The fact that the Petition must be dismissed under 35 U.S.C. § 315(b) is Facebook's own doing. For its own reasons, Facebook chose to wait until the "eleventh hour" of the last day to attempt service, selected a delivery service that was not as fast as EXPRESS MAIL®, decided to drop off the package on a Thursday evening "after FedEx cutoff," and failed to request or pay for Saturday delivery. Nor did Facebook make any effort whatsoever to contact Rembrandt's counsel of record to arrange for service. Clearly, this is not a case where the Petitioner has made even a good faith effort to comply with the rules.

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in the petition is not corrected within one month from the notice of an incomplete petition.").

III. PETITIONER'S OBVIOUSNESS ARGUMENTS ARE WITHOUT MERIT

A. The Claims At Issue

The claims at issue cover a method and system for a person to create and selectively display a personal diary over what the patent calls an otherwise "faceless" Internet.[11] The claims focus on the interaction between a central server and the user's computer browser and on privacy controls that allow the diary owner to limit who else can view the various content items on his or her diary pages.

Representative claim 1, paragraphed as presented in the Petition, is as follows:

1. A method of organizing information for display, comprising:

[a] sending from a diary server to a user system, a diary program capable of being executed by a browser in the user system;

[b] sending diary information from the diary server to the user system, the information comprising content data including an associated time, a page design to specify the presentation of the content data, and configuration information for controlling behavior of a cohesive diary page, the configuration information including privacy level information;

[11] *See* Ex. 1001, '316 patent, 1:31-47.

[c] assembling the cohesive diary page by dynamically combining the content data and the page design in accordance with the configuration information for the cohesive diary page to be displayed by the diary program running in the browser;

[d] receiving by the diary server at least one request for at least one change concerning the diary information, from the diary program in the user system; and

[e] sending, by the diary server to the user system, new diary information for changing the cohesive diary page.

(Ex. 1001, '316 patent, Claim 1.)

Paragraphs "a" and "b" recite four key limitations, each requiring an element to be sent from the "diary server" to the "user system."

Paragraph "a" requires sending a "diary program capable of being executed by a browser in the user system." In this way, any individual with an ordinary computer can take advantage of the invention, without having to pre-program the computer with special software.

Paragraph "b" requires sending "diary information," which includes not only the "content data," but in addition a "page design" and "privacy level information." The page design determines how the content is presented on the page, and the privacy level information (also called "configuration information") determines who can view the content. By sending the content and page design separately these elements can easily be changed independently of each other. Sending the

privacy level information facilitates the user's ability to control and change who else can view his or her diary content.

Paragraph "c" requires the content and page design to be dynamically combined to form the "cohesive diary page" to be displayed, all in accordance with the privacy level (configuration) information. In other words, the content displayed on a page will depend upon the privacy level of the person attempting to access the page.

Paragraphs "d" and "e" deal with the user's ability to request the server to change the "diary information." In particular, as specified in dependent claim 4, which is also at issue here, the user can request a change in the content data of a page without changing the general appearance of the page, i.e., independent of the page design. The request for change is sent from the diary program in the user's browser to the server.

Claim 17 is an apparatus counterpart of claim 1 without the "change" limitations of 1(d) and 1(e). Claim 26 adds another version of change limitations to claim 17. Claim 20, dependent on claim 17 through claim 18, adds the presentation of advertisements on the page.

B. Claim Construction

The only claim construction dispute at issue in this proceeding is the interpretation of "privacy level information."

As an initial matter, it is undisputed that privacy level information governs who is permitted to *view* particular content on a cohesive diary page.[12] Consistently, the '316 patent describes that when a user requests access to a diary owned by another user, the diary system filters the content data in the owner's diary based on privacy level information so that the user seeking access can view only that portion of the content data consistent with the applicable privacy level:

> [T]he diary applet generates HTML only for those portions of the diary equal to the privacy level of the viewer who is viewing the diary. Thus, it is possible that the diary applet will generate different HTML pages for an owner and for a random stranger who each ask to view the same diary page on their respective browsers. *The person viewing a diary page can only view the content marked as appropriate for him and other people at his privacy level*.[13]

Also not disputed is that the privacy level information must be sent from the diary server to the user system. As the '316 specification describes, this allows the diary owner or another authorized user to change the existing privacy level:

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[12] Petition at 24.

[13] Ex. 1001, '316 patent 18:17-25 (emphasis added); see also 10:36-45.

> Button 438 allows any user to change the privacy level on which the diary is operating, provided that the user is able to authenticate himself at the desired level. …[C]licking or otherwise selecting this button displays window 450 of FIG. 4(d) [which Patent Owner has reproduced below]. … Window 450 allows a user of the diary to set a privacy level at which the diary is operating of: world, friend, close friend, best friend, and owner via respective buttons 451, 452, 453, 454, and 455. … This window determines which sections and which objects will be visible during browsing through the diary.[14]

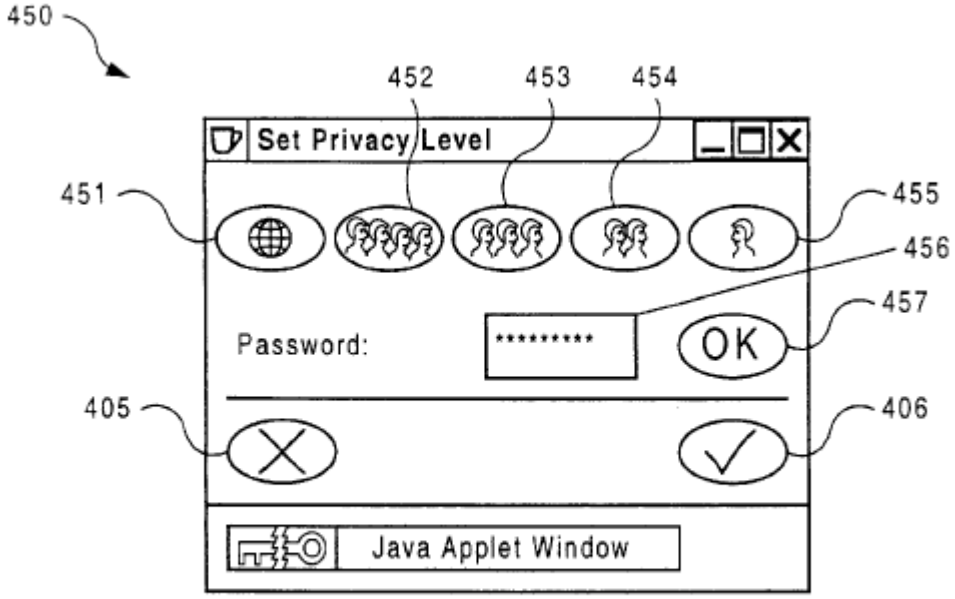

Figure 4(d)

[14] Ex. 1001, '316 patent 10:29-45; Fig. 4(d); see also 2:39-46; 7:12-15; 9:62-64.

In the pending infringement suit the District Court's original construction of "privacy level information" was:

> Configuration information that describes or specifies which user(s) or categories of users are permitted to view particular content data on a cohesive diary page.[15]

Later, in a *Daubert* ruling, the Court interpreted its construction. The issue was whether the construction—in particular the words "which user(s) or categories of users"—meant that the information has to specify the "metes and bounds" of who could view the content. The Court ruled that it did not:

> A statement that privacy level information must indicate the "metes and bounds" of who has permission, or a statement that privacy level information must indicate the "specific" user or users who may access certain content, impermissibly alters and narrows the construction of the term "privacy level information." The Court's construction did not indicate or require that privacy level information must identify the universe of those who may and may not access certain content. According to the Court's construction, configuration information that

[15] Ex. 1003 at 002.

> describes a user who is permitted to view particular content is privacy level information.[16]

Petitioner thus proposes, and relies on, a construction of "privacy level information" as "configuration information that describes or specifies at least one user permitted to view particular content on a cohesive diary page."[17] Patent Owner disagrees. The privacy level information is a filter for determining who can and who cannot view certain content on a diary page. Accordingly, it must include information specifying the universe of who can view the content. All the examples of privacy levels—"world," "friend," "close friend," "best friend," and "owner"—identified in the specification define a universe of permitted viewers.[18] Without information specifying the universe the privacy filter would not work.

Patent Owner thus proposes that the District Court's original construction, interpreted to require that the universe of permitted viewers be specified, be adopted by the Board. In any event, as we show below, even under Petitioner's proposed construction Petitioner's references do not meet the privacy level

[16] Ex. 1003 at 006-007.

[17] Petition at 24.

[18] Ex. 1001, '316 patent 10:36-41; Fig. 4d.

information limitation because none of them discloses sending to the user system any information whatsoever governing who is permitted to *view* particular content on a cohesive diary page.

C. Salas

The Salas reference discloses an online business workroom—called an "eRoom"—that allows business users to collaborate on a common project. As seen below, a Salas eRoom "page" has two main areas: (1) a central rectangular area where icons representing externally stored files are displayed (see "item box" 408, emphasized below), and (2) an "announcement" area (see 420, emphasized below), resembling a blog, where users can see and add time-stamped announcements.

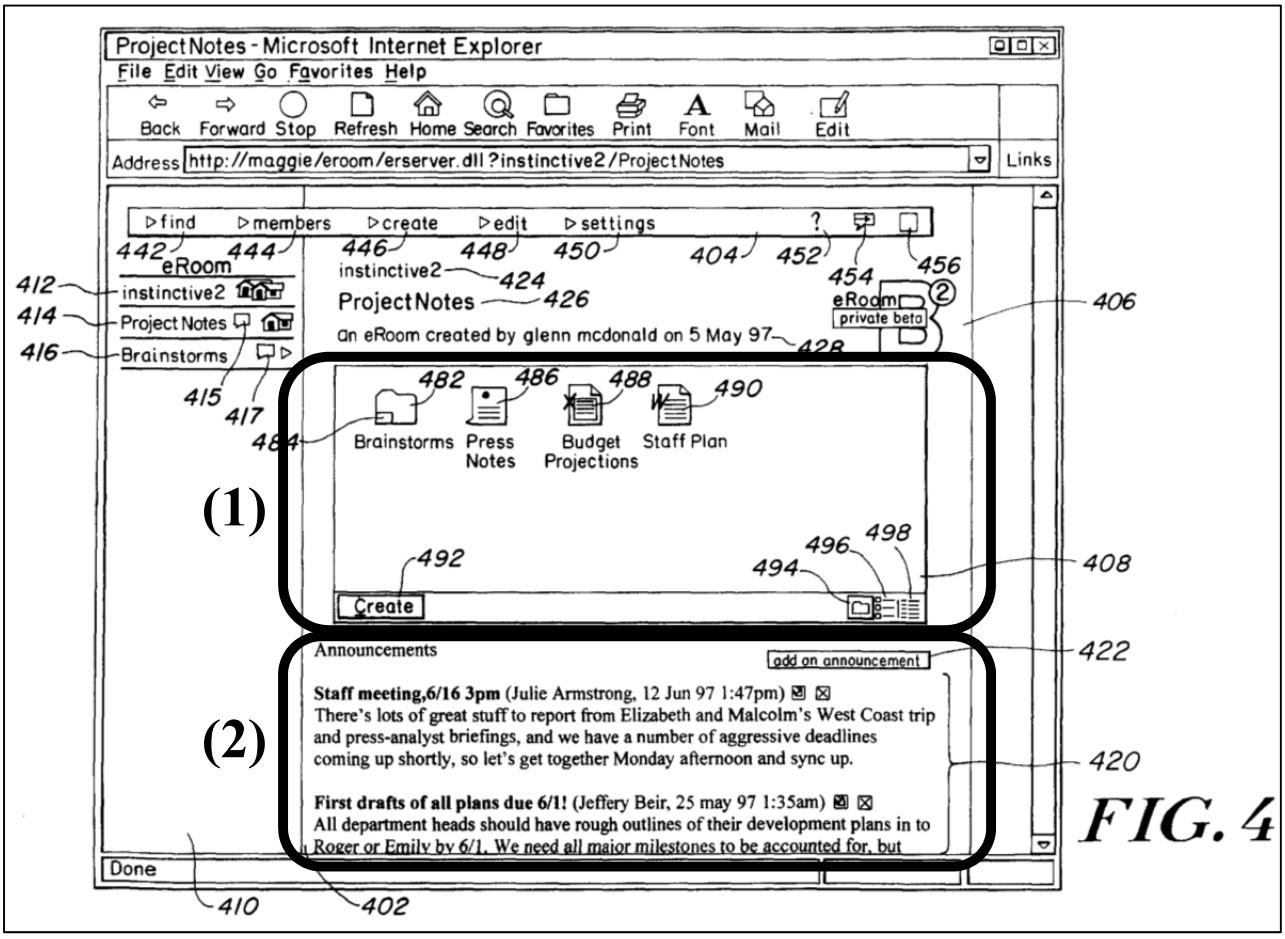

FIG. 4

(Salas, Ex. 1005, Fig. 4, emphasis added)

Salas lacks at least the following limitations required by the subject claims:

1. Salas does not send privacy level information from the server to the user system

Salas does not disclose sending privacy level information from the diary server to the user system—a requirement of each subject claim—both because (1) there is no privacy level information in Salas to begin with, and (2) even if

there were, there is no disclosure of sending any such information to the user system.

In the first place, Salas does not filter, or control in any way, which users may view content displayed on the eRoom pages. Both the announcements and the file icons—the alleged "content data" on the page—are fully visible to all users. The only access control disclosed in Salas is control over who may use the file icons as links to access the actual files represented by the icons. But there is no disclosure that those files are ever combined with page design or in any other way displayed on eRoom pages, all of which would be necessary for the files to qualify as claimed "content data."[19] Instead, so far as appears, the actual files represented by the icons (as opposed to the icons themselves) are opened and displayed outside of the eRoom entirely, in the specific applications (e.g., Microsoft Word) that can be used to make edits to the files.[20] Moreover, there is no disclosure in Salas of

[19] Claim 1 requires "assembling the cohesive diary page by dynamically combining the content data and the page design," and claim 17—the other independent claim at issue—includes a nearly identical limitation. Further, the agreed construction of "cohesive diary page" is "a diary page in which the content data and the page design are fully integrated for display."

[20] Ex. 1005, Salas, at 12:47-55 ("Once the file has been downloaded, or if the file

"dynamically combining" the actual files represented by the icons with the page design. So far as appears in Salas, the only "page design" is the template that controls the appearance of the page that displays the icons, and has no disclosed role in the eventual display of the file itself.

In any event, there is no disclosure in Salas that its access information, whatever its significance, is ever sent to the user system, as is also required by the claims. Rather, the Salas reference discloses only that the access controls are stored at the server along with various other metadata:

> The *server database 20 stores* various tables which contain information about eRooms, members, *access controls*, and other data objects. For example, a members table may be provided which includes unique identification codes for each user, a table value indicating for which eRooms the user fulfills a coordinator role, a table value which indicates for which eRooms the

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was already present in local mass storage, the Watcher launches the application used to edit the file (step 604). The indicated application may be determined using the Object Linking Embedding standard (OLE), the file suffix (three characters in a DOS-based system), or the server 14 may store file metadata which is transmitted together with the file and indicates which application should be used to open and edit the file."); Fig. 4.

> member fulfills an observer role, and a value describing the last time a member record was modified.[21]

Petitioner contends that the following sentence in Salas supports an argument that access control information is sent to the user: "Once synchronization has been accomplished and *local database metadata* has been updated, the appropriate data objects and values are inserted in to the eRoom is displayed to the user."[22] But Salas provides for various types of metadata,[23] only a "subset" of which is stored locally,[24] and never says that this "local database metadata" includes the "access control" information metadata mentioned above. In fact, the paragraph in Salas that precedes Facebook's quoted paragraph (11:42-67) suggests

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[21] Ex. 1005, Salas, at 3:49-56 (emphasis added).)

[22] Ex. 1005, Salas, at 12:1-4 (emphasis added).

[23] Ex. 1005, Salas, at 13:53-57 ("File metadata may include: the name of the file; the size of the file; the date the file was created; the date the file was last modified; access information such as which users may open, view, and edit the file; and information regarding the edit status of the file, such as whether an edit lock has been set by a user.")

[24] Ex. 1005, Salas, at 4:32-36.

that the "local database metadata" that is updated is just one particular piece of metadata relevant to synchronization—namely, a modification tag that is periodically updated and is used to determine whether a given file is current or stale:

> Synchronization is enabled by storing all records in the server database with an associated *modification tag*. The tag is a positive integer which is taken from an ever-increasing counter. …When a client workstation 12' synchronizes its local databases and files, *it also receives the current modification tag*, i.e., it also receives the current value of the counter. … The client workstation 12 stores the received data objects in its local data base and *stores the new received modification tag value*.[25]

Petitioner also points to a passage in Salas that describes an access check being performed on a file that a user has attempted to open:

> [T]he access rights of the requesting user are checked. If the user has appropriate access rights, i.e., "can edit" if

[25] Ex. 1005, Salas, at 11:42-60 (emphasis added); see also Salas dependent claim 4 ("The method of claim 1 wherein step (b) further comprises storing in the client database the received project data *together with a modification tag*.")(emphasis added).

> the user has indicated editing will occur or "can view" if the user has indicated only viewing will occur, the user will be allowed to retrieve the file.[26]

But the context of this passage makes plain that the access check being described takes place at the server, not at the user system. The very next sentence, for example, speaks in terms of *downloading* a file that presumably has passed the access check: "In the case of a user that indicated editing will occur, an edit lock is set before *the file is downloaded*."[27] The file is simply not downloaded if the user has no right to view it.[28] And while the passage talks also about edit rights, edit rights have nothing to do with the privacy levels of the patent, which govern only who can *view* the content, not who can *edit* it. In any event, as the passage above makes clear, any edit locks reside at the server in Salas, not at the user system.

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[26] Ex. 1005, Salas, at 12:34-39; Petition at 40.

[27] Ex. 1005, Salas, at 12:39-43 (emphasis added).

[28] Ex. 1005, Salas, at 12:27-39; 11:54-56; 14:33-36 ("The concept of skeleton information provides a first level of access control, because only data objects stored in 'containers' for which a particular user has Open privileges are synchronized to that client's workstation 12'.")

2. Salas's eRoom does not include advertisements

Salas contains no disclosure whatsoever about including advertisements on his business workroom eRoom pages, as required by '316 patent claim 20, and Petitioner does not contend otherwise.[29]

D. Parker

Parker discloses a system for controlling access to shared resources on a computer network. It has nothing to do with displaying "cohesive diary pages," using a "diary program" to integrate "content data" with "page design," or web advertisements.

Like Salas, Parker displays file icons and controls access to the files represented by the icons. The difference relied upon by Petitioner is that Parker incorporates into the icons an indication of whether the particular user to whom the icon is displayed has the right to access the file by clicking on the icon. This indication can be a lock symbol, or a ghosting or graying of the icon itself. Alternatively, the icon can be blanked out altogether if the user does not have viewing permission.

Just as with Salas, there is no disclosure of the files themselves being displayed as part of a "cohesive diary page" of the claim. So, as with Salas,

[29] Petition at 56-59.

Petitioner has to rely on the icons themselves as the "content data" to which the privacy level information applies. In other words, Parker's access control information would have to control who can view the icons, not the files. But at least for Parker's examples of having the icon itself indicate whether the user has access, by adding the lock symbol or ghosting or graying, the icon remains fully viewable to the user, so there is no relevant viewability control sent to the user. And for Parker's alternative of blanking out the icon altogether, there is also no disclosure of sending any privacy level information to the user. The icon is simply not sent.

Accordingly, even if combined with Salas, Parker does not fill the gap in Salas regarding sending privacy level information to the user system. The presumed combination would thus still be missing a critical limitation of the claims.

E. Tittel

"Tittel" is a second edition of the "*More HTML For Dummies*" book series – a general reference about HTML webpage design.

Petitioner relies on Tittel for its alleged disclosure concerning whether it generally would have been obvious to download certain information *from a server*,

namely, the claimed "diary program"[30] and "page design."[31] Tittel has nothing to do with "cohesive diary pages," sending "privacy level information" or displaying advertisements, and Petitioner does not rely on Tittel for any of these claim requirements.

F. Angles

Angles discloses a system for delivering custom advertisements to a consumer on a content provider website. In particular, an Angles consumer registers with a custom advertising service, provides demographic information, and receives in return a unique ID, which is stored as a cookie at the consumer's computer. Then, whenever the consumer visits the website of a content provider participating in Angles' advertising service, the cookie is retrieved from the consumer and used to determine a type of customized ad to deliver to the consumer.

Petitioner relies on Angles solely for '316 claim 20—contending that it would have been obvious to combine three references—Salas, Parker, and Tittel—and then combine a fourth reference, Angles, to put advertising on Salas's eRoom pages. But Petitioner neither explains nor offers any evidence as to why one of

[30] Petition at 30-31.

[31] Petition at 37-38.

ordinary skill would have been motivated to include advertisements on a website *developed for business users*, such as Salas's eRoom.[32]

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[32] Numerous passages in Salas establish that his eRoom is for business use:

- "[A] broad range of *companies* now use internal collections of HTML files, which are commonly known as 'Intranets.' However, while HTML files excel at displaying and disseminating information to one or more groups of networked users, they do not allow a group of users to collaboratively share information in order to work on a common project." (Ex. 1005, Salas, at 1:49-56)(emphasis added).
- "[S]ince all file transfers take place using HTTP, project groups can span *corporate organizations* as well as time zones and geographic boundaries." (*Id*. at Abstract) (emphasis added).
- "The systems and methods described herein use HTTP to transmit large files of data, such as Word processing files, spreadsheets, etc. The advantage of using HTTP to transmit all project data is that *users from different organizations* can easily and transparently share data since data transmitted by HTTP will be more compatible with firewalls or other security

While Petitioner asserts that "obtaining revenue" would have provided motivation,[33] nothing in the record suggests that placing advertisements on a website geared for business users was conventional or otherwise known in 1998 as an effective way of making money. To the contrary, both common sense—and the absence of advertisements on business workroom applications even today—indicate that advertisements would have been seen as an unwelcome distraction to users in such a system. And Angles does not teach otherwise, since he merely adds advertising to "content provider" web sites for consumers, not sites for business use, like Salas's. Thus, if anything, Petitioner's purported motivator—money—would have driven one of ordinary skill away from including advertisements on the Salas eRoom and towards another monetization approach altogether, such as a model based on company subscription fees.

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mechanisms established by their respective organizations." (*Id.* at 13:64-14:4) (emphasis added).

- "For example, one server may host project facilities for *separate research efforts within one organization or for separate research efforts by separate organizations*. (*Id*. at 3:29-32) (emphasis added).

[33] Petition at 58.

G. The Petition Does Not Establish Even Prima Facie Obviousness

It is well settled that whether an IPR should be initiated depends solely on the contentions made in the Petition. *Wowza Media et al. v. Adobe Systems*, IPR2013-00054, (PTAB July 13, 2013)("the threshold question is whether the information presented in the petition … shows that there is "a reasonable likelihood that the petitioner would prevail").

Although the Petitioner asserts that it could have made a case for anticipation, the Petition as submitted instead relies wholly on obviousness, based on the combination of three, and in one instance four, separate references. Surely Petitioner would have argued anticipation if it truly thought it had merits. The obviousness case presented fails for at least the following reasons.

1. First, neither Salas nor Parker teaches sending privacy level information to the user system.

a. Salas does not have privacy information at all, because his access control is not over what appears on the page but rather over who can click on icons on the page to access files off the page. The files themselves are not "content data" as claimed because they never appear on a page on which they are combined with Salas's page design, as required by all claims.

b. Even if the files themselves were considered to be page content, Salas does not disclose sending the file access control information to the user system.

The Salas language relied on in the Petition all relates to operations conducted prior to downloading the files, carried out at the server.

c. Parker too relates to who can access external files from icons that appear on the page. While Parker teaches modifying the icons to indicate the level of file access, the modifications still leave the icons visible and so do not reflect privacy level information because they do not prevent anyone from viewing content (the icons) on the page. Parker does mention the alternative of blanking out the icon altogether, but in that case nothing at all is disclosed as being sent to the user, certainly not privacy level information. Accordingly, even if combined with Salas, Parker does not fill the gap of sending privacy level information to the user systems.

2. Second, as to claim 20, Salas teaches a business workroom "eRoom" page, and Facebook has offered no evidence regarding why one of ordinary skill would have been motivated to include advertising in an eRoom, especially the type of advertising requiring the viewer to register for ads as disclosed in Angles.

IV. CONCLUSION

For the above reasons, Patent Owner respectfully submits that the Petition should be denied.

Respectfully submitted,

Date: May 12, 2014

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CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned certifies that on May 12, 2014, a complete and entire copy of this Patent Owner's Preliminary Response, and all supporting exhibits, were provided via e-mail, costs prepaid, to the Petitioner by serving the correspondence e-mail addresses of record as follows:

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