

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOD TECHNOLOGY SOFTWARE, INC.,  
Petitioner,

v.

MOBILEIRON, INC.,  
Patent Owner.

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Case IPR2015-00833  
Patent 8,340,633 B1

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Before JUSTIN BUSCH, JENNIFER MEYER CHAGNON, and  
JASON J. CHUNG, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION  
Institution of *Inter Partes* Review  
37 C.F.R. § 42.108

I. INTRODUCTION

Petitioner, Good Technology Software, Inc., filed a Petition to institute an *inter partes* review of claims 1–4, 6–25, 27, and 28 (“the challenged claims”) of U.S. Patent No. 8,340,633 B1 (“the ’633 patent”).

Paper 1 (“Pet.”). Patent Owner, MobileIron, Inc., filed a Preliminary Response pursuant to 35 U.S.C. § 313. Paper 6 (“Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314; 37 C.F.R. § 42.4(a). Upon consideration of the Petition and the Preliminary Response, and for the reasons explained below, we determine that the information presented shows a reasonable likelihood that Petitioner would prevail with respect to claims 1–3, 6–11, 13, 15–25, 27, and 28. *See* 35 U.S.C. § 314(a). Accordingly, we institute an *inter partes* review.

*A. Related Matters*

The ’633 patent is involved in a district court proceeding, *Good Technology Corp v. MobileIron, Inc.*, Case No. 1:14-cv-01308 (D. Del. Oct. 14, 2014)<sup>1</sup>. Pet. 1; Paper 5, 2.

*B. The Asserted Grounds*

Petitioner identifies the following as asserted grounds of unpatentability:

References	Basis	Claim(s) Challenged
Cassett (Ex. 1003) <sup>2</sup> and Stevens (Ex. 1004) <sup>3</sup>	§ 103(a) <sup>4</sup>	1–4, 6–10, 12–19, 21, 22, 25, 27, and 28

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<sup>1</sup> We note this Delaware action appears to have been transferred to the Northern District of California. The parties are reminded that 37 C.F.R. § 42.8(a)(3) requires mandatory notices to be updated if there is a change of information.

<sup>2</sup> U.S. Patent No. 7,817,983 B2, filed Mar. 13, 2006.

References	Basis	Claim(s) Challenged
Cassett, Stevens, and Agarwal (Ex. 1005) <sup>5</sup>	§ 103(a)	6, 20, 23, and 24
Cassett, Stevens, and Barnea (Ex. 1006) <sup>6</sup>	§ 103(a)	11

Petitioner identifies six challenges. Pet. 4–5. In particular, for each of the asserted grounds enumerated in the table above, Petitioner separates its challenges into two grounds: a first ground asserting that the claims are rendered obvious by the combination of Cassett and Stevens and a second ground by the combination of Stevens and Cassett and, for claims 6, 11, 20, 23, and 24, in further view of Agarwal or Barnea. *Id.* In this decision, we do not separate the pairs of grounds and merely analyze each combination of references.

### C. *The '633 Patent*

The claims of the '633 patent are directed to generating mobile device usage reports from aggregated data received directly from mobile devices affiliated with a single enterprise and using multiple service provider networks. Ex. 1001, Abs; cols. 27, 28. The '633 patent explains that collecting usage data by each of an enterprise's mobile devices may allow a

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<sup>3</sup> U.S. Patent No. 6,925,160 B1, Aug. 2, 2005.

<sup>4</sup> The relevant sections of the Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112-29, took effect on March 18, 2013. Because the application from which the '633 patent issued was filed before that date, our citations to Title 35 are to its pre-AIA version.

<sup>5</sup> U.S. Patent Pub. No. 2009-0005002 A1, Jan. 15, 2009.

<sup>6</sup> U.S. Patent No. 7,310,511 B2, Dec. 18, 2007.

manager “to better manage the enterprise’s mobile devices, control costs, and monitor Quality of Service.” *Id.* at 18:13–21. The ’633 patent emphasizes the importance of collecting data directly from the mobile devices, stating that reports received from the service providers are limited and would not provide the details needed to provide more leverage for an enterprise to negotiate with its service provider(s). *Id.* at 19:31–38. The ’633 patent describes a control client application interacting with a mobile device management application hosted on a device management server to log “man-machine interface (MMI) data, file system commands, and other data characterizing usage of, and/or the actions performed on, the mobile device.” *Id.* at 2:41–53.

#### *D. The Challenged Claims*

Petitioner challenges claims 1–4, 6–25, 27, and 28. Pet. 4–5. Claims 1 and 28 are independent. Claim 1 is illustrative and reproduced below:

1. A method, comprising:

receiving, at a first server, mobile device network traffic usage data directly from each of a plurality of mobile devices associated with a particular enterprise, a first subset of the plurality of mobile devices being associated with a first network service provider and a second subset of the plurality of mobile devices being associated with a second network service provider;

aggregating the usage data from each of the plurality of mobile devices according to characterized actions performed on each of the mobile devices; and

generating based on the aggregated usage data one or more mobile device usage reports at least a subset of which compare a first aggregated usage data associated with the first network service provider with a corresponding second

aggregated usage data associated with the second network service provider.

## II. ANALYSIS

### A. *Claim Construction*

In an *inter partes* review, the Board construes claim terms in an unexpired patent using their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012). The claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The Office must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. *Id.* (citing *In re Bass*, 314 F.3d 575, 577 (Fed. Cir. 2002)). There is a “heavy presumption” that a claim term carries its ordinary and customary meaning. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). The “ordinary and customary meaning” is that which the term would have to a person of ordinary skill in the art in question. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Petitioner proposes an express construction for two terms, “mobile device network traffic usage data” and “characterized actions performed on each of the mobile devices.” Pet. 8–10. Patent Owner proposes a construction for mobile device network traffic usage data different than Petitioner’s proposed construction and argues that “characterized actions performed on each of the mobile devices” should be given its plain and

ordinary meaning. Prelim. Resp. 7–10. Both terms are recited in independent claims 1 and 28.

The parties proposed constructions are summarized as follows:

<b>Term</b>	<b>Petitioner’s Proposed Construction</b>	<b>Patent Owner’s Proposed Construction</b>
mobile device network traffic usage data	information regarding use of a network for sending and/or receiving data by a mobile device	data collected from a mobile device relating to its use of a network
characterized actions performed on each of the mobile devices	identifiable usage of and/or actions performed on a mobile device	Plain and ordinary meaning

Upon review of the claims and specification of the ’633 patent, we preliminarily ascribe the plain and ordinary meaning to both identified terms. For purposes of this decision, we need not, and therefore do not, provide an explicit construction of “characterized actions performed on each of the mobile devices.” Because the construction of “mobile device network traffic usage data” impacts arguments presented by the parties, however, we provide our preliminary construction of the plain and ordinary meaning of “mobile device network traffic usage data.”

On this record, we determine that “mobile device network traffic usage data” is data regarding a mobile device’s usage of a network. Of particular note, we disagree with Patent Owner’s argument that “mobile device” refers to the source of the data rather than the type of the data. *See* Prelim. Resp. 7–8. We agree with Patent Owner that the specification describes that the usage data is received directly from the mobile device. *Id.* at 8. We also agree with Patent Owner that the claims explicitly recite

receiving the usage data directly from the mobile device. *Id.* at 7. Contrary to Patent Owner’s conclusion, however, the fact that the claims separately recite that the usage data is received directly from the mobile devices leads us to the conclusion that the “mobile device” modifier of the “network traffic usage data” indicates the type of data, i.e., data indicating network traffic usage by a particular mobile device, rather than the source of the data. Nevertheless, we find Petitioner’s proposed construction of “information regarding use of a network for sending and/or receiving data” too narrow. Although it is possible that Petitioner’s proposed construction of sending and receiving “data” may be intended to encompass voice traffic, the use in the specification of the ’633 patent sometimes separates voice traffic from data traffic and, therefore, to eliminate potential ambiguity of whether voice traffic is encompassed, we decline to limit the phrase to sending and/or receiving “data.”

*B. Obviousness of Claims 1–4, 6–10, 12–19, 21, 22, 25, 27, and 28 in view of Cassett and Stevens*

*1. Cassett (Ex. 1003)*

Cassett describes a system and method “for monitoring usage patterns of a wireless device . . . based on a received usage configuration.” Ex. 1003, Abs. “[B]ased on the usage configuration, the wireless device may forward the log to another device operable to analyze the log and generate a usage pattern report viewable by an authorized user.” *Id.* The system can monitor, log, and “analyze wireless device usage data” and “generate a usage pattern report.” *Id.* at 3:64–4:4. The data monitored and logged may be “any information relating to activity on the wireless device, such as what activity

is occurring, when the activity occurs, and how often the activity occurs, i.e. the frequency, and/or how long the activity occurs, i.e. the duration” and “may track information relating to voice calls, video calls, text messages, the uploading and downloading of content, and the execution and usage of the content and/or applications.” *Id.* at 4:25–35. Exemplary usage pattern data includes the average length of calls, the time of day calls are made, and where calls are made or received. Cassett explains that the collection and analysis of data may “provide insight into a usage pattern.” *Id.* at 4:53–59.

Cassett’s system may log and analyze the usage pattern data of any wireless device, including a cellular telephone, a PDA, a remote-slave device, or a device without an end user, such as a remote sensor or diagnostic tool. *Id.* at 5:4–13. Cassett further describes that the information may be collected from multiple wireless devices and the usage reports may “compare usage patterns between wireless device types” or, in cases where data is accumulated from devices using multiple network service providers, the usage reports may compare “the usage pattern of devices associated with different network service providers.” *Id.* at 9:45–50.

## 2. *Stevens (Ex. 1004)*

Stevens is titled a “system and method for managing cellular telephone accounts.” Ex. 1004, at [54]. Stevens is directed to helping businesses manage phone accounts, including situations involving multiple phone service carriers. *Id.* at 1:47–51. Stevens describes a system wherein a business with multiple employees, who may have cellular service through different providers, may receive “information related to the usage and charges associated with employees of the company.” *Id.* at 3:7–25. Stevens



describes optionally running its system “on a business’s equipment or on a server from which a business may interact with the system.” *Id.* at 4:25–27. The system provides reports so that managers may “analyze employees’ phone usage across various carriers, companies, divisions, and departments.” *Id.* at 10:35–39.

### 3. *Obviousness Challenge*

Petitioner asserts that the subject matter of claims 1–4, 6–10, 12–19, 21, 22, 25, 27, and 28 would have been obvious in view of Cassett and Stevens under 35 U.S.C. § 103(a). Pet. 7–52. Petitioner provides a limitation-by-limitation analysis of where each limitation of 1–4, 6–10, 12–19, 21, 22, 25, 27, and 28 is allegedly taught in Cassett and Stevens.

#### a. *Analogous Art*

Petitioner argues Cassett teaches every limitation recited in independent claims 1 and 28 except for the limitation reciting that the “mobile devices [are] associated with a particular enterprise.” Pet. 17–18. Petitioner further argues Stevens teaches every limitation recited in independent claims 1 and 28 except for the limitation reciting that the mobile device network traffic usage data is received “directly from each of a plurality of mobile devices.” *Id.* at 18. Petitioner alleges the deficiency in Cassett or Stevens may be cured by incorporating the teachings of the other reference. *Id.* Petitioner asserts that Cassett and Stevens are analogous art to each other and the ’633 patent because they all relate to “monitoring usage patterns of wireless devices” and “generating reports based on the usage information.” *Id.* at 18–19. Patent Owner argues that Stevens is not analogous art because “Stevens does not involve collection of information

*directly from the mobile devices themselves -- which is a key element of the solution described in the '633 Patent.*” Prelim. Resp. 13–14. Patent Owner asserts that, because Stevens obtains different data from a different source for a different purpose than what is recited by the claims of the '633 patent, Stevens is not analogous art to the '633 patent.

A reference may be analogous art either if it is from the same field of endeavor, regardless of the problem addressed, *or* if it is reasonably pertinent to the problem the inventor is trying to solve even if it is not in the same field. *In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986). We are persuaded by Petitioner’s assertion that Cassett, Stevens, and the '633 patent all relate to monitoring usage patterns of wireless devices and generating reports based on the usage pattern information monitored. Therefore, we find Stevens is in the same field of endeavor as both Cassett and the '633 patent and, thus, is analogous art.

*b. Combinability of Cassett and Stevens*

Petitioner argues that the combination of Cassett and Stevens merely requires modifying Cassett or Stevens “according to readily known techniques in order to predictably yield a system such as that claimed in the '633 Patent.” Pet. 20, 21–22. Petitioner asserts it would have been obvious to incorporate the teachings of Stevens into the systems and methods of Cassett to monitor usage of wireless devices associated with a particular enterprise because Stevens explains that monitoring an enterprise’s usage of wireless devices may be useful to managers. *Id.* at 19–20 (citing Ex. 1004, 10:37–39). Petitioner further explains that a skilled artisan would have recognized that collecting information from employer-supplied mobile

phones would be another business context in which Cassett's system could be used. *Id.* Petitioner provides an alternate rationale of combining Cassett and Stevens, asserting that a skilled artisan would have been motivated to modify Stevens' system and methods of monitoring and analyzing usage data for employer-supplied mobile phones to collect information directly from the mobile devices in order to avoid the extra processing step of converting the information from carrier-specific formats to a common format. *Id.* at 21.

Patent Owner argues that Cassett and Stevens are not properly combinable because "modifying either reference in view of the other would improperly change the 'basic principles under which the [prior art] was designed to operate,' and/or render the prior art 'inoperable for its intended purpose.'" Prelim. Resp. 15–17 (internal citations omitted). Patent Owner asserts that modifying Cassett, which is a system used by network carriers, to focus on a particular enterprise would allow Cassett only to improve the portion of its network devoted to a particular customer, rendering Cassett inoperable for its intended purpose of managing the entire network. *Id.* at 15–16. Patent Owner also argues that modifying Stevens, which "is directed to the allocation and recovery of billed costs for cellular phone usage," such that "data were received only from the phone itself, as Petitioner's proposed modification would require," Stevens would no longer be able to allocate costs between personal and business use. *Id.* at 16–17. Specifically, Patent Owner asserts that the cost information used in Stevens would only be available from the network carriers, not from the devices themselves, and Petitioner has not explained how usage information received directly from the mobile devices could be used to calculate billed costs. *Id.* We do not

find Patent Owner's arguments of inoperability and changing the principle of operation persuasive.

Petitioner's proposed modification of the software systems and methods taught by Cassett and Stevens are not analogous to the modifications in *In re Ratti*, 270 F.2d 810, 813 (CCPA 1959), and *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984). In *In re Gordon*, the Federal Circuit found that the prior art liquid strainer, which relied partially upon gravity to separate unwanted materials, would be rendered inoperable if turned upside down, because the materials which were intended to be filtered out would be trapped and the materials the prior art sought to separate would freely flow out of the filter. *In re Gordon*, 733 F.2d at 902. In *In re Ratti*, the court found that a spring-biased coffee maker gasket could not properly be combined with a sheet-metal stiffened rubber sealing member that is press fitted because it "would require a substantial reconstruction and redesign of the elements shown" and would change how the sheet-metal stiffened rubber sealing member would operate. *In re Ratti*, 270 F.2d at 813.

The proposed combination in the instant Petition, however, merely alters the point in the process where the data is collected by the system (i.e., collecting data directly from the mobile devices as opposed to from the network carriers) or limits the generated usage reports to a subset of mobile devices (those devices associated with a particular enterprise). As discussed above, Cassett and Stevens (and the '633 patent) are directed to monitoring, collecting, and analyzing mobile device usage patterns and generating reports using that information. The proposed combination still monitors

mobile device usage patterns and generates reports using that information, which is the purpose of both Cassett and Stevens.

A review of the entirety of the cited references shows that, contrary to Patent Owner's implication, Cassett is not limited to being used by network carriers and Stevens is not limited to allocating costs. Although Cassett suggests that usage pattern reports may be used by a network carrier to "more efficiently manage the wireless network," that is merely one use of the reports. Ex. 1003, 4:5–10. Cassett also explains that the usage reports may "provide useful marketing information for entities providing content and/or services that are consumed by the wireless device." *Id.* at 4:10–13. Cassett even describes generating reports "comparing the usage pattern of devices associated with different network service providers." *Id.* at 9:46–50. Patent Owner is also correct in asserting that Stevens explains that one application of the usage pattern reports is for allocating costs between personal and business use of mobile devices. Ex. 1004, 1:52–56. Stevens also explains, however, that the taught system and methods may be useful for "managers to analyze employees' phone usage across various carriers, companies, divisions, and departments." *Id.* at 10:37–39. Stevens further explains that its system may create limits, that may "constrain an employee's use of an applicable phone service by setting limits, such as limits to times, dollars, and numbers of calls after which an employee's use will be defaulted to personal." *Id.* at 4:62–67.

Moreover, although the proposed combination obtains usage information directly from the mobile device, nothing in that combination precludes receiving cost information from network carriers as well, such as billing information or cost reports, as taught in Stevens. Similarly, the

proposed combination does not prevent an entity with access to the system from monitoring usage patterns by mobile devices other than those associated with a particular enterprise and generating reports on that usage pattern data.

In sum, we do not find the teachings or purpose of Cassett and Stevens to be as limited as Patent Owner argues. Therefore, on this record, we find Petitioner has provided sufficient rationale for the combination of the features in Cassett and Stevens asserted in its challenges.

*c. Teachings of Cassett and Stevens*

As discussed above, Petitioner provides a limitation-by-limitation analysis of where it alleges Cassett and Stevens teach each limitation of the claims. Petitioner provides a claim chart identifying portions of Cassett and Stevens that allegedly teach each limitation of claim 1 and a detailed description of how those cited portions of the references relate to the identified limitations of the claims. Pet. 22–36. Petitioner argues that claim 28 is substantively the same as claim 1. *Id.* at 24.

As already discussed, Petitioner asserts that Cassett teaches every limitation recited in claims 1 and 28 except for the “mobile devices being associated with a particular enterprise” and that Stevens teaches every limitation recited in claims 1 and 28 except for the mobile device network traffic usage data being received “directly from each of a plurality of mobile devices.” Pet. 17–18, 23–36. Petitioner, therefore, argues the combination of Cassett and Stevens teaches every limitation of claims 1 and 28. *Id.*

In addition to the arguments against the combinability of Cassett and Stevens discussed above, Patent Owner argues that the combination does not

teach “receiving, at a first server, mobile device network traffic usage data directly from each of a plurality of mobile devices associated with a particular enterprise.” Prelim. Resp. 18–19. In particular, Patent Owner argues that Stevens does not teach receiving the usage data directly from the mobile devices and Cassett does not teach receiving data from devices associated with a particular enterprise. *Id.* Petitioner, however, has conceded those facts and has not asserted that either reference anticipates claims 1 and 28. Instead, Petitioner relies on a combination of Cassett and Stevens to teach the subject matter recited in claims 1 and 28, including that limitation. Patent Owner’s argument is, therefore, unpersuasive.

Patent Owner also argues that the combination of Cassett and Stevens does not teach “a first subset of the plurality of mobile devices being associated with a first network service provider and a second subset of the plurality of mobile devices being associated with a second network service provider.” Prelim. Resp. 19–20. Patent Owner asserts that Cassett does not receive information directly from each of the devices associated with different providers because “each network service provider would have only collected information from devices associated with itself.” *Id.* at 19. Patent Owner argues Stevens also does not teach that element because, in Stevens, the information is collected by the network service provider. *Id.* at 20.

The portions of Cassett and Stevens to which Patent Owner cites, however, teach a first set of mobile devices associated with a first provider and a second set of mobile devices associated with a second provider. It appears that Patent Owner’s arguments actually are directed a failure of the combination to teach receiving information directly from a plurality of mobile devices that are associated with two different service providers.

Once again, we note that Petitioner asserts claims 1 and 28 are unpatentable as obvious in view of Cassett and Stevens and provides rationales for the combination of those references. Petitioner only needs to demonstrate that the combination is proper and results in the elements as arranged. Petitioner does not need to establish that a single reference teaches every aspect of the claims. Moreover, we disagree with Patent Owner's characterization of Cassett. Specifically, our reading of Cassett indicates that mobile devices from different carriers may send their information to a server, where that information may be used to generate reports "comparing the usage pattern of devices associated with different network service providers." Ex. 1003, 9:48–50.

We have reviewed Petitioner's mappings and arguments regarding the teachings of Cassett and Stevens with respect to claims 1–3, 6–10, 15–19, 21, 22, 25, 27, and 28, and find Petitioner has demonstrated a reasonable likelihood of establishing that those claims are unpatentable in view of Cassett and Stevens. We discuss Petitioner's challenges to claims 4 and 12–14, each of which depends from claim 1, in more detail below.

Regarding claim 4, Petitioner argues Stevens teaches "sending the usage data from the first server[, which is an enterprise server of a particular enterprise,] directly to a central server that is not affiliated with the particular enterprise." Petitioner argues that an employee may access usage information using a personal computer that is affiliated with that employee and, thus, not affiliated with the particular enterprise. Pet. 39 (citing Ex. 1004, 3:63–64). We are not persuaded by Petitioner's argument. An employee, by definition, is "one employed by another usually for wages or salary." Merriam-Webster's Collegiate Dictionary 378 (10<sup>th</sup> ed. 1999).



Thus, an employee is “affiliated with” the particular enterprise by which they are employed, and Petitioner has not explained sufficiently why a computer affiliated with an employee of a particular enterprise used to access information from the enterprise’s server is not, thus, affiliated with the particular enterprise. In fact, Figure 11 of Stevens depicts the first computer (item 1112) and second computer (item 1116) as part of the company (item 1106). Therefore, we find Petitioner has not demonstrated a reasonable likelihood of establishing that claim 4 is unpatentable in view of Cassett and Stevens.

Petitioner argues Cassett teaches the additional limitation of “disabling all or a portion of the usage capabilities of a particular mobile device based on usage data received from the particular mobile device,” recited in claim 12 and the additional limitation of “changing a security policy corresponding to a particular mobile device based on usage data received from the particular mobile device,” recited in claim 14. Pet. 43, 44–45. Specifically, Petitioner points to Cassett’s disclosure of a control command parameter that “may allow an authorized user to initiate an upload of usage logs 120 while preventing the same user from downloading a new configuration 118,” and asserts that, based on the logs being uploaded, the system prevents the wireless device from downloading a new configuration. *Id.* Petitioner further argues that “changing whether or not a new configuration can be downloaded is a *change in security policy*.” *Id.* at 45. We agree with Petitioner that Cassett teaches setting a control command parameter that allows a user to initiate an upload of logs while preventing that user from downloading a new configuration. Ex. 1003, 10:31–37. It is the *control command parameter*, however, that prevents downloading a new

configuration while still allowing log uploading. We are not persuaded, therefore, that Cassett teaches preventing downloading of a configuration file *based on* usage data received from the device. Put another way, we are not persuaded that receipt of usage data is a condition precedent to preventing downloading of a configuration. Thus, we find Petitioner has not demonstrated a reasonable likelihood of establishing that claims 12 and 14 are unpatentable in view of Cassett and Stevens.

Petitioner argues Cassett teaches the additional limitation of “wiping all or a portion of the memory of a particular mobile device based on usage data received from the particular mobile device,” recited in claim 13.

Pet. 44. Specifically, Petitioner points to Cassett’s disclosure of deleting a mobile device’s log “automatically upon uploading [the log] to a usage pattern manager server,” and asserts that, based on the log being uploaded, the system wipes a portion of the mobile device’s memory. *Id.* We agree with Petitioner that Cassett teaches that uploading the log from the mobile device triggers deleting or “wiping” the portion of the device’s memory that stores the log. Ex. 1003, 8:19–25. Therefore, we find Petitioner has demonstrated a reasonable likelihood of establishing that claim 13 is unpatentable in view of Cassett and Stevens.

We have reviewed the record, and we determine Petitioner has demonstrated a reasonable likelihood of prevailing in establishing that claims 1–3, 6–10, 13, 15–19, 21, 22, 25, 27, and 28 are unpatentable as obvious in view of Cassett and Stevens.

*C. Obviousness of Claims 6, 20, 23, and 24 in view of Cassett, Stevens, and Agarwal*

*1. Agarwal (Ex. 1005)*

Agarwal is titled a “method and system for collecting information about portable device usage.” Ex. 1005, at [54]. Agarwal describes a system that collects usage information (such as usage of a portable device for calls, data messages, internet browsing, and email (*id.* ¶¶ 2, 3)) from portable devices and sends the information to an information processor. *Id.* ¶ 26. Agarwal’s system may collect the usage information in real time. *Id.* ¶ 39. Agarwal further teaches that the system may filter the collected information, either at the portable device or at a system external to the portable device.

*2. Obviousness Challenge*

Petitioner asserts that dependent claims 6, 20, 23, and 24 would have been obvious over Cassett, Stevens, and Agarwal. Pet. 52–57. Petitioner argues that Cassett and Stevens teach the limitations of independent claim 1, and Agarwal teaches the additional limitations recited in claims 6, 20, 23, and 24, which depend from claim 1. The additional limitations for which Petitioner relies on Agarwal relate to filtering the collected data at the mobile device, receiving data in real-time or on a continuous basis, and collecting email usage information. Cassett teaches that log transmission may occur based on a reporting parameter and provides non-limiting examples of when transmission could occur. Ex. 1003, 8:9–14. Agarwal teaches that, when monitoring certain usage, such as streaming media, logs may be transmitted in real-time. Ex. 1005 ¶ 39. Petitioner argues that a

skilled artisan would have been motivated by Cassett's indication that log transmission timing was non-limiting to look to other techniques, including the real-time transmission taught by Agarwal. Pet. 53–54. Petitioner also argues that Cassett teaches tracking information regarding the execution or usage of applications and a skilled artisan would have been motivated to monitor email usage, based on the disclosure in Agarwal. *Id.* at 53.

On this record, we are persuaded Petitioner has demonstrated a reasonable likelihood of prevailing in establishing that claims 6, 20, 23, and 24 are unpatentable as obvious in view of Cassett, Stevens, and Agarwal.

*D. Obviousness of Claim 11 in view of Cassett, Stevens, and Barnea*

*1. Barnea (Ex. 1006)*

Barnea is titled “monitoring and management of roaming users.” Ex. 1006, at [54]. Barnea aggregates roaming data into activity logs of “calls per roaming device” and manages them “based on activity levels or kinds of activity recorded.” *Id.* at Abs. Barnea explains that “management is per roaming device, preferably real time, and may be used to leverage takeup of roaming services.” *Id.* Barnea teaches a method of upselling, including using a mobile device's usage level “to send text messages with advertisements, reminders and offers.” *Id.* at 5:50–53.

*2. Obviousness Challenge*

Petitioner asserts that dependent claim 11 is unpatentable as obvious over Cassett, Stevens, and Barnea. Pet. 57–60. Petitioner argues that Cassett and Stevens teach every aspect of claim 1, and Barnea teaches the additional limitation of “automatically sending an alert to a particular mobile

device based on usage data received from the particular mobile device,” as recited in claim 11, which depends from claim 1. *Id.*

Petitioner argues that combining Barnea with the Cassett-Stevens combination would yield predictable results. Pet. 58. Petitioner points to Cassett’s teaching of marketing based on the usage patterns and argues Barnea’s upselling would be one way to accomplish such marketing. *Id.*

On this record, we are persuaded Petitioner has demonstrated a reasonable likelihood of prevailing in establishing that claim 11 is unpatentable as obvious in view of Cassett, Stevens, and Barnea.

### III. CONCLUSION

For the foregoing reasons, based on the information presented in the Petition and the Preliminary Response, we are persuaded that there is a reasonable likelihood that Petitioner would prevail in showing the unpatentability of claims 1–3, 6–11, 13, 15–25, 27, and 28 of the ’633 patent. We are not persuaded, however, that there is a reasonable likelihood that Petitioner would prevail in showing the unpatentability of claims 4, 12, and 14 of the ’633 patent.

At this stage of the proceeding, we have not made a final determination on the patentability of the challenged claims.

### IV. ORDER

Accordingly, it is

ORDERED that, pursuant to 35 U.S.C. § 314, an *inter partes* review of U.S. Patent No. 8,340,633 B1 is hereby instituted on the grounds that claims 1–3, 6–10, 13, 15–19, 21, 22, 25, 27, and 28 are asserted to be unpatentable over Cassett and Stevens, claims 6, 20, 23, and 24 are asserted

to be unpatentable over Cassett, Stevens, and Agarwal, and claim 11 is asserted to be unpatentable over Cassett, Stevens, and Barnea;

FURTHER ORDERED that no other ground of unpatentability alleged in the Petition for any claim is authorized for this *inter partes* review; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial commences on the entry date of this decision.

IPR2015-00833  
Patent 8,340,633 B1

Petitioner:

Phillip Bennett  
EIP US LLP  
[pbennett@eip.com](mailto:pbennett@eip.com)

Patent Owner:

Eliot D. Williams  
G. Hopkins Guy  
[eliot.williams@bakerbotts.com](mailto:eliot.williams@bakerbotts.com)  
[hop.guy@bakerbotts.com](mailto:hop.guy@bakerbotts.com)