

Petition for *Inter Partes* Review of
U.S. Patent No. 11,061,532

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACCESSIBE LTD.
Petitioner,

v.

AUDIOEYE, INC.
Patent Owner

Case No. IPR2022-01492
U.S. Patent No. 11,061,532
Issue Date: July 13, 2021

Title: MODULAR SYSTEMS AND METHODS FOR SELECTIVELY ENABLING CLOUD-
BASED ASSISTIVE TECHNOLOGIES

**PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO.
11,061,532**

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

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LIST OF EXHIBITS

EXHIBIT NO.	DESCRIPTION
1001	U.S. Patent No. 11,061,532 to Sean D. Bradley, <i>et al.</i> , (filed Feb. 5, 2021, issued July 13, 2021)
1002	Declaration of Dr. James Fogarty, Ph.D. in Support of Petition for <i>Inter Partes</i> Review of U.S. Patent No. 11,061,532 (“Fogarty”)
1003	Curriculum Vitae of Dr. James Fogarty, Ph.D.
1004	Prosecution History of U.S. Patent No. 11,061,532 (excerpts).
1005	U.S. Patent Application Pub. No. 2004/0148568 A1 (“Springer”)
1006	U.S. Patent Application Pub. No. 20020156799 A1 (“Markel”)
1007	Hironobu Takagi et al., <i>Collaborative Web Accessibility Improvement: Challenges and Possibilities</i> , 11th International ACM SIGACCESS Conference on Computers and Accessibility, ASSETS 2009, Pittsburgh, Pennsylvania, USA, (Oct. 25-28, 2009), available at https://dl.acm.org/doi/10.1145/1168987.1169018 (“Takagi”)
1008	Jeffrey Bigham et al., <i>WebInSight: Making Web Images Accessible</i> , 8th Int. ACM SIGACCESS Conf. on Computers and Accessibility, ASSETS 2006, Portland, Oregon, USA (Oct. 23-25, 2006), available at https://dl.acm.org/doi/10.1145/1168987.1169018 (DOI:10.1145/1168987.1169018) (“Bigham”)
1009	U.S. Patent Application Pub. No. 2013/0104029 (“Hendry”)

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EXHIBIT NO.	DESCRIPTION
1010	Web Content Accessibility Guidelines (WCAG) v1.0, W3C (May 5, 1999) (WCAG v1.0)
1011	Techniques for Web Content Accessibility Guidelines 1.0, W3C Note (Nov. 6, 2000) (“WCAG Techniques v1.0”)
1012	HTML Techniques for Web Content Accessibility Guidelines 1.0, W3C Note (Nov. 6, 2000) (“WCAG HTML Techniques v1.0”)
1013	Web Content Accessibility Guidelines (WCAG) v2.0 (Dec. 11, 2008) (“WCAG 2.0”)
1014	Document Object Model (DOM) Level 1 Specification v1.0, W3C Recommendation (Oct. 1, 1998) (“W3C DOM”)
1015	U.S. Patent Application Pub. No. 2010/0205523 (“Lehota”)
1016	U.S. Patent Application Pub. No. 2002/0124025 (“Janakiraman I”)
1017	Joint Claim Construction Statement, <i>Audioeye, Inc. v. AccessiBe Ltd.</i> , Case No. 6:20-CV-00726-ADA (W.D. Tex. Mar. 31, 2022), ECF No. 38
1018	Jeffrey Bigham, Increasing Web Accessibility by Automatically Judging Alternative Text Quality, 12th International Conference on Intelligent User Interfaces, IUI 2007, Honolulu, Hawaii, USA, (Jan. 28-31, 2007), available at https://dl.acm.org/doi/10.1145/1216295.1216364 (“Bigham 2007”)
1019	U.S. Patent No. 10,394,579 (“Nandakumar”)
1020	History of the Web Content Accessibility Guidelines (WCAG), Bureau of Internet Accessibility (May 6,

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EXHIBIT NO.	DESCRIPTION
	2019), available at https://www.boia.org/blog/history-of-the-web-content-accessibility-guidelines-wcag
1021	Declaration of Sylvia Hall-Ellis
1022	Web Accessibility Evaluation Tools List (last visited May 10, 2021), available at https://www.w3.org/TR/mobile-accessibility-mapping/
1023	Introduction to Web Accessibility (last visited August 31, 2021), available at https://www.w3.org/WAI/fundamentals/accessibility-intro/
1024	Amended Claim Construction Order, <i>AudioEye, Inc. v. AccessiBe Ltd.</i> , No. 6-20-cv-00997-ADA (W.D. Tex. Nov. 23, 2021), ECF No. 69
1025	<i>Not Used</i>
1026	HTML hidden Attribute (Jan. 15, 2021), originally available at http://www.w3schools.com/tags/att_global_hidden.asp , currently available at https://archive.org/web/
1027	HTML <input> name Attribute (Jan. 15, 2021), originally available at https://www.w3schools.com/tags/att_input_name.asp , currently available at https://archive.org/web/
1028	HTML <input> placeholder Attribute (Jan. 15, 2021), originally available at https://www.w3schools.com/tags/att_input_placeholder.a sp , currently available at https://archive.org/web/
1029	HTML <p> Tag (Jan. 15, 2015), originally available at https://www.w3schools.com/tags/tag_p.asp , currently available at https://archive.org/web/

1030	HTML Input Types (Jan. 15, 2015), originally available at https://www.w3schools.com/html/html_form_input_types.asp , currently available at https://archive.org/web/
1031	The ALT-server (July 1997 – Jan. 1998), originally available at https://www.w3.org/WAI/altserv.htm , currently available at https://archive.org/web/ (“The ALT-server”)
1032	Chieko Asakawa et al., <i>Annotation-Based Transcoding for Nonvisual Web Access</i> , ACM Conference on Assistive Technologies, ASSETS 2000, Arlington, Virginia, USA, (Nov. 13-15, 2000), available at https://dl.acm.org/doi/10.1145/354324.354588 (“Asakawa”)
1033	Webvisum-1, July 7, 2008, originally available at http://www.webvisum.com , currently available at https://archive.org/web/ (“Webvisum-1”)
1034	Webvisum-2 (July 3, 2008), originally available at http://www.marcozehe.de/2008/07/03/review-of-the-webvisum-firefox-extension/ , currently available at http://web.archive.org/web/20080902031833/http://www.marcozehe.de/2008/07/03/review-of-the-webvisum-firefox-extension/ (Webvisum-2”)
1035	U.S. Patent No. 8,935,364 (“Teraguchi”)
1036	Philippe Le Hégarret et al., <i>What is the Document Object Model?</i> (Apr. 9, 2002), originally available at https://www.w3.org/TR/2002/WD-DOM-Level-3-Core-20020409/introduction.html , currently available at https://archive.org/web/ (“Hégaret”)

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1037	XML Processing (2004), available at https://web.mit.edu/java_v1.5.0_22/distrib/share/docs/guide/xml/jaxp/index.html (“XML Processing”)
1038	Package org.w3c.dom (2004), originally available at https://web.mit.edu/java_v1.5.0_22/distrib/share/docs/api/org/w3c/dom/package-summary.html (“DOM interface”)
1039	Introduction to XML and XML With Java (Nov. 8, 2005), originally available at http://totheriver.com/learn/xml/xmltutorial.html currently available at: https://archive.org/web/ (“XML with JAVA”)
1040	Complaint, <i>AudioEye, Inc. v. AccessiBe Ltd.</i> , Case No. 6:21-cv-00726 (W.D. Tex. July 14, 2021), ECF No. 1
1041	Order Granting accessiBe’s Motion to Reconsider Amended Order Denying Motion to Transfer Venue to the Western District of New York, <i>Audioeye, Inc. v. AccessiBe Ltd.</i> , Case No. 6:20-CV-00997-ADA (W.D. Tex. Mar. 9, 2022), ECF No. 71
1042	Judge Albright, Western District of Texas, Standing Order Governing Proceedings (OGP) 4.0 – Patent Cases (Mar. 7, 2022), available at https://www.txwd.uscourts.gov/wp-content/uploads/Standing%20Orders/Waco/Albright/Standing%20Order%20Governing%20Proceedings%20Patent%20Cases%20030722.pdf
1043	Order Cancelling Markman, <i>AudioEye, Inc. v. accessiBe Ltd.</i> , No. 6:21-cv-00726 (W.D. Tex. June 17, 2022), ECF No. 44

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I. INTRODUCTION

Pursuant to 35 U.S.C. §§ 311–319 and 37 C.F.R. § 42.100 *et seq.*, Petitioner accessiBe Ltd. (“accessiBe” or “Petitioner”) seeks *inter partes* review and cancellation of claims 1-4, 6-14, 16-20 of U.S. Patent No. 11,061,532 (“the ’532 patent,” Ex.1001) titled “Modular Systems And Methods For Selectively Enabling Cloud-Based Assistive Technologies.” This Petition and supporting exhibits demonstrate that there is a reasonable likelihood that claims 1-4, 6-14, 16-20 of the ’532 patent (the “Challenged Claims”) are unpatentable because each claim would have been obvious to a person of ordinary skill in the art (“APOSA”).

**II. IDENTIFICATION OF CHALLENGE AND RELIEF REQUESTED –
37 C.F.R. § 42.104**

Petitioner respectfully requests that the Challenged Claims be cancelled based on the following grounds of unpatentability:

Ground	Claims	References and Type of Challenge
1	1-4, 6-14, 16-20	Springer (Ex.1005) in view of Takagi (Ex.1007) (35 U.S.C. § 103(a))
2	1-4, 6-14, 16-20	Springer and Takagi in view of Hendry (Ex.1009) (35 U.S.C. § 103(a))
3	1-4, 6-14, 16-20	Springer and Bigham (Ex.1008) in view of Hendry (35 U.S.C. § 103(a))

Ground	Claims	References and Type of Challenge
4	1-4, 6-14, 16-20	Markel (Ex.1006) in view of Takagi (35 U.S.C. § 103(a))
5	1-4, 6-14, 16-20	Markel and Takagi in view of Hendry (35 U.S.C. § 103(a))
6	1-4, 6-14, 16-20	Markel and Bigham in view of Hendry (35 U.S.C. § 103(a))

This Petition is supported by the expert declaration of Dr. James Fogarty, Ph.D. (Ex.1002, hereinafter “Fogarty”), a qualified technical expert. Dr. Fogarty’s experience is reflected in his CV (Ex.1003) and his Declaration. (Fogarty, ¶¶5-15).

III. THE ’532 PATENT AND CHALLENGED CLAIMS

A. Overview of the ’532 Patent

The ’532 patent issued on July 13, 2021 from U.S. Application No. 17/169,346, which was filed on February 5, 2021. Ex.1001. The ’532 patent is a continuation application claiming priority to application No. 15/074,818, filed on March 18, 2016, now Pat. No. 10,444,934. Thus, the priority date of the ’532 patent is no earlier than March 18, 2016. *Id.*

The ’532 patent relates to automating the process of remediating websites to make them compliant with web accessibility guidelines. *Id.*, Abstract, 2:10-29. The general steps recited in the ’532 patent claims are: (1) analyzing the HTML or DOM associated with a webpage; (2) detecting one or more compliance issues,

such as untagged elements lacking adequate textual descriptions; and (3) selecting remediation code to the one or more compliance issues that: (i) determines a textual description for the untagged element; and (ii) associates the textual description with the untagged element by inserting that description into the code so that it can be read by assistive technology (e.g., a screen-reader tool). In the '532 patent, the remediation code may reflect manual remediations retrieved from a remote server. (Fogarty, ¶¶78-85.)

B. The Challenged Claims

Petitioner challenges claims 1-4, 6-14, and 16-20. Claim elements are listed as: 1[a], 1[b], 1[c], *etc.* for ease of reference. Independent claim 1 recites:

1[pre]	1. A computer-implemented method of programmatically assigning a descriptive attribute to an untagged element on a web page to enable an audible description of the untagged element, the web page having an associated document object model (DOM), the method comprising:
1[a]	dynamically analyzing, by a computer system, code associated with the web page, the code comprising at least the DOM or HTML code;
1[b]	detecting, by the computer system, one or more compliance issues

	relating to web accessibility standards in the code, wherein at least one of the one or more compliance issues comprises the untagged element lacking an adequate descriptive attribute;
1[c][1]	applying, by the computer system, one or more pre-existing remediations to the one or more compliance issues, wherein the one or more pre-existing remediations is generated by a remote server system performing at least:
1[c][2]	accessing the code associated with the web page;
1[c][3]	receiving, by the remote server system, via a remediation interface input from a user, the input comprising a remediation action to manually remediate a non-programmatically-fixable compliance issue associated with the web page;
1[c][4]	generating, by the remote server system, the one or more pre-existing remediations based on the input comprising the remediation action to manually remediate a non-programmatically-fixable compliance issue;
1[c][5]	storing, by the remote server system, the one or more pre-existing remediations in an electronic data storage medium; and
1[d]	assigning, by the computer system, a descriptive attribute to the

	untagged element in the code of the web page based on the one or more pre-existing remediations, the descriptive attribute assigned to the untagged element adapted to enable an assistive technology to speak the descriptive attribute to a user.
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Independent claim 11 recites:

11[pre]	11. A non-transitory electronic storage medium with computer code stored thereon, the computer code configured to programmatically assign a descriptive attribute to an element on a web page to enable an audible description of the element, the web page having an associated document object model (DOM), and the computer code configured to perform, when executed by a computer processor, the steps of:
11[a]	dynamically analyzing, by a computer system, code associated with the web page, the code comprising at least the DOM or HTML code;
11[b]	detecting, by the computer system, one or more compliance issues relating to web accessibility standards in the code, wherein at least one of the one or more compliance issues comprises the element lacking an adequate descriptive attribute;

11[c][1]	applying, by the computer system, one or more pre-existing remediations to the one or more compliance issues, wherein the one or more pre-existing remediations is generated by a remote server system performing at least:
11[c][2]	accessing the code associated with the web page;
11[c][3]	receiving, by the remote server system, via a remediation interface input from a user, the input comprising a remediation action to manually remediate a non-programmatically-fixable compliance issue associated with the web page;
11[c][4]	generating, by the remote server system, the one or more pre-existing remediations based on the input comprising the remediation action to manually remediate a non-programmatically-fixable compliance issue;
11[c][5]	storing, by the remote server system, the one or more pre-existing remediations in an electronic data storage medium; and
11[d]	assigning, by the computer system, a descriptive attribute to the element in the code of the web page based on the one or more pre-existing remediations, the descriptive attribute assigned to the element adapted to enable an assistive technology to speak the

	descriptive attribute to a user.
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Claims 2 and 12 depend from claims 1 and 11, respectively, and recite,
“wherein the one or more pre-existing remediations are javascript.”

Claims 3 and 13 depend from claims 1 and 11, respectively, and recite,
“wherein the [] element is an input field.”¹

Claims 4 and 14 depend from claims 1 and 11, respectively, and recite,
“wherein the [] element is an image.”

Claims 6 and 16 depend from claims 1 and 11, respectively, and recite
“wherein the [] element lacks the adequate descriptive attribute when one or more
descriptive attributes of the [] element are erroneous.”

Claims 7 and 17 depend from claims 1 and 11, respectively, and recite,
“wherein the assigning comprises changing the DOM or HTML code associated
with the web page.”

¹ Claims 3-10 recite the same limitation as claims 10-20, but in relation to an
“untagged element” as opposed to an “element.” For example, claim 3 recites
“wherein the untagged element is an input field,” while claim 13 recites “wherein
the element is an input field.” The same is true for the remaining challenged
dependent claims.

Claims 8 and 18 depend from claims 1 and 11, respectively, and recite,
“wherein the descriptive attribute is an HTML label.”

Claims 9 and 19 depend from claims 1 and 11, respectively, and recite,
“wherein the descriptive attribute is an alt-text label.”

Claims 10 and 20 depend from claims 1 and 11, respectively, and recite,
“wherein the computer system comprises one or more computing systems.”

IV. LEVEL OF ORDINARY SKILL IN THE ART

APOSA at the time of the '532 patent's alleged invention would have possessed at least a bachelor's degree in software engineering, computer science, computer engineering, or related field, with at least two years of experience with software application development focused on accessibility. A person could also qualify as APOSA with some combination of (1) more formal education (such as a master's of science degree) and less technical experience or (2) less formal education and more technical or professional experience with software application development focused on accessibility. (Fogarty, ¶¶33-35.)

V. CLAIM CONSTRUCTION

On November 23, 2021, the District Court for the Western District of Texas entered a claim construction order in *AudioEye, Inc. v. accessiBe Ltd.*, Case No. 6:20-cv-00997-ADA (W.D. Tex.) (*accessiBe I*). Ex.1024.

The '532 patent at issue in this IPR was asserted by AudioEye against

accessiBe in *AudioEye, Inc. v. accessiBe Ltd.*, Case No. 6:21-cv-726-ADA (W.D. Tex.) (“*accessiBe II*”). The parties agreed that the district court’s claim construction in *accessiBe I* would apply to the ’532 patent and agreed “alt text label” would be construed as “alternative text label” and that “the [untagged] element lacking an adequate descriptive HTML attribute” in claims 1 and 11 of the ’532 Patent is indefinite under the Court’s claim construction order in *accessiBe I* rendering all claims besides claims 4 and 14 indefinite. Ex.1017. However, the question of indefiniteness is not before the Board in this IPR proceeding. Accordingly, claim terms have been interpreted by their plain and ordinary meaning as viewed by APOSA reading the ’532 patent. (Fogarty, ¶¶95-98.)

VI. DETAILED GROUNDS FOR UNPATENTABILITY

A. Summary and Date Qualification of the Prior Art

1. Springer (Ex.1005)

U.S. Patent Application Pub. No. 2004/0148568 A1 (“Springer”), titled “Checker and Fixer Algorithms for Accessibility Standards,” published on July 29, 2004. Ex.1005. Springer qualifies as prior art under at least (post-AIA) 35 U.S.C. § 102(a).

Springer teaches using a set of tools that scan for, and then fix, accessibility issues in web pages. Ex.1005, Abstract. The Springer system accesses the code (e.g., HTML) or data model (e.g., DOM) of a website, runs a series of checker

tools to detect accessibility compliance issues; and applies fixer tools (each corresponding to a specific checker tool) to remediate the code. *See id.*, ¶10; Tables I(a)-II(b) (excerpted below); *see also id.*, ¶7. (Fogarty, ¶¶108-116.)

Table I(a). 36 CFR § 1194.22 Checkers

36 CFR § 1194.22 Paragraph	Description	Checker	Manual Review
A	Paragraph (a) requires that a text equivalent for every non-text element shall be provided. The provision is necessary because assistive technology cannot describe pictures, but can convey the text information to the user.	ImageChecker ObjectTextChecker ImageMapChecker AsciiArtChecker AppletChecker	No Manual Review Required

Table I(b). Checker Functionality

36 CFR § 1194.22 Paragraph	Checker	Functionality
A	ImageChecker ObjectTextChecker ImageMapChecker AppletChecker	Checks that images have valid alt attributes. Checks that image links have valid alt attributes. Checks that image buttons have valid alt attributes. Checks that long descriptions are valid. Checks that OBJECT elements have enclosed textual descriptions. Checks that AREAs have valid alt attributes. Checks for valid textual alternatives in APPLET elements.

Table II(a). 36 CFR § 1194.22 Fixers

36 CFR § 1194.22 Paragraph	Description	Fixers	Manual Fixes
A	Paragraph (a) requires that a text equivalent for every non-text element shall be provided. The provision is necessary because assistive technology cannot describe pictures, but can convey the text information to the user. This provision requires that whenever an image is used an appropriate alt attribute must be defined.	ImageFixer ObjectTextFixer ImageMapFixer AsciiArtFixer AppletFixer	None

Table II(b). Fixer Functionality

36 CFR § 1194.22 Paragraph	Fixer	Functionality
A	ImageFixer ObjectTextFixer AppletFixer	Adds alt attributes to images Adds alt attributes to image buttons Adds alt attributes to image links Replaces alt attributes that are too long with shorter ones Replaces vague alt attributes on images with more meaningful ones Replaces empty or invalid longdesc descriptions with valid ones Replaces vague alt attributes on image buttons with more meaningful ones Adds a valid textual description to OBJECT elements Adds textual alternatives to APPLET elements
C	ColorContrastFixer	Allows developer to select a new color which has sufficient color contrast
F	ImageMapFixer	Adds alt attributes to AREAs Replaces vague alt attributes in AREAs with more meaningful ones

2. Markel (Ex.1006)

U.S. Pub. No. 2002/0156799A1 (“Markel”), titled “System and Method for Verifying and Correcting Websites,” was filed in April 24, 2002 and published on

October 24, 2002. Markel qualifies as prior art under at least (post-AIA) 35 U.S.C. § 102(a).

Markel discloses a system and method for evaluating and correcting websites automatically, semi-automatically, or manually. Ex.1006, Abstract. Markel's tool "diagnose[s], evaluate[s], report[s], and retrofit[s] code violations existing in websites," (*id.*, ¶52), by "identif[ying] design errors and standard violations including ... missing HTML tags," (*id.*, ¶72), and generating a rule "which specifies that an image tag having an alternative form is required" (*id.*, ¶73). (Fogarty, ¶119.)

A "web crawler or spider" requests "the information located at the URL entered by the user... the information sent represents a blueprint of the website requested and includes code such as HTML, Java Script, or any other suitable programming language." *Id.*, ¶68. An assessment module "identifies design errors" including image tags which require an "alternative form." *Id.*, ¶¶72-73. An reporting module then categorizes the type of correction item required including "automatic correction items, semi-automatic assisted correction items, [and] manual correction instruction item." *Id.*, ¶77. (Fogarty, ¶120.)

For items that must be semi-automatically corrected, the user is prompted to enter an appropriate label. For instance, where the website is lacking an HTML tag, such as an ALT tag, "the user is prompted to enter the pertinent information to

allow the system to replace the ALT tag.” *Id.*, ¶83. The user then selects the “Fix button” and the code is corrected. *Id.*, ¶114. (Fogarty, ¶121.)

3. Takagi (Ex.1007)

“Collaborative Web Accessibility Improvement: Challenges and Possibilities,” by Hironobu Takagi et al. (“Takagi”) was publicly available on October 27, 2009. *See* Ex.1030 (Hall-Ellis Declaration). Takagi qualifies as prior art under at least (post-AIA) 35 U.S.C. § 102(a). Ex.1021., 25-28.

Takagi discloses “social accessibility” as a method for improving the accessibility of web sites. Ex.1007, 196. This allows end users to report accessibility issues to a support community, and in turn, the support community creates external metadata, including alternative text labels, to be provided to the end user to fix the issue. *Id.* “ As a result, the end user can browse the webpage made accessible with the metadata. . . . The public repository allows that metadata to benefit every end user, not just the first user who reported the problem. *Id.* (Fogarty, ¶¶124-127.)

Takagi also recognized that social labeling was by no means an innovation and it had already been proposed by many other references, including the 1997 ALT-server, WebInSight (Bigham), and WebVisum. *Id.* These references are discussed in greater detail by Dr. Fogarty. (Fogarty, ¶¶64, 73, 128-134.)

4. Bigham (Ex.1008)

“WebInSight: Making Web Images Accessible,” by Jeffrey P. Bigham (“Bigham”) was published as early as October 2006, and no later than 2007. *See* Ex.1030 (Hall-Ellis Declaration). Bigham qualifies as prior art under at least (post-AIA) 35 U.S.C. § 102(a). Ex.1021, 21-25.

Bigham discloses software for automatically generating and adding alternative text for images in websites and for measuring the quality of alternative text of web elements by considering context surrounding those elements. Ex.1008, 181. The WebInSight system disclosed by Bigham “retrieves alternative text from its database for each image when it is present and requests that alternative text be calculated for any image not already in its database.” *Id.*, 184. Bigham also describes automatically generating potential alternative text and as well as using human labeling services to generate descriptive text. *Id.* (Fogarty, ¶¶129-130.) WebInSight “currently implements a simple web-based application for humans to label images.” *Id.*, 186. When a web user prefers additional text, the user clicks a link following the unlabeled image, and the image is sent to a labeling service for manual labeling. *Id.* (Fogarty, ¶¶131-134.)

5. Hendry (Ex.1009)

U.S. Pub. No. 2013/0104029 (“Hendry”), titled “Automated Addition of Accessibility Features to Documents” was published on April 25, 2013. Hendry

qualifies as prior art under at least (post-AIA) 35 U.S.C. § 102(a). Hendry discloses distributed computing for accessibility remediation systems and methods. *See* Ex.1009, ¶¶21, 24, 34, 41, 48, 58-59; FIG. 1. (Fogarty, ¶¶136-143.)

B. GROUND 1: Claims 1-4, 6-14, 16-20 are Unpatentable as Obvious Over Springer in view of Takagi

1. Motivation to Combine

APOSA would have been motivated to combine Springer and Takagi, which both disclose checking for and remediating accessibility issues in web pages. APOSA would have been motivated to combine Springer and Takagi in order to improve on Springer's system for checking and remediating accessibility issues by adding the metadata authoring and sharing taught by Takagi. (Fogarty, ¶¶144-157, 167.) Such a combination would have combined Springer's checker and fixer tools with a database that stores manually entered descriptions that are accessible via a remote server. (Fogarty, ¶148.) This would have been obvious to APOSA because Takagi discloses sharing manual remediation from a community, and Springer's discloses a "Autofix" library which allows for manual remediations. (Fogarty, ¶¶149-150.) Retrieving descriptions that had already been manually input by others would reduce the number of manual remediations that would have to be done by every other user, as well as the time it would take to receive a manual remediation, thereby increasing the speed, performance, and accuracy of the

system. (Fogarty, ¶152.) Indeed, APOSA would have understood that using a community of supporters to manually provide descriptions of web elements was well known by the time of the '532 patent. Ex.1007, 196. (Fogarty, ¶¶151, 154-155.)

APOSA would have expected the combination to work without undue experimentation because both systems already operate over the web and interact with servers. Methods for pulling data from network resources such as databases and databases were well known. Ex.1007, 196. (Fogarty, ¶150.) APOSA would have been able to combine Springer with Takagi with minimal modifications, as the underlying code for identifying accessibility problems and applying remediations would remain largely the same; the system would simply query a database before prompting the user for manual input. APOSA would thus expect the combination of Springer and Takagi to succeed with minimal experimentation. (Fogarty, ¶153.)

APOSA could have also reached a similar conclusion or combination by utilizing Springer's "checkers" along with Takagi's "screen-reader-independent end user tool," as both features were designed for, and capable of, checking for accessibility compliance issues. Ex.1007, 196. (Fogarty, ¶156.)

2. Independent Claim 1

a. Claim 1[pre]

To the extent the preamble is limiting, Springer and Takagi disclose it. Springer discloses checkers that “check a data model of a web page” (e.g., DOM), and that it interacts with webpages through a “document tree” or “tree format.” *Id.*, Abstract, ¶¶15, 25, 38, 49. APOSA would have understood Springer’s “document tree” and “data model” to be a document object model. *Id.*, ¶7. (Fogarty, ¶160.)

Springer also discloses fixers that may use an “Autofix” library to automatically apply corrections based on previously-determined corrections, such as inserting labels for untagged input fields or alt attributes for images. Ex.1005, ¶¶15, 16, 18, 21, 52, Tables I(b), II(b). For example, Springer discloses a FormFixer tool for “[adding] LABEL elements to forms.” *Id.*, Tables I(b), II(b). Springer also discloses an ImageFixer for “[adding] alt attributes to images.” *Id.*, Tables I(b), II(b), ¶16. Such attributes are added to the HTML and intended to be used by “a user of an assistive technology that permits verbal communication of web content,” i.e., an audible description. *Id.*, ¶¶ 26, 29. (Fogarty, ¶159)

Takagi also discloses the preamble. Takagi discloses a “script to apply [] metadata [that] directly modifies the DOM as appropriate for each target HTML element,” where the “most frequent metadata type was the ‘alttext.’ This metadata

covers alternative texts for non-textual objects, labels for input forms, and textual descriptions added to content.” Ex.1007, 198. “As a result, the end user can browse the webpage made accessible with the metadata.” *Id.*, 196. (Fogarty, ¶163.) Figure 1 of Takagi also recognizes that the end user utilizes a screen reader to speak the new metadata or descriptive attributes.

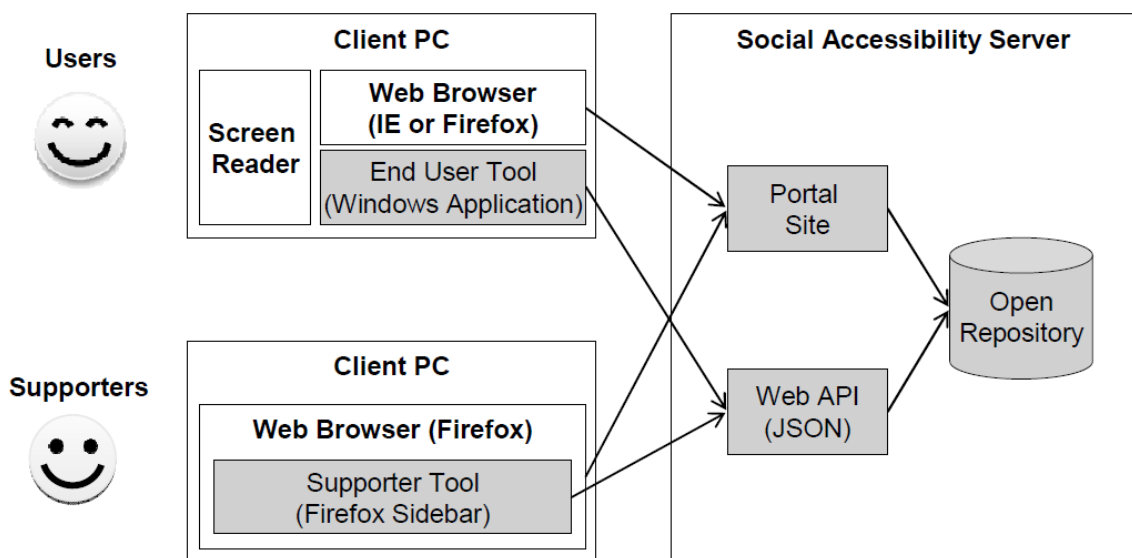


Figure 1. Basic Architecture of Social Accessibility Service

b. Claim 1[a]

Springer and Takagi disclose this element. Springer discloses software for checking “an HTML document of a web page” or “a data model of a web page for accessibility.” Ex.1005, Abstract, ¶¶7, 14. Springer also discloses software that “can be used to scan the HyperText Mark-up Language (HTML) code that powers the web, identify violations with Section 508 Standards (checkers), and correct

those violations by inserting the necessary corrections into the code in real time (fixers).” *Id.*, ¶10. (Fogarty, ¶¶165-166.)

Takagi also discloses this element. Takagi includes an end user tool including a “native application for Windows®” that “handles elements . . . includ[ing] images with no alt-text.” Ex.1007, 196. APOSA would have understood from this disclosure that Takagi’s end user tool analyzed the HTML or DOM of a web page to identify compliance issues such as images without alt text. (Fogarty, ¶¶167-169.)

c. Claim 1[b]

Springer and Takagi disclose this element. Springer discloses software checkers that detect compliance issues such as untagged elements without descriptive attributes. Springer’s “FormChecker” detects form fields that lack a descriptive label, and “ImageChecker” checks “that images have valid alt attributes.” Ex.1005, Table I(a)-(b), ¶15, 37-38. (Fogarty, ¶¶171-172.)

Table I(a). 36 CFR § 1194.22 Checkers

36 CFR § 1194.22 Paragraph	Description	Checker	Manual Review
A	Paragraph (a) requires that a text equivalent for every non-text element shall be provided. The provision is necessary because assistive technology cannot describe pictures, but can convey the text information to the user.	ImageChecker ObjectTextChecker ImageMapChecker AsciiArtChecker AppletChecker	No Manual Review Required

Table I(b). Checker Functionality

36 CFR § 1194.22 Paragraph	Checker	Functionality
A	ImageChecker ObjectTextChecker ImageMapChecker AppletChecker	Checks that images have valid alt attributes. Checks that image links have valid alt attributes. Checks that image buttons have valid alt attributes. Checks that long descriptions are valid. Checks that OBJECT elements have enclosed textual descriptions. Checks that AREAs have valid alt attributes. Checks for valid textual alternatives in APPLET elements.

Id., Tables I(a)-(b) (excerpted).

Takagi also discloses this element. As discussed above, Takagi includes an end user tool that “handles elements . . . includ[ing] images with no alt-text.”

Ex.1007, 196. APOSA would have understood from this disclosure that Takagi’s end user tool analyzed the HTML or DOM of a web page to identify compliance issues such as images without alt-text. (Fogarty, ¶¶174-175.)

d. Claim 1[c][1]

Springer and Takagi disclose this element. Takagi discloses using a social accessibility service to remediate accessibility issues on a webpage. This system “uses external metadata and the participation of an open community, and it allows [for] improving the accessibility of any webpage without asking the site owners to modify the website. Both end users and volunteers (also called supporters) access the repository using client-side tools, which interact with the server through Web

APIs. They can also access the repository by visiting the portal site with their Web browsers.” Ex.1007, 196. “The public repository allows that metadata to benefit every end user, not just the first user who reported the problem.” *Id.* The accessibility metadata is provided by a remote supporter and stored in the accessibility server/database to be loaded, and applied to the webpage of an end user. *Id.*, Fig. 2. Provides remediations to a user through a remote server is shown in Figures 1-2 of Takagi, below:

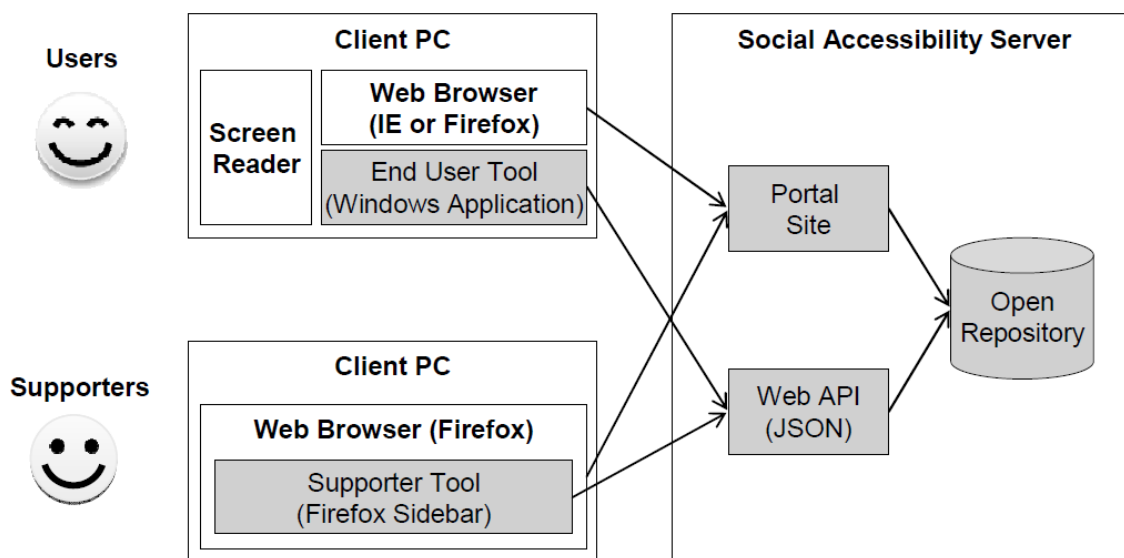
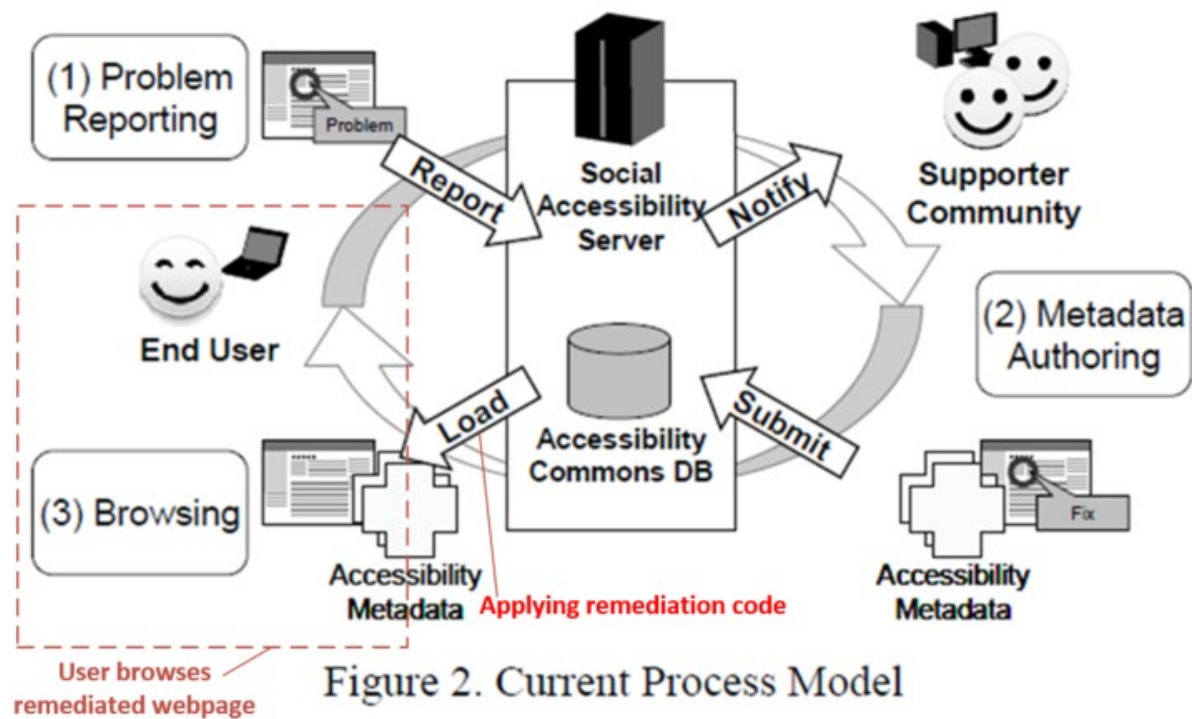


Figure 1. Basic Architecture of Social Accessibility Service



Id., Figs. 1-2 (annotated). (Fogarty, ¶¶177-180.)

As discussed above, APOSA would have been motivated to combine Takagi with the Springer system in order to improve upon Springer’s compliance retrofitter functions using Takagi’s shared database of descriptive text. (Fogarty, ¶¶182-190.)

e. Claim 1[c][2]

Springer and Takagi disclose this element because Takagi discloses a visual metadata authoring interface that allows a remote computer to access the code of the webpage. For example, Takagi discloses an editor that “creates an image of the webpage and allows supporters to quickly choose a webpage element for external metadata by just clicking on that element. The created image adds exclamation

marks for such metadata targets as inaccessible images to help the supporters add useful metadata (Figure 3 (a)). Inaccessible images include those without alternative text or with useless alternative text (such as ‘banner’ or ‘spacer’).”
Ex.1007, 197. This is also shown in Takagi’s Figure 3:

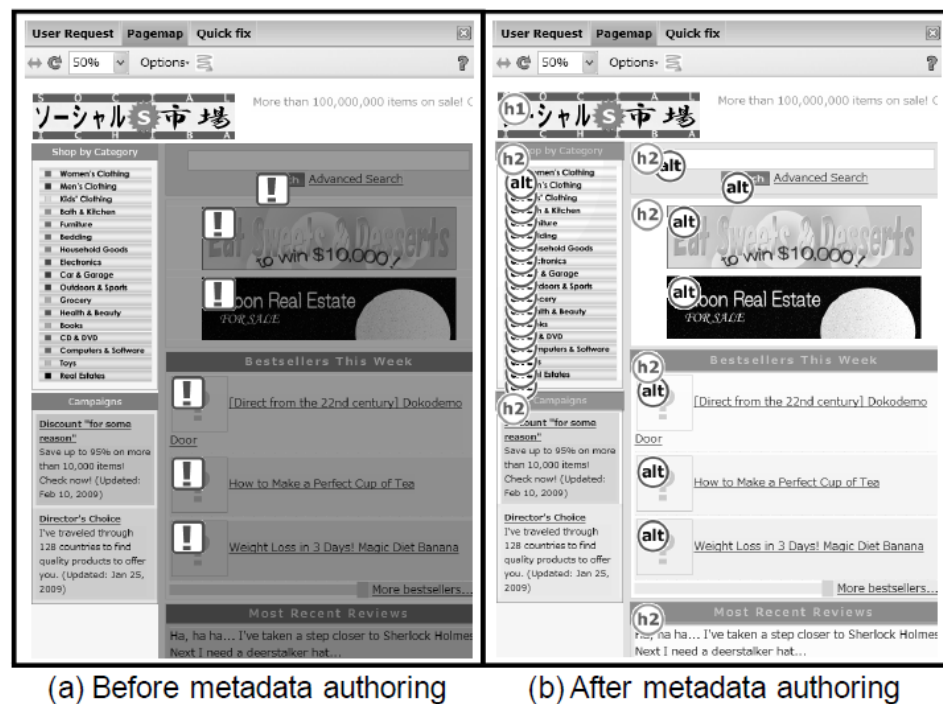


Figure 3. Page Map

Id., Fig. 3. (Fogarty, ¶¶191-198.)

f. Claim 1[c][3]

Springer and Takagi disclose this element. Takagi describes multiple ways in which a remote server system receives, via a remediation interface input from a user, input comprising a remediation action to manually remediate a non-programmatically-fixable compliance issue associated with the web page. As

shown in Figure 1 (below), users use an end user tool to report problems to, and request remediation action from, a remote server. Ex.1007, Fig. 1. (Fogarty, ¶¶201-202.)

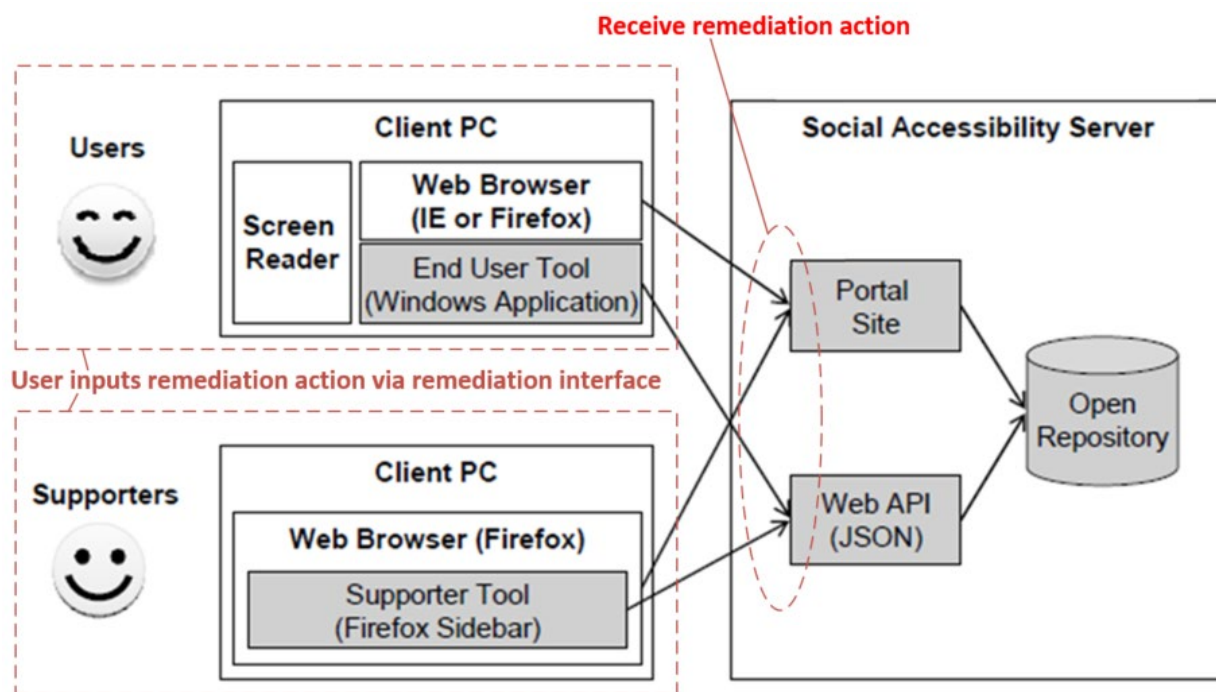
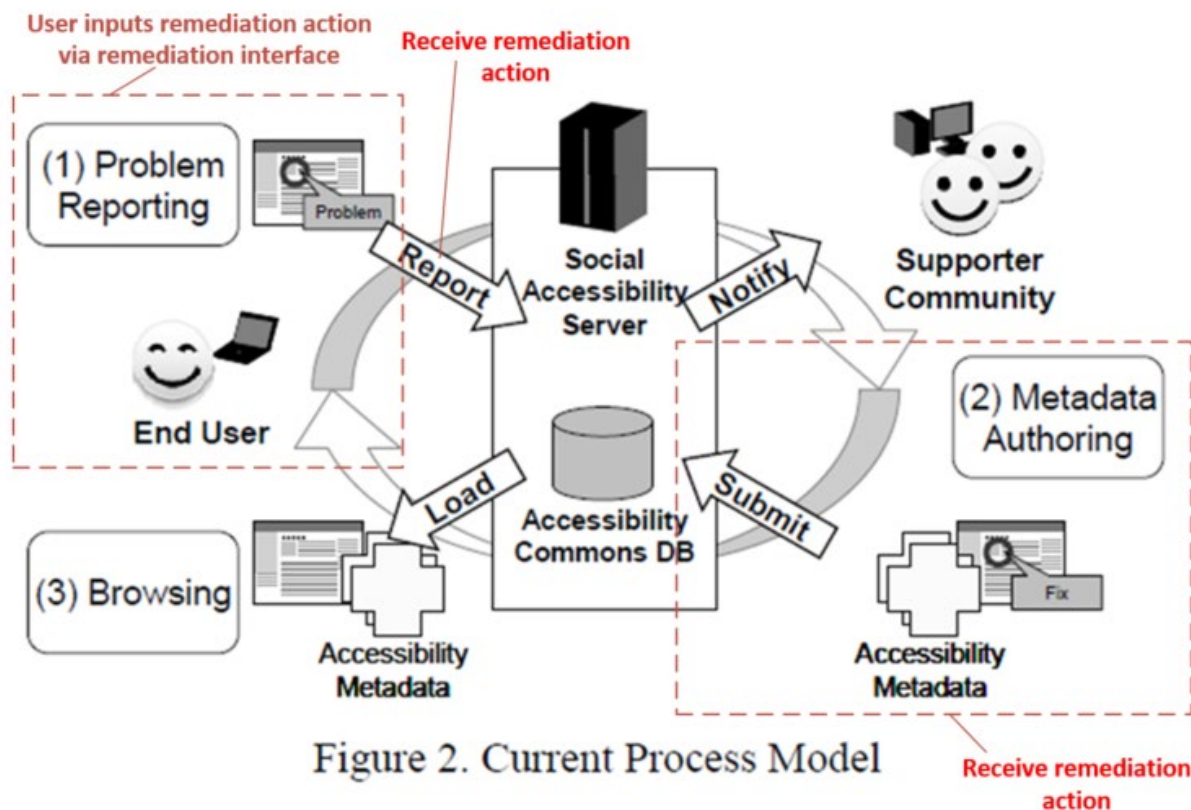


Figure 1. Basic Architecture of Social Accessibility Service

Id., Fig. 1 (annotated). In addition, the end user tools also “allow expert users to create alternative text labels for the previously inaccessible elements based on the context.” Ex.1007, 196. Each of these is an input comprising a remediation action to manually remediate a non-programmatically-fixable compliance issue associated with the web page. (Fogarty, ¶203.)

As shown in Figures 1 (above) and 2 (below), supporters also interact with a remote server through a supporter tool, and their inputs also comprise a manual

remediation action. Both end users and volunteers (also called supporters) access the repository using client-side tools, which interact with the server through Web APIs. They can also access the repository by visiting the portal site with their Web browsers.” Ex.1007, 196.



Id., Fig. 2 (annotated). (Fogarty, ¶¶203-204.)

Figure 3 shows an exemplary support tool that “allows supporters to quickly choose a webpage element for external metadata by just clicking on that element.” This tool “help[s] the supporters add useful metadata,” and provides for “an easy-to-use form for new metadata.” Ex.1007, 197, Fig. 3. (Fogarty, ¶¶205-207.)

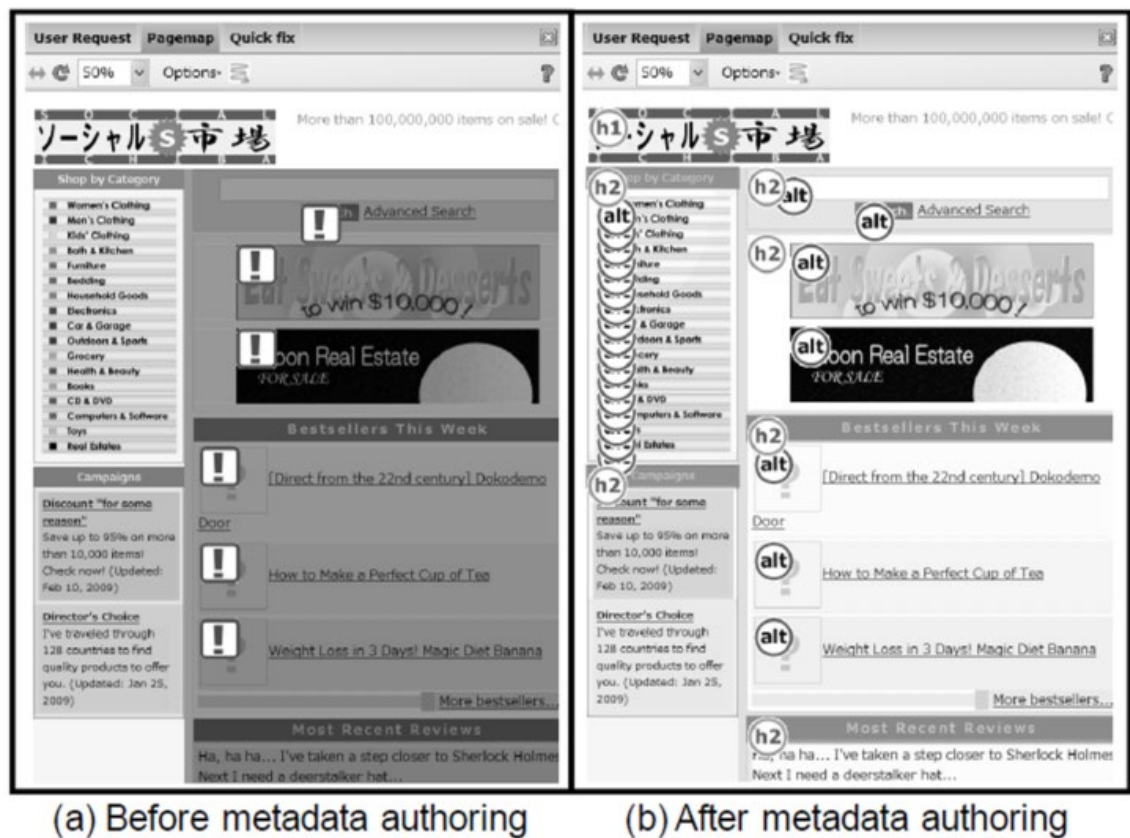


Figure 3. Page Map

Takagi also discloses a “quick fix wizard” which “allows a supporter to quickly fix all of the image-related accessibility problems in a webpage by simply filling in the fields and clicking on the “next” button.” Ex.1007, 197. (Fogarty, ¶208.)

g. Claim 1[c][4]

Springer and Takagi disclose this element. Takagi discloses that after a problem is reported by an end user, “a supporter creates external metadata to fix the reported problem. As a result, the end user can browse the webpage made

accessible with the metadata.” Ex.1007, 196. This is also shown in Figure 2 below:

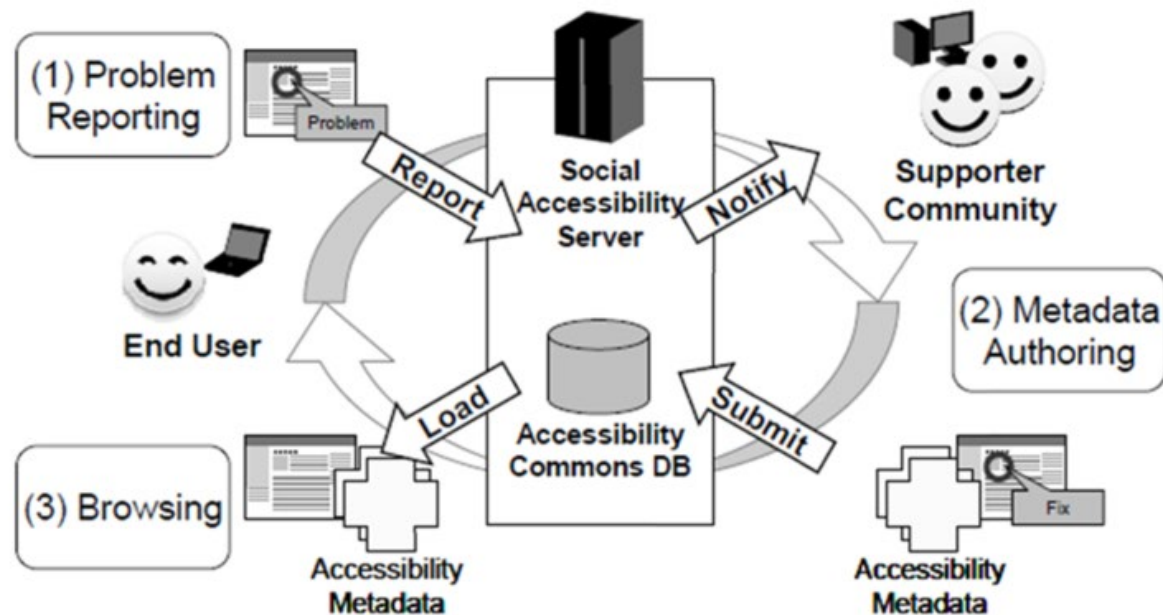


Figure 2. Current Process Model

Using the metadata authored by a remote supporter and stored in the social accessibility server to remediate the end-user’s web page constitutes generating pre-existing remediations code based on the input comprising the remediation action to manually remediate a non-programmatically-fixable compliance issue. Ex.1007, 196, Figs. 1-2. (Fogarty, ¶¶213-216.)

h. Claim 1[c][5]

Springer and Takagi disclose this element. Takagi discloses a repository or database for storing supporter-authored metadata such as alt-text. Ex.1007, 196, 198. This is shown in Figures 1-2 below:

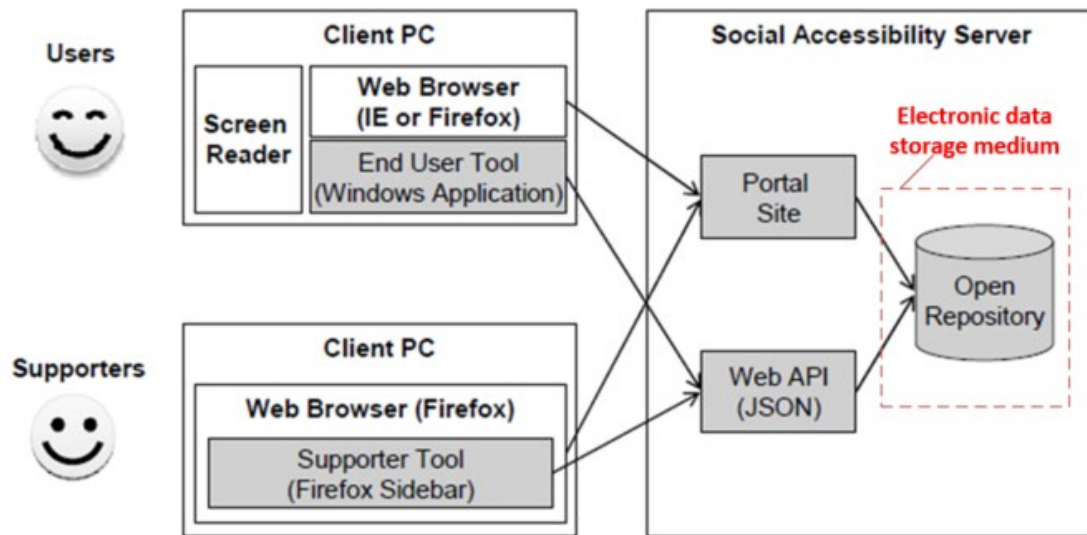


Figure 1. Basic Architecture of Social Accessibility Service

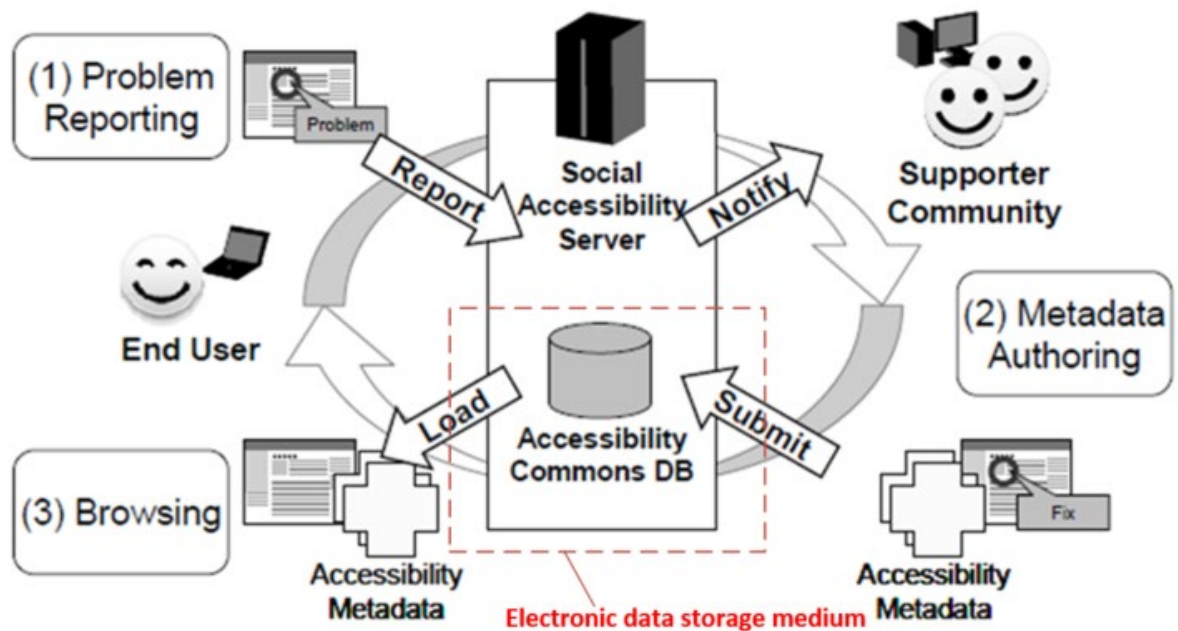
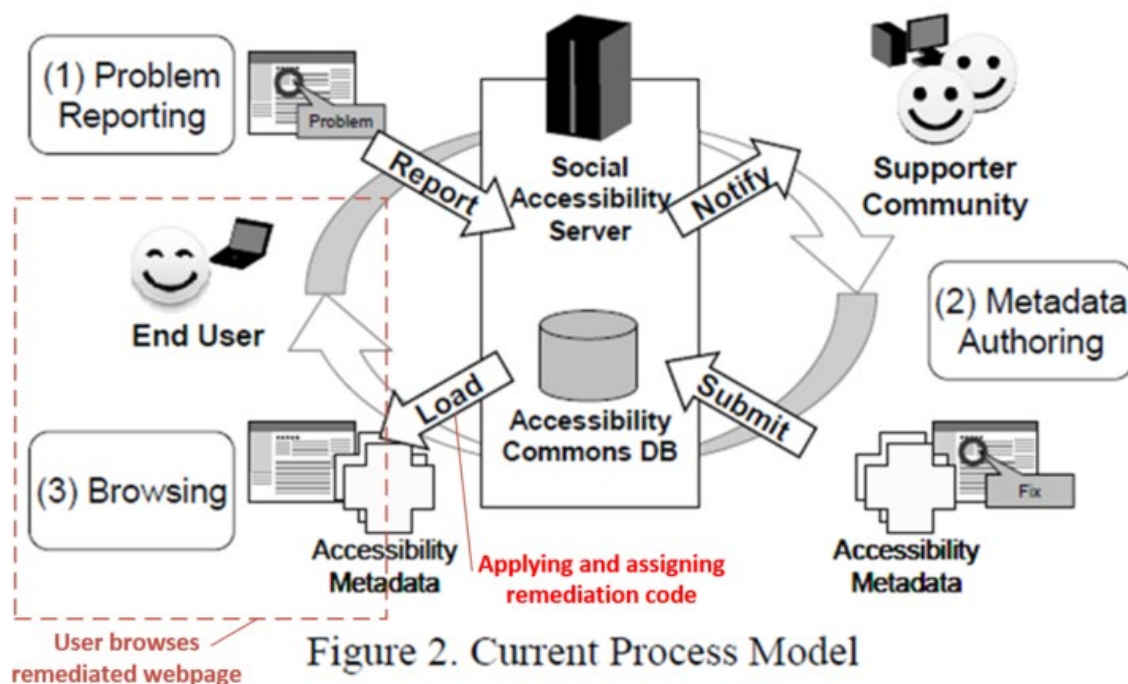


Figure 2. Current Process Model

i. Claim 1[d]

Springer and Takagi disclose this element for the reasons discussed above in 1[pre]. In addition to the disclosures described in 1[pre], Takagi Figure 2 clearly shows the “load[ing]” of the accessibility metadata to a webpage, meets claim 1’s limitations of applying remediation code and assigning a descriptive attribute:



Ex.1007, Fig. 2 (annotated). (Fogarty, ¶¶223-229.)

3. Independent Claim 11

a. Claim 11[pre]

To the extent the preamble is limiting, Springer and Takagi disclose it for the reasons described above for Ground 1, Claim 1[pre]. APOSA would have understood that computer implemented methods were routinely performed by

executing computer code stored on a non-transitory computer readable information storage media. (Fogarty, ¶¶265-266.)

b. Claim 11[a]

Springer and Takagi disclose this element for the reasons described above with respect to Ground 1, Claim element 1[a]. (Fogarty, ¶267.)

c. Claim 11[b]

Springer and Takagi disclose this element for the reasons described above with respect to Ground 1, Claim element 1[b]. Accordingly, Springer and Takagi thus disclose or render this element obvious. (Fogarty, ¶268.)

d. Claim 11[c][1]

Springer and Takagi disclose this element for the reasons described above with respect to Ground 1, Claim element 1[c][1]. (Fogarty, ¶269.)

e. Claim 11[c][2]

Springer and Takagi disclose this element for the reasons described above with respect to Ground 1, Claim element 1[c][2]. (Fogarty, ¶270.)

f. Claim 11[c][3]

Springer and Takagi disclose this element for the reasons described above with respect to Ground 1, Claim element 1[c][3]. (Fogarty, ¶271.)

g. Claim 11[c][4]

Springer and Takagi disclose this element for the reasons described above with respect to Ground 1, Claim element 1[c][4]. (Fogarty, ¶272.)

h. Claim 11[c][5]

Springer and Takagi disclose this element for the reasons described above with respect to Ground 1, Claim element 1[c][5]. (Fogarty, ¶273.)

i. Claim 11[d]

Springer and Takagi disclose this element for the reasons described above with respect to Ground 1, Claim element 1[d]. (Fogarty, ¶274.)

4. Dependent Claims 2 and 12

Springer and Takagi disclose these claims. Springer discloses its code may be written in Java. By the time of the '532 patent, JavaScript had largely replaced Java as the preferred method for interacting with websites. It thus would have been obvious to APOSA to use JavaScript code to implement Springer's methods. (Fogarty, ¶¶231, 275.)

Takagi also explicitly discloses that in some embodiments, end-user tool that injects special JavaScript code into the webpages for the selected functions. Ex.1007, 196. Takagi also discloses a "mechanism for applying metadata inside of webpages without any external tools" using "using a JavaScript library" which is

already used by Google with AJAX technology.” Ex.1007, 201. (Fogarty, ¶¶232-233, 275.)

5. Dependent Claims 3 and 13

Springer and Takagi disclose assigning a descriptive attribute to an input field. Springer discloses a “FormFixer” tool which “[a]dds label elements to forms.” Ex.1005, Tables II(a)-(b); *see also id.*, ¶37. Takagi also discloses a system for adding “metadata [that] covers alternative texts for non-textual objects, labels for input forms, and textual descriptions added to content.” Ex.1007, 198. (Fogarty, ¶¶235-238, 276.)

6. Dependent Claims 4 and 14

Springer and Takagi disclose assigning a descriptive attribute to an image. Springer describes an ImageChecker that can be used to check “that images have valid alt attributes” and an ImageFixer that alt attributes to images. Ex.1005, Tables I(b), II(a)-(b). Takagi discloses that its system “handles” “images with no alternative text.” Ex.1007, 196. (Fogarty, ¶¶239-242, 277.)

7. Dependent Claims 6 and 16

Springer and Takagi disclose these claims. Springer discloses, for example, that its ImageFixer replaces alt attributes that are too long, vague, invalid, or meaningless. Ex.1005, Table II(b), ¶52. Takagi discloses that a system for remediating inaccessible images “includ[ing] those without alternative text or with

useless alternative text (such as “banner” or “spacer”).” Ex.1007, 196. Such descriptive attributes would have been understood to be erroneous. (Fogarty, ¶¶243-247, 278.)

8. Dependent Claims 7 and 17

Springer and Takagi disclose these claims for the reasons described above in 1[pre]. (Fogarty, ¶¶248-250, 279.)

9. Dependent Claims 8 and 18

Springer and Takagi disclose these claims for the reasons described above with regard to claim 3. (Fogarty, ¶¶251-255, 280.)

10. Dependent Claims 9 and 19

Springer and Takagi disclose these claims for the reasons described above with regard to claim 4. (Fogarty, ¶¶256-260, 281.)

11. Dependent Claims 10 and 20

Springer and Takagi disclose these claims for the reasons set forth above with regard to claim 1. To start, claim 10 does not add a meaningful limitation beyond claim 1 because every computer system “comprises one or more computing systems.” Even if that were not the case, Springer discloses “compliance retrofitter . . . can be run on any platform for which a Java Virtual Machine exists, including Windows 95/98, Windows 2000, Windows NT and

Linux.” Ex.1005, ¶57. Takagi also illustrates client PCs in Figure 1. (Fogarty, ¶¶261-264, 282.)

C. GROUND 2: Claims 1-4, 6-14, 16-20 are Unpatentable as Obvious Over Springer and Takagi in view of Hendry

1. Motivation to Combine

APOSA would have been motivated to combine Springer, Takagi, and Hendry. APOSA would have been motivated to combine Springer and Takagi for the reasons described above with respect to Ground 1. (Fogarty, ¶¶283-284.)

Hendry also relates to improving accessibility of documents (including web pages; *see* Ex.1009, ¶42) using client and server machines to analyze documents for accessibility issues and return remediated documents. Ex.1009, ¶¶ 53, 59. Hendry recognizes that specific arrangements can be flexible, and that its steps can be performed on any machine—such as (1) a local client computer, (2) a remote server, or (3) a combination of the two—and that various steps can be repeated, omitted, or performed in different order. *Id.* Similarly, “data stored in the data repository (112) may be distributed (for example, stored on client machine (102) or at other servers).” *Id.*, ¶41. (Fogarty, ¶¶285-286.)

APOSA would have been motivated to further add Hendry in order to combine Hendry’s flexible distribution of accessibility remediation functionality with the systems of Springer and Takagi. As explained by Dr. Fogarty, APOSA

would also have expected this combination to succeed with minimal modification.
(Fogarty, ¶287.)

2. Independent Claim 1

a. Claim 1[pre]

If the preamble is limiting, Springer and Takagi in view of Hendry disclose this element. Springer and Takagi disclose this element for the reasons described in Ground 1, element 1[pre]. (Fogarty, ¶292.)

Hendry further adding “accessibility features” to the documents to improve the accessibility of documents (including webpages and HTML documents defined by DOMs), and that examples of accessibility features include text alternatives for non-text content.” Ex.1009, ¶¶17, 24, 42, 65. (Fogarty, ¶293.) Hendry also discloses that its accessibility improvements “result in proper or better interpretation by an assistive technology” such as “screen readers, [and] text to speech software.” Ex.1009, ¶¶3, 12. (Fogarty, ¶¶294-295.)

b. Claim 1[a]

Springer and Takagi disclose this element for the reasons described above in Ground 1, element 1[a]. (Fogarty, ¶297.)

Hendry also discloses this element. Hendry describes using a computer to analyze an HTML document defined using the DOM and identify accessibility compliance issues such as untagged input fields, and automatically remediating

them. Ex.1009, ¶¶12, 28, 42, 58, 60, 65. (Fogarty, ¶¶298-299.)

c. Claim 1[b]

Springer and Takagi disclose this element for the reasons described above in Ground 1, element 1[b]. Hendry discloses this element for the reasons set forth above with regard to claim 1[b]. (Fogarty, ¶¶301-303.)

d. Claim 1[c][1]

292. Springer and Takagi disclose this element for the reasons described above in Ground 1, element 1[c][1]. (Fogarty, ¶304.)

Hendry discloses this element because Hendry describes identifying accessibility compliance issues, such as untagged input fields, and automatically remediating them. Ex.1009, ¶¶12, 28. As explained above in the Motivation to Combine, Hendry discloses flexible arrangements for distributing its remediation functionality among servers and client machines. Such arrangements include the client machine applying a document modifier retrieved from the server machine in response to a request for a document that is not accessibility enabled. *Id.*, ¶¶53, 58. (Fogarty, ¶¶305-308.)

e. Claim 1[c][2]

Springer and Takagi disclose this element for the reasons described in Ground 1, claim element 1[c][2]. (Fogarty, ¶310.) Hendry further discloses identifying inaccessible features by accessing and searching for text that is known

to be misinterpreted by one or more assistive technologies. “The text to be searched may include particular HTML formatting tags or particular document elements (for example, a layout table) in a HTML document.” *Id.*, ¶60. (Fogarty, ¶¶311-312.)

f. Claim 1[c][3]

Springer and Takagi disclose this element for the reasons described in Ground 1, claim element 1[c][3]. (Fogarty, ¶314.)

Hendry discloses that “[t]he document modifier is activated [on the server machine] in response to a user command.” *Id.*, ¶57. Hendry also discloses that “[t]he server machine executes the document modifier to produce a modified document, which is an accessibility-enabled version of the requested document. In response to receiving a request from the client machine for the particular document, the server machine sends the modified document.” Ex.1009, ¶53. (Fogarty, ¶315.)

g. Claim 1[c][4]

Springer and Takagi in view of Hendry disclose this element. Springer and Takagi disclose this element for the reasons described in Ground 1, claim element 1[c][4]. (Fogarty, ¶318.)

Hendry also discloses this element. Hendry discloses using a document modifier, which is activated on a server machine in response to a user command, to

execute a script for adding accessibility features to a document on the server machine for producing a modified document. Ex.1009, ¶¶12, 57. (Fogarty, ¶319.)

h. Claim 1[c][5]

Springer and Takagi in view of Hendry disclose this element. Springer and Takagi disclose this element for the reasons described in Ground 1, element 1[c][5]. (Fogarty, ¶321.)

Hendry discloses this element because Hendry discloses storing a modified document containing one or more pre-existing remediations in a data repository. “[The] server machine (110) includes a data repository (112) storing one or more of: documents (114), modified documents (116)” and that the “data repository (112) corresponds to any data storage device.” Ex.1009, ¶41. (Fogarty, ¶322.)

i. Claim 1[d]

Springer and Takagi disclose this element for the reasons described in Ground 1, element 1[d]. (Fogarty, ¶324.)

Hendry discloses this element. Hendry discloses adding (assigning), e.g., via JavaScript added by the server plugin (by the computer system), one or more accessibility features to a modified document (a descriptive attribute to the untagged element in the code of the web page based on the one or more pre-existing remediations), and using a browser renders the modified document for display to a user via screen reader (the descriptive attribute assigned to the

untagged element adapted to enable an assistive technology to speak the descriptive attribute to a user). Ex.1009, ¶58. (Fogarty, ¶¶325-326.) *See also* 1[pre].

3. Independent Claim 11

a. Claim 11[pre]

To the extent the preamble is limiting, Springer and Takagi in view of Hendry disclose it for the reasons described above for Ground 2, Claim 1[pre]. APOSA would have understood that computer implemented methods were routinely performed by executing computer code stored on a non-transitory computer readable information storage media. (Fogarty, ¶352.)

b. Claim 11[a]

Springer and Takagi in view of Hendry disclose this element for the reasons described for Ground 2, Claim 1[a]. (Fogarty, ¶354.)

c. Claim 11[b]

Springer and Takagi in view of Hendry disclose this element for the reasons described for Ground 2, Claim 1[b]. (Fogarty, ¶355.)

d. Claim 11[c][1]

Springer and Takagi in view of Hendry disclose this element for the reasons described for Ground 2, Claim 1[c][1]. (Fogarty, ¶356.)

e. Claim 11[c][2]

Springer and Takagi in view of Hendry disclose this element for the reasons described for Ground 2, Claim 1[c][2]. (Fogarty, ¶357.)

f. Claim 11[c][3]

Springer and Takagi in view of Hendry disclose this element for the reasons described for Ground 2, Claim 1[c][3]. (Fogarty, ¶358.)

g. Claim 11[c][4]

Springer and Takagi in view of Hendry disclose this element for the reasons described for Ground 2, Claim 1[c][4]. (Fogarty, ¶359.)

h. Claim 11[c][5]

Springer and Takagi in view of Hendry disclose this element for the reasons described for Ground 2, Claim 1[c][5]. (Fogarty, ¶360.)

i. Claim 11[d]

Springer and Takagi in view of Hendry disclose this element for the reasons described for Ground 2, Claim 1[d]. (Fogarty, ¶361.)

4. Dependent Claims 2 and 12

Springer and Takagi disclose these claims for the reasons described in Ground 1, Claims 2 and 12. Hendry also discloses this claim. Hendry discloses that its accessibility remediation code is JavaScript. Ex.1009, ¶25. (Fogarty, ¶¶328-330, 362.)

5. Dependent Claims 3 and 13

Springer and Takagi disclose this claim for the reasons described for to Ground 1, Claims 3 and 13. Hendry also discloses modifying a document to include labels for input fields. Ex.1009, ¶¶12, 76, 82.

```
<div class="application" aria-labelledby="application_label0">
<form class="form"><div class="form-basic textbox">
<span class="span_form" id="firstname_span">
<label for="firstname">First Name:</label></span>
<input type="text" id="firstname">
<br></div>
<div class="form-basic textbox">
<span class="span_form" id="lastname_span"><label
for="input1">Last Name:</label></span><input type="text"
name="lastname" id="input1">
<br></div>
<div class="form-basic submit"> <input type="submit"
value="Submit" id="input8"></div>
</form></div>
```

(Fogarty, ¶¶331-334, 363.)

6. Dependent Claims 4 and 14

Springer and Takagi disclose this claim for the reasons described for Ground 1, Claims 4 and 14. Hendry also discloses adding a descriptive attribute such as the “alt attribute” to an image. For example, Hendry discloses that where “an image is used only as a design element (for example, a page divider line), then the “alt” attribute is set to an empty string so that a screen reader does not narrate a file name of the design element.” Hendry also discloses that “examples of accessibility

features [] include, but are not limited to, text alternatives for non-text content.”

Ex.1009, ¶24. (Fogarty, ¶¶335-338, 364.)

7. Dependent Claims 6 and 16

Springer and Takagi disclose this claim for the reasons described for Ground 1, Claim 6. (Fogarty, ¶¶339-340, 365.)

8. Dependent Claims 7 and 17

Springer and Takagi disclose this claim for the reasons described for Ground 1, Claims 7 and 17. (Fogarty, ¶¶341-342, 366.)

9. Dependent Claims 8 and 18

Springer and Takagi disclose this claim for the reasons described for Ground 1, Claims 8 and 18. Hendry discloses this claim for the reasons described above for claim 3. (Fogarty, ¶¶343-345, 367.)

10. Dependent Claims 9 and 19

Springer and Takagi disclose this claim for the reasons described in Ground 1, Claims 9 and 19. Hendry discloses this claim for the reasons described above for claim 4. (Fogarty, ¶¶346-348, 368.)

11. Dependent Claims 10 and 20

Springer and Takagi disclose this claim for the reasons described in Ground 1, Claims 10 and 20. Hendry discloses a “system (100) [that] includes a client

machine (102) and a server machine (110).” Ex.1009, ¶34. (Fogarty, ¶¶349-351, 369.)

D. GROUND 3: Claims 1-4, 6-14, 16-20 are Unpatentable as Obvious Over Springer and Bigham in view of Hendry

1. Motivation to Combine

APOSA would have been motivated to combine Springer, Bigham and Hendry. The analysis regarding the motivation for such a combination mirrors that for the Springer/Takagi/Hendry combination described in Grounds 1 and 2 because Bigham and Takagi both improve accessibility of websites using social/human labeling of untagged elements. Ex.1008, 186. Indeed, Takagi itself references Bigham’s WebInSight as related work. Ex.1007, 195-196. (Fogarty, ¶¶370-387.)

2. Independent Claim 1

a. Claim 1[pre]

Springer and Hendry disclose the preamble for the reasons described in 1[pre] for Ground 1 and Ground 2, respectively. (Fogarty, ¶388.)

Bigham discloses the preamble because Bigham discloses a “system that automatically creates and inserts alternative text into web pages on-the-fly” where the “system caches alternative text in a local database and can add new labels seamlessly after a web page is downloaded.” Ex.1008, 181. Bigham also discloses “[u]sing the Document Object Model (DOM), [] [to] extract all relevant

information from each image on the web page, including those images that have been dynamically loaded.” *Id.*, 183. Having proper alternative text for images ensures that screen readers operate correctly. *Id.*, 181, 183. (Fogarty, ¶389.)

b. Claim 1[a]

Springer and Hendry disclose this element for the reasons described in Claim 1[a] for Ground 1 and Ground 2, respectively. (Fogarty, ¶391.)

Bigham discloses analyzing the DOM of a web page, using “Document Object Model (DOM), [] [to] extract all relevant information from each image on the web page.” Ex.1008, 181. (Fogarty, ¶392.)

c. Claim 1[b]

Springer and Hendry disclose this element for the reasons in Claim 1[b] for Ground 1 and Ground 2, respectively. (Fogarty, ¶394.)

Bigham discloses a proxy that automatically appends alternative text to images by querying a database or generating new alternative text that is not contained in the database. Ex.1008, 181, 183. Bigham also detects if an image in its cache has changed based on its MD5 hash, and APOSA would understand that detection of a changed image would be a compliance issue because the “cached alternative text” will be out-of-date and therefore incorrect. *Id.*, 185. (Fogarty, ¶¶395-401.)

d. Claim 1[c][1]

Springer and Hendry disclose this element for the reasons described in Claim 1[c][1] for Ground 1 and Ground 2, respectively. Bigham discloses applying remediations using a proxy, and that such remediations include adding human generated alternative text. Ex.1008, 186. (Fogarty, ¶¶402-404.)

e. Claim 1[c][2]

Springer and Bigham in view of Hendry disclose this element. Springer and Hendry disclose this element for the reasons described in Claim 1[c][2] for Ground 1 and Ground 2, respectively. Bigham discloses allowing users to access the web through a proxy, where the proxy arranges images to be labeled on his or her behalf. Ex.1008, 183. “To generate labels for these images, the WebInSight system provides a mechanism for users to request that an image be sent to a labeling service for labeling by humans.” *Id.*, 186. (Fogarty, ¶¶405-406.)

Bigham discloses “[w]hen alternative text is present in the database for an image viewed by a user of the system, the proxy automatically appends the alternative text and the name of the module that generated it to the value of the alt attribute of the associated img tag. When users reach the image on the page, the alternative text is then available.” Ex.1008, 183. APOSA would have understood that to accomplish such functionality, Bigham’s WebInSight system would need to access the code of whichever website the user had requested from the proxy.

(Fogarty, ¶¶407-410.)

f. Claim 1[c][3]

Hendry discloses this element for the reasons described in Ground 2, Claim 1[c][3]. Bigham also discloses that its system queries its labeling framework based on a user request to load a webpage. If alternative text is not available from its database, it can be calculated, including by using “a labeling service for labeling by humans.” Ex.1006, 186. “To generate labels for these images, the WebInSight system provides a mechanism for users to request that an image be sent to a labeling service for labeling by humans.” *Id.* This allows “users to request alternative text and receive a reply with an acceptable latency.” *Id.* (Fogarty, ¶¶411-414.)

g. Claim 1[c][4]

Hendry discloses this element for the reasons described in Ground 2, Claim 1[c][4]. Moreover, as described above in claim elements 1[c][1]-1[c][3], Bigham discloses generating remediations through the use of human labeling, which meets the limitations of this element. (Fogarty, ¶¶415-418.)

h. Claim 1[c][5]

Hendry discloses this element for the reasons described in Ground 2 Claim 1[c][5]. Bigham also discloses using a database to store the generated remediations and alternative text. Ex.1008, 181. (Fogarty, ¶¶419-421.)

i. Claim 1[d]

Springer and Hendry disclose this element for the reasons described in Claim 1[d] for Ground 1 and Ground 2, respectively. (Fogarty, ¶422.)

Bigham’s system includes “captures web pages and alters them to include both cached alternative text and the code allowing pages to be dynamically updated.” Ex.1008, 185. Adding proper alternative text for images allows for the proper operation of screen readers. *Id.*, 181, 183. (Fogarty, ¶423.)

3. Independent Claim 11

a. Claim 11[pre]

To the extent the preamble is limiting, Springer and Bigham it for the reasons described above for Ground 3, Claim 1[pre]. APOSA would have understood that computer implemented methods were routinely performed by executing computer code stored on a non-transitory computer readable information storage media. (Fogarty, ¶455.)

b. Claim 11[a]

Springer and Bigham in view of Hendry disclose this element for the reasons described for Ground 3, Claim 1[a]. (Fogarty, ¶457.)

c. Claim 11[b]

Springer and Bigham in view of Hendry disclose this element for the reasons described for Ground 3, Claim 1[b]. (Fogarty, ¶458.)

d. Claim 11[c][1]

Springer and Bigham in view of Hendry disclose this element for the reasons described for Ground 3, Claim 1[c][1]. (Fogarty, ¶459.)

e. Claim 11[c][2]

Springer and Bigham in view of Hendry disclose this element for the reasons described for Ground 3, Claim 1[c][2]. (Fogarty, ¶460.)

f. Claim 11[c][3]

Springer and Bigham in view of Hendry disclose this element for the reasons for to Ground 3, Claim 1[c][3]. (Fogarty, ¶461.)

g. Claim 11[c][4]

Springer and Bigham in view of Hendry disclose this element for the reasons described for Ground 3, Claim 1[c][4]. (Fogarty, ¶462.)

h. Claim 11[c][5]

Springer and Bigham in view of Hendry disclose this element for the reasons described for Ground 3, Claim 1[c][5]. (Fogarty, ¶463.)

i. Claim 11[d]

Springer and Bigham in view of Hendry disclose this element for the reasons described for Ground 3, Claim 1[d]. (Fogarty, ¶464.)

4. Dependent Claims 2 and 12

Springer and Hendry disclose this claim for the reasons described for Claims 2/12 for Ground 1 and Ground 2, respectively. Bigham also discloses using a “proxy [that] inserts Javascript code into web pages that allows them to dynamically query the labeling framework after the main content has loaded.” Ex.1008, 184. (Fogarty, ¶¶425-427, 465.)

5. Dependent Claims 3 and 13

Springer and Hendry disclose this claim for the reasons described in Claims 3/13 for Ground 1 and Ground 2, respectively.

Bigham, at a minimum, renders these claims obvious because APOSA would have known to apply Bigham’s “simple web-based application for humans to label images” to any visual element such as an input field. Ex.1008, 186. This is especially true given the many similarities between Bigham, Hendry, and Springer, such as manual remediations, databases, and the automatic (or semi-automatic) insertion of text descriptions to improve accessibility. (Fogarty, ¶¶428-431, 466.)

6. Dependent Claims 4 and 14

Springer discloses this claim for the reasons described for Ground 1, Claims 4/14. Bigham discloses creating and inserting alternative text for images. Ex.1008, 181 (“automatically create[ing] and insert[ing] alternative text into web

pages on-the-fly. To formulate alternative text for images”). (Fogarty, ¶¶432-434, 467.)

7. Dependent Claims 6 and 16

Springer discloses this claim for the reasons described for Ground 1, Claims 6/16. Bigham also discloses erroneous descriptive attributes because Bigham discloses remediating untagged elements such as images which are improperly labeled (e.g., with a zero-length alt attribute). Ex.1008, 183. Moreover, Bigham’s system detects if an image in its cache has changed based on its MD5 hash, and APOSA would understand that detection of a changed image would be a compliance issue because the “cached alternative text” will be out-of-date and therefore “erroneous.” Ex.1008, 185. (Fogarty, ¶¶435-441, 468.)

8. Dependent Claims 7 and 17

Springer disclose this claim for the reasons described for Ground 1, Claims 7/17. Bigham also discloses this claim because Bigham discloses evaluating a DOM dynamically inserting alternative text into a webpage. Ex.1008, 183, 184. (Fogarty, ¶XXXX.) APOSA would have understood that dynamically inserting alternative text into a webpage includes changing the DOM or HTML code associated with the webpage. Ex.1008, 184, Section 4 ¶1. (Fogarty, ¶¶442-445, 469.)

9. Dependent Claims 8 and 18

Springer and Hendry disclose this claim for the reasons described in Claims 8 and 18 for Ground 1 and Ground 2, respectively. Bigham also discloses or renders obvious these claims for the reasons describe above with regard to claim 3. (Fogarty, ¶¶446-449, 470.)

10. Dependent Claims 9 and 19

Springer and Hendry disclose this claim for the reasons described in Claims 9/19 for Ground 1 and Ground 2, respectively. Bigham also discloses or renders obvious these claims for the reasons describe above with regard to claim 4. (Fogarty, ¶¶450-452, 471.)

11. Dependent Claims 10 and 20

Springer and Hendry disclose this claim for the reasons described in Claims 10/20 for Grounds 1 and 2, respectively. Bigham also discloses a computer system comprising at least one computer system. Ex.1008, 185, Fig 4. (Fogarty, ¶¶453-454, 472.)

E. GROUND 4: Claims 1-4, 6-14, 16-20 are Unpatentable as Obvious Over Markel in view of Takagi

1. Motivation to Combine

APOSA would be motivated to combine Markel and Takagi. The analysis regarding the motivation for such a combination mirrors that for the

Springer/Takagi combination described in Ground 1 because Markel and Springer both improve the accessibility of websites by analyzing the website, detecting compliance issues, and fixing them. (Fogarty, ¶473.)

Like Springer, Markel describes several modules for correcting code violations on a website including missing HTML tags, alt tag for images, a title tag, and labels for form fields. Ex.1006, Abstract, ¶¶72, 83, 88. And like Springer’s “checkers” and “fixers,” Markel discloses an assessment module, a reporting module, and a correcting module, together used for evaluating and correcting websites. *Id.*, Abstract. Markel also allows for “semi-automated wizard-assisted manual implementation, and support for manual correction of reported ruleset violation,” and “provides additional functionality including ... adding ALT tags to images after querying the user for appropriate labels.” *Id.*, ¶78. Thus, for the same reasons described above with regard to Springer/Takagi, APOSA would have been motivated to combine Takagi’s social labeling approach with Markel’s system and expect this combination to succeed with minimal experimentation. (Fogarty, ¶¶474-484.)

2. Independent Claim 1

a. Claim 1[pre]

If the preamble is limiting, Markel and Takagi disclose it. Takagi discloses the preamble for the reasons described in Ground 1, Claim 1[pre]. (Fogarty, ¶485.)

Markel also discloses a correcting module for automatically, semi-automatically, or manually correcting standards violations in websites that can include missing HTML tags, alt tag for images, a title tag, and labels for form fields (e.g., input fields. Ex.1006, Abstract. (Fogarty, ¶¶486-487.) Such compliance issues are identified by a web crawler and assessment module that operates on a website having a DOM. (Fogarty, ¶488.) APOSA would have understood that descriptive attributes such as alt-text and field labels could be read by screen readers. (Fogarty, ¶¶489-490.)

b. Claim 1[a]

Takagi discloses the this element for the reasons described for Ground 1, Claim 1[a]. (Fogarty, ¶492.)

Markel discloses a computer implemented system and method to “parse and analyze [a] website as a function of a ruleset of design guidelines.” Ex.1006, Abstract. This system “executes a uniform process of diagnosis, reporting correction, and validation of source website code” where “[t]he system 100 removes standards violations in a rapid, reliable, consistent, and cost-effective manner.” Ex.1006, ¶¶70, 105.

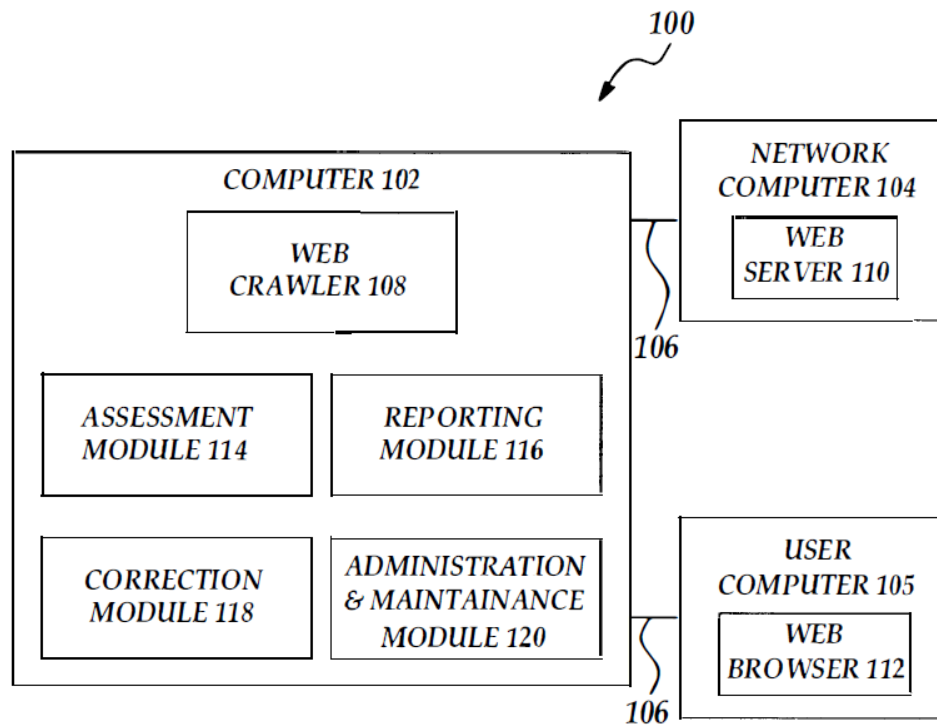


Figure 1

Ex.1006, Fig. 1. (Fogarty, ¶¶493-497.)

c. Claim 1[b]

Takagi discloses the this element for the reasons described for Ground 1, Claim 1[b]. (Fogarty, ¶498.)

Markel also discloses an assessment module identifies standards violations that can include missing HTML tags, alt tag for images, a title tag, and labels for form fields (e.g., input fields). Ex.1006, Abstract, ¶¶72, 76, 83, 88. (Fogarty, ¶¶499-503.)

d. Claim 1[c][1]

Takagi discloses the this element for the reasons described for Ground 1,

Claim 1[c][1]. (Fogarty, ¶504.)

Markel also discloses a correcting module for automatically, semi-automatically, or manually correcting the listed items. Ex.1006, Abstract. This includes “adding ALT tags to images after querying the user for appropriate labels.” Ex.1006, ¶78. (Fogarty, ¶¶505-507.)

As explained above, APOSA have been motivated to combine Markel’s system, which already provided for evaluating and correcting websites based a user’s manual input, with Takagi’s social labeling service to reduce the time and cost associated with remediating non-programmatically fixable compliance issues. Such a system would have simply queried Takagi’s service before prompting the user. (Fogarty, ¶¶508-509.)

e. Claim 1[c][2]

Takagi discloses the this element for the reasons described for Ground 1, Claim 1[c][2]. (Fogarty, ¶¶511.)

Markel also discloses parsing and analyzing the code of a website (Ex.1006, Abstract, ¶¶50, 90) and a “wizard” tool which provides “prompts and methods to resolve conflicts or violations.” Ex.1006, ¶99. In a Markel/Takagi combination, APOSA would have combined the wizard of Markel with one of the interfaces, e.g., the WYSISYG-style editor or quick fix wizard, of Takagi. Ex.1007, 197. (Fogarty, ¶¶512-515.)

f. Claim 1[c][3]

Takagi discloses the this element for the reasons described for Ground 1, Claim 1[c][3]. (Fogarty, ¶516.)

Markel also discloses using a “wizard” tool which provides “prompts and methods to resolve conflicts or violations.” Ex.1006, ¶99. As shown in Figure 9 of Markel, Markel discloses an interface having a fix input text box 906 [that] allows the user to provide input for semi-automatic correction items” such as “an image is missing an ALT tag,” and in that instance, “the user is prompted to enter the appropriate information associated with the ALT tag.” *Id.*, ¶113. Extending Markel’s prompts to a user to Takagi’s prompts to a supporter would have been well known to APOSA at the time of the ’532 patent. (Fogarty, ¶¶517-524.)

g. Claim 1[c][4]

Takagi discloses this element for the reasons described for Ground 1, Claim 1[c][4]. Moreover, as described above in claim elements 1[c][1]-1[c][3], Markel discloses “an interface having a fix input text box 906 [that] allows the user to provide input for semi-automatic correction items” such as “an image is missing an ALT tag,” in which case “the user is prompted to enter the appropriate information associated with the ALT tag.” Ex.1006, ¶113. Sharing such remediations generated by other users over a network would have been well known to APOSA at the time of the ’532 patent. (Fogarty, ¶¶525-532.)

h. Claim 1[c][5]

Takagi discloses this element for the reasons described in Ground 1, Claim 1[c][5]. (Fogarty, ¶533.)

Markel discloses this element. Markel's system includes an "administration and maintenance module 120 [which] contains components to support the storage, history, and long-term support of the website" and upon correcting the code, Markel's system provides that "appropriate information is saved in the code and the documentation." Ex.1006, ¶¶101, 114. Storing such remediations in a shared network resource would have been well known to APOSA at the time of the '532 patent. (Fogarty, ¶¶534-535.)

i. Claim 1[d]

Takagi disclose this element for the reasons described in Ground 4, Claim 1[c][5]. (Fogarty, ¶536.)

Markel's system also "evaluates and corrects dynamically generated web pages," and "provides additional functionality including fixing minor alignment problems or font specifications, or adding ALT tags to images after querying the user for appropriate labels." Ex.1006, ¶78. Adding ALT tags constitutes assigning a descriptive attribute, which would have been known by APOSA to be adapted to enable an assistive technology to speak the descriptive attribute to a user. (Fogarty, ¶¶537-542.)

3. Independent Claim 11

a. Claim 11[pre]

To the extent the preamble is limiting, Markel and Takagi disclose it for the reasons described above for Ground 4, Claim 1[pre]. APOSA would have understood that computer implemented methods were routinely performed by executing computer code stored on a non-transitory computer readable information storage media. (Fogarty, ¶567.)

b. Claim 11[a]

Markel and Takagi disclose this element for the reasons described above for Ground 4, Claim 1[a]. (Fogarty, ¶569.)

c. Claim 11[b]

Markel and Takagi disclose this element for the reasons described above for Ground 4, Claim 1[b]. (Fogarty, ¶570.)

d. Claim 11[c][1]

Markel and Takagi disclose this element for the reasons described above for Ground 4, Claim 1[c][1]. (Fogarty, ¶571.)

e. Claim 11[c][2]

Markel and Takagi disclose this element for the reasons described above for Ground 4, Claim 1[c][2]. (Fogarty, ¶572.)

f. Claim 11[c][3]

Markel and Takagi disclose this element for the reasons described above for Ground 4, Claim 1[c][3]. (Fogarty, ¶573.)

g. Claim 11[c][4]

Markel and Takagi disclose this element for the reasons described above for Ground 4, Claim 1[c][4]. (Fogarty, ¶574.)

h. Claim 11[c][5]

Markel and Takagi disclose this claim for the reasons described above for 4, Claim 1[c][5]. (Fogarty, ¶575.)

i. Claim 11[d]

Markel and Takagi disclose this claim for the reasons described above for Ground 4, Claim 1[d]. (Fogarty, ¶576.)

4. Dependent Claims 2 and 12

Takagi discloses this claim for the reasons described for Ground 1, Claims 2/12. (Fogarty, ¶¶543, 577.)

5. Dependent Claims 3 and 13

Takagi discloses this claim for the reasons described for Ground 1, Claims 3/13. Markel discloses this claim because Markel's assessment module parses and analyzes rule violations including the presence of labels for form fields, and fixes those violations. Ex.1006, Abstract, ¶¶87-88. (Fogarty, ¶¶544-546, 578.)

6. Dependent Claims 4 and 14

Takagi discloses this claim for the reasons described for Ground 1, Claims 4/14. Markel also discloses this element. Markel describes several modules for correcting code violations on a website including missing HTML tags, alt tag for images, a title tag, and labels for form fields. Ex.1006, Abstract, ¶¶72, 83, 88. (Fogarty, ¶¶547-549, 579.)

7. Dependent Claims 6 and 16

Takagi discloses this claim for the reasons described for Ground 1, Claims 6/16. Markel discloses a system for “diagnosis, reporting correction, and validation of source website code,” where the system “focuses on code [that] has design errors.” Ex.1006, ¶70. An “assessment module 114 [that] identifies design errors and standards violations including syntax errors or the misuse of quotes, poor contrast, and missing HTML tags.” Ex.1006, ¶72. For example, Figure 9 shows an image with an alt tag that is erroneously empty:

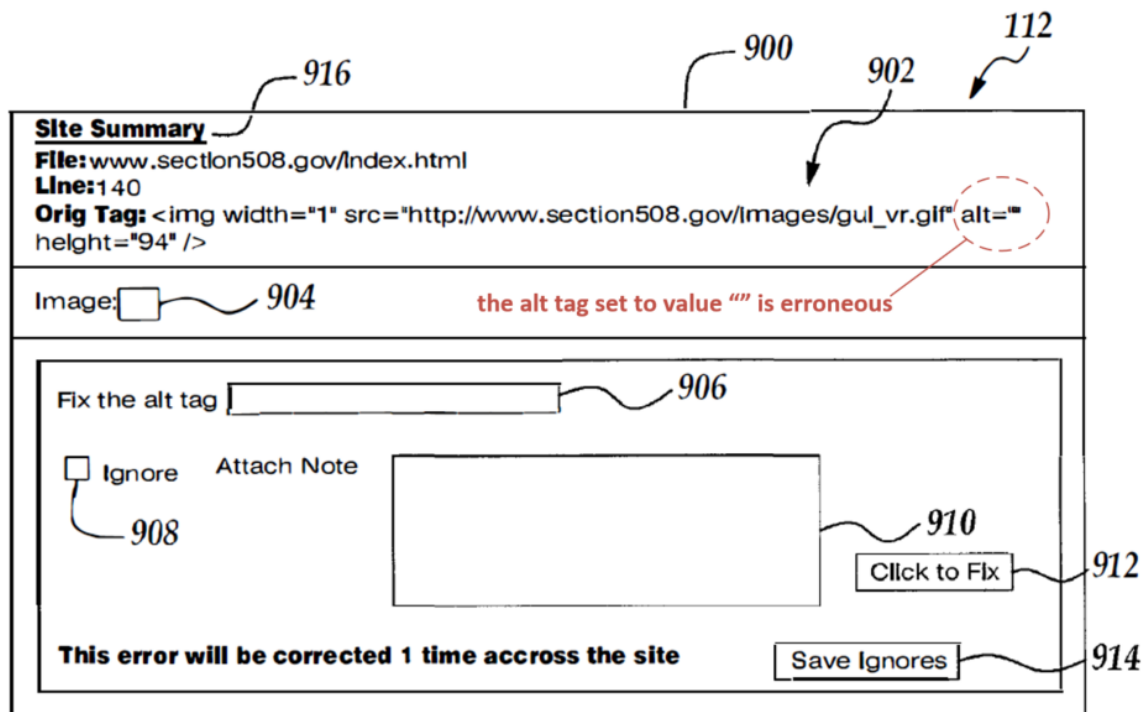


Figure 9

Ex.1006, Fig. 9 (annotated). (Fogarty, ¶¶550-552, 580.)

8. Dependent Claims 7 and 17

Takagi discloses this claim for the reasons described for Ground 1, Claims 7/17. Markel also that a user can select a “fix button,” after which “the code is corrected.” Ex.1007, ¶¶113-114, Fig. 9. “Once the correction tool has been applied to a site, a new version of the site files is generated with the problems rectified.” *Id.*, ¶96. (Fogarty, ¶¶553-556, 581.)

9. Dependent Claims 8 and 18

Takagi discloses this claim for the reasons described in Ground 1, Claims 8/18. Markel discloses this claim for the reasons described above with regard to claims 3/13. (Fogarty, ¶¶557-559, 582.)

10. Dependent Claims 9 and 19

Takagi discloses this claim for the reasons described in Ground 1, Claims 9 and 19. Markel discloses this claim for the reasons described above with regard to claims 4/14. (Fogarty, ¶¶560-563, 583.)

11. Dependent Claims 10 and 20

Takagi discloses this claim for the reasons described for Ground 1, Claims 10/20. Markel discloses this element because Markel's computer system includes at least one computer system, as shown in Figure 1 below:

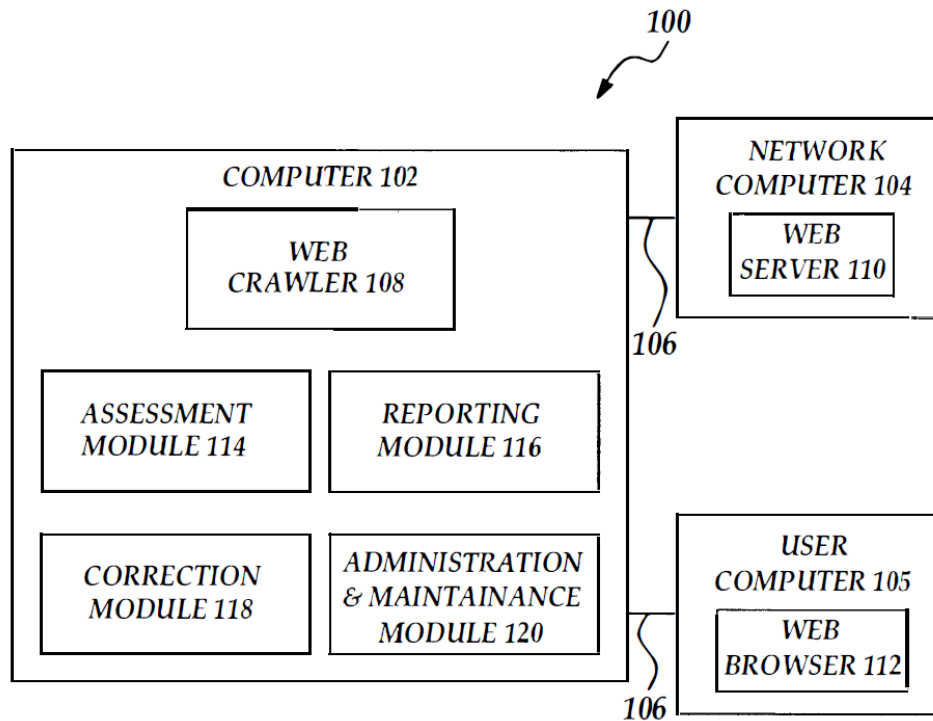


Figure 1

Ex.1006, Fig. 1. (Fogarty, ¶¶564-566, 584.)

F. GROUND 5: Claims 1-4, 6-14, 16-20 are Unpatentable as Obvious Over Markel and Takagi in view of Hendry

1. Motivation to Combine

APOSA would have been motivated to combine Markel, Takagi, and Hendry. The analysis regarding the motivation for combining Markel/Takagi is discussed in Ground 4. The analysis regarding motivation to further include Hendry mirrors that for the combination described in Ground 3 because Markel and Springer both improve the accessibility of websites by analyzing the website, detecting compliance issues, and fixing them. APOSA would have been motivated to further add Hendry in order to combine Hendry's flexible distribution of

accessibility remediation functionality with the systems of Markel and Takagi. As explained by Dr. Fogarty, APOSA would also have expected this combination to succeed with minimal modification. (Fogarty, ¶¶585-595.)

2. Independent Claim 1

a. Claim 1[pre]

To the extent the preamble is limiting, Markel and Takagi in view of Hendry disclose it. Markel and Takagi disclose this claim for the reasons described in Ground 4, Claim 1[pre]. Hendry discloses this element for the reasons described in Ground 2, Claim 1[pre]. (Fogarty, ¶596.)

b. Claim 1[a]

Markel and Takagi disclose this element for the reasons described in Ground 4, Claim 1[a]. Hendry discloses this element for the reasons described in Ground 2, Claim 1[a]. (Fogarty, ¶597.)

c. Claim 1[b]

Markel and Takagi disclose this element for the reasons described in Ground 4, Claim 1[b]. Hendry discloses this element for the reasons described in Ground 2, Claim 1[b]. (Fogarty, ¶598.)

d. Claim 1[c][1]

Markel and Takagi disclose this element for the reasons described in Ground 4, Claim 1[c][1]. Hendry discloses this element for the reasons described in

Ground 2, Claim 1[c][1]. (Fogarty, ¶599.)

e. Claim 1[c][2]

Markel and Takagi disclose this element for the reasons described for Ground 4, Claim 1[c][2]. Hendry discloses this element for the reasons described for Ground 2, Claim 1[c][2]. (Fogarty, ¶600.)

f. Claim 1[c][3]

Markel and Takagi disclose this element for the reasons described for Ground 4, Claim 1[c][3]. Hendry discloses this element for the reasons described for Ground 2, Claim 1[c][3]. (Fogarty, ¶601.)

g. Claim 1[c][4]

Markel and Takagi disclose this element for the reasons described for Ground 4, Claim 1[c][4]. Hendry discloses this element for the reasons described for Ground 2, Claim 1[c][4]. (Fogarty, ¶602.)

h. Claim 1[c][5]

Markel and Takagi disclose this element for the reasons described for Ground 4, Claim 1[c][5]. Hendry discloses this element for the reasons described for Ground 2, Claim 1[c][5]. (Fogarty, ¶603.)

i. Claim 1[d]

Markel and Takagi disclose this element for the reasons described for Ground 4, Claim 1[d]. Hendry discloses this element for the reasons described for

Ground 2, Claim 1[d]. (Fogarty, ¶604.)

3. Independent Claim 11

a. Claim 11[pre]

To the extent the preamble is limiting, Markel and Takagi in view of Hendry disclose it for the reasons described above for Ground 5, Claim 1[pre]. APOSA would have understood that computer implemented methods were routinely performed by executing computer code stored on a non-transitory computer readable information storage media. (Fogarty, ¶613.)

b. Claim 11[a]

Markel and Takagi in view of Hendry disclose this element for the reasons described for Ground 5, Claim 1[a]. (Fogarty, ¶615.)

c. Claim 11[b]

Markel and Takagi in view of Hendry disclose this element for the reasons described for Ground 5, Claim 1[b]. (Fogarty, ¶616.)

d. Claim 11[c][1]

Markel and Takagi in view of Hendry disclose this element for the reasons described for Ground 5, Claim 1[c][1]. (Fogarty, ¶617.)

e. Claim 11[c][2]

Markel and Takagi in view of Hendry disclose this element for the reasons described above for Ground 5, Claim 1[c][2]. (Fogarty, ¶618.)

f. Claim 11[c][3]

Markel and Takagi in view of Hendry disclose this element for the reasons described above for Ground 5, Claim 1[c][3]. (Fogarty, ¶619.)

a. Claim 11[c][4]

Markel and Takagi in view of Hendry disclose this element for the reasons described above for Ground 5, Claim 1[c][4]. (Fogarty, ¶620.)

b. Claim 11[c][5]

Markel and Takagi in view of Hendry disclose this element for the reasons described above for Ground 5, Claim 1[c][5]. (Fogarty, ¶621.)

a. Claim 11[d]

Markel and Takagi in view of Hendry disclose this element for the reasons described above for Ground 5, Claim 1[d]. (Fogarty, ¶622.)

4. Dependent Claims 2 and 12

Markel and Takagi disclose this claim for the reasons described for Ground 4, Claims 2/12. Hendry discloses this claim for the reasons described in Ground 2, Claims 2/12. (Fogarty, ¶¶605, 623.)

5. Dependent Claims 3 and 13

Markel and Takagi disclose this claim for the reasons described for Ground 4, Claims 3/13. Hendry discloses this claim for the reasons described in Ground 2, Claims 3/13. (Fogarty, ¶¶606, 624.)

6. Dependent Claims 4 and 14

Markel and Takagi disclose this claim for the reasons described for Ground 4, Claims 4/14. Hendry discloses this claim for the reasons described for Ground 2, Claims 4/14. (Fogarty, ¶¶607, 625.)

7. Dependent Claims 6 and 16

Markel and Takagi disclose this claim for the reasons described for Ground 4, Claims 6/16. (Fogarty, ¶¶608, 626.)

8. Dependent Claims 7 and 17

Markel and Takagi disclose this claim for the reasons described for Ground 4, Claims 7/17. (Fogarty, ¶¶609, 627.)

9. Dependent Claims 8 and 18

Markel and Takagi disclose this claim for the reasons described for Ground 4, Claims 8/18. Hendry discloses this claim for the reasons described for Ground 2, Claims 8/18. (Fogarty, ¶¶610, 628.)

10. Dependent Claims 9 and 19

Markel and Takagi disclose this claim for the reasons described for Ground 4, Claims 9/19. Hendry discloses this claim for the reasons described for Ground 2, Claims 9/19. (Fogarty, ¶¶611, 629.)

11. Dependent Claims 10 and 20

Markel and Takagi disclose this claim for the reasons described for Ground 4, Claims 10/20. Hendry discloses this claim for the reasons described for Ground 2, Claims 10/20. (Fogarty, ¶¶612, 630.)

G. GROUND 6: Claims 1-4, 6-14, 16-20 are Unpatentable as Obvious Over Markel and Bigham in view of Hendry

1. Motivation to Combine

APOSA would have been motivated to combine Markel, Bigham and Hendry as explained in greater detail by Dr. Fogarty. (Fogarty, ¶¶631-647.) In short, the analysis regarding the motivation for such a combination mirrors that for the combinations discussed above because Markel and Springer both improve the accessibility of websites by analyzing the website, detecting compliance issues, and fixing them, and Bigham and Takagi both improve accessibility of websites using social/human labeling of untagged elements. APOSA would have been motivated to further add Hendry in order to combine Hendry's flexible distribution of accessibility remediation functionality with the systems of Markel and Bigham. As explained by Dr. Fogarty, APOSA would also expect this combination to succeed with minimal modification. (Fogarty, ¶¶641-642.)

2. Independent Claim 1

a. Claim 1[pre]

If the preamble is limiting, Markel and Bigham in view of Hendry disclose this element. Markel and Hendry disclose this element. Markel and Hendry disclose the preamble for the reasons described in Claim 5[pre] for Ground 4 and Ground 5, respectively. Bigham discloses the preamble for the reasons described in Ground 3, Claim 1[pre]. (Fogarty, ¶648.)

b. Claim 1[a]

Markel and Hendry disclose this element for the reasons described in element 1[a] for Ground 4 and Ground 5, respectively. Bigham discloses this element for the reasons described above for Ground 3, Claim 1[a]. (Fogarty, ¶649.)

c. Claim 1[b]

Markel and Hendry disclose this element for the reasons described in element 1[b] for Ground 4 and Ground 5, respectively. Bigham discloses this element for the reasons described above for Ground 3, Claim 1[b]. (Fogarty, ¶650.)

d. Claim 1[c][1]

Markel and Hendry disclose this element for the reasons described in element 1[c][1] for Ground 4 and Ground 5, respectively. Bigham discloses this

element for the reasons described above for Ground 3, Claim 1[c][1]. (Fogarty, ¶651.)

e. Claim 1[c][2]

Markel and Hendry disclose this element for the reasons described in element 1[c][2] for Ground 4 and Ground 5, respectively. Bigham discloses this element for the reasons described above for Ground 3, Claim 1[c][2]. (Fogarty, ¶652.)

f. Claim 1[c][3]

Markel and Hendry disclose this element for the reasons described in element 1[c][3] for Ground 4 and Ground 5, respectively. Bigham discloses this element for the reasons described above for Ground 3, Claim 1[c][3]. (Fogarty, ¶653.)

g. Claim 1[c][4]

Markel and Hendry disclose this element for the reasons described in element 1[c][4] for Ground 4 and Ground 5, respectively. Bigham discloses this element for the reasons described above for Ground 3, Claim 1[c][4]. (Fogarty, ¶654.)

h. Claim 1[c][5]

Markel and Hendry disclose this element for the reasons described in element 1[c][5] for Ground 4 and Ground 5, respectively. Bigham discloses this

element for the reasons described above for Ground 3, Claim 1[c][5]. (Fogarty, ¶¶655-657.)

i. Claim 1[d]

Markel and Hendry disclose this element for the reasons described in element 1[d] for Ground 4 and Ground 5, respectively. Bigham discloses this element for the reasons described above for Ground 3, Claim 1[d]. (Fogarty, ¶658.)

3. Independent Claim 11

a. Claim 11[pre]

If the preamble is limiting, Markel and Bigham in view of Hendry disclose it for the reasons described above for Ground 6, Claim 1[pre]. APOSA would have understood that computer implemented methods were routinely performed by executing computer code stored on a non-transitory computer readable information storage media. (Fogarty, ¶¶674-675.)

b. Claim 11[a]

Markel and Bigham in view of Hendry disclose this element for the reasons described for Ground 6, Claim 1[a]. (Fogarty, ¶676.)

c. Claim 11[b]

Markel and Bigham in view of Hendry disclose this element for the reasons described above for Ground 6, Claim 1[b]. (Fogarty, ¶677.)

d. Claim 11[c][1]

Markel and Bigham in view of Hendry disclose this element for the reasons described for Ground 6, Claim 1[c][1]. (Fogarty, ¶678.)

e. Claim 11[c][2]

Markel and Bigham in view of Hendry disclose this element for the reasons described above for Ground 6, Claim 1[c][2]. (Fogarty, ¶679.)

f. Claim 11[c][3]

Markel and Bigham in view of Hendry disclose this element for the reasons described above for Ground 6, Claim 1[c][3]. (Fogarty, ¶680.)

g. Claim 11[c][4]

Markel and Bigham in view of Hendry disclose this element for the reasons described above for Ground 6, Claim 1[c][4]. (Fogarty, ¶681.)

h. Claim 11[c][5]

Markel and Bigham in view of Hendry disclose this element for the reasons described above for Ground 6, Claim 1[c][5]. (Fogarty, ¶682.)

a. Claim 11[d]

Markel and Bigham in view of Hendry disclose this element for the reasons described above for Ground 6, Claim 1[d]. (Fogarty, ¶683.)

4. Dependent Claims 2 and 12

Markel and Hendry disclose these claims for the reasons described for Ground 5, Claims 2/12. Bigham discloses these claims for the reasons described for Ground 3, Claims 2/12. (Fogarty, ¶¶659, 684.)

5. Dependent Claims 3 and 13

Markel and Hendry disclose these claims for the reasons described above for Ground 5, Claims 3/13. Bigham discloses or renders obvious these claims for the reasons described above for Ground 3, Claims 3/13. (Fogarty, ¶¶660-663, 685.)

6. Dependent Claims 4 and 14

Markel and Hendry disclose these claims for the reasons described above for Ground 5, Claims 4/14. Bigham discloses these claims for the reasons described above for Ground 3, Claims 4/14. (Fogarty, ¶¶664-666, 686.)

7. Dependent Claims 6 and 16

Markel and Hendry disclose these claims for the reasons described above for Ground 5, Claims 6/16. Bigham discloses these claims for the reasons described above for Ground 3, Claims 6/16. (Fogarty, ¶¶667, 687.)

8. Dependent Claims 7 and 17

Markel and Hendry disclose these claims for the reasons described above for Ground 5, Claims 7/17. Bigham discloses these claims for the reasons described above for Ground 3, Claims 7/17. (Fogarty, ¶¶668, 688.)

9. Dependent Claims 8 and 18

Markel and Hendry disclose these claims for the reasons described above for Ground 5, Claims 8/18. Bigham discloses or renders obvious these claims for the reasons described above for Ground 3, Claims 8/18. (Fogarty, ¶¶669, 689.)

10. Dependent Claims 9 and 19

Markel and Hendry disclose these claims for the reasons described above for Ground 5, Claims 9/19. Bigham discloses these claims for the reasons described above for Ground 3, Claims 9/19. (Fogarty, ¶¶671, 690.)

11. Dependent Claims 10 and 20

Markel and Hendry disclose these claims for the reasons described above for Ground 5, Claims 10/20. Bigham discloses these claims for the reasons described above for Ground 3, Claims 10/20. (Fogarty, ¶¶672, 691-692.)

H. No Secondary Considerations Support the Patentability of Claims 1-4, 6-14, 16-20 of the '532 patent

Petitioner is unaware of any secondary considerations that may support the patentability of claims 1-4, 6-14, 16-20 of the '532 patent. Petitioner expressly reserves the right to respond to any allegations of secondary considerations that may be asserted by Patent Owner in this proceeding.

VII. *FINTIV* FACTORS WEIGH AGAINST EXERCISING DISCRETION TO DENY INSTITUTION

To the extent Patent Owner argues the Board should discretionarily deny

institution under 35 U.S.C. § 314(a), that argument fails. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 5-6 (P.T.A.B. Mar. 20, 2020) (precedential); *see also* June 21, 2022 Memorandum from Director Vidal To Members of the Patent Trial and Appeal Board Regarding *Interim Procedures for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation* (“*Fintiv Memo*”).

A. Factor 1: Potential Stay Of Litigation

This factor is neutral under *Fintiv*, as neither party has requested a stay of the District Court proceeding. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 15 at 12 (P.T.A.B. May 13, 2020).

B. Factor 2: Trial Date and Board’s Statutory Deadline

This factor disfavors exercise of the Board’s discretion. The Western District of Texas tentatively scheduled trial to start on June 26, 2023, noting however that “[i]f the actual trial date materially differs from the Court’s default schedule, the Court will consider reasonable amendments to the case schedule....” *accessiBe II*, Agreed Scheduling Order, ECF No. 26 (Nov. 8, 2021). *See Sand Revolution II, LLC v. Cont’l Intermodal Grp. – Trucking LLC*, IPR2019-01393, Paper 24 at 8-9 (P.T.A.B. June 16, 2020) (“[T]he district court’s express inclusion of the qualifier ‘or as available’ for each calendared trial date of its evolving schedule, which indicates a continuing degree of recognized uncertainty of the court’s schedule by the court.”).

Further, the *accessiBe II* case is likely to be transferred to The Western District of New York for the same reasons that *accessiBe I* was transferred to the Western District of New York. *See* Ex.1041. Patent Owner's primary argument in opposition of the motion to transfer in *accessiBe II* was that transfer was denied in *accessiBe I*, but *accessiBe I* was transferred mooting Patent Owner's argument. Ex.1024.

Additionally, under Judge Albright's orders, the court must rule on motions to transfer before any Markman hearing. (Ex.1042, Judge Albright, OGP 4.0 – Patent Cases (Mar. 7, 2022), at 6). On June 17, 2022, the Western District of Texas cancelled the Markman Hearing, which was scheduled for June 23, 2022 and it has not been rescheduled. (Ex.1043.) In view of the status of the *accessiBe II* litigation and pending transfer motion in view of *accessiBe I*, this factor weighs against discretionary denial of institution.

C. Factor 3: There Has Not Been Significant Investment In The Court Proceeding

There has been no substantive investment by the Court or the parties in *accessiBe II*. No fact discovery has taken place in the Western District of Texas. The parties have exchanged preliminary infringement and invalidity contentions, but final contentions have not been served, and the Court cancelled the claim construction hearing. Accordingly, this factor weighs against discretionary denial

of institution.

D. Factor 4: The Petition Includes Different Issues Than in the District Court

This factor weighs against exercising discretion. While Petitioner has noted the relied-on prior art and combinations in its preliminary invalidity contentions, it has not yet raised any of the same arguments or evidence before the District Court in briefings or oral arguments. *See Fintiv*, IPR2020-00019, Paper 11 at 12-13.

E. Factor 5: Overlap Between The Parties In The Parallel Proceeding

This factor is not relevant. This factor should only become relevant when the district court defendant and the petitioner are unrelated. *See id.*, Paper 11 at 13-14.

F. Factor 6: Petitioner's Strong Case Warrants Institution

Petitioner has provided herein six strong bases for unpatentability. *See L.G. Elecs. Inc. v. Bell N. Res. LLC*, IPR2020-00330, Paper 13 at 10 (P.T.A.B. June 19, 2020) (finding that the strong merits of petitioner's challenges weighed against exercising discretion to deny institution). In addition, the Director's *Fintiv* Memo states that "the PTAB will not rely on the *Fintiv* factors to discretionarily deny institution in view of parallel district court litigation *where a petition presents compelling evidence of unpatentability.*" *Fintiv* Memo at 2.

Taken together, these factors weigh against the Board's exercising its

discretion to deny institution.

VIII. CONSIDERATIONS UNDER 35 U.S.C. § 325(d)

This Petition does not present a scenario in which “the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d). Springer, Hendry, and Bigham were identified during prosecution, but none were relied upon or cited by the examiner. Springer, Hendry, and Bigham were disclosed by the applicant in Information Disclosure Statements, but the Examiner neither identified them as relevant references nor performed any analysis of them. *See* Ex.1004, 31 (Springer); 10, 14, 241, 245, 265, 269, 276, 279 (Hendry); 80, 120 (Bigham). None of the other prior art relied on in this Petition was cited during prosecution of the ’532 patent, and the Patent Office never considered the prior art combinations or arguments set forth herein.

IX. CONCLUSION

For the reasons set forth above, Petitioner requests that the claims be found unpatentable as obvious over the prior art and be cancelled.

X. MANDATORY NOTICES

A. Real Parties-in-Interest (37 C.F.R. § 42.8(b)(1))

The Petitioner, accessiBe Ltd., is the real party-in-interest.

B. Related Matters (37 C.F.R. § 42.8(b)(2))

The ’532 patent is the subject of litigation involving Petitioner. The initial

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complaint, filed on July 14, 2021, was filed in the Western District of Texas, Waco Division: *AudioEye, Inc. v. AccessiBe Ltd.*, Case No. 6:20-cv-00726 (W.D. Tex. July 14, 2021). (Ex.1040.) On September 9, 2021, the complaint was served on accessiBe via the Hague Service Convention.

C. Lead And Back-Up Counsel (37 C.F.R. § 42.8(b)(3))

Lead counsel is Sanjeet K. Dutta (Reg. No. 46,145). Backup counsel is Neel Chatterjee, Amadou Diaw, and Jesse Cheng (to seek *pro hac vice* admission). All counsel are with Goodwin Procter LLP. Mr. Diaw is at 1900 N St NW, Washington, DC 20036, tel. 202-346-4000, fax 202-204-7272. Mr. Dutta, Mr. Chatterjee, and Mr. Cheng are at 601 Marshall Street, Redwood City, CA 94063, tel. 650-752-3100, fax 650-853-1038. Email contact for counsel is sdutta@goodwinlaw.com; nchatterjee@goodwinlaw.com; adiaw@goodwinlaw.com; and JesseCheng@goodwinlaw.com.

D. Service Information (37 C.F.R. § 42.8(b)(4))

This Petition is being served by Federal Express Next Business Day Delivery to the correspondence address of record for the '532 patent, Knobbe Martens Olson & Bear LLP, 2040 Main Street, Fourteenth Floor, Irvine, California 92614. The petition is being served by email to AudioEye's counsel in the related litigation, at the following email addresses: jared.bunker@knobbe.com; BNash@mofo.com; ASchnell@mofo.com. Their physical office is located at 701

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Brazos Street, Suite 1100, Austin, TX 78701.

Petitioner may be served at the address provided above for lead counsel, and consents to electronic service by e-mail.

E. Power of Attorney

Filed concurrently in accordance with 37 C.F.R. §42.10(b).

XI. CERTIFICATION OF GROUNDS FOR STANDING

Petitioner certifies pursuant to 37 C.F.R. § 42.104(a) that the patent for which review is sought is available for *inter partes* review and that Petitioner is not barred or estopped from requesting an *inter partes* review challenging the patent claims on the grounds identified in this Petition.

XII. FEES

The Commissioner is hereby authorized to charge all fees due in connection with this matter to Attorney Deposit Account 506989 for the fees set in 37 C.F.R. § 42.15(a) for this Petition and further authorizes any additional fees to be charged to this Deposit Account.

Respectfully submitted,

Dated: September 7, 2022

/Sanjeet K. Dutta/
Sanjeet K. Dutta (Reg. No. 46,145)
Neel Chatterjee (*pro hac vice*)

Petition for *Inter Partes* Review of
U.S. Patent No. 11,061,532

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Counsel for Petitioner

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(d), the undersigned certifies that this Petition for *Inter Partes* Review of U.S. Patent 11,061,532 complies with the type-volume limits of 37 C.F.R. § 42.24(a)(1)(i) because it contains 12,067 words as calculated by the word processing system used to prepare this Petition, excluding the words in the Table of Contents, Table of Authorities, List of Exhibits, Mandatory Notices, Certification under 37 C.F.R. § 42.24(d), and Certificate of Service, as set forth in 37 C.F.R. §42.24(a)(1).

Dated: September 7, 2022

/Sanjeet K. Dutta/

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Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105, I certify that on this 7th day of September, 2022, I caused to have served a copy of the Petition together with all of the exhibits identified in the above Table of Exhibits and Petitioner's Power of Attorney by Federal Express Next Business Day Delivery on the following addresses for patent owner(s) and their representatives that are listed in the United States Patent and Trademark Office's public records :

Knobbe Martens Olson & Bear LLP
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Tel: (949) 760-0404

I also certify that I served a courtesy copy of this Petition, Exhibits, and Power of Attorney on AudioEye's counsel in the related litigation by email, to:

jared.bunker@knobbe.com; BNash@mofo.com; ASchnell@mofo.com.

Dated: September 7, 2022

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