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<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>	Application Number	95/001,061
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	First Named Inventor	Lucinda Stone
	Group Art Unit	3993
	Examiner Name	Jeffrey L. Gellner
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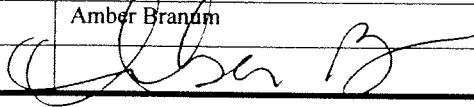
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Stone, et al

Reexamination Control No.: 95/001,061

U.S. Patent No.: 6,446,045

Reexamination Request Filed: July 7, 2008

For: METHOD FOR USING COMPUTERS  
TO FACILITATE AND CONTROL  
THE CREATING OF A PLURALITY  
OF FUNCTIONS

Examiner: Jeffrey L. Gellner

Technology Center/Art Unit: 3993

Attn: Mail Stop "Inter Partes Reexam"  
Central Reexamination Unit  
Office of Patent Legal Administration  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is a Response to Office Action dated December 23, 2008.

- No additional fee is required.  
 Applicant is entitled to small entity status under 37 CFR 1.27  
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- Please charge my Deposit Account No. 504592 in the amount of \$00.00. An additional copy of this transmittal sheet is submitted herewith.  
 The Commissioner is hereby authorized to charge payment of any fees associated with this communication or credit any overpayment, to Deposit Account No. 504592, including any filing fees under 37 CFR 1.16 for presentation of extra claims and any patent application processing fees under 37 CFR 1.17.

Respectfully submitted,



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Date: December 23, 2008

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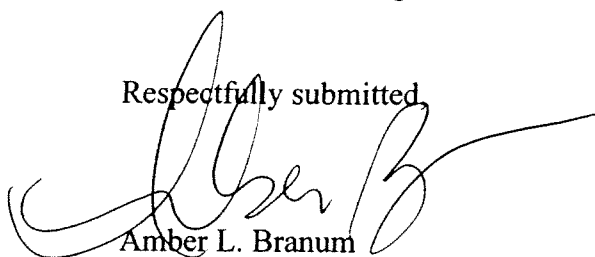
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I, Amber L. Branum, hereby certify that the Response to Office Action was filed on December 23, 2008 for the above-referenced reexamination proceeding in the U.S. Patent and Trademark Office was served by this day 23 of December 2008 by Federal Express and electronic mail:

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the third party requester acting on behalf of the real party in interest, Google, Inc.

Respectfully submitted,



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OF FUNCTIONS

Examiner: Jeffrey L. Gellner

Technology Center/Art Unit: 3993

RESPONSE

Attn: Mail Stop "Inter Partes Reexam"  
Central Reexamination Unit  
Office of Patent Legal Administration  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action mailed September 25, 2008, please enter and consider the following remarks:

## REMARKS

Patent Owner respectfully acknowledges receipt of the First Office Action mailed September 25, 2008. In that Office Action, the PTO rejected claims 1-23, as follows: (1) claims 1-10, 12-23 anticipated under § 102(b) by AdForce; (2) claims 1-9, 16-21 anticipated under § 102(b) by the Del Sesto '882 patent; (3) claims 1-10, 16-22 anticipated under § 102(b) by MarketMatch; (4) claims 1-10, 16-23 anticipated under § 102(b) by Aaddzz Highlights; (5) claims 1-10, 13, 15-23 anticipated under § 102(b) by Zeff97; (6) claims 1-10, 12-23 anticipated under § 102(b) by Zeff99; (7) claims 1-10, 12-23 obvious under § 103(a) by Aaddzz Brochure in view of AdForce; (8) claims 10, 12-15 obvious under § 103(a) by the Del Sesto '882 patent in view of AdForce; (9) claims 12-15 obvious under § 103(a) by Aaddzz Highlights in view of AdForce; (10) claims 12, 14 obvious under § 103(a) by Zeff97 in view of AdForce; (11) claims 15, 23 obvious under § 103(a) by the Del Sesto '882 patent in view of Aaddzz Brochure; (12) claims 10, 23 obvious under § 103(a) by the Del Sesto '882 patent in view of Aaddzz Highlights; (13) claim 10 obvious under § 103(a) by the Del Sesto '882 patent in view of AdStar; and (14) claim 11 obvious under § 103(a) by (a) AdForce in view of the Wojcik '493 patent, (b) the Del Sesto '882 patent in view of the Wojcik '493 patent, (c) MarketMatch in view of the Wojcik '493 patent, (d) Aaddzz Brochure in view of the Wojcik '493 patent, (e) Aaddzz Highlights in view of the Wojcik '493 patent, (f) Zeff97 in view of the Wojcik '493 patent, (g) Zeff99 in view of the Wojcik '493 patent, and (h) Aaddzz Brochure in view of AdForce and the Wojcik '493 patent. Function Media respectfully requests reconsideration for the reasons that follow.

### **I. Background**

The inventors of the '045 patent are employees and principals of Function Media, the current Patent Owner. Prior to their work on the '045 invention, the inventors had developed an Internet-based directory, called First Traveler's Choice (FTC). FTC generated presentations<sup>1</sup> that were derived from information submitted by bed-and-breakfast innkeepers. Prospective customers could review the FTC presentations over the Internet. Through discussions with their innkeeper clients, the inventors realized that a significant problem existed for companies wishing to advertise goods or services in multiple venues on the Internet. Specifically, they discovered that on-line advertisers were required to learn the particular rules for every media outlet where they wished to publish ads, and then had to produce and submit separate ads customized to

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<sup>1</sup> The terms "presentation," "advertisement," and "ad" are used interchangeably herein.

comply with the rules of each individual media outlet. The inventors also knew from their experience as a media outlet operator that the process of negotiating the placement, content, and publication of a seller's presentation was a time-consuming process, requiring significant interaction and coordination between the media outlet and seller. Furthermore, the existing process did not provide media outlets with an adequate method of implementing quality control standards over submitted presentations. In an attempt to solve these problems, the inventors sought a more efficient approach that minimized the amount of work required of sellers who wanted to advertise in multiple on-line media outlets, while providing media outlets with a greater degree of control over the submitted advertising materials. The '045 patent discloses and claims that approach.

As a result of the inventions disclosed in the '045 patent, sellers are able to create multiple presentations customized to meet the requirements of a variety of media outlets, with considerable savings in time and effort. These savings are achieved because the different custom presentations are created automatically in software, based on a single entry of information:

This invention improves on the prior art by automatically publishing the information and data received from sellers in an open-access format that is readily available to public automatic search and index programs as well as to on-demand search programs. With this invention, the seller's presentation can be published in several different directories or indexes, taking on a different style, look, and feel in each as a result of the **automatic restructuring** of the data entered by the seller. This is accomplished by using different presentation formatting guidelines and rules for the targeted directories or indexes. This single-entry and automatically distributed method is more efficient than managing each directory or index individually. '045 patent at 5:10-23.

The '045 patent claims a method that automatically creates presentations customized to the media venue's guidelines from information input by a seller. The automated creation method disclosed in the preferred embodiment is capable of applying editing, style, graphics, data, and content controls to the seller information, as well as design specification and architectural requirements of individual media venues. '045 patent at 4:64-5:5. In other words, presentation data input by the seller takes on a different style, look, and feel when presented in different media outlets, due to "the automatic restructuring of the data entered by the seller" in accordance with guidelines specified by each media venue.

Unlike prior systems that focused on assisting a marketing firm in selecting and distributing advertising presentations to suitable media venues, the '045 patent provides the

capability of replacing the marketing firm altogether by providing an environment that employs a simple data-entry system that a seller—who may have little or no knowledge of presentation software applications or low-level formatting codes—can easily use. `045 patent at 5:35-41. The ability to automatically transform a seller's information into multiple advertising presentations, conforming to individual guidelines of targeted media outlets, provides tremendous efficiencies to both sellers and media outlets and allows sellers to advertise across the Internet, with minimal time, effort and expertise. The `045 patented method enables even relatively unsophisticated sellers to greatly expand their marketing presence across multiple media outlets, while minimizing the labor-intensive tasks that previously had been required to customize presentations for multiple outlets.

The inventions disclosed in the `045 patent also relieve media venues of the need to examine content submitted to them by permitting individual media venues to specify guidelines that are subsequently used when the presentation generation software automatically generates the ads. By specifying guidelines in advance of the generation process, a media venue can control the content and aesthetics of the presentations that are automatically created and submitted to the it. The `045 patent discloses: (1) allowing a media outlet to set in advance its presentation rules that are stored in the system (also referred to in the specification as “guidelines”), and then using those stored rules to control the creation of presentations for publication on that media venue, and (2) allowing a seller to enter its advertising content and desired media outlets into the system, and providing a means for applying the rules of the specified media venue's rules to the content input by the seller to create the customized ads.

This unique combination of features allows advertising to flourish because it permits media venues and sellers that are “strangers” to each other to be brought together via participation in the system. The claimed invention allows sellers to retain control over the placement and content of its presentations, and the media venues to retain control over the content and look and feel of the advertisements they receive and display. This method maximizes seller and media venue exposure and revenue while at the same time saving the seller and media venue cost and effort.

In the following discussion, Patent Owner will focus on the basic fundamental differences between the claimed invention and the cited prior art in an attempt to narrow the issues and to streamline these proceedings, with the understanding that it reserves the right to

address other differences in future responses. Before addressing the specific rejections, however, Patent Owner first will address the interpretation of certain claim limitations of claim 1.

## **II. Claim Interpretation Standard**

### **A. The PTO Applies the Broadest Reasonable Interpretation of a Claim Consistent with the Specification**

During a reexamination, the PTO examines claims using their “broadest reasonable interpretation.” MPEP §§ 2258(I)(G), 2658; *In re Yamamoto*, 740 F.2d 1569, 1572 (Fed. Cir. 1984). This standard is different than the broadest possible interpretation, because the PTO is constrained by certain guidelines imposed by both the MPEP and the Federal Circuit. Notably, the PTO can only give claims the broadest construction that is both reasonable and consistent with the specification. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997); MPEP § 2111. Further, the Federal Circuit has made it clear that the PTO must pay deference to any interpretive guidance offered in the patent specification:

Some cases state the standard as “the broadest reasonable interpretation,” [citation omitted] others include the qualifier “consistent with the specification” or similar language [citation omitted]. Since it would be unreasonable for the PTO to ignore any interpretive guidance afforded by the applicant’s written description, either phrasing connotes the same notion: as an initial matter, the PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification. *Id.* at 1054 (emphasis added).

Function Media respectfully submits that the specification and claim context are largely dispositive of the proper claim interpretation in this reexamination. Although neither Requester nor the PTO provided a specific interpretation of any claim terms, it is clearly the view of both that the claims may be interpreted sufficiently broadly to overlap with the prior art. With all due respect, both Requester’s and the PTO’s implied interpretation of these claims are unreasonable in light of the specification, and the mandates of 35 USC § 112 ¶ 6.

### **B. Claim 1 Includes Means-Plus-Function Limitations That Are Subject to Construction Under 35 U.S.C. §112 ¶ 6**

Claims 1-23 include means-plus-function (MPF) limitations, which are subject to interpretation under 35 U.S.C. §112 ¶ 6. The first step in interpreting a MPF limitation is determining the function performed by the “means.” *Medtronic, Inc., v. Advanced Cardiovascular Sys.*, 248 F.3d 1303, 1311 (Fed. Cir. 2001). The next step is identifying the



structure in the specification that corresponds to that function. *Id.* The “means” portion of the MPF limitation must be interpreted to cover the “corresponding” structure(s) and all equivalents thereof. 35 U.S.C. § 112 ¶ 6.

The Federal Circuit made it clear in its *en banc* decision *In re Donaldson* that the PTO must construe MPF limitations consistent with the interpretation statutorily mandated by § 112, ¶ 6. 16 F.3d 1189, 1194-95 (Fed. Cir. 1994). Accordingly, the PTO “may not disregard the structure disclosed in the specification corresponding to [the MPF limitation] when rendering a patentability determination.” *Id.* Thus, where a claim limitation is couched in MPF language, that limitation must be interpreted to read on the structures disclosed in the specification that correspond to the recited function, and “equivalents thereof.”

Additionally, if the structure that correlates to a MPF clause includes software executing on a general-purpose processor or computer, the appropriate interpretation of the MPF clause includes the algorithm(s) of the claimed function. *WMS Gaming, Inc. v. Int’l Game Tech.*, 184 F.3d 1339, 1349 (Fed. Cir. 1999) (“[i]n a means-plus-function claim in which the disclosed structure is a computer, or microprocessor, programmed to carry out an algorithm, the disclosed structure is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm.”). Because the structure corresponding to the “means for applying” and the “means ... to select” includes computer software executing on a processor, it is necessary to identify the operation or algorithms that correlate to the claimed function.<sup>2</sup> Against this backdrop, the scope of claim 1 will now be addressed.

### C. The “Broadest Reasonable Interpretation” of Claim 1

Claim 1 is the only independent claim in the ‘045 patent. It provides:

1. A method of using a network of computers to contract for, facilitate and control the creating and publishing of presentations, by a seller, to a plurality of media venues owned or controlled by other than the seller, comprising:
  - a) providing a media database having a list of available media venues;
  - b) providing means for applying corresponding guidelines of the media venues;
  - c) providing means for transmitting said presentations to a selected media venue of the media venues;

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<sup>2</sup> The corresponding structure should include only that which is necessary to perform the recited function and not everything necessary to enable the claimed invention to work. *Asyst Techs., Inc. v. Empak, Inc.*, 268 F.3d 1364, 1370-71 (Fed. Cir. 2001).

- d) providing means for a seller to select the media venues; and
- e) providing means for the seller to input information;

whereby the seller may select one or more of the media venues, create a presentation that complies with said guidelines of the media venues selected, and transmit the presentation to the selected media venues for publication. [emphasis added]

Claim 1 recites a method of using a network of computers to automatically create and publish customized seller presentations to a plurality of media venues by, *inter alia*, “providing means for applying the corresponding guidelines of selected media venues.” The claimed method requires:<sup>3</sup> (1) providing a “media database” having a “list” of “available media venues” where the presentation may be published (limitation (a)); (2) providing a “means for a seller to select” one or more of the plurality of media venues listed in this database, where the presentation will be published (limitation d and “whereby” clause); (3) providing a “means for the seller to input information” (limitation e); (4) providing a “means for applying” the guidelines of the selected media venue to the presentation information input by the seller to automatically create presentations that comply “with said guidelines of the media venues selected” (limitation b and “whereby” clause); and (5) providing a “means for transmitting said presentations” to the selected media venues for publication (limitation c and “whereby” clause).

While all limitations of claim 1 must be considered when determining patentability, there are two specific MPF limitations that clearly distinguish claim 1 from all of the cited prior art. Those MPF limitations are the “means for a seller to select” the media venues and the “means for applying ... guidelines” of the selected media venues to the seller’s input information. These two limitations have been misconstrued by Requester and the PTO. Accordingly, the “broadest reasonable interpretation” of those two limitations will be discussed below, in sections 1-2.<sup>4</sup> The

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<sup>3</sup> The ordering of the steps in claim 1 is not specified by the claim context, nor is any order intended by this recitation.

<sup>4</sup> Although the other limitations are also important and may serve to distinguish claim 1 from the prior art—and have not necessarily been interpreted correctly—discussion of those limitations will be kept to a minimum in the current response to meet the page limitations imposed on Patent Owners. However, Patent Owner may address these limitations in a later response, if necessary. The Patent Owner and Requester’s proposed claim constructions are attached as Exhibits 4 and 5, respectively. The Examiner will note substantial differences between the scope of the MPF terms as proposed by Requester in the underlying litigation versus the much broader construction implied by its invalidity positions in this Re-examination.

last section—section 3—discusses claim 1 of the '045 patent as a whole, when viewed within the context of these MPF limitations and the relevant specification disclosure.

A summary of the structures disclosed in the specification corresponding to the recited function of the aforementioned MPF phrases, with explanatory cites, is provided in Chart 1:

**Chart 1: Structures and Explanatory Cites for the Means-Plus-Function Phrases**

“means for applying corresponding guidelines of the media venues”	The disclosed software is the Presentation Generation Program (1710) shown in Figure 2a. The operation and/or algorithms for that computer software are discussed in the '045 patent at Figure 4d, 4e; 3:28-31; 5:10-23; 17:1 – 18:8; 18:63 – 19:31; 22:19-54; 42:36 – 43:51; 51:1-23; 57:27 – 58:59.
“means for a seller to select the media venues”	The disclosed software is the Presentation and Configuration Program (4715) shown in Figure 2c. The operation and/or algorithms for that computer software are discussed in the '045 patent at Figure 4a; 17:1-4, 25-28; 27:55 – 28:9; 40:65 – 41:29.

Figures 1a, 2a, and 2c from the '045 patent (attached in highlighted form as Exhibits 1A, B, and C) are referenced in the following sections to aid in understanding the '045 patent. Figure 1a, attached as Exhibit 1A, is a block diagram of an embodiment of the invention, with the portions that are generally relevant to claim 1 highlighted in red. *See, e.g.*, Seller 4000A, Seller Interface 4000, Central Controller and Presentation Processor 1000, and Media Interface 6000. As shown in Figure 1a, the Seller communicates with the Central Controller and Presentation Processor 1000 through a Seller Interface 4000. '045 patent at 17:1-45. In addition, the Central Controller and Presentation Processor 1000 also communicates with the Media Venues through Media Interface 6000. 17:46 – 18:8.

Figure 2a, attached as Exhibit 1B, is a block diagram of an embodiment of the Central Controller and Presentation Processor 1000, with relevant portions highlighted in red. The Central Controller and Presentation Processor 1000 preferably constitutes a PC, workstation or server. The Central Controller and Presentation Processor 1000 includes several databases, including a Seller Database 1630, a Presentation Database 1640, and a Presentation Rules Database 1650, as well as a software program (Presentation Generation Program 1710) that automatically creates the presentations which are ultimately published by the Media Venues.

Finally, Figure 2c, attached as Exhibit 1C, is a block diagram of one embodiment of the Seller Interface 4000, with relevant portions highlighted in red. *See, e.g.*, Seller Database 4630,

Presentation Database 4640, Presentation Rules Database 4650, and Presentation and Configuration Program 4715.<sup>5</sup>

**1. “means for a seller to select the media venues”**

The “means for a seller to select the media venues” is a MPF limitation. Accordingly, the scope of this limitation must be construed to cover those structures recited in the specification that correspond to the claimed function. The '045 patent specification discloses that this function is performed by computer software – specifically, the Presentation and Configuration Program (4715). *See* Figure 2c, and Figure 4a (Block 11132). The specification states:

The Presentation and Configuration Program 4715 is both the gateway to the present invention and the controlling software interface for the Seller. The Presentation and Configuration Program 4715 introduces the Seller to the instance of the present invention and allows the Seller to choose in which presentations and which media or advertising channels the Seller wishes to participate. The Presentation and Configuration Program 4715 offers the choices of media and presentations to the Seller. '045 patent at 27:55-65 (emphasis added).

Accordingly, this MPF claim limitation requires a computer software component executing on a processor that presents a selection of potential media venues to the seller, and that allows the seller to select certain venues in which to publish presentations. *See also* the example in the '045 patent at 40:4-67; 41:1-55.

**2. “means for applying corresponding guidelines of the media venues”**

The “means for applying corresponding guidelines of the media venues” also is a MPF limitation subject to interpretation under §112 ¶ 6. Accordingly, the scope of this limitation is properly construed to cover those structures recited in the specification that correspond to the claimed function—*i.e.*, the structures that are used to apply the media venues’ guidelines to the information input by the seller. The '045 patent discloses that the structure that implements the claimed function is a software component—the Presentation Generation Program 1710.

Once a seller selects the media venues in which it desires to advertise products or services, “[t]he Seller Interface 4000, specifically the Configuration and Presentation Program 4715 FIG. 2c, will prompt the Seller for the necessary information for the ... media [it has]

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<sup>5</sup> Note the parallel structures located on Seller Interface 4000 and Central Controller and Presentation Processor 1000. In the preferred embodiment, the creation of a presentation by the Presentation Generation Program 1710 (located on Central Controller and Presentation Processor) parallels the function of the Presentation and Configuration Program 4715 (located on Seller Interface). '045 patent at 42:36-60.

selected.” ’045 patent at 17:25-28; *see also* 41:22-24 (stating that once the seller has selected the media venues in which he would like to publish presentations, the Configuration and Presentation Program 4715 “would then prompt the seller for the necessary and optional information to complete the presentations.”). In the preferred embodiment, information relating to the presentation of products, goods or services entered by the seller is stored in the Presentation Database. *See* ’045 patent at 17:1-4, 11-25. “This [presentation] information is the majority of the data that, when combined with portions of the information within the Seller Database 1630 and the Presentation Rules Database 1650 and processed through the Presentation Generation Program 1710, creates the presentations that are transmitted to the Central Presentation and Selection Server 2000 for presentation to the Buyer.” ’045 patent at 17:4-10.

Once the presentation information has been entered, the Presentation Generation Program “utilizes the information submitted by the Seller and held in the Presentation Database 1640, Inventory Database 1660, and Seller Database 1630 ... to create the requested presentations for the various desired resident or non-resident media ... using the Presentations Rules Database 1650 for style and control guidelines.”<sup>6</sup> ’045 patent at 18:63-19:5. Thus, the Presentation Generation Program “creates a presentation designed to conform to the requirements set forth by each media” by applying the venue guidelines (stored in a Presentation Rules Database in the preferred embodiment) to the information supplied by the Seller. ’045 patent at 58:11-12.

Accordingly, this MPF claim limitation requires a software program executing on a processor that accesses the guidelines of multiple media venues and applies those guidelines to presentation information entered by the seller, thereby creating presentations that comply with the guidelines of the multiple media venues.

**3. Claim 1 Requires Computer Software That Accesses the Guidelines of Selected Media Venues and Reconfigures Seller Entered Information to Generate Presentations for a Plurality of Media Venues That Conform to those Guidelines**

Given the above interpretation of the “means for applying” and “means ... to select”, claim 1 is clearly directed to a method of creating multiple presentations by automatically reconfiguring the information input by the seller to conform to the guidelines of different media

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<sup>6</sup> In the preferred embodiment, a Presentation Rules Database “[has] data fields containing information that controls and limits the style and editing of the presentations created by the Presentation Generation Program.” ’045 patent at 17:46-49; 26:48-51; 32:58-62. In other words, it holds the “guidelines” for each media venue.

venues. The seller selects the media venues, and the software generation program accesses data representing the format and style guidelines of each selected venue. The information input by the seller then is modified by the software generation program that, by applying the guidelines of the selected media venues to the seller's information, creates a separate presentation for each media venue conforming to that venue's guidelines. Thus, when the MPF limitations are properly interpreted, claim 1 requires the ability to automatically create multiple presentations in software that conform to the individual guidelines of multiple media venues via the manipulation of information input by the seller.

The specification is consistent with this interpretation of claim 1. The specification states that once a seller has selected the media outlet(s) in which it would like to display a presentation, the seller is "[prompted] for information, based on the criteria set forth by each media outlet and held in the Presentation Rules Database ... that is then used in the creation of presentations [for the media outlets it has chosen]." '045 patent at 58:2-5; 3:23-25. "The Presentation Generation Program, applying guidelines from the Presentation Rules Database, then creates a presentation for each and every media outlet the seller has chosen," where each presentation is "designed to conform to the requirements set forth by each [and every] media." '045 patent at 58:11-12; 3:29-31. "The Presentation Generation Program then . . . transmits the presentation to the appropriate destination." '045 patent at 3:32-33.

The '045 invention "automatically accesses and applies not only editing, style, graphics, data, and content rules, but also design specification and architectural requirements to the design environment," ['045 patent at 4:67; 5:1-3] thus "allowing for the creation of presentations that comply with the design and architectural requirements of any and all participating media." '045 patent at 3:58-61; *see also* 27:55-67; 28:1-9. The claimed invention "edits and structures data and information from an individual seller ... into consistent, designed and controlled presentations." '045 patent at 13:4-6. In the method of claim 1, the seller does *not* create presentations itself—the seller merely selects media venues from a list and inputs data relevant to its presentation (*e.g.*, product description, product photos, contact information, *etc.*), as requested. Once this information has been entered, customized presentations incorporating that data and which conform to the guidelines of each and every media venue the seller selected are automatically created for the seller by the presentation generation software.

The prosecution history of the '045 patent reinforces these same concepts. In the initial Office Action, the PTO rejected then-pending claim 1 based on a patent issued to Mandeberg, *et al.* Office Action mailed November 8, 2001, at 4-5. The originally filed claim 1 did not include a means for applying, but instead recited a “presentation rules database.” The PTO found that Mandeberg included a presentation rules database as per the originally-filed claim 1. *Id.* In the Response filed January 22, 2002, attached as Exhibit 2, Patent Owner rewrote claim 1 in the form in which it ultimately issued, and amended limitation (b) to require the “means for applying.” In the Remarks, Patent Owner pointed out that Mandeberg “does not contain a method to create the presentations.” Response at 8. Patent Owner then quoted language from Mandeberg which stated that “these digital multimedia presentations are generally developed by creative professionals at advertising agencies or clients.” *Id.* Thus, Patent Owner demonstrated that rather than providing computer software that created the presentations, Mandeberg instead required that those presentations had to be created by the client or its advertising agency. *Id.* Patent Owner then clearly reiterated that the novelty of claim 1 was due, at least in part, to the fact that the computer software created the presentations rather than requiring the Seller to make changes to each presentation:

Open-access presentations and dynamic presentations are both common in the art. What is not common in the art are open-access presentations that are created and published from data input into a remote program at a Seller’s location that results in the updating of a database that then results in the changing of multiple open-access presentations. **The creation of multiple open-access presentations being done without the Seller making the changes within a code editor is new to the art**, and being practiced only within our invention and its commercial application. Response at 10.

In its Reasons for Allowance, the PTO agreed, concluding that while Mandeberg was “[t]he closest prior art”, that patent “[did] not disclose a system for selecting media venues owned by other than the seller and creating a presentation that complies with proper guidelines.” Notice of Allowability at 2 (attached as Exhibit 3). To the extent the PTO is using a different interpretation here, it can hardly be deemed “reasonable” if it conflicts with a prior interpretation.

Based on the MPF limitations, the claim context, the specification and the prosecution history, Patent Owner respectfully submits that claim 1 has not been properly interpreted.

### **III. All Claims Should Be Allowed**

#### **A. Legal Standard for Anticipation Rejection by PTO**

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); MPEP § 2131. In order to demonstrate anticipation, the PTO must show “that the four corners of a single, prior art document describe every element of the claimed invention.” *Xerox Corp. v. 3Com Corp.*, 458 F.3d 1310, 1322 (Fed. Cir. 2006) (quoting *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1282 (Fed. Cir. 2000)). “The elements must be arranged as required by the claim but ... identity of terminology is not required.” *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990).

In order to reject a claim containing a MPF element on the grounds of anticipation, the PTO must make a *prima facie* case of equivalence. MPEP §§ 2183-2184. Federal Circuit panel decisions refer to both the triple identity test (requiring prior art to perform the identical function specified in the claim in substantially the same way, and to produce substantially the same results as the corresponding element disclosed in the specification), and substantiality standards (requiring insubstantial differences between the prior art element and the corresponding element disclosed in the specification) for equivalence. The PTO has failed to make a *prima facie* case of equivalence under either standard. In fact, it appears that Requester and the PTO have wholly disregarded the corresponding structure for each of the means-plus-function limitations, as there is no discussion about the “structure” that corresponds to the functionality in any of the MPF limitations. However, even if the PTO had conducted such an analysis, the PTO would not have been able to make a *prima facie* case of equivalence for each and every limitation in the claim because, at minimum, no prior art reference contains a software element that performs the “applying guidelines” function to automatically create customized presentations.

#### **B. The Prior Art Lacks the “Means for Applying” Limitation of Claim 1**

One of the critical distinctions between claim 1 and all of the cited prior art is that the method of claim 1 must *create* a presentation that conforms to the guidelines of a selected media venue via the *application* of said guidelines to information input by the seller. In order to anticipate this claim, prior art must teach or render obvious the *creation* of a presentation that conforms to a selected media venue’s guidelines via the *application* of those guidelines to information entered by a seller. This “applying” step must be performed by a structure that is equivalent to the computer software component described in the patent specification—the Presentation Generation Program 1710. The references relied on by the PTO are deficient in that



they all fail to disclose or suggest a method that includes this fundamental accessing and creating step required by the “means for applying.” In fact, most of the prior art references teach away from this limitation. Furthermore, there is no apparent reason to combine any of these references in the manner indicated in the Office Action. And even if there was, it is axiomatic that no combination of these references—which are each missing the *creation via application* limitation—could teach or render these limitations obvious, even when viewed cumulatively. Finally, in addition to this fundamental distinction between the ’045 patent and cited references, many of those references lack other limitations found in claim 1, as discussed below.

Accordingly, it is respectfully submitted that the cited art does not teach or suggest all limitations of claim 1, and thus the patentability of this claim should be confirmed. Because claims 2-23 all depend from claim 1, the patentability of these claims also should be confirmed.<sup>7</sup>

### **C. The Prior Art Rejections Should Be Withdrawn**

#### **1. AdForce**

Claim 1, as well as dependent claims 2-10 and 12-23, were rejected under 102(b) as anticipated by AdForce. The AdForce reference, however, fails to disclose all of the limitations of claim 1, and accordingly, the ’045 claims are not anticipated by AdForce.

AdForce describes an ad management system designed to facilitate the targeting and placement of a seller’s presentations, and to evaluate the “success” of those placements. As stated on page 1-1, AdForce was a “full-service advertising solution designed to create, manage, target, and report advertising on the World Wide Web.” The AdForce service included the following major components, as listed on page 1-3:

- Campaign Scheduling and Approval
- Ad Targeting
- Inventory Management
- Ad Delivery
- Reporting
- Auditing
- Billing

Notably missing from the list of “major components” is any mention of ad creation. The reason that the AdForce reference does not list creation as a major component is simple—AdForce did not provide any software to automatically create advertisements. Instead, the AdForce system

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<sup>7</sup> Although each piece of prior art and/or prior art combination will be addressed below, it should be noted that the listing of limitations not taught or suggested by the prior art is not intended to be exhaustive.

required sellers to know the guidelines of each media venue they wished to publish to and manually create each presentation and upload each presentation to the server.

**a. Claim 1**

With respect to limitations (a), (b), (d) and (e) of claim 1, Requester focused solely on Chapters 6 and 7 of the AdForce reference. Request at A1-2–A1-7. Likewise, the PTO in its rejection of claim 1 focused on these same two chapters. OA at 70-71.

Chapter 6 of AdForce discusses Advertising. On page 6-22, AdForce describes “Creatives,” which are defined in the AdForce Glossary as “advertising banners.” Adforce at G-8. In the discussion of Creatives, the AdForce reference states that the AdForce server **receives** advertisements from Advertisers and **delivers** them to Web sites. But AdForce states that “[t]he submitted advertisements must be entirely correct and follow AdForce Service’s rich media ad guidelines, or campaign delivery can be delayed.” *Id.* at 6-22. While the “AdForce service can **deliver** virtually any ad style,” it does not create these ads for the seller. *Id.* The seller must upload these advertisements to the system. Thus, while the AdForce server is capable of **receiving** advertisements from sellers and **forwarding** advertisements to media venues, it **does not create** presentations by applying the guidelines of selected media venues to the information input by the seller. Instead, the AdForce reference explains that the seller or its advertising agency must itself author the advertisement (or “Creatives”) and must submit the completed advertisement to the AdForce server for delivery to the media venues. AdForce does not disclose any “creation” software capable of applying media venue guidelines to advertising content entered into the system by a seller. Thus, AdForce does nothing to alleviate the extensive workload required of sellers to learn and conform their presentations to the disparate guidelines of various media venues, which is a central aspect of the claim 1.

The PTO cites pages 1-3, 6-22, 6-28, 6-30, 7-16, and 7-17 as anticipating the step of creating a presentation via a “means for applying” media venue guidelines. OA at 70-71. But none of those pages disclose or suggest software that applies media venue guidelines to create a presentation from user information. Rather, these passages make evident that the advertising presentations must be created by the seller and uploaded to the AdForce server for distribution.

To create a presentation, the AdForce seller must first familiarize itself with the guidelines of particular media venues as described in Web site questionnaires. *See* AdForce at 8-1–8-7. The seller then must manually create ads that conform to these guidelines, upload each

ad into the AdForce server, and then describe its characteristics—*i.e.*, size and file format—to the server. Thus, it is the seller’s responsibility to read, understand, and apply these guidelines when creating an ad for the AdForce system. The AdForce system does not attempt to “apply” these guidelines in any way, much less through a means for applying the guidelines as specified in claim 1—it simply provides them in a centralized location to facilitate access by the sellers. There is certainly no computer software in AdForce that operates to take seller information and, via the application of the guidelines of each selected media venue, generate a plurality of presentations that each comply with the corresponding media venue guidelines of the media venues where the presentation is to be published. Yet the “means for applying” limitation in claim 1—as well as other language in that claim—clearly requires such software. In fact, the approach outlined in the AdForce reference is not substantially different than the prior art described in the ‘045 Background. AdForce (like most of the other references cited by the PTO) highlights the exact problem the ‘045 invention was created to solve—*i.e.*, that sellers had to know the guidelines of various venues and then create a number of individual presentations that conform to each media venue’s guidelines. Rather than meeting the limitations of claim 1, the AdForce reference only reinforces the need for such a solution.

The manner in which the seller-created advertisement is uploaded to the AdForce server is described in Chapters 6 and 7. *See* AdForce at 6-28—6-34. Initially, the seller selects an ad to be inserted into a particular media venue. This is done by selecting the “Pick File” tab, as shown on page 6-28. Once the seller selects the “Pick File” tab, the software displays a folder where pre-existing creatives have been previously stored by the seller. AdForce at 6-28—6-29. After the seller selects the specific advertisement for uploading, the seller must identify the file format (“ad style”) of the presentation and the size (“ad size”) of each presentation. *Id.* at 6-30. *See also id.* at 7-16 and 7-17 (requiring a Seller to enter descriptions [size and style] of presentations uploaded into the system prior to distribution). In the example on page 6-30, a Seller is shown uploading a first creative (Creative #1) to a specified URL address, with a pre-defined ad style (GIF89) and ad size (468 x 60). Clearly, the AdForce program is not creating these creatives for the seller. Instead, the seller creates an ad that complies with media venue guidelines, uploads the ad, and then identifies the ad’s characteristics. AdForce even notes that an ad can be entered into the AdForce service before seller creates the ad, using the “No Image Yet” option. AdForce at 6-77. This option is used to serve as a placeholder until the presentation is subsequently created

and uploaded by the seller. *Id.* This clearly illustrates that the AdForce system does not create presentations – instead it is merely an uploading process used to place the manually created presentations into the AdForce system for distribution.

Accordingly, the AdForce reference fails to anticipate the “means for applying” claimed limitation. For at least that reason, Patent Owner respectfully requests the PTO to withdraw the § 102(b) rejection based on AdForce. Nor would claim 1 have been rendered obvious by AdForce, given the fact that the AdForce reference fails to disclose or suggest the “means for applying” limitation, and in fact, teaches away from such a solution by requiring that the seller manually create every single presentation and upload each presentation to the AdForce system.

The dependent claims 2-10 and 12-23 also were rejected by the PTO based on the AdForce reference. Patent Owner respectfully submits that these claims are patentable for the reasons outlined above, and for the additional reasons set forth below.

**b. Claim 3**

The function of the MPF clause in claim 3 requires “creating structured presentations from the sellers information.” However, the AdForce reference fails to disclose or teach “structured presentations”, *see generally* ‘045 patent at 44:34-65, or software for creating any such presentations. Thus, AdForce does not meet the limitations of claim 3.

**c. Claim 13**

Claim 13 requires “means with instructions for a buyer to select and purchase offers of sellers.” The AdForce reference does not disclose or suggest this capability. Nothing in the AdForce system suggests providing instructions or search parameters that enable a buyer to search for offers that may be of interest. The PTO cites to page 6-100, but this page is directed to transaction tags that permit the system to monitor transactions for billing and reporting purposes. The use of transaction tags to log transactions is different than the “means with instructions” limitation of claim 13.

**d. Claim 16**

The PTO cited pages 6-37, 6-100, and 7-7 as anticipating this limitation. However none of these pages contain any reference to editorial, design, or publication guidelines as disclosed in the ‘045 patent. ‘045 patent at 9:10-14. Although page 6-22 states that “submitted advertisements must be entirely correct and follow AdForce Service’s rich media ad guidelines,” this in no way discloses storing “editorial, design and publication standards” in a database as required by claim

16. Rather than conforming the seller information to the guidelines of the media venue as per the '045 patent, the AdForce system works by finding websites that can accept a previously configured presentation. Accordingly, the AdForce reference fails to anticipate this limitation.

**e. Claim 20**

As discussed at length with regard to claim 1, the AdForce reference wholly fails to teach or disclose any means for creating a presentation, as the seller is expected to create and upload a presentation. Accordingly, the reference necessarily fails to disclose “a computer” that “control[s] and facilitate[s] creation ... of all presentations.”

**f. Claim 21**

As discussed with regard to claims 1, and 20, the AdForce reference fails to teach or disclose any means for creating a presentation, as the seller is expected to create and upload a presentation. Accordingly, AdForce necessarily fails to disclose “a means for automatically creating open-access electronic presentations,” as required by claim 21.

**g. Conclusion**

Given the marked differences between the '045 claims and the AdForce reference, Patent Owner respectfully requests confirmation of all claims over AdForce.

**2. Del Sesto '882 Patent**

Claim 1, as well as dependent claims 2-9 and 16-21, were rejected under § 102(b) as anticipated by the Del Sesto '882 patent.<sup>8</sup> Del Sesto fails to disclose all of the limitations of claim 1, and thus the '045 claims are not anticipated by that patent.

The Del Sesto patent discloses a method for buying and selling television advertising over a computer network. It is, at its core, a match-making service designed to match advertisers with media venues. In contrast to the '045 patent, Del Sesto does not concern itself with the actual creation of those advertisements—it simply assumes that an advertisement (presentation) has been or will be created by the advertiser prior to the match-making. In fact, it does not even contemplate that the media venues will have any “guidelines” in the first place. Advertisers search for advertising slots available in certain markets (“avails”) based on parameters such as target demographics, desired dayparts (soap operas, prime time, *etc.*), and desired category of show or program, and make bids on certain avails offered by specific media venues. Del Sesto at

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<sup>8</sup> Del Sesto was filed February 5, 1999 and issued January 10, 2006. Thus, Del Sesto only qualifies as § 102(e) art. Patent Owner reserves the right to swear behind Del Sesto.

2:27-50; 6:40-54; 9:30-42. A media venue then may offer a contract to an advertiser for one or more avails. *Id.* Once an advertiser accepts a media venue’s contract, the advertiser uploads its commercial to a server. *Id.* The media venue then downloads this content from the server and integrates it into its programming system for airing at the agreed times. *Id.* Accordingly, media venues have no control over the content of the commercials, and the commercials are not changed in any way after their initial creation by an advertiser. As a result, the Del Sesto patent is simply inapplicable to the ’045 claimed invention.

**a. Claim 1**

Figure 6 of Del Sesto illustrates the process for providing the media venues with an advertiser’s presentation.<sup>9</sup> Once the “buyer” accepts the “seller’s” contract, “the buyer uploads the advertising or commercial content to the server.” Del Sesto at 9:30-43. “Buyers are able to upload to the server the actual commercial or advertisement in digital form.” *Id.* at 2:60-66. Thus, Del Sesto only discloses a system in which advertising content is created outside of the system and uploaded to a central server of the system. There is nothing in Del Sesto that suggests a “means for applying” that automatically generates presentations for multiple media venues that conform to the guidelines of those media venues.

In fact, there are no “guidelines” even provided in Del Sesto, as the term is used in the ’045 patent. As noted by the PTO, the media venue may “view and update her avail inventory” and “create and edit rate cards.” OA at 72; Del Sesto at 8:36-38-43. However, these are not “guidelines” for formatting presentations. Instead, “avail inventory” simply lists where and when the media venue has time and space to display an ad, and “rate cards” indicate the “day and time of a particular broadcast, the avail category (preemptable, preemptable with notification, or non-preemptable) and the price.” Del Sesto at 8:42-55. Accordingly, Del Sesto cannot disclose applying media venue guidelines to a seller’s input to create multiple compliant presentations, as it does not disclose the existence of any media venue guidelines in the first place.

With regard to the “means for applying” limitation, the PTO contends that Figure 5C and the supporting text at column 8, lines 42-59 meet this MPF limitation. Figure 5C, however, merely discloses a diagram of the screen display where the media venue (the “seller” in Del Sesto) can create and edit rate cards. Del Sesto at 8:42-43. Neither Figure 5C nor the

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<sup>9</sup> In the Del Sesto patent, sellers of products/services are referred to as “buyers,” media venues are referred to as “sellers,” and presentations are referred to as “commercial or advertising content.”

accompanying text mention the creation of presentations, or the application of media venue guidelines to information—they only discuss a method of scheduling and pricing the display of presentations by a media venue. There is absolutely nothing in Del Sesto equivalent to a presentation generation program that applies the guidelines of a plurality of media venues to seller information to generate a custom presentation; *i.e.* a presentation complying with the guidelines of selected media venues. Accordingly, Del Sesto fails to meet the “means for applying” limitation.

The Examiner also cites Figure 7 as purportedly showing that Del Sesto creates a presentation pursuant to the whereby clause of claim 1. Figure 7 is a block diagram of a digital delivery system for transferring advertising content between buyers and sellers. In this system, Figures 709A-C are client stations that connect to the Digital Server 701 and Storage 707. Del Sesto at 9:59-67. These client stations are used to “enter advertising content into their systems, convert the content to digital format (such as MPEG files), and upload the content to the storage 707.” *Id.* The Examiner apparently contends that converting content to a digital format constitutes “creation” of a presentation. While Patent Owner disagrees that digital conversion constitutes creation within the reasonable scope of the '045 patent, claim 1 clearly requires that such a created presentation “complies with said guidelines of the media venues selected.” The digital conversion described in Del Sesto is applied generically to the ad content, regardless of the media venue selected. In Del Sesto, this conversion is done simply to enable digital storage of the ad content, and not to conform to specific guidelines of the media venues. But the creating requirement of claim 1 requires that the creation of each presentation is done to comply with the individual guidelines of specific, selected media venues (plural). Del Sesto does not do that.

Furthermore, the system disclosed in the Del Sesto reference does not actually disclose the “transmission” of presentations to the media venue for publication. Instead, sellers “upload” their presentations “to the server,” and the media venue then “downloads the content” from the server and “runs or plays the content.” Del Sesto at 2:60-65; 9:37-43; Fig. 6.

For at least these reasons, Patent Owner respectfully requests that the PTO withdraw the anticipation rejection based on the Del Sesto patent. Patent Owner respectfully submits that the claims dependent on claim 1 are patentable for the reasons outlined above. In addition, a number of the dependent claims include limitations that merit patentability in their own right.

**b. Claim 3**

The Del Sesto patent fails to disclose or teach “structured presentations,” or any software for creating such presentations. Thus, Del Sesto does not meet the limitations of claim 3.

**c. Claim 4**

As noted above, Del Sesto only discloses a server to which sellers can upload a presentation, and from which media venues can then download the presentation. As shown in Figure 7, “server 701 is provided with a large memory storage device such as storage 707 for storing advertising content” so that sellers can “upload the content to the storage 707,” after which media venues “are then able to download the content from the storage 707.” Del Sesto at 9:54-56, 59-67. In other words, the server in the Del Sesto reference acts as a storage device for presentations—not as a “means for transmission” as described in the ‘045 patent.

**d. Claim 5**

As noted in the discussion of claim 1, Del Sesto does not disclose any “media venue guidelines,” as this term is used on the ‘045 patent, nor a means to input such guidelines as required by claim 5. Accordingly, Del Sesto fails to meet the limitations of claim 5.

**e. Claim 16**

Nowhere does Del Sesto disclose the existence of “editorial, design, and publication standards.” The Del Sesto patent is focused on finding presentation slots based on the particular demographic that will likely be viewing those slots, and not the actual content of the presentations themselves. In fact, as noted above, Del Sesto does not disclose any sort of media venue “guidelines” that control the look and content of created presentations. The only requirements identified in Del Sesto are the creation of a contract and payment for the presentation slot. Accordingly, Del Sesto does not disclose a media database containing “editorial, publication, and publication standards” for each of the media venues listed therein.

**f. Claim 18**

As noted above, Del Sesto only discloses a server to which sellers can upload their presentations, and from which media venues can download the presentation. In other words, the server in Del Sesto acts as a storage device for presentations, and not a “means for transferring” the multiple presentations to their respective multiple media venues, as claimed.

**g. Claim 20**

As discussed above in regard to claims 1, 4, and 18, the server in Del Sesto acts as a storage device for presentations, accessible by both sellers and media venues—it does not



participate in any way in the creation of presentations. The PTO cites to Del Sesto Figures 1, 4C and 4D, and the accompanying text at 6:37-57. These portions of Del Sesto only discuss a method for a seller to search for appropriate media venues and presentation slots in which to display its presentation—the creation or distribution of these presentations is not addressed.

**h. Claim 21**

Claim 21 was rejected under § 102(b) as anticipated by Del Sesto. OA at 138. However, the Del Sesto reference does not teach or disclose *any* means for creating presentations. Accordingly, it does not disclose a “means for automatically creating open-access electronic presentations.”

**i. Conclusion**

Given the marked differences between the '045 claims and Del Sesto, Patent Owner respectfully requests the PTO to confirm that all claims are patentable over that patent.

**3. AdKnowledge's MarketMatch Guide**

Claim 1, as well as dependent claims 2-10 and 16-22, were rejected under § 102(b) as anticipated by AdKnowledge's MarketMatch Guide. The MarketMatch reference fails to disclose all limitations of claim 1, and thus the '045 claims are not anticipated by MarketMatch.

Before addressing the substance of the AdKnowledge disclosure, Patent Owner respectfully notes that it is not even clear that the MarketMatch Guide qualifies as prior art. There is nothing in the MarketMatch Guide that serves as a copyright date or provides a clear indication of a publication date. Consequently, Patent Owner respectfully submits that this document cannot serve as prior art. Requester and Declarant Schulz contend that the code 3300-598 indicates that the document was published in the fifth month of 1998—*i.e.*, in May 1998—but establishing a publication date based on this ambiguous code, without any copyright date is extremely tenuous. The Declarant does not attest to having personal knowledge of the actual publishing date of the document or personal knowledge of the application of the code to the document, its meaning or its accuracy. The code may have nothing to do with a date, or even if it did signify a date, the date could simply represent a version number and a preparation date, rather than a publication date. Neither the Declarant nor the Requester have explained the significance of the first portion of the code (the “3300”), and thus one is left to speculate about what this code represents. Given these questions and the lack of any corroboration of the Declaration, Patent Owner respectfully submits that requester has failed to carry its burden of

showing that the Marketmatch Guide is prior art. For this reason alone, Patent Owner respectfully requests that the rejection based on AdKnowledge's MarketMatch Guide be withdrawn.

The MarketMatch reference is primarily concerned with selecting websites to maximize the effectiveness of a seller's advertisements, while also analyzing the results of such ad placement. As noted on page 2, "there are a multitude of sources to help media planners identify the best media vehicles in which to place advertisements. *Planner* is the leader in providing the only comparable tool for Web media planning." The "Highlights" include:

Data needed to make relevant assessments:

- Syndicated research
- Demographics
- Audit data
- Psychographic profiling
- Site content reviews and quality ratings

...

And the power to use it:

- Pre-buy analysis
- Buy worksheet for scheduling and budgeting campaigns

...

- Personal, historical data on past buys
- Downloadable reports

MarketMatch at 3. Notably missing from this list is any mention of Advertisement Creation. This is because the focus of MarketMatch was *finding and identifying* the best media venues in which to place a presentation—not the creation or actual transfer and placement of the presentation. In fact, MarketMatch did not support any mechanism to automatically create advertisements, much less multiple advertisements each automatically customized to the guidelines of the media venue to which it is to be published. Instead, it assumed that the seller will have or create its own presentations for use with this system.

**a. Claim 1**

The MarketMatch reference does not teach a method for creating presentations via the application of selected media venues' guidelines (via a "means for applying") to data input by the seller. The reference only contemplates three "guidelines" with which presentations created by the seller must comply—(1) a presentation file size restriction, (2) a presentation size/dimensions restriction, and (3) an advertising technology restriction. MarketMatch at 22.

However, the reference in no way “applies” these guidelines to “create” a conforming custom presentation. Instead, the reference allows sellers to essentially weed-out media venues that do not accept the type of ad technology the sellers use in their ads, and/ or ones that do not accept standard ad sizes. For example, under the section entitled “Ad sizes,” the reference states that:

Your advertising team has been complaining about all the different size banners that they need to create. To ease production costs and headaches, you want to advertise only on those sites that supports the IAB standard banner sizes. To find those sites, Click *Choose All*. MarketMatch at 15 (emphasis added).

This is followed by a graphic that displays eight “standard” presentation sizes, and allows a seller to see a list of media venues that use those presentation sizes. *Id.* However, in the end, the reference leaves it up to the seller to insure that it creates the correct size and “type” of presentation for each media venue. The MarketMatch system, therefore, does not create presentations in accordance with the media venue’s guidelines.

The MarketMatch reference reiterates the same problem disclosed and addressed by the ‘045 patent in that a seller using the MarketMatch system will have to create multiple presentations to comply with the varying ad size requirements of media venues. Rather than solving this problem, the MarketMatch reference “eases” this problem by allowing a seller to limit its media venue selections to sites that support “standard” banner sizes. MarketMatch at 15. This means that a seller (or its “advertising team”) who restricts its media venue selection in this manner will likely have to create fewer presentations than it would otherwise, since it now knows that there are only 8 possible presentation sizes. Of course, this doesn’t take into account that media venues may have other guidelines, and therefore having a presentation of the “correct” size for a particular venue may not necessarily mean that the ad meets a media venue’s other formatting guidelines. However, this reference doesn’t contemplate that a media venue will have any other such guidelines and doesn’t address compliance with such guidelines. The MarketMatch program does not apply a media venue’s guidelines to seller information—it is a method to narrow down the selection of potential media venues to those venues that allow a specific presentation size. The MarketMatch program does not create an ad at all—it simply targets the selection of media venues to those which will find a particular size of presentation acceptable.

The PTO cites page 14 of MarketMatch as disclosing the step of “applying guidelines” to “create” presentations and cites pages 14, 15 and 22 as meeting the creation of a presentation

portion of the whereby clause. OA at 74. Page 14 describes a feature of the MarketMatch system, called “Planner,” that allows a seller to search for sites that allow (or “support”) specific types of ad technologies, such as java or shockwave, as well as sites that support SmartBanners. Like the selection screen provided for ad sizes on page 15, these selection screens merely “ease” the problem of ad creation by allowing a seller to limit its media venue selections to sites that support certain technologies. By restricting media venue choices to those that allow certain technologies, the MarketMatch system does nothing to maximize the seller’s exposure. The seller simply insures that it will not have to create multiple presentations using a variety of technologies by selecting only media venues that allow presentations using the chosen technology. The MarketMatch system thus does not modify or restructure the presentation to meet the “technology” requirements of a media venue or take into account that media venues may have other guidelines, and therefore having a presentation using the “correct” technology for a particular venue may not necessarily mean that the ad meets a media venue’s other formatting guidelines. Specifically, this system fails to apply any guidelines, standards, or rules that effect design and style (or look and feel) of each presentation.

Indeed, page 22 of the MarketMatch reference teaches away from the use of a “means for applying” guidelines. On this page, the MarketMatch Guide describes and depicts an aspect of *Planner* that gives a seller a “report” that essentially lists the requirements of the media venues that the seller has decided to use to display a presentation. The reference states that “Now that you know what sites you are purchasing you need to start producing the ads ... select view reports to see how easy it is to give your creative and trafficking colleagues all the information they need to create and traffic your banners.” MarketMatch at 22 (emphasis added). In other words, *Planner* does not create a presentation for a seller—it merely gathers the three guidelines (file size, presentation size, and ad technology) of the selected media venues in one place so that the seller (or a third party) can create a presentation that complies with the guidelines of each media venue. Once again, this requires the seller to create a variety of presentations, which it will then have to upload into the system for distribution to the media venues, and to know what the guidelines are for each media venue. Accordingly, the MarketMatch reference not only fails to disclose a method for the automated creation of presentations via the application of media venue guidelines, but arguably teaches away from such a method, and therefore does not anticipate claim 1.

For at least these reasons, Patent Owner respectfully requests that the PTO withdraw the anticipation rejection based on the AdKnowledge MarketMatch Guide. Patent Owner respectfully submits that the claims depending from claim 1 are patentable for the reasons outlined above. In addition, a number of the dependent claims include limitations that merit patentability in their own right, as discussed briefly below.

**b. Claim 3**

The function of the MPF clause in claim 3 requires “creating structured presentations from the sellers information.” However, the MarketMatch reference fails to disclose or teach “structured presentations,” or any software for creating such presentations. Thus, MarketMatch does not meet the limitations of claim 3.

**c. Claim 16**

MarketMatch does not disclose a media database that includes “editorial, design [or] publication standards.” While the MarketMatch Guide (at 14-15, 22) includes mention of (1) file size of the presentation, (2) dimensions of the presentation, and (3) the advertising technology allowed, these are not directed to the design or editorial content of a presentation nor are they “standards” or “guidelines” in the sense that they are applied by the system in creating presentations, as discussed above.

**d. Claim 20**

As discussed above, MarketMatch fails to disclose any means for creating a presentation. Accordingly, the reference necessarily fails to disclose “a computer” that “control[s] and facilitate[s] creation and distribution of all presentations.”

**e. Claim 21**

The MarketMatch reference wholly fails to teach or disclose any means for creating a presentation, as the seller himself is expected to create and upload presentations for use within the system. Accordingly, the reference necessarily fails to disclose “a means for automatically creating open-access electronic presentations” as required by claim 21.

**f. Conclusion**

Given the marked differences between the '045 claims and the MarketMatch Guide, Patent Owner respectfully requests the PTO to confirm that all claims are patentable over that reference.

**4. Aaddzz Highlights Website**

Claim 1, as well as dependent claims 2-10 and 16-23, were rejected under § 102(b) as anticipated by the Aaddzz Highlights reference . However, this Aaddzz reference fails to disclose all limitations of claim 1, and thus the '045 claims are not anticipated by Aaddzz.

The Aaddzz system<sup>10</sup> is focused on ad placement, rather than ad creation. It essentially acts as a broker or a match-maker, matching media venue owners with available advertising space with sellers who have advertisements to display. It seeks to maximize both the profits to the media venues and the exposure (or click-thrus) of a seller's advertisements via "ad targeting." However, it falls well short of its goal because, as with the other prior art systems advanced by Requester, it lacks any software for creating an advertisement, much less software capable of creating multiple advertisements by applying corresponding guidelines of selected media venues to information provided by a seller. Instead, Aaddzz also requires the seller (or "advertiser") to create and upload presentations on its own in order to use the ad placement system.

**a. Claim 1**

Aaddzz lacks a "means for applying" the media venue guidelines and does not "create" presentations as required by claim 1. Furthermore, the reference does not teach a "means for a seller to select the media venues" in which it would like to display a presentation.

The "means for applying" and "create a presentation" limitations of claim 1 are directed to ad creation. As noted above, the Aaddzz system does not create ads; instead it merely places ads in media venues. Accordingly, Aaddzz requires the seller to understand the media guidelines, and then independently create and upload presentations that conform to these guidelines, in order to use the ad placement system. The Aaddzz documents envision a system in which the seller will separately upload different versions of an ad that the seller (and not the Aaddzz software) has created. For example, on page 15 of the Highlights reference, Aaddzz notes that a seller should "Allow time to create your advertising banners," thus strongly implying that the seller must separately create the banners. On the next page under the section entitled "Creating an Ad

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<sup>10</sup> The Aaddzz documentation includes a Brochure and a Highlights Website. Although the PTO entered separate rejections, these two documents are treated together as their teachings overlap. To facilitate discussion, Patent Owner assumes sequential numbering of all pages in the two documents—Brochure, pages 1-6; Highlights, pages 1-42. Patent Owner notes for the record that it is not clear if the Aaddzz Highlights document constitutes prior art, as apparently it was obtained from the Internet Archive's WayBack Machine after the filing date of the '045 patent, without any corroborating evidence of the date the website was actually published.

Campaign,” Aaddzz states that “You will need ad images, or banners, to advertise. Your ads must be in GIF or JPEG formats. Your ads may be displayed on both light and dark backgrounds.” Aaddzz Highlights at 16. On page 11 of the Highlights reference (in the sections entitled “Ads, Spaces, & Places”), sellers are given the following tips on creating presentations:

**Ad Sizes**

... advertisers should provide ad images in as many sizes as possible to have the maximum possible exposure for their ads. To aid Aaddzz in targeting, the images for the various sizes should contain substantially similar images and wording.

...

**Animation**

...some sites may not allow animated ads. Therefore, we recommend advertisers make both animated and non-animated versions of their ads.

...

**File Format**

Ads can be in either GIF or JPEG format.<sup>11</sup>

Page 29 of the Aaddzz Highlights reference also advises sellers to “Avoid placing bright text on bright backgrounds. To increase the contrast, you might try adding a shadow or outline to the text,” and that “If your ad images for the different sizes are substantially different, you should submit them as separate ads.” These “tips” clearly indicate that the creation of the presentation is the responsibility of the seller, and furthermore, that the Aaddzz system software does not “apply” any of the media venue guidelines to customize the presentations that the seller creates.

Although page 18 of Aaddzz Highlights discusses the “Create New Ad” function of the Aaddzz program, the document makes it clear that an ad is not “created” in the sense that a program takes seller input and applies media guidelines to that input to create a presentation. In the Aaddzz system, “creating an ad” requires the seller to: (1) manually generate an ad in each desired size; (2) “create a folder for each ad” that is “named by its size”; (3) log into Aaddzz; (4) enter a unique name for the ad to distinguish it from other ads on the system page, and (5) “load your ad’s images into the Aaddzz system” by “enter[ing] the URL of the directory containing your ad” and clicking load. Aaddzz Highlights at 17-18. Once the seller performs these steps, “Aaddzz will attempt to load your images. It will show error messages for sizes it is unable to load.” *Id.* at 18. Accordingly, the “creation” of an ad in Aaddzz merely involves “uploading” a presentation that was previously created by the seller. Consequently, it is evident that Aaddzz

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<sup>11</sup> See also page 5 of the Aaddzz Brochure.

lacks a “means for applying ... media guidelines” that is in anyway equivalent to the claimed presentation generation software program.

The PTO cites pages 3, 16, and 22-23 as anticipating the step of creating a presentation via a “means for applying” media venue guidelines. But as the discussion above illustrates, the Aaddzz documentation requires that the seller create the ads prior to using the system. As reflected on pages 22-23 of Aaddzz Highlights, Aaddzz represents a system in which a media venue can restrict the display of presentations on its site to those with a specific “rating,” and deny presentations that are above a certain size, link to specified domain names, and/or have a low “presentation rating.” In other words, Aaddzz describes a method of entering certain media venue guidelines into a system, and using them to block the display of certain presentations. These pages do not mention the creation of a presentation, or the application of these media venue guidelines to information entered by a seller in order to create an appropriately formatted presentation. Accordingly, they do not anticipate the “means for applying” limitation.

The Aaddzz references also lack a “means for a seller to select media venues” that is equivalent to the operation of the Presentation and Configuration Program 4715. In fact, the Aaddzz system does not allow any mechanism for a seller to select particular media venues in which it would like to display a presentation. “Since sites can join Aaddzz in minutes and the content of any site can change at any time, reviewing sites to determine their suitability for advertising is not practical” Aaddzz Highlights at 9. Aaddzz decides where to display ads via “automatic ad targeting,” wherein the system itself dynamically decides on which media venues a presentation should be displayed. In fact, sellers using the Aaddzz system have no ability to directly select the media venues where their ads are to be published, as required by claim 1, as it is the system that does the selection of the media venues on which the presentation will be published: “Aaddzz will figure out the best pages, not just sites, for your ad. Aaddzz will use ad performance data ... to statistically determine the best pages.” *Id.* at 9. “If the ad did well on [a certain] page, Aaddzz would quickly learn to deliver the ad in this space.” *Id.* In the reference, the question “Which sites will my ads appear on?” is answered as follows: “Aaddzz cannot guarantee on which sites ads will appears, as new publishers can join and leave the Aaddzz network at any time.” *Id.* at 9-10. Accordingly, this reference actually teaches away from providing a means for the seller to select media venues in which to display his presentation. For at least these reasons, Patent Owner respectfully requests that the PTO withdraw the anticipation



rejection based on the Aaddzz reference. Patent Owner also respectfully submits that the dependent claims are patentable for the reasons outlined above. In addition, a number of the dependent claims include limitations that merit patentability in their own right.

**b. Claim 3**

The function of the MPF clause in claim 3 requires “creating structured presentations from the sellers information.” Aaddzz fails to disclose or teach “structured presentations,” or software for creating any presentations, and thus does not meet the requirements of claim 3.

**c. Claim 17**

Aaddzz does not disclose a system where media venues have the ability to list their rates for displaying a presentation. Instead, the “[seller] chooses the price paid per ad impression or click-thru.” Aaddzz Highlights at 25. The Aaddzz Highlights reference instructs sellers to first “determine how much you are willing to pay per impression/ click-thru,” and suggests a rate of \$10 per thousand impressions/ \$100 per thousand click-thrus as starting rates. *Id.* at 16. It then suggests “increasing the amount later if you are not receiving enough click-thrus.” *Id.* Thus, the Aaddzz system teaches away from having a media database that includes “a list of available media and corresponding pricing.” Accordingly, Aaddzz not only fails to disclose the claimed database, but it teaches away from including pricing information.

**d. Claim 20**

As discussed above in regard to claim 1, Aaddzz fails to teach or disclose any hardware or software for creating a presentation. In the Aaddzz system, ads are individually (and painstakingly) generated by the seller, not by any sort of automated system. Once independently generated and stored in a local file, each ad must be individually uploaded to the server. Aaddzz Highlights at 17-18. Accordingly, the “creation” of an ad in the Aaddzz system is merely the “uploading” of a previously created presentation onto the Aaddzz system. But uploading a pre-existing document is plainly different than automatically creating presentations. Accordingly, Aaddzz does not meet the limitations of claim 20.

**e. Claim 21**

As discussed with regard to claims 1 and 20, Aaddzz wholly fails to teach or disclose any means for creating a presentation. The PTO cites page 41 of the Aaddzz reference as meeting this limitation. However, that page merely states that “some sites prohibit animated ads.”

Prohibiting ads that have animation is clearly different than creating advertisements. Accordingly, Aaddzz does not meet the limitations of claim 21.

**f. Conclusion**

Given the marked differences between the '045 claims and Aaddzz, Patent Owner respectfully requests that the PTO confirm that all claims are patentable over Aaddzz.

**5. Zeff 1997 Book (Zeff97)**

Claim 1, as well as dependent claims 2-10, 13, and 15-23, were rejected under § 102(b) as anticipated by the Zeff97. However, Zeff97 fails to disclose all limitations of claim 1, and accordingly, the '045 claims are not anticipated by Zeff97.

The Zeff97 reference is a book entitled *Advertising on the Internet* that presents an overview of the general state of the art in the area of online advertising. The book provides advice to both sellers and media venues on how to successfully advertise (or host advertising space) on the Internet. The book discusses multiple methods for buying and selling online ads, the different types of ads available (buttons, banners, etc.), ways to target customers and customize the content of the ads they will see, and how to use measurement and reporting systems to analyze an ad's success. The book frequently uses then-current advertising systems (some of which are part of the prior art systems cited in this reexamination) as exemplars of certain concepts. However, the book does not anywhere discuss or disclose a method that automatically creates an advertisement from seller input information, based on the media venue guidelines entered into system by the media venue. The reason for this is simple—there was no system in existence at the time that did this. The book makes it clear that either the seller himself or a third party “creative agency” would have to manually create presentations to be sent to the media venues or uploaded to an advertising network's server. *See*, for example, page 163, “Creative Development: If an advertiser does not have an in house staff, an agency will produce the creative [for the advertiser].” As with other prior art references, the Zeff97 reference assumes that a seller will have to manually create multiple presentations in order to receive maximum exposure.

**a. Claim 1**

Claim 1 was rejected under § 102(b) as anticipated by Zeff 1997. OA at 77. Zeff97, however, fails to disclose a “means for applying ... guidelines” that is in anyway equivalent to the operation of the disclosed presentation generation software program. Furthermore, even if

Zeff97 did randomly disclose all of the limitations of claim 1 in the manner cited by the PTO (which Patent Owner disputes), Zeff97 still would not anticipate claim 1, as this reference does not disclose all of the elements as arranged in the claim.

**i. Failure to Disclose Creation via Means for Applying Guidelines**

Although Zeff97 addresses the types of presentations available to a seller, it does so in the context of providing a seller with information on how to create a successful presentation that will be accepted by a majority of Internet sites. Zeff97 never teaches or discusses a system or method that contains or uses software to automatically create presentations for a seller by applying the guidelines of media venues to a seller's input, as required by '045 claim 1.

The PTO cites to pages 155, 156 and 161 of the Zeff97 reference as meeting the "means for applying ... guidelines" and the "create a presentation" limitations. All of these citations are to chapter 8 of the book, which focuses on ways for sellers to locate and buy advertising space. However, nowhere in these pages does Zeff97 mention any system that automatically applies guidelines to create multiple presentations for a seller, with each presentation customized by the system to the particular media venue in which it will be published. The text on page 155 discusses the use of "Ad Networks" as a means for sellers to locate and purchase appropriate advertising space for their presentations, and suggests that these networks can be a useful tool for sellers seeking to place their presentations on numerous media venues that are geared to the same subject matter. The creation of the presentations, however, is not mentioned. The PTO also cites the "Locating Ad Space and Rates" section on page 156, which is concerned with "determin[ing] the specific sites at which to place [presentations]." It provides two indexes of web sites that a seller may wish to consult, and states that the listings on these indexes "include information about the sites, rates, and ad size specification." Thus, page 156 merely discloses a listing of the guidelines that particular venues have—it does not address the application of these guidelines in order to create a presentation. It certainly does not disclose a software program that automatically applies these guidelines to seller input to create a presentation.

Finally, the PTO cites the "Creative Costs" section on page 161, which is part of a section of the book that discusses costs that a seller will incur when purchasing advertising space on a media venue. This portion of the text advises sellers that, once they have selected websites on which they would like to post a presentation, they will have to factor in the "additional cost" of having a third party create a presentation for them. It states the average price range for the

creation of a presentation and “a few different sizes of the same banner.” The reference states that the creation of multiple sizes of the same presentation is “a necessity given the wide variety of sizes that are required for campaigns that run on numerous sites.” It goes on to say that “[i]f an advertiser is using models other than banners, those creative costs must be tallied as well.” This section of Zeff97 clearly also contemplates the necessity of laboriously creating—by the seller or its agent—numerous ads to meet the various requirements of different media venues. This is the exact problem the ’045 invention was designed to solve. As evidence of the state of the art and the long-felt need for the current invention, Zeff97 refers repeatedly throughout the book to prior art systems that require the independent creation and “uploading” of individual presentations as exemplars throughout the book. Zeff97 says nothing about the solution – of saving time or effort by using software that automatically creates multiple presentations by applying the guidelines of media venues to one set of seller input information.

Furthermore, portions of the reference not cited by the PTO make it clear that not only does Zeff97 NOT disclose the aforementioned limitation, it actually teaches away from it. Pages 162-163 discuss the possibility of sellers using an interactive agency to help with their internet advertising campaigns, and states that one of the two major services that such agencies provide is “designing the creative.” In the section entitled “Creative Development,” the reference states that “agencies will develop the creative for an advertiser’s campaign. If an advertiser doesn’t have an in-house staff, an agency will produce the creative using what they have seen work for their other clients.” Clearly, this contemplates that a seller or a third party will have to create a presentation—and therefore clearly does not teach towards or disclose the use of software to automatically generate presentations for a seller by providing the means for applying corresponding guidelines of the media venues as required by claim 1 of the ’045 patent. In the section of the reference directed towards media venues offering advertising space, there is a subsection entitled “Ad Models” that encourages media venues to use standardized banner sizes. *See* Zeff97 at 169-170. This is because “In October 1996, when there were over 200 banner sizes in use on the Web, an advertiser had to spend more time, energy, and money resizing the banner creative than in designing better banners ... so accepting [standardized banner sizes] will remove one more hurdle—resizing the creative—for advertisers considering your website.” *Id.* Thus, not only does the reference not disclose the “means for applying ... guidelines,” it teaches away from the use of such a means. As a result, the Zeff97 book both fails to disclose the limitations

of claim 1 and makes it clear that no one had addressed the problem that the invention '045 patent solved.

**ii. Failure to Disclose All Elements as Arranged in the Claim**

Because the hallmark of anticipation is prior invention, a prior art reference must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements “arranged as in the claim.” *Net Moneyin v. Verisign*, 545 F.3d 1359, 1369-1370, (Fed. Cir. 2008); *Finistar Corp. v. DirectTV Group, Inc.*, 523 F.3d 1323 (Fed. Cir. 2008). This requirement applies to all claims and relates to the need for an anticipatory reference to show all of the limitations of the claims arranged or combined in the same way as recited in the claims. *Id*; see also *Ecolochem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361 (Fed. Cir. 2000). In other words, a prior art reference “must clearly and unequivocally disclose the claimed [invention] or direct those skilled in the art to the [invention] without any need for picking, choosing, and combining various disclosures not related to each other by the teachings of the cited reference.” *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972).

The sections of the Zeff97 book cited by Examiner discuss multiple systems, and discuss multiple methods for purchasing ad space, finding media venues, and transmitting presentations to media venues. However, none of the subsections cited by the PTO contain all of the limitations of claim 1 arranged in the same way as claim 1, and although Zeff97 discusses systems that arguably disclose some portions of claim 1, none of the systems discussed disclose each and every limitation. Nor does the book indicate that the information in these subsections or the methods performed by these systems should be combined per claim 1. Thus, Zeff97 only addresses the state of the art, not anticipation. It is not enough that this reference may include multiple, distinct teachings that a person of skill in the art might somehow combine to achieve the claimed combination (although Patent Owner disputes that it does so)—it must teach all of the limitations combined in the same way as recited in claim 1. Accordingly, it was error for the PTO to find anticipation by combining different parts of separate systems discussed in the reference simply because they were found within the four corners of the document, and all rejections on the basis of this reference should therefore be reversed for this reason alone.

For at least these reasons, Patent Owner respectfully requests that the PTO withdraw the rejection based on Zeff97 and confirm all claims are patentable for the reasons outlined above.

**b. Claim 3**

The function of the MPF clause in claim 3 requires “creating structured presentations from the sellers information.” Zeff97 fails to disclose or teach “structured presentations,” or any software for creating such presentations, and thus does not meet the requirements of claim 3.

**c. Claim 20**

As discussed above in regard to claim 1, Zeff97 fails to disclose any means for creating a presentation. Accordingly, the reference necessarily fails to disclose “a computer” that “control[s] and facilitate[s] creation and distribution of all presentations.”

**d. Claim 21**

Zeff97 fails to disclose any means for creating a presentation, as the seller is expected to create and upload presentations for use within the system. Accordingly, Zeff97 fails to disclose “a means for automatically creating open-access electronic presentations.”

**e. Conclusion**

Given the marked differences between the '045 claims and Zeff97, Patent Owner respectfully requests that all claims be found patentable over that reference.

**6. Zeff 1999 Book (Zeff99)**

Claim 1, as well as dependent claims 2-10, 12-23 were rejected under § 102(b) as anticipated by Zeff99. However, the Zeff99 reference fails to disclose all of the limitations of claim 1, and thus the '045 claims are not anticipated by Zeff99.

The Zeff99 reference is the “second edition” of the Zeff97 reference. It supplements and expands upon the teachings of Zeff97, and contains additional discussion of ad management systems available at the time (including the AdForce and AdKnowledge systems). Its main focus was still the targeting, placement, and evaluation of advertisements. Like its predecessor, the Zeff99 book assumed that a seller would have to manually create multiple presentations in order to receive maximum exposure, as there was still no system in existence that automatically created multiple presentations conforming to media venue guidelines from one instance of seller input. Accordingly, Zeff99 fails for the same reason as Zeff97.

**a. Claim 1**

Claim 1 was rejected under § 102(b) as being anticipated by the Zeff 1999 Article. OA at 79. However, the Zeff99 reference fails to disclose a “means for applying ... guidelines” to seller input equivalent to the operation of the presentation generation software program, and also fails to teach the step of creating a presentation that conforms with media venue guidelines.

Additionally, as was the case with Zeff97, this book also fails as a prior art reference because it does not disclose all of the elements as arranged in the claim.

**i. Failure to Disclose Creation via Means for Applying Guidelines**

As with the Zeff97 reference, although Zeff99 discusses potential features of presentations—such size and style—and mentions that various media venues will have their own guidelines, it never teaches or discusses a system or method that contains or uses software to create presentations for a seller by applying the guidelines of media venues to a seller’s input.

The PTO cites to page 127, Figure 5.7 on page 130, and page 161 as teaching or disclosing the step of “applying guidelines” and “create presentation” limitations. However, none of the discussions or drawings contained therein say anything about providing software that automatically applies guidelines and/or creates presentations for a seller. Page 127 discusses “Third-Party Ad Management”, a “solution that facilitates the buying, placement, and analysis of the campaign.” This portion of the reference does not discuss the creation of presentations, or the guidelines imposed on presentations by the media venues—instead it focuses on the placement and targeting of presentations, and evaluating the “success” thereof. And although the reference does refer to systems that facilitate “ad planning”—including AdKnowledge—these discussions only point to products that help research, plan, and buy advertising space, and evaluate the placement of presentations in those spaces. The cited text states that AdKnowledge’s Planner is “a solution for researching and planning online media campaigns,” while the caption to the Figure accompanying that text—Figure 5.5a—states that Planner “lets you search [the AdKnowledge database] to find the best sites for your campaign.” Once again, a discussion of the creation of the presentations themselves is entirely lacking. Figure 5.7, located on page 130, is a graphic depicting the AdForce home page. Neither the graphic, nor the portion of text that references it (on page 129), describe the features of this system in any way.

Finally, it appears that the PTO may have mistakenly cited page 161, as there is no “Creative Costs” section on this page (as Examiner contends)—it is only a portion of text describing how media venues should price their online advertisement space, and has nothing to do with claim 1. Presumably, this was a mistaken recitation of a rejection directed to the Zeff97 reference. Although pages 226-228 list the “guidelines” a media venue should have, the reference does not discuss implementing software that takes these guidelines and applies them to seller input information to create an appropriate presentation for that media venue. Instead, the

reference focuses on the seller or a third-party either (1) selecting only media venues that allow the type or size of presentation for which the seller has already created presentations, or (2) ascertaining what the media venues' guidelines are, and then manually creating one or more presentations, as necessary, to meet those guidelines. *See*, for example, page 213—in the section directed to buying online ads, there is a subsection entitled “Technology Capabilities”, stating that “you [the seller] may be looking to use certain technologies, like HTML banners or Java. Make sure the sites accept these creative formats.” Thus, not only does the reference not disclose the necessary “means for applying” guidelines, it teaches away from the use of such a means. As a result, the Zeff99 book both fails to disclose the limitation of claim 1 and makes it clear that no one had addressed the problem that the invention '045 patent solved.

**ii. Failure to Disclose All Elements as Arranged in the Claim**

As with Zeff97, the sections of Zeff99 cited by the PTO discuss multiple prior art systems, and discuss multiple methods for purchasing ad space, finding media venues, and transmitting presentations to media venues. None of the subsections cited by the PTO contain all of the limitations of claim 1 arranged in the same way as claim 1, and although Zeff99 discusses systems that arguably disclose some portions of claim 1, none of the systems discussed anticipate each and every claim limitation. Nor does the 1999 edition of the Zeff book indicate that the information in the various subsections or the methods performed by these systems should be combined as per claim 1. Accordingly, this reference only impacts the state of the art, not anticipation. Accordingly, it was error for the PTO to find anticipation by combining different parts of separate systems discussed in Zeff99 simply because they were found within the four corners of the document, and all rejections on the basis of this book should therefore be reversed.

For at least these reasons, Patent Owner respectfully requests that the PTO withdraw the anticipation rejection based on Zeff99. Certain dependent claims also were rejected by the PTO based on the Zeff99 book, but Patent Owner respectfully submits that these claims are patentable for the reasons outlined above.

**b. Claim 3**

The function of the MPF clause in claim 3 requires “creating structured presentations from the sellers information.” Zeff99 fails to disclose or teach “structured presentations,” or any software for creating such presentations, and thus does not meet the requirements of claim 3.

**c. Claim 20**



The Zeff99 reference fails to disclose any means for creating a presentation. Accordingly, the reference necessarily fails to disclose “a computer” that “control[s] and facilitate[s] creation and distribution of all presentations.”

**d. Claim 21**

The Zeff99 reference fails to teach or disclose any means for creating a presentation, as the seller is expected to create and upload presentations for use within the system. Accordingly, the reference fails to meet the limitations of claim 21.

**e. Conclusion**

Given the marked differences between the '045 claims and the Zeff99 reference, Patent Owner respectfully requests that all claims be found patentable over that reference.

**C. Obviousness Rejections**

**1. Legal Standards**

The PTO bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. MPEP §2142. For a claim to be obvious, every limitation must be disclosed in a combination of prior art. *Velandar v. Garner*, 348 F.3d 1359, 1364 (Fed. Cir. 2003); *see also Abbott Labs. v. Sandoz, Inc.*, 500 F.Supp. 2d 846, 851 (N.D. Ill. 2007) (“the need to demonstrate the presence of all claim limitations in the prior art . . . has not been obviated [by KSR].”) Furthermore, there must be an “apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740-41 (2007)(emphasis added). *KSR* further requires that a fact finder’s “apparent reason” analysis be “explicit.” *Id.* at 1741. By imposing this “apparent reason” requirement in *KSR*, the Supreme Court reaffirmed the bedrock principle that “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *Id.* at 1741. *KSR* also reaffirmed that “when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be non-obvious.” *Id.* at 1740 (emphasis added).

It should be noted that, in determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is whether the claimed invention as a whole would have been obvious. MPEP §2141.02(I); *In re Hiraio*, 535 F.2d 67 (CCPA 1976). A prior art reference must also be considered in its entirety, *i.e.*, as a whole, including portions that would

lead away from the claimed invention. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); MPEP §2141.03(VI).

## **2. Global Response on Obviousness**

Each of the PTO's obviousness rejections fail for at least two reasons. First, none of the art cited by the PTO discloses the "means for applying ... guidelines" to "create a presentation that complies with ... guidelines of the media venues selected," which is a fundamental requirement of claim 1. As discussed at length in the preceding sections related to the anticipation rejections, none of the art of record discloses anything equivalent to the presentation generation program of the '045 patent, which is the structure disclosed in the patent that performs the claimed function. In the claim interpretation section, Patent Owner showed that the presentation generation program automatically accesses the media guidelines and creates presentations which are customized by applying the guidelines of selected media venues to seller input information. Because none of the art cited by Requester or the PTO discloses or teaches this "means for applying" claim limitation feature, it necessarily follows that any proposed combination of those references also fails to meet this claim 1 limitation. For that reason alone, the '045 claims are allowable over the art of record.

Second, there is no "apparent reason" to combine the cited references in the manner suggested by the PTO. Neither the PTO nor Requester has cited any concrete reason that would have prompted a person of ordinary skill in the relevant field to piece together the elements contained in these references in the way claimed in the '045 patent. Requester repeatedly recites the same list of broad ephemeral "motivations" to combine the teachings of one reference with another, such as "the desirability of realizing various advantages and/or functionality" described by a particular reference. *See* Request at 22, 28, 38. However, such generalized rationales do not rise to the level of an "apparent reason" to combine. Furthermore, Requester repeatedly states that such combinations "would involve merely combining and/or substituting known prior art elements to yield predictable results." *Id.* However, this glib statement overlooks the fact that the prior art references generally disclose disparate software models with different structures and purposes, and therefore are not readily interchangeable. Meanwhile, the PTO either wholly fails to provide any reason to combine the references, or simply makes the blanket statement that "it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of [Reference 1] by adding [an element disclosed in Reference 2]" to make the system

of Reference 1 more flexible or efficient. *See, e.g.*, OA at 76, 105. The idea that the seller can introduce advertising content into the system, without knowing anything about the rules of the media venues to which that content may be published, and allow the system to create and publish the customized ad on its behalf, is simply nowhere taught anywhere in the prior art. At least part of the novelty of the '045 patent is that it provides a system which enables sellers and media venues, who may be completely unknown to each other, to set the parameters that will be used to automatically create a customized advertisement.

In contrast, the above statements from Requester and the PTO disclose no facts and fail to provide a “clear articulation of the reason(s) why the claimed invention would have been obvious” as required by MPEP §2143. While the Supreme Court explained that the apparent reason for a combination could come from a variety of sources, it also stated that the “analysis should be made explicit” and “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of the obviousness.” *KSR*, 127 S. Ct. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)); *see also* MPEP §§ 2141, 2143. As neither the PTO nor Requester have identified any reason for the combinations they cited, Patent Owner respectfully requests that the obviousness rejections be withdrawn.

With these general concepts in mind, Patent Owner will now address the specific obviousness rejections adopted by the PTO in the Office Action.

### **3. Aaddzz Brochure in view of AdForce (claims 1-10, 12-23)**

Claims 1-10, 12-23 were rejected under § 103(a) as obvious under the Aaddzz Brochure in view of AdForce. OA at 74-75, 84, 87, 90, 93, 96, 98-99, 101, 105-106, 108-109, *etc.* The Aaddzz Brochure is directed to the same system described by the Aaddzz Highlights reference, discussed extensively above in Section C.4. The AdForce reference was discussed extensively in Section C.1. Both fail to disclose the “means for applying ... guidelines” to “create a presentation that complies with said guidelines of the media venues selected.”

#### **i. The Aaddzz/AdForce Combination Fails to Meet the Claim 1 Limitations**

The PTO contends that the Aaddzz Brochure discloses all of the limitations of claim 1 except for a “media database,” which existed in the AdForce system, and that AdForce further discloses the limitations of claims 2-10, 12-23. *Id.* However, the Aaddzz Brochure—like the Aaddzz Highlights Website—fails to disclose a “means for applying” the media venue guidelines

and does not “create” presentations as required by claim 1. Furthermore, the reference does not teach a “means for a seller to select the media venues” in which he would like to display a presentation. Similarly, AdForce also fails to disclose a “means for applying” the media venue guidelines and does not “create” the customized presentations. Accordingly, the combination of these references fails to teach or disclose every limitation of claim 1, and therefore would not render claim 1 obvious.

The Aaddzz system requires the advertiser to understand the media guidelines, and to manually create and upload presentations on its own that conform to these guidelines, in order to use the ad placement system. On pages 5, under the section entitled “Ads, Spaces, & Places,” the Aaddzz Brochure gives advertisers tips on creating presentations:

**Ad Sizes**

... advertisers should provide ad images in as many sizes as possible to have the maximum possible exposure for their ads. To aid Aaddzz in targeting, the images for the various sizes should contain substantially similar images and wording.

**File Format**

Ads can be in either GIF or JPEG format.

**Animation**

...some sites may not allow animated ads. Therefore, we recommend advertisers make both animated and non-animated versions of their ads. Aaddzz Brochure at 5 (emphasis added).

The PTO cites pages 1 and 5 of the Aaddzz Brochure as disclosing the creation of a presentation via a “means for applying” media venue guidelines. However, page 5 actually teaches away from this limitation by instructing the advertisers that they must create their own presentations, and page 1 says nothing about “creating” presentations or “applying guidelines.”

The Aaddzz Brochure also fails to disclose a “means for a seller to select media venues” equivalent to the Presentation and Configuration Program 4715. In fact, the Aaddzz system does not provide *any* mechanism for an advertiser to select the particular individual media venues in which it would like to display a presentation. The Aaddzz system, not the advertiser, decides where to display ads via “automatic ad targeting”—*i.e.*, the system itself dynamically decides on which media venues a presentation should be displayed. *Id.* at 4, under “Click Through Advertising”. In fact, the question “Which sites will my ads appear on?” is answered by the Aaddzz Brochure as follows: “Aaddzz cannot guarantee on which sites ads will appear, as new

publishers can join and leave the Aaddzz network at any time.” *Id.* Accordingly, advertisers using the Aaddzz system have no ability to directly select the media venues where their ads are to be published, as required by claim 1.

AdForce does not solve the deficiencies of the Aaddzz system. In the AdForce system, the seller must manually create ads that conform to media guidelines, and then upload each ad into the AdForce server, while describing the ad’s characteristics to the server. Thus, sellers using the AdForce system are responsible for reading, understanding and applying the guidelines when creating an ad for the AdForce system. There is no software program in AdForce that automatically applies the media venue guidelines to seller input information.

Because both the Aaddzz Brochure and the AdForce reference fail to disclose a “means for applying” media venue guidelines that “creates” presentations that conform to said guidelines, combining these two references together would not render claim 1 obvious. For at least this reason, the obviousness rejection based on Aaddzz and AdForce should be withdrawn.

**ii. No Apparent Reason to Combine**

In addition to the failure to meet all of the limitations of claim 1, the proposed combination also fails because there is no “apparent reason” to combine these references. As noted above, neither the PTO nor Requester has cited any concrete reason to combine these particular references. Furthermore, a person of ordinary skill in the art would not combine these systems, as there are a number of fundamental differences between the systems. For example, the Aaddzz system teaches away from allowing a seller to select media venues—it uses its own internal algorithms to determine the “best placement” for a particular ad. Given that these two systems have a fundamental conflict regarding the manner in which media venues are selected, there is no basis to state that one skilled in the art would seek to mesh together these disparate teachings and fill in the missing pieces to create the novel overarching system of claim 1. In fact, it appears that the only reason to combine these conflicting approaches is based on the use of hindsight. For at least these reasons, this obviousness rejection should be withdrawn.

**iii. Combination Fails to Meet Limitations of Dependent Claims**

The PTO contends that the AdForce reference discloses all of the additional limitations of claims 2-10, 12-23 and therefore that the combination of the Aaddzz Brochure with the AdForce reference renders each of these dependent claims obvious. Even if the combination of the Aaddzz Brochure and the AdForce reference rendered claim 1 obvious—which Patent Owner

disputes—this combination would still fail to render a number of the dependent claims obvious. For example, as discussed above at C.1.b-f, the AdForce reference fails to disclose the limitations found in claims 3, 13, 16, 20, and 21. Accordingly, the combination of AdForce with the Aaddzz Brochure reference cannot render these claims obvious.

#### **iv. Conclusion**

Given that the Aaddzz and AdForce references fail to teach key aspects of claim 1, and also because there is no apparent reason to combine together these disparate teachings, Patent Owner respectfully requests the PTO to withdraw this obviousness rejection.

#### **4. Del Sesto Patent in view of AdForce (claims 10, 12-15)**

Claims 10, 12-15 were rejected under § 103(a) as obvious under the Del Sesto '882 patent in view of the AdForce reference. OA at 103, 108, 111, 115, 118. The PTO contends that the Del Sesto '882 patent discloses all of the limitations of claim 1, and that AdForce discloses the limitations of claims 10, 12-15. The Del Sesto '882 patent was discussed extensively at C.2., above, and AdForce was also discussed at length at C.1.

As noted in the aforementioned sections, both of these references fail to disclose critical limitations of claim 1, including most notably, the “means for applying” limitation. Because neither Del Sesto nor AdForce disclose software that allows the selection of media venues and applies the guidelines of multiple media venues to automatically generate multiple customized presentations from seller input information that each comply with the guidelines of the respective corresponding selected media venue, it necessarily follows that the combination of these two references does not disclose such a limitation, and therefore does not disclose all of the claim 1 limitations. Accordingly, this combination cannot render any '045 claim obvious.

Furthermore, there is no “apparent reason” to combine these references in the manner set forth in claim 1. Neither the PTO nor Requester has cited any reason to combine these particular references. For at least these reasons, this obviousness rejection should be withdrawn.

#### **5. Aaddzz Highlights Website in view of AdForce (claims 12, 13, 14, and 15)**

Claims 12-15 were rejected under § 103(a) as obvious under the Aaddzz highlights reference in view of AdForce. OA at 109-110, 113, 116, 120. The PTO contends that the Aaddzz Highlights reference discloses all of the limitations of claim 1, and that AdForce discloses the limitations of claims 10, 12-15. Aaddzz and AdForce were discussed above at C.4 and C.1. Both references fail to disclose critical limitations of claim 1, including most notably,

the “means for applying” limitation. Because neither Aaddzz nor AdForce disclose software that applies the guidelines of multiple media venues to automatically generate multiple presentations from seller input information, it necessarily follows that the combination of these two references does not disclose such a limitation, and therefore does not disclose all of the limitations of claim 1. Accordingly, the combination of these references cannot render any `045 claim obvious.

Furthermore, there is no “apparent reason” to combine these references. Neither the PTO nor Requester has cited any reason to do so. Furthermore, a person of ordinary skill in the art would not combine these systems, as there are a number of fundamental differences between the systems. For example, the Aaddzz system teaches away from allowing a seller to select media venues—it uses its own internal algorithms to determine the “best placement” for a particular ad. Given these conflicting teachings, one skilled in the art would not combine together these teachings, unless influenced to do so by hindsight.

#### **6. Zeff 1997 Article in view of AdForce (claims 12, 14)**

Claims 12 and 14 were rejected as obvious based on the combined teachings of Zeff97 and the AdForce reference. OA at 110, 117. The PTO contends that the Zeff97 reference discloses all of the claim 1 limitations, and that AdForce discloses the limitations of claims 12 and 14. The Zeff97 reference was discussed extensively at C.5. AdForce was discussed at C.1.

As noted in the aforementioned sections, both of these references fail to disclose critical limitations of claim 1, including most notably, the “means for applying” limitation. Because neither Zeff97 nor AdForce disclose software that applies the guidelines of multiple media venues to automatically generate multiple presentations from seller input information, it necessarily follows that the combination of these two references does not disclose all of the limitations of claim 1. Accordingly, this combination cannot render any `045 claim obvious.

Furthermore, neither the PTO nor Requester has cited any apparent reason to combine these references. In fact, Zeff97, actually discusses the AdForce system and its functionality. However, despite being the supposed “definitive reference” on Internet advertising, Zeff97 never suggests or even hints at the possibility, desire, or need for a combination of the features of the AdForce system with any other system. Accordingly, one of ordinary skill in the art would not combine Zeff97—or any of the systems discussed therein—with AdForce. For at least this reason, this obviousness rejection should be withdrawn.

#### **7. Del Sesto Patent in view of Aaddzz Brochure (claims 15, 23)**

Claims 15 and 23 were rejected as obvious under Del Sesto as modified by the Aaddzz Brochure reference. OA at 119, 145. The PTO contends that Del Sesto discloses all of the claim 1 limitations, and that the Aaddzz Brochure reference discloses the limitations of claims 15 and 23. The Del Sesto '882 patent was discussed extensively at C.2., and the Aaddzz Brochure reference was discussed at C.4.

Both of these references fail to disclose critical limitations of claim 1, including most notably, the “means for applying” limitation. Because neither Del Sesto nor the Aaddzz Brochure disclose software that applies the guidelines of multiple media venues to automatically generate multiple presentations from seller input information, it necessarily follows that the combination of these two references does not disclose all of the claim 1 limitations. Accordingly, the combination of these references cannot render any '045 claim obvious.

Furthermore, neither the PTO nor Requester has cited any reason to combine these particular references. A person of ordinary skill in the art would not combine these systems, as there are a number of fundamental differences between the systems. For example, the Aaddzz system teaches away from allowing a seller to select media venues—it uses its own internal algorithms to determine the “best placement” for a particular ad. For at least these reasons, this obviousness rejection should be withdrawn.

#### **8. Del Sesto Patent in view of Aaddzz Highlights Website (claims 10, 23)**

Claims 10 and 23 were rejected as obvious under Del Sesto and the Aaddzz Highlights Website. OA at 104, 145. The PTO contends that the Del Sesto '882 patent discloses all of the limitations of claim 1, and that the Aaddzz Highlights reference discloses the limitations of claims 10 and 23.

Both of these references fail to disclose critical limitations of claim 1, including most notably, the “means for applying” limitation. Because neither Del Sesto nor Aaddzz disclose software that applies the guidelines of multiple media venues to automatically generate multiple presentations from seller input information, it necessarily follows that the combination of these two references does not disclose such a limitation, and therefore does not meet the limitations of claim 1. Accordingly, the combination of these references cannot render any '045 claim obvious.

Furthermore, there is no “apparent reason” to combine these references. Neither the PTO nor Requester has cited any reason to combine these particular references. A person of ordinary



skill in the art would not combine these systems, as there are a number of fundamental differences between the systems, as noted above.

#### **9. Del Sesto Patent in view of AdStar (claim 10)**

Claim 10 was rejected as obvious based on the Del Sesto patent and the AdStar reference. OA at 104. The PTO contends that Del Sesto discloses all of the limitations of claim 1, and that the Ad Star reference discloses the limitations of claim 10.

Before addressing the substance of the AdStar disclosure, Patent Owner respectfully notes that it is not even clear that this “reference” qualifies as prior art. In its Request, Requester stated that “the *AdStar* reference is a publically available website archived from April 12, 1997, and February 1, 1997,” but offers no evidence to support this statement. Request at 39. In fact, there is nothing in any of the printed web pages that gives a clear indication of a publication date. The one date than can be found is on the “Functional Specifications” webpage. This page has the words “Version 1, Revision 5, January 1, 1996” at the top. However, this more than likely represents a preparation date, rather than a publication date and, even if it did represent a publication date, it would only apply to the content of that particular webpage (as opposed to the entire AdStar website). The web page printouts that Requester submitted were presumably procured from the Internet Archive’s WayBack Machine (given the URL stamp at the bottom of the submitted pages). However, Requester has not submitted any affidavit from a person with personal knowledge of this Website or otherwise established that it reliably reflects the date of publication. Consequently, Patent Owner respectfully submits that this document cannot serve as prior art.

The AdStar system<sup>12</sup> was designed to help streamline the creation and submission of classified ads to newspapers. Unlike the ‘045 patent, it discloses the existence of multiple, self-contained networks that do not interact with one another—*i.e.*, a “wheel and spoke” structure for each individual newspaper, where the newspaper is the inner “wheel” and sellers submitting ads to that newspaper are the “spokes.” In AdStar, if a seller wants to advertise in 3 newspapers, the seller must install three separate instances of the AdStar Remote software on its computer, each

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<sup>12</sup> Patent Owner notes that these website printouts were not numbered in any way by Requester. Patent Owner presumes, for the purposes of this Response, that the PTO used a sequential numbering system for the pages as they were submitted to the PTO, and will therefore adopt such a numbering system for this Response. *See* OA at 153, where the PTO cites specific “page” numbers.

configured to interact only with one specific newspaper, and then separately enter the ad information into each remote software program. Each individual remote program then sends the ad information only to the associated newspaper to which it is linked. In contrast, the '045 patent requires only a single piece of client-side software to be created, that can be installed once on every seller's computer, and is capable of creating and submitting ads to multiple media venues. The '045 patent only requires a seller to enter data for an ad once, into a single instance of software, to create a multiplicity of individual ads that each conform to a separate media venue's guidelines, and that are delivered to each media venue. The AdStar system clearly is distinct from the '045 patented system.

As noted earlier, the PTO contends that Del Sesto discloses all of the limitations of claim 1, and that Ad Star discloses the claim 10 limitations. However, as discussed above, Del Sesto fails to disclose critical limitations of claim 1, including most notably, the "means for applying" limitation. AdStar also fails to disclose critical limitations of claim 1, including most notably the "means for applying" and "media venue database" limitations. Because neither Del Sesto nor AdStar disclose software that applies the guidelines of multiple media venues to automatically generate multiple presentations from seller input information, it necessarily follows that the combination of these two references does not meet all of the limitations of claim 1. Accordingly, the proposed combination still fails to disclose every limitation of claim 1, and therefore would not render obvious claim 1 or any dependent claim of the '045 patent.

**i. Combination Fails to Meet Claim 1 Limitations**

As already noted, the AdStar system has a "wheel and spoke" configuration, requiring specialized client-side software to be created and tailored to each individual newspaper, and thus further requiring a seller to install and use multiple separate software programs to submit ads to different media venues. Thus, each newspaper using the AdStar system essentially has its own "network." Each individual newspaper network is setup as follows: (1) A newspaper has the "Ad-Star Telecommunications Processor (TP) Complex" installed on its servers that interfaces with the newspaper's computer system to provide "ad receipt, acknowledgement, translation, storage, routing, and tracking," (AdStar at 3); and (2) Sellers who wish to place ads in that newspaper must have an instance of the "Ad-Star Remote" software installed on their computer that corresponds to—and works with—that particular newspaper's software. *Id.* at 8, 22. AdStar Remote "allows the remote user to electronically compose Classified advertisements ...

[and] electronically submit such Classified advertisements to Ad-Star TP (located at the NEWSPAPER site).” *Id.* Thus there is only one “media venue” in each “network”—one newspaper that is capable of receiving ad submissions from multiple sellers. Each individual newspaper has its own corresponding instance of the AdStar Remote software program that must be installed on the seller’s computer in order for the seller place ads in that newspaper. Even if two newspapers had the exact same guidelines for ads, a seller would be forced to input identical information twice—once into each newspaper’s client-side software programs. If a seller wanted to advertise in 3 newspapers, it would have to install three separate instances of the software on its computer, each configured to interact only with one specific newspaper.

It would be nonsensical to have a “means for selecting a media venue” in such a system, as each instance of the AdStar Remote software is specifically tailored for one—and only one—newspaper. Thus it is unsurprising that the AdStar reference fails to disclose such a means. And, for the very same reason, it would also be nonsensical for this reference to provide a “database of media venues.” In fact, the PTO declined to adopt Requester’s §102(b) anticipation rejections due to this missing element. “[The] Examiner considers the AdStar system to allow ‘direct advertisers [to] use their own computers to create and send ads right into your [newspapers’] computer system’ ... Hence, each newspaper appears to have its own system. Not disclosed is a ‘media database’ with multiple newspapers listed.” OA at 153. It is also logical, given the setup of the AdStar system, that this reference does not disclose the transmission of a presentation to “selected media venues,” as there is only ever one “media venue” to which an instance of AdStar Remote can send an advertisement.

AdStar also does not “create” an advertisement for the seller by “applying media venue guidelines.” The AdStar system requires the seller to input the advertisement text, and then use the “Ad-Star generic mark-up language” to format and style the text. AdStar at 9, 2, 6. This mark-up language includes code for “type size, line endings, indents, special characters, logos, [and] agat[ing] lines of white space,” among other things. *Id.* at 2, 9. As shown on page 6, the seller must understand the codes and carefully embed them in his text document in order for the newspaper to print his ad the way he wants it. *Id.* at 6, 7. Although the system does verify (“validate”) certain pieces of data prior to transmission to the newspaper, it (a) only checks compliance with certain rules—such as “dates according to NEWSPAPER rules for span and number of insertions” and “format of customer contact identifiers(s)”, and (b) does nothing to

transform or modify the actual content of the ad if the data submitted by the seller is in error. This is clearly much different from the system described and claimed in the '045 patent, which takes a single instance of data entry by the seller, and then modifies that data to conform to media venue guidelines. Accordingly, AdStar fails to disclose a “means for applying” media venue guidelines to “create” a presentation that conforms to those guidelines. As with other prior art systems, the seller must “create” the ad himself—in this case, via the use of a special mark-up codes—and then send it to the media venue for publication “as is.”

As noted above, the Del Sesto patent fails to disclose critical limitations of claim 1, including most notably, the “means for applying” limitation. The AdStar reference also fails to disclose critical limitations of claim 1, including most notably the “means for applying” and “media venue database” limitations. It necessarily follows that the combination of these two references does not disclose all the limitations of claim 1.

**ii. No Apparent Reason to Combine**

There also is no “apparent reason” to combine these references. Neither the PTO nor Requester has cited any concrete reason that would have prompted a person of ordinary skill in the relevant field to piece together the elements supposedly contained in these references in the way claimed in the '045 patent. Furthermore, a person of ordinary skill in the art would not combine these systems, as they are quite dissimilar in nature and design. As mentioned above, the AdStar system is a wheel and spoke configuration centering around sellers placing classified ads in a single newspaper, where delivery of text ads containing mark-up codes is directly from seller to the newspaper, while the Del Sesto patent involves multiple sellers and media venues, and primarily focuses on matching sellers’ pre-prepared WYSIWYG<sup>13</sup> television commercial ads with media venues who have specific time-slots/ demographic target combinations available, where the transfer of ads occurs via uploading and downloading to a central server. It would not have been obvious to one skilled in the art to combine such disparate systems that, in part, teach away from one another.

**iii. Conclusion**

Even if combined, the combined teachings would still fail to disclose every limitation of claim 1, and therefore would not render claim 1 obvious. Accordingly, the combination of these references would not render any '045 claim obvious.

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<sup>13</sup> What-you-see-is-what-you-get.

## **10. Combinations Including the Wojcik `493 Patent (claim 11)**

Claim 11 was rejected as obvious under a variety of different combinations. Essentially, the PTO stated that the AdForce, Del Sesto, MarketMatch, Aaddzz Highlights, Zeff97, and Zeff99 references each (individually) disclosed Claim 1, while the Wojcik `493 patent disclosed the limitations of claim 11. *Id.* The PTO further stated that the Aaddzz Brochure reference in view of the AdForce reference disclosed claim 1, while the Wojcik `493 patent disclosed the limitations of claim 11. *Id.*

The Wojcik `493 patent is directed to a system for helping a food distributor receive, manage, and implement (on a physical warehouse level) customer orders in the most cost-effective way. This is achieved by providing an interface for sales representatives to enter customer orders into the system in real time, logistics software for processing orders and consolidating them into appropriate loads for delivery, and inventory management via the use of software that can track the location and amount of inventory in the warehouse through the use of handheld scanners and barcodes attached to pallets. Wojcik `493 patent at 1:7-21, 65-67; 5:9-20; 8:15-67; 16:27-37. These sub-systems are horizontally integrated (via the use of a network server) and can therefore communicate with one another quickly and easily, and therefore the overall system minimizes the amount of time and paperwork needed to keep a food distribution point functioning at optimal capacity with reduced costs. *Id.* at 1:55-60.

### **i. Combination Fails to Meet Claim 1 Limitations**

The Wojcik `493 patent has absolutely nothing to do with presentations or advertising. It does not accept presentations, create presentations, or transmit them. The Wojcik reference describes a number of integrated hardware and software components that can be used by a single entity (*i.e.*, a food distributor) to take food orders, process and fill them, as well as manage its warehouse inventory in the most cost-effective way (*i.e.*, by packing a single truck to send to multiple locations, by making sure older produce leaves the warehouse before fresher produce, etc.). Accordingly, the system described in Wojcik does not relate to `045 patent claim 1 in any way. As noted in the aforementioned sections, all of the prior art references—and the one prior art combination—cited by the PTO fail to disclose critical limitations of claim 1, including most notably, the “means for applying” limitation. Because neither the AdForce, Del Sesto, MarketMatch, Aaddzz Brochure, Aaddzz Highlights Website, Zeff97, nor Zeff99 references, nor the combination of the Aaddzz Brochure and the AdForce reference, nor the Wojcik `493 patent

disclose software that applies the guidelines of multiple media venues to automatically generate multiple presentations from seller input information, it necessarily follows that the combination of these references does not disclose such a limitation, and therefore does not disclose all claim 1 limitations. Accordingly, the proposed combinations cannot render any '045 claim obvious.

**ii. No Apparent Reason to Combine**

There is also no “apparent reason” to combine these references. Neither the PTO nor Requester has cited any reason to combine these particular references. Furthermore, a person of ordinary skill in the art would not combine these systems, as they are completely unrelated, and directed to achieving entirely different goals—one seeks to optimize food order processing and the physical distribution of those orders for a single food distributor, while the other seeks to optimize a seller’s advertisements and the placement of those advertisements in a multiplicity of media venues. With regards to overall structure, the Wojcik '493 patent is somewhat like the AdStar reference, in the sense that it describes a wheel-and-spoke system where there is one distributor and multiple customers all ordering from that one distributor. Thus, not only does this system not anticipate—or even relate to—the system of the '045 patent, its underlying design is fundamentally incompatible with the system described in the '045 patent.

**iii. Conclusion**

Accordingly, the combination of these references fails to disclose every limitation of claim 1, and therefore would not render claim 1 obvious. Accordingly, the combination of these references would not render any '045 claim obvious.

**CONCLUSION**

For the reasons set forth above, Patent Owner Function Media respectfully requests the PTO to withdraw its rejections to claims 1-23 of the '045 patent and to confirm the patentability of all claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael F. Heim". The signature is fluid and cursive, with a long horizontal stroke at the end.

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Date: December 23, 2008

## Appendix of Claims

1. (as issued) A method of using a network of computers to contract for, facilitate and control the creating and publishing of presentations, by a seller, to a plurality of media venues owned or controlled by other than the seller, comprising:
  - a) providing a media database having a list of available media venues;
  - b) providing means for applying corresponding guidelines of the media venues;
  - c) providing means for transmitting said presentations to a selected media venue of the media venues;
  - d) providing means for a seller to select the media venues; and
  - e) providing means for the seller to input information; whereby the seller may select one or more of the media venues, create a presentation that complies with said guidelines of the media venues selected, and transmit the presentation to the selected media venues for publication.
2. (as issued) The method of claim 1 further providing a seller database having a list of seller.
3. (as issued) The method of claim 1 further providing a means for creating structured presentations from the sellers information.
4. (as issued) The method of claim 3 farther providing a means for transferring said created presentations to the media venues for publishing.
5. (as issued) The method of claim 1 further providing a means for said media venues to input said guidelines and information.
6. (as issued) The method of claim 1 further providing means for said media venues to receive the sellers presentations.
7. (as issued) The method of claim 1 further providing a media buyers database having a list of media buyers.
8. (as issued) The method of claim 1 further providing a media transactions database having a list of media transactions.
9. (as issued) The method of claim 1 further providing a media inventory database having a list of media inventory.
10. (as issued) The method of claim 1 further providing a presentations database containing created presentations.
11. (as issued) The method of claim 1 further providing an inventory database containing available inventory.
12. (as issued) The method of claim 1 further providing a transaction database containing transactions made.



13. (as issued) The method of claim 1 further providing means with instructions for a buyer to select and purchase offers of sellers.
14. (as issued) The method of claim 13 further providing a transaction database for recording the purchases of the buyers.
15. (as issued) The method of claim 13 further providing a means for the buyers to purchase goods or services offered by the seller.
16. (as issued) The method of claim 1 wherein the media database includes a list of available media and corresponding editorial, design and publication standards.
17. (as issued) The method of claim 1 wherein the media database includes a list of available media and corresponding pricing and media inventory availability.
18. (as issued) The method of claim 1 further providing means for transferring said presentations to said selected media venues.
19. (as issued) The method of claim 1 further providing a computer to control and facilitate the network of computers.
20. (as issued) The method of claim 1 further providing a computer to control and facilitate creation and distribution of all presentations to said selected media venues.
21. (as issued) The method of claim 1 further providing a means for automatically creating open-access electronic presentations.
22. (as issued) The method of claim 1 further providing a means for publishing open-access presentations electronically.
23. (as issued) The method of claim 1 further providing a computer to present dynamic presentations electronically.

# TAB 1

# TAB A

EXHIBIT 1A

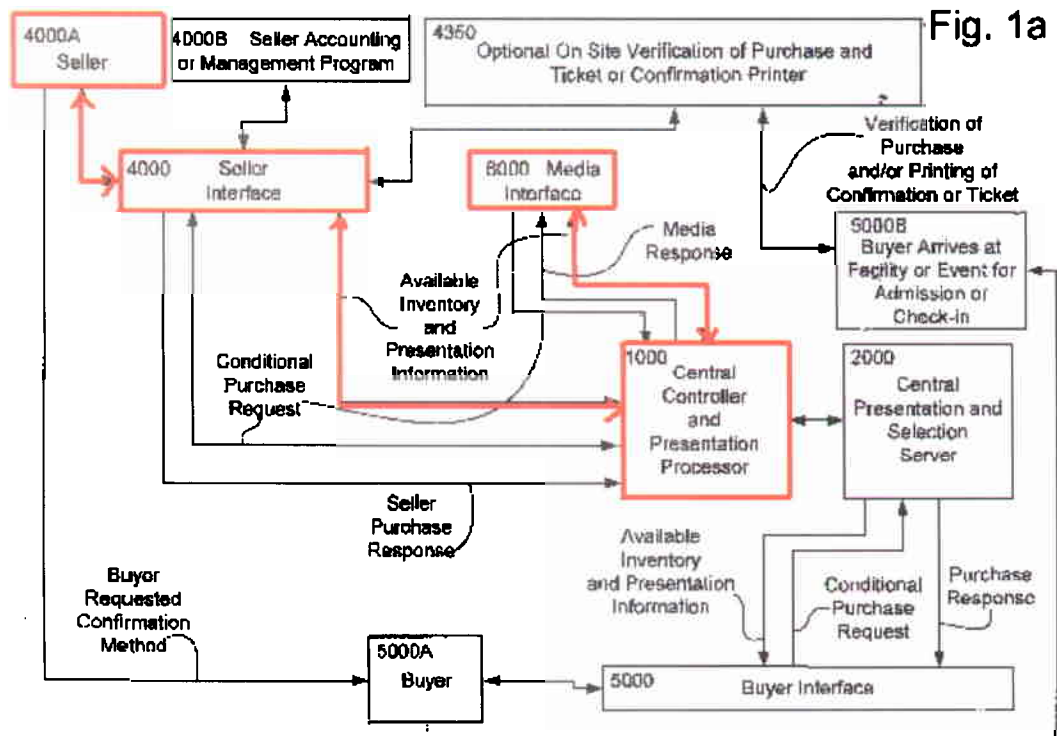


Figure 1a from the '045 patent

TAB B

**EXHIBIT 1B**

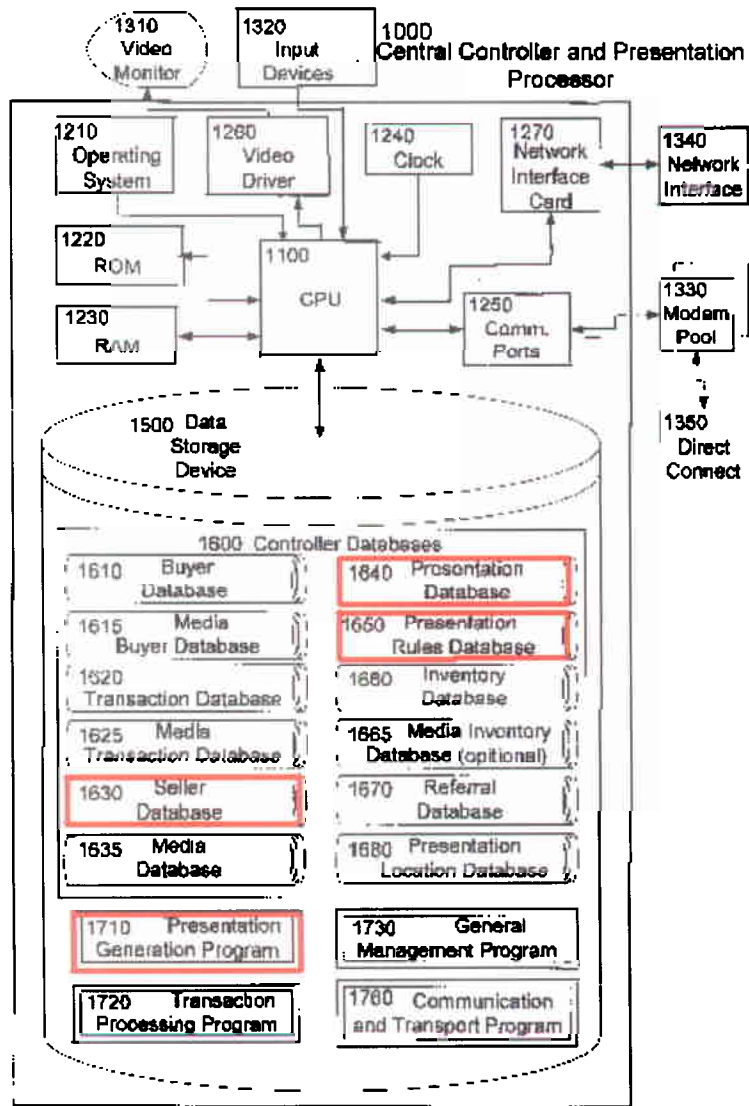


Figure 2a from the '045 patent

# TAB C

EXHIBIT 1C

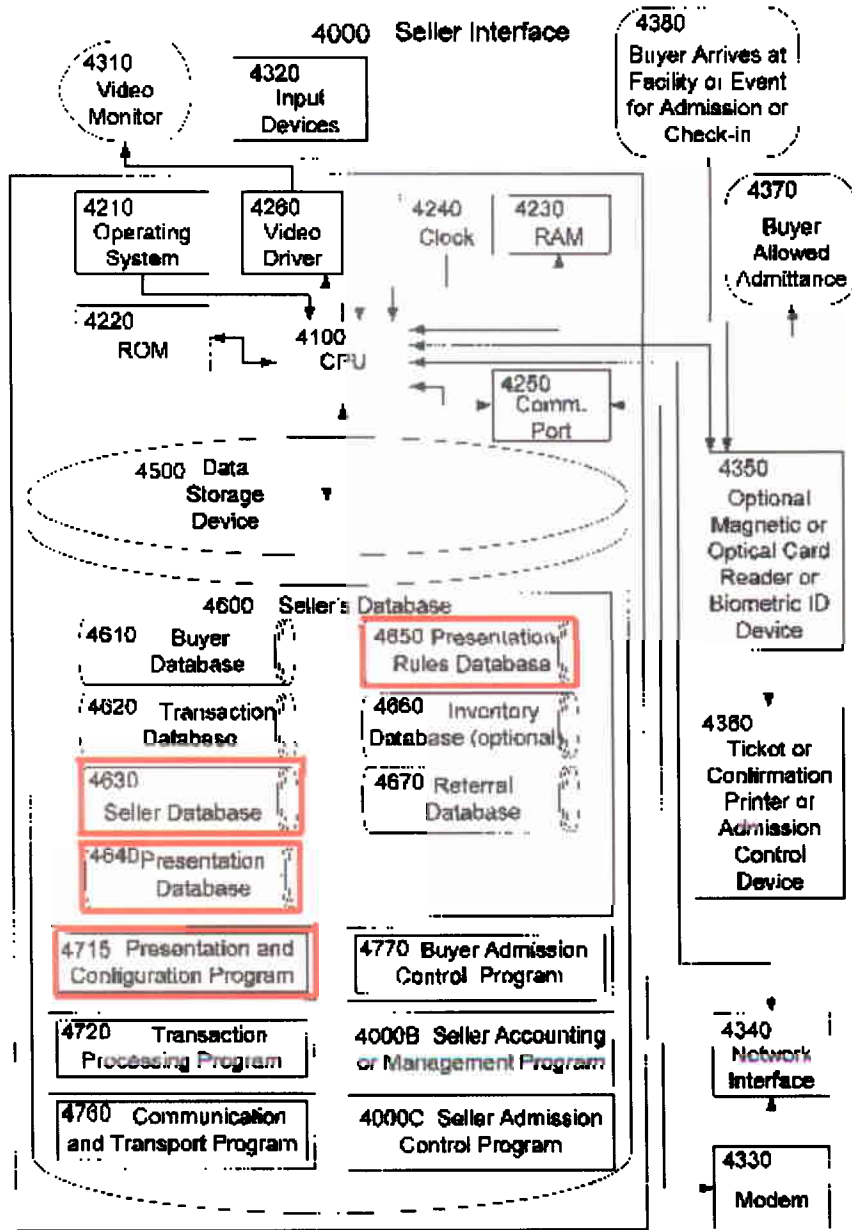


Figure 2c from the '045 patent



# TAB 2

#4

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#4

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Attorney for applicants

Date: 22 January, 2002

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#4/Andta  
T. McBeth-Brown  
PAGE 02 1/25/02

Official



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Stone et al

Serial No: 09/480,303

Filed: Jan 10, 2000

Entitled: A METHOD FOR USING COMPUTERS TO FACILITATE AND CONTROL THE CREATING OF A PLUARLITY OF FUNCTIONS.

Group Art Unit: 2167

Examiners: B. Jaketic  
R. P. Olszewski

Assistant Commissioner of Patents  
Washington, D. C. 20231

Amendment

Gentlemen:

This amendment is being filed in response to the office action, mailed on Nov. 8, 2001 wherein all claims of record, claims 1 through 23 were rejected. Of the original claims 1 through 31, claims 24 through 31 had been withdrawn from consideration under verbal restriction requirement. Applicants' attorney verbally elected claims 1 through 23 with the traverse. Applicants hereby affirms said election.

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This amendment is further in response to the courteous interview extended to the inventors on Dec. 13, 2001. Please amend the above-identified application as set forth below.

**In The Specification**

Responding to the examiner's objection to the disclosure, on page 10 line 6 the "4g" should be ...4h.... This amended shall be made by substituting the following paragraph on page 10 lines 6 and 7;

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"Fig. 4a through 4h is a block diagram showing the Seller's use of the invention. This Example Embodiment is configured for delivery of tickets or reservation confirmation."

This amended line 6 and 7 is in replacement of the erroneous lines 6 and 7, page 10.

**In The Claims**

In response to the restriction requirement, applicants formally cancel claims 24 through 31 without prejudice.

Please substitute the following amended claims for the pending claims with the same numbers

1 (Amended) A method of using a network of computers to contract for, facilitate and control the creating and publishing of presentations, by a seller, to a plurality of media venues owned or controlled by other than the seller, comprising:

- a) providing a media database having a list of available media venues;
- b) providing means for applying corresponding guidelines of the media venues;

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c) providing means for transmitting said presentations to a selected media venue of the media venues;

d) providing means for a seller to select the media venues; and

e) providing means for the seller to input information;

whereby the seller may select one or more of the media venues, create a presentation that complies with said guidelines of the media venues selected, and transmit the presentation to the selected media venues for publication.

2) (Amended) The method of claim 1 further providing a seller database having a list of sellers.

3) (Amended) The method of claim 1 further providing a means for creating structured presentations from the sellers information.

4) (Amended) The method of claim 3 further providing a means for transferring said created presentations to the media venues for publishing.

5) (Amended) The method of claim 1 further providing a means for said media venues to input said guidelines and information.

6) (Amended) The method of claim 1 further providing means for said media venues to receive the sellers presentations.

7) (Amended) The method of claim 1 further providing a media buyers database having a list of media buyers.

8) (Amended) The method of claim 1 further providing a media transactions database having a list of media transactions.

9) (Amended) The method of claim 1 further providing a media inventory database having a list of media inventory.

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- 10) (Amended) The method of claim 1 further providing a presentations database containing created presentations.
- 11) (Amended) The method of claim 1 further providing an inventory database containing available inventory.
- 12) (Amended) The method of claim 1 further providing a transaction database containing transactions made.
- 13) (Amended) The method of claim 1 further providing means with instructions for a buyer to select and purchase offers of sellers.
- 14) (Amended) The method of claim 13 further providing a transaction database for recording the purchases of the buyers.
- 15) (Amended) The method of claim 13 further providing a means for the buyers to purchase goods or services offered by the seller.
- 16) (Amended) The method of claim 1 wherein the media database includes a list of available media and corresponding editorial, design and publication standards.
- 17) (Amended) The method of claim 1 wherein the media database includes a list of available media and corresponding pricing and media inventory availability.
- 18) (Amended) The method of claim 1 further providing means for transferring said presentations to said selected media venues.
- 19) (Amended) The method of claim 1 further providing a computer to control and facilitate the network of computers.
- 20) (Amended) The method of claim 1 further providing a computer to control and facilitate creation and distribution of all presentations to said selected media venues.

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21) (Amended) The method of claim 1 further providing a means for automatically creating open-access electronic presentations.

22) (Amended) The method of claim 1 further providing a means for publishing open-access presentations electronically.

23) (Amended) The method of claim 1 further providing a computer to present dynamic presentations electronically.

### Remarks

Reconsideration of this application, in view of the forgoing amendments and the following remarks, is respectfully requested. Support for the amended claims is found throughout the originally filled specification including the drawings and claims. For example, the term "contract for" as found on claim 1 line 1 of the amended claims is also found in 4a and the past tense "contracted for" is found page 17 line 2 of the definition of "Non Resident Media". The term "seller" as used throughout the amended claims is found throughout the specification and is defined on page 19 of the glossary under the heading "Seller".

Applicants again note with appreciation the courteous interview extended by the examiners on Dec. 13, 2001. Examiners Robert Olszewski and Bryan Jaketic were most helpful in reaching the conclusion that the application has inventive merit.

Be advised that the remaining claims of the application as amended are deemed to have been jointly invented by the named inventors.

Turning now to the rejection and objections to the claims of record, claims 1 through 23, claims 3 and 4 were objected to because of the following informalities: "in line 1 of each claim,

"wherein" should presumably be --comprising--." Applicants have amended claims 3 and 4 to read "further providing" in place of "wherein" and in place of "comprising" as suggested by the examiner. The reason for not using "comprising" as suggested by the examiner is that the claims as amended use the term "further providing".

Claim 5 was objected to because of the following informality: "in line 1 of the claim, "inputs" should presumably be --input--." Applicants have amended claim 5 as suggested by the examiner.

#### Claims Rejections – 35 USC Section 112

Claim 15 stands rejected for insufficient antecedent basis for phrase "the goods or services" in line 1. Applicants' amended claims now presents the amended claim 15 as dependent on claim 13.

#### Claims Rejection 35 USC Section 102

The examiners office action of November 8, 2001 made the following claim rejections under 35 USC Section 102 which are respectfully traversed for reasons subsequently set forth herein;

"Claims 1-6, 10, 13, 15, 16, 18-20 rejected under 35 U.S.C. 102(e) as being anticipated by Mandeberg et al." The examiner maintains that Mandeberg disclosed a method of "...control the creating and publishing of presentations to a plurality of media venues ...". This is incorrect. For example, Mandeberg et al do not contain a method for the creating and publishing of presentations to a plurality of media venues. Mandeberg et al present only an Internal Management Model while the present invention teaches a Business to Business Model, which teach in different directions. Mandeberg et al in col. 5 lines 48-53 teach:

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"As shown in Fig. 1, system 100 includes an apparatus and/or a step for assembling at a central location, digital multimedia presentations for the plurality of stores. This apparatus or step is indicated in Fig. 1 as "content development" 102. Digital multimedia presentations which are developed are stored in a presentation database 104 at the central location..."

Mandeberg et al discuss venues i.e. as "wholesale or retail stores". The Mandeberg et al reference does not use the term "Media Venues" as taught by the present invention.

In the SUMMARY OF THE INVENTION of Mandeberg et al, in col. 1 lines 47-52 states:

"The present invention includes methods, systems and computer program products for generating store displays for a plurality of stores. Digital multimedia presentations are assembled at a central location for the plurality of stores. Start and end times are assigned to the digital multimedia presentations for the stores."

Further the Mandeberg et al reference continues in the SUMMARY OF THE INVENTION, in col. 2 lines 57-60:

"The present invention is particularly applicable for generating menu boards for an enterprise such as a restaurant chain, which includes a plurality of sites such as restaurant sites."

The incorrect equating by the examiner of media venues (sites) is well established by the reference itself. Please note the definition of "Media Venues" as found on page 16 of the glossary of the present invention.

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Turning now to the examiners' reference to Mandeberg et al. (col. 6 lines 4-16), the "presentation database 104" contains completed presentations, this content is not the equivalent of the "presentation rules database" of the present invention.

The term "Sellers" is not taught directly or indirectly by the Mandeberg et al reference. An Internal Management Model does not include a second party seller or sellers as does the Business To Business model presented by the present invention. In the claims as amended the term seller is properly used as supported by the specification. In addition the term "contract for" that is now found in the amended claim 1 preamble clearly supports a Business to Business model i.e., by definition, contract for, is between two or more parties. Such a concept is not contemplated by the Mandeberg et al reference. As defined by Webster's Third New International Dictionary, copyright 1971 by G. & C. Merriam Co. the term contract means:

"an agreement between two or more persons or parties to do or not to do something"

In addition the examiner states "...create a presentation that apply with the guidelines...". Mandeberg et al does not contain a method to create the presentations. Note Mandeberg et al first sentence of the ABSTRACT and col. 7 lines 44-46, which states:

"These digital multimedia presentations are generally developed by creative professionals at advertising agencies or clients."

The examiner's attention is also directed to col. 10 lines 21-26 of Mandeberg et al which states:

"Accordingly, in order to assemble a package of digital multimedia presentations for the plurality of stores, an operator at the control and monitoring station 108 selects one or more programs from the presentation

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database 104, specifies destination sites from the client and site database

110 and schedules the package start and expiration dates."

On page 5 of the rejection, lines 1 and 2, the examiner has again incorrectly identified elements of Mandeberg et al for example the client and site database 110. The examiners' misstatement of "a seller database (110) with a list of sellers (clients)"; the Mandeberg et al client and site database (110) violates the meaning of seller. The examiner has equated seller with store, site, or client.

Regarding claims 13 and 15, Mandeberg et al teach a method of displaying fast food menus, the purchase of the items on those menus is still done as it was prior to Mandeberg et al. As stated in col. 15 lines 11-13, managers of fast food restaurants no longer need to depend on employees to install and maintain signage. Again the examiner has misused the concept of signage, he equates such concept with a means of purchasing.

#### Claims Rejections – 35 USC Section 103

The application currently names joint inventors, and the examiners' presumption that the subject matter of the various claims were commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. The currently named joint inventors remain the correct inventors in view of the claims as amended.

Claims 7-9, 11, 12, 14, 17, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mandeberg et al. The examiner has erroneously concluded that Mandeberg et al disclosed all of the limitations of the original claims. The examiner has excepted terms like buyers' database, transaction database and an inventory database. In view of the examiner's



further conclusion that such databases are common in the art, the elements of any technology can be known; however the contents, structure (relationship of entries and relationship to other elements), and functional use support the present invention. Buyers database or inventory database or any database can have multiple and differing relationships, contents, and functions which are not obvious.

A Mandeberg et al presentation is "A method for generating digital multimedia presentations for a plurality of remote locations." Digital Multimedia cannot be open-access presentations because the core code is not revealed to browsers or search agents and therefore cannot be view except to their viewers or within their player programs. It should be noted that within Mandeberg et al there are no connections to open networks, only WANs for the delivery of "packages" to the remote "stores" or "sites", and LANs within the remote "stores" or "sites" to distribute the "digital multimedia presentations" to the "players" within the remote "stores" or "sites". (note Mandeberg et al Fig 6A, 6B)

Open-access presentations and dynamic presentations are both common in the art. What is not common in the art are open-access presentations that are created and published from data input into a remote program at a Sellers location that results in the updating of a database that then results in the changing of multiple open-access presentations. The creation of multiple open-access presentations being done without the Seller making the changes within a code editor is new to the art, and being practiced only within our invention and its commercial application.

Applicants respectfully traverse the examiner's conclusions that their invention would have been obvious to one of ordinary skill in the art at the time the invention was made. The

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examiner has misconstrued the relevance of Mandeberg et al and has made unsupported conclusions regarding both the reference and the invention.

Under the examiner's Conclusion section, other prior art made of record and not relied upon are listed for Applicants review. Applicants have reviewed the prior art of record and find same to be not relevant; however the Speicher reference appeared to be of interest. Upon detailed review it was found the reference teaches a method that can only be applied to a single organization which is different than the present invention. In addition the Speicher client has no selection of publishing destination, nor control of the presentation.

In view of the foregoing amendment and remarks, all the amended claims, currently pending in this application are now seen to be in condition for allowance. A Notice of Allowance of Claims 1-23 is therefore earnestly solicited.

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

Set forth below are Claims 1 through 23 which have been appropriately marked to show the changes made therein in the foregoing amendment.

.....

- 1) (Amended) A method of using a network of computers to contract for, facilitate and control the creating and publishing of presentations, by a seller, to a plurality of media venues owned or controlled by other than the seller, [while minimizing required input,] comprising:
  - a) providing a media database having a list of available media venues;
  - b) providing means for applying [a presentation rules database having] corresponding [creative] guidelines of the media venues;

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- c) providing means for transmitting said presentations to [the] a selected media venue [venues] of the media venues;
- d) providing means for a seller [the sellers] to select [selection of] the media venues; and
- e) providing means for seller [sellers] to input [inputting] information; [and]

whereby a person may choose one or more media venues, create a presentation [or presentations] that comply with said [media venues] guidelines of the media venues selected, and transmit the presentation [or presentations] to the selected media venues for publication.

- 2) (Amended) The method of claim 1 further providing [wherein] a seller database having [has] a list of sellers.
- 3) (Amended) The method of claim 1 further providing [wherein] a means for creating structured presentations from sellers information [for the media venues].
- 4) (Amended) The method of claim 3 further providing [wherein] a means for [sellers] transferring said created presentations to the media venues for publishing.
- 5) (Amended) The method of claim 1 further providing [wherein] a means for said media venues to input [inputs] said [creative] guidelines and information.
- 6) (Amended) The method of claim 1 further providing [wherein] means for [of] said media venues to receive [receives] the sellers presentations.
- 7) (Amended) The method of claim 1 further providing [wherein] a media buyers database having [has] a list of media buyers.

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- 8) (Amended) The method of claim 1 further providing [wherein] a media transactions database having [has] a list of [all] media transactions.
- 9) (Amended) The method of claim 1 further providing [wherein] a media inventory database having [has] a list of [all] media inventory.
- 10) (Amended) The method of claim 1 further providing [wherein] a presentations database containing [contains] created presentations.
- 11) (Amended) The method of claim 1 further providing [wherein] an inventory [inventories] database containing [contains] available inventory.
- 12) (Amended) The method of claim 1 further providing [wherein] a transaction database containing [contains] transactions made.
- 13) (Amended) The method of claim 1 further providing [wherein] means with instructions for a buyer to select [a method of buyers' selection] and purchase offers of [goods and services is offered by] sellers.
- 14) (Amended) The method of claim 13 further providing [wherein] a transaction database for recording [contains records of] the purchases of the buyers [goods and services made].
- 15) (Amended) The method of claim 13 [1] further providing [wherein] a means for the buyer to purchase [of purchasing the] goods or services offered by the seller [is provided].
- 16) (Amended) The method of claim 1 wherein the media database includes [having] a list of available media and [includes] corresponding editorial, design and publication standards.

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- 17) (Amended) The method of claim 1 wherein the media database includes [having] a list of available media and [includes] corresponding pricing and media inventory availability.
- 18) (Amended) The method of claim 1 further providing means for transferring [wherein] said presentations [to be featured through selected media venues are transferred] to said media venues [them].
- 19) (Amended) The method of claim 1 further providing [wherein] a computer [is used] to control and facilitate the network of computers.
- 20) (Amended) The method of claim 1 further providing [wherein] a computer [is used] to control and facilitate creation and distribution of all presentations to said selected media venues.
- 21) (Amended) The method of claim 1 further providing [comprising] a means for [of] automatically creating open-access electronic presentations.
- 22) (Amended) The method of claim 1 further providing [comprising] a means for [of] publishing open-access presentations electronically.
- 23) (Amended) The method of claim 1 further providing [wherein] a computer [is used] to present dynamic presentations electronically.

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The examiner is hereby requested to telephone the undersigned attorney of record at 972-233-7773 if such would further or expedite the prosecution of the instant application.

Respectfully submitted,

Henry Croskell



Attorney for applicants  
Registration No. 25847

Dated Jan 22, 2002  
6817 Cliffbrook  
Dallas TX. 75254  
Phone 972-233-7773

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# TAB 3



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NOTICE OF ALLOWANCE AND FEE(S) DUE

7590 04/10/2002
HENRY CROSKELL
6817 CLIFFBROOK
DALLAS, TX 75240

EXAMINER

JAKETIC, BRYAN J

ART UNIT CLASS-SUBCLASS

2167 705-027000

DATE MAILED: 04/10/2002

Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
Values: 09/480,303, 01/10/2000, LUCINDA STONE, STONE-1, 4164

TITLE OF INVENTION: METHOD FOR USING COMPUTERS TO FACILITATE AND CONTROL THE CREATING OF A PLURALITY OF FUNCTIONS

Table with 7 columns: TOTAL CLAIMS, APPLN. TYPE, SMALL ENTITY, ISSUE FEE, PUBLICATION FEE, TOTAL FEE(S) DUE, DATE DUE
Values: 23, nonprovisional, YES, \$640, \$0, \$640, 07/10/2002

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above. If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

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B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

[ ] Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

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III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

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7590 04/10/2002  
**HENRY CROSKELL**  
**6817 CLIFFBROOK**  
**DALLAS, TX 75240**

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(Depositor's name)
(Signature)
(Date)

APPLICATION NO. 09/480,303	FILING DATE 01/10/2000	FIRST NAMED INVENTOR LUCINDA STONE	ATTORNEY DOCKET NO. STONE-1	CONFIRMATION NO. 4164
-------------------------------	---------------------------	---------------------------------------	--------------------------------	--------------------------

TITLE OF INVENTION: METHOD FOR USING COMPUTERS TO FACILITATE AND CONTROL THE CREATING OF A PLURALITY OF FUNCTIONS

TOTAL CLAIMS 23	APPLN. TYPE nonprovisional	SMALL ENTITY YES	ISSUE FEE \$640	PUBLICATION FEE \$0	TOTAL FEE(S) DUE \$640	DATE DUE 07/10/2002
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EXAMINER JAKETIC, BRYAN J	ART UNIT 2167	CLASS-SUBCLASS 705-027000
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1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363). Use of PTO form(s) and Customer Number are recommended, but not required.

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1 \_\_\_\_\_

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PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE \_\_\_\_\_ (B) RESIDENCE: (CITY and STATE OR COUNTRY) \_\_\_\_\_

Please check the appropriate assignee category or categories (will not be printed on the patent)  individual  corporation or other private group entity  government

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- Publication Fee
- Advance Order - # of Copies \_\_\_\_\_

**4b. Payment of Fee(s):**

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- Payment by credit card. Form PTO-2038 is attached.
- The Commissioner is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

The COMMISSIONER OF PATENTS AND TRADEMARKS is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

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(Date)

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,303	01/10/2000	LUCINDA STONE	STONE-1	4164
	7590 04/10/2002		EXAMINER	
HENRY CROSKELL 6817 CLIFFBROOK DALLAS, TX 75240			JAKETIC, BRYAN J	
			ART UNIT	PAPER NUMBER
			2167	

DATE MAILED: 04/10/2002

**Determination of Patent Term Extension under 35 U.S.C. 154 (b)**  
(application filed after June 7, 1995 but prior to May 29, 2000)

The patent term extension is 0 days. Any patent to issue from the above identified application will include an indication of the 0 day extension on the front page.

If a continued prosecution application (CPA) was filed in the above-identified application, the filing date that determines patent term extension is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system. (<http://pair.uspto.gov>)

**Notice of Allowability**

Application No.

09/480,303

Examiner

Bryan Jaketic

Applicant(s)

STONE ET AL

Art Unit

2167

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to Amendment A, filed 22 January 2002.
2.  The allowed claim(s) is/are 1-23.
3.  The drawings filed on 10 January 2000 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.
5.  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a)  The translation of the foreign language provisional application has been received.
6.  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8.  CORRECTED DRAWINGS must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1)  hereto or 2)  to Paper No. \_\_\_\_\_.
  - (b)  including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the top margin (not the back) of each sheet. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

9.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>g</u> |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____               | 6 <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|  | 9 <input type="checkbox"/> Other  |

### REASONS FOR ALLOWANCE

1. The following is an examiner's statement of reasons for allowance:

The present invention comprises a method for using a network of computers to contract for, facilitate and control the creating and publishing of presentations, by a seller, to a plurality of media venues owned or controlled by other than the seller comprising the steps of providing a database of available media venues, providing means for applying corresponding guidelines, and providing means for the seller to select one or more media venues. The closest prior art, Mandenberg et al. (US 6,038,545) shows a system for central location to develop multimedia displays and transmit the displays to store locations. Mandenberg et al discloses an "in-house" system, and do not disclose a system for selecting media venues owned by other than the seller and creating a presentation that complies with proper guidelines. This distinct and non-obvious feature is included in the sole independent claim and renders it allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### *Conclusion*

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Eldering discloses an advertisement auction system that


determines demographics. Daimon discloses a system for generating different publications. *Advertising Age* describes recommended banner ad sizes. *NewsInc* describes an ad agency that creates a plan, selects a newspaper, and sends the ad. Hamblen describes an ad agency that selects the correct print size for advertisements based on the type of media venue.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Jaketic whose telephone number is (703) 308-0134. The examiner can normally be reached on Monday through Friday (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-1396 for regular communications and (703) 306-1396 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800.

bj  
January 31, 2002

  
ROBERT P. OLSZEWSKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600 2100