

**United States Court of Appeals
for the Federal Circuit**

DDR HOLDINGS, LLC,
Plaintiff-Appellee,

v.

**HOTELS.COM, L.P., CENDANT TRAVEL
DISTRIBUTION SERVICES GROUP, INC.,
EXPEDIA, INC., TRAVELOCITY.COM, L.P.,
SITE59.COM, LLC, INTERNATIONAL CRUISE &
EXCURSION GALLERY, INC.,
OURVACATIONSTORE, INC., INTERNETWORK
PUBLISHING CORPORATION, AND ORBITZ
WORLDWIDE, LLC,**
Defendants,

AND

**NATIONAL LEISURE GROUP, INC. AND
WORLD TRAVEL HOLDINGS, INC.,**
Defendants-Appellants,

AND

DIGITAL RIVER, INC.,
Defendant.

2013-1505

Appeal from the United States District Court for the Eastern District of Texas in No. 06-CV-0042, Judge J. Rodney Gilstrap.

Decided: December 5, 2014

LOUIS J. HOFFMAN, Hoffman Patent Firm, of Scottsdale, Arizona, argued for plaintiff-appellee. On the brief was IAN B. CROSBY, Susman Godfrey LLP, of Seattle, Washington.

NORMAN H. ZIVIN, Cooper & Dunham LLP, of New York, New York, argued for defendants-appellants, National Leisure Group, Inc., et al. With him on the brief was TONIA A. SAYOUR.

Before WALLACH, MAYER, and CHEN, *Circuit Judges*.

Opinion for the court filed by *Circuit Judge* CHEN.
Dissenting opinion filed by *Circuit Judge* MAYER.

CHEN, *Circuit Judge*.

Defendants-Appellants National Leisure Group, Inc. and World Travel Holdings, Inc. (collectively, NLG) appeal from a final judgment of the United States District Court for the Eastern District of Texas entered in favor of Plaintiff-Appellee DDR Holdings, LLC (DDR). Following trial, a jury found that NLG infringes the asserted claims of U.S. Patent Nos. 6,993,572 (the '572 patent) and 7,818,399 (the '399 patent). The jury also found the asserted claims of the '572 and '399 patents are not invalid. The district court denied NLG's renewed motion for judgment as a matter of law (JMOL) on, *inter alia*, noninfringement and invalidity of the asserted patents. The district court subsequently entered a final judgment

consistent with the jury's findings on infringement, validity, and damages, and awarded DDR pre- and post-judgment interest and costs. We affirm the district court's denial of NLG's motions for JMOL of noninfringement and invalidity of the '399 patent. Because we conclude that the '572 patent is anticipated as a matter of law, we reverse the district court's denial of JMOL on the validity of the '572 patent, and remand to the district court for further proceedings consistent with our decision.

I. BACKGROUND

DDR is the assignee of the '572 and '399 patents. The '572 and '399 patents are both continuations of U.S. Patent No. 6,629,135 (the '135 patent), which has a priority date of September 17, 1998. Each of these patents is directed to systems and methods of generating a composite web page that combines certain visual elements of a "host" website with content of a third-party merchant. For example, the generated composite web page may combine the logo, background color, and fonts of the host website with product information from the merchant. '135 patent, 12:46–50.

The common specification of the patents-in-suit explains that prior art systems allowed third-party merchants to "lure the [host website's] visitor traffic away" from the host website because visitors would be taken to the third-party merchant's website when they clicked on the merchant's advertisement on the host site. *Id.* at 2:26–30. The patents-in-suit disclose a system that provides a solution to this problem (for the host) by creating a new web page that permits a website visitor, in a sense, to be in two places at the same time. On activation of a hyperlink on a host website—such as an advertisement for a third-party merchant—instead of taking the visitor to the merchant's website, the system generates and directs the visitor to a composite web page that displays product information from the third-party mer-

chant, but retains the host website's "look and feel." *Id.* at 3:9–21. Thus, the host website can display a third-party merchant's products, but retain its visitor traffic by displaying this product information from within a generated web page that "gives the viewer of the page the impression that she is viewing pages served by the host" website. *Id.* at 2:56–63, 3:20–22.

Representative claim 13 of the '572 patent recites:

13. An e-commerce outsourcing system comprising:

- a) a data store including a look and feel description associated with a host web page having a link correlated with a commerce object; and
- b) a computer processor coupled to the data store and in communication through the Internet with the host web page and programmed, upon receiving an indication that the link has been activated by a visitor computer in Internet communication with the host web page, to serve a composite web page to the visitor computer wit[h] a look and feel based on the look and feel description in the data store and with content based on the commerce object associated wit[h] the link.

System claim 13 requires that the recited system provide the host website with a "link" that "correlate[s]" the host website with a "commerce object." The "commerce object" is the product or product catalog of the merchant. '135 patent, 3:7–13. After recognizing that a website visitor has activated the link, the system retrieves data from a "data store" that describes the "look and feel" of the host web page, which can include visual elements such as logos, colors, fonts, and page frames. *Id.* at 12:46–50. The claimed system then constructs a composite web page comprising a "look and feel" based on the look and

feel description in the data store along with content based on product information from the associated merchant's product catalog.

The '399 patent is directed to a similar system with a greater emphasis on a "scalable [computer] architecture" to serve "dynamically constructed [web] pages" associated with multiple host website and merchant pairs. '135 patent, 3:32–36. Representative claim 19 of the '399 patent recites:

19. A system useful in an outsource provider serving web pages offering commercial opportunities, the system comprising:
 - (a) a computer store containing data, for each of a plurality of first web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first web pages;
 - (i) wherein each of the first web pages belongs to one of a plurality of web page owners;
 - (ii) wherein each of the first web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and
 - (iii) wherein the selected merchant, the outsource provider, and the owner of the first web page displaying the associated link are each third parties with respect to one other;
 - (b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:
 - (i) receive from the web browser of a computer user a signal indicating activation of one of

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