Exhibit 2014
Zynga, Inc. v. Personalized Media Communications, LLC
Case IPR2013-00164 (SCM)

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD
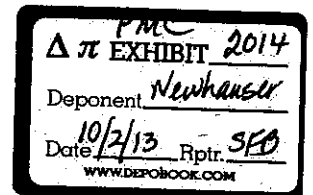
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ZYNGA INC.
Petitioner

v.

PERSONALIZED MEDIA COMMUNICATIONS, LLC
Patent Owner

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Case IPR2013-00164 (SCM)
Patent 7,797,717 B1

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Before SALLY C. MEDLEY, KARL D. EASTHOM, and
JONI Y. CHANG, *Administrative Patent Judges.*

EASTHOM, *Administrative Patent Judge.*

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

I. INTRODUCTION

Zynga Inc. ("Zynga") filed a petition requesting an *inter partes* review of claims 1-7 and 9 of U.S. Patent 7,797,717. (Paper 1, "Pet.") In response, Personalized Media Communications, LLC ("PMC") filed a patent owner preliminary response. (Paper 8, "Prelim. Resp.") We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a):

> THRESHOLD – The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Pursuant to the defined threshold under 35 U.S.C. § 314(a), the Board institutes an *inter partes* review of claims 1-7 and 9 of the '717 patent.

A. Related Proceedings

The '717 patent and other related patents are the subject of four *inter partes* review filings before the Patent Trial and Appeal Board, and District Court litigation in which PMC alleges infringement against Zynga. (*See* Prelim. Resp. 2; *accord* Pet. 1-2; *Personalized Media Communications, LLC v. Zynga Inc.* Civil Action No. 2:12-cv -68-JRG (E.D. Tex. Feb. 13, 2012).)

Zynga asserts that PMC has conceded in the District Court litigation that the '717 patent's earliest effective priority date is September 11, 1987. (Pet. 4.) PMC does not contest the assertion in its Preliminary Response. Accordingly, the Board assumes for purposes of this Decision that September 11, 1987 is the effective filing date of the '717 patent's claims at issue here.

B. The '717 Patent

The '717 patent describes a modified television receiver station which includes a microcomputer which combines television viewer information and general mass media television broadcasting into personalized media for the television viewer. (*See* Ex. 1001, Abstract, Fig. 1.) PMC describes the '717 patent claims as "generally directed to a method for processing an information transmission that is received at a receiver station to locally generate content by processing stored subscriber data." (Prelim. Resp. 2.)

Figure 1, below, depicts a block diagram of a receiver station. (Col. 9, ll. 29-30).
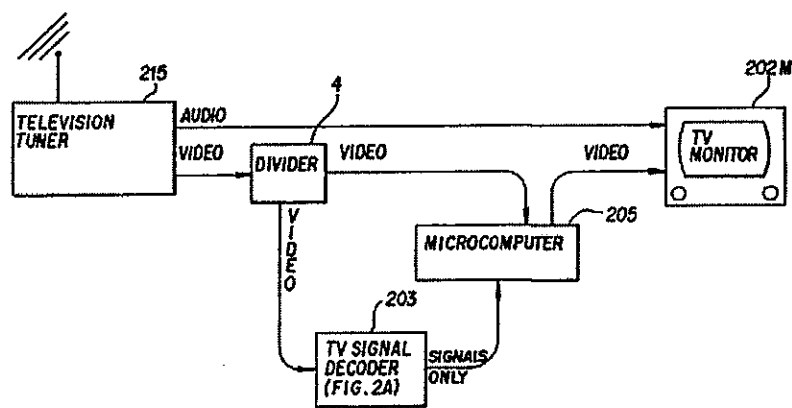

FIG. 1

PMC and Zynga, through its expert declarant Dr. Charles J. Neuhauser (Neuhauser Decl., Ex. 1012), each similarly describe a disclosed receiver station embodiment which involves a television program called "Farm Plans [or Plan] of Europe." (*See* Prelim. Resp. 3; Ex. 1012, ¶ 39.) According to PMC, the television program is part of

> a content distribution system [which] helps farmers . . . with the planning and management of their farms. Each farmer, using a receiver station, can receive an information transmission containing a television program entitled 'Farm Plans of Europe,' information

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relating to commercials [about trucks, services etc.] that might also be presented, and a message to be processed at the receiver station to coordinate the presentation.

(Prelim. Resp. 2-3 (citations to the '717 patent omitted).)

A farmer can store crop information specific to the farm in the receiver station, and upon receipt of the coordinating message, the system accesses that information to generate and output a cost/benefit analysis relating to the purchase of the truck or another service. (*See* Prelim. Resp. 3 (citations to the '717 patent omitted).) Thereafter, the farmer can modify the crop information or other stored information. (*See* Prelim. Resp. 3-4 (citations to the '717 patent omitted).)

C. Exemplary Claim

Challenged claim 1 follows:

1. A method of processing video signals at a receiver station based on at least one information transmission, the method comprising the steps of:

receiving information content and a first control signal in said at least one information transmission at said receiver station, said information content describing at least one of a product and a service;

generating a benefit datum in response to said first control signal by processing subscriber specific data at said receiver station;

delivering said information content and said benefit datum at an output device at said receiver station, wherein said information content and said benefit datum explain a benefit of acquiring said product or service specific to said subscriber;

receiving a subscriber input at said receiver station after said step of delivering;

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and controlling said receiver station based on said subscriber
input.

D. Prior Art Relied Upon

Zynga relies upon the following prior art references:

Bakula	U.S. Patent 4,204,206	May 20, 1980	(Ex. 1010)
Lockwood	U.S. Patent 4,567,359	Jan. 28, 1986	(Ex. 1008)
Lemon	U.S. Patent 4,674,041	June 16, 1987	(Ex. 1011)
Humble	U.S. Patent 4,825,045	Apr. 25, 1989	(Ex. 1009)

E. The Asserted Grounds

Zynga asserts the following grounds of unpatentability under 35 U.S.C.
§§ 102 and 103:

Claims 1-6 and 9 as anticipated by Lockwood;

Claims 1-6 and 9 as anticipated by Humble;

Claims 1-6 and 9 as obvious over Lockwood and Bakula;

Claims 1-6 and 9 as obvious over Humble, Lockwood, and Bakula;

Claim 7 as obvious over Lockwood and Lemon;

Claim 7 as obvious over Lockwood, Bakula, and Lemon;

Claim 7 as obvious over Humble and Lemon;

Claim 7 as obvious over Humble, Lockwood, Bakula, and Lemon.

(Pet. ii)

II. ANALYSIS

A. Claim Construction

The Board interprets each claim in an *inter partes* review using the
"broadest reasonable construction in light of the specification of the patent in
which it appears." 37 C.F.R. § 42.100(b). *See also Patent Trial Practice Guide*,
77 Fed. Reg. at 48766 (*Claim Construction*). "Generally speaking, we indulge a
'heavy presumption' that a claim term carries its ordinary and customary

meaning." *See CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). Tempering the presumption, "claims 'must be read in view of the specification, of which they are a part. . . .' [T]he specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.'" *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Circ. 2005) (en banc) (citations omitted).

The parties do not contend that any claim terms or phrases should be given a meaning other than the ordinary and customary meaning that the terms or phrases would have to a person of ordinary skill in the art in light of the '717 patent specification. *See Ayst Technologies Inc. v. Empak, Inc.*, 268 F.3d 1364, 1369 (Fed. Cir. 2001) (there is "no reason to depart from the position consistently taken on this issue by the parties").

Zynga does not provide a claim construction for any of claims of the '717 patent. Rather, Zynga represents that each claim should be construed in accordance with its plain and ordinary meaning under the broadest reasonable interpretation standard. (Pet. 8.) PMC does not contend otherwise.

However, an implicit disagreement exists over the meaning of the phrase "control signal." (*See, e.g.*, Pet. 18; Prelim. Resp. 8.) The term "control signal" is not specifically defined in the '717 patent. One trade dictionary defines a "control signal" as an electrical signal that directs a sequence of operations to be performed by a computer.[1] The '717 patent describes several examples of signals which appear to be control signals. (*See, e.g.*, Ex. 1001, Abstract.) The '717 patent description includes various electronic or other devices, such as displays, computers, converters, tuners, speakers, printers, and furnaces, which respond to

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[1] *Webster's New World Dictionary of Computer Terms* 60 (1983).

the signal in a variety of causal or predetermined manners, for example, by outputting different media, automating connections, etc. (*See id.*)

As ordinarily understood, the word "signal" means "any electrical quantity, such as voltage, current, or frequency, that can be used to transmit information."[2] *See Comaper Corp. v. Antec, Inc.*, 596 F.3d 1343, 1348 (Fed. Cir. 2010) (Because the specification does not provide an explicit definition of the claim term, in determining the ordinary and customary meaning of the claim term as understood by a person of ordinary skill in the art, it is appropriate to consult a general dictionary definition of the word for guidance.)

In light of the record, the term "control signal" reasonably means "an electrical quantity that is operative to cause a responsive action in a device, including but not limited to causing an output, an operation, or a sequence of operations."

An implicit also disagreement exists over the scope of the phrase "commercial" information. The '717 patent refers to "[p]laying each commercial spot [which] causes the combined medium information for said spot to display information for a particular commercial product such as a truck or a particular service such as a software package." ('717 patent, col. 285, ll. 49-52.) In light of the '717 patent, "commercial" information reasonably means "information for a particular product or service." Also, as discussed further below, this type of descriptive information, set forth in a claim, without more, may correspond to nonfunctional descriptive material.

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[2] *Microsoft Computer Dictionary* 435 (3rd Ed. 1997).

B. Asserted Grounds of Unpatentability

I. Humble – Anticipation, Claims 1-6 and 9

Humble discloses a supermarket point of sales (POS) and universal product code (UPC) scanning system for scanning UPC bar codes and generating promotional messages. (*See* Ex. 1009, Abstract, col. 1, ll. 12-36, col. 2, ll. 53-65, Fig. 1.) Humble's system includes a UPC scanner 12, UPC data store 16, UPC data buffer 24, UPC purchase promotional plan monitor 32, and an inter-active promotional display unit 26. (*See*; Ex. 1009, col. 2, ll. 13-47, Fig. 1.)

Zynga reads Humble's scanner system onto the claimed "receiver station" and other elements recited in claim 1. (Pet. 25.) Dr. Neuhauser, Zynga's expert declarant, further describes the scanner system as follows: "Humble discloses a computer controlled checkout counter that presents promotional messages to customers based on the items they are purchasing. . . . The system is capable of issuing coupons if a customer requests such a coupon after viewing a promotional message." (Ex. 1012, ¶ 103.)

> PMC similarly describes Humble's scanner system as
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> an improved supermarket check-out counter processor that includes a separate display for displaying promotions and commercials based on the Universal Product Codes (UPCs) of items purchased. . . . The scanned UPCs are used to extract price and description information from a first data store 16. . . . Additionally, the UPCs are compared to a list of UPCs in a second data store 32 which contains UPCs that trigger promotions, discounts, and the like. . . . The promotional plans could include graphic messages relating to the product purchased, discounts on further purchases, and the like.

(Prelim. Resp. 19-20 (citations to Humble omitted).)

As to the recited "control signal," in claim 1, Zynga relies on Humble's disclosure that "'[t]he UPC is thus read and a digital signal indicative of the code is furnished to a computer whose memory includes such identification and price data

in storage in address correspondence with the code signal.'" (Pet. 28 (quoting Ex. 1009, col. 1, ll. 18-22).) As to the recited "information content" in claim 1, Zynga relies, *inter alia*, on Humble's disclosure of receiving "'description and price'" product information from various manufacturers who input that information into the scanning system to be stored in the UPC data buffer 24 and later displayed. (*See* Pet. 25, 28; citing Ex. 1009, col. 2, ll. 24-26, Fig. 1); *accord* Ex. 1012 ¶ 112 (Dr. Neuhauser testimony).)

In response, PMC contends that Humble does not disclose "receiving information content and a first control signal in said at least one information transmission at said receiver station" as claim 1 recites. (Prelim. Resp. 20.) PMC reasons that even if the UPC code "can be interpreted as a control signal as Zynga contends], the UPC code received at the scanner 12 of Humble is not an information transmission that further includes information content," because any "information transmission received from the manufacturers would be clearly distinct and separate from any information transmission received from scanner 12." (Prelim. Resp. 21.)

Contrary to PMC's argument, claim 1 does not preclude distinct transmissions or require the control signal and information content to be in the same information transmission. Claim 1 only requires the control signal and information content to be in "at least one information transmission."

PMC also contends that Humble does not disclose information content in an information transmission. According to PMC, "Fig. 1 of Humble . . . does not depict any manufacturer systems connected to either UPC data buffer 24 or UPC data store 16, much less a data line through which an information transmission may be communicated." (Prelim. Resp. 20.) Contrary to PMC's contention, Humble describes that "this information is furnished by lines 18 and 20 to P.O.S.

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unit 22" to create a "computer-implemented look-up table having a product description and price correlated with product UPC." (Ex. 1009, col. 2, ll. 16-20.) In other words, the "information content" is included within an "information transmission" over line 18 or 20 of the system, contrary to PMC's argument. Line 20 is depicted as open-ended thereby signifying that it extends to an external system. (*See* Ex. 1009, Fig. 1.)

PMC also argues that Zynga "fails to demonstrate that Humble teaches the step of *generating a benefit datum in response to said first control signal by processing subscriber specific data at said receiver station*, as recited in independent claim 1." (Prelim. Resp. 21.) PMC reasons that Zynga impermissibly "relie[s] on the UPC received at the scanner 12 as being both the claimed 'control signal' and the claimed 'subscriber specific data'." (*Id.*) However, the "subscriber specific data" is broad enough to correspond to individual data bars in each UPC bar code on a product, or a collection of such UPC codes for a group of products purchased by a specific subscriber.

On the other hand, the "control signal" corresponds to the transmission of a collection of such bars making up a UPC bar code or codes. (*See* Pet. 25-26 (citing Ex. 1009, col. 1, ll. 17-22, col. 2, ll. 32-65, and relying Humble's disclosure of "one or more codes" and "'a digital signal indicative of the code'").) Some of these UPC bar code transmissions ultimately provide a "positive comparison determination" when the system matches scanned UPC codes for purchased products with stored UPC codes for pre-planned promotional messages. (*See* Ex. 1009, col. 2, ll. 36-39; Pet. 28 (referring to UPC code comparisons).)

Therefore, such UPC code transmissions reasonably correspond to the recited "control signal," because the triggered promotional messages correspond to the recited "benefit datum" as recited in claim 1. (*See* Pet. 29 (discussing

Humble's disclosure corresponding to benefit datum including the "'positive comparison determination'").) Accordingly, Zynga establishes a reasonable likelihood of prevailing on the ground of unpatentability of claim 1 as anticipated by Humble.

PMC argues that "[w]ith respect to dependent claim 3, which provides that *said subscriber input modifies said subscriber specific data*, Humble further fails to teach the claimed limitation." (Prelim. Resp. 22.) As PMC notes, Zynga relies on the scanning of additional items to modify the subscriber input set forth in claim 3. (Prelim. Resp. 22 (addressing Pet. 32-33).) PMC responds that "this subsequent scanning does not modify the alleged subscriber specific data–the UPC of the previous item scanned– whatsoever." (Prelim. Resp. 22.)

PMC's response does not address Zynga's specific reliance on Humble's updating of the "customer-specific-list of items to be purchased by the customer." (Pet. 33.) As Zynga maintains, the recited "subscriber specific data" can correspond to a collection of UPC codes corresponding to a list of items scanned or to be scanned as discussed *supra*, so that adding to the collection modifies that collection. Accordingly, Zynga establishes a reasonable likelihood of prevailing on the ground of unpatentability of claim 3 as anticipated by Humble.

PMC also argues that "Humble also fails to teach the additional limitation of dependent claim 4, providing that 'said information content comprises a commercial.'" (Prelim. Resp. 22.) As PMC notes, Zynga relies on Humble's disclosure of displaying description and price information. (*Id.*) PMC contends that price and description cannot constitute a commercial. (*Id.* at 22-23.) It is not clear at this juncture, in light of the claim construction *supra*, why such product information cannot be considered a commercial. Moreover, PMC unpersuasively argues a claim distinction based on the message content; i.e., "printed matter."

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However, "'[w]here the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability.'" *King Pharmaceuticals, Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1278-79 (Fed. Cir. 2010) (quoting *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) and extending the rationale behind *Gulack* and *In re Ngai*, 367 F.3d 1336, 1338-39 (Fed. Cir. 2004) to method claims citing informational instructions). Here, claim 4 does not require any action based on the type of information content recited, thereby rendering the commercial information content non-functional descriptive material.

As to challenged dependent claims 2, 5, 6, and 9, Zynga similarly relies on Humble and the Neuhauser Declaration, and shows persuasively that Humble discloses the additional recited limitations in those claims. (*See* Pet. 32, 34-38.) PMC's arguments are directed to claims 1, 3, and 4, and PMC does not contest the specific limitations in the claims 2, 5, 6, and 9 with separate arguments. Pursuant to the foregoing discussion, the petition establishes a reasonable likelihood of prevailing on the ground of unpatentability of claims 1-6 and 9 as anticipated by Humble under 35 U.S.C. § 102.

2. *Lockwood and Bakula – Obviousness, claims 1-6 and 9*

Zynga similarly relies on the Neuhauser Declaration in its effort to establish that the combination of Lockwood and Bakula renders obvious claims 1-6 and 9. (*See* Pet. 9-24; 38-42.)[3] Lockwood discloses a computer communication system which automatically dispenses information about desired goods and services, such as insurance products, from a central data processing center 1 linked between

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[3] As the listed grounds of unpatentability *supra* indicate, Zynga relies on Lockwood for anticipation, and in the alternative, the combination of Lockwood and Bakula for obviousness. Zynga's obviousness analysis incorporates its anticipation analysis for most of the claim terms. (*See* Pet. 38.)

various seller institution terminals and customers at remotely linked terminals 2. (*See* Ex. 1008, Abstract, Fig. 1.) Bakula discloses a computer editing system which transmits control program information and other content from a host computer to a local processor driven computer at an editing terminal in order to facilitate programming and editing at the editing terminal. (*See* Ex. 1010, Abstract, col. 5, ll. 10-66, Fig. 2, Pet. 39.)

Claim 1 recites "receiving information content and a first control signal in said at least one information transmission at said receiver station, said information content describing at least one of a product and a service." Zynga primarily relies on one of Lockwood's remotely linked customer kiosk terminals 2 to satisfy most of the limitations in this claim phrase and relies on Bakula to buttress the showing. (*See* Pet. 38; Ex. 1012, ¶¶ 61-71, 146, 153; note 1.)

Zynga explains that Lockwood provides the details of an insurance policy, the "information content" recited in claim 1, to a customer at a kiosk terminal 2, the "receiver station" recited in claim 1. (*See* Ex. 1012, ¶ 71.) To the extent that Lockwood does not disclose that the relied-upon "information content" is not "received in . . . at least one information transmission" at a receiver station, as claim 1 recites, Zynga relies on Bakula's teaching of downloading and receiving a control program at an editor terminal to suggest receiving information content at Lockwood's receiver station. (*See* Pet. 38-39.)

To support that reliance, Dr. Neuhauser explains that Bakula and Lockwood disclose "the same basic structure. That is both are groups of terminals connected to a central processing system." (Ex. 1012 ¶ 152.) Dr. Neuhauser also explains that Bakula's downloading method allows each editing terminal to be personalized for its particular use or user. (Ex. 1012 ¶ 152; Ex. 10108, col. 5, ll. 10-14.) Further, Dr. Neuhauser explains that instead of loading programs or other

information into Lockwood's remote terminals by magnetic or paper tape, "[i]t would also have been obvious to one of ordinary skill in the art that the programming on storage disk 9 of terminal 2 could be placed there from the processing center 1 by remote downloading [as Bakula suggests] over the modem 21 line connecting the processing center 1 to the terminals 2." (Ex. 1012 ¶ 153). Zynga contends that "modifying Lockwood's system in this manner would involve a combining of well known prior art elements to achieve a predictable result." (Pet. 41 (citing Ex. 1012 ¶¶ 158-159).)

PMC's response does not show persuasively why Zynga's proposed modification would have been unpredictable or unobvious. (*See* Prelim. Resp. 14-17.) For example, PMC contends that the downloaded program instructions in Bakula do not include information content and that "Bakula provides for the content (stories to be edited) to be sent separately after the program is loaded." (Prelim. Resp. 16.) This line of arguments constitutes an unpersuasive separate attack on Bakula without fully addressing the combined teachings as Zynga proposes. Also, contrary to PMC's latter argument, claim 1 does not preclude distinct transmissions or require the control signal and information content to be in the same information transmission. As noted in the discussion surrounding Humble *supra*, claim 1 only requires the control signal and information content to be in "at least one information transmission."

As also indicated *supra*, as to the recited "information content" in claim 1, Zynga generally refers, *inter alia*, to Lockwood's providing of different types of insurance policy and price information at the receiver station kiosk terminal. (Pet. 10.) Lockwood states that one object of the invention is to "provide the general public information about comparable insurance coverages from several sources." (Pet. 14 (quoting Lockwood, col. 1, ll. 31-36).) Lockwood provides, at the remote

kiosk terminal or receiver station, "video information storage unit 9 for storing a predetermined information message." (Ex. 1008, col. 9, ll. 35-36.) Based on the object of Lockwood's system as providing insurance information to a customer at a terminal, and considering Dr. Neuhauser's explanation and Bakula's teachings, one of ordinary skill in the art would have recognized at least the automation benefit of modifying Lockwood's system. That is, the benefit of providing automatic insurance information updates from the central computer to the receiver station storage unit 9, thereby providing "information content" in "at least one information transmission," as claim 1 requires. Such information content also might include, for example, information explaining certain benefits related to different customers about certain types of insurance, for example, life, health, or auto insurance. (*See* Ex. 1008, col. 6, ll. 51-53.)

The "control signal" mentioned *supra* also is recited in a related claim 1 phrase, "generating a benefit datum in response to said first control signal by processing subscriber specific data at said receiver station." PMC argues that "Bakula's word processing program does not generate any benefit information that explains a benefit of acquiring a product or service specific to the subscriber, nor does it cause the processing of subscriber specific data at the editor terminals of Bakula." (Prelim. Resp. 16.) PMC also argues that Lockwood's input device, a keyboard, does not generate a control signal, and that "the customer information is not disclosed as containing any control signals." (Prelim. Resp. 10.)

The arguments fail to address, in a persuasive manner, Dr. Neuhauser's explanation as to how Lockwood's keyboard generates control signals received at the terminal 2 and how Lockwood discloses or renders obvious the other claim elements alluded to in PMC's arguments. (Ex. 1012, ¶ 69.) Dr. Neuhauser testifies as follows:

> Lockwood discloses a *"benefit datum"*, namely a personalized
> insurance quote *"generated"* by central processor 22 based on data
> provided by the person wishing to receive an insurance quotation. The
> *"subscriber specific data"* is that data entered by the user of terminal
> 2, such as age, gender and marital status. Lockwood discloses a *"first
> control signal"* which is the information entered by the customer at
> terminal 2 via the keyboard (part of monitor 8) or touch pad 13 and
> passed to the processing center 1.

(Ex. 1012, ¶ 69.)

As indicated in the quotation, Dr. Neuhauser relies on a control signal from

Lockwood's keyboard. Given the definition of control signal *supra*, Lockwood

implies or suggests such a signal as signifying a further response to the condition

that a customer has completed entering the necessary customer information, or

"subscriber specific data" recited in claim 1, as the following passages from

Lockwood demonstrate: "[I]n response to customer information received from any

of the terminals," the central processing unit 22 "send[s] quotation data to the

respective terminal[s]." (Ex. 1008, col. 5, ll. 46-49.) "Each sales and information

terminal is programmed to gather a predetermined sequence of information from a

customer on the services in which the customer is interested, and to transmit the

information to the central data processing center." (Ex. 1008, col. 2, ll. 48-54.)

"Once all the necessary information has been gathered at the terminal (see 44), the

processing unit 14 auto-dials the central data processing center 1. (Ex. 1008, col. 7,

ll. 3-4.) The "[c]ustomer enters the necessary information and selects

information/services desired." (Ex. 1008, col. 6, ll. 3-4.)

In other words, this auto-dialing and data gathering by the receiver station

processor, or user selection, after the completion of predetermined information,

implies or suggests that the processor receives some type of a control signal which

originates from the keypad (*see* the touch pad 13, Ex. 1008, Fig. 2) to indicate that

the final required data entry has been made ultimately to trigger an insurance

quotation. Stated differently, Lockwood implies or suggests that the keypad sends a "control signal" to a receiver station processing unit 10 or 14 to inform the processing unit(s) to gather the entered and subsequently stored "subscriber specific data," including age, gender and marital status information, and send that gathered data to the central data processing center so that the latter can respond by sending "benefit datum" in the form of insurance quotations, for example. (*See* Ex. 1008, col. 6, ll. 51-56.)

Further, Lockwood's system "solicits and allows the customer to enter information via the touch pad 13 displayed on the monitor screen." (Ex. 1008, col. 5, ll. 7-9.) A person of ordinary skill in the art would have recognized that a typical query in Lockwood's system might be whether or not the customer desires to change any entries or desires another insurance product, for example, after completing the entries in response to the questions. A "no" response, or a similar keyboard signal, reasonably would constitute a control signal signifying data entry completion so that the receiver station can process the data group (of answers) for transmission to another computer, the central data processing center, according to Lockwood.

Supplementing the showing of obviousness as to the recited "control signal," Zynga explains that Bakula's similar system employs a control signal in a bootstrap program to cause a group of stored programming instructions to be transmitted from another location to another. (Pet. 39; Ex. 1010, col. 5, ll. 10-12.) In other words, Bakula suggests a control signal to instigate gathering a group of information, such as the group of customer answers in Lockwood for further processing.

Based on the combined teachings, Zynga reasonably establishes that employing a keypad control signal to be received at Lockwood's receiver station to

signify the completion of data entry and to trigger further processing, or data gathering, of the stored subscriber specific data, and other elements as recited in claim 1, would have been obvious.

Claim 3 depends from claim 1 and recites "wherein said subscriber input modifies said subscriber specific data." Zynga contends that the subscriber input recited in claims 1 and 3 corresponds to either providing credit card information or other billing information (*e.g.*, name, address), or selecting an insurance policy from a particular institution, as Lockwood teaches. (*See* Pet. 12, 16.) PMC contends that such information is "merely added to the policy information file for the first time at the central data processing center" and "there is no updating of subscriber specific data that was processed in generating a benefit datum." (Prelim. Resp. 13.)

PMC's arguments are not commensurate in scope with claim 3. Claim 1 recites "receiving a subscriber input at said receiver station after said step of delivering" the benefit datum. Because the benefit datum has already been delivered prior to entering the subscriber input, claim 1 implies that the subscriber input, whether it modifies the subscriber specific data as claim 3 requires, or not, does not impact the generated benefit datum. In other words, modifying the subscriber specific data via additional subscriber inputs as claim 3 requires does not require generating a new benefit datum. Even if it does, Lockwood at least suggests modifying the insurance policy package, the benefit datum, to reflect the new data. For example, the new insurance policy would necessarily contain the buyer's name.

As to dependent claims 2, 4-6, and 9, Zynga similarly relies on Lockwood and the Neuhauser Declaration, and shows persuasively that Lockwood discloses or renders obvious the additional recited limitations in those claims. (*See* Pet. 17-

24.) PMC's arguments are directed to representative claim 1 and claim 3, and PMC does not contest the specific limitations in the other challenged claims with separate arguments. Pursuant to the foregoing discussion, Zynga establishes a reasonable likelihood of prevailing on the ground of unpatentability of claims 1-6 and 9 as obvious over the combination of Lockwood and Bakula under 35 U.S.C. § 103.

3. Humble and Lemon, or Lockwood, Bakula, and Lemon, Obviousness, Claim 7

Claim 7 ultimately depends from claim 4. Claims 4-7 follow:

4. The method of claim 1, wherein said information content comprises a commercial.

5. The method of claim 4, wherein said commercial is stored at said receiver station prior to said step of delivering.

6. The method of claim 5, wherein said step of delivering comprises delivering said commercial from storage at said receiver station.

7. The method of claim 6, wherein said step of delivering is performed based on a schedule.

Zynga relies on Lemon to suggest delivering commercials on a schedule according to claim 7. Lemon teaches displaying different pages of coupons: "'If after a prescribed period of time no selection has been made, microcomputer 22 will cause terminal T to display the next page of coupons and so on until the entire menu has been completed.'" (Pet. 41 (quoting Ex. 1011, col. 5, ll. 35-38).)

Zynga articulates similarities between Lockwood's insurance display kiosks or Humble's scanning and coupon display terminal, and Lemon's system for displaying coupons to customers. (Pet. 41-44, 46-47.) As Zynga reasons, displaying such items on a schedule would have allowed a display of multiple

promotional options in the form of insurance quotes or product coupons. (*See* Pet. 43, 47.)

PMC primarily focuses on alleged deficiencies with respect to Humble, or Lockwood and Bakula, with respect to claim 1, or separately attacks Lemon as not teaching elements allegedly not taught by Humble or Lockwood and Bakula. (*See* Prelim. Resp. 18-19, 26-27.) Pursuant to the foregoing discussion, Zynga establishes a reasonable likelihood of prevailing on the ground of unpatentability of claim 7 as obvious over Humble and Lemon, or Lockwood, Bakula, and Lemon, under 35 U.S.C. § 103.

4. Remaining Asserted Grounds of Unpatentability

Zynga asserts additional grounds of unpatentability with respect to claims 1-7 and 9 as listed in Section E *supra*. Those additional grounds are denied as redundant in light of the determination that there is a reasonable likelihood that the challenged claims are unpatentable based on the grounds of unpatentability on which we institute an *inter partes* review. *See* 37 C.F.R. § 42.108(a).

III. CONCLUSION

Zynga's petition demonstrates a reasonable likelihood of prevailing on the following grounds of unpatentability: a) anticipation of claims 1-6 and 9 by Humble; b) obviousness of claims 1-6 and 9 over the combination of Lockwood and Bakula; c) obviousness of claim 7 over the combination of Humble and Lemon; and d) obviousness of claim 7 over the combination of Lockwood, Bakula, and Lemon.

IV. ORDER

In consideration of the foregoing, it is hereby

ORDERED that pursuant to 35 U.S.C. § 314, an *inter partes* review is hereby instituted as to claims 1-7 and 9 of the '717 patent for the following grounds of unpatentability:

1. Claims 1-6 and 9 for anticipation by Humble;

2. Claims 1-6 and 9 for obviousness over the combination of Lockwood and Bakula;

3. Claim 7 for obviousness over the combination of Humble and Lemon; and

4. Claim 7 for obviousness over the combination of Lockwood, Bakula, and Lemon;

FURTHER ORDERED that no other grounds of unpatentability set forth in the petition are authorized for the *inter partes* review as to claims 1-7 and 9 of the '717 patent;

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

FURTHER ORDERED that an initial conference call with the Board is scheduled for 1:00 PM ET on August 27, 2013. The parties are directed to the *Office Trial Practice Guide*, 77 Fed. Reg. 48756, 48765-66 (Aug. 14, 2012) for guidance in preparing for the initial conference call, and should be prepared to discuss any proposed changes to the Scheduling Order entered herewith and any motions the parties anticipate filing during the trial.

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