UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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MICROSOFT CORPORATION AND GOOGLE INC.
Petitioner,

v.

B.E. TECHNOLOGY, LLC,
Patent Owner
_____

Case IPR2014-00039
Patent No. 6,628,314 B1
_____

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

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I.   Guyot Anticipates Claims 11-15 and 17-19 of the '314 Patent

The Board correctly found claims 11-15 and 17-19 of the '314 patent

anticipated by <u>Guyot</u>. Decision at 10-13. In response, Patent Owner argues <u>Guyot</u>

does not show (i) collection of "demographic information"; (ii) transfer of software

in response to a download request by the user, or (iii) providing a unique identifier

to the computer. Each argument relies on limitations not found in the claims, and

conflicts with or disregards evidence in the record. The Board should maintain its

determination that claims 11-15 and 17-19 are unpatentable.

A.   Guyot Discloses a Method of Providing Demographically-Targeted Advertising to a Computer User

The Board correctly found that <u>Guyot</u> shows "a method of providing

demographically-targeted advertising" and "acquiring demographic information

about the user" per claim 11 of the '314 patent. Decision at 10-11. In response,

Patent Owner does not dispute that <u>Guyot</u> teaches processes that collect

information and use that information to deliver targeted ads. Instead, Patent Owner

contends "demographic information is neither explicitly nor inherently disclosed in

<u>Guyot</u>." Response at 10-15. The evidence refutes Patent Owner's contentions.

1.   Guyot Discloses Acquiring Demographic Information and Using that Information to Target Advertising to Users

The Board correctly found <u>Guyot</u> shows collection and use of demographic

information. Decision at 11-12. <u>Guyot</u> shows a user profile being generated using

answers to a questionnaire presented to the user. Ex. 1006 (Guyot) at 3:61-65;

Petition at 28-29; Ex. 1003 at ¶¶ 76-81, 266, 273-274, 300-301; Ex. 1028 at ¶¶ 6-

12. The '314 patent acknowledges this web-based questionnaire technique was

commonly used to collect demographic information. Ex. 1001 at 2:29-34 ("Perhaps

the most common way to acquire demographic data regarding users via the Internet

is to request the information using a form written in html (HyperText Markup

Language) and provided to the user over the World-Wide Web (WWW) using http

(HyperText Transfer Protocol)."). Dr. Houh explained a person of ordinary skill in

the art would have read this description in Guyot as describing a process that

collects "demographic information" within the meaning of the claims—*i.e.,*

"collected characteristic information about a user." Ex. 1027 at 189:10-192:5,

208:3-12, 209:17-210:15; Ex. 1003 at ¶¶ 266, 273-274, 300-301; *see also* Ex. 1028

at ¶¶ 6-16. This is because, for example, the information collected by the user

profile questionnaire is used to establish and update the user's personal profile,

which the server uses to direct targeted advertising to the user. *Id.*; Ex. 1006

(Guyot) at 3:61-65; Ex. 1003 at ¶¶ 273-275, 278; Ex. 1028 at ¶ 9; *see also id.* at ¶¶

6-12.

2. Patent Owner's Expert Admits that Guyot Collects Demographic Information

Patent Owner's Expert, Mr. Goldstein, conceded at his deposition that Guyot

describes collection of demographic information within the Board's construction.

For example, he agreed that information documenting certain types of web browsing activity – such as visiting a particular site on a repeated basis over a defined period – is demographic information. For example, when asked if a hypothetical web browsing history documenting that a user visited the CNN website every day over a 30-day period at 9 am each day could be "demographic information," Mr. Goldstein stated:

> Q. And so in this **browsing history**, there's no user identifying information that accompanies it, right, in my hypothetical?
>
> A. That's correct.
>
> **Q. So then under the board's definition, it would be demographic information as they've defined it?**
>
> **A. Yes, it would be.**

Ex. 2015 at 54:5-54:23 (emphasis added). It is undisputed that Guyot shows collection of web-browsing information from the user's computer, sending this information to the server as part of the Subscriber Statistics, and using it to update the user's profile, which, in turn, is used to direct targeted advertisements. Ex. 1006 (Guyot) at 2:36-4; Ex. 275, 278, 290-291. Indeed, Patent Owner admits this type of admittedly demographic information would be collected by the <u>Guyot</u> questionnaire. Response at 13 ("The questionnaire might ask the server to identify preferred websites. Indeed, Guyot teaches that 'the server utilizes [information on Internet sites that the subscriber has accessed over a predetermined period of time]

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