

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SHOPIFY, INC., PRICELINE.COM LLC, and BOOKING.COM B.V.  
Petitioner,

v.

DDR HOLDINGS, LLC,  
Patent Owner.

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IPR2018-01011  
Patent 9,639,876 B1

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Before CARL M. DEFRANCO, PATRICK M. BOUCHER, and  
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

Opinion for the Board filed by *Administrative Patent Judge* BOUCHER.

Opinion Dissenting-in-Part filed by *Administrative Patent Judge*  
DEFRANCO.

BOUCHER, *Administrative Patent Judge*.

JUDGMENT  
Final Written Decision  
Determining Some Challenged Claims Unpatentable  
*35 U.S.C. § 318(a)*

In response to a Corrected Petition (Paper 8, “Petition” or “Pet.”) filed by Shopify, Inc., we instituted an *inter partes* review of claims 1–5, 7, 8, 11–15, 17, and 18 of U.S. Patent No. 9,639,876 B1 (“the ’876 patent”). Paper 10 (“Dec.”). During the trial, DDR Holdings, LLC, (“Patent Owner”) filed a Response (Paper 20, “PO Resp.”), to which Shopify filed a Reply (Paper 22, “Reply”) and Patent Owner filed a Sur-Reply (Paper 24, “Sur-Reply”). Subsequent to this briefing, Priceline.com LLC and Booking.com B.V. were joined as parties to the proceeding, and we accordingly refer herein to “Petitioner” as including Shopify, Priceline, and Booking.com.<sup>1</sup> Paper 25. An oral hearing was held with the parties, and a copy of the transcript was entered into the record. Paper 32 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Decision is a Final Written Decision under 35 U.S.C. § 318(a) as to the patentability of the claims on which we instituted trial. Based on the record before us, Petitioner has shown, by a preponderance of the evidence, that claims 1–3, 5, 11–13, and 15 are unpatentable.

## I. BACKGROUND

### A. *The ’876 Patent*

#### 1. *Disclosure*

The ’876 patent “relates to a system and method supporting commerce syndication.” Ex. 1001, 1:27–28. The patent is particularly focused on the

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<sup>1</sup> In light of this joinder, we adjusted the one-year pendency for issuing this Final Written Decision. Paper 33.

implementation of “affiliate” marketing systems on the Internet, which Petitioner’s expert, Michael I. Shamos, describes as follows:

Commonly known as affiliate marketing (though the world’s largest system, owned by Amazon.com, actually uses the term associate rather than affiliate), the concept is simple. If website owner A sends a visitor from his website to the ecommerce site owned by website owner B, and if that visitor makes a purchase from B’s website, then B pays A a commission on the sale. A merchant could multiply sales many times by having affiliates market his products.

Ex. 1002 ¶ 16. As the ’876 patent itself explains, with such affiliate marketing systems, “companies let third-party website owners list a subset of their goods (e.g., 10 of Amazon.com’s millions of books, selected by the website owner) and promote them as they choose within their websites.”

Ex. 1001, 2:23–28.

Although the ’876 patent acknowledges that “[t]he benefits of affiliate programs are significant,” it also recognizes that “the greater benefit almost always accrues not to the affiliate, but to Amazon.com and other online stores.” *Id.* at 2:31–38. In particular, the patent identifies a “fundamental drawback of the affiliate programs” as “the loss of the visitor to the vendor,” because, with such an arrangement, the vendor is “able to lure the visitor traffic away from the affiliate.” *Id.* at 2:38–47. The patent describes a solution to this problem by “includ[ing] a data store including a look and feel description associated with a host website.” *Id.* at 4:58–61.

A particular solution relevant to the challenged claims involves three distinct parties: a “host,” which is an operator of a website, a “merchant” selling a product, and an “outsource provider” that facilitates maintaining the

look and feel of the host website when a link to a product of the merchant is selected:

The processor performs the tasks of capturing a look and feel description associated with a host website, storing the captured look and feel description in the data store, providing the host website with a link that link correlates the host website with a commerce object for inclusion within a page on the host website and which, when activated, causes the processor to serve an e-commerce supported page via the communication link with a look and feel corresponding to the captured look and feel description of the host website associated with the provided link and with content based on the commerce object associated with the provided link.

*Id.* at 4:61–5:5. In other embodiments described by the '876 patent, “[t]his folds into two parties where one party plays the dual role of Host and Merchant.” *Id.* at 23:2–3.

According to the '876 patent, “[m]erchants are the producers, distributors, or resellers of the goods to be sold through the outsource provider.” *Id.* at 23:7–8. “A Host is the operator of a website that engages in Internet commerce by incorporating one or more link[s] to the e-commerce outsource provider into its web content.” *Id.* at 23:35–37. And the “outsource provider” has a number of functions that provide support services between merchants and hosts, and which may be illustrated with a description of a typical overall transaction process flow. *See id.* at 23:51–24:9.

In such a typical transaction process, a customer visits a host website and “through contextually relevant content, becomes interested in a product offered.” *Id.* at 24:18–20. The customer selects the item by clicking a

product image or similar link, “taking her to [] dynamically generated web pages which retain the look and feel of the referring Host and are served by the e-commerce outsource provider.” *Id.* at 24:21–26. After browsing through and selecting certain offered products, “the customer initiates the checkout procedure, never leaving the Host website.” *Id.* at 23:34–36. A secure checkout interface appears, “still consistent in look and feel with the Host’s referring website,” and the customer provides billing and shipping information. *Id.* at 24:37–42. The customer is returned to another section of the host’s website, “possibly just returning to the page in which the offer was placed.” *Id.* at 24:44–46. The outsource provider passes the order to the merchant, which receives and logs the order before assembling and shipping the order to the customer. *Id.* at 24:47–53. Settlement is effected by the outsource provider periodically remitting payment to the merchant for filled orders and remitting payment to hosts for commissions earned. *Id.* at 24:54–57.

## 2. *Illustrative Claim*

Independent claim 1 is illustrative of the claims at issue, and is reproduced below.

1. A method of serving commerce information of an outsource provider in connection with host web pages offering commercial opportunities, the method comprising:
  - with a computer system of an outsource provider:
  - upon receiving over the Internet an electronic request generated by an Internet-accessible computing device of a visitor in response to a selection of a uniform resource locator (URL) within a source web page that has been served to the visitor computing device when visiting a website of a host that

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