

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*.

BOUCHER, *Administrative Patent Judge*.

DECISION

Granting Petitioner's Request on  
Rehearing of Final Written Decision  
*37 C.F.R. § 42.71(d)*

I. INTRODUCTION

In our Final Written Decision, the Board held that, based on a preponderance of the evidence, Petitioner had shown that claims 1, 3, 5, 11–13, and 15 of U.S. Patent No. 9,639,876 B1 are unpatentable. Paper 34

(“Dec.”), 42–43. The Board additionally held that Petitioner had not shown that claims 4, 7, 8, 14, 17, and 18 are unpatentable. *Id.* Petitioner requests rehearing with respect to claims 7, 8, 17, and 18 solely on Petitioner’s ground that challenges those claims as unpatentable over the Digital River Publications. Paper 35 (“Req. Reh’g”), 1. “Petitioners do not seek rehearing of the Board’s other findings, including with regard to dependent claims 4 and 14 or other prior art.” *Id.*

For the reasons discussed below, we grant Petitioner’s Request for Rehearing, and modify our Final Written Decision accordingly.

## II. LEGAL STANDARD

A request for rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” 37 C.F.R. § 42.71(d). The burden of showing a decision should be modified on a request for rehearing lies with the party challenging the decision. *Id.*

## III. ANALYSIS

In its Rehearing Request, Petitioner highlights certain findings made in the Final Written Decision with respect to independent claim 1 and the disclosure of the Digital River Publications. Req. Reh’g 3–4. Specifically, we found that “the Digital River Publications describe that the DR SSS brought together manufacturers and dealers to enable them to sell products via the Internet, with the DR SSS acting as the recited ‘outsource provider’ by providing an integrated back-end commerce system.” Dec. 19–20. In addition, we found that the Digital River Publications teach that the DR SSS,

i.e., the recited outsource provider, causes display of the recited “commerce object information associated with the commerce object . . . , which commerce object includes at least one product available for sale through the computer system of the outsource provider,” at least in part because “the Digital River Publications teach generation and transmission of a second web page to a user in allowing the user to shop for products of another merchant.” *Id.* at 21–23.

Claim 7 depends from independent claim 1 and recites that “the commerce object correlated with the source web page is an electronic catalog listing a multitude of products offered for sale by the merchant through a website of an outsource provider, and wherein the composite web page contains one or more selectable URLs connecting a hierarchical set of additional web pages of the outsource provider website, each pertaining to a subset of the product offerings in the electronic catalog.” Ex. 1001, 28:33–41. In discussing this claim in the Final Written Decision, we stated that “Petitioner does not sufficiently address the claim’s requirement that the selectable URLs connect ‘a hierarchical set of additional web pages of the outsource provider website,’ each of which pertains to a subset of product offerings.” Dec. 30. Petitioner disagrees with this characterization of the content of its original Petition and supporting evidence, particularly the Declaration of its witness, Michael I. Shamos, Ph.D. Req. Reh’g 4–11.

According to Petitioner, the Petition “organized its showing of [unpatentability] of claim 7 into two parts corresponding to the claim’s two separate ‘wherein’ clauses.” *Id.* at 4. The Final Written Decision highlighted a perceived deficiency in the Petition’s analysis of the second of those clauses. *See* Dec., dissenting opinion at 7 (“As for the first ‘wherein

clause, the majority appears to find Petitioner’s showing is sufficient.”). With respect to the second “wherein” clause, Petitioner asserts that “[t]he Petition and accompanying expert declaration demonstrated that the Digital River Publications teach a composite web page that displays commerce object information associated with one or more products of the electronic catalog.” Req. Reh’g 7–8. In particular, Petitioner highlights the Petition’s argument that the Digital River Publications disclose that the composite web page can be a buy page, as shown in Exhibit 1009. *Id.* (citing Paper 8 (“Pet.”), 25).

A portion of Exhibit 1009 is reproduced below.



The portion of Exhibit 1009 reproduced above illustrates the structure of the 21 Software Drive web page, notably showing “add to cart,” “view cart,”

“modify cart,” and “check out” links. Ex. 1009. In the context of this drawing, Petitioner specifically contends that “the panel majority overlooked or misapprehended Petitioners’ further showing that the Digital River Publications’ buy page identified above satisfies all of the added elements of the second ‘wherein’ clause of claim 7.” *Id.* at 8. Addressing the hierarchical set of additional web pages highlighted in the Final Written Decision, Petitioner draws our attention to the presence of the “add to cart,” “view cart,” “modify cart,” and “check out” links:

The links *do* connect a hierarchical set of additional pages, namely, pages that are accessed serially by selecting these progressive links within a buy sequence to “add,” “view,” “modify” and “check out,” where each page visited by selecting these links pertains to a subset (e.g., one or more) of the product offerings in the electronic catalog that the user has selected for purchase.

*Id.* at 9 (citing Pet. 25). Petitioner supports this argument by providing a reference to where it is made in the original Petition, as well as supporting evidence that includes testimony by Dr. Shamos. *See* Pet. 25 (citing Ex. 1009, 1; Ex. 1002 ¶ 107; Ex. 1006, 3–6).

Petitioner’s argument on rehearing is persuasive, particularly under the broadest-reasonable-interpretation standard of claim construction applied in this proceeding. *See* Dec. 12–13 (Final Written Decision noting that, for an *inter partes* review proceeding based on a petition filed prior to November 13, 2018, “the Board interprets claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which they appear”). Petitioner clarifies that the Petition identifies Exhibit 1009’s buy page as corresponding to the “composite web page contain[ing] one or more selectable URLs” recited in the claim and identifies

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