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Paper 9
Date: May 16, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRILLER, INC.,
Petitioner,

v.

TIKTOK PTE. LTD.,
Patent Owner.

IPR2022-00179
Patent 9,648,132 B2

Before SALLY C. MEDLEY, JOHN D. HAMANN, and JULIET MITCHELL DIRBA, *Administrative Patent Judges.*

HAMANN, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

Triller, Inc. ("Petitioner") filed a petition for *inter partes* review of claims 1–3, 6, 22, 26, 27, and 31 ("the challenged claims") of U.S. Patent No. 9,648,132 B2 (Ex. 1001, "the '132 patent"). Paper 1 ("Pet."). TikTok Pte. Ltd. ("Patent Owner") filed a Preliminary Response. Paper 8 ("Prelim. Resp.").

Institution of an *inter partes* review is authorized by statute when "the information presented in the petition . . . and any response . . . 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." 35 U.S.C. § 314(a) (2018); *see* 37 C.F.R. § 42.108 (2021). Upon consideration of the papers, we determine that the information presented shows that there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one of the challenged claims of the '132 patent.

A. Real Parties-in-Interest

Petitioner identifies itself as a real party-in-interest, and identifies Triller Holdco LLC as its parent company. Pet. 1. Patent Owner identifies itself as a real party-in-interest. Paper 5, 1.

B. Related Matters

The parties identify *Bytedance Inc. v. Triller, Inc.*, 4:20-CV-07572 (N.D. Cal.) as a matter that may affect, or be affected by, a decision in this proceeding. Pet. 1; Paper 5, 1. In addition, Petitioner filed petitions for *inter partes* review of two additional patents that are related to the '132 patent and owned by Patent Owner: (i) U.S. Patent No. 9,991,322 B2 (IPR2022-00180) and (ii) U.S. Patent No. 9,294,430 B2 ("the '430 patent") (IPR2022-0181).

C. The Challenged Patent

The '132 patent, in relevant part, relates to a portable wireless computing device (e.g., a smart phone), which allows for social network functionality, including allowing a user to create a profile, identify other users as friends, and interact with other users. *See generally* Ex. 1001, 1:24–32, 76:11–78:54. More specifically, the '132 patent teaches that a user of a social network can create a profile so that they can partake in community features and communicate with other users. *Id.* at 76:11–15. In creating their profile, the user can select a unique member name, an image, and a catchphrase, which can be displayed to other users. *Id.* at 76:19–32. The '132 patent also teaches ways for a user to become a friend with another user by allowing the user to view other users' profiles, or search for them by name or phone number, and send a friend request—a list of a user's friends is maintained in the user's profile. *Id.* at 78:12–20, 78:31–43. In accordance with the '132 patent, a user can make recommendations (i.e., recommend a music album, artist, playlist, or track) and send messages to other users who are their friends. *Id.* at 78:44–67.

D. The Challenged Claims

Petitioner challenges claims 1–3, 6, 22, 26, 27, and 31 of the '132 patent, of which claims 1 and 31 are independent claims. Claim 1 is illustrative of the challenged claims and is reproduced below:

> 1. A portable wireless computing device comprising a hardware processor programmed with a software application embodied on a non-transitory storage medium, that enables an end-user to interact with other users in which (a) the software application allows the end-user to, over a wireless connection, create on a remote server one or more user accounts with associated profiles for that end-user; and (b) the software application allows the end-user to, over the wireless connection,

> view profiles created by other users of a service; and (c) the software application allows the end-user to, over the wireless connection, interact with other users of the service; and (d) the software application allows the end-user to, over the wireless connection, send and receive messages to and from other users of the service; and (e) the software application allows the end-user to, over the wireless connection, link his or her user account on the remote server to user accounts on the remote server of other users of the same service or of other services.

Ex. 1001, 86:32–49.

E. Asserted Grounds of Unpatentability

Petitioner asserts that the challenged claims of the '132 patent are unpatentable based on the following grounds:

Claim(s) Challenged	35 U.S.C. §[1]	Reference(s)/Basis[2]
1, 22, 26, 31	102	Abrams[3]
1, 2, 22, 26, 27, 31	103	Abrams

[1] The Leahy-Smith America Invents Act ("AIA") included revisions to 35 U.S.C. §§ 102, 103 that became effective on March 16, 2013. At this stage of the proceeding, we apply the pre-AIA version of the statutory bases for unpatentability because the '132 patent claims priority to an application filed before March 16, 2013. Ex. 1001, 1:9–18. In addition, although Petitioner argues that the '132 patent is subject to post-AIA § 102 (Pet. 11 n.1, 40 n.4), the parties do not argue that the patentability analysis differs here based on what version applies.

[2] For certain challenged claims of certain asserted grounds, Petitioner also lists "the knowledge of [one of ordinary skill in the art] about multitasking and multithreading (as evidenced by *Java Threads* (Ex. 1015) and expert testimony (Ex. 1025))." Pet. 3–4. Although we do not list such knowledge separately, we consider it as part of our obviousness analysis. *See Randall Mfg. v. Rea*, 733 F.3d 1355, 1362–63 (Fed. Cir. 2013). In addition, we view Petitioner's listing of Exhibit 1015 as evidencing the alleged knowledge of one of ordinary skill, rather than including Exhibit 1015 as part of an asserted combination for an asserted ground.

[3] US 2005/0021750 A1, published Jan. 27, 2005 (Ex. 1009, "Abrams").

Claim(s) Challenged	35 U.S.C. §[1]	Reference(s)/Basis[2]
3, 6	103	Abrams, Khedouri[4]
6	103	Abrams, Partovi[5]
3, 6, 27	102	Knight[6]
3, 6, 27	103	Knight

Pet. 3–4, 11–70. Petitioner submits in support of its arguments the Declaration of Michael Shamos, Ph.D. (Ex. 1025).

II. DISCRETIONARY DENIAL UNDER 35 U.S.C. § 325(d)

Patent Owner argues that we should exercise discretion under 35 U.S.C. § 325(d) to deny institution. *See* Prelim. Resp. 7 n.3, 26 n.7. In particular, Patent Owner argues that the Petition's analysis of Abrams for the "software application" "element is 'substantially the same' as prior art [(i.e., Sittig)] applied in a substantive rejection and fails for the same reasons—both describe a generic browser/website pushed out by a web server, with all of the functionality provided by the web server." *Id.* at 7 n.3. Similarly, Patent Owner argues that the Petition's analysis of Abrams for the "creat[ing] on a remote server one or more user accounts" "element is 'substantially the same' as prior art (the Reddick reference) applied in a substantive rejection during prosecution of the parent '430 patent and fails for the same reasons—both references arguably describe allowing a user to edit profiles, but not allowing a user to ***create*** accounts." *Id.* at 26 n.7 (citing Ex. 1005, 73–74).

In evaluating arguments under § 325(d), we use a two-part framework, with the first part being whether the same or substantially the

[4] US 2006/0008256 A1, published Jan. 12, 2006 (Ex. 1011, "Khedouri").
[5] US 8,572,169 B2, issued Oct. 29, 2013 (Ex. 1010, "Partovi").
[6] US 2010/0031366 A1, published Feb. 4, 2010 (Ex. 1012, "Knight").

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