UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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CHEWY, INC.,   :
                                    :
     Plaintiff,   :
                                    :   21-cv-1319 (JSR)
        -v-   :
                                    :   OPINION AND ORDER
INTERNATIONAL BUSINESS MACHINES   :
CORPORATION,   :
     Defendant.   :
                                    :
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JED S. RAKOFF, U.S.D.J.

    This suit concerns a number of patents that claim improvements

to web-based technologies. Before the Court are the motion for

summary judgment of plaintiff Chewy, Inc. and the cross-motion for

partial summary judgment of defendant International Business

Machines Corporation ("IBM"). After careful consideration of the

briefs and applicable law, the Court grants Chewy's motion in full

and denies IBM's motion as moot.

                          BACKGROUND

    The Court here assumes the parties' familiarity with the

facts and prior proceedings of this case. As relevant here,

after IBM sent Chewy a July 6, 2020 letter alleging that Chewy

infringed four of IBM's patents by operation of its website,

Chewy.com, and mobile applications, the parties exchanged

letters and competing claim charts for several months. Chewy

then filed the instant action on February 15, 2021, seeking a

declaratory judgment of non-infringement as to those four patents – U.S. Patent Nos. 7,072,849 (the "'849 patent"), 9,569,414 (the "'414 patent"), 7,076,443 (the "'443 patent"), and 6,704,034 (the "'034 patent").

On April 19, 2021, IBM filed its answer along with counterclaims for infringement of those same four patents. Then, on May 24, 2021, IBM filed its amended answer and added a counterclaim for infringement of a fifth patent – U.S. Patent Nos. 7,496,831 (the "'831 patent")

Chewy moved to dismiss four of IBM's infringement counterclaims, arguing that IBM did not plausibly allege infringement of two of the patents and that the claims of each of the four patents are invalid as abstract ideas under 35 U.S.C. § 101. The Court denied plaintiff's motion by bottom-line order dated August 4, 2021 and issued an opinion setting forth the reasons for that order on August 23, 2021. See ECF No. 66 (Chewy, Inc. v. Int'l Bus. Machines Corp., 2021 WL 3727227, at *1 (S.D.N.Y. Aug. 23, 2021)). On August 18, 2021, Chewy filed its answer to IBM's counterclaims.

On October 8, 2021, following extensive briefing, the Court conducted a lengthy Markman hearing in connection to the parties' claim construction disputes, including Chewy's contentions of indefiniteness as to certain of the asserted claims. The Court subsequently issued its Markman Order,

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adopting various claim constructions and holding the one

independent claim of the '414 patent to be invalid for

indefiniteness. See ECF No. 90 ("Markman Order") (Chewy, Inc.

v. Int'l Bus. Machines Corp., 2021 WL 5225685, at *1 (S.D.N.Y.

Nov. 9, 2021)).

Chewy now moves for summary judgment on IBM's remaining

infringement claims, arguing that there is no genuine issue of

material fact that Chewy does not infringe any of the asserted

claims as well as that all of the asserted claims of the '443

and '849 patents are invalid. IBM cross-moves for partial

summary judgment of no anticipation or obviousness for the

asserted claims of the '831 patent.

THE PATENTS

I.   The '849 Patent

The '849 patent claims a method for presenting advertising

to a user of an interactive service in a manner intended "to

minimize interference with retrieval and presentation of

application data" by, among other things, "storing and managing"

such advertising at the user's reception system — that is, the

user's terminal — before it is "called [for] by the respective

user reception system." ECF No. 1-1 ("Patent '849") at 1:16-28,

3:37-42.

The patent also claims a method of "individualizing the

advertising supplied to enhance potential user interest by

providing advertising based on a characterization of the user as defined by the user[']s interactions with the service, user demographic and geographical location." Id. at 3:24-29; see also id. at 3:54-56 (the selected advertisements are "individualized to the user based on, as noted, the user's prior interaction history with the service, demographics and local[e]"). IBM is asserting claims 1, 2, 12, 14, and 18 of the '849 patent.

Claim 1, on which claim 2 depends, recites as follows:

1. A method for presenting advertising obtained from a computer network, the network including a multiplicity of user reception systems at which respective users can request applications, from the network, that include interactive services, the respective reception systems including a monitor at which at least the visual portion of the applications can be presented as one or more screens of display, the method comprising the steps of:

   a. structuring applications so that they may be presented, through the network, at a first portion of one or more screens of display; and

   b. structuring advertising in a manner compatible to that of the applications so that it may be presented, through the network, at a second portion of one or more screens of display concurrently with applications, wherein structuring the advertising includes configuring the advertising as objects that include advertising data and;

   c. selectively storing advertising objects at a store established at the reception system.

Id., claim 1.

Unasserted claim 8, on which claim 12 depends, recites as follows:

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8. A method for presenting advertising in a computer
   network, the network including a multiplicity of user
   reception systems at which respective users can request
   applications that include interactive services, the
   method comprising the steps of:

   a. compiling data concerning the respective users;

   b. establishing characterizations for respective users
      based on the compiled data; and

   c. structuring advertising so that it may be
      selectively supplied to and retrieved at the
      reception systems for presentation to the respective
      users in accordance with the characterizations
      established for the respective reception system
      users, wherein structuring advertising includes
      supplying advertising data to the reception system
      and storing a predetermined amount of the
      advertising data in a store established at the
      respective reception systems.

Id., claim 8.

Finally, claim 14, on which claim 18 depends, recites as

follows:

14. A method for presenting advertising obtained from a
    computer network, the network including a multiplicity
    of user reception systems at which respective users can
    request applications from the network that include
    interactive services, the respective reception systems
    including a monitor at which at least the visual portion
    of the applications can be presented as one or more
    screens of display, the method comprising the steps of:

    a. structuring applications so that a user requested
       application may be presented, through the network,
       at a first portion of one or more screens of
       display;

    b. separately structuring the advertising in a manner
       compatible to that of the applications so that
       advertising may be presented, through the network,
       at a second portion of one or more screens of

> > display concurrently with any one of a plurality of user requested applications,
>
> > c. configuring the advertising as objects that include advertising data, and
>
> > d. selectively storing advertising objects at a store established at the reception system.

Id., claim 14.

As reflected above, both independent claim 1 and independent claim 14 include a claim limitation of "selectively storing advertising objects at a store established at the reception system." At the Markman hearing, the Court heard the parties' arguments as to the proper construction of this claim limitation, with the primary dispute being "whether 'advertising objects' must be 'pre-fetched,'" that is, whether "the user's system must download and store the advertising in advance, before it is needed for viewing." Markman Order at 8-9. Ultimately, the Court, agreeing with the position put forward by Chewy, held that "selectively storing" does entail pre-fetching, but, in order to avoid the inclusion of jargon in the claim construction, adopted the following construction of the claim limitation: "retrieving advertising objects and storing at a store established at the reception system in anticipation of display concurrently with the applications." Id. at 13.

The Court's Markman Order also construed the term "characterization(s)," which appears in unasserted independent

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claim 8, on which claim 12 depends, as "targeting criteria for users as defined by interaction history with the service and/or such other information as user demographics and locale." Id. at 20.

IBM alleges that Chewy's website and mobile applications infringe the '849 patent because when accessing their websites or mobile applications, users and their computer systems may "cache" certain images (including what IBM asserts is advertising data) by downloading the images and storing them locally. IBM's allegations also rest on certain product carousels appearing on Chewy's website and mobile applications, which suggest products to users related to the page they are currently viewing. See generally ECF No. 158-5 ("Schmidt Inf. Rpt. Ex. C"); ECF No. 158-6 ("Schmidt Inf. Rpt. Ex. D").

II. The '831 Patent

The '831 patent is directed to "a method and system for uncluttering and reformatting a web page before presenting the web page to a user." ECF No. 139-1 ("Patent '831") at 1:9-10. "Specifically, the patented method unclutters hyperlinks using a proximity policy that reformats hyperlinks by looking at their spacing relative to other hyperlinks." Markman Order at 5 (citing Patent '831 at 3:7-15). "The inventors recognized that when numerous hyperlinks were packed into a small area it became difficult for users to interact effectively with the webpage."

Id. The patented method solves this problem by "automatically

unclutter[ing] and reformat[ing] a webpage to address the

spacing between the link[s] before presenting [the page] to a

user." Id. (citing Patent '831 1:7-10). IBM is asserting

claims 1, 7, and 10 of this patent.

Claim 1, on which claims 7 and 10 depend, recites as

follows:

1. A computer implemented method in a computer system for
   presenting a page, the method comprising:

   receiving a page;

   rendering the received page on a virtual display to
   form a rendered page;

   determining whether the rendered page falls within a
   proximity policy;

   responsive to determining that the rendered page does
   not fall within the proximity policy, reformatting the
   rendered page on the virtual display to fall within
   the proximity policy to form a reformatted page,
   wherein the proximity policy defines a minimal spacing
   between links of a plurality of links within the page;
   and

   presenting the reformatted page to a user.

Id., claim 1.

In analyzing the parties' proposed constructions regarding

this patent, the Court considered the issues raised by the

parties and ultimately adopted Chewy's proposed constructions

with some slight modifications. Specifically, the Court

construed "virtual display" to mean "a web browser unit onto

which the page is projected prior to displaying it to the user"
and "proximity policy" to mean "user-defined policy specifying
spacing rules for hyperlinks." <u>Markman</u> Order at 52-63.

IBM alleges that Chewy infringes on this patent because of
the way in which its website provides the user's browser with
different instructions regarding the style and format of the
rendered page depending on such factors as the width at which
the browser has been set. <u>See generally</u> ECF No. 158-3
("Cockburn Inf. Rpt. Ex. D").

III. The '034 Patent

The '034 patent is directed to a method and apparatus for
magnifying web content ("objects") based on the type of the
content (<u>e.g.,</u> text or images) being enlarged. <u>See</u> ECF No. 1-4
("Patent '034") at 11:13-22. If the cursor is moved over a
portion of text, for example, the text will be displayed in an
increased font size. <u>See</u> <u>id.</u> at 5:16-41. If the cursor instead
hovers over an image, a larger version of the image will be
displayed. <u>See</u> <u>id.</u> at 5:42-46. And if the cursor hovers over
an audio object, its volume will be increased. <u>See</u> <u>id.</u> at 7:22-
25.

The '034 patent recognizes that tools were previously
"available for magnifying portions of the screen for a user."
<u>Id.</u> at 2:6-7. But these tools "magnif[ied] a portion of the
screen without regard for the type of content" and performed

magnification "using pixel amplification," which magnifies the text or image but does not improve its clarity. Id. at 2:7-17. For this reason, pixel amplification frequently produces blurry enlargements and "often does not increase the readability of the text being magnified or the details of the image." Id. IBM is asserting claims 8, 18, and 22 of this patent.

Unasserted claim 1, on which claim 8 depends, recites as follows:

1. A method in a data processing system for presenting a set of objects on a display within the data processing system, the method comprising:

responsive to detecting movement of a pointer over an object within the set of objects, identifying an object [type] for the object, wherein the object type is one of a plurality of object types, and wherein more than one object in the set of objects may have a same object type; and

magnifying presentation of the object based on the object type of the object.

Id., claim 1.

Unasserted claim 11, on which claims 18 and 22 depend, is materially similar to claim 1 with respect to the identifying and magnifying limitations, except that claim 11 replaces "object type" with "context" and "object" with "position of the information." It recites as follows:

11. A method in a data processing system for presenting information, the method comprising:

> monitoring for a change in focus on the information
> from a first portion of the information to a second
> portion of the information;
>
> identifying a context of the second portion of the
> information, wherein the context is one of a plurality
> of contexts, and wherein more than one portion of
> information may have a same context; and
>
> magnifying presentation of the information based on
> the context of the second portion of the information.

Id., claim 11.

In its Markman Order, this Court rejected IBM's position

that "various images can be considered different object types

because they differ in terms of a certain attribute in the

source code," and instead construed the term "object type(s)" to

mean "type(s) of object(s) (e.g., a graphic object, image

object, video object, text object, or audio object)." Markman

Order at 41-43. Additionally, recognizing that the

specification uses the terms interchangeably, the Court

construed the term "context" to have essentially the same

meaning as "object," that is, it held that "context(s)" means

"object information type(s) (e.g., textual information, graphic

information, image information, video information, or audio

information)." Id. at 43-45.

IBM's infringement allegations are based on a feature of

Chewy's product detail pages on its website in which, by

hovering the mouse over certain thumbnail images, the user can

cause the larger, main image of the product on the page to be

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swapped out with either a different image or with a video. See
generally ECF No. 158-2 ("Cockburn Inf. Rpt. Ex. C").

IV. The '443 Patent

The '443 patent describes systems and methods relating to
associating search result items with similar or related
advertisements. ECF No. 1-3 ("Patent '443") at 1:63-65. The
Patent '443 method specifically relies on a user's search
results (rather than search queries) to determine which
advertisements to show the user. Under this method, a user
first performs a search. Id. at 2:23-39. If the search returns
a result, the system searches for advertisements related to that
search result. Id.

This approach to ad-targeting stands in contrast to the
"user profiling" approach, which was prevalent when the '443
patent was issued. Id. at 1:15-45. The user profiling approach
extracted data from a user's browsing behavior on a particular
site to determine the user's interests. The approach therefore
targeted ads based on a user's past browsing activity on a site,
as opposed to the user's current search terms. Id. IBM is
asserting claims 13, 15, 16, and 17 of the '443 patent.

Unasserted claim 1, on which claim 13 depends, recites as
follows:

> 1. A method of targeting at least one associated
>   advertisement from an Internet search having access to an
>   information repository by a user, comprising:

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identifying at least one search result item from a
search result of said Internet search by said user;

searching for said at least one associated
advertisement within said repository using said at
least one search result item;

identifying said at least one associated advertisement
from said repository having at least one word that
matches said at least one search result item; and

correlating said at least one associated advertisement
with said at least one search result item.

Id., claim 1.

Claim 15, on which claims 16 and 17 depend, recites as

follows:

15. A method for providing related advertisements for search
result items from a search of an information repository,
comprising:

matching said search result items to said related
advertisements;

designating each of said search result items that have
said related advertisements matched therewith;

providing a corresponding graphical user interface for
each of said search result items so designated for
subsequent user selection;

searching and retrieving said related advertisements
for one of said search result items when said
corresponding graphical user interface is selected by
a user, and,

formatting and displaying said related advertisements
upon selection.

Id., claim 15.

As is relevant to these claims, in its Markman Order, this

Court construed the term "Internet search" to mean "search

through an Internet search engine, e.g., google.com or yahoo.com." See Markman Order at 31. Additionally, the Court construed the claim limitation of "matching said search result items to said related advertisements," found in claim 15, to mean "identifying said related advertisements from said information repository having a word that matches a keyword from said search result items." Id. at 40. As the Court explained, "[t]his construction reflects what both parties essentially concede[d] at the Markman hearing – that claim 15's matching element refers to the same process of matching a word from the related advertisements with a keyword from the search result item that is set out in claim 1." Id. at 39.

IBM alleges that Chewy's website and mobile applications infringe on the '443 patent through the use of "recommendation carousels," which are featured on product pages and show several products alongside the product that the user is viewing. According to IBM allegations, these carousels are populated with products related to the product the user is viewing through a keyword matching process that infringes on the asserted patent claims. See generally ECF 158-7 ("Schmidt Inf. Rpt. Ex. E); ECF 158-8 ("Schmidt Inf. Rpt. Ex. F).

LEGAL STANDARD

The Federal Rules of Civil Procedure provide that a court "shall grant summary judgment if the movant shows that there is

no genuine dispute as to any material fact and the movant is

entitled to judgment as a matter of law." Fed. R. Civ. P.

56(a). "A fact is material if it might affect the outcome of

the suit under the governing law, and an issue of fact is

genuine if the evidence is such that a reasonable jury could

return a verdict for the nonmoving party." Ramos v. Baldor

Specialty Foods, Inc., 687 F.3d 554, 558 (2d Cir. 2012).[1] The

Court must "draw[] all reasonable inferences in favor of [the]

non-movant." Heublein, Inc. v. United States, 996 F.2d 1455,

1461 (2d Cir. 1993). If "no reasonable trier of fact could find

in favor of that party," then "summary judgment is proper." Id.

    "Whether a claim is drawn to patent-eligible subject matter

under [Section 101 of the Patent Act, see 35 U.S.C. § 101,] is a

threshold inquiry, and any claim of an application failing the

requirements of § 101 must be rejected even if it meets all of

the other legal requirements of patentability." In re

Bilski, 545 F.3d 943, 950 (Fed. Cir. 2008). A patent is presumed

to be valid by statute. See 35 U.S.C. § 282. The party

challenging the validity of a patent bears the burden of proving

invalidity by clear and convincing evidence. See, e.g., Pfizer,

Inc. v. Apotex, Inc., 480 F.3d 1348, 1359 (Fed. Cir. 2007). The

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[1] Unless otherwise indicated, in quoting cases all internal
quotation marks, alterations, emphases, footnotes, and citations
are omitted.

question of whether a patent is invalid under Section 101 is an

"issue of law," Bilski, 545 F.3d at 951, that may appropriately

be resolved at summary judgment, see AT&T Corp. v. Excel Comm.

Inc., 172 F.3d 1352, 1355 (Fed. Cir. 1999).

"To establish infringement of a patent, every limitation

set forth in a claim must be found in an accused product or

process exactly or by a substantial equivalent." Johnston v.

IVAC Corp., 885 F.2d 1574, 1577 (Fed. Cir. 1989). "To infringe

a method claim, a person must have practiced all steps of the

claimed method." Finjan, Inc. v. Secure Computing Corp., 626

F.3d 1197, 1206 (Fed. Cir. 2010). "Where there is a material

dispute as to the credibility and weight that should be afforded

to conflicting expert reports, summary judgment is usually

inappropriate." Crown Packaging Tech., Inc. v. Ball Metal

Beverage Container Corp., 635 F.3d 1373, 1384 (Fed. Cir. 2011).

On the other hand, "[w]here the parties do not dispute any

relevant facts regarding the accused [method] . . . but

disagree over possible claim interpretations, the question of

literal infringement collapses into claim construction and is

amenable to summary judgment." MyMail, Ltd. v. Am. Online,

Inc., 476 F.3d 1372, 1378 & n.1 (Fed. Cir. 2007) (quoting Gen.

Mills, Inc. v. Hunt-Wesson, Inc., 103 F.3d 978, 983 (Fed. Cir.

1997)).

DISCUSSION

I.   The '849 Patent

Chewy argues for both non-infringement and invalidity as to the '849 patent. Because, as explained below, the Court holds that summary judgment is appropriate on the basis of non-infringement, it does not reach the issue of invalidity.

1. "Selectively Storing Advertising Objects at a Store Established at the Reception System"

IBM's expert identified three theories upon which IBM relies in asserting that Chewy's website and mobile applications perform the "selectively storing" limitation of claims 1 and 14. Chewy contends that all of these theories fail as a matter of law, because they are inconsistent with the claim limitations as construed by the Court. The Court agrees.

First, IBM's expert argues that "whenever advertising objects are sent to a [content delivery network] server but are not immediately sent to a user's browser [or mobile browser]," that qualifies as "selectively storing" because the objects "are sent to the [content delivery network] server in anticipation of being sent to the user's browser [or mobile browser] at a later time." Schmidt Inf. Rpt. Ex. C ¶ 154; Schmidt Inf. Rpt. Ex. D ¶ 151. However, the plain language of this claim limitation requires that the storing occur "at the reception system," and, because, as IBM's expert acknowledged, the content delivery

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network server is not a store at the user's reception system,

this theory fails. ECF No. 124-32 ("Schmidt Dep. Tr.") at 254:5-

16. Indeed, IBM failed to offer any argument in its brief or at

oral argument in support of this theory, effectively conceding

that it is inconsistent with the Court's claim construction.

Second, IBM's expert argues that when Chewy's website

"retrieves . . . advertising objects" for immediate display, it

also "pre-fetches" those objects "in anticipation of future

display" by caching those objects at the user's computer.

Schmidt Inf. Rpt. Ex. C ¶ 158; Schmidt Inf. Rpt. Ex. D ¶ 154.

In essence, IBM's position on this theory is that that even if

the objects are immediately displayed upon their request by the

user's reception system, they are "selectively stored" within

the meaning of the Court's construction of the term because they

are stored by the browser or mobile device in anticipation of

display the next time the user visits the website or uses the

mobile applications. This theory, however, rests on a

misreading of the Court's claim construction.

As noted above, in its <u>Markman</u> Order, the Court construed

the claim element at issue here to mean "retrieving advertising

objects and storing at a store established at the reception

system in anticipation of display concurrently with the

applications." <u>Markman</u> Order at 13. IBM argues that the Chewy

does perform this limitation, since the browser or mobile device

does store the relevant objects "in anticipation of display,"
where the display, under IBM's theory, is some future subsequent
display. However, as the Court explained in adopting this
construction, "a proper construction of the disputed terms
reflects that the advertising objects must be 'pre-fetched.'"
Id. at 13. And, as the Court further explained, an object is
not "pre-fetched" when it is "retrieved on demand" by the user,
id. at 13, that is – an object is only "pre-fetched" if it is
retrieved and stored at the user's terminal "before being
requested by the user," id. at 2.

This construction follows directly from the specification,
which, among other things, states that when advertising objects
are pre-fetched, "they are available in the [reception system's]
local store" before they are "requested by [the] object
interpreter" when it "requests all [the] objects required to
build a page." Patent '849 at 23:35-36, at 33:63-65; see also
id. at 34:41-44 (noting that "pre-fetching mechanism"
"eliminate[s] from the new page response time the time it takes
to retrieve an advertising object form the host system," and
implying that the object is retrieved before the user requests
the new page).

Thus, when properly understood, the Court's construction
requires that the advertising objects be "pre-fetched" in the
sense that they are retrieved before the user has requested the

page in connection with which they are to appear.[2] IBM's second

theory thus fails to satisfy this claim limitation because, as

IBM's expert acknowledges, before any purported advertising

objects are cached, the user must first request them from

Chewy's server. See Schmidt Inf. Rpt. Ex. C ¶ 138; Schmidt Inf.

Rpt. Ex. D ¶ 134.

Finally, IBM's expert argues that the "selectively storing"

limitation is performed when the purported "advertising objects

are sent to the user's browser [or mobile device] and not

presented immediately on the screen of display." Schmidt Inf.

Rpt. Ex. C ¶ 160; Schmidt Inf. Rpt. Ex. C ¶ 157. According to

IBM's expert, this occurs when an object is sent to the browser

but is not displayed until, for example, the user scrolls down

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[2] To the extent this implies a modification of the Court's prior
term construction, the Federal Circuit has made clear that
"district courts may engage in a rolling claim construction, in
which the court revisits and alters its interpretation of the
claim terms as its understanding of the technology evolves."
Pressure Prod. Med. Supplies, Inc. v. Greatbatch Ltd., 599 F.3d
1308, 1316 (Fed. Cir. 2010) (quoting Pfizer, Inc. v. Teva
Pharm., USA, Inc., 429 F.3d 1364, 1377 (Fed. Cir. 2005)).
Moreover, because IBM explicitly relies on the Court's
construction of "selectively storing" as "prefetching," see ECF
No. 150 at 9-10, and argues for infringement even on the
assumption that "prefetching" involves retrieving prior to a
user's request for the page, see id. at 10, there can be no
argument that any implied "adjustment [to the claim
construction] prejudiced [IBM's position or] compromised its
ability to respond." Pressure Prod., 599 F.3d at 1316.

on the page or presses the right arrow on a product carousel,

such as the one annotated with a red box in the below image:
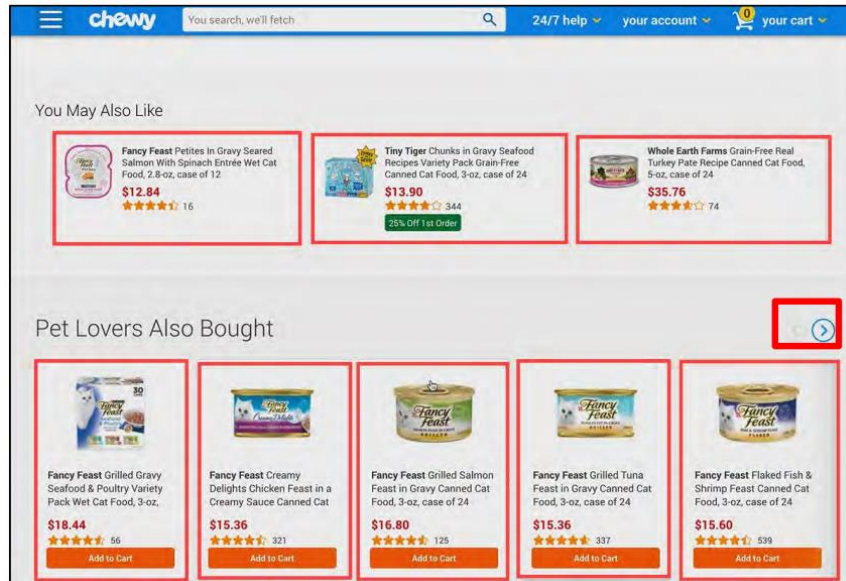
Schmidt Inf. Rpt. Ex. C ¶ 165.

Like IBM's expert's second theory, this theory rests on the

notion that an object is "pre-fetched" in the relevant sense so

long as it is stored locally at the reception system before it

is displayed to the user. See ECF No. 150 at 8-9. However, as

explained above, properly understood, a method only performs the

relevant claim limitation if it retrieves the object before the

user requests the page in connection to which the object is to

be displayed.

IBM argues that there is infringement under this theory

even accepting this construction of the claim terms because

Chewy's "source code does not retrieve advertising objects 'on

demand' or because 'a user has requested the page,' but rather

on the basis of "various 'prioritization' factors, such as 'when

the browser is idle, [and] when certain events occurs (such as

scrolling or resizing)." <u>Id.</u> at 10 (quoting ECF No. 158-19

("Schmidt Reply Rpt.") ¶ 28). But, as IBM's own expert

recognizes, this aspect of Chewy's source code, referred to as

"lazy loading," does not relevantly alter the analysis. <u>See</u>

Schmidt Reply Rpt. ¶ 14 ("Chewy's use of lazy loading . . . does

not affect my opinion that Chewy performs the selectively

storing claim element or any other claim element."). Although

Chewy's website defers loading off-screen elements, it still

only retrieves those elements in response to, rather than in

anticipation of, a user's request for a particular page. <u>See</u>

<u>id.</u> ¶ 9.[3]

 Accordingly, no reasonable factfinder could conclude that

Chewy performs the "selectively storing" element of asserted

claims 1, 2, 14, and 18 of the '849 patent.

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[3] Moreover, that certain documentation associated with the lazy
loading code refers to its function as "prefetching/preloading,"
<u>see</u> Schmidt Reply Rpt. ¶ 18, does not bear on whether it
performs the function of "prefetching" as it is used in the
specification.

2. "Establishing Characterizations for Respective Users Based on the Compiled Data"

As discussed above, in the patented method, the user's system stores advertisement information in advance, before a page is requested by the user. Thus, once a page is requested, the space on the page designated for advertisements can be populated without requiring the user's system to download the advertisement objects from the network, which would slow down the process of retrieving the content the user is actually interested in. See Patent '849 at 3:5-25. In order to ensure that the advertisements downloaded in advance are pertinent to the user, the patented method recites the use of characterizations – that is, as construed by the Court, "targeting criteria for users as defined by interaction history with the service and/or such other information as user demographics and locale," Markman Order at 20 – to determine which advertisements should be preloaded into the user's system, see Patent '849 at 3:25-30.

Chewy argues for summary judgment on non-infringement as to claim 12 on the grounds that no reasonable factfinder could conclude that its website or mobile applications perform the claim limitation of "establishing characterizations for respective users based on the compiled data," which is part of unasserted claim 8, on which claim 12 depends. As Chewy's

expert explains, whenever a viewer visits "a given page (e.g.,

on a browser page, in a product carousel, or in responses to a

search)," "the same items will be displayed . . . regardless of

any data regarding the user's interaction history or

demographics." ECF No. 158-26 ("Almeroth Noninf. Rpt. App'x A")

¶ 84. In other words, it is not the case that Chewy's website

or mobile applications deliver the user advertisements based on

a set of targeting criteria specific to the user built from

information collected about that user, such as his or her past

history of interacting with the site or the user's demographics.

    IBM's expert offers no opinion directly disputing this

fact. Instead, he points to the manner in which Chewy populates

certain features of its website and mobile applications – such

as the "Frequently Bought Together" and "Pet Lovers Also Bought"

carousels that appear on the pages for particular products –

using aggregated user interaction history, including past sales,

to determine which items to feature. Schmidt Inf. Rpt. Ex. C ¶¶

198-206; Schmidt Inf. Rpt. Ex. D ¶¶ 195-200. Specifically,

according to IBM's expert, Chewy generally retrieves results by

querying via SKU (essentially, a barcode associated with the

product), product category, or other product information and

then delivers results using data collected about users who

purchase or browse items associated with that SKU or category.

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Schmidt Inf. Rpt. Ex. C ¶¶ 201-03; Schmidt Inf. Rpt. Ex. D ¶¶

195-97; see also Schmidt Inf. Rpt. Ex. E ¶¶ 71-76.

While such a function could be said to employ targeting

criteria for advertisements based on users' interaction history,

it is not the case that those criteria as developed "for

respective users," as contemplated by the claim limitation.

Patent '849, claim 8. What IBM's expert describes is a method

of targeting advertisements by showing a user content related to

the page he or she is currently viewing. But that is distinct

from the patented method, which requires delivering

advertisements based on a "characterization[] for the respective

user[]," meaning, targeting criteria that are specific and

"individualized to the respective user." See id. at 10:20-24.

Attempting to sidestep this issue, IBM's expert points to

Chewy's privacy policy, which indicates that Chewy "collect[s]

information about users over time and across different websites

and devices . . . to provide [the user] with more useful and

relevant ads," as well as other documents broadly supporting the

contention that Chewy targets advertisements based on

information collected from customers. See Schmidt Inf. Rpt. Ex.

C ¶¶ 194-203; Schmidt Inf. Rpt. Ex. D ¶¶ 193-202.[4]

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[4] Similarly, at oral argument, IBM relied on a document, which,
in its Rule 56.1 statement, it characterized as showing that
Chewy populates its carousels by "analyz[ing] items that a user
who looked at the current item has also viewed" and "featuring

But this evidence does not provide any direct support for the proposition that Chewy utilizes that characterization-based targeting recited by the patent, as opposed to some alternative method of targeting. Indeed, the information collection and use described in the privacy policy is wholly consistent with the above-described method of delivering advertisement related to particular product pages that is attributed to Chewy by IBM's expert. Accordingly, there is no genuine dispute as to the fact that that Chewy does not perform the limitation of "establishing characterizations for respective users based on the compiled data" of claim 12.

Therefore, for the foregoing reasons, the Court grants summary judgment to Chewy on all the asserted claims of the '849 patent, finding that it has infringed none of them.[5]

II. The '831 Patent

Chewy moves for summary judgment with respect to the '831 patent on the ground that its website does not infringe the patent's claims, citing three reasons that all go to claim 1, the asserted independent claim on which both of the other

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products that Chewy users have purchased together with other products in the user's order." See ECF No. 161 (citing No. ECF 153-93 at 1350-52).

[5] Because the Court concludes that Chewy is entitled to summary judgment on non-infringement for the above-referenced reasons, it does not address Chewy's argument that IBM is collaterally estopped from asserting infringement of the '849 patent.

asserted claims depend. First, Chewy argues that it does not

"receiv[e] a page," because it is the user's computer that

receives the page. Second, Chewy argues that it does not

"render[] the received page on a virtual display to form a

rendered page." And third, Chewy argues that Chewy does not

perform the limitation of "determining whether the rendered page

falls within a proximity policy."

As explained below, the Court agrees that no reasonable

factfinder could conclude that Chewy performs either the

"rendering" or "determining" limitations, thus entitling Chewy

to summary judgment on all of the asserted claim of this patent.

> 1. "Rendering the Received Page on a Virtual Display
>   to Form a Rendered Page"

Chewy contends that IBM fails to put forward evidence that

it "render[s] the received page on a virtual display." Prior to

claim construction, IBM took the position that the received page

that is rendered on the virtual display was that page displayed

to the user when the user first requests the page. ECF No. 120

¶ 179. However, pursuant to the Markman Order, the Court

rejected this position, instead construing the term "virtual

display" to refer to "a web browser unit onto which the page is

projected prior to displaying it to the user." Markman Order at

57 (emphasis added). IBM, in response, took the position that

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something called the "render tree" constitutes the claimed page

that is rendered on the virtual display.

Understanding IBM's position requires some background on

the innerworkings of web browsers. The primary function of a

web browser is to present internet content to the user by

requesting it from a server and displaying it in the browser

window. When a user visits a webpage, the server sends the

browser data that the browser then uses to construct two tree-

like data structures: First, it constructs the "Document Object

Model" ("DOM") tree, which contains the content of the webpage.

Then it constructs the "CSS Object Model" ("CSSOM") tree, which

contains the style rules for the content, such as what font or

color certain text should be.[6] The DOM and CSSOM trees are then

combined into a "render tree," which, as IBM's expert explains,

"contains both the content and style information of all the

visible content on the screen." Cockburn Inf. Rept. Ex. D ¶ 74.

The below image illustrates the construction of a render tree:

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[6] See Ilya Grigorik, "Render-tree Construction, Layout, and
Paint," Google Developers. February 12, 2019, available at
https://developers.google.com/web/fundamentals/performance/criti
calrendering-path/render-tree-construction (IBM-CHEWY00159898)
("Grigorik 2019"). This resource is relied on by IBM's expert
in his report. See, e.g., Cockburn Inf. Rept. Ex. D ¶ 74.
Accordingly, it is admissible for purposes of contextualizing
and evaluating the expert's opinion. See Fed. R. Evid. 703
advisory committee's note (2000).
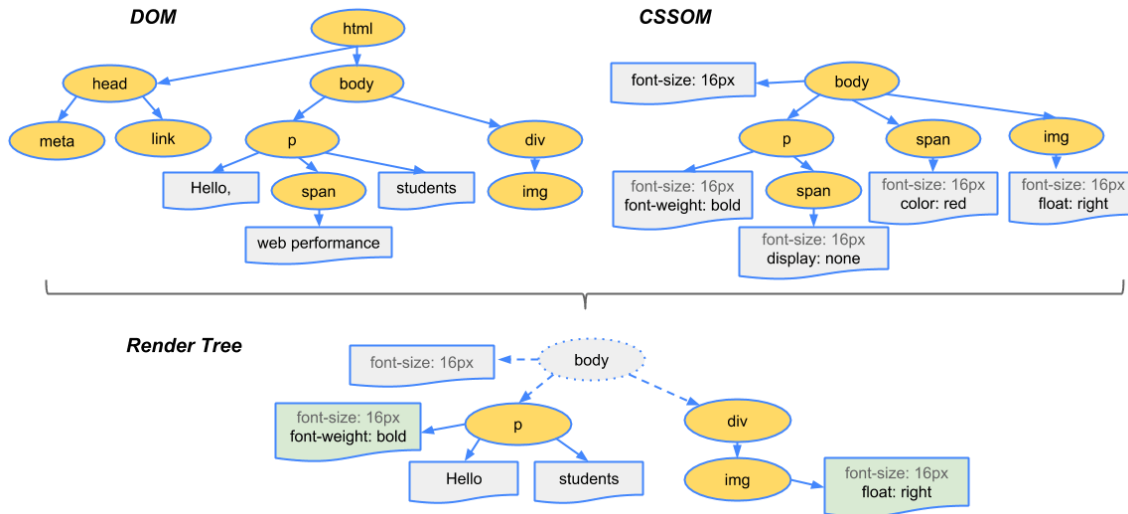
Id. (Grigorik 2019).

At this stage, the actual size and location of each element in tree as it will appear on the webpage has not yet been calculated. This occurs once the render tree is created through the "layout" process. As IBM's expert explains, during the "subsequent process to run layout on the tree," the browser "determines the width, height, and location of all the nodes in the render tree, and determines the size and position of each object on the page. Id. ¶ 116. The final stage is "painting," which "involves drawing every visual part of an element to a user's screen, including text, color, borders." Id. ¶ 140.

IBM contends that performing the limitation of "rendering the received page on a virtual display to form a rendered page" is met by the construction of the "render tree" – that is, merely through the combination of the DOM and CSSOM trees. See id. ¶ 72. Chewy, on the other hand, argues that a "render tree"

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cannot itself constitute a rendered page, because a render tree
is essentially just instructions for how a web page's visual
elements should be rendered, not a rendered page itself.
Specifically, Chewy argues that the render tree cannot be a
rendered page because the location, and thus the spacing, of the
hyperlinks remain undefined at that stage, only being calculated
through the layout process that follows.

IBM responds that the question of whether "a render tree is
an example of a rendered page" is a disputed matter of fact,
thus precluding decision on summary judgment. See ECF No. 150
at 25. But this is not correct. In connection with this issue,
Chewy does not contest any factual points regarding how a render
tree operates or that its website causes a browser to create
such a tree. Rather, the only question is one of claim
construction – what does the claim term "rendered page" mean.
As already noted, questions of claim construction are "amenable
to summary judgment." MyMail, Ltd., 476 F.3d at 1378 & n.1.

Here, an analysis of the specification and the claim
language make plain that IBM relies on an improper construction
of the term "rendered page." The term "rendered page" never
appears in the specification itself. However, consistent with
the contested claim limitation, the specification does discuss
"rendering" a webpage, either directly to the user's display or
to a "virtual display," which, as the Court previously

construed, is not made visible to the user. See, e.g., Patent

'831 at 10:36-51. The fact that the specification uses the same

term to describe both of these actions, without any step

following "rendering" to the user's display, strongly suggests

that at the rendering stage the projection in question can be

characterized as a complete visual representation of the webpage

– including information about the size and location of

individual elements.

    This is further supported by Figure 8, which depicts the

browser rendering the document on the virtual display as the

step immediately prior to "analyz[ing] document vertical and

horizontal spacing between hyperlinks" – implying that once a

page is "rendered," then its elements, including hyperlinks,

possess precise locations on the page that can be so analyzed.
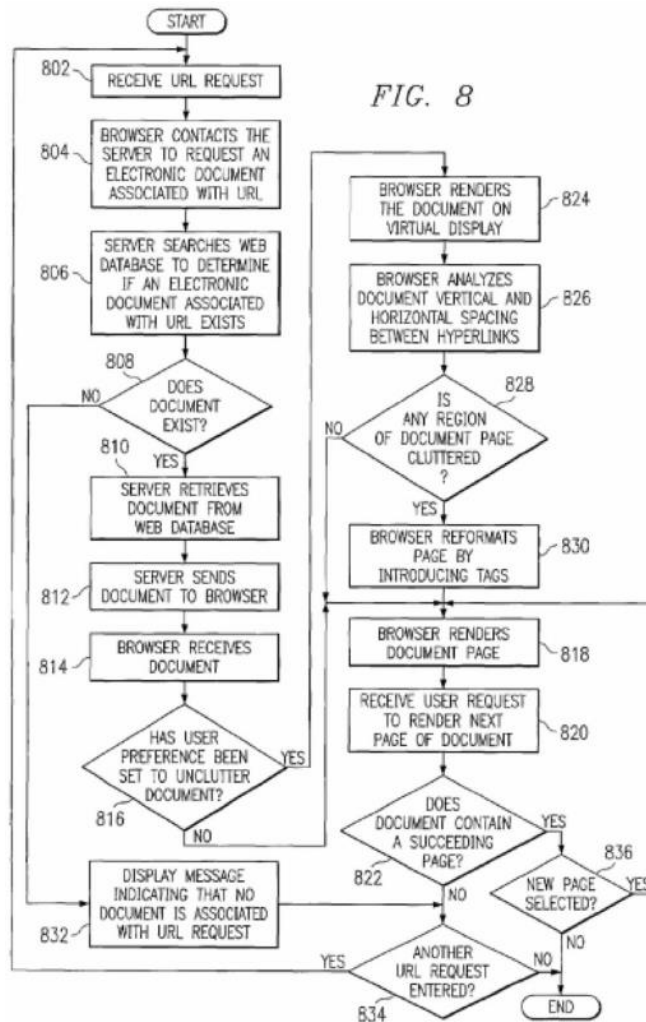
FIG. 8

Id. at Fig. 8.

Taken together, this intrinsic evidence implies that to be a "rendered page" within the meaning of the claim, what is rendered on the virtual display must be in a form that essentially would be viewable were it projected onto a user's display, rather than the internal virtual display that forms part of the browser.

There can be no question that the render tree created by Chewy's website is not a rendered page, so construed, since – as

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IBM's expert states – at that stage the location and size of the elements on the tree have yet to be determined. Indeed, were there any ambiguity that a render tree is not in a form ready to be made viewable on a user's display, it would be erased by the screenshot, contained in IBM's expert report, that shows, side-by-side, what the user's sees on her or his display (on the left) and a visualization of the render tree (on the right):
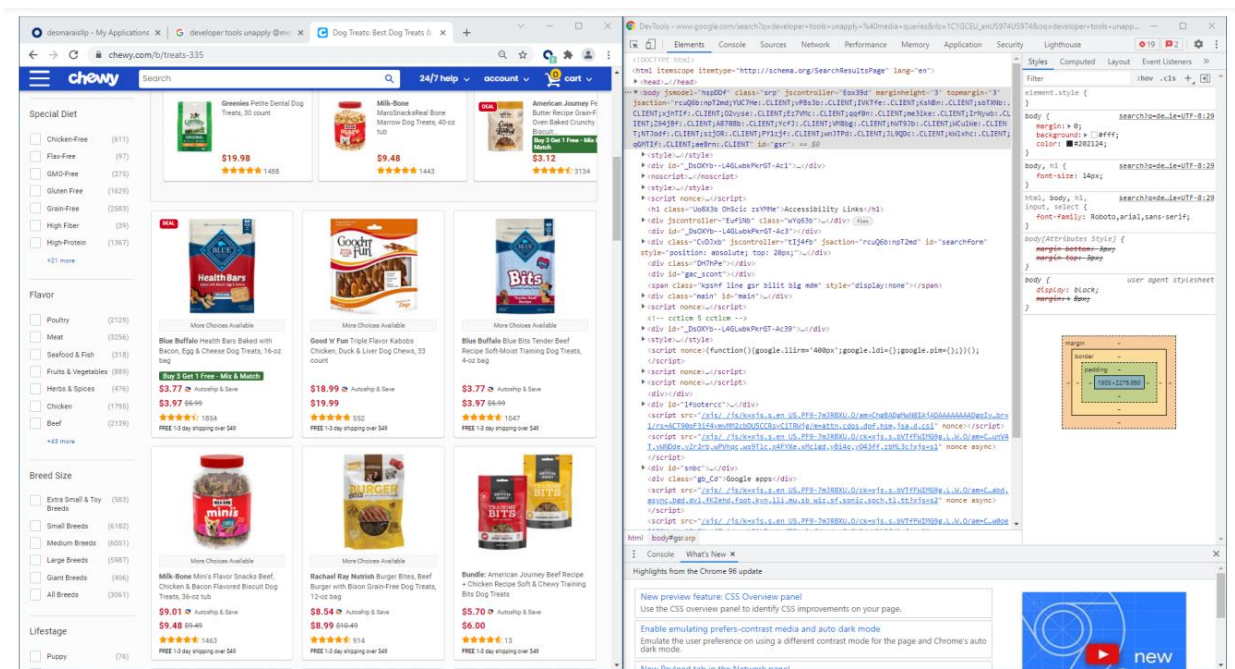


Cockburn Inf. Rept. Ex. D ¶ 74.

The render tree, as this screenshot reflects, may well be understood as a set of instructions for how to render the sort of webpage seen on the right; but it is not itself a rendered page. Accordingly, no reasonable factfinder could conclude that Chewy "render[s] the received page on a virtual display to form a rendered page," as the '831 patent uses those terms.

2. "Determining Whether the Rendered Page Falls
Within a Proximity Policy"

Chewy also argues that it does not perform the limitation
of "determining whether the rendered page falls within a
proximity policy." As noted above, IBM's infringement claim
rests on the allegation that a render tree constitutes a
"rendered page" within the meaning the patent claim. But a
render tree is essentially only a set of instructions for how
the webpage should ultimately be rendered to the user's display.
And, critically, the render tree does not itself contain
information as to the exact locations where on the rendered page
the elements, such as hyperlinks, will appear. See Cockburn
Inf. Rept. Ex. D ¶ 116. Accordingly, because the Court
construed a "proximity policy" to mean "a user-defined policy
specifying spacing rules for hyperlinks," and because the render
tree does not have defined spacing between hyperlinks, Chewy
argues that its website cannot possibly perform this claim
limitation.

IBM seeks to overcome this issue by offering two theories
of infringement, one based on when a user first accesses Chewy's
website and the other based on when a user resizes her or his
browser window. Both of these theories rely on Chewy's use of
"@media queries." Media queries are essentially separate sets
of style rules to be applied when rendering a webpage depending

on the characteristics of the user's browser. For example,
according to IBM's expert, Chewy's code includes one set of
style rules for when a user sets the browser to be at least 1250
pixels wide, causing four product tiles to appear in a row,
while another set of rules applies when the browser is set to be
fewer than 1250 pixels wide, resulting in rows with only three
tiles each. Id. ¶ 149.
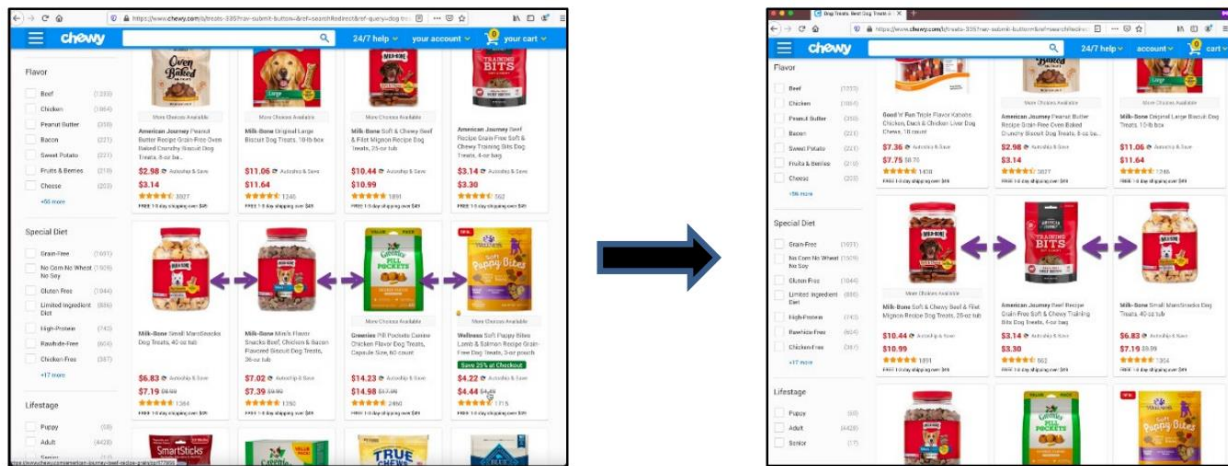
Id. (IBM-CHEWY00074253 at 0:33 to 0:42).

    IBM argues that these media queries constitute proximity
policies, within the meaning of the patent claims, because,
depending on which media query is triggered, the spacing between
the hyperlinked product tiles changes. Id. ¶ 85. As IBM's
expert explains, "[e]ach media query is specific to a particular
range of browser sizes and acts as the proximity policy for that
range." Id. According to IBM, these policies are "user
defined," as required under the Court's construction, because it

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is the user's choice regarding the width of the browser window

that determines which media query is triggered. Id.

But this theory of infringement is plainly inconsistent

with the claim terms, as construed by the Court. As the Court

held in adopting Chewy's proposed construction of the term

"proximity policy," "the patent requires a user to set the

criteria for the 'proximity policy.'" Markman Order at 58.

"[T]he specification describes various criteria that the user

may use to define the 'proximity policy,' stating, for example,

that 'a user may determine that vertical and horizontal spacing

between any two or more hyperlinks is . . . at least 15 pixels."

Id. (quoting Patent '831 at 7:65-8:25). But, as described by

IBM's expert, Chewy's website does not give the user the ability

to set the criteria for any given "proximity policy," that is

media query. Indeed, all of the rules defining each media query

are entirely set by Chewy. The user's role is limited to

altering the pixel width of the browser, thus indirectly

affecting which preset media query is triggered. As such, the

user does not "define" the proximity policy in the sense

contemplated by the patent claims and this claim limitation is

not performed by Chewy.

Accordingly, for the reasons set out above, the Court

grants summary judgment to Chewy on all of the asserted claims

of the '831 patent. Moreover, because the Court grants Chewy's

motion for summary judgment on non-infringement, it denies as moot IBM's motion for summary judgment of no anticipation and no obviousness as to the '831 patent.

III. The '034 Patent

Chewy moves for summary judgment with respect to the '034 patent on the ground that its website does not perform the claim limitation of identifying an object type and thus does not infringe on any of the patent claims. This argument rests on certain details regarding how the code for Chewy's website functions. Accordingly, a brief overview of how the relevant parts of Chewy's website work and IBM's allegations in relation to those aspects of the website is in order:

IBM alleges that Chewy's product details pages ("PDPs") infringe the asserted '034 claims. As depicted in the below screenshot from Chewy's website, a PDP includes, among other things, a "hero image" and a set of "thumbnails" alongside the hero image in a "media-selector carousel." Cockburn Inf. Rpt. Ex. C ¶ 20; ECF No. 120 ¶ 217.
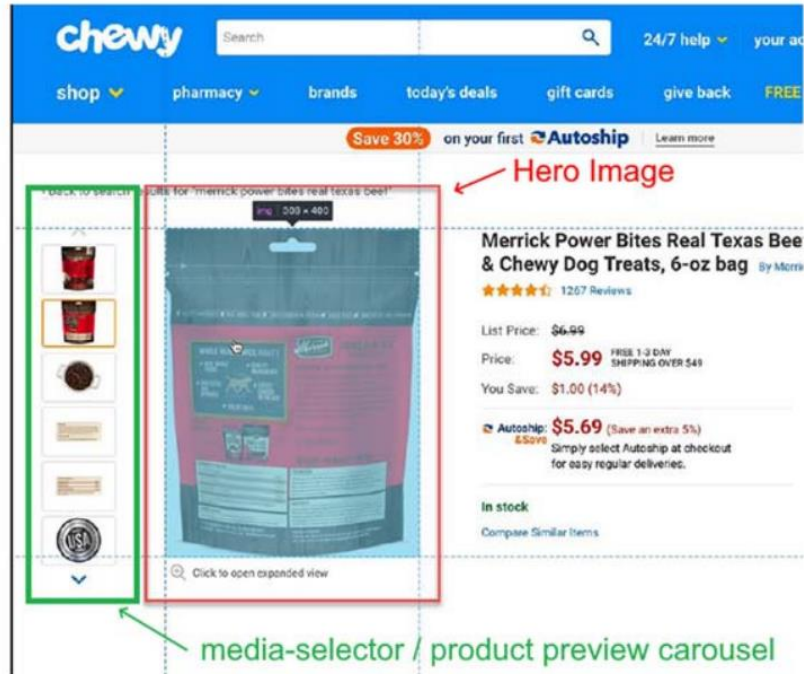
ECF No. 120 ¶ 217.

These thumbnails can either contain a product image or an image of a triangle "play" icon above the text "video." When a user hovers over an image thumbnail in the carousel, the "hero image" is replaced with a magnified version of the image in the thumbnail. When a user hovers over the thumbnail containing the play icon, the "hero image" is replaced with a video. See ECF No. 158-35 ("Cockburn Tr.") at 126-129. The below screenshot shows one of these play icons in the annotated red box:
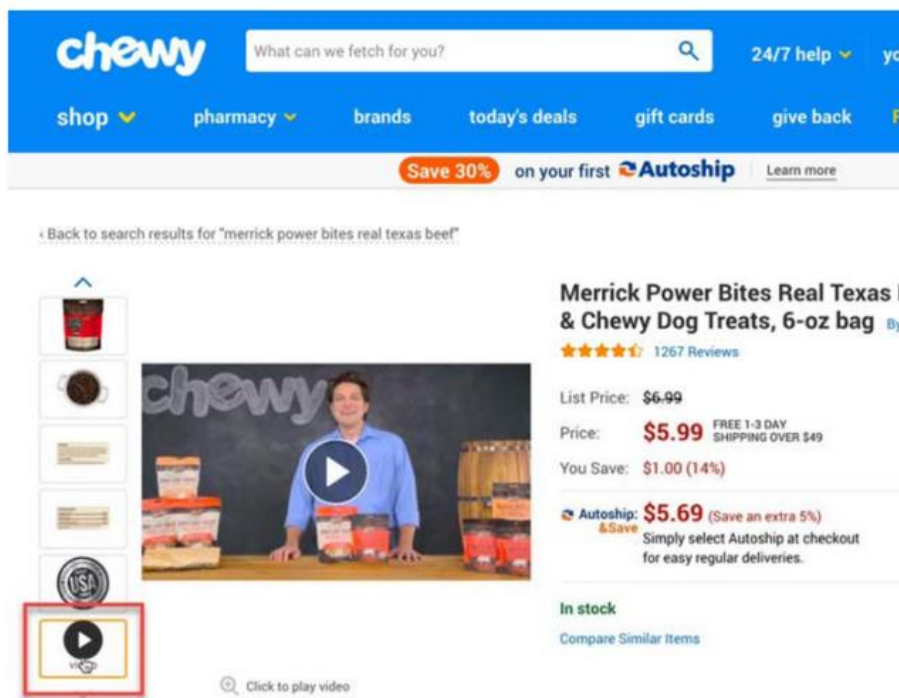
ECF No. 120 ¶ 219.

According to IBM's expert, Chewy's website carries out the above feature through an "if/else" function that responds to what are referred to as "attributes" associated with the thumbnails in the carousel. An attribute is code that can be associated with an object in a website's source code to provide further information about that object. Here, Chewy assigned the attribute "data-wistia-vid" to thumbnails of the "play" icon but not to other thumbnails in the carousel. When a user hovers her mouse over a thumbnail, Chewy's code either performs the "if" function if it identifies the "data-wistia-vid" attribute or it performs the "else" function if that attribute is not detected. Cockburn Inf. Rpt. Ex. C ¶¶ 49, 56, 90. The "if" function

causes a video associated with the "play" icon to be swapped-in

for the hero image, while the "else" function causes a magnified

image corresponding to the thumbnail image to replace the hero

image. ECF No. 160 ("IBM's Response to Chewy Rule 56.1") ¶ 228

(citing Cockburn Tr. at 165-166).

IBM argues that this process constitutes the limitation of

"identifying an object [type] for the object" because, given

that the "data-wistia-vid" attribute is only associated with

thumbnails corresponding to videos and that the carousel only

includes thumbnails corresponding to either images or videos,

the "if/else" function effectively serves to identify whether

the corresponding object is an image object or a video object.

The problem with this theory, however, is that the claim

limitation does not describe a process for identifying what type

of object is linked to the object over which the mouse is

hovering; rather, the limitation contemplates identifying the

object type of the hovered-over object itself. This the

"if/else" function does not do. Indeed, all of the objects in

the carousel are static thumbnail images; in other words, they

are image objects. And the only thing accomplished by the

function described by IBM is to identify attributes associated

with those image objects, not to identify the object type of the

hovered-over object itself. As the Court's Markman Order held,

identifying an object type for an object refers to identifying

what "type of object" it is – that is, "a graphic object, image object, video object, text object, or audio object" – not what other attributes might be associated with it. See Markman Order at 41-43. As such, the accused feature of Chewy's website does not perform the identifying limitation.

IBM attempts to avoid this implication by referring to the thumbnails of the "play" icons as "video objects." But to accept that these static thumbnails are "video objects" would be to blink reality. A "video object" as the term is used in the specification refers to a video – just as a "image object" refers to an image and an "audio object" refers to an audio recording. See Patent '034 at 10:36-46. The thumbnail image of a "play" icon, along with the text "video," is thus not a video object.[7]

Accordingly, no reasonable factfinder could conclude that Chewy performs the limitation of "identifying an object [type] for the object, wherein the object type is one of a plurality of object types," id., claim 1. Further because of the equivalence

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[7] In a footnote, IBM suggests that even if the thumbnail of the play icon is an image object rather than a video object, there is still infringement because an enlarged play icon is overlayed the video that appears in the hero square. See ECF No. 150 at 22 n.9. But even assuming the overlayed icon could be considered a magnified version of the thumbnail (already a stretch), under this theory Chewy's website would not infringe on the patent because it would still not perform the identifying limitation, as described above.

of the identifying limitations of claims 1 and 11, respectively,

the same applies to claim 11's identifying limitation.

Therefore, the Court grants summary judgment of non-infringement

to Chewy as to all the asserted claims of the '034 patent, all

of which are dependent on either claim 1 or 11.

IV. The '443 Patent

With regard to the '443 patent, Chewy renews its argument

that the patent is invalid under Section 101 of the Patent Act

in addition to arguing non-infringement. To determine whether a

claim is eligible for patenting under Section 101 of the Patent

Act, a court applies the two-part test articulated in Alice

Corp. Pty. Ltd. v. CLS Bank Int'l, 573 U.S. 208 (2014). First,

a court must decide "'whether the claims at issue are directed

to' a patent-ineligible concept, namely a law of nature, natural

phenomenon, or abstract idea." Move, Inc. v. Real Est. All.

Ltd., 721 F. App'x 950, 954 (Fed. Cir. 2018) (quoting Alice, 573

U.S. at 217). If the answer is yes, the court then proceeds to

consider the claim elements, "both individually and as an

ordered combination, to determine whether they contain an

'inventive concept' sufficient to 'transform the nature of the

claim' into a patent-eligible application.'" Id. (quoting

Alice, 573 U.S. at 217).

A claim reciting an abstract idea may nevertheless satisfy

Alice step two if it includes "additional features" that are

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more than "well-understood, routine, conventional activities."

Alice, 573 U.S. at 221. However, if "[t]he claim language does

not provide any specific showing of what is inventive about the

[limitation in question] or about the technology used to

generate and process it," the claims do not satisfy Alice's

second step. Move, Inc., 721 F. App'x at 957. "The abstract

idea itself cannot supply the inventive concept, no matter how

groundbreaking the advance." Trading Techs. Int'l, Inc. v. IBG

LLC, 921 F.3d 1084, 1093 (Fed. Cir. 2019).

In its prior order, which preceded the Markman hearing in

this case, the Court analyzed the claims of the '443 and

determined that they "are . . . directed toward an abstract

concept" under Alice step one. ECF No. 66 at 30. Specifically,

the Court held that, "[d]espite IBM's argument that [the patent]

presents an innovative and unconventional approach to

identifying ads based on search results rather than search

queries, the claims themselves do not describe a technical

solution to a technical problem." Id. However, recognizing

that, "[d]epending on the construction of the claim terms, it is

possible that the method in the claim technologically implements

this function in an unconventional way," the Court elected to

defer application of Alice step two until after claim

construction. Id. at 32. Accordingly, the only question to be

determined on this motion is whether the '443 patent fails Alice step two.

Ultimately, although the Court construed a number of the claim terms, none of those constructions causes the claims to recite anything that can properly be understood as an inventive concept sufficient to transform the claims into patent-eligible subject matter. This point is made clear by the Court's construction of the terms "associated advertisement," "related advertisement(s)," and "related product advertisements": The Court, adopting the position put forward by IBM, concluded that these terms are "sufficiently clear to communicate the scope of the patent — namely, that it is a method for determining which advertisements to show the user based on what advertisements are related to the results of the search, rather than advertisements related to the search queries themselves or based on a user profile." Markman Order at 28. However, as the Court further observed, "the patent fails to specify the methods by which the relatedness of advertisements is to be determined, among other technical details." Id. In other words, the claims fail to provide any greater specificity that might transform the abstract idea of targeting advertisement based on search results into an inventive concept.

Nevertheless, IBM argues that an inventive concept can be found in the manner in which the claims use "conventional

pieces" in "non-conventional" ways to accomplish the targeted

advertisement. ECF No. 150 at 44. For example, with regard to

claim 13, which depends on claim 1, IBM argues that the claim

captures a specific way to implement targeted advertisement in

that it contemplates the use of a "repository" (i.e., a

database) of advertisements "associated with" the words within

the search result items, rather than a (conventional) user

profile repository.

But using a repository – which the specification defines as

"a server or wide area network," Patent '443 at 6:27-29 – to

store the information used in associating search results with

advertisements is not an inventive concept. Rather, it merely

encapsulates the conventional concept of storing advertisement

in a means compatible with the patent's abstract advertisement

targeting approach. See Content Extraction & Transmission LLC

v. Wells Fargo Bank, Nat. Ass'n, 776 F.3d 1343, 1347 (Fed. Cir.

2014) ("The concept of data collection, recognition, and storage

is undisputedly well-known. Indeed, humans have always

performed these functions."). This is particularly true give

that the specification notes that "the invention is broadly

applicable to any method in which it is desirable to associate

an advertisement with a result from an information repository

search," Patent '443 at 7:58-6, thus making plain that the

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claims do not involve some particular, unconventional set of steps that could give rise to an inventive concept.[8]

Claim 15, 16 and 17 similarly fail to provide an inventive concept. Claim 15 adds the elements of providing a graphical user interface, so as to create a graphical relationship between the search result item and the advertisement. See ECF No. 161 ¶ 346. But as the Court suggested in its prior order, see Markman Order at 33, visually presenting to the user an otherwise identified relationship between the search results and certain advertisements "add[s] nothing of practical significance to the underlying abstract idea," Ultramercial, Inc. v. Hulu, LLC, 772 F.3d 709, 716 (Fed. Cir. 2014), and IBM fails to muster anything beyond conclusory testimony to the contrary, see ECF No. 158-16 ("Schmidt Val. Rpt. Ex. 3") ¶ 68.[9] Further, although claim 16,

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[8] As to IBM's invocation of "off-line batch process[ing]," in claim 13, IBM concedes that "batch-processing was not new for the web," but nevertheless argues that it was "unconventional to use offline batch processing as claimed" because websites usually used this process "to generate content that was not needed immediately, such as a monthly bill," rather than for advertising. ECF No. 150 at 46. But the use of existing technology as a tool to implement an abstract idea, regardless of how novel that abstract idea may be, does not change the underlying, patent-ineligible focus of the claims. Thus, the claim language cannot support "specific showing of what is inventive about the limitation in question or about the technology used to generate and process it." Move, 721 F. App'x at 957.

[9] Claim 17 depends on claim 15 and adds only the unhelpful limitation "wherein said related advertisements comprise related

which depends on claim 15, adds the concept of using "an identifier for said user" in combination with the steps of claim 15 (meaning that certain information is collected about the user, see Markman Order at 35-37), this addition is essentially a "data-gathering step," that is, the sort of "insignificant extra-solution activity" that cannot transform an abstract concept into a patentable one. In re Bilski, 545 F.3d 943, 963 (Fed. Cir. 2008), aff'd, 561 U.S. 593 (2010). Thus, none of these claims can be said to meaningfully provide "a particular concrete solution to a problem," that is, how to associate advertisements based on search results. Elec. Power Grp., LLC v. Alstom S.A., 830 F.3d 1350, 1356 (Fed. Cir. 2016).

Thus, the Court finds that the asserted claims of the '443 patent are invalid under 35 U.S.C. § 101. Accordingly, the Court grants Chewy's motion for summary judgment of invalidity with regard to the '443 patent. Because the Court grants the motion for summary judgment of invalidity, it does not address Chewy's non-infringement arguments.

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product advertisements." See Patent '443, claim 17.

CONCLUSION

For the foregoing reasons, the Court grants Chewy's motion for summary judgment in full and denies IBM's cross-motion for partial summary judgment. As a result, the Clerk of the Court is directed to enter final judgment in favor of Chewy, declaring that Chewy does not infringe IBM's asserted patent claims and that IBM's counterclaims are all dismissed with prejudice. The Clerk of the Court is further directed to close docket numbers 119, 130 and 180.

SO ORDERED.

Dated: New York, NY
         April 11, 2022   _____
                                           JED S. RAKOFF, U.S.D.J.