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Paper No. 8
Filed: October 13, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STINGRAY DIGITAL GROUP, INC.,
Petitioner,

v.

MUSIC CHOICE,
Patent Owner.

Case IPR2017-01193
Patent 9,357,245 B1

Before GREGG ANDERSON, MITCHELL WEATHERLY, and JOHN F. HORVATH, *Administrative Patent Judges*.

HORVATH, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. Background

Stingray Digital Group, Inc., ("Petitioner") filed a Petition (Paper 1, "Pet.") to institute *inter partes* review of claims 1–9, 12–14, 16, and 17 ("the challenged claims") of U.S. Patent No. 9,357,245 B1 (Ex. 1001, "the '245 patent"). Music Choice ("Patent Owner") filed a Preliminary Response (Paper 5, "Prelim. Resp.").

Upon consideration of the Petition and Preliminary Response, we are persuaded, under 35 U.S.C. § 314(a), that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing the unpatentability of at least one of the challenged claims of the '245 patent. Accordingly, we institute an *inter partes* review of all challenged claims.

B. Related Matters

Petitioner identifies the following as matters that could affect, or be affected by, a decision in this proceeding: *Music Choice v. Stingray Digital Group, Inc.;* Case No. 2:16-cv-00586-JRG-RSP (E.D. Tex.); *Stingray Digital Group, Inc. v. Music Choice*, Case No. IPR2017-01192 (challenging the patentability of U.S. 8,769,602 ("the '602 patent"), from which the '245 patent descends. Pet. 1. Patent Owner identifies the same matters, as well as U.S. Patent Nos. 7,275,256, 7,926,085, 8,769,602, and 9,451,300, from which the '245 patent also descends. Paper 3, 2–3.

C. Evidence Relied Upon

Reference		Publication Date	Exhibit
Mackintosh	WO 00/19662	Apr. 6, 2000	Ex. 1004

Petitioner also relies upon the Declaration of Michael Shamus, Ph.D. (Ex. 1003).

D. Asserted Ground of Unpatentability

Petitioner asserts the following ground of unpatentability:

Ground	Reference(s)	Basis	Claims Challenged
1	Mackintosh	§ 102(b)	1–9, 12–14, 16, and 17

II. ANALYSIS

A. The '245 Patent

The '245 patent is directed toward a system and method for providing an interactive, visual complement to one or more audio programs. Ex. 1001, Abstract. Figure 1 of the '245 patent is reproduced below.

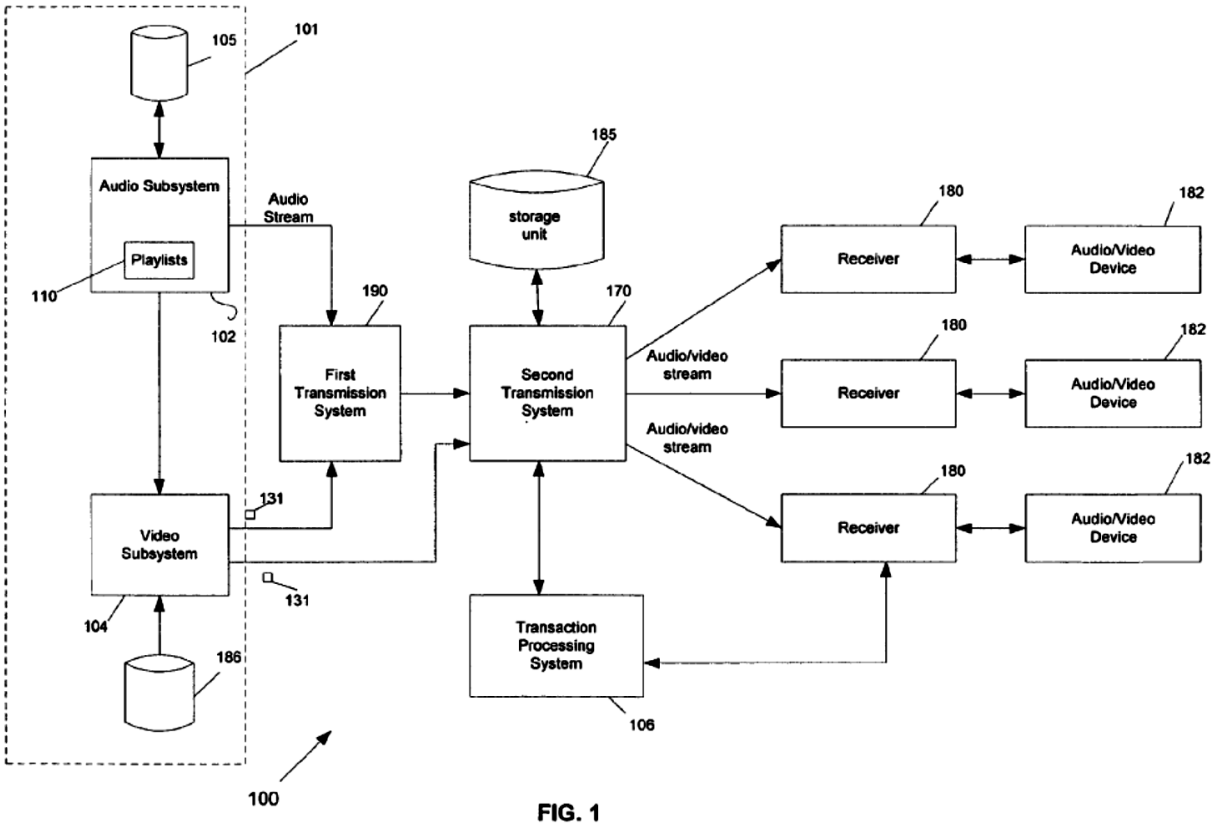

FIG. 1

Figure 1 is a block diagram of audio/video system 100 for providing audio/video programming to consumers. *Id.* at 2:63–65. System 100 includes audio subsystem 102 having playlist 110, video subsystem 104, first transmission system 190, second transmission system 170, receivers 180, and audio/video devices 182. *Id.* at 4:10–36. Playlist 110 contains programmed sound recordings for transmission to listeners of system 100 over a particular broadcast channel, and is typically generated on a periodic basis (e.g., daily or weekly). *Id.* at 4:11–16. Audio subsystem 102 transmits the programmed sound recordings to transmission subsystem 190, which further transmits the recordings to signal transmission system 170, which transmits the recordings to audio/video receivers 180. The latter are coupled to audio/video devices 182 that reproduce the sound recordings for system subscribers. *Id.* at 4:22–34. Audio/video receivers 180 may be, e.g., set-top boxes, and audio/video devices 182 may be, e.g., televisions. *Id.* at 4:34–36.

Video subsystem 104 generates a data packet for the channel over which the sound recording is broadcast upon receiving a trigger from audio subsystem 102. Ex. 1001, 4:37–39, 6:30–35. The trigger identifies the sound recording, information about the sound recording, and the channel broadcasting the sound recording. *Id.* at 6:30–35. The generated data packet contains a video image specification that specifies a visual complement to the audio broadcast. *Id.* at 4:39–44. The video image specification includes one or more visual media asset identifiers, where visual media assets can be graphic images, videos, text messages, and other media assets. *Id.* at 4:45–52. For example, the video image specification may include the name of the song, artist, and album associated with the song broadcast by transmission

system 170. *Id.* at 4:54–67. The video image specification "*may* also specify the screen position where each identified asset is to be displayed" on a subscriber's screen. *Id.* at 4:47–49 (emphasis added). The data packet containing the video image specification can contain an XML or HTML file. *Id.* at 5:31–39. Once generated, the data packet is transmitted from video subsystem 104 to transmission system 170. *Id.* at 5:40–47.

Transmission system 170 parses the data packet received from video subsystem 104, and using the information contained in the video image specification, generates and transmits a video image to audio/video receivers 180. Ex. 1001, 5:63–6:2. The video image is then sent to and displayed by audio/video devices 182. *Id.* at 6:2–3. To generate the video image from the video image specification, transmission system 170 preferably has access to storage unit 185 containing those visual media assets identified by visual media asset identifier in the video image specification. *Id.* at 5:48–56. Alternatively, the visual media assets can be stored in storage unit 186 of video subsystem 104, and video subsystem 104 can transmit the visual media assets to transmission system 170. *Id.* at 5:57–62.

The video image generated by transmission system 170 can include a user selectable "buy" button. Ex. 1001, 7:34–40. A user, selecting the "buy" button, can initiate an e-commerce transaction with transaction processing system 106. *Id.* at 7:64–67. The selection causes a message to be sent from the user's audio/video receiver 180 to transaction processing system 106 containing an identifier of the product (e.g., song, album) the user wants to purchase. *Id.* at 8:10–15.

Figure 2 of the ’245 patent is reproduced below.

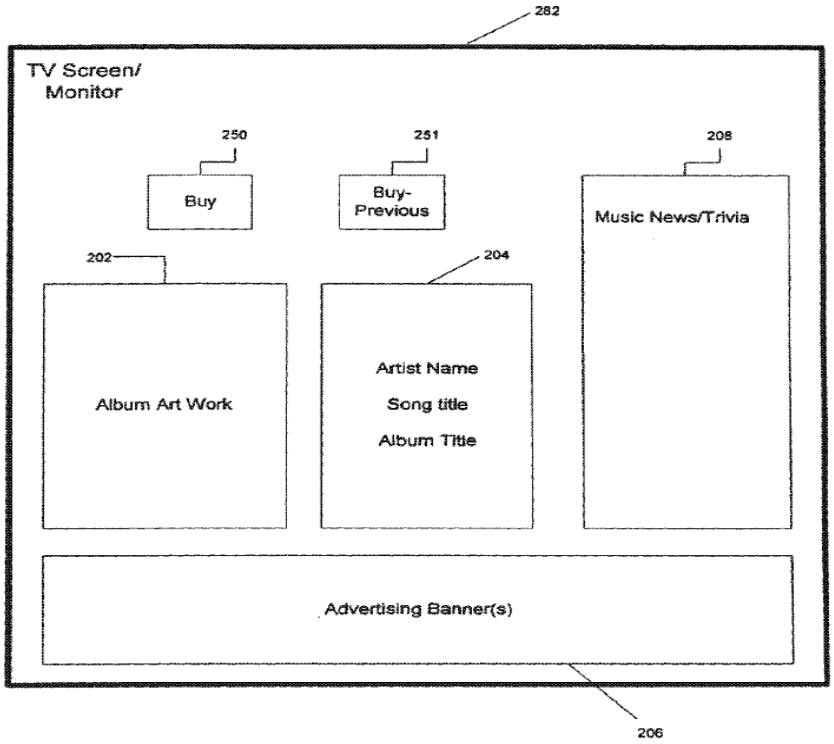

Figure 2 is an illustration of the locations on a TV screen (i.e., audio/video device) where visual media assets can be displayed. Ex. 1001, 2:66–67. For example, when audio/video device 182 receives and plays a song from U2’s Joshua Tree album, the Joshua Tree album cover is displayed at location 202, and the name of the song, as well as U2 and Joshua Tree are displayed at location 204. *Id.* at 4:56–67.

Claims 1, 12, and 17 of the ’245 patent are independent claims. Other challenged claims depend directly or indirectly from claims 1, 12, and 17. Claim 1 is a method claim, and is reproduced below.

> 1. A method for providing a visual complement to an audio stream, comprising:

> transmitting, from a first transmission system to a second transmission system, audio data corresponding to a selected song; and
>
> transmitting a data packet that was generated using an identifier identifying the selected song, wherein the data packet includes a media asset identifier identifying a media asset and further includes song information associated with the selected song, the song information comprising the title of the song and the name of the artist who recorded the song, wherein
>
> the step of transmitting the data packet comprises transmitting the data packet to a receiving system that is configured such that, in response to receiving the data packet, the receiving system automatically generates a video image using the information included in the data packet and automatically outputs the generated video image such that it is received by a display device that is operable to display the video image to a user of the display device without the user having to select a menu item, and
>
> the generated video image includes the song information comprising the title of the song and the name of the artist.

Ex. 1001, 15:62–16:19. Claim 17 is also a method claim, and differs from claim 1 in that it further requires the method to be performed by a music multicast system that simultaneously transmits an audio stream to a plurality of users, where the audio stream consists of audio data for a song automatically selected from a set of available songs. *Compare id.* at 15:62–16:19 *with id.* at 18:4–32. Claim 12 is an apparatus claim, and is reproduced below.

> 12. A system for providing a visual complement to an audio service, the system comprising:
>
> an audio transmission system configured to transmit audio data corresponding to a sound recording specified in a playlist for a linear audio channel; and
>
> a receiving system, comprising a receiver and a video image generator, the receiving system being configured to:
>
> i) in response to receiving a data packet that was generated using an identifier identifying the sound recording, generate a video image in accordance with information included in the data packet, wherein the data packet includes a media asset identifier identifying a media asset and further includes sound recording information associated with the sound recording, the sound recording information comprising the title of the sound recording and the name of the artist who recorded the sound recording; and
>
> ii) automatically output the generated video image such that it is received at a display device operable to display the video image to a user of the display device without the user having to select a menu item, wherein
>
> the generated video image includes the song information comprising the title of the song and the name of the artist, and
>
> the receiving system is configured to retrieve the identified media asset and use the retrieved media asset in generating the video image.

Id. at 16:63–17:23.

B. Claim Construction

The Board interprets claims of an unexpired patent using the broadest reasonable interpretation in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–46 (2016). Consistent with the rule of broadest reasonable interpretation, claim terms are generally given their plain and ordinary meaning, as would be understood by one of ordinary skill in the art in the context of the entire patent disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Only those terms which are in controversy need to be construed and only to the extent necessary to resolve the controversy. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc*., 200 F.3d 795, 803 (Fed. Cir. 1999).

Petitioner contends that all claim terms, except for the term "video image specification," should be given their plain and ordinary meaning, and except as explained below, does not expressly construe any claim term. Pet. 7–8. Patent Owner argues the term "video image specification" does not require construction, and does not expressly construe any claim term. Prelim. Resp. 10. We construe the terms "the data" and "video image specification" below.

1. the data

This term appears in claim 5, which depends from claim 1 by way of claim 4, and recites "the video subsystem is configured to generate the data based . . . on pre-defined configuration data and information included in the trigger message." Ex. 1001, 16:39–42.

Petitioner argues the term lacks antecedent basis, and therefore makes claim 5 ambiguous because claims 1 and 4, from which claim 5 depends,

identify different types of data to which "the data" recited in claim 5 may refer (e.g., "audio data", "data packets", and "song information"). Pet. 36. Nonetheless, Petitioner argues "the data" should be construed to mean "a video image specification" because this interpretation (a) conforms to the disclosure in the '245 patent, and (b) provides antecedent basis for "the video image specification" recited in claim 6, which otherwise lacks antecedent basis. *Id*. Patent Owner does not dispute Petitioner's interpretation of "the data" recited in claim 5. *See* Prelim. Resp.

The Specification of the '245 patent discloses video subsystem 104 generates a data packet comprising a video image specification, and transmits the data packet to audio/video transmission system 170. Ex. 1001, 4:37–42, 5:40–43. The data packet is generated upon receiving a trigger message from audio subsystem 102, and uses pre-defined configuration data associated with a channel being viewed. *Id*. at 6:44–56. Consistent with this disclosure, original claim 1 of the application that issued as the '245 patent recited "transmitting a data packet comprising a video image specification for the sound recording." Ex. 3001, 25.[1] Original claim 5[2] recited, in relevant part, "the video subsystem is configured to generate the video image specification based, at least in part, on pre-defined configuration data." *Id*. at 26. Original claim 6 recited, as it does now, "[t]he method of claim 5, wherein the video subsystem is configured to generate the video

[1] We cite to the page numbers appearing at the bottom of Exhibits 3001 and 3002, rather than to the page numbers within each of these Exhibits.

[2] We note claim 5, as originally submitted, depended from claim 6, which in turn, depended from claim 5. This cyclical, self-referential, indefinite dependency was corrected by amending claim 5 to depend from claim 4.

image specification in response to receiving the trigger message." *Id.*

In response to an examiner's rejection, the applicant amended claim 1 to recite, as it does now, "transmitting a data packet that was generated using an identifier," and amended claim 5 to recite, as it does now, "the video subsystem is configured to generate the data based, at least in part, on pre-defined configuration data." Ex. 3002, 2–3. In doing so, the applicant introduced an antecedent basis problem for claim 5 by referring to "the data" rather than to "the data packet" of claim 1, and introduced an antecedent basis problem for claim 6 by deleting the phrase indicating the data packet comprised "a video image specification." *Id.*

At this stage of the proceedings, and based upon our review of the disclosure and prosecution history of the '245 patent, we construe "the data" recited in claim 5 to refer to "the data packet" recited in claim 1, and to mean "a data packet that includes a video image specification."

2. the video image specification

As noted above, claim 6 depends from claim 5, and recites "[t]he method of claim 5, wherein the video subsystem is configured to generate the video image specification in response to receiving the trigger message." Ex. 1001, 16:43–45.

Petitioner argues the broadest reasonable interpretation of the term "video image specification," based on its description in the '245 patent, is "data that specifies at least one visual media asset identifier." *Id.* (citing Ex. 1001, 4:37–53). Petitioner argues the Specification discloses a "video image specification" may, but need not, specify the screen position where a video media asset is displayed. *Id.* Patent Owner argues this term requires no construction.

At this stage of the proceedings, we agree with Petitioner that the term "video image specification" means "data that specifies at least one visual media asset identifier." The Specification of the '245 patent discloses "the video image specification specifies one or more visual media asset identifiers." Ex. 1001, 4:45–46.

C. Petitioner's Challenge to Claims 1–9, 12–14, 16, and 17

1. Overview of Mackintosh

Mackintosh discloses "systems and methods for providing enhanced features for the delivery of broadcast material to a listener, viewer or, more generally, a user." Ex. 1004, 3:6–8. Mackintosh provides supplemental materials to the user "in a coordinated fashion such that they relate to the actual broadcast materials . . . being streamed or otherwise delivered to the user." *Id.* at 3:10–12. Supplemental materials can include "images, video clips, audio clips, data, or other materials that may be provided to the user in conjunction with the broadcast materials." *Id.* at 3:18–20. For example, Mackintosh discloses "the broadcast of radio broadcast materials over the Internet," such as the broadcast of "a plurality of tracks that can be streamed to a user via the Internet." *Id.* at 3:24–27. The tracks (e.g., music tracks or songs) can be "provided along with program data that can indicate, for example, an identification of the track, the type of track, and other pertinent or relevant information regarding the particular track." *Id.* at 3:27–32.

Figure 5 of Mackintosh is reproduced below.

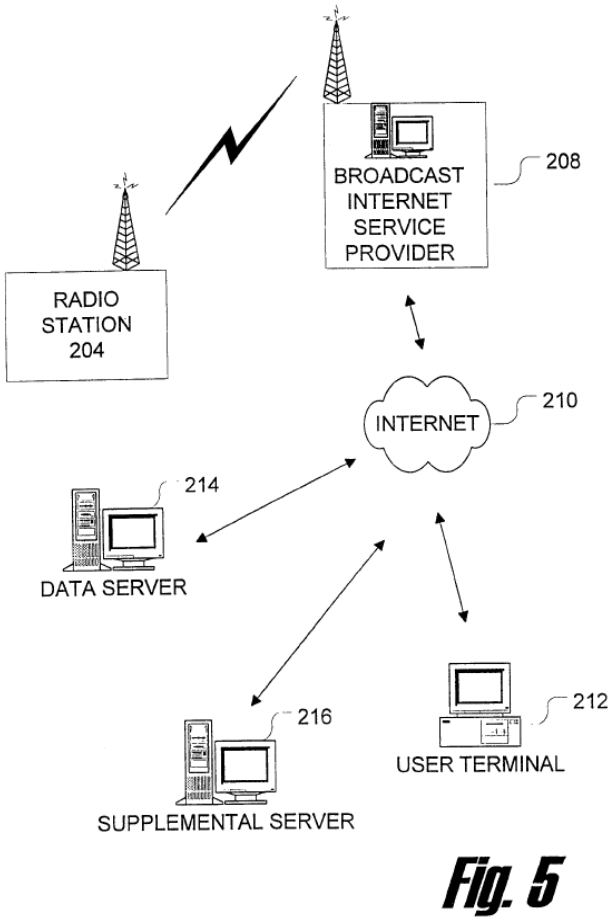

Fig. 5

Figure 5 is a block diagram showing radio station 204 providing a broadcast to user terminal 212 via Internet Service Provider (ISP) 208. Ex. 1004, 5:20–22. Radio station 204 broadcasts material to ISP 208, which then provides the broadcast material to user terminals 212 via the Internet. *Id.* at 10:31–32, 12:13–14. The broadcast can be provided in AM, FM, or digital format, and can consist of pre-programmed broadcast material. *Id.* at 11:1–8. The broadcast material can include the current radio broadcast and program data associated with the current radio broadcast, such as cut codes indicating the tracks in the broadcast, advertising data, and format data indicating the type of music broadcast or the type of product advertised. *Id.*

at 10:32–35, 11:28–35, 12:13–14. The format data can be used to key particular pieces or categories of supplemental material to the current broadcast. *Id.* at 12:1–2. User terminal 212, which can be any general purpose audio/video player capable of playing the broadcast material and the supplemental material, plays the broadcast material to a user. *Id.* at 12:21–26.

ISP 208 provides program data associated with the broadcast, including a cut number and category, to either data server 214 or user terminal 212. Ex. 1004, 12:17–20. When provided to user terminal 212, user terminal 212 provides the program data to data server 214. *Id.* at 12:29–33. Data server 214 uses the program data to retrieve supplemental materials such as images, videos, audios, or text that is associated with the program data, or to retrieve URLs or other location information identifying the location of supplemental materials on supplemental servers 216. *Id.* at 13:10–16. Data server 214 then returns the supplemental materials or location information for the supplemental materials to user terminal 212. *Id.* at 13:16–21. User terminal 212 receives the supplemental materials, or uses the location information to retrieve the supplemental materials from supplemental servers 216, and "plays" or displays them to the user while the user listens to the broadcast material. *Id.* at 13:22–29. This allows the system to provide the user with, e.g., a track number, artist, album title, album image, links to purchase the album, promotional materials, concert schedules, other images or videos relating to the album or artist, or virtually any other information related to the current track broadcasted by radio station 204. *Id.* at 13:34–14:5.

The supplemental material provided to user terminal 212 can be displayed or "played" on a multimedia player such as that shown in Figure 7, which is reproduced below.

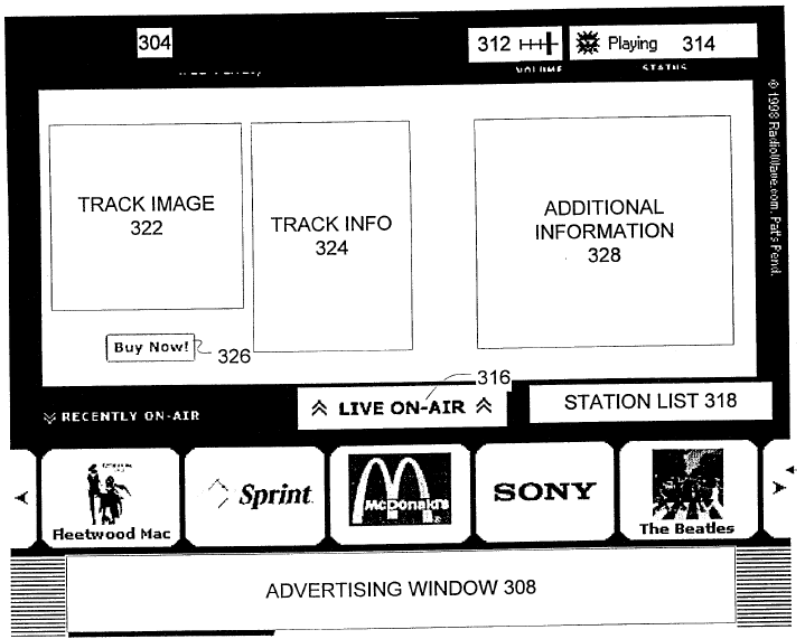

Fig. 7

Figure 7 is an illustration of a multimedia player user interface according to one embodiment of the invention. Ex. 1004, 5:26–27. The user interface includes data window 302, player interface 304, history window 306, and advertising window 308. *Id.* at 15:34–36. Player interface 304 includes user selectable controls such as volume control 312, status display 314, on-air display 316, and station list 318. *Id.* at 16:1–5. Data window 302 includes areas to display track image 322, track information 324, buy now button 326, and additional information selection area 328. *Id.* at 16:11–15. When "user terminal 212 is provided with URL's to retrieve supplemental materials, the URL's can be used to retrieve some or all of the information provided" in data window 302. *Id.* at 16:17–19. Track image 322 can be an album image, i.e., a picture, image, or graphical representation of the album

containing the current song being played. *Id.* at 16:22–24. Track information 324 can display the artist's name, the current song being played, the album on which that song can be found, and any other information related to the current song. *Id.* at 16:35–17:3. User terminal 212 can retrieve and display the track/album image 322 and track information 324 automatically upon receipt without user interaction. *Id.* at 17:8–10. Additional information selection area 328 can provide menus or icons the user can interact with to obtain additional information or supplemental materials regarding the currently playing track, such as concert schedules, tickets, merchandizing or other information. *Id.* at 17:13–20. This information is generally not retrieved by user terminal 212 until it requested by clicking on an icon or otherwise interacting with the menu provided in additional information selection area 328. *Id.* at 17:24–27.

2. Review of Challenge to Claim 1

Claim 1 recites a method for providing a visual complement to an audio stream, and requires a first transmission system transmitting audio data corresponding to a selected song to a second transmission system. Ex. 1001, 15:63–67.

Petitioner demonstrates a reasonable likelihood of showing where Mackintosh discloses this limitation. Pet. 14–16 (citing Ex. 1004, 3:24–29, 10:26–11:2, 12:13–18, Fig. 5). In particular, Petitioner identifies Mackintosh's radio station 204 as the first transmission system, ISP 208 as the second transmission system, and demonstrates radio station 204 transmits audio data to ISP 208. *Id.* Mackintosh discloses radio station 204 broadcasts "a predetermined audio stream comprising a predetermined

sequence of songs." Ex. 1004, 26:25–28. Patent Owner does not contest Mackintosh discloses this limitation. *See* Prelim. Resp.

Claim 1 further requires transmitting a data packet that is generated from the selected song's identifier, and that includes a media asset identifier and song information, including the selected song's title and recording artist. Ex. 1001, 16:1–7.

Petitioner argues this transmitting step does not require use of the first or second transmission systems otherwise required by claim 1. Pet. 16. Petitioner argues Mackintosh's data server 214 performs this step by transmitting a data packet containing supplemental materials to user terminal 212. *Id.* (citing Ex. 1004, 13:16–18, 14:30–32, Fig. 5). Petitioner argues the transmitted data packet is generated from the program data, including cut codes identifying the broadcasted song, data server 214 receives from user terminal 212 or ISP 208. *Id.* at 17–20 (citing Ex. 1004, 3:29–32, 8:8–33, 10:31–35, 11:19–12:2, 12:15–18, 13:10–18). Petitioner further argues the transmitted data packet includes both a media asset identifier (e.g., a URL pointing to images, videos, audio, text, or other information based on the program data associated with the current song), and song information such as the name of the song and the recording artist. *Id.* at 20–25 (citing Ex. 1004, 13:24–14:5, 16:11–21, 16:35–17:3, 28:3–26, Fig. 7; Ex. 1003 ¶ 43).

Patent Owner argues Petitioner has failed to demonstrate that Mackintosh's data server 214 generates and transmits a data packet that includes both a media asset identifier and song information comprising the song title and artist. Prelim. Resp. 13–17. In particular, Patent Owner argues Mackintosh discloses alternative embodiments in which the data

packet transmitted from data server 214 to user terminal 212 contains either supplemental materials, or location information (e.g., URLs) by which user terminal 212 can obtain supplemental materials. *Id.* at 14–15 (citing Ex. 1004, 4:7–11, 8:14–9:8).[3] Patent Owner argues the portions of Mackintosh cited by Petitioner fail to disclose a single embodiment in which the transmitted data packet includes both the supplemental material itself (e.g., song information) and URLs to the supplemental material (e.g., media asset identifiers). *Id.* at 15–16 (citing Ex. 1004, 13:22–14:5, 16:11–21, 16:35–17:3). Therefore, because anticipation can't be shown by combining different embodiments of a reference, Patent Owner argues Petitioner has failed to show Mackintosh anticipates claim 1. *Id.* at 17.

At this stage of the proceeding, we are not persuaded by Patent Owner's arguments. Petitioner cites to, among others, Mackintosh's disclosures on page 16, lines 11–21, and page 28, lines 3–26. Pet. 22–24. Mackintosh discloses when user terminal 212 is provided with URL's to retrieve supplemental materials, "the URL's can be used to retrieve *some or all* of the information provided in . . . data window 302." Ex. 1004, 15:11–21 (emphasis added). This suggests that not all of the information displayed in data window 302 is retrieved via URL. Mackintosh further discloses when a data server receives the cut code (song identifier) of the currently broadcasted song, it can use the cut code to retrieve (1) the name of an

[3] Patent Owner's citation is in the form X(Y):a–b, where X is the page number of Ex. 1004 appearing at the bottom of the page, and Y is the page number of the published Mackintosh application appearing at the top of the page. For simplicity, we cite only to the page number of the published Mackintosh application.

image containing the album cover for the song, (2) a link to additional information related to the song, (3) the name of the artist, (4) the name of the album, and (5) the name of the song. *Id.* at 28:3–18. The data server then either obtains the album cover image and sends the media player the album cover image, song name, artist name, and album name, or sends the media player the link to the album cover image, which the media player uses to obtain the album cover image. *Id.* at 28:20–26. This again, suggests the data packet sent by the data server to the media player contains some of the information displayed in data window 302 (e.g., album, artist, and song name), and a link allowing the media player to obtain additional information such as the album cover image. For example, Mackintosh discloses "[r]esponsive to the receipt of the artist name, album name, song name, image, and provider link . . . [this information is] provided to the player 510." *Id.* at 28:33–35.

Accordingly, at this stage of the proceedings, having considered Petitioner's and Patent Owner's arguments and evidence, both for and against, we find Petitioner has demonstrated a reasonable likelihood of showing where Mackintosh discloses transmitting a data packet that is generated from the selected song's identifier, and that includes a media asset identifier and song information, including the selected song's title and recording artist as required by claim 1.

Claim 1 further requires the data packet to be transmitted to a receiving system that uses the information in the data packet to automatically generate and output a video image to a display device that displays the video image without requiring the user to select a menu item. Ex. 1001, 16:8–16.

Petitioner demonstrates a reasonable likelihood of showing where Mackintosh discloses this limitation. Pet. 25–27 (citing Ex. 1004, 6:30–34, 17:8–12, 28:16–18, 30:23–32:11, Figs. 5, 7, 12, 13). First, Petitioner argues the '255 patent describes the term video image broadly, so that a video image encompasses still images such as GIF, JPEG, and bitmap images. Pet. 25–26 (citing Ex. 1001, 4:47–53). Next, Petitioner argues Mackintosh's user terminal 212 is a receiving system that receives the data packet transmitted by data server 214, generates a video image from the information in the data packet, and automatically displays the video image on a display device without user input as shown in Figures 7 and 12. *Id.* Mackintosh discloses user terminal 212 can be a computer system having a processor, communications interface, and display device. Ex 1004, 6:30–34, 30:23–32:11, Figs. 5, 13. Mackintosh further discloses user terminal 212 can retrieve and display track image 322 and track information 324 (including song, album, and artist names) retrieved from data server 214 automatically, and without user input. *Id.* at 17:8–12, 28:16–18, Figs. 7, 12. Patent Owner, other than contesting the data packet received from data server 214 fails to include both a media asset identifier and song information (which we find unpersuasive for the reasons discussed above), does not contest Mackintosh discloses this limitation. *See* Prelim. Resp.

Lastly, claim 1 requires the displayed video image to include the song information, including the title and recording artist of the selected song. Ex. 1001, 16:17–19.

Petitioner demonstrates a reasonable likelihood of showing where Mackintosh discloses this limitation. Pet. 28 (citing Ex. 1004, 28:16–18). As discussed above, Mackintosh discloses the video image displayed in data

window 302 includes song information including the song title and recording artist. Ex. 1004, 28:16–18, Figs. 7, 12. Patent Owner does not contest Mackintosh discloses this limitation. *See* Prelim. Resp.

For the reasons discussed above, having considered the evidence and arguments presented by Petitioner and Patent Owner, we find on the current record that Petitioner has demonstrated a reasonable likelihood of showing Mackintosh discloses all the limitations of claim 1 and that claim 1 is unpatentable as anticipated by Mackintosh.

3. Review of Challenge to Claims 2–9, 12–14, 16, and 17

Petitioner also argues claims 2–9, 12–14, 16 and 17 are anticipated by Mackintosh. *See* Pet. 28–60. Patent Owner argues Petitioner has failed to demonstrate the likelihood of showing Mackintosh anticipates independent claims 12 and 17 for the same reasons set forth above regarding Petitioner's challenge to claim 1. *See* Prelim. Resp. 17–19. Patent Owner further argues Petitioner has failed to demonstrate Mackintosh anticipates dependent claims 7 and 13 because Petitioner has failed to show that Mackintosh discloses transmitting a data packet that "specifies a screen location that is associated with said media asset identifier" as recited in claims 7 and 13. *Id.* at 19–21.

Having determined Petitioner has demonstrated a reasonable likelihood of showing claim 1 is unpatentable as anticipated by Mackintosh, we need not consider the merits of Petitioner's challenge to claims 2–9, 12–14, 16, and 17 at this stage of the proceedings. *See* 35 U.S.C § 314 (permitting institution of *inter partes* review upon determining "a reasonable likelihood the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."); *see also* 37 C.F.R. § 42.108(a), ("When

instituting *inter partes* review, the Board may authorize the review to proceed on all or some of the challenged claims and on all or some of the grounds of unpatentability asserted for each claim.").

III. CONCLUSION

We have reviewed the Petition and Patent Owner's Preliminary Response with respect to the patentability of claim 1. We have considered all of the evidence and arguments presented by Petitioner and Patent Owner regarding the patentability of claim 1, and have weighed and assessed the entirety of this evidence as a whole. We find, on this record, Petitioner has demonstrated a reasonable likelihood of showing claim 1 is unpatentable as anticipated by Mackintosh.

Accordingly, we institute *inter partes* review of all of the challenged claims in the Petition. *See* 35 U.S.C § 314; *see also* 37 C.F.R. § 42.108(a). The burden remains on Petitioner to demonstrate the unpatentability of all of the challenged claims. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). The Board has not yet made a final determination with respect to the patentability of any claim.

IV. ORDER

It is ORDERED that, pursuant to 35 U.S.C. § 314, an *inter partes* review is hereby instituted on the following grounds:

1. Claims 1–9, 12–14, 16, and 17 under 35 U.S.C. § 102(b) as anticipated by Mackintosh;

FURTHER ORDERED that, except as specifically enumerated above, no other ground of unpatentability, with respect to any claim, is instituted for trial; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial commencing on the entry date of this Decision.

For PETITIONER:

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