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Paper 9
Date: April 25, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AYLO FREESITES LTD.,
Petitioner,

v.

DISH TECHNOLOGIES L.L.C.,
Patent Owner.

IPR2024-00147
Patent 10,757,156 B2

Before THU A. DANG, JOHN A. HUDALLA, and
JULIET MITCHELL DIRBA, *Administrative Patent Judges*.

DIRBA, *Administrative Patent Judge*.

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

On November 7, 2023, Aylo Freesites Ltd ("Petitioner")[1] filed a Petition requesting an *inter partes* review of claims 1–17 of U.S. Patent No. 10,757,156 B2 (Ex. 1001, "the '156 patent"). Paper 1 ("Pet."). Petitioner filed a Declaration of Henry Houh, Ph.D. (Ex. 1003) with its Petition. DISH Technologies L.L.C. ("Patent Owner")[2] timely filed a Preliminary Response (Paper 7, "Prelim. Resp."), along with a Declaration of Dr. Kevin Jeffay (Ex. 2001).

An *inter partes* review may not be instituted unless "the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a).

Having reviewed the parties' papers and the evidence of record, we determine that Petitioner has not shown a reasonable likelihood it will prevail in establishing the unpatentability of any of the challenged claims. Accordingly, we do not institute an *inter partes* review.

I. BACKGROUND

A. Related Matters

The parties state that the '156 patent has been asserted in or may be affected by several district court lawsuits. Pet. 1–2; Paper 4 (Patent Owner's

[1] Petitioner also identifies Aylo Premium Ltd (f/k/a MG Premium Ltd) and Aylo Billing Limited (f/k/a MG Billing Limited) as real parties-in-interest. Pet. 1. In addition, Petitioner states that it was formerly known as MG Freesites Ltd. *Id.*

[2] Patent Owner also identifies, as real parties-in-interest: (1) Sling TV L.L.C., the exclusive licensee of the '156 patent, and (2) EchoStar Corporation, which merged with DISH Network Corporation, the parent company of DISH Technologies L.L.C., on December 31, 2023. Paper 4, 2; Paper 6, 2.

Mandatory Notices), 2–3; Paper 6 (Patent Owner's Updated Mandatory Notices), 2; Paper 8 (Petitioner's Updated Mandatory Notices), 1. The parties also reference an investigation of the International Trade Commission under 19 U.S.C. § 1337 styled *In the Matter of Certain Fitness Devices, Streaming Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1265 (USITC instituted May 13, 2021) ("the ITC Investigation"). *See, e.g.*, Pet. 2, 8–9; Prelim. Resp. 37–39; Paper 4, 3.

In addition, on January 30, 2024, Petitioner challenged the '156 patent in IPR2024-00513, and the Board has not yet issued a decision on institution. *See* Paper 6, 2; Paper 8, 1. Petitioner has also challenged patents related to the '156 patent in IPR2024-00043, IPR2024-00044, IPR2024-00045, IPR2024-00046, IPR2024-00047, IPR2024-00048, IPR2024-00146, IPR2024-00512, IPR2024-00514, IPR2024-00515, IPR2024-00516, IPR2024-00517, IPR2024-00518, and IPR2024-00519. *See* Pet. 2; Paper 4, 3–4; Paper 6, 2–3; Paper 8, 2.

B. The Petition's Asserted Grounds

Petitioner asserts the following grounds of unpatentability (Pet. 3–4):

Claim(s) Challenged	35 U.S.C.[3] §	Reference(s)/Basis
1–17	103(a)	Ogdon[4]
1–17	103(a)	Ogdon, Ala-Honkola[5]
4, 7	103(a)	Ogdon, Shteyn,[6]
4, 7	103(a)	Ogdon, Ala-Honkola, Shteyn
10, 12	103(a)	Ogdon, Chou[7]
10, 12	103(a)	Ogdon, Ala-Honkola, Chou
8, 14	103(a)	Ogdon, SMIL 2.0[8]
8, 14	103(a)	Ogdon, Ala-Honkola, SMIL 2.0

[3] The Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112-29, 125 Stat. 284, 285–88 (2011), revised 35 U.S.C. § 103 effective March 16, 2013. The '156 patent was filed after that date (on March 4, 2019), but claims priority to applications filed as early as April 30, 2004. Ex. 1001, codes (22), (60), (63). Petitioner assumes the earliest possible priority date for purposes of this proceeding (*see* Pet. 8), and Patent Owner does not address the priority date. In this Decision, we assume that the pre-AIA version of Section 103 applies; however, our analysis would be the same under the current version of the statute.

[4] US 6,161,137, issued Dec. 12, 2000 (Ex. 1004).

[5] US 2003/0055995 A1, published Mar. 20, 2003 (Ex. 1017).

[6] US 7,529,806 B1, issued May 5, 2009 (Ex. 1016).

[7] US 6,637,031 B1, issued Oct. 21, 2003 (Ex. 1013).

[8] *Synchronized Multimedia Integration Language (SMIL 2.0)*, dated Aug. 7, 2001 (Ex. 1006).

C. The '156 Patent

The '156 patent describes adaptive-rate shifting of streaming content. Ex. 1001, Abs., 1:25–28. The '156 patent addresses a purported need to "utilize multiple connections between a source and destination, requesting varying bitrate streams depending upon network conditions." *Id.* at 2:57–60.

Figure 1 of the '156 patent is reproduced below.

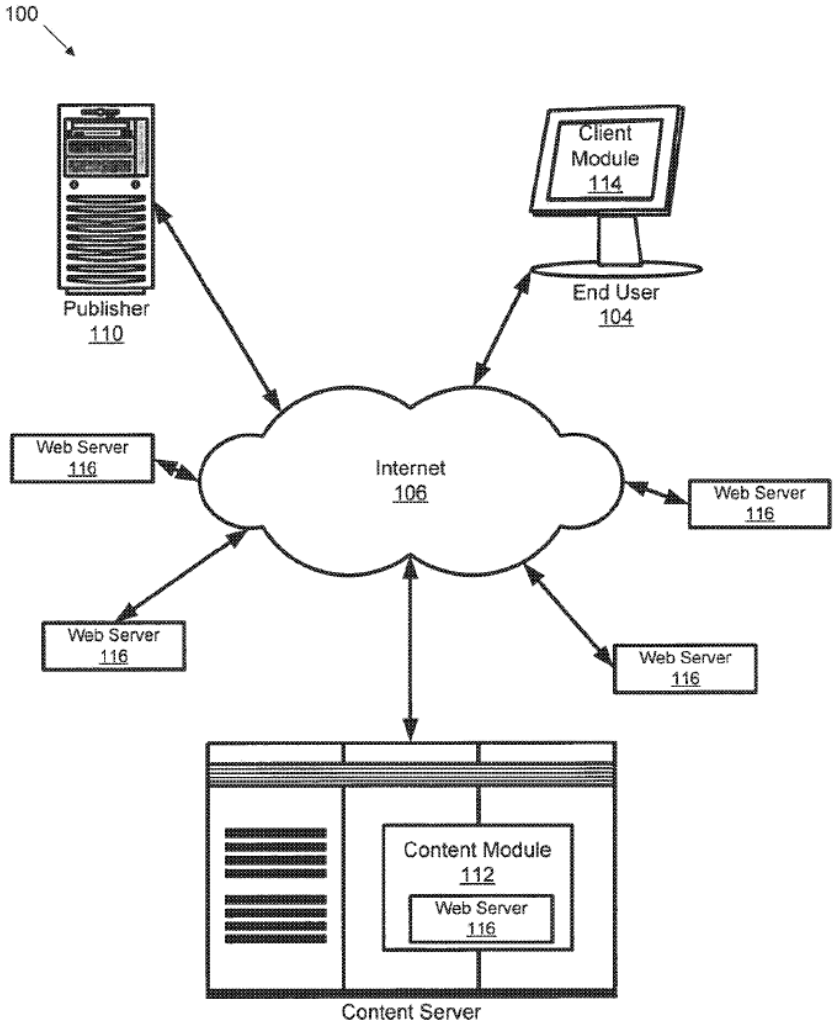

FIG. 1

Figure 1 depicts "system 100 for dynamic rate shifting of streaming content." Ex. 1001, 6:20–22. System 100 includes content server 102, end

user station 104, publisher 110, and web server 116. *Id.* at 6:23–34. Content may be transferred over Internet 106 to content server 102. *Id.* at 6:40–42.

Figure 2b of the '156 patent is reproduced below.

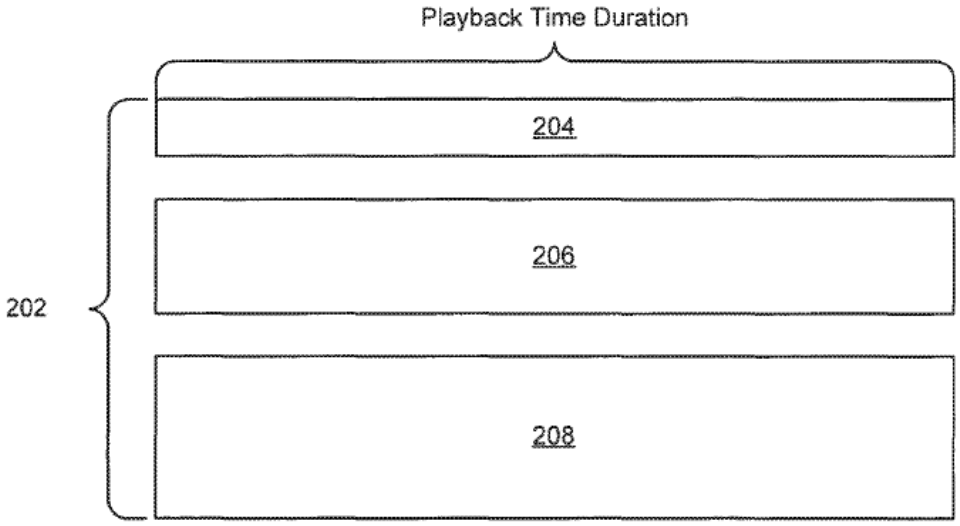

FIG. 2b

Figure 2b depicts "a plurality of streams 202 having varying degrees of quality and bandwidth." Ex. 1001, 6:64–66. Streams 202 comprise low-quality stream 204, medium-quality stream 206, and high-quality stream 208, and each of streams 204, 206, 208 is a copy of content file 200 encoded and compressed to varying bit rates. *Id.* at 6:66–7:1.

Figure 2c of the '156 patent is reproduced below.

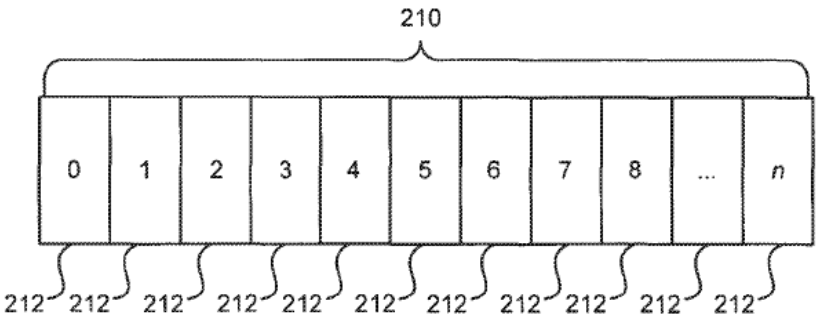

FIG. 2c

Figure 2c depicts "stream 210 divided into a plurality of streamlets 212," which are "any sized portion[s] of the content file 200." Ex. 1001, 7:10–12.

D. Challenged Claims

Petitioner challenges claims 1–17 of the '156 patent. Of these, claims 1 and 13 are independent. Claim 1 is illustrative, and it recites:

> [pre] An apparatus for rendering a video that is adaptively received as a digital stream from a video server over a network, the apparatus comprising;
>
> [A][1] a media player operating on the apparatus, [2] wherein the media player is configured to stream the video from the video server via at least one transmission control protocol (TCP) connection over the network, [3] wherein the video server stores multiple different copies of the video encoded at different bit rates as multiple sets of streamlets, [4] wherein each of the streamlets yields a different portion of the video on playback, [5] wherein the streamlets across the different copies yield the same portions of the video on playback, [6] and wherein the streamlets in the different copies are aligned in time such that the streamlets that play back the same portion of the video for the different copies each begin at the same playback time in relation to the beginning of the video, and wherein the media player streams the video by:
>
> [B][1] requesting sequential streamlets of one of the copies from the video server according to the playback times of the streamlets by transmitting hypertext transport protocol (HTTP) GET requests that identify the selected streamlets stored by the video server, [2] wherein the sequential streamlets are selected by the media player from the based upon successive determinations to shift the playback quality to a higher or lower quality one of the different copies of the video;
>
> [C] repeatedly generating, by the media player, a factor relating to the performance of the network that is indicative of an ability to sustain the streaming of the video;
>
> [D] adapting the successive determinations to shift the playback quality based on the factor to achieve continuous playback of the video using the streamlets of the highest quality copy of the video that is determined to be sustainable at that time; and

> [E] presenting the video for playback by providing the requested streamlets in order of ascending start time.

Ex. 1001, 13:52–14:22 (Petitioner's reference designations added).

II. ANALYSIS

A. Legal Standards

"In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable." *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify "with particularity . . . the evidence that supports the grounds for the challenge to each claim")). This burden of persuasion never shifts to the patent owner except in limited circumstances not present here. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

The legal question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) when in evidence, objective evidence of obviousness or nonobviousness. *Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

Petitioner asserts that the level of ordinary skill in the art corresponds to either: (1) "a B.S. degree in computer science or electrical engineering (or comparable degree) and two years of experience in networking or streaming media," or (2) "a M.S. in computer science or electrical engineering (or comparable degree)." Pet. 8 (citing Ex. 1003 ¶ 42). At this

stage, Patent Owner "disputes Petitioner's definition," but does not explain what it disputes. Prelim. Resp. 2.

For purposes of this Decision, we adopt Petitioner's proposed level of skill, as articulated above. We are satisfied that it comports with the level of skill necessary to understand and implement the teachings of the '156 patent and the asserted prior art.

C. Claim Construction

We interpret claim terms using "the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. [§] 282(b)." 37 C.F.R. § 42.100(b). Under the principles set forth by our reviewing court, the "words of a claim 'are generally given their ordinary and customary meaning,'" as would have been understood by a person of ordinary skill in the art at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)).

Petitioner does not propose any express claim constructions, but acknowledges that the claims have been construed in the ITC Investigation. Pet. 8–10. At this stage, "Patent Owner does not propose that the Board construe any claims." Prelim. Resp. 2.

We determine that it is not necessary to expressly construe any claim terms or phrases for purposes of this Decision. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) ("The Board is required to construe 'only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.'") (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

D. Summary of Prior Art References

1. Ogdon (Ex. 1004)

Ogdon is a U.S. patent directed to "a presentation system wherein network transmission characteristics are utilized in determining the presentation materials presented at each client node during a performance of the presentation." Ex. 1004, 1:12–15. Ogdon contemplates that video and audio portions of the presentation may be provided over the Internet. *Id.* at 2:8–10.

Figures 1A and 1B of Ogdon are reproduced below.

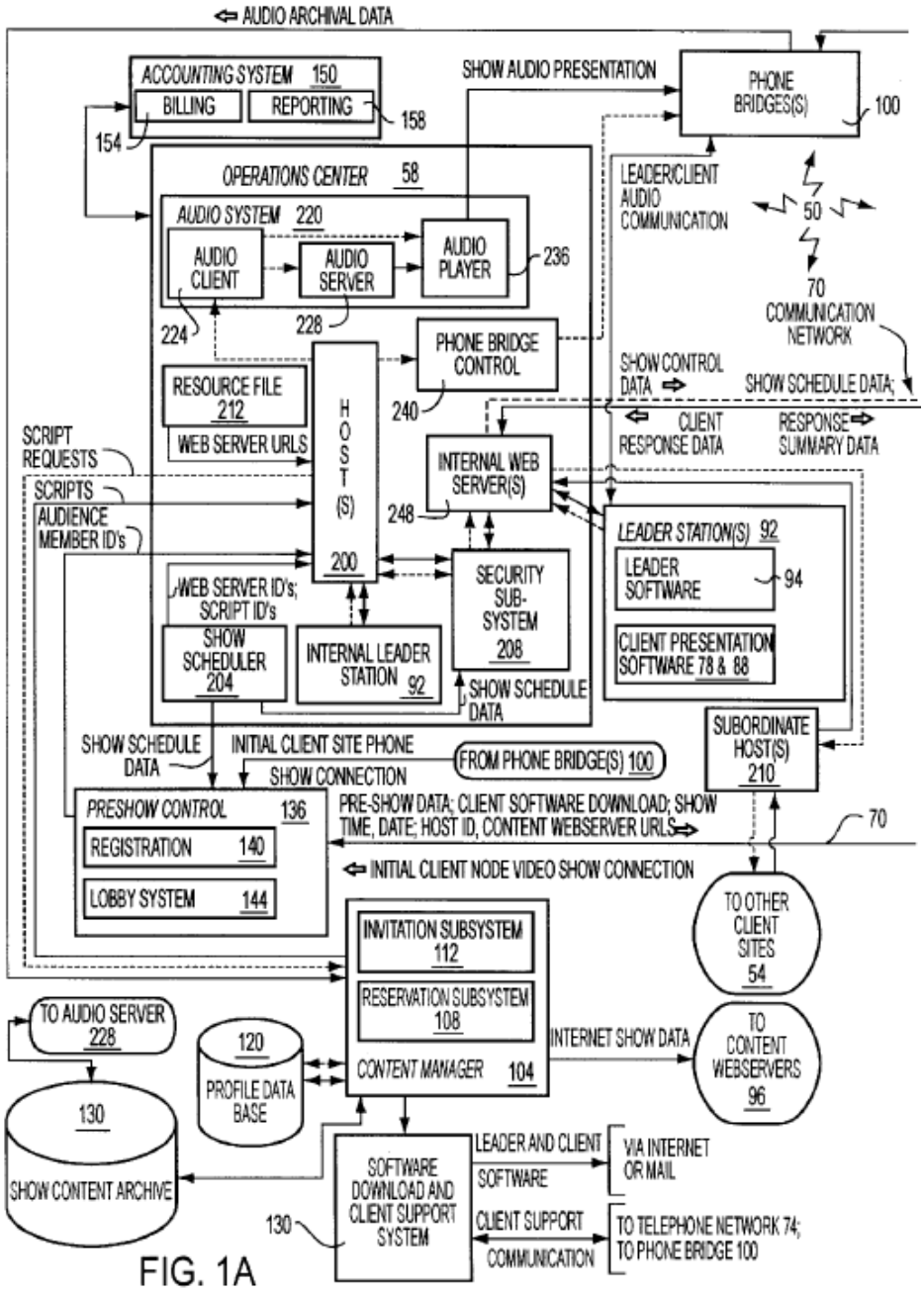

FIG. 1A

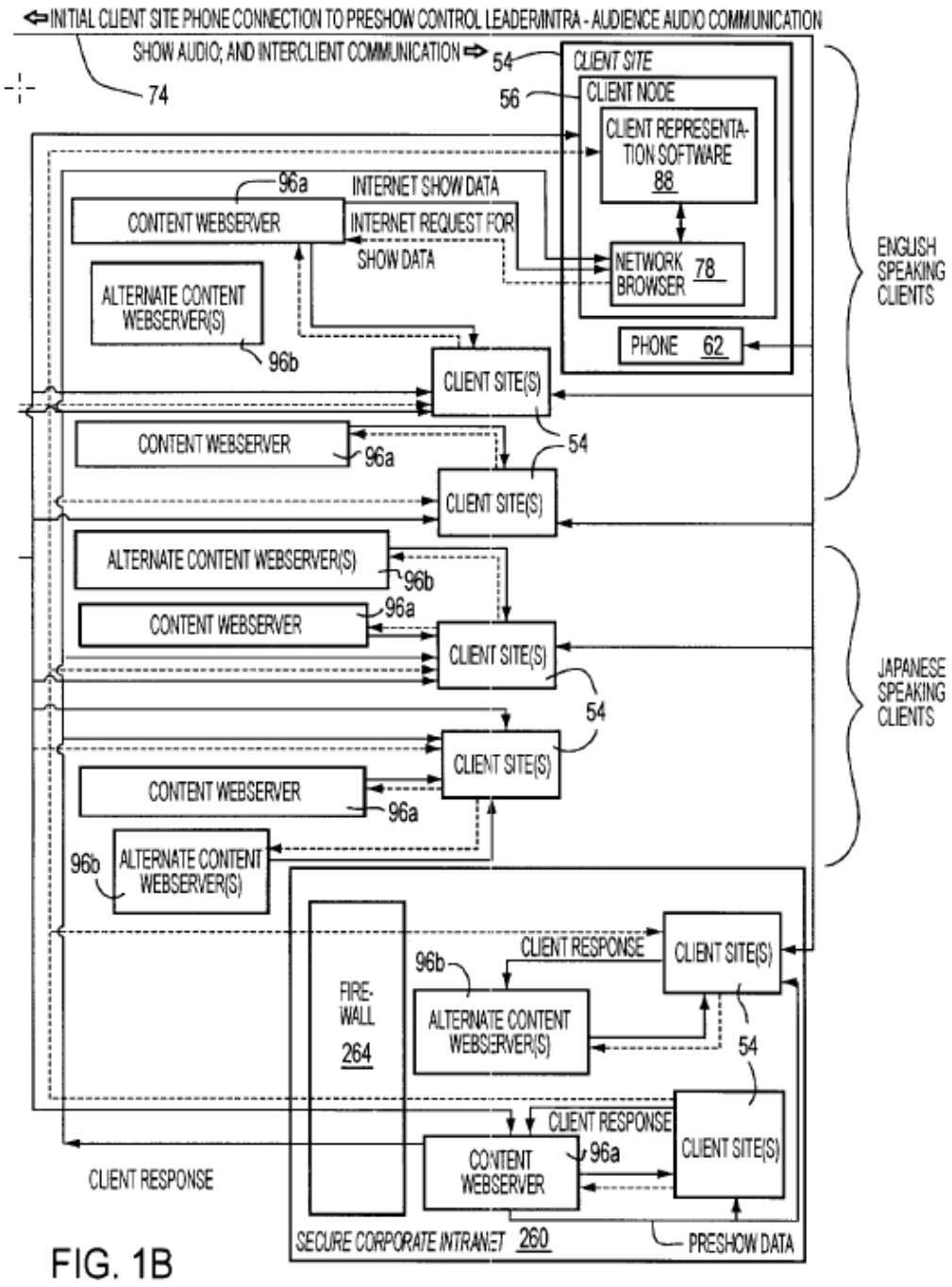

FIG. 1B

Together, Figures 1A and 1B illustrate presentation system 50 with solid arrows denoting presentation data flows and dashed arrows denoting control data flows. Ex. 1004, 7:34–37. Audience members receive a presentation at client sites 54. *Id.* at 7:40–41. Each client site 54 may have client node 56 (e.g., a personal computer) and telephone 62. *Id.* at 7:44–45. Client node 56

may receive video and audio information from communications network 70 (e.g., the Internet), and phone 62 may receive audio routed separately through voice grade telephony networks 74. *Id.* at 7:46–51.

Content manager system 104 manages presentation scripts and data, and logs and confirms the locations and addresses of content webservers 96 where the content for each presentation will reside. Ex. 1004, 9:27–31. Content manager 104 also distributes presentation content (e.g., presentation segments) to content webservers 96. *Id.* at 9:31–32, 9:44–46.

Different versions of the same presentation may be accessible from the content webservers, and each version may be tailored to a different group of audience members (e.g., Japanese-speaking audience members, or audience members affiliated with a particular organization). Ex. 1004, 2:30–35. Each presentation version may include one or more presentation segments that provide different portions of the presentation. *Id.* at 2:36–39. "[S]ubcollections each having one or more segments are provided as presentation 'elements' in that each such subcollection is intended to be an indivisible portion of a presentation performance." *Id.* at 2:39–42. Each presentation version typically includes a subcollection of segments (i.e., presentation elements) ordered according to their presentation sequence. *Id.* at 2:43–45. "[S]ubstantially every segment (or subcollections thereof) in one version corresponds with a segment (or subcollections thereof) having the same presentation order, in each of the other versions." *Id.* at 2:45–50. Such corresponding segments (or subcollections) in different versions may have approximately the same presentation duration, and one segment (or subcollection) may be presented as a replacement for another such corresponding segment (or subcollection) during the presentation. *Id.* at 2:49–55. Corresponding alternative segments (or subcollections) also can

be substituted for one another depending on the performance of the communications network. *Id.* at 2:55–61.

2. Ala-Honkola (Ex. 1017)

Ala-Honkola relates to adaptive streaming of content, such as video. Ex. 1017, Abs., ¶ 1. Ala-Honkola changes "the source of the content of a media stream when an available transmission speed rate changes." *Id.* at Abs. "Each source contains essentially the same information (such as video and voice), but the suitability of each source for transmission has been adjusted to a certain speed rate." *Id.* Ala-Honkola further teaches a client making HTTP GET requests for the video. *E.g.*, *id.* ¶¶ 33–34, 38.

3. Shteyn (Ex. 1016)

Shteyn describes partitioning a content file into segments so that, while one segment is being played, a client can download and buffer a subsequent segment for playback thereafter. *E.g.*, Ex. 1016, Abs., Figs. 1–2. The client downloads control information that enables the client to request, download, and play each segment of the content file sequentially. *Id.* at 2:57–3:36, 3:57–61, Fig. 1. The segments can have different formats (e.g., a standard format such as MP3 or another format), lengths (e.g., 512 or 1024 bytes), and bandwidth requirements. *Id.* at 3:44–53, Fig. 2. To adapt to changing network circumstances, such as lower bandwidth, the client can select among the different segments. *Id.* at 4:20–23.

4. Chou (Ex. 1013)

Chou is directed to multimedia presentation latency minimization. Ex. 1013, code (54). Chou discloses providing a low-quality stream that is quickly available to a client while also providing a high-quality stream to be

gradually combined with the low-quality stream to improve the presentation quality as soon as the high-quality stream can be handled. *Id.* at Abs.

5. SMIL 2.0 (Ex. 1006)

SMIL 2.0 is a technical specification directed to "an XML-based language that allows authors to write interactive multimedia presentations." Ex. 1006, Abs. The language allows users to "describe the temporal behavior of a multimedia presentation, associate hyperlinks with media objects and describe the layout of the presentation on a screen." *Id.*

E. Ground 1: Obviousness Based on Ogdon

Petitioner contends that the subject matter of independent claims 1 and 13 and dependent claims 2–12 and 14–17 would have been obvious over Ogdon. Pet. 16–49. Patent Owner argues that Petitioner fails to make a sufficient showing for the limitations of the independent claims. Prelim. Resp. 3–25. For the reasons explained below, we agree that Petitioner has not demonstrated a reasonable likelihood of prevailing on this ground.

1. Independent Claim 1

Claim 1 recites a media player configured to stream a video from a video server, "wherein the video server stores multiple different copies of the video encoded at different bit rates as multiple sets of streamlets." Ex. 1001, 13:58–61 (referred to as "element 1[A][3]").[9] Petitioner contends

[9] The claim provides additional context for this limitation by stating that "each of the streamlets yields a different portion of the video on playback" and "the streamlets across the different copies yield the same portions of the video on playback." Ex. 1001, 13:61–64; *see* Pet. 21–23 (addressing these limitations as elements 1[A][4] and 1[A][5]).

that Ogdon teaches this limitation. Pet. 19–21. Patent Owner disagrees, arguing that Ogdon fails to teach or suggest encoding a video at a plurality of different bitrates to create different copies of the same video. *See* Prelim. Resp. 14–20. We agree with Patent Owner for the reasons explained below.

(a) Parties' Arguments

Petitioner maps Ogdon's presentation to the claimed "video," and Ogdon's segments to the claimed "streamlets." Pet. 19–20; *see also id*. at 16, 18–19 (addressing the "video"), 21–22 (addressing the "streamlets"). As for the claimed "copies of the video," Petitioner points to Ogdon's discussion of providing different versions of the presentation. *Id.* at 20–21. Specifically, Petitioner asserts that Ogdon

> discloses that the video presentation has multiple different copies (*e.g.*, high quality (*e.g.*, full-animation video) and lower quality (*e.g.*, limited-animation video) versions) encoded at different bitrates because these streamlets (segments) can each be for "[d]ifferent versions of the same presentation" with "different network requirements," for example, "a first version of a presentation may require a network transmission rate sufficient for real time or **animated video**" and "another version of the presentation may only require a transmission rate sufficient for **graphic slides**." Further, "if a low transmission data rate is detected . . . presentation elements of a reduced size can be retrieved" or "if a higher transmission rate is detected . . . presentation elements of a greater size (and **corresponding enhanced quality of presentation**) can be retrieved."

Id. (alterations in original) (citing Ex. 1004, Abs., 2:30–66, 13:47–49, 22:44–47, 24:55, claim 9; Ex. 1003 ¶ 70). According to Petitioner, an ordinarily skilled artisan "would have understood the smaller size and lower transmission rate for 'limited or no animation' video to be encoded at a lower bitrate than the larger size, higher quality, and higher transmission rate

requirement 'full animation' video, which would be encoded at a higher bitrate." *Id.* at 21 (citing Ex. 1003 ¶ 70). Dr. Houh agrees with Petitioner, but does not add any further explanation. *See* Ex. 1003 ¶ 70.

Patent Owner argues that Ogdon fails to teach multiple copies of the *same* video encoded at different bitrates, as required by the claim. Prelim. Resp. 14 (citing Ex. 2001 ¶ 60). Patent Owner submits that Ogdon describes *different versions* of the presentation that contain different content customized for a particular audience (such as one version for Japanese speakers and another for English speakers, or one version for customers of a corporation and another for its sales representatives). *Id.* (citing Ex. 1004, 2:30–35, 25:38–42; Ex. 2001 ¶ 67). According to Patent Owner, "[c]ustomized versions of presentation materials do not disclose or suggest the claimed '***copies of a video***' encoded at different bitrates, at least because the underlying content – not simply the content's quality – in each presentation is different, rather than being a 'copy.'" *Id.* at 14–15 (citing Ex. 2001 ¶ 67). Patent Owner also submits that Ogdon describes different versions of the presentation that include different media (such as one version with graphic slides and another for video). *Id.* at 15–17 (citing Ex. 1004, 2:61–3:10; Ex. 2001 ¶¶ 68–69). In addition, Patent Owner argues that "Ogdon is silent regarding encoding even customized versions at different bitrates." *Id.* at 15 (citing Ex. 2001 ¶ 67); *see also id.* at 18 (arguing that an ordinarily skilled artisan "would have understood the concept of 'bitrate' does not apply to images" (citing Ex. 2001 ¶ 71)).

(b) Analysis

Having reviewed the parties' arguments and the evidence of record, we determine that Petitioner has not sufficiently shown that Ogdon discloses

storing "multiple different copies of the video encoded at different bit rates," as required by element 1[A][3]. We begin our analysis by summarizing the relevant aspects of Ogdon, and then we turn to Petitioner's specific contentions.

Ogdon uses the term "presentation" to broadly refer to content that is synchronously distributed to its members, which may (or may not) include video. *See, e.g.*, Ex. 1004, 1:51–62, 2:61–3:8 (presentation may be "audio" or may include "audio, images, animation [and/]or video"), 3:44–57 (presentation may include "full animation" or "a slide show"). Ogdon states that different members may access "different versions of the presentation" (*id.* at 2:21–23), and Ogdon states that these "different versions" have corresponding content and "can be presented as a replacement" for each other (*id.* at 2:45–55).

Ogdon describes two types of these different versions. First, Ogdon contemplates different versions for "different group[s] of audience members such as a group for Japanese speaking audience members, or audience members affiliated with a particular organization." Ex. 1004, 2:30–35; *see also id.* at 6:52–64. Second, Ogdon describes different versions that include different media (such as a video or slides). *Id.* at 2:61–66 (one version includes "real time or animated video" where another includes "graphic slides"), 2:66–3:8 (one version is an audio presentation where alternate version includes multimedia data), 3:44–57 (one version is "full animation" and another version is "in a slide show format"); *see id.* at 3:38–44 (stating that versions of the presentation "correspond[] (in content)"). Ogdon indicates that this second type allows a version of the presentation to be sent that accommodates "different network transmission requirements." *Id.* at 2:36–66.

However, Ogdon never describes two copies of the same video presentation. It also does not refer to creating two copies of identical content (video or otherwise) that are encoded differently. As a result, although we preliminarily agree that Ogdon's presentation teaches the claimed "video,"[10] we do not agree that Ogdon teaches storing multiple copies of *the same video*, as required by element 1[A][3].

In its Petition, Petitioner points to several passages of Ogdon as disclosing this aspect of the claim (*see* Pet. 20–21), but these passages describe *different versions* of a presentation, rather than multiple *copies of the same video* (*see* Ex. 1004, Abs., 2:30–66, 13:47–49, 22:44–47, 24:55, claim 9). In many of these passages, Ogdon makes no reference to any video (*id.* at Abs., 2:30–61, 13:47–49, 24:55), and one passage specifically states that one presentation includes "video" while another includes "graphic slides" (*id.* at 2:61–66). Ogdon references "full animation" and "limited or no animation" (as an example of a "better presentation quality" element that may be retrieved when there is sufficient time to retrieve the data) (*id.* at 22:44–47), but it fails to disclose that these "animations" are different copies of the same video. Finally, one of Ogdon's claims recites "a first video portion" and "a different second video portion *that corresponds in content* with said first video portion," where the "first and second video portions have substantially different expected data transmission rates." *Id.* at claim 9 (emphasis added). However, Petitioner does not sufficiently show that an

[10] We are persuaded that Ogdon teaches a "video" because Ogdon teaches that its presentation may include a video. *See, e.g.*, Ex. 1004, 2:1–12, 2:61–66. To the extent Petitioner contends that Ogdon's "presentation" is coextensive with a "video presentation" (*see* Pet. 16–17), we disagree because Ogdon identifies presentations that do not include video (*e.g.*, Ex. 1004, 2:61–3:8, 3:44–57).

ordinarily skilled artisan would have understood this (i.e., two videos with *corresponding* content) to teach two copies of the *same* video encoded at different bitrates. Dr. Houh's testimony on this point is conclusory, and thus, we give it little weight. *See* Ex. 1003 ¶ 70; 37 C.F.R. § 42.65(a); *cf.* Ex. 2001 ¶¶ 61 n.9, 70–72 (Patent Owner's expert, Dr. Jeffay, reaching contrary conclusion given other disclosures in Ogdon).

To the extent Petitioner seeks to rely on an inherent disclosure, Petitioner fails to provide a sufficient basis for that contention. *See* Pet. 20–21; *PAR Pharm., Inc. v. TWI Pharms., Inc.*, 773 F.3d 1186, 1196 (Fed. Cir. 2014) (explaining that inherency requires a showing that "the limitation at issue necessarily must be present"). Moreover, Petitioner does not contend that Ogdon suggests (or renders obvious) element 1[A][3]. *See* Pet. 19–21. Further, even if the Petition could be read as including such a contention, we would preliminarily find, on this record, that Ogdon does not suggest storing multiple copies of the same video encoded at different bitrates, and that Petitioner fails to provide any rationale to support a theory that element 1[A][3] would have been obvious over Ogdon alone.[11] In other words, even if an ordinarily skilled artisan *could* have modified Ogdon to store multiple copies of the same video encoded at different bitrates, Petitioner does not provide any rationale to support a contention that an ordinary artisan *would have been motivated* to implement Ogdon in this

[11] The Board instituted *inter partes* review in other proceedings in which Petitioner contends that claim limitations including some of the same subject matter are taught or suggested by a combination of Ogdon and WO 02/075482 A2 (Allen). *E.g.*, IPR2024-00044, Paper 1 at 21–24. There is no tension between this Decision and those other decisions because Petitioner's contentions in those other proceedings are based on materially different arguments and evidence.

manner. *See, e.g.*, *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073 (Fed. Cir. 2015) ("[O]bviousness concerns whether a skilled artisan not only *could have made* but *would have been motivated to make* the combinations or modifications of prior art to arrive at the claimed invention.") (citing *InTouch Techs., Inc. v. VGO Commc'ns, Inc.*, 751 F.3d 1327, 1352 (Fed. Cir. 2014)).

Accordingly, we determine that Petitioner fails to show a reasonable likelihood that it will prevail on its contention that Ogdon discloses "the video server stores multiple different copies of the video encoded at different bit rates as multiple sets of streamlets," as required by claim 1. Ex. 1001, 13:58–61 (element 1[A][3]). Consequently, Petitioner does not show that there is a reasonable likelihood that it would prevail in establishing that the subject matter of claim 1 would have been obvious over Ogdon.

2. Independent Claim 13 and Dependent Claims 2–12 and 14–17

Petitioner contends that the subject matter of independent claim 13 would have been obvious over Ogdon. Pet. 46–48. Independent claim 13 recites a limitation substantially similar to element 1[A][3] (*see* Ex. 1001, 15:9–12), and Petitioner relies on the same deficient analysis to support its contentions regarding claim 13 (*see* Pet. 47). As a result, Petitioner fails to make a sufficient showing for independent claim 13 based on this ground.

Claims 2–12 each depend from independent claim 1, and claims 14–17 each depend from independent claim 13. Thus, these claims include all the limitations of the respective independent claims. Petitioner's reliance on and application of Ogdon to these dependent claims does not cure the above-noted deficiencies that infect the independent claims. Accordingly,

Petitioner does not show that there is a reasonable likelihood that it would prevail in establishing that the subject matter of any of these dependent claims would have been obvious over Ogdon.

Accordingly, we determine that Petitioner has not shown a reasonable likelihood that it would prevail in establishing that the subject matter of any of claims 2–17 would have been obvious over Ogdon.

F. Ground 2: Obviousness Based on Ogdon and Ala-Honkola

Petitioner contends that the subject matter of independent claims 1 and 13 and dependent claims 2–12 and 14–17 would have been obvious over Ogdon and Ala-Honkola. Pet. 49–54. Patent Owner argues that Petitioner's contentions for this ground do not cure the deficiencies noted above with respect to Ogdon. Prelim. Resp. 26. We agree with Patent Owner.

For this ground, Petitioner relies upon its prior contentions regarding Ogdon (*see* Pet. 49) and presents additional arguments regarding elements 1[A][1], 1[B][1], 13[A][2], and 13[A][6] of the independent claims (*see id.* at 50–54). Importantly, Petitioner does not address element 1[A][3], and Petitioner's additional contentions do not impact its prior analysis of that claim limitation. *See id.* at 49–54. As a result, Petitioner's showing for this ground suffers from the same deficiency discussed above regarding claim 1 (*see supra* § II.E.1.b), which infects all claims (*see supra* § II.E.2).[12]

[12] We analyze only the contentions presented in the Petition, and we cannot consider other potential obviousness theories. *See PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018) (The "petitioner's contentions . . . define the scope of the litigation all the way from institution through to conclusion." (quoting *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1357 (2018))).

Consequently, Petitioner does not show that there is a reasonable likelihood that it would prevail in establishing that the subject matter of any of claims 1–17 would have been obvious over Ogdon and Ala-Honkola.

G. Other Grounds

Petitioner presents additional grounds directed to certain dependent claims. Specifically, Petitioner contends that the subject matter of: (1) dependent claims 4 and 7 would have been obvious over: (a) Ogdon and Shteyn and (b) Ogdon, Ala-Honkola, and Shteyn; (2) dependent claims 10 and 12 would have been obvious over: (a) Ogdon and Chou and (b) Ogdon, Ala-Honkola, and Chou; and (3) dependent claims 8 and 14 would have been obvious over: (a) Ogdon and SMIL 2.0 and (b) Ogdon, Ala-Honkola, and SMIL 2.0. Pet. 54–61. Each of these claims depends from either independent claim 1 or claim 13, and Petitioner relies upon its prior analysis of the independent claims. *See id.*; *see also supra* §§ II.E (Ogdon-only ground), II.F (Ogdon-Ala-Honkola ground).

Petitioner's reliance on and application of the references to these dependent claims does not cure the deficiencies of the independent claims. Accordingly, Petitioner does not show that there is a reasonable likelihood that it would prevail in establishing that the subject matter of any of claims 4, 7, 8, 10, 12, and 14 would have been obvious over any of the asserted combinations of references.

III. CONCLUSION

As explained above, Petitioner has not shown a reasonable likelihood that it will prevail on any claims challenged in any of the Petition's grounds. Accordingly, we do not institute an *inter partes* review.

IV. ORDER

It is ORDERED that the Petition is *denied* and no *inter partes* review is instituted.

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