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Paper 11
Entered: August 30, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS INC.,
Petitioner,

v.

WILLIAM GRECIA,
Patent Owner.

_____

Case IPR2016-00602
Patent 8,887,308 B2

_____

Before GLENN J. PERRY, RAMA G. ELLURU, and
MICHELLE N. WORMMEESTER, *Administrative Patent Judges*.

WORMMEESTER, *Administrative Patent Judge*.

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

Unified Patents Inc. ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting *inter partes* review of claim 1 of U.S. Patent No. 8,887,308 B2 (Ex. 1003, "the '308 patent"). William Grecia ("Patent Owner") filed a Preliminary Response (Paper 7, "Prelim. Resp."). We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted "unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." For the reasons that follow, we have decided not to institute an *inter partes* review.

I. BACKGROUND

A. The '308 Patent

The '308 patent is titled "Digital Cloud Access (PDMAS Part III)." Ex. 1003, at [54]. The '308 patent describes a digital rights management system that manages access rights across a plurality of devices via digital media personalization to protect digital media subject to illegal copying. *Id.* at 1:20–27; 4:48–49.

The system includes a first receipt module, an authentication module, a connection module, a request module, a second receipt module, and a branding module. *See id.* at Fig. 1. The first receipt module receives a branding request from a user's (content acquirer's) device. *Id.* at 5:46–48. The branding request is a read and write request of metadata of the digital media and includes a membership verification token corresponding to the digital media. *Id.* at 5:48–51. The authentication module authenticates the membership verification token. *Id.* at 5:57–58. The connection module establishes communication with the user's device. *Id.* at 5:59–61. The

request module requests an electronic identification reference from the user's device. *Id.* at 6:5–7. The second receipt module receives the electronic identification reference. *Id.* at 6:7–9. The branding module brands metadata of the digital media by writing the membership verification token and the electronic identification into the metadata. *Id.* at 6:9–12.

Figure 3, which is reproduced below, illustrates this process.

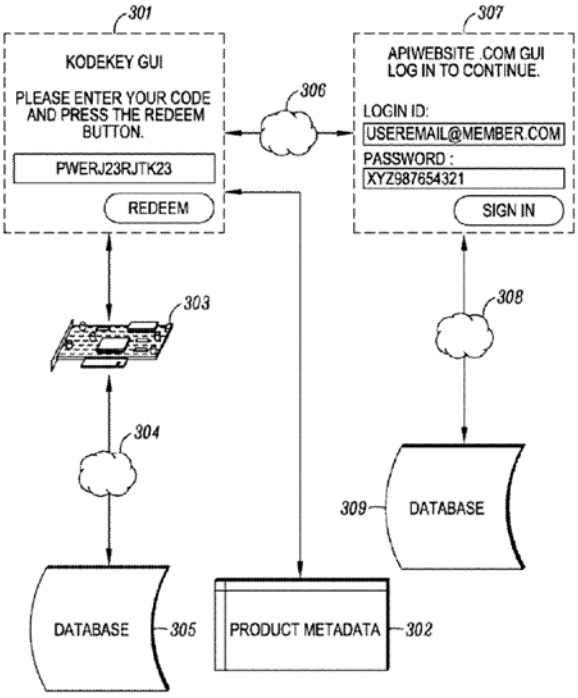


FIG. 3

In particular, Figure 3 is a flow chart of the process of digital media personalization. *Id.* at 4:24–26. A user posts a branding request via Kodekey GUI 301, which prompts the user to enter a token and press the redeem button. *Id.* at 6:66–7:4. Product metadata 302 is associated with the digital media to be acquired. *Id.* at 7:4–5. The Kodekey GUI is connected to token database 305. *Id.* at 7:7:–8. The user is then redirected to APIwebsite.com GUI 307, which prompts the user to enter a login id and password to access the digital media from database 309. *Id.* at 7:11–12, 15–

18. The APIwebsite.com GUI interfaces to a web service membership, where the user's electronic identification is collected and sent back to the Kodekey GUI. *Id.* at 7:11–15. The database containing the digital media is connected to the web service membership. *Id.* at 7:18–20.

B. Challenged Claim

Petitioner challenges claim 1 of the '308 patent, which recites:

> 1. A process for transforming a user access request for cloud digital content into a computer readable authorization object, the process for transforming comprising:
>
> a) receiving an access request for cloud digital content through an apparatus in process with at least one CPU, the access request being a write request to a data store, wherein the data store is at least one of:
>
> a memory connected to the at least one CPU;
>
> a storage connected to the at least one CPU; and
>
> a database connected to the at least one CPU through the Internet; wherein
>
> the access request further comprises verification data provided by at least one user, wherein the verification data is recognized by the apparatus as a verification token; then
>
> b) authenticating the verification token of (a) using a database recognized by the apparatus of (a) as a verification token database; then
>
> c) establishing an API communication between the apparatus of (a) and a database apparatus, the database apparatus being a different database from the verification token database of (b) wherein the APJ is related to a verified web service, wherein the verified web service is a part of the database apparatus, wherein establishing the API communication requires a credential assigned to the apparatus of (a), wherein the apparatus assigned credential is recognized as a permission to conduct a data exchange session between the apparatus of (a) and the database

> apparatus to complete the verification process, wherein the data exchange session is also capable of an exchange of query data, wherein the query data comprises at least one verified web service account identifier; then
>
> d) requesting the query data, from the apparatus of (a), from the API communication data exchange session of (c), wherein the query data request is a request for the at least one verified web service identifier; then
>
> e) receiving the query data requested in (d) from the API communication data exchange session of (c); and
>
> f) creating a computer readable authorization object by writing into the data store of (a) at least one of:
>
> the received verification data of (a); and
>
> the received query data of (e); wherein
>
> the created computer readable authorization object is recognized by the apparatus of (a) as user access rights associated to the cloud digital content, wherein the computer readable authorization object is processed by the apparatus of (a) using a cross-referencing act ion during subsequent user access requests to determine one or more of a user access permission for the cloud digital content.

C. Asserted Grounds of Unpatentability

Petitioner challenges claim 1 of the '308 patent on the following grounds.[1] Pet. 3, 19–52.

[1] In summarizing its asserted grounds on page 3 of the Petition, Petitioner requests cancellation of claim 1 as unpatentable under 35 U.S.C § 103, but states on page 19 of the Petition that the asserted references "anticipate and/or render obvious the claimed subject matter." Given the substance of Petitioner's arguments, we address claim 1 under 35 U.S.C. §§ 102 and 103.

Reference(s)	Basis
DeMello[2]	§ 102
DeMello, Wieder,[3] and "the admitted prior art"	§ 103
Pestoni[4]	§ 102
Pestoni, Wieder, and "the admitted prior art"	§ 103

In support of its arguments, Petitioner proffers the declaration of Ravi S. Cherukuri (Ex. 1009). *See id.*

D. Claim Construction

We construe claims in an unexpired patent by applying 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) (upholding the use of the broadest reasonable interpretation standard). Under this standard, claim terms are generally given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). A "claim term will not receive its ordinary meaning if the patentee acted as his own lexicographer," however, and clearly set forth a definition of the claim term in the specification. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002).

Petitioner provides proposed interpretations for various limitations of the claims. Pet. 12–19. Patent Owner responds. Prelim. Resp. 20–24. For purposes of this Decision, we conclude that no term requires interpretation at

[2] DeMello, U.S. Patent No. 6,891,953 B1, issued May 10, 2005 (Ex. 1006).
[3] Wieder, U.S. Patent No. 8,001,612 B1, issued Aug. 16, 2011 (Ex. 1008).
[4] Pestoni, U.S. Publ'n No. 2008/0313264 A1, published Dec. 18, 2008 (Ex. 1007).

this time to resolve a controversy in this proceeding. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) ("[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.").

II. DISCUSSION

A. Anticipation by DeMello

Petitioner argues that DeMello anticipates claim 1 of the '308 patent. *See* Pet. 19–39. For the reasons explained below, we are not persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing on its asserted ground.

1. DeMello

DeMello describes a digital rights management system that distributes and protects rights in content, such as electronic books (eBooks). Ex. 1006, at [57], 4:43–45. As shown in Figure 4, which is reproduced below, the system includes a retail site, a fulfillment site, and an activation site.

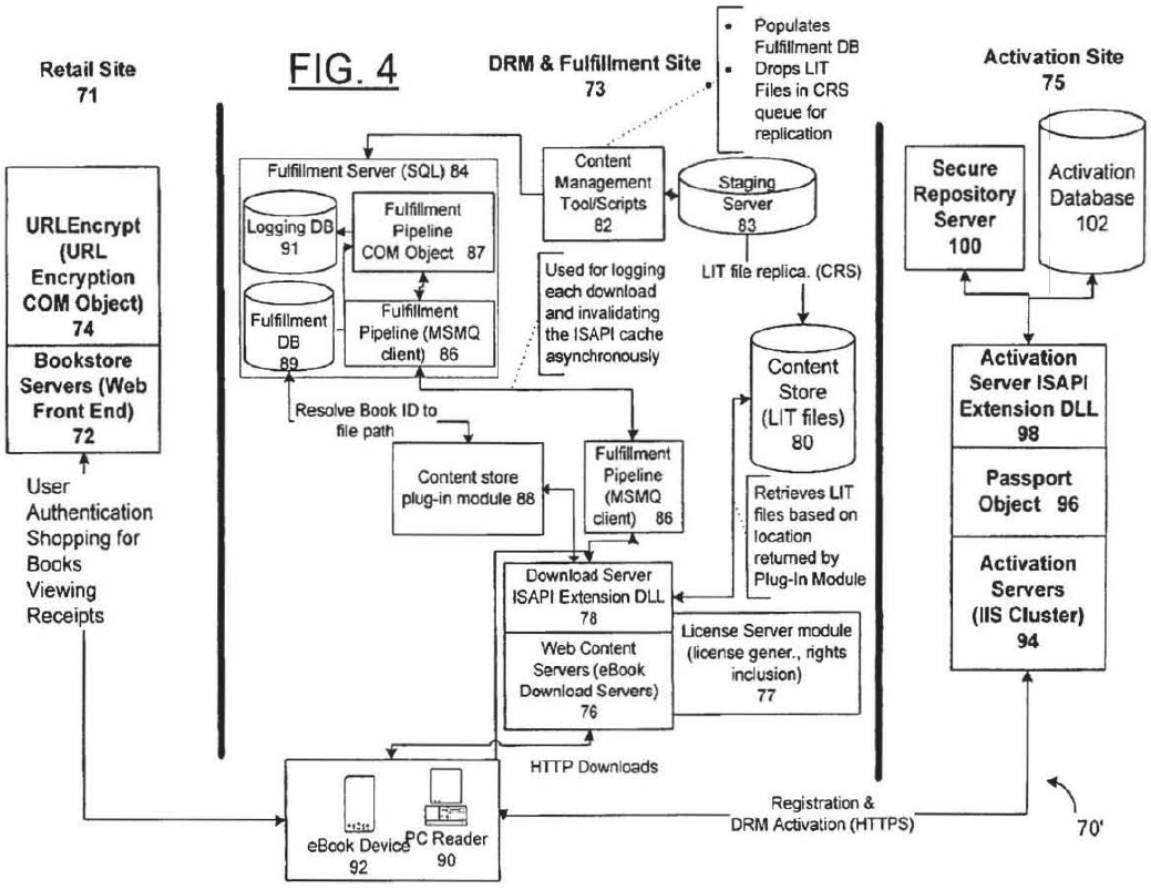


Figure 4 is a block diagram of one embodiment of DeMello's digital rights management system. *Id.* at 4:19–21. The retail site sells eBooks to consumers, the fulfillment site provides the sold eBooks to the consumers, and the activation site enables consumer reading devices to use eBooks with enhanced levels of copy protection (e.g., eBooks requiring licenses). *Id.* at [57], 6:10–16, 21:36–37.

In order to access an eBook, a consumer begins by choosing a title from the retail site and paying for the title. *Id.* at 26:1–4. The retail site then issues a receipt page with a link for downloading the title. *Id.* at 26:4–7. When the consumer clicks on the link, a download server at the fulfillment site adds the consumer's name to the title metadata. *Id.* at 26:15–23, Fig. 4. The title is then downloaded to the consumer's device, and the eBook is

opened to its cover page with the rightful owner's name appearing under the author's name. *Id.* at 26:35–36, 27:45–46.

2. Analysis

Claim 1 recites a "credential assigned to the apparatus of (a)." For this limitation, Petitioner identifies DeMello's reader (user device) as an "apparatus of (a)." Pet. 30. Petitioner further argues that "the claimed 'credential' is shown by the PASSPORT credentials of *DeMello*." *Id.* at 31.

Patent Owner counters that "DeMello's credential [is] assigned to a user—not an apparatus." Prelim. Resp. 2. We agree with Patent Owner.

Claim 1 requires the "credential" to be assigned to the *apparatus of (a)*. As Patent Owner points out, the specification of the '308 patent describes such credential as "an API Key, an Application Secret Key and could also include an Application ID," which "[is] usually embedded in the source code of the apparatus, or stored on a remote Internet server." *Id.* at 28–29 (citing Ex. 100[3], 10:51–56); Ex. 1003, 10:51–66. The apparatus, such as an Internet-powered desktop or a browser-based application, uses the API Key to establish a data exchange session with the API. Ex. 1003, 10:51–58.

By contrast, the "credential in DeMello is assigned to the user, not the device." Prelim. Resp. 28. As Petitioner explains, "[i]n *DeMello*, the reader prompts a *user* to provide login credentials (e.g., PASSPORT™ credentials) to connect to the PASSPORT server via the API of the PASSPORT server to authenticate the *user* at the PASSPORT server." Pet. 31 (emphases added); *see also* Ex. 1006, 23:6–10. Further, Mr. Cherukuri characterizes the PASSPORT credentials as "*user's* credentials." *See* Ex. 1009 ¶ 72 (cited at

Pet. 32) (emphasis added). Neither Petitioner nor Mr. Cherukuri explains persuasively how the *user* PASSPORT credentials in DeMello are assigned to the *reader* (apparatus of (a)). Based on the record presented, we are not persuaded that DeMello discloses the recited credential.

In view of the foregoing, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that DeMello anticipates claim 1.

B. Obviousness over DeMello, Wieder, and the Admitted Prior Art

Petitioner argues that claim 1 of the '308 patent would have been obvious over DeMello, Wieder, and "the admitted prior art." *See* Pet. 19–39. Petitioner does not cite Wieder or the admitted prior art as teaching the elements found to be lacking in the above discussion with respect to DeMello. Accordingly, on this record, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing on its assertion that claim 1 would have been obvious over DeMello, Wieder, and the admitted prior art.

C. Anticipation by Pestoni

Petitioner argues that Pestoni anticipates claim 1 of the '308 patent. *See* Pet. 19, 39–52. For the reasons explained below, we are not persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing on its asserted ground.

1. Pestoni

Pestoni describes a system with domain management for digital media. Ex. 1007, at [57]. As shown in Figure 1, which is reproduced below, the system includes a domain administrator, a content provider, and a license server.

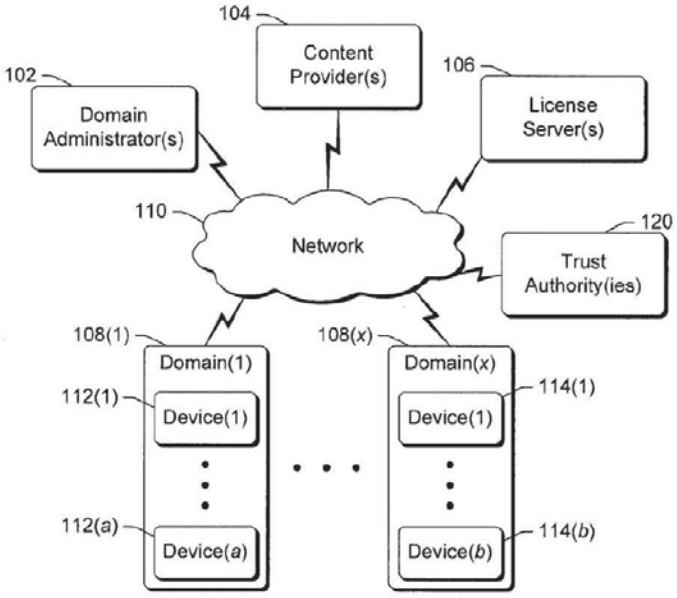


Fig. 1

Figure 1 illustrates one embodiment of a system that employs domain management for digital media. *Id.* ¶ 6. Media playback device 112 or 114 may obtain content from content provider 104 by submitting a content request to the content provider. *Id.* ¶ 67. In order to access and play back the content, the device must have a domain membership license from domain administrator 102 and a content license from license server 106. *Id.* ¶ 17.

To obtain a domain membership license, the device submits a join-domain request to the domain administrator. *Id.* ¶ 38. The request includes

parameters to identify the device, such as a device certificate, user credentials, and a device description. *Id.* ¶ 39. If the domain administrator approves the request, the device becomes a member of the domain and receives a domain membership license. *Id.* ¶¶ 38, 44.

To obtain a content license, the device submits a content license request to the license server. *Id.* ¶¶ 69, 72. The request includes parameters, such as a key ID, a domain ID, and a domain certificate, to identify both the content for which the license is being requested and the domain of which the device is a member. *Id.* ¶ 72. In response to the request, the license server validates the domain certificate, and, if successful, approves the request. *Id.* ¶¶ 75, 79. Once the request is approved, the license server generates a content license, binds the license to the domain identified in the request, and provides the device with the license. *Id.* ¶¶ 79–80, 82, 84.

2. Analysis

Claim 1 recites "requesting the query data, from the apparatus of (a), . . . wherein the query data request is a request for the at least one verified web service [account] identifier." For this limitation, Petitioner identifies Pestoni's content license request as "query data," Pestoni's domain ID as a "verified web service account identifier," and the content playback module of Pestoni's device as an "apparatus of (a)." Pet. 40, 48. Petitioner further argues that "[b]ecause the content license includes the domain ID, the content license generator 260 must necessarily request and receive the domain ID before generating the content license." *Id.* at 48–49. We note that the device (apparatus of (a)) in Pestoni sends to the license server a content license request (query data), which includes various parameters such

as a domain ID (web service account identifier). Ex. 1007 ¶ 72. The content license generator is a part of the license server. *Id.* at Fig. 2.

We are unpersuaded by Petitioner's argument, which relies on an inherency theory. *See* Pet. 49. "If the prior art reference does not expressly set forth a particular element of the claim, that reference still may anticipate if that element is 'inherent' in its disclosure." *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.'" *Id.* (citation omitted). "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient." *Continental Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264, 1269 (Fed. Cir. 1991).

Here, the content license generator in Pestoni may *receive* the domain ID from the device (apparatus (a)). As Patent Owner points out, however, "Pestoni does not *request* information from the apparatus of (a)." Prelim. Resp. 30 (emphasis added). Nor does Petitioner proffer persuasive evidence showing that the content license generator "necessarily" requests the domain ID from the device. Indeed, Pestoni describes the content license request (query data) from the device as "optionally" including the domain ID (web service account identifier). Ex. 1007 ¶ 94. Given that the content license request may include the domain ID, we are not persuaded that the content license generator *necessarily requests* the domain ID from the device.

Based on the record presented, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that Pestoni anticipates claim 1.

D. Obviousness over Pestoni, Wieder, and the Admitted Prior Art

Petitioner argues that claim 1 of the '308 patent would have been obvious over Pestoni, Wieder, and "the admitted prior art." *See* Pet. 19, 39–52. For the reasons explained below, we are not persuaded that Petitioner has demonstrated a reasonable likelihood of prevailing on its asserted ground.

As discussed above, claim 1 recites "requesting the query data, from the apparatus of (a), . . . wherein the query data request is a request for the at least one verified web service [account] identifier." As an alternative to its anticipation argument, Petitioner argues that "it would be obvious to one of skill in the art to implement *Pestoni* with a request and corresponding reception." *Id.* at 49. Petitioner relies on testimony from Mr. Cherukuri's declaration to support this argument. *See id.* (citing Ex. 1009 ¶¶ 97–102).

We are unpersuaded by Petitioner's obviousness argument. As part of its analysis, Petitioner must provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Neither Petitioner nor Mr. Cherukuri proffers any reason, however, for combining Pestoni and any other patent or printed publication to arrive at the claimed invention.

Based on the record presented, we are not persuaded that Petitioner has provided adequately articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *See Kahn*, 441

F.3d at 988. Accordingly, we determine that Petitioner has not demonstrated a reasonable likelihood of prevailing in showing that claim 1 would have been obvious over Pestoni, Wieder, and the admitted prior art.

III. CONCLUSION

For the foregoing reasons, we are not persuaded that Petitioner has demonstrated a reasonable likelihood that it would prevail with respect to the challenged claim of the '308 patent.

IV. ORDER

For the reasons given, it is

ORDERED that the Petition is *denied* as to the challenged claim, and no trial is instituted.

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