

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WHATSAPP INC.,
Petitioner,

v.

TRIPLAY, INC.,
Patent Owner.

Case IPR2016-01659
Patent 9,049,574 B2

Before THU A. DANG, JOSIAH C. COCKS, and MICHAEL R. ZECHER,
Administrative Patent Judges.

COCKS, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
Inter Partes Review
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. Background

WhatsApp Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 12–15 and 18–20 of U.S. Patent No. 9,049,574 B2 (Ex. 1101, “the ’574 patent”). Paper 1 (“Pet.”). TriPlay, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). Taking into account the arguments presented in the Preliminary Response, we determined that the information presented in the Petition established that there was a reasonable likelihood that Petitioner would prevail in challenging claims 12–15 and 18–20 of the ’574 patent on the basis that these claims are unpatentable under 35 U.S.C. § 103. Pursuant to 35 U.S.C. § 314, we instituted this *inter partes* review on March 13, 2017, as to all the challenged claims. Paper 7 (“Dec. on Inst.”).

Upon instituting this proceeding, a conference call was held on August 1, 2017, between the panel and counsel for the respective parties, during which Patent Owner confirmed that it waived its right to file a Response. Paper 18, 2–3. As discussed during the call, the record now before the panel reflects that the arguments and supporting evidence in the Petition stand unopposed as a part of the trial that was instituted. *Id.*

We have jurisdiction under 35 U.S.C. § 6. This decision is a Final Written Decision under 35 U.S.C. § 318(a) as to the patentability of claims 12–15 and 18–20 of the ’574 patent. For the reasons discussed below, we hold that Petitioner has demonstrated by a preponderance of the evidence that claims 12–15 and 18–20 of the ’574 patent are unpatentable under 35 U.S.C. § 103.

B. Related Proceedings

The parties state that the '574 patent is the subject of a pending district court case captioned *TriPlay, Inc. v. WhatsApp Inc.*, No. 1:13-cv-1703-LPS (D. Del.). Pet. 1; Paper 4, 2. Claims 1–6 and 9–11 of the '574 patent are the subject of related Case IPR2016-01660. Petitioner states that the Board found unpatentable, all challenged claims of related U.S. Patent No. 8,332,475 B2 in Case IPR2015-00740 (Paper 61). Pet. 1. Petitioner further states the parent of the '574 patent, U.S. Patent No. 8,874,677 B2, is the subject of two pending *inter partes* reviews, Cases IPR2016-0717 and IPR2016-00718. Pet. 1–2. Petitioner has also filed petitions for *inter partes* review of U.S. Patent No. 9,055,416 in Cases IPR2016-01661 and IPR2016-01662. Pet. 2.¹

C. The '574 Patent

The '574 patent is titled “Messaging System and Method,” and is directed to “cross-platform messaging” and, in particular, a messaging system that converts the formats and layouts of messages sent between communication devices that may have different communication and display capabilities. Ex. 1101, at [54], [57], 8:53–60; 11:53–56. Figure 1 of the '574 patent is reproduced below.

¹ Final Written Decisions in each of Cases IPR2016-01660, IPR2016-01661 and IPR2016-01662 are issued concurrently with this Decision.

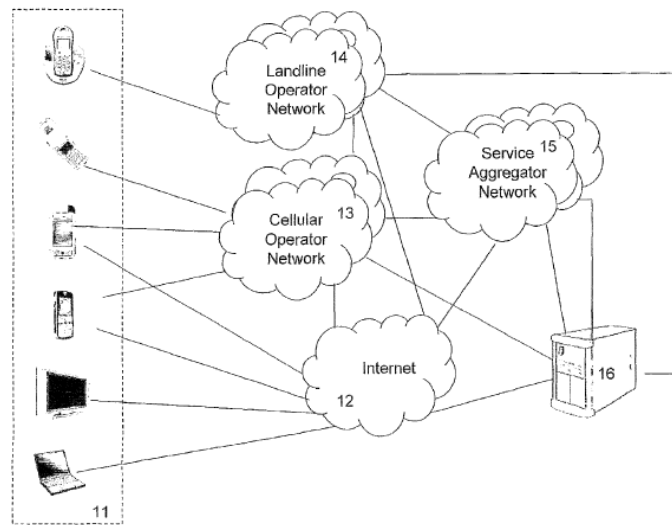


Figure 1

Figure 1 illustrates a network architecture in which the messaging system may be used and depicts various communication devices 11 (e.g., cell phone, personal computer (“PC”)) connected to a data network such as Internet 12, Cellular Operator Network 13, or Landline Operator Network 14. *Id.* at 11:30–40; 10:27–35. Messages from an originating device to a destination device pass through messaging system 16, where at least one of the devices is assigned to a user registered in the system. *Id.* at 12:12–13. Messaging System 16 supports a variety of message formats, such as text, audio, video, and image. *Id.* at 12:16–21. Message content may include a text and/or one or more media items, such as text files, image files, video, audio, and hyperlinks, to be transmitted to the other party. *Id.* at 10:51–55. Figure 2 of the ’574 patent is reproduced below.

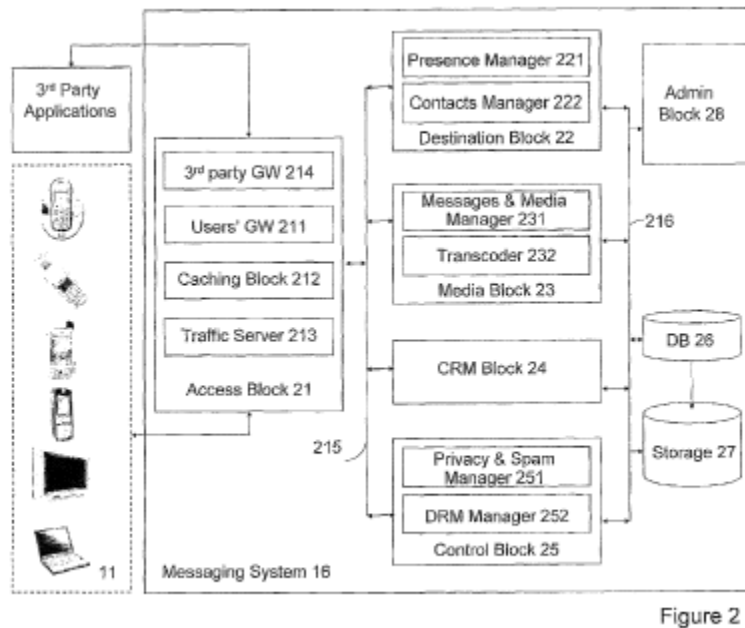


Figure 2 depicts a block diagram of messaging system 16 supporting communication devices 11 and third party applications 29. *Id.* at 12:16–23. Messaging system 16 comprises access block 21 operatively coupled with media block 23 and other functional blocks. *Id.* at 12:62–67. Access block 21 includes users' gateway 211 and third party applications gateway 214 supporting communications, via corresponding network(s) that operate in available communication standards, systems and/or protocols. *Id.* at 13:4–12.

Media block 23 comprises transcoder 232 operatively coupled with message manager 231 that may comprise a template module coupled with database 26. *Id.* at 16:21–24. Figure 6 of the '574 patent is reproduced below.

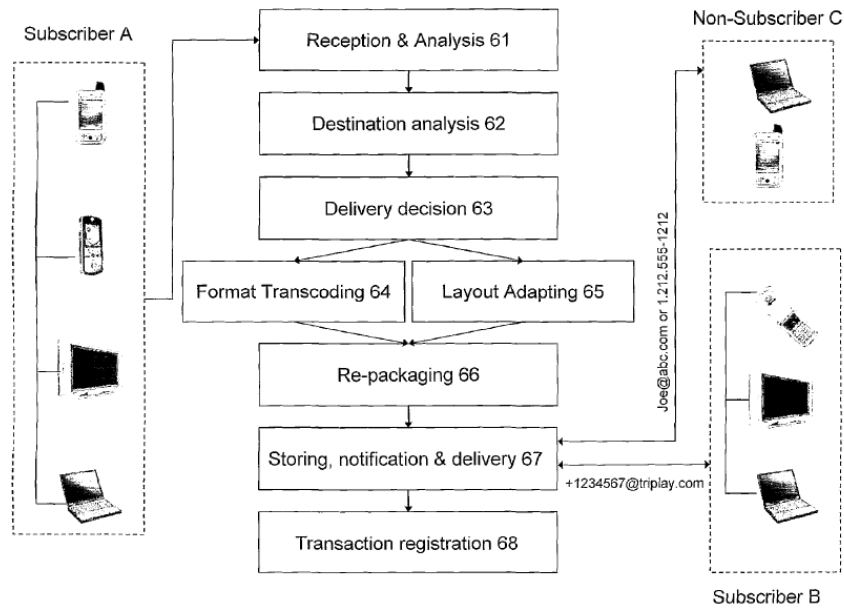


Figure 6

Figure 6 depicts an example of the messaging system's operation, where Subscriber A composes a message at one of the assigned communication devices and sends the message to Subscriber B and Non-subscriber C. *Id.* at 16:46–49. Messaging system 16 receives the message and analyzes 61 originating and destination addresses comprised in the message. *Id.* at 16:51–53. If the destination device is assigned to a subscriber, the system analyzes the destination device 62 and takes a delivery decision 63 accordingly. *Id.* at 16:53–58. The delivery decision comprises delivery instructions (e.g., the content, format and/or layout of the message to be delivered). *Id.* at 16:63–17:4.

In accordance with the delivery decision, the system provides transcoding of the message format 64 and/or adapting message layout 65 and appropriate repackaging 66, if necessary (e.g., if limitations of the communication media or destination device require deleting or replacing some of the media items in the message). *Id.* at 17:6–12. The converted

message and/or notification thereof are delivered 67 to the destination device, and the transaction is registered 68 in the system. *Id.* at 17:13–15. The described process may be provided in a similar manner for several destination devices. *Id.* at 17:16–20.

The '574 patent further describes facilitating composing messages using “pre-defined templates.” *Id.* at 19:48–50. The '574 patent describes different template “types,” each having different “Content Structures.” *Id.* at 19:60–20:14 (Table 1). The messaging system supports different types of templates, each of which is provided with a unique identifier recognizable by the messaging system. *Id.* at 19:51–56. The layout of templates depends on “capabilities of [the] destination device as . . . illustrated in Table 2.” *Id.* at 20:63–65.

Table 2 describes a “General” template type with different layouts for PC, Web, and cellphone display, all of which include a “[l]ist of clickable media.” *Id.* at 21:20–67 (Table 2). For layout for PC and Web, each type of template also includes the sender’s avatar. *Id.* For audio/video media, the cellphone layout contains “clickable icons into” the audio. *Id.* Message layout is based on the template’s unique identifier and the capabilities of the destination device. *Id.* at 21:2–6. Figure 12 of the '574 patent (as annotated by Petitioner) is reproduced below.

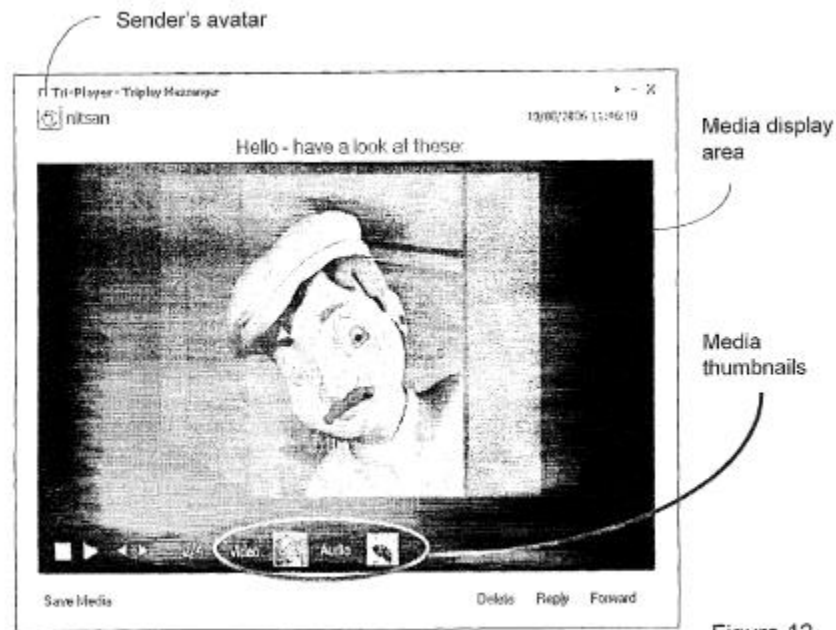


Figure 12

Figure 12 illustrates a layout of a message displayed on a PC screen. *Id.* at 9:35–37, 22:5–7. The sender's avatar is shown at the upper left portion of the PC screen.

D. The Challenged Claims

Of the challenged claims, claim 12 is the only independent at issue. Claim 12 is illustrative of the challenged claims, and is reproduced below:

12. A messaging system, comprising:

an access block operatively coupled to a media block,
wherein:

the access block is configured to receive an initial message sent by an originating communication device to a destination communication device, the initial message being characterized, at least, by message format, an initial message layout, and data

indicative of at least one receiver associated with the initial message, wherein the initial message includes an audio file;

the media block is configured to:

- i) before delivery to the destination communication device associated with the at least one receiver, generate a notification of the initial message that includes the audio file, the notification being an adapted version of the initial message,
- ii) provide at least an image icon based on an avatar of a sender of the initial message, and
- iii) determine an adapted layout for the notification, the adapted layout comprising the image icon based on the avatar of the sender of the initial message and a clickable icon that represents the audio file and that is clickable to request the messaging system to transmit an adapted version of the audio file to the destination communication device; and

the access block is configured to:

- i) facilitate delivery of the notification to the destination communication device,
- ii) receive a request to transmit an adapted version of the audio file to the destination communication device resulting from selection of the clickable icon that represents the audio file in the notification; and
- iii) based on the request to transmit an adapted version of the audio file to the destination communication device, facilitate delivery of an adapted version of the audio file to the destination communication device.

Ex. 1101, 24:45–25:13.

E. Instituted Grounds of Unpatentability

We instituted trial on the following grounds (Dec. on Inst. 25):

Reference[s]	Basis	Claim[s] Challenged
Bellordre, ² Han, ³ Coulombe, ⁴ and Ruppert ⁵	§ 103(a)	12, 13, 15, and 18–20
Bellordre, Han, Coulombe, Ruppert, and Huynh ⁶	§ 103(a)	14

II. ANALYSIS

A. Claim Construction

In the Decision on Institution, we took note that all claim terms are generally presumed to have their ordinary and customary meaning as understood by a person of ordinary skill in the art in light of the ’574 patent. Dec. on Inst. 9. With that presumption in mind, we determined that it was unnecessary, at that time, to make explicit the meaning of any claim term. *Id.* at 11. For purposes of this Final Written Decision, we make that same determination.

B. Principles of Law

A claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject

² US 2006/0176902 A1 (publ. Aug. 10, 2006) (“Bellordre”; Ex. 1103).

³ U.S. Patent No. 7,464,337 B2, PCT filed Feb. 26, 2001, issued Dec. 9, 2008 (“Han”; Ex. 1104).

⁴ US 2003/0236892 A1 (publ. Dec. 25, 2003) (“Coulombe”; Ex. 1105).

⁵ US 2001/0054073 A1 (publ. Dec. 20, 2001) (“Ruppert”; Ex. 1106).

⁶ US 2005/0060381 A1 (publ. Mar. 17, 2005) (“Huynh”; Ex. 1107).

matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The 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 skill in the art; and (4) when in evidence, objective indicia of non-obviousness (i.e., secondary considerations).⁷ *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966). We analyze this asserted ground based on obviousness with the principles identified above in mind.

C. Level of Skill in the Art

There is evidence in the record before us that enables us to determine the knowledge level of a person of ordinary skill in the art. Petitioner's declarant, Mr. David Klausner provides the following testimony:

a person of ordinary skill in the art as of August 2005 would possess at least a bachelor's degree in electrical engineering or computer science (or equivalent degree or experience) with at least two years of experience in the design and implementation of systems for sending and receiving messages over a communication network, such as the Internet.

Ex. 1102 ¶ 16. We adopt Mr. Klausner's assessment because it is consistent with the '574 patent and the asserted prior art, and apply it to our obviousness evaluation below.

⁷No evidence pertaining to “secondary considerations” has been offered by either party in connection with this proceeding.

D. Claims 12, 13, 15, and 18–20

Petitioner cites to the Declaration of Mr. Klausner (Ex. 1102), and contends that claims 12, 13, 15, and 18–20 would have been obvious over Bellordre, Han, Coulombe, and Ruppert. Pet. 24–64.

1. Bellordre (Ex. 1103)

Bellordre is titled, “Method of Processing a Multimedia Message, a Storage Medium, and an Associated Processing System,” and relates to “a method of processing a multimedia message” containing “at least one audio or video multimedia object.” Ex. 1103, [54], [57], ¶ 1. Multimedia messages may contain text, picture, audio, and/or video objects. *Id.* ¶ 4. Bellordre’s message-processing system receives a multimedia message from a receiver, extracts any audio or video object from the message, “adapt[s] the format, sound and size of the audio and video objects to the technical features of the destination terminal,” and stores the adapted message. *Id.* ¶¶ 17–19, 47, 57, 69. Figure 1 of Bellordre is reproduced below.

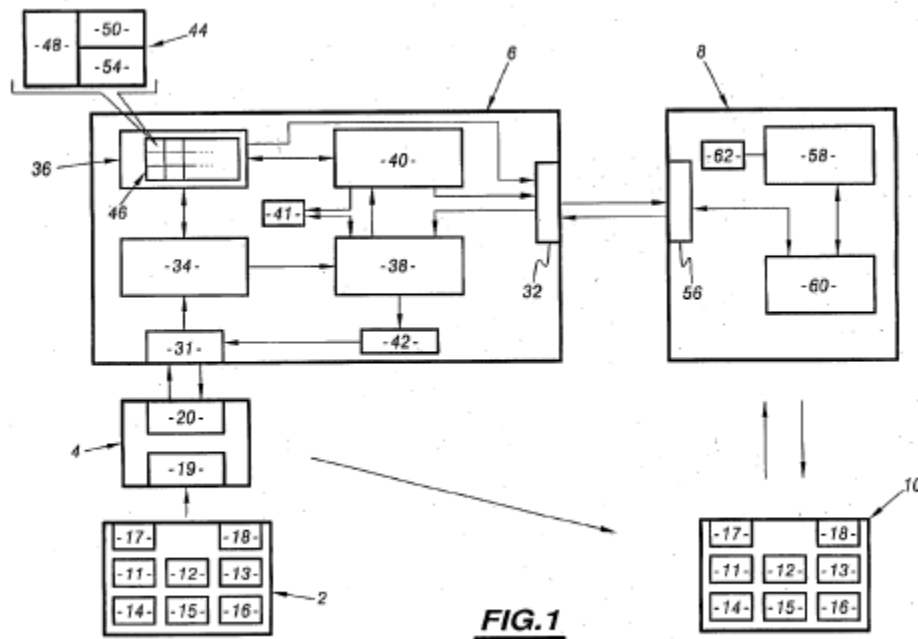


Figure 1 depicts a functional block diagram of a messaging system, with telecommunications terminal 2 of a party sending a multimedia message, multimedia message server 4, application server 6, streaming server 8, and telecommunications terminal 10 of the recipient of a multimedia message. *Id.* ¶¶ 37, 41–42. Multimedia message server 4 sends messages from terminal 2 to application server 6, and sends substitute messages from application server 6 to telecommunications terminal 10. *Id.* ¶ 45. Figures 3 and 4 of Bellordre are reproduced below.

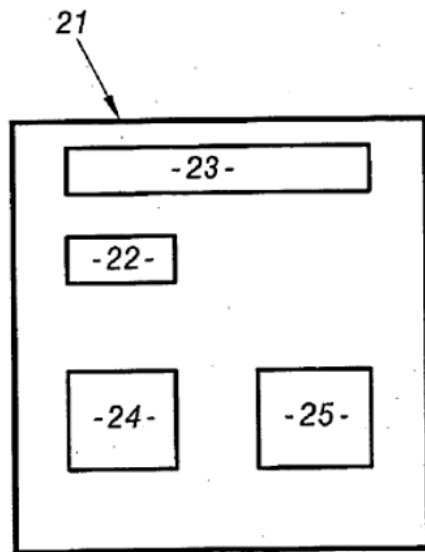


Fig. 3

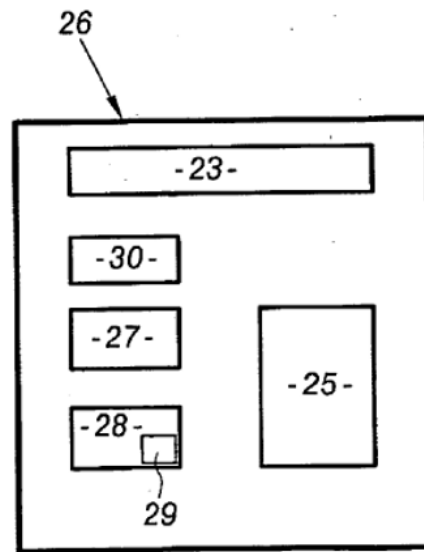


Fig. 4

Figures 3 and 4 are block diagrams depicting an initial multimedia message and a substitute message. *Id.* ¶¶ 46–47. Figure 3 depicts multimedia message 21 comprising identification element 23 identifying the terminal receiving the message, audio or video object 24, and text object 25. *Id.* ¶ 46. Figure 4 depicts substitute message 26, which retains identification element 23 and text object 25, and further contains sequence 27 and “SDP [session description protocol] definition file 28 replacing the audio or video object 24.” *Id.* ¶ 47. Sequence 27 is an object comprising one or more representative extracts from the audio or video object, such as one or more pictures from a video (animated graphics interchange format (GIF)) or a musical excerpt. *Id.* ¶ 48. SDP definition file 28 contains uniform resource locator (URL) hyperlink address 29 of the storage location of the object. *Id.* ¶ 49.

2. *Han (Ex. 1104)*

Han is titled, “Multimedia Communication Method Using Virtual World Interface in Mobile Personal Computers,” and generally describes a method of communication between an instant messenger program and a virtual world interface. Ex. 1104, [54], [57], 1:8–12. Han notes that “it is the current reality that an instant messenger program runs only on either desktop computers or notebook computers,” and states “it is an object of the present invention to provide a multimedia communication method using a virtual world interface in mobile personal computers.” *Id.* at 1:45–47, 1:64–66. Han’s method uses avatars:

The present multimedia communication method is based on avatar and space concepts such that users, which are targets of a personal information inquiry function and other functions, can be distinguished from other users according to the outer appearances of avatars as well as text [identifiers], and users participating in chatting can dispose their avatars in desired places in a virtual world and change the positions of the avatars during chatting. Further, in addition to text and voice, users can express actions with feelings through avatars, so that they can more realistically and intimately chat with one another.

Id. at 6:44–54. Figure 5 of Han is reproduced below.

FIG. 5

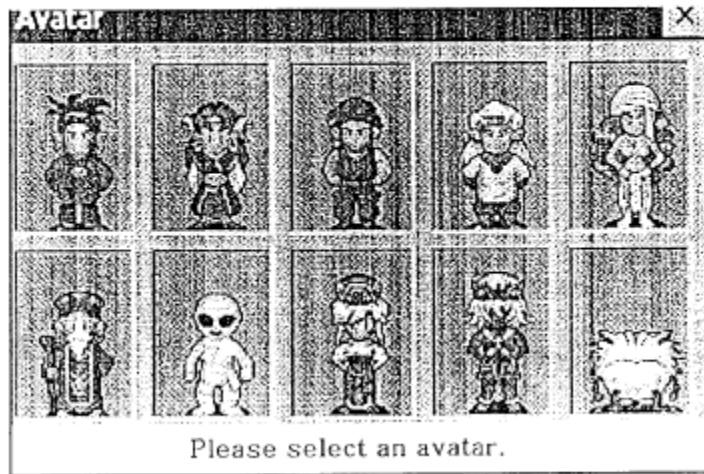


Figure 5 depicts a selection of avatars, which represent clients connected to a messaging server. *Id.* at 4:24–26.

3. Coulombe (Ex. 1105)

Coulombe is titled, “System for Adaptation of SIP Messages Based on Recipient’s Terminal Capabilities and Preferences.” Ex. 1105, [54].

Coulombe describes a system for adaptation of session initiation protocol (SIP) messages based on the recipient’s terminal capabilities and preferences. *Id.* at [57]. Coulombe states that “[i]nteroperability is of paramount importance in messaging,” and discloses that the described invention “tries to overcome the problem of interoperability between terminals and to improve the end user experience by providing a framework for making SIP messages conform to the recipient’s terminal capability and characteristics.” *Id.* ¶¶ 2, 7. For example, Coulombe describes message size reduction and format adaptation for delivery to the destination terminal. *Id.* ¶ 7.

Figure 1 of Coulombe is reproduced below.

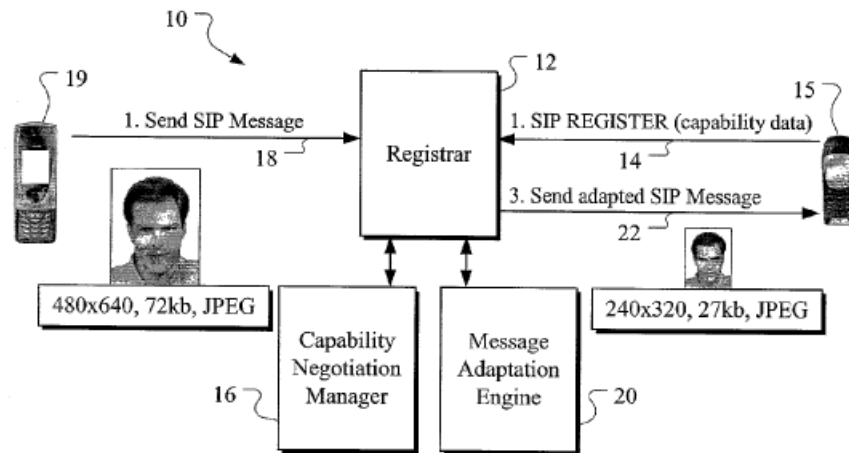


FIG. 1

Figure 1 shows a message flow for SIP message adaptation using system 10. System 10 includes SIP proxy/registrar 12, Capability Negotiation Manager 16, and Message Adaptation Engine 20. *Id.* ¶ 54. Coulombe discloses that, when new message 18 arrives at proxy/registrar 12 from another entity, such as sending terminal 19, proxy 12 obtains the terminal capabilities or user preferences of intended recipient's terminal 15 already stored in the registrar, adapts the message (using Message Adaptation Engine 20), and sends adapted message 22 to recipient's terminal 15. *Id.* ¶ 58. Capability Negotiation Manager 16 is responsible for resolving terminal capability information. *Id.* ¶ 59.

Message Adaptation Engine 20 is responsible for adapting the message for recipient terminal 15, by performing adaptation operations including format conversion (such as conversion of layout formats), presentation or layout adaptation, media characteristics adaptation, message size reduction, and encapsulation adaptation. *Id.* ¶¶ 63, 85–91. Coulombe

further discloses that “adaptation is any manipulation or modification of the message content based on the terminal capabilities, user preferences, network conditions, or any characteristics of the user, his terminal or his environment.” *Id.* ¶ 63.

4. Ruppert (Ex. 1106)

Ruppert is titled, “Method and System for Handling E-Mail Messages in a Communication System,” and generally describes techniques for handling file attachments in email messages and, in particular, replacing attachments with links represented by icons. Ex. 1106, at [54], ¶¶ 11, 29–33. Figure 4 of Ruppert is reproduced below.

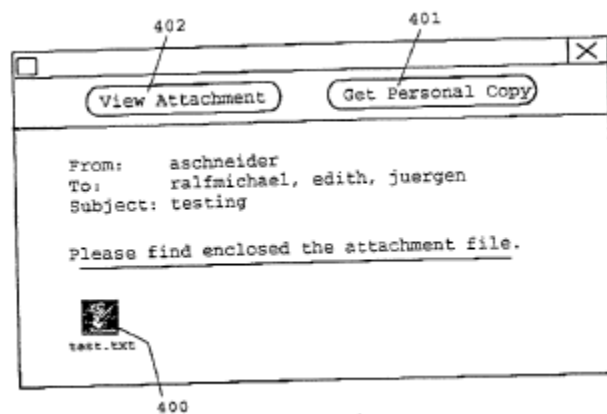


Figure 4 illustrates an email with document link 400, represented by an icon, giving the user direct access to an attachment. *Id.* ¶¶ 32, 33.

5. Discussion—Claims 12, 13, 15, and 18–20

For independent claim 12, Petitioner contends that Bellordre teaches “an access block operatively coupled to a media block,” by disclosing an access block including at least multimedia server 4 and streaming server 8, and a media block including at least application server 6. Pet. 25–27 (citing Ex. 1103 ¶¶ 44, 50, 57, 109).

Petitioner contends that Bellordre discloses that the “access block is configured to receive an initial message sent by an originating communication device to a destination communication device,” by disclosing terminal 2 sending a multimedia message to terminal 10. Pet. 28–29 (citing Ex. 1103, Fig. 1, ¶¶ 42, 45).

Petitioner also contends that Bellordre teaches or suggests the remainder of this limitation, which recites “the initial message being characterized, at least, by message format, an initial message layout, and data indicative of at least one receiver associated with the initial message, wherein the initial message includes an audio file.” Pet. 30–33 (citing Ex. 1102 ¶¶ 63–69, 71, 144; Ex. 1103 ¶¶ 4, 46, 57, 65, 71 109). Petitioner contends it would have been obvious to one of ordinary skill in the art that Bellordre’s disclosure of code for Synchronized Multimedia Integration Language (“SMIL”) could describe an initial layout for an initial multimedia message. *Id.* at 31–32 (citing Ex. 1102 ¶¶ 67–69, 144; Ex. 1103 ¶¶ 46, 65).

Petitioner argues that Bellordre’s identification element, which identifies a destination terminal belonging to the recipient of the multimedia message, teaches the limitation’s recitation of “data indicative of at least one receiver associated with the initial message.” Pet. 32–33 (citing Ex. 1103, Fig. 3, ¶¶ 46, 64). Petitioner further contends Bellordre discloses the recited initial message including an audio file. *Id.* at 33 (citing Ex. 1103 ¶¶ 46, 109; Ex. 1102 ¶¶ 71, 144).

Petitioner further argues that Bellordre discloses the limitation regarding the media block, which recites that the media block is configured to, “before delivery to the destination communication device associated with the at least one receiver, generate a notification of the initial message that

includes the audio file, the notification being an adapted version of the initial message.” In particular, Petitioner cites to Figure 4 of Bellordre and its substitute multimedia message (a notification), which differs from (i.e., is an adapted version of) the multimedia message of Figure 3. *Id.* at 33–35 (citing Ex. 1103 ¶¶ 46–47). Bellordre’s substitute message also includes a hyperlink to an audio file. *Id.* at 36 (citing Ex. 1103 ¶¶ 49, 71).

Petitioner next contends that the combination of Bellordre and Han teach or suggest the limitation wherein the media block is configured to “provide at least an image icon based on an avatar of a sender of the initial message,” in that Han describes avatars and image icons based on avatars. *Id.* at 38–41 (citing Ex. 1104, Figs. 5, 6; 6:44–48, 4:24–28, 4:32–34, 4:65–67). Petitioner also proposes that the next part of the “generate a notification” element, “determining, by the messaging system, an adapted layout for the notification,” is disclosed by Bellordre’s changes to its SMIL description code (Ex. 1103 ¶¶ 46, 47, 65), and also by Coulombe’s express disclosure of adaptation of layout of messages. *Id.* at 43–45 (citing Ex. 1105 ¶¶ 85–91, 118).

For the remaining part of the “generate a notification” element,

the adapted layout comprising the image icon based on the avatar of the sender of the initial message and a clickable icon that represents the audio file and that is clickable to request the messaging system to transmit an adapted version of the audio file to the destination communication device,

Petitioner asserts that the combination of Bellordre and Ruppert teach or suggest this element. Bellordre discloses a hyperlink representing an audio file, which is clickable, and Bellordre also discloses modifying audio objects (i.e., creating an adapted version of the audio file for transmission to the

destination device). Pet. 47–52 (citing Ex. 1103 ¶¶ 49, 57, 61, 62, 71, 90, 92, 96–98, 105–109). Ruppert discloses a clickable icon in its link “represented by an icon” giving a user direct access from an email to an attachment, which can include a multimedia (e.g., audio) file. Pet. 48–49 (citing Ex. 1106 ¶¶ 5, 29–33).

Lastly, Petitioner contends that Bellordre teaches or suggests the remaining limitations regarding the access block being configured to: facilitate delivery of the notification to the destination device, receive a request to transmit the adapted version of the audio file after selection of the clickable icon, and based on the request, facilitate delivery of the adapted version of the audio file. Pet. 53–55 (citing Ex. 1103 ¶¶ 44, 45, 57, 61, 62, 90, 92, 96, 107–109.)

Petitioner also maintains that one of ordinary skill would have had adequate reason to combine the teachings of Bellordre with Han, Coulombe, and Ruppert. Pet. 41–43, 45–46, 49–51 (citing Ex. 1102 ¶¶ 82–89, 93–95, 101, 102). In particular, for combining the teachings of Bellordre with those of Han, Petitioner explains the following:

One of ordinary skill in the art would have recognized that inserting an image icon of the sender’s avatar [of Han] into the notification could have improved the system of Bellordre by providing the advantages of more realistic and intuitive communication. (Klausner Decl., ¶ 161.)

A person of ordinary skill in the art would have perceived no technical obstacle to making this combination. (*Id.*, 162.) In fact, Bellordre specifically notes that the substitute multimedia message 26 can include “picture objects.” (Bellordre, ¶ 0047.) A person of ordinary skill in the art would have understood that this picture object capability could have been used to provide an

image icon based on the user's avatar with the substitute message
26.

Pet. 42–43 (citing Ex. 1102 ¶¶ 160–162).

For combining the teachings of Bellordre and Han with those of Coulombe, Petitioner contends that the references are analogous and that Coulombe “provides express motivations to combine.” Pet. 45–46 (citing Ex. 1102 ¶ 95 (“Coulombe [¶¶ 2, 89] recognized that messaging terminals may have different displays, and therefore, ‘layout adaptation’ may need to be performed”). For combining the teachings of Bellordre, Han, and Coulombe with those of Ruppert, Petitioner also contends that the references are analogous and that Bellordre and Ruppert “both disclose similar processes of modifying messages before delivery to their recipients that includes replacing originally-attached objects with links to those objects.” Pet. 49–51 (citing Ex. 1102 ¶¶ 101, 102).

Dependent claims 13, 15, and 18–20 recite additional features of claim 12's messaging system, including trans-coding of the initial message, characteristics of the adapted message layout, and aspects of the image icon. Ex. 1101, 25:14–18, 26:1–11, 26:16–22. Petitioner presents evidence and arguments as to how the teachings of Bellordre, Han, Coulombe, and the knowledge of one of ordinary skill in the art, accounts for the limitations of these claims, and why one of ordinary skill in the art would have combined or modified the references. Pet. 55–64 (citing Exs. 1102, 1103, 1004, 1105).

We have reviewed Petitioner's explanations and supporting evidence regarding all of the limitations of claims 12, 13, 15, and 18–20, and we agree with and adopt them as our own. We have also reviewed Petitioner's reasoning as to why a person of ordinary skill in the art would have had

sufficient reasons to combine or modify the teachings of the references, and we agree with and adopt them as our own. As noted above, Patent Owner elected not to file any Patent Owner Response, and, as a result, the Petitioner's positions on the unpatentability of claims 12, 13, 15, and 18–20 stand unopposed as a part of this trial. Based on the record developed during trial, Petitioner has demonstrated by a preponderance of the evidence that those claims would have been obvious over the combination of Bellordre, Han, Coulombe, and Ruppert.

E. Claim 14

Dependent claim 14 recites that “the initial message is characterized by the initial message layout based on a template, and wherein the media block is further configured to provide the adapted message layout in accordance with information related to the template.” Ex. 1101, 25:19–23. Petitioner cites to the Klausner declaration and contends Bellordre, Han, Coulombe, Ruppert, and Huynh teach the elements of claim 14, and that it would have been obvious to combine or modify the references. Pet. 64–70.

1. Huynh (Ex. 1107)

Huynh is titled, “Adaptive Electronic Messaging,” and generally describes a technique for modifying or supplementing an initial message to create an enhanced or adapted message for delivery to a recipient. Ex. 1107, [54], ¶¶ 19, 22. Huynh discloses the use of templates to “facilitate generation” of messages. *Id.* ¶ 32.

Such templates may be designed by a sender, a recipient, or a third party electronic message creation and/or mailing service, for example. . . . [T]emplates may vary in complexity and may include . . . cell layout definitions specifying color, size and

location of one or more adaptive message cells, and definitions of digital content elements to be displayed within one or more of the cells.

Id.

2. Discussion—claim 14

Petitioner contends Huynh discloses claim 14's recited use of templates for initial message layout and adapted message layout. Pet. 64–70. Petitioner also provides an explanation as to why one of ordinary skill in the art would have combined or modified the teachings of Huynh with those of Bellordre, Coulombe, Han, and Ruppert. *Id.* at 66–68. More specifically, Petitioner contends Huynh is an analogous reference in the same messaging field as Bellordre, Han, Coulombe, and Ruppert. *Id.* at 67. Petitioner also asserts the following:

Huynh further provides express motivations to combine in the manner described above. As explained above with respect to claim 1, Bellordre teaches that objects in the initial message, such as media files, can be removed and replaced. (Bellordre, *e.g.*, ¶¶ 0046, 0047.) Huynh similarly recognized that media files contained in the initial message can be removed or replaced to generate an adapted message (Huynh, ¶ 0022), and teaches that templates can be used to facilitate this process. . . . As such, one of ordinary skill in the art would have been motivated to apply the template techniques of Huynh to facilitate the message processing described in Bellordre.

Id. at 67–68 (citing Ex. 1102 ¶¶ 197–200).

Once again, Patent Owner elected not to file any Patent Owner Response, and, as a result, the Petitioner's positions on the unpatentability of claim 14 stands unopposed as a part of this trial. We conclude that

Petitioner has demonstrated by a preponderance of the evidence that the teachings of Huynh with those of Bellordre, Han, Coulombe, and Ruppert account for the limitations of claim 14, and that Petitioner has provided articulated reasoning with rational underpinnings that would support a conclusion of obviousness. Based on the record developed during trial, Petitioner has demonstrated by a preponderance of the evidence that this claim would have been obvious over the combination of Bellordre, Han, Coulombe, Ruppert, and Huynh.

III. CONCLUSION

Petitioner has demonstrated by a preponderance of the evidence that (1) claims 12, 13, 15 and 18–20 of the '574 patent are unpatentable under 35 U.S.C. § 103 as obvious based on the combined teachings of Bellordre, Han, Coulombe, and Ruppert, and (2) claim 14 of the '574 patent is unpatentable under 35 U.S.C. § 103 as obvious based on the combined teachings of Bellordre, Coulombe, Han, Ruppert, and Huynh.

IV. ORDER

For the reasons given, it is

ORDERED that claims 12–15 and 18–20 of the '574 patent are held to be unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to this proceeding seeking judicial review of our decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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