

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MG FREESITES LTD.,
Petitioner,

v.

SCORPCAST, LLC,
Patent Owner.

IPR2021-00511
Patent 8,595,057 B2

Before JOSIAH C. COCKS, MEREDITH C. PETRAVICK, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314, 37 C.F.R. § 42.4

I. INTRODUCTION

Petitioner MG FreeSites Ltd. filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–3, 6–8, 10–12, 15, 16, 19, and 20 of U.S. Patent No. 8,595,057 B2 (Ex. 1001, “the ’057 patent”). Patent Owner Scorpcast, LLC filed a Preliminary Response (Paper 7, “Prelim. Resp.”).

With our authorization (Paper 10), Petitioner filed a Reply to the Preliminary Response (Paper 13) to address the factors set forth in *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11, 5–6 (PTAB Mar. 20, 2020) (precedential) that inform our exercise of discretion under 35 U.S.C. § 314(a). Patent Owner filed a Sur-Reply, stating that in light of recent developments in related litigation, Patent Owner no longer asserts that the factors of *Apple Inc. v. Fintiv, Inc.* favor discretionary denial. Paper 14, 1. We, thus, consider moot Patent Owner’s request for discretionary denial (Prelim. Resp. 31–35).

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the Petition and any response thereto shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Taking into account the Petition, the arguments presented in the Preliminary Response, as well as all supporting evidence, we determine that Petitioner has failed to show a reasonable likelihood that at least one of the challenged claims is unpatentable. Accordingly, we do not institute *inter partes* review.

A. Related Matters

The parties state that the ’057 patent was asserted in *Scorpcast, LLC dba HaulStars v. MG Freesites Ltd*, Case No. 6-20-cv-00877 (W.D. Tex.).

Pet. xix; Paper 4, 2. On June 21, 2021, the District Judge transferred this case to the District of Delaware, *Scorpcast, LLC dba HaulStars v. MG Freesites Ltd*, Case No. 1:21-cv-00887. Paper 12, 1–2; Paper 14, 1.

Patent Owner also states that a decision in this proceeding would affect or be affected by numerous other *inter partes* reviews and District Court proceedings. Paper 4, 1–5.

B. The '057 Patent

The '057 patent is titled “System For Apportioning Revenue Based on Content Delivered by an Online Community” and issued on November 26, 2013. Ex. 1001, codes (45), (54). The Abstract of the '057 patent is reproduced below:

Uses media, for example audio, video or text performances that were integrated into an online community for feedback determination of outcome, for digital distribution. Apportions compensation for a selected artist from revenue that may be generated through one or any combination of advertisement services associated with artist's performance, and media sales. The media may include singing, instrumental music, rhythmic music, videos, and writings.

Id. at code (57).

Figure 1 of the '057 patent is reproduced below:

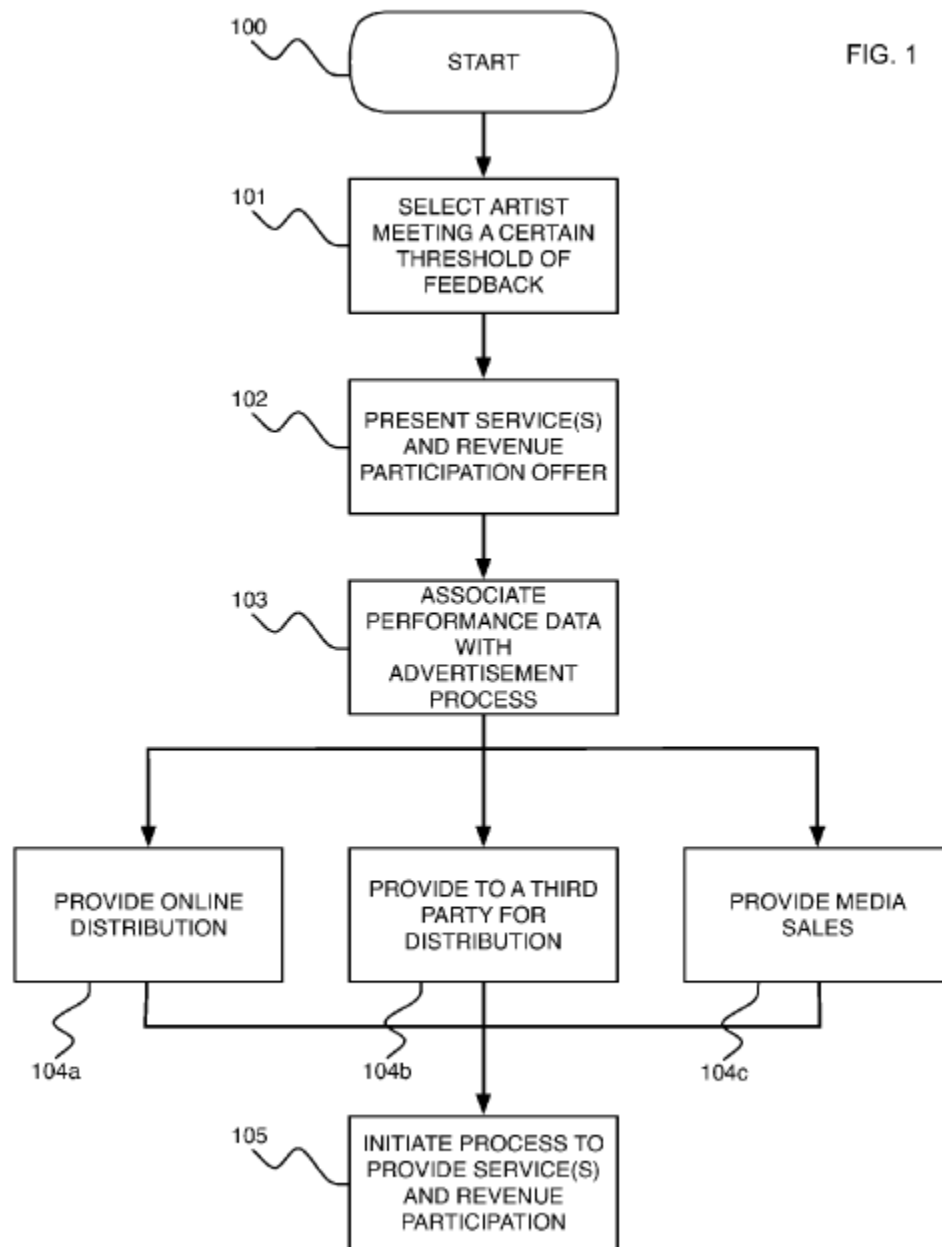


Figure 1 above is a “flow diagram that illustrates the process for providing one or more services to artist meeting a certain threshold of feedback, apportionment of revenue derived from the services related to artist’s performance activities and distribution of submitted performance

data in accordance with one or more embodiments of the invention.” *Id.* at 4:3–8.

C. Challenged Claims

Petitioner challenges claims 1–3, 6–8, 10–12, 15, 16, 19, and 20. Claims 1, 2, and 19 are independent claims. Claims 3–18 ultimately depend from claim 2. Claim 20 depends from claim 19.

Claim 1 is illustrative and reproduced below:¹

[1.P] 1. A system for providing performance data to an online community for outcome determinative feedback comprising:

[1.1] data repository for storing said-recorded performance data of an artist; and,

[1.2] a server configured to:

[1.3] associate said performance data with a profile of said artist;

[1.4] present said performance data to an online community having access to said performance data;

[1.5] obtain feedback from at least one user with respect to said performance data;

[1.6] determine that a selected artist meets a threshold value or condition;

[1.7] offer service and revenue participation to said selected artist;

[1.8] deliver content items associated with said selected artist and one or more advertisements to said online community;

[1.9] calculate an advertisement score for a subsequent online community interaction with said one or more advertisements

¹ Claim 1 is reproduced with Petitioner’s labels. Pet. xiii–xiv.

associated with said content item associated with said selected artist and a performance download score for online community download of a performance data for sale of said selected artist; [1.10] accounts established by members referred by said selected artist;

[1.11] enable a process of providing one or more services to said selected artist; and,

[1.12] apportion revenue to said selected artist based on said advertisement score and said performance download score.

Ex. 1001, 7:47–8:10; Pet. xiii–xiv.

D. Alleged Grounds of Unpatentability

Petitioner asserts the following grounds of unpatentability:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–3, 6–8, 10–12, 15, 16, 19, 20	102	Starr ²
1–3, 6–8, 10–12, 15, 16, 19, 20	103	Starr, Hughes ³
1–3, 6–8, 10–12, 15, 16, 19, 20	102	Arnold ⁴
1–3, 6–8, 10–12, 15, 16, 19, 20	103	Arnold, Hughes

Pet. 1. In addition to the references listed above, Petitioner relies on the Declaration of Dr. Henry Houh (Ex. 1002).

² U.S. Patent Application Publication 2006/0287916 A1 published Dec. 21, 2006 (Ex. 1004, “Starr”).

³ U.S. Patent Application Publication 2006/0265331 A1 published Nov. 23, 2006 (Ex. 1009, “Hughes”).

⁴ U.S. Patent Application Publication 2007/0233564 A1 published Oct. 4, 2007 (Ex. 1005, “Arnold”).

II. ANALYSIS

A. *Principles of Law*

A petition must show how the construed claims are unpatentable under the statutory grounds it identifies. 37 C.F.R. § 42.104(b)(4). Petitioner bears the burden of demonstrating a reasonable likelihood that it would prevail with respect to at least one challenged claim for a petition to be granted. 35 U.S.C. § 314(a).

To establish anticipation under 35 U.S.C. § 102, “all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim.” *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001).

A claim is unpatentable under § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject 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). *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

We analyze the asserted grounds with these principles in mind.

B. *Level of Ordinary Skill in the Art*

In determining the level of skill in the art, we consider the type of problems encountered in the art, the prior art solutions to those problems, the

rapidity with which innovations are made, the sophistication of the technology, and the educational level of active workers in the field. *Custom Accessories, Inc. v. Jeffrey-Allan Indus. Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986); *Orthopedic Equip. Co. v. U.S.*, 702 F.2d 1005, 1011 (Fed. Cir. 1983).

Petitioner contends that a person of ordinary skill in the art at the time of the invention of the '057 patent would have had the following education and experience: “a Bachelor’s degree in Electrical Engineering, Computer Engineering, or Computer Science (or equivalent degree) plus approximately two years of work experience with technologies relating to distributed systems, multimedia streaming, and various HTTP-related technologies.” Pet. 16. Petitioner adds that “[m]ore education can supplement work experience and vice versa.” *Id.* (citing Ex. 1002 ¶¶ 1–36). Patent Owner does not dispute this level of skill. Prelim. Resp. 5.

For purposes of this Decision, we adopt Petitioner’s proposal as reasonable and consistent with the prior art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (the prior art may reflect an appropriate level of skill in the art).

C. Claim Construction

For petitions filed on or after November 13, 2018, the “broadest reasonable interpretation” standard has been replaced with the federal court claim construction standard that is used to construe a claim in a civil action under 35 U.S.C. § 282(b). This is the same claim construction standard articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc), and its progeny.

Neither Petitioner nor Patent Owner provides any explicit construction of any claim terms. We determine that for the purposes of this Decision, it is

unnecessary to expressly construe any claim terms. *See Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (Only terms in controversy must be construed and only to the extent necessary to resolve the controversy); *see also Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (citing *Vivid Techs* in the context of an *inter partes* review).

D. Alleged Anticipation by Starr

Petitioner contends that claims 1–3, 6–8, 10–12, 15, 16, 19, and 20 are anticipated by Starr. Pet. 21–50. Patent Owner disputes Petitioner's contentions. Prelim. Resp. 6–23.

1. Summary of Starr

Starr, a U.S. patent application published on December 21, 2006, is titled “Media Marketplaces.” Ex. 1004, codes (45), (54). Starr characterizes its disclosure as relating to “publishing and distributing media segments in an online marketplace where creators meet advertisers in order to associate advertisements with the media segments.” *Id.* at ¶ 6.

Starr's Figure 1A is reproduced below:

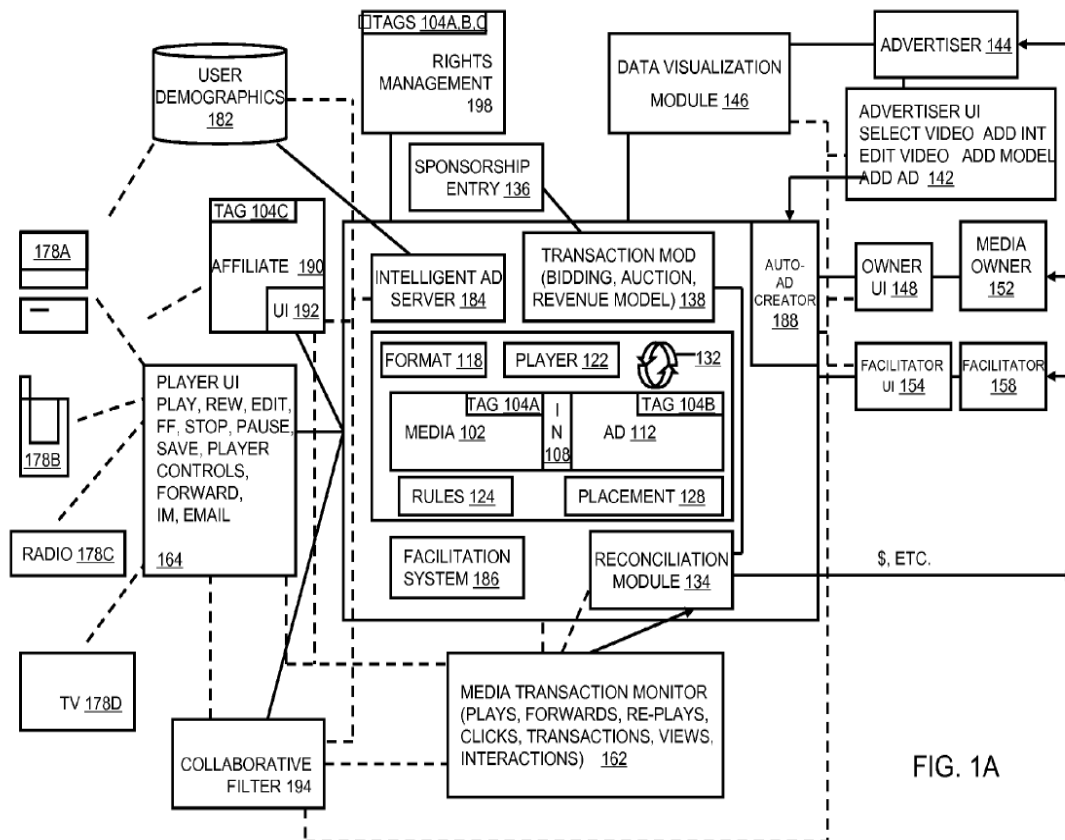


FIG. 1A

Figure 1A above depicts an embodiment of media platform 100 (not numbered in Figure 1A). *Id.* at ¶ 58. “[M]edia owner 152 interacts with an owner user interface 148 to deliver a media segment 102 to the media platform 100.” *Id.* Further, “advertiser 144 may interact with the media platform 100 through an advertiser user interface 142 to provide an advertisement 112 and to submit a bid 101 through a transaction facility 138 to associate the advertisement 112 with the media segment 102.” *Id.*

2. Independent Claim 1

Petitioner contends that Starr describes all the elements of independent claim 1. Pet. 29–36. Patent Owner disagrees and, in particular,

disputes that Starr describes elements [1.7], [1.9], [1.10], [1.11], and [1.12] of claim 1. Prelim. Resp. 6–11. We focus on element [1.9].

By way of background, we observe that element [1.6] recites a step of determining that a “selected artist” meets a threshold value or condition. Ex. 1001, 7:58–59; Pet. xiii. Element [1.9] then specifies that calculation of an “advertisement score” and a “performance download score” occurs, where the performance download score is “for online community download of a performance data for sale of said selected artist.” Ex. 1001, 7:65–8:3; Pet. xiii. According to Petitioner, Starr accounts for the claim requirements pertaining to a “performance download score” in two alleged ways. Pet. 31–32.

In particular, Petitioner states “[f]irst, Starr calculates such a performance download score, by tracking a user’s ‘interactivity (e.g., plays, emails, forwards)’ associated with his/her download of a media segment, which interactivity ultimately determines ‘further compensation.’” Pet. 32 (citing Ex. 1004 ¶¶ 104, 144). Although the cited paragraphs of Starr (Ex. 1004) generally describe tracking of a user’s internet activity, Petitioner provides little by way of insight as to why such tracking amounts to the development or calculation of a “performance download score” with regard to performance data of an artist. To that end, Petitioner simply does not provide adequate explanation as to why Starr’s noted paragraphs convey teaching of calculating a “performance download score.” We agree with Patent Owner (Prelim. Resp. 8) to the extent that we are not satisfied that Petitioner explains adequately why the referenced disclosure of Starr (i.e., ¶¶ 104, 144) gives rise to the required “performance download score.”

Petitioner also expresses the following:

Second, Starr calculates such a performance download score, since media owners can “opt-in to any licensing program” (*id.*, ¶[00023]), whereby media segments “may be licensed for use by third parties for distribution through offline channels such as cell phones” and “pod casts” (*id.*, ¶[00023]) and may be downloaded to “iTunes Viewers” (*id.*, ¶[0310]. *Id.*, ¶[0214] “licensing programs”). A [Person of Ordinary Skill in the Art] would have understood that such licensed downloads involve a performance download score to track downloads of a media segment, for proper distribution of artist licensing revenue.⁶ Ex. 1002, ¶¶ 98–104.

Pet. 32.⁵

Here too, neither Petitioner nor Dr. Houh (Ex. 1002) expresses meaningfully why the second above-quoted sentence follows from the first. Left wanting is adequate explanation as to why disclosure in Starr as to opting in to a “licensing program,” “licensing” media segments through offline channels, or downloading of content from “iTunes Viewers” establishes disclosure of the creation or calculation of a “performance download score.” We share Patent Owner’s view that Petitioner simply does not articulate adequately why Starr’s referenced disclosure necessarily involves calculation of a performance download score. *See* Prelim. Resp. 9.⁶

Accordingly, because we conclude that Petitioner has not explained adequately how or where the “performance download score” element of

⁵ The footnote “6” presented by Petitioner in the quoted portion states “Starr also tracks ‘download and/or viewing rates of the tagged media segments 102.’ Ex. 1004, ¶[0110].”

⁶ We note that the deficiency in Petitioner’s application of Starr’s teachings to the required “performance download score” is also reflected with respect to limitation [1.12] which recites a step of apportioning revenue to the selected artist based in-part on the performance download score.

claim 1 is found in Starr, we do not conclude that Petitioner's proposed ground of anticipation of claim 1 based on that reference is reasonably likely to succeed.

3. Independent Claims 2 and 19

Claims 2 and 19 are independent claims that are each directed to a “non-transitory, computer-readable medium” that carries out various steps pertaining to the distribution to users of an on-line community of a media file composed of a work of authorship by an author. Ex. 1001, 8:11–38, 10:1–24; Pet. xiv–xv, xvii–xviii. Feedback is then obtained from those users to determine a threshold condition, which then factors into an offer of revenue participation for the author and delivery of the media file and advertisement content to the on-line community after acceptance of that offer. Ex. 1001, 8:11–38, 10:1–24; Pet. xiv–xv, xvii–xviii. Petitioner submits that all of the limitations of independent claims 2 and 19 are found in Starr. Pet. 36–42, 48–50. Patent Owner disagrees, and, in doing so, focuses on limitations [2.8] and [19.6] of those claims.⁷ Prelim. Resp. 12–14, 16. Those limitations are similar to one another and are reproduced below from the Petition:

[2.8] delivering advertisement content along with said media file to said online community after acceptance of said revenue participation offer;

⁷ As with claim 1, Petitioner identifies limitations of claims 2 and 19 using numerical labels, which we reference in this Decision. See Pet. xiv–xv, xvii–xviii.

[19.6] delivering advertisement content along with said media file to said online community after acceptance of said revenue participation offer by said author[.]

Pet. xv, xvii.

Patent Owner argues that lacking from the Petition is adequate explanation as to how Starr teaches that any delivery of advertisement content to an online community in light of a met threshold condition is triggered by “acceptance of said revenue participation offer.” Prelim. Resp. 12–13. According to Patent Owner:

[T]here is no discussing in the Petition or in Starr that the playing of the media and/or advertising segment comes after (i) a threshold value or condition being met, (ii) an offer based on said threshold condition, and (iii) acceptance of said revenue participation offer, as required by claim 2. For at least these reasons, Starr does not disclose “delivering advertisement content along with said media file to said online community after acceptance of said revenue participation offer” as required by claim element [2.8].

Prelim. Resp. 13; *see also id.* at 16 (associating discussion of limitation [2.8] in the context of claim 19 and, specifically, limitation [19.6]).

Petitioner contends that the noted limitations [2.8] and [19.6] are satisfied because, according to Petitioner, Starr describes that the media owner “has already conveyed ‘agree[ment] to fee terms’ for the media owner to provide media segments and that such terms may include “revenue sharing terms” for generating revenue from playing the media segments. Pet 41 (citing Ex. 1004 ¶¶ 131, 82, 81; Ex. 1002 ¶¶ 135–136); *see also* Pet. 49 (referencing discussion of limitation [2.8] and citing Ex. 1002 ¶¶ 194–196).

We agree with Patent Owner’s above-noted assessment of features that are required by claim 2 (and claim 19) that acceptance of

a revenue participation offer, and subsequent delivery of advertisement content and a media file to an online community, occurs after some threshold value or condition has been met and a revenue participation offer then made. With that in mind, it is difficult to reconcile Petitioner's view, echoed by Dr. Houh, that Starr's disclosure of some type of initial agreement to "fee terms" coupled with the general recognition that revenue sharing ultimately occurs based on played media content, establishes that the claims elements [2.8] and [19.6] are found in Starr and arranged as in those claims. Yet, that is necessarily what is required to establish that there is a reasonable likelihood that claims 2 and 19 are unpatentable under the guise of "anticipation." *See Karsten Mfg. Corp.*, 242 F.3d at 1383.

Accordingly, having considered the record that is before us, and for at least the foregoing reasons, we conclude that Petitioner has not sufficiently established a reasonable likelihood that claims 2 and 19 are anticipated by Starr.

4. Dependent Claims 3, 6–8, 15, 16, and 20

Claims 3, 6–8, 15, 16, and 20 ultimately depend from either independent claims 2 or 19, and thus require the limitations of those independent claims. We also conclude that Petitioner has not shown a reasonable likelihood of prevailing in its proposal that dependent claims 3, 6–8, 15, 16, and 20 are anticipated by Starr.

E. Alleged Anticipation by Arnold

1. Summary of Arnold

Arnold, a U.S. patent application that published on October 4, 2007, is titled “Method and System for Distributing Revenue Among User-Authors.” Ex. 1005, codes (45), (54). Arnold’s Abstract is reproduced below:

Described is a method and system for receiving user-authored content from one or more user-authors, receiving at least one advertisement from one or more third-parties, associating the at least one advertisement with the user-authored content and determining a compensation for at least one of the user-authors, wherein the compensation is based on at least one of the number of advertisements associated with the user authored content and a number of associations made with the user-authored content by third parties.

Id. at code (57).

Arnold’s Figure 1 is reproduced below:

Fig. 1

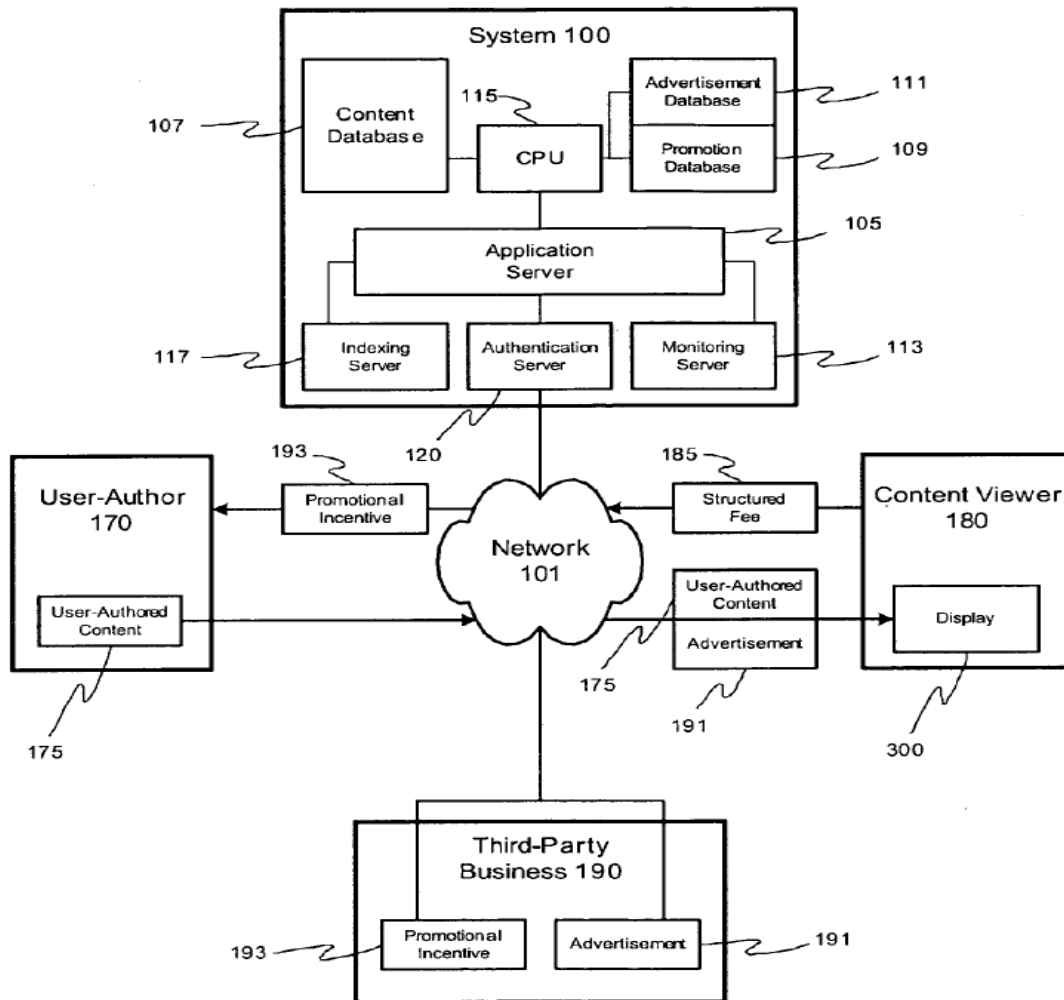


Figure 1 above “shows an exemplary system for publishing and distributing content over a network for sharing revenue derived from the content according to the present invention.” Ex. 1005, ¶ 9. System 100 operates to publish and distribute content over network 101, e.g., the Internet, and interacts with at least one user-author 170, at least one content viewer 180, and at least one third-party business partner 190. *Id.* at ¶ 17.

2. Independent Claim 1

Petitioner proposes that Arnold discloses all the elements of independent claim 1. Pet. 53–66. Patent Owner disagrees and, in particular, disputes that Starr describes elements [1.5], [1.6], [1.7], and [1.10] of claim 1. Prelim. Resp. 6–11. We focus on elements [1.5] and [1.6].

By way of context, we note that limitations [1.2] to [1.4] describe a server that is configured to associate performance data of an artist with a profile of an artist and present that performance data to an online community. Ex. 1001, 751–55; Pet. xiii. Limitation [1.5] reads “obtain feedback from at least one user with respect to said performance data[.]” Ex. 1001, 7:56–57; Pet. xiii. Limitation [1.6] reads “determine that a selected artist meets a threshold value or condition.” Ex. 1001, 7:58–59; Pet. xiii.

Petitioner is of the view that limitation [1.6] and its required determination that a selected artist meets a threshold value or condition is satisfied by Arnold’s disclosure that user-authored content is “approved” by either a network editor or administrator for publication on Arnold’s system. Pet. 58.

Patent Owner disputes Petitioner’s view. As an initial matter, Patent Owner submits that, in the context of claim 1 and the ’057 patent, the feedback obtained in limitation [1.5] from at least one user of the on-line community “is determinative— it determines if the artist meets a threshold value.” Prelim. Resp. 21 (citing Ex. 1001, 5:19–28). With that circumstance in mind, Patent Owner further contends that Petitioner’s reliance on Arnold’s disclosure that user content may be “approved” by a network editor or administrator to be “published on the system” is

insufficient for multiple reasons to account for the requirements of limitation [1.6]. To that end, Patent Owner contends the following:

First, it is not performed by an online community, but by a “network editor.” [citing Pet. 58]. Second, the approval by an editor is necessary for the content to be published, which Petitione[r] cites as the outcome determination. *Id.* But in claim 1 [of] the ’057 patent, the “performance data” is already presented “to an online community having access to said performance data” in limitation [1.3], before feedback from the online community, and before the content is determined to reach a threshold value or condition. The threshold value or condition cannot be used to determine if the online community has access to the performance data, as Petitioner cites from Arnold. For at least these reasons, Arnold does not disclose claim element [1.6].

Prelim. Resp. 22.

On this record, we conclude that Patent Owner’s assessment of the above-noted requirements of claim 1 comports with both the plain language of the claim and also the understanding of the claim when read in the context of the ’057 patent. In that regard, it is sufficiently clear that the required “determination” that a threshold value or condition is met arises from performance content that has already been released or published to the online community for feedback therefrom. We agree with Patent Owner that Petitioner does not explain meaningfully or adequately why Arnold’s disclosure that a network editor or administrator must first approve user-created content before it is published reasonably can be said to meet the requirements of limitation [1.6], i.e., “determine that a selected artist meets a threshold value or condition” as that limitation is understood in the context of the ’057 patent.

3. Independent Claim 2

Petitioner contends that all of the claim features of claim 2 are disclosed in Starr. Pet. 66–72. Patent Owner has a different position, and directs attention to proposed deficiencies in connection with each of limitations [2.5], [2.6], and [2.8]. Prelim. Resp. 23–25.

Claim 2 is drawn to a non-transitory computer-readable medium with instructions for execution by processors that carry out various steps. Those steps include, among other things, presenting a media file associated with a work of authorship to an online community comprising a plurality of users. Limitations [2.5] and [2.6] are similar to those recited as a part of limitations [1.5] and [1.6]. Specifically, limitation [2.5] reads “obtaining feedback on said work of authorship from at least one user of said plurality of users,” and limitation [2.6] reads “determining that a threshold condition based on said feedback has been met.” Ex. 1001; 2:25–28; Pet. xiv–xv.

For limitation [2.6], Petitioner points to its discussion with respect to limitation [1.6], and the disclosure in Arnold pertaining to user-authored content being “‘approved’ by a network editor/administrator.” Pet. 70. As with limitation [1.6], we are not satisfied that Petitioner explains adequately why Arnold’s disclosure that a network editor or administrator must first approve an author’s content for publication meets the requirement of limitation [2.6] of determining that a threshold condition has been met based on feedback from the users of an online community.

Limitation [2.8] reads “delivering advertisement content along with said media file to said online community after acceptance of said revenue participation offer.” Ex. 1001, 8:31–32; Pet. xv. Petitioner contends that the limitation is met in Arnold because “the user-author first (i) accepts registration with the system (which defines a predetermined revenue

allocation model/formula, and/or (ii) selects a particular form of revenue.”
Pet. 71–72 (citing Ex. 1005 ¶¶ 18, 22, 12, 25, 43; Ex. 1002 ¶¶ 275–276).

Patent Owner disputes that Arnold’s disclosure of registering with its system constitutes any “acceptance” of a revenue participation offer.

Prelim. Resp. 25. Patent Owner explains that a user-author registers or “accepts registration” with the system *before* any threshold value or condition has been met, while claim 2 requires that a “revenue participation offer must first be made (based on the user meeting a threshold value or condition) which the user then accepts.” *Id.* We agree. Claim 2 clearly requires in-part that: (1) feedback is obtained on a work of authorship from users of an online community (limitation [2.5]); (2) a determination that a threshold condition based on the feedback has been met (limitation [2.6]); (3) a revenue participation offer is presented based on the threshold condition (limitation [2.7]); and (4) advertisement content and the media file are delivered to the online community after acceptance of the revenue participation offer (limitation [2.8]). Ex. 1001, 8:24–34; Pet. xiv–xv. Petitioner does not credibly explain why preliminary or initial registration by a user with Arnold’s system amounts to what is required by claim 2, including the acceptance of the revenue participation offer that is set forth in limitation [2.8].

Accordingly, because we conclude that Arnold does not disclose or account for all the limitations required by claim 2, we are not persuaded that Petitioner has shown a reasonable likelihood of success in its challenge that claim 2 is anticipated by Arnold.

4. Independent Claim 19

Claim 19 is similar to claim 2 and also requires the step of “delivering advertisement content along with said media file to said online community after acceptance of said revenue participation offer by said author” (limitation [19.6]). For the same reasons discussed above in connection with limitation [2.8], we are not satisfied that Petitioner has shown that Arnold accounts for what is required by claim 19, including the acceptance of the revenue participation offer by an author recited in limitation [19.6].

5. Dependent Claims 3, 6–8, 15, 16, and 20

As noted above, claims 3, 6–8, 15, 16, and 20 ultimately depend from either independent claim 2 or claim 19. We also conclude that Petitioner has not shown a reasonable likelihood of prevailing in its assertion that dependent claims 3, 6–8, 15, 16, and 20 are anticipated by Arnold.

F. Alleged Obviousness Grounds

Petitioner challenges claims 1–3, 6–8, 10–12, 15, 16, 19, and 20 as unpatentable over (1) Starr and Hughes, and (2) Arnold and Hughes. Pet. 51–53, 79–81. Hughes is titled “System and Method for Marketing Product.” Ex. 1009, code (54). Petitioner cites to Hughes as disclosing a “direct distribution system” for delivering and marketing creative and proprietary works by artists. Pet. 51. According to Petitioner, Hughes disclosure of screening such work “for technical and quality standards” by a “human panel” constitutes feedback on the artist’s work and that ultimately an artist earns revenue from distribution of that work. *Id.* (citing Ex. 1009 ¶¶ 15, 22, 35–36, 17–19). Petitioner generally concludes that it would have been obvious to combine Hughes’s teachings with each of the teachings of

Starr and Arnold “in order to maintain baseline ‘technical and quality standards’ for published content, as described by Hughes.” *Id.* at 52, 80.

Petitioner also states that a person of ordinary skill in the art would have had a reasonable expectation of success in combining Hughes’s teachings with the teachings of each of Starr and Arnold. *Id.*

Patent Owner disputes that Petitioner has shown that any of claims 1–3, 6–8, 10–12, 15, 16, 19, and 20 are rendered obvious based on the either the combination of Starr and Hughes or the combination of Arnold and Hughes. Prelim. Resp. 16–20, 28–31.

We are not persuaded that Petitioner has established obviousness of any claims of the ’057 patent in connection with either the combination of Starr and Hughes or the combination of Arnold and Hughes. Even assuming, as Petitioner asserts, that a skilled artisan would have had a reasonable expectation of success in the combining those teachings, Petitioner does not provide adequate analysis as to how Hughes’s teachings are applied to either Starr or Arnold to account for the deficiencies discussed above in connection with the grounds of anticipation. For instance, it simply is not clear from the record why Hughes’s disclosure of screening of artists’ works by a panel for technical and quality standards addresses issues such as calculating a performance download score or providing for delivery of content to an online community after acceptance of a revenue participation offer by an author or artist who has met a threshold condition based on community feedback. As discussed above, we determine that Petitioner does not account adequately for issues such as those based on Starr’s and Arnold’s teachings.

After reviewing the record at hand, we are not persuaded that the grounds of obviousness offered in the Petition for claims 1–3, 6–8, 10–12, 15, 16, 19, and 20 warrant institution of *inter partes* review.

III. CONCLUSION

Petitioner does not show that there is a reasonable likelihood that it would prevail with respect to at least one of the challenged claims.

IV. ORDER

In consideration of the foregoing, it is hereby

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

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