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Paper 10
Date: October 7, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

TOUCHSTREAM TECHNOLOGIES, INC.,
Patent Owner.

IPR2022-00794
Patent 8,904,289 B2

Before DEBRA K. STEPHENS, DANIEL J. GALLIGAN, and AMBER L. HAGY, *Administrative Patent Judges.*

GALLIGAN, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background and Summary

Google LLC ("Petitioner") filed a petition for *inter partes* review (Paper 1 ("Pet." or "Petition")) challenging claims 1, 2, and 6–8 of U.S. Patent 8,904,289 B2 (Ex. 1001 ("'289 Patent")). Touchstream Technologies, Inc. ("Patent Owner") timely filed a Preliminary Response. Paper 6 ("Prelim. Resp."). With our authorization, Petitioner filed a Reply to Patent Owner's Preliminary Response (Paper 7), and Patent Owner filed a Sur-reply to Petitioner's Preliminary Reply (Paper 9).

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides as follows:

> (a) THRESHOLD.—The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 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.

For the reasons explained below, we institute an *inter partes* review of all challenged claims on all grounds raised in the Petition. Our preliminary findings of fact and conclusions discussed below are based on the evidentiary record developed thus far. This Decision to institute trial is not a final decision as to the patentability of any challenged claim. Any final decision will be based on the full record developed during trial.

B. Real Parties in Interest

Patent Owner states that Touchstream Technologies, Inc., is the real party-in-interest. Paper 5 at 1.

Petitioner states that Google LLC is the real party-in-interest. Pet. 76.[1]

C. Related Matters

Petitioner and Patent Owner indicate the '289 Patent was asserted in the following district court proceeding: *Touchstream Techs, Inc. v. Google, LLC*, No. 6-21-cv-00569 (W.D. Tex.). Pet. 76–77; Paper 5 at 1. Petitioner further indicates that the '289 Patent was asserted in the following district court proceeding: *Touchstream Techs., Inc v. Vizbee, Inc.*, No. 1-17-cv-06247 (S.D.N.Y.). Pet. 76–77.

D. The '289 Patent (Ex. 1001)

The '289 Patent, titled "Play Control of Content on a Display Device," issued December 2, 2014. Ex. 1001, codes (45), (54). The '289 Patent describes a system that "allow[s] a personal computing device," e.g., a mobile phone, "to be used to select different content to be played on a remote display," e.g., a television set, and "allow[s] the user to control how the content is displayed on the display device using the personal computing

[1] Petitioner states that Google LLC is a subsidiary of XXVI Holdings Inc., which is a subsidiary of Alphabet Inc. and that XXVI Holdings Inc. and Alphabet Inc. are not real parties-in-interest to this proceeding. Pet. 76 n.4.

device." Ex. 1001, 2:11–15, 2:26–33. Figure 1, reproduced below, is a block diagram illustrating an exemplary system. Ex. 1001, 2:40–41.

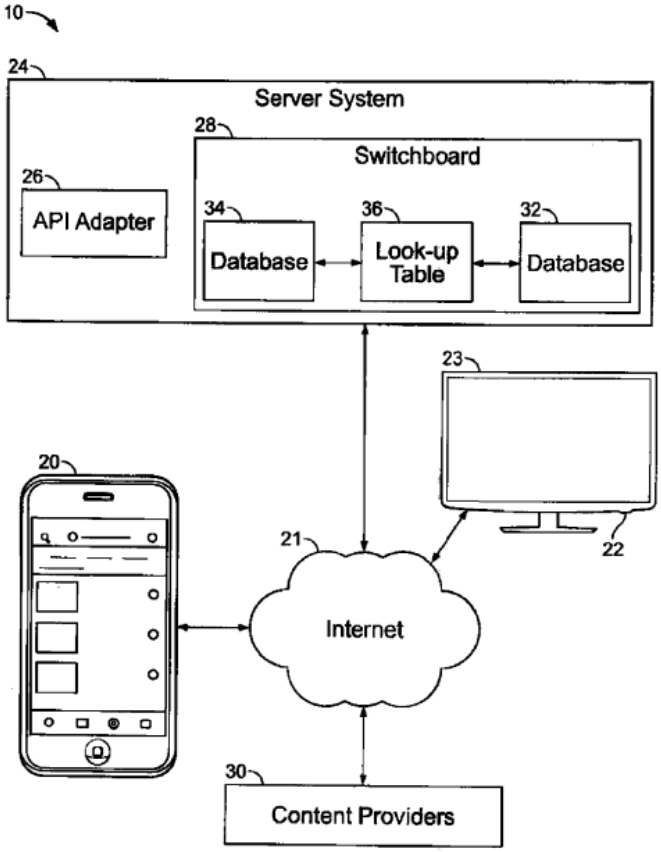


FIG. 1

As shown in the block diagram of Figure 1, "first device (e.g., a personal computing device) 20" connects to and "acts as a controller" for "second device (e.g., a television set 22 with a display 23) [and the second device] acts as a receiver to play content selected by a user of the first device and [the second device] respond[s] to commands that originate at the personal computing device." Ex. 1001, 3:1–7. For example, television set 22 can be commanded "to access a content provider 30 through the Internet 21, load a specific media player, load the media player-specific content (e.g., a video) and play the content on the television display 23." Ex. 1001, 3:18–23.

Furthermore, personal computing device 20 controls the selection of and playback of content on television set 22 through server system 24, rather than through directly controlling television set 22. Ex. 1001, 3:10–18. In particular,

> [w]hen a user makes a selection using the personal computing device 20 for particular content to be displayed on the television display 23, a signal is sent through the Internet (or other network) 21 to the server system 24. A corresponding command signal then is passed along [from server system 24] to the connected television set 22 which acts on a transmission code contained within the signal and performs specified commands.

Ex. 1001, 3:12–18; *see* Ex. 1001, 3:36–41 ("user-initiated play commands," e.g., play pause, stop, rewind, fast forward, "are passed from the user's personal computing device 20through the server system 24, to the television set 22"). Thus, personal computing device 20 sends a signal for controlling media playback to server system 24; server system 24, in turn, sends a signal to television set 22, which correspondingly displays the controlled media. Ex. 1001, 3:18–36.

The signal from personal computing device 20 (which selects content or controls playback) is formatted and transmitted by personal computing device 20 in a message sent to server system 24. Ex. 1001, 4:27–29. That "message from the mobile phone 20 contains a transmission code that includes data regarding . . . the location and name of the media player for the selected video the command (e.g., play, pause, rewind, etc.), and the video file to be acted upon." Ex. 1001, 4:29–35, Fig. 3. That message "is transmitted over the Internet 21 and is received by the server system 24." Ex. 1001, 4:40–42. Server system 24 then "converts the incoming commands from the mobile device 20 into the correct JavaScript (or other programming) code used by the [television set] 22 to control the specific

player (block 120)." Ex. 1001, 5:65–6:3. The server "interpret[s] and convert[s] a standard or universal command (e.g., play, pause, etc.) into the specific command recognized by the media player" playing content on the television set 22. Ex. 1001, 5:58–62. Then, server system 24 "copies the converted version of the message to the database 34 associated with the [television set] 22." Ex. 1001, 6:3–6. Television set 22 then receives the server's converter message and then "executes the message," e.g., "load[s] and unload[s] different video players." Ex. 1001, 6:19–50.

1. Illustrative Claim

Challenged claim 1 is reproduced below.

> 1. A method of controlling presentation of content on a content presentation device that loads any one of a plurality of different media players, the method comprising:
>
> > receiving, in a server system, one or more messages from a personal computing device that is separate from the server system and separate from the content presentation device, wherein the one or more messages, taken together, (i) include information associated with a unique identification code assigned to the content presentation device, (ii) specify a file to be acted upon, (iii) identify a particular media player for playing content from the specified file wherein the media player is a computer application operable to present content and control presentation of the content, (iv) identify a location of the particular media player, and (v) include an action control command for presentation of the content on the content presentation device by the particular media player, the action control command being independent of the particular media player;
> >
> > using the information associated with the unique identification code to store a record establishing an association between the personal computing device and the content presentation device; and

> identifying, by the server system, programming code corresponding to the action control command, wherein the programming code is for controlling presentation of the content by the content presentation device using the particular media player,
>
> wherein, based on information received or retrieved from the server system, the content presentation device uses the particular media player to execute the programming code with respect to the file.

E. References Relied Upon

Petitioner relies upon the following prior art references:

Reference	Exhibit No.
Muthukumarasamy et al., US 2010/0241699 A1, published Sept. 23, 2010 ("Muthukumarasamy")	1008
Hayward, US 8,918,812 B2, issued Dec. 23, 2014 ("Hayward")	1009

Pet. 2.

Petitioner also relies on the Declaration of Benjamin B. Bederson, Ph.D., for support of its contentions in the Petition (Ex. 1005).

F. Asserted Grounds

Petitioner asserts that claims 1, 2, and 6–8 are unpatentable on the following grounds:

Claim(s) Challenged	**35 U.S.C. §**	**Reference(s)/Basis**
1, 2, 6–8	103(a)	Muthukumarasamy
1, 2, 6–8	103(a)	Muthukumarasamy, Hayward

II. ANALYSIS

A. Discretion Under 35 U.S.C. § 314(a)

Patent Owner argues that we should exercise discretion to deny institution under 35 U.S.C. § 314(a) because the factors identified in *Apple, Inc. v. Fintiv, Inc*., IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) ("*Fintiv* Order"), weigh in favor of denying institution. Prelim. Resp. 41–54. Petitioner argues we should not discretionarily deny institution. Pet. 72–76; Paper 7. For the reasons discussed, we do not exercise discretion to deny institution.

Under § 314(a), the Director has discretion to deny institution of an *inter partes* review (*see* 37 C.F.R. § 42.4(a) ("The Board institutes the trial on behalf of the Director."); *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016) ("[T]he PTO is permitted, but never compelled, to institute an IPR proceeding.")). In determining whether to exercise discretion to deny institution under 35 U.S.C. § 314(a), the Board considers whether the circumstances of a parallel district court proceeding are a basis for exercising such discretion. *Fintiv* Order 5–6.

A Memorandum from Director Vidal titled *Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation* (USPTO June 21, 2022) ("Interim Procedure")[2] sets forth the following:

> the PTAB will not deny institution of an IPR or PGR under *Fintiv* (i) when a petition presents compelling evidence of unpatentability; (ii) when a request for denial under *Fintiv* is

[2] Available at https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf.

> based on a parallel ITC proceeding; or (iii) where a petitioner stipulates not to pursue in a parallel district court proceeding the same grounds as in the petition or any grounds that could have reasonably been raised in the petition.

Interim Procedure 9.

> Here, Petitioner has filed a stipulation:
>
> Petitioner has stipulated that if the Board institutes IPR on this Petition, it will not pursue in the related district court proceeding "any ground that [Petitioner] raised or reasonably could have raised" during this proceeding.

Paper 7 at 4 (citing Interim Procedure 3; *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 18–19 (PTAB Dec. 1, 2020); 35 U.S.C. § 315(d); Ex. 1017) (alteration in original).

Thus, in light of Petitioner's stipulation, we do *not* exercise discretion to deny institution under 35 U.S.C. § 314(a).

B. Level of Ordinary Skill in the Art

The level of skill in the art is a factual determination that provides a primary guarantee of objectivity in an obviousness analysis. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 1324 (Fed. Cir. 1999) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966); *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 718 (Fed. Cir. 1991)).

Petitioner asserts that a "person of skill in the art ('POSA') would have had at least a bachelor's degree in electrical engineering or computer science (or equivalent experience) and two years of experience designing or implementing interactive systems with networked media or media playback systems." Pet. 14 (citing Ex. 1005 ¶¶ 42–46). Petitioner further asserts that, "[w]ith more education, for example, postgraduate degrees and/or study, less experience is needed to attain an ordinary level of skill in the art. Similarly,

more experience can substitute for formal education." Pet. 14 (citing Ex. 1005 ¶¶ 42–46).

Patent Owner does not dispute Petitioner's assertion. *See* Prelim. Resp. 21.

Based on the present record including the disclosure in the '289 Patent, we apply Petitioner's definition of the level of ordinary skill in the art (*see* Pet. 14) with the exception of the open-ended phrase "at least," which expands the range of educational experience indefinitely without an upper bound, i.e. "a bachelor's degree in electrical engineering or computer science (or equivalent experience) and two years of experience designing or implementing interactive systems with networked media or media playback systems." We determine this level of skill comports with the qualifications a person would have needed to understand and implement the teachings of the '289 Patent and the prior art of record. *Cf. Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (noting that the prior art itself may reflect an appropriate level of skill in the art).

C. Claim Construction

We construe claim terms according to the standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–17 (Fed. Cir. 2005) (en banc). 37 C.F.R. § 42.100(b) (2021). Under *Phillips*, claim terms are afforded "their ordinary and customary meaning." *Phillips*, 415 F.3d at 1312. "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Phillips*, 415 F.3d at 1313. "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Phillips*, 415 F.3d

at 1313. An inventor may rebut that presumption by providing a definition of the term in the specification "with reasonable clarity, deliberateness, and precision." *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). In the absence of such a definition, limitations are not to be read from the specification into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Petitioner asserts that we "need not construe any claims to resolve [this] controversy" and that it "adopts" Patent Owner's "proposed plain and ordinary meaning for all terms [from] the parallel district court action." Pet. 14–15 (citing Ex. 1014).

Patent Owner does not assert any particular claim construction at this stage in the proceeding. Prelim. Resp. 21.

On this record, we determine that no terms or phrases in the claims require express construction. *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. Asserted Obviousness over Muthukumarasamy

Petitioner contends Muthukumarasamy renders claims 1, 2, and 6–8 obvious. Pet. 15–16, 20–72.

1. Muthukumarasamy (Ex. 1008)

Muthukumarasamy is a US patent application publication titled "Device-Based Control System" and published September 23, 2010. Ex. 1008, codes (43), (54). Muthukumarasamy describes a "Device-Based Control System (DBCS) . . . that enables consumers, through the use of an internet-enabled device (IED)," e.g., a smartphone, "to navigate through

media or entertainment content, control media components or equipment to watch and/or listen to media content." Ex. 1008 ¶ 26. Figure 1, reproduced below, is "a block diagram of the Device-Based Control System (DBCS)." Ex. 1008 ¶ 44.

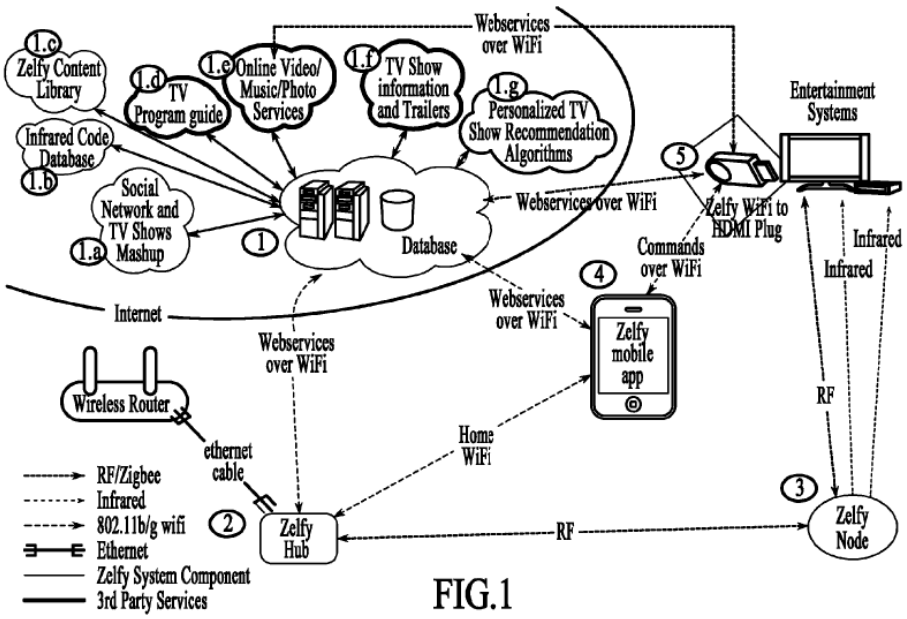


FIG.1

As shown in the block diagram of the DBCS of Figure 1, DBCS includes IED 4, zHub 2, zNode 3, and entertainment systems such as a television set. Ex. 1008 ¶ 44. A user interacts with IED 4 to select or control content playback hosted on internet server 1. Ex. 1008 ¶¶ 44–45. For example, IED 4 executes a media management application that presents media choices from a "plurality of disparate media sources" for the user to select. Ex. 1008 ¶ 48.

"When the IED sends a [content selecting or controlling] command, the zHub receives the command from the IED and resolves the command into a specific instruction directed at a specific zNode in the house." Ex. 1008 ¶ 57. For example, "when a user selects content that is on channel 324 to be displayed on the living room TV, the zHub translates the command into a specific RF signal directed at the zNode in the living room."

Ex. 1008 ¶ 57. In particular, zHub 2 "receives signals or commands from the IED 4 via a local or premise network (e.g., router, WiFi, etc.) and translates [those] received commands to RF signals;" zNode 3 in turn receives the translated RF signals and translates those RF signals "to a protocol (e.g. Infrared) interpretable by the media components." Ex. 1008 ¶ 44. For example, "the infrared codes needed to control the media components" are referenced for such translation. Ex. 1008 ¶ 66. Then, those translated signals are received by media components, e.g., a television set, to control the media component, "e.g., volume selection, channel selection, pause/play, etc." Ex. 1008 ¶ 50.

Additionally, in one DBCS embodiment, a remote-controlled internet browser software (RCIBS or ZRCIBS) provides "a remote controllable internet browser optimized for internet-media consumption." Ex. 1008 ¶ 83.

Figure 18, reproduced below, is a "block diagram . . . of a home network." Ex. 1008 ¶ 83.

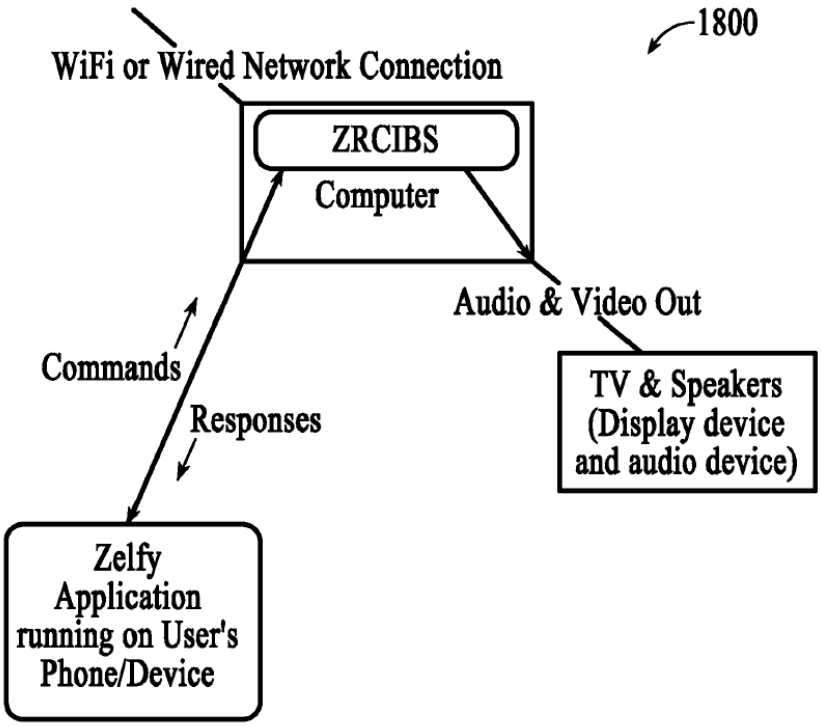


FIG.18

As shown in the block diagram of Figure 18, the home network comprises a computer hosting the RCIBS and the IED. Ex. 1008 ¶ 83, Fig. 18.

Figure 18 further shows "RCIBS is deployed on a computer that has video, audio and internet capabilities and is connected to the home network of the user." Ex. 1008 ¶ 83, Fig. 18. Additionally, the "IED transmits commands to the RCIBS and receives responses from the RCIBS: the commands are received and executed by RCIBS." Ex. 1008 ¶ 83, Fig. 18. For example, RCIBS provides video output to a television. *See* Ex. 1008, Fig. 18. Other commands from the IED include: "Play video at given URL," causing the RCIBS to "play the video present at [a] given URL" and "Play video with given video-id (as specified by 3rd party using 3rd party APIs and Video

Players," causing the RCIBS to "load[] the 3rd Party Video Player specified and plays the video with given video[-]id)." Ex. 1008, Fig. 19.

2. Independent claim 1

Petitioner contends Muthukumarasamy renders independent claim 1 obvious. Pet. 20–61.

a) Alleged Failure to Teach

Patent Owner does not dispute Petitioner's contentions as to each limitation; rather, Patent Owner focuses on two limitations. We first address the parties' arguments and evidence as to the limitations in dispute at this stage. We then briefly address the sufficiency of Petitioner's showing as to the remaining limitations.

(1) Receiving messages that "identify a particular media player for playing content"

Petitioner relies on Muthukumarasamy to teach "receiving, in a server system, one or more messages from a personal computing device that is separate from the server system and separate from the content presentation device." Pet. 28–30 (citing Ex. 1005 ¶¶ 74–79; Ex. 1008 ¶¶ 26, 36, 44, 57, 68, 69, Figs. 1, 15). Petitioner refers to the annotated version of

Muthukumarasamy's Figure 1 below to show the alleged components of claim 1.

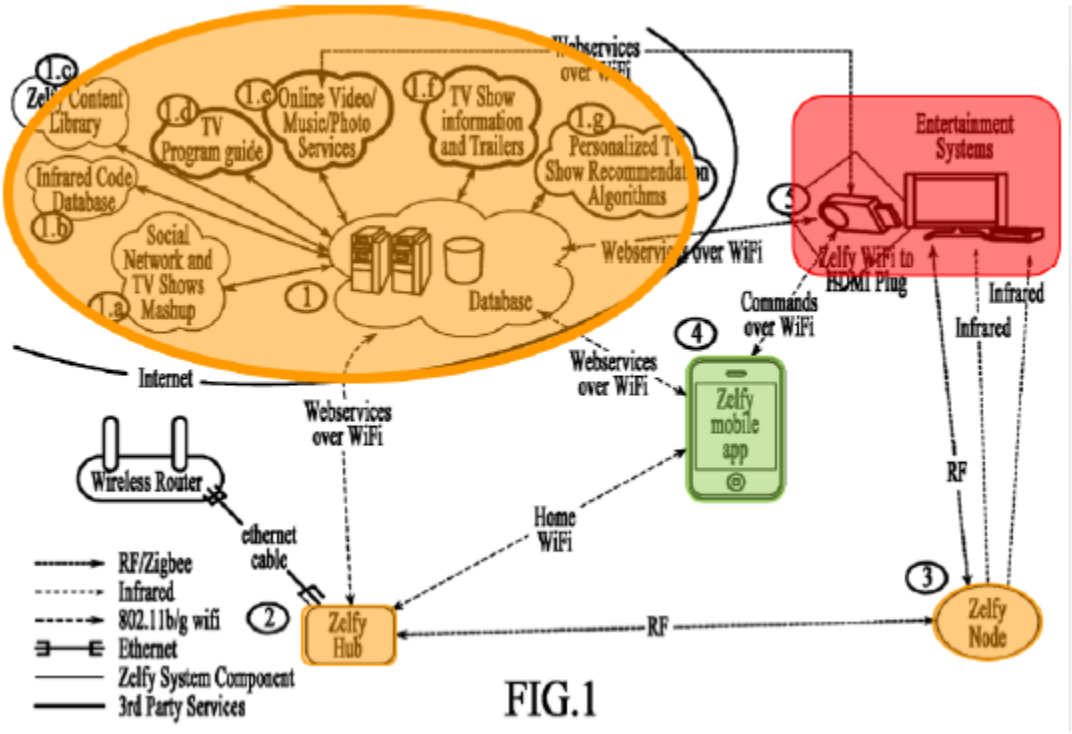


FIG.1

Muthukumarasamy's Figure 1 is "a block diagram of the Device-Based Control System (DBCS)" (Ex. 1008 ¶ 44), and in the annotated version above, Petitioner identifies the internet-enabled device (IED) in green as the claimed "personal computing device"; the internet server, zHub, and zNode in orange as the claimed "server system"; and the devices in red labeled "Entertainment Systems" as the claimed "content presentation device." Pet. 29–30. Petitioner asserts that "Muthukumarasamy's internet server (part of the server system) receives a message from the IED, which is separate from both the internet server and the media device (content presentation device)." Pet. 28 (citing Ex. 1005 ¶ 74); *see also* Pet. 36–37 (asserting that "the zHub, a component of the server system, 'receives signals or commands from the IED'" (quoting Ex. 1008 ¶ 44)).

A disputed issue concerns claim 1's recitations that the received messages "identify a particular media player for playing content from the specified file wherein the media player is a computer application operable to present content and control presentation of the content" and "identify a location of the particular media player." Petitioner asserts that the messages from the IED meet these recitations for two reasons. Pet. 37. First, Petitioner argues that "Muthukumarasamy teaches that a user selects media content from various disparate sources," e.g., selecting content from Netflix, Cinema Now, or Amazon, "which is then delivered to the selected media device for playback depending on the media type." Pet. 37–38 (citing Ex. 1008 ¶¶ 47–48, 134). Based on that disclosure, Petitioner argues a person having ordinary skill in the art "would have understood each request for particular content to identify a media player associated with the particular source of the content" and also the location of the media player or "information that may be used to located the particular media player." Pet. 37–38 (citing Ex. 1008 ¶¶ 47–48, 134; Ex. 1005 ¶¶ 94–95). Second, Petitioner argues that Muthukumarasamy's "IED sends commands to play, through [its] RCIBS, media content 'as specified by 3rd party using 3rd party APIs and Video Players,'" which cause the RCIBS to "load[] the 3rd Party Video Player specified and play[] the video with given video[-]id." Pet. 38 (citing Ex. 1008 ¶ 45, Fig. 19) (third alteration in original). As such, Petitioner argues a person having ordinary skill in the art "would have understood Muthukumarasamy teaches that the command sent from the IED specifies the video (***a file to be acted upon***), and the Video Player to play the video (***a particular media player for playing content from the file***)." Pet. 39 (citing Ex. 1005 ¶ 97).

Patent Owner contends Petitioner fails to show Muthukumarasamy teaches receiving messages in the server system from the from the personal computing device that "identify a particular media player for playing content." Prelim. Resp. 22–29. Addressing Petitioner's first reason, Patent Owner argues that "Petitioner identifies Muthukumarasamy's zHub as the part of the alleged *server system* that *receives messages*," but "Petitioner fails to identify even one disclosed example of a zHub receiving a message from an IED that *identifies a particular media player*." Prelim. Resp. 22–23. More specifically, Patent Owner argues, "Petitioner offers no evidence linking the content selection" (e.g., the selection of content from Netflix, Cinema Now, or Amazon) "with the specific *messages*" sent from the IED to the zHub. Prelim. Resp. 24. Patent Owner further argues, "Muthukumarasamy suggests that a user selects content without needing to identify (or even be aware of) the particular source of that content." Prelim. Resp. 24 (citing Ex. 1008 ¶¶ 27, 47, 75–77, Figs. 2, 3).

Addressing Petitioner's second reason, Patent Owner argues that the RCIBS command Petitioner cites ("Play video with given video-id (as specified by 3rd party using 3rd party APIs and Video Players[])]") "describes that a third party specifies how the requested content is played." Prelim. Resp. 28. Additionally, Patent Owner argues that "the RCIBS is part of the device identified by Petitioner as the *content presentation device* and not part of the alleged *server system*" and, so, the messages sent by the IED "are not *received by the server system*." Prelim. Resp. 28.

At this stage in the proceeding, we determine Muthukumarasamy teaches "receiving, in a server system, one or more messages from a personal computing device that is separate from the server system and separate from the content presentation device," as recited in claim 1.

Pet. 28–30 (citing Ex. 1005 ¶¶ 74–79; Ex. 1008 ¶¶ 26, 36, 44, 57, 68, 69, Figs. 1, 15). We also agree with Petitioner's assertion that Muthukumarasamy's zHub is a component of its server system and receives signals from the IED. Pet. 36–37 (citing Ex. 1008 ¶ 44); *see* Pet. 27–28 ("Muthukumarasamy discloses the claimed *server system* because it discloses an internet server, a zHub, and a zNode."). Indeed, Muthukumarasamy explains that "[w]hen the IED sends a command, the zHub receives the command from the IED and resolves the command into a specific instruction directed at a specific zNode in the house" (Ex. 1008 ¶ 57), which in turn "translate[s] the commands for control of media devices" (Ex. 1008 ¶ 58). As such, we determine Muthukumarasamy's zHub functions as part of a server system, to receive signals from a computing device, translate those signals, and transmit the translated signals.

For the claimed receiving of messages that "identify a particular media player for playing content" and the location of the media player, we determine Petitioner's first reason is adequately supported on this record. *See* Pet. 37–38. Muthukumarasamy discloses that its IED can provide a command to select content from "Netflix, Cinema Now, or Amazon" (Ex. 1008 ¶ 134) and that its system delivers "selected media content and selects and controls the media devices that deliver the selected media content *according to a media type of the selected media content*" (Ex. 1008 ¶ 48 (emphasis added)). Petitioner's declarant, Dr. Bederson, testifies that a person of ordinary skill in the art "would have understood each request for particular content to identify a media player associated with the particular source of the content." Ex. 1005 ¶ 95; *see also* Ex. 1005 ¶ 67 (discussing various media in Muthukumarasamy including "internet media" and

explaining that different media players present different types of media (citing Ex. 1008 ¶¶ 47–48)).

Patent Owner disputes Dr. Bederson's testimony, arguing that, "[t]o the contrary, Muthukumarasamy suggests that a user selects content without needing to identify (or even be aware of) the particular source of that content." Prelim. Resp. 24 (citing Ex. 1008 ¶¶ 27, 47, 75–77, Figs. 2, 3)). But *user* knowledge or identification of the media player is not required by the claim, which does not recite the term "user." Rather, claim 1 recites "one or more messages" that "identify a particular media player for playing content." Petitioner's position, supported by Dr. Bederson's testimony, is that identification of media of a certain type identifies the corresponding media player. Pet. 37–38 (citing Ex. 1005 ¶¶ 94–95). Muthukumarasamy expressly discloses selecting content on the IED from "Netflix, Cinema Now, or Amazon." Ex. 1008 ¶ 134. Thus, Patent Owner's contention that "Muthukumarasamy describes presenting a user with available content options without distinguishing between the content sources" (Prelim. Resp. 25) fails to account for Muthukumarasamy's express disclosure to the contrary.

Patent Owner argues further, "even if a user's content selection identified a source, that fact alone does not suggest that *messages received from* the IED play any part in identifying a *particular media player*." Prelim. Resp. 24–25 (citing Ex. 1008 ¶¶ 61–64, Fig. 19). On this record, we are sufficiently persuaded by Petitioner's contention that Muthukumarasamy's disclosure of a signal from the IED selecting a media source teaches a signal that "identif[ies] a particular media player for playing content" based on Dr. Bederson's explanation as to how a person of ordinary

skill in the art would have understood Muthukumarasamy's disclosure. Ex. 1005 ¶¶ 95–96.

Because we determine Petitioner's first reason suffices for institution, we need not rely on Petitioner's second reason at this stage. Nonetheless, we provide a brief discussion of the parties' arguments to provide guidance for the trial.

As noted above, Petitioner also relies on Muthukumarasamy's disclosure of the operation of the RCIBS in Figure 19. *See* Pet. 38–39 (citing Ex. 1008 ¶ 45, Fig. 19). Patent Owner argues that "the RCIBS is part of the device identified by Petitioner as the *content presentation device* and not part of the alleged *server system*." Prelim. Resp. 28 (citing Pet. 21, 23–24). According to Patent Owner, therefore, "the commands in Figure 19 still cannot meet all the limitations of the *messages* in the *receiving* step because they are not *received in the server system*." Prelim. Resp. 28. In response, Petitioner argues that Patent Owner's characterization of the Petition is incorrect and that "[t]he Petition clearly maps Muthukumarasamy's RCIBS to a part of the server system, stating 'the DBCS includes remote-controlled internet browser software ("RCIBS")' and 'DBCS (e.g., the RCIBS).'" Paper 7 at 1–2 (citing Pet. 9, 27, 65).

We agree with Patent Owner that the Petition identifies the RCIBS as part of the content presentation device, even as it identifies the RCIBS as part of another component of the system. For example, Petitioner states that Muthukumarasamy's system allows streaming media content "onto a content presentation device, such as a media device configured with RCIBS." Pet. 21 (citing Ex. 1008 ¶¶ 26, 27, 31, 45, 83, 134). Petitioner also argues that "the RCIBS, running on the content presentation device, 'loads the 3rd Party Video Player specified and plays the video.'" Pet. 24 (quoting

Ex. 1008, Fig. 19). Figure 18 of Muthukumarasamy, annotated by Petitioner and reproduced below, is "a block diagram of a home network comprising the IED along with a computer hosting the RCIBS under an embodiment." Ex. 1008 ¶ 24.

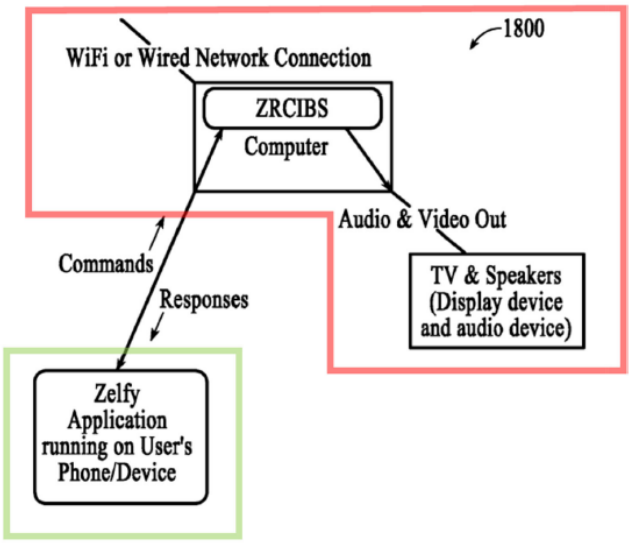


FIG.18

Pet. 25 (reproducing Ex. 1008, Fig. 18 (annotated)). Figure 18 of Muthukumarasamy, shows an IED (i.e., "User's Phone/Device") sending commands to a ZRCIBS (also referred to as an "RCIBS" (*see* Ex. 1008 ¶¶ 24, 83)) hosted on a computer providing output to a display device. In the annotated figure below, Petitioner includes the ZRCIBS of Figure 18 in a red box, red being the color Petitioner uses to designate the "content presentation device." Pet. 22–23. Thus, we disagree with Petitioner's statement that "Patent Owner incorrectly asserts that the Petition identifies Muthukumarasamy's 'RCIBS as part of the alleged content presentation device.'" Paper 7 at 1. Based on Petitioner's identification of the RCIBS as part of the content presentation device, we have some questions as to the sufficiency of Petitioner's argument that the RCIBS's receipt of commands

from the IED, as shown in annotated Figure 18 above, teaches "receiving, in the server system, one or more signals from the personal computing device. *See* Prelim. Resp. 28–29.

Accordingly, based on the record before us, we determine Petitioner has shown sufficiently that Muthukumarasamy teaches "one or more messages from a personal computing device that is separate from the server system and separate from the content presentation device, wherein the one or more messages, taken together . . . identify a particular media player for playing content," as recited in claim 1.

(2) "identifying, by the server system, programming code"

Petitioner relies on Muthukumarasamy to teach "identifying, by the server system, programming code corresponding to the action control command, wherein the programming code is for controlling presentation of the content by the content presentation device using the particular media player." Pet. 54–57 (citing Ex. 1005 ¶¶ 118–124; Ex. 1008 ¶¶ 44, 50, 57–58, 85, 128, Figs. 1, 19). In particular, Petitioner asserts Muthukumarasamy teaches this limitation for two reasons. Pet. 54–55. Petitioner explains that, "upon receiving the signals or commands, the zHub, one component of the server system, translates commands into RF signals for controlling a particular media device (content presentation device) associated with a zNode." Pet. 55 (citing Ex. 1008 ¶ 44). Petitioner further explains that "the translated commands from zHub are then sent to the identified zNode," which in turn "receives RF signals from the zHub and 'translates the RF signals to a protocol (e.g., Infrared) interpretable by the media components' of the particular media device." Pet. 55 (citing Ex. 1008 ¶¶ 44, 57, 58).

Patent Owner contends Petitioner fails to show that Muthukumarasamy teaches identifying "programming code . . . for

controlling presentation of the content by the content presentation device using the particular media player." Prelim. Resp. 32–39. Patent Owner argues that "Muthukumarasamy just translates communication signals from one protocol to another" and that "Petitioner never argues or cites evidence that Muthukumarasamy's translation results in 'programming code.'" Prelim. Resp. 34–35.

At this stage in the proceeding, on the current record, Petitioner has sufficiently shown that Muthukumarasamy teaches "identifying, by the server system, programming code corresponding to the action control command, wherein the programming code is for controlling presentation of the content by the content presentation device using the particular media player." Muthukumarasamy teaches that an IED sends a command to a zHub and "the zHub resolves or maps the command to a specific IR code to be sent to a specific zNode via an RF signal." Ex. 1008 ¶ 57; Pet 55 (citing Ex. 1008 ¶ 44; Ex. 1005 ¶¶ 119–120). More specifically, Muthukumarasamy discloses,

> When the IED sends a command, the zHub receives the command from the IED and resolves the command into a specific instruction directed at a specific zNode in the house. As such, the zHub resolves the command into a specific instruction directed at a specific ZNode in the house. As such, the ZHub resolves or maps the command to a specific IR code to be sent to a specific ZNode via an RF signal. The ZHub can cache IR codes or other data that may be used to control media devices. If the appropriate IR code is not avail able in the cache, the ZHub looks up the code (e.g., from the internet server) as the ZHub is always connected to the internet via the premise router.

Ex. 1008 ¶ 57; Pet. 57. The zNode "translates the commands [received from the zHub] to IR signals" and "broadcasts a corresponding IR signal to control the media devices." Ex. 1008 ¶ 58; Pet. 55 (citing Ex. 1008 ¶¶ 44,

58)). Indeed, Muthukumarasamy teaches that "[t]he primary function of each zNode is to receive commands from the zHub and translate the commands for control of media devices via the media device control protocol. . . . The zNode receives command from the zHub via RF signals and translates the commands to IR signals." Ex. 1008 ¶ 58.

Muthukumarasamy defines an IR code as "an infrared code used to control or perform a specific action on a component or piece of equipment" (Ex. 1008 ¶ 38) and explains that an IR code is, for example, "in a universal control (UES) format, the UES format representing a frequency and mark-space timing of IR pulses as a series of numbers" (Ex. 1008 ¶ 112). Because the zHub translates a playback command into an IR code and that IR code may be "a frequency and mark-space timing of IR pulses" that a playback device responds to, we agree with Petitioner that that the IR code teaches a "programming code." We also agree that Muthukumarasamy's disclosure of the zNode's translated IR signals—i.e., the IR pulses that have frequency and mark-space timing—teaches a "programming code" because the playback device responds to the frequency and mark-space timing of the IR pulses. Patent Owner argues that the '289 Patent discloses "convert[ing] the incoming commands from the mobile device 20 into the correct JavaScript (or other programming) code used by the target device 22 to control the specific player." Prelim. Resp. 34 (emphasis omitted) (quoting Ex. 1001, 5:65–6:3). This disclosure does not exclude converting from one protocol to another, nor does it define the term "programming code," let alone exclude IR codes from the scope of the term. Moreover, both Muthukumarasamy's RF code provided by the zHub and IR signals provided by the zNode control a playback device. Ex. 1008 ¶¶ 57–58.

Patent Owner further argues that "*programming* code refers to data or information used to control software, specifically (in claims 1 and 6) the *particular media player*." Prelim. Resp. 32. However, the IR code and IR signal are data or information used to control a particular media player. For example, Muthukumarasamy teaches the IR code, which controls media equipment (Ex. 1008 ¶ 38), is in UES format, representing a "frequency and mark-space timing of IR pulses as a series of numbers," i.e., data or information (Ex. 1008 ¶ 112). And, the IR signal, received by the media device, "correspond[s]" to the IR code (Ex. 1008 ¶ 58), and therefore, represents the data or information in the UES formatted command.

Patent Owner argues Muthukumarasamy's media devices "are physical media devices, not software operating on such devices," and, as such, controlling those physical media devices does not control software. Prelim. Resp. 35–36. On this record, we disagree because Muthukumarasamy discloses that its system delivers "selected media content and selects and controls the media devices that deliver the selected media content according to a media type of the selected media content." Ex. 1008 ¶ 48; Pet. 23–24. Thus, we are sufficiently persuaded that controlling the physical display device such that the display device displays the content using the appropriate media player teaches controlling the media player as well. *See* Ex. 1005 ¶ 67 (discussing various media including "internet media" and explaining that different media players present different types of media (citing Ex. 1008 ¶¶ 47–48)).

Accordingly, based on the record before us, Petitioner has shown sufficiently that Muthukumarasamy teaches "identifying, by the server system, programming code corresponding to the action control command, wherein the programming code is for controlling presentation of the content

by the content presentation device using the particular media player," as recited in claim 1.

b) Other limitations

Petitioner relies on Muthukumarasamy to teach "[a] method of controlling presentation of content on a content presentation device that loads any one of a plurality of different media players." Pet. 20–25 (citing Ex. 1005 ¶¶ 62–69; Ex. 1008 ¶¶ 3, 25, 26, 27, 31, 36, 45, 47–50, 77, 83, 134, Figs. 1, 18, 19).

As discussed above, we are sufficiently persuaded that Muthukumarasamy teaches "receiving, in a server system, one or more messages from a personal computing device that is separate from the server system and separate from the content presentation device." Petitioner relies on Muthukumarasamy to teach that the messages "include information associated with a unique identification code assigned to the content presentation device" (Pet. 30–35 (citing Ex. 1005 ¶¶ 80–90; Ex. 1008 ¶¶ 45, 48, 67–69, Figs. 14, 15)), "specify a file to be acted upon" (Pet. 35–37 (citing Ex. 1005 ¶¶ 91–93; Ex. 1008 ¶¶ 45, 47–48, 50, 64, 70, 77, 84, 85, 88, 116, 117, 149, Figs. 2, 19)), and "include an action control command for presentation of the content on the content presentation device by the particular media player, the action control command being independent of the particular media player" (Pet. 45–50 (citing Ex. 1005 ¶¶ 106–112; Ex. 1008 ¶¶ 50, 51, 57, 83, Fig. 19)).

Petitioner relies on Muthukumarasamy to teach "using the information associated with the unique identification code to store a record establishing an association between the personal computing device and the content presentation device." Pet. 53–54 (citing Ex. 1005 ¶¶ 115–117; Ex. 1008 ¶¶ 20, 45, 50, 68–69, 114, Figs. 14, 15).

Petitioner relies on Muthukumarasamy to teach "wherein, based on information received or retrieved from the server system, the content presentation device uses the particular media player to execute the programming code with respect to the file." Pet. 58–60 (citing Ex. 1005 ¶¶ 126–128; Ex. 1008 ¶¶ 50, 83).

Patent Owner, at this stage, does not dispute Petitioner's contentions for these limitations of claim 1 (*see* Prelim. Resp.). Upon review of the recitations and relied-upon teachings, we are persuaded, based on the record before us, that Petitioner has made a sufficient showing that Muthukumarasamy teaches the remaining limitations recited in claim 1.

c) Preliminary Determination

Petitioner has demonstrated a reasonable likelihood of prevailing on its challenge to claim 1.

3. Independent claim 6

Petitioner contends Muthukumarasamy renders obvious independent claim 6, referring to its arguments for claim 1 for similar recitations. *See* Pet. 62–63 (table identifying correspondence between recitations in claims 1 and 6).[3] Petitioner argues that Muthukumarasamy teaches "loading, by the server system, a set of protocols or application programming interfaces from a library based on the identity of the particular media player," which is recited in claim 6 but not in claim 1. Pet. 63–64 (citing Ex. 1005 ¶¶ 137–138; Ex. 1008 ¶¶ 44, 56, 83, Fig. 19). Patent Owner, at this stage, does not dispute Petitioner's contentions for this limitation of claim 6. *See* Prelim. Resp.

[3] The left column of the table is labeled "Claim 27 Elements," but the cells in the column refer to claim 6; therefore, this is a minor typographical error. Pet. 62–63.

The "programming code" recitation of claim 6 also differs from claim 1. Claim 6 recites "identifying, based on the set of protocols or application programming interfaces, programming code corresponding to the action control command." Petitioner argues that Muthukumarasamy teaches this subject matter. Pet. 66–70 (citing Ex. 1005 ¶¶ 141–148; Ex. 1008 ¶¶ 44, 50, 57, 58, 83, 85, 111, 128, Fig. 19). Aside from its argument that Muthukumarasamy does not teach a "programming code," which we address above, Patent Owner argues that Muthukumarasamy does not teach identifying programming code based on the application programming interfaces, which claim 6 recites is loaded by the server system. Prelim. Resp. 32–33, 36–39. Claim 6 recites that the identifying is "based on the set of protocols *or* application programming interfaces" (emphasis added), and, therefore, the arguments made by Patent Owner are directed to one of two alternatives. Patent Owner does not specifically address, at this stage, Petitioner's contentions for the "set of protocols" alternative, other than the argument about "programming code" addressed above. *See* Prelim. Resp. 36–39; Pet. 67 ("First, Muthukumarasamy discloses identifying programming code ***based on the set of protocols***.").

Upon review of the recitations and relied-upon teachings, we are persuaded, based on the record before us, that Petitioner has made a sufficient showing that Muthukumarasamy renders obvious the subject matter of claim 6, including identifying programming code based on the set of protocols.

Petitioner has demonstrated a reasonable likelihood of prevailing on its challenge to claim 6.

4. Dependent claims 2, 7, and 8

Claims 2 and 8 depend, respectively, from claims 1 and 6 and recite "loading the particular media player in the content presentation device prior to executing the programming code with respect to the file." Petitioner argues that Muthukumarasamy teaches this subject matter. Pet. 61–62 (citing Ex. 1005 ¶¶ 131–132). Claim 7 depends from claim 6 and recites that the messages "include information indicating a location of the particular media player," which is similar to claim 1's recitation of "identify[ing] a location of the particular media player," to which Petitioner refers. Pet. 71.

Patent Owner, at this stage, does not offer any arguments specific to these limitations. *See* Prelim. Resp. Upon our review of Petitioner's asserted contentions, we are persuaded based on the record before us that Petitioner has made a sufficient showing that Muthukumarasamy renders obvious claims 2, 7, and 8.

5. Conclusion

Based on the record before us, we determine Petitioner's proffered arguments, evidence, and supporting testimony establish a reasonable likelihood that Petitioner would prevail in showing that claims 1, 2, and 6–8 would have been obvious over Muthukumarasamy.

E. Asserted Obviousness over Muthukumarasamy and Hayward

Petitioner contends the combination of Muthukumarasamy and Hayward renders claims 1, 2, and 6–8 obvious. Pet. 15–71.

1. Hayward (Ex. 1009)

Hayward is a US patent titled "Method of Sizing an Embedded Media Player Page" and issued December 23, 2014. Ex. 1009, codes (45), (54). Hayward describes a "method of displaying video data using an embedded media player page" in which a "media player is launched within the

embedded media player page." Ex. 1009, code (57). Hayward explains that a user, accessing a web page, "enter[s] search criteria for a media file, such as a streaming audio or video file." Ex. 1009, 4:25–35. After the search is complete, "media files that satisfy the search request" are returned and displayed to the user who "may then decide to view the video data contained within a video file listed in the search results displayed to the user by clicking a link to one of the video files." Ex. 1009, 5:6–12, 5:17–23. "When the user 'clicks' on a link to a selected video file, a script file, such as a JavaScript file, transmitted to the client . . . instructs the client to request the embedded media player page from the customer system." Ex. 1009, 5:23–29.

> The requested
>
> [e]mbedded media player page includes a reference to a functional media player object (such as a RealPlayer plug in). A reference is a tag (as a file locator as a universal resource indicator, URI, URL, or a file/object accessed through a directory structure) that refers to file, media object, or executable computer code stored in a memory structure.

Ex. 1009, 5:38–44. The "media player object generally is resident on the client, although the reference tag could trigger a download of a media player applet to control the output of a media file." Ex. 1009, 5:44–47. "The embedded media player page includes video display area 202" for video playback. Ex. 1009, 5:61–66. In particular, the "media player is . . . an object by the embedded media player page when launched (i.e., operated or run) within the embedded media player page" and plays the selected video. Ex. 1009, 6:35–42.

2. Independent claim 1

Petitioner contends the combination of Muthukumarasamy and Hayward renders independent claim 1 obvious. Pet. 15–61.

a) Alleged Failure to Teach

Patent Owner does not dispute Petitioner's contentions as to each limitation; rather, Patent Owner focuses on two limitations. We first address the parties' arguments and evidence as to the limitations in dispute at this stage. We then briefly address the sufficiency of Petitioner's showing as to the remaining limitations.

(1) Receiving messages that "identify a particular media player for playing content"

As discussed above, Petitioner relies on Muthukumarasamy to teach "receiving, in a server system, one or more messages from a personal computing device that is separate from the server system and separate from the content presentation device." Pet. 28–30 (citing Ex. 1005 ¶¶ 74–79; Ex. 1008 ¶¶ 26, 36, 44, 57, 68, 69, Figs. 1, 15). Petitioner further relies on Hayward to teach identifying a particular media player and a location of the media player. Pet. 41–45 (citing Ex. 1005 ¶¶ 101–105; Ex. 1009, 1:10–18, 1:26–30, 3:20–29, 4:9–19, 5:6–29, 5:24–28, 5:35–47, 8:39–41, Fig. 1a). Specifically, Petitioner states that Hayward teaches a user accesses and plays media content via a "customer system [that] provides a list of media content available for playback, and a user at the client may then click on particular media content to initiate playback." Pet. 42 (citing Ex. 1009, 4:9–13, 5:6–9). Petitioner cites Hayward's disclosure that, "[w]hen the user 'clicks' on a link to a selected video file, a script file, such as a JavaScript file, transmitted to the client from the customer system 122 instructs the client to request the embedded media player page from the customer system 122."

Ex. 5:24–28, *cited in* Pet. 42. Petitioner additionally asserts that the "requested embedded media player page also 'includes a reference to a functional media player object (such as a RealPlayer plug in)' which is 'resident on the client' and corresponds to the format of the video data to be played." Pet. 42–43 (citing Ex. 1009, 5:38–47). Petitioner explains that a person of ordinary skill in the art "would have understood that to facilitate playback with the appropriate media player require[d], as taught by Hayward, the signal requesting the media content would identify the particular media player and its location" and, further, "would have been motivated to include Hayward's message identifying the particular media player for playback of the media content to facilitate a truly source-agnostic media system in Muthukumarasamy." Pet. 44 (citing Ex. 1005 ¶ 105).

Patent Owner contends that Petitioner "fails to show that Hayward describes or renders obvious *receiving, in a server system, one or more messages from the personal computing device that is separate from the server system and separate from the content presentation device*, and that *identify a particular media player*." Prelim. Resp. 29–31. Specifically, Patent Owner argues "Hayward describes that the ***client*** . . . receives the 'embedded media player page' that includes a reference to a media player object" rather than the embedded media player page being received by a server system. Prelim. Resp. 29.

At this stage in the proceeding, on the current record, Petitioner has sufficiently shown that the combination of Muthukumarasamy and Hayward teaches "receiving, in a server system, one or more messages from a personal computing device that is separate from the server system and separate from the content presentation device" that "identify a particular media player for playing content from the specified file wherein the media

player is a computer application operable to present content and control presentation of the content" and "identify a location of the particular media player." Patent Owner's argument that Hayward discloses a client, rather than a server system, receiving messages identifying a particular media player (Prelim. Resp. 29–31) inappropriately argues Hayward alone and does not address the combination of Muthukumarasamy and Hayward. Petitioner does not rely on Hayward to teach a server system that receives signals from a client—Petitioner relies on Muthukumarasamy to teach that feature. Pet. 28–30.

As discussed above, on the record before us, we determine Muthukumarasamy's zHub-based system teaches a server system that receives messages from a client. *See* Pet. 28–30. Hayward teaches that, "[w]hen the user 'clicks' on a link to a selected video file, a script file, such as a JavaScript file, transmitted to the client from the customer system 122 instructs the client to request the embedded media player page from the customer system 122." Ex. 1009, 5:24–28; Pet. 42. Hayward further teaches that the "[e]mbedded media player page includes a reference to a functional media player object (such as a RealPlayer plug in)." Ex. 1009, 5:38–40; Pet. 42–43. Patent Owner contends no evidence exists "that the request for the 'embedded media player page'" includes "'a reference to a functional media player object,' *i.e.*, the alleged *particular media player*." Paper 9 at 4. However, based on the record before us, we determine Hayward's request from the client for the embedded media player page that includes a reference to the functional media player object, teaches "identifying a particular media player," as recited in claim 1. The client is described in Hayward as being a "device capable of interactive Internet communication" including devices such as "a computer terminal" and "a

wireless device, such as a hand held unit (e.g., cellular telephone)." Ex. 1009, 3:20–29. Hayward's client is therefore "a personal computing device." Thus, at this juncture, we determine the combination of Muthukumarasamy and Hayward teaches message identifying a particular media player and that these messages are received in the server system from the personal computing device, as recited in claim 1. *See* Pet. 41–43.

Petitioner explains that the combination of Muthukumarasamy and Hayward teaches "receiving, in a server system, one or more messages from a personal computing device that is separate from the server system and separate from the content presentation device" that "identify a particular media player for playing content from the specified file wherein the media player is a computer application operable to present content and control presentation of the content" and "identify a location of the particular media player," as recited in claim 1. Pet. 35–45. On the record before us, we determine Petitioner supports that combination with adequate rationale, including that the combination "facilitate[s] the source-agnostic presentation of internet content" and "facilitate[s] presentation of internet content at the content presentation device using any number of media players through embedded media player pages." Pet. 43–44 (citing Ex. 1005 ¶ 104); *see* Pet. 16–20.

Accordingly, based on the record before us, Petitioner has shown sufficiently that the combination of Muthukumarasamy and Hayward teaches or suggests "receiving, in a server system, one or more messages from a personal computing device that is separate from the server system and separate from the content presentation device" that "identify a particular media player for playing content from the specified file wherein the media player is a computer application operable to present content and control

presentation of the content" and "identify a location of the particular media player," as recited in claim 1.

(2) "identifying, by the server system, programming code"

As discussed above, Petitioner relies on Muthukumarasamy to teach "identifying, by the server system, programming code corresponding to the action control command, wherein the programming code is for controlling presentation of the content by the content presentation device using the particular media player." Pet. 54–57 (citing Ex. 1005 ¶¶ 118–124; Ex. 1008 ¶¶ 44, 50, 57–58, 85, 128, Figs. 1, 19). Petitioner further relies on Hayward to "disclose[] that the embedded media player page includes playback commands that control a particular media player." Pet. 57. Petitioner explains that a person of ordinary skill in the art "would have understood that the combination of Muthukumarasamy's translation of an action control command with Hayward's plurality of media players and media-player-specific control commands teaches" this subject matter. Pet. 57–58. Petitioner argues that this combination would "facilitate a truly source-agnostic media system, including controlling playback from any internet source." Pet. 58 (citing Ex. 1005 ¶ 125).

Patent Owner argues Hayward does not teach or render obvious "programming code" (Prelim. Resp. 40); however, Petitioner relies on Muthukumarasamy to teach that feature. Patent Owner also argues that Petitioner's contentions are deficient because "the RCIBS is implemented on a device that Petitioner identifies as the *content presentation device* and not as part of the alleged *server system*," such that the proposed combination "would not have resulted in a method that satisfies all the limitations of the *identifying* step, including the requirement that the *identifying* step be performed by the *server system* (claim 1) or *based on the set of protocols or*

application programming interfaces that are *loaded by* the *server system* (claim 6)." Prelim. Resp. 40–41. On the record before us, we determine RF signals and IR signals are "programming code" as discussed above.

At this stage in the proceeding, on the current record, Petitioner has sufficiently shown the combination of Muthukumarasamy and Hayward teaches the "programming code" limitations of claims 1 and 6. As discussed above, we agree with Petitioner that Muthukumarasamy teaches this subject matter, and as discussed above, we also agree with Petitioner that Hayward teaches a "particular media player." We determine Petitioner's combination is adequately supported by the rationale to "facilitate a truly source-agnostic media system, including controlling playback from any internet source." Pet. 58 (citing Ex. 1005 ¶ 125).

Accordingly, based on the record before us, Petitioner has shown sufficiently that the combination of Muthukumarasamy and Hayward teaches or suggests the "programming code" limitations of claims 1 and 6.

3. Other limitations

Petitioner relies on Muthukumarasamy to teach the limitations as discussed above. *See* Pet. 20–61. Petitioner further relies on Hayward to teach limitations recited in claim 1. More specifically, Petitioner relies on Hayward to teach "[a] method of controlling presentation of content on a content presentation device that loads any one of a plurality of different media players." Pet. 25–28 (citing Ex. 1005 ¶¶ 70–73; Ex. 1009, 2:9–12, 2:60–67, 3:30–40, 3:53–63, 4:9–24, 5:21–29, 5:36–6:4, code (57)).

Petitioner relies on Hayward to teach "an action control command for presentation of the content on the content presentation device by the particular media player, the action control command being independent of

the particular media player." Pet. 50–52 (citing Ex. 1005 ¶¶ 113–114; Ex. 1009, 1:11–13, 1:26–30, 5:61–6:2, Fig. 2); *see also* Pet. 57–58.

Petitioner relies on Hayward to teach executing the programming code by the particular media player. Pet. 60–61 (citing Ex. 1005 ¶ 129; Ex. 1009, 1:11–13, 1:26–30, 5:61–66).

Patent Owner does not dispute, at this stage, Petitioner's arguments and evidence as to these limitations. Based on our review of the record before us, we determine Petitioner has shown sufficiently that the combination of Muthukumarasamy and Hayward teaches the remaining limitations recited in independent claim 1 and that the combination renders obvious claim 1.

4. Claims 2 and 6–8

Petitioner contends the combination of Muthukumarasamy and Hayward renders obvious claims 2 and 6–8. Pet. 61–71.

Patent Owner, at this stage, does not offer arguments for these claims other than those addressed above. *See* Prelim. Resp. Upon our review of Petitioner's asserted contentions, we are persuaded based on the record before us, Petitioner has made a sufficient showing that the combination of Muthukumarasamy and Hayward renders obvious claims 2 and 6–8.

5. Conclusion

Based on the record before us, we determine Petitioner's proffered arguments, evidence, and supporting testimony establish a reasonable likelihood that Petitioner would prevail in showing that claims 1, 2, and 6–8 would have been obvious over the combination of Muthukumarasamy and Hayward.

III. CONCLUSION

For the foregoing reasons, on the record before us, we are persuaded that the Petition establishes a reasonable likelihood that Petitioner would prevail in showing that at least one claim of the '289 Patent is unpatentable.

IV. ORDER

For the reasons given, it is:

ORDERED that pursuant to 35 U.S.C. § 314(a), an *inter partes* is *instituted* on all the challenged claims with respect to all grounds set forth in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(a), *inter partes* review of the '289 Patent is instituted commencing on the entry date of this Order, and pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is given of the institution of a trial.

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