

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DRAFTKINGS INC.,
Petitioner,

v.

WINVIEW INC.,
Patent Owner.

IPR2022-01351
Patent 9,878,243 B2

Before HUBERT C. LORIN, MICHAEL R. ZECHER, and
FRANCES L. IPPOLITO, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

DraftKings, Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1, 3, 4, and 6 of U.S. Patent No. 9,878,243 B2 (Ex. 1001, “the ’243 patent”). WinView, Inc. (“Patent Owner”; “WinView”) did not file a Preliminary Response.

We have jurisdiction under 35 U.S.C. § 6.

Upon consideration of the arguments and evidence presented by Petitioner, we are persuaded that Petitioner has demonstrated, under 35 U.S.C. § 314(a), a reasonable likelihood that it would prevail in showing the unpatentability of at least one challenged claim.

For the reasons stated below, we institute *inter partes* review as to challenged claims 1, 3, 4, and 6 of the ’243 patent.

B. Related Proceedings

Petitioner indicates that the ’243 patent is asserted in two pending district court litigations: *WinView Inc. v. DraftKings Inc.*, No. 3:21-CV-13405 (D.N.J.) and *WinView Inc. v. FanDuel Inc.*, No. 3:21-CV-13807 (D.N.J.). Pet. 1–2; Paper 6 (WinView’s Mandatory Notices), 1.

WinView has made us aware of *FanDuel, Inc. v. WinView Inc.*, IPR2022-01306 and *FanDuel, Inc. v. WinView Inc.*, IPR2022-01307. Paper 6, 1.

C. Real Party in Interest

Petitioner identifies DraftKings Inc. (Nevada), DraftKings Inc. (Delaware), and Crown Gaming Inc. as real parties in interest. Pet. 1. According to Patent Owner, “[t]he real-party-in-interest in Patent Owner is

[WinView]. WinView is a wholly owned subsidiary of Engine Media Holdings, Inc.” Paper 6, 1.

D. The '243 patent (Ex. 1001)

1. Disclosure

The '243 patent, titled “Methodology For Equalizing Systemic Latencies In Television Reception In Connection With Games Of Skill Played In Connection With Live Television Programming,” relates to games of skill that rely on watching live or taped televised events. Ex. 1001, code (54), 2:29–31.

The '243 patent describes problems with playing games of skill that rely on watching televised events due to delay issues. “Games of skill that rely on participation by watching an event on a television have potential latency issues since television signal reception is not synchronized nationwide.” Ex. 1001, 2:29–31. “[T]o maintain user enjoyment and fairness for all participants, these delays must be neutralized.” *Id.* at 2:41–42.

The '243 patent describes solving the latency issue through “a system and method to effectively equalize systemic propagation delay variances to a required level dictated by the demands and rules of a particular game, so that a material competitive advantage is not obtained and the user experience is optimized for all players.” Ex. 1001, 6:38–43. Fig. 1, reproduced below, illustrates a flowchart of a process of preventing latency.

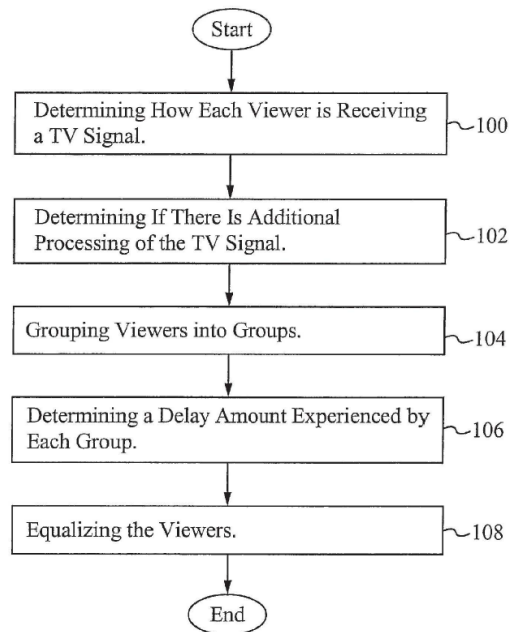


Fig. 1

Fig. 1 of '243 patent illustrates a flowchart of a process of preventing potential latency issues experienced when playing games of skill that rely on participation by watching an event on a television. *Id.* at 4:58–60, 8:22–24.

The methods of “equalizing” (step 108) “include time stamping on [] game ‘lock out’ signals, imposing a time stamp on the entire data stream so that competitors receiving their television information is slightly behind or ahead of others gain no material competitive advantage.” Ex. 1001, 8:36–40, Fig. 1, step 108.

2. Claims 1, 3, 4, and 6

Petitioner challenges claims 1, 3, 4, and 6. Pet. 1. Claim 1 is independent and claims 3, 4, and 6 depend therefrom.

Claim 1 is reproduced below. Bracketing is added to assist in referring to the claim elements.

1. 1[preamble]¹ A method of equalizing effects of latency differences in a game of skill or chance or other entertainment comprising:

- a. 1[a] receiving an online broadcast of content;
- b. 1[b] synchronizing the game of skill or chance or other entertainment with the online broadcast of content; and
- c. 1[c] presenting the online broadcast of content and synchronized game data.

Ex. 1001, 15:2–8.

E. Asserted References

Petitioner relies on the following references:

Name	Reference	Exhibit No.
Wallace	U.S. Patent Application Publication No. 2004/0244057, published Dec. 2, 2004	1003
Fahy	U.S. Patent Application Publication No. 2004/0261128, published Dec. 23, 2004	1004

Petitioner also relies on the Declaration of Kevin Jeffay, Ph.D. (Ex. 1002, “Jeffay Decl.”) as support for the various contentions.

F. Asserted Grounds

Petitioner contends that claims 1, 3, 4, and 6 of the ’243 patent are unpatentable under the following grounds:

¹ Petitioner’s designations to reference the elements of claim 1 are set forth in brackets. Pet. 25–62. Herein we refer to the elements of claim 1 using Petitioner’s designations.

Ground	Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
I	1, 3, 4, and 6	103(a) ²	Wallace, Fahy
II	1, 3, 4, and 6	103(a)	Wallace

Pet. 4.

II. ANALYSIS

A. Principles of Law for Patentability

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

² The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended 35 U.S.C. §§ 102 and 103. The ’243 patent claims the benefit of earlier-filed applications having effective filing dates before the effective date of the applicable AIA amendments (March 16, 2013). See Ex. 1001, (60), (63), 1:10–36. This is not in dispute and therefore we refer to the pre-AIA versions of 35 U.S.C. § 103 throughout this Decision. We note that while Petitioner “does not concede that any of the challenged claims are entitled to benefit” of U.S. Provisional Application No. 60/791,793, filed on April 12, 2006, that Patent Owner contended in the co-pending litigation, no further argument is presented. Pet. 3 fn. 1 (citing Ex. 1013 ¶ 22).

the prior art; (3) the level of ordinary skill in the art; and (4) when in evidence, objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)). This burden of persuasion does not shift to Patent Owner, except in limited circumstances not present here. *See Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing the burden of proof in *inter partes* review).

C. Level of Ordinary Skill in the Art

Petitioner contends a person of ordinary skill in the art “would have had the equivalent of a Bachelor’s Degree in computer science, computer engineering, or a related subject and two or more years of experience in the field of multimedia networking. Less work experience may be compensated for by a higher level of education, such as a Master’s Degree, and vice versa.” Pet. 7 (citing Jeffay Decl. ¶ 26).

Petitioner’s proposed definition of a person of ordinary skill in the art appears to be consistent with the ’243 patent, and we adopt that definition for our analysis in this decision.

“Moreover, Petitioner’s proposed definition appears to be consistent with the level of skill reflected by the prior art of record.” *Okajima v.*

Bourdeau, 261 F.3d 1350, 1355 (Fed. Cir. 2001); *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995); *In re Oelrich*, 579 F.2d 86, 91 (CCPA 1978).

D. Claim Construction

For petitions filed on or after November 13, 2018, “[claims] of a patent . . . shall be construed using the same claim construction standard that would be used to construe the [claims] in a civil action under 35 U.S.C. [§] 282(b), including construing the [claims] in accordance with the ordinary and customary meaning of such claims as [would have been] understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” 37 C.F.R. § 42.100 (2019); *see also Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–14 (Fed. Cir. 2005).

Petitioner contends that the preamble of claim 1 “should be construed as limiting the claim.” Pet. 21 (citing Jeffay Decl. ¶ 61). Petitioner reasons, *inter alia*, that the specification of the ’243 patent “makes clear that Patent Owner intended that the preamble breathe life into the body of claim 1 because the limitations in the preamble define the alleged “present invention.” *Id.* at 23 (citing, *inter alia*, *Catalina Mktg. Int’l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002); Ex. 1001, 5:14–10:45, 8:46–12:55; Jeffay Decl. ¶ 63). Petitioner adopts this view in arguing Ground I. Pet. 25–42. Ground II is presented “[i]f the Patent Owner argues that the preamble is not a limitation.” Pet. 69.

Whether the preamble of claim 1 should be treated as limiting is not currently in controversy. Only those terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

Be that as it may, we analyze Petitioner’s arguments under Ground I by treating the preamble as limiting claim 1.

E. Overview of the Prior Art References

1. Wallace (Ex. 1003)

Wallace “deals with the problem of executing interactive television applications [such as an interactive game] that are related to, or synchronized with, broadcast video signals.” Ex. 1003 ¶ 14. Problems come about when the broadcast includes, for example, commercials that “may delay, interrupt or create discontinuities within the original taped source material.” *Id.* at ¶ 48. In order to play an interactive game related to a broadcast successfully, “[s]ynchronization of the operation of the (local) application and the (remote) broadcast is essential.” *Id.* at ¶ 7.

Wallace describes a synchronization technique whereby event data (e.g., segments of a game) associated with times they occur in a broadcast are recorded in an index. Ex. 1003 ¶ 49.

The broadcaster receives the content from the content provider including the base source broadcast content (e.g. the game show edited without commercials), and the index of events and times. The broadcaster, or another entity, would transmit the events and times to IRDs [integrated receiver decoders] for storage in advance of live broadcast of the program.

Id. When the broadcast is received, it is received concurrently with a reference time. *Id.* at 50. “Each of the events fire based on this reference time.” *Id.* This is accomplished by comparing the event time and the reference time to find a “match or exceeding a threshold.” *Id.* at 51. “Upon reaching the timing threshold, the event application would be triggered at the

first receiver in response to the determined reference time.” *Id.* To exemplify,

if 2 minutes of commercials is inserted at the beginning of the broadcast, then the reference time would be set back two minutes so that the first event does not fire (e.g. the first question is not displayed on the viewer's television) until after the commercials are over.

Id. at 50.

2. *Fahy (Ex. 1004)*

Fahy relates to placement of auxiliary content in an information stream such as conventional television programming. Ex. 1004 ¶ 4, 18. The placement is done in advance through markers added at the head-end of the program stream. *Id.* at ¶ 25.

The head-end is equipped with a communications receiver for receiving a broadcast over a telecommunications network. *Id.* at ¶ 20. The head-end “conditions the channel signals, mixes the signals, and performs other alterations on those signals and then places the video and/or audio signals onto the cables [] leading to the location of the end-user system,” such as a set-top box. *Id.* at 20–21.

In one embodiment, the head-end may “download auxiliary content [] to [a] hard disk [], and, additionally, replace, delete, or modify content.” *Id.* at 40. For example, “[i]n a deletion operation, the broadcaster deletes all commercials from a particular program for a price.” *Id.* at 41.

F. Ground 1—Obviousness Over the Combination of Wallace and Fahy

Petitioner challenges claims 1, 3, 4, and 6 as unpatentable under 35 U.S.C. § 103(a) over Wallace and Fahy. Pet. 25–69.

1. *Claim 1*

1[preamble] “[a] method of equalizing effects of latency differences in a game of skill or chance or other entertainment”

“a game of skill or chance or other entertainment”

Petitioner contends that Wallace discloses an “interactive multiple-choice game” that “requires skill to answer the trivia game questions correctly.” Pet. 26 (citing Ex. 1003 ¶¶ 46, 47; Jeffay Decl. ¶ 68). Dr. Jeffay testifies that “[Wallace’s] interactive multiple-choice game is a game of skill because it requires skill to answer the trivia game questions correctly.” Jeffay Decl. ¶ 68; Pet. 26–27.

Petitioner further explains that Wallace’s interactive game is provided to a user via a set top box, “so that the users can play the game alongside the TV [television] game show broadcast.” Pet. 27 (citing Ex. 1003 ¶¶ 49, 46). According to Petitioner, “the ’243 patent discloses the same type of game (answering multiple choice questions) played alongside the same type of TV broadcast (a recorded trivia game show) as Wallace.” Pet. 28 (citing Ex. 1001, 10:47–50, 11:1–5, 11:49–54; Jeffay Decl. ¶ 70).

Wallace discloses “an interactive game show.” Ex. 1003 ¶ 46; Pet. 26. Since an interactive game show is a game of skill according to Dr. Jeffay (Jeffay Decl. ¶ 68; Pet. 26), there is sufficient evidence to support Petitioner’s contention that Wallace discloses “a game of skill.”

“latency differences”

Petitioner contends that “[b]oth Wallace and Fahy disclose the same kind of latency as the ’243 patent, namely, latency caused by inserting commercials into broadcast TV programs.” Pet. 29 (citing Jeffay Decl.

¶ 71). See also Pet. 33 (citing Ex. 1001, 10:47–62, 11:14–18, 11:25–39; Jeffay Decl. ¶ 78).

Petitioner quotes Wallace as stating: “[I]f a set of commercials is inserted before the first question is asked . . . the first question may not be asked until 00:6:05 into the broadcast content. ***Commercials . . . may delay, interrupt or create discontinuities with the original taped source material.***”

Pet. 29 (quoting Ex. 1003 ¶ 48; citing Jeffay Decl. ¶ 72). Based on said disclosure, Dr. Jeffay testifies that “Wallace addresses latency in its interactive game of skill or chance or other entertainment caused by inserting commercials into the recorded game shows to form the TV broadcast.” Jeffay Decl. ¶ 72; Pet. 29.

Wallace discloses that commercials “may delay, interrupt or create discontinuities within the original taped source material.” Ex. 1003 ¶ 48; Pet. 29. Since Dr. Jeffay (Jeffay Decl. ¶ 72; Pet. 29) indicates that this addresses “latency,” there is sufficient evidence on this record to support Petitioner’s contention that Wallace discloses “latency differences.”

Petitioner further contends that the combination of Wallace and Fahy would have led one of ordinary skill in the art to a game of skill with “latency differences” as claimed because the “interactive games of the combination of Wallace and Fahy would [] have these latency differences [due to] the timing of the segments of the TV program at which the respective parts of the game are to be played differs depending on the different commercials in the respective broadcast streams.” Pet. 33 (citing Jeffay Decl. ¶ 77).

Petitioner relies on Fahy for its disclosure of “commercials [that] can be inserted into the stream for a TV program, and . . . that the inserted

commercials can be ***different*** for different broadcasts.” Pet. 29 (citing Ex. 1004 ¶¶ 45–51). Petitioner explains that “Fahy discloses that commercials can be different among broadcasts of a program in three ways” (*id.* at 30 (citing Jeffay Decl. ¶ 73)): “different commercials can have different lengths, *e.g.*, based on the user’s subscription” (*id.* (citing Ex. 1004 ¶ 47; Jeffay Decl. ¶ 74)); “commercials can be placed at different times during the program” (*id.* at 31 (citing Ex. 1004, Fig. 6, ¶¶ 47, 51, Table 2; Jeffay Decl. ¶ 75)), and, “different broadcasts have different frequencies of commercials” (*id.* at 32 (Ex. 1004 Fig. 6, ¶ 47; Jeffay Decl. ¶ 76)).

Since Wallace, in light of Dr. Jeffay’s testimony, provides sufficient support on this record for Petitioner’s contention that Wallace addresses latency in a game of skill due to commercials, the combination of Wallace and Fahy would also appear to provide sufficient support. That being said, Petitioner provides sufficient evidence on this record to support its contention that the combination of Wallace and Fahy would have led one of ordinary skill in the art to address latency when the broadcast includes different commercials of “different length, timing, and/or frequency that alter when different segments of [a] TV program are aired.” Pet. 32 (citing Jeffay Decl. ¶ 77).

“method of equalizing effects”

Petitioner contends that “Wallace addresses commercial-based latency by synchronizing the interactive game to the TV game show broadcast.” Pet. 34 (citing Ex. 1003 ¶¶ 7, 26, 32, 46–51; Jeffay Decl. ¶ 79). Dr. Jeffay

explains that Wallace’s synchronizing³ “ensures that events in the interactive game are triggered at the right time regardless of commercials, thereby equalizing the effect of latency due to commercials.” Jeffay Decl. ¶ 79; Pet. 34.

Wallace discloses, *inter alia*, that “synchronization of the operation of the (local) application and the (remote) broadcast is essential to the successful playing of the game.” Ex. 1003 ¶ 7; Pet. 34. Since Dr. Jeffay testifies that doing so equalizes the effect of latency due to commercials, there is sufficient evidence on this record to support Petitioner’s contention that Wallace discloses a “method of equalizing effects.”

Petitioner further contends that

it would have been obvious to a [person of ordinary skill in the art] implementing the interactive game of Wallace to (1) create multiple broadcasts of the same program with different commercials as taught by Fahy, and (2) use Wallace’s technique of synchronizing an interactive game to each of the broadcasts just as Wallace does for its broadcast, *i.e.*, by adjusting the reference times in each broadcast for different commercials in the broadcast.

Pet. 35–36. (Petitioner appears to rely on its earlier discussion of Fahy disclosing inserting commercials of different length, timing, and/or into broadcasts. *See* Pet. 29–32, discussed *supra*; Pet. 35 fn. 6.) According to Dr. Jeffay, “[d]oing so equalizes latency differences between different users because for each of the broadcasts, Wallace’s game would be synchronized with the underlying broadcast in a way that accounts for the different commercials in the associated broadcast.” Jeffay Decl. 81; Pet. 36.

³ Petitioner directs us to, *inter alia*, Petition at pages 15–18 for details about Wallace’s synchronization technique. Pet. 35.

Since Wallace, in light of Dr. Jeffay's testimony, provides sufficient support for Petitioner's contention that Wallace discloses a "method of equalizing effects," the combination of Wallace and Fahy would also appear to provide sufficient support. That being said, Petitioner provides sufficient evidence on this record to support its contention that the combination of Wallace and Fahy would have led one of ordinary skill in the art to provide a "method of equalizing effects" due to different commercials in a broadcast.

In its entirety: "[a] method of equalizing effects of latency differences in a game of skill or chance or other entertainment"

For reasons discussed above relative to each of "a game of skill or chance or other entertainment," "latency differences," and "[a] method of equalizing effects," on this record, Petitioner provides sufficient evidence in support of its contention that the combination of Wallace and Fahy discloses and teaches the entirety of what the preamble calls for; that is, "[a] method of equalizing effects of latency differences in a game of skill or chance or other entertainment".

Petitioner further contends that Wallace and Fahy are analogous prior art (Pet. 36–37) and that one of the ordinary skill in the art "would have been motivated to combine Wallace and Fahy" thereby reaching "[a] method of equalizing effects of latency differences in a game of skill or chance or other entertainment" as the preamble calls for, with a reasonable expectation of success. Pet. 37–42.

We have reviewed said further contentions and the evidence presented in support thereof. Petitioner provides sufficient evidence on this record that

the combination of Wallace and Fahy discloses and teaches the subject matter of the preamble as claimed.

[1.a] “receiving an online broadcast of content;”

Petitioner contends, *inter alia*, that “Wallace explains that the IRDs receive a TV broadcast of trivia game show content over a digital broadcast stream using internet protocol (IP).” Pet. 42 (citing Jeffay Decl. ¶ 92). Petitioner further contends that Wallace “discloses that the TV broadcasts of trivia game show content sent over the digital broadcast stream are ‘online broadcasts,’ at least because they are sent using IP (internet protocol).” *Id.* at 44 (citing Ex. 1003 ¶ 21). Dr. Jeffay testifies that “[a person of ordinary skill in the art] would have understood ‘IP,’ a commonly used term, to refer to the Internet protocol suite TCP/IP – the suite of protocols used to transmit data over the Internet.” Jeffay Decl. ¶ 94 (citing Ex. 10101, xi–ss (Preface”), 1–30); Pet. 44.

Wallace discloses, *inter alia*, supplying a “broadcast television signal, which may be conveyed by . . . IP . . .” to a multiplicity of IRDs. Ex. 1003 ¶ 21; Pet. 42–43. Given Dr. Jeffay’s testimony that “IP” is a commonly used term to refer to the suite of protocols used to transmit data over the Internet, there is sufficient evidence on this record to support Petitioner’s contention that Wallace discloses “receiving an online broadcast of content.”

Petitioner further asserts that

Because Wallace in combination with Fahy teaches that IRDs receive the same type of content (TV trivia game shows) as the ’243 patent, and that the content is broadcast online from a server using the Internet Protocol, the combination of Wallace and Fahy teaches receiving an online broadcast of content. EX1002-Jeffay, ¶96.

Pet. 45.

Since Wallace, in light of Dr. Jeffay's testimony, provides sufficient support for Petitioner's contention that Wallace discloses a "receiving an online broadcast of content," the combination of Wallace and Fahy would also appear to provide sufficient support.

[1.b] "synchronizing the game of skill or chance or other entertainment with the online broadcast of content;"

Petitioner contends that "[a]s described above with respect to the preamble of claim 1, Wallace discloses an interactive game of answering multiple-choice questions played on a user's IRD alongside a broadcast of a recorded TV game show." Pet. 46 (citing Ex. 1003 ¶¶ 45–52; Jeffay Decl. ¶ 98). Petitioner details the technique Wallace discloses for "synchronizing" the interactive game and broadcast. Pet. 45–57. According to Petitioner, events of the interactive game are compared to an index of the associated times of the events so that, "[w]hen the reference time in the broadcast stream reaches the event time, the interactive game event is triggered to be displayed with the TV game show broadcast." Pet. 53 (citing Ex. 1003, Abstract, ¶¶ 50–52; Jeffay Decl. ¶ 104). Dr. Jeffay testifies that the "interactive game events are thus synchronized with the specific time in the game show broadcast when they should occur based on the match between the reference time of the TV broadcast and the event time in the index of events." Jeffay Decl. ¶ 104; Pet. 53.

Wallace discloses:

The event time [of the interactive game] and reference time [of the game show broadcast] would be compared or otherwise associated to find a match or exceeding a threshold. Upon reaching the timing threshold, the event application would be triggered at the first receiver in response to the determined reference time.

Ex. 1003 ¶ 51; Pet. 53. Given that “interactive game events are thus synchronized,” according to Dr. Jeffay, there is sufficient evidence on this record to support Petitioner’s contention that Wallace discloses “synchronizing the game of skill or chance or other entertainment with the online broadcast of content.” Jeffay Decl. ¶ 104; Pet. 53.

Petitioner further asserts that

the combination of Wallace and Fahy discloses synchronizing interactive game events with the appropriate time in the online TV broadcast of a game show by comparing a reference time in the TV broadcast to event times in an index of events and triggering the interactive game event when there is a match. . . . [T]he combination of Wallace and Fahy renders obvious synchronizing the game of skill or chance or other entertainment with the online broadcast of content.

Pet. 57–58 (citing Jeffay Decl. ¶ 109).

Since Wallace, in light of Dr. Jeffay’s testimony, provides sufficient support for Petitioner’s contention that Wallace discloses a “synchronizing the game of skill or chance or other entertainment with the online broadcast of content,” the combination of Wallace and Fahy would also appear to provide sufficient support.

[1.c] “presenting the online broadcast of content and synchronized game data.”

Petitioner contends, *inter alia*, that “Wallace teaches and suggests that the trivia game show and the synchronized interactive game are **displayed** to the user.” Pet. 58 (citing, *inter alia*, Jeffay Decl. ¶ 110). In support, Petitioner quotes Wallace; for example, “[A] television viewer sitting at home...**select[s] from a plurality of displayed answers using a remote control in synchronicity with the time at which a question is asked of the actual studio players within the broadcast content.**” *Id.* at 58 (quoting Ex.

1003 ¶ 46). According to Dr. Jeffay, “[t]he data for the interactive game events that are displayed to the user are ‘synchronized game data’ because they are synchronized to the TV broadcast based on a match when comparing the event data and the index of event times stored in the IRD and the reference time.” Jeffay Decl. ¶ 111; Pet. 59.

This evidence sufficiently supports Petitioner’s contention that Wallace discloses “presenting the online broadcast of content and synchronized game data.”

Petitioner further asserts that “the combination of Wallace and Fahy teaches presenting the online broadcast of content and synchronized game data to the IRDs.” Pet. 62 (citing Jeffay Decl. ¶ 115).

Since Wallace, in light of Dr. Jeffay’s testimony, provides sufficient support for Petitioner’s contention that Wallace discloses a “presenting the online broadcast of content and synchronized game data,” the combination of Wallace and Fahy would also appear to provide sufficient support.

2. Conclusion as to claim 1

After considering Petitioner’s positions, including the supporting Declaration of Dr. Jeffay (Ex. 1002), we are persuaded that, based on the current record, Petitioner has demonstrated a reasonable likelihood of

prevailing on its assertions that the subject matter of claim 1 of the '243 patent would have been obvious over the combination of Wallace and Fahy.⁴

3. Claims 3, 4 and 6

At this stage of the proceeding, it is unnecessary for us to provide an assessment of claims 3, 4, and 6 because Petitioner has demonstrated a reasonable likelihood of success in demonstrating that at least one claim (i.e., claim 1) of the '243 patent is unpatentable. *See* 37 C.F.R. § 42.108(a) (2021).

G. Ground II—Obviousness Over Wallace Alone

Petitioner challenges claims 1, 3, 4, and 6 as unpatentable under 35 U.S.C. § 103(a) over Wallace alone. Pet. 69.⁵

At this stage of the proceeding, it is unnecessary for us to provide an assessment of claims 1, 3, 4 and 6 under this ground because Petitioner has demonstrated a reasonable likelihood of success in demonstrating that at least one claim (i.e., claim 1) of the '243 patent is unpatentable under Ground I. *See* 37 C.F.R. § 42.108(a) (2021).

⁴ The arguments and evidence presented by Petitioner relative to just Wallace appear to be sufficient to demonstrate a reasonable likelihood that it would prevail in showing the unpatentability of claim 1 over Wallace alone for reasons discussed herein. During trial, we invite the parties to address why one of ordinary skill in the art would not have been led to the subject matter of claim 1 based on Wallace alone.

⁵ Ground II is presented as an alternative to Ground I, but only “[i]f the Patent Owner argues that the preamble [of claim 1] is not a limitation.” Pet. 69. Our discussion of Ground I (see section II.F.1.) addressed Petitioner’s arguments relative the the preamble of claim 1. To the extent the preamble may ultimately be treated as limiting, our discussion relative the rest of the claim would still apply.

IV. CONCLUSION

For the foregoing reasons, we determine that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing the unpatentability of at least one of 1, 3, 4, and 6 of the '243 patent. Accordingly, we grant the Petition and institute an *inter partes* review as to all the challenged claims of the '243 patent.

Because we have determined that at least one ground set forth in the Petition satisfies the threshold for institution, trial is instituted as to all grounds set forth in the Petition. See 37 C.F.R. § 42.108(a) (“When instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.”)

V. ORDER

It is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314(a), *inter partes* review of claims 1, 3, 4, and 6 of the '243 patent is instituted with respect to all grounds set forth in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), *inter partes* review of claims 1, 3, 4, and 6 of the '243 patent shall commence on the entry date of this Decision, and notice is hereby given of the institution of *inter partes* review.

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For PETITIONER:

Richard Goldenberg
WILMER CUTLER PICKERING HALE & DORR LLP
richard.goldenberg@wilmerhale.com

For PATENT OWNER:

Bradley Liddle
Michael Pomeroy
Daniel L. Schmid
CARTER ARNETT PLLC
bliddle@carterarnett.com
mpomeroy@carterarnett.com
dschmid@carterarnett.com