

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AKAMAI TECHNOLOGIES, INC.,
Petitioner

v.

EQUIL IP HOLDINGS LLC,
Patent Owner

Case IPR2023-00329
U.S. Patent No. 6,792,575

**PATENT OWNER PRELIMINARY RESPONSE
UNDER 37 C.F.R. § 42.107(a)**

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PATENT OWNER'S EXHIBIT LIST

Exhibit No.	Description
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2010	First Amended Complaint for Patent Infringement, 22-677-RGA, <i>Equil IP Holdings LLC v. Akamai Technologies, Inc.</i>

I. INTRODUCTION

The Board should deny institution of *inter partes* review of claims 1 and 9 of U.S. Patent No. 6,792,575 (“the ’575 patent”) because Petitioner fails to demonstrate a reasonable likelihood of prevailing on any claim or any ground.

Each of the Petition’s four Grounds relies on the combination of Lafer and Tso, but Petitioner fails to demonstrate that a skilled artisan would have been motivated to combine these references. Namely, Lafer criticizes the very practice (caching media content) that Petitioner alleges a skilled artisan would have borrowed from Tso and used to modify Lafer. Petitioner overlooks this fundamental difference between the references, which would have discouraged, rather than motivated, their combination.

Petitioner also fails to demonstrate that the combination of Lafer and Tso teaches independent claim Elements [1.f] and [9.f], further demonstrating that all four Grounds fail to satisfy the standard for institution.

II. THE ’575 PATENT

A. Background

The technology at issue in the ’575 patent traces its roots to the early 1990s when Sean Barger founded Equilibrium. Equil IP is the successor-in-interest to Automated Media Processing Solutions, Inc. d/b/a Equilibrium, an industry pioneer and leader in developing patented automated media processing solutions to help its customers manage, modify, and efficiently deploy media-rich content such

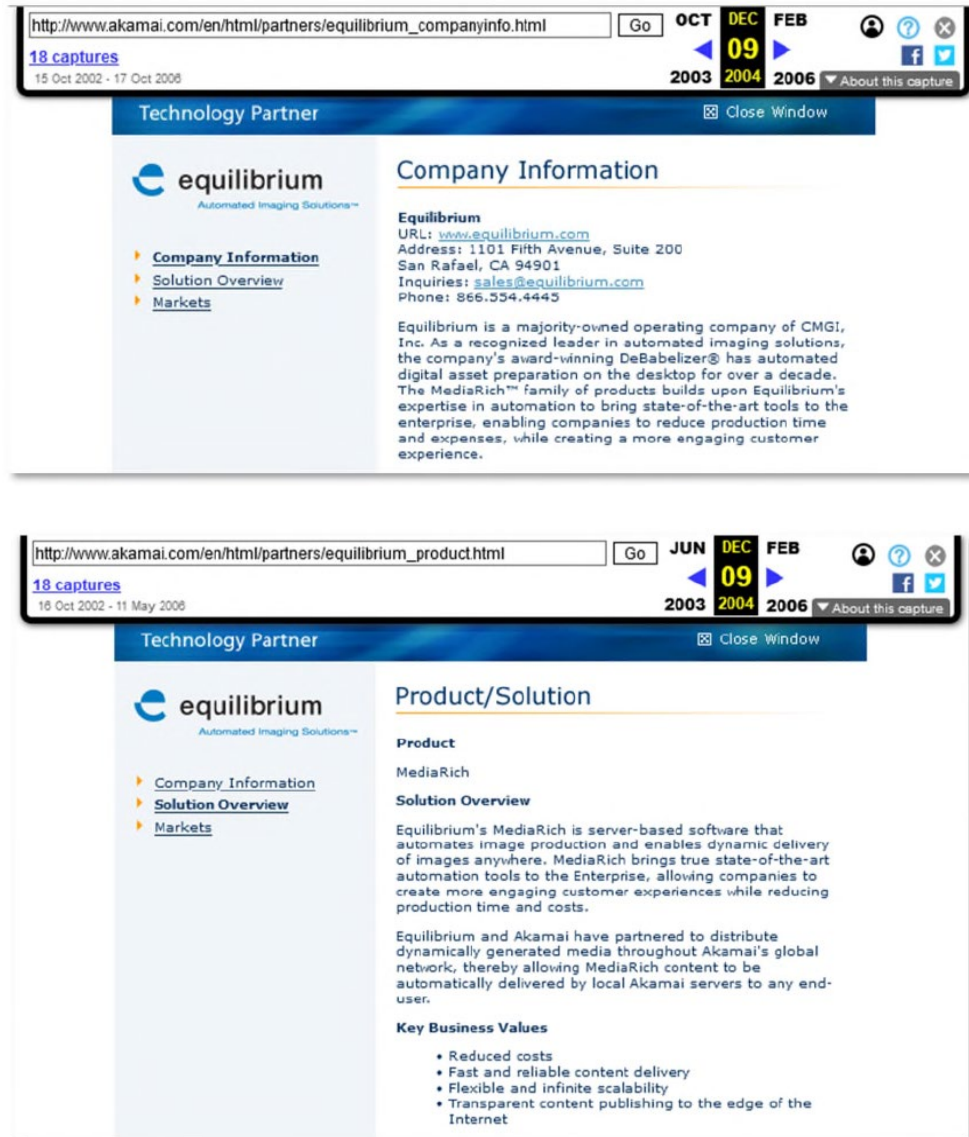
as images, video, and sound optimized for delivery over the Internet and customized for use on Internet-connected, end-user devices such as desktop and laptop computers and mobile phones.

With the growth of the web in the late 1990s, Equilibrium set out to develop a new kind of Internet-based service that web developers could use to simplify the process of optimizing and maintaining rich media content automatically on websites. Equilibrium envisioned a system that would enable next-generation e-commerce and other applications. The '575 patent is a result of that vision.

The technology disclosed and claimed in the '575 patent was released by Equilibrium in 2000 as the “MediaRich Server.” Since that time, Equilibrium has continuously offered MediaRich Server services in the business-to-business market. MediaRich solves technical problems associated with, for example, delivering rich media content over the Internet that arise from the fact that each type of user device has different parameters that can be used to optimize media for viewing.

Equilibrium has partnered with Internet companies to enhance their services with Equilibrium technology—among them Akamai. In fact, Akamai stated on its website that Equilibrium was a “*recognized leader* in automated imaging solutions” and that “Equilibrium’s MediaRich is server-based software that automates image production and enables dynamic delivery of images anywhere.

MediaRich brings true state-of-the-art automation tools to the Enterprise, allowing companies to create more engaging customer experiences while reducing production time and costs.” EX2010, First Amended Complaint, 11-12 (emphasis added) (citing December 9, 2004 Internet Archive captures, shown below).



Over the years, Akamai resisted Equilibrium's offers to establish a more extensive partnership or more complete integration of Equilibrium's technology

into Akamai's edge network. Instead, Akamai released an image management service that it called "Image Manager" (today called "Image and Video Manager" or "IVM"), which is at issue in the related district court action. *See generally* EX2010.

B. Overview

The '575 patent is directed to a system and method that "us[es] as input original media, an HTML document or browser language having proprietary tags, . . . to generate an optimized Web media and HTML to refer to the generate[d] media, and to automatically deploy the HTML and media to the Web server." EX1001, Abstract. The system "automat[es] the production of a media through proprietary HTML tags embedded in Web documents." *Id.*, 5:21-24. Proprietary tags describe media processing script operations. *Id.*, Table A, Table B. The system "obtain[s] the location of the original file" and "interprets the proprietary tag and generates the image." *Id.*, 8:8-11. The original media is placed "in the media repository 660" and "[t]he generated Web media 220 is placed in a media cache subsystem 620." *Id.*, 8:17-18, 8:28-29. One advantage of the system is that it generates media "on demand from original assets" and "only the original assets need to be updated." *Id.*, 4:57-60. Additionally, "[a]ny change to the original image automatically propagates throughout the system." *Id.*, 14:12-13.

Figures 6 and 7 of the '575 patent provide an overview of the system and

method of generating Web media. “The media repository 660 contains original images 665 used in the system 100.” *Id.*, 8:12-13. Web server 110 stores “HTML document[s] with proprietary tags.” *Id.*, 8:18-20. “HTML parsing subsystem 610 parses through an HTML document and searches for proprietary tags,” and passes any proprietary tag “to a media caching system 620 for further processing.” *Id.*, 7:37-40. The media caching system 620 looks up a “media tag entry” associated with the proprietary tag from media cache database 640 “to determine if the image has been created.” *Id.*, 7:21-67, Claim 9. Each media tag entry is a database record that includes “the script used to create the image, the names of the images used to create the image, the dates of those files, and the HTML that represents the created image.” *Id.*, 7:59-62. If the media caching subsystem 620 determines “an image has been created for the requested proprietary tag” and the original image “that built that image [has] not been modified, the media caching subsystem 620 returns an HTML tag that refers to a previously-generated image.” *Id.*, 7:47-52. Otherwise, “media creation subsystem 630 uses the media tag to generate a Web media” and “[t]he generated Web media is placed in a media cache subsystem 620.” *Id.*, 8:26-29.

Original images are stored in the media repository 660 and derivative images are created using media tags and are stored in media caching subsystem 620, which is separate and different from media repository 660 in Figure 6 below. *Id.*, 8:12-13,

8:26-29.

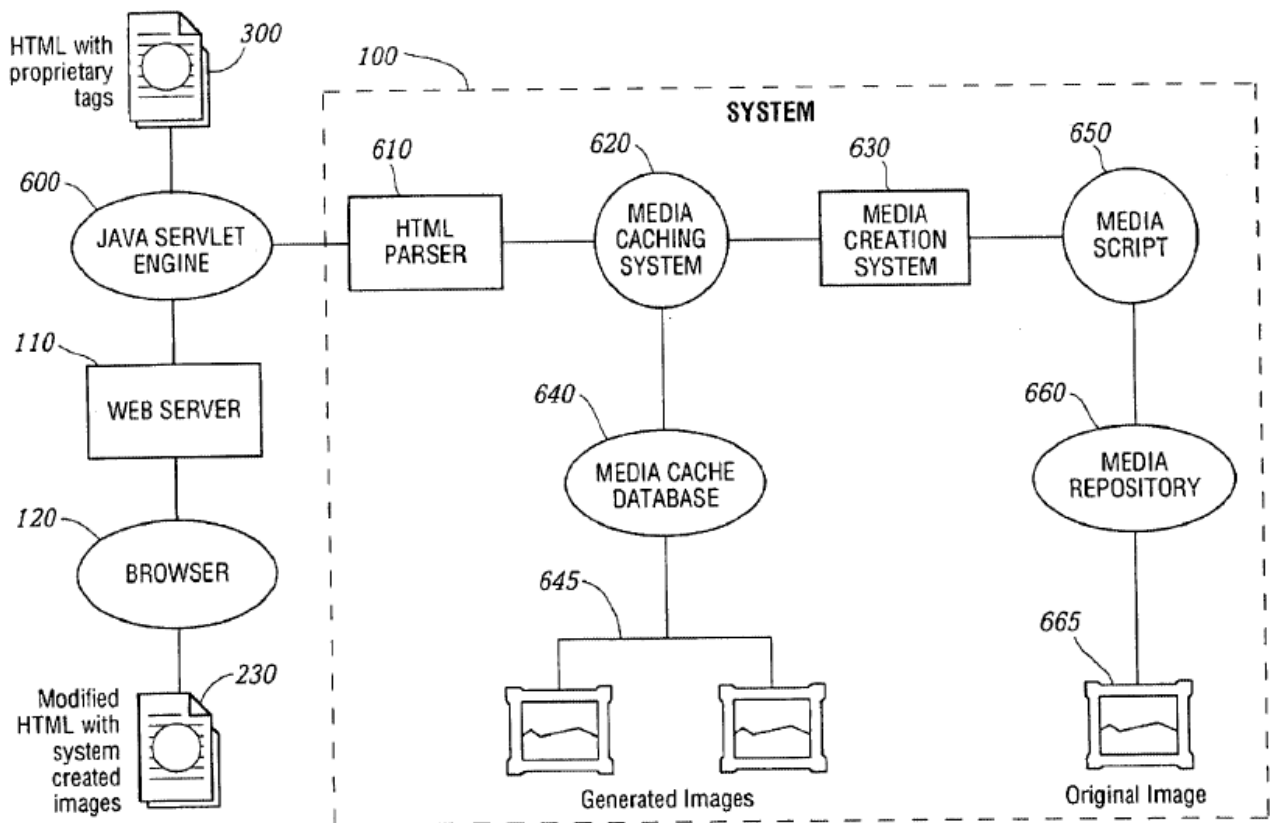


FIG. 6

EX1001, FIG. 6.

C. Person of Ordinary Skill in the Art (POSITA)

Patent Owner applies Akamai's definition of a POSITA for purposes of this Preliminary Response.

D. Claim Construction

Petitioner alleges but fails to meet its burden to establish that Elements [1.f]-[1.i] and [9.d]-[9.f.4] are "conditional limitations" entitled to no weight. Petitioner bears the burden to satisfy 35 U.S.C. § 312(a)(3) such that "the petition identifies, in writing and *with particularity* . . . the grounds on which the challenge to each

claim is based, and the evidence that supports the grounds for the challenge to each claim.” As part of that burden, Petitioner must identify “[h]ow the challenged claim is to be construed.” 37 C.F.R. § 42.104. Furthermore, “[t]o satisfy its burden of proving obviousness, a petitioner cannot employ mere conclusory statements.”

In re Magnum Oil Tools Int’l, Ltd., 829 F.3d 1364, 1380 (Fed. Cir. 2016). Here, Petitioner’s conclusory assertions that Elements [1.f]-[1.i] and [9.d]-[9.f.4] are “conditional” limitations—*de facto* claim constructions—are insufficient to support an obviousness determination and fail to satisfy the institution threshold. Pet., 14-15 (alleging Elements “[1.f]-[1.i] and [9.d]-[9.f.4] recite conditional limitations that need not be performed”), 15 (alleging Elements [9.d]-[9.d.2], [9.e]-[9.e.5], and [9.f]-[9.f.4] “are ‘mutually exclusive conditional steps,’ and meeting any one of these sets of steps is sufficient to meet the claim”); *see also id.*, 42, 76. Petitioner’s assertions are deficient at least because (1) they cite no controlling authority, and (2) their declarant’s testimony does not provide any further explanation or support, relying only on what he was instructed to assume.

First, Petitioner fails to cite any controlling authority for its assertion that Elements [1.f]-[1.i] and [9.d]-[9.f.4] are conditional limitations. The *Microsoft* case that Petitioner cites is a non-precedential, non-informative Board decision. Pet., 14-15 (citing *Microsoft Corp. v. Uniloc 2017 LLC*, IPR2019-01187, Paper 20 (P.T.A.B. January 19, 2021)). And Petitioner does not even analyze the claim

elements at issue in that case with the ones here. Petitioner additionally provides, without any explanation, an irrelevant cite to M.P.E.P. § 608.01(m). Pet., 15. That section generically relates to the “Form of Claims” in an application and does not provide any support for Petitioner’s conditional limitation argument. Accordingly, Petitioner fails to provide any controlling authority to support its assertion that Elements [1.f]-[1.i] and [9.d]-[9.f.4] are conditional limitations.

Second, Petitioner’s declarant, Dr. Madisetti, does not provide any testimony on this point that saves Petitioner’s argument. Remarkably, Dr. Madisetti does not even provide his own opinion on whether Elements [1.f]-[1.i] and [9.d]-[9.f.4] are, in fact, conditional limitations. Instead, he indicates that he has only been “instructed to assume” that they are conditional limitations. EX1003, ¶51 (“For purposes of this declaration, *I have been instructed to assume* that elements [1.f]-[1.i] are conditional limitations.”), ¶52 (“For purposes of this declaration, *I have also been instructed to assume* that elements [9.d]-[9.f.4] are mutually exclusive conditional limitations. . . . *I have been instructed to assume* that these are mutually exclusive conditional steps, and meeting the claim requires only one of these sets of steps to be performed.”). Thus, Dr. Madisetti’s testimony, based only on what he was instructed to assume, provides no support for Petitioner’s argument and should not be afforded weight. *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15-16 (P.T.A.B. August 24, 2022) (precedential) (rejecting expert

testimony when “the cited declaration testimony is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight”).

In sum, Petitioner provides conclusory assertions that Elements [1.f]-[1.i] and [9.d]-[9.f.4] are “conditional” limitations. Petitioner does not cite any controlling authority for its position and does not even analyze the routine Board decision it cites in view of the claims here. Moreover, Petitioner’s declarant’s testimony provides no support to Petitioner’s assertions because it is based on what he was instructed to assume. Therefore, Petitioner fails to satisfy its burden under 35 U.S.C. § 312(a)(3) and 37 C.F.R. § 42.104 to establish that Elements [1.f]-[1.i] and [9.d]-[9.f.4] are conditional limitations. The Board should thus deny institution.

III. PETITIONER FAILS TO DEMONSTRATE A REASONABLE LIKELIHOOD THE CLAIMS WOULD HAVE BEEN OBVIOUS.

The Board should deny institution on the merits for at least two reasons: (1) All four Grounds rely on the combination of Lafer and Tso but Petitioner fails to demonstrate that a POSITA would have been motivated to combine Lafer and Tso because Petitioner overlooks a fundamental difference between these references that would have discouraged their combination and (2) Petitioner fails to demonstrate that the combination of Lafer and Tso teaches Elements [1.f] and [9.f].

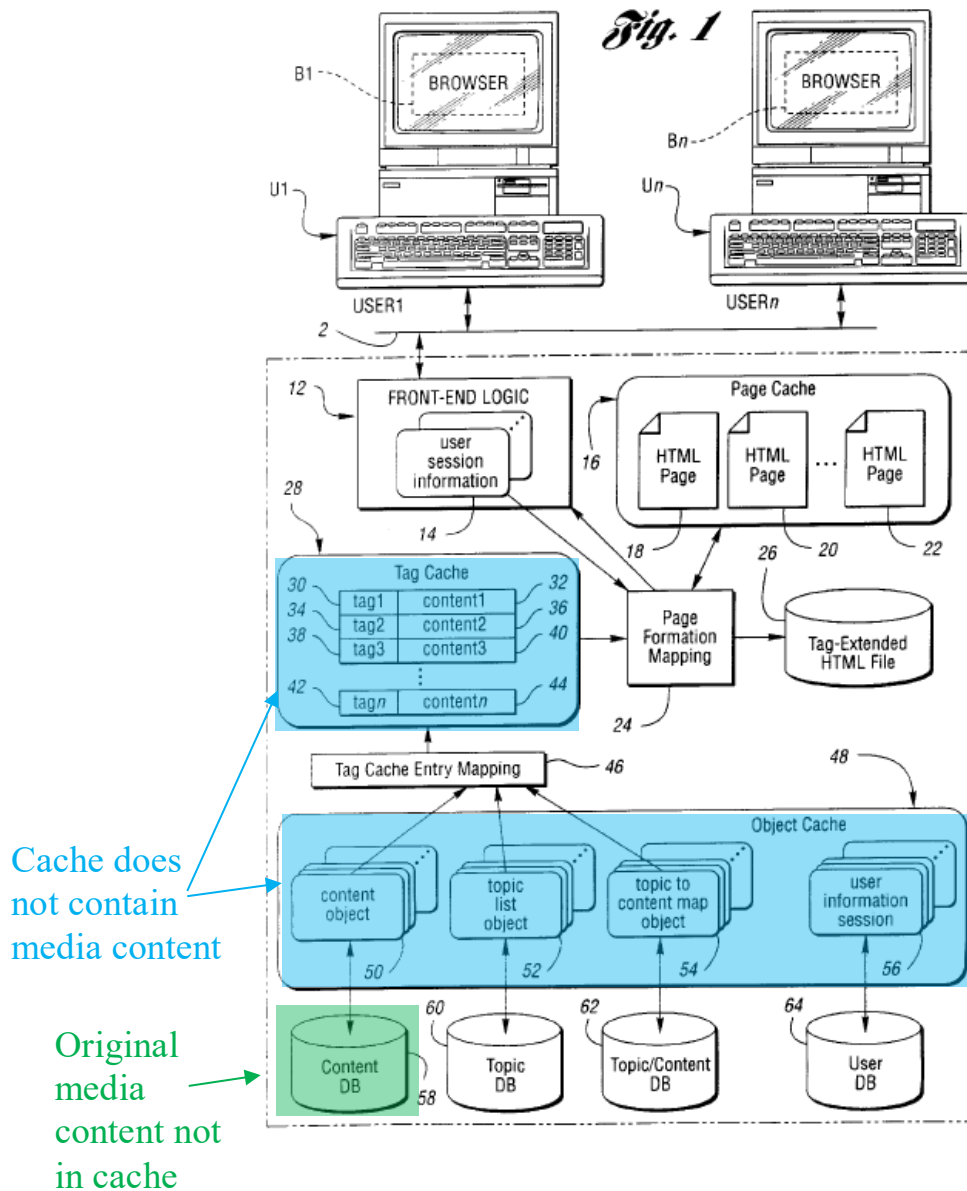
A. Overview of Lafer

Lafer is directed to a method and system “for selectively constructing and distributing personalized HTML pages.” EX1004, 4:55-57. Specifically, Lafer discloses “storing selected fragments of HTML text in a tag cache, and rapidly rendering the personalized HTML pages via special tags embedded in extended HTML files.” EX1004, 4:57-61.

Accordingly, Lafer discloses a tag cache and an object cache. The tag cache contains “a plurality of tag-content pairs.” EX1004, 3:23-25. The tag-content pairs contain HTML fragments that reference “content data from a database.” EX1004, 4:24-31. Particularly, “[a] tag cache entry mapping” maps “HTML fragments into the tag[s]” based on the content of the tags. EX1004, 3:31-35. “HTML fragments mapped into the tag cache are fetched from an object cache.” EX1004, 3:36-38. “The object cache holds objects 50, topic list objects 52, and topic-to-content map objects 54.” EX1004, 3:39-41. However, “[t]he data for [those] objects are maintained in respective databases 58, 60, 62 and 64.” EX1004, 3:41-43.

Lafer seeks to solve the problem of efficiently retrieving a personalized media content from a database of a webserver for a particular user. *See* EX1004, 1:15-18, 1:44-47. According to Lafer, caching the media content is not effective because each user is trying to obtain “personalized or customized Web pages.” *See* EX1004, 1:27-30. To solve this issue, Lafer teaches a method of accessing media

content through special tags stored in a tag cache. EX1004, 3:23-30. Each tag is associated with an HTML fragment, which is stored in an object cache. EX1004, 2:21-25, 3:31-35. Finally, media content referenced in an HTML fragment is stored in a content database (e.g., content DB 58). EX1004, 3:41-43. In essence, Lafer teaches caching indexes of content, e.g., tag-content pairs in the tag cache and HTML fragments in the object cache, because accessing content through optimized indexes is more efficient, while the content itself is stored in databases (not cache).



EX1004, FIG. 1 (annotated).

B. Overview of Tso

Tso discloses “[a] system for dynamically transcoding data transmitted between computers . . . implemented in an apparatus for use in transmitting data between a network server and a network client over a communications link.”

EX1005, Abstract. “The apparatus includes a parser[,] coupled to a transcode

service provider,” that “is configured to selectively invoke the transcode service provider in response to a predetermined selection criterion.” *Id.*

Figure 3 of Tso, reproduced below, illustrates the apparatus as “transcoding server 34,” which is coupled to “network client 12” via communications link 14 and to the “Internet 18” via communications link 16. EX1005, 3:31-44, FIG. 3. As shown below, the “transcoding server 34 includes an HTTP (HyperText Transfer Protocol) remote proxy 36, capable of accessing Internet 18 over server/network communications link 16,” EX1005, 3:31-34, and a “transcoder 20 . . . coupled to HTTP remote proxy 36,” EX1004, 3:45-46. Tso discloses that “using transcoder 20, HTTP remote proxy 36 is capable of changing content received from Internet 18 prior to returning it to a requesting network client 12.” EX1005, 3:40-44.

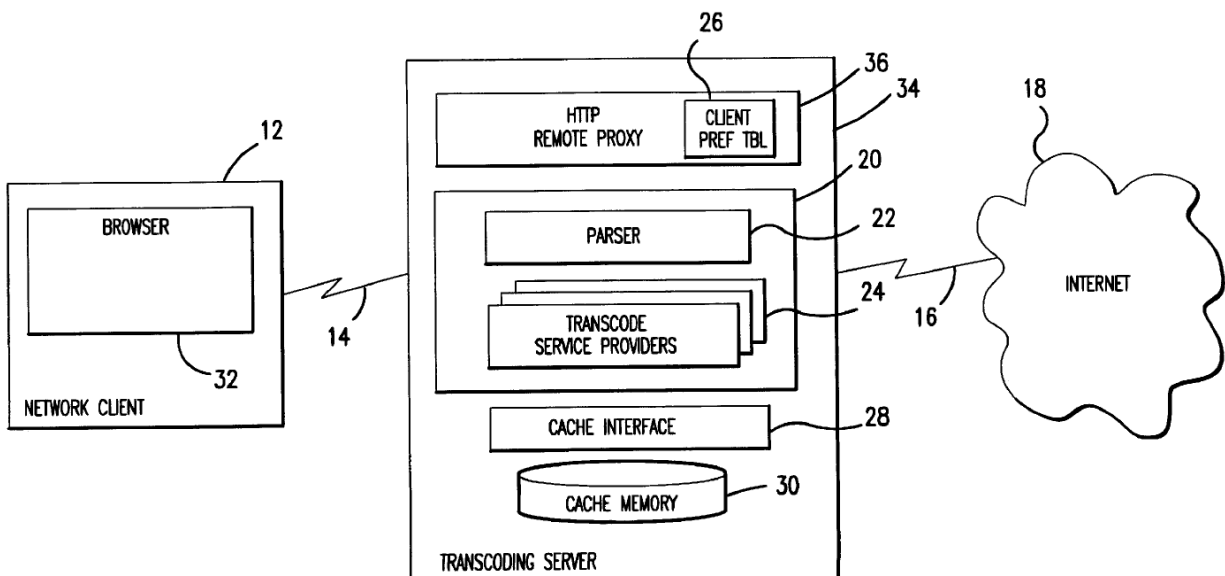


FIG.3

EX1005, FIG. 3.

For example, Tso discloses that “transcode service providers 24 [of transcoding server 34] may provide the capability to compress and/or scale different types of data content, such as image, video, or HTML.” EX1005, 3:51-54. Tso explains that “[p]arser 22 selects an appropriate transcode service provider 24 based, for example, on the content type of the data stream.” EX1005, 6:37-39. The transcode service provider(s) 24 “transcodes the data stream appropriately, and HTTP remote proxy 26 transmits the transcoded data stream to network client 12.” EX1005, 10:47-49. Tso also discloses that “transcoding server 34 may also include a server-side cache memory 30” that “may be used to store both original and transcoded versions of content for later transmission to network client 12 without the need to re-retrieve the content from Internet 18 or to re-transcode the content.” EX1005, 3:66-4:5.

C. Petitioner fails to demonstrate a motivation to combine Lafer and Tso because it overlooks a fundamental difference between these references that would have discouraged their combination.

“An obviousness determination requires finding that a person of ordinary skill in the art would have been motivated to combine or modify the teachings in the prior art and would have had a reasonable expectation of success in doing so.” *Regents of the University of California v. Board Institute, Inc.*, 903 F.3d 1286, 1291 (Fed. Cir. 2018). “Fundamental differences between the references are central to this motivation to combine inquiry.” *Adidas AG v. Nike, Inc.*, 963 F.3d 1355,

1359 (Fed. Cir. 2020); *see id.* at 1358-59 (affirming the Board’s decision that certain claims were nonobvious because the proposed combination would have altered the principle of operation of the primary reference or would have rendered the primary reference inoperable for its intended use).

The Board should deny institution because each of Grounds 1-4 relies on Petitioner’s proposed combination of Lafer and Tso, Pet., 6-7, but Petitioner fails to demonstrate a reasonable likelihood that a POSITA would have been motivated to make this combination. Specifically, Petitioner alleges that “Tso discloses generating and storing original and transcoded versions of media objects in a server-side cache,” and that “[a] POSITA would have been motivated to modify Lafer with [this and other] teachings from Tso by implementing a system in which (1) original media objects are retrieved and transcoded, and the original and *transcoded versions are stored in the ‘Content DB’*; and (2) ‘substitution tokens’ in Lafer’s special tags carry selection criteria used to transcode content, including bandwidth.” Pet., 21-22 (emphasis added). That is, Petitioner’s proposed combination of Lafer and Tso would effectively cache the various transcoded versions of the media content in a database.

But Petitioner overlooks a fundamental difference between Lafer and Tso that would have discouraged a POSITA from making this proposed combination: Lafer criticizes the practices of “caching of the information stored in a database

accessed by a server based on classification or categorization” as inefficient, EX1004, 1:27-35, and thus teaches caching tag-content pairs and HTML fragments (or HTML code) that reference content or media in a separate database, EX1004, 3:23-43; *see also* Pet., 17-18. Petitioner’s proposed combination is contrary to Lafer’s express teachings and would fundamentally change Lafer’s principle of operation.

Specifically, Lafer seeks to “provide an improved method and system for Web page construction and distribution which allows a user the ability to personalize individual pages.” EX1004, 1:44-47. Lafer proposes optimizing “distribution efficiency” by “reducing the amount of time required by a server to construct or generate a particular Web page requested by a user.” EX1004, 1:15-18. Lafer recognizes that caching had been previously utilized “in an attempt to decrease the server response time,” but Lafer explicitly states that the known “*caching arrangements do not improve efficiency* of distributing personalized or customized Web pages.” EX1004, 1:27-30. Such known, inefficient techniques included “caching of the information stored in a database accessed by a server based on classification or categorization.” EX1004, 1:30-35.

Instead of caching the data or media itself, Lafer teaches caching tag-content pairs and “HTML fragments” that reference media content in a content database. EX1004, 3:23-43. Indeed, Petitioner acknowledges that Lafer’s ““HTML

fragments’ are HTML code, such as HTML tags,” and that Lafer’s “system stores ‘HTML fragments’ as content objects in the object cache *and associates these fragments with content data (which a POSITA would have understood includes media content) stored in, e.g., a content database.*” Pet., 17-18 (emphasis added).

Bottom line, Lafer criticizes caching media content as inefficient and instead teaches caching tag-content pairs and HTML fragments (code) that are mapped to media content stored elsewhere. By contrast, as Petitioner acknowledges, “Tso discloses generating and storing original and transcoded versions of media objects in a server-side cache,” Pet., 21, and Petitioner proposes combining this teaching of Tso with Lafer to cache transcoded versions of media content. Pet., 21-22. A POSITA would have recognized this fundamental difference between Lafer and Tso, and would have been discouraged from (rather than motivated to) combine Lafer and Tso.

Petitioner overlooks Lafer’s criticism of known caching techniques and thus fails to demonstrate a reasonable likelihood that a POSITA would have been motivated to combine Lafer and Tso, defeating all Grounds in the Petition.

D. Petitioner fails to demonstrate that the combination of Lafer and Tso teaches Elements [1.f] and [9.f].

Element [1.f] recites: “if at least one media tag of said proprietary media tags is not found, generating a Web media by using said at least one media tag.”

Element [9.f] recites: “if said media tag entry does not exist in said media database,

create said media using said media tag.”

Petitioner alleges that the combination of Lafer and Tso teaches Elements [1.f] and [9.f]. Pet., 42-47, 83 (addressing Element [9.f] and referencing Element [1.f]). Specifically, Petitioner asserts that “Lafer discloses if at least one media tag of said proprietary media tags is not found . . . using said at least one media tag,” but not the required “*generating a Web media by using said at least one media tag.*” Pet., 42-44. Petitioner then asserts that “Tso discloses if said media is not found” (which is not recited in Elements [1.f] and [9.f]) “generating a Web media . . . using said at least one media tag.” Pet., 44-47. Because neither reference teaches the entire element, Petitioner proposes that a POSITA would have been motivated to embed within Lafer’s tag select examples of Tso’s selection criteria, such as network characteristics, network client properties, and proxy characteristics. Pet., 45.

But even if a POSITA would have been motivated to embed some of Tso’s selection criteria in Lafer’s tag (which Patent Owner does not concede), Petitioner fails to explain how or why this combined system would “generat[e] a Web media” by using this combined Lafer-Tso tag. *See Personal Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017) (“[A] clear, evidence-supported account of the contemplated workings of the combination is a prerequisite to adequately explaining and supporting a conclusion that a relevant skilled artisan would have

been motivated to make the combination and reasonably expect success in doing so.”). Petitioner merely concludes that “generating a Web media” would be the outcome of its proposed combination, but fails to explain why and fails to address Lafer’s teachings as a whole. Pet., 44; *see also id.*, 21-25.

As Petitioner recognizes with its color-coded version of Figure 2 of Lafer (reproduced below), the result of a negative determination at step 118 (“IS TAG IN TAG CACHE?”) is to construct in step 122 a tag-content pair, Pet., 19-20, not to generate a Web media by fetching media content from the Internet and transcoding it, as Tso describes. In Lafer, it is not necessary to fetch and generate new content because Lafer is directed to the web server itself, which already includes the content in its databases. EX1004, 2:50-55 (describing Figure 1, which shows a server coupled to user computers over a communication medium, such as the Internet), 3:41-43 (describing that content is stored in databases 58, 60, 62, and 64). By contrast, Tso is directed to a proxy server sitting between network clients and the Internet (hosting web servers). *See* EX1005, FIG. 3. Petitioner fails to appreciate that the systems disclosed by Lafer and Tso serve different functions within a network, such as the Internet, and fails to explain why a POSITA would have changed Lafer’s system and method to generate Web media at step 122, as opposed to generating a tag-content pair (which is fundamental to Lafer’s operation).

Accordingly, Petitioner fails to demonstrate a reasonable likelihood that the combined teachings of Lafer and Tso disclose Elements [1.f] and [9.f], and thus the Board should deny institution of Grounds 1-4.

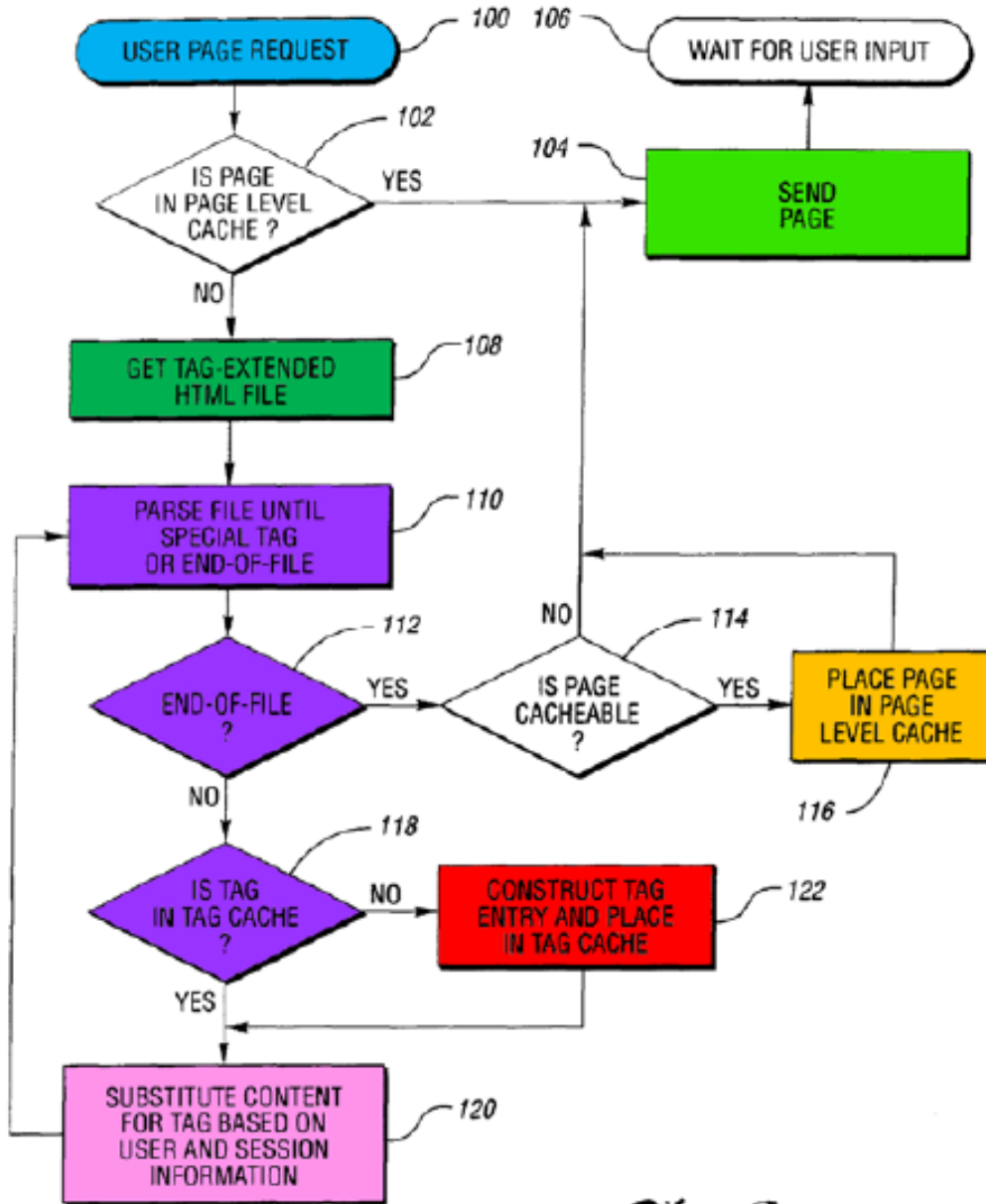


Fig. 2

Pet., 19 (annotating EX1004, FIG. 2).

IV. CONCLUSION

The Petition fails to show a reasonable likelihood that any of the challenged claims is unpatentable as obvious in view of the cited art. Therefore, the Board should deny institution.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, reading "Richard M. Bemben". The signature is fluid and cursive, with the first name "Richard" being the most prominent.

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Registration No. 68,658
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Date: April 26, 2023

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CERTIFICATE OF WORD COUNT (37 C.F.R. § 42.24(d))

1. This Patent Owner Preliminary Response complies with the type-volume limitation of 14,000 words, comprising 3,708 words, excluding the parts exempted by 37 C.F.R. § 42.24(a)(1).

2. This Patent Owner Preliminary Response complies with the general format requirements of 37 C.F.R. § 42.6(a) and has been prepared using Microsoft® Word 2016 in 14-point Times New Roman font.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, reading "Richard M. Bemben". The signature is written in a cursive, flowing style with a large initial 'R'.

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PATENT OWNER PRELIMINARY RESPONSE UNDER 37 C.F.R. § 42.107(a)** and associated Exhibit 2010 were served in their entireties on April 26, 2023, upon the following counsel of record for Petitioner:

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Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, reading "Richard M. Bembien". The signature is fluid and cursive, with the first name "Richard" being the most prominent.

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