

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DISH NETWORK L.L.C. AND DISH TECHNOLOGIES L.L.C.,

Petitioner,

v.

DIGITAL BROADCASTING SOLUTIONS, LLC,

Patent Owner.

***Inter Partes* Review No. IPR2023-00976
Patent No. 8,929,710**

**PATENT OWNER'S RESPONSE TO THE PETITION
FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 8,929,710
PURSUANT TO 37 C.F.R. § 42.120**

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IPR2022-00624, Paper 9 (P.T.A.B. Aug. 24, 2022) (Precedential)..... 17, 24, 54

EXHIBIT LIST

Exhibit	Description
2001	Defendant’s Initial Invalidity Contentions, <i>Digital Broadcasting Solutions LLC v. Dish Network L.L.C.</i> , No. 2:22-cv-00335-JRG (Jan. 20, 2023).
2002	http://www.graphics.stanford.edu/courses/cs448-98-fall/dtv/dvcr.html (Fall 1998).
2003	http://www.graphics.stanford.edu/courses/cs448-98-fall/ (Fall 1998)
2004	https://www.sfgate.com/entertainment/article/WHAT-S-NEW-IN-1999-Consumers-Testing-New-2953718.php
2005	U.S. Patent Publication No. 2009/0238536 (“ <i>Gratton</i> ”)
2006	Declaration of Dr. Immanuel Freedman
2007	CV of Dr. Immanuel Freedman

I. INTRODUCTION

Digital Broadcasting Solutions, LLC (“Patent Owner”) respectfully submits this Patent Owner Response (the “Response”) to the Petition for *Inter Partes* Review of U.S. Patent No. 8,929,710 (IPR2023-00976, the “Petition” or “Pet.”) filed by DISH Network L.L.C. and DISH Technologies L.L.C. (collectively, “Petitioner”). Petitioner fails to show unpatentability of claims 1-19 of the ’710 Patent (the “Challenged Claims”) because Petitioner’s Grounds fail to disclose or render obvious one or more limitations of each Challenged Claim. Specifically, the claimed digital video recorder (DVR) places specific, time-based restrictions on when the user can skip a transmitted commercial: the DVR must preclude the user from skipping the *transmitted commercial* during a first period of time, when “it is more likely [to] ha[ve] value to the user,” and allow the user to skip the same *transmitted commercial* during a second period of time “only after its value has diminished.” Ex. 1001, Abstract. But the Petition all but ignores that limitation. Instead, the Petition relies on art where the functionality of the commercial skipping feature is not time based but predetermined (e.g., enabled or disabled by the content provider, etc.).

II. PETITIONER’S ASSERTED GROUNDS OF UNPATENTABILITY

Petitioner asserts that claims 1-19 of the ’710 Patent are unpatentable under the following grounds:

Ground	Basis	Reference(s)	Challenged Claims
1	§ 103	<i>Casagrande</i> in view of <i>Russ</i>	1-19
2	§ 102	<i>Dow</i>	1-5, 7-13, 16-19
3	§ 103	<i>Dow</i> in view of <i>Russ</i>	1-19

See Pet., p. 13.

III. THE '710 PATENT

A. The Technology of the '710 Patent

The '710 Patent, which is titled “System and Method for Time Shifting At Least a Portion of a Video Program,” was filed on October 24, 2011, and issued on January 6, 2015. Ex. 1001. It claims priority to Provisional Application No. 61/408,759, which was filed on November 1, 2010. *Id.*

As explained by patentee during prosecution, the '710 Patent is directed to

a digital video recorder (“DVR”) that stores a video program and plays at least a portion of the video program back at a later time (e.g., a time more convenient to the user of the DVR, etc.). Video programs generally include multiple types of data. For example, a video program may include program data (e.g., a movie, a sitcom, etc.) and auxiliary data (e.g., a news ticker, a commercial, etc.), where the auxiliary data is either superimposed over the program data and/or placed between portions of the program data. While the program data may have a relatively long shelf life, the auxiliary data may not. For example, a news ticker or a commercial concerning the evening news may be of no (or limited) value after the evening news has been transmitted. The claimed invention addresses this issue by allowing a user to program the DVR to skip (or omit) at least a portion of the auxiliary data after its value has diminished.

The claimed invention achieves the above advantages by allowing a user of the DVR to set (or program) the DVR into one of two states. In a first state, the DVR is configured to play the program as it was originally recorded (e.g., with both the program and auxiliary data). In a second state, the DVR is configured to play the program data without the auxiliary data (or a portion thereof). In the claimed inventions, the DVR can only be programmed to skip (or omit) auxiliary data once the auxiliary data is no longer of value or is of limited value. To this end, the claimed invention provides that if the video program is being watched within a first period of time (e.g., within a day or two of the video program being transmitted to the DVR, etc.), then the video program will be played back in its entirety (e.g., including both program and auxiliary data). However, if the video program is being watched within a second period of time (e.g., a week after the video program has been transmitted to the DVR, etc.), then the video program will be played back in its entirety (e.g., including both program and auxiliary data, etc.) if the DVR has been programmed to operate in its first playback state, or in portions (e.g., without at least a portion of the auxiliary data, etc.) if the DVR has been programmed to operate in its second playback state. At any time during the second period of time, the user could also watch the video program with and without auxiliary data (or portions thereof) by watching the video program while the DVR is in a first playback state, and then watching the video program while the DVR is in a second playback state.

Ex. 1003, pp. 108-109.

These foregoing features are recited in the claimed inventions. For example, claim 1 provides for the reception and storage of a “transmitted video program” that includes “at least first, second and third portions.” Ex. 1001, 11:46-12:16. A command can then be used to playback the video program from memory where (i) the video program is played back during a first period of time “in its entirety . . . regardless of a playback state” of the DVR, (ii) the video program is played back

during a second period of time “in its entirety . . . [if] said DVR is in said first playback state,” and (iii) the video program minus the second (e.g., commercial) portion is played back during the second period of time if “said DVR is in said second playback state,” where another “[user-initiated] command” controls the playback state. *Id.*, 11:62-12:14.

It is important to note that (A) the entire video program (including first, second, and third portions) are received and stored in memory before playback is commenced and (B) it is the transmitted commercial (i.e., “second portion”) that cannot be skipped during the first period of time (regardless of playback state) and can be skipped during the second period of time only if the DVR is in a second playback state. Thus, the DVR must preclude the user from skipping the *transmitted commercial* during the first period of time and allow the user to skip the same *transmitted commercial* during the second period of time.

B. Level of Ordinary Skill in the Art

For the purposes of this Response only, Patent Owner does not dispute the level of skill of a person of ordinary skill in the art (“POSITA”) identified in the Petition. *See* Pet., p. 14.

C. Claim Construction

The “words of a claim are generally given their ordinary and customary meaning . . . the ordinary and customary meaning of a claim term is the meaning that

the term would have to a [POSITA] at the time of the invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc) (cleaned up). The claims themselves, the specification, and the prosecution history provide substantial guidance as to the meaning of a claim term. *See id.*

1. “a first period of time”

Claim limitation 1[d][i] recites, in part, “a first period of time.” Ex. 1001, 11:66. A POSITA would interpret the “first period of time” to start after transmission of the entire “video program” to the DVR. *See* Ex. 2006, ¶47. That interpretation is based on the claim language itself. Specifically, claim 1 also recites “a memory device for storing said video program,” “a second command initiates playback of said video program from said memory device” of the DVR, and “at least one processor configured to [] provide said video program in its entirety to a display device . . . if said second command is received during a first period of time.” Ex. 1001, 11:54-66 (emphasis added). In order to “provide said video program in its entirety” from “said memory device,” the entire “video program” must be stored in the “memory device,” which is only possible after transmission of the entire “video program” to the DVR. *See* Ex. 2006, ¶47. Accordingly, the “first period of time” must start after transmission of the entire “video program.”

Further, that interpretation is also consistent with the dependent claims. For example, dependent claim 6 recites, in part, “wherein said first period of time is a

period of time that is less than one week from said transmission of said video program.” Ex. 1001, 12:37-39 (emphasis added). As another example, dependent claim 14 recites, in part, “wherein said first period of time is a first day after said video program has been transmitted.” Ex. 1001, 14:1-2 (emphasis added). Accordingly, the dependent claims reinforce that the “first period of time” must start after transmission of the entire “video program.” See Ex. 2006, ¶48.

Further still, that interpretation is also consistent with the prosecution history of the ’710 Patent. As explained by patentee to the Examiner, the claimed invention is directed to

a digital video recorder (“DVR”) that stores a video program and plays at least a portion of the video program back at a later time (e.g., a time more convenient to the user of the DVR, etc.) . . . In a first state, the DVR is configured to play the program as it was originally recorded (e.g., with both the program and auxiliary data). In a second state, the DVR is configured to play the program data without the auxiliary data (or a portion thereof) . . . To this end, the claimed invention provides that if the video program is being watched within a first period of time (e.g., within a day or two of the video program being transmitted to the DVR, etc.), then the video program will be played back in its entirety (e.g., including both program and auxiliary data).

Ex. 1003, pp. 108-109 (emphasis added). Accordingly, based on the prosecution history of the ’710 patent, the “first period of time” must start after transmission of the entire “video program.” See Ex. 2006, ¶49.

For the foregoing reasons, the “first period of time” of independent claim 1 must start after transmission of the entire “video program.” Independent claims 9

and 18 also recite the “first period of time” (Ex. 1001, 13:9, 14:34) and should be construed in the same manner. *See* Ex. 2006, ¶50.

2. “first command”

Independent claim 1[c] recites “a first command changes said DVR from a first playback state to a second playback state, and a second command initiates playback of said video program from said memory device.” Ex. 1001, 11:57-61. Accordingly, independent claim 1 requires two distinct commands (i.e., a first command and a second command). A POSITA would not interpret the “first command” as initiating playback of the video program because the claim specifies that the “second command” initiates playback. *See* Ex. 1001, 11:62-12:9; Ex. 2006, ¶51. The “first command” alone never initiates playback of the video program in independent claim 1. *See* Ex. 1001, 11:62-12:9. Instead, throughout independent claim 1, the “first command” and the “second command” are used together to control operation of the DVR: the “first command” is used to set the playback state of the DVR, while the “second command” is used to initiate playback of the video program after the playback state of the DVR has been set by the “first command.” Ex. 1001, 11:62-12:9. If the “first command” also initiated playback of the video program, that would render the “second command” redundant and render claim 1 illogical. *See* Ex. 2006, ¶51.

For the foregoing reasons, a POSITA would not interpret the “first command” of independent claim 1 as being capable of initiating playback of the video program. Independent claims 9 and 18 also recite the “first command” (Ex. 1001, 12:62, 14:8) and should be construed in the same manner. *See* Ex. 2006, ¶52.

IV. RESPONSE TO ISSUES RAISED IN THE PETITION AND THE INSTITUTION DECISION

A. Ground 1 – The Combination of Casagrande and Russ Does Not Render Obvious Claims 1-19 of the '710 Patent.

Petitioner contends that the combination of *Casagrande* and *Russ* renders obvious claims 1-19 of the '710 Patent. Pet., pp. 13, 22-51. The combination of *Casagrande* and *Russ* does not render obvious those claims for at least the following reasons. *See* Ex. 2006, ¶¶54, 55.

Although *Casagrande* is generally directed to a set top box with digital video recorder (DVR) functionality, it is fundamentally different than the '710 Patent. *Casagrande* discloses a “receiving device” (e.g., a set-top box with DVR capabilities) that receives and stores a “first audio/visual stream” that includes “segments” and “interstitials” (e.g., commercials). *See* Ex. 1006, 2:33-47, Fig. 7, Fig. 8, Fig. 15. The “receiving device” generates a “second audio visual stream” by removing the “interstitials” from the “first audio/visual stream” and, in some cases, replacing the removed “interstitials” with “substitute content.” *See id.*, 8:63-9:5, 13:13-31, Fig. 4, Fig. 8. The “user may select by way of the user input 1523 whether

the first A/V stream 1504 or the second A/V stream 1512 is transferred to the display device.” *Id.*, 19:63-66. But *Casagrande* fails to disclose a commercial skipping feature that is time-based (i.e., is precluded during a first period of time and allowed during a second period of time), as required by the claims. Further, *Casagrande* fails to disclose a “first command” used to set the playback state of the DVR, while a “second command” is used to initiate playback of the “video program” after the playback state of the DVR has been set by the “first command,” as also required by the claims. *See* Ex. 2006, ¶56.

Russ is also fundamentally different than the ’710 Patent. *Russ* is directed to “broadband communications systems, and more particularly, to the insertion of advertisements into presentations of networked multi-room systems.” Ex. 1008, ¶[0002]. *Russ*’ “primary device” (e.g., set-top box) receives and stores a video presentation including a program and commercials. *See id.*, ¶¶[0015], [0020], [0032], Fig. 4. The “primary device” may replace the existing commercials with alternative commercials tailored to the user of the device. *See id.*, ¶¶[0030], [0032]. *See* Ex. 2006, ¶57.

The commercial-related functionality in *Russ* is driven by “tags.” *Russ* uses “ad-insertion tags” to “differentiate between the program and commercials.” *See* Ex. 1008, ¶[0026]. Frames within the program “are preferably tagged to indicate a splicing point when a commercial break is coming.” *Id.*, ¶[0027]. Through the tags,

commercials are inserted or replaced. *Id.*, ¶[0028]. *Russ* discloses that the same tag can also specify whether the user can fast forward through a commercial (so-called “trick play” functionality). And the same tag can also specify an expiration date, after which “the tag would become inactive or replaceable.” *See id.*, ¶[0035]. At that point, the commercial would no longer be viewable (because the tag is inactive) or the commercial would be replaced with a different commercial (because the tag is replaced). *See id.* *Russ* fails to disclose providing the entire video program (including the transmitted commercial) during a first time period “regardless of a playback state,” as required by the claims. *Russ* also fails to disclose transmitting a first portion and a third portion (i.e., frames) of a previously stored video program to a display device, but not transmitting a second portion (i.e., frames) of the video program to the display device, “during said second period of time and [when] said DVR is in said second playback state.” In *Russ*, the transmitted commercial can either be skipped or not. While *Russ* does provide that trick play can be precluded for a period of time, the preclusion ends when the commercial expires. Thus, there is not a period of time when the transmitted commercial can be skipped or not, depending on the state of the DVR. *See Ex. 2006*, ¶58.

1. Independent Claim 1

The combination of *Casagrande* and *Russ* does not render obvious independent claim 1 because the combination does not teach or suggest the following elements of the claim. *See* Ex. 2006, ¶59.

- i. 1[c] “a controller configured to receive commands from a user of said DVR . . .”

Limitation 1[c] recites “a controller configured to receive commands from a user of said DVR, wherein a first command changes said DVR from a first playback state to a second playback state, and a second command initiates playback of said video program from said memory device.” Ex. 1001, 11:57-61 (emphasis added). The Petition contends that the claimed “first playback state” and “second playback state” correspond to whether the first A/V stream or the second A/V stream is displayed to the user:

Regarding the claimed “first command,” *Casagrande* teaches that “a user may select by way of the user input 1523 whether the first A/V stream 1504 or the second A/V stream 1512 is outputted to the display device 1514 by way of the A/V interface 1518,” corresponding to the claimed first and second playback states.

Pet., p. 30. And it contends that the “first command” toggles between which stream is displayed. *Id.* But it is the “second command” that initiates playback of a

particular program or stream. *See* Ex. 1001, 11:62-12:14. The claimed “first command,” which places the DVR in a “first playback state” or a “second playback state,” is associated with time-based limitations on navigation through a program, as discussed in further detail below for limitation 1[d]. *See id.*; *see also infra* Section IV.A.1(ii). Accordingly, the combination of *Casagrande* and *Russ* does not teach or suggest claim limitation 1[c]. *See* Ex. 2006, ¶60.

According to the Board,

We are not persuaded by Patent Owner’s argument that suggests that *Casagrande* does not teach the “first command” because it initiates playback rather than changing playback state. *See* Prelim. Resp. 11–12. *Casagrande* teaches, as Petitioner asserts, that “a user may select by way of the user input 1523 whether the first A/V stream 1504 or the second A/V stream 1512 is outputted to the display device 1514,” which we preliminarily agree is sufficient to teach the claimed change of playback states by the first command. *See* Ex. 1006, 19:63–66.

Institution Decision, Paper 8, p. 17. But as discussed in Section III.C.2, the claimed “first command” does not initiate playback of the video program. *See* Ex. 2006, ¶61. In contrast, *Casagrande*’s selection of “the first A/V stream 1504 or the second A/V stream 1514” does initiate playback. *Casagrande* is silent on any additional step the user must take to initiate playback after selecting “the first A/V stream 1504 or the second A/V stream 1514.” *See* Ex. 1006, 19:63-7:2; Ex. 2006, ¶61. Petitioner does

not argue that it would have been obvious to account for this deficiency in *Casagrande*. See Pet., pp. 29-31. Accordingly, *Casagrande*'s selection of the "first A/V stream 1504 or the second A/V stream 1514" for "output[] to the display device" is not and cannot be the claimed "first command" of claim limitation 1[c]. See Ex. 2006, ¶61.

For the foregoing reasons, the combination of *Casagrande* and *Russ* does not teach or suggest claim limitation 1[c].

ii. 1[d] "at least one processor configured to . . ."

Limitation 1[d] recites "at least one processor configured to" provide different portions of the "video program" based on the "playback state" of the DVR and when playback is taking place (i.e., whether playback is taking place during the claimed "first period of time" or "second period of time"). Ex. 1001, 11:62-12:14. The claim recites three scenarios that define the required configuration of the "at least one processor." *Id.*

First, the "at least one processor" must

"(i) provide said video program in its entirety to a display device in response to receiving said second command regardless of a playback state of said DVR if said second command is received during a first period of time"

See *id.*, 11:62-66. The claimed "video program" contains at least three portions. See *id.*, 11:49-53. As a result, under the first scenario, the "at least one processor" must

be configured to provide the first, second, and third portions. *See id.*, 11:49-53, 11:62-66. This is true “regardless of the playback state of said DVR.” *See* Ex. 1001, 11:49-53, 11:62-66; Ex. 2006, ¶64.

Second, the “at least one processor” must

“(ii) provide said video program in its entirety to said display device in response to receiving said second command if said second command is received during a second period of time and said DVR is in said first playback state”

Ex. 1001, 11:66-12:3. This scenario occurs when (1) “said DVR is in said first playback state” and (2) “said second command is received during a second period of time.” *See id.* The “first command” to set the DVR in the “first playback state” must be received before the “second command” initiating playback is received. *See* Ex. 2006, ¶65. Here again, the “video program” contains at least three portions, so under the second scenario, the “at least one processor” must be configured to provide the first, second, and third portions. *See* Ex. 1001, 11:66-12:3; Ex. 2006, ¶65.

Third, the “at least one processor” must

“(iii) provide only a portion of said video program to said display device in response to receiving said second command if said second command is received during said second period of time and said DVR is in said second playback state, said portion of said video program including at least said first and third portions of said video program, wherein said third portion of said video program is provided to said display device immediately following said first portion of said video program if said second command is received during said second period of time and said DVR is in said second playback state”

Ex. 1001, 12:3-14. This scenario occurs when (1) “said DVR is in said second playback state” and (2) “said second command is received during said second period of time.” *See id.* The “first command” to set the DVR in the “second playback state” must be received before the “second command” initiating playback is received. *See* Ex. 2006, ¶66. Under the third scenario, the “at least one processor” provides only a portion of the video program, not the entirety of the video as under the first and second scenarios. *Compare* Ex. 1001, 12:3-14 *with* Ex. 1001, 11:62-66 (first scenario), 11:66-12:3 (second scenario). Specifically, the “at least one processor” will provide “first and third portions of said video program,” but not the second portion, and “said third portion of said video program is provided to said display device immediately following said first portion of said video program.” *See* Ex. 1001, 12:3-14; Ex. 2006, ¶66.

In summary, the “at least one processor” is configured such that the user of the DVR cannot skip the “second portion” of the “video program” during the “first time period” (i.e., the first scenario). *See* Ex. 1001, 11:62-66. Subsequently, during the “second time period,”¹ the “at least one processor” is configured such that the

¹ Claim 1 of the ’710 Patent recites that “said second period of time is a period of time after said first period of time.” Ex. 1001 at 12:15-16.

user of the DVR can choose whether to skip the “second portion” of the “video program” based on selecting the “first playback state” or the “second playback state” (i.e., the second and third scenarios). *See id.*, 11:57-61, 11:66-12:14. As a result, the user cannot skip the “second portion,” which can be a commercial more proximate to when the “video program” was received, whereas the skip functionality becomes available at a later point in time. *See Ex. 1001*, 11:57-61, 11:62-12:14; *Ex. 2006*, ¶67.

The combination of *Casagrande* and *Russ*, as pled in the Petition, does not disclose the first scenario (i.e., limitation 1[d][i]). *See Pet.*, pp. 31-32. The Petition cites to only *Casagrande* for alleged disclosure of the first scenario (i.e., limitation 1[d][i]). *See id.* The cited portions of *Casagrande* show that the first A/V stream may be shown in its entirety even if the user desires to see the second A/V stream “by way of additional information delivered to the receiving device” by the “content provider.” *See Ex. 1006*, 19:66-20:2; *see also id.*, 5:66-6:3. But that limitation by the “content provider” remains the same—there is no determination on whether “said second command is received during a first period of time” as is required by the claim. *See Ex. 2006*, ¶68. The Petition does not argue that it would have been obvious to modify *Casagrande* to satisfy this claim limitation, alone or in combination with *Russ*, so the combination of *Casagrande* and *Russ* does not disclose the first scenario (i.e., limitation 1[d][i]).

According to the Board, “there is no ‘determination’ step or function recited in claim 1.” Institution Decision, p. 21. Although it is true that the claims do not expressly recite the word “determination,” that was not the import of Patent Owner’s argument. The plain language of the claim requires that the processor restrict the user from skipping the claimed “second portion” of “said video program” if the “second command” was received during the “first period of time.” Ex. 1001, 11:62-12:14. *See* Ex. 2006, ¶69. Accordingly, a POSITA would understand that the DVR must determine whether the “second command” initiating playback was received during the “first period of time” in order to determine whether the user is restricted from skipping the claimed “second portion” during playback. *See* Ex. 2006, ¶69.

Also according to the Board,

Dr. Jeffay testifies that a person of ordinary skill in the art “would have understood that processing a user request for either the first A/V stream or second A/V stream leads to the depiction of the first A/V stream (i.e., the stream in its entirety) on the display device during a first period of time where the content provider has placed restrictions on removing interstitial content.” Ex. 1002 ¶ 111.

Institution Decision, p. 18. But Dr. Jeffay’s declaration should be afforded no weight because it does nothing more than restate Petitioner’s argument without any additional supporting evidence or reasoning. *Compare* Pet., p. 32 with Ex. 1002, ¶¶111; *Xerox Corp., et al. v. Bytemark, Inc.*, No. IPR2022-00624, Paper 9, pp. 15-

16 (P.T.A.B. Aug. 24, 2022) (Precedential) (declaration is entitled to little weight when it contains an exact restatement of the petition’s arguments without any additional supporting evidence or reasoning). *See also* Ex. 2006, ¶70.

The combination of *Casagrande* and *Russ*, as pled in the Petition, does not disclose the second scenario (i.e., limitation 1[d][ii]). *See* Pet., pp. 32-36. *Casagrande* does not disclose the second scenario for the similar reason that the limitation by the “content provider” remains the same—there is no determination based on whether “said second command is received during a second period of time” as is required by the claim. *See* Ex. 1006, 19:66-20:2; *see also id.*, 5:66-6:3; Ex. 2006, ¶71. In other words, it is the “content provider” that determines whether a commercial can be skipped—not the time period as claimed.

According to the Board, “there is no ‘determination’ step or function recited in claim 1.” Institution Decision, p. 21. Although it is true that the claims do not expressly recite the word “determination,” that was not the import of Patent Owner’s argument. The plain language of the claim requires that the processor provide “said video program” in different forms (i.e., with or without the “second portion”) based on whether the “second command” was received during the “second period of time.” Ex. 1001, 11:66-12:14. *See* Ex. 2006, ¶72. Accordingly, a POSITA would understand that the DVR must determine whether the “second command” initiating playback was received during the “second period of time” in order to determine

whether the user is even permitted to skip the claimed “second portion” during playback. *See* Ex. 2006, ¶72.

Further, in the second scenario, the “first command” to set the DVR in the “first playback state” must be received before the “second command” initiating playback is received. *See* Ex. 2006, ¶73. Petitioner mapped *Casagrande*’s selection of “the first A/V stream 1504 or the second A/V stream 1512” and *Casagrande*’s “selection of particular segments from the selection menu” for presentation to the claimed “first command” and the claimed “second command,” respectively. *See* Pet., pp. 30-31 (citing Ex. 1006, 4:1-8, 19:63-66). But *Casagrande* fails to disclose that its selection of “the first A/V stream 1504 or the second A/V stream 1512” (Petitioner-identified “first command”) is ever used with *Casagrande*’s “selection of particular segments from the selection menu” (Petitioner-identified “second command”), much less in the sequence required by the second scenario. *See* Ex. 2006, ¶73.

Nor is the second scenario disclosed by *Russ*. The commercial-related functionality in *Russ* is driven by “tags.” *Russ* uses “ad-insertion tags” to “differentiate between the program and commercials.” *See* Ex. 1008, ¶[0026]. Frames within the program “are preferably tagged to indicate a splicing point when a commercial break is coming.” *Id.*, ¶[0027]. Through the tags, commercials are inserted or replaced. *Id.*, ¶[0028]. *Russ* discloses that the same tag can also specify

whether the user can fast forward through a commercial (so-called “trick play” functionality). And the same tag can also specify an expiration date, after which “the tag would become inactive or replaceable.” *See id.*, ¶[0035]. At that point, the commercial would no longer be viewable (because the tag is inactive) or the commercial would be replaced with a different commercial (because the tag is replaced). *See id.* Accordingly, *Russ* does not disclose providing “said video program in its entirety . . . during a second period of time.” In other words, it is the “tag” that determines whether the commercial can be skipped—not the time at which the video program is played back. And if the tag expires (after a period of time), the commercial would either be non-viewable or replaced by a new commercial—not the transmitted commercial (or “second portion”) as claimed. *See id.*; *see also* Ex. 2006, ¶74.

According to the Board, “*Russ* does not describe that an ‘inactive’ tag means that a commercial is ‘no longer viewable.’” Institution Decision, p. 22. Patent Owner disagrees. Because a tag “signif[ies] where to insert an ad” in a video program, a POSITA would understand an “inactive tag” to mean the commercial is no longer to be inserted/included into the video program, and thus is not viewable during playback of the video program. Ex. 1008, ¶[0035] (emphasis added). *See* Ex. 2006, ¶75.

The combination of *Casagrande* and *Russ*, as pled in the Petition, does not disclose the third scenario (i.e., limitation 1[d][iii]). *See* Pet., pp. 36-38. Claim 1 requires that the “second portion” of “said video program as transmitted” (e.g., the transmitted commercial) is played back during the first period of time “regardless of the playback state of said DVR.” Ex. 1001, 11:62-12:15. It is not until the second period of time that the “second portion” (e.g., the transmitted commercial) can be played back or not, depending on the playback state, as selected by the user. It is this feature—where the transmitted commercial *cannot* be played back *during the first period of time* but *can* be played back *during the second period of time*—that is not disclosed in either *Casagrande* or *Russ*. *See* Ex. 2006, ¶76.

Casagrande discloses that it is the “content provider” that determines whether the transmitted commercial can be skipped “by way of additional information delivered to the receiving device.” *See* Ex. 1006, 19:66-20:2; *see also id.*, 5:66-6:3. But that limitation by the “content provider” remains the same during the first and second periods of time—there is no determination based on whether “said second command is received during said second period of time” as is required by the claim. *See id.* *See also* Ex. 2006, ¶77.

According to the Board, “there is no ‘determination’ step or function recited in claim 1.” Institution Decision, p. 25. Although it is true that the claims do not expressly recite the word “determination,” that was not the import of Patent Owner’s

argument. The plain language of the claim requires that the processor provide “said video program” in different forms (i.e., with or without the “second portion”) based on whether the “second command” was received during the “second period of time.” Ex. 1001, 11:66-12:14. *See* Ex. 2006, ¶78. Accordingly, a POSITA would understand that the DVR must determine whether the “second command” initiating playback was received during the second time period in order to determine whether the user is even permitted to skip the claimed “second portion” during playback. *See* Ex. 2006, ¶78.

The same is true for *Russ*. In *Russ*, it is the “tag” that determines whether a commercial can be skipped. *See* Ex. 1008, ¶[0035] (e.g., so-called “trick play” functionality). This is the same tag that specifies an expiration date for the commercial. *Id.* Thus, like *Casagrande*, the determination of whether a commercial can be skipped is not based on time, but on the specific commercial, or the “tag” associated therewith. *See* Ex. 2006, ¶79.

While *Russ* provides that the “tag” can “preclude trick play for only a specified length of time, such as two weeks,” it goes on to provide that this is because “a commercial could expire after a period of time after which the tag would become inactive or replaceable.” Ex. 2008, ¶[0035]. Thus, the preclusion of trick play in *Russ* is commercial-dependent, not time-dependent. The commercial that is included with the transmitted video program (i.e., the “second portion”) is either

skippable or not. While commercial skipping may resume (e.g., after a period of time), it is not the *transmitted commercial* that is skipped, but a new (or replacement) commercial. *See* Ex. 2006, ¶80.

Further, in the third scenario, the “first command” to set the DVR in the “second playback state” must be received before the “second command” initiating playback is received. *See* Ex. 2006, ¶81. Petitioner mapped *Casagrande*’s selection of “the first A/V stream 1504 or the second A/V stream 1512” and *Casagrande*’s “selection of particular segments from the selection menu” for presentation to the claimed “first command” and the claimed “second command,” respectively. *See* Pet., pp. 30-31 (citing Ex. 1006, 4:1-8, 19:63-66). But *Casagrande* fails to disclose that its selection of “the first A/V stream 1504 or the second A/V stream 1512” (Petitioner-identified “first command”) is ever used with *Casagrande*’s “selection of particular segments from the selection menu” (Petitioner-identified “second command”), much less in the sequence required by the third scenario. *See* Ex. 2006, ¶81.

Accordingly, the combination of *Casagrande* and *Russ* does not disclose the third scenario (i.e., limitation 1[d][iii]).

Petitioner’s alleged motivations to combine fare no better. *See* Pet., pp. 33-36. Petitioner argues that because *Casagrande* and *Russ* discuss the general concept of restricting the ability to skip commercials, it would have been obvious to combine

the references to arrive at the claimed invention. *See* Pet., pp. 33-36. Beyond that general, and unsupported, assertion that a person of ordinary skill in the art would find it obvious to combine any references that discuss restricting the ability to skip commercials, the Petition does not identify any specific reasoning to combine or modify the references according to the claimed invention. *See* Pet., pp. 33-36. The only support is from the declaration of Dr. Jeffay. *See* Pet., pp. 33-36 (citing Ex. 1002, ¶¶114-118). But his declaration should be afforded no weight because it does nothing more than restate Petitioner's argument without any additional supporting evidence or reasoning. *Compare* Pet., pp. 33-36 *with* Ex. 1002 ¶¶114-118 (Jeffay declaration); *Xerox Corp., et al. v. Bytemark, Inc.*, No. IPR2022-00624, Paper 9, pp. 15-16 (P.T.A.B. Aug. 24, 2022) (Precedential) (declaration is entitled to little weight when it contains an exact restatement of the petition's arguments without any additional supporting evidence or reasoning). Indeed, the majority of his opinions cite no supporting evidence. *See* Ex. 1002 ¶¶114-118. Accordingly, Petitioner's remaining obviousness rationale lacks support. *See* Ex. 2006, ¶83.

In sum, Petitioner's obviousness rationale for this limitation is driven by hindsight, without any evidence that the claimed invention would have been obvious to a person of ordinary skill in the art. *See* Ex. 2006, ¶84.

2. Dependent Claim 3

Dependent claim 3 depends from and adds limitations to independent claim 1. As discussed above, the combination of *Casagrande* and *Russ* fails to render independent claim 1 obvious. Accordingly, the combination of *Casagrande* and *Russ* fails to render dependent claim 3 obvious for at least the same reasons. *See* Ex. 2006, ¶85.

Further, dependent claim 3 recites

wherein said video program includes at least primary and secondary video content, and said portion of said video program that is provided to said to said display device if said second command is received during said second period of time and said DVR is in said second playback state includes said primary video content and only a portion of said secondary video content.

Ex. 1001, 12:20-26 (emphasis added). Accordingly, claim 3 falls within the third scenario (i.e., claim limitation 1[d][iii]). Petitioner mapped *Casagrande*'s "interstitials" (e.g., commercials) to the claimed "secondary video content." *See* Pet., p. 40. To meet the requirements of claim limitation 1[d][iii], the Petition cited to the embodiment in *Casagrande* where "interstitials" (e.g., commercials) are skipped in their entirety. *See* Pet., p. 37 (citing Ex. 1006, Fig. 8). Here, to meet the requirements of claim 3, Petitioner cited to the embodiment in *Casagrande* where the DVR "automatically present[s] the commercial segments regardless of the receipt of user input requesting non-presentation of the segments." Pet., pp. 41-42

(quoting Ex. 1006, 24:34-43). That mapping is flawed because the two embodiments (i.e., commercials entirely skipped, commercials presented) are mutually exclusive. That mapping is also flawed because it fails to teach presenting “only a portion” of *Casagrande*’s “interstitials” (e.g., commercials) (Petitioner-identified “secondary video content”). See Ex. 1006, 24:34-43. *Russ* does not cure the deficiencies of *Casagrande*, and the Petitioner does not state otherwise. See Pet., pp. 40-42. Accordingly, the combination of *Casagrande* and *Russ* fails to render obvious dependent claim 3. See Ex. 2006, ¶86.

3. Independent Claim 9

The Petition does not provide independent analysis for independent claim 9. See Pet., pp. 22-39. Instead, it contends that the same combination of *Casagrande* and *Russ* is relevant to each of the independent claims. See *id.* As a result, the Petition fails to show that the combination of *Casagrande* and *Russ* renders claim 9 obvious for the same reasons as claim 1. See *supra* Section IV.A.1. See also Ex. 2006, ¶87.

- i. 9[c] “receiving a first command from at least one user of said DVR, said first command indicating a playback state of said DVR”

Limitation 9[c] recites “receiving a first command from at least one user of said DVR, said first command indicating a playback state of said DVR.” Ex. 1001, 12:62-64. The Petition contends that the claimed “first playback state” and “second

playback state” correspond to whether the first A/V stream or the second A/V stream is displayed to the user. Pet., p. 30. And it contends that the “first command” toggles between which stream is displayed. *Id.* But, as with claim 1, the “first playback state” and “second playback state” correspond to more than simply which video stream is displayed. See Ex. 1001, 13:4-24; see also *infra* Section IV.A.3(ii). Accordingly, for these reasons and all the reasons discussed above in reference to claim limitation 1[c], the combination of *Casagrande* and *Russ* does not teach or suggest limitation 9[c]. See Ex. 2006, ¶88.

- ii. 9[f] “wherein the step of providing said at least a portion of said video program to said display device further comprises . . .”

As with limitation 1[d], limitation 9[f] recites three scenarios that define how video is provided based on (1) the playback state and (2) the “period of time.” Compare Ex. 1001, 13:4-24 (limitation 9[f]) with Ex. 1001, 11:62-12:14 (limitation 1[d]). Like limitation 1[d], limitation 9[f] also requires that the entire “video program” is provided in certain scenarios and that skipping commercials is both user and time dependent. These features are not disclosed in *Casagrande* or *Russ*. See *supra* Section IV.A.1(ii); see also Ex. 2006, ¶89. Accordingly, the combination of *Casagrande* and *Russ* does not teach or suggest limitation 9[f] for the same reasons as limitation 1[d].

4. Dependent Claim 12

Dependent claim 12 depends from and adds limitations to independent claim 9. As discussed above, the combination of *Casagrande* and *Russ* fails to render obvious independent claim 9. Accordingly, the combination of *Casagrande* and *Russ* fails to render obvious dependent claim 12 for at least the same reasons. *See* Ex. 2006, ¶90.

The Petition relies on the same analysis for both claim 3 and claim 12. *See* Pet., pp. 40-42. Accordingly, the combination of *Casagrande* and *Russ* fails to render obvious dependent claim 12 for all the reasons discussed above in reference to dependent claim 3. *See* Ex. 2006, ¶91.

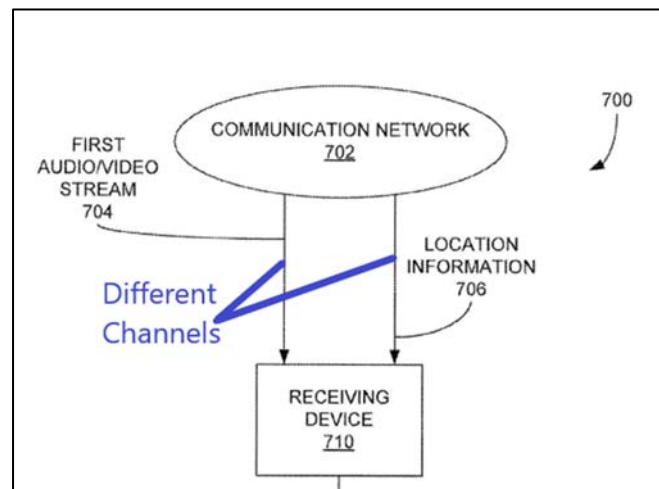
5. Dependent Claim 17

Dependent claim 17 depends indirectly from and adds limitations to independent claim 9. As discussed above, the combination of *Casagrande* and *Russ* fails to render obvious independent claim 9. Accordingly, the combination of *Casagrande* and *Russ* fails to render obvious dependent claim 17 for at least the same reasons. *See* Ex. 2006, ¶92.

Further, claim 17 recites, in part, “receiving . . . said at least one time of when said second portion of said video program begins, and said at least one time of when said second portion of said video program ends from a satellite, wherein each one of said at least one times is received by said DVR after said video program is stored on

said memory device.” Ex. 1001, 14:11-17 (emphasis added). In other words, the start time and the end time of the second portion are received from the satellite after the video program is stored on the memory device of the DVR. See Ex. 2006, ¶93.

Casagrande discloses that “[t]he location information 706 may be transmitted to the receiving device 710 together or separately from the first A/V stream 704.” Ex. 1006, 12:52-54 (emphasis added). Petitioner mapped *Casagrande*’s “location information 706” to the claimed “said at least one times.” Pet., p. 49. Even if that mapping is proper, a POSITA would understand “separately” to mean “on a different channel,” not “at a different time.” See Ex. 2006, ¶94. For example, *Casagrande*’s Figure 7 shows different channels for “A/V stream 704” and the “location information 706:”



Ex. 1006, Fig. 7 (excerpted and annotated). Under this reading (i.e., different channels), Petitioner provides no evidence that *Casagrande*’s “location information” (Petitioner-identified “said at least one times”) is received from the satellite after the

video program is stored on the memory device of the DVR, as claim 17 requires. *See* Ex. 2006, ¶94. Further, even if “separately” means “at a different time,” both Petitioner and its expert still fail to explain why “at a different time” means “received by said DVR after said video program is stored on said memory device,” as claim 17 requires. *See* Pet., p. 49 (citing Ex. 1002, ¶¶200-204); *see also* Ex. 2006, ¶94.

Accordingly, *Casagrande* fails to teach or suggest claim 17. *Russ* does not cure the deficiencies of *Casagrande*, and the Petition does not state otherwise. *See* Pet., p. 49. Thus, the combination of *Casagrande* and *Russ* fails to render obvious claim 17. *See* Ex. 2006, ¶95.

6. Independent Claim 18

The Petition does not provide independent analysis for independent claim 18. *See* Pet., pp. 22-39. Instead, it contends that the same combination of *Casagrande* and *Russ* is relevant to each of the independent claims. *See id.* As a result, the Petition fails to show that the combination of *Casagrande* and *Russ* renders claim 18 obvious for the same reasons as claim 1. *See supra* Section IV.A.1; *see also* Ex. 2006, ¶96.

- i. 18[c] “a controller for receiving commands including at least a first command for setting a playback state of said DVR and a second command for initiating a playback of said video program from said memory device”

Limitation 18[c] recites “a controller for receiving commands including at least a first command for setting a playback state of said DVR and a second command for initiating a playback of said video program from said memory device.” Ex. 1001, 14:27-30. The Petition contends that the claimed “first playback state” and “second playback state” correspond to whether the first A/V stream or the second A/V stream is displayed to the user. Pet., p. 30. And it contends that the “first command” toggles between which stream is displayed. *Id.* But, as with claim 1, the “first playback state” and “second playback state” correspond to more than simply which video stream is displayed. See Ex. 1001, 14:31-46; see also *infra* Section IV.A.6(ii); Ex. 2006, ¶97. Accordingly, for these reasons and all the reasons discussed above in reference to claim limitation 1[c], the combination of *Casagrande* and *Russ* does not teach or suggest limitation 18[c].

- ii. 18[d] “at least one processor for . . .”

As with limitation 1[d], limitation 18[d] recites three scenarios that define how video is provided based on (1) the playback state and (2) the “period of time.” Compare Ex. 1001, 14:31-46 (limitation 18[d]) with Ex. 1001, 11:62-12:14 (limitation 1[d]). Like limitation 1[d], limitation 18[d] also requires that the entire

“video program” is provided in certain scenarios and that skipping commercials is both user and time dependent. These features are not disclosed in *Casagrande* or *Russ*. *See id.* Accordingly, the combination of *Casagrande* and *Russ* does not teach or suggest limitation 18[d] for the same reasons as limitation 1[d]. *See supra* Section IV.A.1(ii); *see also* Ex. 2006, ¶98.

7. Dependent Claims 2, 4-8, 10-16, and 19

Dependent claims 2 and 4-8 depend from and add limitations to independent claim 1. Dependent claims 10-16 depend from and add limitations to independent claim 9. Dependent claim 19 depends from and adds limitations to independent claim 18. The combination of *Casagrande* and *Russ* fails to render obvious independent claims 1, 9, and 18, therefore, the combination of *Casagrande* and *Russ* fails to render obvious dependent claims 2, 4-8, 10-16, and 19 for at least the same reasons. *See* Ex. 2006, ¶99.

B. Ground 2 – Dow Does Not Anticipate Claims 1-5, 7-13, and 16-19 of the ’710 Patent.

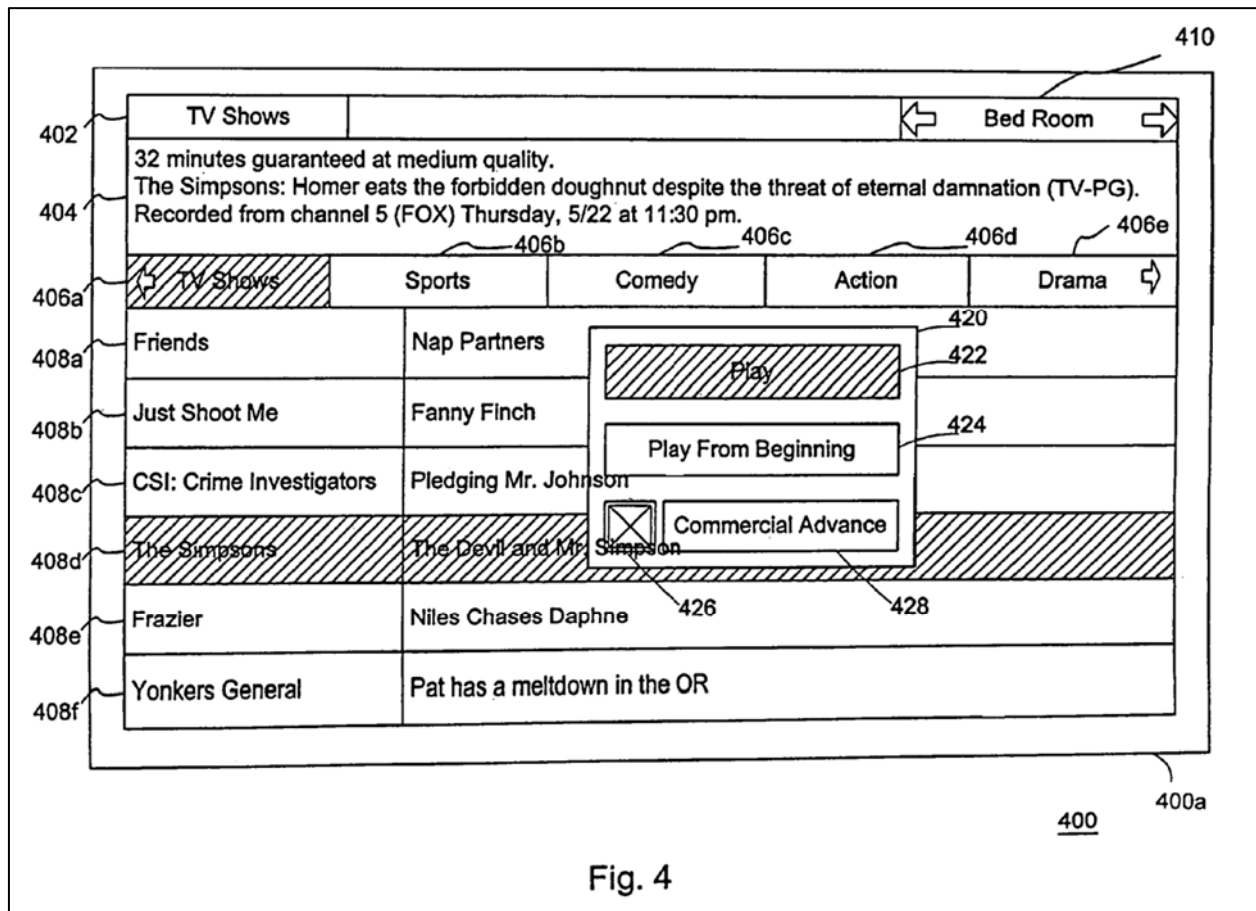
Petitioner contends that *Dow* anticipates claims 1-5, 7-13 and 16-19 of the ’710 Patent. Pet., pp. 13, 51-67. *Dow* does not anticipate those claims for at least the following reasons.

Dow is fundamentally different than the claimed inventions of the ’710 Patent. *Dow* was filed on April 26, 2002. Ex. 1007. The context from that filing date is

important—*Dow* was filed when DVRs were starting to replace VCRs in the marketplace. One of the first DVR prototypes was made at Stanford University in the fall of 1998. *See* Ex. 2002; *see also* Ex. 2003. The first consumer DVRs were demonstrated by Replay Network and TiVo at the 1999 Consumer Electronics Show (CES). *See* Ex. 2004. *Dow* acknowledges that as of its filing date the transition from VCRs to DVRs was “revolutionizing the way broadcast video content is stored, managed, and viewed.” *See* Ex. 1007, 2:61-62; *see also* Ex. 2006, ¶101.

Dow recognizes that predecessor VCRs included commercial-skipping functionality. *See* Ex. 1007, 1:31-2:60. But those “commercial-skipping VCRs” had shortcomings that limited their ability to accurately detect commercials. *See id.* *Dow* recognizes that the digital storage in a DVR (as opposed to the analog storage in a VCR) can be used to provide better event detection (e.g., detection of commercials) and navigation through those events. *See id.*, 3:14-48. *Dow* purports to “provide improved detection of events in a video signal or data stream” by “calculating the luminance of at least a portion of a video frame, and comparing the luminance against a threshold value.” *See id.*, 3:53-57. The specification focuses on the details of how to implement *Dow*’s purported improvements to event detection. *See generally* Ex. 1007; *see also* Ex. 2006, ¶102.

With respect to navigation through those events (e.g., skipping commercials),
Dow discloses a simple toggle for whether the “Commercial Advance” (426 in Fig. 4) feature is enabled:



Ex. 1007, Fig. 4. “The commercial skip toggle 426 indicates whether the commercial skip feature is enabled or not.” Ex. 1007, 11:57-58. When the feature is enabled, “commercials will be skipped regardless of the play mode selected.” *Id.*, 11:59-61 (emphasis added). *Dow* does not, however, disclose the time-based limitations on navigation through a program claimed in the ’710 Patent that were

recognized by the inventor of the '710 Patent as DVR technology matured. *See* Ex. 2006, ¶103.

1. Independent Claim 1

Dow does not anticipate independent claim 1 because it does not disclose the following elements of the claim. *See* Ex. 2006, ¶104.

- i. 1[c] “a controller configured to receive commands from a user of said DVR . . .”

Limitation 1[c] recites “a controller configured to receive commands from a user of said DVR, wherein a first command changes said DVR from a first playback state to a second playback state, and a second command initiates playback of said video program from said memory device.” Ex. 1001, 11:57-61 (emphasis added). The Petition contends that the claimed “first playback state” and “second playback state” correspond to whether the commercial-skipping functionality in *Dow* is active or inactive:

The control interface module “define[s] one or more control signals for toggling the commercial skip function between active and inactive modes, such as a button on (and corresponding control signal from) a remote control,” thereby defining a first command for changing from disabled commercial skipping (first playback state) to enable commercial skipping (second playback state).

Pet., p. 56. And it contends that the “first command” toggles whether that functionality is active or inactive. *Id.* But the “first playback state” and “second playback state” correspond to more than simply whether commercial-skipping

functionality in is active or inactive. *See* Ex. 1001, 11:62-12:14. They also place time-based limitations on navigation through a program, as discussed in further detail below for limitation 1[d]. *See id.*; *see also infra* Section IV.B.1(ii). Accordingly, *Dow* does not anticipate claim limitation 1[c]. *See* Ex. 2006, ¶105.

ii. 1[d] “at least one processor configured to . . .”

Limitation 1[d] recites “at least one processor configured to” provide different portions of the “video program” based on the “playback state” of the DVR and when playback is taking place (i.e., whether playback is taking place during the claimed “first period of time” or “second period of time”). Ex. 1001, 11:62-12:14. The claim recites three scenarios that define the required configuration of the “at least one processor.” *Id.* *See also* Ex. 2006, ¶106.

First, the “at least one processor” must

“(i) provide said video program in its entirety to a display device in response to receiving said second command regardless of a playback state of said DVR if said second command is received during a first period of time”

Ex. 1001, 11:62-66. The claimed “video program” contains at least three portions. *See id.*, 11:49-53. As a result, under the first scenario, the “at least one processor” must be configured to provide the first, second, and third portions. *See id.*, 11:49-53, 11:62-66. This is true “regardless of the playback state of said DVR.” *See* Ex. 1001, 11:49-53, 11:62-66; *see also* Ex. 2006, ¶107.

Second, the “at least one processor” must

“(ii) provide said video program in its entirety to said display device in response to receiving said second command if said second command is received during a second period of time and said DVR is in said first playback state”

Ex. 1001, 11:66-12:3. This scenario occurs when (1) “said DVR is in said first playback state” and (2) “said second command is received during a second period of time.” *See id.* The “first command” to set the DVR in the “first playback state” must be received before the “second command” initiating playback is received. *See* Ex. 2006, ¶108. Here again, the “video program” contains at least three portions, so under the second scenario, the “at least one processor” must be configured to provide the first, second, and third portions. *See* Ex. 1001, 11:66-12:3; *see also* Ex. 2006, ¶108.

Third, the “at least one processor” must

“(iii) provide only a portion of said video program to said display device in response to receiving said second command if said second command is received during said second period of time and said DVR is in said second playback state, said portion of said video program including at least said first and third portions of said video program, wherein said third portion of said video program is provided to said display device immediately following said first portion of said video program if said second command is received during said second period of time and said DVR is in said second playback state”

Ex. 1001, 12:3-14. This scenario occurs when (1) “said DVR is in said second playback state” and (2) “said second command is received during said second period

of time.” *See id.* The “first command” to set the DVR in the “second playback state” must be received before the “second command” initiating playback is received. *See* Ex. 2006, ¶109. Under the third scenario, the “at least one processor” provides only a portion of the video program, not the entirety of the video as under the first and second scenarios. *Compare* Ex. 1001, 12:3-14 *with* Ex. 1001, 11:62-66 (first scenario), 11:66-12:3 (second scenario). Specifically, the “at least one processor” will provide “first and third portions of said video program,” but not the second portion, and “said third portion of said video program is provided to said display device immediately following said first portion of said video program.” *See* Ex. 1001, 12:3-14; *see also* Ex. 2006, ¶109.

In summary, the “at least one processor” is configured such that the user of the DVR cannot skip the “second portion” of the “video program” during the “first time period” (i.e., the first scenario). *See* Ex. 1001, 11:62-66. Subsequently, during the “second time period,”² the “at least one processor” is configured such that the user of the DVR can choose whether to skip the “second portion” of the “video program” based on selecting the “first playback state” or the “second playback state”

² Claim 1 of the ’710 Patent recites that “said second period of time is a period of time after said first period of time.” Ex. 1001 at 12:15-16.

(i.e., the second and third scenarios). *See id.*, 11:57-61, 11:66-12:14. As a result, the user cannot skip the “second portion,” which can be a commercial more proximate to when the “video program” was received, whereas the skip functionality becomes available at a later point in time. *See id.*, 11:57-61, 11:62-12:14. *See Ex. 2006*, ¶110.

Dow does not disclose any of the three scenarios recited in limitation 1[d]. For the first scenario, the Petition cites to *Dow*’s “variables governing the activation of the navigation function when the DVR is in a particular state, such as playback mode, playback menu mode, live view mode, program guide menu mode, etc.” Pet., p. 56 (citing Ex. 1007, 24:24-27, 24:30-31). Those citations disclose that different operational modes of *Dow*’s DVR affect whether the user can skip commercials, but do not disclose any of those modes being affected by time. *See Ex. 1007*, 24:24-27. The Petition also cites to the disclosure in *Dow* that “[t]he control interface module 818 may define that commercial skip is always inactive in live view mode or in delayed view mode (a form of playback) where there is insufficient time to buffer and process events for identifying commercial groups (e.g., a time delay of less than two minutes).” Pet., p. 58 (citing Ex. 1007, 24:43-48) (emphasis added). But there the “commercial skip” is disabled based on what mode the DVR is in, not by time. *See Ex. 1007*, 24:43-48; *see also Ex. 2006*, ¶111. In short, *Dow* does not determine

whether a “second command” was received during a “first period of time,” as claim limitation 1[d][i] requires.

Moreover, *Dow* cannot “provide said video in its entirety,” as claimed, in either the “live view mode” or “delayed view mode . . . where there is insufficient time to buffer and process events for identifying commercial groups (e.g., a time delay of less than two minutes).” According to claim 1, a transmitted video program (including first, second, and third portions) is received and stored in a memory device. Ex. 1001, 11:46-61. “[A] second command initiates playback of said video program *from said memory device*,” where the specific playback from memory depends on DVR state and time. *Id.* (emphasis added). The Petition identifies the content portions of a program as the claimed “first portion” and “third portion,” whereas the commercials between those portions are identified as the claimed “second portion.” See Pet., p. 53 (citing Ex. 1007, Fig. 3). *Dow*’s DVR cannot “provide said video in its entirety” in its “live view mode” because the user is viewing the “first portion” of the program live, so the “second portion” and “third portion” have not been received yet, let alone stored on a memory device, from which playback is initiated. See Ex. 1007, 24:23-27; Ex. 2006, ¶112. Similarly, *Dow*’s DVR cannot “provide said video in its entirety” in its “delayed view mode . . . where there is insufficient time to buffer and process events for identifying commercial groups (e.g., a time delay of less than two minutes)” because the “second

portion” has not been fully received and the third portion has not yet been received, let alone stored in a memory device. *See* Ex. 1007, 24:43-48; Ex. 2006, ¶112. Accordingly, *Dow* does not disclose the “at least one processor” configured to “(i) provide said video program in its entirety to a display device in response to receiving said second command regardless of a playback state of said DVR if said second command is received during a first period of time.” *See* Ex. 2006, ¶112.

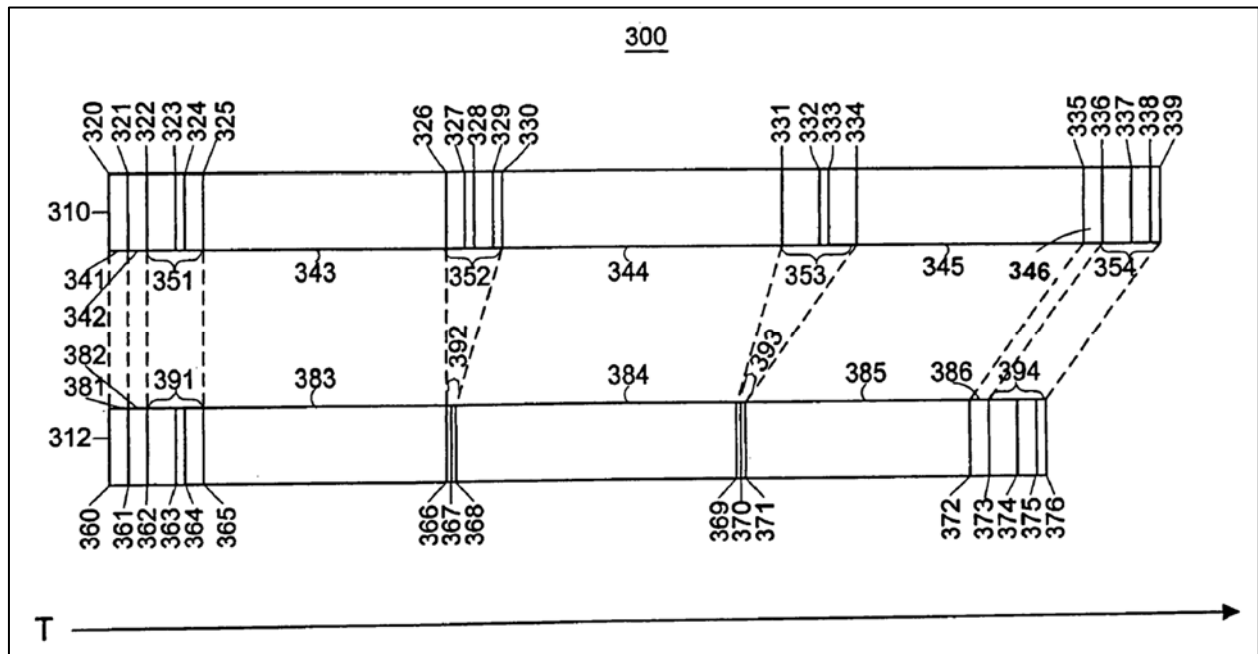
Still referring to the first scenario, Petitioner mapped the period during which *Dow*’s DVR is operating in the “live view mode” or the “delayed view mode” to the claimed “first period of time.” *See* Pet., p. 58. That mapping is flawed because, as discussed above in Section III.C.1, the claimed “first period of time” must start after transmission of the entire “video program” to the DVR. *See* Ex. 2006, ¶113. In contrast, in *Dow*’s “live view mode” or “delayed view mode,” the entire “video program” has not been transmitted to the DVR. Specifically, as previously mentioned, the “second portion” has not been fully transmitted and the “third portion” has not yet been transmitted. *See* Ex. 2006, ¶113.

For the second scenario, the Petition cites to *Dow*’s disclosure of “toggling the commercial skip function between active and inactive modes.” *See* Pet., p. 58 (citing Ex. 1007, 24:29-32). But again, *Dow* does not disclose that function being available or not available based on time. *See* Ex. 1007, 24:29-32; Ex. 2006, ¶114. Accordingly, *Dow* does not disclose the “at least one processor” configured to “(ii)

provide said video program in its entirety to said display device in response to receiving said second command if said second command is received during a second period of time and said DVR is in said first playback state.” See Ex. 2006, ¶114.

For the third scenario, the Petition cites to Figure 3 in *Dow*, which depicts how a program will be displayed to the user when commercial-skip function is inactive and active. See Pet., pp. 58-59 (citing Ex. 1007, Fig. 3, 9:40-45, 10:45-47).

Figure 3 is reproduced below:



Ex. 1007, Fig. 3. The Petition identifies the content portions (343 & 344) of a program as the claimed “first portion” and “third portion,” whereas the commercials between those portions (352) are identified as the claimed “second portion.” See Pet., p. 53 (citing Ex. 1007, Fig. 3). Timeline 310 depicts the program as originally presented, whereas timeline 312 depicts how the program will be displayed with the

commercial-skip feature active. *See* Ex. 1007, 9:37-47. Figure 3 and the related written disclosures are silent about the commercial-skip feature becoming available during “a second period of time” when it was not available during “a first period of time,” and where the “first period of time” started after transmission of the entire video program. *See* Ex. 2006, ¶115. Accordingly, *Dow* does not disclose the “at least one processor” configured to “(iii) provide only a portion of said video program to said display device in response to receiving said second command if said second command is received during said second period of time and said DVR is in said second playback state, said portion of said video program including at least said first and third portions of said video program, wherein said third portion of said video program is provided to said display device immediately following said first portion of said video program if said second command is received during said second period of time and said DVR is in said second playback state.” *See* Ex. 2006, ¶115.

Again, while *Dow* may provide that “commercial skip is always inactive in live view mode or in delayed view mode,” this feature is mode-based, not time-based as claimed. *See* Ex. 1007, 24:43-48; Ex. 2006, ¶116. It is also before the first, second, and third portions have been received and stored on a memory device, from which playback is initiated. Thus, by definition, this “inactivation” of “commercial skip” cannot be during “said second period of time . . . wherein said second period of time is a period of time after said first period of time.” Ex. 1001, 11:62-12:16;

see also Ex. 2006, ¶116. In other words, inactivating commercial skip before the commercials have been received (or before the programming after the commercial has been received) is completely different from the claimed invention, where skipping is allowed after the video program (first, second, and third portions) has been received and stored in memory. *See* Ex. 2006, ¶116.

2. Dependent Claim 3

Dependent claim 3 depends from and adds limitations to independent claim 1. As discussed above, *Dow* fails to anticipate independent claim 1. Accordingly, *Dow* fails to anticipate dependent claim 3 for at least the same reasons. *See* Ex. 2006, ¶117.

Further, dependent claim 3 recites

wherein said video program includes at least primary and secondary video content, and said portion of said video program that is provided to said to said display device if said second command is received during said second period of time and said DVR is in said second playback state includes said primary video content and only a portion of said secondary video content.

Ex. 1001, 12:20-26 (emphasis added). Accordingly, claim 3 falls within the third scenario (i.e., claim limitation 1[d][iii]). *See* Ex. 2006, ¶118. Petitioner mapped *Dow*'s "commercials" to the claimed "secondary video content." *See* Pet., pp. 60-61 (citing Ex. 1007, 16:5-9). To meet the requirements of claim limitation 1[d][iii], the Petition cites to the embodiment in *Dow* where commercials are skipped in their

entirety. *See* Pet., p. 59 (citing Ex. 1007, 10:45-47). Now, to meet the requirements of claim 3, Petitioner cites to the embodiment in *Dow* where the DVR still plays “a small portion of one of more commercials in a skipped commercial group.” *See* Pet., p. 61 (citing Ex. 1007, 16:5-9). But those are mutually exclusive embodiments. Petitioner fails to explain how a commercial can be skipped in its entirety but a small portion of the commercial is still played. *See* Pet., pp. 60-61; *see also* Ex. 2006, ¶118. Accordingly, *Dow* fails to anticipate dependent claim 3.

3. Independent Claim 9

The Petition does not provide independent analysis for independent claim 9. *See* Pet., pp. 51-60. Instead, it contends that the same disclosure in *Dow* is relevant to each of the independent claims. *See id.* As a result, the Petition fails to show that *Dow* anticipates claim 9 for the same reasons as claim 1. *See supra* Section IV.B.1; *see also* Ex. 2006, ¶119.

- i. 9[c] “receiving a first command from at least one user of said DVR, said first command indicating a playback state of said DVR”

Limitation 9[c] recites “receiving a first command from at least one user of said DVR, said first command indicating a playback state of said DVR.” Ex. 1001, 12:62-64. The Petition contends that the “playback state” corresponds to whether the commercial-skipping functionality in *Dow* is active or inactive. *See* Pet., p. 56. But as with claim 1, the “first playback state” and “second playback state”

correspond to more than simply whether commercial-skipping functionality is active or inactive. *See* Ex. 1001, 13:4-24; *see also infra* Section IV.B.3(ii). Accordingly, *Dow* does not anticipate limitation 9[c]. *See* Ex. 2006, ¶120.

- ii. 9[f] “wherein the step of providing said at least a portion of said video program to said display device further comprises . . .”

As with limitation 1[d], limitation 9[f] recites three scenarios that define how video is provided based on (1) the playback state and (2) the “period of time.” *Compare* Ex. 1001, 13:4-24 (limitation 9[f]) *with* Ex. 1001, 11:62-12:14 (limitation 1[d]). Like limitation 1[d], limitation 9[f] also requires that the entire “video program” is provided in certain scenarios and that portions can only be skipped after the entire video program (or at least first, second, and third portions) has been received and stored on a memory device. *See id.*; Ex. 2006, ¶121. Accordingly, *Dow* does not anticipate limitation 9[f] for the same reasons as limitation 1[d]. *See supra* Section IV.B.1(ii); Ex. 2006, ¶121.

4. Dependent Claim 12

Dependent claim 12 depends from and adds limitations to independent claim 9. As discussed above, *Dow* fails to anticipate independent claim 9. Accordingly, *Dow* fails to anticipate dependent claim 12 for at least the same reasons. *See* Ex. 2006, ¶122.

The Petition relies on the same analysis for both claim 3 and claim 12. *See* Pet., pp. 60-61. Accordingly, *Dow* fails to anticipate dependent claim 12 for all the reasons discussed above in reference to dependent claim 3. *See* Ex. 2006, ¶123.

5. Dependent Claim 17

Dependent claim 17 depends indirectly from and adds limitations to independent claim 9. As discussed above, *Dow* fails to anticipate independent claim 9. Accordingly, *Dow* fails to anticipate dependent claim 17 for at least the same reasons. *See* Ex. 2006, ¶124.

Further, claim 17 recites, in part, “receiving . . . said at least one time of when said second portion of said video program begins, and said at least one time of when said second portion of said video program ends from a satellite, wherein each one of said at least one times is received by said DVR after said video program is stored on said memory device.” Ex. 1001, 14:11-17 (emphasis added). In other words, the start time and the end time of the second portion are received from the satellite after the video program is stored on the memory device of the DVR. *See* Ex. 2006, ¶125.

Petitioner mapped *Dow*’s “event data or other metadata” to the claimed “said at least one times.” Pet., pp. 65-66 (citing Ex. 1007, 14:17-19, 16:59-62). Even if that mapping is proper, *Dow* still fails to disclose the specific timing required by claim 17. Specifically, *Dow* fails to disclose that the “event data or other metadata” (i.e., Petitioner-identified “at least one times”) is received from the satellite after the

video program is stored on the memory device of the DVR. Accordingly, *Dow* fails to anticipate claim 17. *See* Ex. 2006, ¶126.

6. Independent Claim 18

The Petition does not provide independent analysis for independent claim 18. *See* Pet., pp. 51-60. Instead, it contends that the same disclosure in *Dow* is relevant to each of the independent claims. *See id.* As a result, the Petition fails to show that *Dow* anticipates claim 18 for the same reasons as claim 1. *See supra* Section IV.B.1; Ex. 2006, ¶127.

- i. 18[c] “a controller for receiving commands including at least a first command for setting a playback state of said DVR and a second command for initiating a playback of said video program from said memory device”

Limitation 18[c] recites “a controller for receiving commands including at least a first command for setting a playback state of said DVR and a second command for initiating a playback of said video program from said memory device.” Ex. 1001, 14:27-30. The Petition contends that the “playback state” corresponds to whether the commercial-skipping functionality in *Dow* is active or inactive. *See* Pet., p. 56. But as with claim 1, the “first playback state” and “second playback state” correspond to more than simply whether commercial-skipping functionality in is active or inactive. *See* Ex. 1001, 14:31-46; *see also infra* Section IV.B.6(ii). Accordingly, *Dow* does not anticipate limitation 18[c]. *See* Ex. 2006, ¶128.

ii. 18[d] “at least one processor for . . .”

As with limitation 1[d], limitation 18[d] recites three scenarios that define how video is provided based on (1) the playback state and (2) the “period of time.” *Compare* Ex. 1001, 14:31-46 (limitation 18[d]) with Ex. 1001, 11:62-12:14 (limitation 1[d]). Like limitation 1[d], limitation 18[d] also requires that the entire “video program” is provided in certain scenarios and that portions can only be skipped after the entire video program (or at least first, second, and third portions) has been received and stored on a memory device. *See id.* Accordingly, *Dow* does not anticipate limitation 18[d] for the same reasons as limitation 1[d]. *See supra* Section IV.B.1(ii); Ex. 2006, ¶129.

7. Dependent Claims 2, 4, 5, 7, 8, 10, 11, 13, 16, and 19

Dependent claims 2, 4, 5, 7, and 8 depend from and add limitations to independent claim 1. Dependent claims 10, 11, 13, and 16 depend from and add limitations to independent claim 9. Dependent claim 19 depends from and adds limitations to independent claim 18. *Dow* fails to anticipate independent claims 1, 9, and 18, therefore, *Dow* fails to anticipate dependent claims 2, 4, 5, 7, 8, 10, 11, 13, 16, and 19 for at least the same reasons. *See* Ex. 2006, ¶130.

C. Ground 3 – The Combination of *Dow* and *Russ* Does Not Render Obvious Claims 1-19 of the '710 Patent

Petitioner contends that the combination of *Dow* and *Russ* renders obvious claims 1-19 of the '710 Patent. Pet., pp. 13, 67-74. The combination of *Dow* and *Russ* does not render obvious those claims for at least the following reasons. See Ex. 2006, ¶131.

1. Independent Claim 1

The combination of *Dow* and *Russ* does not render obvious independent claim 1 because the combination does not teach or suggest the following elements of the claim. As described above in Sections IV.A and B, neither *Russ* nor *Dow* discloses the time-based limitations recited in the claims. Accordingly, Petitioner's argument that the combination of *Dow* and *Russ* is driven by impermissible hindsight rather than evidence of what would have been obvious to a person of ordinary skill in the art at the time of the invention. See Ex. 2006, ¶132.

- i. 1[c] “a controller configured to receive commands from a user . . .”

Limitation 1[c] recites “a controller configured to receive commands from a user of said DVR, wherein a first command changes said DVR from a first playback state to a second playback state, and a second command initiates playback of said video program from said memory device.” Petitioner does not contend that it would have been obvious to combine *Dow* and *Russ* to address *Dow*'s failure to disclose

limitation 1[c]. *See* Pet., pp. 67-72. Accordingly, the combination of *Dow* and *Russ* does not teach or suggestion limitation 1[c] for the same reasons provided in Section IV.B.1(i). *See* Ex. 2006, ¶133.

- ii. 1[d][i] “at least one processor configured to (i) provide said video program in its entirety . . .”

Limitation 1[d][i] recites “at least one processor configured to (i) provide said video program in its entirety to a display device in response to receiving said second command regardless of a playback state of said DVR if said second command is received during a first period of time.” Ex. 1001, 11:62-66. Petitioner does not contend that it would have been obvious to combine *Dow* and *Russ* to address *Dow*’s failure to disclose limitation 1[d][i]. *See* Pet., pp. 67-72. Accordingly, the combination of *Dow* and *Russ* does not teach or suggestion limitation 1[d][i] for the same reasons provided in Section IV.B.1(ii). *See* Ex. 2006, ¶134.

Further, in *Dow*’s system, once an entire video program is recorded, the user may playback the video program with or without the commercials. *See* Ex. 1007, 10:45-50, 24:14-56. In other words, *Dow* does not impose any time-based restrictions on the user’s ability to playback a stored video program without the commercials. *See id.* Following Petitioner’s proposed modifications, *Dow*’s users will now need to wait some arbitrary time period before they can playback the stored video program without commercials. According to Petitioner, “some users are

willing to accept restrictions on commercial skipping soon after distribution of content (i.e., a first period of beginning upon completion of transmission of the program) while other users are willing to wait weeks to watch the program to allow for availability of commercial skipping.” Pet., p. 69. But that is not true for *Dow*’s users, who never had such restrictions in the first place. Ex. 2006, ¶135. *Dow*’s users would not react favorably to the new playback restrictions. Ex. 2006, ¶135. Accordingly, there is no motivation to combine *Dow* and *Russ*.

Also according to Petitioner, a POSITA “would have understood that combining Russ’s techniques with Dow’s teachings allows the content provider to obtain additional revenue from showing advertisements to users who value watching the program during the initial release period.” Pet., p. 69. *See also* Ex. 1002, ¶¶343-345. But neither Petitioner nor Petitioner’s expert provides any evidence that content providers in *Dow* either (a) suffer from reduced ad revenues because of *Dow*’s ad-skipping feature, or (b) would experience an increase in ad revenues if *Dow*’s system was modified as proposed by Petitioner. *See id.*; *see also* Ex. 2006, ¶136. Accordingly, there is no motivation to combine *Dow* and *Russ*.

- iii. 1[d][ii] “at least one processor configured to . . . (ii) provide said video program in its entirety . . .”

Limitation 1[d][ii] recites “at least one processor configured to . . . (ii) provide said video program in its entirety to said display device in response to receiving said

second command if said second command is received during a second period of time and said DVR is in said first playback state.” Ex. 1001, 11:66-12:3. For this limitation, Petitioner contends that it would have been obvious to combine *Dow* with *Russ* to overcome the shortcomings in *Dow* because “Russ discloses the desirability of having a second time period (i.e., once the restriction expires) in which the user may elect to skip the commercials or not.” See Pet., pp. 68-69. But *Russ* does not disclose “providing said video program in its entirety” (i.e., including commercials under Petitioner’s argument) “during a second period of time.” See Ex. 2006, ¶137.

The commercial-related functionality in *Russ* is driven by “tags.” *Russ* uses “ad-insertion tags” to “differentiate between the program and commercials.” See Ex. 1008, ¶[0026]. Frames within the program “are preferably tagged to indicate a splicing point when a commercial break is coming.” *Id.*, ¶ [0027]. Through the tags, commercials are inserted or replaced. *Id.*, ¶[0028]. *Russ* discloses that the same tag can also specify whether the user can fast forward through a commercial (so-called “trick play” functionality). And the same tag can also specify an expiration date, after which “the tag would become inactive or replaceable.” See *id.*, ¶[0035]. At that point, the commercial would no longer be viewable (because the tag is inactive) or the commercial would be replaced with a different commercial (because the tag is replaced). See *id.*; Ex. 2006, ¶138. Accordingly, *Russ* does not disclose providing “said video program in its entirety” because the commercial would either be non-

viewable or replaced by a new commercial. *See id.* And Petitioner’s rationale that “Russ discloses the desirability of having a second time period (i.e., once the restriction expires) in which the user may elect to skip the commercials or not” is not supported by the reference. *See* Pet., pp. 68-69. As discussed above, when the restriction expires, so too does the commercial (or its tag), and a new, different commercial is provided. *See* Ex. 2006, ¶138.

Petitioner’s remaining obviousness rationale is supported by only the declaration of Dr. Jeffay. *See* Pet., p. 69 (citing Ex. 1002, ¶345).³ But his declaration should be afforded no weight because it does nothing more than restate Petitioner’s argument without any additional supporting evidence or reasoning. *Compare* Pet., p. 69 *with* Ex. 1002 ¶345 (Jeffay declaration); *Xerox Corp., et al. v. Bytemark, Inc.*, No. IPR2022-00624, Paper 9, pp. 15-16 (P.T.A.B. Aug. 24, 2022) (Precedential) (declaration is entitled to little weight when it contains an exact restatement of the petition’s arguments without any additional supporting evidence or reasoning). Accordingly, Petitioner’s remaining obviousness rationale lacks support. *See* Ex. 2006, ¶139.

³ The Petition also cites paragraph 343 of the Jeffay declaration, but that paragraph does not contain any rationale regarding obviousness.

In sum, Petitioner’s obviousness rationale for this limitation is driven by hindsight, without any evidence that the claimed invention would have been obvious to a person of ordinary skill in the art. *See* Ex. 2006, ¶140.

- iv. 1[d][iii] “at least one processor configured to . . . (iii) provide only a portion of said video program . . .”

Limitation 1[d][iii] recites “at least one processor configured to . . . (iii) provide only a portion of said video program . . .” Ex. 1001, 12:3-14. In arguing that this feature is obvious, Petitioner merely restates its anticipation arguments for *Dow*, and its previous arguments for *Russ* (where trick play is precluded). *See* Pet., pp. 69-72. However, as discussed above, this feature is not disclosed in either *Dow* or *Russ*. *See* Ex. 2006, ¶141. In *Dow*, there are no time-based restrictions on commercial skipping after the video program has been received and stored on a memory device—only while the program is being received (as one cannot skip while viewing program live or with a slight (e.g., two minute) delay). *See supra* Section IV.B.1(ii). In *Russ*, the commercial skipping restrictions are commercial based, not time-based. The transmitted commercial can either be skipped or it cannot (based on its “tag”). *See supra* Section IV.A.1(ii). It does not switch from non-skippable (during a first period of time) to skippable (during a second period of time). Accordingly, *Russ* cannot make up for this deficiency in *Dow*. *See* Ex. 2006, ¶141.

2. Independent Claims 9 and 18

The Petition does not provide independent analysis for independent claims 9 or 18. *See* Pet., pp. 67-72. Instead, it contends that the same disclosures in *Dow* and *Russ* are relevant to each of the independent claims. *See id.* As a result, the Petition fails to show that the combination of *Dow* and *Russ* renders obvious claims 9 and 18 for the same reasons as claim 1. *See supra* Section IV.C.1; *see also* Ex. 2006, ¶142.

3. Dependent Claim 17

Dependent claim 17 depends indirectly from and adds limitations to independent claim 9. As discussed above, the combination of *Dow* and *Russ* fails to render obvious independent claim 9. Accordingly, the combination of *Dow* and *Russ* fails to render obvious dependent claim 17 for at least the same reasons. *See* Ex. 2006, 143.

Further, claim 17 recites, in part, “receiving . . . said at least one time of when said second portion of said video program begins, and said at least one time of when said second portion of said video program ends from a satellite, wherein each one of said at least one times is received by said DVR after said video program is stored on said memory device.” Ex. 1001, 14:11-17 (emphasis added). In other words, the start time and the end time of the second portion are received from the satellite after the video program is stored on the memory device of the DVR. *See* Ex. 2006, ¶144.

Petitioner mapped *Dow*'s "metadata" to the claimed "said at least one times." Pet., pp. 65-66 (citing Ex. 1007, 14:17-19, 16:59-62), 74. Even if that mapping is proper, *Dow* still fails to disclose the specific timing required by claim 17. See Ex. 2006, ¶145. Specifically, *Dow* fails to disclose that the "metadata" (i.e., Petitioner-identified "at least one times") is received from the satellite after the video program is stored on the memory device of the DVR. See Ex. 2006, ¶145.

According to Petitioner, a POSITA "would have understood that the metadata affiliated with video events could be transmitted to the DVR separately, or after the video program has been transmitted" and a POSITA "would have found it obvious to have *Dow*'s DVR store the video program in memory separately or before receiving the times when the second portion begins and ends." Pet., p. 74. But neither Petitioner nor its expert provide any evidence or reasoning for those conclusions. See Pet., p. 74; Ex. 1002, ¶¶423-425. The Petition references *Dow*'s "live view mode or delayed view mode." Pet., p. 74 (citing Ex. 1007, 24:44-48). But as discussed above, in *Dow*'s "live view mode or delayed view mode" the entire video program has not yet been transmitted to the DVR, and thus the video program has not yet been stored in the memory device of the DVR. Accordingly, it is unclear how *Dow*'s "live view mode or delayed view mode" teaches "each one of said at least one times is received by said DVR after said video program is stored on said memory device," as claim 17 requires. See Ex. 2006, ¶146. *Russ* does not cure the

deficiencies of *Dow*, and the Petition does not state otherwise. *See* Pet., p. 74. Accordingly, the combination of *Dow* and *Russ* fail to render claim 17 obvious.

4. Dependent Claims 2-8, 10-16, and 19

Dependent claims 2-8 depend from and add limitations to independent claim 1. Dependent claims 10-16 depend from and add limitations to independent claim 9. Dependent claim 19 depends from and adds limitations to independent claim 18. The combination of *Dow* and *Russ* fails to render obvious independent claims 1, 9, and 18, therefore, the combination of *Dow* and *Russ* fails to render obvious dependent claims 2-8, 10-16, and 19 for at least the same reasons. *See* Ex. 2006, ¶147.

V. CONCLUSION

For the foregoing reasons, Petitioner has not established that the cited references render any of the challenged claims unpatentable.

CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), I hereby certify that the foregoing Patent Owner's Response contains 13,473 words as measured by the word processing software used to prepare the document, excluding the cover page, signature block, and portions exempted under 37 C.F.R. § 42.24(a) or (b).

DATED: March 11, 2024

Respectfully submitted,

By: /John Wittenzellner/
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, the undersigned certifies that on March 11, 2024, the foregoing document was served on counsel of record for Petitioner by filing this document through the End-to-End System, as well as via electronic mail to counsel of record for Petitioner at the following addresses: Eliot D. Williams (eliot.williams@bakerbotts.com), G. Hopkins Guy (hop.guy@bakerbotts.com), Ali Dhanani (ali.dhanani@bakerbotts.com), and Thomas Carter (thomas.carter@bakerbotts.com).

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