

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AYLO FREESITES LTD and FUBOTV MEDIA INC.,

Petitioners

v.

DISH TECHNOLOGIES L.L.C.,

Patent Owner

U.S. Patent 10,469,555

Issue Date: November 5, 2019

Title: APPARATUS, SYSTEM, AND METHOD FOR MULTI-BITRATE
CONTENT STREAMING

Inter Partes Review No. IPR2024-00146

**PETITIONER AYLO FREESITES LTD'S
REQUEST FOR REHEARING**

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450
Submitted Electronically via PTAB P-TACTS

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I. INTRODUCTION

Petitioner Aylo Freesites Ltd respectfully requests rehearing of a discrete portion of the Patent Trial and Appeal Board’s (“Board”) April 17, 2025 Final Written Decision (Paper 57) (“FWD”). Specifically, Petitioner seeks rehearing of the Board’s finding that claims 4, 7, 22, and 23 (and their dependent claims)¹ (“Requested Claims”), were not shown unpatentable based on an erroneous claim construction of “a [first / plurality of] web servers . . . configured to . . . retrieve from the [at least one storage] device the requested first streamlet” limiting the claims to a particular embodiment disclosed in the patent. Petitioner further requests rehearing of the Board’s finding that the Requested Claims were not shown unpatentable even under the construction adopted by the Board because the Board misapprehended the Petition’s mappings and overlooked cited evidence from Ogdon.²

¹ The Board found claims 8 and 9 unpatentable because these claims depend upon claim 7. FWD, 63. This request for rehearing applies equally to those portions of the Board’s decision. While the Board found the limitations of claim 8 satisfied in its analysis of claim 15 (FWD, 71, n.16), Petitioner acknowledges that the Board found certain limitations of claims 9 were not satisfied in its analysis of claim 16 due to alleged deficiencies relating to a ten second delay (FWD, 72, n.17).

² Although Petitioner seeks a narrow rehearing, Petitioner expressly reserves and does not waive its appeal rights regarding any issues in the Final Written Decision. *See Voice Tech Corp. v. Unified Pats., LLC*, 110 F.4th 1331, 1340 (Fed. Cir. 2024).

II. CLAIM CONSTRUCTION

Claim 1 recites, in part, “[a] system for adaptive-rate content streaming of live event video . . . the system comprising: *at least one storage device* storing live event video.” Claim 4 depends upon claim 1 and recites, in part, “a plurality of web servers located at different locations across the internet, each web server configured to: . . . retrieve from the *[at least one] storage device* the requested first streamlet.” Claim 7 also depends upon claim 1 and similarly recites, in part, “a first web server configured to: . . . retrieve from the *[at least one] storage device* the requested first streamlet.”

Claim 18 recites, in part, “[a] system for adaptive-rate content streaming of live event video . . . the system comprising: *at least one storage device* configured to store live event video.” Claim 22 depends upon claim 1 and recites, in part, “a first web server configured to: . . . retrieve from the *[at least one] storage device* the requested streamlet.” Claim 23 also depends upon claim 18 and similarly recites, in part, “a plurality of web servers located at different locations across the internet, each web server configured to: . . . retrieve from the *[at least one] storage device* the requested streamlet.”

Patent Owner argued that the claims are limited to a “proxy cache” embodiment described in the Patent, where proxy cache servers “ask[] for content *on behalf of* the client module.” POR, 45 (quoting EX1001, 7:3-6) (emphasis in

original). In other words, according to Patent Owner, the claimed “web servers” do not retrieve streamlets from their own storage devices but instead act as an intermediary, i.e., a proxy, that requests streamlets from a central storage device. Patent Owner went even further to argue that each of the web servers must retrieve streamlets from “*the same* central storage device.” POR, 45 (emphasis in original).

The Requested Claims are not limited to the proxy cache embodiment disclosed in the patent. The patent expressly teaches that the proxy cache embodiment is an “*alternative*[.]” arrangement, and there is no language either in the specification or claims limiting the invention to the proxy cache embodiment. EX1001, 7:1-3 (emphasis added); *Liebel–Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed.Cir.2004) (“[I]t is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited.”).

The Requested Claims simply require each of the “first” or “plurality” of web server(s) be configured to retrieve streamlets from *at least one* storage device, regardless of whether it is the webserver’s own storage device or remote from the respective webserver. Indeed, the limitation “the storage device” in claims 4, 7, 22, and 23 each have antecedent basis in claim 1 or claim 18, which recite “at least one

storage device.” There is no reason to add a “same” requirement to the claims.³ Similar recitations exist in other ABR patents. *E.g.*, U.S. Patent No. 10,469,555 at claim 5 (“at least one storage device . . . the storage device”); *see also* U.S. Patent No. 11,677,798 at claim 2 (“at least one storage device . . . the at least one storage device”); U.S. Patent No. 11,470,138 at claim 6 (same). Because there can be multiple storage devices including local storage devices at the web server(s), it is implausible that the claims require the web server or web servers to retrieve streamlets from the same central storage device.

This is consistent with the Board’s summary of the ’555 Patent, which included arrangements where each webserver retrieves streamlets from its own local storage device or from network accessible storage. Section III.A. For example, the ’555 Patent explains that content can reside at a local storage device of each web server since “[c]ontent may be transferred over the Internet 106 to the content server 102” for “stor[ing] content” (EX1001, 6:59-63) and “[c]ontent from the content

³ Petitioner pointed out that “***DISH removed the words ‘at least one’ and replaced them with brackets***” when quoting claim 6 of the ’138 Patent to argue that the claims require retrieval from the same central storage device. IPR2024-00044, Paper 37 at 19 (emphasis in original). And Dr. Jeffay admitted during his deposition that the plain language of “the at least one storage device” means there could be multiple storage devices. EX1030, 246:4-16.

server 102 may be *replicated* to other web servers 116.” EX1001, 7:4-6 (emphasis added). Further, “the client module 114 may be configured to retrieve streamlets 304 from [the] plurality of web servers 116” where “[e]ach web server 116 may be located in various locations across the Internet 106.” EX1001, 9:43-46.

This interpretation is also consistent with the Board’s finding that claim 26 of the ’554 Patent is unpatentable. Claim 26 of the ’554 Patent recites in relevant part, “[a] process executable by *one or more servers* to stream a live event video for playback by one or more end user stations, the process comprising: *storing, by the one or more servers*, a plurality of streams . . . *retrieving from the storage device* the requested first streamlet.” The Board properly found claim 26 of the ’554 Patent unpatentable since Ogdon teaches “webserver 96 retrieving from the storage device the requested segment from the currently selected stream.” IPR2024-00045, Paper 59, 78.

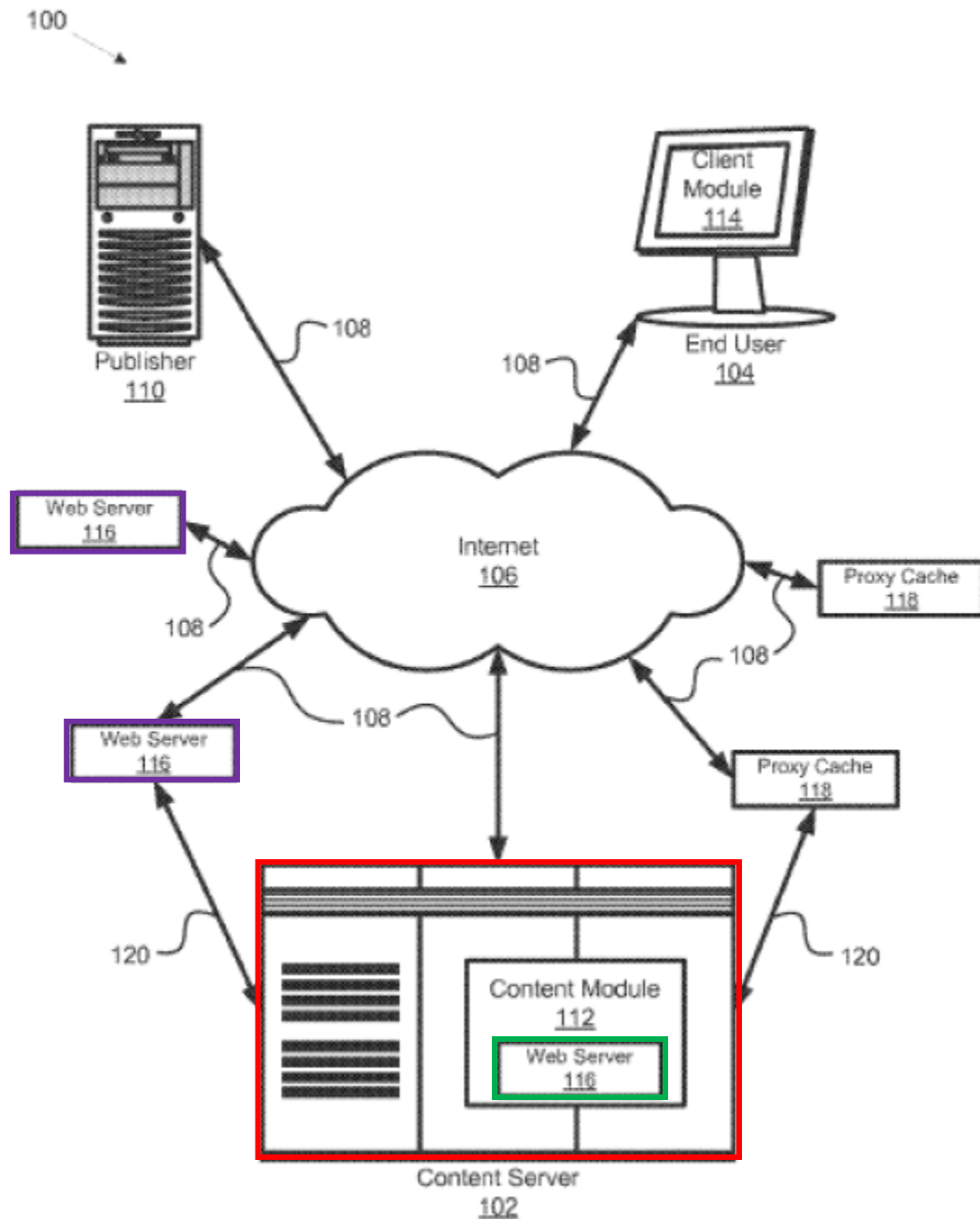
III. DISCLOSURES OF THE ’555 PATENT AND OGDON

The disclosures of the ’555 Patent and Ogdon are substantially similar.

A. The Content Webservers Disclosed in the ’555 Patent

As the Board noted, Figure 1 of the ’555 Patent provides an illustration of the system and “system 100 includes *content server 102*” and “[c]ontent may be transferred over Internet 106 *to content server 102*, and content from content server

102 may be *replicated to other web servers 116.*” FWD, 5 (citing EX1001, 6:56-58, 7:1-2, FIG. 1) (emphases added).

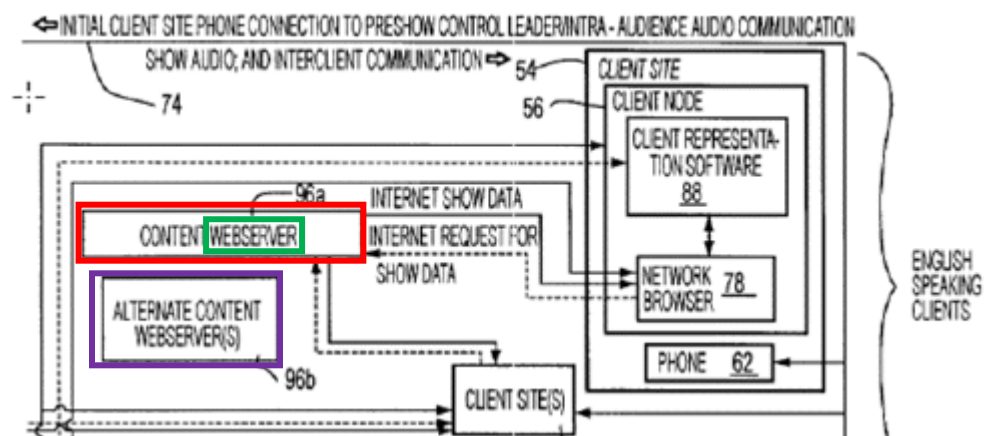


EX1001, FIG. 1 (annotated, showing a *content server 102* and *web server 116* with content stored on a local storage device that can be replicated to *other web servers*

116). As the '555 Patent explains, “[c]ontent from the content server 102 may be replicated to other web servers 116 or *alternatively* to proxy cache servers 118.” EX1001, 7:1-3 (emphasis added).

B. The Content Webservers Disclosed in Ogdon

The Board also explained that Ogdon describes that “[d]ifferent versions of the same presentation may be *accessible from the content webservers*.” FWD, 16 (citing EX1004, 2:30-35) (emphasis added). The Board noted that Ogdon’s content manager “distributes presentation content (e.g., presentation segments) to *content webservers*” and “confirms the locations and addresses of the *content webservers 96* where the *content* for each presentation *will reside*.” FWD, 16 (citing EX1004, FIGs. 1A-1B, 9:27-32, 9:44-46) (emphases added).



EX1004, FIG. 1B (excerpted, annotated, showing a *content webserver 96a* with content stored on a local storage device that can be replicated to *other alternate webservers 96b*.)

Thus, similar to the '555 Patent, Ogdon describes a content webserver where content is stored on a local storage device and that such content may be replicated to other alternate content webserver “where the content for each presentation will reside.” EX1004, 9:30-31.

IV. OGDON DISCLOSES “WEBSERVERS” AND “AT LEAST ONE STORAGE DEVICE” UNDER THE PROPER INTERPRETATION OF THE CLAIMS

Under the proper interpretation of the claims, where there is no requirement that each webserver retrieves streamlets from the same central storage device, Petitioner demonstrated Ogdon renders the claim unpatentable.

As an initial matter, Petitioner respectfully submits that the Board misapprehended the Petition’s mapping for “web servers” and “at least one storage device.” The Board stated that “Petitioner already has mapped the recited ‘at least one storage device’ to Ogdon’s webserver 96 in its analysis for claim 1 For claim 4, Petitioner maps the recited ‘plurality of web servers’ to the same elements in Ogdon, i.e., webserver 96.” FWD, 60; *see also id.*, 63 (“Petitioner relies on the same analysis from claim 4 . . . for the reasons discussed above, we are not persuaded by Petitioner’s analysis for claim 7 Petitioner’s analysis for claims 8 and 9 builds upon and incorporates the same deficiencies discussed above with respect to claim 7.”). The Board concluded that Petitioner essentially relies on each of Ogdon’s

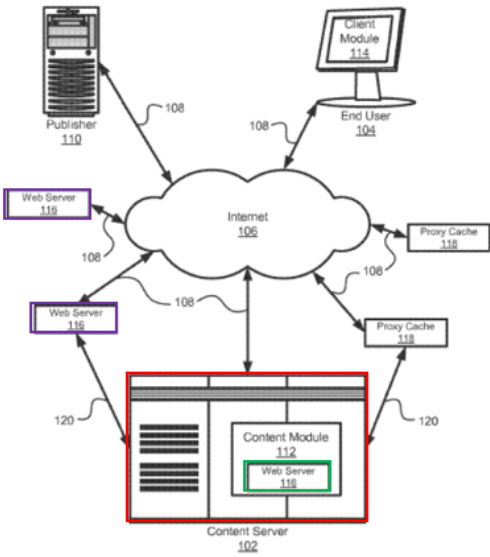
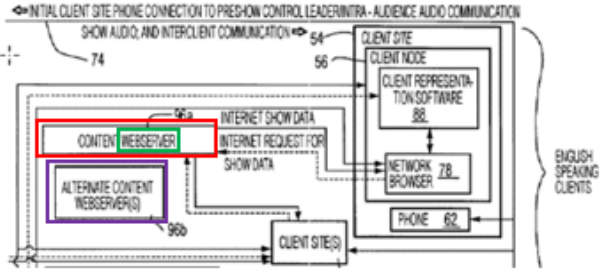
webservers 96 “retrieving the streamlet from the ‘content servers 96,’ i.e., from itself.” FWD, 60-63, 81.

But the Petition did not map “the at least one storage device” and the “plurality of web servers” / “first web server” to the *same* element. Regarding “at least one storage device,” the Petition stated that “Ogdon discloses that the webserver(s) store live event video” (i.e., store to a local or network accessible storage device). Petition, 17, 23. The Petition mapped the “plurality of web servers” / “first web server” to Ogdon’s webservers 96 which, as content webservers just as described in the ’555 Patent, necessarily access at least one storage device (either local or network accessible) where segments are pre-stored—the same arrangement as described in the ’555 Patent. *E.g.*, EX1001, FIG. 1.

Specifically, the Petition stated, “Ogdon discloses a plurality of web servers located at different locations across the internet, including a first web server, (webserver 96a and webserver 96b).” Petition, 32-33. The Petitioner further stated that “Ogdon discloses that the webserver(s) 96,” i.e., the plurality of web servers, “retrieve from the storage device,” i.e., the necessary hard disk or cache, “the requested streamlet.” Petition, 35 (citing EX1004, 19:54-67); EX1004, 19:54-67 (explaining that Ogdon’s webservers 96 are “*content* webservers 96 where the presentation segments *have been pre-stored*”) (emphases added). Petitioner did not cite these portions of Ogdon to argue that webservers 96 retrieve segments “from

themselves.” Rather, Ogdon discloses that the webserver(s) access at least one storage device to retrieve segments in response to client requests, and Petitioner’s mapping to the “at least one storage device” included both local storage devices at each of Ogdon’s webserver(s) as well as a central network accessible storage device. *See* Petition, 23-24 (describing that Ogdon’s webserver(s) “store the live event video”, citing EX1004 claim 21 (“**storing** a plurality of segments of a presentation for **network access** via one or more content supplying nodes”) (emphases added), 9:30-31 (“webserver(s) 96 where the **content** for each presentation **will reside**”) (emphasis added)).

As explained above and set forth in the Petition, Ogdon discloses that each of its plurality of webserver(s) retrieve requested segments from its own local storage device or network accessible storage. Section III.B. That is all the claim requires. The similarities between the disclosures of webserver(s) in the ’555 Patent and in Ogdon confirm that Ogdon renders the claim unpatentable.

'555 Patent	Ogdon
 EX1001, FIG. 1 (annotated)	 EX1004, FIG. 1B (excerpted, annotated)
“Content may be transferred over the Internet 106 to the content server 102” to “store content.” EX1001, 6:59-63.	“content manager 104 distributes presentation content (e.g., presentation segments) to the content webserver 96.” EX1004, 9:44-46. “content webserver 96 where the content for each presentation will reside.” EX1004, 9:30-31.
“client module 114 may be configured to retrieve streamlets 304 from a plurality of web servers 116.” EX1001, 9:43-44.	“next collection of segments to be retrieved by the client nodes and the network 70 addresses of the primary and alternate webserver 96 from which to

	retrieve the segment collection.” EX1004, 21:42-45.
“Each web server 116 may be located in various locations across the Internet 106.” EX1001, 9:45-46.	“content webserver 96 URLs and path names on these webserver where presentation content data resides.” EX1004, 12:42-44.
“Streamlets 304 may be served by the web server 116.” EX1001, 9:49-50.	“the present invention employs a ‘client-request’ technology where each presentation member’s browser requests information from a communications network server” with “data transmissions in response.” EX1004, 7:10-15, FIG. 1B (showing client “INTERNET REQUEST FOR SHOW DATA” and webserver response serving requesting client with “INTERNET SHOW DATA”).

V. OGDON DISCLOSES “A PLURLAITY OF WEB SERVERS” / “FIRST WEB SERVER” AND “AT LEAST ONE STORAGE DEVICE” EVEN UNDER THE BOARD’S INTERPRETATION

Even under the Board’s interpretation of the Requested Claims limiting them to the proxy cache embodiment (i.e., retrieval from the same central storage device), Petitioner showed that Ogdon renders the claim unpatentable. Consistent with Petitioner’s claim mapping explained above, Ogdon discloses a plurality of webserver retrieving segments from the same central storage device.

Patent Owner did not dispute that Ogdon describes a plurality of webserver at different locations.” POR, 44-45. Nor did Patent Owner dispute that Ogdon’s webserver retrieve segments from a storage device. *Id.* Instead, Patent Owner simply contended that Ogdon discloses “separate webserver” that “each retrieve” segments “from their *own local storage device*; they do not each retrieve content from *the same central storage device*, as claimed.” POR, 45 (emphases in original).

In its Reply, Petitioner pointed out that the claims do not actually require this reading and that the proxy cache arrangement is merely optional, but nonetheless argued that “[r]egardless, Ogdon teaches a plurality of webserver each pulling from a single storage device.” Reply, 20-21 (citing EX1004, claim 31, 5:53-65). Specifically, Petitioner argued that Ogdon’s claim 31, similar to Ogdon’s claim 21 cited by the Petition (Section IV), describes “storing a plurality of segments . . . said segments are network accessible from one or more content supplying network

nodes.” i.e., servers have network access to a device where segments are stored. EX1004, claim 31. Additionally, Petitioner pointed out that Ogdon describes “web servers retrieving segments from a network server in a virtual server collection.” Reply, 21 (citing EX1004, 5:53-65). Thus, Ogdon discloses, consistent with the Petition’s mapping, a plurality of web servers retrieving segments stored in the same central network accessible storage device.

VI. CONCLUSION

Petitioner respectfully requests that the Board grant rehearing and find that Petitioner established that the Requested Claims are unpatentable.

DATED: May 14, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2025 I caused a true and correct copy of the foregoing Petitioner's Request for Rehearing to be served via email to the counsel of record:

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