

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,
Petitioner,

v.

TOUCHSTREAM TECHNOLOGIES, INC.,
Patent Owner.

IPR2024-00322
Patent 8,356,251 B2

Before GEORGIANNA W. BRADEN, MICHELLE N. WORMMEESTER,
and MATTHEW S. MEYERS, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judge*.

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

I. INTRODUCTION

A. Background

Comcast Cable Communications, LLC (“Petitioner”) filed a Petition for *inter partes* review (Paper 2 (“Pet.” or “Petition”)) challenging claims 1–26 of U.S. Patent 8,356,251 B2 (Ex. 1101 (the “’251 patent”)). Touchstream Technologies, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”). Petitioner filed an authorized Reply to Patent Owner’s Preliminary Response (Paper 11 (“Prelim. Reply”)), and Patent Owner filed a Sur-reply to Petitioner’s Preliminary Reply (Paper 12 (“Prelim. Sur-reply”)).

Under 37 C.F.R. § 42.4(a), we have authority to determine whether to institute review. The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted unless the information presented in the Petition and the Preliminary Response shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

For the reasons explained below, we institute an *inter partes* review of all challenged claims on all challenges raised in the Petition.

B. Related Matters

As required by 37 C.F.R. § 42.8(b)(2), the parties identify various related matters. Pet. ix–xi; Paper 4 at 1–2. One related matter is *Touchstream Technologies, Inc. v. Comcast Cable Communications, LLC*, 2:23-cv-00062-JRG (E.D. Tex.) (“related district court litigation”). Pet. ix; Paper 4 at 1. Petitioner also challenges claims 1–26 of the ’251 patent in IPR2024-00321, in which we deny institution.

C. Real Parties in Interest

Petitioner identifies itself, Comcast Corporation, and Comcast Cable Communications Management, LLC as the real parties in interest.

Paper 7 at 1. Patent Owner identifies itself as the real party in interest.

Paper 8 at 1.

D. '251 Patent and Illustrative Claims

The '251 patent discloses a “system for presenting and controlling content on a display device [that] includes a network, a server system coupled to the network and comprising one or more servers, a display device coupled to the network and having a display, and a personal computing device.” Ex. 1101, code (57).

Claims 1 and 22 are reproduced below.

1. A machine-implemented method of controlling presentation of video content on a display device that loads any one of a plurality of different media players, the method comprising:

assigning, by a server system, a synchronization code to the display device;

receiving, in the server system, a message from a personal computing device that is separate from the server system and separate from the display device, wherein the message includes the synchronization code;

storing, by the server system, a record establishing an association between the personal computing device and the display device based on the synchronization code;

receiving, in the server system, one or more signals from the personal computing device, the one or more signals specifying a video file to be acted upon and identifying a particular media player for playing the video content, the one or more signals further including a universal playback control command for controlling playing of the video content on the display device by the particular media player,

converting, by the server system, the universal playback control command into corresponding programming code to control playing of the video content on the display device by the particular media player, wherein converting the universal playback control command includes selecting from among a plurality of specific commands, each of which represents a corresponding playback control command for a respective media player; and

storing, in a database associated with the server system, information for transmission to or retrieval by the display device, wherein the information specifies the video file to be acted upon, identifies the particular media player for playing the video content, and includes the corresponding programming code to control playing of the video content on the display device by the particular media player in accordance with the universal playback control command.

22. An automated machine-implemented method of presenting video content on a display device that loads any one of a plurality of different media player, the method comprising:

displaying, by the display device, a synchronization code that was assigned to the display device by a server system, the server system subsequently storing, based on a message from a personal computing device that is separate from the server system and the display device, an association between the display device and the personal computing device, the message from the personal computing device including the synchronization code;

retrieving, by the display device from the server system, first information that specifies a first video file to be acted upon, that identifies a first media player for playing the first video file, and that indicates corresponding programming code to control playing of the first video file on the display device by the first media player in accordance with a first playback control command, wherein the server system previously received, from the personal computing device, one or more signals specifying the first video file, identifying the first media player and including the first playback control command;

obtaining, by the display device, over the Internet the first media player for playing the first video file;

loading the first media player in the display device;

executing the first playback control command with respect to the first video file using the first media player;

subsequently retrieving, by the display device from the server system, second information that specifies a second video file to be acted upon, that identifies a second media player different from the first media player for playing the second video file, and that indicates corresponding programming code to control playing of the second video file on the display device by the second media player in accordance with a second playback control command, wherein the server system previously received, from the personal computing device, one or more signals specifying the second video file, identifying the second media player and including the second playback control command;

obtaining, by the display device, over the Internet the second media player for playing the second video file;

loading the second media player in the display device; and

executing the second playback control command with respect to the second video file using the second media player.

E. Asserted Challenges to Patentability

Petitioner presents the following bases:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–26	103(a) ¹	Danciu, ² Mahajan ³
1–26	103(a)	Danciu, Mahajan, Calvert ⁴
1–26	103(a)	Aldrey, ⁵ Mahajan

II. ANALYSIS

A. Discretionary Denial

1. 35 U.S.C. § 325(d)

Patent Owner argues that we should exercise discretion to deny institution under 35 U.S.C. § 325(d) because, according to Patent Owner, the same or substantially the same prior art previously was presented to the Office. Prelim. Resp. 2, 14–15, 44–51; Prelim. Sur-reply 3–5. For the reasons stated below, we decline to exercise discretion to deny on this basis.

Section 325 of Title 35 of the United States Code addresses the relationship of proceedings before the Board with other proceedings in the Office, and provides, in part, that

[i]n determining whether to institute or order a proceeding

¹ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284 (2011), amended 35 U.S.C. §§ 102 and 103, effective March 16, 2013. The application for the ’251 patent was filed before this date, and Petitioner applies pre-AIA §§ 102 and 103. Ex. 1101, code (22); *see* Pet. 4, 9, 11, 13 (asserting references are prior art under pre-AIA §§ 102(b), (e)).

² US 9,490,998 B1, filed Mar. 7, 2011, issued Nov. 8, 2016 (Ex. 1112).

³ US 2009/0248802 A1, published Oct. 1, 2009 (Ex. 1114).

⁴ US 2004/0078812 A1, published Apr. 22, 2004 (Ex. 1111).

⁵ US 2009/0172757 A1, published July 2, 2009 (Ex. 1115).

under this chapter, chapter 30, or chapter 31,^[6] the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.

In evaluating arguments under Section 325(d), we use a two-part framework, determining, first, “whether the same or substantially the same art previously was presented to the Office or whether the same or substantially the same arguments previously were presented to the Office.” *Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH*, IPR2019-01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential). If either condition of the first part of the framework is satisfied, we then determine “whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims.” *Id.*

Patent Owner argues that the first part of the *Advanced Bionics* framework is met because Mahajan was cited during prosecution of a patent in the same family as the ’251 patent and because Danciu “is substantially similar to and also cumulative of art that was considered by the Office.” Prelim. Resp. 45, 48. We disagree.

As to Mahajan, our precedent holds that “[u]nder § 325(d), the art and arguments must have been previously presented to the Office during proceedings pertaining to the challenged patent.” *Advanced Bionics*, Paper 6 at 7. Patent Owner does not allege that Mahajan was presented previously in a proceeding involving the ’251 patent. Thus, Patent Owner’s argument for § 325(d) denial based on Mahajan fails under the first part of the *Advanced Bionics* framework.

We further note that Patent Owner relies on Mahajan’s citation in

⁶ Chapter 31 (35 U.S.C. §§ 311–319) relates to *inter partes* review.

a 2019 office action for a different patent. Prelim. Resp. 46 (citing Ex. 2017 (Jan. 8, 2019 Office Action for Application No. 15/687,249, which issued as U.S. Patent No. 11,048,751 B2)). The '251 patent issued in January 2013, six years before this office action. Thus, the citation was not one “previously presented” and consequently we also do not find this argument persuasive.

Patent Owner argues that “Danciu describes and is substantially similar to the YouTube Remote and YouTube Leanback services,” which “were before the Examiner during prosecution.” Prelim. Sur-reply 3–4 (citing Ex. 1101, 2–3; *see* Prelim. Resp. 14 (citing Ex. 1104, 259 (IDS signed by examiner))). Patent Owner’s general assertion of similarity is insufficient to satisfy the first part of the *Advanced Bionics* framework. Rather, Patent Owner must provide a more substantive analysis comparing the teachings to show that they are substantially the same. Patent Owner does not even direct us to the YouTube Remote and YouTube Leanback prior art in the record so that we can evaluate it, and the presence of those documents is not readily apparent. *Cf. SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006) (“Judges are not like pigs, hunting for truffles buried in briefs.” (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991))); *DeSilva v. DiLeonardi*, 181 F.3d 865, 867 (7th Cir. 1999) (“[a] brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with the record.”). In its Sur-reply, Patent Owner argues that “Danciu (like the YouTube-related services it describes) only provides control over content from a single source and using a single media player—YouTube.” Prelim. Sur-reply 4. If the YouTube-related art before the Examiner is as Patent Owner describes, then it differs materially from Danciu, which discloses controlling content from

more than one source, as explained further below.

Patent Owner also cites the YouTube Remote prior art’s consideration by a jury in federal district court as supporting § 325(d) denial. Prelim. Resp. 48–49. We disagree because § 325(d) authorizes denial when “the same prior art or arguments previously were presented to the Office,” not a district court.

Because we determine that the first part of the *Advanced Bionics* framework is not satisfied, we decline to deny institution under 35 U.S.C. § 325(d).

2. 35 U.S.C. § 314(a)

Patent Owner argues that we should exercise discretion to deny institution under 35 U.S.C. § 314(a) because the factors identified in *Apple, Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential), weigh in favor of denying institution in view of the related district court litigation. Prelim. Resp. 2–3, 52–64; Prelim. Sur-reply 1–3.

We consider the following factors to assess “whether efficiency, fairness, and the merits support the exercise of authority to deny institution in view of an earlier trial date in the parallel proceeding”:

1. whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted;
2. proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision;
3. investment in the parallel proceeding by the court and the parties;
4. overlap between issues raised in the petition and in the parallel proceeding;
5. whether the petitioner and the defendant in the parallel proceeding are the same party; and

6. other circumstances that impact the Board’s exercise of discretion, including the merits.

Fintiv, Paper 11 at 5–6.

a) First factor – likelihood of stay

Petitioner has not yet requested a stay but represents “its intention to request a stay if the present IPR is instituted.” Prelim. Reply 1. Patent Owner argues that the related district court litigation is unlikely to be stayed based on that court’s low grant rate in other cases. Prelim. Resp. 53–54 (citing Ex. 2002). Petitioner argues that factor one is neutral and that Patent Owner’s stay statistics fail to account for the timing of the motions requesting a stay. Pet. 17; Prelim. Reply 1–2.

On this record, we decline to speculate as to how the district court might rule on a motion that Petitioner has not yet filed. Thus, we determine that this factor is neutral.

b) Second factor – district court trial date

The related district court litigation is currently scheduled for trial on October 28, 2024. Pet. 17; Prelim. Resp. 54. Patent Owner argues that this schedule is consistent with the district court’s median time-to-trial, which Patent Owner states is 21 months. Prelim. Resp. 54–55 (citing Ex. 2004); *see Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation* (USPTO June 21, 2022) (“Guidance Memo”)⁷ at 8–9 (providing that “[p]arties may present evidence regarding the most recent statistics on median time-to-trial for civil actions in the district court in which the parallel litigation resides for the PTAB’s

⁷ Available at https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf.

consideration”). Patent Owner argues that factor two favors discretionary denial because the district court trial date is more than eight months before our final written decision would be due if we instituted in July 2024. Prelim. Resp. 54.

Petitioner does not dispute Patent Owner’s evidence regarding time-to-trial. *See* Prelim. Reply (not addressing factor 2). Patent Owner’s representation of median time-to-trial of 21 months is consistent with the most recent available data from the judiciary.⁸ *See* Ex. 2005 (complaint filed February 17, 2023). Petitioner agrees that trial is scheduled for October 28, 2024, but notes that it has pending motions to transfer. Pet. 17. According to Patent Owner, however, the district court has since denied Petitioner’s transfer motions. Prelim. Resp. 55 (citing Ex. 2006).

We find that the related district court litigation’s trial date and the district court’s median time-to-trial favor denial.

c) Third factor – Investment in related district court litigation

Petitioner argues that “[f]actor three does not warrant denial” because the district court “has not yet begun the claim construction process and fact discovery does not close until June 2024.” Pet. 17. By Petitioner’s own admission, fact discovery will have closed by the deadline for institution, and we evaluate the investment in the related district court litigation as of the time of the institution decision. *Fintiv*, Paper 11 at 9–10. Furthermore, Patent Owner argues that expert discovery also will be closed by the deadline for institution, and substantial work on claim construction will have

⁸ Available at https://www.uscourts.gov/sites/default/files/fcms_na_distprofile1231.2023_0.pdf.

happened, including a claim construction hearing scheduled for May 16, 2024. Prelim. Resp. 56–57 (citing Exs. 2003, 2007, 2009, 2022).

Patent Owner also argues that Petitioner filed the Petition “almost ten months after learning of the asserted claims and almost five months after serving its invalidity contentions,” which, according to Patent Owner, does not show diligence in filing the Petition. Prelim. Resp. 58 (emphasis omitted); *see Fintiv*, Paper 11 at 11–12 (noting that the timing of the Petition’s filing relative learning the asserted claims may be considered for factor three).

We agree with Patent Owner that factor three favors denial. Petitioner relies only on claim construction and fact discovery, which have progressed or have been completed by now. Patent Owner shows that the related district court litigation has progressed in other aspects as well and notes Petitioner’s delay in filing the Petition. Petitioner does not further address factor three in its authorized reply.

d) Fourth factor – overlap of issues

Petitioner argues that “[f]actor four strongly favors institution” because the Petition challenges all claims while only claims 1, 2, 5, and 7–9 are asserted in the related district court litigation. Pet. 18. Petitioner also states that it “stipulates not to pursue in the District Court any ground that utilizes the same combination of prior art references relied upon in the instituted petition.” Pet. 18 (citing Ex. 1182). Petitioner’s characterization of the stipulation is slightly different from the stipulation itself, which states that, if trial is instituted, Petitioner “will not pursue in [the related district court litigation] the specific grounds against the instituted patent(s) as set forth in the respective instituted *inter partes* review petition(s).” Ex. 1182. Patent Owner argues that the “as set forth” language could be read broadly

to allow Petitioner, in the related district court litigation, to rely on the same combination of prior art in a different manner than “set forth” in the Petition. Prelim. Resp. 59–60.

Patent Owner also argues that Charter Communications, Petitioner’s co-defendant in the related district court litigation, “is pursuing almost identical invalidity defenses and has not agreed to be bound by any such stipulation.” Prelim. Resp. 60. According to Patent Owner, “Petitioner and Charter’s cases remain consolidated for all pretrial purposes and issues of invalidity will likely be dealt with at the same time.” Prelim. Resp. 60 (citing Ex. 2013 (order consolidating “for pretrial purposes”)).

Petitioner argues, however, that Charter is not a co-defendant but was sued separately, that the district court consolidated the cases for pretrial purposes only, and that invalidity will be a trial issue. Prelim. Reply 2–3. Petitioner also argues that Charter is not a real party in interest or privy in this proceeding and that Petitioner “cannot be held responsible for the acts of Charter.” Prelim. Reply 3.

Patent Owner responds that it “must still prepare for and defend against the petitioned grounds in a jury trial, regardless whether the Board institutes on the Petition” because Charter is pursuing the same invalidity defenses. Prelim. Sur-reply 3.

We agree with Petitioner that Charter’s invalidity defenses cannot be held against Petitioner. This is evident from the Guidance Memo, which provides that “the PTAB will not discretionarily deny institution in view of parallel district court litigation where a petitioner presents a stipulation not to pursue in a parallel proceeding the same grounds or any grounds that could have reasonably been raised before the PTAB.” Guidance Memo 3. This provision applies even if another defendant might pursue such grounds

in parallel litigation. Petitioner can only control what it pursues in the related district court litigation, and Petitioner's case is consolidated with Charter's case only for pretrial purposes, not for trial. Ex. 2013.

On the other hand, we agree with Patent Owner that the language in Petitioner's stipulation in Exhibit 1182 does not eliminate overlap with district court invalidity arguments. Furthermore, Petitioner's stipulation "not to pursue in the District Court any ground that utilizes the same combination of prior art references relied upon in the instituted petition" (Pet. 18) allows Petitioner to utilize a prior art reference that may be considered a primary reference, that is one disclosing a majority of the claim limitations, in combination with a reference that is not relied on in the Petition. This may not address adequately "concerns of inefficiency and the possibility of conflicting decisions." *See Fintiv*, Paper 11 at 12.

Finally, we agree with Petitioner that the fact that the Petition challenges claims that are not asserted in the litigation shows that there is not complete overlap. Patent Owner asserts that "Petitioner does not even attempt to show that any of challenged-but-unasserted claims present different issues of invalidity from the asserted claims." Prelim. Sur-reply 3. Even so, they are different claims, Petitioner challenges their patentability, and the district court will not resolve the issue. *Cf. SAS Institute, Inc. v. Iancu*, 138 S.Ct. 1348, 1355 (2018) ("[I]n an inter partes review the petitioner is master of its complaint and normally entitled to judgment on all of the claims it raises . . .").

Based on the foregoing discussion, we determine that factor four weighs slightly against denial.

e) Fifth factor – defendant in district court

Petitioner is the defendant in the related district court case. Pet. 18; Prelim. Resp. 61. We find that this factor favors denial. *See Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020) (precedential as to § II.A).

f) Sixth factor – other circumstances, including the merits

The sixth *Fintiv* factor takes into account other circumstances that may bear on the decision to exercise discretion to deny, such as the merits of the patentability challenges. *Fintiv*, Paper 11 at 14–16. Under this factor, “the PTAB will not deny institution based on *Fintiv* if there is compelling evidence of unpatentability.” Guidance Memo 5. Board precedent provides that we should only consider the compelling merits standard if the first five *Fintiv* factors favor discretionary denial. *CommScope Techs. LLC v. Dali Wireless, Inc.*, IPR2022-01242, Paper 23 at 4–5 (PTAB February 27, 2023) (precedential).

The second, third, and fifth *Fintiv* factors favor denial. The first factor is neutral, and only the fourth factor weighs against denial. As set forth above, we determine that the first five *Fintiv* factors favor discretionary denial, and thus, we assess compelling merits. *CommScope*, Paper 23 at 5 (“In circumstances where, however, the Board’s analysis of *Fintiv* factors 1–5 favors denial of institution, the Board shall then assess compelling merits.”).

We note that the compelling merits standard is met if “the evidence, if unrebutted in trial, would plainly lead to a conclusion that *one or more claims* are unpatentable by a preponderance of the evidence.” Guidance Memo 4 (emphasis added). Thus, the standard need only be met as to one claim. In this case, we determine, for the reasons explained below in our

analysis of Petitioner’s unpatentability challenges, that the Petition presents a compelling challenge at least for independent claim 22.

Thus, we decline to deny institution based on the *Fintiv* factors.

B. Principles of Law

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of ordinary skill in the art; and (4) any secondary considerations, if in evidence.⁹ *Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 17–18 (1966).

C. Level of Ordinary Skill in the Art

Petitioner argues that a person of ordinary skill in the art “would have had a degree in computer or electrical engineering, computer science, information systems, or a similar discipline, along with three-to-four years of experience with the design and/or implementation of network-based content delivery systems, such as video-on-demand cable systems and Internet video streaming.” Pet. 18–19 (citing Ex. 1102 ¶¶ 30–32).

Patent Owner does not dispute Petitioner’s proposed skill level at this time. *See* Prelim. Resp. 21 (“[F]or the purpose of this Preliminary Response

⁹ Patent Owner has not introduced secondary considerations evidence.

only, Patent Owner assumes Petitioner has correctly stated the level of ordinary skill in the art.”).

To the extent necessary, and for purposes of this Decision, we accept the uncontested assessment offered by Petitioner, which appears consistent with the ’251 patent and the asserted prior art.

D. Claim Construction

The parties do not propose express construction for any claim terms. Pet. 19; Prelim. Resp. 21.

On this record, we determine that no terms need express construction. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy.’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

During the trial, the parties may wish to address the construction of “programming code” if it bears on any issues of patentability. *See* § II.E.2.c(1) below and Ex. 1165, 16–20.

E. Danciu Challenges (Claims 1–26)

Petitioner asserts that claims 1–26 are unpatentable as obvious over the combined teachings of Danciu and Mahajan and also over the combined teachings of Danciu, Mahajan, and Calvert. Pet. 17, 20–59. Patent Owner opposes. Prelim. Resp. 21–38, 40–44.

1. Overview of the Prior Art

Danciu, titled “Network-Based Remote Control,” “is directed to techniques for exchanging information between a networked device, such as a network-enabled television, and web-enabled device, such as a remote

control, via a network service (e.g., a ‘cloud service’).” Ex. 1112, code (54), 1:39–44. Danciu discloses that a “web-enabled cellular phone” may be used as a remote control. Ex. 1112, 5:1–2.

Mahajan discloses techniques for handling presentation of media in client-server collaboration sessions. Ex. 1114 ¶ 11. Mahajan discloses that “the client and server may or may not support the same media platforms” and that “media playback commands specific to a media platform supported on a server may be meaningless for a media platform supported on the client.” Ex. 1114 ¶ 12. Mahajan discloses “translat[ing] a platform specific media playback command of the server into a generic media playback command,” which “can then be translated into a platform specific media playback command for a media platform supported on the client.” Ex. 1114 ¶ 13.

Calvert discloses making media available that use different playback applications via a content aggregator, and it discloses that “media service data” includes information “indicating the format of the media service, the corresponding playback application 608, [and] output requirements of the media service.” Ex. 1111 ¶¶ 20–21, 42.

We discuss additional pertinent details of the references below.

2. Independent Claim 22

We begin our merits analysis with claim 22, and we refer to Petitioner’s contentions for similar subject matter of claim 1, as Petitioner does. *See* Pet. 54–58 (referring to claim 1 contentions where applicable).

a) Preamble

Claim 22 is directed to an “automated machine-implemented method of presenting video content on a display device that loads any one of a plurality of different media players.” The method of claim 22 operates with

“a display device,” “a server system,” and “a personal computing device that is separate from the server system and the display device.”

Petitioner provides the following colorized version of Danciu’s Figure 1 to illustrate its contentions:

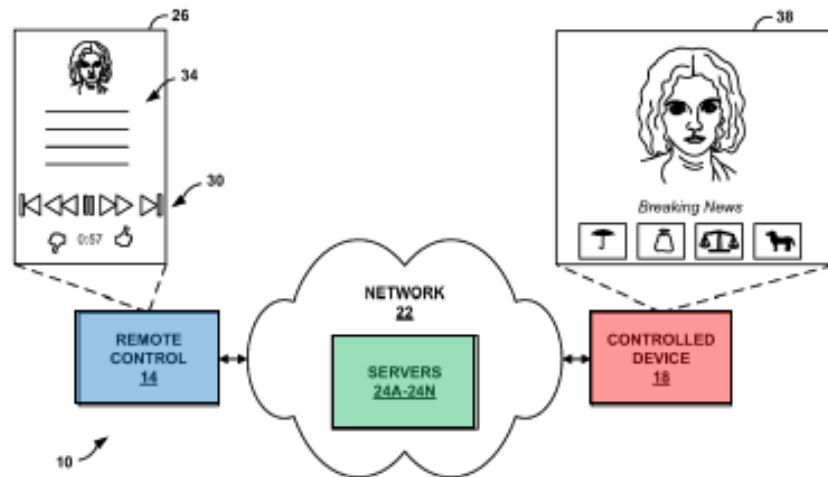


FIG. 1

Pet. 20. Danciu’s Figure 1 above with Petitioner’s component coloring shows networked environment 10 with remote control 14 (blue), which “communicates with controlled device 18 [(red)] via network 22 and servers 24A–24N [(green)] . . . in network 22.” Ex. 1112, 4:58–64; Pet. 20. Petitioner maps controlled device 18 to the recited “display device,” remote control 14 to the “personal computing device,” and servers 24 to the “server system.” Pet. 20, 24. Danciu discloses that, “[a]s shown in FIG. 1, according to some examples, remote control 14, controlled device 18, and servers 24 may be distinct components (e.g., physically distinct).” Danciu discloses that remote control 14 may be “a web-enabled cellular phone.” Ex. 1112, 5:1–2.

Petitioner argues that “the controlled device may have the ability to select a program to view content from YouTube, Netflix, or Hulu based on

received commands.” Pet. 7 (citing Ex. 1112, 11:22–35, 12:32–49, 16:55–67, 17:21–43); *see* Pet. 21 (referring to this discussion for loading a media player in preamble of claim 1). Petitioner thus argues that Danciu teaches “a display device that loads any one of a plurality of different media players,” as recited in the preamble of claim 22. Pet. 21.

Patent Owner does not dispute Petitioner’s contentions for the preamble. Patent Owner acknowledges that Danciu’s controlled device may have multiple media players, but Patent Owner argues that Danciu does not disclose controlling multiple media players on the controlled device using the remote control. Prelim. Resp. 40–44. We address this argument below.

We find Petitioner’s contentions for the preamble persuasive, and, therefore, we need not determine whether the preamble is limiting for purposes of this Decision.

b) Displaying a synchronization code

Claim 22 recites

displaying, by the display device, a synchronization code that was assigned to the display device by a server system, the server system subsequently storing, based on a message from a personal computing device that is separate from the server system and the display device, an association between the display device and the personal computing device, the message from the personal computing device including the synchronization code.

Petitioner argues that Danciu discloses displaying a QR code on the controlled device, which the user may scan with the remote control, which then sends a message with a unique identifier to the server, which associates the remote control and the controlled device. Pet. 55 (citing Ex. 1112, 4:36–45, 6:55–7:51, 8:23–49, 13:16–32, 13:62–14:1, 15:28–16:6; Ex. 1102 ¶¶ 249–250); *see also* Pet. 22–25 (discussing similar limitations for claim 1).

Patent Owner does not dispute these contentions.

We find Petitioner’s contentions and evidence persuasive. For example, Danciu discloses that “a user may be presented with a quick response (‘QR’) code via the controlled device that the user scans with the remote control (e.g., using a camera of the remote control). The QR code identifies a user account or previously initiated session maintained by the network service.” Ex. 1112, 4:36–41; *see also* Ex. 1112, 4:4–8 (“[T]he network service may assign each remote control and each controlled device a unique identifier. When pairing devices, the network service may utilize the unique identifier associated with each device to route communication signals properly.”).

After scanning the QR code, “the remote control may send a message to the network service indicating that the network service should assign a unique identification number to the remote control and pair the remote control with the user account or session identified by the QR code.” Ex. 1112, 4:41–45. Danciu further discloses that “device management module 168 [in the server] identifies and stores associations of remote controls 62 and controlled devices 64 to facilitate repeat communication between remote controls 62 and controlled devices 64.” Ex. 1112, 15:34–38.

On this record, we agree with Petitioner that Danciu discloses displaying a synchronization code and storing an association between the display device and the personal computing device based on a message from the personal computing device, as recited in claim 22.

c) Retrieving information that identifies a media player

Claim 22 recites

retrieving, by the display device from the server system, first information that specifies a first video file to be acted upon, that identifies a first media player for playing the first video file, and that indicates corresponding programming code to control playing of the first video file on the display device by the first media player in accordance with a first playback control command, wherein the server system previously received, from the personal computing device, one or more signals specifying the first video file, identifying the first media player and including the first playback control command.

Petitioner argues that Danciu's disclosure of sending commands to play media files from the remote control to the controlled device via the servers teaches this subject matter. Pet. 25–28, 38–39, 55–56. Petitioner also relies on Mahajan and Calvert in combination with Danciu for this subject matter. Pet. 28–38.

(1) Danciu

Referring to Figure 1, Danciu discloses that “remote control 14 includes a user interface 26,” which “may display controls 30 and information 34 associated with content being played on controlled device 18.” Ex. 1112, 5:29–33; *see* Pet. 25. Exemplary controls include “fast forward, reverse, skip ahead or back, play, stop, move to new content, etc.” Ex. 1112, 5:33–37. Danciu also discloses that “controlled device 18 receives one or more messages from remote control 14 via network 22 and servers 24 to alter the content that is rendered on display 38 of controlled device 18.” Ex. 1112, 5:64–6:2; *see* Pet. 25. Based on these disclosures, we agree with Petitioner, on this record, that Danciu teaches that the remote control controls the controlled device by sending messages through the servers. *See* Pet. 25–27 (discussing routing messages from remote control to

controlled device via servers). We also agree that Danciu teaches commands that specify a video file to be acted upon because they “alter the content that is rendered on display 38 of controlled device 18.” Ex. 1112, 5:64–6:2. Danciu discloses that content includes video. Ex. 1112, 13:13–15 (“Processor 120 then executes the video or web browser application and causes display 124 to display content to the user.”), *cited in* Pet. 38–39.

Petitioner also argues that Danciu discloses identifying a particular media player because it discloses that the controlled device may work with various video services, including YouTube, Hulu, and Netflix. Pet. 27 (citing Ex. 1112, 5:31–33, 7:17–29, 11:34–35, 14:13–64, Fig. 1; Ex. 1102 ¶ 154).

Patent Owner argues that “Danciu discloses a system for controlling a single media player,” YouTube, and that Danciu’s reference to other media players is inadequate because Danciu only describes control of other media players by the controlled device (display device) itself and not by the remote control. Prelim. Resp. 40–43. According to Patent Owner, “[n]owhere does Danciu envision ‘remote’ control of multiple media players.” Prelim. Resp. 43.

On this record, we disagree with Patent Owner. Danciu discloses the following:

Controlled device 118 may be used, in some examples, in conjunction with a remote control, such as remote control 14 shown in FIG. 1, remote controls 62 shown in FIG. 2, or remote control 75 shown in FIG. 3. For example, storage device 92 may store application instructions associated with a video application or web browser for displaying video content from

the World Wide Web (e.g., YouTube[] content, Hulu[] content, Netflix[] content, etc.).

Ex. 1112, 13:4–11. Storage device 92 is part of the remote control.

Ex. 1112, 8:62–65 (“Remote control 75 may include battery 80, user interface 84, display 88, storage device 92 having one or more applications 94, one or more processors 96, and network module 100.”).

Thus, Danciu expressly discloses that the remote control stores instructions for interacting with multiple video services, and we determine, on this record, that this teaches identifying a particular media player.

We also find no support in Danciu for Patent Owner’s assertion that “Danciu [is] focused on a single media player: YouTube.” Prelim.

Resp. 43. Danciu mentions YouTube twice, both times with Hulu and Netflix. Ex. 1112, 11:31–35, 13:7–11. Furthermore, Danciu discloses that its remote control is meant to be used to control any available controlled device, as reflected in the following passage:

A user may use the remote control application of remote control 75, for example, to initiate contact with a server, such as server 24, for pairing remote control 75 to one or more controlled devices, such as controlled device 18 shown in FIG. 1. In some examples, the user may also utilize the remote control application of remote control 75 to select one or more previously paired controlled devices, and to send control messages to one or more paired controlled devices. For example, the user may interact with user interface 84 and/or display 88 to interact with and control any available controlled devices.

Ex. 1112, 10:63–11:6. Thus, on this record, the evidence shows that “Danciu envision[s] ‘remote’ control of multiple media players,” contrary to Patent Owner’s argument. *See* Prelim. Resp. 43.

We agree with Patent Owner that Danciu teaches a user interface on the controlled device itself via which a user can control media players. *See* Prelim. Resp. 43 (citing Ex. 1112, 2:56–60, 11:29–35). It is unsurprising that Danciu’s controlled device, such as “an Internet-connected television” (Ex. 1112, 5:45–48), would have a user interface, as TVs do. For example, Danciu explains that “user interface 120 may also include a detachable or otherwise independent device, such as a *traditional remote control device* having a keypad, a keyboard, a mouse, a roller ball, buttons, or other devices that allow a user to interact with controlled device 18.” Ex. 1112, 11:25–29 (emphasis added). “A user may utilize user interface 120 to control media content being presented by controlled device 118 (e.g., audio or video content).” Ex. 1112, 11:29–31. We see nothing in Danciu that would eliminate any native controls of a controlled device. Rather, Danciu is directed to a “Network-Based Remote Control” for the controlled device, as the title implies. *See* Ex. 1112, code (54). Thus, Danciu’s teaching of a user interface on the controlled device itself by which a user can control different media players does not take away from Danciu’s disclosed network-based remote control, which also provides this capability, as discussed above.

Petitioner also relies on Mahajan “[t]o any extent that Patent Owner argues that Danciu does not explicitly disclose implementation details for transmission of commands for controlling a client.” Pet. 28. Patent Owner does not make such an argument, other than to say that Danciu’s remote can control only a single media player, which we address above.

Petitioner also relies on Mahajan for limitations in claims 1 and 11 that recite converting, by the server, a playback command from the personal computing device into a “programming code” for transmission to the display device. Pet. 39–42. Patent Owner disputes Petitioner’s contentions with

respect to the converting limitations, particularly regarding the location at which any command conversion happens in the proposed combination, and we address those arguments below. *See* Prelim. Resp. 23–38. Claim 22, however, recites no such conversion requirement. Rather, claim 22 recites “retrieving, by the display device from the server system, first information . . . *that indicates corresponding programming code* to control playing of the first video file on the display device by the first media player in accordance with a first playback control command” (emphasis added).

Neither party proposes an express construction for “programming code.” *See* Pet. 19; Prelim. Resp. 21. In a previous Board proceeding involving the ’251 patent, Patent Owner asserted that “programming code” means “computer program instruction(s) encoded for execution by a data processing apparatus (such as a computer processor).” Ex. 1165 (IPR2022-00795 Patent Owner Response), 16–20. Danciu teaches that the display device retrieves information that *indicates* programming code to execute because it discloses that the display device executes the command from the remote control. Ex. 1112, 7:28–29 (“Controlled device 18 receives the control message and performs the appropriate action.”), 16:65–67 (“After receiving the control information, controlled device 18 executes an action in accordance with the control information (212).”); *see* Pet. 38–39 (citing this disclosure). Claim 22 does not require the server to transmit the programming code, only to transmit information that *indicates* programming code.

Petitioner’s arguments and evidence show that Danciu alone teaches “retrieving, by the display device from the server system, first information . . . that indicates corresponding programming code to control

playing of the first video file on the display device by the first media player in accordance with a first playback control command.”

(2) Danciu and Mahajan

Petitioner relies on Mahajan for “implementation details for transmission of commands for controlling a client” and for converting playback commands into programming code. Pet. 28–34, 39–42. As discussed above, claim 22 does not recite converting commands into programming code. As for transmission of commands to a client, Petitioner argues that “Mahajan discloses a client-server collaboration session wherein a user may enter commands . . . on Mahajan’s server . . . for controlling content . . . that is playing on a client device.” Pet. 28 (citing Ex. 1114 ¶¶ 11–13, Figs. 1, 2, 4). Petitioner summarizes Mahajan’s relevant disclosure as follows: “1) commands for a type of media playing application on the server are received at Mahajan’s server, 2) the commands are translated into a universal command, 3) the universal command is transmitted, 4) the client re-translates the universal command, and 5) the new specific command is executed.” Pet. 29 (citing Ex. 1114 ¶¶ 35–36, Figs. 1, 2). Petitioner argues that a person of ordinary skill in the art “would have understood that Danciu’s remote control, which may be a portable device such as a cell phone, would likely employ different applications than Danciu’s controlled device, which may be a set top box or personal video recorder,” thus motivating a person of ordinary skill in the art “to apply Mahajan’s teachings of command conversion.” Pet. 32 (citing Ex. 1112, 5:1–6:13; Ex. 1102 ¶ 162).

Patent Owner’s arguments against the combination of Danciu and Mahajan focus on the location of the command translation and that the combination fails to teach the conversion required at the server in claims 1

and 11. Prelim. Resp. 22–38. These arguments do not apply to claim 22, which recites no such requirement. In addressing claim 1, Petitioner argues that it would have been obvious for Mahajan’s client command translation to occur at the server (Pet. 41), and we address this argument below. But even assuming that in the combination the client re-translates the command and executes the command, the command that is transmitted from the server to the client would still “indicate[] corresponding programming code,” as recited in claim 22, by virtue of the command execution.

Thus, we find Petitioner’s contentions based on the combination of Danciu and Mahajan persuasive for this limitation regardless of where the final command translation occurs.

(3) Danciu, Mahajan, and Calvert

Petitioner additionally argues that Calvert discloses “select[ing] between a plurality of media players based on messages referencing a piece of content,” and Petitioner relies on this to address “identifying a particular media player for playing the video content.” Pet. 34. Petitioner argues that, based on Calvert’s teachings, a person of ordinary skill in the art

would have understood that a media playing application, such as an application running on controlled device, could include multiple media players and that which media player to use for a particular item of content could be determined based on information included in a message regarding the content from the remote control to the controlled device.

Pet. 37 (citing Ex. 1102 ¶ 172). Petitioner argues that a person of ordinary skill in the art would have used “Calvert’s teachings to support multiple media players and select between them in order to provide more options for playing back content.” Pet. 37 (citing Ex. 1102 ¶ 172).

Patent Owner acknowledges that Petitioner relies on Calvert for “identifying a particular media player,” but Patent Owner does not address Petitioner’s contentions based on Calvert when it asserts that Petitioner’s Danciu challenge fail to disclose this limitation. *See* Prelim. Resp. 22, 40–44.

We have reviewed Petitioner’s un rebutted evidence and contentions based on Calvert, and we find them persuasive on this record. For example, Calvert discloses a content adapter that processes “media service data,” which includes information “indicating the format of the media service, the *corresponding playback application 608*, [and] output requirements of the media service.” Ex. 1111 ¶ 42 (emphasis added). On this record, we determine that this disclosure teaches “identifying a particular media player for playing the video content.”

d) Obtaining and loading the media player

Claim 22 recites “obtaining, by the display device, over the Internet the first media player for playing the first video file,” “loading the first media player in the display device,” and “executing the first playback control command with respect to the first video file using the first media player.”

Petitioner argues that Danciu’s disclosure of accessing content “via the World Wide Web” (Ex. 1114, 11:43–44) shows that it would have been obvious to a person of ordinary skill in the art “that the media player for that Internet content would have been downloaded as part of the webpage.” Pet. 56 (citing Ex. 1112, 11:41–44, 12:32–49, 13:4–15; Ex. 1102 ¶ 253). Petitioner also argues that “Mahajan teaches that the display device may display a webpage obtained and loaded over the Internet from a server for displaying content” and that “Calvert discloses that when a new media

player application that is not already present (and thus not already selected) on the playback device is required to output content, the playback device may request, locate, and store (i.e., install) the required media player on the playback device.” Pet. 56 (citing Ex. 1114 ¶¶ 19–20; Ex. 1111 ¶ 32; Ex. 1102 ¶¶ 254–255).

Petitioner further argues that it would have been obvious to a person of ordinary skill in the art “that for a media player to execute and display content, it should be loaded on the device, even if temporarily in RAM.” Pet. 57 (citing Ex. 1102 ¶ 256).

Patent Owner does not dispute these contentions. *See* Prelim. Resp.

On this record, we find Petitioner’s contentions persuasive. Danciu discloses that “[c]ontrolled device 18 may include a variety of network-enabled devices,” such as “an Internet-connected television.” Ex. 1112, 5:42–48. Danciu also teaches that the “display 124 may be configured to present audio and/or video content from a cable service provider, a satellite television provider, *content accessible via the World Wide Web*, or other content providers.” Ex. 1112, 11:41–44 (emphasis added); *see also* Ex. 1112, 13:7–11 (disclosing “video content from the World Wide Web (e.g., YouTube[] content, Hulu[] content, Netflix[] content, etc.)”). Thus, Danciu teaches a device that is connected to the Internet and can display Internet content. We agree with Petitioner that it would have been obvious for a device that is connected to the Internet and that plays Internet content to obtain a media player for playing such content from the Internet. *See* Ex. 1102 ¶ 253 (declarant testimony explaining how plugins for playing video in Web pages would be downloaded).

We also agree with Petitioner that the display device loads the media player and executes the playback command. *See* Pet. 56–57 (citing

Ex. 1112, 5:29–37, 5:64–6:2, 7:17–29, 16:55–67, 17:21–43; Ex. 1102 ¶¶ 256, 258); Ex. 1112, 7:28–29 (“Controlled device 18 receives the control message and performs the appropriate action.”), 16:65–67 (“After receiving the control information, controlled device 18 executes an action in accordance with the control information (212).”).

e) Retrieving a second command

Claim 22 recites retrieving, obtaining, loading, and executing steps for a second video file and a second media player that is different from the first media player. Petitioner argues that “the controlled device and the remote control operate in the same manner as described” for the first information “for a subsequent command entered by a user of the remote control for the controlled device, which includes converting the command to a second playback control command.” Pet. 57–58 (citing Ex. 1112, 7:11–8:58; Ex. 1102 ¶ 260).

Patent Owner does not dispute this contention, apart from its argument that Danciu works with only one media player, which we address above.

On this record, we agree with Petitioner that Danciu, in combination with Mahajan and Calvert, teaches that a second video can be played with a different media player.

f) Determination for claim 22

As noted above, the compelling merits standard is met if “the evidence, if unrebutted in trial, would plainly lead to a conclusion that one or more claims are unpatentable by a preponderance of the evidence.”

Guidance Memo 4. Our precedent provides that a challenge can only meet this standard “if it is highly likely that the petitioner would prevail with respect to at least one challenged claim.” *OpenSky Indus., LLC v. VLSI*

Tech. LLC, IPR2021-01064, Paper 102 at 49 (PTAB Oct. 4, 2022) (precedential) (“*OpenSky*”).

Based on Petitioner’s persuasive evidence and arguments for claim 22, discussed above in view of Patent Owner’s contrary arguments, we determine that it is highly likely that Petitioner would prevail in challenging claim 22. This determination “should not be taken as a signal to the ultimate conclusion after trial.” *See OpenSky*, Paper 102 at 50.

Having determined that the Petition meets the compelling merits standard for one claim, we focus in the remainder of this Decision on the parties’ disputes to provide guidance for the trial.

3. Independent Claim 1 and 11

Independent claims 1 and 11 differ from claim 22 by reciting that the server converts a playback command into “corresponding programming code.” Petitioner relies on Mahajan to teach translating between commands sent from a server to a client. Pet. 39–42 (citing Ex. 1114, ¶¶ 18, 22–23, 37–43, 51, 58, 63, 78, Figs. 3, 5; Ex. 1102 ¶¶ 179–184). Petitioner argues that Mahajan’s “RTS Media Abstraction module of the client . . . converts the commands received by the client . . . from the server.” Pet. 40 (citing Ex. 1114 ¶¶ 37–43, 63, Figs. 3, 5; Ex. 1102 ¶ 180). As noted above in the discussion of claim 22, Petitioner summarizes Mahajan’s relevant disclosure as follows: “1) commands for a type of media playing application on the server are received at Mahajan’s server, 2) the commands are translated into a universal command, 3) the universal command is transmitted, 4) the client re-translates the universal command, and 5) the new specific command is executed.” Pet. 29 (citing Ex. 1114 ¶¶ 35–36, Figs. 1, 2).

Patent Owner argues, and we agree, that command conversion at the client does not teach converting by the server, as recited in claims 1 and 11. *See* Prelim. Resp. 22–33.

Although Petitioner argues that Mahajan discloses command conversion at the client, Petitioner also asserts that Mahajan teaches using a distributed computing environment and that “it would have been obvious to a [person of ordinary skill in the art] that one or more RTS Media Abstraction Modules could operate at a server, such as in Servers 24A–24N” in *Danciu*. Pet. 41 (citing Ex. 1114 ¶¶ 18, 22–23, 51, 58, 78; Ex. 1102 ¶ 182).

Patent Owner argues that Petitioner’s obviousness arguments are inconsistent because Petitioner asserts that, in the proposed combination, *Danciu*’s remote control (personal computing device) and controlled device (display device) translate commands, a contention that, according to Patent Owner, “stands in direct contradiction of Petitioner’s argument” that it would have been obvious to translate commands at the server. Prelim. Resp. 36 (citing Pet. 32, 41).

Patent Owner’s argument refers to Petitioner’s contention that

[c]ombining Mahajan with *Danciu* would have been nothing more than applying a known technique (Mahajan’s system for sending commands) to a known device (*Danciu*’s remote control system) ready for improvement to yield predictable results (*Danciu*’s remote control would translate commands associated with a first type of media playing application to a generic format, transmit them to the controlled device, which would translate them to a command associated with a second type of media playing application for execution).

Pet. 32 (citing Ex. 1102 ¶ 163).

We agree with Patent Owner that there is some tension between Petitioner's contentions because the above-quoted argument states that the "predictable results" of the combination of Danciu and Mahajan would include command translation at the remote control and the display device whereas Petitioner's later assertion is to perform such translation at the server. *See* Pet. 32, 41. Nevertheless, Petitioner's allegation that it would have been obvious to locate the command translation module at the server does address the claimed location requirement.

Patent Owner also argues that the contention about locating command translation at the server is insufficient because it merely asserts that the modules *could* operate at a server without providing a reason that a person of ordinary skill in the art *would* have made the modification. Prelim. Resp. 37 (citing Pet. 41). Patent Owner argues that "Mahajan teaches away from performing any claimed converting at the server by locating one or more RTS Media Abstraction Modules at the server and it is contrary to Mahajan's principle of operation, because Mahajan discloses a preference for locating them on the client." Prelim. Resp. 38 (citing Ex. 1114 ¶ 42); *see* Ex. 1114 ¶ 42 ("[B]y abstracting the media operations, the RTS mapping tables 302, 304 can be simpler than other potential solutions. For example, the server RTS mapping table 302 may not need to take into account all the possible media platforms that can be employed on the client 204.").

We do not agree with Patent Owner's suggestion that the Petition is devoid of reasoning to combine because Petitioner's contentions are "[b]ased on Mahajan's express teachings that its system can operate in a distributed environment." Pet. 41 (citing Ex. 1114 ¶¶ 18, 58, 78; Ex. 1102 ¶ 182). Whether or not such reasoning is persuasive is an issue that will be resolved on a full trial record. On this record, however, we do not see

Mahajan’s teachings as rising to the level of teaching away from command translation at the server given Mahajan’s disclosure that “processes may also be practiced in a distributed computing environment where functions are performed by remote processing devices that are linked through a communications network.” Ex. 1114 ¶ 58; *see* Pet. 41. Mahajan explains that “[i]n a distributed computing environment, program modules may be located in both local and remote memory storage devices.” Ex. 1114 ¶ 18. On this record, we find this disclosure provides some support for Petitioner’s position that “it would have been obvious to a [person of ordinary skill in the art] that one or more RTS Media Abstraction Modules could operate at a server, such as in Servers 24A–24N” in Danciu. *See* Pet. 41 (citing Ex. 1114 ¶¶ 18, 22–23, 51, 58, 78; Ex. 1102 ¶ 182).

F. Combined Teachings of Aldrey and Mahajan

Petitioner argues that claims 1–26 are unpatentable as obvious over the combined teachings of Aldrey and Mahajan. Pet. 17, 59–87. Patent Owner argues that this challenge is deficient for the same reasons as discussed above for claims 1 and 11, and we refer to our discussion of those arguments above. Patent Owner also argues that Petitioner “fails to address the ‘wherein’ clause of the *converting* step anywhere in its discussion of the Aldrey-Mahajan ground.” Prelim. Resp. 39 (citing Pet. 69–72). We note that Petitioner explains its position as to how Mahajan teaches the “wherein” clause of the converting step for the Danciu challenges, and we understand Petitioner to be relying on the same teachings of Mahajan in combination with Aldrey. *See* Pet. 41–42 (citing Ex. 1114 ¶ 37; Ex. 1102 ¶ 183).

III. CONCLUSION

For the foregoing reasons, we institute *inter partes* review of all challenged claims on all challenges raised in the Petition. *See* 37 C.F.R. 42.108(a) (“When instituting *inter partes* review, the Board will authorize the review to proceed on all of the challenged claims and on all grounds of unpatentability asserted for each claim.”). At this stage of the proceeding, we have not made a final determination with respect to the patentability of any of the challenged claims or the construction of any claim term.

IV. ORDER

Accordingly, it is

ORDERED that, pursuant to 35 U.S.C. § 314(a) and 37 C.F.R. § 42.4, an *inter partes* review is hereby instituted as to claims 1–26 of the ’251 patent on all challenges raised in the Petition; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial, which will commence on the entry date of this decision.

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Patent 8,356,251 B2

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