

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMCAST CABLE COMMUNICATIONS, LLC,
CHARTER COMMUNICATIONS, INC.,

Petitioners,*

v.

TOUCHSTREAM TECHNOLOGIES, INC,
Patent Owner.

IPR2024-00322
Patent 8,356,251

**REPLY DECLARATION OF DAVID B. LETT
IN SUPPORT OF PETITIONER'S REPLY**

*Charter Communications, Inc. filed a petition and a motion for joinder in IPR2024-01231 and has been joined as a petitioner in this proceeding.

TABLE OF CONTENTS

	Page
1. INTRODUCTION	1
2. MATERIALS CONSIDERED	1
3. MAHAJAN IS NOT LIMITED TO A TWO ELEMENT SERVER- CLIENT ARCHITECTURE.....	2
4. MAHAJAN IS ANALOGOUS ART TO THE '251 PATENT	3
4.1. Mahajan is in the same field of endeavor as the '251 Patent.....	4
4.2. Mahajan is reasonably pertinent to problems addressed by the '251 Patent.....	5
5. THE DANCIO-MAHAJAN COMBINATION TEACHES THE LIMITATIONS OF CLAIM 22	6
5.1. Danciu teaches retrieving information from the server	7
5.2. Danciu teaches first/second information that “identifies a first media player”	8
6. THE ALDREY-MAHAJAN COMBINATION TEACHES THE LIMITATIONS OF CLAIM 22	13
7. CONCLUSION.....	14

I, David B. Lett, declare that I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would do so competently.

1. INTRODUCTION

1. I have been retained as an expert witness on behalf of the Petitioner, Comcast Cable Communications, LLC, for the above-referenced *inter partes* review proceeding.

2. I have been asked to provide a reply declaration regarding certain matters pertaining to U.S. Patent No. 8,356,251 (“the ’251 Patent”) (Ex. 1101) and the unpatentability grounds set forth in the Petition for this proceeding.

3. I am being compensated at my usual consulting rate of \$350 per hour for my work on this matter. My compensation is in no way dependent upon my opinions or testimony or the outcome of this proceeding. I have no financial interest in the parties or in the outcome of this proceeding.

4. My qualifications are set forth in my previous declaration (Ex. 1102).

2. MATERIALS CONSIDERED

5. In addition to those mentioned in my previous declaration, I have reviewed the following documents:

- The Board’s Institution Decision

- Patent Owner’s Response and its accompanying exhibits, including Dr. Wicker’s Declaration;
- All other documents referenced herein.

3. MAHAJAN IS NOT LIMITED TO A TWO ELEMENT SERVER-CLIENT ARCHITECTURE

6. I understand that Patent Owner (“PO”) and Dr. Wicker argue that the architecture of Mahajan is incompatible with the architecture of the ’251 Patent claims because Mahajan is purportedly limited to a two-part server-client architecture. POR, pp. 24-26; Ex. 2025, ¶¶ 48-49.

7. However, as I discussed in my previous declaration, Mahajan is not so limited because it also describes that it can operate in a distributed environment. Ex. 1102, ¶ 182.

8. In particular, in paragraph 18, Mahajan describes that while its examples relate “relate to a single server and a single client; however, this is but one potential configuration.” Ex. 1114, [0018]. Mahajan describes that other “examples may be practiced in distributed computing environments, where tasks are performed by remote processing devices that are linked through a communications network.” Ex. 1114, [0018]. A POSITA would have understood that Danciu and Aldrey both describe architectures where remote processing devices are linked through a communications network.

9. A POSITA would further have understood that Mahajan’s disclosure of a distributed computing environment allows for its server media abstraction module to be located in a processing device that may not typically be labeled a “server,” such as remote control 14 of Danciu. As also discussed in my prior declaration (Ex. 1102, ¶ 162), paragraph 17 of Mahajan reinforces that a server media abstraction module may be located in a cell phone or similar device. Ex. 1114, [0017]. Similarly, a POSITA would have understood that Mahajan allows its client media abstraction module to be located in other remote processing devices, such as Danciu’s servers 24A-N.

4. MAHAJAN IS ANALOGOUS ART TO THE ’251 PATENT

10. I understand that PO and Dr. Wicker argue that a POSITA would not combine Mahajan with Danciu or Aldrey purportedly because “Mahajan is not related to remotely controlling a display device, nor does its specification teach or suggest using the disclosure in such a manner.” POR, p. 35; Ex. 2025, ¶ 37.

11. I understand that prior art is “analogous” to the challenged patent (i.e., can be applied in an obviousness combination) if it either: (1) is from the same field of endeavor regardless of the problem addressed, or (2) is reasonably pertinent to the particular problem addressed by the patent. I also understand that the field of endeavor is not limited to a particular focus within a field or to the point of novelty of the challenged patent.

12. In my opinion a POSITA would have found Mahajan to be analogous art to the '251 Patent under both of these requirements.

4.1. Mahajan is in the same field of endeavor as the '251 Patent

13. The '251 Patent is titled “Play Control of Content on a Display Device” and the first line of the Background section of the Specification repeats that “[t]his disclosure relates to play control of content on a display device.” Ex. 1101, 1:14-15.

14. A POSITA would have found that Mahajan is also related to controlling playback of content on a display device. Mahajan is titled “Systems and Methods for Managing Multimedia Operations in Remote Sessions.” Ex. 1114, cover. A POSITA would have understood “managing multimedia operations” to include controlling the playback of such content on a display device. Furthermore, in its Detailed Description section, Mahajan states that its methods and systems “relate to collaboration sessions and handling media playback operations in collaboration sessions.” Ex. 1114, [0011].

15. Mahajan further describes how controlling the playback of media files (such as MPEG files) would be accomplished in its collaboration sessions including by the conversion of platform-specific playback commands to generic playback commands and from generic commands to platform-specific commands. Ex. 1114, [0012]-[0014]. *See also* Ex. 1102, ¶¶ 124-130.

16. I understand that PO and Dr. Wicker seem to be contending that the field of the '251 Patent is more narrowly limited to “remotely controlling a display device.” Even if that were the case, in my opinion a POSITA would have found that Mahajan is also related to remotely controlling a display device.

17. As discussed above, Mahajan is titled “Systems and Methods for Managing Multimedia Operations in Remote Sessions” and relates to handling media playback operations in collaboration sessions. Mahajan describes that these collaboration sessions “can provide [] a remoting experience between a local computer and a remote computer.” Ex. 1114, [0001], [0011]. Mahajan further describes that multimedia files on a remote server are played back on a local client and control of the playback is accomplished by processing commands through the remote server in order to control media playback on the display device of the client. *See, e.g.*, Ex. 1114, [0011]-[0014].

4.2. Mahajan is reasonably pertinent to problems addressed by the '251 Patent

18. Among the problems purportedly addressed by the '251 Patent is the situation where a playback control command is not recognizable by a media player on the display device and must be converted to a corresponding command that is recognizable by the media player. Ex. 1101, 1:66-2:7.

19. A POSITA would have recognized that Mahajan is pertinent to converting playback commands into a form recognizable by the media player at the

display device. In particular, as discussed above, Mahajan describes converting platform-specific playback commands to generic playback commands and from generic commands to platform-specific commands. Ex. 1114, [0012]-[0014], Fig. 3. *See also* Ex. 1102, ¶¶ 124-130.

20. Another problem purportedly addressed by the '251 Patent is the situation where different media players are required on the display device to present different content. Ex. 1101, 2:27-31.

21. A POSITA would have recognized that Mahajan is pertinent to converting playback commands into a form recognizable by each of a number of different media players at the display device. In particular, Mahajan describes that its mapping tables may include translations to commands understandable by multiple client media players, including, for example, where the client has separate media players for QuickTime and Ogg format media files. Ex. 1114, [0041].

5. THE DANCIU-MAHAJAN COMBINATION TEACHES THE LIMITATIONS OF CLAIM 22

22. PO and Dr. Wicker contend that the Danciu-Mahajan combination does not teach the “retrieving, by the display device from a server system, first information” and “second information,” and that the “[first/second] information . . . identifies a [first/second] media player,” of claim 22. POR, pp. 43-46; Ex. 2025, ¶¶ 62-79. In my opinion, PO and Dr. Wicker are incorrect on both counts as I explain below.

5.1. Danciu teaches retrieving information from the server

23. I understand that PO and Dr. Wicker argue that claim 22's retrieving step would require an active step by the display device to initiate the transfer of information. Ex. 2025, ¶ 64; POR, p. 45 ("claim 22 imposes a requirement of the display device taking an active step to retrieve the information from the server, as opposed to the server initiating the communication.")

24. The sole description regarding "retrieving" in the '251 specification is "[o]nce the message is retrieved by or sent to the display device 22, the display device proceeds to execute the command." Ex. 1101, 6:60-62. It is my opinion that a POSITA would have understood that while a first computing device may retrieve information from its own memory by finding and selecting it, the first device may not do so with information residing on a second device. In that case, the second device (i.e., where the data resides) must transmit the information to the first device.

25. Danciu discloses that applications 130 executing on the processor 132 of the controlled device 118 (i.e., Danciu's display device) may require data from the servers 24 and "[n]etwork module 136 is configured to transmit data/requests to and receive data/responses from one or more servers via network." Ex. 1112, 12:50-13:3, 11:7-13, Fig. 4; Ex. 1102, ¶ 97. Danciu further describes, and a POSITA would have understood, that network module 136 (i.e., of Danciu's display device) may communicate with the servers using hypertext transfer protocol (HTTP). Ex. 1112,

12:50-13:3. A POSITA would have known that at the time of the '251 Patent, it was well-known that HTTP implemented, for example, “GET” commands for requesting data by a client from a server, and then providing the received data to the processor/application.

26. In regard to claim 22, a POSITA would understand that communications between the server and display device are initiated before the retrieving step occurs, when the server assigns a synchronization code to the display device. Ex. 1101, 13:51-14:4. Danciu also describes that communications between its servers and controlled device are initiated when a unique identification code (i.e., synchronization code) is assigned. Ex. 1112, 4:21-45. Danciu further describes that the controlled device can initiate contact with Danciu’s servers for various other reasons including by being powered on or by a user logging in to a user account maintained on the servers. Ex. 1112, 5:48-63. Accordingly, it is my opinion that to the extent PO and Dr. Wicker are arguing that an active step from the display device is required to initiate the retrieving step, Danciu discloses it at least as much as it is disclosed in the '251 Patent.

5.2. Danciu teaches first/second information that “identifies a first media player”

27. PO and Dr. Wicker also argue that Danciu-Mahajan combination cannot meet the “retrieving . . . first information that . . . identifies a first media player” because Danciu does not contemplate swapping between media players

using remote messages identifying particular media players. POR, pp. 45-46; Ex. 2025, ¶¶ 74, 77. PO and Dr. Wicker acknowledge that Danciu teaches controlling the operation of YouTube, Hulu, and Netflix media players, but allege that a remote control session can only be initiated once a media player application has been loaded and thus that swapping media players is not possible. POR, p. 46; Ex. 2025, ¶¶ 74, 77. In my opinion PO and Dr. Wicker are incorrect as Danciu describes that a remote control session can be initiated before a media player is selected. Ex. 1102, ¶¶ 142-143.

28. In particular, Dr. Wicker states:

Danciu only contemplates a user utilizing user interface 120 (e.g., traditional keypad, keyboard, mouse, etc.) to interact with controlled device 118 in order to navigate to a web page or to execute applications 130. Ex. 1112, 11:22–35; 11:65–67, 12:17–19. In particular, Danciu contemplates a user interacting with user interface 120 to execute 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, 13:7–15. From this point, Danciu specifies that a user may use the video application of applications 130 or the web browser to facilitate paring [sic] of controlled device 118 to the remote

control, for instance by notifying a server that it is available to join a session. Ex. 1112, 13:16–23. This implies that the “video application” or “web browser” must be loaded (by a user via traditional user interface controls) before the controlled device 118 joins a session maintained by the server.

Ex. 2025, ¶ 74. I disagree. This argument does not appear to be based on any explicit teaching of Danciu that the video application or web browser “must” be loaded before the controlled device 118 joins a session maintained by the server. Rather, the argument appears to be based on the fact that, in one instance, Danciu describes example video players that may be utilized to facilitate pairing. Ex. 1112, 13:16-21. However, the description of Danciu’s operation that supposedly “implies” that a remote control session can only be joined after a video application or web browser is loaded, ignores other sections of Danciu that make no mention of loading a video application or web browser before initiating a remote control session. For example, Danciu describes how a remote control and controlled device may be paired through the use of a QR code, without any reference to a video application or web browser. Ex. 1112, 4:36-45, 8:23-49, 13:27-32. Further, Danciu states that “controlled device 118 may notify a server, such as server 24 shown in FIG. 1, that it is available to be joined to a session maintained by server 24 *upon powering on or* executing a video or web browser application.” Ex. 1112, 13:19-23 (emphasis added). While Danciu

allows that “[a] user *may* utilize the video application of applications 130 or web browser of controlled device 118 to facilitate pairing,” a POSITA would have understood that Danciu also provides multiple other ways of initiating a remote control session without first loading a video application or web browser. Ex. 1112, 13:16-19 (emphasis added).

29. I understand that PO and Dr. Wicker further argue that Danciu’s control information does not teach identification of media players “because control commands are not media player identifications.” POR, pp. 46-47; Ex. 2025, ¶¶ 72-73. However, Danciu’s control information is not limited to playback control commands (e.g., play, pause, etc.) that are untethered from other information as PO and Dr. Wicker assume. In particular, Danciu describes that the storage device 92 inside its remote control 75 “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, 13:7-11 (emphasis added). A POSITA reading Danciu would have understood that there would be no point to storing, on the remote control, information specific to particular media players that can be executed on the controlled device if no information identifying them was conveyed to the server and subsequently to the controlled device via Danciu’s control information. Indeed, Danciu states that “control information may include data intended to alter the operation of controlled device 18

(e.g., stop playback of content, *move to other content*, etc.).” Ex. 1112, 16:52-54 (emphasis added). A POSITA would have understood that in Danciu’s system, in order to instruct the controlled device to “move to other content,” information identifying the content and associated media player must be included in the control information. *See e.g.*, Ex. 1102, ¶¶ 74-77.

30. It is also my opinion that PO’s argument that the Petition is contradictory because it negates the need for command conversion and that generic commands cannot identify a media player is incorrect. POR, p. 47. I understand that the claims are not limited to sending only commands, and no other information, between the remote control, server, and display device. For example, claims 1 and 11 each recite sending “one or more signals” that “specify[] a video file,” “identify[] a particular media player,” and “include[] a universal playback control command.” Ex. 1101, 11:36-42, 12:44-49. Similarly, claim 22 recites “one or more signals specifying the first video file identifying the first media player and including the first playback control command.” Ex. 1101, 14:13-15. As I discussed above, Danciu’s control information includes more than just playback commands and the claims explicitly allow that other information may be sent along with playback commands.

31. In regards to the “second information”, as I stated in my previous declaration, does not present any new novel aspects and Danciu operates in the same

manner for the subsequent “second information” and related commands as it does “first information” and related commands. Ex. 1102, ¶ 260.

6. THE ALDREY-MAHAJAN COMBINATION TEACHES THE LIMITATIONS OF CLAIM 22

32. I understand that PO and Dr. Wicker contend that the Aldrey-Mahajan combination does not teach the limitation of “obtaining, by the display device, over the Internet the first media player for playing the first video file” and “loading the first media player in the display device.” POR, p. 50; Ex. 2025, ¶¶ 83-89.

33. First, Aldrey describes “remote application[s],” and explains that this software is resident on both Aldrey’s remote terminal (i.e., the personal computing device) and Aldrey’s STB (i.e., the display device). E.g., Ex. 1115, [0044], [0047], [0050] (remote application 209c is resident on STB 201). Dr. Wicker acknowledges this (Ex. 2025, ¶ 85) but argues that the remote application is not a media player (Ex. 2025, ¶ 86). Aldrey describes that remote application 209c can be overlaid on the display of STB 201 thus functioning as the media player and that software can be loaded based on instructions from the remote application. Ex. 1115, [0044], [0052]-[0053], [0014], [0020], [0054], [0055], [0093].

34. Aldrey also describes that one of the types of media content displayed on the display may be “Internet services content (streamed audio, video, or pictographic media)”, and/or any other equivalent media form. Ex. 1115, ¶ [0021]; *see also* Ex. 1115, ¶¶ [0020]-[0021], [0025]. As I previously explained (e.g., in Ex.

1102, ¶ 160), it was well known at the time that web pages comprised various embedded applications for viewing video. For example, HTML and Flash players were included in web pages, and were used to play video embedded in web players. *See* Ex. 1102, Section 8; Ex. 1115, [0068], [0075]. Those plugins could be downloaded as part of the web page, or separately (e.g., Flash player might be downloaded in advance or when not detected as part of the webpage). In some instances, web pages may have their own video content player that would download for their page (e.g., a proprietary player on a given web page). A POSITA would have thus understood that obtaining a media player to play video content on a web page was a well-known aspect of watching video on the Internet at the time. Ex. 1102, ¶ 360.

7. CONCLUSION

35. All of the statements made in this declaration of my own knowledge are true. All statements made based on information and belief are believed to be true. I declare under penalty of perjury that the foregoing is true and correct.

Dated: 2/11/2025

By: David B. Lett
David B. Lett