

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LG ELECTRONICS, INC., LG ELECTRONICS U.S.A., INC,
Petitioner,

v.

MULTIMEDIA TECHNOLOGIES PTE. LTD.
Patent Owner

Case No. IPR2024-00354
U.S. Patent No. 10,419,805

PATENT OWNER'S PRELIMINARY RESPONSE

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE BOARD SHOULD EXERCISE ITS DISCRETION TO DENY THIS PETITION UNDER § 314(a)	2
A.	Factor 1: Petitioner has Not Requested a Stay, and would have No Authority to Request a Stay in the Vizio Litigation.....	5
B.	Factor 2: The Board’s Final Written Decision Deadline Would Likely be After a Trial in the LG Litigation and/or Vizio Litigation	7
C.	Factor 3: There Has Been Substantial Investment by the Parties and District Court in the LG Litigation and the Vizio Litigation	9
D.	Factor 4: Petitioner’s Claims Directly Overlap with both Parallel Litigations, Despite Petitioner’s Efforts to Obscure this with an Ineffective Stipulation	12
E.	Factor 5: Petitioner is the Defendant in the LG Litigation, and the Vizio Litigation Involves Substantially Similar Issues.....	18
F.	Factor 6: Petitioner Has Not Established Grounds for Review under The Statutory Standard, Let Alone the Far Stricter “Compelling Merits” Standard.....	18
III.	OVERVIEW OF THE ’805 PATENT	20
IV.	SUMMARY OF THE REFERENCES ASSERTED IN THE PETITION ...	24
A.	Chen.....	24
B.	Melnychenko	25
C.	Kim	26
D.	Lee-1	27
E.	Lee-2.....	27
F.	Ferren.....	27

G. Choi	28
V. LEVEL OF ORDINARY SKILL IN THE ART	28
VI. CLAIM CONSTRUCTION	29
VII. PETITIONER FAILS TO SHOW A REASONABLE LIKELIHOOD OF PREVAILING ON ANY CHALLENGED CLAIM.....	29
A. Ground 1: Melnychenko in view of Chen Does Not Render Obvious Claims 1, 10, and 17 of the '805 Patent	29
1. Melnychenko in view of Chen Does Not Disclose “organizing, by the processor, the data according to a pre- defined format corresponding to each of the plurality of subservices . . . wherein each of the VOD data model, EPG data model, and media data model provide a uniform format for the plurality of subservices” in Accordance with the Claim.....	30
B. Ground 2: Melnychenko in view of Chen, Kim, and Lee-1 Does Not Render Obvious Claims 1-3, 6, 10-12, and 16-18 of the '805 Patent	35
C. Ground 3: Melnychenko in view of Chen, Kim, Lee-1, and Lee-2, Does Not Render Obvious Claims 4 and 13 of the '805 Patent.....	36
D. Ground 4: Melnychenko in view of Chen, Kim, Lee-1, Lee-2, and Ferren Does Not Render Obvious Claim 5 of the '805 Patent	36
E. Ground 5: Melnychenko in view of Chen, Kim, Lee-1, and Choi Does Not Render Obvious Claims 6-8, 14, and 15 of the '805 Patent	37
VIII. CONCLUSION.....	37

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>10X Genomics v. President and Fellows of Harvard College</i> , IPR2023-01299, Paper 15 (PTAB Mar. 7, 2024).....	8, 11
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020).....	<i>passim</i>
<i>AviaGames, Inc. v. Skillz Platform, Inc.</i> , IPR2022-00530, Paper 14 (PTAB Mar. 2, 2023).....	4, 19
<i>BOE Technology Group Co. v. Element Capital Commercial Co.</i> , IPR2023-00808, Paper 9 (PTAB Nov. 15, 2023).....	16
<i>CommScope Technologies LLC v. Dali Wireless, Inc.</i> , IPR2022-01242, Paper 23 (PTAB Feb. 27, 2023).....	<i>passim</i>
<i>Ericsson Inc. and Nokia of America Corp. v. Collision Communications, Inc.</i> , IPR2022-01233, Paper 12 (PTAB Jan 19, 2023)	11
<i>Mylan Laboratories Ltd. v. Janssen Pharmaceutica NV</i> , IPR2020-00440, Paper 17 (PTAB Sept. 16, 2020).....	10, 16, 18
<i>NHK Spring Co. v. Intri-Plex Technologies, Inc.</i> , IPR2018-00752, Paper 8 (PTAB Sept. 12, 2018).....	2, 5, 7
<i>NXP USA, Inc. v. IMPINJ, Inc.</i> , IPR2021-01556, Paper 13 (PTAB, Sept. 7, 2022).....	13
<i>Samsung Electronics Co. v. California Institute of Technology</i> , IPR2023-00130, Paper 10 (PTAB May 4, 2023)	8
<i>Samsung Electronics Co. v. Cardware Inc.</i> , IPR2023-00314, Paper 11 (PTAB July 18, 2023).....	7
<i>Samsung Electronics Co. v. Mojo Mobility Inc.</i> , IPR2023-01098, Paper 11 (PTAB Feb. 9, 2024).....	10

<i>Sand Revolution II, LLC v. Continental Intermodal Group - Trucking LLC,</i> IPR 2019-01393, Paper 24 (PTAB June 16, 2020)	16
<i>Sotera Wireless, Inc. v. Masimo Corp.,</i> IPR2020-01019, Paper 12 (PTAB Dec. 1, 2020)	<i>passim</i>
<i>Village Green Technologies, LLC v. Samsung Electronics, Co.,</i> No. 2:22-CV-00099-JRG, 2023 WL 416419 (E.D. Tex. Jan. 25, 2023)	6
<i>Wasica Finance GmbH v. Schrader International, Inc.,</i> 432 F. Supp. 3d 448 (D. Del. 2020).....	14
<i>Wirtgen America, Inc. v. Caterpillar, Inc.,</i> No. 1:17-CV-00770-JDW-MPT, 2024 WL 51010 (D. Del. Jan. 4, 2024)	14

Statutes

35 U.S.C. § 314(a)	<i>passim</i>
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Other Authorities

Memorandum, Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation (USPTO June 21, 2022).....	3, 7, 13, 17
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Exhibit No.	Petitioner's Exhibit List
Ex.1001	U.S. Patent No. 10,419,805, Shoykher et al.
Ex.1002	Prosecution History of U.S. 10,419,805
Ex.1003	Declaration of Dr. Andrew Lippman under 37 C.F.R. § 1.68
Ex.1004	<i>Curriculum Vitae</i> of Dr. Lippman
Ex.1005	U.S. Patent Pub. No. 2013/0263184A1 to Melnychenko et al. ("Melnychenko")
Ex.1006	U.S. Patent Publication No. 2012/0054794 A1 to Kim et al. ("Kim")
Ex.1007	U.S. Patent Publication No. 2007/0226268 A1 to Chen ("Chen")
Ex.1008	U.S. Patent No. 9,008,190 to Lee et al. ("Lee-1")
Ex.1009	U.S. Patent No. 9,398,339 to Lee et al. ("Lee-2")
Ex.1010	U.S. Patent No. 8,893,184 to Ferren et al. ("Ferren")
Ex.1011	U.S. Patent Publication No. 2013/0057764 A1 to Choi et al. ("Choi")
Ex.1012	U.S. Patent Publication No. 2013/0031592 A1 to Choi et al.
Ex.1013	U.S. Patent Publication No. 2009/0257738 A1 to Park et al.
Ex.1014	U.S. Patent Publication No. 2013/0152135 A1 to Hong et al.
Ex.1015	U.S. Patent Publication No. 2005/0283800 A1 to Ellis et al.
Ex.1016	U.S. Patent No. 6,665,869 to Ellis et al.
Ex.1017	Claim Comparison Chart
Ex.1018	U.S. Patent Publication No. 2013/0176415 to Kim et al.

Exhibit No.	Patent Owner's Exhibits
2001	Third Amended Docket Control Order, <i>Multimedia Techs. Pte. Ltd. v. LG Elecs. Inc. et al.</i> , No. 2:22-cv-00494 (E.D. Tex. Jan. 3, 2024), ECF No. 54
2002	Table C-5—U.S. District Courts—Civil Statistical Tables For The Federal Judiciary (Median Time From Filing to Disposition of Civil Cases, by Action Taken—During the 12-Month Period Ending December 31, 2023)
2003	Westlaw Litigation Analytics Report for Hon. Rodney Gilstrap, for 3/27/2023 to 3/27/2024
2004	Docket Control Order, <i>Multimedia Techs. Pte. Ltd. v. Vizio, Inc.</i> , No. 2:23-cv-00124 (E.D. Tex. Aug. 4, 2023), ECF No. 46
2005	Report and Recommendation re: Motion to Dismiss, <i>Multimedia Techs. Pte. Ltd. v. LG Elecs. Inc. et al.</i> , No. 2:22-cv-00494 (E.D. Tex. Mar. 1, 2024), ECF No. 61
2006	Defendants' Invalidity Contentions, <i>Multimedia Techs. Pte. Ltd. v. LG Elecs. Inc. et al.</i> , No. 2:22-cv-00494 (E.D. Tex.) (filed Sept. 28, 2023)
2007	Petition for Inter Partes Review Under 35 U.S.C. § 312 and 37 C.F.R. § 42.104, <i>Vizio, Inc. v. Multimedia Techs. Pte. Ltd.</i> , IPR2024-00699 (PTAB) (filed Mar. 14, 2024)

2008	Defendant's Invalidity Contentions, <i>Multimedia Techs. Pte. Ltd. v. Vizio, Inc.</i> , No. 2:23-cv-00124 (E.D. Tex. Sept. 28, 2023)
2009	Order Adopting Report and Recommendations, <i>Multimedia Techs. Pte. Ltd. v. LG Elecs. Inc. et al.</i> , No. 2:22-cv-00494 (E.D. Tex. Mar. 28, 2024), ECF No. 65

I. INTRODUCTION

The Board should deny the Petition for *Inter Partes* Review of U.S. Patent No. 10,419,805 (“’805 Patent”) because Petitioners LG Electronics Inc., LG Electronics U.S.A., Inc. (“Petitioners”) fail to demonstrate a reasonable likelihood that any challenged claim is not patentable.

As an initial matter, the Board should exercise its discretion to deny the Petition under § 314(a). Two district court litigations involving the ’805 Patent are in their late stages and will result in jury trials long before the Board issues any Final Written Decision. Moreover, the *Fintiv* factors weigh against institution, and the Petition falls far short of presenting a “compelling unpatentability challenge” that would warrant institution despite this inefficiency.

Even if the merits are considered, the Petition still fails. At a minimum, Petitioner fails to show that its cited art has any teaching or suggestion of the recited limitation “organizing, by the processor, the data according to a pre-defined format corresponding to each of the plurality of subservices . . . wherein each of the VOD data model, EPG data model, and media data model provide a uniform format for the plurality of subservices” in accordance with the disclosures of the specification. As a result, Petitioner is unable to point to any disclosed grounds that render obvious the claims of the ’805 Patent, and the Board should deny institution.

II. THE BOARD SHOULD EXERCISE ITS DISCRETION TO DENY THIS PETITION UNDER § 314(a)

The Board should exercise its discretion to deny institution under § 314(a) because institution would be an “inefficient use of Board resources.” *NHK Spring Co. v. Intri-Plex Techs., Inc.*, IPR2018-00752, Paper 8 at 19-20 (PTAB Sept. 12, 2018). As explained in further detail below, two district court litigations involving the ’805 Patent are at advanced stages and will conclude long before a PTAB proceeding would.

In *NHK Spring Co.*, the Board denied institution of an *inter partes* review under § 314(a) where a parallel district court proceeding was nearing its final stages, and a PTAB proceeding would not conclude until about six months after the district court trial was scheduled. *NHK Spring Co.*, IPR2018-00752, Paper 8 at 19-21. In so reasoning, the Board set the precedent that parallel court proceedings must be considered when determining whether the institution of an *inter partes* review is consistent with the objective of the America Invents Act (“AIA”) to “provide an effective and efficient alternative to district court litigation.” *Id.*

Building on *NHK Spring Co.*, in *Apple Inc. v. Fintiv, Inc.*, the Board identified specific factors relating to “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.” IPR2020-00019, Paper 11 at 6 (PTAB Mar. 20, 2020) (precedential).

The *Fintiv* factors include:

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.

Id.

The Director provided further guidance on the application of the *Fintiv* precedent in a June 21, 2022 Memorandum¹ (“Guidance Memo”) and *CommScope*

¹ Memorandum, Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation (USPTO June 21, 2022) (“Guidance Memo”) available at https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621.pdf

Technologies LLC v. Dali Wireless, Inc., IPR2022-01242, Paper 23 (PTAB Feb. 27, 2023) (precedential). The Director set forth a “compelling merits test” under which the Board—if it has found that *Fintiv* factors 1-5 favor discretionary denial—must assess whether a petition presents a “compelling unpatentability challenge” before discretionarily denying institution. *CommScope*, IPR2022-01242, Paper 23 at 3-5. As the Director explained, “the compelling merits standard is a higher standard than the standard for institution set by statute.”² *Id.* at 3. A reasonable likelihood that the petitioner would prevail with respect to at least one challenged claim does not suffice to demonstrate that a challenge is “compelling.” Rather, a “compelling” challenge is one “in which 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” such that “it is **highly likely** that the petitioner would prevail with respect to at least one challenged claim.” *Id.* at 3-4 (emphasis added). This is a “high standard” (*see AviaGames, Inc. v. Skillz Platform, Inc.*, IPR2022-00530, Paper 14 at 3, 5 (PTAB

² Institution of an IPR is authorized only when “the information presented in the petition ... and any response ... shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *CommScope*, IPR2022-01242, Paper 23 at 3 n.3.

Mar. 2, 2023)) and the Board must explain its reasoning in determining whether the merits are compelling. *CommScope*, IPR2022-01242, Paper 23 at 4-6.

All of the *Fintiv* factors weigh in favor of discretionary denial, in light of the Guidance Memo. The validity of the '805 Patent is being challenged in two pending litigations:

- *Multimedia Technologies Pte. Ltd. v. LG Electronics Inc. et al.*, No. 2:22-cv-00494 (E.D. Tex.) (Filed Dec 23, 2022) (the “LG Litigation”)
- *Multimedia Technologies Pte. Ltd. v. Vizio, Inc.*, No. 2:23-cv-00124 (E.D. Tex.) (Filed Mar. 24, 2023) (the “Vizio Litigation”)

Both of these litigations have progressed significantly, and while either one would independently merit a discretionary denial, together the two parallel district court litigations tip the scales heavily in favor of it.

A. Factor 1: Petitioner has Not Requested a Stay, and would have No Authority to Request a Stay in the Vizio Litigation

“A district court stay of the litigation pending resolution of the PTAB trial allays concerns about inefficiency and duplication of efforts,” and thus “weigh[s] against exercising the authority to deny institution under *NHK*.” *Fintiv*, IPR2020-00019, Paper 11 at 6. Petitioner has not filed any motion to stay the parallel district court proceeding in view of the Petition, has provided no indication that they intend to do so, and has presented no evidence suggesting a stay is likely if they did

(particularly in light of the pending trial date). Judge Gilstrap of the United States District Court for the Eastern District of Texas—before whom the LG Litigation is pending—has identified criteria he examines before granting a stay motion pending *inter partes* review, and a final written decision must not be “expected in the ordinary course before trial in [the] case would otherwise take place.” *Village Green Techs, LLC v. Samsung Elecs., Co.*, No. 2:22-CV-00099-JRG, 2023 WL 416419 at *3 (E.D. Tex. Jan. 25, 2023). Judge Gilstrap further identified as relevant to this consideration whether, as here, petitioner was dilatory in seeking review and whether, as here, the review would not cover all contested patents in the litigation. *Id.* Here, the pending LG Litigation covers *seven* patents for which Petitioner has chosen not to seek review (and for which Petitioner has now exceeded the one-year deadline for challenging). Moreover, as will be discussed in greater length below, Petitioner’s final decision would not only come months after both trials have concluded, but this delay is the direct result of Petitioner’s delay in filing until almost a year after the LG Litigation began.

Moreover, even if Petitioner were to request (and be granted) a stay, this would have no impact on the parallel Vizio Litigation.

This factor weighs strongly in favor of denying institution.

B. Factor 2: The Board’s Final Written Decision Deadline Would Likely be After a Trial in the LG Litigation and/or Vizio Litigation

“If the court’s trial date is earlier than the projected statutory deadline, the Board generally has weighed this fact in favor of exercising authority to deny institution under *NHK*.” *Fintiv*, IPR2020-00019, Paper 11 at 9. In addition to whether a trial date has been set by the court, the Guidance Memo instructs the Board to look to “the most recent statistics on median time-to-trial for civil actions in the district court in which the parallel litigation resides” as well as statistical information for the specific judge involved in the litigation. Guidance Memo at 8-9. While such evidence is probative, the Board “generally take[s] courts’ trial schedules at face value absent some strong evidence to the contrary.” *Samsung Elecs. Co. v. Cardware Inc.*, IPR2023-00314, Paper 11 at 11 (PTAB July 18, 2023) (internal quotes omitted). Here, whatever metric is chosen, it is clear that both the LG Litigation and Vizio Litigation are expected to proceed to trial long before the Board will issue its ruling were it to initiate review. Petitioner does not dispute this fact. Pet. at 90-91.

The LG Litigation has already been set for trial in November, 2024—with Jury Selection set to begin at 9:00 a.m. on November 18. Ex. 2001 at 1. Moreover, the most recent statistics for the Eastern District of Texas provide a median time-to-trial of 20.7 months, which, given the LG matter’s filing date of December 23, 2022, would yield an expected trial even earlier—in mid-September 2024. Ex. 2002 at 2.

Likewise, individual statistics over the past 12 months for Judge Gilstrap show a median time-to-verdict of 639 days, which would yield a trial date of September 2024. Ex. 2003 at 1.

The Vizio Matter was commenced on March 24, 2023, and is also pending before Judge Gilstrap. It has been set for trial in early January of 2024, with Jury Selection set to begin on January 6th. Ex. 2004 at 1. Time to trial statistics (whether measured by the average time-to-trial statistics for the Eastern District of Texas, or those for Judge Gilstrap individually) yield an even earlier expected trial in December of 2024. (Ex. 2002, 2003.)

As a result, whether the Board considers “the scheduled trial date or the trial date expected based on time-to-trial statistics,” it is clear that the trials for *both* parallel litigations will almost certainly “commence several months before the expected date of [the Board’s] final written decision.” *Samsung Elecs. Co. v. Cal. Inst. of Tech.*, IPR2023-00130, Paper 10 at 16 (PTAB May 4, 2023); *see also*, *10X Genomics v. President and Fellows of Harvard Coll.*, IPR2023-01299, Paper 15 at 17 (PTAB Mar. 7, 2024).

This factor weighs strongly in favor of denying institution.

C. Factor 3: There Has Been Substantial Investment by the Parties and District Court in the LG Litigation and the Vizio Litigation

In considering whether or not to institute review, the Board weighs “the amount and type of work already completed in the parallel litigation[s] by the court and the parties at the time of the institution decision.” *Fintiv*, IPR2020-00019, Paper 11 at 9. In determining how much weight to give these investments, the Board also considers whether “the petitioner filed the petition expeditiously, such as promptly after becoming aware of the claims being asserted,” or whether they instead waited “until the district court trial has progressed significantly before filing a petition at the Office.” *Id.* at 11. Where a Petitioner has chosen to sit on their hands the Board has recognized that “notwithstanding that a defendant has one year to file a petition” initiating review risks “impos[ing] unfair costs to [the] patent owner.” *Id.*

The substantial investment in time and resources by the parties and district court in both the LG Litigation and the Vizio Litigation, particularly when coupled with LG’s dilatory tactics in filing this Petition, strongly supports denial.³ *See, e.g.,*

³ Vizio also filed a copycat petition for *inter partes* review of the ’805 Patent as time ran out on its March 27, 2024 statutory deadline. *See* Ex. 2007, IPR2024-00699 (filed March 14, 2024).

Mylan Labs. Ltd. v. Janssen Pharm. NV, IPR2020-00440, Paper 17 at 17-19 (PTAB Sept. 16, 2020).

The parties in the LG Litigation have already exchanged extensive discovery—including document and source-code discovery. Indeed, contrary to Petitioner’s assertion that “the co-pending litigations are in relatively early stages,” Pet. at 90, the deadline for substantial completion of all document discovery was on March 26, 2024, (Ex. 2001 at 4), the parties have already submitted joint filings, and Multimedia has filed its opening brief for the upcoming *Markman* hearing on May 10, 2024, and the case will continue to progress before the Board is expected make an institution decision.⁴ Ex. 2001 at 4. *See Samsung Elecs. Co. v. Mojo Mobility Inc.*, IPR2023-01098, Paper 11 at 9 (PTAB Feb. 9, 2024) (noting that significant investments in fact discovery weigh against institution). Moreover, the court has also already invested considerable resources into the Litigation, including a substantive Report and Recommendation by Magistrate Judge Payne, (Ex. 2005), that was adopted by Judge Gilstrap (Ex. 2009), denying LG’s motion to dismiss. *See*

⁴ On the March 25, 2024 call addressing Vizio’s improper pre-institution motion for joinder of IPR2024-00699 and the instant Petition, *see VIZIO Inc. v. Multimedia Technologies Pte. Ltd.*, IPR2024-00699, Paper 5 at 4, the Board indicated an institution decision regarding this Petition was unlikely to be reached before June.

Genomics, IPR2023-01299, Paper 15 at 18 (finding that district court investment in resolving motions to dismiss the parallel litigation weighed against institution). Likewise, the parties in the Vizio Litigation have exchanged extensive discovery, including extensive document and source-code discovery, and are beginning *Markman* exchanges.

These expenditures of resources are even more significant in light of LG's decision, despite being served with notice of this complaint on December 23, 2022, to wait until December 20, 2023—just before the expiration of the statutory deadline—before filing its petition.⁵ LG has provided no justification for this decision to wait out the entire statutory period before seeking review, while actively causing the litigants in the parallel litigations to accrue needless expenses in time and effort. The Board has repeatedly recognized that waiting until the cusp of the one-year deadline wastes the time and resources of parties and the courts, and held that such gamesmanship weighs strongly against institution. *See, e.g., Genomics*, IPR2023-01299, Paper 15 at 19; *Ericsson Inc. and Nokia of Am. Corp. v. Collision Commc'ns, Inc.*, IPR2022-01233, Paper 12 at 15 (PTAB Jan 19, 2023).

⁵ As discussed above, Vizio also waited until nearly reaching its statutory deadline (March 27, 2024) to file a verbatim copy of the instant Petition. *See* IPR2024-00699 (filed March 14, 2024).

This factor weighs strongly against review.

D. Factor 4: Petitioner’s Claims Directly Overlap with both Parallel Litigations, Despite Petitioner’s Efforts to Obscure this with an Ineffective Stipulation

Where a “petition includes the same or substantially the same claims, grounds, arguments, and evidence as presented in the parallel proceeding” thus creating “concerns of inefficiency and the possibility of conflicting decisions” this provides a strong reason for not granting review. *Fintiv*, IPR2020-00019, Paper 11 at 11-12. Petitioners do not challenge that the ’805 patent is the subject of both parallel litigations, nor that their arguments in this Petition are substantially the same as those being litigated (as discussed at length above). Instead, Petitioners argue that the stipulation they have provided adequately addresses any concerns of reduplication. Pet. at 90-91. This claim however, misconstrues the authority on which it purports to rely.

In *Sotera Wireless, Inc. v. Masimo Corp.*, the Board recognized that a Petitioner can “mitigate[] any concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions” by filing a binding stipulation in the parallel district court proceeding that ensures that the two proceedings will not deal with the same grounds. IPR2020-01019, Paper 12 at 18-19 (PTAB Dec. 1, 2020). In *Sotera*, the Petitioner filed a stipulation with the district court not to subsequently raise in litigation any ground “that was raised or

could have been reasonably raised in an IPR.” *Id.* at 18. Finding that this stipulation was not “unclear” and was sufficiently potent to “ensure[] that an *inter partes* review is a ‘true alternative’ to the district court proceeding” the *Sotera* court declined to deny institution. *Id.* at 20-21.

The Guidance Memo accepted the reasoning of *Sotera*, and indicated that, where a Petitioner has submitted a valid stipulation which “mitigates concerns of potentially conflicting decisions and duplicative efforts between the district court and the PTAB,” by ensuring that “the grounds the PTAB resolves will differ from those present in the parallel district court litigation,” this suffices to minimize concerns of inefficiency (and will generally be grounds for not discretionarily denying review). Guidance Memo at 7; *but see, NXP USA, Inc. v. IMPINJ, Inc.*, IPR2021-01556, Paper 13 at 4 (PTAB, Sept. 7, 2022) (noting that a purported *Sotera* stipulation which in actuality serves to “frustrate[] these goals” and to “open the door to gamesmanship” will not receive deference under the Guidance Memo).

Claiming to rely on this authority, Petitioner asserts that, if the Board institutes review, they will not pursue “the specific grounds asserted here, or on any other ground that was raised or could have been reasonably raised in this IPR” as part of the LG Litigation. Pet. at 90-91. Petitioner has failed however to file a proper *Sotera* stipulation. While Petitioner’s stipulation uses similar wording to the one approved

by the Director, it fundamentally departs from the Director’s guidance (and the Board’s holding in *Sotera*) in two key respects.

First, unlike the stipulation which the Board and Director approved of in *Sotera*, Petitioner has not actually filed this stipulation in the District Court in the parallel proceedings. *Sotera*’s emphasis on such a filing is not a mere formality—by filing in District Court, the Petitioner in *Sotera* provided the court with an opportunity to review the stipulation, and ensure that those grounds which “could reasonably be raised” in an *inter partes* review were sufficiently clear and distinct to be later judicially enforceable. This concern is particularly acute in cases where, as here, a petitioner indicates it will rely upon published descriptions of system art such as product manuals and user guides in challenging validity at the District Court, *see Wasica Finance GmbH v. Schrader International, Inc.*, 432 F. Supp. 3d 448, 454 n.6 (D. Del. 2020) (surveying entrenched disagreements at the district court level regarding the proper method for categorizing such manuals as system vs. paper art), or, as here, intends to rely on unspecified combinations of paper and system art in the underlying litigation, *see Wirtgen America, Inc. v. Caterpillar, Inc.*, No. 1:17-CV-00770-JDW-MPT, 2024 WL 51010 at *9 (D. Del. Jan. 4. 2024) (noting unresolved, and frequently litigated ambiguity regarding which combinations constitute a “ground that the petitioner raised or reasonably could have raised during the *inter partes* review.”).

Here, Petitioner’s invalidity contentions for the ’805 Patent rely heavily on “thousands of [purportedly] invalidating combinations,” (Ex. 2006 at 39), of prior art, including paper art, systems art, and “Non-Patent Prior Art Publications.” *Id.* at 20-21. Petitioner makes clear in its contentions that believes it can rely on “any of a number” of and any “invaliding combinations” of identified art (including system art and user guides), and notes that the sheer volume of purported invaliding combinations are so numerous—“thousands” by Petitioner’s own estimation—as to be “unduly burdensome” for Petitioner to identify in its contentions. *Id.* at 39-40. Were the Board to institute review without clarity as to which (if any) of these combinations and publications are covered by Petitioner’s stipulation, the all-but-certain result would be the duplicate litigation of nearly all of Petitioner’s claims at the District Court level via attempts to exclude certain art and combinations from the bounds of Petitioner’s stipulation.

This is not a challenge to the proper role of *Sotera* stipulations in making institution decision. But here, Petitioner attempts to circumvent the process *Sotera* laid out for providing the requisite clarity to all parties and institutions involved. By declining to follow the procedure endorsed by *Sotera* and Director Vidal—*i.e.*, requesting the District Court accept the stipulation in the first instance—and declining to identify the art it believes it can and cannot rely on in the District Court, Petitioner has feinted at an agreement not to raise certain anticipation and/or

obviousness challenges in the parallel litigation, but left the contours of that stipulation so vague as to be meaningless.

Where a Petitioner has offered a stipulation that does not meaningfully prevent them from later efforts to relitigate the subject matter of the *inter partes* review, the Board has been consistent in finding that such stipulation is at most “marginally” relevant in determining whether to grant review, *Sand Revolution II, LLC v. Continental Intermodal Group – Trucking LLC*, IPR 2019-01393, Paper 24 at 12 (PTAB June 16, 2020), and that it does not receive deference under the Guidance Memo. *See BOE Tech. Grp. Co. v. Element Cap. Com. Co.*, IPR2023-00808, Paper 9 at 25-26 (PTAB Nov. 15, 2023). Therefore, at worst, this factor is neutral.

In addition to failing to bind Petitioner, Petitioner’s stipulation also elides the existence of the parallel Vizio Litigation, which would be unaffected by Petitioner’s stipulation. The Board has made clear in multiple decisions, including *Mylan* and *Fintiv*, that the existence of such parallel litigation covering issues “the same as, or substantially similar to” those presented for IPR is an independent basis for discretionary denial of review—even where concerns of reduplication within the parallel litigation to which the Petitioner is party are minimal. *Fintiv*, IPR2020-00019, Paper 11 at 14; *Mylan*, IPR2020-00440, Paper 17 at 22-23. Such third-party based denials are obviously not reparable by means of a stipulation signed by the

Petitioner alone, which does nothing to “mitigate[] concerns of potentially conflicting decisions and duplicative efforts between the district court” in the Vizio Litigation and the PTAB. Guidance Memo at 7. Rather, the third-party itself must consent to a *Sotera* stipulation to avoid a *Mylan*-based denial.

Here, although Vizio has purported to enter a similar stipulation in their (identical to LG’s) petition for *inter partes* review, (Ex. 2007 at 90-91), it is not linked to the institution of Petitioner’s requested review, and Vizio remains free to withdraw their petition. Moreover, it suffers from all of the same defects as LG’s stipulation, described above, including ambiguity as to the art Vizio believes it can raise in District Court. *See* Ex. 2008 at 27, 32 (identifying “thousands of [purportedly] invalidating combinations” of prior art that can be combined in “any combination,” which are so numerous that Vizio itself finds identifying them “unduly burdensome,” including paper art, systems art, and “Non-Patent Prior Art Publications”).

Petitioner’s failure to provide a proper *Sotera* stipulation, the fact that Petitioner’s stipulation will have no effect on the parallel Vizio litigation, and the strong overlap between Petitioner’s grounds here and those asserted in the Vizio litigation collectively counsel in favor of denying Petitioner’s request.

This factor weighs against review.

E. Factor 5: Petitioner is the Defendant in the LG Litigation, and the Vizio Litigation Involves Substantially Similar Issues

Petitioner is the defendant in the LG Litigation, which favors denial. *Fintiv*, IPR2020-00019, Paper 11 at 13-14. Petitioner is not a party to the Vizio Litigation. Nonetheless, “the issues [in the Petition] are the same as, or substantially similar to, those already or about to be litigated,” so this factor favors denial even with respect to the Vizio Litigation. *Id.*; *Mylan*, IPR2020-00440, Paper 17 at 22-23 (noting that denial of review on the basis of an additional litigation to which petitioner is not a member does not constitute prejudice, since they will in any event have the opportunity “to fully litigate the invalidity of the [challenged] patent” in the litigation they are defending).

F. Factor 6: Petitioner Has Not Established Grounds for Review under The Statutory Standard, Let Alone the Far Stricter “Compelling Merits” Standard

The “factors considered in the exercise of discretion are part of a balanced assessment of all the relevant circumstances in the case, including the merits.” *Fintiv*, IPR2020-00019, Paper 11 at 14. The Director has provided further guidance on the proper role of consideration of the merits in weighing a discretionary denial, both in the Guidance Memo, as well as in her precedential decision in *CommScope Technologies LLC v. Dali Wireless, Inc.*, IPR2022-01242, Paper 23 (PTAB Feb. 27, 2023). The Director set forth a “compelling merits test” under which the Board—if

it has found that *Fintiv* factors 1-5 favor discretionary denial—must assess whether a petition presents a “compelling unpatentability challenge” before discretionarily denying institution. *CommScope*, IPR2022-01242, Paper 23 at 3-5.

As the Director explained, “the compelling merits standard is a higher standard than the standard for institution set by statute.” *Id.* at 3.⁶ A reasonable likelihood that the petitioner would prevail with respect to at least one challenged claim does not suffice to demonstrate that a challenge is “compelling.” Rather, a “compelling” challenge is one “in which 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” such that “it is ***highly likely*** that the petitioner would prevail with respect to at least one challenged claim.” *Id.* at 3-4 (emphasis added). This is a “high standard” (see *AviaGames, Inc. v. Skillz Platform, Inc.*, IPR2022-00530, Paper 14 at 3, 5 (PTAB Mar. 2, 2023)) and the Board must explain its reasoning in determining whether the merits are compelling. *CommScope*, IPR2022-01242, Paper 23 at 4-6.

⁶ Institution of an IPR is authorized only when “the information presented in the petition ... and any response ... shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *CommScope*, IPR2022-01242, Paper 23 at 3 n.3.

Here, the *Fintiv* factors weigh strongly in favor of discretionary denial. Moreover, as discussed in the merits section below, Petitioner’s challenge does not meet even the statutory standard, let alone the higher “compelling merits” standard. Accordingly, there is no basis for ignoring the other factors and granting review.

This factor weighs strongly in favor of denying review.

Because institution of any ground raised in the Petition would be an inefficient use of the Board’s resources—as evidenced by all six *Fintiv* factors—and the Petition does not satisfy the “compelling merits test,” the Board should exercise its discretion under § 314(a) to deny institution.

III. OVERVIEW OF THE ’805 PATENT

The inventions of the ’805 Patent and its family members broadly relate to intelligent televisions, also known as ITV’s, smart TVs and/or internet TVs. As discussed in the specification of the ’805 Patent, ITVs represent the convergence of various computing and telecommunications functions and hardware into a single package, enabling TVs that can also connect to the internet, function as a smart hub for connected homes, interface with social media, and perform myriad other functions. More specifically, they claim systems and methods for ITVs that, for example, employ novel user interfaces to harmonize and enable the various functions, sources and inputs necessary to perform all of the converged technologies. The claims of the ’805 Patent cover specific improvements in the field of televisions

and television user interfaces that go beyond what was well-understood, routine, and conventional to solve then-existing problems in the field, particularly with respect to “Smart TVs”. Generally, a Smart TV is “a device that integrates access to the Internet and Web 2.0 features into television sets” and “represent[ed] the trend of technological convergence between computers and television sets.” See, e.g., Ex. 1001 at 2:1-5. Smart TVs allow for access to “online interactive media, Internet TV, on-demand streaming media” and do not generally “focus on traditional broadcast media” although they typically provide access to same. *Id.* at 2:5-7. Prior art Smart TV systems failed to, inter alia, “provide seamless and intuitive user interfaces for navigating and/or executing the various features of the Smart TV.” *Id.* at 2:8-10. Accordingly, there remained “a need for an Intelligent TV with intuitive user interfaces and with seamless user interaction capability.” *Id.* at 2:16-17.

To address this, the ’805 Patent—and its family members—describes and claims inventions that provide these “intuitive” and “seamless” interfaces. Broadly speaking, the ’805 Patent discloses functionality to sort and display data regarding available content. Ex. 1001 at 11:12-21, 17:44-62. Additional related patents describe and claim (1) global panels that enable users to navigate Smart TV offerings, and associated panels employed and oriented in novel ways to facilitate navigation of the Smart TV; (2) remote controls that enable a user to navigate the

Smart TV; and (3) tracking and presenting content in the Smart TV environment in ways that enable users to effectively identify and access the desired content.

In particular, the '805 patent is directed to “a data service system in an Intelligent Television (TV) includes an internal content provider module configured to provide content to video hardware or display of the Intelligent TV or to a content provider module or application of the Intelligent TV and a subservice configured to provide the internet content provider module with requested data for a pre-defined data model.” Ex. 1001 at Abstract.

The '805 patent explains that each type of content (e.g., EPG, VOD, media) and its corresponding metadata have an associated data model, such as VOD data model 1404 for VOD data, EPG data model 1408 for EPG data, and media data model 1412 for media data. Ex.1001, 28:35-37. The '805 patent explains that “[t]he data models govern what information is to be stored and how that information will be stored by the data service.” Ex.1001, 21:6-8, 28:37-38 (similar). For example, with reference to Figure 14 below, the '805 patent provides that “[t]he data models provide uniform formats for the respective subservices (i.e., VOD subservice 1420, EPG subservice 1424, and media subservice 1428) and/or the internal content provider modules 1416 which interface with applications 416.” Ex.1001, 33:25-29. Thus, the '805 patent provides that each data model (e.g., VOD data model 1404) or

a particular type of content (e.g., VOD content) provides a corresponding format for that content and associated metadata (e.g., metadata for VOD content):

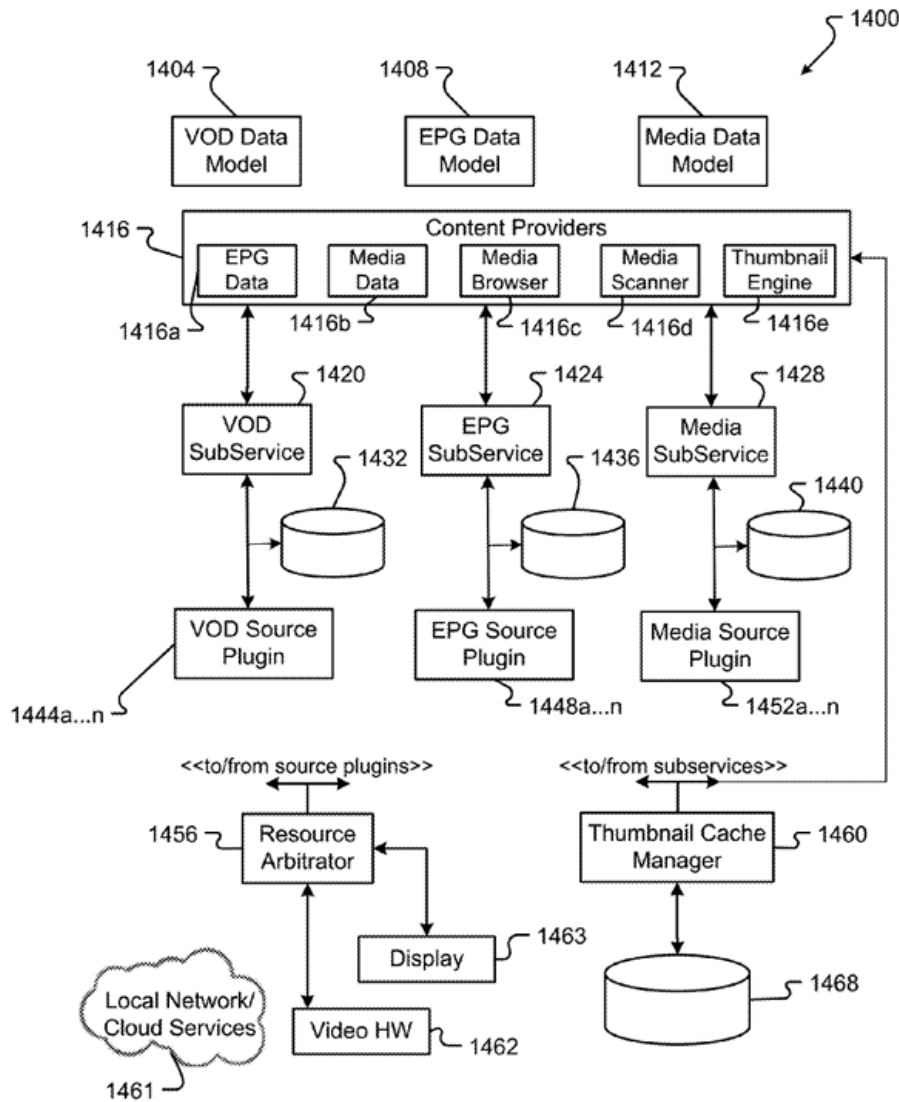


Fig. 14

Claim 1 (and analogous Claims 10 and 17) of the '805 Patent recite:

1. A method of providing content for a television (TV), the method comprising:

receiving, by a processor, data relevant to one or more scheduled events from one of a corresponding subservice of a plurality of subservices, wherein the plurality of subservices comprises a video-on-demand (VOD) subservice, electronic programming guide (EPG) subservice, and a media subservice

organizing, by the processor, the data according to a pre-defined format corresponding to each of the plurality of subservices, wherein the pre-defined format comprises one of a VOD data model, an EPG data model and a media data model, wherein organizing the data according to the pre-defined format comprises converting the data received from the subservice into the pre-defined format of the corresponding data model and wherein each of the VOD data model, EPG data model, and media data model provide a uniform format for the plurality of subservices; and

providing, by the processor, the organized data to one or more of a plurality of content provider modules of the TV.

Ex. 1001 at Claim 1.

IV. SUMMARY OF THE REFERENCES ASSERTED IN THE PETITION

A. Chen

Chen describes a “method of managing metadata” in the context of a set top box and focuses on certain files, e.g. MP3, WPA, JPEG, and MPEG-4. *See, e.g.*, Ex. 1007 at [0006], [0018]. Chen’s method specifically declines to employ “different

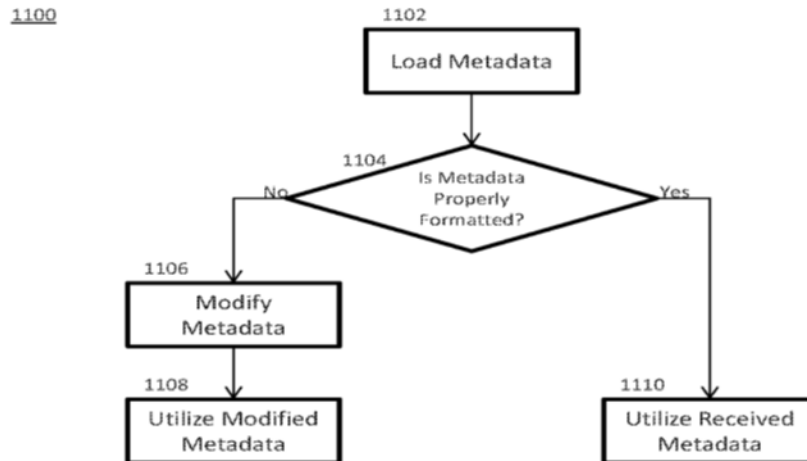
types of media data in a corresponding database according to the” information corresponding with that type. *Id.* at [0006]; *see also id.* at [0007]. Instead, as a way of minimizing storage space, Chen’s method stores “plural types of media data” in metadata tables: formatted in accordance with a single “uniform format.” *Id.* at [0017]; *see also id.* at Fig. 3.

B. Melnychenko

Melnychenko describes systems and methods “for modifying metadata associated with content that is improperly formatted.” Ex. 1005 at Abstract. Melnychenko addresses scenarios where metadata which has been initially formatted in an application, source or purpose-specific “metadata format,” *see generally id.* at [0088]-[0105], or has otherwise been corrupted, is needed for an application or purpose requiring a different format. *Id.* at [0064]-[0067], [0106]-[0115]. The system described by Melnychenko aggregates metadata from a variety of sources, *id.* at [0082]-[0087], and pre-processes it to, instead of having its initial format, conform to a particular specified format desired for the application, *id.* at [0116]-[0140]. *See generally, id.* at Figs. 13-15; [0157]-[0180]. While both the aggregation and conformation processes described by Melnychenko utilize information from a variety of sources, *see id.* at [0083]-[0085], [0142]-[0148], [0175] the goal of Melnychenko is to conform all pre-processed metadata into a

single metadata format that is compatible with the desired application or purpose.

See, e.g., id at [0116]-[0140], Fig. 11:



C. Kim

Kim describes a “multifunctional display device” consisting of a number of “card object” panels displayed in different portions of the display, along with “a method of controlling” the same. Ex. 1006 at Abstract. While Kim’s method includes metadata and a “metadata manager”, Kim provides minimal detail regarding the process by which this metadata is processed upon receipt from an external source, *see id.* at [0064], provides no information regarding how metadata from varying sources is formatted, and gives no indication that metadata from different sources is either reformatted or stored in accordance with any particular data model.

D. Lee-1

Lee-1 describes an “apparatus for processing images” which includes “a thumbnail generator” that is able to “generate” either “a still picture thumbnail or a moving picture thumbnail” as well as an accompanying encoder. Ex. 1008 at Abstract. Lee-1 provides further description regarding the generation, manipulation, utilization, and deletion of these thumbnails. *Id.* at 12:36-18:3.

E. Lee-2

Lee-2 describes an “image display apparatus for receiving and processing a broadcast signal” that includes “a favorite channel object representing favorite channels.” Ex. 1009 at Abstract. Lee-2 modifies the card object framework described in Kim by adding a specialized “FAVORITE CH” card which enables users to view and access pre-selected favorite channels. *Id.* at 29:27-29:39. In addition, Lee-2 instructs that favorite-channel information may be added as a sub-component of the BROADCAST card (which airs television content while the user is viewing the home screen). *Id.* at 30:44-31:52; 31:57-33:6. Lee-2 does not propose a new method or system for formatting and storing metadata beyond that described in Kim.

F. Ferren

Ferren describes a mechanism “for facilitating multiple multimedia viewing planes in media display systems.” Ex. 1010 at Abstract. Ferren describes a variety of methods for navigating, coordinating, and communicating between these display

systems. *See, e.g., id.* at 4:11-4:37. In certain, limited, cases – this involves the use of SQLite databases. *Id.* at 10:5-10:37.

G. Choi

Choi describes “a method of providing an external device list and an image display device” for a smart tv. Ex. 1011 at Abstract. Such external devices may come in a wide variety of forms, and can be either connected or disconnected from the television. *Id.* at [248]-[250].

The television described in Choi shares the “card object” system employed in Kim, *Id.* at Fig. 9; *see generally, id.* at [0208]-[0247]. Despite this fact, Choi instructs that this external device list is contained in a full-screen application, rather than in a card object. *Id.* at Figs. 10-11. Indeed, where Choi does discuss an external-objects card object in the home screen envisioned by his patent, this card object is said to only cover “a list of external devices connected to the image display device.” *Id.* at [218].

V. LEVEL OF ORDINARY SKILL IN THE ART

Patent Owner adopts Petitioner’s definition of a person of ordinary skill in the art (“POSITA”) for the purposes of this Preliminary Response. See Pet. at 9. Patent Owner reserves the right to present arguments on the definition should the Petition be instituted.

VI. CLAIM CONSTRUCTION

Patent Owner does not dispute Petitioner's statement on claim construction for the purposes of this Preliminary Response. See Pet. at 9-10. Patent Owner reserves the right to present arguments on appropriate claim construction should the Petition be instituted.

VII. PETITIONER FAILS TO SHOW A REASONABLE LIKELIHOOD OF PREVAILING ON ANY CHALLENGED CLAIM

To the extent the Board considers the merits of the Petition, the Petition does not demonstrate that the combinations of Melnychenko in view of Chen, Melnychenko in view of Chen, Kim, and Lee-1, Melnychenko in view of Chen, Kim, Lee-1, and Lee-2, Melnychenko in view of Chen, Kim, Lee-1, Lee-2, and Ferren, and Melnychenko in view of Chen, Kim, Lee-1, and Choi render obvious any of the challenged claims.

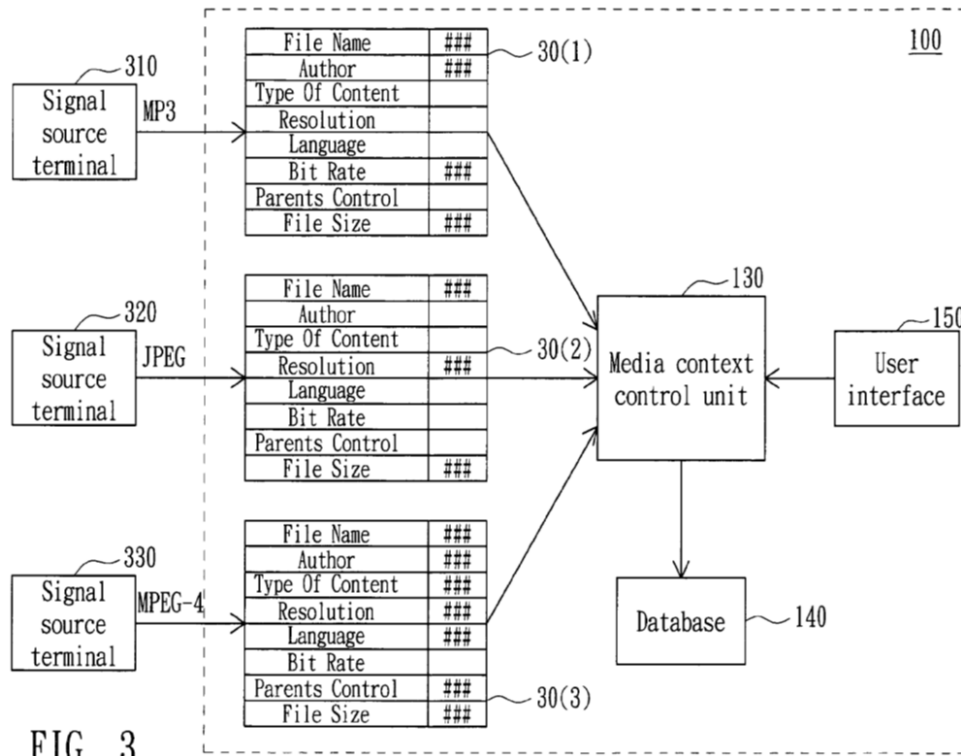
A. Ground 1: Melnychenko in view of Chen Does Not Render Obvious Claims 1, 10, and 17 of the '805 Patent

Petitioner's primary combination, Melnychenko in view of Chen, is premised on Chen's disclosure of a singular, uniform format for metadata collected from, e.g., MP3, WMA, JPEG, and MPEG-4 files. This is inapposite to the inventions taught and claimed in the '805 patent, which require three different data models—a VOD data model, an EPG data model, and a media data model. Petitioner does not identify any disclosure in Melnychenko in view of Chen that purportedly describes or renders

obvious the limitation “organizing, by the processor, the data according to a pre-defined format corresponding *to each of* the plurality of subservices.” Ex. 1001 at Claim 1. Accordingly, the combination does not render obvious Claims 1, 10, and 17 of the ’805 Patent.

1. **Melnychenko in view of Chen Does Not Disclose
“organizing, by the processor, the data according to a pre-defined format corresponding to each of the plurality of subservices . . . wherein each of the VOD data model, EPG data model, and media data model provide a uniform format for the plurality of subservices” in Accordance with the Claim**

Chen discloses a method of minimizing storage space by homogenizing all metadata from a few different (but similar) types of files—MP3, WPA, JPEG, and MPEG-4 files—into a single type of metadata table:



Ex. 1007 at Fig. 3, Abstract, [0006], [0007]. Petitioner asserts that this narrow disclosure of a singular homogenized table of metadata—and limited to particular file types with similar metadata—renders obvious “organizing, by the processor, the data according to a pre-defined format corresponding to each of the plurality of subservices . . . wherein each of the VOD data model, EPG data model, and media data model provide a uniform format for the plurality of subservices.” *See*, Pet. at 12-13, 32-37. But this disclosure does not comport with plain language of the claim, or the nature and purpose of the invention as disclosed in the embodiments of the ‘805 Patent specification.

The '805 Patent teaches that “[t]he received content from the various source plugins may be converted to the specific format handled by the respective data model.” Ex. 1001 at 33:23-25. In other words, various types of, *inter alia*, VOD data are received and processed into a “pre-defined format [] of a VOD data model.” *Id.* at Claim 1. As explained in the specification, “the [VOD, EPG, and media] data models provide uniform formats *for the respective subservices (i.e., VOD subservice 1420, EPG subservice 1424, and media subservice 1428)* and/or the internal content provider modules 1416 which interface with applications 416.” *Id.* at 33:25-30 (emphasis added). The '805 Patent illustrates this data service in Figure 14:

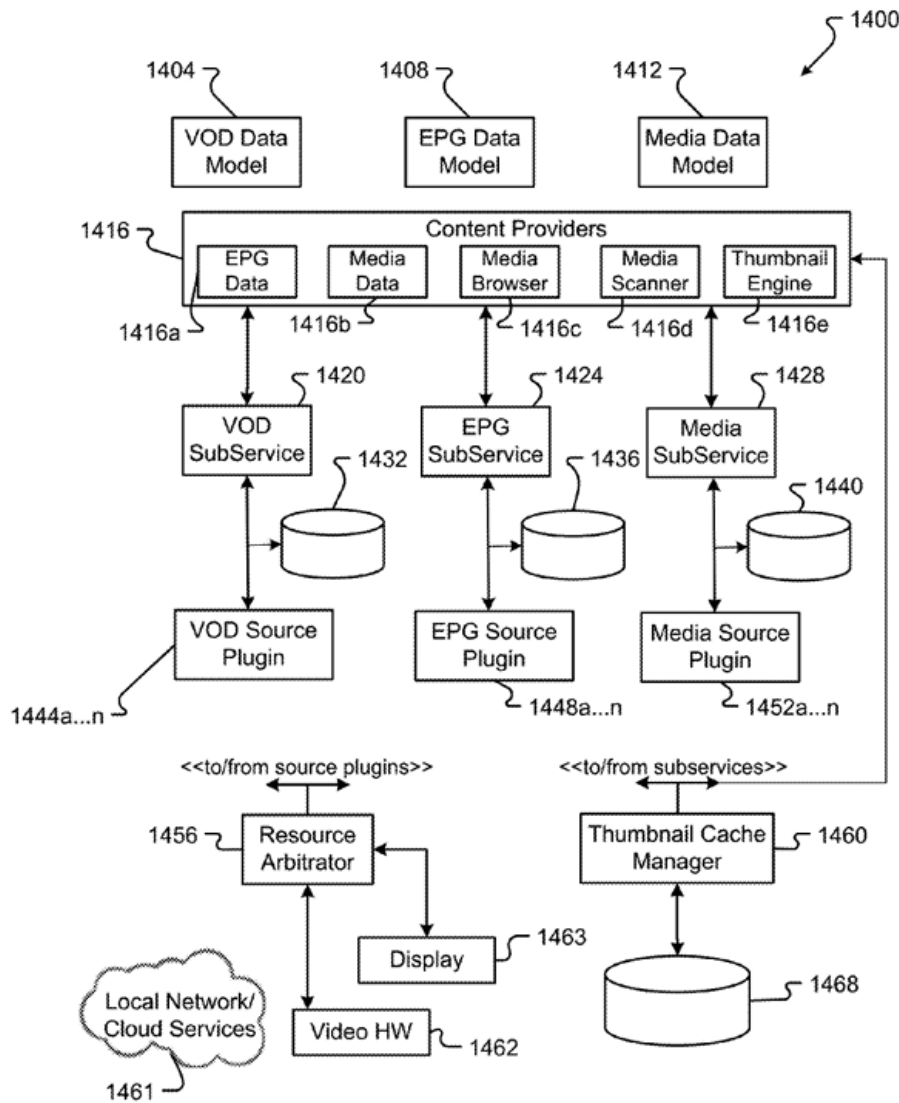


Fig. 14

This is captured in the limitations of claim 1, which recited three different data models, a VOD data model, an EPG data model and a media data model. In contrast, Petitioner's focus on Chen's disclosure of creating tables of metadata formatted into a singular format within a single database effectively reads this disclosed embodiment out of the scope of the claims of the '805 Patent and is, thus, improper.

Notably, the narrow disclosure of Chen—focusing certain types of media files—does not account for the variety of data types accessible to the claimed methods and systems of the ‘805 Patent, which comprise a VOD subservice, an EPG subservice, and a media subservice and/or internal content provider modules that interface with applications. *See* Ex. 1001 at 33:25-30. These various subservices may have different requirements for data format when they process the “the received media and/or data according to the need of the internal content provider modules 1416 and/or applications 416.” *Id.* at 33:34-42. For example:

[an] EPG data provider 1416a may serve applications with EPG information in a read-only format. Therefore, EPG subservice 1424 may work with data provider 1416a to provide read-only access the EPG information stored in EPG storage 1436. EPG subservice 1424 may organize the EPG information such that only the most relevant information is sent to EPG data provider 1416a (i.e., EPG subservice 1424 may resolve conflicts between an Internet EPG source versus EPG information embedded in a content feed in order to provide with the most detailed or up-to-date information is sent to EPG data provider 1416 a). Media data provider 1416b may require EPG information from EPG subservice 1424 as well as media information from VOD subservice 1420 or media subservice 1428 in order to provide personalized media

metadata information to relevant applications. Therefore, these subservices may process the received media and/or data in order to provide the relevant information to media data provider 1416b for generating the personalized media metadata.

Id. at 33:42-67 (describing various implementations of subservices and processing of data to meet particular requirements). Petitioner's proposed ground of Melnychenko in combination of Chen is contrary to this disclosure in the specification and the required limitations recited in the claims.

Accordingly, the disclosure of Melnychenko in combination of Chen does not render obvious Claims 1, 10, and 17 of the '805 Patent, and the Board should deny institution.

B. Ground 2: Melnychenko in view of Chen, Kim, and Lee-1 Does Not Render Obvious Claims 1-3, 6, 10-12, and 16-18 of the '805 Patent

Petitioner's Ground 2 fails for at least the same reasons as Ground 1. Ground 2 purports to demonstrate the obviousness of certain limitations found in claims 1-3, 6, 10-12, and 16-18 of the '805 Patent, and does not address the deficiencies in the independent claims as addressed in Ground 1. Pet. at 52-74. Accordingly, Melnychenko in view of Chen, Kim, and Lee-1 does not render obvious claims 1-3, 6, 10-12, and 16-18 of the '805 Patent at least for the same reasons Melnychenko in

view of Chen alone does not render obvious those claims, and the Board should deny institution.

C. Ground 3: Melnychenko in view of Chen, Kim, Lee-1, and Lee-2, Does Not Render Obvious Claims 4 and 13 of the '805 Patent

Petitioner's Ground 3 fails for at least the same reasons as Ground 1. Ground 3 purports to demonstrate the obviousness of certain limitations found in dependent claims 4 and 13 of the '805 Patent, and does not address the deficiencies in the independent claims as addressed in Ground 1. Pet. at 74-79. Accordingly, Melnychenko in view of Chen, Kim, Lee-1, and Lee-2 does not render obvious claims 4 and 13 of the '805 Patent at least for the same reasons Melnychenko in view of Chen alone does not render obvious those claims, and the Board should deny institution.

D. Ground 4: Melnychenko in view of Chen, Kim, Lee-1, Lee-2, and Ferren Does Not Render Obvious Claim 5 of the '805 Patent

Petitioner's Ground 4 fails for at least the same reasons as Ground 1. Ground 4 purports to demonstrate the obviousness of certain limitations found in dependent claims 4 and 13 of the '805 Patent, and does not address the deficiencies in the independent claims as addressed in Ground 1. Pet. at 79-83. Accordingly, Melnychenko in view of Chen, Kim, Lee-1, Lee-2, and Ferren does not render obvious claim 5 of the '805 Patent at least for the same reasons Melnychenko in

view of Chen alone does not render obvious that claim, and the Board should deny institution.

E. Ground 5: Melnychenko in view of Chen, Kim, Lee-1, and Choi Does Not Render Obvious Claims 6-8, 14, and 15 of the '805 Patent

Petitioner's Ground 5 fails for at least the same reasons as Ground 1. Ground 5 purports to demonstrate the obviousness of certain limitations found in dependent claims 6-8, 14, and 15 of the '805 Patent, and does not address the deficiencies in the independent claims as addressed in Ground 1. Pet. at 83-90. Accordingly, Melnychenko in view of Chen, Kim, Lee-1, and Choi does not render obvious claims 6-8, 14, and 15 of the '805 Patent at least for the same reasons Melnychenko in view of Chen alone does not render obvious those claims, and the Board should deny institution.

VIII. CONCLUSION

Petitioner fails to show that institution is warranted. As explained above, institution would require an inefficient use of the Board's resources, and the Petition falls far short of presenting a "compelling unpatentability challenge" that would warrant proceeding.

Even if the Board reaches the merits under the lower "reasonable likelihood" standard, denial is still warranted. Petitioner fails to demonstrate that the asserted

prior art teaches every limitation of the challenged claims. For the foregoing reasons, Patent Owner respectfully requests that the Board deny institution.

Dated: April 11, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with the type-volume limitations of 37 CFR § 42.24(a)(1)(i). This brief contains 7,648 words as calculated by the “Word Count” feature of Microsoft Word, the word processing program used to create it. The undersigned further certifies that this brief complies with the typeface requirements of 37 CFR § 42.6(a)(2)(ii) and typestyle requirements of 37 CFR § 42.6(a)(2)(iii). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 point font.

Dated: April 11, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Patent Owner's Preliminary Response, was served on April 11, 2024 *via* email directed to counsel of record for the Petitioner at the following address of record as listed on PTACTS:

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